



August 15, 2022

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

Re: Request for Comments on Public Interest: Small Project General Applicability Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for EPA Financial Assistance Awards

Dear Assistant Administrator Fox,

The Association of State Drinking Water Administrators (ASDWA) and its members would like to commend EPA on its recently proposed waiver for the requirements under Build America, Buy America (BABA) for small projects under a specified size threshold. ASDWA's members are busy working with systems to develop grant applications to ensure successful implementation of the Bipartisan Infrastructure Law (BIL) funding, and any actions by EPA through waivers and otherwise to streamline its processes will help to ensure that obtaining this funding is as smooth and straightforward as possible and will reach the communities that need it most.

ASDWA supports a waiver for small projects and agrees with EPA's reasoning that this action will "reduce the administrative burden to potential assistance recipients, including predominantly small and disadvantaged communities, where the costs of compliance with BABA could significantly negate the benefits of the smallest grants and projects." Additionally, ASDWA agrees that failure to provide this flexibility "could perpetuate systemic barriers to opportunities and benefits and limit the agency's ability to deliver resources and benefits equitably to all."

ASDWA has read this waiver as applying to the full amount of federal funding for a project, not the total construction contract. This will be especially useful for projects that utilize EPA's smaller grant programs for joint funding. For example, a \$2 million dollar project where only \$250,000 comes from federal funding would be exempt from BABA. However, ASDWA's members have voiced concerns that the currently proposed threshold of \$250,000 will provide limited benefit to projects funded under the State Revolving Funds (SRF). Loans this small are rare for the SRF programs. To better achieve the Agency's goals of reducing the burden on small

and disadvantaged communities, ASDWA recommends EPA increase the threshold from the currently proposed \$250,000 to \$1 million.

ASDWA continues to recommend that EPA ensure consistency across all the Agency's infrastructure programs for these and future waivers. 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. The principles for waivers should remain the same whether the funding results from Water Infrastructure Financing and Innovation Act (WIFIA), BIL, Congressionally directed spending, America's Water Infrastructure Act (AWIA) or other legislation. The same principles should apply to all.

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 more than one funding program. Implementing different requirements for the same project will cause unnecessary confusion and complication. 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 for water infrastructure, 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 take the following actions:

- ASDWA recommends that EPA provide BABA waivers for SRF projects in small communities 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 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,



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

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