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Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000

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Summary

Many counties are compensated for the tax-exempt status of federal lands. Counties with national forest lands and with certain Bureau of Land Management lands have historically received a percentage of agency revenues, primarily from timber sales. However, timber sales have declined substantially—by more than 90% in some areas. Thus, Congress enacted the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS; P.L. 106-393) as a temporary, optional program of payments based on historic, rather than current, revenues.

SRS expired at the end of FY2006. Congressional debates over reauthorization considered the basis and level of compensation (historical, tax equivalency, etc.); the source of funds (receipts, a new tax or revenue source, etc.); the authorized and required uses of the payments; interaction with other compensation programs (notably Payments in Lieu of Taxes); and the duration of any changes (temporary or permanent). In addition, legislation with mandatory spending raises policy questions about increasing the deficit; budget rules to restrain deficit spending impose a procedural barrier to such legislation, generally requiring offsets by additional receipts or declines in other mandatory spending.

Several proposals to extend, modify, and/or phase out the SRS payment system were considered in the 110th Congress. One approach was a four-year extension with declining payment levels and a modified formula to shift funding toward areas with low historic receipts but substantial federal lands; such an extension passed the Senate in early 2007, in the Emergency Supplemental Appropriations Act, but was deleted in the conference agreement. Instead, a one-year extension was enacted, while Congress continued to debate the issues. In 2008, the Senate included a four-year extension, with declining payments, a modified formula, and transition payments for certain areas, in the Emergency Economic Stabilization Act (H.R. 1424), which the House agreed to and the President signed into law (P.L. 110-343) on October 3, 2008.

With the pending expiration of SRS payments, county compensation is again the subject of congressional debates. The modified formula and declining payments of SRS expire at the end of FY2011, and the transition payments are only authorized through FY2010. Thus the eight states eligible for transition payments—California, Louisiana, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, and Washington—could face substantially lower payments for FY2011, and these states and additional areas could see further declines if SRS is not extended or a substitute is not enacted. To date, no legislative action has occurred in the 111th Congress. Nonetheless, Congress is likely to discuss many of the same issues that were debated in 2006-2008.

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Many counties are compensated for the tax-exempt status of federal lands. Counties with national forest lands and with certain Bureau of Land Management (BLM) lands have historically received a percentage of agency revenues, primarily from timber sales. However, timber sales have declined substantially—by more than 90% in some areas. Congress enacted the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS, P.L. 106-393) to provide a temporary, optional system to supplant the revenue-sharing programs for the national forests, managed by the Forest Service (USFS) in the Department of Agriculture, and for certain public lands administered by the BLM in the Department of the Interior. The law authorizing these payments expired at the end of FY2006. The 109th Congress considered the program, but did not enact reauthorizing legislation. The 110th Congress extended the payments for one year, then enacted legislation to reauthorize the program for four years and to modify the formula for allocating the payments. The authorization for payments expires again after payments are made for FY2011. To date, the 111th Congress has taken no legislative action to reauthorize or modify the program. This report explains the changes enacted for the program when the act was amended in 2008 and describes the issues that Congress has debated and that may again arise when the program expires.

Background

Since 1908, the USFS has paid 25% of its gross receipts to the states for use on roads and schools in the counties where the national forests are located (16 U.S.C. §500); receipts come from sales, leases, rentals, or other fees for using national forest lands or resources (e.g., timber sales, recreation fees, and communication site leases).[1] This mandatory spending program was enacted to compensate local governments for the tax-exempt status of the national forests, but the compensation rate (10% of gross receipts in 1906 and 1907; 25% of gross receipts since) was not discussed in the 1906-1908 debates. The program is called USFS Payments to States, because each state allocates the funds to road and school programs, although the USFS determines the amount to be spent in each county based on the acreage of each national forest in each county. The states cannot retain any of the funds; they must be passed through to local governmental entities for use at the county level (but not necessarily to county governments) for authorized road and school programs.

Congress has enacted numerous programs to share receipts from BLM lands for various types of resource use and from various classes of land, but one program—the O&C payments—accounts for the vast majority (more than 95%) of BLM receipt-sharing. The O&C payments are made to the counties in western Oregon containing the revested Oregon and California (O&C) grant lands returned to federal ownership for failure to fulfill the terms of the grant. The O&C counties receive 50% of the receipts from these lands.[2] These mandatory payments go directly to the counties for any local governmental purposes. Concerns about, and proposals to alter, USFS

[1] For more on these and other county-compensation programs with mandatory spending for federal lands, see CRS Report RL30335, *Federal Land Management Agencies' Permanently Appropriated Accounts*, by Ross W. Gorte, Carol Hardy Vincent, and M. Lynne Corn.

[2] Payments for the Coos Bay Wagon Road (CBWR) lands are usually included with the O&C land payments. The CBWR lands were similarly returned to federal ownership for the company's failure to fulfill the terms of the grant. They are commonly included with the O&C lands, because (1) they produce similar values; (2) they have similar management direction; (3) treatment of revenues is similar; and (4) the much smaller acreage of CBWR lands (74,547 acres) are essentially surrounded by the O&C lands (2,577,220 acres). However, instead of 50% of receipts, the CBWR counties receive payments for the county tax assessments, up to 75% of BLM receipts.

receipt-sharing payments also typically include the O&C payments, because both are substantial payments derived largely from timber receipts.

At their pre-SRS peaks in FY1989, USFS payments totaled $362 million, while O&C payments totaled $110 million. USFS and O&C receipts have declined substantially since FY1989, largely because of declines in timber sales. The decline began in the Pacific Northwest, owing to efforts to protect northern spotted owl habitat and other values. Provisions in the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) directed USFS payments for 17 national forests in Washington, Oregon, and California (§13982) and BLM payments to the O&C counties (§13983) at a declining percentage (beginning at 85% in FY1994 and declining by 3 percentage points annually) of the average payments for FY1986-FY1990. Declining federal timber sales in other areas led to SRS replacing these "owl payments" in 2000.

Payments under SRS are substantial, and substantially greater than the receipt-sharing payments would be. USFS receipts (for receipt-sharing purposes) in FY2009 totaled $392 million,[3] which would lead to 25% payments of less than $100 million. However, FY2009 payments under SRS actually totaled $438 million. Similarly, BLM timber receipts from western Oregon (which includes some non-O&C lands) totaled $13 million in FY2009.[4] This would lead to 50% payments of $7.5 million, compared to SRS payments of $87 million in FY2009.

In addition to these receipt-sharing programs, Congress enacted the Payments in Lieu of Taxes (PILT) Program.[5] PILT payments to counties are based on "eligible" federal lands, including national forests and O&C lands, in each county (but are restricted in counties with very low populations). PILT payments are reduced (to a minimum payment per acre) by other payment programs—including USFS Payments to States and BLM's O&C payments—so changes to these latter programs may also affect a county's payments under PILT. This also explains why FY2009 PILT payments to Colorado were double the PILT payments to Oregon, even though there is more federal land in Oregon (32.6 million acres) than in Colorado (23.6 million acres).

As enacted, PILT requires annual appropriations. If the appropriations are less than the authorized total payments, each county gets its calculated pro rata share of the appropriations. However, the 2008 SRS amendment also made PILT payments mandatory spending for FY2008-FY2012. Thus, for those five fiscal years, each county will receive 100% of its authorized PILT payment.

One issue of concern to Congress is the geographic allocation of the USFS, O&C, and PILT payments. **Table 1** shows the payments for FY2009. The largest USFS and O&C payments are in Oregon, which received nearly 40% of the total payments. The next-largest payments are in California, which received less than 10% of the total payments. PILT payments are more evenly distributed, with no state receiving more than 10% of the total payments.

[3] U.S. Dept. of Agriculture, Forest Service, *Fiscal Year 2011 Budget Justification*, p. 1-20.

[4] U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2009*, Table 3-11, http://www.blm.gov/public_land_statistics/pls09/pls3-11_09.pdf.

[5] See CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

Table 1. FY2009 USFS, O&C, and PILT Payments, by State

(in thousands of dollars)

	USFS & O&C	PILT		USFS & O&C	PILT
Alabama	$2,236.2	$685.2	Nevada	$5,209.2	$23,269.4
Alaska	$18,760.5	$25,674.1	New Hampshire	$624.5	$1,686.8
Arizona	$16,688.2	$31,662.1	New Jersey	$0.0	$94.4
Arkansas	$8,356.7	$3,917.7	New Mexico	$18,185.9	$37,013.3
California	$52,803.6	$34,397.9	New York	$29.5	$139.4
Colorado	$17,159.9	$28,660.6	North Carolina	$2,326.6	$4,047.1
Connecticut	$0.0	$28.1	North Dakota	$0.8	$1,392.1
Delaware	$0.0	$17.4	Ohio	$349.5	$730.2
Florida	$2,862.8	$4,600.7	Oklahoma	$1,192.4	$2,539.2
Georgia	$1,864.1	$2,397.2	*Oregon – USFS*	*$121,443.0*	
Hawaii	$0.0	$323.8	*Oregon – O&C*	*$87,175.0*	
Idaho	$34,900.0	$26,434.5	Oregon - Total	$208,618.0	$14,963.8
Illinois	$113.8	$1,058.2	Pennsylvania	$4,609.1	$514.1
Indiana	$337.4	$641.0	Rhode Island	$0.0	$0.0
Iowa	$0.0	$434.0	South Carolina	$2,498.4	$382.6
Kansas	$0.0	$1,074.0	South Dakota	$2,940.1	$4,263.7
Kentucky	$2,596.9	$2,245.1	Tennessee	$1,428.4	$2,409.8
Louisiana	$2,620.1	$528.9	Texas	$3,655.9	$4,348.9
Maine	$99.3	$326.6	Utah	$14,371.5	$33,063.0
Maryland	$0.0	$99.9	Vermont	$400.7	$879.3
Massachusetts	$0.0	$99.8	Virginia	$2,161.7	$3,809.1
Michigan	$4,350.9	$4,336.2	Washington	$34,004.2	$10,771.3
Minnesota	$9,450.2	$2,736.7	West Virginia	$2,356.8	$2,552.0
Mississippi	$7,705.7	$1,469.2	Wisconsin	$2,744.0	$1,355.2
Missouri	$4,681.7	$2,760.9	Wyoming	$4,890.4	$25,561.6
Montana	$24,619.0	$28,060.7	Other	$184.7	$85.3
Nebraska	$584.4	$1,106.0	**Total**	**$525,573.2**	**$381,647.9**

Sources: USFS: U.S. Dept. of Agriculture, Forest Service, "All Service Receipts (ASR), Final Payment Summary Report PNF (ASR-10-01)," unpublished report.

O&C: U.S. Dept. of the Interior, Bureau of Land Management, *FY2011 Budget Justification*, p. X-6, http://www.doi.gov/budget/2011/data/greenbook/FY2011_BLM_Greenbook.pdf.

PILT: U.S. Dept. of the Interior, *Payments in Lieu of Taxes (PILT) Payments by State*, http://www.nbc.gov/pilt/pilt/states.cfm#search.

Notes: Other includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

Program Concerns and Responses

Concerns

Three concerns have been raised about USFS and O&C receipt-sharing payments. The primary focus has been on the decline in USFS and O&C receipts due to the decline in timber sales, particularly in Oregon. National forest receipts (subject to sharing) declined from their peak of $1.53 billion in FY1989 to $266 million in FY2003—a drop of 83% from the FY1989 level. Estimated receipts for FY2010 were $254 million. In some areas, the decline has been even greater; for example, payments to the eastern Oregon counties containing the Ochoco National Forest fell from $10 million in FY1991 to $309,000 in FY1998—a decline of 97% from the FY1991 level.

Another concern has been annual fluctuations in the payments. Even in areas with modest declines or increases, the payments have varied widely from year to year. From FY1985 to FY2000, the payments from each national forest have risen or fallen an *average* of nearly 30% annually—that is, on average, a county's payment in any year is likely to be nearly 30% higher or lower than its payment the preceding year. Such wide annual fluctuations impose serious budgeting difficulties on the counties.

A third, longer-term concern is referred to as *linkage*. Some observers have noted that, because the counties receive a portion of receipts, they are rewarded for advocating receipt-generating activities (principally timber sales) and for opposing management that might reduce or constrain such activities (e.g., designating wilderness areas or protecting commercial, tribal, or sport fish harvests). Counties have thus often been allied with the timber industry, and opposed to environmental and other interest groups, in debates over USFS management and budget decisions. This source of funds was deemed appropriate when the USFS program was created (albeit, prior to creation of federal income taxes). Some interests support retaining the linkage between county compensation and agency receipts; local support for receipt-generating activities is seen as appropriate, because such activities usually also provide local employment and income, especially in rural areas where unemployment is often high. Others assert that ending the linkage is important so that local government officials can be independent in supporting management decisions that benefit their locality, rather than having financial incentives to support particular decisions.

Proposals to Change the System

Concerns about the USFS and BLM programs have led to various proposals over the years to alter the compensation system. Most have focused on some form of *tax equivalency*—compensating the states and counties at roughly the same level as if the lands were privately owned and managed. Many acknowledge the validity of this approach for fairly and consistently compensating state and county governments. However, most also note the difficulty in developing a tax equivalency compensation system, because counties and states use a wide variety of mechanisms to tax individuals and corporations—property taxes, sales taxes, income taxes, excise taxes, severance taxes, and more. Thus, developing a single federal compensation system for the tax-exempt status of federal lands may be very difficult if not impossible.

In his 1984 budget request, President Reagan proposed replacing the receipt-sharing programs with a tax equivalency system, with a guaranteed minimum payment. The counties argued that the proposal was clearly intended to reduce payments, noting that the budget request projected savings of $40.5 million (12%) under the proposal. The change was not enacted. The FY1986 USFS budget request included a proposal to change the payments to 25% of *net* receipts (after deducting administrative costs), which would have reduced the payments by $207.4 million, to 13% of the FY1986 baseline payments.[6] Legislation to effect this change was not offered.

In 1993, President Clinton proposed a 10-year payment program to offset the decline in USFS and O&C timber sales, and thus payments, resulting from efforts to protect northern spotted owls and other values in the Pacific Northwest. Congress enacted this program in §13982 of the 1993 Omnibus Budget Reconciliation Act (P.L. 103-66). These "spotted owl" payments began in 1994 at 85% of the FY1986-FY1990 average payments, declining by 3 percentage points annually, to 58% in 2003, but with payments after FY1999 at the higher of this formula or the standard payment.

In his FY1999 budget request, President Clinton announced that he would propose legislation "to stabilize the payments" by extending the spotted owl payments formula to all national forests. The proposal would have directed annual payments from "any funds in the Treasury not otherwise appropriated," at the higher of (a) the FY1997 payment, or (b) 76% of the FY1986-FY1990 average payment. This approach would have increased payments in areas with large payment declines while decreasing payments in other areas, eliminated annual fluctuations in payments, and de-linked the payments from receipts. The Administration's proposed bill was not introduced in Congress. The FY2000 and FY2001 USFS budget requests contained similar programs, but no legislative proposals were offered.

The National Association of Counties (NACo) proposed an alternative in 1999. The NACo proposal would have provided the counties with the higher of (a) the standard payment, or (b) a replacement payment determined by the three highest consecutive annual payments for each county between FY1986 and FY1995, indexed for inflation. NACo also proposed "a long-term solution ... to allow for the appropriate, sustainable, and environmentally sensitive removal of timber from the National Forests" by establishing local advisory councils. The NACo approach would have maintained or increased the payments and might have reduced the annual fluctuations, but would likely have retained the linkage between receipts and payments in at least some areas.

Legislative History of the Secure Rural Schools and Community Self-Determination Act of 2000, as Amended

Several bills were introduced in the 106th Congress to alter USFS and O&C payments. After extensive debates, Congress enacted the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS, P.L. 106-393). The act established an alternative payment system for FY2001-FY2006. At each county's discretion, the states with USFS land and counties

6 This implies that USFS administrative costs were estimated to be $195.0 million, 87% of the receipts generated.

with O&C land received either the regular receipt-sharing payments or 100% of the average of the three highest payments between FY1986 and FY1999. Counties receiving at least $100,000 under the alternative system were required to spend 15%-20% of the payment on (1) certain county programs (specified in Title III of the act), (2) federal land projects proposed by local resource advisory committees and approved by the appropriate Secretary if the projects meet specified criteria, including compliance with all applicable laws and regulations and with resource management and other plans (identified in Title II of the act), or (3) federal land projects as determined by the Secretary. Funds needed to achieve the full payment were permanently appropriated, and came first from agency receipts (excluding deposits to special accounts and trust funds) and then from "any funds in the Treasury not otherwise appropriated." Since FY2001, O&C payments have risen to $110 million annually, up from $62 million of O&C spotted owl payments in FY2000. Since FY2001, total USFS payments have exceeded $350 million annually, up from $192 million in FY2000; SRS payments have accounted for more than 95% of total USFS payments since FY2001, and for 100% of O&C payments.

Reauthorization Efforts in the 110th Congress

SRS expired at the end of FY2006, with final payments made at the end of December 2006. Legislation to extend the program was considered in the 110th Congress; various bills would have extended the program for one or seven years, and one specified funding it with a miniscule (0.00086%) rescission of "any [FY2007] non-defense discretionary account." An amendment to the FY2007 continuing resolution (H.R. 2) to extend the program for one year was offered and then withdrawn.

The debate continued in the Emergency Supplemental Appropriations Act for FY2007 (H.R. 1591, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007). The House included a one-year extension of the program. The Senate amended the bill (S.Amdt. 709) to extend the program for five years (FY2008-FY2012) and significantly change the formula for allocating funds to the counties; the change was to address the concentration of payments in certain areas by spreading payments more broadly (as discussed below). The conference agreed on the House-passed version (a one-year extension), but the bill was vetoed by President Bush.

A new version of Emergency Supplemental Appropriations for FY2007 (H.R. 2206) was introduced on May 8, 2007. This bill also included a one-year extension of SRS payments, and it was signed into law as P.L. 110-28 on May 25, 2007. Title V, Chapter 4, § 5401 authorized payments of $100.0 million from receipts and of $425.0 million from appropriations, to "be made, to the maximum extent practicable, in the same amounts, for the same purposes, and in the same manner as were made to States and counties in 2006 under that Act." Thus, preliminary FY2007 payments were made at the end of September 2007, with final payments made at the end of December 2007.

A new bill—the Public Land Communities Transition Assistance Act (H.R. 3058)—was introduced in July 2007 to extend, modify, and phase out the SRS payments; it was similar to S.Amdt. 709. The House Natural Resources Committee held a subcommittee hearing on the bill on July 26, 2007, and a committee markup on September 26. The committee ordered the bill reported, amended, by voice vote. The bill was brought up on the House floor under suspension of the rules procedures, but did not garner the two-thirds vote needed to pass under this procedure, nor was it brought up later under other procedures.

Four-Year Extension Enacted

On October 1, 2008, the Senate passed H.R. 1424, the Emergency Economic Stabilization Act, with a provision similar to S.Amdt. 709 in § 601 (in Title VI—Other Provisions, Division C—Tax Extenders and Alternative Minimum Tax Relief). The House agreed to the Senate amendments on October 3, and President Bush signed the bill as P.L. 110-343.

Section 601(a) of H.R. 1424 extended the SRS payment program with several changes: "full funding" that declines over four years; the basis for calculating payments; transition payments for certain states; and the use of SRS funds for Title II and Title III activities. In addition, § 601(b) modified the original USFS 25% payment program (under which counties can get compensation in lieu of SRS payments and for payments after SRS expires). Finally, § 601(c) provided five years of mandatory spending for the PILT program.

Full Funding

The act defined *full funding* in § 3(11). For FY2008, full funding was $500 million; for FY2009-FY2011, full funding would be 90% of the previous year's funding. However, total payments exceeded the full funding amount in the first two years; payments under SRS totaled $562.8 million in FY2008 and $509.7 million in FY2009. This occurred because the *calculated payments* (discussed below) are based on full funding, as defined in the bill, but the act also authorized *transition payments* (discussed below) in lieu of the calculated payments in eight states. Since the transition payments exceeded the calculated payments for those states, the total payments were higher than the full funding amount.

Calculated Payments

SRS payments to each state (for USFS lands) or county (for O&C lands) differed significantly from the payments made under the original SRS; **Table A-1** shows the dollars and share of total SRS payments in each state in FY2006 and FY2009. Payments under § 102 were based on historic revenue-sharing payments (like SRS), but modified based on each county's share of federal land and relative income level. The payment calculations required a multiple-step process:

- **Step 1.** Determine the three highest revenue-sharing payments between FY1986 and FY1999 for each eligible county, and calculate the average of the three.[7]
- **Step 2.** Calculate the proportion of these payments in each county (divide each county's three-highest average [**Step 1**] by the total of three-highest average in all eligible counties, with separate calculations for USFS lands and O&C lands).
- **Step 3.** Calculate the proportion of USFS and O&C lands in each eligible county (divide each county's USFS and O&C acreage by the total USFS and O&C acreage in all eligible counties, with separate calculations for USFS lands and O&C lands).
- **Step 4.** Average these two proportions (add the payment proportion [**Step 2**] and the acreage proportion [**Step 3**] and divide by 2, with separate calculations for

[7] Eligible counties are those that choose to receive payments under this program; counties that choose to continue to receive payments under the original revenue-sharing programs are excluded from these calculations.

USFS lands and O&C lands). This is the *base share* for counties with USFS lands and the *50% base share* for counties with O&C lands.

- **Step 5.** Calculate each county's *income adjustment* by dividing the per capita personal income in each county by the median per capita personal income in all eligible counties.
- **Step 6.** Adjust each county's base share [**Step 4**] by its relative income (divide each county's base share or 50% base share by its income adjustment [**Step 5**]).
- **Step 7.** Calculate each county's *adjusted share* or *50% adjusted share* as the county's proportion of its base share adjusted by its relative income [**Step 6**] from the total adjusted shares in all eligible counties (divide each county's result from **Step 6** by the total for all eligible counties [USFS and O&C combined]).

In essence, the amendment differed from the original SRS by basing half the payments on historic revenues and half on proportion of USFS and O&C land, with an adjustment based on relative county income. This was done because of the concentration of payments under the original SRS to Oregon, Washington, and California (more than 75% of payments in FY2006; see **Table A-1**). Several counties opted out of the amended SRS system, while other opted in, because of the altered allocation. For example, in FY2006 100% of the payments to Pennsylvania were under SRS, but in FY2009 only 54% of the payments to Pennsylvania were under SRS. Conversely, in FY2006 none of the payments to New Hampshire and only 29% of the payments to Michigan were under SRS, but in FY2009 44% of the payments to New Hampshire and 78% of the payments to Michigan were under SRS.

In addition, the act set a full payment amount allocated among all counties that chose to participate in the program (eligible counties). Thus, the fewer counties that participated (i.e., the more that opted for the original payment programs), the more each participating county received.

Transition Payments

In lieu of the calculated payments under § 102, the counties in eight states—California, Louisiana, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, and Washington—received transition payments for three fiscal years, FY2008-FY2010. These counties were included in the calculations, but received payments of a fixed percentage of the FY2006 payments under SRS, instead of their calculated payments. The schedule in the act specified FY2008 payments equaling 90% of FY2006 payments, FY2009 payments at 81% of FY2006 payments, and FY2010 payments at 73% of FY2006 payments. Because the transition payments were higher than the calculated payments (using the multi-step formula, above), total payments have been greater than the "full funding" defined in the act.

Title II and Title III Activities

As with the original SRS, the amended version allowed counties with less than $100,000 in annual payments to use 100% of the payments for roads and schools (or any governmental purpose for O&C counties). However, it modified the required use of 15%-20% of funds for Title II projects (reinvestment in federal lands) for counties with "modest distributions"—for counties with annual payments of more than $100,000 but less than $350,000, the required 15%-20% could be used either for Title II projects or for Title III programs. Counties with payments of more than $350,000 were limited to 7% of the payments for Title III programs. The amendment also modified the authorized uses of Title III funds, deleting some authorized uses (e.g., community work centers) while expanding authorized uses related to community wildfire protection.

Income Averaging

Section 601(b) of the act altered the USFS 25% Payment to States program. It changed the payment from 25% of current-year gross receipts to 25% of average gross receipts over the past seven years—essentially a seven-year rolling average of receipts. This reduces the annual fluctuation in payments, providing more stability in the annual payments. Thus payments will increase more slowly than in the past when and where national forest receipts are rising, but will decline more slowly when and where receipts are falling. This change immediately affected counties with USFS land that chose not to participate in the SRS payment program, and will affect all counties with USFS land after the program expires in 2011 (unless SRS or some other alternative is enacted).

Payments in Lieu of Taxes (PILT)

Section 601(c) of the act provided mandatory spending for the PILT program for five years, FY2008-FY2012. This means that eligible counties have and will receive the full calculated PILT payment for those five years—a significant increase in PILT payments, since appropriations have averaged less than two-thirds of the calculated payments over the past decade. After FY2012, PILT will again require annual appropriations, unless Congress extends mandatory spending for the program.

Legislative Issues

When SRS expired at the end of FY2006, future payments were to return to the original formulas. In 2003, a group established by Congress to review the SRS compensation formula—the Forest Counties Payments Committee—recommended extending and modifying the act.[8] Generally, six issues commonly have been raised about compensating counties for the tax-exempt status of federal lands: the lands covered; the basis for compensation; the source of funds; the authorized and required uses of the payments; interaction with other compensation programs; and the duration of the new system. In addition, any new mandatory spending in excess of the baseline that would result in an increase in the deficit may be subject to budget rules, such as congressional pay-as-you-go (PAYGO) rules and the recently enacted Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139), which generally require budgetary offsets.[9]

[8] Forest Counties Payments Committee, *Recommendations for Making Payments to States and Counties: Report to Congress* (Washington, DC: U.S. GPO, 2003). The committee was established in §320 of the FY2001 Interior and Related Agencies Appropriations Act, P.L. 106-291.

[9] For an overview of federal budget procedures, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith. For background on PAYGO rules, see CRS Report RL34300, *Pay-As-You-Go Procedures for Budget Enforcement*, by Robert Keith.

Offsets For New Mandatory Spending

The following legislative issues involve the many policy considerations in compensating local governments for the tax-exempt status of USFS and O&C lands. In addition, a different policy issue concerns legislation with mandatory spending that would increase the federal deficit, and whether such spending should be offset so as not to increase the deficit. Congress has enacted a set of budget rules to require that this issue be addressed, generally requiring that legislation not increase spending that would add to the budget deficit. Most legislation that creates new or extends existing mandatory spending (in excess of the baseline) must be balanced—offset—by increases in receipts or decreases in other mandatory spending. The budget rules may be waived or set aside in particular instances, but the increased deficit spending remains a consideration.

Legislation to reauthorize (with or without other modifications) the Secure Rural Schools and Community Self-Determination Act of 2000, or to enact a different alternative, would require an offset—increased revenues or decreased spending from other mandatory spending accounts—or a waiver to the budget rules. In 2000, Congress provided such a waiver by including a specific type of provision, called a reserve fund, in the budget resolution.

In 2006, to fund a six-year reauthorization of SRS, the Bush Administration proposed selling some federal lands. To fund the O&C payments, the BLM would have accelerated its land sales under § 203 of the Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. § 1713). For the USFS payments, estimated at $800 million, the USFS would have sold approximately 300,000 acres of national forest land. This would have required legislation, as the USFS currently has only very narrow authority to sell any lands. The Administration offered draft legislation to authorize these land sales, but no bill to authorize that level of national forest land sales was introduced in the 109th Congress. Instead, Congress again included a reserve fund for SRS payments in the budget resolution.

In FY2007, the Bush Administration again proposed selling national forest lands to fund a phase-out of SRS payments, with half of the land sale revenues for other programs (including land acquisition and conservation education). Again, no legislation to authorize national forest land sales was introduced.

Lands Covered

SRS includes payments only for national forests and for the O&C lands. Some observers have noted that these compensation programs provide substantial funding for the specified lands, while other federal lands that are exempt from state and local taxation receive little or nothing. The easiest comparison is with the national grasslands. Some have questioned the logic of compensating national forest counties with 25% of gross receipts and protecting these counties from declines in receipts under SRS, while compensating national grassland counties with 25% of net receipts and excluding them from SRS. Both forests and grasslands are part of the National Forest System, although the laws authorizing their establishment differ.

More significantly, many other tax-exempt federal lands provide little compensation to local governments. The BLM has numerous compensation programs, but generally the payments are quite small. (The O&C payments account for about 95% of BLM compensation payments, but O&C lands are only about 1% of BLM lands.) The National Park Service has two very small compensation programs related to public schooling of park employees' children at two parks.

PILT provides some compensation for most federal lands, but many lands—inactive military bases, Indian trust lands, and certain wildlife refuge lands, for example—are excluded and the national forests and O&C lands get PILT payments in addition to other compensation. In 1992, the Office of Technology Assessment recommended "fair and consistent compensation for the tax exempt status of national forest lands and activities."[10] This concept of fair and consistent compensation could be extended to all tax-exempt federal lands. Others argue that the limited costs imposed on local governments by federal land ownership may lead to overcompensating state and local governments.

Basis for Compensation

The legislative histories of the Agriculture appropriations acts establishing the USFS payments to states (the last of which, enacted on May 23, 1908, made the payments permanent) clearly indicate that the intent was to substitute receipt-sharing for local property taxation, but no rationale was discussed for the level chosen (10% in 1906 and 1907; 25% since). Similarly, the rationale was not clearly explained or discussed for the Reagan tax equivalency proposal, for the spotted owl payments (a declining percent of the historical average), or for the legislation debated and enacted by the 106th Congress (generally the average of the three highest payments during a specified historical period). The proposals' intents were generally to reduce (Reagan Administration) or increase (more recently) the payments.

The geographic basis is also a potential problem for USFS payments. USFS 25% payments are made to the states, but are calculated for each county with land in each national forest.[11] Using the average of selected historical payments from each national forest or to each county or each state could result in different levels of payments in states with multiple national forests.[12] (This is not an issue for O&C lands, because the O&C payments are made directly to the counties.)

Source of Funds

As noted above, the USFS 25% payments are permanently appropriated from agency receipts, and were established prior to federal income taxes and substantial federal oil and gas royalties. Most of the proposals for change also would establish mandatory payments; lacking a specified funding source, mandatory spending would come from the General Treasury. SRS directed payments first from receipts, then from the General Treasury. Critics are concerned that retaining the linkage between agency receipts (e.g., from timber sales) and county payments (albeit less directly than for the 25% payments) still encourages counties to support timber sales over other USFS uses.

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[10] U.S. Congress, Office of Technology Assessment, *Forest Service Planning: Accommodating Uses, Producing Outputs, and Sustaining Ecosystems*, OTA-F-505 (Washington: U.S. GPO, Feb. 1992), p. 8.

[11] There was no discussion in the legislative history of why the payments were made to the states, and not directly to the counties.

[12] The complexity of this situation is shown using Arizona as an example in out-of-print CRS Report RL30480, *Forest Service Revenue-Sharing Payments: Legislative Issues*, by Ross W. Gorte (available from the author).

Authorized and Required Uses of the Payments

The USFS 25% payments can be spent only on roads and schools in the counties where the national forests are located. State law dictates which road and school programs are financed with the payments, and the state laws differ widely, generally ranging from 30% to 100% for school programs, with a few states providing substantial local discretion on the split.[13] The O&C payments are available for any local governmental purpose.

SRS modified these provisions by requiring (for counties with at least $100,000 in annual payments) that 15%-20% of the payments be used for other specified purposes: certain local governmental costs (in Title III); federal land projects recommended by local advisory committees and approved by the Secretary (under Title II); or federal land projects as determined by the Secretary (under § 402). Use of the funds for federal land projects has been touted as "reinvesting" agency receipts in federal land management, but opponents argue that this "re-links" county benefits with agency receipt-generating activities and reduces funding for local schools and roads. The Forest Counties Payments Committee recommended granting local governments more flexibility in their use of the payments. The committee also recommended that the federal government prohibit the states from adjusting their education funding allocations because of the USFS payments.[14]

Duration of the Program

The USFS 25% payments and the O&C payments are permanently authorized. The USFS 25% payments were established in 1908 (after having been enacted as a one-year program in 1906 and again in 1907). The O&C payments were established in 1937. The spotted owl payments were a 10-year program, enacted in 1993. SRS was enacted as a six-year program that expired on September 30, 2006 (with the final payment in December 2006). Some of the bills debated in the 106th Congress would have made permanent changes; others would have changed the system temporarily, often with an advisory group to examine the old system and the temporary changes and to make recommendations. The Forest Counties Payments Committee recommended a permanent change based on SRS, with some adjustments. The essential questions for Congress are (1) how often should Congress review the payment systems (these or all county compensation programs, or the lack thereof) to assess whether they still function as intended; and (2) what options are available (e.g., a sunset provision) to induce future Congresses to undertake such a review?

[13] See CRS Congressional Distribution Memorandum, *Forest Service Revenue-Sharing Payments: Distribution System*, by Ross W. Gorte (available from the author).

[14] Some states include FS payments allocated for education in their calculations allocating state education funds to the counties.

Appendix. SRS Payments in FY2006 and FY2009

As described in the text, under "Four-Year Extension Enacted," the SRS payment formula was modified in the extension to include federal acreage and relative income in each county, as well as transition payments in some states. The result is a change in the payments and the allocation of total payments in the modified formula. These changes are shown in **Table 2**. Be aware, however, that the change in the payment formula led some counties that had chosen 25% payments for FY2006 to opt for SRS payments for FY2009, and vice versa. Some of the increase in SRS payments in FY2009 is due to more counties opting for SRS payments in some states, such as Michigan, New Hampshire, Ohio, Puerto Rico, and Wisconsin. In at least one state—Pennsylvania—a portion of the decline is due to some counties opting for 25% payments in FY2009.

Table A-1.FY2006 and FY2009 USFS and O&C Payments Under SRS, by State

(in thousands of dollars and percent of total)

	FY2006		FY2009			FY2006		FY2009	
	Dollars	Percent	Dollars	Percent		Dollars	Percent	Dollars	Percent
AL	2,133.8	0.44%	2,236.2	0.44%	NY	16.9	<0.01%	29.5	0.01%
AK	9,377.2	1.92%	18,760.5	3.68%	NC	1,020.9	0.21%	2,326.6	0.46%
AZ	7,289.8	1.50%	16,688.2	3.27%	ND	0.0	0.00%	0.8	<0.01%
AR	6,568.0	1.35%	8,309.6	1.63%	OH	68.8	0.01%	339.7	0.07%
CA	65,279.3	13.44%	50,125.6	9.83%	OK	1,238.9	0.26%	1,192.4	0.23%
CO	6,338.7	1.31%	14,641.3	2.87%	*OR-USFS*	*149,153.3*	*30.72%*	*121,316.4*	*23.80%*
FL	2,504.5	0.52%	2,862.3	0.56%	*OR-O&C*	*108,852.0*	*22.42%*	*87,175.0*	*17.10%*
GA	1,304.6	0.27%	1,864.1	0.37%	OR-Total	258,005.3	53.13%	208,491.4	40.91%
ID	21,173.5	4.36%	34,900.0	6.85%	PA	6,491.6	1.34%	2,505.6	0.49%
IL	304.2	0.06%	107.6	0.02%	PR	0.0	0.00%	184.7	0.04%
IN	130.2	0.03%	337.4	0.07%	SC	3,288.2	0.68%	2,498.4	0.49%
KY	682.1	0.14%	2,596.9	0.51%	SD	3,823.4	0.79%	2,931.1	0.58%
LA	3,726.1	0.77%	2,620.1	0.51%	TN	560.3	0.12%	1,428.4	0.28%
ME	41.4	0.01%	99.3	0.02%	TX	4,688.8	0.97%	3,655.9	0.72%
MI	789.8	0.16%	3,397.1	0.67%	UT	1,872.5	0.39%	14,177.0	2.78%
MN	1,468.8	0.36%	3,330.1	0.65%	VT	392.3	0.08%	400.7	0.08%
MS	8,287.2	1.71%	7,705.7	1.51%	VA	925.2	0.19%	2,093.7	0.41%
MO	2,767.2	0.57%	4,681.7	0.92%	WA	42,293.9	8.71%	33,990.9	6.67%
MT	12,934.8	2.66%	24,523.6	4.81%	WV	2,006.3	0.41%	2,356.8	0.46%
NE	55.6	0.01%	584.4	0.11%	WI	577.6	0.12%	2,730.1	0.54%
NV	408.8	0.08%	5,174.2	1.02%	WY	2,387.4	0.49%	4,357.6	0.85%

	FY2006		FY2009			FY2006	FY2009
NH	0.0	0.00%	275.2	0.05%			
NM	2,383.6	0.49%	18,185.9	3.57%	**Total**	**485,567.7**	**509,667.8**

Sources: USFS: U.S. Dept. of Agriculture, Forest Service, "All Service Receipts (ASR), Final Payment Summary Report PNF (ASR-10-01)," unpublished reports.
O&C: U.S. Dept. of the Interior, Bureau of Land Management, *FY2011 Budget Justification*, p. X-6, http://www.doi.gov/budget/2011/data/greenbook/FY2011_BLM_Greenbook.pdf.

Note: Counties could choose to receive the regular 25% USFS payments or 50% O&C payments, rather than the SRS payments, and in many cases opted for the 25% in FY2006 or FY2009, and sometimes in both fiscal years. Thus, a change in the SRS payments in the table might not reflect the total change in USFS payments to that state.

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