



# OFFICE OF INSPECTOR GENERAL

## U.S. ENVIRONMENTAL PROTECTION AGENCY

CUSTOMER SERVICE ★ INTEGRITY ★ ACCOUNTABILITY

*Operating effectively and efficiently  
Cleaning up and revitalizing land*

### **Brownfields Program- Income Monitoring Deficiencies Persist Because the EPA Did Not Complete All Certified Corrective Actions**

Report No. 22-P-0033

March 31, 2022



**Report Contributors:** Angela Bennett  
Michael Davis  
Tina Lovingood  
Tim Roach  
John Trefry  
Lela Wong

<b>Abbreviations:</b>	ACRES	Assessment, Cleanup, and Redevelopment Exchange System
	C.F.R.	Code of Federal Regulations
	EPA	U.S. Environmental Protection Agency
	OBLR	Office of Brownfields and Land Revitalization
	OIG	Office of Inspector General
	OLEM	Office of Land and Emergency Management
	U.S.C.	United States Code

**Cover Image:** The brownfields redevelopment process—a contaminated site (left), a remediated site (middle), and a reused site (right). (EPA images)

**Are you aware of fraud, waste, or abuse in an EPA program?**

**EPA Inspector General Hotline**

1200 Pennsylvania Avenue, NW (2431T)  
Washington, D.C. 20460  
(888) 546-8740  
(202) 566-2599 (fax)  
[OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov)

Learn more about our [OIG Hotline](#).

**EPA Office of Inspector General**

1200 Pennsylvania Avenue, NW (2410T)  
Washington, D.C. 20460  
(202) 566-2391  
[www.epa.gov/oig](http://www.epa.gov/oig)

Subscribe to our [Email Updates](#).  
Follow us on Twitter [@EPAoig](#).  
Send us your [Project Suggestions](#).



# Office of Inspector General U.S. Environmental Protection Agency **At a Glance**

22-P-0033  
March 31, 2022

## Why We Did This Audit

The Office of Inspector General conducted this audit to determine whether the corrective actions taken by the U.S. Environmental Protection Agency's Office of Brownfields and Land Revitalization, under the Office of Land and Emergency Management, effectively addressed the program deficiencies identified in [OIG Report No. 17-P-0368, \*Improved Management of the Brownfields Revolving Loan Program Is Required to Maximize Cleanups\*](#), issued August 23, 2017.

The prior [OIG report](#) included 23 recommendations—17 addressed to the Office of Land and Emergency Management and six addressed to EPA Regions 1 and 10. The Agency agreed to implement corrective actions to address all 23 recommendations.

### **This audit supports EPA mission-related efforts:**

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

### **This audit addresses a top EPA management challenge:**

- *Managing infrastructure funding and business operations.*

Address inquiries to our public affairs office at (202) 566-2391 or [OIG\\_WEBCOMMENTS@epa.gov](mailto:OIG_WEBCOMMENTS@epa.gov).

[List of \*\*OIG reports\*\*.](#)

## ***Brownfields Program-Income Monitoring Deficiencies Persist Because the EPA Did Not Complete All Certified Corrective Actions***

### **What We Found**

EPA Regions 1 and 10 effectively completed all corrective actions for their six recommendations in [OIG Report No. 17-P-0368](#). Of the 17 recommendations addressed to the Office of Land and Emergency Management, the Office of Brownfields and Land Revitalization, or OBLR, did not fully complete the agreed-to corrective actions for five, despite certifying that those actions were completed, and program-income monitoring deficiencies persist. Corrective actions for three of those five recommendations were not completed because the Agency had not determined an appropriate level of program-income tracking and oversight. Corrective actions for the two other recommendations were not completed because the EPA's guidance did not include program-income tracking and post-closeout reporting. Office of Management and Budget and EPA policies require the Agency to take corrective actions promptly.

**The OBLR did not complete all certified corrective actions and still lacks current and accurate information needed to monitor an estimated \$46.6 million of program income.**

As a result, the EPA continues to lack current, accurate, and complete data necessary for effective post-closeout monitoring of program income. Without such data, the OBLR is unable to determine whether an estimated \$46.6 million of program income under closed cooperative agreements was used timely and for the purposes authorized under the closeout agreements, as required by federal regulation, or whether actions are needed to address noncompliance with closeout agreement terms and conditions.

### **Recommendations and Planned Agency Corrective Actions**

We make six new recommendations in this report. We recommend that the assistant administrator for Land and Emergency Management develop a policy and implement procedures to reduce the balances of available program income and establish a time frame for the use or return of funds, implement a method for tracking program income and compliance with reporting requirements, expand existing guidance to include a post-closeout annual report submission deadline and program-income tracking requirements, and provide training on the tracking method and expanded guidance. We also recommend that the assistant administrator assess whether any of the \$46.6 million of program income under closeout agreements should be returned to the government.

We updated our recommendation to assess whether any unused program income should be returned to the government, based on the Agency's response to the draft report. The Agency provided acceptable corrective actions for all six of our recommendations but did not provide the required estimated completion dates for some or all corrective actions for four of the recommendations. As a result, two recommendations are resolved with corrective actions pending, while four are unresolved.



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

THE INSPECTOR GENERAL

March 31, 2022

**MEMORANDUM**

**SUBJECT:** Brownfields Program-Income Monitoring Deficiencies Persist Because the EPA Did Not Complete All Certified Corrective Actions  
Report No. 22-P-0033

**FROM:** Sean W. O'Donnell

A handwritten signature in blue ink, reading "Sean W O'Donnell", is placed over the printed name.

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

This is our report on the subject audit conducted by the U.S. Environmental Protection Agency's Office of Inspector General. The project number for this audit was [OA-FY21-0002](#). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Land and Emergency Management is responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your office provided acceptable planned corrective actions and estimated milestone dates in response to Recommendations 3 and 4. These recommendations are resolved with pending corrective actions.

**Action Required**

Recommendations 1, 2, 5, and 6 are unresolved. EPA Manual 2750 requires that recommendations be resolved promptly. Therefore, we request that the EPA provide us within 60 days its responses concerning specific actions in process or alternative corrective actions proposed on the recommendations. Your response will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification. The Inspector General Act of 1978, as amended, requires that we report in our semiannual reports to Congress on each audit or evaluation report regarding which we receive no Agency response within 60 calendar days.

We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

# Table of Contents

## Chapters

<b>1</b>	<b>Introduction.....</b>	<b>1</b>
	Purpose.....	1
	Background.....	1
	Responsible Offices .....	2
	Scope and Methodology.....	2
<b>2</b>	<b>EPA's Actions to Address Program-Income Monitoring Deficiencies Were Not Complete, Despite Certification .....</b>	<b>5</b>
	OMB and Agency Policies Require Prompt Corrective Actions .....	5
	Agency Did Not Complete All Agreed-To Corrective Actions .....	6
	Conclusions.....	10
	Recommendations.....	10
	Agency Response and OIG Assessment.....	10
<b>3</b>	<b>Program-Income Monitoring Deficiencies Persist .....</b>	<b>Error! Bookmark not defined.</b>
	Agency Actions Did Not Effectively Address Program-Income Monitoring Deficiencies .....	12
	OBLR's Database Was Not Current, Complete, or Accurate .....	13
	Post-Closeout Annual Reports Were Not Always Submitted or Timely .....	14
	OBLR Cannot Determine Whether Program Income Is Used Timely or for Authorized Purposes .....	14
	Conclusions.....	15
	Recommendations.....	15
	Agency Response and OIG Assessment.....	15
	<b>Status of Recommendations and Potential Monetary Benefits .....</b>	<b>17</b>

## Appendixes

<b>A</b>	<b>Brownfields Revolving Loan Fund Cooperative Agreement Closeout Process Memorandum.....</b>	<b>18</b>
<b>B</b>	<b>OIG Assessment of EPA Corrective Actions for OIG Report No. 17-P-0368.....</b>	<b>21</b>
<b>C</b>	<b>Program Income for Closed Cooperative Agreements Reviewed.....</b>	<b>26</b>
<b>D</b>	<b>Agency Response to Draft Report.....</b>	<b>288</b>
<b>E</b>	<b>Agency's High-Level Intended Corrective Actions and OIG Assessment for OIG Report No. 22-P-0033 Recommendations .....</b>	<b>344</b>
<b>F</b>	<b>Distribution .....</b>	<b>377</b>

# Chapter 1

## Introduction

### Purpose

The Office of Inspector General of the U.S. Environmental Protection Agency [initiated](#) this audit to determine whether the corrective actions taken by the EPA effectively addressed the identified program deficiencies in OIG Report No. [17-P-0368](#), *Improved Management of the Brownfields Revolving Loan Program Is Required to Maximize Cleanups*, issued August 23, 2017.

#### Top Management Challenge Addressed

This audit addresses the following top management challenge for the Agency, as identified in OIG Report No. [22-N-0004](#), *EPA's Fiscal Year 2022 Top Management Challenges*, issued November 12, 2021:

- Managing infrastructure funding and business operations.

### Background

The 2002 Small Business Liability Relief and Brownfields Revitalization Act authorizes the EPA to provide funding to local governments, quasi-governmental entities, state redevelopment agencies, and other eligible entities to capitalize a revolving loan fund and to provide subawards to carry out cleanup activities at brownfield sites. The Act defines a brownfield site as real property—the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The EPA provides revolving loan fund grants through either a competitively awarded new cooperative agreement every other year or through an annual supplemental funding application under an existing cooperative agreement.

The revolving loan funds generate program income through loan principal repayments, interest, and program fees received during the life of the agreements and after the cooperative agreements are closed. When loans are repaid, the loan amount is returned to the fund and is intended to be lent to other borrowers, providing an ongoing source of capital within a community. After all applicable administrative actions and required work of the cooperative agreement have been completed, the grant recipient can choose to close out its cooperative agreement. Based on the terms and conditions of the cooperative agreement, the grant recipient must negotiate a closeout agreement with the EPA to govern the use of program income after closeout.

OIG Report No. [17-P-0368](#) reported that approximately \$11 million available to clean up brownfields was not being used as intended. We found that contaminated brownfield properties were not cleaned up and redeveloped for ten of the 20 closed brownfields cooperative agreements we reviewed. The recipients of the cooperative agreements had not reloaned or spent program income collected after the closeout agreements were signed. We

As of fiscal year 2022, competitive awards are new cooperative agreements available to all eligible entities that do not have an open revolving loan fund cooperative agreement. Supplemental awards are limited to recipients with existing cooperative agreements. These can be awarded as new cooperative agreements or as amendments to existing cooperative agreements.

Closeout agreements set forth the terms and conditions for continued management and use of program income after the grant period.

also found confusion among EPA regions and grant recipients, as well as dissimilarities in terms and conditions, leading to inconsistencies in program applications. Program income was not maximized by depositing funds into an interest-bearing account, and sources of program income were excluded from the terms and conditions of cooperative agreements and closeout agreements. We also questioned over \$2.7 million in unsupported costs from three grant recipients.

Our prior report contained 23 recommendations—17 to the Office of Land and Emergency Management, known as OLEM, and six to EPA Regions 1 and 10. The Agency agreed with all 23 recommendations and submitted acceptable corrective action plans. Thus, we considered all 23 recommendations resolved with corrective actions pending. The Office of Brownfields and Land Revitalization, or the OBLR, which is the office under OLEM responsible for managing the Brownfields Program, certified to the Office of the Chief Financial Officer that all agreed-to corrective actions had been completed. Regions 1 and 10 issued management decision letters on the recommendations and recorded in the audit recommendation tracking system that they completed all corrective actions.<sup>1</sup>

## Responsible Offices

OLEM was responsible for completion of corrective actions for Recommendations 1 through 17 of our prior report, and Regions 1 and 10 were responsible for completion of corrective actions for Recommendations 18 through 23. Along with managing the Brownfields Program, which includes the Brownfields Revolving Loan Fund program, the OBLR issues guidance to EPA regions and makes grant award selections. The EPA's regional grants management offices award the cooperative agreements. Regional project officers are primarily responsible for grants management and oversight, including post-closeout tracking and monitoring. Some regions assign one project officer to oversee all closeout agreements, while other regions have the same project officer manage the cooperative agreement before and after closeout.

## Scope and Methodology

We conducted this performance audit from October 2020 to November 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed the internal controls necessary to satisfy our audit objective.<sup>2</sup> In particular, we assessed the internal control components—as outlined in the U.S. Government Accountability Office's Green Book—significant to our audit objective. Any internal control deficiencies we found are discussed in this report. Because our audit was limited to the internal control components deemed significant to our

---

<sup>1</sup> A management decision letter provides the Agency action official's response to OIG audit recommendations to the grant recipient. For the recommendations discussed in this report, the management decision letters summarize the OIG's recommendations, corrective actions taken by the grant recipients and the regions, and the action officials' rationales for their decisions on the audit recommendations.

<sup>2</sup> An entity designs, implements, and operates internal controls to achieve its objectives related to operations, reporting, and compliance. The U.S. Government Accountability Office sets internal control standards for federal entities in GAO-14-704G, *Standards for Internal Control in the Federal Government* (also known as the "Green Book"), issued September 10, 2014.

audit objective, it may not have disclosed all internal control deficiencies that may have existed at the time of the audit.

We conducted audit procedures to determine whether the Agency's corrective actions effectively addressed the program deficiencies identified in OIG Report No. 17-P-0368. This included determining whether the Agency had, in fact, completed all the corrective actions for the report's 23 recommendations. We reviewed the prior audit recommendations, the OLEM-proposed corrective actions, and the OBLR's memorandum certifying that corrective actions were completed. We obtained and verified the evidence of completion that the OBLR cited in its corrective action certification memorandum to assess whether the actions were completed as certified. We also reviewed the data in the Agency's audit tracking system and the management decision letters to verify that Regions 1 and 10 completed their corrective actions.

To assess the effectiveness of the Agency's actions in resolving our prior report findings, we updated our understanding of how the Agency manages Brownfields Revolving Loan Fund cooperative agreements after closeout. We interviewed OBLR management and staff, as well as project officers and program managers in the five EPA regions with the most cooperative agreements—Regions 1, 3, 4, 5, and 9. We also discussed the cooperative agreements we selected for analysis with project officers in Regions 6, 8, and 10. The following sections describe how we assessed the effectiveness of the actions taken by the OBLR and Regions 1 and 10.

### *Follow-Up on Recommendations Addressed to OLEM*

The recommendations to OLEM in our prior report related to deficiencies pertaining to unused program income, inconsistencies in program application, and unavailable or unused program data. These 17 recommendations included corrective actions such as developing and implementing policies for, as well as providing training about, post-closeout program-income monitoring. To determine whether the corrective actions taken by the OBLR effectively addressed the deficiencies identified in the OIG's prior audit, we selected and reviewed 31 cooperative agreements—12 open and 19 closed agreements.

We analyzed grant documents for the 12 open cooperative agreements to determine whether the OBLR incorporated the updated terms and conditions into the new awards and amendments to existing cooperative agreements in accordance with OBLR requirements. This analysis was conducted to assess the effectiveness of OLEM's corrective actions for three recommendations from our prior report (Recommendations 3, 5, and 15).

For the 19 closed cooperative agreements, we reviewed supporting documentation and obtained additional clarifications from regional personnel to verify the program-income amount, the status of closeout agreements, and grant recipients' compliance with post-closeout reporting. Six of the 19 cooperative agreements had closeout agreements executed after June 21, 2018, the effective date of the OBLR's closeout process memorandum (Appendix A). For these six, we also reviewed the closeout agreements to confirm that the applicable regions incorporated the new terms and conditions from that memorandum. These analyses were conducted to assess the effectiveness of corrective actions taken to address the remaining 14 recommendations issued to OLEM in our prior report. Table 1 summarizes the 31 cooperative agreements we analyzed.

**Table 1: Summary of cooperative agreements analyzed**

Status	All cooperative agreements on OBLR's list		Cooperative agreements analyzed		
	Number of cooperative agreements	Total award amount	Number of cooperative agreements	Total award amount	Percent of award amount analyzed
Open	103	\$185,959,033	12	\$20,809,932	11
Closed	357	368,075,790	19*	56,231,053	15
<b>Total</b>	<b>460</b>	<b>\$554,034,823</b>	<b>31</b>	<b>\$77,040,985</b>	

Source: OIG summary of OBLR data. (EPA OIG table)

\* Includes cooperative agreements with a closeout agreement, as well as cooperative agreements without a closeout agreement but have program income.

To select the 31 cooperative agreements for our review, we obtained a list of 460 cooperative agreements from the OBLR on December 8, 2020, that represented all open and closed Brownfields Revolving Loan Fund awards made from program inception. We compared the OBLR's list with corroborating data obtained from other Agency systems—the Compass Business Objects Reporting and the Assessment, Cleanup, and Redevelopment Exchange System, or ACRES—to ensure that the list was complete. We separated the 460 cooperative agreements into the following categories:

- Open cooperative agreements.
- Closed cooperative agreements with closeout agreement.
- Closed cooperative agreements with no closeout agreement but have program income.
- Closed cooperative agreements with no closeout agreement and no program income.

We selected cooperative agreements from the first three categories for analysis. Selection criteria varied among the categories. The agreements selected for analysis generally fell under one or more of the following categories:

- The grant award amount was among the highest in the cooperative agreement category.
- The award was made by the regions with the highest number of cooperative agreements.
- The cooperative agreement included information that concerned us regarding data accuracy based on our initial analysis of the list.

### ***Follow-Up on Recommendations Addressed to Regions 1 and 10***

The six recommendations made to Regions 1 and 10 related to financial management issues with three grant recipients—the Columbia River Estuary Study Taskforce; the City of Bridgeport, Connecticut; and the Rhode Island Economic Development Corporation. These recommendations included determining the allowability of costs questioned during our prior audit and placing these grantees under more restrictive procedures for reimbursing claimed costs. To review the completeness and effectiveness of the regions' actions for these recommendations, we reviewed the data in the Agency's audit recommendation tracking system and the regions' management decision letters for corrective actions taken. We then verified the regions' corrective actions through the Agency's Compass Business Objects Reporting system data and additional supporting documentation—including closeout agreements, annual reports, and other accounting and banking information—provided by the grant recipients through the regions.

## Chapter 2

### **EPA's Actions to Address Program-Income Monitoring Deficiencies Were Not Complete, Despite Certification**

OLEM did not complete corrective actions for five of the 17 recommendations issued to that office in our prior report, despite the OBLR certifying on behalf of OLEM that it had completed all of the agreed-to corrective actions. Office of Management and Budget Circulars A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, and A-50, *Audit Follow-up*, as well as EPA Manual 2750, *Audit Management Procedures*, require the Agency to take corrective actions to address deficiencies promptly. All unimplemented corrective actions are related to monitoring program income. OBLR officials told us that tracking program income is very resource intensive and that tracking money that does not belong to the Agency is not a good use of resources. Nonetheless, the OBLR's officials said that they will continue to work with the regions and the EPA's Office of Grants and Debarment to determine the appropriate amount of tracking and oversight needed to monitor the unspent program income. Since all 17 recommendations were certified as complete, our *Semiannual Report to Congress* issued in November 2021 did not state that this report had unimplemented recommendations when it did.<sup>3</sup> Further, deficiencies in program-income monitoring that we identified during our prior audit persist, as discussed in Chapter 3.

### **OMB and Agency Policies Require Prompt Corrective Actions**

Office of Management and Budget Circulars A-123 and A-50, as amended, and EPA Manual 2750, dated March 28, 2017, require the Agency to take corrective actions to address control deficiencies promptly. Specifically, Circular A-123 states that:

Correcting control deficiencies is an integral part of management accountability and must be considered a priority by the Agency. An Agency's ability to correct control deficiencies is an indicator of the strength of its internal control environment.

Circular A-50 states that:

Audit follow up is an integral part of good management...Corrective action taken by management on resolved findings and recommendations is essential to improving the effectiveness and efficiency of Government operations.

EPA Manual 2750 states that the audit follow-up official is responsible for:

a) Ensuring that agencywide audit management, resolution and follow-up policies and procedures are in place...[and]

---

<sup>3</sup> EPA OIG *Semiannual Report to Congress: April 1, 2021 to September 30, 2021*, Report No. [EPA-350-R-21-002](#), November 2021.

b) Ensuring that audit reports are resolved promptly and implemented in a manner that satisfies requirements of statutes and agency regulations; ...[and] improves the efficiency and effectiveness of the programs.

EPA Manual 2750 also requires the Agency action official to certify when all corrective actions have been completed. On March 19, 2019, the OBLR director submitted a memorandum to the EPA chief financial officer certifying that corrective actions for all 17 recommendations to OLEM were completed. The certification memorandum provided a table of the OIG recommendations, the OLEM-proposed corrective actions to resolve the recommendations, and the corrective actions the OBLR took to address the recommendations.

The reporting requirements of sections 5(a)(3) and 5(a)(10)(C) of the Inspector General Act of 1978, as amended, require OIGs to identify each significant recommendation described in previous semiannual reports for which corrective action has not been completed, as well as a summary of each audit, inspection, and evaluation report for which there are any outstanding unimplemented recommendations. Based on the Agency's certification that our prior report recommendations were completed, our *Semiannual Report to Congress* issued in November 2021 did not report any unimplemented recommendations for our prior report.

## **Agency Did Not Complete All Agreed-To Corrective Actions**

Despite certifying that it had completed corrective actions for all 17 prior audit recommendations addressed to OLEM, the OBLR had not completed corrective actions for five of the recommendations related to program-income monitoring. Specifically, the OBLR did not:

- Establish a time frame for grant recipients to use or return unspent program income funds to the government, as agreed to in response to Recommendation 1 in the prior report.
- Develop a method for the regions to track closed cooperative agreements with program income and grant recipient compliance with post-closeout reporting requirements, as agreed to in response to Recommendations 14 and 16 in the prior report.
- Develop a policy or provide training related to EPA project officer's responsibilities for maintaining post-closeout information for closed cooperative agreements with program income, as agreed to in response to Recommendations 8 and 13 in the prior report.

Corrective actions for Recommendations 1, 14, and 16 from the prior report were not completed because the OBLR has not determined the appropriate amount of tracking and oversight needed to monitor the unspent program income. Corrective actions for Recommendations 8 and 13 were not completed because the closeout process memorandum and the closeout agreement template issued on June 21, 2018, to address these recommendations did not include program-income tracking and post-closeout reporting. Table 2 lists the five recommendations from our prior report for which corrective actions were not completed. Appendix B lists all of our prior report's recommendations and their completion status.

**Table 2: Recommendations from prior report for which corrective actions were not completed**

Number	Recommendation
1	"Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a time frame for recipients to use or return the funds to the EPA."
8	"Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the cooperative agreement is closed if program income exists."
13	"Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income."
14	"Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post-program income."
16	"Create a method for the Office of Brownfields and Land Revitalization and EPA regional managers to track compliance with reporting requirements for closed cooperative agreements."

Source: OIG Report No. 17-P-0368. (EPA OIG table)

### ***Guidance Did Not Establish Time Frame for Use or Return of Funds***

Recommendation 1 in our prior report urged OLEM to develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by grant recipients and establish a time frame for grant recipients to use or return the funds to the EPA. According to the OBLR's certification memorandum, to address the OIG recommendation, the OBLR issued a closeout process memorandum on June 21, 2018, along with a template for closeout agreement terms and conditions, instructing regions to add certain language from the template to new closeout agreements executed after the date of the closeout process memorandum.

The additional language allows the EPA to conduct assessments to determine whether grant recipients holding more than \$500,000 in program income three years after the effective date of the closeout agreement adequately carried out the closeout agreement. Based on the assessment, the additional language also allows the EPA to revoke the closeout agreement and direct the grant recipient to return the unused program income to the EPA. However, the closeout process memorandum and template do not address the unused program income for cooperative agreements with closeout agreements executed prior to June 21, 2018. Furthermore, the OBLR has not conducted these assessments and lacks the current, accurate, and complete program income data, as discussed above, to accurately identify closeout agreements that need to be assessed. The OBLR's data indicated that 25 cooperative agreements had program-income balances over \$500,000, but the actual number may vary because the OBLR's data are not current, accurate, and complete.

### ***OBLR Did Not Establish Methods to Track Closed Cooperative Agreements with Program Income and Compliance with Post-Closeout Reporting***

The OBLR did not develop methods for tracking closed cooperative agreements with program income or for tracking grant recipient compliance with post-closeout reporting requirements, as urged in Recommendations 14 and 16 in the prior report. At the time the prior report was issued, OLEM concurred with the recommendations and proposed that the OBLR work with the regions to address them. According to the OBLR's certification memorandum, the OBLR's closeout process memorandum and template addressed the recommendations, but these documents do not provide guidance for tracking and monitoring program income or recipient compliance with reporting requirements.

The OBLR's certification memorandum also stated that updates to ACRES would allow for easier tracking of closed cooperative agreements that have program income. According to OBLR staff and management, ACRES is primarily used to track program accomplishments, not program income or post-closeout reporting requirements. In addition, the OBLR's certification memorandum stated that staff used data-sharing software to generate a shared database that project officers can use to track and monitor these cooperative agreements. Based on discussions with eight of the ten EPA regions, only Region 5 uses the data-sharing software for tracking and monitoring closed cooperative agreements. Although Regions 1, 3, and 4 have a regional tracking database, it is not shared with anyone outside of their respective region. Regions 6, 8, 9, and 10 do not have a regional or shared database, and project officers in those regions use their own monitoring methods. As shown in Table 3, the use of a regional database and the type of information tracked varied among regions.

**Table 3: Summary of regional tracking of Brownfields Revolving Loan Fund cooperative agreements**

Region	Total number of cooperative agreements	Is a regional tracking database used?	Does the database track program income?	Does the database track annual reports?
1	98	Yes	Yes	No
2	21	Region was not selected for interview		
3	46	Yes	No	Yes
4	43	Yes	Yes	No
5	117	Yes	Yes	No
6	32	No	No	No
7	26	Region was not selected for interview		
8	22	No	No	No
9	41	No	No	No
10	14	No	No	No
<b>Total</b>	<b>460</b>			

Source: OIG summary of OBLR data and interviews with the regions. (EPA OIG table)

Program-income tracking and monitoring deficiencies continue because the OBLR has not determined the appropriate amount of tracking and oversight and has not provided a method to the regions to conduct tracking. As shown in Appendix C, our analysis of the 19 cooperative agreements with closeout agreements showed that the Agency continues to lack current and accurate program income data. Although OLEM agreed to have the OBLR develop and implement a method for tracking, the evidence of corrective action completion provided by the OBLR did not include a tracking method, and OBLR staff stated that the method used to track and monitor post-closeout activities was up to the regional project officers. OBLR staff stated that there is no statute requiring the tracking of program income or returning the unused program income to the EPA. OBLR officials also stated that tracking is very resource intensive and that tracking money that does not belong to the Agency is not a good use of resources. Nonetheless, the OBLR's officials said that they will continue to work with the regions and the EPA's Office of Grants and Debarment to determine the appropriate amount of tracking and oversight.

While there are no requirements for tracking program income or returning funds, 2 C.F.R. § 1500.8(c) allows the grant recipients to keep program income at the end of the assistant agreement only if they use those funds for continued operation of the revolving loan fund or for other brownfields purposes, as outlined in their closeout agreements. Without tracking and monitoring program income and recipient compliance with post-closeout reporting requirements, there is no assurance that the recipients have fulfilled the terms and conditions of the closeout agreement, as required in 2 C.F.R. § 1500.8(c).

## ***OBLR Did Not Develop Policy or Training for Post-Closeout Responsibilities***

We found that OLEM did not complete the recommended corrective actions for Recommendations 8 and 13 in our prior report, which urged OLEM to establish a policy and develop required training for post-closeout responsibilities.

Recommendation 13 said that OLEM should require project officers—through policy—to maintain information on all cooperative agreements with pre- and post-closeout program income. The OBLR certified that the recommended corrective action was completed and directed us to the following paragraph in the closeout process memorandum:

For cooperative agreements awarded in [fiscal year 2017] onward, the [revolving loan fund] cooperative agreement awards will include a term and condition that constitutes the Closeout Agreement for the [grant recipient] (Closeout Agreement [term and condition]). At the end of the cooperative agreement, the EPA Project Officer will remind the [grant recipient] via email that the Closeout Agreement [term and condition] applies, include the provisions as an attachment to the e-mail, and request that the [grant recipient] confirm receipt of this email. If any amendments are made to [revolving loan fund] cooperative agreement awarded prior to [fiscal year 2017], to add supplemental funding or otherwise, Regions must ensure that the Closeout Agreement [term and condition] is included in the amended cooperative agreement. For [revolving loan fund] cooperative agreements awarded prior to [fiscal year 2017] and whose terms and conditions have not been amended to include the Closeout Agreement [term and condition], a separate Closeout Agreement that conforms to the Template will be required.

The referenced paragraph provides guidance on the project officer's responsibilities for updating terms and conditions for new awards, amendments, and closeout agreements, but it does not discuss maintaining information on closed cooperative agreements with program income, such as tracking program income and compliance with reporting requirements.

Recommendation 8 urged the Agency to develop and implement required training for all Brownfields Revolving Loan Fund regional staff that covers program policy and guidance related to maintaining the revolving loan fund cooperative agreement after closeout if program income exists. The OBLR certified that during two regularly scheduled meetings, it trained staff on guidance related to maintaining the revolving loan fund after a cooperative agreement is closed. The OBLR certification memorandum also stated that the OBLR was in the process of updating its "bootcamp trainings" to include a training dedicated to revolving loan fund policies. The anticipated completion date for the "bootcamp training" was fiscal year 2019. However, OBLR staff told us that the training has not yet been completed because of the turnover of program leads.

The two trainings OBLR conducted occurred during a regularly scheduled national brownfields coordinators' call on June 20, 2018, and during an all-day training on December 10, 2019, which included grant recipients as well as EPA personnel. Although the materials the OBLR provided for these two trainings covered the updated closeout process memorandum and template, there was no evidence of any discussion about the EPA's responsibilities for maintaining information on closed cooperative agreements, such as tracking program income and recipient compliance with reporting requirements after the cooperative agreement is closed. The training materials discussed EPA project officers'

responsibilities for updating the terms and conditions for new awards, amendments, and closeout agreements but not the tracking and monitoring to be conducted after the closeout agreement is executed.

OBLR staff said that not all topics covered in the training were included in the training slides. As discussed earlier, OBLR staff stated that the method for tracking and monitoring post-closeout activities was left to the regional project officers and that the OBLR needs to work with the regions and the Office of Grants and Debarment to determine the appropriate amount of tracking and oversight. Therefore, it is unclear as to what guidance the OBLR provided during the training on maintaining information after grant closeout. The OBLR said that the person who conducted the training is no longer with the EPA and could not provide additional documentation on the training.

## **Conclusions**

Despite certifying completion of corrective actions for all recommendations in OIG Report No. 17-P-0368, corrective actions for five of the OLEM's 17 recommendations have not been completed. This casts substantial doubt on the integrity of OLEM's audit report closeout process. Because OLEM did not complete the corrective actions, the deficiencies identified in our prior audit report on program-income monitoring continue to exist.

## **Recommendations**

We recommend that the assistant administrator for Land and Emergency Management:

1. Develop a policy and implement procedures to reduce the balances of available program income and establish a time frame for recipients to use or return the funds to the EPA.
2. Implement a method for tracking program income and compliance with post-closeout reporting requirements.
3. Expand existing guidance to include the requirements and method for the post-closeout tracking of program income and annual reports.
4. Provide training to regional Brownfields Revolving Loan Fund staff and management on the post-closeout tracking and monitoring requirements.

## **Agency Response and OIG Assessment**

The Agency provided a response to the draft report on December 20, 2021 (Appendix D), concurring with Recommendations 1–4. The response included “high-level intended corrective actions” for all four recommendations. The Agency also provided estimated completion dates for Recommendations 3 and 4, which are resolved with corrective actions pending. The OBLR did not provide estimated completion dates for some corrective actions in Recommendations 1 and 2, and these two recommendations are unresolved. The OBLR stated that it was unable to provide estimated completion dates since the dates would depend on the Agency's ability to modify its “Information Collection Request” for ACRES reporting to comply with the Paper Reduction Act and to amend grant recipients' closeout agreement

terms and conditions. The OBLR also stated that the estimated completion dates will depend on the workload of regional offices.

The OBLR disagreed with our conclusion that the five recommendations from the prior audit report were not addressed. The OBLR reiterated the corrective actions taken, provided explanations on the challenges it encountered in implementing them, and proposed alternative corrective actions. We confirmed these proposed alternative corrective actions with the OBLR and incorporated them into the resolution of our current audit recommendations, as summarized in Appendix E.

The OBLR did not provide new information on the lack of a tracking method (prior report Recommendations 14 and 16) or the lack of policy and training on post-closeout monitoring (prior report Recommendations 8 and 13) to change our positions on these findings.

With respect to our finding that the OBLR's guidance issued to address Recommendation 1 in the prior report did not establish a time frame for using or returning funds, the OBLR stated that according to the June 21, 2018 closeout process memorandum, the OBLR was not required to start the assessments until June 21, 2021, and that it has initiated the assessment process with the regions. The OBLR also stated that it is beyond the EPA's authority to unilaterally amend existing closeout agreements entered into prior to June 21, 2018, and the workload of renegotiating all active closeout agreements is not justified based on regional staff constraints. While we agree with the OBLR's comments, our prior audit recommendation and OBLR's "high-level intended corrective actions" were not limited to new closeout agreements going forward, so corrective actions are not complete until the OBLR addresses the existing closeout agreements executed prior to June 21, 2021. The OBLR did not provide support for its statement that the workload to amend all closeout agreements is not justified. Our position on this issue remains unchanged.

## Chapter 3

### Program-Income Monitoring Deficiencies Persist

The corrective actions that the EPA took did not effectively address the deficiencies found in our prior audit on program-income monitoring, and the Agency continues to lack the current, accurate, and complete data necessary for effective post-closeout monitoring of program income. The deficiencies should be corrected in order for the Agency to ensure compliance with the federal requirements in 2 C.F.R. § 1500.8(c). The deficiencies continue to exist because the OBLR had not fully completed the corrective actions agreed to during audit resolution, as discussed in Chapter 2, and the actions taken were not effective in addressing the issues we noted in our prior report relating to the monitoring of program income. Without current, accurate, and complete data, the OBLR cannot determine whether an estimated \$46.6 million of post-closeout program income is used timely and for purposes authorized under the closeout agreements, nor can it assess whether any of the \$46.6 million of program income need to be returned to the government.

#### Agency Actions Did Not Effectively Address Program-Income Monitoring Deficiencies

The OBLR corrective actions did not effectively address the deficiencies we identified in our prior report on program-income monitoring. These deficiencies include the lack of policy requiring the cooperative agreement recipients to use program income (prior report Recommendation 1); the inconsistent application of program requirements due to confusion about the definition for program income and whether the revolving loan funds with program income need to continue operating (prior report Recommendation 8); and the lack of efficient data collection methods for closed agreements with program income and monitoring of program income and post-closeout annual reports (prior report Recommendations 13, 14, and 16).

As explained in Chapter 2, the guidance that the OBLR issued to address prior report Recommendation 1 added language to new closeout agreements to allow the EPA to conduct assessments to determine whether unused program income needs to be returned, but no policy or guidance has been issued to address unused program income in the existing closeout agreements. We found that at least one of the grant recipients we identified in our prior audit that had a large unused program-income balance still has a large unused balance as of May 2021. The EPA project officer who works with that grant recipient told us in February 2021 that the last update received from the recipient indicated that as of November 24, 2020, the recipient had three closeout agreements with a total program-income balance of \$4.6 million. The first cooperative agreement ended in September 2008. No program income had been spent for more than 12 years until the award of a \$2.5 million subgrant in May 2021. The recipient still had a program-income balance of over \$2 million after the subgrant award. According to the EPA project officer, the funds were not spent because the grant recipient had changed its spending plans several times until it awarded the subgrant.

Although the Agency's *Revolving Loan Fund Administrative Manual* states that EPA regions should encourage the grant recipient to maximize the amount of money loaned out for cleanup purposes at all times and that funds should not remain idle, the EPA had not established a time frame for grant recipients with existing closeout agreements to use the program income or return it to the government.

As a result, those grant recipients can postpone expending the program income without consequence. As shown in Appendix C, in the 19 closeout agreements we reviewed, four had a program-income balance of more than \$2 million, and three had a balance of more than \$1 million.

As explained in Chapter 2, the guidance that the OBLR issued to address Recommendations 14 and 16 does not provide a method for tracking and monitoring program income or grant recipient compliance with post-closeout reporting requirements, which is needed to assess the program-income status. The training developed and provided to address Recommendations 8 and 13 also did not cover tracking and monitoring of post-closeout program income and reporting. As a result, there is no consistent understanding among the regions on the tracking and monitoring of program income after grant closeout, and the Agency continues to lack current, complete, or accurate data necessary to monitor program-income earning and spending.

These deficiencies should be corrected in order for the Agency to ensure compliance with 2 C.F.R. § 1500.8(c). This federal regulation allows the grant recipients to keep the program income after grant closeout only if the recipients “use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their respective closeout agreement.” The Agency needs current, complete, and accurate program income data to verify that the grant recipients are using the funds to continue operating the revolving loan funds, instead of holding the funds idle, and that funds are used for the purposes outlined in the closeout agreements.

## **OBLR’s Database Was Not Current, Complete, or Accurate**

We found that the Agency continues to lack the current, complete, or accurate data necessary to monitor program income earning and spending. The OBLR has not updated the revolving loan fund database since it was provided to the OIG in 2016 for our prior audit. Due to the lack of updated data, it took the OBLR more than six weeks to provide a list of cooperative agreements for this follow-up audit. The list we received contained incorrect, missing, and incomplete data. For example, the OBLR incorrectly identified ten of the 19 cooperative agreements we reviewed as closed with no closeout agreement when closeout agreements were, in fact, in place. The OBLR also indicated that some of the cooperative agreements had pre- or post-closeout program income but did not provide the program-income amount. For a few other cooperative agreements, the program-income amount was a rough estimate or the OBLR noted that the amount needed to be verified. We also found errors in the award dates, award amounts, and project start and end dates.

Of the 460 cooperative agreements included in the OBLR’s database, 357 were closed cooperative agreements. We reviewed 19 of these closed cooperative agreements and all had closeout agreements. The OBLR’s database showed total program income of \$23,308,738 for these 19 agreements. Our analysis found that the program-income amounts for 12 of the 19 cooperative agreements were either inaccurate or outdated. Seven of the 12 cooperative agreements had not been updated since December 31, 2018, or earlier, including one cooperative agreement that had not been updated since 2015. In addition, for two other cooperative agreements, the OBLR found and corrected errors in the data provided to us.

Based on additional documentation obtained from the regions during this follow-up audit, we adjusted the program-income amount the OBLR provided for the cooperative agreements reviewed. The adjusted amount represents what the most updated program-income balance would have been on January 27, 2021—the date the OBLR last amended the database provided to us—if the Agency received the annual

reports from the grant recipients within two to three months after the end of the reporting period. As shown in Appendix C, the adjusted program income for the 19 cooperative agreements analyzed was \$19,884,867, which is \$3.4 million less than the amounts in the database provided by the OBLR.

## Post-Closeout Annual Reports Were Not Always Submitted or Timely

Post-closeout annual reports needed to assess the status of program income were not always submitted or submitted timely. For 11 of the 19 closed cooperative agreements analyzed, grant recipients had not submitted the required annual reports or submitted them up to 30 months after the report period end date. At least two were submitted after we requested supporting documents.

We found that the OBLR has not established a deadline for annual report submission. The closeout agreement terms and conditions establish the time periods that post-closeout annual reports must cover, but they do not provide a due date for report submission. The *Revolving Loan Fund Administrative Manual* also does not address the submission due date. Not specifying a report submission deadline makes it difficult for the project officers to know when the report becomes overdue and to follow up timely.

## OBLR Cannot Determine Whether Program Income Is Used Timely or for Authorized Purposes

Because the Agency lacks the current, accurate, and complete data necessary for post-closeout monitoring of program income, the OBLR cannot determine whether an estimated \$46.6 million of program income is used timely and for authorized purposes as specified in the closeout agreements and in accordance with federal regulations. With better tracking and monitoring, the EPA can address any idle funds timely to maximize cleanup of brownfields. As shown in Table 4, the EPA had awarded 460 revolving loan fund cooperative agreements totaling \$554,034,823 as of December 8, 2020, when the OBLR provided the revolving loan fund database to us. These agreements had a program-income balance of \$46.6 million.

**Table 4: Summary of program-income balances**

Region	Number of cooperative agreements	Total award amount	Program-income balance
1	98	\$109,700,598	\$3,680,347
2	21	23,123,750	111,236
3	46	29,435,678	2,368,693
4	43	44,063,533	5,525,997
5	117	176,281,171	11,884,131
6	32	43,056,325	5,843,391
7	26	27,272,973	3,010,317
8	22	29,673,171	2,767,099
9	41	47,052,305	8,338,420
10	14	24,375,319	3,048,574
<b>Total</b>	<b>460</b>	<b>\$554,034,823</b>	<b>\$46,578,205</b>

Source: OIG summary of OBLR data. (EPA OIG table)

The program-income amount shown in Table 4 is based on the list the OBLR provided to us on December 8, 2020, and amended on January 27, 2021. The actual amount may vary due to the program-income tracking deficiencies discussed in this report.

## Conclusions

The corrective actions taken by the Agency were not effective in addressing our prior report's findings on program-income monitoring. As a result, a large amount of program income continues to be idle, and the Agency continues to lack the current and accurate information needed to monitor program income earned and spent after cooperative agreements are closed. This includes the lack of tracking and monitoring for grant recipient reporting, which is needed to assess the status of program income. Without accurate program-income information, the OBLR cannot adequately monitor an estimated \$46.6 million of program income and determine whether the funds are used timely and for purposes authorized under the closeout agreements, as well as whether any of the \$46.6 million needs to be returned to the government.

## Recommendations

We recommend that the assistant administrator for Land and Emergency Management:

5. Expand existing guidance to include a deadline for post-closeout annual report submission.
6. Assess whether any of the \$46.6 million of program income under closeout agreements should be returned to the government.

## Agency Response and OIG Assessment

The Agency provided a response to the draft report on December 20, 2021 (Appendix D), and we followed up with the OBLR to clarify its response and supporting documentation. We also met with OBLR staff and managers to discuss our report findings and recommendations. Based on that meeting and our analysis of the Agency response and its supporting documentation, we revised draft report Recommendation 6.

The Agency concurred with Recommendation 5. The OBLR stated that it had updated its fiscal year 2021 cooperative agreement terms and conditions to include a deadline of September 30 for post-closeout annual report submissions. For closeout agreements dated prior to fiscal year 2021, the OBLR proposed alternative corrective actions. These completed and proposed corrective actions meet the intent of the recommendation. However, the OBLR stated that it was unable to provide an estimate completion date for the proposed corrective action addressing the older closeout agreements, so Recommendation 5 is unresolved.

For Recommendation 6, our draft report recommended that the Agency assess whether the unspent program income should be returned to the Agency for better use. While the Agency agreed with the recommendation, it disagreed with returning the funds to the EPA for better use because, under 31 U.S.C. § 3302(b), the program income must be returned to the U.S. Department of the Treasury. Based on the Agency's comments, we updated Recommendation 6 to recommend that the unspent funds be returned to the government. We have also updated the report to eliminate discussions about using the funds for other brownfield cleanups. The Agency provided a proposed corrective action plan to address the recommendation but did not provide an estimated completion date, so Recommendation 6 is unresolved.

The Agency's "high-level intended corrective actions" were provided as part of its official response to our draft report and the subsequent discussions. Appendix E contains a summary of all intended corrective actions and our assessments of these actions. The Agency also provided technical comments on the report language and the program income information. We updated the report based on these comments where appropriate.

## ***Status of Recommendations and Potential Monetary Benefits***

RECOMMENDATIONS							Potential Monetary Benefits (in \$000s)
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date		
1	10	Develop a policy and implement procedures to reduce the balances of available program income and establish a time frame for recipients to use or return the funds to the EPA.	U	Assistant Administrator for Land and Emergency Management			
2	10	Implement a method for tracking program income and compliance with post-closeout reporting requirements.	U	Assistant Administrator for Land and Emergency Management			
3	10	Expand existing guidance to include the requirements and method for the post-closeout tracking of program income and annual reports.	R	Assistant Administrator for Land and Emergency Management	9/30/22		
4	10	Provide training to regional Brownfields Revolving Loan Fund staff and management on the post-closeout tracking and monitoring requirements.	R	Assistant Administrator for Land and Emergency Management	3/31/23		
5	15	Expand existing guidance to include a deadline for post-closeout annual report submission.	U	Assistant Administrator for Land and Emergency Management			
6	15	Assess whether any of the \$46.6 million of program income under closeout agreements should be returned to the government.	U	Assistant Administrator for Land and Emergency Management			46,578

<sup>1</sup> C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

## ***Brownfields Revolving Loan Fund Cooperative Agreement Closeout Process Memorandum***



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

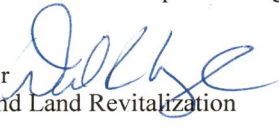
JUN 21 2018

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

NOW THE  
OFFICE OF LAND AND  
EMERGENCY MANAGEMENT

### **MEMORANDUM**

**SUBJECT:** Brownfields Revolving Loan Fund Cooperative Agreement Closeout Agreement Process

**FROM:** David R. Lloyd, Director   
Office of Brownfields and Land Revitalization

**TO:** Superfund National Policy Managers, Regions 1-10  
Brownfields Regional Coordinators  
Grants Management Officers, Regions 1-10

This memorandum provides guidance to Brownfields Revolving Loan Fund (RLF) cooperative agreement Project Officers regarding "Closeout Agreements" that govern the use of program income generated both during the life of the cooperative agreement, as well as after an agreement has closed. This guidance supersedes the guidance previously issued on June 10, 2015 on this issue. Note that only an authorized Award Official or Grants Management Officer may close out a grant or cooperative agreement; therefore, Project Officers should work closely with Regional Grants Management personnel throughout the closeout process. This guidance applies to the following categories of cooperative agreements:

- Brownfields RLF cooperative agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 104(k);
- Brownfields RLF cooperative agreement pilots awarded under CERCLA Section 104(d); and
- Brownfields RLF cooperative agreement pilots awarded under CERCLA Section 104(d) that have transitioned to Section 104(k) as provided in Section 104(k)(3)(D).

Brownfields RLF cooperative agreements generate program income through loan principal repayments, interest payments, and program fees during the life of the agreements. In addition,

principal repayments and interest payments may continue after the cooperative agreements close out.

Pursuant to 2 CFR 1500.7(c), to continue the mission of the Brownfields RLF, cooperative agreement recipients (CARs) may use grant funding prior to using program income funds generated by the revolving loan fund. CARs may also keep program income at the end of the assistance agreement, as long as they use these funds: 1) to continue to operate the revolving loan fund; 2) support other brownfields activities outlined in their Closeout Agreement; and 3) are held in an interest-bearing account.

All Closeout Agreements entered into after the date of this memorandum must conform to OBLR's national Closeout Agreement Template (Template) unless the OBLR Director or designee grants an exception to this policy. Modifications to the terms of Closeout Agreements that originally followed the Template also require the Director or designee's approval. A copy of the Template is attached.

As described in the RLF Terms and Conditions, and as provided in 2 CFR 200.307(f) and 2 CFR 1500.7(c), after the end of the award period, the CAR may keep and use program income generated during the life of the cooperative agreement (retained program income) and use program income earned after the agreement has closed (post-closeout program income) in accordance with the Closeout Agreement; The Closeout Agreement describes the federal requirements that apply to the RLF recipients use of retained and post-closeout program income.

For cooperative agreements awarded in FY17 onward, the RLF cooperative agreement awards will include a term and condition that constitutes the Closeout Agreement for the CAR (Closeout Agreement T&C). At the end of the cooperative agreement, the EPA Project Officer will remind the CAR via email that the Closeout Agreement T&C applies, 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 FY17, to add supplemental funding or otherwise, Regions must ensure that the Closeout Agreement T&C is included in the amended cooperative agreement. For RLF cooperative agreements awarded prior to FY17 and whose terms and conditions have not been amended to include the Closeout Agreement T&C, a separate Closeout Agreement that conforms to the Template will be required.

For those Brownfields RLF CARs whose terms and conditions have not been amended to reference 2 CFR Parts 200 and 1500 and who have accrued pre-closeout program income that will not be used on other eligible Brownfield activities, the EPA Regions will need to obtain an exception from the grant regulations in 40 CFR 31.50(d)(2). An approved exception will allow the RLF recipients to retain the accrued program income in an interest-bearing account and use what remains in their account at the time of closeout. 40 CFR 31.21(f)(2) requires accrued program income to be used prior to drawing down the unobligated balance of RLF cooperative agreement funds. This exception needs to be requested prior to the preparation of the Closeout Agreement to ensure that this exception is in place in a timely manner. Exception requests will be considered on a case-by-case basis by the Director of the National Policy, Training and Compliance Division in the Office of Grants and Debarment. Regions

should coordinate their exception requests with their Grants Management Office and the Office of Brownfields and Land Revitalization.

If you have any questions regarding this memorandum, please contact Rachel Congdon with the Office of Brownfields and Land Revitalization at (202) 566-1564 or by email at [Congdon.Rachel@epa.gov](mailto:Congdon.Rachel@epa.gov).

## OIG Assessment of EPA Corrective Actions for OIG Report No. 17-P-0368

No.	Recommendation	Proposed corrective actions	Agency completed actions*	OIG assessment
<b>Action Official: assistant administrator for Land and Emergency Management</b>				
1	"Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA."	The OBLR will work with the regions to develop a policy regarding monitoring of accumulated program income. The policy will also establish actions to be taken in certain time frames to reduce balance of program income or require return of funds to the EPA as appropriate.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Not fully completed.</i> For details, see Chapter 2 of this report.
2	"Develop a policy to require a recipient's balance(s) of Brownfields Revolving Loan Fund program income be used before awarding additional funds, as required by regulation."	The OBLR and the regions will develop a policy that will lead to reductions of inappropriately large balances of accrued program income held by recipients receiving additional direct funding from the EPA. The OBLR also stated that the actions it planned to take to improve recipient reporting and EPA monitoring of closeout agreements will also reinforce the importance of timely disbursement of accrued program income.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Completed.</i> Although the OBLR has not issued any policy and the OBLR closeout process memorandum and template do not require program income to be used before awarding additional funds, the revolving loan fund grant funding eligibility criteria met the intent of the recommendation.
3	"Create a policy to require any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account."	The OBLR will develop a policy as recommended. The OBLR has already revised the revolving loan fund grant terms and conditions requiring program income to be deposited into an interest-bearing account. These terms and conditions will be incorporated into new awards and amendments to existing cooperative agreements.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Completed.</i> Although the OBLR has not issued any policy, its revised revolving loan fund grant terms and conditions and closeout agreement template met the intent of this recommendation.
4	"Develop a policy to require any new closeout agreements to include the term and condition to deposit program income into an interest-bearing account."	The OBLR will develop and issue a policy as recommended. The OBLR has already revised the revolving loan fund grant terms and conditions to include closeout agreement requirements, which include program income to be deposited into an interest-bearing account.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Completed.</i> Although the OBLR has not issued any policy, its revised revolving loan fund grant terms and conditions and closeout agreement template met the intent of this recommendation.

No.	Recommendation	Proposed corrective actions	Agency completed actions*	OIG assessment
5	"Develop a plan and implement a policy that requires all recipients to maintain program income and requires revolving loan funds to be maintained in interest-bearing accounts."	The OBLR will develop a plan and implement a policy as recommended starting in fiscal year 2017. The plan will also include strategies for maximizing the number of existing grant recipients required to maintain program income and revolving loan funds in interest-bearing accounts, as the Agency does not have authority to unilaterally modify the terms and conditions of existing agreements.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Completed.</i> Although the OBLR has not issued any policy, its revised revolving loan fund grant terms and conditions and closeout agreement template met the intent of this recommendation.
6	"Develop a policy to require any new closeout agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual."	The OBLR will develop a policy as recommended. The OBLR has already revised the revolving loan fund grant terms and conditions to include closeout agreement requirements, which provide a clear definition of "program income" consistent with the manual.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Completed.</i> Although the OBLR has not issued any policy, its revised revolving loan fund grant terms and conditions and closeout agreement template met the intent of this recommendation.
7	"Develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients."	The OBLR will develop and implement a policy as recommended. The policy will provide an explicit definition of "program income" and identify the mechanism the EPA will use to distribute the definition to grant recipients.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> ; the closeout agreement template; and the fiscal year 2018 grant terms and conditions template.	<i>Completed.</i> Although the OBLR has not issued any policy, the closeout template provides an explicit definition for program income.
8	"Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the grant is closed if program income exists."	The OBLR will work with the regions to develop and deliver a series of training sessions to regional Brownfields Revolving Loan Fund staff. The training will cover all program policies and guidance related to the management of the Brownfields Revolving Loan Fund cooperative agreements after closeout, focusing on agreements that have program income after closeout. The OBLR will use various formats to deliver training to project officers, such as meetings, webinars, SharePoint, and in-person training.	Upon release of the updated closeout policy and template, the OBLR provided two training sessions to staff on the guidance related to maintaining a Brownfields Revolving Loan Fund cooperative agreement after the agreement has closed—one during a monthly brownfields coordinators' call and one during a quarterly call with the regional revolving loan fund program leads. Additionally, the OBLR is in the process of updating the "bootcamp training" and one training will be dedicated to revolving loan fund policies.	<i>Not fully completed.</i> Although training was provided, the OBLR did not address the EPA's responsibilities for maintaining the cooperative agreement after closeout. For details, see Chapter 2 of this report.
9	"Track staff completion of required training."	The OBLR will work with supervisors of revolving loan fund project officers to ensure all required training is completed by staff managing revolving loan fund cooperative agreements.	Completed required training will be tracked via spreadsheet. The spreadsheet will be incorporated into the revolving loan fund tracking management tool so that all information is housed in a central location.	<i>Completed.</i> Although the OBLR has not developed a central tracking management tool, training is tracked via attendance spreadsheets and meeting agendas.

No.	Recommendation	Proposed corrective actions	Agency completed actions*	OIG assessment
10	"Require any new closeout agreement to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed-to, post-closeout Brownfields Revolving Loan Fund activities."	The OBLR will require any new closeout agreements to include the recommended terms and conditions. The OBLR had already revised the terms and conditions of the new revolving loan fund cooperative agreements to clearly define the requirements.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Completed.</i>
11	"Develop and implement a methodology that will align recipients with the same termination terms and conditions."	The OBLR will work to implement a methodology that seeks to maximize the number of agreements with consistent national model terms and conditions by working with grant recipients to negotiate bilateral modifications of the terms and conditions of their agreements. The OBLR explained that it is beyond the EPA's authority to unilaterally change the terms and conditions of older cooperative agreements.	Issuance of the OBLR's updated closeout policy.	<i>Completed.</i>
12	"Provide an explicit definition of 'expenditure' for EPA regions to distribute to recipients."	The OBLR will provide an explicit definition of "expenditure" for the EPA to distribute to grant recipients.	December 21, 2017 email from OBLR staff with the definition.	<i>Completed.</i>
13	"Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income."	The OBLR will work with the regions to develop and issue a policy regarding the assignment and maintenance of information on all closed cooperative agreements with pre- and post-program income. The policy will outline the mechanism the OBLR will use to work with regional management to implement this policy.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template.	<i>Not fully completed.</i> The closeout process memorandum and template do not address the responsibilities for maintaining post-closeout information. For details, see Chapter 2 of this report.
14	"Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post-program income."	The OBLR will work with the regions to develop and implement a method to track pre- and post-closeout program income until termination of the closed out cooperative agreements in accordance with the reporting requirements listed under the closeout agreement. Regional staff will be required to update and monitor the tool in accordance with the reporting requirements listed in the closeout agreements. The 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.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and the closeout agreement template. Additionally, updates to the existing ACRES will allow for easier tracking of revolving loan fund cooperative agreements that closed out with program income. Also, staff are using SharePoint lists to generate a shared Access database that revolving loan fund project officers can use as a management tool to track and monitor closed cooperative agreements with program income.	<i>Not fully completed.</i> The OBLR still does not have a method to accurately and consistently track program income. For details, see Chapter 2 of this report.

No.	Recommendation	Proposed corrective actions	Agency completed actions*	OIG assessment
15	"Develop a policy to require terms and conditions in the cooperative agreement and/or the closeout agreement to require all recipients to report program income."	The OBLR will develop a policy to require the terms and conditions of the cooperative agreements and the closeout agreements to require all grant recipients to report program income in fiscal year 2017 and beyond.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and closeout agreement template.	<i>Completed.</i> Although the Agency has not issued any policy, its revised revolving loan fund grant terms and conditions and closeout agreement template met the intent of this recommendation.
16	"Create a method for the Office of Brownfields and Land Revitalization, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements."	The 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 grant recipients are complying with the reporting requirements. The OBLR will monitor and discuss compliance with the regional brownfield managers during conference calls.	Issuance of the June 21, 2018 memorandum titled <i>Brownfields Revolving Loan Fund Closeout Agreements Process</i> and closeout agreement template.	<i>Not fully completed.</i> The OBLR still does not have a method for tracking compliance with reporting requirements for closed cooperative agreements. For details, see Chapter 2 of this report.
17	"Train regional Brownfields Revolving Loan Fund project officers and managers on the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled 'Compliance and Performance Issues,' to include the roles and responsibilities of the project officer and instruction on enforcement actions available to the EPA if a recipient does not comply."	The OBLR will work with the regions to develop and provide training to revolving loan fund project officers and managers on "Compliance and Performance Issues" based on Office of Grants and Debarment policies and guidance. The OBLR plans to deliver this training during regularly scheduled revolving loan fund meetings with the regions, training seminars, webinars, and in-person meetings. The training material will clarify the roles, responsibilities, and process to take available enforcement actions.	Revolving loan fund project officers have been directed to read and review Chapter 4.5 of the Office of Grants and Debarment's <i>Assistance Agreement Almanac</i> and are required to sign a completion form to certify that they have reviewed the materials.	<i>Completed.</i>
<b>Action Official: Region 10 regional administrator</b>				
18	"Question the unsupported use of \$103,968 in EPA Brownfields Revolving Loan Fund revenue reported by the Columbia River Estuary Study Taskforce in its profit and loss statements, and recover any remaining program income."	The OBLR will work with Region 10 to review documentation on questioned costs.	The grant recipient subsequently provided additional supporting documentation for the questioned costs. On December 14, 2017, Region 10 issued a management decision letter to the grant recipient, stating that the additional supporting documentation showed that the grant recipient had appropriately expended all but \$13,060 of the questioned costs. The grant recipient returned the \$13,060 on August 2, 2018.	<i>Completed.</i>
19	"Place the Columbia River Estuary Study Taskforce on a reimbursement basis for all EPA grants and agreements."	The OBLR will work with Region 10 to determine whether it is appropriate to place this grant recipient in reimbursement status.	The grant recipient did not have any other grants or agreements with the EPA. Therefore, it was not possible to place the grant recipient on a reimbursement basis for EPA awards.	<i>Completed.</i>

No.	Recommendation	Proposed corrective actions	Agency completed actions*	OIG assessment
<b>Action official: Region 1 regional administrator</b>				
20	"Question unsupported use of \$1,983,198 in EPA Brownfields Revolving Loan Fund program income reported by Bridgeport, Connecticut, and recover remaining program income."	The OBLR will work with Region 1 to review documentation on questioned costs.	Region 1 reviewed the grant recipient's supporting documentation and determined that all but \$7,614 of the questioned costs have been properly expended. As of August 2, 2018, the grant recipient had returned the \$7,614.	<i>Completed.</i>
21	"Place Bridgeport, Connecticut, on a reimbursement basis for all EPA grants and agreements."	The OBLR will work with Region 1 to determine whether it is appropriate to place this grant recipient in reimbursement status.	According to Region 1's management decision letter, dated August 15, 2018, the region reviewed the grant recipient's financial management system for reporting and tracking program income and made suggested changes. The grant recipient developed and implemented procedures for tracking, recording, and substantiating the revolving loan fund transactions and balance. The grant recipient's accounting procedures also included adequate separation of duties. As a result, the recipient's high-risk status was removed.	<i>Completed.</i>
22	"Question unsupported use of an estimated \$608,712 in EPA Brownfields Revolving Loan Funds by the Rhode Island Economic Development Corporation and recover remaining program income."	The OBLR will work with Region 1 to review documentation on questioned costs.	Region 1 reviewed the grant recipient's supporting documentation and determined that all costs were properly supported.	<i>Completed.</i>
23	"Place the Rhode Island Economic Development Corporation on reimbursement basis for all EPA grants and agreements."	The OBLR will work with Region 1 to determine whether it is appropriate to place this grant recipient in reimbursement status.	According to Region 1's management decision letter, the grant recipient was placed on reimbursement basis on October 31, 2017. Region 1 reviewed the grant recipient's financial management system for reporting and tracking program income and made suggestions. The grant recipient developed and implemented procedures for tracking, recording, and substantiating the revolving loan fund transactions and balance. The grant recipient's accounting procedures also included adequate separation of duties. As a result, the grant recipient's high-risk status was removed.	<i>Completed.</i>

Source: OIG Report No. 17-P-0368 and Agency response. (EPA OIG table)

\*For Recommendations 1 to 17, the OBLR certified that corrective actions were completed. For Recommendations 18 to 23, Regions 1 and 10 issued management decision letters as evidence of completing the corrective actions.

## ***Program Income for Closed Cooperative Agreements Reviewed***

Item no.	Region	Cooperative agreement no.	Grant recipient	Award amount	OBLR's program income <sup>a</sup>		Audit adjusted program income <sup>b</sup>		Variance
					Amount	Date	Amount	Date	
1	4	BF96429905	South Carolina, State of	\$6,512,546	\$2,363,000	7/23/20	\$2,363,000	No adjustment	\$0
2	5	BL00E45201	Ohio Development Services Agency	4,100,000	1,136,416	11/24/20	1,136,416	No adjustment	0
3	10	BF97067501	Washington Department of Commerce	6,915,000	2,775,371	6/30/15	1,503,174	12/31/20	1,272,197
4	5	BF97564102	Ohio Development Services Agency	5,860,000	3,383,933	11/24/20	3,383,933	No adjustment	0
5	9	BF00T71001	Brea Redevelopment Agency	1,725,000	1,153,300	March 2017 <sup>d</sup>	144,304	8/30/18	1,008,996
6	8	BL98811601	Colorado Department of Public Health and the Environment	5,486,843	2,097,488	6/20/20	2,097,488	No adjustment	0
7	5	BL00E01001	Downriver Community Conference	4,500,000	2,033,122 <sup>c</sup>	11/01/20	973,932	9/30/20	1,059,190
8	6	BL97611001	New Mexico, State of	1,000,000	2,348,884 <sup>c</sup>	6/30/20	704,465	4/29/21	1,644,419
9	1	BF97157201	Brewer, City of	1,300,000	449,229	6/15/16	384,916	8/7/20	64,313
10	1	BF96117201	Bridgeport, City of	1,750,000	0	1/27/21 <sup>e</sup>	0	No adjustment	0
11	1	BF9613400	Nashua, City of	1,500,000	0	1/27/21 <sup>e</sup>	188,558	9/30/20	(188,558)
12	1	BF98193201	Rhode Island Economic Development Corporation	2,793,421	0	1/27/21 <sup>e</sup>	210,068	6/30/20	(210,068)
13	1	BF98191401	Southern Windsor County Regional Planning Commission	1,793,385	0	1/27/21 <sup>e</sup>	159,683	3/31/20	(159,683)
14	3	BF98397501	Allentown, City of	1,765,000	0	12/31/17	634,000	2/27/20	(634,000)
15	5	BF00E00417	Grand Rapids, City of	1,760,000	0	4/2/18	210,341	4/2/20	(210,341)

Item no.	Region	Cooperative agreement no.	Grant recipient	Award amount	OBLR's program income <sup>a</sup>		Audit adjusted program income <sup>b</sup>		Variance
					Amount	Date	Amount	Date	
16	9	BF97955901	Emeryville, City of	2,427,489	3,202,288	12/1/20	3,202,288	No adjustment	0
17	1	BF97145701	Gloucester, City of	943,902	495,872	9/30/17	519,992	9/30/19	(24,120)
18	1	BF97130701	New Hampshire Department of Environmental Services	2,338,674	296,674	9/30/18	475,148	12/31/20	(178,474)
19	9	BF00955601	Sacramento, City of	1,759,793	1,573,161	9/30/20	1,593,161	No adjustment	20,000 <sup>e</sup>
<b>TOTAL</b>				<b>\$56,231,053</b>	<b>\$23,308,738</b>		<b>\$19,884,867</b>		<b>\$3,423,871</b>

Source: OIG summary of OBLR data and OIG adjustments to the data based on information from project officers. (EPA OIG table)

- <sup>a</sup> The OBLR's program-income amount is from the data the OBLR provided to us on December 8, 2020, and the subsequent adjustments the OBLR made on January 27, 2021. We selected these 19 cooperative agreements and contacted the project officers to determine the source and date of the program-income amounts in the OBLR's database.
- <sup>b</sup> The audit adjusted program-income amount was the most updated balance the OBLR should have had on January 27, 2021—the date the OBLR last updated its database for the OIG audit—if the Agency received the annual reports from the grant recipients within two to three months after the end of the reporting period. The cooperative agreement listed as Item No. 8—Cooperative Agreement No. BL97611001 with the State of New Mexico—is an exception. The audit adjusted program-income amount was the balance on April 29, 2021. The OBLR provided in its database the cumulative program income earned as of June 30, 2020 (the OBLR's program income). The project officer did not have the unexpended program-income balance as of January 27, 2021, as the grant recipient had not submitted annual reports since June 30, 2018. On May 3, 2021, the project officer provided an annual report for the period of July 1, 2017, to April 29, 2021, which we used as the audit adjusted program-income amount.
- <sup>c</sup> The amount was the cumulative program income earned, not the unexpended balance.
- <sup>d</sup> OBLR's program-income amount was from the closeout agreement, which was not dated. According to Region 9, the closeout agreement was executed in March 2017.
- <sup>e</sup> The OBLR database shows \$0 in program income. There is no information on the source and date of the \$0; therefore, we put 1/27/21 as the date since that was the last database update we received from the OBLR.
- <sup>f</sup> Variance of \$20,000 due to the Agency's transposition error when inputting the pre-closeout program income into the OBLR's database. The region entered \$1,446,519 instead of \$1,466,519.

## *Agency Response to Draft Report*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

### MEMORANDUM

**SUBJECT:** Response to Office of Inspector General (OIG) Draft Report No. OA-FY21-0002, "Program-Income Monitoring Deficiencies Persist Because the EPA Did Not Complete All Certified Corrective Actions", dated November 17, 2021

**FROM:** Barry N. Breen                      **BARRY**  
Acting Assistant Administrator      **BREEN**

Digitally signed by  
BARRY BREEN  
Date: 2021.12.20  
18:24:14 -05'00'

**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 draft report. Following is a summary of the Agency's overall position, along with its position on each of the draft report recommendations. For those report recommendations with which the Agency agrees, we have provided high-level intended corrective actions and estimated completion dates to the extent we can. For those report recommendations with which the Agency does not agree, we have explained our position, provided the legal basis, and proposed alternatives to recommendations. For your consideration, we have included Technical Comments to supplement this response (see Attachment).

### AGENCY'S OVERALL POSITION

The Agency agrees with the OIG's overall findings, with the exception of items noted below and in the Attachment.

The draft OIG report asserts that OLEM needs to assess whether any of an estimated \$45 million of program income (PI) under Brownfields Revolving Loan Fund (RLF) closeout agreements should be returned to the Agency for better use, such as for other brownfield cleanups. However, a 2020 legal opinion, which was re-confirmed by the Office of General Counsel (OGC) in December 2021, advised that any PI the Agency recovers in connection with the closeout of an RLF capitalization grant at the conclusion of the funded activities must be deposited into the US Treasury as miscellaneous receipts, as required by 31 U.S.C. 3302(b). The opinion states the Agency is not entitled to keep the returned funds because allowing agencies to retain recovered

PI would be an improper augmentation of appropriations.<sup>4</sup> Therefore, any returned PI funds cannot be used for other brownfield cleanups or for any other Agency purpose. Since it is in the Agency's best interest to encourage the RLF cooperative agreement recipient (hereafter referred to as recipient) to find ways to spend the PI on allowable brownfields activities under their closeout agreement, EPA will pursue this approach first. Recovery of unspent PI for deposit into the US Treasury as miscellaneous receipts will be undertaken on a case-by-case basis if other efforts to assist the recipient are not successful. OLEM's corrective actions in response to the OIG's recommendations reflect our priority for encouraging recipients to spend PI on allowable brownfields activities included in their closeout agreements. In addition, the draft OIG report states that the Office of Brownfields and Land Revitalization (OBLR) did not complete corrective actions for five of 17 prior audit recommendations. OBLR disagrees with the OIG's conclusion that the five audit recommendations were not addressed. Actions taken by the OBLR on each of the five original recommendations are described below, along with the OBLR's revised position after review of the OIG's findings.

## **1. Guidance Did Not Establish Time Frame for Use or Return of Funds (Recommendation 1)**

### OBLR's original position and actions taken:

The subject OIG report acknowledges that, for new closeout agreements executed after June 21, 2018 (the date of the OBLR's closeout process memorandum), OBLR did establish model closeout terms and conditions (T&Cs) with a timeframe for the assessment of PI balances and the possibility of revoking the closeout agreement and returning funds when any recipient has over \$500,000 of post-closeout PI three years after the closeout date. Since assessment starts three years after the closeout date, the earliest the OBLR and the regions would start the assessment of PI balance for these closeout agreements is June 21, 2021. The OBLR initiated this assessment process with the regions.

The OIG report notes that this policy does not cover the large majority of closeout agreements that were executed prior to June 21, 2018, but the report does not explain that this is because closeout agreements are bilateral agreements that cannot be changed by EPA without re-negotiation and recipient concurrence. While the OBLR and the regions can strive to maintain and align the same national closeout T&Cs for all active closeout agreements, it is beyond EPA's authority to unilaterally change the T&Cs of older closeout agreements. OGC concurs with this position. The OBLR previously determined that the workload of re-negotiating and updating all active closeout agreements to the latest closeout T&Cs is significant and not justified based on regional staff constraints.

### OBLR's revised position:

The OBLR concurs that dissimilarities in closeout agreement T&Cs from one recipient to another causes confusion for regional project officers (POs) who monitor them, leading to inconsistencies in program application. In addition, the OBLR agrees it is difficult to track

---

<sup>4</sup> OGC noted that the requirement for depositing returned program income into the US Treasury as miscellaneous receipts does not apply to "refunds" of program income that satisfy claims for overpayments of unallowable costs based on OIG audits or other findings of improper use of EPA funds. Refunds may be credited to the appropriation account that bore the costs for the improper payments.

current, accurate, and complete data on PI when recipients have different reporting requirements (e.g., many older closeout agreements no longer require reporting).

Although recipients cannot be forced to accept a revised closeout agreement, some recipients may choose to revise their closeout agreements with EPA due to additional flexibilities in recent closeout T&Cs that allow for increased uses of PI for Brownfields purposes. These additional flexibilities can also lead to quicker ways to reduce the balance of PI. Therefore, the OBLR will work with the regions to implement a methodology that seeks to maximize the number of agreements with consistent and current national closeout T&Cs. However, because recipient concurrence is required and because regional offices will have to take on this workload in the midst of the significant influx of processing new awards using Bipartisan Infrastructure Law (BIL) funds, it is unlikely EPA will be able to update 100% of older closeout agreements.

## **2. The OBLR Did Not Establish a Method to Track Closed Cooperative Agreements with Program Income and Compliance with Post-Closeout Reporting (Recommendations 14 and 16)**

### OBLR's original position and actions taken:

The OBLR did provide guidance to the regions on tracking closed cooperative agreements, to include post-closeout reporting. However, the specific method of how they were tracked was left to the regions. The OBLR did not have a suitable comprehensive database for this purpose, since the existing Assessment, Cleanup, and Redevelopment Exchange System (ACRES) database was primarily used to track program accomplishments and not for tracking PI or post-closeout reporting requirements.

Note that the draft OIG report states that a deadline for post-closeout annual report submission was not included in the OBLR guidance. However, a deadline of September 30<sup>th</sup> for post-closeout annual report submission is included in Section IV.F.13 of the FY21 T&Cs and will be included in annual model T&Cs going forward. The FY21 T&Cs were provided to the OIG via email on June 10, 2021. Therefore, closeout agreements executed after June 2021 already address the OIG's recommendation regarding including a deadline for report submission.

### OBLR's revised position:

Due to difficulties the regions have had in tracking PI and post-closeout reporting in a consistent and accurate manner, the OBLR has determined that it is necessary to expend the resources to modify ACRES to allow for tracking of PI in closeout agreements. In addition, within the past few months, OBLR initiated making other ACRES enhancements for RLF grants, with the intention of providing follow-up training to RLF recipients and POs. Therefore, the OBLR intends to 1) as part of those ongoing enhancements, include additional RLF grant requirements in ACRES such as the PI balance and date of submittal of last performance report, and 2) add a provision in the FY22 model T&Cs that requires recipients to update the information in ACRES when they submit their performance report. Note that a modification to OBLR's Information Collection Request (ICR) authority for ACRES reporting will be required to maintain compliance with ICR procedures. For older closeout

agreements that are not updated to the FY22 T&Cs (either because the recipient does not concur or the region does not have the capacity to re-negotiate the closeout agreement), OBLR will advise POs to request the PI balance as of September 30<sup>th</sup> from the recipient each year. The POs will document in ACRES the PI balance and whether a performance report was submitted or is not required by the closeout agreement. With these changes, the probability of ACRES providing complete and accurate data on PI and timely completion of annual post-closeout reporting will improve over time. Eventually, the OBLR will be able to use ACRES as a means for tracking RLF recipients who have over \$500,000 of post-closeout PI. The OBLR will then be able to follow up with the regions to discuss how they are working with the recipient to reduce the PI balance.

### **3. The OBLR Did Not Develop Policy or Training for Post-Closeout Responsibilities (Recommendations 8 and 13)**

#### OBLR's original position and actions taken:

As previously stated, the OBLR provided guidance regarding maintaining information on closed cooperative agreements with PI, but the methods used for tracking and monitoring post-closeout activities was left up to the regional POs. The OBLR also conducted two trainings to explain the closeout process memorandum and template. However, the OIG report expressed concern with the extent to which the training discussed the EPA's responsibilities for maintaining information on closed cooperative agreements, such as tracking PI and recipient compliance with reporting requirements after the cooperative agreement is closed.

#### OBLR's revised position:

As stated in #2 above, the OBLR intends to make enhancements to ACRES to include the PI balance for each RLF grant and the date when the last performance report was submitted. Following completion of the enhancements, OBLR will provide training to recipients on how to update ACRES and to POs on how they are to monitor and track the PI and timely submittal of post-closeout performance reporting.

### AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

#### Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Develop a policy and implement procedures to reduce the balances of available program income and establish a time frame for recipients to use or return the funds to EPA.	1.1 OBLR will revise FY22 closeout T&Cs for new closeout agreements to include 1) additional flexibilities 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, conducting an annual review thereafter. OBLR will work with the regions to maximize the number of older closeout	4 <sup>th</sup> Quarter FY 2022

		agreements with consistent national closeout T&Cs, as their workload allows. However, EPA cannot unilaterally modify older closeout agreements and will need to work with these recipients on bilateral agreements to incorporate new closeout T&Cs.	
2	Implement a method for tracking program income and compliance with post-closeout reporting requirements.	2.1 OBLR will update ACRES to include entries for PI balance and date of latest post-closeout performance report.	2 <sup>nd</sup> Quarter FY 2023
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 closeout agreements.	4 <sup>th</sup> 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 “Closeout Procedures” chapter of RLF Program Manual and discuss their responsibilities for tracking PI and performance reporting under closeout agreements.	1 <sup>st</sup> 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 <sup>nd</sup> Quarter FY 2023
5	Expand existing guidance to include a deadline for post-closeout annual report submission.	5.1 This has been completed for closeout agreements executed after June 2021. See 1.1 above for OBLR’s plan to address this in older closeout agreements.	4 <sup>th</sup> Quarter FY 2022

#### Disagreements

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
6	Assess whether any of the \$45 million of program income should be returned to the Agency for better use.	Based on OGC legal opinion, the Agency is not permitted to keep returned PI since any returned funds go back to the US Treasury. For RLFs in post-closeout status that have more than \$500,000 of PI, OBLR intends to encourage the regions to increase their 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.	Assess whether program income under closeout agreements is being used in a timely manner and if not, address idle program income on a case-by-case basis, to include returning the funding to the US Treasury when warranted.

#### 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](mailto:Thornton.Kecia@epa.gov) or (202) 566-1913.

#### Attachment

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

## Agency's High-Level Intended Corrective Actions and OIG Assessment for OIG Report No. 22-P-0033 Recommendations

Rec. no.	OIG recommendation	Agency's high-level intended corrective action	OIG assessment
<b>Action official: assistant administrator for Land and Emergency Management</b>			
1	Develop a policy and implement procedures to reduce the balances of available program income and establish a time frame for recipients to use or return the funds to the EPA.	<p>The OBLR will revise fiscal year 2022 closeout terms and conditions for new closeout agreements to include (1) additional flexibilities for use of program income that will allow for quicker reduction in program income balance and (2) in addition to assessing revolving loan fund agreements where program income is greater than \$500,000 after three years, conducting an annual review thereafter. The OBLR will work with the regions to maximize the number of older closeout agreements with consistent national closeout terms and conditions, as its workload allows. The EPA cannot unilaterally modify older closeout agreements and will need to work with these grant recipients on bilateral agreements to incorporate new closeout terms and conditions.</p> <p><u>Estimated completion:</u> Fourth quarter of fiscal year 2022.</p> <p>In the narrative section of its response (Appendix D), the OBLR stated that it will work with the regions to "implement a methodology" to maximize the number of older closeout agreements with consistent national closeout terms and conditions.</p> <p>The OBLR confirmed this intended corrective action on January 24, 2022. It further stated, "This process will be started by the [fourth quarter of fiscal year 2022]. However, it is not possible to provide a date for when all older closeout agreements will be modified to be consistent with national closeout [terms and conditions]. This is because closeout agreements are bilateral agreements that cannot be changed by EPA without re-negotiation and recipient concurrence. As shared previously, the workload of re-negotiating and updating all active closeout agreements to the latest closeout [terms and conditions] is significant, and it is unlikely EPA will be able to update 100 [percent] of older closeout agreements."</p> <p><u>Estimated completion:</u> Did not provide.</p>	<p>Although the OBLR's corrective actions did not include developing a policy, the proposed corrective action, along with the narrative response, meet the intent of the recommendation. Based on the closeout process memorandum and closeout template the OBLR issued to address our prior audit's Recommendation 1, for all new closeout agreements executed from June 2018 onward, the Agency has the authority to assess whether any of the grant recipients holding program income of \$500,000 or more three years after the closeout agreement execution date should return the unused funds to the government.</p> <p>The proposed corrective action expands the Agency's authority to conduct annual assessments going forward. These corrective actions will establish a time frame for the use or return of any large unspent program incomes under all new closeout agreements executed June 2018 onward. Under the proposed corrective action, the Agency will implement a methodology to get as many of the pre-2018 closeout agreements updated to include these same terms and conditions as possible.</p> <p>The corrective action proposed for Recommendation 2 will enhance the accuracy and completeness of the data necessary for the Agency to identify closeout agreements with a program-income balance of \$500,000 or more. Once the corrective actions for Recommendations 1 and 2 are implemented, the Agency should have the data and authority to make the use-or-return determination for all closeout agreements with large program-income balances. While these corrective actions will not address all of the closeout agreements, they should cover all those with a significant program-income balance.</p> <p>Since the OBLR had not provided an estimated completion date for the second part of the corrective action, Recommendation 1 is unresolved.</p>
2	Implement a method for tracking program income	The OBLR will update ACRES to include entries for program-income balance and date of latest post-closeout performance report.	The OBLR's proposed corrective action, along with the narrative response, meet the intent of Recommendation 2.

Rec. no.	OIG recommendation	Agency's high-level intended corrective action	OIG assessment
<b>Action official: assistant administrator for Land and Emergency Management</b>			
	and compliance with post-closeout reporting requirements.	<p><u>Estimated completion:</u> Second quarter of fiscal year 2023.</p> <p>Although not included in the OBLR's intended corrective action table, the OBLR confirmed the following additional intended corrective action explained in the narrative section of its draft report response (Appendix D):</p> <ul style="list-style-type: none"> <li>• "Add a provision in the [fiscal year 2022] model [terms and conditions] that requires recipients to update the information in ACRES when they submit their performance report."</li> </ul> <p><u>Estimated completion:</u> Fourth quarter of fiscal year 2022.</p> <ul style="list-style-type: none"> <li>• "For older closeout agreements that are not updated to the [fiscal year 2022 terms and conditions] (either because the recipient does not concur or the region does not have the capacity to re-negotiate the closeout agreement), OBLR will advise [project officers] to request the [program- income] balance as of September 30<sup>th</sup> from the recipient each year. The [project officers] will document in ACRES the [program-income] balance and whether a performance report was submitted or is not required by the closeout agreement." The OBLR clarified that it will "advise" the project officers to request the program income balance "per direction given through training on the [program manual] and ACRES." The OBLR further stated that "Information Collection Request (ICR) for ACRES reporting will need to be modified. Until the modification is approved, [project officers] cannot contact [the grant recipient] about this issue if the closeout agreement does not require reporting."</li> </ul> <p><u>Estimated completion:</u> Did not provide.</p>	<p>The corrective action will establish a system for tracking program income and post-closeout reporting. It will establish a requirement for grant recipients to report program-income data and submit closeout reports in ACRES for all new closeout agreements going forward. The corrective action related to older closeout agreements will ensure that program income for most of the older agreements are also tracked in ACRES. We believe that the completion of the three proposed corrective actions should allow the Agency to track program income accurately and completely.</p> <p>Since the OBLR had not provided an estimated completion date for the corrective action relating to the older closeout agreements, Recommendation 2 is unresolved.</p>
3	Expand existing guidance to include the requirements and method for the post-closeout tracking of program income and annual reports.	<p>The OBLR will revise the revolving loan fund program manual to include project officer responsibilities for tracking program income and performance reporting under closeout agreements.</p> <p><u>Estimated completion:</u> Fourth quarter of fiscal year 2022.</p>	The OBLR's proposed corrective action meets the intent of the Recommendation 3. This recommendation is resolved with corrective action pending.
4	Provide training to regional Brownfields Revolving Loan Fund staff and management on the post-closeout tracking and monitoring requirements.	<p>The OBLR will provide training to revolving loan fund project officers on the "Closeout Procedures" chapter of the revolving loan fund program manual and discuss their responsibilities for tracking program income and performance reporting under closeout agreements.</p> <p><u>Estimated completion:</u> First quarter in fiscal year 2023.</p>	The OBLR's proposed corrective actions meet the intent of Recommendation 4. This recommendation is resolved with corrective actions pending.

Rec. no.	OIG recommendation	Agency's high-level intended corrective action	OIG assessment
<b>Action official: assistant administrator for Land and Emergency Management</b>			
		<p>The OBLR will provide training to grant recipients and project officers on ACRES enhancements and requirements for program-income and post-closeout reporting.</p> <p><u>Estimated completion:</u> Second quarter of fiscal year 2023.</p>	
5	Expand existing guidance to include a deadline for post-closeout annual report submission.	<p>This has been completed for closeout agreements executed after June 2021. See Recommendation 1 for the OBLR's plan to address this in older closeout agreements.</p> <p><u>Estimated completion:</u> Fourth quarter of fiscal year 2022.</p> <p>In its response to the draft report (Appendix D), the Agency stated that "for older closeout agreements that are not updated to the [fiscal year 2022 terms and conditions] (either because the recipient does not concur or the region does not have the capacity to re-negotiate the closeout agreement), OBLR will advise [project officers] to request the [program-income] balance as of September 30<sup>th</sup> from the recipient each year. The [project officers] will document in ACRES the [program-income] balance and whether a performance report was submitted or is not required by the closeout agreement."</p> <p><u>Estimated completion:</u> Did not provide, as explained in the Recommendation 2 section.</p>	<p>The OBLR's proposed corrective actions meet the intent of Recommendation 5. The OBLR did not provide an estimated completion date for the proposed corrective action relating to older closeout agreements; therefore, this recommendation is unresolved.</p>
6	Assess whether any of the \$46.6 million of program income under closeout agreements should be returned to the government.	<p>Based on the EPA's Office of General Counsel, the Agency is not permitted to keep returned program income since any returned funds go back to the Treasury Department. For agreements in post-closeout status that have more than \$500,000 of program income, the OBLR intends to encourage regions to increase their efforts in helping grant recipients use the funds on eligible activities, as regional workload allows. The OBLR will review, on a case-by-case basis, whether additional action is needed, such as recovery of unspent program income. The OBLR will communicate this expectation in the revolving loan fund program manual and training.</p> <p><u>Estimated completion:</u> The OBLR said that, since this effort will be accomplished as regional workload allows, it was not possible to provide a completion date.</p>	<p>We agree with the OBLR's comments that the Agency cannot keep the returned funds and we revised Recommendation 6 to return the funds to the government instead of the Agency. We also updated the report to remove discussions about using the funds for other brownfield cleanups.</p> <p>The Agency's proposed corrective actions meet the intent of Recommendation 6.. It had not provided an estimated completion date; therefore, this recommendation is unresolved.</p>

Source: OIG analysis of EPA information. (EPA OIG table)

## ***Distribution***

The Administrator  
Deputy Administrator  
Chief of Staff, Office of the Administrator  
Deputy Chief of Staff, Office of the Administrator  
Agency Follow-Up Official (the CFO)  
Assistant Administrator for Land and Emergency Management  
Regional Administrator for Region 1  
Regional Administrator for Region 10  
Agency Follow-Up Coordinator  
General Counsel  
Associate Administrator for Congressional and Intergovernmental Relations  
Associate Administrator for Public Affairs  
Director, Office of Continuous Improvement, Office of the Chief Financial Officer  
Principal Deputy Assistant Administrator for Land and Emergency Management  
Deputy Assistant Administrator for Land and Emergency Management  
Deputy Regional Administrator for Region 1  
Deputy Regional Administrator for Region 10  
Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management  
Director, Office of Regional Operations  
Deputy Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management  
Audit Follow-Up Coordinator, Office of the Administrator  
Audit Follow-Up Coordinator, Office of Land and Emergency Management  
Audit Follow-Up Coordinator, Region 1  
Audit Follow-Up Coordinator Region 10