

this determination shall become applicable October 19, 2020 and no further public notice will be issued.

**ADDRESSES:** Requests for a public hearing should be addressed to: Robert Clement by email at [clement.robert@epa.gov](mailto:clement.robert@epa.gov) or by phone (303) 312-6653.

**FOR FURTHER INFORMATION CONTACT:** Robert Clement, Drinking Water B Section, EPA Region 8, Denver, Colorado by email at [clement.robert@epa.gov](mailto:clement.robert@epa.gov) or by phone (303) 312-6653.

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g-2, and 40 CFR 142.13, public notice is hereby given that the state of Utah has revised its PWSS program by adopting federal regulations for the Penalty Authority Rule that correspond to the NPDWR in 40 CFR parts 141 and 142. EPA has reviewed Utah's regulations and determined they are no less stringent than the federal regulations. EPA is proposing to approve Utah's primacy revision for the Penalty Authority rule. This approval action does not extend to public water systems in Indian country as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Unit B.

#### A. Why are revisions to State programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 to maintain primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

#### B. How does this action affect Indian country (18 U.S.C. 1151) in Utah?

EPA's approval of Utah's revised PWSS program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country in Utah generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Utah, in part or in full: the Goshute Reservation, the Navajo Indian Reservation, the reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah and Ouray Reservation (subject to federal court decisions removing certain lands from Indian country status within the Uintah and Ouray Reservation), and the Washakie Reservation; (2) any land held in trust by the United States for an Indian tribe;

and (3) any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151. EPA or eligible Indian tribes, as appropriate, will retain PWSS program responsibilities over public water systems in Indian country.

#### C. Requesting a Hearing

Any interested party may request a hearing on this determination within thirty (30) days of this notice. All requests shall include the following information: Name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of interest and information to be submitted at the hearing; and a signature of the interested individual or responsible official, if made on behalf of an organization or other entity. Frivolous or insubstantial requests for a hearing may be denied by the RA.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and in a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose of the hearing, information regarding time and location for the hearing, and the address and telephone number where interested persons may obtain further information. The RA will issue an order affirming or rescinding the determination upon review of the hearing record.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: September 10, 2020.

**Gregory Sopkin,**

*Regional Administrator, Region 8.*

[FR Doc. 2020-20592 Filed 9-17-20; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OW-2020-0426; FRL-10014-59-OW]**

### Proposed 2020 Financial Capability Assessment for Clean Water Act Obligations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comment.

**SUMMARY:** As part of EPA's commitment to implementing Clean Water Act (CWA) objectives in a sustainable manner, EPA continues to enhance our

understanding of the issues surrounding financial capability assessments (FCA) and seeks ways to move past the 1997 FCA Guidance and the 2014 FCA Framework. Consistent themes have emerged during discussions with stakeholders, such as the benefit of expanding on the flexibility available under the existing 1997 FCA Guidance and ensuring a consistent approach for implementing these flexibilities. The proposed 2020 FCA embraces these stakeholder priorities and provides tools to more easily articulate local financial circumstances, while advancing the mutual goal to protect clean water. The 2020 FCA directly incorporates relevant portions of the 1997 FCA Guidance and the 2014 FCA Framework as Appendices. When finalized, EPA expects to use the 2020 FCA to support negotiations of schedules for implementing CWA requirements for municipalities and local authorities. EPA is requesting comment on approaches for assessing financial capability of communities to meet CWA obligations.

**DATES:** Comments must be received on or before October 19, 2020.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OW-2020-0426, by the following method:

- *Federal eRulemaking portal:* <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this guidance. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the guidance process, see the "Submitting Your Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Sonia Brubaker, Office of Wastewater Management, Water Infrastructure Division (MC4204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-0120; email address: [brubaker.sonia@epa.gov](mailto:brubaker.sonia@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Affordability of Water Services and the Financial Capability Assessment for Clean Water Act Schedule Development
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**I. Affordability of Water Services and the Financial Capability Assessment for Clean Water Act Schedule Development***a. Why is the Agency requesting comments?*

Water infrastructure is essential for healthy communities and the success of our local and national economies. Ensuring that adequate drinking water, wastewater, and stormwater infrastructure (collectively referred to as water infrastructure) is in place is critical for all communities to thrive. Additionally, as communities grow, they must spend capital to increase capacity of their water infrastructure, thus further complicating investment in aging infrastructure. Too often, the toughest infrastructure challenges are found in low-income and resource constrained communities that lack enough investment in water infrastructure. Collaborating with local

decision makers to help ensure the proper collection and treatment of domestic sewage and wastewater is vital to public health and clean water, which is a key part of our mission at the EPA. EPA engages with local, state, and national stakeholders to understand the challenges and successes that communities experience in maintaining, replacing, and increasing the capacity of their water infrastructure.

Communities are facing substantial needs to invest in water infrastructure renewal, repair, and replacement. These investments are necessary to keep pace with the aging of critical water infrastructure, much of which is approaching or is already well past the end of its service life. Challenges associated with aging infrastructure can be exacerbated in economically stressed communities. A community may be relatively strong economically on the whole but have a significant number of low-income households, which further complicates matters. Overall, there is considerable variation across communities in terms of water infrastructure needs as well as the technical, managerial, and financial ability to make investments and meet public health and environmental regulatory obligations.

EPA recognizes that a single customer, or ratepayer, pays for both drinking water and wastewater services and often sees these costs reflected on one bill. Costs for stormwater services also impact customers in many communities. EPA acknowledges that critical infrastructure investment needs, including Clean Water Act (CWA) obligations, impact many communities at the same time, making investment in infrastructure challenging in many areas across the country. To address these challenges, EPA is requesting comment on a proposed 2020 Financial Capability Assessment (2020 FCA), which would expand the metrics EPA uses to consider a community's financial capability to fund its water obligations. Specific questions for public comment are identified throughout the proposed 2020 FCA and are summarized in Section IV of this **Federal Register** document.

The proposed 2020 FCA is intended to provide flexibility to communities and offer templates and calculations that local authorities can use in assessing their financial capability to implement control measures needed to meet CWA obligations. The 2020 FCA incorporates aspects of EPA's 1997 Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development (1997 FCA Guidance) and EPA's 2014 Financial

Capability Assessment Framework for Municipal Clean Water Act Requirements (2014 FCA Framework). Once finalized, EPA intends to use the 2020 FCA to evaluate the affordability of CWA control measures applicable to municipalities in both the permitting and enforcement context, including upgrades to publicly owned treatment works; control measures to address combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), stormwater, and total maximum daily loads; and integrated planning. EPA does not intend to use this guidance to evaluate the affordability of the public health protections required by the Safe Drinking Water Act (SDWA), although EPA does employ compliance schedules in that context as well, where appropriate and consistent with protecting public health.<sup>1</sup>

In addition, the 1997 FCA Guidance is substantively identical to the public sector sections of the 1995 Interim Economic Guidance for Water Quality Standards (1995 WQS Guidance)<sup>2</sup> which is used for supporting revisions to designated uses, water quality standard (WQS) variances, and antidegradation reviews for WQS. EPA proposes to apply the options and flexibilities from Alternative 1 of the proposed 2020 FCA to the consideration of economic impacts to public entities when making such WQS decisions and EPA seeks comment on this in Section IV of this **Federal Register** document.

*b. What is the Agency requesting comments on?*

EPA is requesting public comment on the proposed 2020 Financial Capability Assessment. The proposed 2020 FCA implements a range of ideas generated from recent stakeholder engagement to better support affordability of water services in our nation's communities. This proposal explores how a customer's ability to pay for services impacts the affordability of capital

<sup>1</sup> The 2019 Safe Drinking Water Act settlement in *U.S. v. City of New York and New York City Department of Environmental Protection* includes a compliance schedule to complete \$2.9 billion in capital improvements at the Hillview Reservoir in Yonkers, NY.

<sup>2</sup> The 1995 WQS Guidance uses a substantively identical two-phased approach and data as the 1997 FCA Guidance, although the terminology of the two guidances is different. The 1997 FCA Guidance's terms *Residential Indicator* and *Financial Capability Indicator* are based on the same data and metrics as the 1995 WQS Guidance's terms *Municipal Preliminary Screener* and *Secondary Score*, respectively. In the 1995 WQS Guidance, these indicators are brought together into a matrix to determine the degree of economic impact for a WQS decision whereas, the matrix in the 1997 FCA Guidance is used to determine a community's financial capability to support negotiations of schedules.

expenditures and operation and maintenance needed to ensure compliance with public health and environmental standards.

This proposal references the financial capability indicators described in EPA's 1997 FCA Guidance. In addition to the 1997 FCA Guidance, this proposal also references the 2014 FCA Framework, developed in support of EPA's Integrated Planning Framework,<sup>3</sup> to provide an aid for identifying key financial elements, including drinking water costs, that EPA may consider when working with communities to establish schedules for implementing CWA control measures. As part of EPA's commitment to implementing CWA objectives in a sustainable manner, EPA continues to enhance our understanding of the issues surrounding financial capability assessments and seeks ways to move past the 1997 FCA Guidance and the 2014 FCA Framework. Consistent themes have emerged during discussions with stakeholders, such as the benefits of expanding on the flexibility available under the existing 1997 FCA Guidance and ensuring a consistent approach for implementing these flexibilities. The proposed 2020 FCA embraces these stakeholder priorities and provides tools to more easily articulate local financial circumstances, while advancing the mutual goal to protect clean water. The 2020 FCA directly incorporates relevant portions of the 1997 FCA Guidance and the 2014 FCA Framework as Appendices. When finalized, EPA expects to use the 2020 FCA to support negotiations of schedules for implementing CWA requirements for municipalities and local authorities.

EPA is committed to working with state, tribal, local, and non-government partners to assist communities in meeting CWA obligations in a manner that recognizes unique local financial challenges. The proposed 2020 FCA sets forth two alternatives for assessing financial capability that a community may choose to employ. The first alternative adopts the residential indicator approach from the 1997 FCA Guidance, but adds elements to address how the lowest household incomes and other poverty indicators in a service area can be considered in addition to metrics from the 1997 FCA Guidance, such as a community's median household income (MHI). Additional information, such as a community's

total water costs (*i.e.*, costs for, wastewater, stormwater, and drinking water infrastructure investment) may also be submitted and will be considered when negotiating the length of an implementation schedule for a municipality's CWA obligations. The second alternative utilizes dynamic financial and rate models that evaluate the impacts of debt service on customer bills. These new tools should help standardize and advance the progress made in understanding and considering a community's financial capability.

EPA seeks public comment on the proposed 2020 FCA, the metrics considered, and the thresholds for selected metrics. See Section IV of this **Federal Register** document for more information on the comments requested. In addition, EPA requests comments on the use of the same metrics and thresholds in Alternative 1 of the proposed 2020 FCA 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 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>, which encompass the data inputs and calculations of the 1995 WQS Guidance, would replace the worksheets and calculations for the public sector sections of the 1995 WQS Guidance. This replacement would then guide states and authorized tribes in determining the degree of economic impact for use in WQS decisions including revisions to designated uses, WQS variances, and antidegradation reviews.

#### *c. What should I consider as I prepare my comments for EPA?*

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the guidance by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—the agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- Provide specific examples to illustrate your concerns and suggest alternatives.

- Explain your views as clearly as possible.

- Make sure to submit your comments by the comment period deadline identified.

2. *Submitting Your Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OW-2020-0426, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

<sup>3</sup> US Environmental Protection Agency, *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*, May 2012. Accessible at <https://www.epa.gov/npdes/integrated-municipal-stormwater-and-wastewater-planning-approach-framework>.

## II. Background on the Financial Capability Assessment Guidance and Framework

### a. EPA's Financial Capability Assessment Guidance and Framework

EPA's 1997 FCA Guidance sets forth a two-phased approach for evaluating a National Pollutant Discharge Elimination System (NPDES) permittee's financial capability to implement CWA NPDES projects. In the first phase, the Residential Indicator (RI) calculates the cost per household as a percentage of MHI for the service area of the permittee using data collected by the U.S. Census Bureau. In the second phase, the Financial Capability Indicator (FCI) evaluates the municipality or wastewater utility's overall fiscal health and local demographics relative to national norms. The RI and FCI results are brought together in a matrix that evaluates the burden a proposed CWA program imposes on the municipality or utility (high, medium, or low). This two-phased approach is referred to as the Financial Capability Assessment (FCA). Though developed for use in assessing the affordability of CSO controls, EPA also has used the 1997 FCA Guidance when negotiating schedules to implement SSO controls.

The 2014 FCA Framework was developed to encourage the use of the flexibility available under the 1997 FCA Guidance. Both the 1997 FCA Guidance and the 2014 FCA Framework were developed with extensive public input and are based on factors for consideration of financial capability<sup>4</sup> as identified in the Combined Sewer Overflow (CSO) Policy, 59 FR 18688, 18894.<sup>5</sup> As emphasized in both the 1997 FCA Guidance and the 2014 FCA Framework, the primary financial indicators in the 1997 FCA Guidance are a snapshot in time that might not present the most complete picture of a community's financial capability to fund its CWA obligations. However, the indicators did provide common benchmarks for financial burden discussions among the community, EPA, and state or tribal NPDES authorities. Communities were encouraged to submit any additional documentation that would create a more accurate and complete picture of their

<sup>4</sup> These factors are: (i) Median household income; (ii) Total annual wastewater and CSO control costs per household as a percent of median household income; (iii) Overall net debt as a percent of full market property value; (iv) Property tax revenues as a percent of full market property value; (v) Property tax collection rate; (vi) Unemployment; and (vii) Bond rating.

<sup>5</sup> CWA 402(q) requires that each permit, order and decree shall conform with the CSO Policy.

financial capability, whether as part of the first or second phase of the FCA calculation. Additional information that the community provided on its unique financial circumstances was considered so that schedules could take local considerations into account. Where appropriate, additional information encouraged to be considered pursuant to the 2014 Framework has been used to justify implementation schedules longer than the schedules suggested by the 1997 FCA Guidance baseline analysis.

### b. EPA's Use of the 1997 FCA Guidance and the 2014 FCA Framework

Communities, in consultation with regulators and the public, are responsible for evaluating and selecting controls that will meet CWA requirements. After controls have been selected, an FCA is used to aid in assessing a community's financial capability as a part of negotiating implementation schedules under both permits and enforcement agreements. EPA has used both the 1997 FCA Guidance and the 2014 FCA Framework to support consent decree negotiations with over 100 wastewater utilities throughout the United States and U.S. territories. The results of the FCA analyses provide an important benchmark for EPA decision-makers to consider in CWA permitting and enforcement actions to support consistency across the country.

EPA does not view or use the 1997 FCA as a rigid metric that points to a given schedule length or threshold over which the costs are unaffordable. It is a common misconception that the FCA can be used to cap spending on CWA programs or projects at a percentage of MHI. The FCA does not remove obligations to comply with the CWA nor does it reduce regulatory requirements.<sup>6</sup> Rather, EPA uses the FCA to assess a community's financial capability for the purpose of developing a reasonable implementation schedule that will not overly burden the community. In practice, EPA considers each community's financial capability on a holistic case-by-case basis, and MHI is only one of the metrics that EPA evaluates. EPA has approved implementation schedules for CWA municipal consent decrees that go beyond the general scheduling boundaries in the 1997 FCA Guidance to ensure CWA requirements are met while also taking the financial capability of the community into

<sup>6</sup> If a permittee cannot meet water quality-based requirements of the CWA, the permittee should work with its state or authorized tribe to evaluate other tools, such as a revision to designated uses under 40 CFR part 131.

consideration. In these cases, the implementation schedules were determined to be reasonable based upon the baseline FCA calculation done in accordance with EPA's 1997 FCA Guidance and consideration of supplemental information that was submitted by the community, as encouraged by the 2014 FCA Framework.

### c. Stakeholder Feedback on EPA's Use of the 1997 FCA Guidance and the 2014 FCA Framework

#### 1. Congressional Direction

As part of the 2016 Appropriation, Congress directed EPA to contract with the National Academy of Public Administration (NAPA)<sup>7</sup> to create a framework for "community affordability."<sup>8</sup> The contract gave NAPA one year to conduct an independent study to create a definition of, and framework for, community affordability for clean water infrastructure. NAPA surveyed both EPA staff and stakeholders through over 50 in-person interviews with approximately 100 participants; electronic interviews; and a stakeholder roundtable that included the American Water Works Association (AWWA), the National Association of Clean Water Agencies (NACWA), the National League of Cities (NLC), the Brookings Institute, Center for Progressive Reform (CPR), the Natural Resources Defense Council (NRDC), and the U.S. Conference of Mayors (USCM).

NAPA issued its report, "Developing a New Framework for Community

<sup>7</sup> NAPA was Chartered by Congress as an independent, non-partisan organization to assist government leaders in building more effective, efficient, accountable, and transparent organizations. See <http://www.napawash.org/>.

<sup>8</sup> Senate Report 114-70 on the Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2016, p. 54: "Community Affordability—Within the funds provided, the Committee directs EPA to contract with the National Academy of Public Administration—an independent, nonpartisan, nonprofit organization chartered by the U.S. Congress—to conduct an independent study to create a definition and framework for "community affordability." The Academy shall consult with EPA, States and localities, and such organizations, including, but not limited to the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors; review existing studies of the costs and benefits associated with major regulations under such laws as the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act; and determine how different localities can effectively fund municipal projects. The Academy shall submit a report with its findings, conclusions, and recommendations no later than 1 year after the date of contract with EPA.

Affordability of Clean Water Services”<sup>9</sup> in October 2017. NAPA’s report provided several recommendations to EPA, including:

- Recommendations regarding EPA’s 1997 FCA Guidance and the 2014 FCA Framework:

- Recommendation to improve the RI and the FCI metrics in the 1997 FCA Guidance; the metrics used should meet the following criteria:

- Readily available from publicly available data sources;
- Clearly defined and understood;
- Simple, direct, and consistent;
- Valid and reliable measures,

according to conventional research standards; and

- Applicable for comparative analyses among permittees.

- Recommendation to include all water costs (Clean Water Act and Safe Drinking Water Act) and to focus on the income of the low-income users rather than MHI when considering burdens to communities of the costs of CSO control measures.

- Recommendation to expand the socioeconomic components affecting the community’s market conditions to include trends in population, relative wealth, economic growth, and other economic structural problems in the community.

- Recommendations regarding EPA’s Integrated Planning Framework:

- Recommendation to provide additional technical assistance to municipalities seeking to develop integrated plans.

- Recommendation to allow municipalities to develop an integrated plan as a primary step for addressing regulatory requirements with “formalized agreements” between the municipality, the state, and EPA.

- Recommendations on EPA’s cost/benefit analysis and financing for water infrastructure.

In response to NAPA’s report, EPA reviewed current guidances that address household and community financial capability within EPA’s water program. Three guidance documents were reviewed:

- *1995 Interim Economic Guidance for Water Quality Standards:*

Implemented by EPA’s Office of Water, Office of Science and Technology and used for supporting revisions to designated uses, water quality standard (WQS) variances, and antidegradation reviews for WQS.

- *1997 CSO Financial Capability Assessment Guidance and the 2014*

*Financial Capability Assessment Framework:* Implemented by EPA’s Office of Water, Office of Wastewater Management and EPA’s Office of Enforcement and Compliance Assurance, Office of Civil Enforcement to provide guidance for CWA schedule development in CWA permitting and enforcement actions.

- *1998 Developing Affordability Criteria for Drinking Water Systems:* Implemented by EPA’s Office of Water, Office of Ground Water and Drinking Water and used to grant variances for compliance technology to small drinking water systems.

In addition, EPA researched affordability at both the household and community level for essential services such as drinking water, wastewater, stormwater, housing, energy, and others.

2. Mayors, League of Cities, Counties, and National Water Associations Input

The National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors have expressed concerns regarding “EPA’s reliance on 2% Median Household Income to determine a community’s financial capability.” The groups are concerned that the MHI metric puts an “unfair and oppressive financial burden on low- and middle-income citizens.”

In April 2019, AWWA, NACWA, and the Water Environment Federation (WEF) jointly submitted a report to EPA titled “Developing a New Framework for Household Affordability and Financial Capability Assessment in the Water Sector.”<sup>10</sup> The authors of the report requested that EPA consider changes to how the Agency takes affordability into account across its CWA and SDWA programs. The report proposed a new methodology for calculating financial capability using:

- All water sector costs (drinking water, wastewater, and stormwater);
- Utility revenue and customer bills rather than the cost of CSO control measures;
- Lowest Quintile Income (LQI) and Federal Poverty Levels (FPL); and
- Forward-looking analysis/long-term cash flow forecasting.

3. Utility Feedback

Individual utilities have met with EPA to discuss concerns surrounding affordability of providing drinking water, wastewater, and stormwater services. The utilities identified household affordability challenges in paying bills for these services as well as

in the utility’s ability to pay for infrastructure renewal along with costs of regular operation and maintenance and workforce needs.

### III. EPA’s Proposed 2020 Financial Capability Assessment

#### a. Purpose of the Proposed 2020 Financial Capability Assessment

The proposed 2020 FCA advances the ability of communities to more accurately demonstrate the financial burdens they face and increases the transparency of EPA’s considerations as it endeavors to consistently apply FCA methodologies across the country. With the proposed 2020 FCA, EPA intends to allow communities to easily submit information that may indicate the entire community’s capability to fund CWA projects/programs. Specifically, the proposed 2020 FCA includes templates and calculations that communities can use when submitting information for consideration regarding LQI, drinking water costs, financial models or studies, and other relevant areas. The templates and calculations include references that direct the community to the applicable publicly available data sources.

The proposed 2020 FCA sets forth two alternative general approaches for assessing a community’s financial capability to carry out CWA control measures. The first alternative is the existing 1997 FCA methodology with expanded consideration of costs, poverty, and impacts on the population in the service area with incomes in the lowest quintile. The first alternative may be employed by the community or by EPA for the community, as it involves use of publicly available information. Communities with lower cost control measures or an ability to self-finance the cost of CWA controls may wish to employ the first alternative due to its simplicity.

The second alternative is the development of a dynamic financial and rate model that looks at the impacts of rate increases over time on utility customers, including those with incomes in the lowest quintile. Communities with more expensive CWA obligations may choose to employ the second alternative, given its more sophisticated evaluation of affordability over time. However, if a community chooses the second alternative, it must conduct the analysis itself as it involves information known only to the community.

For use in the first alternative, relevant portions of the 1997 FCA Guidance and the 2014 FCA Framework are included as Appendices to the FCA Supplement. While the structure of the

<sup>9</sup> Available at [https://www.napawash.org/uploads/Academy\\_Studies/NAPA\\_EPA\\_FINAL\\_REPORT\\_110117.pdf](https://www.napawash.org/uploads/Academy_Studies/NAPA_EPA_FINAL_REPORT_110117.pdf).

<sup>10</sup> Available at <https://www.awwa.org/Portals/0/AWWA/Government/DevelopingNewFrameworkForAffordabilityReport.pdf>.

included 1997 FCA Guidance worksheets remains for the first alternative, the 2020 FCA also includes standardized instructions for how to define and submit certain additional costs into the portion of the RI calculation that looks at total CWA costs per household as a percent of MHI. EPA intends to not only consider MHI when calculating the impact of costs on a community's households but is proposing to also consider impacts to households in the lowest quintile. MHI is considered a key metric because it represents the mid-point of income in a geographical area determined by the American Community Survey (ACS). Median is used to express a "middle" value in a set of data. This "middle" value is also known as the central tendency. Median is determined by ranking the data from largest to smallest, and then identifying the middle so that there are an equal number of data values larger and smaller than the middle point. The median is generally used for skewed distributions and is typically used to derive at central tendency since it is not largely affected by outlier values. However, EPA recognizes that many communities have many customers that represent either end of the income spectrum. Some communities have a range of incomes but also have contiguous areas of population that have difficulty paying for their water services. For some communities, these challenges can be shown by looking at the community's LQI along with its MHI. As such, EPA intends to incorporate LQI as the basis of a key recommended critical metric when calculating the impact of costs on a community's households.

Based on stakeholder feedback, EPA is basing its LQI metric on data that is available in the ACS. The ACS is conducted every year by the U.S. Census Bureau to provide up-to-date information about the social and economic conditions of communities. The annual updates include key socio-demographic information and can be provided to a fine level of geographic granularity with historic continuity. The ACS can produce data showing the quintiles of household income (each quintile defines the household income range for 20% of a community's households). Use of LQI as an FCA metric meets the following criteria proposed by NAPA:

- Readily available from publicly available data sources;
  - Clearly defined and understood;
  - Simple, direct, and consistent;
  - Valid and reliable measures,
- according to conventional research standards; and

- Applicable for comparative analyses among permittees.

The proposed 2020 FCA can help to ensure that local challenges related to low-income households are better reflected in CWA implementation schedules. The types of data provided in Alternative 1 of the 2020 FCA are not exhaustive; and consistent with previous policy, EPA will consider any relevant financial or demographic information presented that illustrates the unique or atypical circumstances faced by a community.

#### *b. Overview of the 2020 FCA*

Consideration of affordability requires certain information. Alternative 1 of the proposed 2020 FCA recommends analyzing both the first phase (RI) and the second phase (FCI) of the two-phased approach in the 1997 FCA Guidance as critical metrics and adds two new critical metrics: The Lowest Quintile Residential Indicator (LQRI) and the Poverty Indicator (PI). These four critical metrics would be calculated by EPA or the community and would be considered equally. It should be emphasized that these four recommended critical metrics might not present the most complete picture of a community's financial capability to fund its CWA requirements. However, these metrics do provide a common basis for financial burden discussions among the community, the state or tribe, and EPA. Since flexibility is an important aspect of the CWA, communities are encouraged to submit any additional documentation (other metrics) for consideration that would create a more accurate and complete picture of their financial capability. Alternative 2 of the proposed 2020 FCA recommends analyzing a financial and rate model in addition to calculating the Poverty Indicator Score.

The proposed 2020 FCA also includes Other Metrics with Standardized Instructions, as well as Other Metrics with Submission of Information to be Determined by the Community. Significant consideration will be given to drinking water costs as well as the cost of meeting CWA obligations. Consideration of other metrics is permitted under either Alternative 1 or 2 and may support an implementation schedule that goes beyond the schedule benchmarks applicable to Alternative 1 in Exhibit 6. However, EPA does not anticipate establishing implementation schedules that would exceed the useful life of the community's water infrastructure assets.<sup>11</sup>

<sup>11</sup> Based on EPA's experience with water programs, the assumed useful life of water

#### Alternative 1: Recommended Critical Metrics With Established Thresholds and Instructions

- Residential Indicator—cost per household as a percentage of MHI
- Financial Capability Indicator—six socioeconomic, debt, and financial indicators used to benchmark a community's financial strength
  - Lowest Quintile Residential Indicator—cost per low-income household as a percentage of the lowest quintile income
  - Poverty Indicator—five poverty indicators used to benchmark the prevalence of poverty throughout the service area

#### Alternative 2: Recommended Critical Metrics

- Financial and Rate Models
- Poverty Indicator

#### Other Metrics With Standardized Instructions

- Drinking Water Costs
- Potential Bill Impact Relative to Household Size
- Customer Assistance Programs
- Asset Management Costs
- Stormwater Management Costs

#### Examples of Other Metrics With Submission Information Determined by the Community

- Unemployment Rates
- Debt Service Coverage Ratio
- Debt to Income Ratio
- Percent Population Decline, or Other Population Trends
- Locality Specific Information on Household Size, Including the Size of Households With Incomes In The Lowest Quintile
- State or Local Legal Restrictions or Limitations on Property Taxes, Other Revenue Streams, or Debt Levels
- Other Metrics as Determined by the Community
- Schedule Development
- Additional Considerations: Discharges to Sensitive Areas; Use Impairment; Public Health; Environmental Justice
- Schedule Development for Alternative 1
- Schedule Development for Alternative 2
- Schedule Development for Hypothetical Communities

The proposed 2020 FCA is available at: <https://www.regulations.gov/>, Docket ID No. EPA-HQ-OW-2020-0426. Throughout the document, EPA has identified specific questions for public comment.

infrastructure assets for the purpose of financing is typically 30–40 years.

#### IV. Request for Public Comment

EPA requests public comment on the proposed 2020 FCA. Specifically, EPA is requesting comments on the following:

##### Requests for Comment on Overarching Matters

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?

2. In addition to the data sets that are discussed in this document, what other data sets are you aware of that meet NAPA's criteria as identified in the October 2017 report, "Developing a New Framework for Community Affordability of Clean Water Services"?

3. What additional resources are publicly available that can be used to assess financial capability (e.g., the ALICE Essentials Index<sup>12</sup>)?

4. What additional examples, calculations, or templates would you like EPA to develop to assist with assessing financial capability?

##### Requests for Comment on the Proposed FY2020 FCA Supplement

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.

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

7. Is EPA distinguishing appropriately between critical and other metrics?

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

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.

10. EPA is seeking comment on whether the same benchmarks for assessing the MHI Residential Indicator should be used for assessing the Lowest Quintile Residential Indicator (LQRI), as proposed, or if different benchmarks should be used.

11. EPA is seeking comment on the list of proposed poverty indicators and on whether the bracketing of the middle

50% is an appropriate method to benchmark the proposed poverty indicators.

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

13. What other resources, in addition to those listed in Section IV of the proposed 2020 FCA (Resources), are available to assist communities related to water infrastructure financing?

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

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?

##### Requests for Comment Related to Water Quality Standard Decisions

16. EPA is also considering how the LQRI, PI, and other metrics and thresholds discussed in this **Federal Register** document 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.

Dated: September 4, 2020.

**Andrew D. Sawyers,**

*Director, Office of Wastewater Management, Office of Water.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9052-9]

#### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS) Filed September 4, 2020 10 a.m. EST Through September 14, 2020 10 a.m. EST Pursuant to 40 CFR 1506.9.

#### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

*EIS No. 20200181, Draft, USACE, WA, Chehalis River Basin Flood Damage Reduction Project, Comment Period Ends: 11/17/2020, Contact: Brandon Clinton 206-316-3164.*

*EIS No. 20200182, Final, USFS, AZ, Fossil Creek Wild and Scenic River Comprehensive River Management Plan, Review Period Ends: 11/02/2020, Contact: Mike Dechter 928-527-3416.*  
*EIS No. 20200183, Final, BR, CA, Friant-Kern Canal Middle Reach Capacity Correction Project Final Environmental Impact Statement/ Environmental Impact Report, Review Period Ends: 10/19/2020, Contact: Rain Emerson 559-262-0335.*

*EIS No. 20200184, Final Supplement, USN, WA, Northwest Training and Testing Activities Final Supplemental Environmental Impact Statement/ Overseas Environmental Impact Statement, Review Period Ends: 10/19/2020, Contact: Jacqueline Queen 360-257-3852.*

*EIS No. 20200185, Final, USFS, ID, Hungry Ridge Restoration Project, Review Period Ends: 10/19/2020, Contact: Jennie Fischer 208-983-4048.*

*EIS No. 20200186, Final, NPS, CA, Point Reyes National Seashore General Management Plan Amendment, Review Period Ends: 10/19/2020, Contact: Carey Feierabend 415-464-5101.*

*EIS No. 20200187, Draft, NPS, NC, Cape Hatteras National Seashore*

<sup>12</sup> Asset Limited, Income Constrained, Employed (ALICE) is measure of poverty that examines a subset of households that earn above the Federal Poverty Level, but not enough to afford a minimal household budget. See <https://www.unitedforalice.org/>.