



May 20, 2022

The Honorable Radhika Fox  
Assistant Administrator, Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
Via: [WIFIA@epa.gov](mailto:WIFIA@epa.gov)

**Re: Program Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for Projects in Design Planning**

Dear Assistant Administrator Fox,

The Association of State Drinking Water Administrators (ASDWA) and its members would like to commend EPA on its recent proposed waiver for the requirements under Build America, Buy America (BABA) for Water Infrastructure Finance and Innovation Act (WIFIA) borrowers that initiated project design plans prior to May 14, 2022 – the day which BABA went into effect. ASDWA is supportive of this action and encourages EPA to continue to implement similar waivers in limited circumstances and when it is in the best interest of the public.

ASDWA agrees with EPA's conclusion that requiring borrowers that have already begun project design to comply with BABA "may lead to significant cost and schedule increases for much-needed infrastructure" and that this conflicts with the Bipartisan Infrastructure Law's (BIL) goal of "investing in the nation's water infrastructure and initiating construction in an expeditious and efficient manner." Similarly, ASDWA agrees with EPA's determination that imposing BABA requirements on borrowers that initiated project design plans prior to May 14, 2022, is not in the public's interest. The funding from the BIL represents a once-in-a-generation opportunity to implement an incredible amount of drinking water infrastructure improvements and to continue to ensure the protection of public health. This critical funding will assist water systems in addressing much-needed infrastructure improvements, removing lead service lines, and tackling emerging contaminants such as PFAS. But we must work to lessen the burden and simplify the process for those communities most in need to access these funds.

To achieve this, ASDWA has the following recommendations for the Agency.

- EPA should provide additional waivers for BABA requirements, in limited circumstances, for the BIL funds moving through the drinking water state revolving fund (DWSRF)

programs. ASDWA recommends that EPA use a population cutoff for projects to qualify for these waivers and suggests the Agency consider a 10,000-population threshold.

- ASDWA has interpreted that the BABA requirements would only apply to projects that utilize the federal cap grant funds and not the additional leveraged DWSRF funds. ASDWA supports this application of BABA but recommends EPA give a more explicit explanation as to what funds must comply with the BABA requirements.
- ASDWA also recommends that EPA consider similar waivers for the Davis-Bacon (DB) Act requirements.

ASDWA believes in the principles of BABA and DB; however, these requirements make the DWSRF process insurmountable for many small systems that need the funding the most. Small systems with only a few hundred connections face higher costs for even their basic supplies. Requiring BABA and DB for the infrastructure projects these systems so desperately need only exacerbates the economic disadvantage imposed on these systems. Some states, such as California, have resorted to utilizing their own funding to aid small, disadvantaged communities in order to overcome these shortcomings of the federal DWSRF program.

Limited waivers for BABA and DB will help States meet the Agency's ambitious goal under the Justice40 initiative to work towards ensuring that at least forty percent of the overall benefits from federal investments go towards disadvantaged communities. Justice40 and the communities that will benefit should be prioritized over BABA and DB. The benefits for the country by implementing BABA will result from much larger community projects that will do the overwhelming amount of purchasing for their much larger investments. Pitting small communities against large community purchasing power is a surefire way to continue the injustice these communities struggle with every day.

We look forward to further engagement with EPA as the Agency works to implement similar waivers to ensure that we make the most of the opportunity presented to us with the BIL. If you have any questions regarding these comments, please contact me ([aroberson@asdwa.org](mailto:aroberson@asdwa.org)) or Stephanie Schlea ([sschlea@asdwa.org](mailto:sschlea@asdwa.org)).

Sincerely Yours,



J. Alan Roberson, P.E.  
ASDWA Executive Director

Cc: Bruno Piggott – EPA OW  
Jennifer McLain – EPA OGWDW  
Andrew Sawyers – EPA OWM  
Jorianne Jernberg – EPA OWM