



Proposed Water System Restructuring Assessment Rule (WSRAR)

Webinar Overview

Background on the WSRAR

- Why EPA is Proposing the Rule
- Overview of the Proposed Rule
- Long-Term Goal
- Defining “Restructuring”
- Key Messages

Guiding Principles of Restructuring

Regulatory Components and Key Topics for Public Comment

Final Rule Schedule and Information

Questions and Answers

Why EPA is Proposing the WSRAR

The *SDWA requires this rulemaking* and provides states with a new **authority** to mandate assessments of restructuring options for water systems.

States may mandate assessments of a water system when:

- The water system struggles to provide safe drinking water.
- The water system cannot (or will not) take feasible, affordable actions to comply, or it has failed to successfully restructure on its own.
- The state finds that restructuring is feasible.
- The state finds that restructuring is likely to resolve the water system's compliance challenges.

Overview of the Proposed WSRAR

All states must submit ***primacy revisions*** for a new mandatory restructuring assessment program.

Each ***assessment must meet implementation and schedule requirements***.

- Assessments must identify operational, managerial or infrastructure changes to build long-term capacity.
- Assessments must be system-specific - “tailored” based on each water system’s characteristics.
- Many restructuring alternatives are possible, including consolidation or ownership transfer.

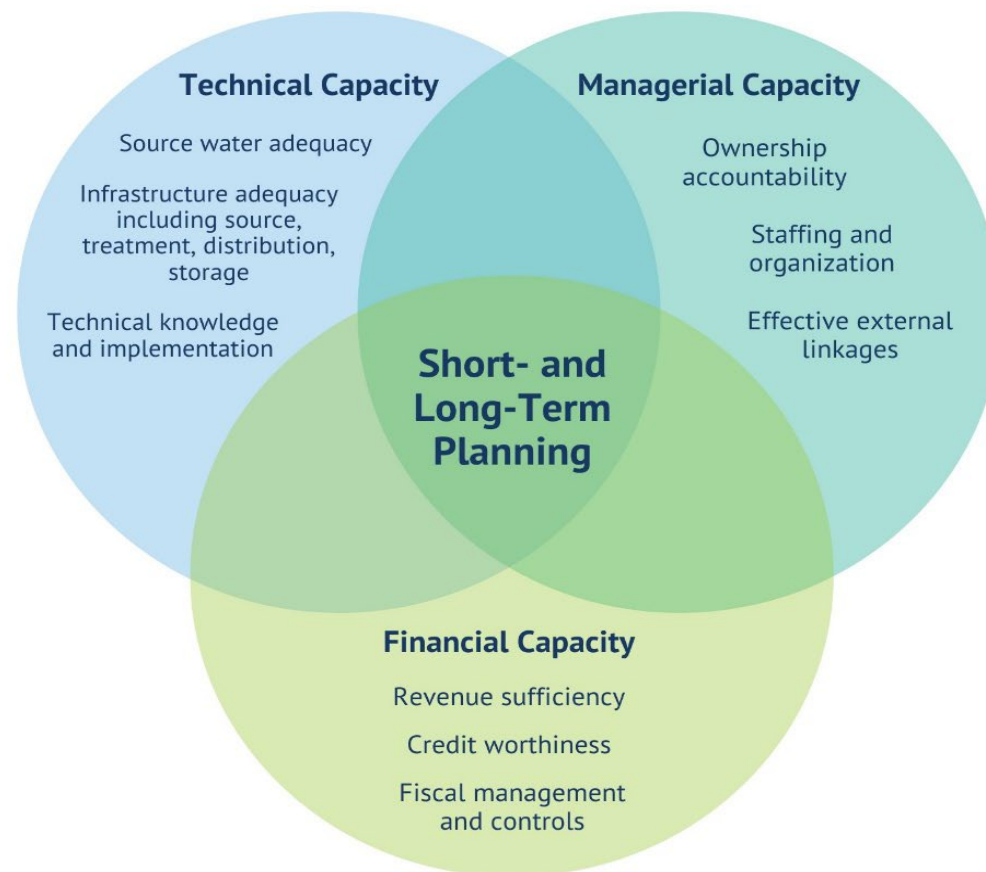
Establishes ***eligibility criteria*** and ***schedule requirements for restructuring plan incentives***.

- Enforcement relief for struggling water systems.
- Liability protection for compliant water systems that partner with assessed water systems.

Expected Benefits: EPA expects that, when fully implemented, the rule will:

- ***Increase chances that the assessed water systems will sustainably restructure*** to provide safe, affordable drinking water.
- ***Reduce state administrative costs*** of enforcement against persistently noncompliant water systems.

Long-Term Goal is Technical, Managerial and Financial Capacity to Sustainably Provide Safe, Affordable Drinking Water



What is Restructuring?

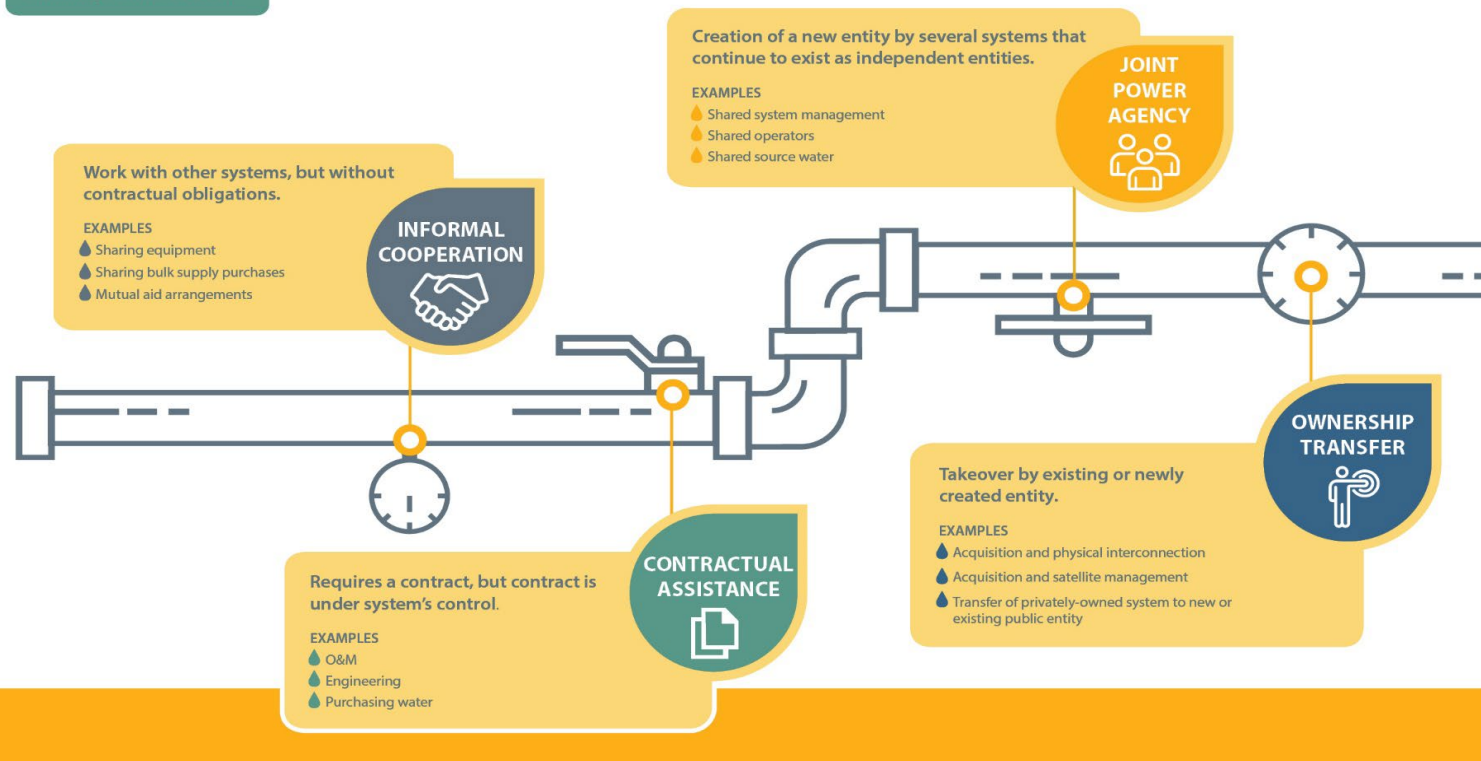
- Restructuring is a change in the management, ownership, operations, or physical infrastructure of a water system that is intended to improve the water system's capacity to provide safe drinking water.
- The proposed rule allows a wide range of restructuring options, including sharing of operators or equipment, debt restructuring, new treatment technology, interconnection with another water system, changes in ownership or the merger of two or more separate water systems into a new, combined water system.

What is Restructuring?



Water system partnerships encompass a range of opportunities for systems to work together in order to sustainably provide drinking water services.

Increasing Transfer of Responsibility



Source: Water System Partnerships: State Programs and Policies Supporting Cooperative Approaches for Drinking Water Systems (EPA 2017)

Key Messages

Community engagement is required for assessments and plans.

- States must hold public meetings and make reports and plans publicly available.

Assessments of restructuring options must be “tailored” to water systems and the communities they serve.

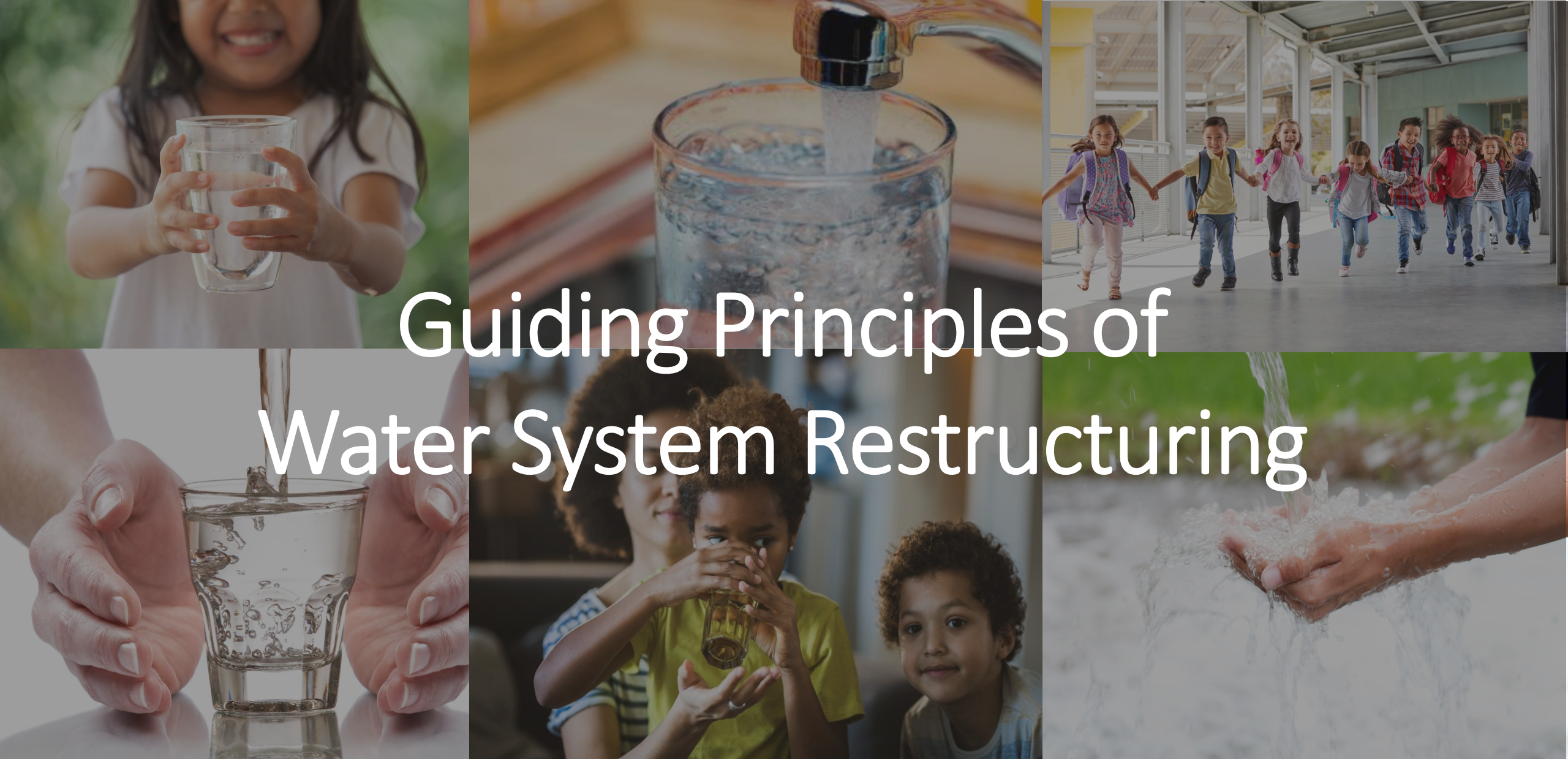
- Physical, technical and socio-economic factors are important.

Water system restructuring is voluntary.

- States and EPA may not mandate restructuring.

States have flexibility when using their new assessment authority.

- States may choose not to mandate - even for struggling water systems.



Guiding Principles of Water System Restructuring

Evaluate Alternatives Based on Community Needs

Focus on community needs:

- Planning should focus directly on the status and needs of the community served.
- Develop locally driven approaches.
- Focus is consistent with EPA's Water Technical Assistance (WaterTA) initiative.

Feasible alternatives for water systems should be identified based on a wide range of factors, including:

- Socio-economic conditions of the community, such as underserved or disadvantaged status.
- Affordability of water rates.
- Community culture, needs and interests.

Engage Affected Communities Directly in Decision Making

States and water utilities should collaborate with community leaders when making restructuring decisions.

- Provide comprehensive information about governance and ownership types.
- States should work with trained facilitators and technical assistance providers to clearly communicate the costs and benefits of restructuring alternatives.
- Provide background information, access to state data, and mapping and planning tools.

Direct engagement is essential for restructuring that involves changes in water rates, rate structures, water system consolidation or transfer of ownership.

- Address community concerns about affordability.
- Explain complicated technical and financial terms and concepts in plain language.
- Build trust between the state, local government, water systems and communities.

Ensure Community Capacity to Make Affordable Investments in Safe Drinking Water

2021 Bipartisan Infrastructure Law (BIL) - \$16.7 billion in added DWSRF funds available the next two years.

- Nearly half (49 percent) designated for disadvantaged communities under SDWA section 1452(d).
- Identify restructuring alternatives; technical support for communities applying for funding; design and implement restructuring plans; build and maintain sustainable water systems.

EPA's Small, Underserved and Disadvantaged Community (SUDC) grant program.

- Treatment, distribution, and storage improvement; development of new sources; assistance to increase technical, managerial, and financial (TMF) capacity, physical interconnection, water system consolidation or purchase of a water system.

TCTAC (Thriving Communities Technical Assistance Centers) grant program.

- 17 Centers and \$177 million to help EJ communities access federal funds.
- Training and technical assistance to build capacity for navigating grant application process.
- Guidance on community engagement, meeting facilitation, and translation and interpretation services.

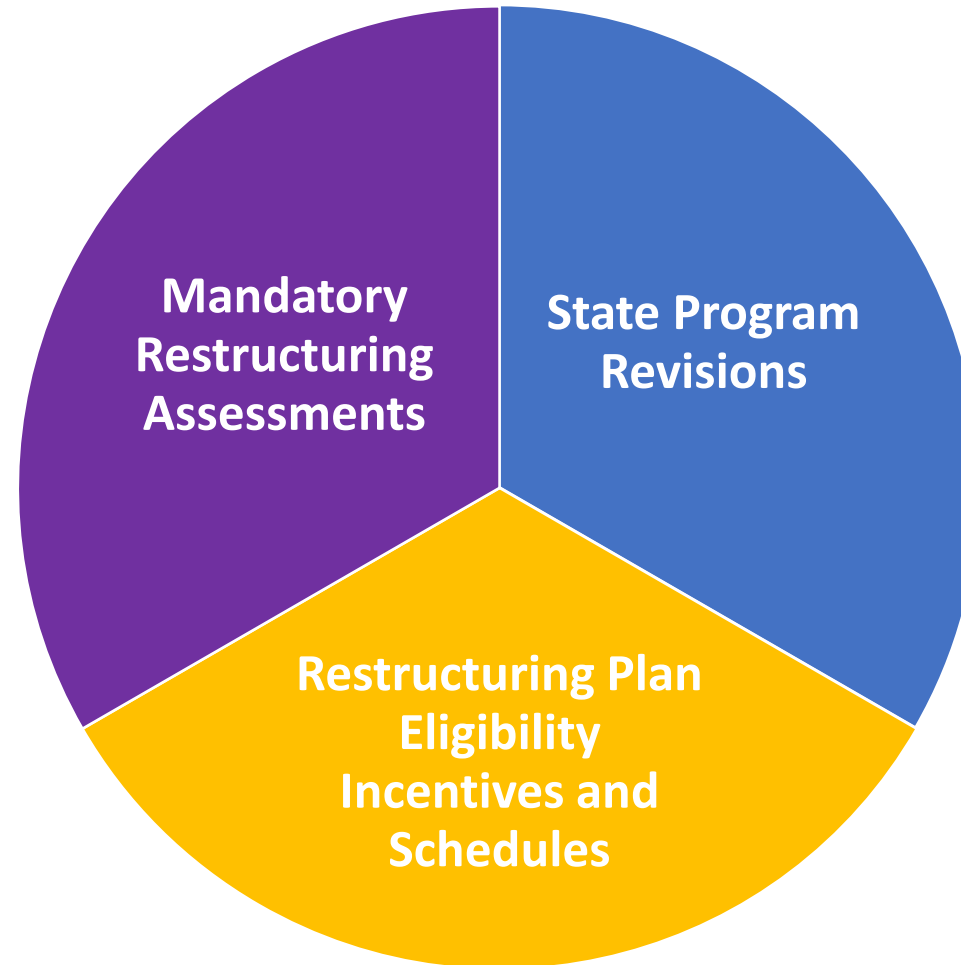
EPA funded Environmental Finance Centers (EFCs).

- Network of 29 EFCs across 10 EPA Regions to assist states, Tribes, communities and NGOs.
- Tools, training, and information to identify sustainable infrastructure solutions and help access federal funding.



Regulatory Components of the Proposed Rule

WSRAR: Three Regulatory Components

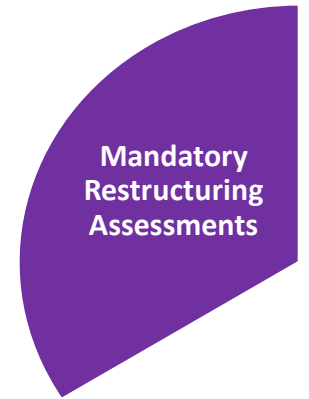


Mandatory Restructuring Assessment Requirements

- When a state may mandate an assessment.
- Which entities may perform an assessment.
- Assessment report content and “tailoring” requirements, including ensuring that any option will provide access to safe, affordable drinking water.
- Schedule requirements.
- Public engagement:
 - Public meetings for assessments that identify consolidation or ownership transfer.
 - Sharing electronic and paper copies of assessments with the community.
 - State consultation with assessed water systems about next steps.

Mandatory
Restructuring
Assessments

Mandatory Restructuring Assessment Steps



Step 1. State identifies the water system to be assessed and provides notice.

Step 2. State or other approved assessor performs mandatory assessment using tailoring criteria.

Step 3. Assessor completes mandatory assessment and prepares report that meets content requirements.

Step 4. State holds public meeting, consults with water system and provides the assessment report to public.

Mandatory State Program Revisions



State Program
Revisions

State programs must be able to:

- Identify water systems in need of assessments.
- Ensure assessments are tailored to water system characteristics.
- Approve eligible assessors.
- Ensure assessments meet schedule requirements.
- Determine plan eligibility for enforcement relief or liability protection.
- Meet reporting and recordkeeping requirements.

State requests for approval of program revisions are due *two years* after the final rule, with a *possible two-year extension*.

State Reporting Requirements

State Program
Revisions

States must annually report to EPA the number of water systems that were:

- Identified as assessment candidates based on SDWA criteria.
- Notified by the state as subjects of assessments.
- Determined to have completed mandatory assessments.
- In violation of assessment requirements.
- Eligible for enforcement relief or liability protection incentives.

State Recordkeeping Requirements

States must keep records of restructuring plans and assessment reports:

- From the ***date of state approval until 1 year*** after restructuring is complete:
 - Restructuring plans eligible for enforcement relief or liability protection.
 - Mandatory assessment reports associated with plans approved for liability protection.
- For ***5 years from the date of state approval***:
 - Mandatory assessment reports approved by the state.

Restructuring Plan Incentives and Eligibility

Rule includes three SDWA incentives to encourage voluntary water system restructuring:

- DWSRF funding is available for identified restructuring activities.
- Enforcement relief for up to 2 years.
- Liability protection for a compliant water system partnering with a struggling water system.

Four restructuring plan types are eligible* for enforcement relief or liability protection:

- Physical consolidation.
- Administrative/managerial consolidation.
- Transfer of ownership.
- Contracts for administrative or managerial functions of a water system to resolve violations identified in the plan.

* A water system may develop a plan for other types of restructuring, such as upgrades to treatment technologies or interconnection with another water system, but these plans are not eligible for enforcement relief or liability protection under SDWA.



Restructuring Plan
Eligibility
Incentives and
Schedules

Enforcement Relief



What is enforcement relief and how does it work?

- A water system that is responsible for the identified violations receives up to 2 years of enforcement relief.
- The relief period begins on the date the State approves the restructuring plan.
- During the relief period no enforcement action may be taken for the identified violations.
- Relief applies to specific violations identified in the plan but not to new violations that occur during restructuring.
- States may supplement 2-year federal relief through state-level enforcement orders.

Enforcement Relief

A water system seeking enforcement relief must submit a plan that:

- Calls for consolidation (physical/administrative), transfer of ownership or contracted water system management.
- Identifies each violation that would be resolved through restructuring.
- Describes how restructuring would address underlying causes of violations.
- Contains a schedule and measures of progress.
- Describes how restructuring would improve the water system's TMF capacity to comply with National Primary Drinking Water Regulations.
- Describes how restructuring would ensure that the community served achieves access to *safe* and *affordable* drinking water.

Restructuring Plan
Eligibility
Incentives and
Schedules

Liability Protection

What is liability protection?

- Liability protection is an incentive for a compliant water system to consolidate with or acquire an assessed water system.
- If the State approves a restructuring plan and determines that all restructuring is complete, the compliant system is not liable for assessed water system violations.
- The compliant water system must use acquired assets (to the maximum extent available) to compensate the state.
 - **Example:** \$100,000 in fines and penalties; \$75,000 paid with assessed water system assets, remaining \$25,000 waived.
Compliant partnering water system does not use its own funds or assets to pay penalties or fines.

Restructuring Plan
Eligibility
Incentives and
Schedules

Liability Protection



What are the eligibility requirements for liability protection?

- Requirements are the same as those for enforcement relief *plus*:
 - Plan must be based on an approved mandatory assessment (SDWA requirement).
 - Plan must identify assets and liabilities (or lack thereof) of the assessed system and provide the data and documentation used.

How would assets and liabilities be determined?

- *Assets* would be determined by the water system that prepares the restructuring plan.
- *Liabilities* are the value of the fines/penalties that state has assigned to the identified violations.

Restructuring Plan Incentives - Time Frames*

After a Restructuring Plan is Submitted to the State...

Enforcement Relief

- State Determines Plan is Eligible Type (**60 days**)
- State Approves Plan Eligible for Relief (within **12 months**)
- Up to 2 years of Enforcement Relief Begins on Approval Date, **Before Restructuring has Started.**
 - Relief only applies to violations identified in the approved plan.

Liability Protection

- State Determines Plan is Eligible Type (**60 days**)
- State Approves Plan Eligible for Protection (within **18 months**)
- Liability Protection Begins **After State Determines Restructuring is Complete**
 - Protection only applies to violations identified in the approved plan.

*Proposed time frames assume states could make multiple concurrent plan type and eligibility determinations.

Public Engagement Requirements for Restructuring Plans

Public Meeting

- State **must hold a public meeting as soon as practicable** after determining a plan is an eligible type.
- The meeting must satisfy **EPA notice, location and time** requirements to ensure opportunity for community participation.

Public Availability of Restructuring Plans

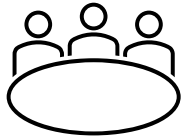
- *Within 30 days* of determining that a plan is eligible for either enforcement relief or liability protection, the state must:
 - Post the eligible plan on the state's website for the fastest possible access.
 - Make paper copies available for residents without internet services in one or more public libraries as near as possible to the local community.

Request for Public Comment – Key Topics



Tailoring criteria

- What other water system characteristics should EPA consider for tailoring mandatory assessments?



Expanded community engagement

- Should a Citizen's Advisory Committee (CAC) or existing advisory body directly participate in assessments? How should states and water systems engage the broader community?



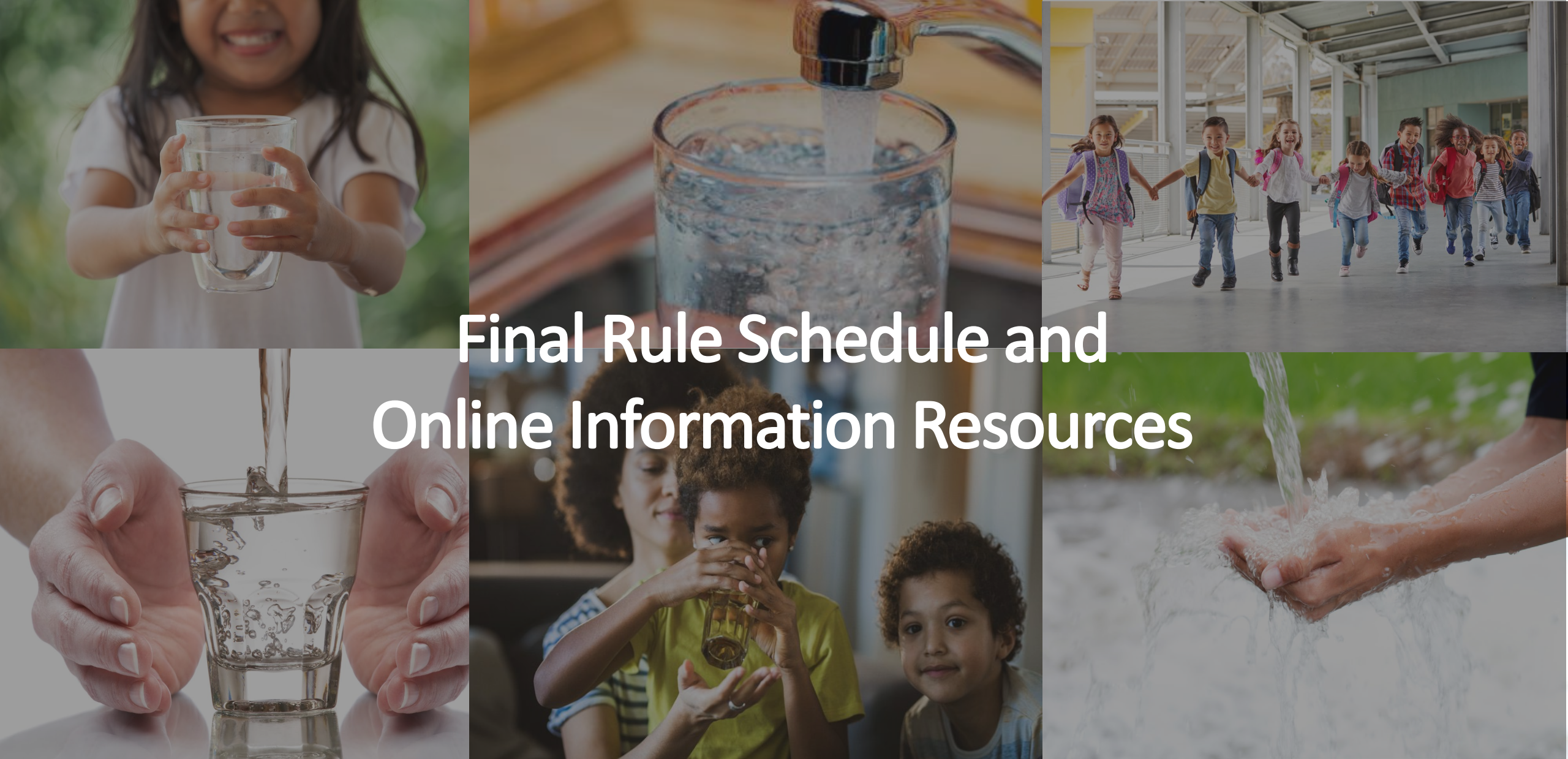
Liability protection

- What are best practices in identifying existing and potential liabilities and assets of struggling water systems?



Restructuring plans

- Are the time frames for states to determine eligibility for incentives adequate?
- Are the enforcement relief and liability protection requirements and limitations clear?



Final Rule Schedule and Online Information Resources

Remaining Milestones for Final Rule Publication

- EPA is accepting comments on the proposal through **July 29, 2024**.
- The public may review and comment on the proposed rule and supporting documents via the public docket at: www.regulations.gov under Docket ID: EPA-HQ-OW-2022-0678.
- For more information about submitting information on EPA dockets, go to: <https://www.epa.gov/dockets/commenting-epa-dockets>
- EPA intends to sign the final WSRAR **in 2024**.

Online Information Resources

- **Water System Restructuring Assessment Rule Informational Webinar**
 - Materials
 - Recording
- **Fact Sheet**
- **Frequently Asked Questions (FAQ)**
- **Registration for 2-hour Listening Sessions**
 - Week of July 15
 - Week of July 22

<https://www.epa.gov/dwcapacity/water-system-restructuring-assessment-rule>



Questions and Answers About the Proposed WSRAR