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better promote the three guiding principles – 1) restructuring alternatives based on the needs of the community; 2) direct community engagement; and 3) ensuring the community has the capacity to make affordable investments in safe drinking water – that helped shape the proposal. We look forward to continuing discussions on this important topic.

Sincerely,

Mayor Leirion Gaylor Baird
LGAC Chair

July 29, 2024

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

The Local Government Advisory Committee (LGAC) appreciates the opportunity to provide meaningful public comment on the proposed Water System Restructuring Assessment Rule. As members who represent local governments, providing safe and clean water to our communities is paramount. We agree with the guiding principles put forth in the rule to help ensure mandatory assessments and restructuring plans are the result of collaborative efforts between states, local authorities, water utilities and communities. We are dedicated to protecting the safety, health, and well-being of our communities and are proud to help shape the foregoing water policy with our recommendations to EPA.

Based on the proposed rulemaking, the LGAC has developed the following recommendations. We recommend that EPA:

- Bolster public and community engagement requirements within the rule.
- Address deficiencies in the processes outlined in the rule to facilitate negotiations and the restructuring work between the vulnerable water system and the state.
- Provide communities with funding and technical assistance to conduct assessments and develop restructuring alternatives. Funding for states to implement this rule is also crucial.
- Do not allow states to seize community assets to pay for past violations.
- Carefully scrutinize state primacy revisions to ensure each state implements this rule fairly and justly.

More details about these recommendations are included below. The LGAC believes these recommendations will enhance the final rule and

LGAC Recommendations – Water System Restructuring Assessment Rule

1. Supplementing Incentives to Encourage Development of Restructuring Plans and Affordability

Plan Development

Safe and clean drinking water must be accessible to all community members. Where a water system is struggling to meet regulatory standards, fund necessary repairs, maintenance, or operation, we agree it may be necessary for that system to evaluate restructuring options. However, many communities and their water systems that are struggling to maintain compliance likely also lack technical, managerial or financial resources to carry out a restructuring assessment. Without receiving solutions-oriented help in the form of free or very low-cost technical assistance to address system deficiencies and to develop options for restructuring, this proposed rule may not result in ultimate improvements to water quality and those systems will remain vulnerable to privatization. As part of assistance with system evaluation, solution development, and associated engineering work, technical assistance is greatly needed by struggling systems on the financial side to evaluate existing and future rate structures, conduct asset inventory, and to identify viable funding solutions. **The LGAC recommends that the EPA works with states, non-governmental organizations, and contractors to provide financial and technical assistance resources especially to rural and small communities and their public water systems to carryout restructuring assessment activities where necessary. Providing grants to local governments to develop and submit restructuring plans, and grants to carry out those plans, not just SRF eligibility, would be a stronger incentive.**

Funding

The proposed rule would provide primacy agencies (i.e., states) the authority to mandate restructuring assessments. While this rule does not mandate restructuring assessments, it will impact state resources to develop, manage, and maintain such a program. Carrying out restructuring will also burden local resources. At a time when state and local governments are burdened with increasingly extreme weather events, lead service line replacement, and PFAS regulation implementation, this effort may not result in the desired state and local action without providing enough financial and other resources available to states to carry out this authority. **The LGAC recommends that the federal government works to secure funding and assists with workforce development across the country to address the multiplying issues state and local water providers are facing and to implement this rule.**

Asset Retention

The LGAC does not support the element of the proposed rule requiring that funds and value of identified assets of the assessed system be transferred to the state to satisfy liability for violations.

While curing financial penalties may be of concern, higher policy priority should be placed on those funds and assets remaining with the community and rate base who purchased or paid for those assets. Any funds and assets identified should remain with the community and be available to the non-responsible system or supplier as an additional incentive for consolidation, regionalization or other restructuring alternative.

Process

The LGAC appreciates the proposed rule's guidance that the assessment should be collaborative in nature and that states should consider the least intrusive restructuring alternatives. However, the proposed process as outlined does not leave much room or provide mechanisms for a local system or municipality to challenge the state's assessment, the state's rejection of a system's self-assessment, or the terms of a restructuring plan. **The LGAC recommends that there should be embedded in the process a provision that allows for the request of a neutral intermediary to reach a negotiated final restructuring plan.** Similarly, the LGAC recommends that there be an option for dispute resolution should the parties fail to reach agreement on restructuring within a certain period that ensures safe drinking water is provided expeditiously.

2. Factors EPA Should Consider as Tailoring Criteria for Mandatory Restructuring Assessments

The proposed rule lays out eight tailoring criteria an assessor must take into account when evaluating a system to determine feasible restructuring alternatives. The LGAC has general recommendations and a specific recommendation for one of the eight criteria.

In general, providing this mandatory assessment authority to states without appropriate guardrails will result in 50 different mindsets and preferred approaches on how to bring a PWS into compliance. Some states may be unnecessarily heavy handed and take away local control and force a sale or consolidation. A state could direct a wealthier community or system to take over a non-compliant system for political reasons; consolidation could result residents of a non-compliant system losing their voice or representation in matters affecting affordability and rates. **The LGAC recommends that the EPA carefully scrutinize state primacy revisions made to conform to the requirements of the final rule to ensure there is a knowledgeable, objective, and well-organized business unit within each state to implement this rule fairly and justly. The EPA should also deliver guidance for selecting third-party assessors.** Similarly, **state primacy revisions should also include a Citizen Advisory Committee (CAC) within the unit managing and performing mandatory assessments.** The state Citizen Advisory Committee should include a diverse set of perspectives and regularly review the state's policies and procedures regarding restructuring assessments. This would complement consultations with local CACs when assessing specific water systems.

The LGAC also questions what guardrails would be in place to **protect rate payers of non-responsible systems that aid or rescue assessed systems.** It is currently unclear in the proposed rule whether the state has authority to choose the non-responsible water system that would partner with the assessed system for a restructuring plan or whether the state would issue a solicitation process. **More guidance is needed on how non-responsible systems would be matched with assessed systems.**

h. State or local statutory or regulatory requirements. Some states have existing laws that address certain water systems that face challenges in meeting SDWA standards. **The EPA's rule should complement these existing state laws.** For example, West Virginia's Distressed and Failing Utilities Improvement Act requires the state Public Service Commission to hold proceedings for distressed and failing water utilities, with requirements for public engagement. The Commission then enters a final order stating whether the utility is distressed or failing and identifying capable proximate utilities if they exist. The Commission must consider options such as reorganization of the utility under new management, operation of the utility by another entity, merger, acquisition, or other viable alternatives. It also provides for the determination of an acquisition price, if applicable, and for addressing debts and cost recovery.

In the case of West Virginia, it would be ideal that assessments and plans required by the WSRAR be satisfied by the assessment and final order issued by the state Commission based on state law, so long as they contain the same or substantially similar information. **The LGAC recommends that the WSRAR should recognize the existence of state laws such as the West Virginia law and provide clarity that joint assessments and plans can be developed to satisfy both, so long as all federal requirements are met.** One benefit of this approach is that participating state agencies, and the distressed or failing utilities, would undergo a single process, rather than potentially two parallel processes.

3. Factors EPA Should Consider When Evaluating Potential Additional Community Engagement Requirements for Mandatory Assessments

In the preamble of this rule, the EPA describes one of three guiding principles for water system restructuring: *engaging affected communities directly in restructuring decision making.*

States and water utilities should directly engage with community leaders when making restructuring decisions. This approach is essential to ensure successful collaboration between state and local authorities, community leaders, and drinking water utilities. Direct engagement is particularly important if the water system is considering consolidation or transfer of ownership, which can raise community concerns about the affordability of safe drinking water and which involve complicated technical and financial terms and concepts. States should work with utilities, trained facilitators, and technical assistance providers to clearly communicate the costs and benefits of restructuring alternatives to community leaders and consumers and should ensure frequent opportunities for public input. (89 FR 47003)

The LGAC recommends that this sentiment be bolstered within the final rule. A restructuring assessment triggered by the requirements of this rule means that the local water system is in a dire situation. Residents may be learning for the first time that their water provider has repeated public health-related violations and that their local provider could lose control over its system. Public relations and transparency will be critical. The public should be made aware of the several items that the state agency would review and consider. This transparency should be provided through *multiple* community and public meetings where public comment is encouraged and facilitated. At a minimum, three public meetings should be held:

- To outline the problem, identify the impacts and potential impacts to ratepayers, and to walk through the process the public water system and state will go through in determining restructuring alternatives and feasibility;
- To present and review the alternatives analysis and potential impacts to ratepayers; and
- To present a final recommendation.

Within these public meetings, and through other means such as mailings, bill inserts, websites, social and traditional media, evidence should be provided to the public that demonstrates the need or benefit of restructuring as well as the rate impact analysis. The public should also be presented with data or summaries of data regarding SDWA violations, water quality sample results, water reliability studies, asset deterioration data, and more.

In communities where English is not the primary language, federal funding should be allocated for translation services. All written materials should be translated into the primary languages of the community (for example, Detroit translates materials into Arabic, Spanish and Bengali). Residents should be allowed to submit comments and concerns in their native language and receive a response in that language.

This rule should better reflect the guiding principle that the public be engaged because most systems are public utilities which have been supported by rate payers and taxpayers. Given public ownership, the EPA should evaluate all requirements of this proposed rule based on a common mission of ensuring high-quality affordable drinking water to the public. Without this, there is increased risk that public water utilities give way to private water companies.