



July 15, 2022

The Honorable Xochitl Torres Small
Undersecretary for Rural Development
U.S. Department of Agriculture
1400 Independence Ave SW
Washington, D.C. 20250

Celeste Drake
Director, Made in America Office
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Re: Adjustment Period Waiver for Build America, Buy America Act Requirements for U.S. Department of Agriculture Programs

Dear Undersecretary Small and Director Drake:

Thank you for the opportunity to provide comments on the six-month adjustment period waiver for domestic preference procurement requirements in Build America, Buy America Act (BABAA) for programs offered by the U.S. Department of Agriculture (USDA). The Council of Infrastructure Financing Authorities (CIFA), which represents the Clean Water and Drinking Water State Revolving Funds (SRFs), **supports** the waiver.

Moreover, CIFA recommends USDA Rural Development (RD) and the U.S. Environmental Protection Agency (EPA) align the guidance and waiver process across agencies to eliminate inconsistency and reduce confusion among rural communities which are served by both RD and the SRFs. SRFs and RD fund the same types of water infrastructure projects and, in many states, co-fund or coordinate funding for water infrastructure projects in rural America. Because the waiver rules for the “cognizant agency” apply to projects (the agency providing the most federal funding), different rules and requirements for BABAA may negatively impact these productive partnerships, especially if one program is perceived as more permissive than the other.

Like the SRFs, RD’s Water and Environmental Programs (WEP) finance water and wastewater systems in rural areas with populations of 10,000 or less. While SRFs help communities of all sizes, the overwhelming majority of SRF subsidized loans are provided to water systems serving fewer than 10,000 people. On average, the federally-managed WEP funds 600 projects each year; state-run SRFs funded 2,767 projects in 2021.

Since established, the Drinking Water SRFs provided:

- 71% of subsidized loans to systems serving populations less than 10,000
- 53% of subsidized loans to systems serving populations less than 3,300
- 20% of subsidized loans to systems serving populations less than 500

Since established, the Clean Water SRFs provided:

- 68% of subsidized loans to systems serving populations less than 10,000
- 54% of subsidized loans to systems serving populations less than 3,500

As RD and the SRFs know first-hand, most small and rural communities don't have the professional capacity to manage compliance with the myriad of federal mandates associated with federally funded subsidized loans for water and wastewater infrastructure. 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.

BABAA requirements 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. While BABAA is well-intentioned public policy, this unintended consequence may increase the risk to public health and the environment in small and rural communities.

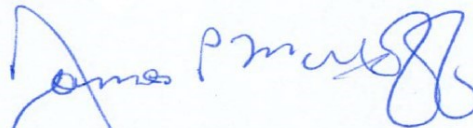
Higher administrative costs for water infrastructure projects in small and rural communities impacts all communities. While many small and rural communities qualify for grants or principal forgiveness to cover administrative costs, every dollar used for *administration* is one less dollar available for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

Finally, more relief is needed to help rural communities build water infrastructure to provide access to safe, affordable drinking water and protect the environment. The Office of Management and Budget's [Initial Implementation Guidance](#) suggested that federal agencies consider waivers for projects that are less than the Simplified Acquisition Threshold which is currently \$250,000. Unfortunately, few water projects, even in rural communities, will meet this threshold, especially given the unprecedented inflation which is driving up the cost of construction to historic levels. Instead, population and the ability of a community to pay for needed infrastructure may be a better metric to determine relief from new requirements.

To address these challenges, CIFA also encourages USDA and EPA to issue temporary categorical waivers of BABAA requirements for construction materials and manufactured goods for water systems that serve populations under 3,500 and a streamlined waiver process for water systems serving populations between 3,501 and 10,000. Waiving the BABAA requirements for small and very small communities served by RD and the SRFs will get more drinking water and wastewater projects into the pipeline at a lower cost which increases protection for public health and the environment, all of which is in the public interest.

Thank you for considering these comments. CIFA looks forward to working with you to successfully implement BABAA.

Sincerely



James P McGoff
COO and Director of Environmental Programs
Indiana Finance Authority
CIFA President

CC: EPA Assistant Administrator for Water Radhika Fox

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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