



## THE NEXT 100 DAYS: *Climate, Environmental Justice, Infrastructure, Resilience, the Energy Transition, and Energy in the Transportation Sector*

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APRIL 30, 2021

### Introduction - [Shelley Fidler](#)

On April 29<sup>th</sup>, the Government Advocacy and Public Policy Practice team at Van Ness Feldman (VNF) hosted a webinar to examine what to expect during the next 100 days of the Biden Administration. We provided a forward-looking overview of the next steps likely to be taken by Executive Branch agencies to implement the directives issued by the Administration, as well as anticipated legislative action by Congress.

The Biden Administration has informed its agenda by declaring some key areas as a “whole-of-government” approach. The comprehensive attention to climate policy and a clean energy future; equity and social and environmental justice; resilience and infrastructure; and, most notably - jobs - will continue to inform every action by the Administration and extend to proposals on Capitol Hill.

We are pleased to provide a brief summary of the themes discussed during the webinar.

### Climate Change - [Stuart Hall](#)

President Biden’s address to the joint session of Congress on Wednesday, April 28<sup>th</sup>, integrated policies on climate change and greenhouse gas reductions. The President made an ambitious pledge in the recently announced Nationally Determined Contribution (NDC) to the Paris Climate Agreement, bolstering U.S. greenhouse gas reduction commitments and reaffirming his pledge to reach net-zero carbon emissions from the electric power sector by 2035 and net-zero emissions economy-wide by 2050. He also has included climate change and the nation’s transition to a clean energy future as whole-of-government issues that characterize his policy priorities.

To reach these goals, the President will need Congressional action. One mechanism Congress could use in the power sector is a clean electricity standard (CES). The President proposed a CES as part of his “American Jobs Plan,” and Congressional Democrats are also considering a federal CES, which are in part modeled after successful state renewable energy standards. A CES would require electric utilities to ensure that an increasing percentage of their electricity sales are from lower or zero carbon emitting power generators.

There is political momentum building to include a CES as part of an infrastructure package. House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) has included a CES in H.R. 1512, [the “Climate Leadership and Environmental Action for our Nation’s \(CLEAN\) Future Act,”](#) which was introduced this year with updated language from draft legislation released during the last Congress to specifically meet the President’s 2035 goal. Congressmen Kurt Schrader (D-OR) and David McKinley (R-WV) have also released a CES proposal that provides more flexibility, establishes a longer transition time, and emphasizes investment in clean energy technologies. On the other side of the Capitol, Senators Tina Smith (D-MN) and Ben Ray Lujan (D-NM) are planning to reintroduce CES legislation that they sponsored during the last Congress.

Many electric utilities have already made substantial emissions reduction commitments despite the lack of federal policy requiring it. Some are in line with the President’s 2035 goal, and some have publicly embraced a CES. We expect robust debate on the workability of a CES with a specific focus around the timeline of reductions, maintaining plant and grid reliability, building transmission, and federal incentives – all of which impact the cost of complying with ambitious clean energy targets. Notably, a federal CES alone will not accomplish the Administration’s climate goals in the power sector. Additional incentives through tax policy, federal support for research, development, and deployment, and agency and state engagement will also be necessary even if a federal CES is enacted.

## Environmental Justice - [Tiffany Ganthier](#)

In the area of environmental justice, President Biden emphasized the chance to “deliver real equity” and “real opportunities in the lives of more Americans,” including clean air and clean water. His comments supported his previous promises, through several executive orders, that “Environmental justice will be at the center of all we do.” Recognizing that disadvantaged communities are plagued by cumulative impacts, the President has vowed to ensure that environmental justice (EJ) is a consideration in decision-making across the entire federal government. President Biden has ordered every federal agency to review the state of equity in the agency and, within 200 days, develop a plan to remedy any “unequal barriers to opportunity” in policies and programs. We can expect to see those recommendations at the end of the next 100 days.

President Biden also established the White House Environmental Justice Interagency Council (WHEJIC) to coordinate environmental justice work across agencies and the White House Environmental Justice Advisory Council ([WHEJAC](#)), which is made up of EJ experts who guide the interagency group. Both groups report to the Chair of the White House Council on Environmental Quality ([CEQ](#)), Brenda Mallory, who was recently confirmed and reports directly to the President. The two councils are responsible for addressing environmental injustice and strengthening [Executive Order 12989](#) by developing a system for measuring its effectiveness, including an annual scorecard. Specifically, the duties of the WHEJAC are to provide advice and recommendations in identified priority areas in the next 100 days, including:

- Climate change mitigation, resilience, and disaster management;
- Toxics, pesticides, and pollution reduction in overburdened communities;
- Equitable conservation and public lands use;
- Tribal and Indigenous issues;
- Clean energy transition;
- Sustainable infrastructure, including clean water, transportation, and the built environment;
- NEPA, enforcement, and civil rights; and
- Increasing the Federal Government’s efforts to address current and historic environmental injustice.

On April 28<sup>th</sup>, the WHEJAC presented its recommendations publicly on implementing President Biden’s Justice40 Initiative, which aims to give 40 percent of the benefits of federal investments in clean energy to underserved communities. The Initiative could likely take the form of electrification projects, sustainable housing, support for community-shared solar, training programs for green jobs, and remediating historic pollution. The WHEJAC also released recommendations to strengthen the 1994 executive order and the design of the climate and economic justice screening tool.

Agencies have also been tasked with evaluating their own actions on EJ and have started to implement strategies. While these actions throughout the Executive Branch are significant, President Biden will need the cooperation of Congress to change environmental laws and reallocate or enact increased funding. EJ-focused bills or bills that embed EJ as a key component have been introduced and additional legislation is under development. One bill that will likely gain traction is the Environmental Justice for All Act. This proposal is the result of several years of collaboration with impacted communities and strengthens protections against environmental discrimination and pollution burdens. This widely supported effort comes as Congress pursues new investments in the infrastructure package with significant potential to fund EJ priorities.

## Resilience - [Tanner Johnson](#)

Resilience is a theme carried throughout the President’s American Jobs Plan and resonates across many of his priorities on climate. While resilience typically is defined as the capacity of individuals, communities,

and the infrastructure they rely upon to prepare, recover, and adapt to the disruption and shock that can come from natural and other disasters, in the context of in discussions around climate change it typically refers to how we adapt when mitigation measures are not in place. While discussions around mitigation of and the causes of climate change are historically challenging, investments in resilient infrastructure as an approach to adapt to the impacts of climate change tend to be less controversial.

In the next 100 days, there may be fertile ground for compromise on investments made to existing programs that can promote resilience. The President has called for \$50 billion in dedicated investments to improved infrastructure resilience, and resilience is a theme throughout the proposed \$2.25 trillion infrastructure plan.

There are three key areas where resilience investments seem to be present throughout the President's proposal and that enjoy some bipartisan appeal:

- Saving taxpayer dollars by investing before disaster strikes;
- Adapting to the impacts of climate change, sea-level rise, and other disasters, and;
- Prioritizing investment in low and moderate-income and minority communities.

Some existing federal programs that already are on the table for increased funding or other policy changes to enhance resilience might include:

- **Coastal Resilience** – National Oceanic and Atmospheric Administration (NOAA) grants, administered through the National Fish and Wildlife Foundation (NFWF), enhance the natural features of coastal areas that can make communities and their critical infrastructure more resilient. Authorized by Congress in 2014, and first funded in 2017, this program has received \$30 million to-date and could receive a large boost in funding.
- **Federal Emergency Management Agency (FEMA) Building Resilient Infrastructure and Communities (BRIC) Program** – FEMA's new pre-disaster mitigation grant program could rise to \$1 billion or more this coming fiscal year. Authorized by Congress in 2018, this law allows the President to allocate up to 6% of estimated aggregate amount of funding awarded under seven sections of the Stafford Act. Eligibility depends on states and counties with recent disaster declarations and is focused on public infrastructure projects, projects that mitigate risk to one or more community lifelines, projects that incorporate nature-based solutions, and the adoption and enforcement of the latest published editions of building codes.
- **Housing and Urban Development (HUD) Community Development Block Grant program (CDBG)** For the last 40+ years, CDBG has provided annual grants on a formula basis to states, cities, and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income communities. Specific programs relative to disaster mitigation and resilience could receive additional funding as Congress looks to find bipartisan programs to stimulate job creation.
- **Tax Credits for Resilient Construction** – Numerous proposals are circulating to provide a tax credit to provide incentives to low- and middle-income families and to small businesses to invest in disaster resilience. This was also called out in the President's American Jobs Plan.

Other programs and areas of focus identified by the President and leading Members of Congress could find their way into the discussion. Some special mention has been made of specific areas that may indicate some other priority areas for the Administration and Congressional leaders:

- Investments in resilience measures against extreme wildfires;
- Other programs for coastal resilience to sea-level rise and hurricanes;
- Support for agricultural resources management and climate-smart technologies; and

- Protection and restoration of major land and water resources like Florida's Everglades and the Great Lakes, the Western drought crisis, Tribal Water Settlements, dam safety, and the Outdoor Restoration Force Act.

### **Energy Transition - Mike Weiner**

Included in the President's American Jobs Plan is a vision to reimagine the way the U.S. produces, transports, and consumes energy across all sectors. As Congress negotiates how the American Jobs Plan is translated into legislation, the Administration will spend the next 100 days leveraging its existing authorities and sources of federal funds to move towards that objective.

To achieve a net-zero emission power sector by 2035 as outlined in the American Jobs Plan, renewable energy will certainly need to comprise a far greater share of electric generation than it does currently. Accelerating the expansion of electric transmission infrastructure is an important part of that equation, and just this week, the Administration [announced](#) the availability of \$8.5 billion in federal financing tools to boost transmission buildout and announced a commitment to help state Departments of Transportation host transmission lines, build renewable energy projects, deploy broadband, and support electric vehicle charging along existing highway rights-of-way.

However, the Administration's intended energy transition is not singularly focused on renewable power, nor is it focused only on the electric power sector. The President has outlined his vision to modernize and decarbonize the existing fossil fuel economy as well. The American Jobs Plan indicates that carbon capture, utilization, and storage (CCUS) technologies will be a critical tool to help decarbonize both the electric power sector and the industrial sector, as CCUS can help to address harder-to-decarbonize industrial processes where mitigation options are limited. The Department of Energy (DOE) will also focus heavily on carbon dioxide removal through technology pathways like direct air capture and bioenergy with CCUS, both of which will be critical components of the Administration's plans to achieve its newly announced commitments under the Paris Climate Agreement.

The Administration is also interested in fully leveraging its available authorities within the federal agencies to transition to a clean hydrogen economy. Hydrogen, of course, has applications in a variety of end uses including power generation, electricity storage, as an industrial fuel and chemical feedstock, and for transportation. Renewables, nuclear energy, and fossil fuels with CCUS can all be harnessed to produce the clean hydrogen required to fuel a hydrogen economy at scale.

Underpinning the President's climate-related objectives is an explicit focus on how jobs can be created and maintained through the energy transition, and future funding opportunities related to energy and climate are likely to focus on job creation. To that end, the Administration released funding opportunities last week that explicitly focused on supporting jobs and economic growth in coal and power plant communities that might otherwise be left behind by the energy transition that will be awarded in the next 100 days. The funding opportunities focus on utilizing resources and expertise that may already be present in those communities – by deploying geothermal energy, extracting rare earth minerals from coal, and supporting CCUS deployment on both power and industrial applications. On the carbon capture deployment opportunity in particular, it is notable the Administration is requiring applicants to submit both job creation and environmental justice analyses accompanying any applications for funding.

Over the next 100 days, Democrats in Congress will attempt to turn the American Jobs Plan into legislation that can be passed in both a House and Senate that are narrowly divided along partisan lines. A significant amount of legislation has already been introduced covering energy transition issues, with many more still in development as Members of Congress and their staff seek feedback. As a potential package comes together this summer, there will be additional opportunities for stakeholders to engage with Congress on legislation intended to support both decarbonization and job creation.

### **Transportation - Tracy Tolk**

In the next 100 days, there will be significant legislative activity focused on the transportation sector, as existing Federal Surface Transportation Programs expire on September 30, 2021. Congressional action will be required to either extend programs under current law or reauthorize them with new legislation. Leadership for the House Transportation and Infrastructure Committee and Senate Environment and

Public Works Committee have indicated that they will start crafting their bills in May, with the Senate Commerce, Science, and Transportation Committee set to follow in June.

We have a good sense for what will be included in the next bill based on House and Senate action in the last Congress.

In July 2020, the House passed a five-year, nearly \$500 billion bill that was later incorporated into a broader infrastructure package that passed the House of Representatives. While this effort did not make it through the Republican-controlled Senate during the last Congress, it will be the starting point for policymakers this year with Democrats now in control of both chambers. One year earlier, the Senate Environment and Public Works Committee passed the America's Transportation Infrastructure Act, which included the first-ever surface transportation reauthorization title committed to addressing climate change, out of Committee on a bipartisan basis.

The last and most significant hurdle for any summertime action on a surface transportation bill is how to pay for the programs lawmakers agree to create. The Senate Finance and House Ways and Means Committees have not yet signaled how or when they will work on their sections. Since surface transportation reauthorization is considered "must-pass" legislation, it may be the legislative vehicle for broader infrastructure proposals already introduced in Congress or those supported by the Administration that also impact the transportation sector. One such measure is H.R. 1512, the "[CLEAN Future Act](#)," a \$565 billion bill that includes significant authorized spending for the transportation sector. Legislative action on the CLEAN Future Act is expected in the House this summer.

The Department of Transportation is simultaneously working on a coordinated strategy to shift the U.S. transportation sector towards zero-emission vehicles. Transportation Secretary Pete Buttigieg has homed in on transitioning cars and trucks to electric and hydrogen powered systems, while also working to protect the biofuels industry.

President Biden's American Jobs Plan proposes a \$15 billion investment to fund this vision. The primary component of that investment would be the buildout of a national network of 500,000 electric vehicle charging stations, a campaign promise repeated by the President during his address to Congress on April 28<sup>th</sup>. For context, in March, the United States passed the milestone of 100,000 public chargers.

Transportation and infrastructure could be a place where Democrats and Republicans are able to reach agreement on shared priorities. The upcoming deadline for action on surface transportation legislation will force Members of Congress to negotiate, and that may ultimately serve as the avenue through which significant legislation supporting broader transportation infrastructure can emerge.

### For More Information

Van Ness Feldman advises clients on the actions of the Administration and Congress and the implications for regulated businesses. The professionals at Van Ness Feldman help businesses understand and navigate federal policy and the complex intersection between business and government.

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