

National Brownfields Nonprofit Network Initiative

March 11, 2008

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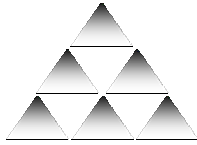
Re: Recommended Administrative Actions to Maximize Effectiveness of the Brownfields
Revolving Loan Fund Allocation of the American Recovery and Revitalization Act

The effective implementation of the American Recovery and Revitalization Act (ARRA) is dependent on the rapid deployment of funding to worthy projects. Regional and community-based brownfields and community development nonprofit organizations are well versed in utilizing federal funding programs and ensuring investment in community and economic development projects that achieve both economic development goals and neighborhood revitalization/environmental justice objectives.

Regional and community-based nonprofit brownfields and community development organizations have expertise, knowledge and resources that can be jointly applied to achieve the successful implementation of the land revitalization provisions of the ARRA. They have established track records developing and implementing cutting edge brownfield remediation loan products and successfully navigating the complicated and multi-faceted world of brownfield development financing. This expertise, combined with their oft-needed role as liaison between communities and regulators, uniquely positions nonprofits to invigorate economic development through the deployment of brownfields resources. First, they have the long-term vision and active presence necessary to keep local projects moving forward. Second, they can serve a crucial role as a credible, neutral intermediary between the community and public and private entities, advocating for brownfield redevelopment projects that are in the interest of the public good, not just in the interest of a private developer. Third, they have the specialized brownfield knowledge to act as catalysts, managing and coordinating brownfield activities on behalf of, and in support of, communities that would otherwise pass up these sites without the nonprofit's assistance. Lastly, they have the capacity to leverage brownfield funding with other public funds, including new energy economy, transit-oriented development, and smart growth program funds.

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The National Brownfields Nonprofit Network Initiative (NBNNI) is co-managed by four nonprofits working on brownfields in different regions across the country: New Partners for Community Revitalization, Inc (NPCR) in New York, Delta Redevelopment Institute (REDI) in Chicago, Center for Creative Land Recycling (CCLR) in San Francisco, and the Colorado Brownfields Foundation (CBF) in Denver. In that each of these organizations is a leader in their respective regions of the country and has deep experience on land revitalization issues, NNBNI has jointly developed the below recommendations for your consideration in best implementing the ARRA. We believe that all of these program improvements can be made expeditiously, as they involve administrative interpretations and do not require statutory amendments:

1. We support the clarification that the replenishment of grant dollars to existing RLF grantees is not restricted by the \$1 million limit for first-time grantees

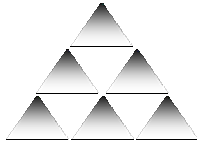
- There is a statutory limit of \$1 million for first-time RLF grantees; but there is no statutory limit for additional funding to existing RLF grantees, therefore ARRA funds should not have a funding limit.
- The key determining factors for funding are already established in and include 10 ranking criteria. See CERCLA § 104(k)(5)(C). In making ARRA funding awards, EPA should transparently provide greater weight to the following criteria than the others because these criteria would most effectively advance the goals of the ARRA to stimulate jobs and community benefits in the most impacted neighborhoods:
 - i. The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.
 - ii. The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

In addition, the following criteria should also be part of the EPA funding decision-making process:

- iii. Does the grantee have a successful track record using RLF funds?
- iv. the extent that the grantee has identified worthy, shovel-ready projects that can be completed within the next 18 months?
- v. The extent to which there will there be a positive stimulus effect of the award on the surrounding community that could not be achieved without the funds?
- vi. Statutory considerations in 42 USC 9604 (k)(4)(A)(ii)

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2. We support clarification that there is no \$200,000 limit on sub-grants

- The statutory limit of \$200,000 is for direct grants, i.e., where a municipality uses the grant for its own site.
- There is no statutory limit for RLF sub-grants.
- Funding decisions for grants made by the EPA to municipalities that will be used for sub-grants should be based on the strength of eligible recipient's ability to achieve the EPA's criteria described in #1 above.

3. We support the recommendation to administratively remove the 40% RLF sub-grant cap

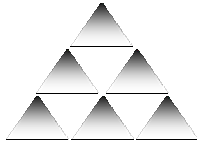
- Although there are no statutory limits on the percentage of an RLF grant that may be sub-granted, EPA has administratively (through Guidance) created a 40% cap on sub-grants. This Guidance should be administratively amended to eliminate the 40% cap.
- If the ARRA funds for the RLF program are to truly stimulate brownfield redevelopment in the communities that are facing the most stress from the credit crunch, the funds need to be in the form of grants. Sub-grants provide the ideal mechanism through which this can be accomplished as illustrated by the following:
 - i. A remediation loan means that the developer will eventually need to obtain long term financing with which to pay for the cleanup. In this economic climate, every additional financing requirement represents a significant challenge to a project's viability.
 - ii. Many affordable housing and other public purpose projects simply cannot support remediation costs. Indeed, government subsidies are needed to reach affordability and other community goals. There is no room in the project budget for remediation costs.

4. Remove the 25% minimum petroleum set-aside

- There is no statutory minimum funding for petroleum-contaminated sites
- Such a set-aside inhibits EPA from allocating the stimulus funds as efficiently and effectively as possible. Removing this set-aside will enhance flexibility.
- It should be noted that substantial funding is available for the petroleum contamination from ARRA's for \$200 Million for the cleanup of leaking underground storage tanks. Therefore, there is no need to arbitrarily set aside funds for petroleum sites. EPA should retain full discretion to provide funding based on an applicant's demonstration of need without arbitrarily limiting ARRA's brownfield funds.

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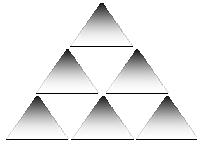


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5. **Clarify that “site ownership” includes nonprofit-controlled LLCs and other equivalent entities created pursuant to State law, e.g., housing development fund corporations in New York State.** Nonprofits nationally are involved directly in the cleanup and redevelopment of brownfield sites. Nonprofits often do not take direct, sole ownership of property for a variety of reasons:
- A nonprofit will often form a Limited Liability Corporation (LLC) for the sole purpose of purchasing and developing a specific property because the nonprofit would not otherwise be able to assume the risks involved in property acquisition. The additional liability concerns on brownfields make the LLC structure critical to the nonprofit’s ability to invest in such a site.
 - Two or more nonprofits will often form an LLC for the sole purpose of purchasing and developing a specific property because it is only through the pooling of the multiple parties’ resources that the project can be successfully managed and financed.
 - A nonprofit housing developer will often form an LLC or a Limited Partnership (LP) with a for-profit financing institution for the sole purpose of taking advantage of various tax credits (i.e. affordable housing, new market, etc.) that the nonprofit would be unable to take advantage of on their own. The terms of the partnership are structured such that the financing partner’s involvement is limited strictly to the receiving of tax credits in exchange for crucial up-front financing, without which many affordable housing projects would not be realized. The for-profit partner does not benefit directly from the development in any way.
7. **Clarify Davis-Bacon compliance to maximize flexibility.**
- A significant portion of brownfield development projects involve non-construction costs, including design, transactional costs associated with regulatory approvals, property appraisals, surveys and other predevelopment costs, that do not trigger Davis-Bacon.
 - RLF resources for these “soft costs” would fill significant project remediation funding gaps, particularly in today’s credit crunch.
 - Guidance should be issued clarifying the distinction between hard costs and soft costs which do not trigger Davis-Bacon.
 - Such guidance would provide clarity to RLF funding, improve clarity of the RLF as a funding source, and address lender reluctance to rely on the RLF as a project financing source.

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8. Streamline the Process to reduce bureaucracy and avoid delay and redundancy

- RLF grants and sub-grants carry with them significant administrative requirements that impede the efficient use of RLF funds. EPA should significantly streamline the administrative requirements to enable RLF funds to be used on projects immediately, while ensuring compliance with statutory requirements.
- Remove QAP and SAP requirements and replace with more streamlined requirements or eliminate this requirement when a project is being remediated through a state regulatory cleanup program.

9. Enable RLFs to leverage existing expertise to effectively distribute cleanup funds

- Nonprofit organizations often interface on multiple projects and are excellent points of contact for communities pursuing economic redevelopment programs.
- Administrative and transaction costs frequently make accessing RLF funds infeasible, particularly for small or rural communities that lack staff and knowledge resources and for projects in low- and moderate-income urban centers that have narrow profit margins..
- The EPA should clarify that eligible costs include those associated with encouraging the engagement of nonprofits to provide outreach and borrower assistance to brownfields communities.

10. Extend administrative flexibility to earlier funding awards.

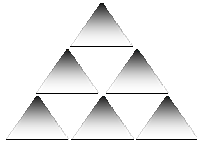
- The RLF program has been beset by serious delays, many of which are administrative requirement; and there are significant RLF dollars that were previously awarded that have not yet been invested into brownfield deals. The administrative solutions to making the RLF program more efficient for ARRA funds should also be applied to RLF funds previously awarded.

11. Establish a flexible technical assistance grant program using CERCLA § 104(k)(6) grants to facilitate and accelerate the cleanup of brownfield sites (including sites advancing using RLF grants and sub-grants).

- The existing statute provides broad authority for using 104(k)(6) funds for technical assistance to facilitate the site preparation, site assessment and remediation of brownfield sites. However, to date, these funds have been used primarily for broad training and technical assistance and also for research grants.
- Research has revealed that the single, most important factor in advancing a community-supported brownfields development projects is the availability of good technical assistance and flexible funding that can be invested upfront in a project to reduce project uncertainty to the point where a site is “developable.” EPA should provide flexible grants to eligible entities and not-for-profit

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organizations to work with local development organizations to facilitate the cleanup and redevelop of brownfield properties to meet real and pressing community needs -- affordable housing, good jobs, educational and community facilities, waterfront access and open space -- that are increasingly difficult to build due to current economic circumstances.

- NBNNI members and other not-for-profit organizations have an established track record to targeting resources to advance the redevelopment of brownfield sites where the assistance is needed to quickly advance a project to remediation and/or redevelopment. This includes projects which are nearly “ready to go” where the environmental investigation and cleanup plan are in good shape, but where the developer may need assistance to establish and carry out a clear environmental closure strategy or related pre-development activities, as well as projects that may need supplemental site investigation.
- Regional and local not-for-profit organization, and local governments, because of their knowledge of their community, are in the best position to efficiently deliver technical assistance to projects and expeditiously advance projects to development based on developer capacity, end use, level of community support, how the project fits with plans for the area, and other resources identified/committed to the project. Recipient of grants should have the flexibility to provide the technical assistance as necessary on a project. Direct technical assistance can be provided to help the development team identify, understand and manage the brownfield issues within the context of other pre-development issues and the pre-development/development process overall.

The National Brownfields Nonprofit Network has assembled these recommendations in the interest of furthering the economic development efforts of struggling communities across the country. We appreciate the opportunity to contribute to the revitalization of our nation’s economy and appreciate your consideration of our recommendations. We are available, individually or as a group, to further discuss these recommendations at your request.

Respectfully submitted,


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Colorado Brownfields Foundation


Stephanie Shakofsky, Executive Director,
Center for Creative Land Recycling


Jody Kass, Co-Director,
New Partners for Community Revitalization


Donna Ducharme
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