

CRS Report for Congress

The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties

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Summary

The Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393) provided a temporary (through FY2006), optional program of payments to counties whose regular Forest Service and Bureau of Land Management receipt-sharing payments had declined significantly. Concerns about the decline in traditional payments, the substantial annual fluctuations in payments, and the *linkage* of payments to receipt-generating activities have led to many proposals to change the system. *Tax equivalency* is the most common alternative suggested, but the Clinton Administration proposed a program using historical payments, and this vision was used in P.L. 106-393.

The Secure Rural Schools and Community Self-Determination Act expired at the end of FY2006. Congress could let the program end, renew the authorization or make it permanent, or modify it in various ways. Possible issues for modifying the program include 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, budget rules impose a procedural barrier to reauthorizing the law; to be considered on the floor, legislation with mandatory spending (in excess of the baseline) must be offset by additional receipts or declines in other mandatory spending.

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The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties

The Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393) provided an alternative system for compensating counties for the tax-exempt status of most national forests, managed by the Forest Service (FS) in the Department of Agriculture, and some public lands administered by the Bureau of Land Management (BLM) in the Department of the Interior. The law authorizing these payments expired at the end of FY2006. The 109th Congress considered bills to reauthorize the program, but did not enact reauthorizing legislation. The 110th Congress is likely to consider legislation to reauthorize the program.

Background

Since 1908, the FS 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.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% in 1906 and 1907; 25% since) was not discussed in the 1906-1908 debates. The program is called FS Payments to States, because each state allocates the funds to road and school programs, although the FS determines the amount to be spent in each county based on the acreage of each national forest in each county. The states cannot retain the funds; they must be passed through to local governmental entities (not necessarily counties) for the authorized road and school programs. At their peak, in FY1989, FS payments totaled \$361 million. FS receipts have declined substantially since FY1989, largely because of declines in timber sales.

The FS has four other compensation programs. The largest is Payments to Counties for National Grasslands (7 U.S.C. §1012); this program pays 25% of *net* (rather than gross) receipts from grazing and other uses of the national grasslands directly to the counties where the grasslands are located, for use on roads and schools in the counties. The payments have been rising slowly, to a peak of \$6.2 million in FY2002. The other three programs are quite small, both in acreage affected and amount of money going to the local governments, totaling about \$2 million annually.

Congress has also enacted numerous programs to share receipts from BLM lands for various types of resource use and from various classes of land. One

¹ For more on these and other mandatory county-compensation programs 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.

program accounts for the majority of BLM receipt-sharing: counties in western Oregon containing the revested O&C lands (Oregon and California Railroad grant lands returned to federal ownership for failure to fulfill the terms of the grant) receive 50% of the receipts from these lands.² These mandatory payments go directly to the counties for any local governmental purposes. The payments peaked at \$205 million in FY1990, but have similarly declined because of declining timber sales since the late 1980s. Concerns about, and proposals to alter, FS receipt-sharing payments also typically include the O&C payments, because both are substantial payments derived largely from timber receipts.

Last, in addition to these receipt-sharing programs, Congress enacted the Payments in Lieu of Taxes (PILT) Program.³ Subject to annual appropriations (\$230 million in FY2005), 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 FS Payments to States and BLM’s O&C payments — so changes to these latter programs may also affect a county’s payments under PILT.

Program Concerns and Responses

Concerns. Three concerns have been raised about FS and O&C receipt-sharing payments. The primary focus has been on the decline in FS 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 to 17% of the FY1989 level. 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 to 3% of 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., protecting commercial or sport fish harvests or designating wilderness areas). Counties have

² The counties are granted 75% of receipts, but up to a third (i.e., 25% of receipts) is to be used by the BLM to administer the O&C lands; administrative costs have exceeded this share for more than 50 years, and thus the counties effectively receive 50% of receipts.

³ See CRS Report RL31392, *PILT (Payments In Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

thus often been allied with the timber industry, and opposed to environmental groups, in debates over FS management and budget decisions. This source of funds was deemed appropriate when the FS 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 being paid to support particular decisions.

Proposals to Change the System. Concerns about the FS 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 FS 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 required payments). Legislation to effect this change was not offered.

In 1993, President Clinton proposed a 10-year payment program to offset the decline in FS and O&C timber sales, and thus payments, resulting from efforts to protect 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. No Member introduced the Administration’s proposed bill. The FY2000 and FY2001 FS 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 FY1986-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.

The Secure Rural Schools and Community Self-Determination Act of 2000

Several bills were introduced in the 106th Congress to alter FS and O&C payments. The bills were generally based on the Clinton Administration and/or NACo proposals, with various modifications. Some would have established a new payment program to supplant the current systems; others would have supplemented the standard payments.

After extensive debates, Congress enacted the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393). The act established an alternative payment system for FY2001-FY2006.⁴ States with FS land and counties with O&C land can receive (at the counties’ discretion) either the regular receipt-sharing payments or 100% of the average of the three highest payments for FY1986-FY1999. Counties receiving at least \$100,000 under the alternative system must 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 are permanently appropriated, and come 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 FS payments have exceeded \$350 million annually, up from \$192 million in FY2000; P.L. 106-393 payments have accounted for more than 95% of total FS payments since FY2001.

Legislative Issues

P.L. 106-393 expired at the end of FY2006, with the final payment in December 2006. Future payments are now scheduled to return to the original formulas. In 2003, the Forest Counties Payments Committee recommended extending and

⁴ The act contains two additional, unrelated titles. Title V amended the Mineral Leasing Act of 1920 to clarify mineral receipt-sharing payments, and Title VI established a cooperative forest restoration program in New Mexico.

modifying the act.⁵ Alternatively, a new system could be devised in legislation. Generally, five issues are raised about compensating counties for the tax-exempt status of federal lands: 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 compensation program with mandatory spending would require an offset under PAYGO rules.

Basis for Compensation. The legislative histories of the FY1907, FY1908, and FY1909 Agriculture appropriations acts establishing the FS payments (the last of which 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 1984 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 only clear conclusion is that the proposals were generally to reduce (in 1984) or increase (more recently) the payments.

The geographic basis is also a potential problem for FS payments. FS 25% payments are made to the states, but are calculated for each county with land in each national forest. 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.⁶ (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 FS 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 have established mandatory payments, but most did not specify a funding source. P.L. 106-393 directed the payments first from receipts, then from the General Treasury. Critics are concerned that this retained the linkage between agency receipts (e.g., from timber sales) and county payments, albeit less directly than for the 25% payments. The source of funds may relate to the offset under PAYGO rules, as discussed below.

Authorized and Required Uses of the Payments. The FS 25% payments can only be spent 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.⁷ The O&C payments are available for any local governmental purpose.

⁵ 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 P.L. 106-291, the FY2001 Interior appropriations act.

⁶ The complexity of this situation is shown using Arizona as an example in CRS Report RL30480, *Forest Service Revenue-Sharing Payments: Legislative Issues*, by Ross W. Gorte.

⁷ See CRS Congressional Distribution Memorandum, *Forest Service Revenue-Sharing* (continued...)

P.L. 106-393 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 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 FS payments.⁸

Interaction with Other Compensation Programs. As noted above, many programs have been enacted to provide counties with federal funding to compensate for the tax-exempt status of certain federal lands. PILT is the broadest general payment program, and authorized PILT payments are reduced by certain other payment programs, including FS 25% payments, O&C payments, and payments under P.L. 106-393. During the debate over P.L. 106-393, Congress debated whether to replace the FS 25% and the O&C payment programs (temporarily or permanently), or to allow counties to opt for the current system instead of the enacted alternative system. Congress also considered whether to exempt the alternative payments from the PILT offset, which would have provided greater total payments to the counties. In the end, P.L. 106-393 provided an optional, temporary program with payments included as offsets to PILT. Nonetheless, these possibilities may again be discussed. Perhaps the question of PILT offsets might lead to a broader discussion of the appropriate total compensation to state and local governments for the tax-exempt status of all federal lands.

Duration of the Program. The FS 25% and the O&C payments are permanently authorized. The FS 25% payments were established in 1908 (after having been enacted as one-year programs 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. P.L. 106-393 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 P.L. 106-393, with some adjustments. The essential questions for Congress are (1) how often should Congress review the payment systems 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?

⁷ (...continued)

Payments: Distribution System, by Ross W. Gorte (available from the author).

⁸ Some states, notably Washington, include the FS payments allocated for education in their calculations allocating state education funds to the counties.

Offsets Under Budget Rules. The preceding legislative issues involve the many policy considerations in compensating local governments for the tax-exempt status of FS and O&C lands. In contrast, the offset issue concerns the procedural requirements for considering mandatory spending on compensation programs. Legislation that creates new or extends existing mandatory spending in excess of the baseline generally must be balanced — offset — by changes in other revenue or mandatory spending.⁹ Thus, bills 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.

In 2006, to fund a six-year reauthorization of the Secure Rural Schools and Community Self-Determination Act, 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 FS payments, estimated at \$800 million for the reauthorization, the FS would have sold approximately 300,000 acres of national forest land. This would have required legislation, as the FS 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.

⁹ See CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff, Jr.