



THE UNITED STATES
CONFERENCE OF MAYORS



American Water Works
Association



November 10, 2022

Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dominic Mancini
Acting Administrator
Office of Information and Regulatory Affairs
White House Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Via Electronic Mail

Dear Administrator Regan and Acting Administrator Mancini,

The undersigned municipal and water sector organizations would like to express our concern and frustration with the final version of EPA's Financial Capability Assessment (FCA) Guidance, which we understand is currently undergoing informal interagency review.

Intended as a long-overdue update to the original 1997 version of the guidance¹, based on conversations with EPA staff it is anticipated that the new FCA will fall well short of meeting the expectations of those calling for an update, including the members of our respective organizations and other key stakeholders. While seemingly a minor guidance document impacting a small portion of EPA's environmental portfolio, hundreds of communities around the country have committed to tens of billions of dollars of federally-mandated spending on Clean Water Act (CWA) requirements based in part on the FCA calculations. This is a document that the Agency must get right or the nation will repeat the

¹ *Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development*, US Environmental Protection Agency, Office of Water, February 1997.

mistakes of the past and continue to put low-income and disadvantaged communities across the country in the untenable position of being unable to afford their water and sewer bills.

Communities have committed to rate structures and construction plans – spanning one to two decades or more of required spending for their communities – based in part on the FCA. In some communities, this has put the lowest income earners in a position where they are being asked to spend a significant percentage of their income (in some cases as high as 20 percent or more²) just for water and sewer services. For nearly two decades, our organizations, financial experts (including the Agency's Environmental Financial Advisory Board), Congress and others have recognized that changes were needed to ensure the FCA better accounted for these impacts on low-income ratepayers.

The undersigned groups carefully worked with the two prior administrations to address our concerns that federal mandates and required spending on water and wastewater had weakened the federal, state, and local partnership that had been so instrumental in the success of the federal water programs to date. Those conversations sought to advance bipartisan concepts like integrated planning, as well as revising the FCA Guidance, to empower local communities to have more say over how they spend their limited public dollars to achieve the maximum environmental benefit for their ratepayers' investment, especially low-income ratepayers. Our groups, along with others, worked with EPA to craft a draft FCA document that addressed the concerns of the municipal and water community, as well as those contained in a Congressionally-directed report³ and communicated by other key stakeholders.

Unfortunately, that carefully crafted guidance was fundamentally changed without meaningful engagement or input from any of the undersigned organizations after an earlier draft was withdrawn in January 2021. Given the impact the CWA FCA guidance has had and will continue to have on our communities, we have been extremely frustrated by the process of finalizing this document over the past 20 months. We have concerns about how quickly the Agency is moving toward finalizing it when the key water sector and municipal stakeholders – who will be directly impacted by it – have outlined numerous flaws with the draft and expressed clearly to EPA's Office of Water that we cannot support the FCA in its current form.

Some of the changes EPA made since January of 2021 are in response to concerns raised by one group of stakeholders, the environmental activist community. It is important to note that many of these activist groups do not disagree that EPA's current financial capability assessment methodology is flawed. However, instead of commenting on how the methodology should be revised, these groups argued that clean water utilities should be held accountable for solving local affordability challenges before being provided any flexibility through the FCA process. In response to these groups, EPA has added a new, onerous Financial Alternatives Analysis (FAA) to the FCA. The FAA is an expansive effort that forces consideration of numerous funding options including alternative rate structures that are neither consistent with best practice or current state laws in some cases. The FAA is required before a community is even determined to be eligible for the relief the FCA shows they deserve.

² *Public Water Cost Per Household: Assessing Financial Impacts of Affordability Criteria in California Cities*, The United State Conference of Mayors, November 2014.

³ *Developing a New Framework for Community Affordability of Clean Water Services*, National Academy of Public Administration under contract with the US Environmental Protection Agency, at the direction of the Senate Appropriations Committee, October 2017.

Some environmental activists lobby against giving communities more time to meet their CWA obligations by arguing that any delay in water quality improvements will have a disproportionate impact on environmental justice (EJ) communities and low-income residents, because those communities in many cases have not benefited from past investment and should not have to wait longer for the environmental protection they deserve. Without a doubt, water quality investments historically have overlooked the lower income portions of many communities. Those low-income areas have been disproportionately impacted and deserve to have their homes and areas where they recreate protected from adverse water quality conditions. These past inequities must be addressed, and future investments must not repeat the mistakes of the past.

However, while water quality improvements can be enjoyed by everyone in a community, regardless of income, the impacts of accelerating environmental improvements, including those intended to offset past inequities, hit the low-income residents of a community – who often are already paying a larger share of their limited income for water and wastewater service – the hardest. ***These disproportionate financial impacts raise equally important EJ concerns.*** Unfortunately, the new version of the FCA would not evaluate actual impacts on the bills that a low-income household might pay. Instead, it uses community level metrics and compares those to national benchmarks instead of looking at what individual households will be asked to spend. This fundamental methodological flaw fails to adequately document that EJ households comprised of lower-income earners are paying proportionately more for the same water and wastewater services as a percentage of their income than the rest of the community. How can we fully examine the equity of our water investments if we are not willing to openly discuss the true impact of our spending on low-income households?

Low-income households should not be burdened with extreme affordability challenges to correct past inequities. Our respective organizations understand this challenge and have actively pursued federal support to address this very issue – how to bring the benefits these communities need and deserve without the financial impact that can burden a family for generations. We have sought to ensure that the impacts on low-income customers are fully considered in any assessment of financial capability under the CWA and we must get this update of the FCA Guidance right.

We respectfully request that you not finalize the current draft of the FCA, that EPA engage in a serious dialogue with us about our concerns, and that EPA re-propose a guidance that meets our communities' needs and our shared objective of addressing environmental justice.

Sincerely,



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The U.S. Conference of Mayors



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Joint Letter on EPA's FCA Guidance

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cc: Radhika Fox, EPA
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