



March 21, 2024

Environmental Financial Advisory Board  
Water Affordability Work Group  
Via email: [efab@epa.gov](mailto:efab@epa.gov)

**Re: Water Affordability Charge**

Dear Members of the EFAB Water Affordability Work Group:

On behalf of Natural Resources Defense Council (NRDC) and our over 3 million members and online activists nationwide, please accept these comments and recommendations concerning the “Water Affordability Charge” that EFAB accepted in October 2023.<sup>1</sup>

As you know, across the country, many people struggle to afford their water and sewer bills. As a result, families face service shutoffs, punitive fees, liens on their homes, foreclosure and home loss, and threats to their health and the health of their communities. These impacts are not evenly distributed; lower-income communities and communities of color are especially hard hit. However, unaffordable water bills can affect people everywhere, in communities large and small, rural and urban.<sup>2</sup>

Meanwhile, water rates continue to rise to support necessary investments in outdated drinking water and wastewater infrastructure. Utilities increasingly recognize that, to generate the revenue they need to serve their communities, they must find ways to ensure that bills are affordable for those least able to pay. For example, municipalities are often reluctant to raise rates because of concerns about costs to low-income customers; effective affordability programs can enable utilities to increase rates overall to generate needed revenue, while protecting people who can’t afford higher water bills.

EFAB’s water affordability charge comes at an opportune time, when EPA is increasing its focus on solutions to water affordability challenges. For example, EPA’s 2023 update to its “Clean Water Act Financial Capability Assessment Guidance” includes—for the first time—an emphasis not only on affordability challenges associated with a utility’s capital improvement needs, but on

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<sup>1</sup> <https://www.epa.gov/system/files/documents/2023-11/efab-water-affordability-charge.pdf>

<sup>2</sup> See NRDC and National Consumer Law Center, *Water Affordability Advocacy Toolkit* (June 2022), <https://www.nrdc.org/resources/water-affordability-advocacy-toolkit>; L. Levine, “Making Our Water Safe and Affordable,” 5/30/2023, <https://www.nrdc.org/bio/larry-levine/making-our-water-safe-and-affordable>.

solutions utilities can implement to address those challenges.<sup>3</sup> The guidance pushes utilities to pursue “strategies for lowering costs and reducing impacts on low-income households”<sup>4</sup> using tools that “ensure that a financial strategy is in place to support needed infrastructure upgrades without overburdening their most vulnerable ratepayers.”<sup>5</sup> It identifies “strategies for communities to support affordable utility rates while planning investments in water infrastructure that are essential to protecting clean water. . . . Tools such as variable rate structures, consumer assistance programs, and grants or subsidies from the. . . State Revolving Fund are some of the tools outlined in the guidance.”<sup>6</sup> In releasing the guidance, EPA emphasized its commitment to work closely with state and utilities to deploy these strategies.

EPA is also working on a low-income water assistance “needs assessment” study, required by the Bipartisan Infrastructure Law, which must include “recommendations of the Administrator regarding the best methods to reduce the prevalence of a lack of affordable access to water services.”<sup>7</sup>

We welcome EPA’s focus on ensuring *affordable* access to essential water and sanitation services, without sacrificing *safe water* and a *healthy environment*. EFAB can make an important contribution to that effort.

**We offer below some initial comments on four topics:** outreach that EFAB should undertake to key stakeholders that are not well-represented among EFAB membership; a framework that EFAB can use to contextualize its water affordability recommendations; distinguishing “affordability” and “assistance”; and specific recommendations on each element of EFAB’s charge.

## **I. Outreach to Additional Stakeholders and EPA’s National Environmental Justice Advisory Committee**

EFAB’s membership is comprised almost entirely of representatives of from the municipal, utility, and finance sectors, as well as others who provide professional consulting services to those sectors. Many other stakeholders, however, have important perspectives and expertise on the issues addressed in the charge—including many who are directly impacted by water affordability challenges and/or are engaged in developing and advocating for solutions.

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<sup>3</sup> EPA, Clean Water Act Financial Capability Assessment Guidance, February 2023, <https://www.epa.gov/system/files/documents/2023-01/cwa-financial-capability-assessment-guidance.pdf>.

<sup>4</sup> EPA, FAQ: Financial Capability Assessment Guidance Questions & Answers, Feb. 1, 2023, <https://www.epa.gov/system/files/documents/2023-02/cwa-fca-questions-and-answers.pdf>.

<sup>5</sup> EPA, EPA Announces Financial Capability Guidance to Support Communities and Ensure Clean, Affordable Water, Feb. 1, 2023, <https://www.epa.gov/newsreleases/epa-announces-financial-capability-guidance-support-communities-and-ensure-clean>.

<sup>6</sup> EPA, Fact Sheet: Clean Water Act Financial Capability Assessment Guidance, February 2023, <https://www.epa.gov/system/files/documents/2023-02/cwa-fca-fact-sheet.pdf>.

<sup>7</sup> Public Law No. 117-58, section 50108(b)(2)(I).

We encourage EFAB to actively seek input from advocates, including community-based organizations, who are engaged in water affordability issues. EPA is currently engaging in stakeholder outreach for its low-income water assistance “needs assessment” study. The participants in that stakeholder engagement can provide one starting point for EFAB outreach.

We also strongly urge EFAB to reach out to EPA’s National Environmental Justice Advisory Committee (NEJAC) for input on this study. Unlike EFAB, NEJAC includes members representing people who are directly affected by unaffordable water bills. It also includes representation from multiple organizations who advocate for policies to address affordability, in contrast to the membership of EFAB.

NEJAC has a track record working on water issues, including water affordability. It currently has a water infrastructure work group,<sup>8</sup> which issued recommendations last year on water technical assistance.<sup>9</sup> Moreover, NEJAC has previously issued a report on “EPA’s Role in Addressing the Urgent Water Infrastructure Needs of Environmental Justice Communities,” which included water affordability recommendations that are especially relevant to parts 2, 3, and 5 of the EFAB charge.<sup>10</sup> EPA’s only official response to that report and its recommendations, under a previous Administrator, was to acknowledge receipt.<sup>11</sup> The current EFAB study presents a good opportunity to re-engage NEJAC on these issues.

## **II. Framework for Contextualizing EFAB’s Water Affordability Recommendations**

We encourage EFAB to acknowledge the many facets of water affordability and to situate its findings and recommendations within that larger context. EFAB’s report should recognize explicitly that, pursuant to the charge, it seeks to address only certain aspects of affordability.

Specifically, we believe it would be helpful for EFAB to use the following 5-part framework to describe a more holistic policy approach that is needed to address water affordability. Within this framework, EFAB’s charge questions fall within items #1 and 2.

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<sup>8</sup> <https://www.epa.gov/system/files/documents/2023-03/Current%20NEJAC%20Workgroups%20%203-6-2023.pdf>

<sup>9</sup> “The NEJAC’s Water Infrastructure Workgroup Recommendations to the United States Environmental Protection Agency on Water Technical Assistance,” Aug. 2023, [https://www.epa.gov/system/files/documents/2023-10/nejac-water-infrastructure-ta-letter-of-recommendations\\_august-2023.pdf](https://www.epa.gov/system/files/documents/2023-10/nejac-water-infrastructure-ta-letter-of-recommendations_august-2023.pdf)

<sup>10</sup> NEJAC, “EPA’s Role in Addressing the Urgent Water Infrastructure Needs of Environmental Justice Communities,” August 2018, pp. 26-28, <https://www.epa.gov/environmentaljustice/epas-role-addressing-urgent-water-infrastructure-needs-environmental-justice>. Relevant recommendations included that EPA should promote and encourage utilities to adopt “residential rates based on low incomes,” “customer assistance programs,” “emergency assistance,” “equitable rate structures that raise revenue with greater equity among users... which allow communities to generate revenues needed for water infrastructure investment without unduly burdening low-income households,” and “for customers experiencing consistent water-sewage unaffordability... low income-based affordability programs [which] support the stability of water systems.” The report also recommended that EPA should encourage utilities to “address long-term water and wastewater infrastructure costs to residential users.” Id.

<sup>11</sup> [https://www.epa.gov/sites/default/files/2019-05/documents/signed\\_letter\\_-\\_op-19-000-3222.pdf](https://www.epa.gov/sites/default/files/2019-05/documents/signed_letter_-_op-19-000-3222.pdf)

We note that much of this framework, especially items #2 through 4, is adapted from a water affordability policy toolkit published by NRDC and National Consumer Law Center (NCLC).<sup>12</sup>

1. ***Reducing the costs that must be recovered from ratepayers.*** The first step in rate setting is to determine the system’s revenue need, which must be recovered from ratepayers and/or other sources. Therefore, a utility can reduce the costs imposed on all ratepayers—including low-income households—by reducing the revenue needed to achieve safe water and clean water goals *and* the share of that revenue that must be obtained from ratepayers. This includes a range of approaches summarized below. (We cannot emphasize enough that weakening, or avoiding adoption or enforcement of, standards necessary to protect public health and the environment is not an acceptable way to reduce a utility’s costs.)
  - a. Reducing operations, maintenance, and capital costs. This includes, but is not limited to:
    - i. Adopting lower-cost solutions to capital improvement needs, such as distributed infrastructure solutions. (This is the main focus of question #1 in EFAB’s charge.)
    - ii. Improving efficiency of operations, such as by reducing leakage of water from distribution pipes. (This also overlaps with question #1 in EFAB’s charge.)
    - iii. Improving asset management programs, which can reduce life cycle costs by prioritizing repair or replacement of critical infrastructure before it breaks down and requires even more expensive interventions.
    - iv. Creating regional partnerships among utilities that may reduce the cost of delivering service, including, in appropriate cases and with robust community engagement and buy-in, consolidation of small water systems.<sup>13</sup>
  - b. Maximizing non-ratepayer sources of funding, especially federal and state funding. This includes, but is not limited to:
    - i. Increasing federal and state water infrastructure funding, including grants and subsidized loans—but especially in the form of grants for disadvantaged communities.
    - ii. Improving access to federal and state funding, with priority for disadvantaged communities.
    - iii. Providing federal and state funding for low-income affordability and/or assistance programs, which flows through to utilities on behalf of participating low-income customers.

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<sup>12</sup> NRDC and National Consumer Law Center, *Water Affordability Advocacy Toolkit*, June 2022 (hereinafter “*Toolkit*”), <https://www.nrdc.org/resources/water-affordability-advocacy-toolkit>,

<sup>13</sup> Consolidation raises many complex concerns around governance, oversight, transparency, public engagement in decision-making, and other issues, and it is not the right solution in every case. In some cases, consolidation can even undermine affordability. See L. Levine, “Why Do Water Bills Vary So Widely,” 1/2/2024, <https://www.nrdc.org/bio/larry-levine/why-water-bills-vary-wildly>.

2. ***Ensuring equitable allocation of the costs that utilities recover from ratepayers.*** (This is the focus of items #2 through 4 in EFAB’s charge.) This includes, but is not limited to:
  - a. Ensuring that rates and charges recover only costs of operating, maintaining, and improving the system.<sup>14</sup>
  - b. Ensuring that cost allocations do not place an unfair burden on the residential customer class, relative other customer classes.<sup>15</sup>
  - c. Replacing regressive rate structures with more equitable rate structures.<sup>16</sup>
  - d. Adopting programs specifically for low-income households to ensure that their bills are affordable, including through discounted rates and water efficiency assistance.<sup>17</sup>
  
3. ***Preserving access to water when customers are unable to afford their bill.*** This includes:
  - a. Preventing shutoffs, lien sales, and foreclosures.<sup>18</sup>
  - b. Enabling customers to eliminate water debt.<sup>19</sup>
  
4. ***Improving transparency and accountability of water systems to people they serve.*** This includes:
  - a. Ensuring utilities publicly report data that are needed to quantify affordability challenges, identify impacted populations, and evaluate the effectiveness of existing or new programs to address affordability challenges.<sup>20</sup>
  - b. Improving governance and oversight of utilities, including opportunities for meaningful public input in decisions that affect affordability.<sup>21</sup>
  
5. ***Ensuring nondiscriminatory provision of water services and equitable allocation of financial assistance to utilities.*** A holistic approach to affordability must recognize, and remedy, historic inequities in access to safe water and infrastructure investment that have exacerbated affordability challenges in communities of color.<sup>22</sup>

### **III. Distinguishing “Affordability” and “Assistance”**

We also urge EFAB to be careful in its report not to conflate the terms “assistance” and “affordability.” For example, the terms “affordability program” and “assistance program” (or

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<sup>14</sup> See *Toolkit*, chapter on “Equitable Water Rates.”

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Toolkit*, chapters on “Affordability and Assistance Programs” and “Water Efficiency and Plumbing Repair Assistance.”

<sup>18</sup> See *Toolkit*, chapters on “Water Shutoffs and “Water Liens.”

<sup>19</sup> See *Toolkit*, chapter on “Water Debt.”

<sup>20</sup> See *Toolkit*, chapter on “Data Collection and Transparency.”

<sup>21</sup> See *Toolkit*, chapter on “Accountability and Participation in Decision Making.”

<sup>22</sup> See, e.g., C. Montag, *Water/Color: A Study of Race & the Water Affordability Crisis in America’s Cities*, Thurgood Marshall Institute at the NAACP Legal Defense Fund, April 2019, [https://www.naacpldf.org/wp-content/uploads/Water\\_Report\\_FULL\\_5\\_31\\_19\\_FINAL\\_OPT.pdf](https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf).

“customer assistance program”) are often used interchangeably. In reality, however, if one takes seriously the concept of affordability, they mean quite different things. An affordable water bill is one that a household can regularly and successfully pay on time without compromising its ability to meet other essential needs. In keeping with that definition, a true “affordability program” is one that ensures each participating household’s water bill will not exceed a level deemed to be affordable (often defined as a percentage of household income). Such affordability programs are sometimes known as percentage-of-income payment plans, or PIPPs. Philadelphia and Baltimore are currently the only cities with PIPPs for water; more PIPPs exist in the energy sector.<sup>23</sup>

By contrast, traditional “assistance programs” include a range of approaches, none of which is designed to achieve an affordable bill for each participating household. These include programs that offer low-income customers a flat dollar-amount discount or a flat percentage discount on all or part of the water bill. The size of the benefit is determined without regard to how large the individual household’s remaining bill will be, and without regard to whether the household can afford that amount based on its income. In practice, these water assistance programs tend to offer far less support than would be necessary to make bills affordable for many, and perhaps most, participating households.<sup>24</sup> EFAB should take care not to refer to such programs as “affordability programs.”

#### **IV. Recommendations Concerning Specific Elements of the Charge**

Below we offer initial recommendations concerning specific elements of EFAB’s water affordability charge.

- 1. “CAPITAL PROJECTS: The agency asks EFAB to conduct a high-level exploration of types of capital projects that could address local water service needs that are innately less burdensome on local ratepayers. For example, large-scale water use efficiency measures as an alternative to a more expensive new pipeline. This objective will not involve a comprehensive study of such alternatives, but will address how consideration of infrastructure investment choices can be broadened to include unconventional options that are more affordable for the whole community while still solving for the water infrastructure challenges (e.g., water supply, treatment, stormwater capture, etc.). The deliverable would ideally include a survey of the types of capital projects that have already been shown to have substantial promise as alternatives and supplements to conventional water systems, such as green stormwater infrastructure and technologies aimed at reducing system leaks.”***

This element of the charge focuses on infrastructure solutions that reduce costs of service, including water efficiency improvements and green infrastructure. Both of these approaches reduce the need for investment in more traditional “gray” infrastructure. Moreover, they can reduce both upfront capital costs and life-cycle costs.

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<sup>23</sup> See *Toolkit*, p. 70.

<sup>24</sup> *Id.*

For example, investments in water efficiency—on both the customer side (including residential and non-residential uses, indoor and outdoor uses) and the utility side (such as reducing water loss from distribution systems)—reduce the need for new water supply sources and expanded wastewater treatment capacity. Green stormwater infrastructure reduces the need to increase the capacity of stormwater collection and treatment infrastructure. These solutions can also provide important “co-benefits” beyond the water system, such as the multiple environmental and health benefits of green stormwater infrastructure that creates new urban green space.

We encourage EFAB to highlight capital planning methods that can help utilities identify these solutions, which are often overlooked or de-prioritized, by default, in traditional approaches to capital planning.

Likewise, EFAB can apply its expertise to highlight funding and financing methods that can enable implementation of these solutions, which often take the form of “distributed infrastructure” rather than the large capital projects that the municipal bond market has traditionally funded. EFAB can play an important role by helping to correct misconceptions that certain financing methods are inapplicable to distributed infrastructure. For example, it can highlight progress that has been made to eliminate perceived legal or accounting barriers to funding and financing these solutions as part of utilities’ capital program, as well as identifying any such barriers that remain and recommending steps to overcome them.

2. ***“CAP BARRIERS: EPA asks EFAB to identify and analyze common state and/or local legal barriers (and possibly other types), including perceived barriers, to adoption of CAPs and other affordability measures, and provide recommendations for EPA to address these. For example, few states explicitly preclude CAPs; instead, they establish broad restrictions on how ratepayer funds can be used, which can provide some room for flexibility. Having a more precise understanding of the 3-5 primary types of barriers will provide a foundation for EFAB’s recommendations to address affordability challenges.”***

Legal barriers to low-income discounts are more often perceived than real. EFAB should urge EPA to help correct these misconceptions. EPA could, for example, develop and disseminate educational resources and provide technical assistance to utilities that are concerned about legal barriers. We focus here on the opportunity for EFAB to highlight the “business case” for low-income discounts and explain how it can help overcome real or perceived legal barriers (and financial barriers).

Most states’ laws neither expressly authorize nor prohibit discounts for low-income customers. This was illustrated by a widely-cited 50-state survey by the UNC Environmental Finance



Center, which was funded by major water and wastewater utility associations.<sup>25</sup> The absence of express statutory language leaves ample room for water and wastewater systems to put forward their best interpretations that state law does allow for such discounts. The UNC report offers some recommendations in this regard,<sup>26</sup> as does the Water Affordability Advocacy Toolkit.<sup>27</sup>

One such legal argument rests on the “business case” for low-income discounts. Often, a utility’s legal concern is that lower rates or discounts for low-income households may be deemed unlawful “cross-subsidization” of one set of customers by another, unlawful “discrimination” against some customers in favor of others, or an unlawful “tax” on customers whose rates will marginally increase to pay for the program. Therefore, the UNC report suggests one way to bolster legal arguments in support of ratepayer-funded programs: “Rather than framing [a low-income discount] as a subsidized rate class, present it as an essential cost of running a utility that provides financial benefits to all customers.”<sup>28</sup>

A forthcoming academic article profiles how Atlanta used the business case argument to overcome potential legal barriers to providing low-income water discounts.<sup>29</sup>

A Water Research Foundation report on low-income affordability, which was jointly sponsored by EPA, also supports this approach. The report noted that “customer assistance programs have been shown to be capable of producing more total revenue for the dollars expended.”<sup>30</sup> Therefore, the authors wrote:

If a special rate has a purpose broader than simply to improve the affordability of bills to low-income customers, it is more likely that the rate will be [considered permissible under state law]. State regulatory commissions have approved low-income discount rates not solely as social policy, but rather as sound business alternatives to a cycle involving the billing of unaffordable rates, followed by entering into unaffordable payment plans, followed by payment plan breaches, followed by yet additional unaffordable payment plans.<sup>31</sup>

The American Water Works Association’s (AWWA) the industry-standard rate-setting manual also recognizes this “business case” for low-income discounts:

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<sup>25</sup> UNC Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs*, 2019, <https://efc.sog.unc.edu/resource/navigating-legal-pathways-rate-funded-customer-assistance-programs-guide-water-and/>.

<sup>26</sup> See *id.* at 16-18.

<sup>27</sup> *Toolkit* at 80-81. See also *id.* at 96 (suggesting that “a more progressive view of cost allocation” in rate-setting could justify spreading the costs of “universal service” widely across the entire customer base).

<sup>28</sup> UNC Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs*, p. 9.

<sup>29</sup> S. Murthy, *Disrupting Utility Law for Water Justice*, forthcoming in *Stanford Law Review*, Vol. 76 (2024), pp. 50-52, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4385404](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4385404).

<sup>30</sup> J. Cromwell, et al., *Best Practices in Customer Payment Assistance Programs*, Water Research Foundation, January 2010, p. 91, [https://aquadoc.typepad.com/files/water\\_affordability\\_4004.pdf](https://aquadoc.typepad.com/files/water_affordability_4004.pdf). See also *id.* at 87-91.

<sup>31</sup> *Id.* at 93.



When customers have trouble paying utility bills, the cost to the utility is manifested in increased arrearages, late payments, disconnection notices, and service terminations....Some of the specific advantages of adopting customer financial assistance programs include...reducing utility collection costs, arrearages, disconnects, and reconnects, which improves the utility’s bottom line....<sup>32</sup>

Likewise, the rate-setting manual of the leading wastewater utility association, the Water Environment Federation, explains:

If the rates and charges are not affordable for a portion of the customers, a utility may experience...increasing levels of accounts receivables, rising expenses for uncollectable accounts....[Low-income discounts]...will help ensure that...costs of bill collection and bad debts are minimized, and desired revenues can be collected to achieve other goals and objectives of the utility.<sup>33</sup>

Even bond rating agencies treat low-income discount programs as means to “improve revenue certainty and stability.”<sup>34</sup>

The business case concept has long been recognized in the water sector. But its lessons often are not applied when utilities consider whether—and how—to develop, fund, and provide legal justification for low-income discount programs.

To help fill this gap, NRDC recently developed a tool that allows utilities to quantify the business case for water affordability, by modeling the financial impacts on the utility of offering low-income discounts. NRDC commissioned this “Water Affordability Business Case Tool” from a technical expert in utility affordability, who has decades of experience planning, implementing, and evaluating low-income utility affordability programs for clients including water and energy utilities, state agencies, federal agencies, and non-profit organizations. We beta tested the Tool with several utilities before releasing it last year. It is available as a free download on NRDC’s website.<sup>35</sup> An accompanying blog also explains the purpose and function of the Tool.<sup>36</sup>

The Tool’s webpage also provides supporting materials, including a FAQ, user manual, and a memo with case studies from the energy and water utility sectors, based on historical collections

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<sup>32</sup> American Water Works Association (AWWA), *M-1 Manual: Principles of Water Rates, Fees and Charges*, Seventh Edition, 2017, pp. 217-18.

<sup>33</sup> Water Environment Federation, *Financing and Charges of Wastewater Systems, Manual of Practice No. 27*, 4<sup>th</sup> Ed. (2018), Chapter 12.

<sup>34</sup> E. Burke, S&P Global Ratings, “Rates and Affordability: A Ratings Agency Perspective,” 4/3/2020, <https://waterfm.com/rates-and-affordability-a-ratings-agency-perspective/>.

<sup>35</sup> <https://www.nrdc.org/resources/water-affordability-business-case-downloadable-tool>

<sup>36</sup> L. Levine, “A New Tool for Water Utilities: The Business Case for Water Affordability,” 6/20/2023, <https://www.nrdc.org/bio/larry-levine/new-tool-water-utilities-business-case-affordability>.

data, which illustrate the financial benefits to utilities of providing discounts to low-income utility customers. It also includes a recorded webinar featuring the technical expert who developed the Tool and a representative of a major water utility that is currently using it to support development of a low-income discount program.

We urge EFAB to clearly explain in its report the business case for low-income discounts, including the ways in which it can help utilities overcome perceived legal barriers. EFAB should also explain that the business case can help utilities overcome perceived financial barriers—i.e., it shows that a well-designed low-income discount program may be net-positive to the utility’s bottom line or, at a minimum, have a far lower net cost than a utility assumes. We also encourage EFAB to recommend the “Water Affordability Business Case Tool” as a resource that EPA should promote to utilities.

- 3. RATE STRUCTURE/DESIGN: EPA asks the Board to identify and analyze options for rate structure/design to help households who would be adversely affected by significant rate increases for water services, focusing on what can be accomplished within the bounds of existing legal requirements or restrictions (where those exist). Options might include, but would not be limited to, lifeline rates, income-based rate structures, senior assistance plans, host community rate structures, payment restructuring programs, and customer charge waivers. This analysis would be integrated with Element 2 above involving the legal limitations on consumer assistance programs.***

This element of the charge can be broken into three parts: rate structures that apply to all customers regardless of income; rates structures that incorporate discounts for low-income households; and management of water debt.

- a. Rate structures that apply to all customers regardless of income

There is tremendous opportunity to improve water affordability by adopting more equitable water rate structures that apply to all customers. Although these rate structures alone will not ensure that rates are affordable for all low-income households, they can ameliorate affordability challenges for many of those households, reducing the size of the problem that must be tackled with programs available specifically to low-income customers.

Most significantly, when a utility’s rate structure relies on high fixed charges, flat rates, or declining block rates, lower-income customers (who tend to be lower-use customers) often subsidize higher-income ones. A shift toward more equitable rate designs would tend to improve affordability for low-income households. This includes avoiding overreliance on fixed charges; using tiered, inclining block rates; adopting lifeline rates with a low charge for an initial amount of usage sufficient to meet each household’s essential needs; and establishing separate rates for wastewater and stormwater.<sup>37</sup> These rate designs often do not implicate the legal concerns that

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<sup>37</sup> *Toolkit*, pp. 97-99. See also Aspen Institute and Nicholas Institute for Environmental Policy Solutions, *Toward a National Water Affordability Strategy: Report from the Aspen-Nicholas Roundtable Series on Water Affordability*, Jan. 2022, pp. 40-41, <https://www.aspeninstitute.org/wp-content/uploads/2022/03/WATER-Report-TXT-6X9-2022->

are raised regarding low-income discounts, as they do not differentiate customers based on their income.

Unfortunately, a recent analysis found that water and sewer utility rate designs are trending in the opposite direction, towards more “regressive” rate structures that charge lower-volume users a higher per gallon rate, and emphasized that this will exacerbate affordability challenges for low-income customers:

American water and sewer utilities are balancing their budgets on the backs of their conservative [i.e., low-volume] and moderate-volume customers. This trend toward more regressive rates carries troubling implications for low-income customers, since ample evidence shows that progressive pricing improve[s] affordability.<sup>38</sup>

This finding underscores the need to better educate utilities about how equitable rate designs that apply across-the-board to all customers can help achieve more affordable bills for low-income households. EFAB’s recommendations should emphasize the need for EPA to enhance its educational offerings and technical assistance around equitable rate design.

Also broadly within the topic of rate structures that apply to all customers, we encourage EFAB to address rate-setting practices that unnecessarily drive up bills for all residential customers by artificially inflating the utility’s revenue requirement or inappropriately allocating costs to the residential customer class.<sup>39</sup> Regarding the revenue requirement, far too often, publicly owned utilities divert rate revenue to non-utility local government purposes, driving up rates for all customers beyond the actual cost of providing water and sewer service.<sup>40</sup> Regarding cost allocation, utilities sometimes make decisions that place unfair burdens on residential customers relative to other customer classes. This may include providing certain non-residential users with exemptions from paying for water (e.g., local government buildings) or steeply discounted rates (e.g., universities); in a regional system, it may also include use of outdated formulas for allocating costs between retail and wholesale customers, or among wholesale customers.<sup>41</sup> EFAB should recommend that EPA take strong action to discourage these practices.

b. Rate structures that incorporate discounts for low-income households

Among the rate structure options listed in part 3 of the charge, we encourage EFAB also to emphasize the value of “income-based rate structures.” We assume this is meant to refer to the sorts of percentage-of-income rates that have been adopted in Philadelphia and Baltimore, which are in wider use in the energy utility sector. The NRDC/NCLC *Toolkit* includes extensive

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[Final2.pdf](#); L. Levine, “Why Do Water Bills Vary So Widely.” Importantly, when designing lifeline rates, utilities must take into account low-income households that may need higher-than-average amounts of water to meet basic needs. See *Toolkit* pp. 98-99.

<sup>38</sup> M. Teodoro, “Pricing Predicament,” 3/12/2024, <https://mannyteodoro.com/?p=4605>.

<sup>39</sup> Technically, in the rate-setting process, determining the revenue requirement and cost allocation among customer classes is not part of the decision concerning “rate structure.” However, we urge EFAB to interpret its charge broadly enough to encompass these critical, closely-related issues.

<sup>40</sup> See *Toolkit*, p. 95.

<sup>41</sup> *Id.* at 96-97.

discussion of this approach.<sup>42</sup> As noted above, these rate structures can be considered true “affordability” programs, as they calibrate the level of discount to ensure the resulting bill is affordable given the participating household’s income.

Also broadly within the category of programs that reduce bills for low-income customers—although not actually a “rate structure”—we urge EFAB to consider programs that provide water efficiency and plumbing repair assistance specifically for low-income households. This does not provide any direct discount on a water bill, but it enables low-income households to achieve lasting reductions in bills—just like long-standing, low-income energy efficiency retrofit programs do for energy bills. This approach is underutilized in the water sector. Notably, it can complement equitable rate structures such as lifeline rates (discussed above), by helping low-income customers keep their usage within the first, lowest-cost pricing tier.<sup>43</sup>

### c. Management of water debt

We assume the reference in the charge to “payment restructuring plans” relates to repayment of a customer’s water debt, or arrears. In regard to debt, we encourage EFAB to promote the use of “arrears management plans” (AMPs) for low-income customers, in which debt is forgiven incrementally as a customer makes timely payments of future bills.<sup>44</sup>

AMPs are a much more effective approach than typical “deferred payment agreements,” in which customers already struggling to pay their bills are expected (unrealistically) to pay an *additional* amount on top of their regular bills to resolve their debt via an extended repayment plan. In practice, the latter often contributes to an ongoing spiral of debt as the customer falls behind on repayments. In contrast, data from arrears management plans in the energy utility context show that they benefit not only individual customers, but also other ratepayers and the utilities, because customers in the plan made higher payments than they otherwise would have.<sup>45</sup>

#### ***4. SRF SUBSIDIES: EPA asks EFAB to research the possible flow of SRF funds, through rate structures or other mechanisms, for additional subsidization to ratepayers that would experience a financial hardship because of an increase in rates necessary to fund capital infrastructure projects.***

We assume this is a reference to the Clean Water Act provision that allows communities that are not “disadvantaged communities” (as defined by a state), but which are receiving CWSRF assistance for a project, to receive additional subsidization to be used specifically to help individual low-income customers who “will experience a significant hardship from the increase

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<sup>42</sup> *Toolkit*, pp. 72-74, 85-87.

<sup>43</sup> *Toolkit*, chapter on “Water Efficiency and Plumbing Repair Assistance.”

<sup>44</sup> *Toolkit*, pp. 43-44.

<sup>45</sup> *Id.*, pp. 44-45.

in rates necessary” to finance the project.<sup>46</sup> We have come across only one state that appears to have made limited use of this provision.<sup>47</sup>

We believe the provision has potential to support innovation by local utilities, if state SRF programs would actually offer this opportunity and promote it to applicants. It can provide a method of using federal funds, at least to some degree, to support local-level low-income assistance or affordability programs. We emphasize, however, that this use of CWSRF funds should not be considered a substitute for creating and funding a nationwide, federal low-income water assistance program, which Congress can and should do.

We encourage EFAB to work with EPA to determine which states may have used the existing CWSRF authority and to examine the successes or challenges of these efforts. EFAB may also wish to ask EPA and the Council of Infrastructure Finance Agencies (CIFA) to reach out to state CWSRF administrators to ask why they have not used this authority and what sorts of technical assistance from EPA would help make it a practical option for them to implement.

EPA should strongly encourage any states seeking to use this CWSRF authority to:

- prioritize support for communities that provide a matching contribution from their own funds, to the extent allowed by state law;
- allow use of funds to reduce low-income customers’ bills through bill discounts and/or through “direct install” water efficiency retrofit programs;<sup>48</sup>
- ensure that communities seeking these funds:
  - demonstrate that they will provide support to participating customers at a level that will make a meaningful difference to the affordability of their bills, taking into account both the customers’ income and the size of their water bills;
  - create an effective implementation plan;
  - include meaningful community engagement in the program; and
  - track and report on program implementation and on results of the program (such as improved collections rates from participants, reduced disconnections for non-payment, etc.).

**5. *EPA SUPPORT: EPA asks EFAB to provide recommendations on ways that EPA could support legal arguments and develop supportive policy for providing customer assistance and provide leadership in guiding program implementation. These***

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<sup>46</sup> 33 U.S.C. § 1383(i)(1)(A)(ii).

<sup>47</sup> Delaware Department of Natural Resources and Environmental Control, “DNREC Environmental Finance, DPH Office of Drinking Water, Water Infrastructure Advisory Council Announce Additional Subsidization Assistance Program for Low-Income Subgroups,” press release, June 15, 2016, <https://news.delaware.gov/2016/06/15/dnrec-dph-announce-additional-subsidization-assistance-program>. These grants were also available in connection with the Drinking Water State Revolving Fund program.

<sup>48</sup> As explained in the *Water Affordability Advocacy Toolkit*, low-income households are often in the most need of help with replacing outdated plumbing fixtures and repairing leaks, which can significantly reduce their bills. But they are also the least likely to receive it. See *Toolkit* at 103-107.

*recommendations would recognize that EPA's role is not directive but limited to providing resources and guidance that could be useful to states in navigating affordability issues.*

In our discussion of specific elements of the charge, above, we offered multiple recommendations concerning actions that EPA should take. We encourage EFAB to incorporate these into its recommendations.

In addition, we strongly encourage EFAB to recommend that EPA:

- Use existing water infrastructure funding programs to incentivize water affordability best practices by utilities receiving federal financial assistance.
- Fully integrate water affordability solutions into its existing technical assistance programs, including enhanced technical assistance concerning equitable rate design and the development and implementation of low-income affordability and assistance programs.
- Use SDWA programs and authorities related to “capacity development” and “technical, managerial, and financial capacity” (TMF) to drive water systems to reexamine whether their rate designs are equitable and ensure universal, affordable access to essential water services.
- Provide support to states and utilities to complete a “Financial Alternatives Analysis,” as described in EPA’s 2023 Financial Capability Assessment Guidance, when a utility is concerned that capital investments necessary to achieve Clean Water Act goals may create or exacerbate affordability challenges for low-income households. This analysis includes examination of options to fund and finance investments while maintaining affordable bills for low-income households.

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We look forward to additional opportunities to provide recommendations as EFAB continues its work on this important study.

Sincerely,



Lawrence Levine  
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