



# Environmental Council of the States

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June 29, 2022

Re: Public Comment on EPA's Decision Memorandum, "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 Assistant Administrator Fox,

ECOS members appreciate the historic funding provided by Congress through the Bipartisan Infrastructure Law (BIL) to support water infrastructure improvements. Many state environmental agencies manage or work in close partnership with their state's Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF), which are reviewing the requirements of the Build America, Buy America Act (BABA) and related proposed waivers. ECOS offers the following comments on EPA's draft *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*.

ECOS generally supports an adjustment period waiver for state SRF programs for projects that began planning prior to May 14, 2022. States urge EPA to consider a broader application of the waiver for those projects beyond the proposed standard of those that have "submitted engineering plans and specification to an appropriate state agency prior to May 14, 2022." ECOS encourages EPA to use a standard similar to the waiver requested for EPA's WIFIA program.

The proposed waiver for the WIFIA program "covers projects that have initiated design planning prior to May 14, 2022" which was the effective date of BABA requirements. For purposes of the WIFIA waiver, "initiated project design planning" means efforts made by the utility owner to evaluate and identify both technologically and financially viable options for capital improvement projects."

The WIFIA waiver acknowledges that "Although these early stages of project planning and design may be performed years in advance of construction, they incorporate, and are influenced by, the expected availability of supplies, materials, manufactured products, equipment, packaged technological solutions, and even siting options. Design and construction of these projects are carefully choreographed and interdependent processes. Imposing new conditions on the tail end of the process may require costly re-evaluation of earlier decisions on which the whole project is based."

SRF projects, like WIFIA projects, go through a lengthy planning process and the reasoning for a project adjustment for WIFIA projects would also apply to prospective applicants to state SRF programs. We recommend using the WIFIA waiver's standard for having "initiated project design planning" in the SRF waiver in recognition that communities have duly invested time in project design planning even if they have not yet submitted engineering plans and specification to an appropriate state agency, the higher standard which EPA has proposed in the SRF waiver.

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ECOS also supports consistency between the two waivers because the WIFIA program is intended to work in conjunction with the SRF program funding, and using different standards for the two waivers may create confusion. Most projects eligible for SRF funding are also eligible for WIFIA, but proceeding with different waivers may reduce projects that can be co-funded by the two programs.

Historically, states have worked cooperatively with EPA on American Iron and Steel (AIS) provisions and any needed individual or general waivers so that community improvements are not hindered and funding may be used optimally for protection of human health and the environment. While both EPA and SRFs have experience managing the program for AIS, states and EPA are learning together about the sourcing of the broader category of “construction materials” as called for by BABA in BIL. This is another reason ECOS urges EPA to consider using the WIFIA project waiver description for the SRF waiver.

Congress, in passing the BIL in November 2021, sought to address the up to 10 million American households and 400,000 schools and child care centers lacking safe drinking water with water investments across America. On December 2, 2021, [EPA wrote to all Governors](#) sharing that the BIL had been signed into law, asking states to “make rapid progress on lead-free water for all,” target resources to disadvantaged communities, and tackle “forever chemicals.” States greatly appreciate EPA’s encouragement to work to apply funding to communities in need without delay.

The adjustment period waiver recognizes the need to balance forward momentum without placing undue burden on projects that are well underway. The SRF waiver should offer the same flexibility for SRF projects as is extended to WIFIA projects. Ultimately, the success and completion of SRF funded projects contributes to the mutual goals of the BIL and of state environmental agencies to protect public health and the environment, promote equity, and provide safe and sustainable water infrastructure to communities across the country.

ECOS appreciates the opportunity to provide this feedback. Please reach out to Ben Grumbles, 202-266-4929, or [bgrumbles@ecos.org](mailto:bgrumbles@ecos.org), with any questions.

Sincerely,



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Cc:

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