

A low-angle photograph of an American flag flying on a tall pole in front of a grand, classical building with ornate architectural details and a large column. The sky is clear and blue.

# **NACo REGULATORY OUTLOOK FOR THE BIDEN ADMINISTRATION**

February 2021

# INTRODUCTION

Many county responsibilities are mandated by both the state and the federal government. While county responsibilities differ widely, most states grant their counties significant authorities to fulfill public services. These authorities include construction and maintenance of roads, bridges and critical infrastructure, assessment of property taxes, record keeping, administering elections, and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment and workforce training, emergency management, land use planning and zoning. Environmental stewardship is also a primary function of county governments to ensure healthy, safe and vibrant communities for our residents.

Regulatory policy is a crucial difference between presidential administrations and is often a way for the successive administration to immediately differentiate itself from the last. Following his election, President Donald Trump repealed and replaced several regulations written by President Barack Obama. Our nation's counties should expect to see a similar overhaul to the finalized regulations enacted during President Trump's term. President Joe Biden has said he intends to use his regulatory authority to advance many of his policy priorities.

As the Biden Administration works its way through its regulatory agenda, counties urge them to continue to hold meaningful consultation early in the rulemaking process to reduce the risk of unfunded mandates and produce successful strategies for implementing federal policies. Federal regulations and guidelines are more effective if they are clear, understandable and can be easily administered at the local level.

The National Association of Counties (NACo) strengthens America's counties, serving nearly 40,000 county elected officials and 3.6 million county employees. Founded in 1935, NACo united county officials to: advocate county priorities in federal policymaking; promote exemplary county policies and practices; nurture leadership skills and expand knowledge networks; optimize county and taxpayer resources and cost savings; and enrich the public's understanding of county governments.

NACo policy positions are introduced, debated and voted on by 10 policy steering committees with over 1,400 county officials, as well as NACo Board of Directors and full membership.



President Biden on a Zoom call with the NACo Board during a meeting in December of 2020

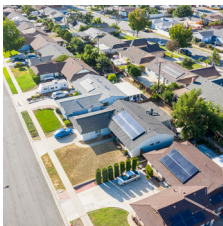
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# REGULATORY SNAPSHOT

KEY {  Regulatory action taken or expected

 Regulatory watch list



## Affirmatively Furthering Fair Housing

HUD's new fair housing final rule titled [Preserving Community and Neighborhood Choice](#) broadly defines "fair housing" as housing that is affordable, safe, decent, free of unlawful discrimination and accessible under civil rights laws, and "affirmatively furthering fair housing" as any action that promotes any of the above attributes of fair housing.

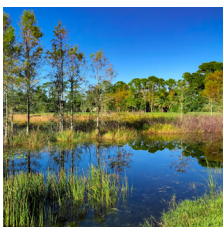
The AFFH rule which has significant impact on counties that administer major federal housing programs including the Community Development Block Grant (CDBG), HOME Investment Partnerships and the Homelessness Assistance Program, and play a central role in ensuring access to fair housing at the local level.



## Opportunity Zones

[Opportunity Zones](#) encourage private investment in new businesses, property development and infrastructure in distressed communities via tax incentives.

Many counties contain areas that qualify for Opportunity Zone status and are eligible for targeted investment.



## Waters of the United States

The "[Waters of the United States](#)" (WOTUS) is a term used in the Clean Water Act (CWA) to describe the nation's navigable waters and the core tributary systems that provide perennial or intermittent flow into them.

WOTUS defines the scope of waters federally regulated under the CWA. The remaining waters are subject to States' primary authority over land and water resources.

Counties will call on the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) to develop and implement a definition that exempts local streets, gutters and human-made ditches and encourages consultation with state and local governments.



## Paris Climate Agreement

The Paris Agreement Under the United Nations Framework Convention on Climate Change or COP21 ([Paris Climate Agreement](#)) is an international treaty adopted in December 2015 to reduce greenhouse gas emissions that contribute to global warming.

Regardless of human-made or natural warming cycles, counties must adapt to a changing climate. Counties will call on our federal partners to ensure local governments are present when discussing large-scale climate action.



### **Affordable Clean Energy Rule**

The [Affordable Clean Energy rule](#) (ACE) established emission guidelines for states to use when developing plans to limit carbon dioxide at coal-fired electric generating units (EGUs).

Counties support federal programs that provide financial and technical assistance to partner with federal and international entities as they transition to a lower-carbon economy.



### **National Ambient Air Quality Standards**

The Clean Air Act requires the EPA to set National Ambient Air Quality Standards ([NAAQS](#)) for pollutants common in outdoor air that are considered harmful to public health and the environment.

Counties support having the option of adopting secondary standards which are more stringent than the national goals in order to protect localized, environmental, property and human values.



### **Lead and Copper Rule**

The [Lead and Copper Rule](#) requires drinking water systems to monitor water at customer taps.

Counties support the federal government adopting clear federal policies and regulations that allow flexibility to state and local governments to implement programs that will protect public health balanced with environmental and economic impacts.



### **PFAS**

Per- and polyfluoroalkyl substances ([PFAS](#)) are a class of toxic chemicals that have been used in the production of Teflon, Scotchgard, cardboard packaging and other products since the 1960s. Although manufacturers stopped using the chemicals in 2006, these chemicals do not deteriorate and pose a long-term risk. The U.S. Department of Defense has long mandated use of a particular firefighting foam that contains chemicals in the PFAS family.

Counties support efforts by the EPA and other federal agencies to study health and environmental impacts of PFAS chemicals. Counties will urge the EPA to work closely with state and local governments throughout the rulemaking process.



## Clean Water Act Financial Capability Assessment

The EPA released its [Proposed 2020 Financial Capability Assessment](#) (FCA) for Clean Water Act Obligations as it helps communities plan for water infrastructure improvements.

The proposal seeks to support water utilities that serve economically disadvantaged communities and provide vital clean water services that support public health, the environment and local economies. Counties supported the [proposed FCA guidance](#) and urged the Trump Administration to finalize the rule before the transition of power. The final FCA guidance was published on January 12, 2021.



## Refugee Admission Standards

In October 2020, the Trump Administration set [refugee admissions goal](#) for Fiscal Year (FY) 2021.

Counties request federal funding to continue at the 100 percent reimbursement level for financial assistance, medical care, social services, employment services and education until refugees reach a reasonable level of self-sufficiency.



## Deferred Action for Childhood Arrivals (DACA)

The [Deferred Action for Childhood Arrival](#) (DACA) programs gives certain young undocumented immigrants a two-year period of protection from deportation and allows them to work in the United States.

The DACA program requires that an applicant must have arrived in the U.S. before age 16 and lived here before June 15, 2007. Individuals who apply for the program must also fulfill education and criminal record requirements. In addition, an individual must have not been convicted of a felony, significant misdemeanor and not otherwise pose a threat to national security or public safety.

Counties calls upon Congress and the president to enact the American Dream and Promise Act or similar legislation that, without imposing costs on counties, would allow certain undocumented immigrants who entered the country as children and/or for humanitarian reasons to attain legal status if they pass background checks, demonstrate good moral character and meet education requirements.



## Public Charge Ground of Inadmissibility

The U.S. Department of Homeland Security [finalized](#) the Inadmissibility on Public Charge Grounds final rule that would reshape how the federal government defines “public charge” – a term used by federal immigration authorities to determine whether an individual seeking immigration status is likely to become primarily dependent on the federal government for subsistence. The final rule widens the scope of programs and factors that federal immigration authorities may consider when determining if an individual qualifies as a “public charge.”

Counties oppose changes to existing immigration policy that would lead to increases in uncompensated care and shift federal and state costs and the administrative burden to counties, including preventing access to and/or penalizing immigrants for the use of federally-funded health care and public health programs including Medicaid and the Children’s Health Insurance Program (CHIP).



## Title 42 of the Code of Federal Regulations (CFR) Part 2: Confidentiality of Substance Use Disorder Patient

The Substance Abuse and Mental Health Services Administration (SAMHSA), under the U.S. Department of Health and Human Services (HHS), [finalized new rules](#) aimed at making it easier for providers to share substance use records.

Counties support the integration of health information technologies into the local health care delivery system, including the behavioral health and substance use treatment systems.

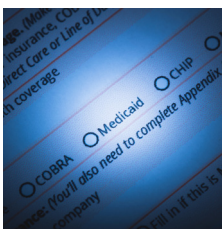


## Medicaid Fiscal Accountability

Medicaid Fiscal Accountability Rule ([MFAR](#)) would have made substantial changes to Medicaid’s financing structure and supplemental payments, including negative impacts to counties responsible for providing non-federal matching funds and services.

The creation of new reporting requirements, for instance, would require additional time and resources without providing additional federal funding to meet this obligation.

The proposed changes to Medicaid’s financing structure could challenge counties’ ability to provide essential health services to vulnerable populations and plan our budgets strategically.



## Medicaid Block Grant and Per Capita Cap Waiver Allowances

The Centers for Medicare and Medicaid Services (CMS) [issued](#) Medicaid waiver guidance encouraging states to pursue block grant or per capita cap funding options through their state Medicaid programs.

Counties oppose using block grants and per capita caps in Medicaid as these approaches could force counties to make cuts to program eligibility, benefits and provider payment rates. Counties contribute to Medicaid in 26 states. Of these states, 18 mandate counties contribute up to 60% of the non-federal share of Medicaid costs and/or administrative, program, physical health and behavioral health costs.



### **Title X Family Planning Programs for Reproductive Care Under the Affordable Care Act**

The [Title X Family Planning Program](#) is a federal grant program for low-income patients to receive family planning and reproductive health services.

Counties support family planning programs that provide information on a wide range of family planning methods with sensitivity to religious beliefs of the client or recipient. Physician-patient communications should not be dictated, defined or restricted by laws or regulations that restrict a patient's right to medical information and legal medical procedures.



### **Implementation of Section 1557 of the Affordable Care Act**

The U.S. Department of Health and Human Services (HHS) [finalized](#) revised regulations implementing Section 1557 of the Affordable Care Act (ACA).

Counties support ongoing system reform that focuses on improving access to and delivery of quality health services for all and support implementing and making improvements to the ACA by regulation and legislation to enhance the ability of county governments to build healthy, safe and resilient communities.



### **Supplemental Nutrition Assistance Program (SNAP) - Requirements for Able-Bodied Adults Without Dependents (ABAWDs)**

The U.S. Department of Agriculture Food and Nutrition Service (USDA FNS) [finalized](#) a rule to narrow state options to waive work requirements for ABAWDs participating in the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps.

Counties oppose arbitrary and counterproductive work and participation requirements and support a strong county role in mutually negotiated outcome measures in which states are judged by their progress toward achieving agreed upon goals.

The USDA FNS administers the program in partnership with states, 10 of which delegate the responsibility to counties: California, Colorado, Minnesota, New Jersey, New York, North Carolina, North Dakota, Ohio, Virginia and Wisconsin. These 10 county-administered states account for 31 percent of all SNAP program participants. Counties operating SNAP often contribute significant levels of local funds to meet the administrative and supplemental costs of running the program.



### **Flood Risk Management Standards**

In 2015, the Obama Administration [issued](#) an executive order establishing a new Federal Flood Risk Management Standard. The new standard aimed to improve the nation's resilience to flooding and better prepare the nation for the impacts of climate change.

Counties will work with Congress to include local and state stakeholders in the process of drafting legislation for the reauthorization of the National Flood Insurance Program that modernizes flood mapping and flood risk accuracy.





## Federal Cannabis Policy

The U.S. Justice Department (DOJ) [rescinded](#) an Obama-era policy that had eased enforcement of federal marijuana laws in states that legalized the drug, instead giving federal prosecutors wide latitude to pursue criminal charges.

Counties support the principles of federalism and local control of cannabis regulation and enforcement.



## Disaster Recovery Reform Act Implementation

President Trump signed into law [H.R. 302](#), which contains the [Disaster Recovery Reform Act](#) (DRRA) of 2018. The DRRA modifies several Federal Emergency Management Agency (FEMA) programs related to disaster mitigation, preparedness and recovery efforts.

Counties will work with FEMA to actively consult with and involve counties in the continuing development, analysis and implementation of the federal emergency management policies and implementation.



## National Monuments

[National Monuments](#) are designated under the Antiquities Act, which gives the President of the United States the authority to, by presidential proclamation, create national monuments from federal lands to protect significant natural, cultural, or scientific features.

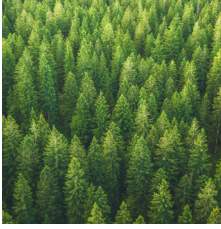
Counties will urge the White House to prevent designating national monuments without the approval of the affected states and counties.



## Endangered Species Act

In August 2019, the U.S. Departments of Interior (DOI) and the U.S. Department of Commerce finalized revisions to the Endangered Species Act (ESA). The changes apply to [ESA sections 4 and 7](#).

County governments have long supported updating the ESA and its implementation, including better use of scientific and population data to determine appropriate critical habitat designations and listing decisions.



## U.S. Forest Service National Environmental Protection Act (NEPA) Revisions

The U.S. Forest Service (USFS) published its amendments to the [USFS's NEPA regulations](#) which establishes new and revised categorical exclusions and a Determination of NEPA Adequacy provision.

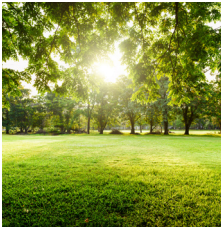
Counties support federal and state land use planning and management actions being consistent with local land use policies. Counties will urge the White House to coordinate with state and local governments during the NEPA process for planning and projects on federal lands that may affect the economy, environment, society and culture of local citizens.



## Interior Secretarial Order 3348

The U.S. Department of Interior (DOI) [issued](#) Secretarial Order (SO) 3348 revoking Secretarial Order 3338 issued under the Obama Administration, which placed a moratorium on the Federal Coal Leasing program.

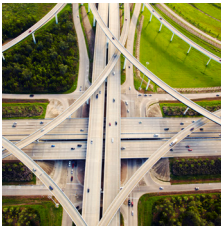
Counties support a comprehensive, integrated approach to a national energy policy that includes county priorities and is committed to working with Congress and the administration to meet shared goals.



## Interior Secretarial Order 3388

The U.S. Department of the Interior (DOI) [issued](#) Secretarial Order (SO) 3388, governing implementation of the Land and Water Conservation Fund (LWCF), which became a mandatory program under the Great American Outdoors Act (P.L. 116-152).

County officials support elevating the voice of local governments in the use of LWCF for new land acquisitions and efforts to creatively solve the requirements for state and local governments to come up with matching funds. SO 3388 achieves these goals.



## Infrastructure Projects during COVID-19

President Trump signed an [Executive Order](#) (EO) to expedite infrastructure projects carried out through the U.S. Departments of Agriculture, the Interior and Transportation, as well as the U.S. Department of the Army and the Department of Defense.

Counties urge the administration to ensure that counties are recognized as major owners of transportation infrastructure and that the county role is adequately reflected through funding levels and the preservation of local decision-making and consultation.



## National Environmental Policy Act (NEPA) Streamlining Revisions

The Council on Environmental Quality (CEQ) [finalized](#) a rule proposing changes to the implementation of [P.L. 91-190](#), the National Environmental Policy Act (NEPA).

Counties support commonsense environmental reforms that facilitate economic development but remain balanced with excellent environmental stewardship.



## Motor Vehicle Emissions Tracking

President Trump [repealed](#) an Obama Administration rule that required state departments of transportation to track greenhouse gas emissions from vehicles on federal highways and to establish subsequent reduction targets.

Counties will work with the administration to establish reasonable guidance for mitigating carbon emissions and other greenhouse gases produced by motor vehicles, including ways to address traffic congestion, that do not result in unfunded mandates for local governments.



## 5G Deployment

The Federal Communications Commission (FCC) [approved](#) a new rule on 5G wireless network deployment that significantly restricts local authority.

Counties have long advocated for universal access to reliable wireline and wireless high-speed broadband service as crucial for education, employment and economic development.

Counties support retaining local control of land use planning and ordinances that reflect local priorities.



## Local Franchise Fees and Agreements

The Federal Communications Commission (FCC) [adopted](#) a Third Report and Order, which subjects cable-related, in-kind contributions to the statutory five percent franchise fee cap established under the Communications Act.

The order, which was strongly opposed by county governments, could contribute to a reduction of 30 to 40 percent in franchise fees resulting in a significant drop in resources for Public, Educational and Governmental (PEG) channels.

# REGULATORY ANALYSIS

## AFFIRMATIVELY FURTHERING FAIR HOUSING

In July 2020, U.S. Department of Housing and Urban Development (HUD) ended the 2015 Affirmatively Furthering Fair Housing (AFFH) regulation. The 2015 AFFH rule required local governments receiving HUD-administered grants to implement housing plans that improve fair housing outcomes for residents. HUD's 2020 fair housing final rule titled [Preserving Community and Neighborhood Choice](#) broadly defines "fair housing" as housing that is affordable, safe, decent, free of unlawful discrimination and accessible under civil rights laws, and "affirmatively furthering fair housing" as any action that promotes any of the above attributes of fair housing.

Rather than updating the 2015 AFFH rule as initially proposed, HUD instead terminated the AFFH rule which has significant impact on counties that administer major federal housing programs including the Community Development Block Grant (CDBG), HOME Investment Partnerships and the Homelessness Assistance Program, and play a central role in ensuring access to fair housing at the local level. HUD grantees that attest to affirmatively further fair housing is deemed to be sufficient by HUD. The regulation provides additional flexibility to local governments including counties in ensuring fair housing and providing affordable housing opportunities in their jurisdictions.

On January 26, President Biden issued a [memorandum](#) addressing discriminatory federal housing policies. The memorandum directs HUD to review the Trump Administration's actions around fair housing and to use this examination to implement the Fair Housing Act in an appropriate manner. In calling for this review, the memorandum cites the ongoing legacies of residential segregation and discrimination, including a racial gap in homeownership, a persistent undervaluation of properties owned by families of color and other systemic barriers.

Counties will work with HUD to provide dedicated resources to grantees to enhance their ability to comply with a new rule.

## OPPORTUNITY ZONES

Established under the 2017 Tax Cuts and Jobs Act ([P.L. 115-97](#)), Opportunity Zones encourage private investment in new businesses, property development and infrastructure in distressed communities via tax incentives. Many counties contain areas that qualify for Opportunity Zone status and are eligible for targeted investment.

In December 2019, the U.S. Department of the Treasury [finalized](#) new regulations to provide clarity for Opportunity Zone investors and offer guidelines on topics ranging from how much funding investors must provide to receive the tax benefits to regulations on development of vacant properties. Private investors are given significant tax breaks for investing in these zones across the country. The initiative outlines performance metrics to determine whether participants are meeting Opportunity Zones requirements, however, there are not rigorous reporting requirements or assessments to ensure investments are making positive differences in communities for the long-term. Input from local governments regarding location or potential benefits for these private investments in local communities is not required either.

While there was some concern about the Opportunity Zones not meeting the needs of more distressed communities and difficulty tracking the benefits to local economies with robust data, the Biden Administration has signaled some positive aspects about the initiative. The administration is likely to retain the initiative and increase data and reporting requirements to prevent abuse, and target investments to the most distressed areas.

Counties support Opportunity Zones tax incentives for the private sector to encourage economic development in distressed communities, provide a public benefit for the long-term, allow input from local jurisdictions and stakeholders, and prevent misuse.

## WATERS OF THE UNITED STATES

The Clean Water Act (CWA) directs the U.S. Army Corps of Engineers (Army Corps) and the U.S. Environmental Protection Agency (EPA) to protect “navigable waters.” The “Waters of the United States” (WOTUS) is a term used in the CWA to describe the nation’s navigable waters and the core tributary systems that provide perennial or intermittent flow into them. Since being enacted in 1979, the definition of WOTUS changed in 1986, 2015 and 2020.

The Trump Administration repealed and replaced President Obama’s definition of WOTUS. The Navigable Waters Protection Rule (NWPR) now defines “Waters of the United States,” which was implemented in June 2020.

On his first day in office, President Biden signed an [executive order](#) to review the Navigable Waters Protection Rule. In late January, the EPA and Army Corps called on the U.S. District Court for the District of Maryland to freeze litigation over the NWPR and mentioned they would provide a status update to the court within 90 days.

Counties will call on the EPA and Army Corps to develop and implement a practical definition that exempts local streets, gutters and human-made ditches and encourages consultation with state and local governments.

## PARIS CLIMATE AGREEMENT

The Paris Agreement Under the United Nations Framework Convention on Climate Change or COP21 (Paris Climate Agreement) is an international treaty adopted in December 2015 to reduce greenhouse gas emissions that contribute to global warming. The Paris Climate Agreement was implemented on November 4, 2016 and was signed by 194 countries

and ratified by 188.

The Trump Administration announced in 2017 that the United States intended to pull out of the agreement, with a complete withdrawal happening on November 4, 2020.

On his first day in office, President Biden rejoined the Paris Climate Agreement on January 20, 2021 and committed the U.S. to lowering its greenhouse gas emissions. As a procedural step, he will have to put forth new climate commitments to the United Nations.

America’s counties are highly diverse communities occupying a nearly unlimited range of geographic settings, with immense variation in their natural resource endowments and many different economic, cultural, and social systems and concerns. Across the U.S., counties are experiencing new, often drastic, weather patterns and their effects attributed to climate change. Regardless of human-made or natural warming cycles, counties must adapt to a changing climate. Counties will call on our federal partners to ensure local governments are present when discussing large-scale climate action.

## AFFORDABLE CLEAN ENERGY RULE

The Affordable Clean Energy rule (ACE) established emission guidelines for states to use when developing plans to limit carbon dioxide at their coal-fired electric generating units (EGUs). The EPA issued the final ACE on June 19, 2019.

As part of the ACE rule, the Trump Administration repealed President Obama’s Clean Power Plan (CPP) because they said it exceeded the agency’s authority under the Clean Air Act. The Obama Administration crafted the CPP in August 2015 to reduce carbon pollution from power plants and act against climate change.

On January 19, 2021, the United States Court of Appeals for the District of Columbia Circuit struck down the ACE rule. The DC Circuit’s decision clears

the way for the EPA to establish a new regulatory framework for power plant Greenhouse Gas emissions.

Counties support federal programs that provide financial and technical assistance to partner with federal and international entities as they transition to a lower-carbon economy. We support federal financial assistance to implement innovative regional approaches for reducing air pollution, including locally driven actions that include energy efficiency and renewable energy projects.

## NATIONAL AMBIENT AIR QUALITY STANDARDS

The Clean Air Act requires the EPA to set National Ambient Air Quality Standards (NAAQS) for pollutants common in outdoor air that are considered harmful to public health and the environment. The statute establishes two types of national air quality standards – primary standards and secondary standards.

On April 12, 2018, President Trump signed an executive order to provide states with a more efficient reporting process and promote economic growth. Meanwhile, President Obama tightened ozone limits from 0.075 parts per million to 0.70 parts per million. The Obama rule was challenged in federal court and was vacated in 2018.

The EPA has noted it may further analyze the NAAQS rules to limit greenhouse gases released into our atmosphere.

Counties support having the option of adopting secondary standards which are more stringent than the national goals in order to protect localized, environmental, property and human values. NAAQS should be set using well-founded, peer-reviewed scientific evidence that include the range of health effects associated with the pollutant, the levels of pollution as they relate to the effects on health, the characteristics and number of people affected, and the compounded effects when multiple pollutants are present.

## LEAD AND COPPER RULE

The Lead and Copper Rule was first published in 1991 to control lead and copper in drinking water. Since 1991, the Lead and Copper Rule has been updated in 2000, 2004, and 2007. The Lead and Copper Rule requires drinking water systems to monitor water at customer taps. If lead concentrations exceed a level of 15 parts per billion (ppb) or copper concentrations exceed a level of 1.3 parts per million (ppm) in more than 10 percent of customer taps sampled, the water system must undertake additional actions to control corrosion. If the level is exceeded, the water system must also inform the public about steps they should take to protect their health and may have to replace lead service lines under their control.

At the beginning of 2020, the Trump Administration wrote its Proposed Lead and Copper Rule Revisions. This proposal aims to reduce lead exposure through drinking water. The proposal establishes a new threshold of 10 ppb, that when exceeded, requires more and rapid implementation of corrosion control treatment to reduce lead in drinking water.

On December 22, 2020, President Trump's EPA [finalized](#) the Lead and Copper Rule.

The EPA has not committed to taking a certain action on the rule. It could either move forward with President Trump's proposal and secure more funding to ensure utilities have adequate funding to replace lead service lines or it could throw out the proposal and start from scratch.

Counties support the federal government adopting clear federal policies and regulations that allow flexibility to state and local governments to implement programs that will protect public health balanced with environmental and economic impacts. Counties will urge the Biden administration to prescribe realistic maximum limits for contaminants, with standards tailored to lead and copper.

## PFAS

Per- and polyfluoroalkyl substances (PFAS) are a class of toxic chemicals that have been used in the production of Teflon, Scotchgard, cardboard packaging and other products since the 1960s. Although manufacturers stopped using the chemicals in 2006, these chemicals do not deteriorate and pose a long-term risk.

The Trump Administration published its original [PFAS Action Plan](#) in 2019. The Action Plan describes EPA's approach to identifying and understanding PFAS, approaches to addressing current PFAS contamination, preventing future contamination and effectively communicating with the public about PFAS. In February 2020, the EPA released its [PFAS Action Plan: Program Update](#), which demonstrates the efforts made by EPA over the last year to help states and local communities address PFAS contamination concerns.

The EPA is expected to designate PFAS as a hazardous substance, setting enforceable limits for PFAS in the Safe Drinking Water Act, prioritizing substitutes through procurement and accelerating toxicity studies and research on PFAS.

Counties support efforts by the EPA and other federal agencies to study and address health and environmental impacts of PFAS chemicals. Counties will urge the Biden Administration to work closely with state and local governments throughout the rulemaking process.

## CLEAN WATER ACT FINANCIAL CAPABILITY ASSESSMENT

In September 2020, the EPA released its Proposed 2020 Financial Capability Assessment (FCA) for Clean Water Act Obligations. The FCA helps communities plan for water infrastructure improvements.

President Trump's proposed FCA aimed to provide a more comprehensive methodology and transparent process for determining community affordability than EPA's 1997 FCA guidance and 2014 FCA. The

proposal seeks to support water utilities that serve economically disadvantaged communities and provide vital clean water services that support public health, the environment and local economies.

On January 12, 2021, the EPA released its [final FCA](#).

The administration has not commented on the FCA.

Counties will work with Congress to establish a water trust fund that provides, on an annual basis, matching grants and other assistance to advance the achievement of national clean water goals at the local, statewide and national levels. We believe the federal government should adopt clear federal policies and regulations that allow flexibility to state and local governments to implement programs that will protect public health balanced with environmental and economic impacts.

## REFUGEE ADMISSION STANDARDS

In October 2020, the Trump Administration set [refugee admissions goal](#) for Fiscal Year (FY) 2021. Administered through the U.S. Refugee Admissions Program, the FY 2021 proposed goal is 15,000 refugees, an all-time low number for the third year in a row. The goal for FY 2020 was 18,000, which was not met.

President Joe Biden announced that his administration would raise the annual refugee admissions threshold from the Trump Administration's current 15,000 individuals to 125,000 individuals.

Although President Biden will not face any legal obstacles when increasing the refugee admissions threshold, there are significant challenges his administration will face after four years of historically low refugee levels.

Among those challenges include additional funding to bolster up refugee resettlement infrastructure, addressing backlog in processing refugees and both Congress and the administration addressing immigration policies amid a pandemic.

Counties request federal funding to continue at the 100 percent reimbursement level for financial assistance, medical care, social services, employment services and education until refugees reach a reasonable level of self-sufficiency.

## DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Established in 2012 under President Obama, the [Deferred Action for Childhood Arrival](#) (DACA) program gives certain young undocumented immigrants a two-year period of protection from deportation and allows them to work and remain in the United States.

The DACA program requires that an applicant must have arrived in the U.S. before age 16 and lived here before June 15, 2007. Individuals who apply for the program must also fulfill education and criminal record requirements. In addition, an individual must have not been convicted of a felony, significant misdemeanor and not otherwise pose a threat to national security or public safety.

In September 2017, the Trump Administration [announced](#) its decision to end the DACA program. However, in June 2020, the U.S. Supreme Court [ruled](#) in a 5-4 vote that the U.S. Department of Homeland Security (DHS) cannot carry out its plan to end DACA.

On his first day in office, President Joe Biden released his [plan to restore](#) the DACA program.

More recently, on December 4, 2020, a federal judge in New York directed the administration to allow newly eligible immigrants to file new applications for protection under DACA, reversing a memorandum issued over the summer by the DHS, which restricted the program to people who were already enrolled. Under the court order, as many as 300,000 new applicants could now be eligible.

Despite this ruling in favor of reinstating DACA, the program also faces other legal battles.

If the court order in New York stands, President

Biden will be able to successfully achieve his goal in reinstating the program.

Counties calls upon Congress and the president to enact the American Dream and Promise Act or similar legislation that, without imposing costs on counties, would allow certain undocumented immigrants who entered the country as children and/or for humanitarian reasons to attain legal status if they pass background checks, demonstrate good moral character and meet education requirements.

## PUBLIC CHARGE GROUND OF INADMISSIBILITY

In February 2020, the U.S. Department of Homeland Security (DHS) [issued](#) the Inadmissibility on Public Charge Grounds final rule that would reshape how the federal government defines “public charge” – a term used by federal immigration authorities to determine whether an individual seeking immigration status is likely to become primarily dependent on the federal government for subsistence.

The final rule aimed to widen the scope of programs and factors that federal immigration authorities may consider when determining if an individual qualifies as a “public charge.” This includes individuals already in the country seeking permanent legal residency or visa extensions, as well as those seeking entry to the country. The public charge rule has undergone a variety of legal challenges. Most recently, in November 2020, a federal judge struck down the public charge rule. However, an appeals court judge stayed the lower court’s decision pending an appeal.

NACo submitted [comments](#) outlining concerns that, if implemented, the “public charge” rule could result in a decrease in use of federal public benefits, leading to an increase in reliance on local services. Additionally, the change could also impose new administrative demands on counties, both of which would further strain county budgets.

While this rule plays out in the court system, DHS has explicitly stated that it plans to take action to reverse



the public charge rule. President Biden signed an [Executive Order](#) placing the public charge rule under agency review.

Counties oppose changes to existing immigration policy that would simply lead to increases in uncompensated care and shift federal and state costs and the administrative burden to counties, including preventing access to and/or penalizing immigrants for the use of federally-funded health care and public health programs including anti-poverty, Medicaid and the Children's Health Insurance Program (CHIP).

## **TITLE 42 OF THE CODE OF FEDERAL REGULATIONS (CFR) PART 2: CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT**

In July 2020, the Substance Abuse and Mental Health Services Administration (SAMHSA), under the U.S. Department of Health and Human Services (HHS), [finalized new rules](#) aimed at making it easier for providers to share substance use records.

Under 42 CFR Part 2, the federal regulations that govern health information sharing, when a person is identified as having a substance abuse disorder, no information, or even confirmation that the person is being treated, may be released without a written authorization by the client or guardian. The Health Insurance Portability and Accountability Act (HIPAA) privacy rule, on the other hand, permits the disclosure of health information needed for patient care and other important purposes (i.e., coordination of care, consultation between providers and referrals).

The final rule intends to facilitate better coordination of care for substance use disorder (SUD) patients between health care providers and specialists and are an essential component of the federal response to the opioid epidemic. The revised rules would make it easier for patients to consent to the disclosure of their information to a wider range of entities and allows providers to note a patient's treatment history

directly on their electronic health record (EHR).

It is unclear at this time what, if any, actions the current administration will take on this regulation. While the Trump Administration focused on more closely aligning 42 CFR Part 2 with HIPAA privacy rules, concerns from both Democrats and Republicans about data privacy may impede further advancement on this regulatory issue.

Counties support the integration of health information technologies into the local health care delivery system, including the behavioral health and substance use treatment systems. Counties also support efforts to promote the use of a range of information technologies to facilitate appropriate access to health records and improve the standard of care available to patients, while protecting privacy.

## **MEDICAID FISCAL ACCOUNTABILITY**

In September 2020, the leadership of the Centers for Medicare and Medicaid's [announced](#) the agency was withdrawing the proposed Medicaid Fiscal Accountability Rule (MFAR) from the regulatory agenda.

The rule, which was first proposed in November 2019 and was set to be finalized fall 2020, would have made substantial changes to Medicaid's financing structure and supplemental payments, which was opposed by NACo. NACo submitted [comments](#) on the proposed rule, which emphasized the potentially burdensome impacts of these proposed provisions on counties. This rule directly impacts counties responsible for providing non-federal cost share for Medicaid services and administration. Furthermore, the proposed changes to Medicaid's financing structure could challenge counties' ability to provide essential health services to vulnerable populations and plan our budgets strategically.

The White House is expected to take action to withdraw this rule. Despite the announcement by CMS, the rule remains on the regulatory agenda, which means that the potential to finalize and implement it remains. Should the rule be finalized, the Biden Administration would have the option to overturn or modify the regulation through future rulemaking.

Counties support the stabilization of the federal-state-local partnership for financing and administering the Medicaid program for the duration of the public health crisis the state and local fiscal crisis and are oppose to measures that would limit flexibility for states and counties in meeting the non-federal share of Medicaid payments.

## MEDICAID BLOCK GRANT AND PER CAPITA CAP WAIVER ALLOWANCES

In January 2020, the Centers for Medicare and Medicaid Services (CMS) [issued](#) Medicaid waiver guidance encouraging states to pursue block grants or per capita cap funding options through their state Medicaid programs. The initiative, the Healthy Adult Opportunity, would allow states to implement a block grant or per capita cap for certain Medicaid beneficiaries with the goal of slowing growth of federal medicaid spending.

CMS is expected to take action to reverse or withdraw this rule.

Counties oppose using block grants and per capita caps in Medicaid as these approaches could force counties to make cuts to program eligibility, benefits and provider payment rates. Counties could also face increased costs for uncompensated care costs for individuals who become uninsured as a result of the reduced federal share in Medicaid payments.

## TITLE X FAMILY PLANNING PROGRAMS FOR REPRODUCTIVE CARE UNDER THE AFFORDABLE CARE ACT

Started in 1970, the [Title X Family Planning Program](#) is a federal grant program for low-income patients to receive family planning and reproductive health services. It funds services including contraception, testing and treatment for sexually transmitted infections and breast and cervical cancer screenings. Title X regulations prohibit funds from being used for abortion care, though health centers that provide abortions have received Title X funds.

In March 2019, the US Department of Health and

Human Services (HHS) finalized a rule for the Title X family planning program titled, "[Compliance with Statutory Program Integrity Requirements](#)." The rule contains two key changes: one revision, referred to as a "gag rule" by its opponents, prohibits Title X recipients from providing referrals for abortion care, even when requested by the patient. Another revision requires Title X-funded centers to "establish and maintain physical separation" from the provision of abortion.

On January 28, 2021, President Biden signed an [Executive Order](#) providing federal funding for family planning services that primarily benefit low-income patients. These funds may not be used in programs where abortion is a method of family planning, but places no further abortion-related restrictions on recipients of Title X funding.

Counties support family planning programs that provide information on a wide range of family planning methods with sensitivity to religious beliefs of the client or recipient. Physician-patient communications should not be dictated, defined or restricted by laws or regulations that restrict a patient's right to medical information and legal medical procedures.

## IMPLEMENTATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT

In June 2020, the U.S. Department of Health and Human Services (HHS) [finalized](#) revised regulations implementing Section 1557 of the Affordable Care Act (ACA). Section 1557 prohibits discrimination based on race, color, national origin, sex, age and disability in health programs and activities receiving federal financial assistance. The final rule, which was issued in June 2020, eliminated the general prohibition on discrimination based on gender identity and sex-stereotyping and specific health insurance coverage protections for transgender individuals among other things.

HHS is expected to take action to reverse or withdraw this rule.

Counties support ongoing system reform that focuses on improving access to and delivery of quality health services for all and support implementing and making improvements to the ACA by regulation and legislation in order to enhance the ability of county governments to build healthy, safe and resilient communities.

## **SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) - REQUIREMENTS FOR ABLE-BODIED ADULTS WITHOUT DEPENDENTS (ABAWDS)**

In December 2019, the U.S. Department of Agriculture Food and Nutrition Service (USDA FNS) [finalized](#) a rule to narrow state options to waive work requirements for ABAWDs participating in the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps.

The final rule would have limited state flexibility in waiving work participation requirements for childless adults participating in the Supplemental Nutrition Assistance Program (SNAP). The agency suspended the rule's implementation in March 2020 for the duration of the COVID-19 public health emergency in March in response to a federal injunction and under direction from Congress as part of the [Families First Coronavirus Response Act \(PL 116-127\)](#). In October 2020, a federal judge [struck down](#) the final rule. USDA appealed that ruling in December 2020.

Under the current administration, USDA FNS is expected to take action to withdraw this rule.

Counties oppose arbitrary and counterproductive work and participation requirements and support a strong county role in mutually negotiated outcome measures in which states are judged by their progress toward achieving agreed upon goals. We support greater flexibility in SNAP work requirements in order to allow counties and states to meet the individual needs of their caseloads.

## **FLOOD RISK MANAGEMENT STANDARDS**

In 2015, the Obama Administration [issued](#) an executive order establishing a new Federal Flood Risk Management Standard. The new standard aimed to improve the nation's resilience to flooding and better prepare the nation for the impacts of climate change. The new flood risk standard would require all future federal investments, including the construction of new structures and the reconstruction of those that have been damaged, meet a certain level of resilience to flooding. The Trump Administration [reversed](#) the 2015 executive order in August 2017.

On January 20, 2021, President Biden signed an [Executive Order](#) reinstating the Obama-era Federal Flood Risk Management Standard.

Counties will work with Congress to include local and state stakeholders in the process of drafting legislation for the reauthorization of the National Flood Insurance Program that modernizes flood mapping and flood risk accuracy and mitigation.

## **FEDERAL CANNABIS POLICY**

In January 2018, the U.S. Justice Department (DOJ) [rescinded](#) an Obama-era policy that had eased enforcement of federal marijuana laws in states that legalized the drug, instead giving federal prosecutors wide latitude to pursue criminal charges. The reverse in policy could have consequences for residents that live in the more than 40 states who have legalized recreational or medicinal cannabis usage in some form.

The White House is expected to pursue cannabis decriminalization and expungements for people with prior cannabis convictions.

Counties will work with the administration to promote the principles of federalism and local control of cannabis regulation and enforcement.

Drug and alcohol abuse and addiction are factors in crimes and incarceration of 80 percent of the

inmates in local jails, yet most of these inmates do not receive adequate substance abuse treatment and related services. Counties support the treatment of individuals struggling with substance abuse in jails and calls on the federal government to provide funds to counties in both urban and rural areas to develop assessment and treatment programs these individuals, including education and literacy programs, vocational training, HIV prevention and medical and mental health services.

## DISASTER RECOVERY REFORM ACT IMPLEMENTATION

In October 2018, President Trump signed into law [H.R. 302](#), which contains the [Disaster Recovery Reform Act](#) (DRRA) of 2018. The DRRA modifies several Federal Emergency Management Agency (FEMA) programs related to disaster mitigation, preparedness and recovery efforts. FEMA is actively working to implement approximately 60 policy reforms included in the legislation.

NACo [released](#) an analysis of the Disaster Recovery Reform Act.

The Biden Administration is likely to strengthen DRRA's environmental protections during the implementation process.

Counties will work with FEMA to ensure it actively consults with and involves counties in the continuing development, analysis and implementation of the DRRA.

## NATIONAL MONUMENTS

National Monuments are designated under the Antiquities Act, which gives the President of the United States the authority to, by presidential proclamation, create national monuments from federal lands to protect significant natural, cultural, or scientific features.

President Trump signed Executive Order 13792 to order a review of all national monuments designed by the antiquities Act since 1996 that are more than 100,000 acres. This led to the reduction of the Bears

Ears National Monument and the Grand Staircase National Monument, as well as the opening of the Northeast Canyons and Seamounts Marine National Monument to commercial fishing.

The White House has alluded to restoring Bears Ears and Grand Staircase, as well as issue more land designations under the Antiquities Act.

Counties will urge the Department of the Interior (DOI) to prevent designating national monuments without the consultation and approval of the affected state and county.

## ENDANGERED SPECIES ACT

In August 2019, the U.S. Departments of Interior (DOI) and the U.S. Department Commerce finalized new regulations for implementing the Endangered Species Act (ESA). The changes apply to ESA sections 4 and 7. The updates to section 4 ensure that the five statutory factors used to list a species are the same factors used to delist or reclassify a species' listing. Additionally, the final rule updates the critical habitat designation process by requiring that areas where threatened or endangered species are present at the time of listing be evaluated first before unoccupied habitat can be considered as critical. The regulations also set a higher bar for agencies to designate unoccupied areas as critical habitat by requiring at the time of designation that unoccupied habitat contain one or more of the physical or biological features essential to the species' recovery. Lastly, DOI rescinded its "blanket rule" under section 4(d) of the ESA, which automatically gave threatened species the same protections as endangered species, resulting in stricter regulations on activities where a threatened species may be present.

Although DOI has not publicly committed to repealing and rewriting this regulation, we expect the new administration to review these revisions.

County governments have long supported updating the ESA and its implementation, including better use of scientific and population data to determine appropriate critical habitat designations and listing decisions.

## U.S. FOREST SERVICE NATIONAL ENVIRONMENTAL PROTECTION ACT (NEPA) REVISIONS

In November 2020, the U.S. Forest Service (USFS) published its amendments to the USFS's NEPA regulations. The final rule establishes new and revised categorical exclusions and a Determination of NEPA Adequacy provision. These updates will help expedite environmental analysis and decision making through these new tools and flexibility that supports the USFS mission.

Although USFS has not committed to repealing and rewriting this regulation, we expect them to take a hard look at this proposal.

Counties support federal and state land use planning and management actions being consistent with local land use policies. Counties will urge the administration to coordinate with state and local governments during the NEPA process for planning and projects on federal lands that may affect the economy, society and culture of its citizens.

## INTERIOR SECRETARIAL ORDER 3348

In March 2017, the U.S. Department of Interior (DOI) issued Secretarial Order (SO) 3348 revoking Secretarial Order 3338 issued under the Obama Administration, which placed a moratorium on the Federal Coal Leasing program. Under SO 3348, DOI restores the coal leasing program and directs the Bureau of Land Management (BLM) to make improvements to the program. BLM is responsible for coal leasing on approximately 370 million acres where coal mineral estate is owned by the Federal government. The surface estate of these lands could be controlled by BLM, the National Forest Service, private landowners or other federal agencies.

On January 20, 2021, the Acting Secretary of the Interior issued Secretarial Order 3395, which temporarily suspends new onshore and offshore fossil fuel leases, including coal, on federal lands.

Counties support a comprehensive, integrated approach to a national energy policy that includes

county priorities and is committed to working with Congress and the administration to meet shared goals.

## INTERIOR SECRETARIAL ORDER 3388

In November 2020, the U.S. Department of the Interior (DOI) [issued](#) Secretarial Order (SO) 3388, governing implementation of the Land and Water Conservation Fund (LWCF), which became a mandatory program under the Great American Outdoors Act (P.L. 116-152). The SO sets new parameters for both the stateside of LWCF and the federal land acquisition portion of the program.

State and local governments use LWCF to establish and improve parks, greenspaces, and other conservation areas. The SO establishes creative mechanisms for state/locally owned lands not used for recreation to be factored into non-federal match requirements. Additionally, costs to comply with federal laws/regulations can be credited, while state land donated between a state and its subdivisions can be factored into match requirements. Finally, state and local governments can now use LWCF funds to acquire excess federal property and for migration corridors and other wildlife conservation projects.

The SO also makes key changes to the LWCF federal land acquisition program to prioritize acquisition of NPS and US Fish and Wildlife Service lands. The SO also requires acquisitions to improve access/recreational opportunities, focus on inholdings from willing sellers, reduce wildfire threats/increase vegetation management, and decrease conflicts from environmental compliance. Most importantly, the SO mandates written support of governors and impacted counties before a land acquisition can move forward.

County officials support elevating the voice of local governments in the use of LWCF for new land acquisitions and efforts to creatively solve the requirements for state and local governments to come up with matching funds. SO 3388 achieves these goals. DOI has not weighed in on whether the SO will be repealed.

## INFRASTRUCTURE PROJECTS DURING COVID-19

In June 2020, President Trump signed an [Executive Order](#) (EO) to expedite infrastructure projects carried out through the U.S. Departments of Agriculture, the Interior and Transportation, as well as the U.S. Department of the Army and the Department of Defense. With the stated goal of facilitating post-COVID-19 economic recovery, the EO allows covered agencies to implement emergency provisions that scale back environmental reviews normally required by law under the National Environmental Policy Act, the Clean Water Act and the Endangered Species Act.

President Biden signed an [executive order](#) on his first day revoking this and several other related EOs that had sought to streamline the NEPA process. On this issue, the White House will need to navigate a complex path forward that balances national economic recovery with a progressive environmental agenda.

Counties will urge the administration to ensure that we are recognized as major owners of transportation infrastructure and that the county role is adequately reflected through funding levels and the preservation of local decision-making. We will work to continue progress toward commonsense environmental reforms that facilitate economic development but remain balanced with excellent environmental stewardship.

## NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) STREAMLINING REVISIONS

In July 2020, the Council on Environmental Quality (CEQ) [finalized](#) a rule proposing changes to the implementation of [P.L. 91-190](#), the National Environmental Policy Act (NEPA). CEQ, a division of the Executive Office of the President, was established by NEPA upon its enactment in 1970. As part of the Trump Administration's ongoing efforts to streamline the federal permitting process, CEQ's actions altered the decades old regulation with the goal of expediting the delivery of infrastructure projects. The changes have been met with significant consternation from

environmental groups, largely to due to how carbon emissions and other environmental factors are now factored into NEPA reviews.

Prior to the Trump Administration's reforms, NEPA implementation rules had not been updated in over 40 years, with the requirements often viewed at the local level as cumbersome because of significant administrative burdens and delays stemming from difficulties coordinating across different federal agencies, as well as certain aspects of the analysis being performed consecutively instead of concurrently. These concerns, among others associated with the process, can cause major delays that prevent badly needed and often simple local transportation projects from being completed in a timely manner.

Counties will work with the administration to continue progress toward commonsense environmental reforms that facilitate economic development but remain balanced with excellent environmental stewardship and respect local decision making.

## MOTOR VEHICLE EMISSIONS TRACKING

In July 2018, the Trump White House's [repeal](#) of an Obama Administration rule requiring state departments of transportation to track greenhouse gas emissions from vehicles on federal highways and establish subsequent reduction targets went into effect. The Trump Administration said it reversed the Obama rule because it "imposed costs with no predictable level of benefits."

The administration is expected to reinstate the 2017 rule and has already taken steps to strengthen emissions standards for greenhouse gases. Among other emissions directives, this administration has called for the development of a plan for transitioning to clean and zero-emissions vehicle fleets at all levels of governments, including the county level.

Counties will work with the administration to establish reasonable guidance for mitigating carbon

emissions and other greenhouse gases produced by motor vehicles, including ways to address traffic congestion, without imposing unfunded mandates for local governments.

## 5G DEPLOYMENT

In September 2018, the Federal Communications Commission (FCC) [approved](#) a new rule on 5G wireless network deployment that significantly restricts local authority. The FCC decision limits fees that local governments may assess telecommunications companies for the placement of wireless service facilities. It also constrains local governments to just 60 days to evaluate applications from wireless companies to attach 5G Small Cells to existing structures and 90 days to review applications for equipment on entirely new structures.

By narrowing the window for evaluating 5G deployment applications, the FCC rule would prevent local governments from properly assessing and mitigating the impact broadcasting facilities may have on the public health, safety and welfare of the community.

While the FCC remains independent of the president's control, the new democrat chair of the FCC to revisit this issue.

Counties have long advocated for universal access to reliable wireline and wireless high-speed broadband service as crucial for education, employment and economic development. Counties will urge the Biden Administration and FCC to protect local zoning authority or the ability to charge reasonable fees for the use of publicly owned land to build wireless infrastructure.

## LOCAL FRANCHISE FEES AND AGREEMENTS

In August 2019, the Federal Communications Commission (FCC) [adopted](#) a Third Report and Order, which subjects cable-related, in-kind contributions to the statutory five percent franchise fee cap established under the Communications Act.

Local franchising authorities often require cable providers to offer in-kind contributions, such as public, educational or government (PEG) channels, as a condition to a franchise agreement. These in-kind contributions, including PEG channels, provide significant public benefits to communities, such as transparency and accountability through access to local and regional government meetings; educational programming including for-credit courses; coverage of local events; local election coverage; candidate forums; and public safety programming. The order, which was strongly opposed by county governments, could contribute to a reduction of 30 to 40 percent in franchise fees resulting in a significant drop in resources for PEG channels. These channels are critical to civic engagement and awareness.

During the next four years, the FCC may reverse this rule.

Counties will work with FCC to affirm the importance of cable franchising in granting permission for cable companies to use valuable public property for their lines and to protect contracts with existing franchises.

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