



August 15, 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: 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 and Director Drake:

The Council of Infrastructure Financing Authorities (CIFA), which represents the Clean Water and Drinking Water State Revolving Funds (SRFs), recommends revisions to the proposed waiver of domestic preference requirements in the Build America, Buy America Act (BABAA) for small grants. Specifically, CIFA recommends waiving BABAA requirements for “small projects” and projects in “small and rural communities,” rather than for “small grants.”

The threshold for a “small grant” should be based on the average cost of water infrastructure construction projects.

According to federal regulations, the “Simplified Acquisition Threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see [§ 200.320](#)).” While a threshold of \$250,000 may make sense for determining a streamlined process for procurement of lower cost goods and services, the threshold is extremely low for infrastructure construction projects that provide safe drinking water and environmental protection for millions of people living in rural America.

Some have suggested that the proposed threshold could provide relief to farmers who receive funding to purchase equipment, such as crop interseeders, to implement agricultural best management practices, which protect water quality in rural areas. Instead, CIFA suggests evaluating the eligibility of exempting these vehicles, engines, and equipment from BABAA, similar to EPA’s determination that electric school buses purchased through the Clean School Bus program are exempt from BABAA.

The threshold for a “small grant” waiver for the SRFs should be based on publicly-available SRF data collected by EPA.

The Safe Drinking Water Act defines small water systems as those serving fewer than 10,000 people. However, the SRFs provide the majority of subsidized loans to communities serving fewer than 3,500 people.

In 2021, Clean Water SRFs awarded 53% of subsidized loans to communities with a population of fewer than 3,500. However, total financial assistance for those projects was just 12% of annual federal funding to the SRFs. The average cost of these projects, including both materials and labor, was \$1,068,389.

That same year, the Drinking Water SRFs awarded 51% of all subsidized loans to communities with a population of 3,300 or fewer; 20% of all subsidized loans were awarded to communities with a population of 500 or fewer. Similarly, total financial assistance for those projects was just 16% of annual federal funding to the SRFs. The average cost of these projects, including both materials and labor, was \$1,134,372.

For water infrastructure, grants to fund these construction projects are considered small. Based on this data, CIFA recommends increasing the threshold in the proposed waiver from \$250,000 to \$1,200,000, which is the 2021 average SRF subsidized loan award multiplied by the 2021 inflation rate of 5.8%. CIFA also recommends indexing the threshold to annual inflation for as long as the waiver remains in effect.

Protecting public health and the environment in rural America requires meaningful relief from new federal mandates to ensure water infrastructure projects remain on track, on time and on budget.

The smaller the community, the greater the challenge in building critical water infrastructure. Small water systems often lack the professional capacity to implement capital improvement projects with the myriad of complex federal mandates. These systems require intensive and attentive technical assistance and administrative support from the SRFs to shepherd projects from concept to construction. The increased cost and administrative burden of compliance often deter small and rural communities from seeking and accepting federal assistance, even when replacement of pipes and rehabilitation of facilities are desperately needed to protect public health and the environment.

New procurement mandates for construction materials and manufactured products may also put small and rural communities at a competitive disadvantage with larger communities for engineering and construction services. Historic inflation, supply chain disruptions, and worker shortages are already disproportionately hurting small and rural communities, many of which were economically distressed prior to the current unprecedented economic conditions. Adding new BABAA requirements on water infrastructure projects in small and rural communities, which

already have slim profit margin, may exacerbate the challenge of securing services. As a result, needed water and wastewater projects are likely to be delayed or deferred, indefinitely.

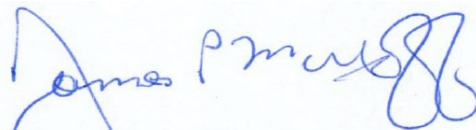
Higher administrative costs for water infrastructure projects in small and rural communities impacts all communities. While many small and rural communities qualify for grants or principal forgiveness to cover administrative costs, every dollar used for *administration* is one less dollar available for *construction* of water and wastewater infrastructure. Additionally, prescriptive compliance procedures with burdensome paperwork have the potential to consume the time and talent of SRF staff and technical assistance providers, diverting valuable resources from activities to move water and wastewater infrastructure projects through the SRF pipelines, from concept to construction.

Tiered implementation, starting with larger projects in the initial phase, will ensure both initial and sustained success for projects of all sizes.

Considering the historic and transformational scope of government-wide implementation of BABAA, water systems serving fewer than 3,500 represent an extremely small percentage of annual federal financial assistance, with a significant amount of project cost used for labor, not covered materials and manufactured products. Waiving requirements for small projects in small communities will allow EPA and the SRFs to focus initial implementation on larger projects which use the overwhelming majority of covered products. A tiered approach will allow EPA and SRFs to develop and refine processes and procedures for compliance before requiring new mandates on small and rural communities, especially at a time when they can least afford it.

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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