



June 29, 2022

Leslie Corcelli
BABA Implementation Team
Via Email: BABA-OW@epa.gov

Re: Program Waiver of Section 70914 of P.L. 117-58, Buy America, Build America Act, 2021 for State Revolving Fund Projects with Submitted Engineering Plans and Specifications

Dear Leslie Corcelli,

The New Mexico Environment Department (NMED) generally supports an adjustment period waiver from the Buy America, Build America Act (BABA) requirements for State Revolving Fund (SRF) programs for projects that began planning prior to May 14, 2022. New Mexico agrees with and support the goals of BABA and will support communities' efforts to source products domestically when possible.

The adjustment period waiver of BABA requirements for water and wastewater infrastructure projects must support forward momentum without placing undue burden on projects that are well underway. Therefore, we urge the U.S. Environmental Protection Agency (EPA) to consider a broader application of the waiver for those projects beyond those that have "submitted engineering plans and specification to an appropriate state agency prior to May 14, 2022," similar or comparable to EPA's proposed waiver for the Water Infrastructure Finance and Innovation Act (WIFIA) program. The proposed WIFIA waiver covers projects that have *initiated* design planning prior to May 14, 2022, the effective date of BABA requirements. The SRF waiver should offer the same flexibility for SRF projects as is extended to WIFIA projects. Such parity is directly in line with EPA and the White House's goal of closing the gap for disadvantaged communities, many of which are far too small and rural to ever benefit from the WIFIA program and are much more likely to rely upon the SRF programs.

The proposed SRF program waiver from BABA requirements would cover projects that have engineering plans and specifications submitted to NMED prior to May 14, 2022. The waiver would apply to both Clean Water State Revolving Loan Fund and the Drinking Water State Revolving Fund projects. We understand that the American Iron and Steel requirements will still apply even if the BABA requirements have been waived. We appreciate that borrowers will not be forced to amend their already completed designs to incorporate BABA requirements and unnecessarily delay projects and increase their cost, but this does not go far enough. As noted above, the Department believes that a broader waiver is in the best interest of the funding recipients of both SRF programs. NMED urges EPA to adopt a broad definition of *initiation of project design planning*, as suggested by the Council of Infrastructure Finance Authorities comment letter. Expanding the waiver supports the Bipartisan Infrastructure Law's focus on delivering a higher degree of service to underserved communities that are often limited by the high costs of projects.

New Mexico appreciates EPA's efforts to seek and consider comments from state SRF agencies as you develop the BABA adjustment period waiver for SRF projects.

Sincerely,

Rebecca Roose,
Deputy Cabinet Secretary of Administration

Cc: James C. Kenney, NMED Cabinet Secretary
John Rhoderick, NMED Water Protection Division, Acting Director
Marquita Russel, New Mexico Finance Authority, Chief Executive Officer
Courtney Kerster, Office of Governor Michelle Lujan Grisham, Senior Advisor
Mike Hamman, Office of Governor Michelle Lujan Grisham, Water Advisor
Bruno Pigott, EPA Office of Water, Deputy Assistant Administrator