



**ASSOCIATION OF  
METROPOLITAN  
WATER AGENCIES**

**LEADERS IN WATER**

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March 22, 2021

The Honorable Frank Pallone  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Paul Tonko  
Chairman  
Subcommittee on Environment and  
Climate Change  
U.S. House of Representatives  
Washington, DC 20515

The Honorable David McKinley  
Ranking Member  
Subcommittee on Environment and  
Climate Change  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Pallone, Ranking Member McMorris Rodgers, Chairman Tonko, and Ranking Member McKinley:

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to submit comments for the record of today’s hearing entitled “LIFT America: Revitalizing our Nation’s Infrastructure and Economy.” As an organization representing the nation’s largest publicly owned drinking water systems, with a collective service population of more than 156 million Americans, we are pleased that the committee is turning its attention to reauthorizing a number of critical drinking water infrastructure assistance programs.

Three years ago, Congress succeeded in enacting the bipartisan America’s Water Infrastructure Act of 2018 (P.L. 115-270), commonly known as AWIA. This landmark legislation reauthorized the Drinking Water State Revolving Fund (DWSRF) and the Water Infrastructure Finance and Innovation Act (WIFIA) programs for the first time, while also creating a handful of new water infrastructure initiatives targeting priorities like drinking water resilience and emergency preparedness. However, the AWIA authorizations are beginning to expire, meaning that now is the time for Congress to recommit to these and other essential water infrastructure assistance programs.

Despite the progress represented by AWIA, and annual appropriations that have delivered funding to many of these authorized programs over the past several years, America’s water and wastewater infrastructure remains in need of additional attention. EPA’s most recent Drinking Water Infrastructure Needs Survey and Assessment found that the nation’s drinking water infrastructure requires more than \$472 billion worth of investments over two decades just to maintain current

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levels of service. The agency's corresponding needs estimate for wastewater infrastructure identified another \$271 billion in required spending, but even these estimates may be too modest. The needs surveys do not take into account costs associated with new regulations to address emerging drinking water contaminants, or dollars that drinking water and wastewater systems will be forced to spend to upgrade their infrastructure to withstand the effects of climate change and extreme weather. These challenges will only grow in the coming years, just as states and communities work to emerge from the economic fallout of the COVID-19 pandemic.

Earlier this month, we watched with interest the introduction of the LIFT America Act (H.R. 1848). As proposed, Title II of this legislation carries a number of important drinking water infrastructure program reauthorizations as well as several new funding initiatives. However, Title II also includes a number of provisions that require revision and clarification, and completely bypasses an opportunity to reauthorize and improve EPA's only program solely dedicated to helping community water systems adapt their infrastructure to withstand the effects of natural hazards associated with climate change and extreme weather.

As work on this legislation moves forward, AMWA hopes to offer assistance to produce the strongest water infrastructure proposal possible. To this end, we offer the following comments and suggestions on several sections of Title II of the legislation:

### **Sec. 20001: Drinking Water SRF Funding**

The Drinking Water SRF is EPA's foundational program for promoting public health protection through drinking water quality. Through capitalization grants from EPA, states leverage DWSRF funds to issue low-cost or subsidized loans for projects that protect or improve drinking water quality and therefore avoid or address serious public health risks. As of mid-2019, the DWSRF had provided more than \$41.1 billion to help communities nationwide carry out more than 15,000 projects to upgrade drinking water infrastructure, improve water supply sources, and modernize drinking water treatment. However, the three-year DWSRF reauthorization enacted in AWIA is set to expire at the conclusion of the 2021 fiscal year.

AMWA appreciates that the LIFT America Act would reauthorize the DWSRF for five years, through FY26, at a total of \$25.44 billion. This comes out to an average annual authorization of just above \$5 billion, a level that is more than four times the typical annual appropriation received by the DWSRF in recent years. Provided that all states are able to continue to meet their 20% match requirement, this figure could represent an aspirational funding target.

AMWA further recognizes that the legislation would make permanent the American Iron and Steel Products requirement for DWSRF projects that is currently scheduled to expire after the 2023 fiscal year. Given the apparent likelihood of Congress continuing to extend this requirement into the future, AMWA believes that making it permanent will give water systems greater certainty as to the regulatory mandates they will have to comply with when pursuing DWSRF funding in the coming years.

Section 20001 would also extend through 2026 EPA's Public Water System Supervision grants to states, as well as important programs to help schools and child care centers test their water for lead

and replace outdated drinking water fountains. AMWA supports reauthorizing each of these programs to ensure they remain on solid footing for the next several years.

### **Sec. 20002: Drinking Water System Resilience Funding**

AMWA supports this five-year, \$250 million reauthorization of EPA's Drinking Water Infrastructure Risk and Resilience Program under Sec. 1433(g) of SDWA. This program is intended to help community water systems address vulnerabilities identified in the system's emergency response plan, with eligible uses of funds that include obtaining equipment for detecting malevolent acts, installing perimeter security systems, tamper-proofing manhole covers and fire hydrants, improvements to computer systems and cybersecurity, and equipment necessary to support emergency water and power supplies. The program's authorization expires after the 2021 fiscal year, but it should be extended as community water systems are just beginning to complete their mandated emergency response plans that outline strategies to address identified risks. The committee should also consider expanding eligible uses of program funds to support water system participation in information-sharing networks that provide intelligence on cybersecurity threats and recommended response actions.

However, the committee must recognize that this Sec. 1433(g) Drinking Water Infrastructure Risk and Resilience Program is primarily focused on helping community water systems respond to the above-defined physical and cybersecurity threats. It was not designed to broadly assist community water systems that require aid to prepare for unique challenges posed by climate change and extreme weather. For those purposes, in 2018 Congress authorized the Drinking Water System Infrastructure Resilience and Sustainability Program within Sec. 1459A(l) of SDWA. The program promises to offer competitive grants to enhance water supply options and increase the resilience of community water systems to natural hazards such as floods, hurricanes, wildfires, or other hydrologic changes.

Congress has appropriated \$7 million for the Sec. 1459A(l) Drinking Water Infrastructure Risk and Resilience Program to date, and EPA plans to begin soliciting grant applications later this spring. But the scope of the program is limited because AWIA restricted eligibility to drinking water systems serving fewer than 10,000 people, or systems serving disadvantaged communities as defined by SDWA. This effectively excludes roughly 4,300 of the nation's community water systems, serving a collective population of 250 million Americans, from any chance at competing for a share of these resilience and sustainability funds.

In other words, the vast majority of the nation's communities with a population above 10,000 people are excluded from EPA's only program dedicated to helping drinking water systems prepare their infrastructure to withstand the effects of extreme weather and climate change. Communities as varied as New York, Morgantown, Chicago, Wilmington, Baltimore, and Detroit are ineligible to even apply for funds through this program. But we need only look to Jackson, Mississippi, or Austin, Dallas, and Houston, Texas, to understand how extreme weather events can impact large drinking water systems. In each of these communities, residents were left without clean drinking water or suffered extensive service interruptions due to frozen equipment, power outages, and water main breaks associated with the severe winter storm that battered the South in February. Congress cannot, in good conscience, continue to exclude these and other large drinking water systems from

having any opportunity to compete for dedicated resilience and sustainability aid from EPA.

The authorization of the Drinking Water System Infrastructure Resilience and Sustainability Program expired after the 2020 fiscal year. AMWA supports a robust reauthorization while removing the unnecessary restrictions that prevent all community water systems nationwide from having a fair opportunity to apply for funds. Any infrastructure or climate change legislation produced by this committee that ignores this need will remain incomplete.

### **Sec. 20003: PFAS Treatment Grants**

AMWA welcomes the legislation's creation of a new Sec. 1459E of SDWA that would house a grant program to help community water systems offset costs associated with implementing technologies to remove per- and polyfluoroalkyl substances, or PFAS, from drinking water. While this funding assistance could provide much needed relief to communities that may be faced with investing in expensive PFAS removal technologies, the usefulness of the program as written in the legislation appears to be severely limited. This is because the new Sec. 1459E(c) would only allow grant funding to be spent on technologies that are certified by EPA to be "effective at removing all detectable amounts of PFAS from drinking water" (emphasis added).

Given the thousands of long-and short-chain PFAS in the environment, and modern advancements that allow PFAS to be detected in drinking water at the part-per-trillion level, restricting funding assistance only to technologies that can remove "all detectable amounts" of the substances would exclude virtually all technologies that water utilities currently rely on to address PFAS. For example, this funding could not be used on technologies like granular activated carbon filtration that are effective at removing long-chain PFAS, but which are less successful at eliminating short-chain PFAS. Even high-pressure membranes like reverse osmosis, which EPA has declared to be "extremely effective at removing PFAS" from drinking water, are typically "90 percent effective at removing a wide range of PFAS."<sup>1</sup> While 90% is impressive, it is less than the "all detectable amounts" standard that the legislation would require the technology to reach before Sec. 1459E funding could be expended on it.

To ensure that the program is able to offer funding to help communities bring concentrations of PFAS to below any applicable state or federal drinking water standard, AMWA recommends that the proposed Sec. 1459E(c) language be modified to read as follows:

"(c) LIST OF ELIGIBLE TREATMENT TECHNOLOGIES.—Not later than 150 days after the date of enactment of this section, and every 2 years thereafter, the Administrator shall publish a list of treatment technologies that the Administrator determines to be effective at reducing concentrations of PFAS in drinking water to—

"(1) in the case of a PFAS that is subject to a national primary drinking water regulation under this Act, a level that is not more than any maximum contaminant level for such PFAS established through such regulation; or

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<sup>1</sup> <https://www.epa.gov/sciencematters/reducing-pfas-drinking-water-treatment-technologies>

“(2) in the case of a community water system located in a state that has established a maximum contaminant level for a PFAS that is below the level referenced in paragraph (1), a level that is not more than the level established by such state.

#### **Sec. 20004: Lead Service Line Replacement**

AMWA notes that the legislation would create a new Lead Service Line Replacement grant program, which would be housed in a new subsection (u) of SDWA Sec. 1452. This new program would be authorized at \$22.5 billion over five years, or nearly 90% of the amount of funding that the legislation would authorize for the entire Drinking Water SRF program. AMWA has a number of observations and suggestions related to how this program would operate.

First, the legislation proposed to divide funding among states based on the same formula used to distribute Drinking Water SRF funding, which in turn is based on the results of EPA’s quadrennial Drinking Water Infrastructure Needs Survey and Assessment. That formula considers all of a state’s reported drinking water infrastructure needs – not only lead service line replacement costs. Meanwhile, the 2018 AWIA legislation added a requirement to Sec. 1452(h) of SDWA that EPA must include in future drinking water needs surveys “an assessment of costs to replace all lead service lines” of public water systems in each state. This data would be a better guide for how to distribute funding exclusively for lead service line replacements among the various states, rather than the broader needs survey figures.

We also observe that this new Sec. 1452(u) program would operate alongside EPA’s existing Reducing Lead in Drinking Water grant program, which was established as Sec. 1459B of SDWA through the Water Infrastructure Improvements for the Nation Act of 2016 (P.L. 114-322). That program was created to help communities fully replace lead service lines, and further allows federal dollars to be used to cover the cost of replacing the privately-owned portions of lead service lines that are the property of low-income homeowners. EPA issued the first \$17 million worth of these grants in the fall of 2020.

AMWA supported creation of this existing Sec. 1459B program because it facilitates the full replacement of lead service lines, while allowing federal funds to be used to cover the cost of replacing privately-owned lead service lines at low-income households. In contrast, the proposed Sec. 1452(u) program would allow federal funding to be used to replace both publicly and privately owned portions of lead service lines, regardless of the income of the private owner. It is worthwhile to consider whether limited federal water infrastructure resources are best spent on subsidizing the replacement of lead service lines that are the private property of wealthy homeowners.

Most concerning to AMWA is the fact that the proposed Sec. 1452(u) could be interpreted to confer a permanent private-side lead service line replacement requirement on any community water system that receives any funding through the program, even after this federal assistance has been exhausted. This is because the proposed Sec. 1452(u)(5)(B) reads that “Any recipient of funds made available under this subsection shall offer to replace any privately owned portion of the lead service line at no cost to the private owner.” Nothing in this language appears to limit the private-replacement requirement only to funds awarded to community water systems through the program.

AMWA does not believe that community water systems should be required to draw on ratepayer

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revenue to finance the replacement of privately owned lead service lines, regardless of homeowner income. We therefore urge the adoption of the following alternative language for Sec. 1452(u)(5)(B):

“(B) NO HOMEOWNER CONTRIBUTION.—None of the funds made available under this subsection may be used to replace the publicly owned portion of a lead service line if:

“(i) the publicly owned portion of such lead service line is connected to a privately owned portion of a service line that is comprised of lead; and

“(ii) the recipient of such funds has not offered to replace the privately-owned portion of such lead service line at no cost to the private owner.

### **Drinking Water Affordability**

While Title II touches on a number of important drinking water priorities, some things are left out. We have previously discussed our concerns about the absence of a reauthorization of EPA’s Drinking Water System Infrastructure Resilience and Sustainability Program, but another priority not addressed in the legislation is a permanent low-income water ratepayer assistance program. Last December’s COVID-19 response legislation (P.L. 116-260) created the Low-Income Household Drinking Water and Wastewater Emergency Assistance Program at the Department of Health and Human Services, and it has since received more than \$1.1 billion in appropriated funds. The nation’s water affordability challenge will not end at the conclusion of the COVID-19 pandemic, so we urge the committee to pursue establishment of a permanent low-income water ratepayer assistance program a core component of the federal safety net.

Thank you again for the opportunity to submit these comments for the record of today’s hearing on the LIFT America Act. While we praise the committee’s initiative in developing legislation to strengthen our nation’s drinking water infrastructure, the proposal as introduced would benefit from a number of revisions to truly meet the range of challenges faced by our nation, its water systems, and their ratepayers. AMWA is eager to cooperatively assist in this process, and we hope to have the opportunity to work with the committee to refine the proposal to a point where we can offer our full support.

Sincerely,



Diane VanDe Hei  
Chief Executive Officer

cc: Energy and Commerce Committee members