

From: [William Carr \[KDHE\]](#)
To: BABA-OW@epa.gov
Subject: 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
Date: Tuesday, June 28, 2022 3:24:12 PM

The Kansas Department of Health and Environment, which administers the Kansas State Revolving Fund programs, opposes the proposed waiver for State Revolving Fund Projects with Submitted Engineering and Plans and Specifications. The opposition of this wavier is made because:

- the defined parameters of the proposed waiver are too narrow and will not provide the time needed for the SRF program to transition to new rules and processes; and
- the proposed waiver is significantly more restrictive than the WIFIA waiver for projects in design planning, yet SRFs and WIFIA fund the same types of projects and can also co-fund specific projects. The proposed SRF waiver should at least be altered to allow the same parameters as the WIFIA waiver for projects in design planning. SRF projects are just as complex as WIFIA projects and SRF waivers should also acknowledge that even though design might not be complete and ready for submittal to the state agency, planning and design began well before OMB released its BABA guidance (or before BABA was made law) and redesigning these projects or starting a new design planning process is not feasible or even possible.

EPA should consider general applicability public interest waivers that:

- are consistent between EPA funding programs, not only to reduce confusion, but to ensure that compliance processes are fair and equitable for both state administered infrastructure programs (like SRFs) and EPA administered infrastructure programs (like WIFIA and Congressionally Directed Spending/Community Funded Projects); and
- provide an adequate transition period (suggested 6 months) that allows for SRF programs to create rules and procedures that follow EPA guidance, after such guidance is released, rather than base waiver transition periods solely on project milestones.

EPA's proposal of the SRF waiver for submitted engineering plans and specifications highlights the importance and need for EPA to release guidance that details how project owners can request project specific waivers. If the proposed waiver were to be approved, all projects that have not submitted engineering plans and specifications to state agencies by May 14, 2022, still do not know the details of how to comply with the Build America Buy America law through the SRF programs.

Sincerely,

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