



WATERREUSE®

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June 29, 2022

The Honorable Radhika Fox

Assistant Administrator

Office of Water

U.S. Environmental Protection Agency

William Jefferson Clinton Building

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Dear Assistant Administrator Fox:

Thank you for your commitment to swiftly implementing the historic Infrastructure Investment and Jobs Act (IIJA), and for meaningfully engaging stakeholders throughout the process. We write today to express our provisional support, contingent on EPA making modifications, for the proposed waiver of Buy America, Build America Act (BABAA) requirements to the state revolving fund (SRF) program for projects that have submitted engineering designs and specifications prior to May 14, 2022.

The WateReuse Association is a not-for-profit trade association for water utilities, businesses, non-profit organizations, and research entities that advocate for policies and programs to advance water recycling. WateReuse and its state and regional sections represent nearly 250 water utilities serving over 60 million customers, and over 200 businesses and organizations across the country.

WateReuse and our members were deeply involved in the development and enactment of the IIJA. We worked closely with Congress to ensure that the legislation supports water recycling as a resiliency tool.

We recommend that the proposed waiver criteria under BABAA for SRF-funding projects be revised by adjusting the eligibility criteria that trigger compliance and align these criteria with those required for Water Infrastructure Finance and Innovation Act (WIFIA) program-funded projects.

While the proposed waiver program addresses several concerns raised by water reuse and recycling utilities, including the importance of establishing a phased approach to the implementation of BABAA requirements and a recognition of the labor and design costs associated with project development prior to application for SRF, we find the project phase eligibility criteria only apply to a narrow set of projects that have fully completed the design process, significantly hampering the pipeline of essential water projects under SRF.

Additionally, the eligibility standard of this proposed waiver tied to submitted engineering designs and specifications diverges from the published waiver program standard for WIFIA funding. The competing standards create undue confusion for communities navigating multiple federal funding sources. We strongly urge EPA to adjust the eligibility from projects that have completed design and submitted engineering plans and specifications prior to May 14, 2022, to projects that have initiated project design prior to May 14, 2022.

Adjusting the eligibility ensures a phased implementation approach for projects in the SRF program pipeline that are in project phases from initial project design to construction prior to the effective date. When defining “initiated project design,” EPA should utilize the finalized WIFIA BABA waiver program definition. This adjustment will more accurately address the need to prevent project delays and additional costs for projects that have already been in the planning phase for many months and, in many cases, for several years, and thereby not inhibit communities’ ability to implement upgrades to meet Clean Water Act and Safe Drinking Water Act requirements as expeditiously as possible.

Further, for projects that utilize multiple federal funding streams, such as the WIFIA program *and* SRF, the proposed waiver would require different waiver eligibility criteria under each program which will lead to competing eligibility standards for projects seeking funding under both programs. This not only results in two different standards being used to comply with the same legislative language, but for projects seeking both WIFIA and SRF funding, complying with competing eligibility criteria for a waiver is unworkable. For example, a project that qualified for funding under WIFIA and developed cost estimates and budgets in reliance of a waiver would either be potentially shut-out of SRF funding or vulnerable to higher costs and other project uncertainties.

Moreover, to adequately address community water infrastructure needs through federal funding, Congress created complementary and stackable funding programs, such as WIFIA and SRF. Requiring each program’s waiver to comply with different waiver standards undermines Congressional intent to enable communities to access multiple programs concurrently to fund the same project. The WIFIA waiver creates a phased implementation approach that allows essential water projects to continue to be funded as the U.S. builds manufacturing capacity and supply chains of American-made manufactured goods. We believe taking this approach and incorporating flexibility for SRF-financed water projects is essential to supporting communities in meeting their infrastructure needs. We urge EPA to align the SRF program waiver eligibility to match the eligibility provisions in the previously-adopted WIFIA BABAA waiver.

As EPA moves forward with broader BABAA implementation, we urge you to develop comprehensive implementation guidance to minimize confusion, uncertainty, and inconsistency across the water sector.



We thank EPA for the continued engagement with the water stakeholder community through the implementation of BABAA. WaterReuse looks forward to working with you and your team to ensure that EPA funding programs effectively support water reuse projects across the United States.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Pat. Sinicropi', written in a cursive style.

Patricia L. Sinicropi, J.D.
Executive Director

