

# EPA's Financial Capability Assessment Guidance for Clean Water Act Obligations

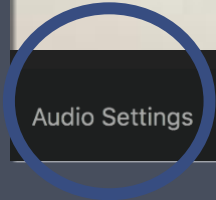
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FEBRUARY 23, 2023

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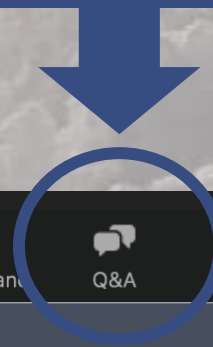
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Q&A

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Q&A

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# Introductions

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- Bruno Pigott, Deputy Assistant Administrator of the Office of Water
- Chrisna Baptista, Attorney-Advisor in the Office of Enforcement and Compliance Assurance

# Roadmap for Today's Discussion

Welcome

Background

Overview of Updated Guidance

- Purpose and Goals of FCA Guidance Updates
- Structure of Updated FCA Guidance
- CWA Schedule Development
- Economic Impact Analysis for WQS Decisions for the Public Sector

Additional Resources

# Background: History of FCA Guidance

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- EPA issued the Combined Sewer Overflow Guidance for Financial Capability Assessment (FCA) and Schedule Development in 1997 to assist NPDES permittees and EPA/state NPDES authorities in cooperatively developing CSO control implementation schedules pursuant to EPA's 1994 CSO policy.
- The Guidance was very similar in terms of the metrics and calculations to the 1995 Economic Guidance for Water Quality Standards (WQS) Decisions used for certain WQS variances, use attainability assessments, and anti-degradation reviews.
- In 2014, EPA issued the FCA Framework to clarify that FCAs could be used to evaluate other CWA compliance costs in addition to wastewater system overflows and treatment.

# Background: Financial Capability Assessment Guidance for Schedule Negotiations

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- A financial capability assessment explains how an NPDES permittee can assess its financial capability to develop compliance schedules for implementing CWA controls.
- Normally, the CWA control implementation schedule is the time required for normal engineering and construction practices. However, the implementation schedule can be lengthened based on consideration of financial capability.
- Establishing an implementation schedule for CWA controls is a negotiation involving the permittee, EPA, and state NPDES authorities which is memorialized in a permit or enforcement mechanism.
- The 2023 Updated FCA Guidance supersedes the 1997 FCA Guidance and supplements the 2014 FCA Framework.



# Background: Financial Capability Assessment Guidance for Certain WQS Decisions

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- Used by states, authorized tribes, and EPA in determining the degree of economic impacts of needed pollution controls when establishing or revising water quality standards (WQS) (through WQS variances or use changes) or conducting antidegradation reviews.
- Meant to assist states, authorized tribes, and public entities in understanding the economic factors that may be considered, and the types of tests that can be used to determine if a designated use is feasible to attain, if a WQS variance can be justified, or if degradation of a high-quality water is warranted.
- The 2023 Updated FCA Guidance will supplement the public sector section of the 1995 Interim Economic Guidance for WQS that applies to WQS revisions or antidegradation reviews.

# Background: Direction from Congress and NAPA Report

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- In 2016, Congress directed EPA to contract with the National Academy of Public Administration (NAPA) to create a framework for “community affordability.”
- NAPA’s report, Developing a New Framework for Community Affordability of Clean Water Services (Oct 2017), included the following recommendations:
  - ✓ Improve EPA’s financial capability assessment metrics
  - ✓ Include all water costs (Clean Water Act and Safe Drinking Water Act)
  - ✓ Focus on the income of low-income users rather than median household income
  - ✓ Expand the socioeconomic components to include economic structural problems in the community
  - ✓ Consider using the improved FCA framework, in all of EPA’s clean and drinking water regulatory decision processes consistent with current statutory requirements

# Background: Other Factors Supporting Update

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- Update the basis for the FCA calculations given changes in Census and other data:
  - Census demographic data updates are now available annually rather than every ten years.
  - Availability of financial information online, rather than having to request data from the municipality.
- EPA and other federal programs have been established to provide resources and financing that were not available in the 1990s. Opportunity to link to these resources to empower and support utilities, including best practices to mitigate economic impacts.
- NAPA and stakeholder requests to increase emphasis on low-income households.

# Purpose and Goals of FCA Guidance Updates

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- Quantifies the severity and prevalence of poverty in a community as compared to national benchmarks.
- Adds consideration of available means to reduce impacts of water rates on low-income households (i.e., a Financial Alternatives Analysis).
- Acknowledges and encourages use of integrated planning and green infrastructure.
- Provides links to resources for funding and financing opportunities.
- Consolidate the CWA scheduling and WQS into a single guidance document given the similarity of the analyses.

# Structure of Updated FCA Guidance

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## Alternative 1

Residential Indicator (RI)

Financial Capability Indicator  
(FCI)

NEW - Lowest Quintile Income  
Poverty Indicator (LQPI)

**or**

## Alternative 2

NEW - Financial Modeling,  
with consideration of LQPI

**and**

NEW - Financial Alternatives Analysis

**and**

Other Metrics

# Lowest Quintile Poverty Indicator

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Indicator	Strong	Mid-Range	Weak	Weighting
Upper Limit of Lowest Income Quintile	More than 25% above National LQI	±25% of National LQI	More than 25% below National LQI	50%
Percentage of Unemployed Population 16 and Over in Civilian Labor Force	More than 25% below National value	±25% of National value	More than 25% above National value	10%
Percentage of Population Living Under 200% of Poverty Level	More than 25% below National value	±25% of National value	More than 25% above National value	10%
Percentage of Population Receiving Food Stamps/SNAP Benefits	More than 25% below National value	±25% of National value	More than 25% above National value	10%
Percentage of Vacant Housing Units	More than 25% below National value	±25% of National value	More than 25% above National value	10%
Trend in Household Growth	>1%	0-1%	<0%	10%

## Alternative 2 – Financial Rate Modeling

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- The Updated Guidance offers an option to the FCA analysis that provides for a more sophisticated and detailed evaluation of the financial feasibility and customer impact of required improvements.
- Alternative 2 combines financial rate modeling and lowest quintile and poverty indicators to determine a schedule that attempts to reduce rate shock and overly burdensome water rates.
- Financial modeling evaluates the timing of capital costs over time, including the rate increases necessary to pay for improvements.
- Alternative 2 cannot be used, on its own, to support WQS decisions.

# Financial Alternatives Analysis

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- FCA should include a description of current and planned efforts to mitigate the environmental and financial impacts on low-income households.
- Financial considerations identified in CSO Policy:
  - Grant and loan availability;
  - Previous and current residential, commercial and industrial sewer user fees and rate structures; and
  - Other viable funding mechanisms and sources of financing.
- Supplements both Alternative 1 and Alternative 2



# Financial Alternative Analysis, cont'd

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- Appendix C provides a “checklist” of financial options for communities—including loans, grants, customer assistance programs and alternative rate structures.
- EPA provides resources where needed in this analysis (e.g., Water Finance Clearinghouse, Municipal Ombudsman, Environmental Finance Centers) and encourages subsidy and grant consideration from governmental funding sources for utilities with significant financial challenges.
- Special considerations where there are resource constraints, and in particular for small communities serving less than 3,000 persons.

# Other Metrics

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- The Updated FCA provides for submission of additional information for consideration, such as:
  - ✓ Drinking Water Costs
  - ✓ Customer Assistance Programs
  - ✓ Asset Management Costs
  - ✓ Stormwater Management Costs
  - ✓ Other Relevant Community-Specific Information

# CWA Schedule Development

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- Schedules should take into account:
  - ✓ Discharges to sensitive areas;
  - ✓ Use impairment;
  - ✓ Public health; and
  - ✓ Environmental justice.
- Reducing exposure to raw sewage should be a priority in any negotiated schedule.
- Any implementation schedule should sequence projects to mitigate public health and environmental impacts to areas with potential environmental justice concerns as early as possible.
- Before seeking an extended schedule, EPA also encourages communities to actively involve the affected public by holding public meetings.

Expanded FCA Matrix Results	Recommended Implementation Schedule Benchmarks
Low Impact	Normal Engineering/Construction Schedule
Medium Impact	Total schedule generally up to 10 years
Medium Impact with Comprehensive Financial Alternatives Analysis	Total schedule generally up to 15 years
High Impact	Total schedule generally up to 15 years (or 20 years based on further negotiation with EPA and state NPDES authorities)
High Impact with Comprehensive Financial Alternatives Analysis	Total schedule generally up to 20 years (or 25 years based on further negotiation with EPA and state NPDES authorities)

# Determining a CWA Schedule Using Alternative 1

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# Steps to Evaluate Potential Economic Impacts on Public Entities

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- Step 1: Determine the Initial Economic Impact
  - ✓ Municipal Preliminary Screener
  - ✓ Secondary Score
- Step 2: Determine the Lowest Quintile Poverty Indicator Score
- Step 3: Perform a Financial Alternatives Analysis
- Step 4: Combine the Initial Economic Impact and LQPI Score in the Expanded Economic Impact Matrix

# Recommendations for Making WQS Decisions Related to Economic Impacts for the Public Sector

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- Exhibit 13 in the FCA Guidance shows EPA's recommendations for making WQS decisions after applying the Expanded Economic Impact Matrix, including consideration of financial alternatives where appropriate.
- Recommends additional analyses for use changes based on 40 CFR 131.10(g)(6) (commonly referred to as "Factor 6").
- Recommends evaluation of other metrics or financial and rate models where impacts may be unclear.
- Recommends consideration of other opportunities to mitigate the negative impacts of WQS decisions that may affect areas with potential environmental justice (EJ) concerns.

# Additional Resources

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- Additional information about the 2023 FCA Guidance is available at <https://www.epa.gov/waterfinancecenter/clean-water-act-financial-capability-assessment-guidance> and at <https://www.epa.gov/wqs-tech/economic-guidance-water-quality-standards>
  - ✓ Fact Sheet
  - ✓ Q&A
  - ✓ Online tools
- Requests for technical assistance can be made by emailing [WaterTA@epa.gov](mailto:WaterTA@epa.gov) or visiting <https://www.epa.gov/water-infrastructure/water-technical-assistance>
- Upcoming trainings to be scheduled on use of FCA Guidance for schedule negotiations, for WQS decisions, for small communities
- Contacts:
  - ✓ CWA Schedule Negotiations: Chrisna Baptista, Jacob Lunn, Hannah Anderson
  - ✓ WQS Decisions: Menchu Martinez, Gary Russo