



THE UNITED STATES
CONFERENCE OF MAYORS



July 29, 2024

Mr. Will Bowman
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC, 20460

RE: Water System Restructuring Assessment Rule, Docket ID Number: EPA-HQ-OW-2022-0678

Dear Mr. Bowman,

On behalf of the United States Conference of Mayors and the National League of Cities, we appreciate the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) Water System Restructuring Assessment Rule (WSRAR), which outlines a framework for states, public water systems (PWSs), and the communities they serve to evaluate options for restructuring to help ensure safe, reliable drinking water. As owners and operators of public water systems, protecting public health and providing safe and affordable drinking water services are key priorities for local leaders.

We appreciate the Agency's actions in adhering to directives from the America's Water Infrastructure Act of 2018 (AWIA) to provide a restructuring framework for distressed or noncompliant drinking water systems. However, as currently written, the proposed rule fails to adequately provide a clear path forward for water systems to consider restructuring and lacks the necessary clarity needed by water systems to ensure implementation success.

As such, we are concerned the long-term impacts of this proposed rule will ultimately not meet the goals as intended by Congress. Specifically, we urge EPA to expand the incentives for liability protection and enforcement relief, provide direct and additional funding options for restructuring efforts, clarify key provisions of the rule and holistically consider affordability.

Our overarching suggestions and technical concerns regarding the proposed WSRAR are outlined below. We urge EPA to engage stakeholders on these items before finalizing the proposed rule.

1. Affordability and Implementation

Local governments continue to fund the majority of municipal water investments, yet even with the historic level of federal funding for water infrastructure through the

bipartisan Infrastructure Investment and Jobs Act (IIJA), a widening infrastructure needs gap continues to exacerbate local water challenges. Public water systems rely on customer ratepayers to sustain continued services and make capital improvements, but increasing water rates combined with new mandates will likely increase the number of systems that will struggle to upgrade their infrastructure and comply with new federal standards. This is especially true for smaller systems.

Overall, we are concerned with the long-term local affordability impacts of this proposed rule. By definition, systems being assessed under this proposed rule will already have been struggling to meet compliance requirements, and therefore are, already fraught with significant financial and operational challenges. To meet the proposed rule's requirements, public water systems will be forced to allocate limited staff capacity and resources towards mandated assessments for data collection, delivery and verification.

Additionally, some form of increased investment will likely be necessary for the system to safely and reliably deliver drinking water services. Therefore, as EPA moves forward with finalizing this rule, it must consider not only affordability as it relates to water rates and the necessary upgrades needed to meet current compliance, but also affordability regarding the future operational sustainability of the water system.

Regarding implementation, the proposed rule gives states the authority to conduct restructuring assessments, but ultimately cannot force a water system to restructure. Therefore, it is unclear how the Agency plans to navigate the challenge of water systems that do not agree to move forward with any form of restructuring after an assessment has been completed. The final rule should clarify that entering into a restructuring plan is voluntary on behalf of the water system.

We appreciate that the proposed rule recognizes that restructuring efforts are most successful when individually tailored to community needs and water system characteristics, including consideration of local socio-economic conditions and impacts. Implementing any restructuring plan without appropriate coordination between the community, local and state officials, and water systems could result in affordability and operational challenges that are even more unsustainable than before restructuring took place.

2. Assessor Criteria

The proposed rule gives new primacy authority to states to mandate, at their discretion, restructuring assessments for non-compliant water systems. These assessments are a primary component of the proposed rule and may be conducted by the states, the water system themselves, or an approved third party. However, as currently proposed, the proposed rule does not clarify the criteria for which these assessors will be approved under or what qualifications would need to be met.

Generally, assessors should be qualified professionals with experience in the water sector, including expertise in navigating the legal, financial or operational landscape of public water systems. Outlining these qualifications would help avoid conflicts of interest and promote transparency within the community. As such, we urge the Agency to further clarify the criteria for approved assessors in the final rule.

3. Flexibility and Expanded Incentives for Water Systems

In addition to expanded eligibility through the Drinking Water State Revolving Fund (DWSRF), the proposed rule includes two specific provisions intended to incentivize water system restructuring: (1) liability protection and (2) enforcement relief. Overall, our organizations support these measures, as financial and legal barriers remain critical challenges for systems deciding to restructure. However, as currently proposed, the timeframe for liability relief is narrow and may not align with a system's full transition into restructuring, and enforcement protection only covers violations identified in the initial restructuring plan.

We urge the Agency to provide additional direct financial funding beyond the increased DWSRF eligibility, as well as expand the timeframe allowed for liability protection and allow newly reported violations to be eligible for enforcement relief. This additional flexibility of the incentives will open the door for more water systems to seriously consider restructuring.

4. Holistic Approach Towards Water Regulations and Costs

It's important to note that by the time this proposed rule is final, public water systems will be facing increased financial and operational challenges as they work to comply with several new regulatory mandates. These include the recently finalized new drinking water regulations for six different types of PFAS chemicals and the forthcoming Lead and Copper Rule Improvements, which will be final by the end of the year. The Agency should, therefore, consider the effects these final regulations will have on the number of noncompliant systems and their potential to impact the rule's estimated costs. An adjusted economic analysis that takes these costs into account may trigger the Agency's consultation requirements under Executive Order 13132: Federalism and the Unfunded Mandates Reform Act.

5. Infrastructure Investment and Jobs Act Funding and Compliance Timeframe

The Agency refers to the funding available through the IIJA as a financial resource for water systems to utilize when implementing restructuring plans. While local governments appreciate the historic amounts of funding invested for water infrastructure, the proposed timeline of the WSRAR goes beyond the availability of IIJA funds (FY2026) and most, if not all, of this money will have been already allocated. Therefore, it is unlikely water systems will be actually able to utilize these funds to comply with this rule. We recommend that EPA remove reference to IIJA funding as an option in the final rule. EPA should further adjust the compliance timeframe to align with the delivery of available funds.

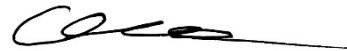
Conclusion

On behalf of the nation's mayors and cities, we urge EPA to modify the proposed rule to ensure implementation success. The Agency should work to clarify key elements of the rule, expand incentive flexibility and holistically consider the affordability impacts on water systems. We look forward to working with EPA to address these issues before the rule is finalized. If you have any questions, please contact us: Judy Sheahan (USCM) at 202-355-8540 or jsheahan@usmayors.org; and Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org.

Sincerely,



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