



July 7, 2023

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: Amended Public Interest Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for State Revolving Fund and Water Infrastructure Projects that have Initiated Design Planning

Dear Assistant Administrator Fox,

The Association of State Drinking Water Administrators (ASDWA) and its members would like to thank EPA for the opportunity to comment on its recent proposed amended waiver for the requirements under Build America, Buy America (BABA) for State Revolving Fund (SRF) borrowers that have initiated design planning before May 14, 2022 – the day BABA went into effect. ASDWA's members are busy working with systems to develop grant applications to ensure successful implementation of the Bipartisan Infrastructure Law (BIL) funding, and actions by EPA 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.

Regarding the proposed waiver, the association disagrees with EPA's use of a "sunset date" for this BABA waiver. As initially written, the SRF BABA waiver will have a natural conclusion as, eventually, no more projects will meet the criteria of having "initiated design planning prior to May 14, 2022, the effective date of BABA requirements." By adding this sunset date, EPA risks disrupting numerous projects that are far along in the process but will not be completed before this date. The responsible officials for these projects have already been told that they will be exempt from BABA, and changing course now will force many projects to start over in order to comply with BABA causing unnecessary increases in cost and time.

If EPA opts to retain a sunset date, ASDWA recommends that EPA modify the date for SRF program projects to apply only to new project applications submitted to the program after the sunset date of Sept 30, 2024. For example, any intended use plan applications accepted after September 30, 2024, will not be able to use this BABA waiver. However, up to September 30, 2024, new project applications

can use the waiver as long as they can provide evidence for complying with the conditions stated in the waiver prior to May 14, 2022.

ASDWA continues to recommend that EPA ensure consistency across all the Agency's infrastructure funding programs for these and future waivers. Navigating this process between the different funding programs 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. 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.

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. 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 beyond just those that have initiated design planning before May 14, 2022, to include all SRF projects within certain qualifiers. 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 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. 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,



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