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EXTENDING AND AMENDING THE STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

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Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 13367]

The Committee on Finance, to which was referred the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. SUMMARY

The renewal of the State and Local Fiscal Assistance Act of 1972, or general revenue sharing, represents a reaffirmation of the principles of the 1972 legislation.

The committee believes that our Federal system of government, composed of Federal, State, and local governments, has been strengthened by the provision of unrestricted fiscal assistance on a continuing and certain basis. By providing Federal funds with few limitations, the committee believes that State and local governments may more effectively meet the diverse needs and priorities of the nation. The bill, as amended by the committee, renews the 1972 Act to achieve this result. In addition to providing continued, growing financial assistance to State and local governments, the committee has made certain changes in the 1972 Act which are designed to strengthen and clarify the legislation.

Extension, funding, and amounts

Under the committee amendment to H.R. 13367, the general revenue sharing program is renewed for 5¾ years. Entitlement payments

of $6.9 billion are provided for fiscal year 1977, and are increased thereafter by $150 million per year. Also, the noncontiguous State adjustment amounts will increase throughout the renewal period. Thus, unlike the House bill which did not provide for any growth in funding, the committee amendment provides for an 11-percent increase in funding.

Distribution of funds

Basically the committee continues the present provisions relating to the distribution of funds. As a result, the distribution of the funds to the States will continue to be based on one of two formulas: one is based on population, on tax effort, and on need (inverse per capita income); the other is based on population, urbanization, need, relative use of income taxes, and tax effort. The State governments themselves will receive one-third of the funds and the remainder distributed among the counties, cities, and other local governments for the most part on the basis of population, tax effort, and need. However, a few relatively minor changes to the distribution formulas are made on the basis of the experience to date.

The committee amendment retains the current formulas for allocation of funds among States and within. It does provide for certain technical modifications designed to improve the administration of the formulas and achieve greater equity. At the State level, the committee amendment provides that the noncontiguous State adjustment be available to States (Hawaii and Alaska) with extraordinary costs of living under both the 5-factor and 3-factor formulas. Under current law, the adjustment has been available only for such States with extraordinary costs of living which benefit under the 3-factor formula.

At the local level, the committee amendment also provides for certain technical changes in the administration of the formulas which are designed to achieve greater equity and greater certainty. First, the committee amendment would prohibit the retroactive application of a change in statistical methodology (e.g., the precise manner in which, for example, school taxes are removed from total taxes to arrive at adjusted taxes) by the Office of Revenue Sharing which would result in a recipient having to repay revenue sharing funds received in a previous entitlement period. Second, to minimize fluctuations in entitlements, census data would be required to be used only for periods ending before the beginning of the next entitlement period. Third, revenue sharing funds waived by an Alaskan Native Village or Idian Tribe is to be added to tse entitlement of the county government in which the tribe or village is located. This is the requirement of current law with respect to waivers by cities and townships, and would provide parallel treatment for tribes and villages. Fourth, the committee amendment provides for an allocation to certain separate law enforcement officers in Louisiana except in Orleans parish from funds available to State and parish governments. A State may elect during the renewal period the optional within-State distribution formula provided in current law.

Fiscal requirements

The committee amendment revises the fiscal requirements of the Act by eliminating the requirements that localities spend revenue sharing funds in priority categories and that recipients not use revenue sharing

to match other Federal programs. Also, the State maintenance of effort requirement in the Act is revised so that States must maintain their transfers to localities compared to a moving average of their previous transfers.

Eligibility requirements

The committee amendment continues the local government eligibility requirements of current law, and eliminates an unused category of recipients ("other units of local government").

Accounting and auditing requirements

The committee amendment provides that where State or local law requires a financial audit of State and local revenues and expenditures, the same requirements are to be sufficient for revenue sharing funds. Where no statutory audit requirement exists, an independent audit of the recipient's financial statements, according to generally acceptable accounting standards, is to be required every three years. A series of audits which aggregate the entire financial activity of the recipient would be sufficient. In certain circumstances, where recipient units of Government are not auditable, the required audit is to be waived where it is demonstrated by the recipient (under regulations promulgated by the Secretary) that substantial progress toward being auditable is being achieved annually. Recipients with annual entitlements of less than $25,000 per year of revenue sharing funds would be exempted from the required audit provisions. Coordination with other Federal audit requirements is mandated, in order to avoid duplication of audits in the case of units of Government not subject to State or local statutory audit requirements.

Reports, hearings, and public participation

The committee amendment provides a general requirement for public hearings, notification, and publication of summary budgetary information. An exception to this general requirement is provided if a recipient holds public hearings after notice on the proposed uses of its own funds in which citizens can participate under generally applicable State or local law.

Nondiscrimination

The committee amendment also strengthens the nondiscrimination provisions of current law by providing: (1) a general prohibition against discriminating on the basis of race, color, national origin or sex, with respect to any program or activity of a recipient government which program or activity has been designated as receiving revenue sharing funds or which under all the facts and circumstances is demonstrated to be funded in whole or in part with revenue sharing funds; (2) a procedure which provides certain timetables under which the Treasury Department must seek compliance, and which can result in suspension of revenue sharing payments; (3) standing for citizens who, upon exhaustion of administrative remedies, can bring a civil action in an appropriate U.S. district or State court.

Study of Federal fiscal system

The committee amendment also creates a 14 member Commission to study and evaluate our (and other) Federal systems in terms of the allocation of taxing and spending authorities; to study and

evaluate State and local government organization to determine, especially at the local level, what general governments do and how they might relate to each other and to special districts in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities. In addition, the Commission is to examine the effectiveness of Federal stabilization policies on local areas, and the effects of individual State and local fiscal decisions on aggregate economic activity, the quality of financial control and audit procedures that exists in our Federal system, and the formal and pratical aspects of citizen participation in fiscal decisions in our Federal system. The Commission is to have 3 years to make its study and report to the President and Congress. The commission is to be composed of the Speaker of the House, the Minority Leader of the House, the Majority and Minority Leaders of the Senate, two members of the Executive Branch, two Governors, two local government officials, two representatives of the business community and two representatives from labor.

II. REASONS FOR THE BILL

Fiscal problems of State and local governments

Over the past two and a half years, the Nation has suffered the worst recession since the Great Depression. Not only has the private sector been adversely affected, but so too has the State and local sector. Rapidly rising service costs coupled with sluggish or declining tax bases has meant that State and local governments have had to raise tax rates and/or cut services. For example, State spending grew in 1975 by 18.2% while revenues grew by only 9.8%. The impact of the recession has been especially severe in some of the older, industrial cities. As a result of this, the committee concluded that State and local governments face financial problems of a continued severe nature.

A chronic problem State and local governments face is that the demand for public services is more elastic than the availability of revenues to finance them. Thus, because of inflation and other factors, expenditure requirements tend to outpace revenues. On the revenue side, State and local governments have tended to rely on revenue sources that do not grow as the economy does.

The continued provision of general revenue sharing thus not only serves to help solve the fiscal problems of individual State and local governments, but also serves to stabilize the economy.

Revenue sharing in the Federal fiscal system

Since 1972, general revenue sharing has become an integral part of State and local budgets. Initially proposed as a new and additional form of Federal assistance, revenue sharing has been used by State and local governments to hold the fiscal line as other Federal categorical programs were reduced. As such, revenue sharing has become not only well integrated into the State and local fiscal process, but also an essential source of funding to State and local governments.

Expiration of general revenue sharing

Payments to State and local governments under the State and local Fiscal Assistance Act of 1972 (title I of Public Law 95–512) terminate at the end of calendar 1976. Were the committee not to act between now and the end of 1976, State and local governments would lose more than

10 percent of all Federal grant-in-aid funds. Besides the fact that it has become essential to State and local governments, the committee considers the renewal of revenue sharing to be worthwhile because of its success in allowing State and local governments to effectively meet their needs and priorities.

III. GENERAL EXPLANATION

A. Extension, Funding, and Amounts (sec. 5 of committee amendment and sec. 105 of present law)

Payments to State and local governments under the State and Local Fiscal Assistance Act of 1972 (revenue sharing) end at the end of the calendar 1976.[1] The payments began at an annual rate of $5.3 billion per year and increased annually until they reached $6.65 billion annual rate for the second half of calendar year 1976. Table 1 displays the aggregate amounts of aid over this period.

TABLE 1.—PAYMENTS TO STATE AND LOCAL GOVERNMENTS UNDER GENERAL REVENUE SHARING

Entitlement period	Amount (millions)	Percent increase over previous period [1]
(1) Jan. 1 to June 30, 1972	$2,650.0	
(2) July 1 to Dec. 30, 1972	2,650.0	
(3) Jan. 1 to June 30, 1973	2,987.5	(12.7)
(4) July 1, 1973 to June 30, 1974	6,050.0	(1.3)
(5) July 1, 1974 to June 30, 1975	6,200.0	(2.5)
(6) July 1, 1975 to June 30, 1976	6,350.0	(2.4)
(7) July 1, 1975 to Dec. 31, 1976	3,325.0	(4.7)
Total	30,212.5	

[1] At annual rates.

The 1972 Act provided that the funds be permanently appropriated out of funds attributable to Federal individual income tax collections and placed in a trust fund.

In considering the renewal of revenue sharing, the committee has sought to balance its concern that the program be periodically reviewed, and thus made controllable, with the concern that State and local governments be provided sufficient certainty so that they might plan and therefore use revenue sharing funds most effectively. By renewing the program for 5 and 3/4 years, substantial certainty will continue to be available to State and local governments, and the Congress will have sufficient time to be able to review its operation prior to considering its renewal again.

Over the five years of revenue sharing, annual payments rose from $5.3 billion to $6.65 billion, a 25.5 percent overall increase. During this period, however, the Consumer Price Index rose by more than 35 per-

[1] Under Sec. 102 of the Act, revenue sharing payments are made in at least four installments over the "entitlement period" which is generally the Federal fiscal year. The Act permits the Treasury Department to make these payments as late as 5 days after the end of each quarter. The Treasury Department practice has been to make payments of equal size with some amount (e.g., .5 percent) held back to account for corrections to data, etc. after the close of each quarter. Accordingly, the last checks under the 1972 Act will be mailed out in early January, 1977.

cent, and the implicit price deflator for State and local purchases of goods and services (a price index for State and local government) rose by more than 30 percent. Thus, the value of revenue sharing, once corrected for price changes, has declined somewhat over the period of its existence. The committee considers it essential that the level of new funding, to the extent financially possible, take into account future price increases. Accordingly, the committee amendment provides that revenue sharing payments be $6.9 billion for fiscal year 1977. This represents a 3.8 percent increase over the $6.65 billion per year rate at which current law ends. The committee amendment then provides for a more modest growth rate: for fiscal year 1978, the growth in funding is 2.2 percent; and in the last year of the renewal period, the growth rate is 2.0 percent.

In view of the new budget procedures resulting from the Congressional Budget and Impoundment Act of 1974, the committee provides for entitlement funding, which combines the certainty previously available with additional oversight which derives from the exercise of the Congressional budgetary process.

Explanation of provision

The committee amendment provides for a 5 and ¾-year extension of entitlement payments to State and local governments. Payments under the noncontiguous State adjustment are increased at the same rate. In fiscal year 1977, $6.9 billion will be available for allocations. Since $1,662.5 million is provided for the period October 1, 1976–December 31, 1976 under present law, the committee amendment provides for $5,237.5 million for the 9-month period, January 1, 1977–September 30, 1977. Thereafter, the amount available for allocation increases each year by $150 million. Table 2 displays the aggregate amount available and the noncontiguous State adjustment amounts under the committee amendment and House bill.

The House bill provides for a 3 and 3/4-year extension of entitlement payments. Payments are at a constant $6.65 billion annual rate; the noncontiguous States adjustment amount is also fixed at a $4.78 million annual rate.

Effective date

The committee amendment is effective for entitlement periods beginning on or after January 1, 1977.

TABLE 2.—ENTITLEMENT PAYMENTS UNDER COMMITTEE AMENDMENT AND HOUSE BILL

Entitlement period	Basic amount ($ millions)		Noncontiguous States adjustment amount ($ millions)	
	Committee amendment	House bill	Committee amendment	House bill
(8) Jan. 1, 1977 to Sept. 30, 1977	$5,237.7	$4,987.5	$3.8	$3.6
(9) Oct. 1, 1977 to Sept. 30, 1978	7,050.0	6,650.0	5.1	4.8
(10) Oct. 1, 1978 to Sept. 30, 1979	7,200.0	6,650.0	5.2	4.8
(11) Oct. 1, 1979 to Sept. 30, 1980	7,350.0	6,650.0	5.3	4.8
(12) Oct. 1, 1980 to Sept. 30, 1981	7,500.0		5.4	
(13) Oct. 1, 1981 to Sept. 30, 1982	7,650.0		5.5	
Total	41,987.5	24,937.5	30.3	18.0

B. Distribution of Funds (secs. 5, 6(b), 6(c), 6(d), 6(e), and 6(f) of committee amendment and secs. 102, 105, 106, 108, and 109 of present law)

1. Interstate allocation.—Under present law, the amount available to each State area for each entitlement period is allocated on the basis of whichever of two formulas, the "three-factor" formula or the "five-factor" formula, yields the greater portion of the amount available for the entitlement period. (These formulas allocate funds to a State geographic area for the use of the State government and all the units of local government in the State. The division of funds between the State government and the units of local government in the State is discussed below.)

The three-factor formula is based on a multiplication of population, tax effort, and inverse per capita income. The formula compares the resulting product for a State with the sum of the product similarly determined for all of the States and, initially, allocates a State area amount equal to the resulting proportion of $5.3 billion.

If this allocation is determined under the three-factor formula, rather than under the five-factor formula described below, and the State is eligible for the "noncontiguous State adjustment"—Alaska and Hawaii only—the basic allocation is increased.

Under the noncontiguous State adjustment, the basic allocation for States in which civilian employees of the U.S. Government receive an allowance under sec. 5941 of title 5 of the U.S. Code is increased by this percentage increase in base pay allowance (currently 15 percent for Hawaii and 25 percent for Alaska). The full fiscal year appropriation for this adjustment is $4.78 million, some of which may not be used because the percentage increase of the basic allocation may require less, or one or both States may not be eligible for the percentage adjustment because they receive more under the five-factor formula. This adjustment is taken into account before the determination of whether these States receive more under the three-factor formula or under the five-factor formula, but is provided only if the three-factor formula with the adjustment is more advantageous than the five-factor formula. Table 3 displays payments to Alaska and Hawaii under this provision.

TABLE 3—PAYMENTS TO ALASKA AND HAWAII UNDER THE NONCONTIGUOUS STATE ADJUSTMENT PROVISION, CURRENT LAW

Entitlement period	Payments to—		Total payment
	Alaska	Hawaii	
(1) Jan. 1 to June 30, 1972	$660, 567	0	$660, 567
(2) July 1 to Dec. 31, 1972	660, 567	0	660, 567
(3) Jan. 1 to June 30, 1973	741, 427	$1, 648, 573	2, 390, 000
(4) July 1, 1973 to June 30, 1974	1, 482, 855	3, 297, 145	4, 780, 000
(5) July 1, 1974 to June 30, 1975	0	0	0
(6) July 1, 1975 to June 30, 1976	0	0	0
(7) July 1, 1976 to Dec. 31, 1976	0	0	0
Total	3, 545, 416	4, 945, 718	8, 491, 134

Source: U.S. Treasury Department, Office of Revenue Sharing.

2. Within State allocation

The amount allocated to a State is divided two-thirds to the local governments in that State and one-third to the State government.

1. County area allocations.—The two-thirds available for allocation to the local governments is then allotted among county areas [2] on the basis of the three-factor formula: population multiplied by general tax effort, and that product multiplied by inverse relative per capita income.

In the case of county areas the population taken into account is the population of the country area, the tax effort taken into account is the "adjusted taxes" [3] raised by all units of general government in the county area divided by the total money income of the residents of the county area, and the per capita money income is the total money income of the county area divided by the county area population.

In the case of cities or townships, the population used refers to the population within its political boundaries; the tax effort used is the ratio of its adjusted taxes to the total money income of the residents of the city or township; the per capita income used is the ratio of total money income of the city or township divided by its respective population.

Inverse per capita income is the ratio of the larger geographic unit's per capita income to that of the jurisdiction for which an allocation is being computed. Thus, in the case of a county area allocation, inverse per capita income is the ratio of State per capita income to the county per capita income in question.

3. Intra-county allocation

Once each county area allocation has been determined, allocation among types of governments (county, city, township, and Indian tribes, and Alaskan native villages which perform substantial governmental functions) is made. If there are any Indian tribes or Alaskan native villages, an allocation is made first on the basis of total tribal population as a percentage of the county area population. The remainder of the county area allocation is then divided among the county governments, all cities (if any), and all townships (if any) on the basis of their adjusted taxes.

Table 4 displays these steps for a hypothetical county area with an initial $1,000,000 county area allocation. Since total tribal population is 10 percent of the county area population, the tribes receive $100,000; this leaves $900,000 to be allocated among the county government, all cities, and all townships. Total adjusted taxes are $10,000,000, of which the county government has 70 percent, the cities 20 percent, and the townships 10 percent. Accordingly, the county government receives $630,000 (70 percent of $900,000); the cities receive $180,000 (20 percent of $900,000); and the townships receive $90,000 (10 percent of $900,000). This division of funds on the basis of taxes was intended to distinguish among fiscally active and inactive types of governments.

[2] For any part of the State where there is no county, the next unit of local government below the State level will be treated as a county. In other words, this allocation to county areas is intended to cover the entire geographic area of the State, whether or not there are active county governments. Thus, for example, San Francisco and Baltimore cities are treated as county areas, as are the independent cities in Virginia.

[3] "Adjusted taxes" mean all tax revenues minus the amount attributable to finance education.

TABLE 4.—EXAMPLE OF DIVISION OF $1,000,000 COUNTY AREA ALLOCATION AMONG TYPES OF GOVERNMENT

	Population	Adjusted taxes	Share of area allocation
Area total	100,000	$10,000,000	
Tribes	10,000		$100,000
County governments		7,000,000	630,000
All cities		2,000,000	180,000
All townships		1,000,000	90,000

4. *Optional formula and special rules.*

A State may by law alter the above allocation formula once during the 5 years of the program. Instead of using the three-factor formula, a State may use an average of population times tax effort and population times inverse per capita income. The change which must be made for the entire State may be solely at the county area level, solely at the sub-county level, or both; however, the maximum and minimum limitations may not be changed. To date, no State has elected to modify the formula provided in the 1972 legislation.

5. *Definitions—Inter-State data.*

The population of a State is the total resident population as determined by the Bureau of the Census. The population data are estimates which are updated annually by the Bureau of the Census, and published in *Current Population Reports, Series P-25.* Urbanized population of a State is the amount of that State's population which is classified as an urbanized area by the Bureau of the Census. Urbanized population data is based on complete population enumeration and subsequent classification of population density. Urbanized population data is available only from a decennial census. The per capita income of a State is the ratio of the estimated total money income received by all persons residing in the State to the estimated resident population of the State. The calendar year 1972 updates for Entitlement Periods 6 and 7 and the planned future updates are Bureau of the Census estimates. The estimates are developed by utilizing information obtained by the place of residence questions on the IRS 1040 forms in conjunction with other administrative records. Sec. 144 of the 1972 Act requires that State, county, city or township place of residence be provided annually by taxpayers on the 1040 and 1040A individual income tax forms.

The State individual income tax of a State is the tax imposed upon the income of individuals by the State according to Section 164(a)(3) of the Internal Revenue Code of 1954. Actual calendar year collections data are published annually by the Bureau of the Census in their *Quarterly Summary of State and Local Tax Revenue* reports. The Federal individual income tax liability of a State is the total annual Federal individual income tax after credits attributed to the residents of the State by IRS. Calendar year estimates are obtained annually from the Internal Revenue Service's publication, *Statistics of Income.* State and local taxes data are the compulsory contributions exacted by a State (or local government of the State) for public purposes other than employer or employee assess-

ments, contributions to finance retirement and social insurance systems, and special assessments for capital outlay. State and local taxes data are updated annually and published by the Bureau of the Census in their publication *Government Finances.* The general tax effort factor of a State is the State and local taxes of the State divided by the aggregate personal income of the State. The aggregate personal income of a State is the income of individuals of the State as determined by the Department of Commerce for National income accounts purposes. General tax effort factor data are updated annually by the Bureau of the Census and are published in *Governmental Finances.*

6. *Definitions—Intra-State data.*

The population of a unit of local government is the total resident population as determined by the Bureau of the Census. The July 1, 1973 updates for Entitlement Periods 6 and 7 and the planned future updates are Bureau of the Census estimates. The estimates are developed by utilizing information derived from the place of residence questions on the IRS 1040 forms in conjunction with information from other administrative records. Annual revisions are also made to the population data to reflect boundary changes and annexations. The Bureau of the Census conducts an annual *Boundary and Annexation Survey*, the result of which are utilized to update the boundaries and thereby the population and per capita income data for local governments.

The per capita income for a local government is the ratio of estimated total money income received by the residents of the jurisdiction to the estimated total population of the jurisdiction as determined by the Bureau of the Census. The calendar year 1972 updates for Entitlement Periods 6 and 7 and the planned future updates are Bureau of the Census estimates. The estimates are developed by utilizing information derived from the place of residence questions on the IRS 1040 forms in conjunction with other administrative records. Sec. 144 of the 1972 Act requires that State, county, city, or township place of residence be provided annually by taxpayers on the 1040 and 1040A individual income tax forms. Annual revisions are made to the per capita income data which reflect updated boundaries of the local governments. The updated geography information is collected by the Bureau of the Census in their annual *Boundary and Annexation Survey.*

The adjusted taxes of a local government are the total taxes received by the government excluding taxes for schools and other educational purposes. Adjusted taxes data are collected annually by the Bureau of the Census in their *General Revenue Sharing Survey.*

The intergovernmental transfers of a local government are the total amounts received from other governments (other than revenue sharing) for use for either specific functions or general financial support. These data are collected annually by the Bureau of the Census in their *General Revenue Sharing Survey.*

7. *Utilization of new data*

Current law (Sec. 109(a)(7) (A) and (B) and 109(c)(2)) requires that the data used be the most recently available, and that where such data provided by the Bureau of the Census are not current enough or

not comprehensive enough to provide equitable allocations, the Secretary may use additional data, including data based on estimates as provided by regulations. Present law (Sec. 109(a)(5)) also provides, except as provided otherwise by regulations, that computations of allocations for an entitlement period be made 3 months prior to the beginning of the entitlement period. As a consequence, unless the Secretary provides otherwise through regulations, the Office of Revenue Sharing may have to use preliminary estimates of the required Census data to initially write checks and then, during the entitlement period, use the final data estimates. Table 5 displays for Entitlement Periods 1 through 7 the periods to which the data refer.

TABLE 5

GENERAL REVENUE SHARING—DATA ELEMENT BASE PERIODS, ENTITLEMENT PERIODS 1 TO 7

	Entitlement period —						
	1—Jan. 1, to June 30, 1972	2—July 1, to Dec. 31, 1972	3—Jan. 1, to June 30, 1973	4—July 1, 1973 to June 30, 1974	5—July 1, 1974 to June 30, 1975	6—July 1, 1975 to June 30, 1976	7—July 1, to Dec. 31, 1976
Data for intrastate allocations:							
Population	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	July 1, 1973	July 1, 1973.
Per Capita income	CY 1969	CY 1969	CY 1969	CY 1969	CY 1969	CY 1972	CY 1972.
Adjusted taxes	FY 1971	FY 1971	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975.
Intergovernmental transfers	FY 1971	FY 1971	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975.
Data for interstate allocations:							
Population	Apr. 1, 1970	Apr. 1, 1970	July 1, 1972	July 1, 1972	July 1, 1973	July 1, 1974	July 1, 1975.
Urbanized population	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970.
Per capita income	CY 1969	CY 1969	CY 1969	CY 1969	CY 1969	CY 1972	CY 1972.
State individual income taxes	CY 1972	CY 1972	CY 1972	CY 1972	CY 1973	CY 1974	CY 1975.
Federal individual income tax liabilities	CY 1971	CY 1971	CY 1971	CY 1971	CY 1972	CY 1973	CY 1974.
State and local taxes	FY 1970–71	FY 1970–71	FY 1970–71	FY 1970–71	FY 1971–72	FY 1972–73	FY 1973–74.
General tax effort factor	FY 1970–71	FY 1970–71	FY 1970–71	FY 1970–71	FY 1971–72	FY 1972–73	FY 1973–74.

Note: CY refers to a calendar year, and FY refers to the 12 month period beginning on July 1.

Source: U.S. Treasury Department, Office of Revenue Sharing.

In reviewing the allocation of funds under present law, the committee determined that several problems required attention.

1. *Noncontiguous State adjustment.*—The noncontiguous State adjustment provision of the Act had been infrequently used because it is available only under the three-factor formula, which is not as beneficial to Alaska and Hawaii as the five-factor formula is (see table 3). Yet, the cost of living difference in States potentially affected by the provision (Alaska and Hawaii) as compared to the rest of the country remain substantial. Accordingly, the committee amendment provides that the noncontiguous State adjustment be available under both the five-factor and three-factor formulas, subject to the overall limitation that such adjustments not exceed the amount of funds made available.

2. *Retroactive repayment for changes in entitlements resulting from revised statistical procedures.*—Another difficulty the committee encountered with respect to the distribution of funds involves when and under what circumstances the Office of Revenue Sharing may use new or revised procedures to obtain the necessary data to administer the program, and the extent to which it may seek repayment which results from the use of such data. It is the committee's understanding that the Office of Revenue Sharing in consultation with the Bureau of the Census has revised the manner in which it removes from total taxes those taxes attributable to education to arrive at "adjusted taxes." Upon arriving at these revised adjusted tax figures, the Office of Revenue Sharing recomputed the entitlements for previous periods for counties in Virginia and sought retroactive repayments from several of these counties. The committee has concluded that under these circumstances, the seeking of retroactive repayment, either directly through the transfer from such counties to the Office of Revenue Sharing, or indirectly through the current or future reduction of such counties' entitlements, is undesirable because of its unsettling effect on local governments' budgetary planning and not in accord with the intention of the 1970 Act. The committee amendment remedies this problem by limiting the period after which decreases in payments may be made.

3. *Allocations to certain separate law enforcement offices in Louisiana.*—When considering the revenue sharing legislation in 1972, the committee made special provisions in the allocation formulas to reflect variations in governmental structures. For example, provision was made for city-county governments such as St. Louis, Missouri, and Baltimore, Maryland, to be treated as county areas. Similarly, provision was made to treat the independent cities of Virginia as county areas. And, because certain States do not have county governments (Connecticut and Rhode Island), the allocation formulas were structured to deal with these situations as well. In reviewing the performance of the program since enactment, another case of unique governmental organization (which was not provided for in the 1972 legislation) has come to light which in the committee's judgment warrants legislative action. The State of Louisiana has separate law enforcement officers who perform certain governmental functions. While they are closely related to the parish governments, they have not, as had been contemplated in the 1972 legislation, benefited from the revenue sharing program. Consequently, in order to ensure equitable treatment, the committee amendment provides a direct allocation to each separate

sheriff office in parishes other than Orleans of an amount equal to 15 percent of what would otherwise have been the parish allocation, to be financed one-half from the parish allocation and one-half from the State government allocation.

4. *Timeliness of data.*—Three other matters related to the distribution of funds have come to the committee's attention. First, the committee has been concerned by the extent of fluctuations in entitlement amounts through and after an entitlement period. It is the committee's understanding that these fluctuations, which have been marked in certain cases, result primarily from the revision of data during an entitlement period. Small corrections to interstate data can lead to extensive changes in the dollar allocations to a State area, or to a locality. To minimize these unintended fluctuations, the committee amendment directs the use of data that will not be changed during an entitlement period except by reason of clerical or administrative error.

5. *Treatment of waivers by Indian Tribes and Alaskan Native Villages.*—Another matter that has come to the committee's attention involves the treatment of revenue sharing payments which are waived by recognized Indian Tribes and Alaskan Native Villages. The 1972 Act provides that waivers by cities and townships are to result in transfer of the waived funds to the county government; however, funds waived by Indian Tribes and Alaskan Native Villages are, under the present law, shared among all units of local government.[4] The committee has concluded that greater equity would be achieved by treating waivers by Indian Tribes and Alaskan Native Villages on a basis parallel to that of waivers by cities and townships.

6. *Optional formula.*—A further concern of the committee is that the optional formula for the instate allocations in the current law be available during the renewal period. While the current allocation formula has been thought to be equitable and generally equalizing, the committee considers the optional formula to be a desirable feature of the Act which should be generally available in the future.

Explanation of provisions

1. Noncontiguous State adjustment.—The committee amendment to the noncontiguous State adjustment provision of current law provides that the adjustment is to be available under both the 5-factor and 3-factor formulas, that the amounts available for this purpose are to increase, and that the amounts resulting from the application of the adjustment(s) are not to exced the amounts available. To achieve this, the adjustment is not made initially when choosing between the 5- and 3-factor formulas for the affected States, Alaska and Hawaii, but after the larger of the two amounts is chosen and after it is scaled to the aggregate amounts available. For example, were Alaska and Hawaii to choose the 5-factor formula, and the amounts after being scaled were respectively $9.1 million and $27.7 million, the committee amendment increases the Alaska mount by 25 percent and the Hawaii amount by 15 perecnt, or to $11.4 million and $31.9 million respectively. However, because the increment of both adds to $6.5 million, and, for the purposes of the example only $4.9 million is available,

[4] The pertinent Treasury Regulations (§ 51.25 of 31 CFR, Subtitle B, Part 51) provide for both waivers and constructive waivers. The reallocation of waived payments of less than $25 per locality are currently not being made.

both increments need to be reduced 25 percent so that only $4.9 million is allocated. Table 6 displays the fiscal year 1977 entitlements under the committee amendment, based on the data used for Entitlement Period 7.

TABLE 6

ENTITLEMENTS TO STATE AREAS FOR FEDERAL FISCAL YEAR 1977 UNDER COMMITTEE AMENDMENT*

Alabama	111,559,810	Nebraska	43,552,877
Alaska	14,091,129	Nevada	16,710,555
Arizona	67,338,133	New Hampshire	22,186,146
Arkansas	72,625,015	New Jersey	216,305,799
California	736,447,011	New Mexico	45,000,814
Colorado	76,190,678	New York	777,393,207
Connecticut	87,867,487	North Carolina	171,578,056
Delaware	21,863,877	North Dakota	17,360,120
D.C.	28,904,467	Ohio	278,294,614
Florida	213,191,645	Oklahoma	76,964,109
Georgia	147,081,400	Oregon	74,580,440
Hawaii	33,326,363	Pennsylvania	362,796,160
Idaho	26,393,737	Rhode Island	29,653,525
Illinois	353,174,066	South Carolina	97,033,882
Indiana	147,159,241	South Dakota	22,459,639
Iowa	84,389,635	Tennessee	127,744,739
Kansas	62,266,829	Texas	347,605,056
Kentucky	114,599,236	Utah	38,597,598
Louisiana	153,181,117	Vermont	20,414,869
Maine	42,853,345	Virginia	139,684,725
Maryland	138,003,113	Washington	102,778,495
Massachusetts	218,466,588	West Virginia	63,380,049
Michigan	282,926,372	Wisconsin	168,234,408
Minnesota	138,954,570	Wyoming	11,150,329
Mississippi	104,134,420		
Missouri	129,942,645	Total	6,903,719,784
Montana	25,327,644		

*Based on data for entitlement period 7.

2. Retroactive payments.—Under the committee amendment, the Treasury Department would be prohibited from increasing or decreasing a payment previously made to a recipient unless the Secretary made a demand to the recipient within a year after the close of the entitlement period.

3. Allocations to certain separate law enforcement officers in Louisiana.—The committee amendment with respect to Louisiana sheriff offices provides that, beginning January 1, 1977, such sheriff offices (except those in Orleans Parish) shall receive an entitlement equal in amount to 15 percent of what would otherwise be allocated to the parish government. One-half of this amount is to come from a reduction in the parish entitlement, and one-half from what would otherwise be the State government's entitlement. For example, if a parish were entitled to, after the application of the formula, maximum and minimum constraints, the 50-percent limitation,[5] and the deminimis and waiver provisions, $1,000,000, an allocation of $150,000 to the sheriff office in the parish would be made; the parish entitlement payment would then be $925,000, and the entitlement of the State

[5] Current law provides that no unit of local government receive more than 50 percent of its adjusted taxes plus transfers.

government would be reduced by $75,000 (one-half of the $150,000 amount).

4. Timeliness of Data.—The committee amendment provides that the Office of Revenue Sharing must use tax data which relates to the period ending before the entitlement period in question. Thus the Office of Revenue Sharing must use tax data throughout an entitlement period without introducing new data (e.g., for a more recent period) until the beginning of the next entitlement period. It is understood that this may permit the Office of Revenue Sharing to use data according to the schedule displayed in Table 7.

TABLE 7

PERIODS TO WHICH DATA REFERS FOR ENTITLEMENT PERIODS 8 TO 13 UNDER THE COMMITTEE AMENDMENT

	Entitlement period—					
	8—(Jan. 1 to Sept. 30, 1977)	9—(Oct. 1, 1977, to Sept. 30, 1978)	10—(Oct. 1, 1978, to Sept. 30, 1979)	11—(Oct. 1, 1979, to Sept. 30, 1980)	12—(Oct. 1, 1980, to Sept. 30, 1981)	13—(Oct. 1, 1981, to Sept. 30, 1982)
Data for intrastate allocations:						
Population	July 1, 1973	July 1, 1976	July 1, 1977	July 1, 1978	July 1, 1979	Apr. 1, 1980.
Per capita income	CY 1972	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979.
Adjusted taxes	FY 1975	FY 1976	FY 1977	FY 1978	FY 1979	FY 1980.
Intergovernmental transfers	FY 1975	FY 1976	FY 1977	FY 1978	FY 1979	FY 1980.
Data for interstate allocations:						
Population	July 1, 1975	July 1, 1976	July 1, 1977	July 1, 1978	July 1, 1979	Apr. 1, 1980.
Urbanized population	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1980.
Per capita income	CY 1972	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979.
State individual income taxes	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979	CY 1980.
Federal individual income tax liabilities	CY 1974	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979.
State and local taxes	FY 1973–74	FY 1974–75	FY 1975–76	FY 1976–77	FY 1977–78	FY 1978–79.
General tax effort factor	FY 1973–74	FY 1974–75	FY 1975–76	FY 1976–77	FY 1977–78	FY 1978–79.

5. Reserves for adjustments.—The committee amendment permits the Secretary to reserve a percentage of each State area's entitlement as he deems necessary to insure there will be sufficient funds available to pay certain adjustments. The percentage may not exceed one-half of 1 percent.

6. Treatment of waivers by Indian Tribes and Alaskan Native Villages.—The committee amendment provides that in circumstances in which an Indian Tribe or Alaskan native village waives an entitlement payment, it is given to the county government in which it is located. Previously, the waived amount was shared among all units of local government in proportion to their share of the county area other than that provided to the Indian tribe(s) or Alaskan native village(s).

7. Optional formula.—The committee amendment provides that the optional formulas in current law be available during the renewal period except for Louisiana.

Effective date

These provisions take effect January 1, 1977.

C. Fiscal Requirements (Secs. 3, 4, and 6(a) of committee amendment, secs. 103, 104 and 107 of present law)

1. General requirements.—Under current law, recipient governments must comply with certain fiscal requirements in order to receive revenue sharing payments. In particular, State and local governments must use the funds in accordance with the laws and procedures applicable to the expenditure of their own revenues, establish a trust fund in which the revenue sharing payments are deposited, use the funds in a reasonable period of time, pay prevailing wage rates, pay wages at rates consistent with the Davis-Bacon Act on construction projects funded 25 percent or more by revenue sharing, make annual and interim reports to the Secretary, and in the case of Indian tribes and Alaskan native villages, spend revenue sharing funds only for the benefit of members residing in the county area of allocation.

2. Priority categories.—In addition, a locality must spend revenue sharing in priority categories: for ordinary and necessary operating expenses (public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, and financial administration) and for ordinary and necessary capital expenditures. There are no restrictions on State uses of revenue sharing funds.

3. Matching prohibition.—State and local governments are prohibited from using revenue sharing, directly or indirectly, to match other Federal programs.

4. State maintenance of effort.—Current law requires that for any entitlement period beginning on or after July 1, 1973, a State government's revenue sharing payment will be reduced by the amount which the average of local transfers from its own sources for that period and the immediately preceding period is less than the similar total for the one year period beginning July 1, 1971. A two-year moving average

compared against the base year amount is currently being used by the Office of Revenue Sharing to measure compliance.[6]

Present law allows adjustments in the base amount (one year beginning July 1, 1971) to reflect State assumption of new expenditure categories or the granting of new taxing powers to local governments. Special rules are also provided for the two entitlement periods beginning July 1, 1973, and July 1, 1976.

The Act further states that when the Secretary has reason to believe that there is noncompliance with this requirement, he shall give notice and opportunity for a hearing. If, after a hearing, he determines that there is noncompliance, he must notify the Governor and withholds from subsequent payments to the State an amount equal to the reduction in transfers. This sum is transferred to the general fund of the Treasury.

1. Priority categories.—After considering the experience to date with the high priority categories for localities, the committee concluded that their requirement at the local level but not at the State level was inequitable. In view of the fact that the high priority categories have substantially complicated the operation of what was intended to be an administratively simple program, the committee amendment eliminates the priority categories, the required certification by local governments that revenue sharing funds were used only for these purposes, and the 110-percent repayment penalty for violating this restriction.

2. Matching prohibition.—In 1972, the committee was concerned about the number of open ended Federal matching programs that were available to State and local governments. Some provided as much as three Federal dollars for every State or local dollar provided for matching purposes. Since 1972, however, most of these programs, such as title XI of the Social Security Act (the social services program), have been limited. Accordingly, the committee feels it is now appropriate to allow recipients to match other Federal programs in accordance with their own priorities. The committee amendment thus eliminates the matching prohibition and related provisions.

3. State maintenance of effort.—Several problems have developed in relation to the current law requirement that States maintain transfers to localities at historical levels. First, the fixed 1972 base period has limited substantially the effectiveness of the provision. Second, there is some uncertainty about how to properly account for a State's own source transfers and about the accuracy of the current data being used to administer the requirement. Third, the current provision references a July 1 to June 30 period for the measurement of a State's

[6] Treasury regulation 51.40 (31 CFR, subtitle B, part 51) elaborates on the statutory requirement by: (i) including the proceeds from borrowing in own source revenues against which transfers are measured; (ii) providing a formula to calculate the level of transfers from own sources for States that do not have accounting systems which permit the separation of own source funds from other monies. This formula basically assumes that own source transfers are a portion of all transfers equal to the ratio of own source revenues to all revenues. The Secretary may use an alternative to this formula if he feels that it would provide a more equitable standard of compliance in any particular case; (iii) detailing conditions for adjustments in the requirement where a State assumes responsibility for an additional category of expenditures or where new taxing powers are conferred on local governments. The latter provisions exclude increases in already authorized taxes unless such result in decreases in related State taxes; (iv) requiring an annual report from the Governor covering the following items relevant to the proceeding fiscal year of the State: the State's own source funds; the State's total funds; the State's own source transfers to units of local government, and the State's total transfers to units of local government.

transfers; however, three States [7] are on a different fiscal year basis. Fourth, there are certain inequitable circumstances in which a State government would be penalized for not making certain transfers to localities. Accordingly, the committee amendment revises the maintenance of effort provision in the Act so that it is on a moving average basis, rather than a fixed date basis, relates the intergovernmental transfers to the State's fiscal year, and provides for situations where the Federal government assumes responsibilities for what was previously a local program.

Explanation of provision

1. Priority categories.—The committee amendment eliminates the priority categories by striking section 103 of current law. Also, the provision in sec. 123(a)(3) that recipients repay 110 percent of amounts spent in violation of the priority spending requirement is eliminated. The House bill also eliminated this provision.

2. Matching prohibition.—The committee amendment eliminates the prohibition on using revenue sharing to match other Federal programs in (sec. 104 of present law). The House bill also eliminated this provision.

3. Maintenance of effort provision.—The committee amendment revises the current requirement by comparing two-year average of transfers to a two-year moving average (based on the State's fiscal year) base period for which data is available. The years covered by the base period would be different from the two-year average tested for maintenance of effort. Thus, if FY 1975 were the most recent fiscal period for which data on a State's transfers were available, the average of own source transfers in FY 1975 and FY 1974 would be compared to the average of its own source transfers in FY 1973 and FY 1972.

It is the committee's understanding that there is some uncertainty now in the measurement of a State's own-source transfers. It is expected that the Office of Revenue Sharing will rely on the Bureau of the Census to collect such information on intergovernmental transfers and then, if necessary, apply the necessary procedures to arrive at State's own-source transfers. Both agencies would participate in the process of data improvement resulting from challenges by recipients and self-initiated Office of Revenue Sharing and Census efforts.

As a part of this cooperative effort, it is contemplated that procedures will be developed to identify and properly account for previously local programs that are now directly Federally funded. For example, the Federal Supplemental Security Income program (SSI) replaced a Federal-State-local program of categorical assistance to the blind, aged, and disabled. In States with county-administered welfare programs. Federal assistance has passed through the State general fund to the county government. Since the State matched this program in part, and transferred the resulting Federal funds to the county, subsequent Federal assumption has diminished previous State transfers to the county, and the State might violate the maintenance of effort requirement of current law, unless this matching is properly accounted for.

[7] Alabama is on an October 1 basis; New York is on an April 1 basis; and Texas is on a September 1 basis.

The House bill moved the base period of the maintenance of effort requirement to the period July 1, 1975–June 30, 1976, or the most recent similar 1-year period prior to then for which data is available.

Effective date

These provisions take effect on January 1, 1977.

D. Eligibility Requirements (sec. 10c of committee amendment and sec. 108 of present law)

To receive funds under the 1972 Act, a government must be a State government [1] or a unit of local government as defined by the Bureau of the Census for general statistical purposes. A unit of local government is further defined in the Act to be a county, municipality, township, or other unit of government [2] below the State, and the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The Census Bureau generally defines a government as: "an organized entity which, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other governmental unit." [3] A unit of local government is thus a general government as compared to a single purpose government such as a school district or a mosquito-control district.

After reviewing the definitions of a recipient government in the Act, the committee concluded that they properly reflect the original intent of Congress to provide assistance to general governments. However, it is the committee's understanding that use of "other unit of local government" has led to some confusion about the original intent of Congress. In view of the fact that no such recipient has received funds under the current operation of the program, the committee concluded that the elimination of this category would be desirable.

Explanation of provision

The committee amendment eliminates the phrase "other unit of local government" in Section 108(d)(1) of the present law.

While the committee amendment retains the eligibility criteria of current law, the House bill adds certain restrictions to become effective October 1, 1977. The net result of the House provision is to eliminate governments which do not continue to perform two or more of 14 enumerated services in Federal fiscal year 1978.

E. Accounting and Auditing Requirements (sec. 9 of committee amendment and sec. 123 of present law)

The 1972 Act requires that recipient governments use fiscal accounting and audit procedures in conformity with guidelines developed by the Secretary, after consultation with the Comptroller General. A

[1] The District of Columbia is treated as a State area for the purposes of the interstate formula, and as a county area which has no units of local government within it. Accordingly, the 1972 Act requires that the District be subject to the priority category expenditure restrictions.

[2] The phrase "other unit of government" has led to some confusion, in that, for the purposes of revenue sharing, the four types of governments (county, city, and township governments, and recognized Indian tribes and Alaska native villages) enumerated are the only ones actually receiving payments.

[3] U.S. Bureau of the Census, Census of Governments, 1972, *Vol. 1 Governmental Organization* (U.S. Government Printing Office, 1973), p. 13.

recipient must also provide the Secretary and the Comptroller General access to its books and documents in order to permit the Secretary to review compliance with the provisions of the 1972 Act.

The Secretary is empowered to require such accounting and audit procedures, evaluations, and reviews to insure that expenditures by recipients are made in compliance with the 1972 Act. The Secretary may accept a State audit of itself, or a local audit of itself, if the audit procedures are sufficiently reliable. The Comptroller General is required to review the work of the Secretary and the recipients. Section 51.71(c) of the revenue sharing regulations provide that the Secretary is to rely to the maximum extent possible on audits of recipient governments by State auditors and independent public accountants.

In 1973, the Treasury Department issued an audit guide [8] to assist recipients in complying with the audit requirements of the Act, and in August 1976, issued a revision of the guide.[9]

The revised Audit Guide distinguishes between audits performed by local government auditors, and audits performed by State auditors and independent public accountants (IPAs). The revised guide now subjects the IPAs to a subsequent review of their performance. Local government auditors must now, however, be reviewed prior to the audit, in terms of their independence, to satisfy the Office of Revenue Sharing that the audits will be acceptable. Also, the revised guide precludes accepting audits made by local government auditors if the government has recurring audits made of all of its funds by a State auditor.

While present law empowers the Secretary through regulation to require audit procedures to ensure compliance with present law (e.g., expenditure of funds in accordance with applicable State and local law, prevailing wages, Davis-Bacon, maintenance of effort, prohibition of matching, high priority categories, nondiscriminaton, etc.), the Secretary has not required audits of recipients to ascertain if compliance has been achieved. The Secretary has relied to the maximum extent feasible on audits by State auditors and independent public accountants. The regulations do not deal with situations where recipients do not perform or have not performed audits of their revenue sharing funds.

In view of audit problems in ensuring compliance with the current requirements of the Act, and in view of the committee's continuation of the majority of the current fiscal requirements of the Act, the committee concluded that a general requirement for a financial and compliance audit is necessary. To balance this need with the likelihood that some recipients may not be initially auditable and/or are now under State or local laws which require audits, the committee believes it is also necessary to provide certain waiver conditions for the audit requirement as well as certain exceptions.

Explanation of provision

The committee amendment balances its concern that financial and compliance audits be performed with its concern that State or local financial audits performed under generally applicable State or local

[8] Department of the Treasury, Office of Revenue Sharing, *Audit Guide and Standards for Revenue Sharing Recipients*, October, 1973.
[9] Department of the Treasury, Office of Revenue Sharing, *Audit Guide and Standards for Revenue Sharing Recipients* (revised), August, 1976.

law be sufficient for the purposes of general revenue sharing. The committee amendment thus provides a general requirement for financial and compliance audits. An exception to this general requirement is provided if a recipient performs a compliance audit pursuant to generally applicable State or local audit requirements. If a recipient under either the general audit requirement or the exception is unauditable, the committee amendment empowers the Secretary to waive the requirement, in either case, if the recipient demonstrates, as provided by regulations, that it is making progress toward becoming auditable.

Under the general audit and accounting requirement of the committee amendment, an independent financial and compliance audit of a recipient's financial statements, according to generally accepted auditing standards and generally accepted accounting principles is required at least every three years. A series of audits which aggregate the entire financial activity of the recipient, and which are performed over the three-year period, would meet this requirement. In applying the rule that a series of audits may be aggregated over a time to meet the every-three-year audit requirement, the committee amendment contemplates that the recipient will by the end of the three-year period have audited 100 percent of its funds of accounts, in terms of the number of accounts in its financial activity. Governments receiving less than $25,000 per year in revenue sharing entitlements are exempted from this requirement. Governments which are not auditable can have the general requirement waived, if it can be demonstrated, pursuant to regulations issued by the Secretary that substantial progress toward being auditable is being annually achieved. With respect to a compliance audit regarding the nondiscrimination provisions, the audit would pertain to whether there are any outstanding complaints or lawsuits alleging discrimination prohibited under the nondiscrimination provisions. It is also expected that the audit would indicate the designation and use of revenue sharing funds. The committee amendment also requires coordination of other Federal audit requirements so that duplication of financial and compliance audits is avoided. A financial and compliance audit performed for another Federal program could thus satisfy the general audit requirement if it satisfied the requirements of independence, scope, and was otherwise adequate with respect to standards established by the Secretary through regulations.

With respect to audits performed under the general requirement, the evaluation of the independence of the auditor, and will include but not be limited to, considerations of the manner of his appointment and the source and control of his funding. With respect to the standard of financial and compliance audit required, it is expected that "generally accepted auditing standards" will be defined in terms of those standards set forth in the first element ("Financial and Compliance") of *Standards for Audit of Governmental Organizations, Programs, Activities and Functions of the General Accounting Office.*

The committee amendment provides that if a recipient has performed a financial audit in compliance with generally applicable State or local law, such an audit will be accepted by the Secretary in lieu of an audit performed under the general requirement.

It is expected that a recipient which has performed an audit under the general audit requirement will provide a copy of the opinion of the

audit to the Secretary, in a manner and at such time as the Secretary provides through regulation. Similarly, it is expected that a recipient which has performed a financial audit in compliance with generally applicable State or local law will provide a copy of the opinion to the Secretary in a manner and at such time as the Secretary provides through regulation. It is contemplated that the Office of Revenue Sharing, in conjunction with the General Accounting Office, will evaluate the audits performed by recipients.

The House bill requires that a recipient perform an annual audit of its financial statement in accordance with generally accepted audit standards. The Secretary of the Treasury is empowered to partially or entirely exempt recipients from this requirement when the costs are unreasonably burdensome in relation to the revenue sharing entitlement.

F. Reports and Public Hearings (Sec. 7 of committee amendment and sec. 121 of present law)

The 1972 Act requires each government to file an actual use report after the close of the entitlement period which indicates the amounts and purposes for which funds received during the entitlement period have been spent or obligated. The pertinent regulations (§ 51.11(b) of subtitle B, Part 51) require further that the report indicate how the funds were spent or transferred from the trust fund, indicate any interest earned on entitlement funds during the period, and show the status of the trust fund, including its balance, as of June 30 each year. The report must be filed with the Secretary on or before September 1 of each year.

Prior to receiving an entitlement payment, a government must file a planned use report setting forth the amounts and purposes for which it plans to spend or obligate the revenue sharing funds it expects to receive. As a part of the planned use report document, the Office of Revenue Sharing has incorporated the signature of the chief executive officer of statement of assurances [1] required under Section 123 of the Act, and also provides to the recipient an estimate of the entitlement payment due.

The third requirement of the Act is the publication, in a newspaper of general circulation, of the proposed use and actual use reports. The regulations (§ 51.13 (a) and (b) of 31 CFB subtitle B, Part 51) further provide that government in a metropolitan area which crosses State boundaries may satisfy the publication requirement by publishing the report in a newspaper in the adjoining State. Additionally, the recipient is required to advise the news media of the publication of the actual use report and make copies available upon request. Also, each recipient is required to make available for public inspection a copy of both reports and information developed to support the reports.

Table 8 displays the months in which the Office of Revenue Shar-

[1] The assurances relate to the establishment and deposit of entitlements into a trust fund; use of such funds during such periods as required by regulations; use of the funds for priority expenditures; provide for the expenditure of such funds only in accordance with the laws and procedures applicable to the expenditure of its own revenues; use fiscal accounting and audit procedures in conformity with regulations; provide access to the Secretary and Comptroller to books and documents as may be necessary; pay wages in accordance with the Davis-Bacon requirements of the Act; and pay employees funded by revenue sharing at wage rates not lower than those funded by other sources of funds.

ing mails out, and expects to receive, the proposed and actual use reports as provided by the Act and regulations.

TABLE 8—TIMING OF PLANNED AND ACTUAL USE REPORTS UNDER PRESENT LAW

	Entitlement periods						
	1	2	3	4	5	6	7
Planned use report mailed	(1)	(1)	Apr. 1973	July 1973	Apr. 1974	Apr. 1975	Apr. 1976
Planned use report due	(1)	(1)	June 1973	Sept. 1973	June 1974	June 1975	June 1976
Actual use report mailed	(1)	(1)	do	June 1974	June 1975	June 1976	Dec. 1976.
Actual use report due	(1)	(1)	Sept. 1973	Sept. 1974	Sept. 1975	Sept. 1976	Mar. 1977.

[1] Combined with Entitlement Period-3 reports as provided in the Act.

Source: U.S. Treasury Department, Office of Revenue Sharing.

In providing unrestricted assistance to Sate and local governments, the committee expected increased citizen participation in the budgetary process to provide the oversight which the imposition of categorical restrictions had sought to achieve in other grant in aid programs. Since enactment, several difficulties in the current reporting requirements have developed which in turn have limited the expected growth in citizen participation. First, the reporting forms developed by the Treasury Department have been found to be uninformative, especially in relating uses of revenue sharing to the general budget. Another limitation of the current reporting system is that it frequently requires information on a basis other than the government's fiscal period. The committee is especially concerned about this problem in view of the new Federal fiscal year, which begins on October 1, and which would be the new entitlement period under the amendment.

The committee is in favor of having reporting, hearing, and publicity requirements for revenue sharing, subject to the extent possible, that they follow the budgetary, hearing, and publication requirements of State and local law.

Explanation of provision

The committee amendment balances the committee's desire that a public hearing be held which encourages public participation in the budgetary process with the committee's determination that generally applicable public hearing, notification, and information provisions of State or local law as they relate to the State or local budgetary process be relied upon.

Accordingly, the committee amendment provides a general requirement for public hearings, notification, and publication of summary budgetary information. An exception to this general requirement is provided if a recipient holds public hearings after adequate notice on the proposed uses of its own funds in which citizens can participate under generally applicable state or local law.

Under the general requirement, a recipient must, at least seven days before the adoption of its budget, hold a public hearing on the proposed expenditures of revenue sharing funds. The hearing must be at a place and time that is convenient to general public attendance. At the hearing, citizens would be able to give written and oral comment on the proposed uses of revenue sharing. For State governments, such a hearing would be before each of the relevant committee or committees of each part of the legislature.

The planned use report under the general requirement would have to be published prior to the required hearing by each recipient (except where its cost exceeds 5 percent of last year's entitlement or if impractical, as provided by the Secretary through regulation) in a newspaper of general circulation. The publication must be sufficiently prior to the public hearing to provide for meaningful participation of the public. Publication of the report the morning of the hearing would not, for example, meet this criteria. The report would inidicate the amounts of revenue sharing funds to be expended in the budget, and a comparison of these proposed uses to those of the current period, and the previous period and the proposed designation of the coming fiscal year's expenditures; a short narrative summary would also be published which would relate the broad uses in the report to the line items in the proposed budget. The newspaper publication would also give notice of the time(s) and place(s) of the public hearing(s).

Under the general publication requirement, a recipient must show in its proposed use report a summary of its entire budget for the previous year, for the current year, and for the coming year. The report is also to indicate how the previous, current and proposed uses of revenue sharing expenditures relate to the recipient's budget, and contain a narrative summary of the proposed revenue sharing funded programs.

In addition, the general requirement provides certain rules for the public hearing requirements with respect to legislatures which are not unicameral. It is contemplated that, in the case of a bicameral legislative body of a state or unit of local government, more than one hearing will be held if the relevant appropriations committee of each body meets separately. Where joint committee hearings are held on the executive budget proposal, a hearing before the joint session would meet the general requirement. Where more than one committee in each body deals with the budget proposal, it is contemplated that one hearing on each side, e.g., the house and senate of a State legislature would meet the requirement. Thus, if subcommittees of the appropriations committee of the house hold hearings, and the full committee does as well, it is expected that a hearing before the full committee, if it meets the requirements discussed above, would satisfy the public hearing requirement for the house.

Upon election by the recipient, as provided by the Secretary through regulation, the government may waive the above general public hearing, publication, and notice requirements, if it certifies that it will hold a public hearing at which citizens may give written and oral comment, upon adequate notice. The election must describe the hearing and reporting process as it relates to its own revenues and expenditures.

The committee understands that the necessary election information (or information indicating a recipient's compliance with the general hearing requirement) could be incorporated into the present form used by the recipient to provide assurances to the Secretary as currently required by the Act.

G. Nondiscrimination

1. Scope of Nondiscrimination Provision (sec. 8(a) of the commitment and sec. 122(a) of the present law)

The present nondiscrimination provision (sec. 122(a)) prohibits discrimination on the basis of race, color, national origin, or sex "under

any program or activity funded in whole or in part" with revenue sharing funds.*

The committee believes that the prohibition of present law against discrimination in programs or activities funded with revenue sharing funds can be either unintentionally or intentionally circumvented. The committee recognizes that the difficulty in tracing revenue sharing funds, once these funds are received at the local level, may have permitted some recipients to escape the nondiscrimination coverage by designating their revenue sharing funds for use in programs or activities where discrimination does not exist, and designating their own freed-up funds for use in programs or activities where discrimination may exist. These designations could be found in a State's or locality's budgetary documents, trust fund records, accounting records, and other official records, reports, and documents.

It is clear that the present nondiscrimination provision applies to any program or activity specifically designated as the recipient of revenue sharing funds. Generally, in those instances where there is no specific designation of revenue sharing funds to any particular program or activity, each program or activity is considered a pro rata recipient of revenue sharing funds. It is not clear, however, where certain programs or activities are specifically designated as the recipients of revenue sharing funds, whether any other programs or activities of the locality could under some circumstances be considered recipients of revenue sharing funds.

For these reasons, the committee decided that it was necessary to clarify the language of the present nondiscrimination provision.

Explanation of provision

The committee amendment prohibits discrimination on the grounds of race, color, national origin or sex under any program or activity of a State government or unit of local government which (1) has been designated as being funded with revenue sharing funds, or (2) under all the facts and circumstances, is demonstrated to be funded in whole or in part with revenue sharing funds.

By this amendment, the committee intends to clarify the provisions of present law, particularly where a program or activity is not included among those programs or activities of a locality which are specifically designated as recipients of revenue sharing funds. The committee's amendment contemplates that it is possible under certain facts and circumstances that these programs and activities of the locality could be considered recipients of revenue sharing funds. Thus, if evidence adduced by the Secretary demonstrates that a program or activity has received revenue sharing funds as a result, for instance, of the shifting of freed-up funds to the program or activity, notwithstanding that the program or activity is not specifically designated as a recipient, it will be subject to the prohibitions of the nondiscrimination provision.

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*It is the committee's understanding that other existing laws prohibit discrimination on the basis of religion, age, and handicapped status. Title II of the 1964 Civil Rights Act (pertaining to discrimination in places of public accommodation) and Title VIII of the 1968 Civil Rights Act (pertaining to the sale or rental of housing) prohibit discrimination based on religion. The Rehabilitation Act of 1973 prohibits discrimination against "otherwise qualified handicapped individuals" in Federally financed programs, and the Age Discrimination Act of 1975 prohibits unreasonable discrimination on the basis of age in programs and activities receiving Federal financial assistance, including revenue sharing funds. Title VI of the Civil Rights Act of 1964 (relating to nondiscrimination in Federally assisted programs) does not contain any prohibition against discrimination on the grounds of religion.

2. Authority of the Secretary and Procedure in Withholding Funds (sec. 8(a) of the committee amendment and sec. 122(b) of present law)

Under present law, the Secretary is required to notify the Governor of the State (or, in the case of a unit of local government, the Governor of that State in which the unit is located) of noncompliance with the nondiscrimination provision. The notice is to request the Governor to secure compliance with the nondiscrimination provision and if, within a reasonable period of time, the Governor fails or refuses to secure compliance, the Secretary is then authorized (but not necessarily required) to (1) refer the matter to the Attorney General with the recommendation that appropriate civil action be instituted, (2) exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), or (3) take such other actions as may be provided by law.

Generally, Title VI of the Civil Rights Act of 1964 (more specifically, 42 U.S.C. 2000d–1) grants authority to Federal agencies empowered to extend Federal financial assistance to any program or activity to effect compliance with the nondiscrimination provision relating to the particular Federal program involved by the termination of or refusal to grant or to continue assistance under the program or activity with respect to which the recipient, by an express finding on the record, has been found to have been involved in discriminatory activity.

This termination or refusal to grant or to continue Federal financial assistance can only take place after an opportunity for a hearing regarding the matter. However, termination, etc., cannot occur until the Federal agency has advised the persons of noncompliance, determined that compliance cannot be secured by voluntary means, and filed a full report with the committees of the House and Senate having legislative jurisdiction over the program or activity involved. No such action could become effective until 30 days has elapsed after the filing of the report.

The regulations issued by the Office of Revenue Sharing pertaining to the procedure for effecting compliance restate, in substance, the statutory provisions of the Revenue Sharing Act and the above-described provisions of Title VI of the Civil Rights Act of 1964. They provide that a "reasonable period of time" to secure compliance is not to exceed 60 days. The regulations also provide that the Office of Revenue Sharing (seemingly, at the end of the 60-day period) may initiate an administrative hearing in which it could seek an order from an administrative law judge to withhold temporarily, to repay, or to forfeit revenue sharing funds. Even after an administrative law judge has ordered a temporary withholding of funds, withholding would not occur until:

(1) 30 days has elapsed, during which time efforts will have been made to assist the recipient government to comply with the nondiscrimination provision and there has been a submission of a full written report of the circumstances and grounds for withholding of funds to the House Committee on Government Operations and the Senate Finance Committee; and

(2) the Secretary has notified the recipient that it will withhold payment of funds until the recipient complies with the order of the administrative law judge.

These regulations further provide for withholding pursuant to court action. Under this regulation section (51.59(c)), the Office of Revenue Sharing would immediately withhold the payment of an entitlement if: (1) a violation of the revenue sharing nondiscrimination provision was alleged in a complaint before a court; (2) the court finds that the recipient government has violated the revenue sharing nondiscrimination provision, and (3) the court has failed to pass on the question of whether withholding of revenue sharing funds should take place.

The committee believes that it is necessary to establish a procedure setting forth an ascertainable and reasonable period of time within which a cutoff of revenue sharing funds to a recipient found to be discriminating in violation of the revenue sharing nondiscrimination provision will definitely occur. In formulating this procedure, the committee recognizes the necessity for including provisions which will safeguard the due process rights of the recipient.

Explanation of provision

The initial formal step of the procedure involves the Secretary's sending of a noncompliance notice to a revenue sharing recipient. This notice will be triggered by and must be sent within 10 days of:

(1) Receipt of a holding by a Federal or State court or by a Federal administrative agency law judge of discrimination on the grounds of either race, color, national origin, or sex in any of the State's or local unit's activities or program. This section contemplates the actual receipt by the Secretary of a certified copy of the holding.[10] A Federal administrative agency law judge's holding must have been preceded by a notice and opportunity for a hearing and it must be rendered pursuant to the provisions of the Administrative Procedures Act (5 U.S.C. 551–559).

(2) A finding by the Secretary, as a result of an investigation, that it is more likely than not that the recipient has not complied with the nondiscrimination provision. This finding will be made with respect to any complaint, information, or holding from any source other than the holding of a court or Federal administrative law judge. If within 60 days after the Secretary receives a complaint, information (including information generated within the Office of Revenue Sharing), or a holding by a State or local administrative agency pertaining to discrimination on the grounds of either race, color, national origin or sex, he determines that it is more likely than not that the recipient has not complied with the nondiscrimination provision, he will send a noncompliance notice to the recipient. This notice will be sent no later than 10 days after the finding is made.

The Secretary (and/or other Federal agencies with which it has entered into cooperative enforcement agreements) will conduct an investigation with respect to a complaint or any other information received pertaining to discrimination on the grounds of either race, color, national origin or sex. It is this investigation that will set in motion the procedural machinery under which the Secretary may make the

[10] It is contemplated that other Federal administrative agencies, pursuant to cooperative agreements with the Office of Revenue Sharing, will bring such holdings to the attention of the Secretary. It is also contemplated that the Secretary will currently review law reporters, legal journals and other publications in order to be apprised of any court or Federal administrative agency law judge holding of discrimination on the grounds of either race color, national origin or sex.

finding described above. The Secretary's investigation would pertain to whether any of the prohibited types of discrimination have occurred and whether the program or activity involved has been funded in whole or in part with revenue sharing funds. It is contemplated that within a reasonably short period of time after the investigation begins (e.g., 5 days), the recipient will be informed of the investigation and its purpose.

Upon the receipt of a holding of a State or local administrative agency of discrimination on the grounds of either race, color, national origin or sex, the Secretary will be required to review the finding and determine, among other things, whether the finding was rendered in accordance with procedures which are similar to or consistent with those requirements set forth in the Administrative Procedures Act (5 U.S.C. 551–559). If he concludes that the State or local administrative agency's findings were so rendered, his investigation need not be as extensive as it would be with respect to a complaint or other information alleging discrimination. If the Secretary determines, however, that the State or local administrative agency's finding was not rendered pursuant to requirements similar to or consistent with provisions of the Administrative Procedures Act, it would then be incumbent upon him to conduct the same investigation as that which would be conducted with respect to a complaint or information alleging discrimination.

It is the committee's intention to encourage voluntary compliance agreements. Thus, it is contemplated that in this 60-day pre-notice period, the recipient could enter into a compliance agreement under which it would agree to end its discriminatory acts or practices. The procedure established by the committee, both in the pre-notice and post-notice periods, provides many opportunities for the recipient to enter into a compliance agreement.

The notice sent by the Secretary to the recipient should clearly set forth the specific acts or practices and the programs or activities in which the recipient is accused of discriminating and the grounds upon which the accusation is based. In the event that the notice is triggered by a holding of a court of Federal administrative law judge, the allegations of the notice should include all parts of the holding which conclude that there has been discrimination on the grounds of either race, color, national origin, or sex.

In the 60 days following notification by the Secretary, the recipient will have the opportunity to informally present its evidence and contentions to the Secretary. In those instances where the notice was triggered by a finding of discrimination by a court or Federal administrative agency, the question of discrimination will be considered resolved against the recipient so long as the Secretary's notice was restricted to the particular holding of the court or Federal administrative agency. The only issue in this instance would be whether the particular program or activity was funded with revenue sharing funds.

In those instances where the notice was triggered by a complaint, information or State or local administrative agency finding, both the issues of discrimination and funding would be subject to discussion during this 60-day period.

By the end of the initial 60-day period following notification, the Secretary must issue a determination as to whether the recipient has failed to comply with the nondiscrimination provision. As previously stated, if the notice was triggered by a finding of discrimination by a court or Federal administrative law judge, the Secretary's determination regarding discrimination (but not funding) would be dictated by the court's or Federal administrative law judge's holding in that this holding will have already been made after a full hearing either before a court or a Federal administrative law judge on the full facts.

A determination of noncompliance with the nondiscrimination provision will start a new 60-day period running, during which the recipient may enter into a compliance agreement.

The compliance agreement will contain the terms and conditions with which the recipient agrees in order to remedy the violations of the nondiscrimination provision. The agreement could condition the resumption of the payment of funds suspended under this procedure upon the Secretary's determination that the recipient has taken specified remedial steps. Within 15 days after the execution of the agreement, the Secretary will send copies thereof to any persons whose complaint initiated the procedure which ultimately led to the compliance agreement. In the event these persons were parties to a class action, a copy of the agreement will be sent to their representative. The agreement must dispose of all the issues with respect to which there had been findings or holdings of discrimination on the grounds of either race, color, national origin, or sex.

The committee intends that the Secretary actively monitor the steps taken by the recipient in complying with the agreement. If the Secretary determines that the recipient is not taking these steps within the time limits set forth in the agreement, he will then be required to reinstitute any part of the procedures established by the committee amendment which had not taken place at the time the agreement was executed.

It is contemplated that in those instances where the notice was triggered by a finding of a Federal or State court or by a Federal administrative agency, a compliance-type agreement entered into between the recipient and the Federal administrative agency involved, or with the authorities (including the Attorney General) which brought the action in the Federal or State court, would constitute a compliance agreement for purposes of these provisions. The Secretary, however, will have the discretion to reject the agreement involved if he feels that it does not adequately remedy the discrimination involved. Moreover, where suspension of funds has occurred under this procedure, the Secretary shall have the authority in approving the agreement, to condition the resumption of the payment of funds upon the recipient's compliance with any or all of the provisions of the agreement. Any agreement entered into between the recipient and another authority besides the Secretary would nonetheless have to be executed within the time periods designated in this procedure. In this situation, the Secretary will be required to send copies of the agreement to complainants within fifteen days of his approval of the agreement.

In those instances where the compliance agreement is between the Secretary and a State government, the necessary signators will be the Secretary and the Governor of the affected State. In those instances

where the compliance agreement is between a locality and the Secretary, the necessary signators will be the Secretary and the chief executive officer of the locality.

If within the second 60-day period following notification the recipient does not enter into a compliance agreement, the Secretary will immediately notify the recipient that it will have 10 days within which to request a full hearing before an administrative law judge. The hearing will be conducted pursuant to the requirements set forth in the Administrative Procedures Act (5 U.S.C. 551–559). If a finding of discrimination has already been made by a court or a Federal administrative law judge, the hearing would only pertain to whether the program or activity involved received revenue sharing funds. In this instance, the issues at the hearing would be whether the particular program or activity in question was, in fact, designated as a revenue sharing fund recipient or, under the facts and circumstances, was a revenue sharing fund recipient.

If the recipient fails to request a hearing within 10 days of the Secretary's determination, the Secretary would be required to immediately suspend payment of revenue sharing funds to the locality.

Within 30 days of the request for a hearing, a Federal administrative law judge must commence a hearing. Within 60 days of commencement of the hearing, the administrative law judge will be required to make a preliminary finding on the record of evidence then before him as to whether it is likely that the recipient would fail to prevail on the issues to which the hearing pertained. It is contemplated that within this 60-day period, something akin to a summary hearing would be held, where both parties, through affidavits and other evidence, would present their sides of the case. The burden of proof during this preliminary hearing, and in the total hearing, will be upon the Secretary. (See 5 U.S.C. 556(d)).

A preliminary finding by the administrative law judge in favor of the Secretary within the 60-day period following the commencement of the hearing will result in the immediate suspension of any further payments of revenue sharing funds to the recipient pending the outcome of the full hearing. At the conclusion of the hearing, the administrative law judge will make a finding based upon the complete record of evidence before him and, if, by the preponderance of the evidence, the Secretary prevails upon the issues, an indefinite suspension of the payment of funds will occur within 30 days after the rendering of the finding by the administrative law judge, unless within that 30-day period a compliance agreement is entered into.

This suspension of funds would be indefinite until such time that: (a) a compliance agreement is entered into or the Secretary determines that the recipient has complied with certain provisions of a compliance agreement, such determination being a condition precedent to the resumption of payments; (b) the recipient complies fully with the order of a court or Federal administrative law judge if that order covers all the matters raised by the Secretary in his notice of noncompliance; (c) upon a rehearing or similar proceeding, the court or administrative law judge which originally held that the recipient had discriminated on the grounds of either race, color, national origin, or sex, holds that the recipient did not so discriminate; (d) an appellate court reverses the findings of discrimination by a lower court or

administrative agency, such initial findings having triggered the notice of noncompliance and ultimately the suspension of funds by the Secretary; or (e) the Secretary determines that the recipient has come into compliance with the nondiscrimination provision.

3. Authority of Attorney General (sec. 8(a) of the committee amendment and sec. 122(f) of the present law)

Under current law, the Attorney General is authorized to bring a civil action seeking "such relief as may be appropriate, including injunctive relief."

The committee decided that it would be desirable to elaborate more specifically as to the authority of the Attorney General in his enforcement of the nondiscrimination provision.

Explanation of provision

The Attorney General's authority is expanded so that whenever he believes that a State government or unit of local government has engaged in a pattern or practice of discriminatory actions in violation of the nondiscrimination provision, he may bring a civil action seeking as relief any temporary restraining order, preliminary or permanent injunction, or other order calling for, among other things, the suspension, termination, repayment, or placing of revenue sharing funds in escrow pending the outcome of the litigation. The House bill similarly expands the authority of the Attorney General.

4. Agreements Between Agencies (sec. 8(a) of the committee amendment and new sec. 122(g) of the present law)

While there is no specific authorizing provision in present law, the Office of Revenue Sharing, as a matter of current practice, has entered into various interagency cooperative agreements with respect to the enforcement of the nondiscrimination provision.

To encourage greater efficiency in nondiscrimination enforcement, the committee decided to specifically provide the Secretary with authority to enter into cooperative enforcement agreements.

Explanation of provision

The committee amendment provides that the Secretary is to endeavor to enter into agreements with State agencies and with other Federal agencies authorizing these agencies to investigate allegations of noncompliance with the nondiscrimination provision. Each agreement is to describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance, and will provide for immediate notification to the Secretary of any actions instituted against a State government or unit of local government alleging a violation of any Federal civil rights statute or regulations issued thereunder.

5. Citizen Remedies (sec. 8(b) of the committee amendment and newly added sec. 124 of present law)

Present law does not contain any specific provision pertaining to citizen remedies.

The committee felt it was necessary to establish specific time limits within which the Office of Revenue Sharing and the Department of Justice should respond to complaints filed by any person alleging that a recipient is violating the nondiscrimination provision. The committee decided that in the event both the Office of Revenue Sharing and the Department of Justice failed to affirmatively respond to a person's complaint within these time limits, the person should then have the right to seek relief in court.

Explanation of provision

Upon exhaustion of administrative remedies, a civil action may be instituted by an aggrieved person in an appropriate United States district court or State court. The action, alleging discrimination by a recipient in violation of the revenue sharing nondiscrimination provision, could seek such relief as a temporary restraining order, preliminary or permanent injunction or other order providing for the suspension, termination, repayment of funds, or placing any further payments of revenue sharing funds in escrow pending the outcome of the litigation.

Administrative remedies will be considered "exhausted" upon:

(a) the expiration of the 60-day period following the date the complaint is filed with the Office of Revenue Sharing, during which time it either (i) fails to issue a determination on the merits of the complaint, (ii) issues a determination that the recipient did not violate the nondiscrimination provision, or (iii) refers the complaint to the Department of Justice, and

(b) the expiration of the subsequent 60-day period where the complaint is filed with or referred to the Department of Justice, during which time it either (i) fails to issue a determination on the merits of the complaint or, (ii) issues a determination that the recipient did not violate the nondiscrimination provision.

The Attorney General may, upon timely application, intervene in any action brought by a private citizen (after that citizen has exhausted his administrative remedies) if he certifies that the action is of general public importance.

It is contemplated that the Secretary will promulgate regulations establishing, among other things, the required form and content of a complaint alleging discrimination, and the methods by which the complainant will be advised of the status of the complaint and the manner and form in which the Secretary's determination with respect to the allegation will be made.

H. Commission on Revenue Sharing and Federalism (Sec. 11 of the Committee Amendment and new sec. 146 of the Act)

There is presently a permanent 26-member Advisory Commission on Intergovernmental Relations (ACIR). The ACIR was established in 1959 (P.L. 86–380), primarily as a result of the study and recommendations of the Knestnbaum Commission. The ACIR is composed of members from Congress, the Executive Branch, State Governors, State legislators, mayors, county officials, as well as representatives from private life. The ACIR was created generally to make studies and investigations of intergovernmental relations, provide a forum for discussing the administration and coordination of Federal grant pro-

grams, and to recommend methods of coordinating and simplifying the tax laws and administrative practices governing relations between the Federal government and State and local governments.

Reasons for change

In reviewing the 1972 Act, the committee was concerned that detailed information was not available on certain aspects of our Federal system of government. In particular was the concern that our knowledge about the efficiency and equity aspects of the allocation of spending and taxing responsibilities among the three tiers of government was not sufficiently detailed to be of assistance when the question of the revision of revenue sharing was before the committee. Accordingly, the committee amendment provides for the establishment of a temporary commission whose mission is to study, evaluate, and make recommendations on several well-defined matters of our Federal system of government. In providing for this temporary commission, it is the committee's intention that it be a complimentary, but more concentrated effort to those currently in existence.

Explanation of provision

The committee amendment establishes a 14-member Commission on American Federalism. The membership is to consist of (1) the Speaker and Minority Leader of the House of Representatives, (2) the Majority and Minority Leaders of the Senate, and (3) ten members to be appointed by the President, with the advice and consent of the Senate (two from the Executive Branch, two State Governors, two local government officials, two from business, and two from labor). Any vacancy is to be filled as for the original appointment. The Commission is to select, by majority vote, its chairman and vice chairman from the members appointed by the President. It is contemplated that the membership will be bipartisan in nature.

The Commission is to study and evaluate the American federal fiscal system, primarily in terms of the allocation and coordination of public resources among Federal, State, and local governments. The study is to cover, but not be limited to, the following areas of intergovernmental concern to the committee:

(1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other Federal government systems;

(2) State and local governmental organization from both legal and operational viewpoints to determine how general local governments do and ought to relate to each other, to special districts and to State governments in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities;

(3) the effectiveness of Federal Government stabilization policies on State and local areas and the effects of State and local fiscal decisions on aggregate economic activity;

(4) the quality of financial control and audit procedures that exists among Federal, State, and local governments;

(5) the legal and operational aspects of citizen participation in Federal, State, and local governmental fiscal decisions; and

(6) the specific relationship of Federal general revenue sharing funds to other Federal grant programs to State and local govern-

ments, as well as the role of revenue sharing funds in Federal, State, and local fiscal interrelationships.

The Chairman is to have authority (under rules adopted by the Commission) to appoint an executive director and necessary staff personnel, without regard to the provisions governing appointments in the competitive service and General Service pay rates except that the executive director is not to receive pay in excess of the maximum rate in effect for grade GS–18. Other personnel may not receive pay in excess of the rate for GS–17. All meetings of the Commission are to be open to the public, unless the members vote otherwise in a public session.

The Commission is to submit a final report to the President and to the Congress no later than 3 years after the date that all members of the Commission have been appointed. The report is to contain a detailed statement of the findings and conclusions for the legislation as it deems advisable. The Commission is to terminate 90 days after submission of the final report. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Effective date

This provision is effective on February 1, 1977.

IV. Costs of Carrying Out the Bill and Vote of the Committee in Reporting the Committee Amendment to H.R. 13367

Revenue Cost

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs in carrying out H.R. 13367. The committee estimates that it will have no effect on revenues. The Treasury agrees with this statement.

In accordance with section 308(a) of the Congressional Budget and Impoundment Control Act of 1974, the committee states that H.R. 13367 involves no new tax expenditures, and provides new budget authority for assistance for State and local governments as displayed in the following table:

COST ESTIMATE OF H.R. 13367

[In millions of dollars]

	Fiscal year—						
	1977	1978	1979	1980	1981	1982	1983
New budget authority	5,241	7,055	7,205	7,355	7,505	7,655	.....
Estimated outlays	3,446	7,017	7,167	7,317	7,467	7,617	1,988

The committee contemplates that reductions in other programs under its jurisdiction will offset any estimated increase in total budget authority and outlay levels for general revenue sharing for fiscal year 1977. These offsetting reductions are expected to ensure that legislation extending the general revenue sharing program will be consistent with the first concurrent resolution.

In accordance with section 403 of the Congressional Budget Act of 1974, the Director of the Congressional Budget Office has provided the following cost estimate:

Congressional Budget Office

cost estimate

1. Bill number: H.R. 13367 (as amended by Senate Finance Committee).

2. Bill title: State and Local Fiscal Assistance Amendments of 1976.

3. Purpose of bill: This bill extends and amends the State and Local Fiscal Assistance Act of 1972. Funds for general revenue sharing program are provided for the period from January 1, 1977, through September 30, 1982.

4. Cost estimate: (Fiscal years, in millions of dollars.)

	1977 [1]	1978	1979	1980	1981	1982	1983
Budget authority	5,241	7,055	7,205	7,355	7,505	7,655	.....
Estimated outlays	3,446	7,017	7,167	7,317	7,467	7,617	1,988

[1] The original law, Public Law 92-512, provides funding through the 1st quarter of fiscal year 1977. The bill provides money for the remaining 3 quarters of the fiscal year. Total fiscal year 1977 budget authority is $6,905,000,000.

5. Basis for estimate: The bill contains explicit dollar amounts for general revenue sharing payments for the periods, January through September 1977, fiscal year 1978, fiscal year 1979, fiscal year 1980, fiscal year 1981 and fiscal year 1982. In the past, the spendout pattern has been that the allotment for the last quarter of any fiscal year is paid within the first five days of the first quarter of the next fiscal year. Consequently, the outlays for fiscal year 1977 are less than the budget authority by one quarter's payment, and there is a one quarter's payment in fiscal year 1983 after the program's authority has been expended.

The other adjustment from budget authority to outlays is the unobligated balance reserve for adjustment of revenue-sharing payments. Following OMB assumptions, the CBO estimates that a reserve of approximately $70 million will be created from the new program budget authority in fiscal year 1977. This reserve is assumed to grow each succeeding year by $1 million. This money is spent out in fiscal year 1983.

The bill continues the non-contiguous states adjustment amount from the prior program with two changes. One is that the amount available to Alaska and Hawaii will grow by the same rate as the regular revenue sharing payments grow. Second, Alaska and Hawaii will qualify for this additional allotment under either of the two allotment formulas. It is assumed that this money will be spent out in the same manner as the regular revenue sharing payments.

6. Estimate comparison: H.R. 13367, as passed by the House, was originally estimated by the CBO to have the following costs: (Fiscal years, millions of dollars)

	1977	1978	1979	1980	1981
Budget authority	4,991	6,655	6,655	6,655	.....
Estimated outlays	3,325	6,650	6,650	6,650	1,663

The outlays have been reestimated by CBO, based on different assumptions about the unobligated balance reserve. The reestimated outlays are as follows:

Fiscal years:	*Millions*
1977	3,258
1978	6,650
1979	6,650
1980	6,650
1981	1,730

The basic differences between the House-passed and Senate Finance versions of H.R. 13367 are: (1) the House extension is 3¾ years; the Senate extensions is 5¾ years; (2) the House funding level for the regular program is $6,650 million for each year; the Senate establishes a level of $6,900 million for the full FY 1977, and then increases this amount by $150 million each year; (3) the House maintains the level of $4.8 million for the non-continguous states adjustment; the Senate increases the non-contiguous states amount each year, and makes Alaska and Hawaii eligible for this allotment under either formula.

7. Estimate prepared by: Roger M. Winsby (225–5373).

8. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Vote of the committee

In compliance with section 133 of the Legislative Reorganization Act of 1940, the following statement is made relative to the vote by the committee on the motion to report the amendment. The committee amendment to H.R. 13367, as amended by committee, was ordered reported by a recorded vote of 14 to 0.

V. Changes in Existing Law

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the committee amendment, as reported).

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