

## Statements Required by Law and Executive Order

Federal executive agencies, including the Environmental Protection Agency (EPA), are required to withhold or limit financial assistance, to impose special conditions on approved loans, to provide special notices to recipients or borrowers and to require special reports and data from borrowers in order to comply with legislation passed by the congress and Executive Orders issued by the President and by the provisions of various inter-agency agreements. 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) in (42 USC 9601 et seq.); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Contingency Plan (NCP) (40 Part 300). In addition, the loan recipient agrees to comply with the following federal statutes:

### **Privacy Act (5U.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 the 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 the 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 request, Freedom of Information Act 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 [31U.S.C. 3701(a)(3)] & Debt Collection Act of 1982 [P.L. 97-365]].

When this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature, the 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 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 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 EPA office and be identified as a Freedom of Information request. **Relationship of the Freedom of Information Act to the Privacy Act:** The Freedom of Information Act (FOIA) and the Privacy Act both deal with the disclosure of information held by the Federal Government. The 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 the FOIA.

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

This is notice to you as required by the Right of Financial Privacy Act of 1978, of the EPA's, State of Nevada Division of Environmental Protection's (NDEP) and State Assistance Fund for Enterprise, Business and Industrial Development Corporation's (SAFE-BIDCO) 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 the EPA, NDEP, & SAFE-BIDCO 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 EPA, NDEP, or SAFE-BIDCO 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 EPA's, NDEP's and SAFE-BIDCO's access rights continue for the term of any approved loan or loan guarantee agreement. No further notice to you of EPA's, NDEP's and SAFE-BIDCO's access rights is required during the term of any such agreement.

The law also authorizes the EPA, NDEP, or SAFE-BIDCO 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 EPA, NDEP, or SAFE-BIDCO except as required or permitted by law.

## **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 (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) 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 applicants 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 (Civil Rights Act of 1964 Title VI, Federal Water Pollution Control Act of 1972 Section 13, Federal Rehabilitation Act of 1973 Section 504, 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 EPA.

## **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)**

Pursuant to CERCLA 104(G)(1), The Davis Bacon Act applies to construction, repair or alteration work funded in whole or in part with BCRLF loan funds. All construction contracts awarded by the recipient or subcontractors of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) 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 EPA and the NDEP.

## **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 \$2500 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 1/2 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 the 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. The 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 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 section 508 of the Clean Water Act, and Section 308 of the 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 the EPA indicating that a facility utilized, or to be utilized, by subject firm is under consideration to be listed on the 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.

### **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 who 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 General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs 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 (Pub. L. 89-754, as amended), Uniform Relocation and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, as amended), Section 504 of the Rehabilitation act of 1973 (Pub. L. 93-112, including executive orders 11914 & 11250), Section 192 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Pub. L. 100-590), Women's and Minority Business Enterprise, Executive Orders 11625, 12138, 12432.

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