



July 27, 2022

The Honorable Radhika Fox
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
Via: BABA-OW@epa.gov

Re: Request for Comments on Temporary Public Interest Waiver of Section 70914 of P.L. 117-58, Build America, Buy America Act, 2021 for Selected EPA Funding Programs

Dear Assistant Administrator Fox,

The Association of State Drinking Water Administrators (ASDWA) and its members would like to commend EPA on its recent proposed six-month “adjustment period waiver” for the requirements under Build America, Buy America (BABA) for selected EPA water infrastructure and water resources protection programs. ASDWA supports this action but again recommends that EPA extend similar waivers across all EPA infrastructure funding programs in limited circumstances and when the waivers are in the public interest.

ASDWA agrees with EPA’s reasoning in this most recent waiver, that these programs have limited to no experience with conforming to the similar American Iron and Steel requirements and therefore require an adjustment period. ASDWA recommends that EPA extend similar adjustment period waivers to all water infrastructure programs to ensure consistency and clarity for both applicants and States. States are still waiting for further guidance from EPA on how to implement these waivers, even though they are already reviewing projects which would qualify. EPA must allow for an adjustment period to ensure that projects are not unnecessarily delayed.

To date, EPA has released three different waivers for BABA requirements, each with varying qualifiers. While ASDWA agrees with the Agency’s goal to keep these waivers as narrow as possible, it can be confusing to have different requirements, like BABA, for similar programs that fund the same projects and have the same applicant pools. Having such significant differences among the various waivers is not in the public interest and could adversely affect public health and the environment by slowing down construction and/or increasing construction costs. Many of these projects are also co-funded by different funding pots. Implementing different requirements for the same project will cause unnecessary confusion and complication.

As EPA releases additional waivers, ASDWA recommends that the Agency ensure consistency across all of EPA's infrastructure programs. The principles for waivers should remain the same whether the funding results from WIFIA, BIL, Congressionally directed spending, America's Water Infrastructure Act (AWIA) or other legislation. The same principles should apply to all. Additionally, the waivers should reflect continuity and clarity across any application of the waivers. As stated previously, navigating this process can be burdensome and confusing for local communities and water systems. EPA should take every action possible to ensure that obtaining infrastructure funds is as smooth and straightforward as possible.

The funding from the BIL represents a once-in-a-generation opportunity, and 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 the Federal and state partners must work to lessen the burden and simplify the process for those communities most in need to access these funds. Beyond the initial recommendations stated above, ASDWA recommends that the Agency do the following.

- 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 recommends that the Agency consider a 10,000-population threshold for these waivers.
- 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 continues to support the underlying principles of BABA and DB as America needs to increase its ability to manufacture construction materials and components. However, in many cases, 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 and disadvantaged communities to overcome these shortcomings of the federal DWSRF program.

Limited BABA waivers assist States in meeting the Agency's 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

more significant investments. Pitting small communities against large community purchasing power will likely continue the injustice these communities struggle with every day.

ASDWA's members look forward to further engagement with EPA as the Agency works to implement similar waivers to ensure that state primacy and funding agencies make the most of the opportunities with BIL funding. If you have any questions regarding these comments, please contact me (aroberson@asdwa.org) or Stephanie Schlea (sschlea@asdwa.org).

Sincerely Yours,

A handwritten signature in blue ink that reads "J. Alan Roberson". The signature is written in a cursive style with a large initial "J".

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