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

To Whom it May Concern:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on U.S. EPA's proposed waiver of Build America, Buy America Act (BABAA) requirements for the State Revolving Fund (SRF) Program. The waiver would exempt from the expanded BABAA requirements those projects that submitted engineering plans and specifications to an appropriate state agency prior to May 14, 2022, the statutory effective date of the BABAA requirements.

NACWA has significant concerns with the SRF waiver as proposed and urges EPA to expand it to match the waiver provided for projects funded through the Water Infrastructure Finance and Innovation Act (WIFIA) program. The same logic and waiver process that applies to WIFIA should apply to its sister loan program - the SRF - because of the vital importance of ensuring the success of water infrastructure funding. These programs often work in tandem so applying equal treatment is both practical and necessary.

NACWA represents 350 publicly owned wastewater treatment agencies nationwide who serve the majority of the sewered population in the United States. Our members have a long history of successfully leveraging federal water financing, particularly the SRF programs, to advance critical infrastructure projects that protect public health and the environment.

Advancing water investment was an important priority in the Bipartisan Infrastructure Law (BIL), and our members are ready to put the new federal investment to work. However, the expanded domestic procurement requirements of BABAA are raising significant uncertainties and potential cost increases for utilities that are in the process of project development.

The SRF waiver's proposed exemption of projects for which engineering plans and specifications were submitted to the state prior to BABAA's effective date is an important start to helping utilities navigate the new requirements without delaying

important projects. However, NACWA strongly urges that the waiver be expanded to cover projects that have *initiated design planning* prior to BABAA's effective date.

The waiver's current applicability only to projects with plans and specifications submitted by May 14 will not help utilities that are well into the design and engineering process – which likely started prior to BABAA – but whose plans have not yet been submitted to the state. These utilities have already made key decisions and calculations based around specific equipment and materials, changes to which could quickly become time- and cost-consuming.

Planning, designing and engineering clean water projects can take years and the projects are typically designed to meet strict regulations, compliance deadlines and technological requirements. As EPA notes in the waiver, at any time thousands of SRF projects may have finalized engineering plans and specifications, making it impractical to retroactively change and apply new domestic procurement requirements. But thousands more may have design and engineering near completion or pending submission. These potential SRF recipients were not able to reasonably plan for taking BABAA into account when their design got underway.

Helpfully, EPA's recent draft WIFIA waiver offers a straightforward approach to address NACWA's concern with the proposed SRF waiver. The WIFIA waiver applies to projects for which design planning had been initiated prior to the effective date of BABAA. Initiated design planning was defined as efforts made by the utility to "evaluate and identify both technologically and financially viable options for capital improvement projects". Those steps are equally important to potential SRF projects as they are for WIFIA projects—indeed, sometimes both financing programs are considered for a given project.

We ask EPA to provide the same waiver for SRF projects as it will for WIFIA projects. A common approach for both core EPA water financing programs, the SRFs and WIFIA, is both logical and equitable.

We also urge EPA to work expeditiously to provide additional comprehensive implementation guidance for construction materials and manufactured products. This will help utilities understand the new requirements which now must be taken into account from the planning and design process forward.

Expanding the SRF waiver to include projects for which project design planning has been initiated will help avoid costly delays and help keep critical projects on schedule. The types of goods and materials covered by BABAA may be integral aspects of a project and essential to achieving environmental and health objectives or regulatory compliance.

SRF investments support environmental improvements, public health protection, help maintain affordability of water services, and support important projects in disadvantaged, underserved and marginalized communities. Already, utility projects are facing challenges from supply chain delays and inflation. Further restrictions for projects with planning already underway will only exasperate these impacts.

It is important to note that utilities and state SRF authorities have a history of working with EPA to comply with American Iron & Steel requirements. This means that the BIL's SRF investments will support American businesses and jobs in these industries from day one. But the expanded requirements to construction materials and

manufactured goods call for providing utilities the opportunity to understand and integrate the expanded domestic procurement requirements early on in the design process. This will set the stage for successfully advancing American manufacturing and jobs through federal investments long term.

Simply put, the SRFs are integral to achieving BIL's goals, making this waiver particularly important. We strongly urge that the EPA expand the waiver to include projects for which design planning was underway prior to May 14, similar to the WIFIA waiver, as well as to move quickly to provide additional guidance for utilities that are now trying to plan for construction materials and manufactured goods compliance. Our request aligns with NACWA's previous requests to the Agency to ensure that projects for which planning is underway are grandfathered in. This will avoid disruptions, accelerate investment and alleviate the affordability challenges utilities and communities face.

Thank you for the opportunity to comment on this proposed waiver. NACWA's members look forward to continuing to work with EPA to implement the historic BIL funding and the BABAA provisions to improve our nation's environmental and economic resilience.

Sincerely,



Kristina Surfus
Managing Director, Government Affairs
NACWA