

From: Lori Johnson

Sent: Friday, June 24, 2022 5:06 PM

To: BABA-OW@epa.gov

Subject: Proposed 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 Specification

To whom it may concern,

Thank you for the opportunity to review and provide comment on the proposed SRF program waiver for BABA. The OWRB is the responsible state agency for administering the OK CWSRF program and co-administering the OK DWSRF program with the Oklahoma Department of Environmental Quality (ODEQ). In the absence of guidance from EPA on BABA implementation for the SRF programs, states are not up to speed on providing adequate oversight of program compliance for BABA. For example, EPA announced in late April at a state-EPA workgroup meeting in Washington, DC that BABA would be an equivalency requirement. However, there has been nothing in writing confirming this. EPA also noted it would be a capitalization grant condition and wouldn't apply to projects before states receive their FFY 2022 grant agreement. Therefore, the scope of what this actually applies to, even after the enactment date, is still unclear to state programs and utilities.

OWRB would like to request uniformity amongst programmatic waivers for EPA's Office of Water programs, including WIFIA. We support a programmatic waiver for the implementation phase of BABA but oppose the narrow touchpoints associated with the proposed waiver. There are still many unknowns associated with projects that submitted Plans and Specifications (P/S) or advertised for bid after the May 14th enactment date since guidance hasn't been issued.

OWRB is requesting expanding the proposed SRF programmatic waiver for BABA requirements to projects that have "initiated project design planning" prior to the publication of EPA's guidance for the SRF programs and for a period of 6 months after guidance for the SRFs is made available. This will ensure that communities can plan for compliance for new projects and give the states time to implement the requirement into their program. Based on the vast differences in state SRF programs, "initiated project design planning" could mean any of the following, but not limited to, a project is on the state's project priority list (PPL), has an executed agreement, project listed on CIP or master plan, engineer contract in place, or any other documentation that shows the project is in the development phase.

We have had a multitude of projects that are in the planning stages but haven't submitted P/S or advertised for bids, that are unclear on what they need to include in their documents. Without proper guidance in place, states are not able to answer these questions.

Thanks,

Lori Johnson | Assistant Chief

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