



## CSAC

### WASHINGTON BRIEFS

SECOND QUARTER 2015

The annual appropriations process was in full swing during the second quarter of the year as lawmakers devoted considerable time and attention to advancing the various fiscal year 2016 spending bills. By the Independence Day recess, the House Appropriations Committee had managed to approve ten of the 12 annual funding measures, with a total of six bills cleared by the full House. In the Senate, the Appropriations Committee has passed nine spending measures.

Despite the unusually rapid pace of this year's appropriations process, several factors will likely complicate the prospects for finalizing the fiscal year 2016 budget. For starters, a number of bills include extraneous "policy riders," many of which are opposed by congressional Democrats and the White House. By way of illustration, the House Energy & Water Development spending bill – as well as both chambers' Interior & Environment appropriations legislation – include language that would block the Obama administration from implementing its recently finalized "Waters of the U.S." (WOTUS) rule. Several bills also include controversial language on such matters as air quality standards, the *Endangered Species Act*, and gun control.

Moreover, Senate Democrats are vowing to prevent all 12 appropriations bills from reaching the floor of the upper chamber until Republicans agree to negotiate a budget deal that would allow for additional federal spending. Specifically, Democrats and the White House are pushing for a "Ryan-Murray type" budget accord that would replace, beginning next fiscal year, some of the sequestration cuts that were mandated under the 2011 *Budget Control Act* (BCA; PL 112-25). While the original Ryan-Murray agreement (PL 113-67) dialed back some of the BCA's cuts in fiscal years 2014 and 2015, the Act did not make room for additional federal spending in fiscal year 2016 and beyond.

While the appropriations process filled much of the congressional agenda this past quarter, lawmakers did consider several other items. For starters, Congress cleared and President Obama signed into law a bipartisan anti-trafficking measure (PL 114-22) that provides competitive grant funding to state and local entities to enhance collaboration and provide services to youth trafficking victims. Congress also finalized a long-awaited extension of the Secure Rural Schools (SRS) program.

## TRANSPORTATION REAUTHORIZATION

### Senate Committee Approves Six-Year Highway Bill

The Senate Environment and Public Works (EPW) Committee approved on June 24 a much-anticipated six-year highway reauthorization bill. The legislation, entitled the *Developing a Reliable and Innovative Vision for the Economy (Drive) Act*, was cleared by the panel on a 20-0 vote.

Sponsored by Senate EPW Committee Chairman James Inhofe (R-OK) and Ranking Member Barbara Boxer (D-CA), the bill (S 1647) would authorize over \$277 billion for surface transportation projects for fiscal years 2016 through 2021, including over \$257 million for the Federal-Aid Highway Program. The spending level equates to a roughly three percent annual increase above the amounts authorized in current law (MAP-21), or an average growth rate of \$5.3 billion per year.

It should be noted that the *DRIVE Act* does not include a funding mechanism to pay for future transportation spending. In the Senate, the job of identifying a revenue source belongs to the Finance Committee, which is currently examining various options for funding road, safety, transit, bicycle, and other federal transportation projects (please see section below on recent congressional hearings regarding financing).

In general, the legislation would maintain the structure of MAP-21 while building upon some of the reforms that were approved by Congress as part of the 2012 Act. With regard to funding for local bridges – a key CSAC priority – the bill would require states to spend a certain percentage of their Surface Transportation Program (STP) allocation on bridges that are not located on the National Highway System (NHS). Although MAP-21 created a funding "set-aside" for local bridges that are neither located on the NHS nor on the Federal-Aid Highway system (referred to as "off-system" bridges), the Act did not require states to spend any money on local bridges that are off of the NHS but *on* a Federal-Aid Highway.

During the committee's consideration of the bill, Senator Kirsten Gillibrand (D-NY) offered, but withdrew, an amendment that would have made *all* bridges that are not a part of the NHS eligible for funding under the National Highway Performance Program (NHPP). The language is similar to the senator's amendment from the previous Congress, which was ultimately included in then-Chairwoman Boxer's MAP-21 reauthorization legislation.

It should be noted that Senator Gillibrand intends to offer the amendment on the floor of the Senate. For its part, CSAC will be working to modify the *DRIVE Act* to make the expenditure of NHPP funds for local bridges a requirement.

The Senate EPW bill includes a number of other provisions that are of interest to California's counties, including: language designed to further streamline the transportation project delivery process; a requirement that states obligate increased funding for rural road safety projects if the fatality rate on rural roads does not decrease and the state fatality rate exceeds the

national average; and, updates to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

It is unclear when the *DRIVE Act* will be considered on the Senate floor. While EPW Committee leaders would like to see the upper chamber debate the legislation prior to the August recess, there are a number of complicating factors that may thwart the expeditious consideration of a long-term transportation bill.

### **CA Members Send Bridge Funding Letter to House Committee Leaders**

Led by Representative Jeff Denham (R-CA), 34 members of the California congressional delegation sent a letter this past quarter to leaders of the House Transportation & Infrastructure (T&I) Committee regarding the need for Congress to create a dedicated funding stream for locally-owned bridges that are on the Federal-Aid Highway System. CSAC worked closely with Congressman Denham's office on the development of the correspondence and helped secure the support of a number of lawmakers for the effort.

In California, unlike most other states, a large percentage (over 50%) of locally-owned bridges are on the Federal-Aid Highway System. As described in the previous section, local off-system bridges receive a special funding set-aside under MAP-21, whereas on-system bridges do not have a dedicated funding source. As a result, on-system bridge projects must compete for limited dollars, meaning many projects are left shortchanged.

Across Capitol Hill, Senator Dianne Feinstein (D-CA) sent to the Senate EPW Committee a similar letter regarding the need for on-system bridge funding. It should be noted that Senator Feinstein directed her staff to develop the correspondence following a meeting with CSAC earlier this year.

### **House and Senate Committees Hold Hearings on Transportation Financing**

The congressional committees with jurisdiction over revenue matters held a series of hearings during the second quarter to examine options for financing a new long-term transportation bill. The hearings, which took place in the House Ways and Means Committee and the Senate Finance Committee, were designed to help inform committee members as they wrestle with finding a consensus on how to pay for future transportation investment.

While the focal point of the forums was examining potential financing mechanisms for a multi-year highway bill, much of the discussion centered around the need to identify a funding source for another short-term bailout of the Highway Trust Fund (HTF). With the latest extension of MAP-21 slated to expire on July 31, it appears inevitable that Congress will need to, once again, temporarily extend the Act. At this point, however, key members remain deeply divided over how to pay for a short-term funding patch.

Likewise, lawmakers remain far apart on how best to fund road and bridge projects as part of any multi-year highway package. While using taxes from corporate profit repatriation is an option that has gained support among some members of Congress in recent weeks, Senate Finance Committee Chairman Orrin Hatch (R-UT), for one, has expressed opposition to using

revenues from repatriation to pay for infrastructure projects. Additionally, several prominent business organizations and conservative groups have come out in strong opposition to such a plan.

Looking ahead, lawmakers will have very little time to reach agreement on another HTF bailout before current spending authority expires. The prospects of a battle over the source and duration of a subsequent extension raises the likelihood that efforts to pass a long-term bill will be delayed until the fall or beyond.

### **House Panel Examines Rural Transportation Needs**

In late June, the House Transportation & Infrastructure Committee's Highways and Transit Subcommittee held a hearing entitled "Meeting the Transportation Needs of Rural America." The panel received input from several stakeholders, including Commissioner Bob Fox of Renville County, MN, who testified on behalf of the National Association of Counties (NACo).

While there were a number of topics discussed at the hearing, rural road safety and the need for adequate investment in local bridges was a primary theme. As part of his testimony, Commissioner Fox called on Congress to make more federal funding available to locally owned on-system and off-system bridges, while highlighting the need for the next transportation bill to prioritize investment in high-risk rural roads.

### **Fiscal Year 2016 Transportation-HUD Appropriations**

The Senate Appropriations Committee approved this past quarter a \$55.6 billion fiscal year 2016 Transportation-Housing and Urban Development (T-HUD) spending bill. The committee passed the measure by a vote of 20-10, clearing the legislation for Senate floor action.

Among other things, the Senate T-HUD bill would authorize \$40.26 billion to be spent on the Federal-aid Highway Program – or level funding – contingent upon the enactment of a new transportation authorization measure. The spending package also would free up \$2.4 billion in unused earmarks, which could be spent on other transportation projects.

Additionally, the legislation would provide \$500 million for the Department of Transportation's TIGER grant program, equal to the fiscal year 2015 enacted level.

It should be noted that the committee adopted an amendment by Senator Richard Shelby (R-AL) that would allow longer trucks on the nation's roadways. The controversial amendment, which was cleared on a narrow 16-14 vote, would permit the length of commercial trucks to increase from 28 feet to 33 feet.

While the language is similar to truck-length provisions that are included in the House-passed T-HUD spending bill, Senator Shelby's amendment would provide states with administrative flexibility, including the ability to prohibit longer trucks from driving on local roads and allowing states to seek certain exemptions. The amendment also would require DOT to examine three-years worth of crash data to determine whether 33-foot trailers pose a greater danger than 28-foot trailers.

## SECURE RURAL SCHOOLS

On April 16, President Obama signed into law a two-year extension of the Secure Rural Schools (SRS) program. The SRS provisions, which were included as part of the so-called "doc fix" legislation, require payments to be made to counties for fiscal year 2014 (retroactive) and fiscal year 2015. The law also requires the U.S. Forest Service to provide the fiscal year 2014 payment in a timely manner.

In an effort to further expedite the distribution of payments, counties were not given the option, as they have in past years, to elect whether to receive a share of timber harvest receipts or the SRS payment. Instead, the election made by each county in fiscal year 2013 will carry forward for fiscal years 2014 and 2015. Finally, pursuant to the new law, the deadline to initiate a Title II or Title III project will be extended to September 30, 2017, and the deadline to obligate Title II or Title III funds has been extended to September 30, 2018.

On the long-term reauthorization front, Senators Ron Wyden (D-OR) and Mike Crapo (R-ID) introduced bipartisan legislation (S 517) earlier this year that would extend the SRS program for three years at 2011 funding levels. The bill also would restore mandatory funding for the Payments-in-Lieu-of-Taxes (PILT) program. While the legislation does not include a spending offset, Senators Wyden and Crapo have pledged to work to identify a viable source of funding that would be acceptable to both parties.

In addition, there were several measures introduced this past quarter that would reform forest management practices. For example, Representative Cathy McMorris Rodgers (R-WA) introduced a bill (HR 2178) that would require the U.S. Forest Service to actively manage its commercial timber lands. Before transitioning back to a payment structure solely based on timber sales, HR 2178 would provide a three-year extension of SRS at 2010 funding levels.

Another proposal (HR 2316), sponsored by Representative Raul Labrador (R-ID), would establish a pilot program to allow local management of National Forest System land. Finally, Representative Ryan Zinke (R-MT) has proposed legislation (HR 2644) that would, among other things, discourage litigation by requiring plaintiffs who challenge Forest Service timber sales to post cash bonds.

## PAYMENTS-IN-LIEU-OF-TAXES

On June 24, the Department of the Interior (DOI) announced that it will be distributing nearly \$405 million in fiscal year 2015 PILT payments to eligible counties. Pursuant to the announcement, 57 California counties will receive a combined total of approximately \$42.2 million. In the previous year, 56 counties in California received roughly \$45.3 million.

It should be noted that Congress approved a total of \$442 million in fiscal year 2015 discretionary PILT funding, slightly more than the previous fiscal year. The dollars were included in two separate measures - \$70 million provided from the *Buck McKeon National Defense Authorization Act* (NDAA; PL 113-291) and \$372 million through the fiscal year 2015 omnibus appropriations law (PL 113-235).

Pursuant to PL 113-291, the PILT funding was split into two separate payments: (1) \$33 million for fiscal year 2015, and (2) \$37 million to be available beginning on October 1, 2015, which coincides with the start of the new fiscal year. Furthermore, the NDAA stipulates that the second payment be distributed in October 2015.

According to Interior Department officials, the underlying statute governing PILT requires the second tranche of funding to be calculated under the *fiscal year 2016 formula*, which will take several months to process. As a result, the funding will likely not be made available to counties until the first quarter of calendar year 2016. In addition, DOI considers the \$37 million as a sort of “down payment” on PILT for fiscal year 2016, rather than a continuation of the fiscal year 2015 payment, which is what Congress initially intended. Such a scenario would leave counties with less PILT funding this year than anticipated.

There is currently an effort underway to clarify the congressional intent. In fact, the fiscal year 2016 Senate Interior spending bill includes language that would make clear that the \$37 million is to be treated as a fiscal year 2015 payment. As previously discussed, the appropriations process is likely to come to a halt unless there is a new budget agreement in place. Therefore, CSAC will be working with the California congressional delegation, NACo, and others in an effort to include this technical correction in another legislative vehicle.

## NATIVE AMERICAN AFFAIRS

This past quarter, the House Subcommittee on Indian, Insular and Alaska Native Affairs held an oversight entitled "*Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act (IRA) of 1934.*" Testifying on behalf of CSAC at the hearing was Sonoma County Supervisor David Rabbitt.

The forum provided witnesses with an opportunity to discuss the Bureau of Indian Affairs' (BIA) fee-to-trust process, as well as the implications of the Supreme Court's *Carciere v. Salazar* decision. In *Carciere*, the Court ruled that the secretary of the Interior can only take land into trust for tribes that were "under federal jurisdiction" at the time of the passage of IRA.

Since the Court's action in 2009, many Indian tribes have urged Congress to pass legislation that would overturn the decision. Such bills, known as Carciere "fix" legislation, would simply reverse the Supreme Court's ruling and would not provide for any other amendments to the IRA. For their part, county governments – led by CSAC – have insisted that any *Carciere* "fix" include comprehensive reforms in the fee-to-trust process.

As described by Supervisor Rabbitt in his testimony, the Department of the Interior's trust land acquisition process - which is governed not by federal statute but by regulations prescribed by the BIA - is void of adequate standards and has led to significant, and in many cases, unnecessary conflict within the federal decision-making system for trust lands. The result in California and other states has been intense disagreement over proposed tribal development projects and, in many cases, litigation.

Additionally, the BIA does not provide sufficient notice regarding fee-to-trust applications and does not notify counties of requests for Indian lands determinations (which is a critical component of a gaming application). Accordingly, and in light of the various long-standing deficiencies in the fee-to-trust process, CSAC has advocated for a series of changes that would ensure transparency and fairness in the trust-land system. The proposed modifications are embodied in the association's comprehensive fee-to-trust reform package, which is gaining traction on Capitol Hill.

In addition to Supervisor Rabbitt, the following witnesses testified at the hearing: Kevin Washburn, assistant secretary of Interior for Indian Affairs; Randy Noka, councilman, Narragansett Tribe of Rhode Island and vice president of the United South and Eastern Tribes; Brenda Golden, policy analyst and self governance officer, Muscogee (Creek) Nation of Oklahoma; Lori Stinson, tribal attorney general, Poarch Band of Creek Indians of Alabama; and, Christian McMillen, Corcoran Department of History, University of Virginia, Charlottesville.

Earlier in the year, the Senate Committee on Indian Affairs held a roundtable discussion entitled "The *Carciari v. Salazar* Supreme Court Decision and Exploring a Way Forward." The intent of the roundtable was to bring key stakeholders together for a conversation regarding the implications of the *Carciari* decision, as well as the process used by the BIA to take land into trust.

Notably, CSAC was one of only four organizations invited to participate in the roundtable, with Sonoma County Supervisor Rabbitt and Napa County Supervisor Diane Dillon representing the association. As part of the dialogue, the supervisors provided detail on and examples of the deficiencies in the BIA's trust-land process and urged the committee to approve CSAC's comprehensive fee-to-trust reform proposal.

Finally, and in related developments, the Interior Department finalized this past quarter regulations that institute reforms in the administrative process by which Indian tribes are formally recognized by the federal government. In order to become a federally recognized Indian tribe, the new rules require petitioning groups to substantiate that they existed as a community and had exercised political control over its membership beginning in 1900 (the previous benchmark was the time of first sustained contact with non-Indians, or 1789). A previous draft of the rule would have modified the date to 1934, which was the year Congress passed the IRA.

While the final rule will increase public access to petition documents, as well as require BIA to notify local governments when a recognition petition has been filed, other changes could have the effect of diminishing the ability of counties and other interested parties to participate in the federal acknowledgment process.

## HEALTH AND HUMAN SERVICES

### Child Welfare Financing Reform

Senate Finance Committee Ranking Member Ron Wyden (D-OR) issued in May a discussion draft to provide new prevention funding through Title IV-E foster care. The draft proposal includes IV-E reimbursement for up to 12 months of services to keep children out of foster care who have been identified as "candidates for foster care" (as well as their family members) or to help a child exit care. Eligible services would include, but not be limited to: parenting skills; counseling; substance use; housing barriers; and, domestic violence services.

Additionally, the discussion draft proposes to increase mandatory funding under the Title IV-B Promoting Safe and Stable Families program to \$1 billion from the current level of \$345 million. Those funds also support prevention services and family reunification efforts. It should be noted that this is the first draft bill that has circulated this session which addresses child welfare reforms. Senator Wyden may formally introduce his legislation later in the year, but a markup is not expected this summer.

In related developments, President Obama signed into law in late May a bipartisan measure addressing child sex trafficking. The *Justice for Victims of Trafficking Act* (PL 114-22) establishes a Domestic Trafficking Victims Fund through DOJ, which is paid with federal fines from persons convicted of trafficking and other sex crimes. Pending guidance from DOJ, three-year competitive block grants will be available to states and counties addressing the issue, with grants focused on collaboration, training, and funding for services provided by entities involved with sexually exploited youth. The new law also requires state plans under the *Child Abuse Prevention and Treatment Act* (CAPTA) to include protocols identifying, assessing, and providing comprehensive services to sex trafficking victims. The CAPTA provision is effective two years from the date of enactment.

### Health Program Extensions

As part of a bill creating a new payment structure for physicians treating Medicare patients, President Obama signed into law (PL 114-10) on April 16 a number of health provisions affecting low-income families, including:

- **Children's Health Insurance Program (CHIP)** – The measure provides a two-year extension of funding for CHIP. The extension continues the enhanced federal financial match of 65 percent, instead of 50 percent. Without the enhanced federal funding, California's Health and Human Services Agency estimated a loss of up to \$533 million annually.
- **Home Visiting Program** – The law provides for a two-year extension of funding at the current level of \$400 million annually for the Maternal, Infant, and Early Childhood Home Visiting Program. In February, California received \$22.6 million in fiscal year 2015 funding. As of that month, 21 California counties participated in the federal program, which supports pregnant women and families and helps at-risk parents of pre-school



children by using evidence-based, cost-effective models that improve maternal and child health and prevents child abuse and neglect.

- **Transitional Medical Assistance** – The law made permanent the transitional medical assistance (TMA) program, which allows low-income families to maintain their Medicaid coverage for up to one year as they transition from welfare to work.
- **Express Lane Eligibility** – The Act extends for two years the express lane eligibility option, which permits states to streamline and facilitate enrollment in health coverage using the eligibility findings in other federal programs, such as the Supplemental Nutrition Assistance Program, the Temporary Assistance for Needy Families program, and Head Start, among others.

### **Affordable Care Act Excise Tax**

Effective in 2018, a 40 percent federal excise tax will be imposed on high-cost health insurance plans that have a total cost exceeding a statutory dollar amount. The excise tax is based on the total cost of the employer and employee contribution to the plan, as well as any savings account arrangements such as health reimbursement arrangements and flexible spending accounts.

A number of California counties offer health insurance plans and related programs that will exceed the totals prescribed in the law. Existing labor agreements lock the current plans in place and negotiations of new labor contracts may have to take the tax into consideration.

The cost of any employer-sponsored retiree health plan also is included in calculating the aggregate value of health coverage. In 2018, the tax would be imposed on health care coverage costing over \$10,200 annually for individuals and \$27,500 for family coverage. Standalone dental and vision plans, long-term care, and other types of insurance are excluded from the calculations.

In late April, Representative Joe Courtney (D-CT) introduced the *Middle Class Health Benefits Tax Repeal Act of 2015*, which would eliminate the ACA excise tax. The legislation (HR 2050) has 115 co-sponsors, only seven of whom are Republican. Twenty California House Democrats are co-sponsors of the bill. The measure was referred to the House Ways and Means Committee, where no action, to date, has been scheduled.

### **STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**

This past quarter, the House and Senate Appropriations Committees approved their respective versions of the fiscal year 2016 Commerce-Justice-Science (CJS) spending legislation (HR 2578; no Senate bill number). The full House went on to approve its package on a 242-183 vote; the Senate has yet to consider the CJS measure.

In a positive development for California's counties, the House bill includes a \$35 million increase in funding for the State Criminal Alien Assistance Program (SCAAP). Under the

legislation, SCAAP would be funded at \$220 million, compared to current spending of \$185 million.

In total, the House measure would provide \$51.4 billion in discretionary funding, a proposed increase of \$1.3 billion over fiscal year 2015 spending levels (and \$661 million below the Obama administration's budget request). Notably, the legislation includes the aforementioned SCAAP funding boost despite an overall decrease in grant program funding – the bill includes \$2 billion for state and local grant programs, or \$334 million below the fiscal year 2015 enacted level.

In the Senate, the Appropriations Committee-approved CJS bill would provide \$75 million for SCAAP, or a proposed \$110 million decrease in funding. Historically, the Senate's version of the CJS spending legislation has included limited funding for SCAAP.

It should be noted that both the House and Senate CJS appropriations measures include language would allow the Department of Justice (DOJ) to reallocate a certain percentage of SCAAP funding for other departmental activities. In recent years, DOJ has exercised its authority to transfer 10 percent of SCAAP funds to other agency functions (the maximum amount allowable under the law).

The fiscal year 2016 Senate CJS bill would allow DOJ to transfer up to 17 percent of SCAAP funding – as well as other state and local law enforcement/criminal justice funding – for other agency purposes. The House version does not have a fixed cap on the percentage of state/local justice funding that can be transferred.

## REMOTE SALES TAX

House Oversight and Government Reform Committee Chairman Jason Chaffetz (R-UT) introduced during the second quarter Internet sales tax legislation – the *Remote Transaction Parity Act* (RTPA; HR 2775). RTPA seeks to build upon another online sales tax measure – the *Marketplace Fairness Act* (MFA; S 698), which has been endorsed by CSAC. Like the MFA, the Chaffetz legislation would give states the ability to collect sales taxes from out-of-state Internet retailers, with the tax based on the final *destination* of the purchase.

While the two bills are fairly similar, RTPA includes significant audit protections for small businesses that are not included in S 698. One critique of the MFA was that it could leave small businesses vulnerable to multiple audits in every state. Under the Chaffetz proposal, however, companies that use certified software would only be subject to an audit from their home state and/or any state where the company has a physical presence. Furthermore, businesses with less than \$5 million in gross annual sales would be fully exempt from remote sales tax audits, unless there is a reasonable suspicion that the seller has engaged in intentional misrepresentation or fraud.

Another key difference is that the RTPA would exempt more small businesses from tax collection requirements in the first few years. In the first year, the bill would exempt businesses with less than \$10 million in gross annual sales. By the second year, the exemption

would drop to \$5 million, and by the third year, only businesses with less than \$1 million in gross revenue would be exempt from tax collection requirements. However, the bill does not include an exemption for products sold over an electronic marketplace (i.e. eBay, Amazon, etc). Finally, HR 2775 would require states to provide remote sellers with the software needed to collect and remit the taxes owed (it also would require states to pay for set-up, installation, and maintenance costs of the software).

The Chaffetz bill has been referred to the House Judiciary Committee, where Chairman Bob Goodlatte (R-VA) has been working on his own draft proposal – the *Online Sales Simplification Act*. Unlike the two aforementioned bills, the Goodlatte draft would allow states to require retailers to charge sales taxes based on the *location of the seller*, rather than on the location of the consumer. Additionally, Goodlatte's draft proposal would only subject remote sellers to one audit by their home state taxing authority, and does not include an exemption for small businesses.

While Chairman Goodlatte has yet to publicly comment on the RTPA, early indications are that he would not support the bill. Further complicating matters, House and Senate GOP leaders have shown little interest in moving remote sales tax legislation this year.

#### **PROPERTY ASSESSED CLEAN ENERGY PROGRAM**

Earlier this year, a contingent of CSAC officials and staff met with Alfred Pollard, General Counsel of the Federal Housing Finance Agency (FHFA), to encourage FHFA to withdraw its objections to residential Property Assessed Clean Energy (PACE) programs. While Mr. Pollard acknowledged that the agency is supportive of energy/water efficiency upgrades to residential properties, FHFA continues to maintain that first liens established by PACE assessments in California (and a number of other states) pose risk management challenges for existing mortgage lenders.

In addition, federal regulators continue to have concerns with California's Loan Loss Reserve Program, claiming that it fails to offer full loss protection to Fannie Mae and Freddie Mac. Questions have also been raised about the Reserve Fund's ability to be sustainable over time. As such, FHFA is not prepared to change its position and will continue to prohibit housing lenders from purchasing or refinancing mortgages with a PACE lien. Mr. Pollard also warned that the agency would not hesitate to act, despite the rapid expansion of PACE programs in California and across the country.

We hope this information is useful to California county officials. If you have any questions or comments, please feel free to contact us.

