



July 19, 2022

Radhika Fox
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Celeste Drake
Director, Made in America Office
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

RE: Temporary Public Interest Waiver of Section 70914 of P.L. 117-58, Build America, Buy America Act, 2021 for Selected Environmental Protection Agency Funding Programs

Dear Assistant Administrator Fox and Director Drake:

The Council of Infrastructure Financing Authorities (CIFA), which represents the Clean Water and Drinking Water State Revolving Funds (SRFs), respectfully requests that the proposed waiver of domestic preference requirements for construction materials and manufactured products in the Build America, Buy America Act (BABAA) for Selected Environmental Protection Agency (EPA) Funding Programs be extended to the Clean Water and Drinking Water SRFs and the Water Infrastructure Finance and Innovation Act (WIFIA) Program for all the reasons described in the proposed waiver. CIFA is not requesting a waiver of domestic preference procurement requirements for iron and steel in BABAA for the SRFs or WIFIA.

Successful Implementation Requires a Comprehensive Approach.

To ensure successful implementation of BABAA, borrowers with projects in the SRF pipeline need relief from new mandates until EPA issues implementation guidance. After EPA issues guidance, SRFs need a six-month adjustment period to implement the new rules of compliance.

Waiving requirements for borrowers who initiated design planning prior to the release of EPA implementation guidance will ensure water infrastructure projects remain on time, on track, and on budget. Without the rules of compliance, borrowers with projects currently in the SRF pipeline are unable to evaluate the impact of new mandates for construction materials and manufactured products on their bottom-line or construction timeline. A waiver will provide borrowers with safe harbor to move forward with construction paid for by a federally funded SRF subsidized loan without the possibility of redesigning or rebidding to comply with the new mandates. Additionally, providing a prospective effective date in the waiver, similar to the prospective date used in the 2014 waiver for American Iron and Steel (AIS), will ensure adequate time for borrowers to understand their potential eligibility and to meet the specific requirements of the waiver.

Additionally, because states – not EPA – are responsible for compliance with BABAA, SRFs need a six-month adjustment period *after* EPA issues implementation guidance to integrate new processes and procedures into their state programs. Without a sufficient adjustment period after EPA issues implementation guidance, the SRFs may need to stop awarding federally funded subsidized loans until their programs are updated to ensure compliance. Without this additional safe harbor for *current* projects, the SRFs are likely to be inundated with individual requests for product waivers, potentially overwhelming staff who would otherwise be focused on obligating historic funding in the Infrastructure Investment and Jobs Act to *new* projects.

The complexity of compliance for new mandates for construction materials and manufactured products will determine whether a six-month time adjustment waiver is adequate, especially for complex manufactured products that are needed to treat drinking water and wastewater to increasingly stringent water quality standards. Without a longer timeframe for relief for manufactured products, a significant number of projects currently in the SRF pipeline may need to redesign and rebid their projects or apply for waivers, both of which will likely increase costs and add months to the construction timeline.

Same Projects and Same Recipients of Federal Assistance have the Same Challenges.

Several of the programs covered by the proposed waiver, such as earmarks, fund the same types of water infrastructure projects funded by subsidized loans from the SRFs and WIFIA. In fact, two of the programs covered by the waiver are managed by the SRFs in some states, including the Sewer Overflow and Stormwater Reuse Municipal Grants and the Small and Disadvantaged Community Grants Program. Some of these projects may even be co-funded with these programs and the SRFs.

Recipients of federal assistance for several of these programs are the same applicant pool as borrowers of the SRFs and WIFIA, primarily municipal utilities that provide drinking water and wastewater services. The recipients of federal assistance for water infrastructure projects, whether funded through the SRFs, WIFIA or other EPA water infrastructure programs, face the same challenges with implementation of the new mandates in BABAA, including inflation, supply chain disruptions, and a tight labor market.

Waivers shouldn't be based on the source or amount of appropriations, especially for the same projects with the same recipients that are facing the same challenges. Bluntly, why should borrowers of the SRFs and WIFIA have a higher bar for compliance for the same types of projects than recipients of federal assistance through the EPA programs?

All Programs, including the SRFs and WIFIA, have New Mandates.

EPA has said a six-month waiver is unnecessary for the SRFs and WIFIA because these programs "have experience with mandates for AIS while the other programs don't." By the same logic, if the SRFs' experience with AIS is transferable to new mandates for construction material and manufactured products, then it seems EPA's experience with AIS in the SRFs and WIFIA could

just as easily be transferable to other EPA programs, especially ones for the same projects with the same applicant pool.

However, without comprehensive implementation guidance, it is impossible to determine whether *any* experience with AIS will be transferable to implementation of new mandates for construction materials and manufactured products. SRFs have no experience with a domestic preference procurement mandate for construction materials. SRFs implemented a “one-time” domestic preference procurement mandate for manufactured products, but that was more than a decade ago as part of the 2009 American Recovery and Reinvestment Act (ARRA) and the requirements in BABAA are more stringent than those in ARRA.

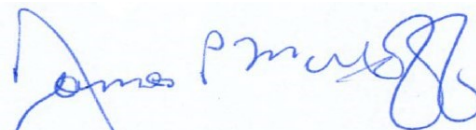
Time is Needed to Successfully Implement New Mandates.

All recipients of federal assistance for water infrastructure projects should be provided the same relief, specifically, a temporary public interest waiver of new domestic preference procurement mandates for construction materials and manufactured products. Relief should be provided to borrowers who “initiated design planning” for water infrastructure projects prior to the effective date of the law, during the period of time between the effective date of the law until such a time as EPA issues comprehensive implementation guidance, and for at least six months *after* the EPA issues final comprehensive implementation guidance that clearly defines the rules of compliance.

As it stands today, borrowers the Clean Water and Drinking SRFs and WIFIA are the only programs in the nation that have been denied a six-month adjustment period waiver for construction materials and/or manufactured products. Denying adequate safe harbor for the SRFs and borrowers of the SRFs and WIFIA will be extremely disruptive and costly, with the burden likely falling on ratepayers who are already facing historic inflation for other basic necessities like food and fuel.

Thank you for your consideration.

Sincerely,



James P McGoff
COO and Director of Environmental Programs
Indiana Finance Authority
CIFA President

About CIFA

CIFA is a national not-for-profit organization that represents the Clean Water and Drinking Water State Revolving Funds (SRFs), the nation’s premier programs for funding water infrastructure that protects public health and the environment.

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