King County

Department of Natural Resources and Parks
Wastewater Treatment Division

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Via Regulations.gov April 25, 2022
Sonia Brubaker
Water Infrastructure Division (MC4204M)
Office of Wastewater Management
Office of Water, US Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

RE: Comments on Docket ID No. EPA-HQ-OW-2020-0426

Dear Ms. Brubaker

Thank you for the opportunity to comment on EPA's proposed 2022 Financial Capability Assessment (FCA) guidance. We appreciate EPA's interest in hearing from local agencies on how the changes could impact our customers.

While we commend the EPA for acknowledging the need to address income disparity and affordability, King County's Wastewater Treatment Division (WTD) is concerned that the Proposed 2022 Guidance removes the Lowest Quintile Residential Indicator (LQRI) and introduces new national average-based income data that dilutes the only measure that incorporates cost impacts to households, the Residential Indicator (RI). These metrics do not produce a meaningful comparison across agencies since they exclude any adjustment to address significant cost of living differences across the nation.

There is no more critical outcome to the Guidance than the determination of how financial impacts inform schedule parameters. Arbitrary schedule caps of 15 and 20 years are assigned to outcomes that do not consider whether the compliance program has multiple mega projects, how many billions of dollars are required to fund the projects, urban density, and labor market delivery constraints.

While we appreciate EPA's focus on addressing low-income communities, the proposed 2022 FCA guidance does not address the issue in a meaningful way for many cities and counties, including King County. We hope EPA will take into consideration cost of living differences across the nation in developing metrics and reconsider linking tiered fixed schedule limits to measures that have no direct relationship to those schedules. We stand with the EPA in wanting to address the needs of our system while not over-burdening low-income rate-payers, and hope you will consider other options for meaningful relief.

Kindest Regards,

Kamuron Gurol, Division Director, King County Wastewater Treatment Division

King County Wastewater Treatment Division Comment Submission for 2022 Proposed Financial Capability Assessment (FCA) Guidance

Commenting on the 2022 Proposed Guidance must be done in context of the EPA's Proposed 2020 FCA Guidance and the 2021 rescinded Prepublication FCA Guidance. While the Proposed 2020 and Proposed 2021 Guidance had moved the needle, the Proposed 2022 Guidance removes the Lowest Quintile Residential Indicator (LQRI) and introduces new national average-based income data that dilutes the only measure that incorporates cost impacts to households, the Residential Indicator (RI).

King County's Wastewater Treatment Division would like to first acknowledge and amplify the serious concerns with the Proposed 2022 Guidance documented by NACWA. A critical highlight is the abandonment of years of industry collaboration:

> "NACWA will not support finalizing the 2022 Proposed FCA Guidance, even with modifications, given the serious concerns outlined below. After years of constructive dialogue with the Agency on this issue, NACWA and its members did not have the opportunity to engage on the new revisions in any kind of meaningful fashion after EPA withdrew the 2020 Proposed FCA Guidance. EPA made major substantive changes to key elements of the document that undermine the purpose of the document and ignore numerous reports and Congressional directives as to how the guidance needed to be revised. Short of reverting back to the 2020 Proposed FCA Guidance, released in January 2021, NACWA cannot support finalizing the document."

The FCA is meaningful only if it reflects (1) relative ability to pay across agencies[1] and (2) the financial impact of the negotiated alternative compliance schedules[2]. The 2022 Guidance does not provide a meaningful comparison across agencies since it excludes any basic adjustment to acknowledge significant national cost of living differential when relying on household income to inform ability to pay.

Alternative 1

The Guidance does not reflect financial impact differential for schedule alternatives in that the only cost-impact measure that informs the Alternative 1 matrix (RI) is time agnostic and, therefore, unable to produce any differential for the key element that is negotiated, a schedule. Instead, there is significant weighting of factors that do not inform relative burden of alternative schedules in negotiation, specifically The Financial Capability Indicator (FCI) which makes up one of two matrix axes before including the Lower Quintile Poverty Indicator (LQPI) score. The FCI includes data such as overall net debt as a percent of full market property value, property tax revenues as a percent of full market property value, and property tax collection rate. These factors correspond to a City or County's general fund property tax revenue rather than an enterprise fund and user fee revenue.

Alternative 1 includes a critical flaw, in that if the agency/permittee metrics place it in the strong FCI category, there is no RI that could result in a high impact matrix outcome. *Even if the RI exceeds 100%, meaning the cost per household is greater than a household's total income, the*

[1] "The results of the FCA analyses provide an important benchmark for EPA decisionmakers to consider in CWA permitting and enforcement actions to support consistency across the country."

[2] "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."

matrix will not produce a high impact outcome. If the agency currently shows reasonable financial performance and the cost of compliance would result in significant non-payment and inability to collect revenue, the agency financial metrics would be negatively impacted as a result. However, the matrix fails to capture this since it anchors financial capability to status quo agency financial performance metrics, which would not remain unchanged if a substantially unaffordable rate resulted from compliance. Also, the only practical impact of agency financial performance is potentially lower cost of debt in the bond market, which is a small difference to a large compliance program. Additionally non-market funding can be made available to assist financing capability for agencies that have weak financial performance. There is nothing on the Financial Capability Indicator axis that is relevant to measuring ability to pay or the financial impact of schedule alternatives. Maintaining the FCI and its significant weighting disqualifies the Alternative 1 matrix from any reasonable application to measure financial capability.

The 2022 version of the expanded matrix moves further from reflecting meaningful financial impact by introducing additional factors that do not incorporate compliance cost impacts (or cost of living), with the national average income data in the Lower Quintile Income Indicator (LQII). In the 1997 FCA Guidance, 50% of the matrix included an indicator that incorporated compliance costs. (RI). In this Proposed 2022 FCA, only 25% of the expanded matrix has an indicator that reflects costs (still just the RI).

While the RI is the only reasonably relevant criteria to reflect financial capability in the matrix, the RI as defined in the Guidance has two important limitations. One is that the methodology for cost per household is time agnostic, even though the compliance schedule is the specific variable that is in negotiation. The other is that the income data has no adjustment for cost of living, making it incomplete and errored for comparing among agencies nationwide.

Cost of Living

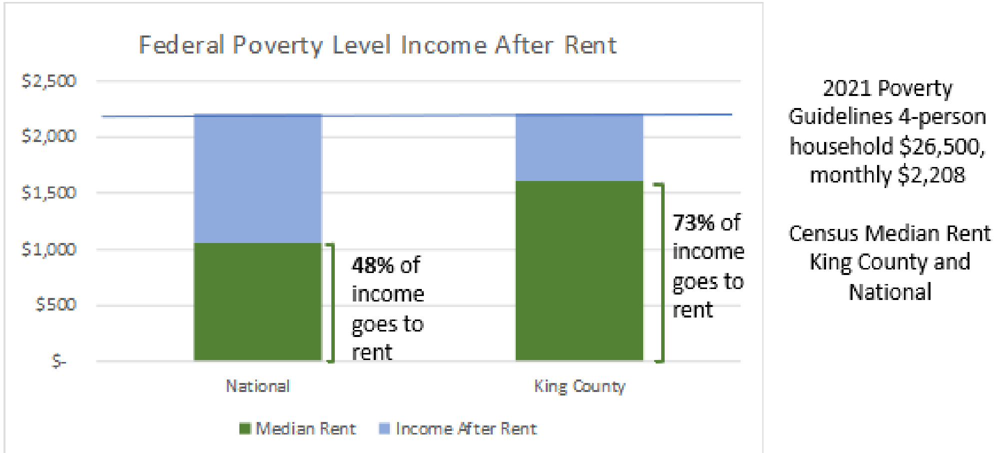
The most meaningful measure to benchmark cost of living is housing. Where housing costs are higher than average, other essential costs such as food and childcare[3] are higher as well. The median rent census data should be used to make a meaningful, cost of living adjusted metric for median income, lower quintile income, or poverty measures. While there are cost of living indices published, they can be complex and many include data that is only available for large metropolitan locations. Median rent is available to the census tract level of detail, the same source as the income data relied on for the RI and consistent with the NAPA criteria cited in the 2022 Guidance[4]. A factor of local median rent to national median rent could be applied to median and lower quintile income data to account for significant cost of living differences across the United States. Alternatively, an After-Rent or After-Housing Indicator could be utilized that subtracts median rent from the income metric to calculate the customer bill as a percentage of

[3] "We find that child care expenditures for all types of care is about half the national median mortgage payment and nearly 80% of the national median rent." https://www.freddiemac.com/research/insight/20200107-family-budget-burdens

[4] The 2022 Proposed FCA metrics meet the following criteria recommended by the National Academy of Public Administration (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"

after housing income. Comparison among agencies would reflect some adjustment for cost of living equalization with very accessible information and simple math.

Benchmarking income without adjusting for cost of living does not represent a comparative ability to pay.



Schedule

The Guidance takes a multi-layered and dubious matrix outcome and creates three tiers to indicate schedule caps. The combination of agency general fund property tax information that limits the measure of a time agnostic RI, weighted with a national average-based poverty measure that ignores cost of living and financial impact, is not measuring anything meaningful. The tiered outcome of this exercise is then tied to arbitrary schedule caps. There is no more critical outcome to the Guidance than the determination of how financial impacts inform schedule parameters. Schedule caps of 15 and 20 years are assigned to outcomes that do not consider whether the compliance program has multiple mega projects, how many billions of dollars are required to fund the projects, urban density and labor market delivery constraints.

While it would appear at first that the option to select Alternative 2 and use a rate model could solve for most of the failures of Alternative 1, the Guidance is ambiguous or incomplete on how Alternative 2 would be evaluated. Alternative 2 lists a second measure in addition to a rate-model driven RI, Lowest Quintile Poverty Indicator (LQPI), without describing a matrix or weighting structure by which that information will be combined with the Alternative 2 RI.

Additionally, it is noted that if the LQPI result is medium or high, a Financial Alternatives Analysis is required (for both Alt 1 and Alt 2). In the case of a high cost of living location, the LQPI will not provide reasonable comparative poverty indication. The 2022 Guidance is silent on a path where the LQPI produces a low impact score. A substantially high-cost burden demonstrated by the rate model outputs, combined with a low LQPI does not have a path identified in the guidance.

Financial Alternatives Analysis (Alternative 1 and Alternative 2)

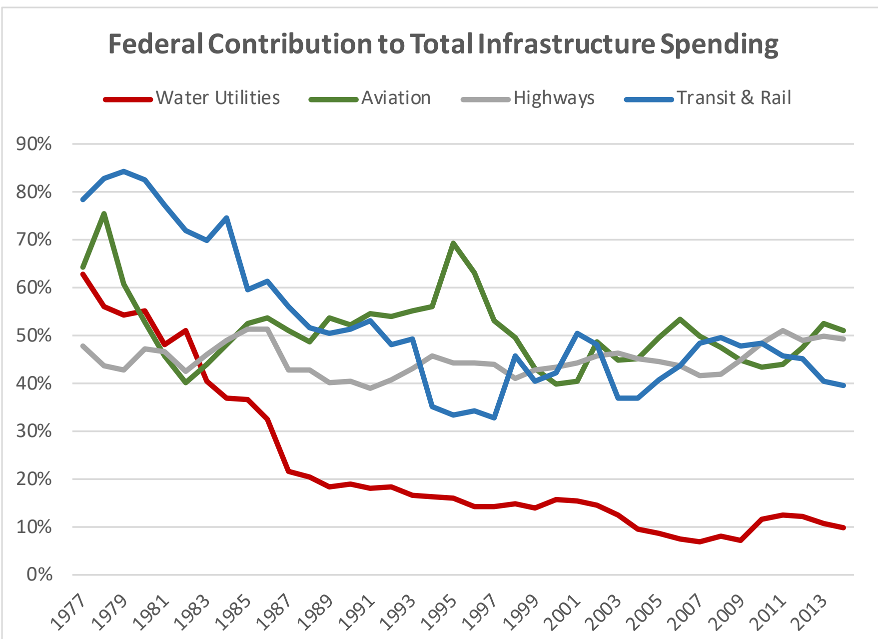
Discussing mitigation measures implies that excessively burdensome, unaffordable household impacts from a particular schedule could be mitigated in a meaningful way if utilities would just do things that they are not doing yet. This implies a gross misunderstanding of the affordability challenges and constraints faced by utilities. The Financial Alternatives response is FCA scope creep and additionally burdening agencies to produce the already overly complex FCA.

1. Financing Options for Capital Costs

   "In addition, we strongly encourage additional subsidy or grant consideration from governmental funding sources for entities that show a "medium" or "high" impact Initial LQPI Score."

Subsidy and grant consideration is a supply side problem, not a demand side problem. The Guidance suggests the agencies are turning away free money when the Clean Water Act grant funding has been drastically reduced, remaining funding offered as loans rather than grants, and the loans are through a competitive process and applying agencies are turned away.

> "Prior to CWA amendments in 1987 (P.L. 100-4), Congress provided wastewater grant funding directly to municipalities. The federal share of project costs was generally 55%; state and local governments were responsible for the remaining 45%. The 1987 amendments replaced this grant program with the SRF program. Local communities are now often responsible for 100% of project costs, rather than 45%, as they are required to repay loans to states."[5]



Based on detailed data of public spending on transportation and water infrastructure related to CBO's March 2015 report Public Spending on Transportation and Water Infrastructure, 1956 to 2014, the EPA needs to reconsider the context of citing subsidies and grants as a meaningful mitigation consideration. Unless the EPA can source funding rather than financing, the marginal impacts of a slightly lower than market rate state loan is not an impactful consideration for mitigating the financial impact of a compliance program that could cost in the billions of dollars.[6]

2. Rate Design

[5] https://www.everycrsreport.com/reports/96-647.html

[6] Based on detailed data of public spending on transportation and water infrastructure related to CBO's March 2015 report Public Spending on Transportation and Water Infrastructure, 1956 to 2014.

This section appears confused about water rate structures vs sewer rate structures. Volumetric sewer rates are typically charged on winter average water use, a proxy for indoor water use that goes down the drain and becomes sewer flow, excluding seasonal irrigation. Inclining block structures are equitable in water utilities where discretionary seasonal use is to be priced and controlled for supply constraints. Applying it in sewer to indoor water use unfairly impacts large families or households with multiple families sharing a single-family space. This new Financial Alternatives Analysis should be developed with industry experts in rate-making.

"Have you considered a wealth-based approach." The only income factored rates that are in use are in Tiered Assistance Program format, which allows income (voluntarily provided) to place rate-payers in an assistance tier, at the lower end of the income spectrum. "Wealth" suggests an intent to apply income measure to cost recovery at the upper end of income population. Responding to the Financial Alternatives Analysis requires legal research and documentation of each agency's ability to convert cost recovery to an income tax. Aside from the cost prohibitive administrative burden of maintaining income data for every utility customer, some utilities reside in states that don't even have a state income tax. Utilities would be on their own to develop an IRS function for their service area. A wealth-based cost recovery analysis in a Financial Capability Assessment that seeks to evaluate compliance cost impacts is out of scope.

3. Ratepayer Support Options for Lower Income Residential Customers

"What legal obstacles exist to establishing low-income household support for your community?" While it is reasonable to request agencies share what assistance programs they offer and the policy behind the selection of the program elements, documenting legal constraints and administrative burden for topics the industry is struggling to find solutions for is excessive and scope creep. Agencies are following the lead of the industry organizations such as American Water Works Association (AWWA) and NACWA pursuing solutions to addressing affordability and low income assistance. Having every agency document that status in the FCA, and to assume the EPA has available staff resources with the expertise to assess the achievement of maximizing opportunity among legal constraints that vary by state, and policy considerations that vary by utility, seems unreasonable.

In conclusion, evaluating the relative financial outcome of alternative schedule compliance can be done more simply by utilizing rate model outputs and cost of living adjusted income measures. The time-sensitive outputs from the model can inform real schedule length considerations rather than arbitrary five year increments and schedule caps that have no analytical or data grounding.