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Testimony

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PAYMENTS TO COUNTIES

Shortcomings in
Oversight and
Implementation of
Key Parts of the
Secure Rural Schools
Act May Be Addressed
by Recent Agency
Guidance

Statement of Anne-Marie Fennell, Director
Natural Resources and Environment



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United States Government Accountability
Office
Washington, DC 20548

Chairman Wyden, Ranking Member Murkowski, and Members of the Committee:

I am pleased to be here today to discuss our work on the Secure Rural Schools and Community Self-Determination Act.¹ As you know, the act was a response to the steep decline in federal timber sales during the 1990s, which significantly decreased revenues from national forests managed by the Department of Agriculture's Forest Service and from some public lands managed by the Department of the Interior's Bureau of Land Management (BLM). Counties containing federal lands have historically received a percentage of the revenues generated by the sale or use of natural resources on these lands, and the act was enacted in part to stabilize payments to counties dependent on revenues from federal timber sales. The act, which covers all National Forest lands and certain BLM lands in western Oregon, was initially enacted in 2000 and has been reauthorized several times, most recently for a 1-year extension in 2012.² Under the act, each county may continue to receive a portion of the revenues generated from the sale or use of resources from federal lands or can choose instead to receive annual payments based in part on historical revenue payments to the county. Title III of the act authorizes counties to use a portion of the payments for certain purposes related to wildland fire and emergency services on federal lands.

In 2011, at the request of this committee, we undertook a review of the oversight and implementation of the 2008 reauthorization of Title III. We examined the actions the Forest Service and BLM had taken to oversee county spending under Title III and the extent to which county expenditures were consistent with the provisions of the act. In July 2012 we reported that the agencies had provided limited oversight of county spending under Title III and that, although the projects for which counties reported using Title III funds were generally aligned with the purposes of

¹Pub. L. No. 106-393 (2000), as amended.

²Pub. L. No. 106-393 (2000) covered the period from fiscal year 2001 through fiscal year 2006. Pub. L. No. 110-28, Title V, § 5401 (c) (2007), reauthorized the act for fiscal year 2007. Pub. L. No. 110-343, Div. C, Title VI, § 601 (2008), reauthorized the act from fiscal year 2008 through fiscal year 2011. Pub. L. No. 112-141, Div. F, Title I, § 100101 (2012), reauthorized the act through fiscal year 2012. In this testimony, we refer to the Secure Rural Schools and Community Self-Determination Act of 2000 as the Secure Rural Schools Act.

Title III, county spending did not in all cases appear consistent with the act.³ We recommended that the Forest Service and BLM strengthen their oversight by issuing regulations or clear guidance specifying the types of allowable county uses of Title III funds. The agencies concurred with this recommendation and have taken action to do so. We also suggested that Congress, if it chooses to extend Title III beyond the 1-year reauthorization enacted in 2012, consider revising and clarifying the language of Title III to make explicit which types of expenditures are and are not allowable under the act.

My testimony today will describe (1) key findings of our 2012 report related to oversight and implementation of the act and (2) actions the agencies have taken to strengthen oversight of county spending since our report was issued. This statement is based on our July 2012 report, and includes selected updates conducted in March 2013 on actions the agencies have taken in response to our report's recommendation. To conduct the updates, we reviewed additional guidance issued by the agencies and interviewed agency officials. Detailed information about scope and methodology can be found in our July 2012 report. We conducted the performance audit work that supports this testimony in accordance with generally accepted government auditing standards. Those standards require that we plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Secure Rural Schools Act was enacted to help address fiscal difficulties confronting rural counties having substantial federal lands and a history of federal timber harvesting. The act, as reauthorized, comprises three principal titles. Under Title I, counties are to use the majority of payments they receive for the same purposes for which they used federal receipts, in most cases for the benefit of roads and schools. Under Title II, counties may reserve a portion of the payments to fund certain land management projects that benefit federal lands. Title III authorizes the use of a portion of the payments for certain purposes related to wildland

³GAO, *Payments to Counties: More Clarity Could Help Ensure County Expenditures Are Consistent with Key Parts of the Secure Rural Schools Act*, [GAO-12-775](#) (Washington, D.C.: July 16, 2012).

fire and emergency services on federal lands.⁴ These authorized uses include carrying out certain activities to increase the protection of people and property from wildland fires under the Firewise Communities program,⁵ reimbursing the county for search and rescue and other emergency services performed on federal land, and developing community wildfire protection plans to help protect homes and neighborhoods. Title III requires counties to follow certain administrative requirements, including publishing public notices of proposed uses for the payments and submitting annual certifications of Title III expenditures to either the Forest Service or BLM, as appropriate, stating that any Title III funds spent in the previous year went toward authorized uses. For fiscal years 2008 through 2011, 358 counties received a total of \$108 million for Title III projects, and individual counties received from about \$3,600 to over \$2 million in a single fiscal year for such projects.⁶

The Forest Service and BLM are responsible for carrying out certain parts of the Secure Rural Schools Act. Both agencies calculate the amounts that counties are to receive each year, and both agencies are required by the act to review the counties' certification of Title III expenditures as the agencies determine to be appropriate. The act also requires the agencies to issue regulations to implement the act, although it does not describe what the regulations are to address or establish a deadline for issuing them.

⁴Counties receiving \$100,000 or less in payments may allocate all of their payments to uses authorized under Title I. Counties receiving more than \$100,000 must allocate from 15 to 20 percent of their payments to Title II and Title III projects or give the funds back to the federal government. Counties choose how to divide this percentage among Title II and Title III, although counties receiving \$350,000 or more in payments may allocate no more than 7 percent of the payments to Title III projects.

⁵The Firewise Communities program is a nonregulatory program administered by the National Fire Protection Association and sponsored by the Forest Service, Interior, and state forestry organizations. It is designed to involve homeowners, community leaders, planners, developers, and others in efforts to protect people, property, and natural resources from the risk of wildland fire.

⁶Payments under all three titles of the act totaled over \$2 billion for fiscal years 2008 through 2011.

Federal Agencies
Had Provided
Limited
Oversight of
County Spending
at the Time of
Our Report, and
Some County
Expenditures May
Have Been

In our July 2012 report, we found that the Forest Service and BLM had taken few actions to oversee county spending under Title III of the Secure Rural Schools Act and that the guidance they provided was limited and, in some cases, did not appear consistent with the act.⁷ We also found that some expenditures by selected counties we contacted may have been inconsistent with the act—which may have resulted in part from the limited guidance available from the agencies—and that counties we reviewed did not consistently follow Title III’s administrative requirements.

~~Inconsistent~~
Oversight by
Federal Agencies
Provisions of
the Act

In July 2012, we reported that neither the Forest Service nor BLM had issued regulations under the act and that the guidance the agencies had issued was limited and sometimes unclear. We expressed particular concern that the agencies had not developed regulations or clear guidance because the act itself does not define key terms. For example, the act authorizes counties to use Title III funds for “search and rescue and other emergency services, including firefighting, that are performed on federal land” but does not specify the types of activities covered by this phrase.⁸ We concluded that because the language of the law leaves certain provisions open to varying interpretations, and available guidance from the agencies had done little to clarify this language, counties had generally been left to make their own interpretations about which types of expenditures are allowable under Title III and which are not.

To provide guidance, the Forest Service had developed a brief overview of Title III, which generally echoed wording in the act, and a “frequently asked questions” document responding to questions on authorized uses of Title III funds. At the time of our report, agency officials told us they believed the frequently asked questions document provided sufficient clarity for counties to use when considering how to spend Title III funds.

⁷GAO-12-775.

⁸The legislative history of Title III contains almost no information that clarifies the phrase “emergency services.”

Officials from several counties we contacted, however, told us they found these documents to be of little help, and our review of these documents found that they did not clearly define terms from the act or specify which types of expenditures were allowed under the act and which were not. For example, the act authorizes counties to use Title III funds for “search and rescue and other emergency services, including firefighting, that are performed on federal land” but does not define the types of activities covered by this phrase. Neither of the Forest Service documents defined such activities. In addition, in the frequently asked questions document, the Forest Service listed eight specific uses of Title III funds—including purchase of capital equipment, capital improvements, purchase of land, and training for emergency response—and asked, “Are Title III funds authorized for the following uses?” Instead of answering the question directly, the documents stated that for certain uses—such as construction of facilities, purchase of real property, and purchase of vehicles and other capital equipment—the act does not explicitly authorize these uses. It then further stated that reimbursement for certain uses—such as the purchase of replacement equipment damaged or destroyed during an emergency response or maintenance of vehicles and equipment in proportion to their actual use for emergency services performed on federal land—may be allowable. We concluded that such statements were confusing and unclear.

Further, our review showed that, in addition to being unclear, the Forest Service’s frequently asked questions document appeared to be inconsistent with certain provisions of the act. For example, the act authorizes counties to use Title III funds to carry out activities under the Firewise Communities program to educate homeowners about, and assist them with, techniques in home siting, construction, and landscaping. Forest Service guidance documents, however, defined Firewise Communities as an approach that, among other things, “emphasizes community responsibility for planning in the design of a safe community as well as effective emergency response.” The documents did not emphasize the act’s requirement that counties’ Firewise activities with Title III funds must be limited to providing fire-related education or assistance to homeowners. Moreover, the frequently asked questions document stated that developing emergency 9-1-1 systems under Firewise—which is not an activity clearly authorized under the act—may also be an authorized use of Title III funds. We raised concerns that including emergency response in a definition of Firewise and suggesting that developing 9-1-1 systems may be an authorized activity under the act could lead some counties to interpret the act as allowing expenditures

that improve the county's emergency response—a use not clearly authorized under the act.

Our report also raised issues related to counties' certification that any Title III funds spent in the previous year went toward uses authorized under the act. For example, we found that the Forest Service and BLM had jointly developed a process to assist counties in certifying their Title III expenditures but that the information the agencies directed the counties to submit—typically the amount spent in each of the three allowable Title III spending categories but without further details regarding actual activities—did not allow either agency to determine whether counties spent their Title III funds appropriately. In addition, the act requires counties to submit certifications only for the years they have spent funds, and we found that neither the Forest Service nor BLM had a process to contact counties that did not submit a certification to determine if these counties spent no Title III funds that year or had simply not submitted the required certification. Some county officials we interviewed said they had not submitted certifications even when their counties had Title III expenditures the previous year. Overall, we found that of the \$108 million in Title III payments provided to 358 counties for fiscal years 2008 through 2011, the counties had certified having spent about \$46 million—or less than half the total amount—by the end of calendar year 2011. However, because the agencies did not have a process to ensure an accurate accounting of the amounts of Title III funds spent and unspent, we concluded that it was unclear whether the amounts were accurate and that it would be difficult to ensure that counties return to the U.S. Treasury any funds that remain unobligated upon the act's expiration, as the act requires.

Consistency of County Expenditures

We also found that expenditures by counties we contacted for our 2012 report did not in all cases appear consistent with the act.⁹ These counties reported using Title III funds for projects that were generally aligned with the three broad purposes of Title III—wildland fire preparedness, emergency services on federal land, and community wildfire protection planning—and some counties reported expenditures that were clearly authorized by the act. Nevertheless, we identified various expenditures by some counties that may not have been consistent with specific requirements of the act, such as the following examples:

- Wildland fire preparedness. Title III authorizes counties to spend funds for activities carried out under the Firewise Communities program but specifies that these activities are to involve educating or assisting homeowners with home siting, home construction, or home landscaping to help protect people and property from wildfires. Some counties we reviewed used Title III funds on broad emergency preparedness activities that may not be consistent with the 2008 act. For example, two counties we reviewed told us they spent part of their Title III funds to clear vegetation along roads, some of which are potential emergency evacuation routes, and others said they removed vegetation from county lands, parks, schools, or cemeteries or from larger swaths of land to create fuel breaks—locations not directly associated with home siting, home construction, or home landscaping. In addition, four counties used Title III funds to update their 9-1-1 telephone systems, according to county officials—an activity not clearly authorized by Title III (although, as noted, agency guidance stated that such an activity may be allowable).
- Emergency services on federal land. Title III authorizes counties to use funds as reimbursement for search and rescue and other emergency services, including firefighting, that they perform on federal lands. Some counties we reviewed spent Title III funds on activities that may not have been consistent with this requirement. For

⁹For our 2012 review, to obtain information about the projects and activities on which counties spent Title III funds, and their administrative practices related to Title III, we interviewed, in person or by telephone, officials from 42 selected counties of the 358 counties receiving Title III funds since the act was reauthorized in 2008. These 42 counties make up a nonprobability sample of counties selected for variation in both the amounts of Title III funds received and in geographic location. Because the 42 counties we selected are a nonprobability sample, the information we obtained from these counties cannot be generalized beyond these counties; the information did, however, provide us with an understanding of how the selected counties spent Title III funds and the actions taken to follow Title III's administrative requirements.

example, instead of reimbursements for specific incidents, a number of counties used Title III funds to pay a portion of their fire or emergency services departments' salary and administrative costs, including office supplies, utility costs, or insurance. As justification for this approach, these counties cited the high percentage of federal land in their counties or the difficulty in breaking out the costs of emergency services on federal versus nonfederal land. Some counties we reviewed also used the funds to carry out routine law enforcement patrols on federal land; officials from one of these counties told us that these patrols help reduce and deter criminal activity and enhance visitor safety on federal lands. In addition, some counties reported that, to maintain access to federal lands, they used Title III funds to help rebuild flood-damaged roads, and some reported using funds to purchase equipment, such as radios and GPS equipment, sonar equipment, watercraft, all-terrain vehicles, snowmobiles, and trucks for patrols.

- Community wildfire protection planning. The act authorizes counties to use Title III funds “to develop community wildfire protection plans in coordination with the appropriate Secretary concerned.” Some counties we reviewed reported Title III expenditures for wildfire protection planning activities that may not be consistent with this provision. For example, one county used Title III funds to purchase vehicles having firefighting capabilities, as well as other equipment associated with emergency response. Another county used Title III funds to contract for firefighter dispatch and suppression services. Officials from this county explained that county emergency service units cannot reach certain remote areas quickly, so they contract with a state agency to provide dispatch and suppression services during the heavy wildland fire season, and because the area served is largely federal land, the county pays for a portion of the contract costs with Title III funds.

Administrative Requirements

We also found that counties we reviewed did not consistently follow Title III's administrative requirements. Title III requires counties to certify expenditures to the Forest Service or BLM annually and provide 45-day notification to the public and any applicable resource advisory committee before spending funds.¹⁰ The 2008 act also required projects to be

¹⁰Resource advisory committees are established primarily under Title II of the act and are to contain 15 members representing diverse local interests. For more information on these committees and Title II in general, see GAO, *Update on the Status of the Merchantable Timber Contracting Pilot Program*, [GAO-10-379R](#) (Washington, D.C.: Mar. 4, 2010).

initiated by September 30, 2011. Our review identified instances where counties did not follow the requirements, including:

- **Certification.** Some counties did not submit certifications at all or submitted their certifications late, some certified expenditures for multiple years simultaneously, and some acknowledged putting incorrect information on the certification form. We found various reasons for counties' not complying with the certification requirements in the act. Three counties, according to county officials we interviewed, did not submit their certifications to the Forest Service for the years they spent funds because they were unaware of the requirement to do so. Two other counties submitted certification forms for some but not all years in which they spent funds, and many counties submitted their certification forms after the deadline specified in the act, in some cases because they were initially unaware of or overlooked the requirement to do so.
- **Public notification.** The act directs each county, before moving forward with Title III projects, to publish a proposal describing its planned use of Title III funds in local newspapers or other publications, after which the county must allow a 45-day comment period before using the funds. Some counties in our review followed only part of the public notification requirement. For example, some counties published notices in their local newspapers but did not allow for a 45-day comment period before moving ahead with projects or activities, according to county officials and documents, while other counties issued public notices in some years but not in others. We also found four counties that did not issue any public notices on their Title III project proposals; officials from these counties told us that they were unaware of the requirement to do so.
- **Notice to resource advisory committees.** Some counties in our review did not notify the relevant resource advisory committees of their Title III projects, as required under the act. County officials cited a number of reasons for the lack of notification, including (1) they were unaware of the requirement to do so; (2) the committee meets only once a year in the summer, which does not coincide with the county's timeline for the Title III budgeting process; and (3) the county planned to notify the resource advisory committee but did not because a local Forest Service official stated that resource advisory committees were involved only in Title II, not Title III projects—even with a specific reference to such committees in Title III of the act.

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- Project initiation. Some counties did not initiate projects by September 30, 2011, as required by the 2008 act.¹¹ County officials we interviewed provided a number of reasons why they missed this deadline. For example, counties did not receive their Title III funds for fiscal year 2011 until 2012, and officials in one county told us that their county's guidelines prohibit starting projects before funding is actually received. Another county had not initiated all of its Title III projects because some of its previous projects had cost less than estimated, unexpectedly leaving the county more Title III funds to spend; county officials told us that they were selecting additional Title III projects on which to use the extra funding.

The 2008 act also required Title III funds to be obligated by September 30, 2012, and officials from nearly all counties in our review that had spent funds told us they anticipated doing so.¹² However, as noted, the agencies did not have a process to ensure an accurate accounting of the amount of Title III funds spent and unspent, making it difficult to ensure that unobligated funds are returned to the U.S. Treasury when the act expires.

The Forest Service and BLM Have Taken Action to Strengthen Oversight

In response to our recommendation that the agencies strengthen their oversight by issuing regulations or clear guidance specifying the types of allowable county uses of Title III funds, the Forest Service and BLM provided additional guidance to counties, which clarifies the types of allowable uses of county funds. In addition, the agencies reported that they plan to update their expenditure reporting requirements for Title III funds, so that counties report not only funds expended the previous year but also amounts remaining unobligated.

Regarding guidance, soon after our report was issued in July 2012,¹³ the agencies updated their websites to provide substantial additional information on allowable expenditures under the act. Given that this information includes specific discussion about, and numerous examples of, expenditures that are and are not authorized by the act, we believe

¹¹The 2012 reauthorization of the act extended the deadline for initiating such projects to September 30, 2012.

¹²The 2012 reauthorization of the act extended the deadline for funds to be obligated to September 30, 2013.

¹³GAO-12-775.

that this additional guidance addresses our recommendation. The guidance addressed each of the three main areas of allowable spending under Title III, as follows:

- Wildland fire preparedness. As we noted, several counties reported expending funds for broad emergency preparedness activities under the Firewise Communities program that did not appear consistent with the act because they did not involve providing fire-related education or assistance to homeowners. This issue is specifically addressed in the guidance, which now states that Title III authorizes funds to be “spent on Firewise Communities program activities that (1) **educate homeowners** in fire-sensitive ecosystems about techniques in siting (positioning or locating) a home, constructing a home, landscaping and maintenance around a home. . .or (2) **assist homeowners** in implementing these techniques” (emphasis in original). The guidance goes on to list examples of activities that are authorized—such as disseminating Firewise information or assisting with “clean-up days”—and those that are not—such as updating 9-1-1 systems or clearing vegetation along emergency evacuation routes or from county lands, parks, schools, cemeteries, or other larger swaths of land not directly associated with home siting.
- Emergency services on federal land. Likewise, the guidance addresses concerns we raised about whether certain projects related to emergency services on federal land were clearly consistent with the act. The guidance, among other things, clarifies the definition of emergency services and provides lists of expenses that are authorized (e.g., salary or wages of emergency response personnel deployed during an emergency response) and those that are not (e.g., routine sheriff’s patrols of national forest roads and campgrounds, cleanup after a flood event, and purchase of capital equipment or real property).
- Community wildfire protection planning. The guidance also addresses concerns we raised about development of community wildfire protection plans by clarifying authorized uses and illustrating those that are not authorized, including the implementation of activities described in such plans.

Regarding annual reporting requirements on the part of counties, both agencies updated the certification form for counties to use in certifying Title III expenditures, so that counties must report not only on the funds expended the previous year but also on the amount of their Title III funds that remain unobligated. Such an update is consistent with guidance provided by Agriculture’s Office of General Counsel in response to a Forest Service request for legal advice on its role in counties’ return of

unobligated Title III funds. The update is likely to allow the agencies a more accurate accounting of the overall amounts of Title III funds spent and unspent—a need we noted in our report.

In our July 2012 report, we also suggested that if Congress chooses to extend Title III beyond the 1-year reauthorization enacted in 2012, it should consider revising and clarifying the language of Title III to make explicit which types of expenditures are and are not allowable under the act. Given that the agencies have issued guidance that we believe clarifies the allowable uses of Title III funds, there may be less need for changes to the language of the act itself. Nevertheless, it will be important to monitor counties' Title III expenditures to observe whether the incidence of expenditures that appear inconsistent with the act diminishes in the wake of the additional guidance the agencies have issued.

Chairman Wyden, Ranking Member Murkowski, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contacts and
Staff
Acknowledgments

If you or your staff have any questions about this testimony, please contact me at (202) 512-3841 or fennella@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Key contributors to this testimony include Steve Gaty (Assistant Director), Ellen W. Chu, Jonathan Dent, Richard P. Johnson, Lesley Rinner, and Leigh McCaskill White.

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