

July 2012

PAYMENTS TO COUNTIES

More Clarity Could
Help Ensure County
Expenditures Are
Consistent with Key
Parts of the Secure
Rural Schools Act



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Highlights of [GAO-12-775](#), a report to the Committee on Energy and Natural Resources, U.S. Senate

Why GAO Did This Study

Under the Secure Rural Schools Act, counties with federal lands may elect to receive payments to help stabilize revenues lost because of declining federal timber sales. Under Title III of the act, counties are authorized to use these funds for certain projects related to wildland fire and emergency services on federal lands. Counties received \$108 million for Title III projects for fiscal years 2008 through 2011. The act provides oversight roles for the Forest Service and BLM, requiring them to review counties' certification of their Title III expenditures as they determine to be appropriate and to issue regulations to carry out the purposes of the act. GAO examined the (1) actions the agencies have taken to oversee county spending under Title III, (2) consistency of selected counties' expenditures with the act, and (3) extent to which counties have followed Title III's administrative requirements. GAO reviewed agency and county documents and interviewed officials from the Forest Service, BLM, and 42 selected counties.

What GAO Recommends

If Congress chooses to extend Title III beyond 2012, it should consider making explicit which types of expenditures are and are not allowable. GAO also recommends that the agencies issue regulations or clear guidance specifying the types of allowable county uses of Title III funds. In commenting on a draft of this report, the Forest Service and Interior generally agreed with GAO's findings and recommendation.

View [GAO-12-775](#). For more information, contact Anu Mittal at (202) 512-3841 or mittala@gao.gov.

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PAYMENTS TO COUNTIES

More Clarity Could Help Ensure County Expenditures Are Consistent with Key Parts of the Secure Rural Schools Act

What GAO Found

Both the Forest Service and the Bureau of Land Management (BLM) have provided limited oversight of county spending under Title III of the Secure Rural Schools Act. Neither agency has issued regulations, and guidance available from these agencies is limited and sometimes unclear about which types of expenditures are allowable under the act. In addition, their guidance appears to be inconsistent with certain provisions of the act. For example, the Forest Service website contains a brief overview document of Title III, which generally echoes wording in the act, and a "frequently asked questions" document. These documents, however, do little to clarify language in the act, neither defining terms from the act, such as "emergency services," nor specifying which activities the terms cover. Moreover, the agencies do not review the annual certifications of expenditures that counties are required to complete to determine whether counties spent funds appropriately and do not have assurance that they have an accurate accounting of the amounts of Title III funding spent and unspent by the counties. According to agency officials, the steps they have taken to provide guidance have been limited because they believe they do not have authority under the act to do more to oversee county spending. They also stated that Title III's provisions are clear and do not need further clarification through regulations. As a result, they generally have not provided advice to counties on how to interpret the act and have not taken steps to assess whether counties are spending funds appropriately.

The counties GAO reviewed 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—but GAO identified various expenditures by some counties that may not be consistent with specific requirements of the act. For example, consistent with the act, some counties used funds to provide homeowners with education on or assistance with home siting, home construction, or home landscaping to help protect people and property from wildland fires. Other counties, however, reported expenditures that appear inconsistent with the act's provisions, such as spending on broader emergency preparedness activities including clearing vegetation along evacuation routes, updating 9-1-1 systems, or buying capital equipment. Counties may have considered such expenditures appropriate because the language of the act is open to varying interpretations and because of the limited and sometimes contradictory guidance and advice available to the counties from the agencies and other sources.

Counties also did not consistently follow Title III's administrative requirements, which include annual certification of expenditures, 45-day notification periods to the public and others before spending funds, and deadlines for project initiation and funding obligation. GAO found that some counties closely followed these requirements, whereas others did not. For example, some counties certified their Title III expenditures on time and in accordance with agency instructions, but some counties did not submit a certification for certain years when they spent funds, other counties submitted their certifications late, and still others did not consistently follow notification and project initiation requirements.

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Abbreviations

BLM Bureau of Land Management

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Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

July 16, 2012

The Honorable Jeff Bingaman
Chairman
The Honorable Lisa Murkowski
Ranking Member
Committee on Energy and Natural Resources
United States Senate

Counties containing federal lands have historically received a percentage of the revenues generated by the sale or use of natural resources on these lands. A steep decline in federal timber sales during the 1990s, however, 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 (Interior) Bureau of Land Management (BLM). The Secure Rural Schools and Community Self-Determination Act of 2000,¹ reauthorized in 2008,² was enacted in part to address this decline by stabilizing payments to counties dependent on revenues from federal timber sales. The act covers all National Forest lands, as well as certain BLM lands in western Oregon.³

Under the Secure Rural Schools 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. These payments were to decline each year, and states and counties

¹Pub. L. No. 106-393 (2000). This act 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. In this report, we refer to the Secure Rural Schools and Community Self-Determination Act of 2000 as the Secure Rural Schools Act.

²Pub. L. No. 110-343, Div. C, Title VI, § 601 (2008) reauthorized the act for the period 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.

³Most of these BLM lands were originally granted to the Oregon and California Railroad Company and later returned to the federal government; they are referred to as O&C lands.

received the most recent payment authorized by the act (for fiscal year 2011) in early 2012.⁴

The Secure Rural Schools 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.⁵ Under Title II, counties may reserve a portion of the payments to fund certain land management projects that benefit federal lands. Title III, which is the focus of our report, authorizes the use of a portion of the payments for certain purposes related to wildland fire and emergency services on federal lands.⁶ These authorized uses include carrying out certain activities to increase the protection of people and property from wildland fires, 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. Counties must also follow certain administrative requirements under Title III, 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. 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.⁷

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

⁴Payments from the Forest Service go to the states, which then allocate payments to the counties, while payments from BLM go directly to the counties.

⁵For the western Oregon counties containing BLM lands, Title I payments go into each county's general fund to be used as the county determines.

⁶Counties 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.

⁷Payments under all three titles of the act totaled over \$2 billion for fiscal years 2008 through 2011.

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.

You asked us to report on federal oversight and counties' use of Title III funds. This report examines for fiscal years 2008 through 2011 (1) actions the Forest Service and BLM have taken to oversee county spending under Title III, (2) consistency of selected counties' expenditures with the purposes of the act, and (3) the extent to which these counties followed Title III's administrative requirements.

To conduct this work, we reviewed relevant laws and agency documents, including the Secure Rural Schools Act, as reauthorized, and Forest Service guidance made available to counties. We also interviewed Forest Service and BLM officials about their oversight activities and obtained in writing Agriculture's and Interior's legal interpretations of relevant portions of the act. We reviewed the forms indicating counties' election to allocate funds for Title III and the forms counties submitted to the federal agencies certifying that the funds expended in the previous year were used for authorized purposes. 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 comprise a nonprobability sample of counties selected for variation in both the amounts of Title III funds received and in geographic location. We collected and reviewed documentation from these counties, including public notices related to Title III and detailed expenditure information. We did not, however, perform a financial audit of counties' expenditures. Because the 42 counties we selected are a nonprobability sample, the information we obtained from these counties cannot be generalized beyond these counties; however, the information provided us with an understanding of how the selected counties spent Title III funds and the actions taken to follow Title III's administrative requirements.⁸ We also

⁸In addition to these 42 counties that had spent Title III funds, we interviewed officials from three selected counties that had not yet spent any Title III funds to discuss their reasons for not spending the funds and their plans for spending or returning remaining funds. These counties were likewise selected for variation in Title III funds received and geographic location.

interviewed representatives from several nongovernmental organizations, including the National Association of Counties, National Forest Counties and Schools Coalition, Western Governors' Association, Headwaters Economics, Association of O&C Counties,⁹ and National Fire Protection Association. Appendix I describes our objectives, scope, and methodology in more detail.

We conducted this performance audit from August 2011 to July 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit 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. In the years leading up to passage of the original act in 2000, debate focused on how to finance payments to these timber-dependent counties. Some interested parties, including county representatives, argued that the Forest Service and BLM should finance any shortfall in timber revenues from the agencies' own appropriations and timber receipts, thus leading the agencies to either expand timber harvesting on federal lands or reduce their nontimber programs, while others argued that compensation for the shortfall should come from the U.S. Treasury and be completely decoupled from federal timber harvests. Proponents of continued federal timber harvests argued against decoupled payments, maintaining that such an approach would hurt local timber-related businesses.

The Senate committee version of what would become the 2000 act was a compromise between these two views, providing in Title I for decoupled payments to counties while in Title II reserving funds for certain county-recommended timber harvesting projects and other activities on federal lands, including search-and-rescue efforts. The administration opposed tying funding to projects on federal lands and, late in the legislative

⁹The Association of O&C Counties represents the 18 western Oregon counties within which lie the Oregon and California Revested Grantlands, which are now managed by BLM. These are the BLM lands covered by the act.

process, the bill was amended to allow counties to opt out of Title II, instead using funds for projects related to but not occurring on federal lands. This provision became Title III of the act. Because Title III was added late, little legislative history is associated with it that the agencies or courts can use to interpret its meaning.

The original act of 2000 established six categories of authorized uses for Title III funds:

- *Search and rescue and emergency services.* A county was allowed to use funds to reimburse all documented costs incurred and paid for by a county or county sheriff's department for search and rescue and other emergency services, including firefighting, performed on federal lands.
- *Community service work camps.* A county was allowed to use funds to reimburse all or part of the costs it incurred to pay the salaries and benefits of county employees who supervise adults or juveniles performing mandatory community services on federal lands.
- *Easement purchases.* A county was allowed to use funds to acquire conservation easements and easements from private or other noncounty landowners, on a willing-seller basis, to provide nonmotorized access to public lands for hunting, fishing, and other recreational purposes.
- *Forest-related educational opportunities.* A county was allowed to use funds to establish and conduct forest-related after-school programs.
- *Fire prevention and county planning.* A county was allowed to use funds for (1) efforts to educate homeowners in fire-sensitive ecosystems about techniques in home siting, home construction, and home landscaping that can increase protection of people and property from wildfires and (2) planning efforts to reduce or mitigate the impact of development on adjacent federal lands and to increase the protection of people and property from wildfires.
- *Community forestry.* A county was allowed to use funds to assist in obtaining competitive Forest Service grants for improving forests in urban settings.

The 2008 act significantly narrowed the counties' authorized uses for Title III funds. The act did not include the previous provisions authorizing community service work camps, funding to acquire easements, forest-related after-school programs, and community forestry grant assistance. It continued to allow counties to obtain reimbursements for search and rescue and other emergency services, including firefighting, performed on

federal land, and it retained fire prevention and county planning as allowable uses of funds but further defined them, as follows:¹⁰

- *Firewise*. A county may use funds to carry out activities under the Firewise Communities program to provide to homeowners in fire-sensitive ecosystems education on, and assistance with implementing, techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires.
- *Search and rescue and other emergency services*. A county may use funds to reimburse the participating county for search and rescue and other emergency services, including firefighting, that are performed on federal land and paid for by the participating county.
- *Community wildfire protection plans*. A county may use funds to develop community wildfire protection plans in coordination with the appropriate departmental Secretary concerned.

The 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.¹¹ 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. Activities under the program include assisting individuals and residential communities with techniques to help protect homes from ignition due to wildland fire and to improve emergency preparedness in the event of a wildland fire. Communities that conduct certain steps can become recognized Firewise Communities sites. Community wildfire protection plans identify and set priorities for

¹⁰A sponsor of the Senate version of the bill that ultimately became the 2008 act noted that “county funding under Title III has been restricted and focused on programs that indirectly benefit public land management. In addition, provisions have been added to Title III to encourage compliance with its terms and greater awareness of the counties’ efforts by federal land managers.” 153 Cong. Rec. S3992 (Mar. 28, 2007) (statement of Senator Bingaman). One independent report had suggested that some counties may not have been spending Title III funds appropriately: Jonathan Kusel et al., *Assessment of the Secure Rural Schools and Community Self-Determination Act, Public Law 106-393* (Taylorsville, Calif.: Sierra Institute for Community and Environment, March 2006).

¹¹The mission of the National Fire Protection Association, an international nonprofit established in 1896, is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes and standards, research, training, and education.

treatments to reduce flammable vegetation, which can fuel wildland fires, and recommends the types and methods of treatment on federal and nonfederal land that will protect at-risk communities and essential infrastructure; community plans also recommend measures to protect structures throughout the at-risk community from ignition. A community plan may cover one or more communities, and some cover entire counties.

In implementing Title III projects, counties must follow certain administrative requirements in the act. Specifically, each county must “publish . . . a proposal that describes the proposed use of county funds” in local newspapers or other publications and submit the proposal to any resource advisory committee, which is established for the county primarily under Title II of the act and is to contain 15 members representing diverse local interests.¹² The county must then allow a 45-day comment period before using the funds. Counties do not have to notify or gain approval from the federal government regarding their plans. Counties that have spent Title III funds, however, must submit an annual certification to the Forest Service or BLM, as appropriate, stating that any Title III funds spent in the previous year went toward authorized uses. The 2008 act in effect during our review provided that the authority for counties to initiate Title III projects expired September 30, 2011, and the act stated that any Title III funds not obligated by counties as of September 30, 2012 were to be returned to the U.S. Treasury.¹³

The 358 counties that have received Title III payments since fiscal year 2008 are located throughout the United States—in 36 states—but the payments were not evenly distributed geographically, in part because the amounts of federal land and historic timber receipts (two factors for calculating payments under the act) vary widely by county. About 44 percent of total Title III payments for fiscal years 2008 through 2011 went to counties in Oregon, with another 11 percent distributed to counties in northern California. The counties that have received Title III payments are diverse, with some located in rural areas with populations

¹²For 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).

¹³In July 2012, as we completed our review, Pub. L. No. 112-141, Div. F, Title I, § 100101 extended each of these dates by 1 year.

of less than 100,000 and others near major urban areas, such as Portland, Oregon, and Seattle, Washington.

Federal Agencies Have Provided Limited Oversight of County Spending under Title III

Both the Forest Service and BLM took few actions to oversee county spending under Title III of the Secure Rural Schools Act. Neither agency has issued regulations under the act, and the guidance that has been issued is limited and sometimes unclear; further, in some areas, the guidance appears inconsistent with certain provisions of the act. The agencies also have not reviewed the annual certifications provided by counties to determine whether counties spent funds appropriately, and they do not have assurance that they have an accurate accounting of the amounts of Title III funding spent and unspent by the counties. According to agency officials, the steps agencies have taken to provide guidance have been limited because they believe they do not have authority under the act to do more to oversee county spending.

To provide guidance, the Forest Service developed and posted on its website a brief overview of Title III, which generally echoes wording in the act, and a “frequently asked questions” document responding to questions on authorized uses of Title III funds. Agency officials told us they believe the frequently asked questions document provides sufficient clarity for counties to use when considering how to spend Title III funds. However, officials from several counties we contacted told us they found these documents to be of little help, and our review of these documents found that they do not clearly specify which types of expenditures are allowed under the act and which are 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 defines such activities. In addition, in the frequently asked questions document, the Forest Service lists eight specific uses of Title III funds and asks “Are Title III funds authorized for the following uses?” These uses include purchase of capital equipment, capital improvements, purchase of land, and training for emergency response. Instead of answering the question directly, the documents state 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 states 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 believe that such statements are confusing and unclear. The document also directs the counties to consult their own legal counsel regarding the authorized uses of Title III funds.

Our review showed that, in addition to being unclear, the Forest Service's frequently asked questions document appeared inconsistent with certain provisions of the act. For example, regarding the Firewise Communities program, the act states that Title III funds may be used for those Firewise activities involving educating homeowners about, and assisting them with, techniques in home siting, construction, and landscaping to help protect people and properties from wildfires. The frequently asked questions, as well as the overview document provided by the Forest Service, define 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." These documents do not emphasize 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 states that developing emergency 9-1-1 systems under Firewise may also be an authorized use of Title III funds, which is not an activity clearly authorized under the act. We are concerned that a Firewise definition that includes emergency response and the suggestion 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. Officials in one county specifically directed us to the definition of the Firewise approach provided in the Forest Service's overview document in explaining why they spent most of their Title III funds on activities related to effective emergency response.

The Forest Service and BLM also jointly developed a process to assist counties in certifying that the county's Title III funds spent in the previous year went toward authorized uses, but the agencies do not review county Title III project expenditures to determine whether the funds have been used on county projects that are allowable. To implement this process, the Forest Service and BLM developed instructions that counties are to follow to certify their Title III expenditures, including requirements and certification procedures associated with the act and addresses for submitting the paperwork. The agencies also developed an optional form that counties may use for certification. These instructions and form are posted on the Forest Service's website and, in 2010, the Forest Service also mailed a copy of the instructions and form to the counties. Once counties submit their certifications, officials from both agencies told us

they review the information contained on the forms. However, the limited information collected through the forms—typically the amount spent in each of the three allowable Title III spending categories, without further details regarding actual activities—does not allow either agency to determine whether counties spent funds appropriately, and senior officials at both agencies told us that they do not take additional steps to conduct this type of oversight. Some counties, particularly those in Oregon, provided the agencies with information describing their Title III projects beyond what was required in the act, but even so, agency officials told us that neither agency has reviewed this information to determine whether those Title III projects were allowable under the act.

Counties are required to submit certifications only for the years they have spent funds, and neither the Forest Service nor BLM has a process to contact counties to determine whether the counties spent funds but did not submit a certification. According to officials from some of the counties that we contacted, they did not submit certifications even when their counties had Title III expenditures. Of the \$108 million in Title III payments provided to 358 counties for fiscal years 2008 through 2011, the counties certified having spent about \$46 million—or less than half the total amount—by the end of calendar year 2011. However, because the agencies do not have a process to ensure an accurate accounting of the amounts of Title III funds spent and unspent, it is unclear whether this amount is accurate, and it will be difficult to ensure that counties return to the U.S. Treasury any funds that remain unobligated upon the act's expiration. In August 2011, the Forest Service requested legal advice from the Department of Agriculture's Office of General Counsel on its role in a county's return of unobligated Title III funds. In a September 2011 memorandum, the Office of General Counsel suggested to the Forest Service that it revise the instructions to counties for the certification due in February 2013, to require counties to indicate the amount of any Title III funds unobligated as of September 30, 2012. In January 2012, the Forest Service posted instructions on its website for counties on how to return unobligated funds, directing counties to self-report the amount of unspent Title III funds and request a bill for collection from the Forest Service. The agency official in charge of the Secure Rural Schools program told us that the agency plans to revise the certification process accordingly.

Agency officials told us they believe that the act does not give them oversight authority, so they do not attempt to determine whether counties are spending funds appropriately and, for the most part, do not provide opinions or advice to counties on how to interpret the act's provisions. The Forest Service official in charge of the program told us that when

counties ask him for advice, he is willing to discuss proposed uses of Title III funds but ultimately can do little more than point them to the act and the frequently asked questions guidance and advise them to consult their legal counsels. Officials with both agencies told us they do not have the authority to approve the counties' projects or tell them how to spend the funds. The act, however, states that the agency "concerned shall review the certifications submitted . . . as [it] determines to be appropriate" and also that the agencies "shall issue regulations to carry out the purposes of this Act"¹⁴—language that we believe specifically authorizes oversight. As part of this authority, we believe the agencies would, for example, be allowed to issue regulations or guidance clarifying types of authorized expenditures, which could also facilitate the review of certifications by establishing criteria for allowable uses of Title III funds. In their legal views provided to us, the Department of Agriculture stated that the act was highly prescriptive and it was unclear what utility, if any, would be achieved through the issuance of regulations, and Interior stated that it believed Title III's provisions are clear and do not need further clarification in regulations¹⁵—although, as noted earlier, the Forest Service chose to issue guidance in the form of frequently asked questions, suggesting the agency believed some clarification was needed.

That the agencies have not developed clear guidance or regulations is particularly concerning because the act itself does not define key terms. For example, as noted previously, the act authorizes counties to use Title III funds for "emergency services" but does not specify the types of activities covered by this term.¹⁶ Similarly, while the act authorizes counties to use Title III funds to carry out activities "under the Firewise Communities program," it does not specify what activities qualify as part of the program—for example, whether a community must be a recognized

¹⁴The act does not specify what matters the regulations are to address or contain a deadline for their issuance.

¹⁵In its legal views, Interior further stated that it considers funds distributed under the act to be county funds and that therefore "it appears that the Department is limited in its authority to develop a regulatory structure to enforce the proper expenditure of the funds."

¹⁶The legislative history of Title III contains almost no information that clarifies the phrase "emergency services."

“Firewise Community” for expenditures to qualify.¹⁷ Because the language of the law leaves certain provisions open to varying interpretations, and available guidance from the agencies has done little to clarify this language, counties have generally been left to make their own interpretations about which types of expenditures are allowable under Title III and which are not.

Expenditures by Some Counties May Be Inconsistent with the Act

Selected counties we contacted 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—but we identified various expenditures by some counties that may not be consistent with specific requirements of the act. The reasons for this may be in part because of language in the law leaving certain provisions open to varying interpretations and also because of limited and sometimes contradictory guidance available to the counties from the agencies and other sources.

Wildland Fire Preparedness

Some counties we reviewed used Title III funds for Firewise projects that were clearly authorized, but others spent funds on broader emergency preparedness or educational activities that may not be consistent with the 2008 act. As noted, 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. Many counties we reviewed limited their use of some or all of their Title III funds to such activities that were consistent with the act. For example, regarding education, officials from several counties we reviewed told us that they used Title III funds to educate homeowners about the principles of Firewise, which include creating defensible space around homes and choosing home building materials, such as roofing and siding that are more resistant to wildland fire. Officials from these counties described a variety of methods for (1) distributing information, such as door hangers, print or radio advertisements, or calendars, to educate homeowners

¹⁷To become recognized, communities undertake several actions, including completing a community assessment and creating an action plan, forming a Firewise Board or Committee, helping fund local wildland fire mitigation projects, and submitting an application to the Firewise Communities program.

about Firewise principles and (2) making Firewise materials available at community events. Several counties used Title III funds for a Firewise coordinator, according to county officials, whose activities could include holding educational workshops, assisting communities with Firewise planning, hosting community events such as “cleanup days” to encourage homeowners to remove brush and other vegetation from around their homes, and assisting communities with applications for Firewise Communities recognition. An official from one such county told us that the county also formed a coalition of federal, state, and local officials with the goal of educating people about Firewise; this coalition used a portion of the county’s Title III funds to create an educational video on Firewise principles that is shown to homeowners. Some counties used Title III funds to purchase and outfit Firewise trailers, which county employees take to communities to publicize and educate residents about the Firewise program (see fig. 1). Officials from a few counties we reviewed noted that they have seen improvements at residences since the county began Firewise education.

Figure 1: Mobile Firewise Trailer Used to Educate Residents on Firewise Principles



Source: County official from Catron County, New Mexico.

Similarly, a number of counties we reviewed provided wildland fire mitigation assistance to homeowners at their properties, through activities such as thinning trees and brush that could fuel a wildland fire. For example, one county we reviewed said it used all of its Title III funds to conduct wildland fire mitigation activities at or near private homes, many of which abut Forest Service, state, or private forested lands. County officials told us that volunteers, contractors, or crews from local fire departments performed the activities, with homeowners generally paying for half of the cost and the county paying the other half, primarily with Title III funds.¹⁸ Some other counties carried out similar work, but homeowners paid different portions of the cost, and counties used different sources of labor. For example, one county used youth crews and

¹⁸This county also used funds it received from other sources, including grants from the state, to pay for wildland fire mitigation activities.

parolees to do fire mitigation work.¹⁹ Another provided grant funds to homeowners to arrange for the Firewise work themselves. To obtain grant funding from that county, homeowners must present an invoice from a licensed landscaping professional for work that might include tree trimming, brush removal and chipping, and installation of irrigation systems. According to county officials, homeowners may also receive funding to pay a portion of the cost of a new roof, siding, or windows or for purchasing fire-resistant plants. Another county used Title III funds to pay for personnel to inspect homes and educate homeowners on home siting and landscaping. The county's inspectors evaluated homes on construction methods and materials related to wildland fire exposure, including roofing materials, attic vents, exterior siding, windows, exterior doors, stairs, and decks, as well as vegetation around the homes. A few counties that received smaller amounts of Title III funds took chippers to communities during Firewise event days to assist homeowners in disposing of materials cleared from their properties, according to county officials. (Fig. 2 shows a residence before and after the local fire department conducted mitigation work).

¹⁹The 2008 reauthorization of the act eliminated community service work camps as an authorized use of Title III funds; the original act authorized funds for county employees' salaries to supervise people completing mandatory community service. The reauthorized act also eliminated forest-related after-school programs. Officials from this county told us that the youth crews were funded under these provisions before the act changed in 2008 but that after the reauthorization, the program shifted from an education program to a crew performing Firewise mitigation work. The county officials also said they began using older high school and college-aged workers for the program.

Figure 2: A Private Home in Montana Before and After Wildland Fire Mitigation Work Was Completed Using Title III Funds



Source: County official from Missoula, Montana.

In contrast, some counties we reviewed used Title III funds for broader emergency preparedness activities under the Firewise program that do not appear consistent with the act because they do not involve providing fire-related education or assistance to homeowners. 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, authorized activities specified by the act. Four counties used Title III funds to update their 9-1-1 telephone systems, according to county officials, and three used funds to purchase new address and street signs. For example, one rural county used Title III funds to purchase over 400 signs to make cabins, homes, and businesses easier for firefighters and other emergency responders to

locate.²⁰ Officials in another rural county told us that before they began an effort to purchase and put up signs using Title III funds, the county had no street signs: homeowners would have to tell firefighters and providers of emergency services to look for the “tree with the pink tape,” for example. This county and another we reviewed purchased fire danger signs displaying the area’s current level of wildland fire danger (e.g., low, medium, or high), according to county officials, who told us that these signs were to help educate residents about the community’s wildland fire risk, as well as to motivate homeowners to perform mitigation activities. Officials from two counties told us that they were planning to use Title III funds to purchase and install water tanks in remote areas to help in fire suppression.²¹

Counties may have considered expenditures for improving their emergency response as allowed under Title III of the act because the Forest Service’s frequently asked questions and other documents do not emphasize that counties’ Firewise activities with Title III funds must be limited to providing fire-related education or assistance to homeowners. Specifically, officials in one county told us that they view Firewise as an “out-of-the-box program” encompassing a large range of activities, and they directed us to a Forest Service Title III summary document with a definition of the Firewise approach that includes effective emergency response²²—an area in which this county spent the majority of its Title III funds. Some counties also received guidance on Firewise from other sources that may not have been consistent with the act. For example, officials from one county told us that they formed a group of Forest

²⁰Some of the signs may have improved the ability of emergency responders to locate homes, but the act states that Title III funds may be used for “assistance with implementing techniques in home siting, home construction, and home landscaping.” 16 U.S.C. § 7142(a)(1).

²¹At the time of our interviews with these county officials, these water tanks had not been purchased or installed.

²²Officials from this county directed us to the following definition of the Firewise Communities program, found in a Forest Service document containing information on Title III funds: “The Firewise Communities approach emphasizes community responsibility for planning in the design of a safe community as well as effective emergency response, and individual responsibility for safer home construction and design, landscaping and maintenance.” This definition is also contained in a user guide to the Firewise Communities program developed by the National Fire Protection Association (National Fire Protection Association, *A User Reference Guide to the Firewise Communities/USA® Recognition Program* [Quincy, Mass.: 2009]).

Service, state, and local officials and that all members of the group—including a local Forest Service official—agreed that emergency response activities were an appropriate use of Title III funds under the Firewise category, despite the act’s limitations of Firewise activities to those involving home siting, construction, and landscaping. In Oregon, an association that provides guidance to counties receiving Title III funds advised the Oregon counties to explore the wide array of activities undertaken under the Firewise Communities program via the Firewise Communities website,²³ many of which go beyond the Firewise activities authorized under Title III.

Several counties we reviewed used Title III funds to educate youth on the Firewise program and other issues related to wildland fire that are also not consistent with the act. Education to homeowners about Firewise is clearly authorized under Title III, but youth education was one of the formerly allowable uses that Congress eliminated when it reauthorized the Secure Rural Schools Act in 2008. Specifically, some counties used Title III funds for youth camps, which county officials told us incorporated aspects of the Firewise program or wildland fire safety, and one county funded forest-related after-school programs that included a Firewise educational component. Officials in one of these counties provided a letter from a local Forest Service official commending the county’s use of Title III funds for a youth day camp under the Firewise program. A number of counties in one state gave their Title III funds to the state university’s cooperative extension service for Firewise education, which included “Firewise Youth Days.” During these events, extension agents visited schools to discuss issues related to wildland fire, including a Firewise component on how to make homes more resistant to wildland fire, according to an official from the university. Officials in a few other counties we reviewed told us they planned to use Title III funds to purchase materials—including Smokey Bear costumes—that would be used for youth education in schools or at community events. Officials from the state extension service and some counties that provided youth education told us that teaching children the principles of the Firewise program can help protect communities because the children may share the information with their parents.

²³The Firewise Communities website is managed by the National Fire Protection Association.

In its legal views provided to us, Interior stated that uses unrelated to homeowner education and assistance with respect to home siting, construction, and landscaping would not be consistent with the Firewise provision of Title III and, in its legal views, Agriculture agreed that it was reasonable to interpret the provision in this manner. Agriculture added that, in its view, these activities would qualify as authorized activities only if they were carried out in a community with a Firewise-recognized program and that activities associated with meeting the certification requirements for being recognized as a Firewise Community, or with maintaining that recognition once received, would have a direct link to the Firewise Communities program and would therefore also be authorized uses of Title III funds. However, these points are not explicit in the agencies' guidance to counties, and some counties in our review that used Title III funds for Firewise-related activities had no communities that had received recognition as Firewise Communities, nor had they sought such recognition, according to county officials.

Emergency Services on Federal Land

Counties we reviewed used Title III funds to pay for a wide variety of activities and equipment related to emergency services, some of which were clearly consistent with the act and others that were not. 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 interpreted this provision in the act narrowly and limited their expenditures to after-the-fact reimbursements of county spending on emergency services on federal lands. For example, the sheriff's offices in a few counties we reviewed submitted invoices for reimbursement for staff hours spent on search-and-rescue activities, including rescuing lost or injured individuals on federal lands. Some of these counties also kept track of county equipment used during these activities and reimbursed the appropriate department with Title III funds according to various usage rates. Another county set aside funds in case they were needed for a search-and-rescue incident, but no such incident had taken place in the county by the time of our review, and these funds had not yet been spent.

Some counties spent Title III funds on activities that went beyond providing search and rescue or other emergency services and may not have been consistent with the act. For 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.²⁴ These counties cited the high percentage of federal land in their county or the difficulty in breaking out the costs of emergency services on federal versus nonfederal land as justification for this approach. In addition, some counties we reviewed 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 the safety of visitors to federal lands. They also told us that county deputies are able to serve as first responders to any search and rescue or other emergency situation. In addition to routine patrols, officials from a few counties told us they used Title III funds to pay for law enforcement activities related to marijuana eradication, vandalism, and thefts on federal lands, or for additional law enforcement presence on federal lands during holidays or special events.²⁵ Officials from one county told us that, without Title III funding, they would not be able to provide any law enforcement services on federal lands, especially given other large budget cuts the county had already experienced. Indeed, some counties told us that Title III funds were especially critical to their law enforcement or search and rescue operations because of worsening county fiscal conditions. A few counties we reviewed spent Title III funds for search-and-rescue training. For example, one county used over \$12,000 each year for training on flood, swift-water, and technical rope rescue operations. Another county used its Title III funds to pay the personnel costs of an employee who clears debris from roads after major storms to maintain access to federal lands. And still another provided funds to the county's roads department to help rebuild washed-out roads after floods.

²⁴An association that provides guidance to Oregon counties receiving Title III funds advised the Oregon counties that reasonable overhead, administrative, and capital costs (such as equipment, overhead, training, and administration) can be included for reimbursement, but recommended that the counties calculate a portion of these costs that could be fairly attributed to the services performed on federal lands. Association of O&C Counties, "More Sideboards for Title III Projects; the "Red-Face" Test Updated," Memorandum, Jan. 15, 2009.

²⁵Officials from two counties told us they used Title III funds to pay for law enforcement presence at Rainbow Family of Living Light gatherings. These gatherings often occur on public lands and can include as many as 20,000 people, posing logistical challenges in providing law enforcement, food, water, sanitation, and medical care to large gatherings of people in remote settings.

In addition, a number of counties we reviewed used Title III funds to purchase equipment for use during search and rescue and other emergencies, uses that fell outside the ordinary definition of the term services.²⁶ Examples of such uses in counties we reviewed included the purchase of supplies such as personal safety equipment, rappelling equipment, and blankets. Based on our review of county documentation, the equipment some counties purchased also included communication radios and GPS equipment, sonar equipment, watercraft, all-terrain vehicles, snowmobiles, and trucks for patrols. One county used Title III funds to update building infrastructure (e.g., improvements to the heating, ventilation, and air conditioning system) at its radio towers as part of a larger project to upgrade the local communication system to offer service to more agencies and cover a broader area. Another county purchased smoke detection cameras, which were installed in the national forests in the county to help detect wildland fires. Officials in one county said they used Title III funds to help purchase a new generator for the courthouse where emergency services departments were located, and officials in still another county said that the county used the funds for improvements at its 9-1-1 center facility. One county used Title III funds to purchase land to relocate and upgrade a runway at a county airport used for search-and-rescue and firefighting operations. This county did so despite an opinion by the Department of Agriculture's Office of General Counsel that the authorized use of funds under Title III of the Secure Rural Schools Act to reimburse search-and-rescue services would not include the purchase of land. According to officials from another county, it used Title III funds to purchase a vehicle used to patrol federal lands, even though it received informal advice from local Forest Service officials indicating that such purchases might not be authorized. According to officials from that county, local Forest Service officials told them that they did not believe vehicle purchases were authorized under Title III but were unable to direct the county to clear guidance on this issue; subsequently, the county

²⁶For example, the Federal Acquisition Regulation does not specifically define the term *service*, but it does define *service contract* to mean "a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply." 48 C.F.R. § 37.101. The regulation in turn states that the term *supplies* includes, but is not limited to, "public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing." 48 C.F.R. § 2.101. This regulation does not apply to county expenditures under Title III, but it does provide some general understanding of the term "services."

went forward with the vehicle purchase. Another county attorney advised officials in the county that they could purchase capital equipment with Title III funds, even with the fact that such purchases do not fall within the ordinary definition of the term services. In Oregon, an association that provides guidance to counties receiving Title III funds advised the Oregon counties that reasonable capital costs can be included for reimbursement but recommended that these costs would only seem appropriate on an annual, amortized basis, and in amounts that are proportional to the amount the county can demonstrate the assets are actually used for services performed on federal lands. The association also noted in guidance documents that any expenditures for equipment or facilities should be undertaken with great caution and that the county officials confer with county counsel.²⁷

We asked the General Counsels of the Departments of Agriculture and the Interior for their views on whether the following categories of uses would be consistent with Title III: (a) the purchase or leasing of real property; (b) the purchase, leasing, or construction of buildings or other permanent improvements to real property; (c) vehicle purchases; (d) equipment purchases;²⁸ and (e) training. In their legal views provided to us, the agencies stated that these expenditures generally would not be consistent with Title III.²⁹

²⁷Association of O&C Counties, "Sideboards for Title III Projects; the "Red-Face" Test Under Pub. L. No.106-393," Memorandum, Jan. 31, 2001; "More Sideboards for Title III Projects; the "Red-Face" Test Updated," Memorandum, Jan. 15, 2009; "Title III Restrictions, Secure Rural Schools Safety Net Legislation," Memorandum, May 7, 2010.

²⁸Our question was confined to items such as nondisposable personal protective equipment, and electronic aids such as GPS location devices, which have useful lives extending beyond a single mission.

²⁹In its legal views, Interior stated, "We can envision a scenario under which expenditures such as training and certain equipment costs may be considered to be directly related to the provision of emergency services on Federal land and, therefore, may be reimbursable under the statute. We understand, however, that the Forest Service has interpreted the statute to exclude expenditures for training and for nondisposable equipment, including personal equipment that is purchased in anticipation of responding to an emergency, and we currently are deferring to the Forest Service on this matter."

Development of Community Wildfire Protection Plans

Some counties we reviewed reported using their Title III funds to develop new or update existing community wildfire protection plans, as authorized by the act, but others went beyond these activities in ways that may not be consistent with Title III. Consistent with the act, officials we interviewed from 13 counties used Title III funds to either develop a new plan or update an existing one. For example, officials from one county told us that the county used Title III funds to hire a consultant to update its countywide wildfire protection plan, which was first developed in 2002. Another county used Title III funds to develop its first community wildfire protection plan, and officials told us that the Title III funds they received after reauthorization of the act in 2008 coincided with the beginning of their planning process and that, in developing the plan, they worked with local Forest Service officials to identify communities at risk and also worked with state forestry officials. In contrast, other counties we interviewed certified Title III expenditures for wildfire protection planning activities that may not be consistent with the act. 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 contracted for firefighter dispatch and suppression services using Title III funds. Officials from this county explained that county emergency service units cannot reach certain remote areas in the county quickly, so they contract with a state agency to provide dispatch and suppression services during the heavy wildland fire season; since the area served is largely federal land, the county pays for a portion of the contract costs with Title III funds. Another county used Title III funds to hire a consultant to develop an animal evacuation plan and purchased fencing to be used in case livestock were evacuated because of a wildland fire, according to county officials.

Counties Have Followed Title III's Administrative Requirements Inconsistently

The 42 counties included in our review that had spent Title III funds did not consistently follow the related administrative requirements. As noted, Title III requires counties to certify expenditures annually and provide 45-day notification to the public and any applicable resource advisory committee before spending funds. The 2008 act in effect during our review also required projects to be initiated by September 30, 2011, and funds to be obligated by September 30, 2012.³⁰ We observed variation in

³⁰As noted, Pub. L. No. 112-141, Div. F, Title I, § 100101, which was enacted as we completed our review, extended each of these dates by 1 year.

the extent to which counties in our review followed or anticipated following each of these administrative requirements. Specifically, we found the following variations:

- *Certification.* Some counties certified their Title III expenditures on time, and in accordance with agency instructions, and other counties did not. As noted previously, counties that have spent Title III funds must submit an annual certification to the Forest Service or BLM, as appropriate, stating that any Title III funds spent in the previous year were used for authorized purposes; this certification is due by February 1 following the year in which funds were spent. We found that many counties submitted the Forest Service's certification form for the preceding year's expenditures, and some provided letters certifying their expenditures.³¹ In certifying their expenditures, a number of counties provided additional documentation, such as project descriptions, public notices, or accounting spreadsheets. In contrast, 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 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 February 1 deadline specified in the act, in some cases because they were initially unaware of or overlooked the requirement to do so. Seven counties we interviewed did not certify expenditures on the basis of calendar year, as instructed by the Forest Service, but reported expenditures either for fiscal year or for multiple years. Officials from one such county said they provided expenditure information by the county's fiscal year because those expenditures had been audited and noted that it would be difficult to break out expenditures by calendar year. Another county certified its total Title III expenditures for 4 years on one form. Moreover, some counties did not certify the proper expenditure amount on their forms. For example, officials from two counties told us that, upon reviewing

³¹Counties are required to certify their expenditures annually but are not specifically required to use the Forest Service's form when doing so.

the certifications they submitted, they discovered that they had underreported their Title III expenditures on their certification forms for a particular year, and officials from another county told us that they had overreported expenditures by including Title III funds received under the previous version of the act. The two counties that underreported their Title III expenditures provided corrected certifications to the Forest Service after discovering the errors, but an official from the county that overreported told us that it would be difficult to separate Title III funds received and expended under the two iterations of the act because of the county's accounting and auditing processes. This variation in county compliance with the certification requirement has contributed to the agencies' previously noted lack of an accurate accounting of the amounts of Title III funds spent and unspent.

- *Public notification.* Some counties notified the public about their proposed uses of Title III funds via published local media and offered the required comment period as required by the act, whereas other counties did not. As noted previously, before moving forward with Title III projects, the act directs each county 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. Officials we interviewed from some counties said that they closely followed these requirements or even went beyond them. For example, one county published its Title III public notices for 45 business days and included project details and a public hearing date as part of the notice. Officials from another rural county told us that they published notices on a county website because the county has no local newspapers or television stations; they said they also advertised Title III projects via letters and e-mails to county residents. In contrast, other counties followed only part of the public notification requirement. For example, four 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; one such county issued a public notice and allowed only a 3- to 5-day notification period before holding a public hearing to allocate Title III funds. Other counties issued public notices in some years but not in others, according to county officials we interviewed. For example, according to county officials we interviewed in one county, they published a notice in 2009 for planned Title III expenditures that year but did not issue another notice until 2012, when they published a notice for all Title III funds received for fiscal years 2008 through 2011. This notice was published after the fact, when the county had already spent much

of the funding advertised in the notice. In addition, we found four counties that did not issue any public notices on their Title III project proposals, and officials from these counties told us that they were unaware of the requirement to do so. We also noted variations in the degree of detail in the published notices, with some notices fully describing the Title III projects and others simply including one-line descriptions. For example, one county published a paragraph on each of its Title III proposals, which detailed specifics of each project and expected outcomes, such as enhanced public awareness about Firewise and improved countywide emergency response maps, while other counties provided one-line descriptions of their project proposals or repeated the same information in notices published in subsequent years. Nevertheless, officials in most counties that published public notices told us that they received virtually no substantive comments on their proposed projects. Officials from five counties told us that they had received substantive comments on their Title III proposals.

- *Notice to resource advisory committees.* Some counties submitted Title III project proposals to applicable resource advisory committees as required by the act, while others did not. Officials in one county told us that they presented proposed Title III projects at resource advisory committee meetings, and officials in four counties told us that they wrote to the committees to notify them of their Title III projects. Other counties, however, did not notify their resource advisory committees of Title III projects. Some of the reasons cited by county officials for not notifying resource advisory committees include (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—despite specific reference to such committees in Title III of the act. Some counties that did not provide required notification told us they were unable to do so because no applicable committee existed in the county. For example, the resource advisory committee in one county we reviewed became active only in 2011, according to county officials, and other counties still do not have applicable committees because they did not receive any Title II funds, the primary purpose for forming such committees. In some instances where the advisory committees were not formally notified, county officials told us that they believed that informal notification had been provided because some officials involved in selecting the county's Title III projects also sat on the relevant resource advisory committee. In one such county, officials told us that

one person had simultaneously served as both the county manager and the chair of the resource advisory committee, so he was clearly aware of the county's Title III projects. Officials in a number of counties told us they received no, or minimal, input from resource advisory committees, but several other counties said that their local committees were more involved by sometimes providing input on Title III project selection or approving selected projects. Nevertheless, the act provides no formal role for resource advisory committees in selecting or approving Title III projects.³²

- *Project initiation.* Some counties initiated projects by September 30, 2011, as required by the 2008 act in effect during our review, and others did not. The counties did not receive their Title III funds for fiscal year 2011 until 2012, but officials from some counties told us that they developed a process enabling them to initiate projects before the deadline. For example, one county ensured that it had completed the necessary steps for initiating its Title III projects before the September 30, 2011, deadline, including budgeting for the projects and completing the associated public notification process, according to county officials. In contrast, other counties told us that they did not initiate all of their Title III projects by the September 30, 2011, deadline for varying reasons. For example, officials in one county told us that county guidelines prohibited initiation of projects before funding was 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 to use the extra funding. Officials from one county told us the county took no steps to initiate any projects by the deadline because it was unaware it would receive Title III funds in 2012. Counties now have additional time to initiate Title III projects, however, because the 2012 reauthorization of the act extended the deadline for initiating such projects to September 30, 2012.
- *Obligation of funds.* Officials we interviewed from nearly all 42 counties that had spent Title III funds told us that they anticipated obligating all of their Title III funds by September 30, 2012—the 2008 act in effect during our review required unobligated funds to be

³²Under earlier versions of the bill ultimately enacted in 2000, these committees would have had a more significant role in selecting and reviewing Title III projects, but such a role was eliminated from the version that became law.

returned to the U.S. Treasury after that date—and officials from several of these counties told us they had already done so. Nevertheless, some county officials reported being confused about this part of the act. For example, officials from one county told us that they were initially unclear about what was required for funds to be considered “obligated,” but after seeking guidance from a number of sources, they determined that their budgeting process was adequate to meet the act’s requirement. Similarly, officials in another county told us they believed they had 3 years from when they received Title III funds to spend them and were thus unaware of the September 2012 deadline; despite this misunderstanding, the county had already obligated all of its Title III funds at the time of our review. Similar to the requirement for initiating projects, however, the deadline for obligating Title III funds was extended to September 2013, allowing counties additional time to obligate funds.

Conclusions

For more than a decade, the Secure Rural Schools and Community Self-Determination Act has allowed the Forest Service and BLM to aid counties that include federal lands by providing payments to help offset the loss of revenue these counties once received from federal timber sales. Within the act, Title III has helped counties address the consequences of their proximity to federal lands by providing reimbursements for emergency services the counties furnish on those lands, as well as funds to help protect communities from the threat of wildland fires. The act contains language limiting the use of Title III funds in carrying out these activities, but it does not define key terms or fully specify the activities that qualify as allowable uses of Title III funds—leaving some of its provisions open to interpretation. The Forest Service and BLM have provided relatively little oversight of county expenditures and have not issued regulations as required by the act; moreover, the guidance they have provided is sometimes vague and does not always appear consistent with the act. Such limitations, in combination with the sometimes-unclear language in the act itself, have left counties to interpret on their own what is allowable under the act and what is not—and some counties are spending their Title III funds in ways that appear inconsistent with the act’s requirements with little oversight from the agencies. In light of the lack of clarity in the act and agency guidance, and because of the constrained fiscal environment that some counties are experiencing, some counties may be adopting a more expansive interpretation of what is allowed under Title III so as to supplement scarce county funds and maintain county services. In addition, some counties are not fully abiding by the administrative requirements of Title III, such as

providing sufficient notice of proposed spending or not properly certifying earlier expenditures.

Matter for Congressional Consideration

If Congress chooses to extend Title III of the Secure Rural Schools and Community Self-Determination Act beyond the 1-year reauthorization recently enacted, 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.

Recommendation for Executive Action

We recommend that the Secretary of Agriculture direct the Chief of the Forest Service, and that the Secretary of the Interior direct the Director of BLM, to issue formal federal regulations or clear guidance specifying types of allowable county uses of Title III funds, to help counties make appropriate decisions regarding these funds.

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to the Departments of Agriculture and the Interior. In its written comments, the Forest Service, responding on behalf of the Department of Agriculture, generally agreed with our findings and recommendation. The Forest Service's comments are reproduced in appendix II. The Forest Service also provided technical comments, which we incorporated as appropriate. Likewise, Interior generally agreed with our findings and recommendation, and its written comments are reproduced in appendix III.

While Interior generally agreed with our findings and recommendation, it expressed concern about how we characterized BLM's review of certification forms submitted by counties. Interior noted that it believed BLM had fulfilled its responsibilities under the Secure Rural Schools Act because BLM reviewed the certifications submitted by counties. We made changes to the report to clarify that the agencies did not review county certifications to determine whether counties had spent funds appropriately. Interior also suggested we amplify our discussion of its legal interpretation regarding oversight responsibilities; however, we believe this point is sufficiently addressed in the body of our report and have made no changes in response to this comment.

We are sending copies of this report to the Secretaries of Agriculture and the Interior, the Chief of the Forest Service, the Director of the Bureau of Land Management, the appropriate congressional committees, and other

interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or mittala@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

A handwritten signature in black ink that reads "Anu K. Mittal". The signature is written in a cursive, flowing style.

Anu K. Mittal
Director, Natural Resources and Environment

Appendix I: Objectives, Scope, and Methodology

Our objectives were to examine (1) actions the Forest Service and Bureau of Land Management (BLM) have taken to oversee county spending under Title III, (2) consistency of selected counties' expenditures with the purposes of the act, and (3) the extent to which these counties followed Title III's administrative requirements.

To conduct this work, we reviewed relevant laws and agency documents, including the Secure Rural Schools and Community Self-Determination Act of 2000, as reauthorized; legislative history on the act; legal opinions related to Title III; and Forest Service guidance made available to counties, including the Forest Service's frequently asked questions document and guidance provided on returning unobligated funds to the U.S. Treasury. We also obtained legal interpretations in writing from the Department of Agriculture's Office of General Counsel and Department of the Interior's Office of the Solicitor on various issues related to the act generally and Title III in particular, and we interviewed Forest Service and BLM officials about their oversight activities. In addition, we reviewed the forms indicating counties' election to allocate funds under the act to Title III projects and the forms counties submitted to the federal agencies certifying that the funds they expended in the previous year were used for authorized purposes.

To obtain information about the projects and activities on which counties spent Title III funds, as well as about their administrative practices related to Title III, we used a semistructured interview template to interview, in person or by telephone, officials from 42 of the 358 counties receiving Title III funds since the act's 2008 reauthorization. These 42 counties constitute a nonprobability sample of counties receiving Title III funds, which we selected to reflect variation in the amount of Title III funds received, the amount spent, and geographic location. We initially contacted 30 counties that Forest Service records indicated had spent Title III funds, selected as follows:

- one county selected because of concerns about questionable Title III spending, conveyed by the Forest Service;
- one county selected because of concerns about questionable Title III spending, conveyed by congressional staff;
- one county selected on the basis of our review of certifications;
- two counties in Oregon selected because they received the most Title III funding of any county in the nation; and
- twenty-five counties selected from locations across the country that receive Title III funding, in an attempt to include variation in amounts of funding received and variation in geographic location.

We contacted an additional 15 counties because Forest Service files had no records of any Title III spending by these counties, and we sought to interview county officials to discuss their reasons for not spending funds. After contacting these counties, however, we learned that 12 had indeed spent Title III funds, while 3 counties had spent no Title III funds at the time of our review—giving a total of 42 counties in our review that had spent Title III funds and 3 that had not.¹

We collected and reviewed documentation from the 42 counties that had spent Title III funds, including public notices related to Title III and detailed expenditure information. We did not, however, conduct a financial audit of counties' expenditures. We interviewed the 3 counties that had not yet spent any Title III funds to discuss why they had not and to discuss their plans for spending or returning any remaining funds. These counties were likewise selected for variation in Title III funds received and geographic location. Because the 42 counties we spoke with make up a nonprobability sample, the information we obtained from these interviews cannot be generalized beyond these counties; however the information provided us with an understanding of how the selected counties spent Title III funds and the actions taken to follow Title III's administrative requirements. See table 1 for the counties we contacted during our review.

¹Initially, we contacted 15 counties that did not have a certification form for Title III expenditures in 2009 or 2010 in the Forest Service files. Of these 15 counties, however, 12 had in fact spent Title III funds, leaving only 3 counties that had not spent any Title III funds. We did not find certification forms for these 12 counties for varied reasons. Some of these 12 counties had started spending Title III funds only in 2011 and, therefore, were not yet required to submit spending certifications; others had spent funds and not submitted certification forms to the Forest Service; and still others told us they had submitted certification forms, even though we did not find the forms in the Forest Service's files. We asked these 12 counties questions about their Title III projects and administrative practices and included them in our sample of 42 counties that had spent Title III funds.

Table 1: Counties Contacted During GAO Review

Alabama	Covington
Arizona	Coconino
California	Butte
	Plumas
	Shasta
	Siskiyou
	Tulare
Colorado	Gunnison
	Park
	Rio Blanco
	Saguache
Florida	Liberty
	Marion
Georgia	Lumpkin
Idaho	Boise
	Clearwater
	Idaho
	Shoshone
Michigan	Mackinac
Minnesota	St. Louis
Mississippi	Greene
	Scott
Missouri	Iron
	Ripley
	Shannon
Montana	Granite
	Lincoln
	Missoula
	Sanders
New Mexico	Catron
	Rio Arriba
North Carolina	Cherokee
	Graham

Appendix I: Objectives, Scope, and Methodology

Oregon	Douglas
	Josephine
	Lane
Pennsylvania	Warren
South Dakota	Lawrence
Tennessee	Stewart
Utah	Emery
Washington	Skagit
	Skamania
	Yakima
Wisconsin	Forest
Wyoming	Fremont

Source: GAO.

To determine the total amount in Title III payments that counties had received for fiscal years 2008 through 2011, we accessed reports from the Forest Service’s All Service Receipts database and summary documents on total payments from BLM. To determine the reliability of the Forest Service’s All Service Receipts database, we verified data inputs into the system back to source documentation, verified payment amounts with county officials we contacted, and interviewed knowledgeable Forest Service officials. We found that these data were sufficiently reliable for the purposes of this review. To determine how much Title III funding counties reported spending from 2009 through 2011, we collected certification forms submitted by counties to the Forest Service and BLM before May 18, 2012, and totaled the amounts indicated therein. For counties for which we did not find certification forms in information provided to us by the Forest Service, we collected additional certification forms directly from the counties and included their reported spending in our total amount.

To obtain perspectives on Title III from nongovernmental entities, we interviewed representatives from several nongovernmental organizations, including the National Association of Counties, National Forest Counties and Schools Coalition, Western Governors’ Association, Headwaters Economics, Association of O&C Counties, and National Fire Protection Association. We also reviewed reports from these and other organizations, including research on county expenditures under the Title III program and outside guidance related to Title III and the Firewise Communities program.

We conducted this performance audit from August 2011 to July 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit 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.

Appendix II: Comments from the Department of Agriculture, Forest Service



Forest Service
Washington Office

1400 Independence Avenue, SW
Washington, DC 20250

File Code: 1420

Date:

JUL 09 2012

Anu K. Mittal
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G. Street, N.W.
Washington, DC 20548

Dear Ms. Mittal,

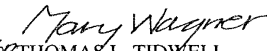
Thank you for the opportunity to comment on the draft report "Payments to Counties: More Clarity Could Help Ensure County Expenditures Are Consistent with Key Parts of the Secure Rural Schools Act" (GAO-12-775). The report pertains to federal oversight and counties' use of funds under title III of the Secure Rural Schools and Community Self-Determination Act of 2000, as reauthorized in 2008 (the SRS Act), 16 U.S.C. 7101 et seq.

The Department of Agriculture (USDA) generally agrees with GAO's findings and recommendation to issue formal federal regulations or clear guidance specifying types of allowable county expenditures to help counties make appropriate decisions regarding the use of title III funds if the act is reauthorized.

Although the authorized uses of title III funds were narrowed when the SRS Act was reauthorized in 2008, and the language describing the authorized uses is prescriptive, the GAO audit clearly shows the level of confusion on the part of some counties in interpreting title III. USDA agrees that the Act, if reauthorized, would benefit from clarification and that, depending on the extent to which Congress clarifies the type of expenditures that are allowed, the issuance of regulations or clarification of guidance by USDA would provide the specificity needed by counties to ensure their compliance with title III.

If you have any questions, please contact Thelma Strong, Acting Chief Financial Officer, at 202-205-1321 or tstrong@fs.fed.us.

Sincerely,


THOMAS L. TIDWELL
Chief



Caring for the Land and Serving People

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Appendix III: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 02 2012

Ms. Anu K. Mittal
Director, Natural Resources and Environment
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-001

Dear Ms. Mittal:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled *PAYMENTS TO COUNTIES: More Clarity Could Help Ensure County Expenditures Are Consistent with Key Parts of the Secure Rural Schools Act* (GAO-12-775). The Department of the Interior (Department) appreciates the diligent work of the GAO team in conducting this study, which has illustrated some of the difficulties in interpreting and administering this law, Title III of the Secure Rural Schools and Community Self-Determination Act of 2000 (SRSA), 16 U.S.C. §7151.

The draft report contains a single recommendation, that if Title III is reauthorized, the agencies issue regulations or clear guidance specifying the types of allowable expenditures, consistent with the reauthorizing language. The Department agrees to evaluate any legislation reauthorizing the SRSA Title III, and issue guidance or regulations, as appropriate.

The Department has not issued regulations under the existing Title III of the Secure Rural Schools and Community Self-Determination Act of 2000 (SRSA), 16 U.S.C. §7151, for several reasons, which are discussed in the May 4, 2012, letter from Deputy Solicitor Edward T. Keable, to Karen Keegan, Assistant General Counsel, GAO (enclosed). We appreciate your acknowledgment of this legal interpretation on page 11 and in footnote 14. We suggest adding this concept to the conclusions section on page 25 by modifying the last line of page 25, so that the last line will read as follows (additions in italics):

the act, because according to their legal interpretation, they do not have authority to oversee expenditures of funds once allocated to counties. Moreover, the guidance they have provided is sometimes vague and does not always

In addition, the Department would like to clarify the characterizations in the report pertaining to the BLM's review of certifications by counties. As noted in the report, counties located in Oregon on public lands managed by the Department's Bureau of Land Management (BLM) have received payments as authorized under the Title III of the Act. On the summary page and again on pages 9 -10, GAO asserts that the BLM did not complete a review of the annual certification of counties expenditures under Title III. However, the Department believes that the BLM

**Appendix III: Comments from the Department
of the Interior**

fulfilled its responsibilities under the SRSA because the BLM completed the annual certification reviews of the counties that submitted reports.

We hope the comments will assist you in preparing the final report. If you have any questions about this response, please contact Lynda Boody Division Chief, Division of Rangeland Resources, at 202-912-7220 or LaVanna Stevenson, BLM Audit Liaison Officer, at 202-912-7077.

Sincerely,



Marcilynn A. Burke
Acting Assistant Secretary
Land and Minerals Management

Enclosure

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Anu K. Mittal, (202) 512-3841 or mittala@gao.gov

Staff Acknowledgments

In addition to the contact person named above, Steve Gaty (Assistant Director), Ellen W. Chu, Richard P. Johnson, Anne Rhodes-Kline, Lesley Rinner, and Leigh McCaskill White made key contributions to this report.

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