

March 13, 2023

Submitted electronically to www.regulations.gov

Re: 2 CFR Parts 184 and 200; Guidance for Grants and Agreements; Proposed rule; notification of proposed guidance

To Whom It May Concern:

The National Rural Electric Cooperative Association (NRECA), the national trade association representing America's nearly 900 consumer-owned, not-for-profit electric cooperatives, respectfully requests the Office of Management and Budget (OMB) swiftly clarify its position as stated in M-22-11 regarding the applicability of the Build America Buy America Act (BABA) to for-profit entities.¹

OMB's current position in M-22-11 exempting for-profit entities from BABA has already created confusion, added ambiguity into the grant application process, and puts electric cooperatives on an unequal footing with for-profit entities when applying for competitive federal grant programs. OMB's guidance creates a barrier to entry for America's not-for-profit electric cooperatives that are currently evaluating whether and how to pursue federal funding opportunities being made available through the Infrastructure Investment and Jobs Act (IIJA), and other federal grant opportunities. The guidance is deterring some electric cooperatives from pursuing IIJA and other federal grant opportunities out of belief that they will receive disparate treatment during the application review process. Electric cooperatives have limited resources to dedicate to competitive grant applications. They must be judicious in how they spend resources as all additional costs borne by the co-op are ultimately passed to the end-of-the-line consumer. It was not Congressional intent in the IIJA to see America's not-for-profit electric cooperatives be disadvantaged as the federal government makes generational investments in infrastructure spanning electricity to broadband, which will ultimately leave rural America behind. While we believe this is an unintended consequence of OMB-issued guidance, it is critical for OMB to quickly resolve this matter by issuing clarifying guidance to federal agencies to correct it on a consistent basis government-wide.

We have registered these concerns with the Department of Energy and the National Telecommunications Information Administration, among other agencies, but have yet to receive a determination or revised guidance.² Meanwhile, these agencies continue to release new funding opportunities consistent with M-22-11.

¹ In April 2022, OMB issued guidance to federal agencies for purposes of implementing BABA. M-22-11 provides, in pertinent part, "[f]or purposes of this guidance, for-profit organizations are not considered non-Federal entities." Additionally, in February 2023, OMB issued Proposed Rule; Notification of Proposed Guidance 88 Fed. Reg. 8374 (Proposed Rule), proposing "to revise OMB Guidance for Grants and Agreements." As the Proposed Rule states, "[t]he proposed revisions are limited in scope to support implementation of [BABA] provisions of the [IIJA]; and to clarify existing requirements. These proposed revisions provide further guidance on implementing these statutory requirements and improve Federal financial assistance management and transparency."

² See NRECA's comment filings here: <https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/NRECA.Comments.NTIA.MMG.BABA.10.03.2022.pdf>

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It is critical that OMB correct this inadvertent guidance government-wide and clarify that for-profits are subject to BABA. Failure to do so will have stark ramifications for electric cooperatives if the Federal government continues to treat for-profit entities differently for competitively awarded infrastructure funding. For example, in the Middle Mile Broadband Deployment Grant program, small business electric cooperatives will be directly competing against large, national for-profit corporations, such as AT&T, Comcast, and Verizon. Requiring small not-for-profit businesses to adhere to BABA while exempting these large for-profit companies is inconsistent and will result in rural communities being left behind.

For over 75 years, electric cooperatives have remained committed to common sense domestic procurement when awarded Federal financial assistance. Many electric cooperatives are Rural Utilities Service (RUS) borrowers and thus follow that agency's longstanding rule on Buy America in their procurement practices. We appreciate OMB's prompt attention to resolving this matter so that electric cooperatives will not be deterred from pursuing competitive grants for infrastructure, and will be on equal footing with for-profit entities as applications are reviewed, as Congress intended in IIJA.

Thank you for considering our comments and we welcome further discussion with your team as to how to resolve this matter. Please contact Stephanie Crawford at stephanie.crawford@nreca.coop or 571-623-4049 if you have any questions about the information provided.

Sincerely,

Stephanie Crawford

Stephanie Crawford
Regulatory Affairs Director
National Rural Electric Cooperative Association