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IN FOCUS

February 25, 2021

Payments in Lieu of Taxes (PILT): Section 6902 Payments

Introduction

Several federal programs exist to compensate local jurisdictions for the presence of nontaxable federal lands. The widest-ranging program is known as Payments in Lieu of Taxes (PILT). PILT compensates units of general local government (generally referred to as *counties*, although a unit could be other than a county) for selected lands administered by several federal agencies. PILT is administered by the Office of the Secretary in the Department of the Interior (DOI). In FY2020, PILT paid $515 million to more than 1,900 counties across 49 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

PILT funding is allocated through three payment mechanisms—Section 6902, Section 6904, and Section 6905—which are named for the sections of law in which they are authorized (31 U.S.C. §§6902, 6904, 6905). Section 6902 payments account for the majority of PILT payments and are available to the most counties. Section 6904 and 6905 payments account for <1% of PILT payments, are supplementary to 6902 payments, and are made to selected counties for specific purposes as identified in statute. This In Focus discusses Section 6902 payments.

Payment Structure

Section 6902 payments are made to counties pursuant to a formula provided in statute (**Figure 1**).

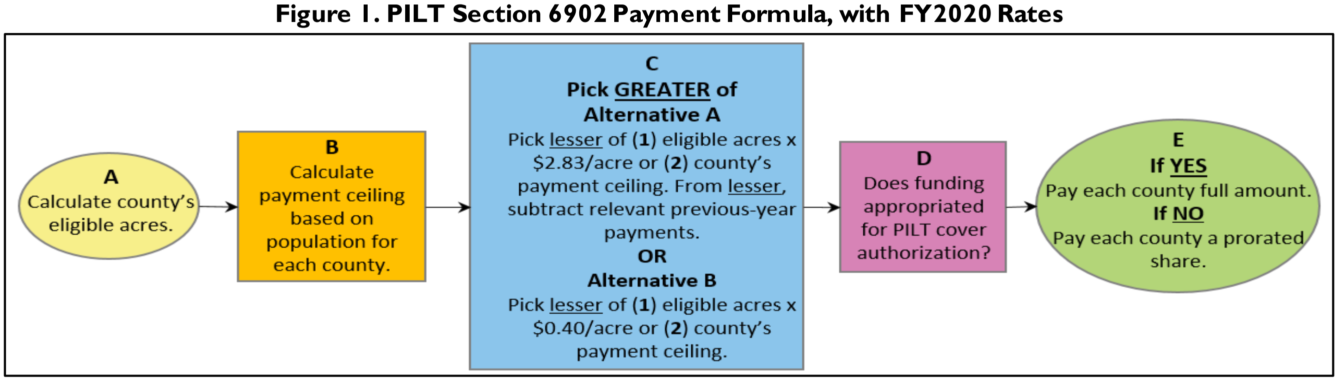
Several factors are used to calculate the authorized PILT payment amount for a county: entitlement land and per acre payment rates, population-based payment ceilings, prior-year payments, pass-through laws, and inflation. These factors are described below. Additionally, the level of funding appropriated for PILT payments determines whether counties receive the fully authorized payment amount or a lesser, prorated amount.

Entitlement Land and Per Acre Payment Rates: Lands eligible under PILT are referred to as *entitlement lands* in statute (31 U.S.C. §6901) and include federal lands

- in the National Park System;
- in the National Forest System;
- administered by the Bureau of Land Management;
- in the National Wildlife Refuge System withdrawn from the public domain;
- dedicated to the use of federal water resources development projects;
- used for certain dredge disposal areas;
- located near Purgatory River Canyon and Piñon Canyon, CO, that were acquired after December 31, 1981, to expand the Fort Carson military reservation;
- on which are located semi-active or inactive Army installations used for certain purposes; and
- acquired per the Southern Nevada Public Land Management Act (P.L. 105-263).

The first step in calculating authorized payments is determining the number of entitlement acres within a county, which is the responsibility of the various federal agencies that administer the lands (**Figure 1**, Step A). Taking into account a *population-based payment ceiling* as described below (**Figure 1**, Step B), a county's authorized payment is calculated by multiplying the number of entitlement acres by one of two per acre payment rates—a higher rate offset by *prior-year payments* (Alternative A) or a non-offset lower rate (Alternative B) (**Figure 1**, Step C). The higher amount is the authorized payment.

Figure 1. PILT Section 6902 Payment Formula, with FY2020 Rates



Source: CRS, with data from 31 U.S.C. §§6901 et seq. and DOI, *FY2020 Payments in Lieu of Taxes National Summary*, at https://www.doi.gov/pilt/resources/annual-reports. Per acre payment rates are adjusted annually for inflation (31 U.S.C. §6903(d)).

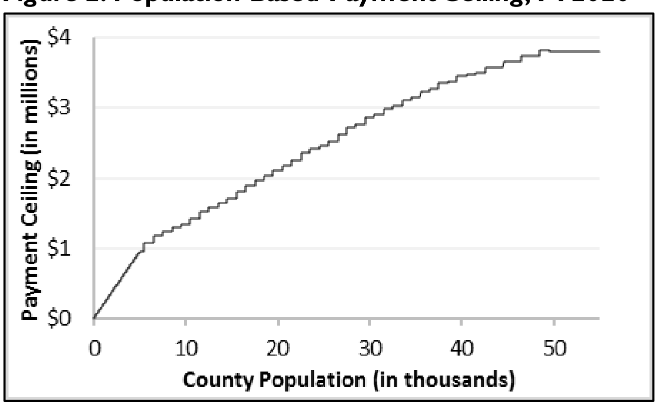
Population-Based Payment Ceiling: The law limits the payment a county is authorized to receive based on a *population-based payment ceiling*. This ceiling is calculated by multiplying a county's population by a corresponding per capita payment rate, as described below (**Figure 1**, Steps B and C). As a county's population increases, the per capita payment rate generally decreases, although the ceiling generally increases (**Figure 2**).

Prior-Year Payments: PILT is not the only payment program to compensate counties for the presence of nontaxable federal lands, so the PILT formula accounts for counties receiving some of these other payments. Under Alternative A, PILT requires the amounts received in the prior year pursuant to these payments to be subtracted from the payment amount calculated. Prior-year payments are considered from several federal programs identified in statute (31 U.S.C. §6903(a)). Prior-year payments are subtracted only under Alternative A and only when a state has not implemented *pass-through laws* as described below (**Figure 1**, Step C, Alternative A).

Pass-Through Laws: States may have *pass-through laws* that require federal payments under selected compensation programs to automatically pass through the county to specified local jurisdictions or districts (such as school districts). Only prior-year payments under other programs made at the county level are deducted during Alternative A calculations; payments subject to pass-through laws do not count as prior-year payments and are not deducted.

Inflation: Per acre payment rates used in Alternatives A and B and per capita payment rates used for population-based payment ceilings are adjusted for inflation annually based on the Consumer Price Index (31 U.S.C. §6903(d)).

Figure 2. Population-Based Payment Ceiling, FY2020



Source: CRS, with data from DOI, *FY2020 Payments in Lieu of Taxes National Summary*, at https://www.doi.gov/pilt/resources/annual-reports.

Alternative A and Alternative B

A county's authorized payment is the higher of either Alternative A or Alternative B. Alternative A has a higher per acre payment rate but accounts for prior-year payments, which are subtracted during the payment calculation. Alternative B has a lower per acre rate, but prior-year payments are not subtracted. Under both alternatives, if the product of multiplying the number of entitlement acres by the per acre payment rate is greater than the population-based payment ceiling, the population-based ceiling is used to calculate a county's authorized payment (**Figure 1**, Step C). For Alternative A, if the ceiling replaces the acre-based product, it does so before subtracting prior-year payments.

Population-Based Payment Ceiling

A county's population-based payment ceiling is calculated by multiplying its population by the corresponding per capita rate for a county of its size (**Figure 2**). For counties with a population of 5,000 or larger, the population is rounded to the nearest 1,000. For counties with populations smaller than 5,000, the actual population is multiplied by the per capita rate for a county with a population of 5,000. Counties with populations greater than 50,000 have the same ceiling as counties with populations of 50,000.

Appropriations

The DOI Office of the Secretary calculates authorized PILT payments each fiscal year pursuant to the statutory formula. However, the amount available for disbursement ultimately depends on how much funding is appropriated for PILT (**Figure 1**, Step D). Over the years, PILT has been funded through either discretionary or mandatory appropriations or both. Appropriations have been equal to or very near the authorized amount in some years and substantially less than the authorized amount in others. In years when funding for PILT payments is less than the authorized amount, county payments typically have been prorated to accommodate the difference (**Figure 1**, Step E). The amount of proration depends on the difference between the authorized and appropriated amounts. For example, a county's prorated payment can be substantially less than its authorized payment if there is a substantial difference between the authorized and appropriated amounts. Its prorated payment can be nearly equal to the authorized payment when appropriated funding for county payments is only slightly less than the authorized amount, such as when the deviation results only from a set-aside for program administration.

Annual discretionary appropriations laws also have provided requirements for PILT payments. For example, they have restricted county payments authorized for less than $100, allowed payments to be prorated if appropriated funding is insufficient to cover authorized amounts, and set aside funding to be used for program administration.

FY2021 Payments

Section 115 of Division G of the Consolidated Appropriations Act, 2021 (P.L. 116-260), provided for PILT to be funded at the authorized amount for FY2021. However, P.L. 116-260 did not specify the actual funding level, as the FY2021 authorized amount had not yet been calculated when the law was enacted. This calculation typically has occurred in late spring or early summer. Division G provided additional stipulations, including, among other requirements, that up to $400,000 may be used for administration and payments may be prorated.

For more information, see CRS Report R46260, *The Payments in Lieu of Taxes (PILT) Program: An Overview*.

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