THE UNITED STATES CONFERENCE OF MAYORS

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June 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

Dear Chairman Pallone and Ranking Member McMorris Rodgers,

On behalf of the nation's mayors, cities and counties, we write to express our concerns with the Assistance, Quality, and Affordability Act of 2021 (AQUA Act, H.R. 3291) and the PFAS Action Act of 2021 (H.R. 2467). Our organizations strongly support provisions in H.R. 3291 that would reauthorize the Drinking Water State Revolving Fund and authorize grants to support lead pipe replacement and PFAS treatment. However, the legislation also includes provisions that would require the U.S. Environmental Protection Agency (EPA) to set National Primary Drinking Water Regulations for PFAS and other chemicals and regulate PFAS under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These provisions could have unintended consequences for local governments and place an undue cost burden on communities and our residents.

In general, our organizations support provisions in the 1996 Amendments to the Safe Drinking Water Act (SDWA), which require that drinking water standards be based on sound science, public health protection and occurrence of contaminants in drinking water supplies at levels of public health concern to reduce risk while balancing costs. Congress should not circumvent this process in any way for select contaminants.

Moreover, CERCLA ensures that hazardous substances that may endanger public health or the environment are cleaned up by holding responsible parties financially liable. Local governments, including municipal airports and fire departments, which were required by federal law to use firefighting foam containing PFAS chemicals, and drinking water and wastewater utilities and municipal landfills, which serve as receivers of PFAS chemicals and did not cause or contribute to contamination, should not be held liable for PFAS contamination or cleanup costs.

The nation is just emerging from a deadly pandemic that has left local governments and many of our residents and small businesses reeling financially. Our communities need financial assistance to address our drinking water infrastructure challenges, but we can not absorb costly unfunded mandates that will become an additional burden to local budgets and our residents. While we acknowledge the public health risks associated with PFAS chemicals and urge Congress and the Administration to examine PFAS contamination holistically and to take

comprehensive action to address the problem, the federal government should avoid passing costs onto local governments and ratepayers for PFAS treatment and cleanup.

We agree with the sentiment outlined in the comment letter from the American Water Works Association, Association of Metropolitan Water Agencies, National Association of Water Companies and the National Rural Water Association to the House Energy and Commerce Committee on June 15, which raises similar concerns.

Specifically, we offer the following comments on the AQUA Act and the PFAS Action Act of 2021:

- Local governments, water utilities and their ratepayers should not be held financially liable under CERCLA for PFAS contamination. CERCLA was established to make polluters and manufacturers of these pollutants pay for the contamination they caused. At a minimum, the legislation should extend a similar CERCLA liability exemption to local governments that is offered to airports.

- We are opposed to Congress modifying EPA's impartial contaminant regulatory process on an ad-hoc basis to establish a unique and expedited regulatory process for specific chemicals. The legislation would require EPA to rush to finalize drinking water regulations for PFOA, PFOS, and other chemicals in the PFAS family within two years of the bill's enactment. We believe that an expedited time frame would come at the expense of public transparency and scientific rigor and would lead to inequitable regulations that force the lowest-income water ratepayers to shoulder a greater proportion of the new compliance costs that are passed on by their water systems.

- Repealing section 1412(b)(6) of the Safe Drinking Water Act, a key provision that allows EPA the opportunity to ensure that the public health benefits of a drinking water regulation are reasonably balanced with the compliance costs that water system ratepayers will incur, will directly shift the burden to pay for these upgrades to local governments. Under current law, if EPA determines that the benefits of a proposed maximum contaminant level (MCL) do not justify the costs of compliance, section 1412(b)(6) gives EPA the option, following notice and opportunity for public comment, to promulgate an MCL "that maximizes health risk reduction benefits at a cost that is justified by the benefits."

- The PFAS infrastructure grant program as proposed in H.R. 2467 includes the limitation of eligible treatment technologies to those that are certified to remove "all detectable amounts" of PFAS from water supplies is admirable. We are concerned about this requirement, however, since no technology is available today that can reliably meet this standard.

- As it pertains to the replacement of lead service lines, there is language included in the grant authorization that would require "any recipient of funds … shall offer to replace any privately owned portion of the lead service line at no cost to the private owner." This

language is potentially problematic for several reasons. First, as the water associations pointed out in their letter, the language could be interpreted to require any water system that receives any amount of program funds to permanently pay for all future private-side lead service line replacement costs, even after this federal grant assistance has been exhausted. Second, we are also concerned that authorization does not mean full appropriations at the levels necessary to replace all private residences' lead service lines. Including this language could potentially hamper local government long-term efforts to develop a program to replace all lead service lines. Finally, we are concerned that potential new EPA testing and replacement rules will trigger lead pipe replacement without the necessary Congressional funds. For these reasons, we agree with the water associations' recommendation--that the legislation should specify that "none of the funds made available" through this program may be spent in a manner inconsistent with conditions specified by Congress.

Thank you for considering the local government perspective as you move this legislation forward. We look forward to working with you to address our nation's drinking water needs. If you have any questions, please don't hesitate to contact our staff: Judy Sheahan (USCM) at jsheahan@usmayors.org; Carolyn Berndt (NLC) at berndt@nlc.org; or Adam Pugh (NACo) at apugh@naco.org.

Sincerely,

Tom Cochran	Clarence E. Anthony	Matthew D. Chase
CEO & Executive Director	CEO & Executive Director	CEO & Executive Director
The U.S. Conference of Mayors	National League of Cities	National Association of Counties

CC: Members of the House Energy and Commerce Committee