

# Revolving Loan Fund

## Applicable Laws

### **Statements Required by Law and Executive Order**

Federal executive agencies, including the U.S. Environmental Protection Agency (U.S. EPA), are required to withhold or limit financial assistance; impose special conditions on approved loans; provide special notices to recipients or borrowers; and require special reports and data from borrowers in order to comply with legislation passed by Congress and Executive Orders issued by the President and by the provisions of various interagency agreements. U.S. EPA has issued regulations and procedures that implement these laws and Executive Orders.

The borrower will carry out the project in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.); Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 Code of Federal Regulations [CFR] Part 31); Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (40 CFR Part 35, Subpart O); and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300). In addition, the borrower agrees to comply with the following federal statutes.

### **Privacy Act (5 U.S.C. 552a)**

The Privacy Act of 1974 is a law which mandates how federal agencies maintain records about individuals. The law strives to balance the government's need to maintain these records with the individual's right to be protected from unwarranted invasions of personal privacy. The Privacy Act requires that agencies collect only information on individuals that is necessary to carry out an agency function, provide safeguards to protect the records from unauthorized access and disclosure, allow people to see the records kept on them, and provide an opportunity to correct inaccuracies.

Any person can request to see or get copies of any personal information that U.S. EPA has in his or her file, when that file is retrievable by individual identifiers, such as name or social security numbers. Requests for information about another party may be denied unless U.S. EPA has the written permission of the individual to release the information to the requestor. Disclosure exceptions that do not require consent of the individual of record are internal agency requests, Freedom of Information Act (FOIA) requirements, routine agency use, requests by the Bureau of the Census, statistical research or reporting requests, preservation of records by the National Archives and Records Administration, requests for civil or criminal law enforcement, Congressional disclosure requests, disclosure for health or safety purposes, requests by the General Accounting Office, requests made pursuant to the order of a court of competent jurisdiction, or for debt collection (Federal Claims Collections Act of 1966 [31 U.S.C. 3701(a)(3)] and Debt Collection Act of 1982 [Public Law 97-365]).

When this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature, U.S. EPA may refer it to the appropriate agency, whether federal, state, local, or foreign, charged with responsibility for or otherwise involved in investigation, prosecution, enforcement, or prevention of such violations. See Fed. Reg. 8020 (1991) for other published routine uses. Complete U.S. EPA Privacy Act procedures are set out in 40 CFR Part 16.

### **Freedom of Information Act (5 U.S.C. 552)**

This law provides, with some exceptions, that U.S. EPA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders, or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms, and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest U.S. EPA office and be identified as a Freedom of Information request.

### **Relationship of the Freedom of Information Act to the Privacy Act**

FOIA and the Privacy Act both deal with the disclosure of information held by the Federal Government. FOIA generally gives the public the right to inspect their government's records but has exemptions which permit the withholding of certain limited classes of records, including records which would cause a clearly unwarranted invasion of personal privacy if disclosed. As a general rule, the Privacy Act does not affect the public's right of access to records available under FOIA.

### **Right to Financial Privacy Act of 1978 (12 U.S.C. 3401)**

This is notice to you as required by the Right to Financial Privacy Act of 1978, of the U.S. EPA's, State of California Department of Toxic Substances Control's (DTSC), and State Assistance Fund for Enterprise, Business and Industrial Development Corporation's (Underwriter) access rights to financial records held by financial institutions that are, or have been, doing business with you or your business, including any financial institutions participating in a loan or loan guarantee. The law provides that U.S. EPA, DTSC, and Underwriter shall have a right of access to your financial records in connection with its consideration or administration of assistance to you in the form of a Government loan or loan guarantee agreement. The U.S. EPA, DTSC, or Underwriter is required to provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records, after which no further certification is required for subsequent accesses. The law also provides that the U.S. EPA, DTSC, and Underwriter's access rights continue for the term of any approved loan or loan guarantee agreement. No further notice to you of U.S. EPA, DTSC, and Underwriter's access rights is required during the term of any such agreement. The law also authorizes the U.S. EPA, DTSC, or Underwriter to transfer to

another Government authority any financial records included in an application for a loan, or concerning an approved loan or loan guarantee, as necessary to process, service, or foreclose on a loan or loan guarantee or to collect on a defaulted loan or loan guarantee. No other transfer of your financial records to another Government authority will be permitted by the U.S. EPA, DTSC, or Underwriter except as required or permitted by law.

### **Information Practices Act of 1977**

All departments and agencies of the State of California shall enact and maintain a permanent privacy policy, in adherence with the Information Practices Act of 1977 (Civil Code Section 1798 et seq.), that includes, but is not necessarily limited to, the following principles: (a) personally identifiable information may only be obtained through lawful means; (b) the purposes for which personally identifiable data are collected shall be specified at, or prior to, the time of collection, and any subsequent use of the data shall be limited to and consistent with the fulfillment of those purposes previously specified; (c) personal data may not be disclosed, made available, or otherwise used for a purpose other than those specified, except with the consent of the subject of the data, or as required by law or regulation; (d) personal data collected shall be relevant to the purpose for which it is needed; and (e) the general means by which personal data is protected against loss, unauthorized access, use, modification, or disclosure shall be posted, unless the disclosure of those general means would compromise legitimate agency objectives or law enforcement purposes. As a State entity, DTSC's records (and those of the loan recipients and contractors) are also subject to the California Public Records Act. The California Public Records Act is designed to give the public access to information in possession of public agencies: "Public records are open to inspection at all times during the office hours...and every person has a right to inspect any public record, except as provided, [and to receive] an exact copy" of an identifiable record unless impracticable (Government Code § 6253). Specific exceptions to disclosure are listed in Government Code §§ 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, or 6276.02-6276.48.

### **Equal Employment Opportunity**

All loans shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." In addition, the borrower will undertake good faith efforts in compliance with 40 CFR § 35.6580 to give opportunities for qualified Small Business Enterprises, Minority Business Enterprises, and Women-Owned Business Enterprises to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The borrower may be requested to submit a report of such efforts.

### **Equal Credit Opportunity Act (15 U.S.C. 1691)**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

### **Nondiscrimination in Recipients of Federal Assistance (Title VI of the Civil Rights Act of 1964, Federal Water Pollution Control Act of 1972 Section 13, Federal Rehabilitation Act of 1973 Section 504, and Age Discrimination Act of 1975 Pub. L. 94-135)**

These rules provide that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.

### **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)**

All loans will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor Regulations (29 CFR Part 3 *Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States*). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to U.S. EPA.

### **Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a-5)**

Pursuant to CERCLA 104(G)(1) the Davis-Bacon Act applies to construction, repair, or alteration work funded in whole or in part with the Brownfields Cleanup Revolving Loan Fund. All construction contracts awarded by the recipient or subcontractors of more than \$2,000 shall include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 276a to 276a-5) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation, and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to U.S. EPA and DTSC.

**Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)**

Where applicable, all loans in excess of \$100,000 for construction contracts and in excess of \$2,500 for other loans that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.

**Executive Order 11738—Environmental Protection (38 F.R. 25161) including the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended**

The Executive Order charges U.S. EPA with administering its programs in a manner that will result in effective enforcement of the Clean Air Act, the Federal Water Pollution Act, and other environmental protection legislation. U.S. EPA must, therefore, impose conditions on some loans. By acknowledging receipt of this form and presenting the application, the principals of all small businesses borrowing \$100,000 or more in direct funds stipulate the following:

1. That any facility used, or to be used, by the subject firm is not cited on the U.S. EPA list of violating facilities.
2. That subject firm will comply with all the requirements of Section 114 & 306 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) and Sections 308 and 508 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements of the respective acts, and all regulations and guidelines issued thereunder.
3. That the subject firm will notify the lender of the receipt of any communication from the Director of U.S. EPA indicating that a facility utilized, or to be utilized, by subject firm is under consideration to be listed on the U.S. EPA list of violating facilities.

**Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Recipients who apply for a loan shall file the required certification. Each tier certifies to the tier above that it will not, and has not, used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-

Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the loan recipient.

**U.S. EPA Requirements for Drug-Free Workplace**

The Drug-Free Workplace Act of 1988 requires that all recipients receiving funds from any Federal agency certify to that agency that they will maintain a drug-free workplace, or in the case of a recipient that is an individual, certify to the agency that his or her conduct of activity will be drug-free. This government-wide rule implements the statutory requirements. It directs that recipients take steps to provide a drug-free workplace in accordance with the Act.

**Debarment and Suspension (Executive Orders 12549 and 12689)**

A person who is debarred or suspended is excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. No loans shall be made to parties listed on the System for Award Management (SAM), formerly the Excluded Parties List System (EPLS), in accordance with Executive Orders 12549 and 12689, *Debarment and Suspension*. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Borrowers shall provide the required certification regarding its exclusion status and that of its principal employees.

**Other Economic or Social Requirements**

Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754, as amended), Uniform Relocation and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, as amended), Section 504 of the Rehabilitation act of 1973 (Public Law 93-112, including Executive Orders 11914 and 11250), Section 192 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100-590), Women's and Minority Business Enterprise, Executive Orders 11625, 12138, and 12432.

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