



AMERICAN PUBLIC WORKS ASSOCIATION

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Public Works Resource

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October 19, 2020

David Ross  
Assistant Administrator, Office of Water  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 4101M  
Washington, DC 20460

Re: Comments on Proposed 2020 Financial Capability Assessment for Clean Water Act Obligations (Docket Number EPA-HQ-OW-2020-0426)

Dear Assistant Administrator Ross:

On behalf of the American Public Works Association (APWA) and our more than 30,000 members, we are writing to thank you and the staff at the Environmental Protection Agency (EPA) for your continued work and focus on our nation's water quality. Your recent proposed 2020 Financial Capability Assessment for Clean Water Act Obligations (FCA) is a much-needed update of the more than 20-year-old guidance for communities planning water infrastructure improvements. APWA members were appreciative of your outreach to water sector stakeholders in developing this proposed guidance and understand the great number of factors that go into producing a document such as this one.

In short, the current Financial Capability is inadequate in determining affordability for a community because it relies on median household income (MHI) as the metric to determine affordability, something MHI was never intended to do. To remedy this problem, APWA recommends EPA take the following actions:

- First, APWA recommends that EPA support legislative and regulatory efforts to encourage water systems in significant noncompliance to voluntarily partner with successful and compliant utilities. These efforts would also limit the liability of the "Good Samaritan" water utility.
- Second, APWA recommends that EPA encourage rate design that is more accurate and reflective of full cost-of-service, as the second alternative in this proposed guidance offers.

When reviewing guidance documents, it is important to remember the overall goal. In this case, the goal of the FCA is to evaluate the financial capability of a community to develop a schedule for water infrastructure improvements to meet regulatory standards. But, beyond that, there is a larger goal: to provide essential water and sewer services to all residents in a community, including low-income households.

PRESIDENT  
Mary Joyce Ivers, CFPF, PWLF

CHIEF EXECUTIVE OFFICER  
Scott D. Grayson, CAE



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APWA members believe that:

- Affordability and cost effectiveness, both for the service provider and the customer, must be included as a basic tenet within the SDWA and CWA permitting processes along with an understanding that affordability varies by community, region, and economic conditions.
- Cost-benefit analyses and feasibility studies must be retained as key components in the process of developing new regulations and revising existing regulations.
- Federal programs that aid water customers in disadvantaged communities receive support, ensuring that these populations are not denied essential services.

While EPA has made this goal a priority for decades, the primary metric used to determine “affordability” for all households, including low-income ones, is grossly inadequate for that use. The median household income (MHI) metric has been used to determine whether water service is affordable at the utility level. To use this metric on a household level, as has been done for years, exacerbates problems of household affordability of water and sewer services. For one, focusing on “median” income inherently ignores the low-income households that are the most vulnerable. Second, MHI does not factor in average water use in relation to essential water use. Next, MHI may show that the water and sewer services may be “affordable” but other essential costs (health care, food, etc.) may cause low-income households to use disposable income to pay for such services. Finally, MHI produces an arbitrary threshold to define affordability, rather than reflecting the reality of affordability in each community.

An additional factor in these considerations is the correlation with stormwater programs, especially the Municipal Separate Storm Sewer System (MS4) programs. More and more communities are beginning to implement stormwater management programs. Many of these systems face issues regarding combined sewer overflows (CSO), sanitary sewer overflows (SSO), and stormwater management during heavy rain events. According to the most recent EPA Clean Water Needs Survey, nearly \$50 billion is needed for combined sewer overflow correction. Combined sewer overflows occur when combined sewer systems, which serve hundreds of communities across the nation, release raw sewage into waterways. Such releases are commonly triggered by precipitation events that produce a volume of effluent exceeding the system's manageable levels. When such events occur, the combined sewer system is designed to discharge raw sewage and wastewater directly into a nearby body of water rather than allow plumbing to back-up in homes and businesses.

Although these problems impact communities across our country, it has had a disproportionate impact on many disadvantaged communities. These areas are least able to afford the required improvements to wastewater

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infrastructure. It is therefore important than any metrics used to define “affordability” regarding CWA compliance include stormwater management and associated costs.

In previous regulatory comments from APWA to EPA, we have highlighted one single common thread: the need for additional federal funding and financing to help communities make necessary water infrastructure investments. While revisions to the FCA will work to providing a better picture of what communities can afford in terms of these investments, such revisions, at least as proposed, will not resolve the need for additional federal supports. Simply put, existing federal programs at current funding levels are not enough to meet the need. EPA already estimates that the existing need for investment in water infrastructure is nearly \$744 billion over the next 20 years. Additionally, in the current pandemic conditions, water service providers are dealing with significant revenue shortfalls, making planned investments more difficult to fund and finance. EPA should request from Congress, and Congress should provide, substantial increases in federal funding and financing programs for investment in water infrastructure.

While the need for robust federal funding and financing options is apparent, there are other steps that EPA can take in order to help bring low-income communities into being able to afford improvements necessary to come into compliance with regulatory obligations, as stated at the top of these comments. First, APWA recommends that EPA support legislative and regulatory efforts to encourage water systems in significant noncompliance to voluntarily partner with successful and compliant utilities. These efforts would also limit the liability of the “Good Samaritan” water utility. Many successful utilities have expressed the desire to help systems that are struggling but are hesitant to do so because of the potential transfer of liability. This voluntary decision to partner with a “Good Samaritan” would be made solely by the local community with the struggling water system, not the EPA, the state, or any other utility.

In terms of a more long-term solution to help communities get a better grasp of “affordability” when it comes to compliance with drinking water and clean water regulations, APWA recommends that EPA encourage rate design that is more accurate and reflective of full cost-of-service. As discussed previously, water utilities are in dire need of funding for investment in infrastructure. To fund these investments, utilities are increasing water rates in a regressive manner, often putting the most economic pressure on the most conservative water customers. This regressive nature is reflected in the “first gallon price”, which includes any fixed charges plus the price of the first unit of water or sewer service. As prices for water and sewer services have increased, low-volume customers (often those in low-income communities that are only using essential services) have on average borne a much larger share of utilities’ rising revenue burdens than those using water and sewer for more discretionary services. EPA can help arrest this problem by encouraging ratemaking that considers low fixed charges, volumetric sewer prices based on indoor flows, low volumetric water prices for essential household water use, and steeply escalating volumetric prices for demand beyond essential use.

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In terms of the proposed revisions to the FCA being discussed here, the option that allows utilities to use a “dynamic financial and rate model” to evaluate the impacts of CWA compliance costs on customers would be preferred by APWA members. While both options are marked improvements on the current FCA, the latter option provides a more complete, nuanced economic picture of the communities that water and sewer service providers serve.

Finally, APWA must acknowledge a hard truth about the proposed revisions that EPA is putting forward. The revisions in this proposed guidance would inform EPA’s work with water and sewer providers regarding compliance schedules. These compliance schedules, under this more flexible guidance, will determine whether and how utilities ought to delay compliance with federal regulations. A side-effect not considered by the EPA guidance, but one that public works professionals must face every day, is whether delaying compliance with water pollution regulations in order to keep utility rates low (and therefore “affordable”) is beneficial to communities, including low-income ones.

Each day public works professionals are diligently working to protect and maintain the critical infrastructure that is so essential to protecting our health and quality of life. Because of our shared commitment, APWA looks forward to continuing to work with you and your staff on this guidance to help public works professionals meet our water infrastructure challenges. If you have questions or comments regarding this letter or APWA’s water priorities, please contact APWA Government Affairs Manager Sean Garcia at (202)218-6734 or [sgarcia@apwa.net](mailto:sgarcia@apwa.net).

Sincerely,

Mary Joyce Ivers, CFPF, PWLF  
President

Scott D. Grayson, CAE  
Chief Executive Officer

PRESIDENT  
Mary Joyce Ivers, CFPF, PWLF

CHIEF EXECUTIVE OFFICER  
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