



October 19, 2020

Ms. Sonia Brubaker
Office of Wastewater Management, Water Infrastructure Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: 2020 Proposed Financial Capability Assessment for Clean Water Act Obligations, Docket ID No. EPA-HQ-OW-2020-0426

Dear Ms. Brubaker,

On behalf of The U.S. Conference of Mayors (USCM), National League of Cities (NLC), National Association of Counties (NACo) and the Government Finance Officers Association (GFOA), we write to offer our comments in response to the U.S. Environmental Protection Agency's (EPA) *Proposed 2020 Financial Capability Assessment (FCA) for Clean Water Act (CWA) Obligations*. We appreciate the opportunity to offer input on the proposed guidance that will directly impact local governments' ability to accomplish their public service mission.

As intergovernmental partners and co-regulators with EPA on federal environmental statutes, including the CWA, local governments have a direct interest in any proposed changes to financial capability assessments that will impact negotiations of schedules for implementing CWA requirements for municipalities and local authorities. We appreciate the opportunity to discuss our priorities for the guidance with EPA staff on July 13, 2020 and to discuss the draft proposal with EPA staff on September 1, 2020 before its release.

According to the latest U.S. Census data, local governments have spent over a trillion dollars on water and sewer needs, including over \$130 billion in 2018 alone, over the last ten years. The only federal financing options dedicated to water and sewer needs are the Clean Water and Drinking Water State Revolving Loan Funds (SRFs) and the Water Infrastructure Financing and Innovation Act (WIFIA). The SRFs and WIFIA are appropriated at roughly \$2 billion and \$50 million, respectively and are available to

local governments in the form of loans that must be paid back. As a result, local governments are currently responsible for 98% of all water and wastewater expenditures - and have been for decades. While local governments appreciate and support the SRFs and WIFIA, these programs provide no real financial relief for the investments local governments make to maintain public and environmental health to comply with federal and state unfunded mandates.

For many communities throughout the United States, the lack of federal resources has resulted in substantial and widespread economic impact on citizens. This is why our organizations initially engaged with EPA in 2009 to develop other solutions. We strongly believe the use of green infrastructure, creating the Integrated Planning Framework (IP Framework) and proposing this revised affordability guidance are all positive steps. The proposed 2020 FCA Guidance, along with the IP Framework, acknowledges the economic burdens on our residents and will potentially provide additional flexibility, transparency and financial relief for cities, counties and utilities in meeting CWA obligations in a more cost-effective manner.

Local governments strongly support the proposed 2020 FCA Guidance as it provides a more comprehensive methodology and transparent process for determining community affordability than EPA's *1997 Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development* (1997 FCA Guidance) and *2014 Financial Capability Assessment Framework for Municipal Clean Water Act Requirements*. In general, our organizations and the 3,069 counties and 19,000 cities, towns and villages (including the chief elected official) we represent support finalizing the proposed 2020 FCA Guidance in the near term.

As EPA works to finalize the guidance, we recommend incorporating aspects of the 1997 FCA Guidance into the new 2020 proposal, but with the revisions that we outline throughout this letter. Notably, the proposed 2020 FCA Guidance promotes transparency and provides communities with alternatives to determine what their community and their citizens can afford. It also begins the vital step of providing an alternative from utilizing Median Household Income (MHI) as the primary measurement for what a community can afford. Moreover, the addition of the poverty index and the lowest quintile residential indicator will provide a more comprehensive and holistic calculation of affordability. As we have for the past decade, we strongly recommend that EPA not use MHI as a factor for determining affordability.

As we respond to some of the questions asked in the proposal, we want to highlight some overarching themes and key points that must be addressed as the Agency moves forward in finalizing the guidance:

- Remove Median Household Income as a benchmark for determining affordability (see answer to Question #1)
- Clarify definitions and terms particularly the phrase "useful life" (see answer to Question #6)
- Allow additional flexibility regarding the schedule timeframes for compliance (see answers to Questions #6 and #12)
- Modify and expand method metrics to assess financial capability (see answers to Questions #5, #8 and #9)
- Consider how drinking water obligations can be included in the financial capability assessment (see answer to Question #15)

Our responses to the Agency's questions below expand on these items. Our comments and recommendations will strengthen the proposed guidance to ensure that it is beneficial and workable for local governments and local leaders.

Responses to Questions for Public Comment

1. Should EPA's previous FCA documents be consolidated into the 2020 FCA, as proposed, or should EPA continue to use the 1997 FCA Guidance as the controlling guidance with the 2020 revisions serving as a supplement?

Although the proposed 2020 FCA Guidance needs some improvements, particularly in its continued reliance on MHI as a determining factor for affordability, it is a much better approach than the 1997 FCA Guidance. Therefore, we recommend keeping the 1997 FCA Guidance as an appendix.

Local governments are invested in the proposed 2020 FCA Guidance because of EPA's aggressive enforcement campaigns that resulted in very high costs to ratepayers – citizens, businesses and institutions. A concern from local leaders was EPA's reliance on MHI in the 1997 FCA Guidance and how it was used by EPA regions when the Agency brought enforcement actions related to sewer overflows. The MHI metric masked substantial and widespread financial burdens on low- and moderate-income households. The continued reliance on this metric remains a concern for local governments. As previously mentioned, we strongly recommend MHI not be used as a factor in determining affordability because it places an undue economic burden on low- and moderate-income families.

3. What additional resources are publicly available that can be used to assess financial capability (e.g., the ALICE Essentials Index)

We support a local government's ability to bring forth additional information and data to help determine community affordability. ALICE, developed by the United Way to assess impacts on those that are Asset Limited, Income Constrained and Employed, is a better portrayal of the cost of living and the impact that compliance costs have on households.

5. EPA invites comment on the appropriateness of using the four recommended critical metrics to assess financial capability and what their relative importance in considering financial capability should be.

Of the four critical metrics proposed for Alternative 1, MHI and the Residential Indicator (RI) are the least useful metrics because they continue to mask financial impacts at the low- and moderate-income levels. Transparency requires that EPA examine the economic implications for each income level (decile or quintile) estimated and report the current cost burden and the additional burden related to compliance with the enforcement action or water quality standard. The Lowest Quintile Residential Indicator (LQRI) and poverty indicators are appropriate metrics to include in an assessment. Additionally, supportable information on low- and moderate-income household characteristics, such as but not limited to, indicators of minimum wage employment and other relevant factors, should be considered.

6. What supplemental information is relevant to support implementation schedules that go beyond the proposed benchmarks in Exhibit 6?

In the proposed 2020 FCA Guidance, EPA states that the Agency “does not anticipate establishing implementation schedules that would exceed the useful life of the community’s water infrastructure assets.” In footnote #5, the proposed 2020 FCA Guidance states, “the useful life of water infrastructure assets for the purpose of financing is typically 30-40 years.”

We are concerned about the lack of a definition for the term “useful life.” Is EPA proposing this term to mean the functional and physical life of the infrastructure, or is EPA proposing an accounting definition based on financing? If based on the physical equipment, does “useful life” encompass the entire facility or a component of a facility component, such as a pipe or wire? As you know, the functional life of a water infrastructure facility can far surpass the financing term on the facility, while a pipe or valve might have a comparatively short life span.

We urge EPA to provide a clear and real-world definition of the term “useful life.” The definition should be broader than just the financial loan term and should incorporate the asset’s physical life. Additionally, we request EPA provide an example or information on how the phrase “useful life” will be implemented and enforced.

Moreover, regarding the implementation schedule benchmarks used in Exhibit 6, we urge EPA to provide additional flexibility on timeframes. In Alternative 1, the timeframe that a local government must meet to upgrade their systems and meet CWA requirements is based on whether the calculus results in a low-, medium-, or high-burden on the community. We believe these timeframes should be considered on a project-by-project basis. We urge EPA to provide flexibility on the timeframes, and strongly recommend that flexibility is built into the medium- and high-burden impact terms ranging beyond the 15- and 25-year timeframes, respectively. For more of our comments on timeframes, please see our answer to Question #12.

8. EPA is seeking comment on the proposed methodology for calculating the ratio for lowest quintile household size to median household size.

EPA’s proposed method to calculate the ratio of household size between low and median household size is arithmetically correct. However, as a metric, it lacks accuracy because it is a national metric not a local one that can differ. EPA’s statement that it would consider alternative local data is appropriate. For more comments on calculation and methodology, please see our answer to Question #9.

One alternative to relying on the ratio between the LQRI and the MHI is to allow a community to construct higher- and low-income limits for the bottom four deciles (\$0 to \$39,999.99) and allow a community to survey this group. Alternatively, U.S. Census tract income data can be used to sharpen the accuracy of the actual utility bills per household. This would provide for a more accurate and transparent process than the proposed ratio approach.

9. EPA invites public comment on whether adjusting the LQRI based on household size is appropriate or if there are other ways to calculate a residential indicator for LQI households.

EPA should clarify the reason why the adjustment to estimating financial burden is needed. There are two concerns in using this method. The first is EPA has increased their level of assessment from the household level to the individual, and this is a vast departure for the Agency in setting rules or guidance.

Second, using metrics that are keyed to a characteristic of the median household suggests that EPA is not moving far enough away from the MHI concept, but is instead skewing the difference toward the median by using a national household size ratio approach (e.g., 70.2%). This is a problem because it masks the financial burden in the overall impact estimation process. For example, examining Exhibit 1, EPA proposes to adjust the cost per household estimates based on persons per household estimates. Assuming EPA is correct in the results displayed in row 1, the ratio is 70.2%; row 2 shows the median household annual expenditure on sewer utilities; and row 3 shows the result of multiplying row 1 and row 2 using the ratio between the median and low-income groups. The result is an estimated \$604, not the \$860 expenditure in row 2 for the median person per household group. The \$604 estimate is then blended in the calculation with the higher income groups and the estimated low-impact. The flaw is that the blending of effects results in an estimated 2.1% overall impact to comply. This ignores the fact that an annual \$604 spent on utility service still consumes over 6% of the household's annual income when \$10,000 or less and 3% of the household's annual income when \$20,000.

Moreover, another complication in using several estimates of household size and annual spending per household is that it does not accurately reflect the reality of leaky pipes and the lack of water conservation appliances in different service areas. For example, if one estimates the annual household expenditure using the ratio of number of persons per household, the result can be insensitive to the problem of leaking pipes and faucets or high water use appliances. The actual annual expenditure for low-income households can be above the median household expenditure under these circumstances. However, it appears that EPA assumes all communities and households are on par with wealthy households and upscale neighborhoods that are in the vanguard of water conservation at the household level.

We recommend EPA consider calculating the financial impact of all household income strata and report what the current annual household expenditures are and the additional expenditures required to comply with the CWA obligation(s).

12. EPA is seeking public comment on the proposed schedule benchmarks in Exhibit 6.

We are concerned that the 15- and 25-year timeframes are both arbitrary, and the 15-year time schedule may prove to be impractical for some communities. For high-impact communities, the proposed 2020 FCA Guidance provides for additional flexibility with the possibility of EPA providing more time "after consideration of additional information." However, our members wonder why not provide longer timeframes of 30-40 years from the outset, or even 60 years, given that these assets have much longer "useful lives" that go beyond 25 years. We request that EPA reconsider this maximum cap of 25 years.

In addition, the benchmarks outlined in Exhibit 6 do not indicate additional flexibility for medium-impact communities, which, we would argue, is essential. As with high-impact communities, we request a similar provision that allows a community to provide EPA with "additional information" for its consideration to extend beyond the 15-year timeframe.

For example, a community may be in a position where they cannot afford another rate hike, such as in the case of Baltimore, which had to raise rates by 9% for all but one year (where it was increased by 4%) for nearly ten years to comply with EPA mandates; in many communities, residents faced double digit rate increases annually for several years; or in New York City, where over 1 million people live below poverty levels and in rental properties. Given the EPA's formulas, is it safe to assume that these communities are deemed as high-impact and eligible for the 25+ years? EPA needs to allow enough flexibility in each of

the burden categories to allow for the development of a solution that meets that community's needs. Local officials want to work with EPA to establish a timeframe for compliance that is synchronized with a local government's ability to invest and operate.

Additionally, we recommend that EPA provide more clarification on how the compliance timeframes apply to new Water Quality Standards that will be implemented.

14. EPA is seeking comment on whether additional detail can be provided to better understand the implementation of Alternative 2.

The EPA Municipal Ombudsman, as outlined and statutorily defined by the Water Infrastructure Improvement Act (PUBLIC LAW 115-436—JAN. 14, 2019), can play a key role in helping a community better understand its options. The Municipal Ombudsman should serve as a liaison between the community and the Agency and help shepherd the community through the proper channels if a dispute arises between the parties.

For example, we strongly recommend when contact is made by EPA regarding a potential enforcement case, the EPA Municipal Ombudsman should be required to tell the permittee that they are entitled to submit an Integrated Plan in order to comply with these rules. The Municipal Ombudsman should outline the two alternatives and provide any other relevant information including, but not limited to, the different public and private sector models that have been used, best practices from other communities facing similar requirements and information from EPA's Water Infrastructure and Resiliency Finance Center.

15. Should drinking water costs be considered as part of scheduling considerations and are there appropriate benchmarks for considering the contribution of drinking water costs to household burdens, such as a specific percentage of income?

Local governments strongly recommend that EPA include ALL water costs, including compliance with the Safe Drinking Water Act (SDWA) and CWA, as part of the calculation for scheduling considerations and financial burden. We recommend that EPA allow communities to submit actual utility billing data to improve both transparency and accuracy in determining affordability.

As previously mentioned, most residents do not differentiate between their drinking water and sewer costs, and the money they use to pay these bills comes from the same bank account. As a result, communities have to be mindful of raising rates on both water and sewer bills so as to not cause an undue financial burden on individual households. When EPA forces communities to engage in consent orders to address clean water issues without factoring in potential costs on drinking water requirements, many communities find they do not have the resources to comply with both CWA and SDWA requirements without financially overburdening their poorest and most vulnerable citizens.

For example, in South Bend, Ind., every man, woman and child owes approximately \$14,000 toward the city's \$1 billion combined sewer overflow consent decree, leaving only a couple of hundred dollars per individual to address their drinking water needs. This may not be the best prioritization of expenditures based on the community's environment and public health needs. Communities should be allowed to factor in drinking water costs into this affordability determination, as well as include drinking water costs as a

factor in determining the “water” priorities for the community. At a minimum, these costs need to be factored as “all-in costs” and not be siloed as they have been in the past.

16. EPA is also considering how the LQRI, Poverty Index, and other metrics and thresholds discussed in this Federal Register Notice could be used to support WQS decisions. EPA seeks comment on the use of these same metrics and thresholds under Alternative 1 for use in WQS decisions using the proposed expanded matrix in Appendix D. This proposed matrix provides guidance on how to apply the options and flexibilities of Alternative 1 in the proposed 2020 FCA to the consideration of economic impacts to support WQS decisions related to public entities. EPA intends that the proposed expanded matrix for WQS decisions, along with the electronic spreadsheet tools for the public sector at <https://www.epa.gov/wqs-tech/spreadsheet-tools-evaluate-economic-impacts-public-sector>, would replace the worksheets and calculations for the public sector sections of the 1995 WQS Guidance. This replacement would be used for determining the degree of economic impact for use in WQS decisions for the public sector. The proposed 2020 FCA does not revise the recommended methodology in the private sector sections of the 1995 WQS Guidance. EPA is separately exploring whether there are practical methodologies available to increase the objectivity of the analyses recommended to determine the degree of economic impact on private sector entities when evaluating these same WQS decisions.

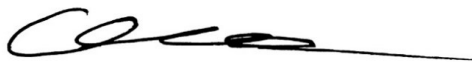
We support replacing the 1995 Water Quality Standards Guidance with the proposed 2020 FCA Guidance. Concerns expressed above related to the use of the Residential Index are also concerns with its use when applied to Water Quality Standards.

In conclusion, we look forward to working with you as the Agency finalizes this critical guidance to better determine community affordability. If you have any questions, please do not hesitate to contact us: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Adam Pugh (NACo) at 202-942-4269 or apugh@naco.org; and Michael Thomas (GFOA) at 202-393-8022 or mthomas@gfoa.org.

Sincerely,



Tom Cochran
CEO and Executive Director
The United States Conference of Mayors



Clarence E. Anthony
Executive Director and CEO
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



Chris Morrill
Executive Director
Government Finance Officers Association