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Federal Legislative Report

Fiscal Year 2019 Appropriations

To date, Congress has approved, and President Trump has signed into law five of the 12 appropriations measures for the fiscal year that began October 1. The following spending bills have been finalized and are funded through September 30, 2019: Energy & Water; Military Construction-Veterans Affairs; Legislative Branch (via PL 115-244) and Labor-HHS-Education and Defense (via PL 115-245).

The remaining 7 appropriations bills – which fund dozens of federal agencies – are operating under a short-term Continuing Resolution (CR) that runs through December 7. The CR covers the following spending legislation: Agriculture; Commerce-Justice-Science; Financial Services-General Government; Homeland Security; Interior-Environment; State-Foreign Operations; and, Transportation-HUD. The remaining bills provide federal dollars for dozens of programs that are of interest to Solano County, ranging from local law enforcement to transportation to water resources.

After the midterm elections, lawmakers will have roughly one month to complete action on the seven unfinished appropriations measures. Of course, the outcome of the elections will undoubtedly affect this fall's budget debate, with the possibility that a final budget package could be held over until 2019.

Farm Bill

The authorization for programs covered by the Farm Bill lapsed on September 30. Although USDA has signaled that the legislation's expiration will not directly impact farmers and ranchers in the short term, many agricultural interests have expressed concern that an extended delay in programmatic authority could negatively impact a variety of conservation and agriculture programs. With regard to the Supplemental Nutrition Assistance Program (SNAP/Calfresh), the program is an "appropriated entitlement," meaning it does not rely on the Farm Bill for continuing programmatic authority.

During the last several months, Republican and Democratic leaders of the House and Senate Agriculture Committees have struggled to find a compromise between their respective Farm Bill reauthorization measures (HR 2/S 3042). While there are several major sticking points, disagreements over SNAP have bogged down the negotiations.

The House Farm Bill includes strict new work requirements for SNAP program recipients. Under the legislation, all able-bodied adults without children under age six would be required to work at least 20 hours per week and/or be engaged in a work-related program. The first failure to do so for more than one month would result in the loss of SNAP benefits for one year; a second failure would result in the denial of benefits for a period of three years.

HR 2 also would restrict categorical eligibility for SNAP to only those individuals receiving TANF cash assistance or other TANF supports, such as child care. Currently, there are other ways of becoming eligible for SNAP, such as receiving aid through a state assistance program or SSI. Additionally, the bill would effectively eliminate the use of the standard utility disallowance and instead would require SNAP participants to submit utility bills and would count any LIHEAP benefits when determining SNAP benefits. Given the legislation's work-centric focus, the

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measure would nearly triple the amount of funding for SNAP Employment and Training programs.

The Senate's bipartisan version of the Farm Bill does not include any cuts to SNAP. During floor consideration of the measure, senators rejected a number of amendments that mirrored some of the House provisions designed to reduce SNAP benefits.

Opioid Legislation

After months of legislative work, Congress passed, and President Trump recently signed into law a comprehensive opioids package – the SUPPORT for Patients and Communities Act (HR 6). The nearly 660-page bill is made up of dozens of individual measures that lawmakers from all over the country put forward in the 115th Congress.

While there are several new programs and initiatives in the legislation, the new law largely reauthorizes and expands a number of current prevention, treatment, and recovery programs that span almost every federal agency. Even though HR 6 passed both chambers by wide margins, the legislation has been criticized for its lack of concrete funding. The majority of the programs reauthorized/created within the package will still need to compete with other programs for federal dollars during the annual appropriations process.

The wide-ranging measure includes several new policies of note to Solano County.

- Presently a state option under the Affordable Care Act, the bill mandates that all states, no later than 2023, ensure that former foster youth continue to be covered by Medicaid until age 26. HHS had interpreted the provision as mandating coverage only within the state where the youth was in foster care, unless a receiving state had made a change in its law to cover youth leaving foster care.
- The bill requires states to suspend, not terminate, Medicaid coverage youth who have been in juvenile custody. While states have this option now, many have chosen not to do so, requiring youth to begin the application process anew. The new requirement is effective one year after enactment.
- The measure modifies Medicaid to ensure that pregnant and postpartum women receiving treatment for substance use disorders in a facility can continue receiving other Medicaid-covered care outside of the facility, including prenatal services.
- The legislation gives states the option to provide Medicaid-covered substance use disorder treatment in residential facilities with over 16 beds. The so-called Institutions for Mental Diseases (IMD) exclusion currently limits Medicaid participation in facilities with 16 or fewer beds. Under the option, states could receive federal reimbursement for Medicaid beneficiaries aged 21-64 for up to 30 days of care.

Trump Administration's Western Water Policy

In late October, President Trump signed a memorandum entitled "Promoting the Reliable Supply and Delivery of Water in the West." Pursuant to the presidential order, the Departments of Interior and Commerce are directed to work together to "minimize regulatory burdens" in

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order to increase water supplies for certain areas of the West, including California's Central Valley.

The memorandum is expected to streamline the approval of certain water storage projects in California, as well as accelerate the ongoing environmental review of the long-term coordinated operations of the Central Valley Project and the State Water Project. Pursuant to the terms of the presidential memorandum, final biological opinions regarding Delta smelt and chinook salmon are expected to be issued in the summer of 2019.

On a related matter, the Bureau of Reclamation recently notified the California Department of Water Resources that it was initiating the renegotiation of the Coordinated Operations Agreement (COA). Among other things, the 1986 COA sets forth procedures for the operation of the Central Valley Project and State Water Project and identifies formulas for sharing joint responsibilities for meeting Delta standards and other legal uses of water. The renegotiation efforts are ongoing.

Proposed "Public Charge" Rule

On October 10, the U.S. Department of Homeland Security (DHS) published in the *Federal Register* a notice of proposed rulemaking (NPRM) redefining the meaning of "public charge." If adopted, the proposal would make it difficult for some individuals to enter the U.S. and for certain current legal immigrants to change their status to that of a lawful permanent resident (LPR).

Under current immigration policy, a green card may be denied to an individual who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense." Public benefits that are considered for public charge purposes are: TANF, SSI, state/local cash assistance programs, and public assistance for long-term institutional care.

The Trump administration's proposed rule would define public charge as a non-citizen/alien who receives one or more public benefits. In addition to the aforementioned benefits, the following programs would be included in the calculation: receipt of non-emergency Medicaid, SNAP, and housing assistance, among other programs. It should be noted that DHS is considering including the Children's Health Insurance Program (CHIP) in a final rule and is explicitly asking for comments regarding this aspect of the proposal.

Some immigration lawyers and advocates contend that not only has the rumor of issuing the proposal already had an effect on individuals applying for benefits, the totality of the numerous financial and other considerations U.S. Citizenship and Immigration Services (USCIS) could apply within the rule would make it more difficult for families to sponsor their relatives to come into the country. Additionally, and as previously indicated, those who are here legally and who are applying for LPR status may soon find it more difficult to obtain a green card.

Stakeholders have until December 10 to submit comments to DHS. The Department will then be required to review and consider those comments before issuing a final rule. In the meantime, there are no changes in the way USCIS determines what constitutes a public charge.

Post-Election Outlook

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Completing the fiscal year 2019 appropriations process will be the number one priority for Republican congressional leaders once lawmakers return to Washington, D.C. after the midterm elections. It remains to be seen whether Democrats will be open to negotiating a final budget deal or whether they'll attempt to push the debate into 2019.

One issue that could lead to a budget stalemate is disagreement over funding for President Trump's border wall. In fact, the president has threatened a government shutdown if lawmakers do not approve his \$5 billion request. While House Republicans have acquiesced to the administration's demands, the Senate's fiscal year 2019 DHS spending legislation recommends only \$1.6 billion for the wall. The president's request is a nonstarter for Democrats, particularly in the absence of a permanent solution to the expired Deferred Action for Childhood Arrivals (DACA) program.

Also, on tap following the elections is the ongoing Farm Bill conference, as well as pending reauthorizations of the National Flood Insurance Program and the *Violence Against Women Act*.