

The EPA Does Not Always Track the Use of Build America, Buy America Act Waivers for Infrastructure Projects

May 8, 2024 | Report No. 24-N-0037



Report Contributors

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Abbreviations

BABA	Build America, Buy America Act
C.F.R.	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
IJA	Infrastructure Investment and Jobs Act
OIG	Office of Inspector General
OMB	Office of Management and Budget
Pub. L.	Public Law

Cover Image

Water infrastructure site. (EPA photo)

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At a Glance

The EPA Does Not Always Track the Use of Build America, Buy America Act Waivers for Infrastructure Projects

Why We Did This Project

To accomplish this objective:

The U.S. Environmental Protection Agency Office of Inspector General conducted this project to quantify the extent to which the EPA is issuing Build America, Buy America Act waivers for infrastructure projects. To answer our objective, we analyzed all approved and pending EPA Build America, Buy America Act waivers; reviewed applicable regulatory guidance and each waiver decision memorandum that the Agency published for public comment; and analyzed Agency data on infrastructure projects subject to the Build America, Buy America Act.

The Build America, Buy America Act focuses on maximizing the federal government's use of services, goods, products, and materials produced and offered in the United States. The Build America, Buy America Act also allows for the use of both project-specific and general applicability waivers in certain contexts.

To support this EPA mission-related effort:

- *Operating efficiently and effectively.*

To address this top EPA [management challenge](#):

- *Managing grants, contracts, and data systems.*

Address inquiries to our public affairs office at (202) 566-2391 or OIG.PublicAffairs@epa.gov.

[List of OIG reports.](#)

What We Found

As of December 2023, the EPA had issued 11 Build America, Buy America Act waivers. However, the EPA does not always track the use of these waivers across EPA-funded infrastructure projects. We found that the EPA only tracked the use of the Water Infrastructure Finance and Innovation Act program waivers. The EPA did not track the use of the other ten waivers. Build America, Buy America Act waivers can be categorized into two types: project-specific waivers and general applicability waivers. The Agency was unable to provide the number of award recipients that fall under either type of waiver and does not have a method in place to track this information.

Project-specific waivers only apply to one project and are typically initiated by the award recipient. General applicability waivers apply to multiple projects and are designed in the interest of efficiency and to ease the administrative burden on award recipients. Generally, the EPA initiates the general applicability waivers, and any award recipient can use the waiver as long as the project meets the eligibility requirements. The EPA stated that it had developed a dashboard to track the approved waivers; however, the dashboard does not show which or how many projects or award recipients are using each waiver. Therefore, even with the waiver tracking dashboard, the EPA was unable to identify how many award recipients had used the approved waivers in their projects or to quantify how many infrastructure projects were subject to a waiver.

While there is no legal requirement for the EPA to track the use of waivers, Congress has advised that "every executive agency should scrupulously monitor, enforce, and comply with Buy American laws, to the extent they apply, and minimize the use of waivers." With approximately \$60.3 billion in Infrastructure Investment and Jobs Act projects potentially subject to Build America, Buy America Act requirements, the EPA needs to develop and implement a method to track all waiver use. Without tracking the use of such waivers, the EPA may not be able to maximize use of U.S. goods, products, and materials in EPA-funded infrastructure projects.

Without tracking the use of waivers, the EPA risks being unable to determine whether it is meeting the intent of the Build America, Buy America Act—bolstering America's industrial base, protecting national security, and supporting high-paying jobs.

Recommendation and Planned Agency Corrective Actions

We recommend that the assistant administrator for Mission Support develop and implement a method to track all Build America, Buy America Act waiver use across EPA-funded infrastructure projects. The Office of Mission Support agreed with our recommendation and provided acceptable proposed corrective actions and estimated completion dates. The Agency has stated the corrective actions are complete; however, we will continue to work with the Agency to verify the actions are complete. We consider this recommendation resolved.



OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

May 8, 2024

MEMORANDUM

SUBJECT: The EPA Does Not Always Track the Use of Build America, Buy America Act Waivers for Infrastructure Projects
Report No. 24-N-0037

FROM: Sean W. O'Donnell, Inspector General *Sean W O'Donnell*

TO: Janet McCabe, Deputy Administrator

Bruno Pigott, Acting Assistant Administrator
Office of Water

Kimberly Patrick, Principal Deputy Assistant Administrator
Office of Mission Support

This is our report on the subject audit conducted by the U.S. Environmental Protection Agency Office of Inspector General. The project number for this audit was [OA-FY23-0084](#). This report contains a finding that describes the problem the OIG has identified and a corrective action the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Mission Support and the Office of Water are responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your office provided acceptable corrective actions in response to the OIG recommendation. The Office of Water also provided technical comments, which we reviewed and addressed in this report as appropriate. The recommendation is resolved, and no final response to this report is required. If you submit a response, however, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epaoig.gov.

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Purpose

The U.S. Environmental Protection Agency Office of Inspector General [initiated](#) this project to quantify the extent to which the EPA is issuing Build America, Buy America Act, or BABA, waivers for infrastructure projects.

Top management challenge addressed

This audit addresses the following top management challenge for the Agency, as identified in OIG Report No. [24-N-0008](#), *The EPA's Fiscal Year 2024 Top Management Challenges*, issued November 15, 2023:

- Managing grants, contracts, and data systems.

Background

The Infrastructure Investment and Jobs Act, or IIJA, Pub. L. 117-58, was signed into law on November 15, 2021. Overall, the IIJA appropriates approximately \$60.9 billion to the EPA from fiscal year 2022 through FY 2026, most of which is available until expended. Most of this amount consists of funds that the EPA will award to nonfederal entities in the form of grants, cooperative agreements, and other financial assistance for infrastructure projects.

The IIJA appropriates funds to the EPA so that it can make significant investments to advance public health and safety by improving the nation's drinking water, wastewater, and stormwater infrastructure; cleaning up pollution; investing in healthier air; increasing the Agency's workforce; and enhancing the country's climate resilience. The IIJA funding consists of \$55.43 billion for state and tribal assistance grants, \$1.96 billion for environmental programs and management, and \$3.5 billion for Superfund remediation and cleanup activities. The IIJA appropriation is a significant increase in funding for the EPA, which has received annual appropriations ranging from approximately \$8.2 billion to \$10.1 billion from FY 2014 through FY 2023.

Build America, Buy America Act

The IIJA includes BABA, which requires that the head of each agency ensure that all funds used in federal financial assistance programs for infrastructure only be obligated for a project if all iron, steel, manufactured products, and construction materials used in the project are produced in the United States. BABA creates demand for domestically produced goods, which helps develop and grow U.S. manufacturing. BABA applies to all federal government procurement and to financial assistance programs for infrastructure.¹

According to Office of Management and Budget, or OMB, Memorandum M-22-11, *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance*

¹ Pub. L. 117-58 Sec. 70911(12).

Programs for Infrastructure, for purposes of BABA, agencies should interpret the term “infrastructure” broadly; specifically, infrastructure can include structures, facilities, and equipment that are permanently affixed to the infrastructure project and that serve a public function. In other words, BABA applies to all materials permanently incorporated in an infrastructure project and does not apply to any materials that will be removed.

BABA states that U.S. taxpayer dollars should not be spent procuring infrastructure project materials that were not made in the United States unless there is reasonable justification to do so. Whenever possible, entities using federal assistance should use materials and products produced in the United States. Further, BABA advocates for directing government funding toward entities committed to upholding the same environmental, worker, and workplace safety standards as the United States.

Build America, Buy America Act Waivers

There are two types of BABA waivers: project-specific waivers that apply only to one project or general applicability waivers that apply to multiple projects. Project-specific waivers are typically initiated by the award recipient, whereas general applicability waivers are initiated by the Agency and any award recipient can use the waiver as long as it meets the waiver guidelines. Per OMB Memorandum M-22-11, federal agencies must follow certain criteria to grant BABA waivers.² For example, waivers should be time-limited, targeted, and conditional—meaning that waivers should have short and clearly defined time frames, should not be overly broad, and should stipulate specific conditions that support BABA policies and goals. OMB Memorandum M-22-11 further states that “overly broad waivers undermine market signals designed to boost domestic supply chains, particularly for key articles, materials and supplies in critical supply chains.”

Additionally, agencies must conduct thorough market research and make informed decisions on waiver requests following the guidelines set forth in BABA, OMB Memorandum M-22-11, 2 C.F.R. part 184,³ and all other relevant Buy American laws. Specifically, according to the IJA, the head of a federal agency must prepare a “detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States” and verify that there was an adequate search to identify domestic sources before applying a BABA waiver to an infrastructure project.⁴ Congress also advised

² OMB Memorandum M-22-11 provided implementation guidance on the application of a Buy America preference to federal financial assistance programs for infrastructure and a transparent process to waive such a preference, when necessary. The OMB rescinded this memorandum and replaced it with OMB Memorandum M-24-02, *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, on October 25, 2023. Almost all the EPA-issued BABA waivers were issued before the release of OMB Memorandum M-24-02; therefore, we reference OMB Memorandum M-22-11.

³ On August 23, 2023, the OMB issued a Notification of Final Guidance to add 2 C.F.R. part 184 and revise 2 C.F.R. section 200.322. Part 184 provides guidance to federal agencies on how to apply the “Build America” preference set forth in BABA to federal awards for infrastructure projects. The revised section 200.322 clarifies existing provisions on domestic preferences for procurements made under federal financial assistance awards and specifies that agencies providing financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 C.F.R. part 184.

⁴ IJA § 70937(c)(2)(A).

that “every executive agency should scrupulously monitor, enforce, and comply with Buy American laws, to the extent they apply, and minimize the use of waivers.”⁵

General applicability waivers

General applicability waivers are designed in the interest of efficiency and to ease the burden on award recipients. These waivers apply to multiple projects. For example, an agency may waive the Buy America requirements for grants that do not exceed \$250,000. If an agency issues a general applicability waiver, any award recipient with an eligible project may use the waiver. Award recipients must follow the waiver conditions and document the waiver use in their project files.

Responsible Offices

The Office of Mission Support leads the Agency’s core mission support functions to improve efficiency, coordination, and customer experience, including grant management, information technology, and information-management activities. Within the Office of Mission Support, the Office of Resources and Business Operations oversees the implementation of BABA. This includes participating in BABA workgroups, drafting programwide waivers, conducting market research, and processing waiver requests from award recipients. The Office of Water is responsible for ensuring drinking water is safe and restores and maintains oceans, watersheds, and their aquatic ecosystems to protect human health and the environment. The Office of Water issued BABA implementation procedures for the Office of Water’s federal financial assistance programs. Similarly, the Office of Land and Emergency Management issued a frequently asked questions document on BABA applicability for federal financial assistance programs under the scope of its office.

Scope and Methodology

We conducted this project from June 2023 to March 2024. This project followed the OIG’s quality control procedures to ensure that the information in this report is accurate and supported. Additionally, the Council of the Inspectors General on Integrity and Efficiency’s *Quality Standards for Federal Offices of Inspector General* requires that our work adhere to the highest ethical principles of integrity, objectivity, confidentiality, independence, and professional judgment, and we adhered to these principles when we performed our work.

To answer our objective, we analyzed all approved EPA BABA waivers on infrastructure projects as of November 27, 2023. To obtain an understanding of BABA waivers, we reviewed all applicable guidance documents issued by the OMB and each waiver decision memorandum that the Agency published for public comment. Additionally, we requested Agency data on all infrastructure projects subject to BABA, conducted subject-matter expert interviews, and analyzed the requirements and standards for each approved waiver. We also reviewed all 20 IJA appropriations to the EPA to determine which programs were affected by BABA and BABA waivers.

⁵ IJA § 70933(2).

Prior Reports

In our review of EPA OIG reports related to this project, we found four reports that identified EPA challenges with prioritizing spending and projects; staffing issues, such as turnover and shortages; and implementing requirements.

In EPA OIG Report No. [23-N-0004](#), *American Recovery and Reinvestment Act Findings for Consideration in the Implementation of the Infrastructure Investment and Jobs Act*, issued December 7, 2022, we analyzed prior EPA OIG reports related to the EPA's management of its American Recovery and Reinvestment Act funds to identify findings and lessons learned that may help the Agency prepare, implement, and oversee programs receiving IIJA appropriations. The report includes three lessons that the EPA should consider in an attempt to mitigate risks and reduce the likelihood of fraud, waste, and abuse of IIJA funds. These lessons are to ensure that federal requirements are met; provide clear and comprehensive guidance; and improve project management, monitoring, and data verification.

In EPA OIG Report No. [22-N-0057](#), *Considerations from Single Audit Reports for the EPA's Administration of IIJA Funds*, issued September 15, 2022, we reviewed OIG memorandums summarizing the findings from external audits of nonfederal entities, such as states, local governments, and federally recognized tribes, that expended EPA grant funds. We found that from FY 2019 through 2021, there had been 364 instances of noncompliance with applicable federal laws, regulations, and program requirements by nonfederal entities expending EPA grant dollars. These instances of noncompliance spanned nine EPA programs that are expected to receive IIJA funds.

In EPA OIG Report No. [22-N-0055](#), *Considerations for the EPA's implementation of Grants Awarded Pursuant to the IIJA*, issued August 11, 2022, we highlighted previously reported grant administration and oversight deficiencies from OIG and U.S. Government Accountability Office audit reports issued from FY 2017 through 2021. The report summarizes deficiencies in three broad areas of improvement for the Agency to consider when preparing to administer and oversee IIJA grants, which include enhancing the grants oversight workforce and strengthening monitoring and reporting; establishing and implementing comprehensive guidance and detailed work plans, as well as improving communications; and requiring adequate documentation to support grant payments.

In EPA OIG Report No. [24-E-0022](#), *Perspectives on Capacity: Managing Drinking Water State Revolving Fund Infrastructure Investment and Jobs Act Funding*, issued February 27, 2024, we used a survey to identify state agencies' perspectives on their capacity to manage IIJA funds and any barriers the agencies' administrators believe limit their capacity to manage those funds. We found that most state Drinking Water State Revolving Fund administrators agreed that their agencies had the organizational capacity necessary to manage the IIJA funds. A few states expressed concerns related to financial capacity, workforce management, and insufficient guidance on BABA requirements. While we made no recommendations in this report, the report does provide the EPA with an opportunity to work with state agencies to address their capacity concerns.

Results

As of December 2023, the EPA had issued 11 BABA waivers for EPA-funded infrastructure projects. However, we found that the EPA only tracks waiver use for one out of the 11 waivers. So, although we were able to quantify the extent to which the EPA has issued BABA waivers for these projects, we were unable to determine how many times each waiver had been used. The Agency was not able to provide this information because it does not have a method in place to track BABA waiver use. If the EPA does not track BABA waiver use, the Agency risks being unable to determine whether it is meeting the intent of BABA.

The EPA Has Issued Build America, Buy America Act Waivers

As of December 2023, the EPA had issued 11 BABA waivers, all of which were general applicability waivers. See Figure 1 and Appendix A for details on each waiver.

Figure 1: Timeline of EPA-issued BABA waivers



Notes: CERCLA = Comprehensive Environmental Response, Compensation and Liability Act. WIFIA = Water Infrastructure Finance and Innovation Act. SRF = state revolving fund.

Source: OIG analysis of EPA-issued BABA waivers. (EPA OIG image)

The EPA Does Not Always Track Build America, Buy America Act Waiver Use

Except for the Water Infrastructure Finance and Innovation Act Program, we found that the EPA does not track waiver use across EPA-funded infrastructure projects. Although there is no legal requirement for the EPA to track BABA waiver use, Congress has advised that “every executive agency should scrupulously monitor, enforce, and comply with Buy American laws, to the extent they apply, and minimize the use of waivers.”⁶

Once a general applicability waiver is approved, any award recipient can use the waiver if its project meets the eligibility requirements of the waiver. However, the recipient is not required to notify the EPA when it is using a waiver on a specific award or project. Therefore, the EPA is unable to determine how many recipients are using the waivers on their awards or projects.

Of the 20 IIJA appropriations to the EPA, Agency officials stated that BABA applies to 13 because they support investments in infrastructure. BABA does not apply to the other seven because they do not support infrastructure construction. The IIJA provided approximately \$60.3 billion to the EPA through these 13 appropriations. Table 1 lists the programs we reviewed and whether BABA provisions apply to the program and, if so, whether a BABA waiver applies to projects within that program. Notably, projects within 12 of the 13 programs subject to BABA are eligible for a BABA waiver.

Table 1: The 20 IIJA appropriations to the EPA and related BABA information

IIJA appropriation	Does BABA apply to this appropriation?	Does a BABA waiver apply to projects receiving funds from this appropriation?*
Clean Water State Revolving Loan Funds	Yes	Yes, the Amended SRF Program Waiver for Design Planning
Drinking Water State Revolving Loan Funds	Yes	Yes, the Amended SRF Program Waiver for Design Planning
Drinking Water State Revolving Loan Funds—Lead Service Line Replacement	Yes	Yes, the Amended SRF Program Waiver for Design Planning
Clean Water State Revolving Loan Funds—Emerging Contaminants	Yes	Yes, the Amended SRF Program Waiver for Design Planning
Drinking Water State Revolving Loan Funds—Emerging Contaminants	Yes	Yes, the Amended SRF Program Waiver for Design Planning
Addressing Emerging Contaminant Grants	Yes	Yes, the Office of Water Selected Programs Adjustment Period Waiver
UIC Grants	No	Not applicable
Geographic and Related Water Programs	Yes	Yes, the Office of Water Selected Programs Adjustment Period Waiver
National Estuary Program Grants	Yes	Yes, the Office of Water Selected Programs Adjustment Period Waiver
Gulf Hypoxia Action Plan	Yes	Yes, the Office of Water Selected Programs Adjustment Period Waiver

⁶ IIJA § 70933(2).

IIJA appropriation	Does BABA apply to this appropriation?	Does a BABA waiver apply to projects receiving funds from this appropriation?*
Drinking Water Programs—Class VI Wells	No	Not applicable
Superfund—Remedial	Yes	Yes, the CERCLA Adjustment Period Waiver
Brownfields	Yes	Yes, the CERCLA Adjustment Period Waiver
Battery Recycling Best Practices	No	Not applicable
Voluntary Battery Labeling Guidelines	No	Not applicable
Solid Waste Infrastructure Financing—Save Our Seas Act Grants	Yes	No
Recycling Grants	No	Not applicable
Clean School Bus Program	Yes	Yes, the Clean School Bus Adjustment Period Waiver
Pollution Prevention Grants	No	Not applicable
Inspector General†	No	Not applicable

Notes: CERCLA = Comprehensive Environmental Response, Compensation and Liability Act. SRF = state revolving fund, UIC = Underground Injection Control. See Appendix A for additional waiver details.

Source: OIG analysis of EPA IIJA appropriations and BABA waivers. (EPA OIG table)

* The De Minimis, Small Projects, and Pacific Island Territories General Applicability Waivers may also apply to the project.

† The IIJA appropriated a portion of the EPA's IIJA funds to the EPA inspector general to provide oversight of the EPA's IIJA funds. Because the OIG's IIJA funds are not available to provide federal financial assistance for infrastructure, they are not subject to BABA.

In June 2023, the EPA stated that it had developed a dashboard to track the ten approved waivers. The Agency issued another waiver on November 13, 2023. As of March 2024, the Agency had not added this waiver to the dashboard. The dashboard includes the approved waivers, the approval dates, and a brief description of each waiver but does not show which or how many projects or grants are using each waiver. Therefore, even with the waiver-tracking dashboard, the EPA was unable to identify how many award recipients had used the approved waivers in their projects.

The EPA reported that it does track some waiver use. Specifically, the EPA tracks the use of the Water Infrastructure Finance and Innovation Act waivers for loans issued after May 14, 2022. The EPA identified that the waiver has covered 26 Water Infrastructure Finance and Innovation Act projects. However, the EPA was unable to quantify the covered projects for any of the other waivers. While the EPA stated that some programs' waiver use is recorded in the project or grant files, EPA officials would have to review each individual program or grant file to determine whether the program used a waiver. The EPA did not track all waiver use because the Agency believed that there was no requirement to track waiver use at the project or grant level. While BABA does not explicitly state that the Agency must track waiver use, the Agency should monitor waiver use to ensure compliance with BABA.

Conclusions

Without tracking the use of each waiver, the EPA is not effectively monitoring BABA and minimizing the use of waivers. Further, without such tracking, the EPA is not able to determine whether award recipients are maximizing the use of domestic goods, products, and materials. Thus, the EPA risks being unable to determine whether it is meeting the intent of BABA—bolstering America’s industrial base, protecting national security, and supporting high-paying jobs. With approximately \$60.3 billion in IJA projects potentially subject to BABA requirements, the EPA needs to develop and implement a method to track all waiver use.

Recommendation

We recommend that the assistant administrator for Mission Support:

1. Develop and implement a method to track all Build America, Buy America Act waiver use across EPA-funded infrastructure projects.

Agency Response and OIG Assessment

The Office of Mission Support agreed with the recommendation and provided acceptable proposed corrective actions and estimated milestone dates. The Agency said that the corrective actions are complete; however, we will continue to work with the Agency to verify the actions are complete. We consider this recommendation resolved. The Office of Water also provided technical comments, which we reviewed and addressed in this report as appropriate. Appendix B contains the Agency’s response to the draft report.

Status of Recommendation

Rec. No.	Page No.	Recommendation	Status*	Action Official	Planned Completion Date
1	9	Develop and implement a method to track all Build America, Buy America Act waiver use across EPA-funded infrastructure projects.	R	Assistant Administrator for Mission Support.	3/8/24

* C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

EPA-Issued Build America, Buy America Act Waivers

Waiver	Applicability	Description
Amended SRF Program Waiver for Design Planning	SRF programs and water infrastructure projects subject to SRF requirements for projects underway before May 14, 2022	Rescinds and replaces the original SRF waiver. Broadens applicability to include water infrastructure projects subject to SRF requirements that are funded separately from SRF appropriations. Applies to covered projects for which funding was appropriated in fiscal year 2022 and 2023.
CERCLA Adjustment Period Waiver	Six-month adjustment period waiver for Brownfields and Superfund	Waived all BABA requirements for Superfund and Brownfields Cooperative Agreement projects funded before March 1, 2023.
Clean School Bus Adjustment Period Waiver	Six-month adjustment period waiver for the Clean School Bus Program	Waived all BABA requirements for the Clean School Bus grants funded before January 29, 2023.
De Minimis General Applicability Waiver	Agencywide projects	Provides up to a 5-percent cost threshold allowance for projects.
Electric Vehicle Charger Product Waiver	Public interest product waiver	Issued by the EPA and Federal Highway Administration, this is a general applicability, time-limited product waiver for electric vehicle chargers.
Minor Components of Iron and Steel General Applicability Waiver	Agencywide projects	Provides up to a 5-percent component cost threshold allowance on iron and steel products for manufacturers.
Office of Water Selected Programs Adjustment Period Waiver	Six-month adjustment waiver for selected Office of Water programs	Waived all BABA requirements for Office of Water projects except SRF and WIFIA funded before March 2, 2023.
Pacific Island Territories General Applicability Waiver	Agencywide projects	Waived BABA requirements for Pacific Island Territories for 18 months. Will be reviewed one year after approval to assess whether it is still necessary.
Small Projects General Applicability Waiver	Agencywide projects	Waives all projects less than \$250,000.
SRF Program Waiver for Design Planning	SRF programs for projects underway before May 14, 2022	Waives only manufactured products and nonferrous construction materials; American Iron and Steel still applies.
WIFIA Program Waiver for Design Planning	WIFIA Program; Projects underway before May 14, 2022.	Waives only manufactured products and nonferrous construction materials; American Iron and Steel still applies.

Notes: SRF = state revolving fund and WIFIA = Water Infrastructure Finance and Innovation Act

Source: OIG analysis of EPA-issued BABA waivers. (EPA OIG table)

Agency’s Response to Draft Report



OFFICE OF MISSION SUPPORT

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA-FY-0084, *“The EPA Does Not Always Track the Use of Build America, Buy America Act Waivers for Infrastructure Projects,”* Project No. OA-FY23-0084 dated March 25, 2024

FROM: Kimberly Y. Patrick, Principal Deputy Assistant Administrator **KIMBERLY PATRICK** Digitally signed by KIMBERLY PATRICK
Date: 2024.04.08
10:00:30 -04'00'

TO: Kate August, Project Manager
Special Drinking Water Projects Directorate
Office of Audit

Thank you for the opportunity to respond to the issues and recommendation in the subject evaluation draft report. Following is a summary of the agency’s overall positions, along with its position on the report’s recommendation. The Office of Mission Support agrees with the recommendation outlined in the Office of Inspector General’s Draft Report. Outlined in the table below are the actions that we have already taken that we believe fully addresses the recommendation.

AGENCY’S OVERALL POSITION

The Office of Mission Support concurs with the recommendation outlined in the Office of Inspector General’s Draft Report. The corrective action plan below outlines the actions that we have already taken that we believe fully address the OIG’s recommendation. We have attached documentation that demonstrates that the actions have been completed.

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Corrective Action Completion Date
1	Develop and implement a method to track all Build America, Buy America Act waiver use across EPA-funded infrastructure projects.	EPA agrees with the importance of tracking Build America, Buy America Act waivers. In response, on March 8, 2024, EPA deployed a new BABA waiver workflow that requires all EPA programs to submit and process BABA waivers	Completed

		<p>through an enterprise application. EPA's enterprise BABA application will enable the agency to aggregate data across products and grant programs for EPA-funded infrastructure projects. EPA will also continue to require recipients to track their use of waivers in their project files. A screenshot of the application and a report from it are attached.</p>	
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CONTACT INFORMATION

If you have any questions regarding the response, please contact Afreeka Wilson, Audit Follow-up Coordinator, Office of Resources and Business Operations, (202) 564-0867 or wilson.afreeka@epa.gov

Attachments

- cc: Bruno Pigott
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U.S. Environmental Protection Agency

The whistleblower protection coordinator's role is to educate Agency employees about prohibitions against retaliation for protected disclosures and the rights and remedies against retaliation. For more information, please visit the OIG's whistleblower protection [webpage](#).

Contact us:



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