



Environmental Council of the States

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July 27, 2022

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,

ECOS members support the intent of the Build America, Buy America Act (BABAA), and appreciate the opportunity to provide comments on the six-month adjustment period waiver for domestic preference procurement requirements in BABAA for programs offered by the U.S. Environmental Protection Agency (EPA) Office of Water (OW). ECOS represents state environmental agencies who work in close partnership with or may directly implement the Clean Water and Drinking Water State Revolving Funds (SRFs) as well as a number of the OW programs included in this proposed waiver. ECOS supports the proposed waiver and encourages EPA to broaden the proposed waiver to include SRFs and the Water Infrastructure Finance and Innovation Act (WIFIA) program.

First, EPA's proposed waiver extends an adjustment period waiver for selected water infrastructure and water resources protection programs for the period extending six months from the effective date of this waiver. The proposed waiver includes sixteen programs, a number of which may be implemented by state environmental agencies including:

- Small and Disadvantaged Community Grants Program, including Emerging Contaminants and Drinking Water Infrastructure Resilience & Sustainability (SDWA §1459A)
- Reducing Lead in Drinking Water Grant Program (SDWA §1459B)
- Voluntary School and Child Care Program Lead Testing and Remediation Grant Program (SDWA 1464(d))
- Sewer Overflow and Stormwater Reuse Municipal Grants (OSG)
- 319 Nonpoint Source Management Program Implementation
- Gulf Hypoxia Program
- U.S.-Mexico Border Water Infrastructure Program
- Geographic Programs

EPA notes these programs do not have a history of applying domestic preference requirements and a waiver to delay imposition could lessen potential negative impacts. States agree and support EPA's proposed 6-month waiver.

Secondly, EPA's proposed waiver would include Congressionally Directed Spending/Community Project Funding (Community Grants). In some instances, these projects may also receive SRF and/or WIFIA funding. However, SRFs and WIFIA are not included in this proposed waiver. This exclusion could create confusion for communities. If a community receives a Community Grant and either SRF or WIFIA funding and these funds are not included in this waiver, it would result in two set of rules in play for the different sources of funding. Even

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if a community only receives one source of funding, it creates a more confusing message, in particular for small and rural communities that may be struggling to figure out how best to access federal assistance.

Further, the U.S. Department of Agriculture Rural Development (RD) has proposed a six-month adjustment period waiver for BABAA requirements. Often SRF and RD funds serve similar small, rural communities. For EPA to exclude SRFs from its waiver creates inconsistency across federal agencies, with communities left to wade through specific rules to make the best determination for their circumstance. In addition to the inconsistency, EPA's decision to leave SRFs out of the proposed waiver creates an uneven playing field for SRF programs with EPA's WIFIA and USDA's RD.

The White House and EPA will issue BABAA guidance for SRFs. However, while the guidance is being developed, state programs wanting to move forward with funding for communities are taking a risk of potential future oversight review findings if decisions made now do not match future guidance requirements. Without an adjustment period waiver, SRF programs are subject to BABAA without any published guidance to follow. In addition, some states have already accepted grants that contain BABAA requirements, in part due to the need for federal funding to support their delegated program obligations. However, these grants similarly have no published guidance to follow; therefore, it would be beneficial for this waiver to extend back to May 14, the effective date of BABAA, for listed OW programs, SRFs, and WIFIA.

For these reasons, states urge EPA to adopt and broaden application of this adjustment period waiver to also include those projects funded by SRFs and WIFIA.

ECOS appreciates the opportunity to provide this feedback. Please reach out to Ben Grumbles, 202-266-4929, or bgrumbles@ecos.org, with any questions.

Sincerely,



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