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S. Hrg. 109–82

PASSING THE BUCK: A REVIEW OF THE UNFUNDED MANDATES REFORM ACT

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

APRIL 14, 2005

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Committee on Homeland Security and Governmental Affairs

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PASSING THE BUCK: A REVIEW OF THE UNFUNDED MANDATES REFORM ACT

THURSDAY, APRIL 14, 2005

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:04 a.m., in room SD–342, Dirksen Senate Office Building, Hon. George V. Voinovich, Chairman of the Subcommittee, presiding.

Present: Senators Voinovich, Coleman, Coburn, and Carper.

Senator VOINOVICH. Good morning. Thank you all for being here today.

Today, the Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia meets to examine a subject in which I have long been interested. I am pleased that my colleague and former governor, Senator Carper, is serving as Ranking Member of this Subcommittee today. The two of us have been concerned about this a long time.

Today's hearing entitled, Passing the Buck, A Review of the Unfunded Mandates Reform Act will review UMRA's impact on Federal, State and local governments. Over the course of my career as a State representative, county auditor, commissioner, lieutenant governor, and mayor I first watched the relationship between the Federal Government, its State and local counterparts affecting our citizens and our communities.

My experience fuels my passion for federalism. I understand the importance of balancing the Federal Government's power with the powers our founding fathers envisioned for the States and that is why in 1991, as a member of the National Governors Association, I started a long campaign with the State and local government coalitions to curb the practice of Federal unfunded mandates. It's really interesting that at my first governors meeting I had this resolution on unfunded mandates, and there was this governor who came over and put his arm around me and said, partner, I am with you on this. That was Bill Clinton.

As Governor of Ohio I requested a first of its kind study to examine the impact of unfunded mandates. In the introduction to this report I noted that too often Federal mandates on the States interfere with one of the most fundamental tasks of government, the setting of priorities. State officials entrusted by the voters with the responsibility to set a course for State Government, provide serv-

ices and plan for the future find their ability to do these things constrained by Federal directive that take legal or statutory precedence. According to our findings, between 1992 and 1995, Ohio had unfunded mandates of $1.7 billion.

This unique report served three important purposes in the unfunded mandates debate. First, it illustrated the growing mandate problem in my State.

Second, it galvanized lobbying efforts of the big seven by providing them with evidence that unfunded mandates have a real impact on State and local governments.

Finally, it underscored the importance of enacting Federal unfunded mandate legislation in Congress. And thankfully, State and local efforts to pass UMRA were supported strongly by Dirk Kempthorne, William Roth, John Glenn, Representatives Rob Portman, Tom Davis, and Bill Clinger.

One of the highlights of my tenure during my term as governor was working with Congress on this vital issue. As a matter of fact the first time I set foot on the floor of the U.S. Senate was when UMRA was passed on March 15, 1995. I was honored to be at the Rose Garden representing State and local governments when President Clinton signed the legislation on March 22, 1995 and I have that pen that he used to sign it proudly displayed on the walls of my office today.

When I was elected to the Senate I vowed to continue examining how the Federal Government could improve the way it works with all levels of government to better serve the American people. My interest in federalism and my involvement in the passage of UMRA led me to request a two-part GAO review of the law. The first report issued in May 2004 provided a general overview of UMRA and analyzed the law's effectiveness. In this review, GAO found evidence that UMRA is limiting the number of Federal mandates, but that its procedures, definitions, exceptions, and exclusions might still allow some unfunded mandates to reach State and local governments.

For example, in 2001 and 2002, GAO found that only 5 of 377 statutes enacted and 9 of 122 major regulations issued contained mandates above UMRA thresholds. However, over the same time 43 statutes were enacted and 65 regulations issued that might be perceived as mandates but were not identified as such.

For example, the No Child Left Behind Act, which I voted against because I was concerned about its cost and the policy of federalizing education, was not identified as an unfunded mandate because it is a condition of Federal financial assistance. In order for States to receive funding under the No Child Left Behind Act they must demonstrate that they are meeting Federal requirements established for educational standards and assessments.

However, if States can provide compelling reasons they may opt out of the law and forgo Federal funding. Unfortunately, this portion of the law was considered a condition of Federal financial assistance under UMRA and, therefore, did not meet the definition of a mandate. We call it a mandate, but under the law it's not an unfunded mandate.

The second part which GAO is releasing this morning explores whether changes are necessary to strengthen the law. I would like

Ms. Williams to know that the second panel of witnesses will be listening intently as you detail your findings this morning. I am extremely interested in hearing how my friends in State and local government react to both of GAO's studies and if they believe that changes in the law are required.

As many of you know, the process of strengthening UMRA began this year with a provision in the budget resolution. I was pleased that the Budget Committee, Chairman Gregg added language to increase UMRA's point of order from 50 to 60 votes. I believe this provision will strengthen UMRA and ultimately make it much more effective.

I would like to thank GAO for their hard work and dedication on producing two comprehensive and informative reports on UMRA. In addition, I want to send a warm welcome to the rest of our witnesses, including my colleagues from State and local governments. I look forward to discussing this issue with you today and I now yield to my good friend, the Senator from Delaware, Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thank you, Mr. Chairman. Mr. Chairman, I have a statement I'd like to submit for the record, if I may.

Senator VOINOVICH. Without objection.

[The prepared opening statement of Senator Carper follows:]

PREPARED OPENING STATEMENT OF SENATOR CARPER

Thank you, Mr. Chairman. It's a pleasure to sit with you here today in this capacity to discuss an issue that's been so important to both of us during our careers in public service—the impact unfunded Federal mandates have on State and local governments and what we can do to address them.

When I was governor, we were able to balance our budget every year I was in office. We were also able to cut taxes 7 out of the 8 years I was fortunate enough to be entrusted by the people of Delaware with their governorship. Times were good, then, but it still angered me to think that our job was made more difficult because of the money our State was spending to comply with Federal mandates we had little role in crafting and oftentimes probably didn't agree with.

Unfunded mandates are still around today and they're still a drain on State and local resources. We'll hear testimony this morning from witnesses on our second panel that Federal mandates, whether we think they're meritorious or not, still have a staggering impact on budgets in our States, counties and cities. That said, the Unfunded Mandates Reform Act that you played such a key role in bringing to fruition a decade ago, Mr. Chairman, appears to have been a success.

While there's still work to be done, it's clearer now than it was before the passage of the 1995 Act that Federal legislative and regulatory actions have an impact outside of Washington, DC. Because of the tools built into the Act, the Federal Government probably imposes fewer, less burdensome mandates on State and local governments.

As we'll hear today, only a fraction of the legislative and regulatory mandates examined under the Act have been deemed unfunded from year to year. This could be because legislators and regulators have learned their lesson and are cooperating with the officials on the ground in State and local governments who are impacted by their actions. It could mean we're avoiding actions that might unnecessarily or unfairly push costs down to other levels of government. Others will argue, however, that it's because the Act is not strong enough and is not applied to much of the work done here in Washington from day to day.

I look forward to hearing from our witnesses today about how the 1995 Act has worked and what might need to be done to improve it. While it's not possible to eliminate altogether all Federal mandates that impose costs on State and local governments, we should see if it's possible to get a better sense of how much a given law or regulation will truly cost State and local governments. This should give decisionmakers like you and me, Mr. Chairman, the information we need to make more

informed choices when developing legislation that might impact State and local budgets.

I'd also like to learn some more about any gaps in the 1995 Act that allow mandates that should be more heavily scrutinized to escape our attention.

Thank you again for holding this hearing, Mr. Chairman. I look forward to hearing from our witnesses and to working to ensure that work Congress did a decade ago continues to be effective.

Senator CARPER. Thank you.

Now to our witnesses, welcome this morning. This is one issue that Senator Voinovich and I have been joined at the hip on for some time. While Bill Clinton no longer has his arm around him and saying, partner, we are working on this one together, Senator Voinovich and I very much are partners in this endeavor. I think the good work that he did, the leadership that he provided more than a decade ago has not been for naught. Some good has come from that effort.

As in most things, can we do a better job? Sure, we can. Can we do a better job here with respect to unfunded mandates? Sure, we can. Part of what I hope comes out of today's hearing is a bit of a path forward, some consensus on what further changes need to be made.

I, too, am encouraged by the change that was reflected in the budget resolution with respect to raising a point of order to 60 votes. I think that's a positive step. There may be some other things that we ought to be doing and considering, and hopefully we'll hear some of that from our panel. So we thank you all for being here and look forward to your testimony and the chance to have a conversation with you.

Thanks, Mr. Chairman.

Senator VOINOVICH. Thank you, Senator Carper.

We are pleased that we have Senator Coburn from Oklahoma. Senator, do you have a statement?

Senator COBURN. Mr. Chairman, I don't have a written statement. I would just, first of all, apologize in advance. We are in the midst of an executive committee meeting in Judiciary so I'll be in and out and intermit with my attendance. I am very appreciative that you're holding this hearing. I believe there are still way too many mandates coming out of Washington for States and local communities, and many of them, although we call them funded, they're not. So there is a difference between an unfunded mandate and an underfunded mandate, and the way we are getting around the law today is underfunding the mandates. So I look forward to studying this report and also the testimony of your witnesses today, and thank you for holding the hearing.

Senator VOINOVICH. Thank you very much.

We do have two excellent panels today and I look forward to a good discussion. All witnesses' statements will be entered into the record in their entirety and I'd appreciate it if you would limit your remarks to 5 minutes.

It's the custom of the Subcommittee to require swearing in our witnesses and if you will stand, and those from the local governments stand, I'll swear you in.

[Witnesses sworn.]

Senator VOINOVICH. Let the record show that all of the witnesses answered in the affirmative. Our first panel of witnesses, Orice

Williams is Director of Strategic Issues at the Government Accountability Office and served as the project leader on the unfunded mandate report. We are so glad that you're here, and GAO did a super job, as they always do.

Dr. Graham is the Administrator of the Office of Information and Regulator Affairs at the Office of Budget and Management. Dr. Graham, welcome back to this Subcommittee. We haven't seen you for some time. We do remember the hearings on your nomination. There was some controversy about them and I told my colleagues that you would be the best OIRA director that we could get and you've done an outstanding job over there of looking after regulations in the Federal Government. I was pleased that you're there.

Mr. GRAHAM. Thank you, sir.

Senator VOINOVICH. In my opinion, you have really thrown the ball down the middle. I've watched some of the decisions you've made and I want to congratulate you. I think you're really doing the job that we expect you to do.

Dr. Elizabeth Robinson is the Deputy Director of CBO. I want to thank CBO for the outstanding job that you have done in providing mandate statements. It's a lot of work. I think you've got four or five people over there that work on it on a continuing basis. They're here today. I understand that the team leader is Terri Gullo, and I want to thank you, Terri, for your leadership. This issue that may not seem important to some people but I can tell you it's really important to the local government officials that are here and local government representatives throughout the United States.

We'll start out with Ms. Williams.

TESTIMONY OF ORICE M. WILLIAMS,[1] DIRECTOR, STRATEGIC ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. WILLIAMS. Mr. Chairman, and Members of the Subcommittee, thank you for the opportunity to participate in today's hearing to discuss the Unfunded Mandates Reform Act of 1995, commonly known as UMRA. My statement this morning focuses on two reports issued by GAO in the past year at your request.

First, in May 2004 we issued a report that identified a number of issues surrounding the gap between Federal mandates under the Act and those that may be viewed as mandates by affected parties. As a follow-up to that report you asked that we obtain the views of a diverse group of parties knowledgeable about UMRA as well as Federal mandates.

In summary, we found that identifying and analyzing Federal mandates is a complex process under UMRA. This is due primarily to the Act's various definitions, exceptions, and exclusions. In 2001 and 2002, the period covered by our review, as you mentioned only 5 of the 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing Federal mandates at or above UMRA's thresholds. Of these, only one final rule contained an intergovernmental mandate.

Despite the application of UMRA and the paucity of actions identified as mandates under the Act, we found other provisions of stat-

[1] The prepared statement of Mr. Williams appears in the Appendix on page 00.

utes and rules that did not trigger UMRA requirements, but appear to have potential financial impacts similar to those identified as containing Federal mandates at or above UMRA thresholds. As a result, many were viewed as unfunded or underfunded mandates by affected parties.

Building on those findings, as requested, we asked a diverse group of parties from academia, business, Federal agencies, public interest advocacy groups, and State and local governments to share their views about strengths and weaknesses of UMRA and Federal mandates. Two issues quickly emerged.

First, UMRA's coverage was the first issue cited across sectors. The vast majority saw UMRA's coverage as a weakness of the Act because it excludes many potentially significant actions from the scrutiny of UMRA. Most offered ways that the Act's coverage could be expanded. However, a few disagreed, believing the Act should, in fact, be kept narrow.

Second, parties across the sectors also raised a number of issues concerning the lack of evaluation and research of mandates in general. They felt more and better retrospective analysis would result in better information about the costs and benefits of mandates and could potentially improve prospective analysis.

In closing, Mr. Chairman, I would like to reiterate our findings and share a few observations.

First, of the 100-plus comments provided, almost one-third pointed out the strengths of UMRA, and even its harshest critics did not suggest that the Act be repealed.

Second, and not surprisingly, coverage continues to be an issue in most sectors. To the extent that UMRA plays a role in shining a light on unfunded mandates, there is some evidence that UMRA has resulted in fewer legislative mandates at or above UMRA's thresholds. Although UMRA does not ban the imposition of unfunded mandates, broadening coverage would result in more information about a wider range of Federal actions, but not necessarily prevent them.

Third, as I mentioned at the onset, retrospective analysis emerged as a key issue when discussing Federal mandates. We heard repeatedly about the need for various types of analysis to evaluate existing programs, but also as a tool to improve the design and prospective analysis of future actions.

Finally, as we move forward in an environment of constrained fiscal resources, the issue of unfunded mandates raises broader questions about the assignment of fiscal responsibilities within our Federal system. Most major domestic programs, costs, and administrative responsibilities are shared. Therefore, part of this public policy debate includes a re-examination of the Federal Government's role in our system, and a need to sort out how responsibilities for these types of programs should be financed in the future. If left unchecked, unfunded mandates can weaken accountability and remove constraints on decisions by separating the enactment of benefit programs from the responsibility of having to pay for these programs. Likewise, 100 percent Federal financing of intergovernmental programs can pervert fiscal incentives necessary to ensure proper stewardship at the State and local level for shared programs.

This concludes my oral statement and I would be happy to answer any questions.

Senator VOINOVICH. Thank you, Ms. Williams. Dr. Graham.

TESTIMONY OF HON. JOHN GRAHAM,[1] ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. GRAHAM. Good morning, Mr. Chairman, and Senator Carper.

As you know, an important reason for the enactment of the Unfunded Mandates Act was to ensure that Congress and the Executive Branch better understood and considered the impact of laws and regulations on our intergovernmental partners and on the private sector before these laws and regulations were enacted. The Administration firmly supports the principles on this Act and we have been working to increase the opportunities for our intergovernmental partners to participate fully in the regulatory process.

Let me give you some feel how this Administration has compared to previous administrations on the rate of growth in unfunded mandates. I guess it's the story of Washington, DC, when you talk about progress you only talk about rates of growth in things. You never actually reduce anything. But, nonetheless, that's the situation we are in.

When OMB began to keep records in 1981 we tracked major rules on State and local governments and the private sector. During that 24-year period from 1981 to 2004, the average annual growth rate in these major rules was about $5 billion per year on top of the existing several hundred billion dollars a year in regulatory costs. During the President's first term we reduced that rate of growth to under $2 billion per year, or about 68 percent lower than the 24-year average. These statistics, while they're not in my written statement, are in the annual report to Congress which we have provided you under the Regulatory Right-to-Know Act.

So the good news is that we are slowing the growth rate or unfunded mandates. The bad news is we haven't really yet been effective of that getting at the existing base of these unfunded mandates.

Let me conclude with a few remarks about my experience in the Executive Branch dealing with regulatory agencies on the subject of what are the conceptual solutions to a proposal for an unfunded mandate. Let's remember that they're often times very exciting and noble ideas that are behind unfunded mandates even though they don't have any funding behind them.

The first potential conceptual solution to that problem is to fund the unfunded mandate at the Federal level. Let me assure you that my budget colleagues at OMB hearing me even utter that sentence would be shuddering about the prospect of all of that Federal spending. But I think we recognize that conceptually this is one of the possible solutions to the problem. It needs to be examined, and clearly it needs to be examined in the context of an overall fiscal approach to the Federal Government.

A second conceptual response to the proposal for an unfunded mandate is to reject the unfunded mandate and simply allow the

[1] The prepared statement of Mr. Graham appears in the Appendix on page 00.

State and local governments or the private sector to handle the issue as they see appropriate. We, at OMB, look at that option, whenever possible, as a potential solution.

The third solution, and my experience, practically speaking it tends to be the most effective, is to find more cost-effective ways or less costly ways of achieving the purpose of the unfunded mandate than were originally contemplated in the proposal. Allowing, for example, State and local governments to have flexibility to consider less costly ways of achieving whatever the objective may be, whether it be in environment, whether it be in education and so forth.

Those, I think, conceptually are the three solutions we have when we have a proposal for an unfunded mandate, and I think that when you strip away all of the details that's what it boils down to. So I look forward to the discussion of the Subcommittee and I have my written statement with some details.

Senator VOINOVICH. Thank you, Dr. Graham. Dr. Robinson.

TESTIMONY OF ELIZABETH ROBINSON,[1] DEPUTY DIRECTOR, CONGRESSIONAL BUDGET OFFICE

Ms. ROBINSON. Thank you. Good morning, Mr. Chairman and Mr. Carper. I am very glad to be here today to discuss the Unfunded Mandates Reform Act and CBO's role in implementing parts of the Act. To provide some context, CBO has now about 10 years of experience in implementing the Act. During that time we have transmitted over 5,200 reviews of specific pieces of legislation, and under the definitions in the Act, about 12 percent of those found mandates on States and localities, and 14 percent found such mandates on the private sector.

Now as you know, UMRA not only requires that we identify mandates but that we estimate their cost and compare those costs to the thresholds that are established in the Act. A much smaller universe of the mandates we see actually have costs higher than those thresholds. Again, for the total universe of 5,200 only about 1 percent had mandates on States and localities, as defined in the Act, with costs above the threshold, and about 3 percent private sector mandates with costs above the threshold.

At the same time, we can't always estimate the size of these mandates, especially if there are many more steps in the process that have to happen after the mandate is enacted; regulations promulgated by the Executive Branch or other things. So UMRA also requires that if we say we can't estimate the cost, we also explain why. A similar number of bills to those that actually contain mandates with costs over the threshold have not been estimable by CBO at the time the legislation was being considered by the Congress.

Also, as bills are considered by the Congress, we find that only about a third of those where we identify mandates with costs over the thresholds, I guess about 20 percent on States and localities and about a third on the private sector, actually get enacted into law. That's not surprising to us actually because during the process members and their staff are very interested in the impacts of their

[1] The prepared statement of Ms. Robinson appears in the Appendix on page 00.

legislation on States, localities, and the private sector. They work with us on specific provisions. They ask us for whatever information we can give them. They then respond; for example, the House has brought up UMRA points of order and committees have modified mandates on the Floor and sometimes they have provided funding as well to cover the cost of the mandate.

So in a very broad brush way and in terms of procedure, the Act has been implemented fairly smoothly over the last 10 years. But during that time there's been a lot of concern about the definitions in the Act, whether or not they're providing the information that policymakers need as they're going through the legislative process to adequately assess what the impact of the legislation is going to be.

GAO has already very ably mentioned that one of the biggest problems concerns legislation that would change conditions for existing grant programs. When a State is already participating in a grant program and the conditions are changed, and if those conditions cause them to spend more money, it can feel like a mandate. It may not be a mandate under UMRA but it can feel like a mandate. We hear that often and try to work with staff to understand how UMRA defines mandate as those kinds of bills go through the process.

At a much smaller level, a more technical level, there are some aspects of the definitions in UMRA that CBO would appreciate some legislative clarification on. We have mentioned these as they come up in the various statements that we put forward, but there are two central questions that we have had to face over the years.

One question is that if the bill extends an existing mandate, is that actually a new mandate that then should be considered under the procedures of UMRA?

The second is, what happens if a bill does not itself create a mandate but, by its actions, it triggers spending under other existing mandates? Should that bill be considered under UMRA as containing a mandate?

Senator CARPER. Would you say that again?

Ms. ROBINSON. If you have a bill that, for instance, sites a facility in a specific area and that's all it does, but that triggers spending on the part of the States in order to provide transportation going there under Federal regulation, maybe environmental regulations, and those costs exceed the threshold, does that bill then contain a mandate? Those mandates were created in previous bills, but the siting of a facility would trigger additional spending. So is that a mandate under UMRA?

We think it's very timely that now, after 10 years and a lot of experience implementing UMRA, that the Subcommittee reconsider this piece of legislation. There have been very few changes to the law over the last 10 years and we look forward to working with the Subcommittee to consider issues as they come up. Thank you.

Senator VOINOVICH. Thank you very much.

We are going to have rounds of questions of 6 minutes. The first question I have is for all of the witnesses. In the second report, GAO noted that many stakeholders would like a retrospective evaluation of mandates to ensure they were achieving their intended goals and a better measure of the actual costs by non-Federal enti-

ties. Do you believe that this process would help measure the actual cost of mandates? If so, who should be responsible for conducting such an evaluation for both laws and regulations?

Mr. GRAHAM. Let me start by just giving you, Senator, some ballpark and sobering numbers on that subject. Since OMB began to keep records in 1981—so that includes some of the pre-UMRA period, OMB has cleared 20,000 Federal regulations.

Senator VOINOVICH. How many?

Mr. GRAHAM. Twenty thousand. Most of those, to the best of our knowledge, have never been re-examined to determine how much they actually cost or what their effective was. We could get you those same numbers for the period in the 1990's of the UMRA period.

The question of who should perform those evaluations, I think, is a difficult one. On the one hand, the agencies themselves might seem to be a logical place to go for an evaluation. But then one could argue that maybe they're not in the most objective position to evaluate the regulations that have promulgated. Some would say OMB should be involved in that activity, but I can assure you some would say that we are not the most objective people to evaluate those.

So, I think one thing that needs to be given thought to is the question of where that most objective evaluation of those would come from. I think in our report to Congress we have actually asked for public comment on about 15 independent academic studies that have been done of the evaluation of the costs and benefits of previous regulations, and in the process we'll be learning more about the subject about how good this literature is in its technical quality and how it can be expanded in the future.

Ms. WILLIAMS. Just to expand on that. In terms of looking at retrospective analysis, two things were made very clear to us. One, when conducting this type of analysis it's important to look at the costs that were estimated versus the actual costs as well as the benefits. And two, to perform this type of analysis to inform prospective analysis. I think in terms of the agencies having a role, to the extent that the agencies perform this type of analysis it may actually strengthen their ability to perform analysis going forward in the future.

Senator VOINOVICH. Dr. Robinson.

Ms. ROBINSON. CBO is always supportive of more analysis. We would love to have more analysis on how these mandates have turned out. But we also have a number of questions that, I think, would have to be answered in that kind of retrospective review.

One is, what would the States and localities have done otherwise? Many mandates that we see going through require for the majority of States something that some States have already embarked upon. Would it be that in the intervening period after the mandate is enacted other States would not have taken this up in the absence of the Federal mandate? So trying to determine the counterfactual, what is it that you're measuring against, is something that I think we'd need to think hard about when we are quantifying these costs.

Senator VOINOVICH. Dr. Graham, you look at these regulations and come back and try to define whether or not they're an un-

funded mandate. Do you just take all your regulations and go back and look at them and see what their cost is afterwards? In other words, Congress passes a law requiring agencies to issue regulations and there's an estimate of what that regulation is going to cost, so you do that. But so often after it has passed the cost skyrockets. Is there any way that those kinds of regulations are flagged after the fact?

Mr. GRAHAM. We do provide an opportunity, Senator, each year through OMB's report to Congress on regulation which was developed through the Regulatory Right-to-Know Act, which I know you supported with Senator Thompson when it was passed. What that report does each year is it provides the public, including State and local governments, an opportunity to suggest specific regulations that they believe are more costly than they were originally thought, or are outmoded, or don't in fact provide benefits.

That opportunity has been available in 3 of the first 4 years of this Administration. We have received a substantial number of comments. Most of them, however, are from the private sector groups that are affected by unfunded mandates. We have had fewer comments from our State and local intergovernmental partners.

Senator VOINOVICH. I have been concerned about the roles and regulations issued by the Environmental Protection Agency and the impact they have on local communities. In many instances, the cost of them is very large, and in so many instances there is no flexibility in terms of how long it would take to comply with the mandate.

For example, I've got one case of the city of Akron, Ohio has agreed to comply with the provisions in terms of storm flow overflow. It's very expensive and they want to implement it over 30 years and the EPA says they must do it in 15 years. I've asked EPA to look and see why something can't be done about that and their attitude is, that's just the way it is. From my perspective, it's an unfunded mandate, and we keep cutting back the amount of money made available to State and local governments for a lot of these things that are being mandated and there doesn't seem to be any fairness.

In other words, if we are not going to provide the funding—we start out providing the funding and then we keep ratcheting back what we are providing, that increases the cost to the local governments, but there is no consideration given to that impact or the time it takes to get the job done. It seems to me that there are a lot of areas like that. We really should look at the regulations that are turning into unfunded mandates for local governments because the feds have just pulled back on funding them.

For example—I'll finish on this—the President has recommended eliminating approximately 150 programs. Have you examined those programs set for elimination? In effect we eliminated funding but the requirement to fulfill the Federal law still exists, but now State and local governments are going to have to pick up the tab.

Mr. GRAHAM. As I mentioned in by oral remarks, there are three solutions to an unfunded mandate. Fund it, remove the mandate, or find less costly alternatives for addressing the objective, like your example of a 30-year phase-in period rather than 15 years.

Those are the only three possible solutions that we have been able to find when an unfunded mandate is proposed, and all of them are painful in some ways. As a practical matter, most of the progress we make at OIRA on these issues is in the third category, let's be more creative about finding ways to provide flexibility so people can achieve the objective at lower cost. That tends to be, at a practical level, the most successful approach.

Senator VOINOVICH. Thank you. Senator Carper.

Senator CARPER. Thank you. Again, our thanks for your testimony today. I just want to come back and revisit some of what you've already said just to help me synthesize it in my mind. Is the consensus that the effect of the 1995 bill has generally been a positive one in terms of, if not reducing unfunded mandates, at least reducing the growth of those unfunded mandates? How would you all characterize the effectiveness of the bill?

Ms. WILLIAMS. In terms of the parties we spoke with there were definitely sectors that held that sentiment, that it was definitely a step in the right direction and it has had some impact on the growth of unfunded mandates, especially on the legislative side.

Senator CARPER. When you say especially on the legislative side, you're talking legislation as opposed to regulatory unfunded mandates?

Ms. WILLIAMS. Correct, yes.

Senator CARPER. Dr. Graham.

Mr. GRAHAM. Just to elaborate, and keep in mind that the analytic requirements that were put in UMRA for regulations on the Executive Branch were similar to Executive Order requirements that were already in place prior to UMRA. So the big effect was on the legislative side, as the previous answer indicated.

I think your summary of it is a good one. I would say there has been progress in slowing the growth in new unfunded mandates. However, a weakness in our situation is that we haven't been able to get at very effectively that sea of existing unfunded mandates that are already out there, and figuring out a way to evaluate whether they're still effective, whether there are more cost-effective ways to address those issues. That's a much bigger challenge.

Senator CARPER. Dr. Robinson, same question.

Ms. ROBINSON. In terms of the analytical requirements and procedures that CBO helps to implement, people are very interested in it; members and staff. They're consuming that information. They're paying attention to it. They find it useful within the limits of the Act itself. So if that's a measure, that they are considering the information as legislation goes forward and getting the kinds of responses they need, then yes, I think it has helped quite a lot.

Senator CARPER. The second question would be, if you're sitting up here instead of where you're sitting, what would you do, either to work further on the legislative mandates, or to work on the regulatory mandates? If you were a U.S. Senator, or if you were a member of this Subcommittee, what would you do?

Ms. WILLIAMS. I think based on the conversations we had with the parties from the various sectors, one of the interesting issues that emerged, and it isn't really a surprising one, is the issue of coverage. You can ask about the number of unfunded mandates, or the number of mandates at or above UMRA's thresholds and the

numbers are relatively small. But when you talk to parties affected by mandates that go beyond those identified in UMRA the numbers are much larger. So if you look at the issue of coverage and where the bar is, it raises issues about whether or not UMRA actually covers all actions that affected parties view as unfunded or underfunded mandates.

Senator CARPER. So let me just ask my question again. What would you do?

Ms. WILLIAMS. I think in terms of——

Senator CARPER. There's no right or wrong answers here. I just want to know, what would you do?

Ms. WILLIAMS. I think this is the point. After 10 years of experience, now's the time to revisit some of the provisions of UMRA and ask if all of the exclusions and exemptions still make sense in today's environment, and bring parties from the sectors that we spoke with to the table to get their input on whether or not all of them still need to be in place today. So that's where I would start if I were in your shoes.

Senator CARPER. Thank you. Dr. Graham.

Mr. GRAHAM. I think I would look to the question of how valid are the cost estimates that are made on unfunded mandates at the time members must vote on them or we at OMB must rule on them. We now have 10 years of experience to look at the cost estimates that were made before these mandates were imposed. Let's find out exactly how much they actually did cost, how many times was it greater than we thought, how many times was it less than we thought. As an analyst my hope is a lot of times we get that answer roughly right. But we need to know the answer to that question to know how much confidence we should put behind these estimates of the cost of unfunded mandates, and I think it would be useful if you could stimulate that work to be done.

Senator CARPER. Thank you. Dr. Robinson.

Ms. ROBINSON. I'd like to start out with saying that the organic Act for CBO actually prohibits me from telling you what I would do if I were a Senator. So with that in mind and me wanting to keep my job, one thing I would definitely consider is the informational side of the Act—the information in the legislative process is always king in terms of affecting things and having them move forward. There might be more information out there on other types of legislative vehicles like expansions of requirements under existing grant programs.

I would mention, though, that these additional classes of legislation would bring in a lot more bills. If we were to try to estimate the costs of new conditions on existing grant programs for States and localities it would more than double the bills for which we would have to do a cost estimate. So I might also think about the resources available to CBO for doing this. These changes are actually very significant in terms of the number of bills that would be affected and how important it is to Congress to consider this kind of information for all bills moving forward.

Senator CARPER. Thanks. My time has just expired.

Senator VOINOVICH. Senator Coleman is here with us. Senator Coleman, I think that during your term as mayor of St. Paul, the Unfunded Mandates Relief legislation was passed. One of the rea-

sons why we were successful in getting it passed is that we got terrific support from all of the State and local government groups, and it was on a bipartisan basis. It was like a tide that just rolled through this place and we got it done. So we are glad that you're here today.

OPENING STATEMENT OF SENATOR COLEMAN

Senator COLEMAN. Thanks, Mr. Chairman. I don't think it's by accident that the three of us sitting up here are all former local elected officials; two former mayors and two former governors. You notice there's only three people here, but there are two former mayors and two former governors.

I have a statement that I would like entered into the record.

Senator VOINOVICH. Without objection.

[The prepared opening statement of Senator Coleman follows:]

PREPARED OPENING STATEMENT OF SENATOR COLEMAN

I want to thank Chairman Voinovich and Senator Akaka for holding this important hearing to review the Unfunded Mandated Reform Act. I also want to take a moment and welcome a constituent of mine from Blue Earth County, Commissioner Colleen Landkamer, who will be testifying on the second panel today. Commissioner Landkamer is First Vice President of the National Association of Counties and has served as Commissioner of Blue Earth County since 1988. And, if anyone wants to know where Blue Earth County is, you can go back and watch Little House on the Prairie reruns and when Laura Ingalls Wilder visited Mankato, she was in Blue Earth County. Commissioner Landkamer, I want to thank you for your service and I look forward to hearing your testimony today.

Unfunded mandates have been around for as long as I can remember and created real challenges for Saint Paul when I was mayor. When I came to Washington, I wanted to bring my experiences from the bottom of the political food chain to committee hearings like this to talk about how unfunded mandates can hamstring local leaders who are just trying to get things done. I can remember being told when I was mayor that doing business with the city could easily add 20 percent to the cost of a project. Well 20 percent on five houses and you have built another house. I was also told that adding $1 of Federal money in an activity can trigger thousands of dollars worth of additional requirements. The result when I was mayor was that some great ideas never got realized because unfunded mandates drove folks away from doing business with us.

I also remember projects that were almost never realized because of the requirements imposed by Federal mandates that were necessary to comply with to receive Federal funding. Anyone that has worked with local government knows that communities tend to have scarce resources and opting out of a Federal program is often not a solution, nor an option. That leads to cities putting up with one size fits all requirements in order to receive funding.

Earlier this year, I was proud to introduce an amendment to the Senate budget resolution, which was approved, to prevent cuts to the Community Development Block Grant Program (CDBG). I bring this up because this program is based on the idea that we should not have 1,500 command and control programs run out of Washington trying to micromanage the needs of communities. Instead through CDBG, we help communities meet those needs and priorities through one block grant. With all the unfunded mandates coming down from Washington, CDBG is one way we actually help communities across the country meet some very critical priorities without hampering local leaders.

As Minnesota's Mayor in Washington, I still believe that government is beholden to the people. That individuals, with the help of their local representatives, can plan their lives better than bureaucrats in some distant capital. The Unfunded Mandates Reform Act of 1995 was a good first step towards making sure Congress adequately appropriated funds for mandates imposed on local governments. However, we still have a lot more work to do on this issue. I am pleased that the Senate budget resolution raised the threshold to overcome an unfunded mandates point of order from a simple majority to 60 votes. It still remains to be seen whether this will survive in Conference but it is something I hope to get feedback on today. I look forward

to hearing the testimony of our panelists and their thoughts on what provisions of the Unfunded Mandates Reform Act have worked and what needs to be changed.

Senator COLEMAN. I will note that the second panel contains a friend of mine, Commissioner of Blue Earth County, which if you go back and watch Little House on the Prairie and when Laura Ingalls Wilder visited Mankato, she was in Blue Earth County. So this is the heart of America there, and I want to thank Commissioner Landkamer for her service and look forward to her testimony.

I just have two observations. One, this really is for those local leaders, it's an important issue. I always tell people you never forget when you're at the bottom of the political food chain. The feds tell the State, and the State tells the county and the cities, and then our taxpayers are the ones who have to deal with it, and we hear about it. So I think this was important legislation.

The areas, I just met yesterday with a group of home builders in Minnesota and they raised the issue of stormwater regulations. It's fascinating, because they actually talked about the EPA passing on the enforcement to folks at county, State, and city level and they've got various folks now that they know how to respond to in dealing with that, and that becomes particularly frustrating for them.

I just want to go back, if I can, to Dr. Graham. The question that my colleague, Senator Carper, asked about what would you do, your response talked about the validity of cost estimates. But in the earlier part of your testimony, one of the things you noted, which has been my observation, is that we have made progress in slowing up the growth of new unfunded mandates but we still have this underlying body of things out there that we have to deal with.

Could I ask you to respond to the question that Senator Carper asked about what would you do, specifically focusing on that earlier response where you said, we have still got this challenge with that body of mandates that are out there that are still having some impact? What would you do if you were sitting up here dealing with that specific issue?

Mr. GRAHAM. I am not sure, because we at OMB are humbled by the challenge of the sea of existing Federal regulations and unfunded mandates that are out there and have accumulated over the years. I mentioned, I think before you arrived, that since 1981 when OMB began to keep records there have been over 110,000 new Federal regulations adopted by all Federal agencies. Twenty-thousand of those we at OMB reviewed and cleared. And of those, over 1,100 were estimated to cost the economy over $100 million per year at the time that they were enacted.

To the best of our knowledge, nobody has ever looked back at most of these regulations to determine what they actually cost, what their benefits were, or whether they could be accomplished in a better way. And we with two dozen employees in the office I work in at OMB are obviously in no position to review all of these tens of thousands of regulations. In this Administration we have taken one modest step which is, for example, we asked the public to nominate specific rules for revision. We are working right now, for example, on 76 of them that affect the manufacturing sector of the economy.

Senator COLEMAN. That's very helpful and it goes back to Ms. Williams' comment about engaging again in a conversation with some of the folks who are impacted and perhaps they can provide us with more focus. Clearly your testimony lays out the daunting nature of the task, but perhaps if we can—what I am hearing is with a little focus we can begin to make some headway, though certainly not clearing the table. So I appreciate that.

Mr. Chairman, I want to thank you for having this hearing. This is a very important issue to folks in local government and we are all impacted by it so I look forward to good things coming out of this as we continue to address this issue. Thank you.

Senator VOINOVICH. Thank you very much. I would like to find out what kind of procedures are in place. When UMRA passed, we established procedures requiring Federal agencies to consult with State and local governments to get their input on what impact it would have on State and local governments. Dr. Graham, is there some kind of procedure that is in each department that you monitor to make sure that they do try to get input from State and local government folks when they are doing these regulations?

And second of all, is there consultation at all with the private sector on these regulations, to get their impression and get into the issue that you talked about, alternatives that are more reasonable?

Mr. GRAHAM. Yes. Mr. Chairman, we have an annual report to Congress on the Unfunded Mandates Act that includes a summary of the consultation activities that different Federal agencies are undertaking to make sure that State and local governments have an opportunity to interact, and my characterization of that report is that there are some really good examples of consultation that are documented in that report at the Department of Education, the Environmental Protection Agency and so forth, but I think it would be fair to say that those best practices are not necessarily uniform across the Federal Government or across any particular agency. We oftentimes, at OMB, hear concerns on a particular regulation, that either the State and local governments had not been adequately consulted or the private sector had not been adequately consulted.

That is why we at OMB have an open-door policy for outside groups to come in and talk to us about their concerns about regulations and unfunded mandates.

Senator VOINOVICH. I recall that when I was governor we lobbied and had passed a provision dealing with the Clean Water Act that basically said that you had to use cost benefit analysis and regulations in regard to that Act at the time. We were requiring local governments every 3 years to take on 25 new pollutants to check to see whether or not they were in their water or not, and we required them to do the most advanced technology in terms of cleaning water. We went to work on that. Are you familiar with what I am talking about?

Mr. GRAHAM. Generally. I do not know the specific example though.

Senator VOINOVICH. I ask because, at the time we were interested in including a cost benefit analysis, peer review and good science, and then you would then also be required to look at alternatives. So that is the Clean Water Act.

When I came to Congress, my first 2 years here I tried to get legislation passed that did the same thing with the Clean Air Act. Unfortunately, so many members mistakenly thought that I was trying to eviscerate the Clean Air Act, and we never got back to it.

I would really like you to know whether the amendments that we made in the Clean Water Act have made it any different in terms of their regulations as contrasted to legislation dealing with the Clean Air Act. Could you look into that for me?

Mr. GRAHAM. Yes, sir. I am familiar under the Safe Drinking Water Act, which was passed—the amendments of 1996, where there were cost benefit and sound science requirements.

Senator VOINOVICH. Yes. I mischaracterized that.

Mr. GRAHAM. I just wanted to make sure we——

Senator VOINOVICH. That is exactly what I am talking about, yes.

Mr. GRAHAM [continuing]. Were talking about the same provisions.

Senator VOINOVICH. Yes.

Mr. GRAHAM. And I want you to know that we believe they have made a significant difference, and in fact, in this Administration we have taken the basic approach that was in the Safe Drinking Water Act amendments on cost benefit and sound science, and incorporated it in government wide guidance under the Information Quality Act, where we require all Federal agencies, regardless of whether it is an environmental regulation or a labor regulation, to have the replicable science and an appropriate peer review process on that science. And we already have requirements in executive order to look at alternatives, less costly alternatives. Quite frankly, that is the bread and butter of the work of the Office of Information and Regulatory Affairs.

But having said that, I want to emphasize the fact that if Congress, when they pass a statute like the Clean Air Act, says that alternatives will not be considered or costs will not be considered, that really limits the ability of the Executive Branch to bring in the kind of tools you are talking about.

Senator VOINOVICH. I would like to really look at what you have done with the 1996 Safe Drinking Water Act, and to ascertain whether or not as a result of the cost benefit provisions and the other provisions that I mentioned, that serious damage has been done to the safe drinking water in our country, because I really think that at this stage of the game we should review and look at our Clean Air legislation in terms of cost benefit.

For example, I was just blown away when I met with the head of our EPA about the new requirements under the ambient air standards that were litigated. I will finish on this note. He basically told me—you would be interested in this, Senator Carper, because you and I have been working on this issue—he said that in spite of if we pass Clear Skies, the care rule and the other rules, that all of the businesses in my State that are in counties that are not complying with the current rules, that all of the businesses there are going to, in terms of if there is any new emissions, are going to have the install enormous—spent an enormous amount of money installing those particular things to do with their emissions, as they move toward compliance with the ambient air standards. And that in many instances, some of the counties would absolutely

not be able to comply with that within a 5-year period, or if they did, the cost would just be astronomical.

I was really shocked at that because I got the impression that if we passed Clear Skies and the new regulations dealing with diesel fuel, that these counties would be considered to be in compliance with, in an attainment because the big burden was going to be put on the utilities, and we were cleaning up our diesel gasoline. So this thing is going to cost a lot of money. I want to tell your State and local government folks out here, you have no idea what this is going to do in terms of the counties that you represent that are not achieving these ambient air standards.

Senator Carper.

Senator CARPER. Thank you. A couple of questions if I could of Ms. Williams, please. There are a number of ways that we could broaden the 1995 Act's coverage to include more laws or more regulations that are considered here in Washington on a day-to-day basis. Among those that you have talked to, what approaches were most popular?

Ms. WILLIAMS. They really broke out into two categories. One would be the provisions that deal with procedural changes, acts that are included, for example, in appropriations bills or rules that are issued by independent agencies. Under UMRA those are currently excluded from UMRA coverage. So those are two examples of procedural changes that could be made to broaden coverage under UMRA.

The parties also mentioned looking at some of the definitions in UMRA and revisiting certain specific exclusions. I think CBO mentioned conditions of Federal financial assistance as one possible area that could be looked at that is an exclusion under UMRA that could be revisited.

Senator CARPER. You point out in your report that some stakeholders you spoke to actually like the narrow scope of the bill, the Act?

Ms. WILLIAMS. Yes.

Senator CARPER. And do not favor broadening it. What reasons did they give for continuing with the current limits that are placed on these kinds of laws and regulations?

Ms. WILLIAMS. They varied. Some parties felt that the strength of UMRA in its narrow coverage is that it does not try to be more than it needs to be. Some also felt that because the scope is narrow, when a provision does meet the threshold for a Federal mandate under UMRA it results in a significant red flag, so when this happens it is a big enough issue that people take notice and they are willing to negotiate and make adjustments. If the Act is broadened, then it may decrease the effectiveness of the red flag if more red flags are constantly going up.

Senator CARPER. Dr. Robinson, my question to you would be how often do the enforcement mechanisms that are part of the 1995 Act ever encourage the lawmakers, guys like us, to modify our proposals? That is the first part of the question. And second, would this change if they were strengthened in some way?

Ms. ROBINSON. Well, the first part of your question is actually pretty hard to quantify because although we transmitted 5,200 formal estimates, many of those were preceded by informal consulta-

tions with members and their staff asking whether or not their specific provision was going to cause a mandate. And we have seen——

Senator CARPER. Did the lawmakers initiate those inquiries or their staffs?

Ms. ROBINSON. Yes. They will bring the legislation to us, the draft legislation to us, and then we have to work with it.

Senator CARPER. And that occurs in you say the majority of cases?

Ms. ROBINSON. No, I would not say the majority of cases, but I would say that before we actually do an estimate of a major bill, we oftentimes have done an informal consultation and in terms of time, effort, and feedback that we give to committees that work often swamps the final estimates when we are looking at the formal legislation. And we see routinely that members are concerned that when we raise a flag, they want to approach that and consider whether or not it is worth it in their whole scheme of getting the legislation through.

The House has brought up points of order in its considerations. The Senate has considered bringing up points of order, but I don't think it ever actually has. So that is an example where there was a flag raised and before there was even a vote there were negotiations to avoid imposing a mandate. So, yes, I think that we do see quite a lot of legislative movement around these issues.

And then your second question was?

Senator CARPER. Would this change if these mechanisms were strengthened in any way?

Ms. ROBINSON. I think that is hard to tell. I think that there is a benefit of having a rigorous definition that people understand so that they understand across bills what "mandate" means. If that were to be expanded in a number of the ways GAO has talked about and people became used to that information and could use it, I think that the more information routinely is better. The more estimates that people can understand and compare to other versions of bills that are addressing the same issue, the better. Analysis like that does help.

So in terms of the effectiveness and the red flags, it is a little hard to—it is one of these things like estimating cost under UMRA. It is like saying, OK, what is actually going to happen 5 years from now once the new regime is in place, and how are people going to be acting then?

I do firmly believe, however, that more information is better.

Senator CARPER. Thanks.

Dr. Graham mentioned there are three solutions I think to the unfunded mandate dilemma. And first, he said fund them, which could get to be expensive; and second, I think he said reject the unfunded mandates. I think the third he said was find less costly ways of achieving the purpose or the objective of the unfunded mandates. Is that a fair characterization?

Mr. GRAHAM. Yes, sir.

Senator CARPER. Let me just ask Dr. Robinson and Ms. Williams, is that pretty much the universe of alternatives that we face? Are there others that we ought to be mindful of?

Ms. WILLIAMS. I think if you look at the information we collected from the parties, they generally more or less break out into those broad categories, and I think all of them need to be on the table and part of the debate as you go forward. I would also imagine there probably is a fourth alternative if you talk to the parties and reach for it.

Senator CARPER. Dr. Robinson.

Ms. ROBINSON. This is also a serious case of it depends. It really does depend on the mandate in question whether or not you need States and localities and the private sector to be putting forth their own resources in order to effectively administer the mandate. That is always a serious question, and sometimes there is not an option to do nothing. That information exists about issues that the legislation is addressing. Congress has made that determination, so at that point their question is, how are we going to do it, and whether or not it involves a mandate.

I am sure that is the universe. It is almost tautological to say it is the universe, and I think it is. But the choice of alternatives depends on the mandate in question.

Senator CARPER. Thanks. My thanks to each of you.

Senator VOINOVICH. If there are no further questions, we would like to thank you very much for being here today, and there will be some questions from the Members of this Subcommittee in writing, and we would appreciate your responding to them. We will leave the record open for that.

And again, this has been quite illuminating, and I will be working with Senator Carper to see if there are some things that we can do to improve upon this legislation or decide to let it continue to go as it is.

Thank you very much.

Mr. GRAHAM. Thank you.

Ms. WILLIAMS. Thank you.

Ms. ROBINSON. Thank you.

Senator VOINOVICH. Dr. Graham, if you could do that for me, I would be grateful, on the safe Drinking Water.

Mr. GRAHAM. We will look into it.

Senator VOINOVICH. Thank you.

We will get started with our second panel. We have with us today Delegate John Hurson from Montgomery County, Maryland, who is testifying here on behalf of the National Conference of State Legislatures. We are very glad that you are here today.

Commissioner Colleen Landkamer from Blue Earth County, Minnesota, representing the National Association of Counties, NACO.

And Council Member Nick Licata from Seattle, Washington, representing the National League of Cities.

We thank you both for being here, and Mr. Licata for coming a long distance to testify here today. As I mentioned to the other witnesses, we would like you, if possible, to limit your testimony to 5 minutes. Be assured that your testimony will be in the record. We will proceed with Delegate Hurson.

Senator CARPER. Mr. Chairman, before you proceed, as you all know, we have a number of hearings that are going on at the same time. We have a hearing in my Banking Committee on Terrorism Risk Reinsurance, and I am going to have to slip out in just a mo-

ment. I apologize for that. We have not figured out how to clone us yet and we are still looking. [Laughter.]

Thank you. Thanks for being here.

Senator VOINOVICH. I would just like to explain to the witnesses too. This is a Subcommittee hearing. It is a subject that I am very interested in, and so is Senator Carper and so are the Members of the Subcommittee. But you ought to know that I could be at three different places right now and justify my presence at each one of them. So it makes it difficult. I think one of our problems here in the Senate is a lot of us are very busy with lots of committees, and so often we like to be at hearings and we just cannot make them because in my case there are a couple other things that I could be at, but I am here, because I am the Chairman of the Subcommittee.

My first year in the Senate, I was on five committees at the time, and we were trying to figure out how to be in four or five different places at once, and we created these cardboard cutouts of me, and we would position them at the different hearings. And it worked for a while, but people started saying I seemed stiff. [Laughter.]

So we gave that up.

I want to, I am sure on behalf of everyone here, to thank both of you for being here because UMRA is a very important subject and we want to thank you for paying as much attention as you do to it.

TESTIMONY OF HON. JOHN HURSON,[1] DELEGATE, MARYLAND HOUSE OF DELEGATES, AND PRESIDENT, NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. HURSON. Chairman Voinovich, Senator Carper, I am John Hurson, President of the National Conference of State Legislatures and a member of the Maryland House of Delegates. I appear before you on behalf of NCSL, a bipartisan organization representing the 50 State legislatures and the legislatures of our Nation's commonwealths, territories, possessions and the District of Columbia. Thank you for the opportunity to testify before you today about UMRA. Thank you, Mr. Chairman, for your efforts and leadership as Governor of Ohio that helped UMRA become a reality a decade ago and for your continued commitment in the U.S. Senate to review how it is working.

My presentation today will highlight the effectiveness and limitations of UMRA, the impact of those limitations on State budgets and the need for substantive and technical changes to UMRA. I would like to request that a copy of NCSL's March 10, 2005 *Mandate Monitor* be submitted for the record to accompany my testimony.

Senator VOINOVICH. Without objection.

Mr. HURSON. NCSL applauds the success of UMRA and the work of the Congressional Budget Office in particular in bringing attention to the fiscal effects of Federal legislation on State and local governments, improving Federal accountability and enhancing consultation.

[1] The prepared statement of Mr. Hurson appears in the Appendix on page 00.

CBO's recent report which identifies five laws that crossed UMRA's threshold speaks loudly for its effectiveness.[1] The hundreds of fiscal analyses completed by CBO show a commitment to carry out the spirit and letter of the law. Both of these facts, however, mask some of the statute's shortcomings that NCSL urges you to address.

UMRA is limited, and I believe the GAO's May 2004 report to you concluded the same thing. As a result, much is slipping under UMRA's radar and intensifying pressures on State budgets. NCSL has identified a $51 billion cost shift in Federal funding to States for fiscal years 2004 and 2005 collectively.

Senator VOINOVICH. Fifty-one billion?

Mr. HURSON. Fifty-one billion, 5 percent of States' general revenue funds annually. And the cost shift continues and will likely grow in fiscal year 2006.

Mr. Chairman, legislators view mandates more expansively than UMRA's definition. We believe there are mandates when the Federal Government, for instance, establishes direct Federal orders without sufficient funding to pay for their implementation, or establishes a new condition of grant aid, or reduces the Federal match rate or administrative funds available without a reduction in requirements. It may be a mandate to compel coverage of certain populations under a current program without providing full or adequate funding for this coverage, or a mandate occurs when we create under funded national expectations.

To illustrate our concerns our written testimony provides examples of provisions contained in three bills enacted during the 108th Congress that were not considered intergovernmental mandates under UMRA, but did create significant cost shift to the States. This includes an excise tax on vaccines, under funding IDEA, the Individuals with Disabilities Education Act, and provisions in the Medicare prescription drug program.

I would like to spend the remainder of my time, however, not focusing on the past, but on the future of UMRA. We seek your support to strengthen UMRA. This hearing, as well as the work of GAO, is an excellent start. We suggest that Members of this Subcommittee sit down with legislators, governors and county and city officials to develop broader protections to States and localities against these cost shifts. Specifically, NCSL encourages the Congress to examine the definitions of UMRA. Too many mandates are falling outside of UMRA's review.

The biggest example for our members is the No Child Left Behind Act. We believe Congress should revisit how UMRA treats entitlement and mandatory spending, in particular Medicaid. Most changes made on Capitol Hill to the Medicaid program—which I know in Maryland constitutes approximately 17 percent of State expenditures—affect State spending. The cost of these changes, direct or indirect, need to be recognized. States do not always have the flexibility to absorb these costs.

Congress should establish greater Executive Branch consultation. CBO does a great job, but we do not receive the same level of con-

[1] The CBO's report entitled "A Review fo CBO's Activities in 2004 Under the Unfunded Mandates Reform Act," March 2005, appears in the Appendix on page 00.

sultation or information from Federal departments or the Joint Committee on Taxation.

Congress should consider the cumulative impact of mandates and consider developing a look-back process.

Congress should support Section 403 of the fiscal year 2006 Senate Budget resolutions, which strengthens the existing point of order against legislation imposing unfunded Federal mandates by requiring 60 votes to waive the point of order.

Mr. Chairman, in closing I would like to add that NCSL remains steadfast in its resolve to work with Federal policymakers to reduce the Federal deficit and to maintain critical programs. Controlling the deficit is a daunting task involving difficult choices, many of which involve our intergovernmental partnership.

We recognize that the pressures on the Federal budget promote a tendency to seek the accomplishment of national goals through Federal mandates on State and local governments. However, NCSL is encouraged that you and other Federal lawmakers have recognized the difficulties posed by the cost shifts to States, and we look forward to working with you on this important issue.

Thank you for the opportunity to testify and I would be happy to answer any questions.

Senator VOINOVICH. Thank you very much. It was great testimony.

Mr. HURSON. Thank you.

Senator VOINOVICH. Commissioner Landkamer.

TESTIMONY OF HON. COLLEEN LANDKAMER,[1] COMMISSIONER, BLUE EARTH COUNTY, MINNESOTA, AND FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF COUNTIES

Ms. LANDKAMER. Chairman Voinovich, I want to thank you for the leadership you have shown on this. You are really making a difference on such a critical important issue.

I am Colleen Landkamer. I am a County Commissioner from Blue Earth County, Minnesota, and I am proud to serve as First Vice President of the National Association of Counties and to testify before you today on our decade of experience with Unfunded Mandates Reform Act.

I would like to submit for the record a copy of a recent snapshot survey on unfunded mandates that was conducted by the National Association of Counties.[2] This survey includes information that in Blue Earth County, Minnesota over the past 3 years, it shows that we have spent the following for every family of four. For every family of four we have spent $8 to comply with the Americans with Disabilities Act, and another $8 for the Help America Vote Act. For every family of four we have spent $3 to comply with the Health Insurance Portability and Accountability Act. For every family of four we have spent $11 under the Resource Conservation and Recovery Act, and for every family of four we have spent more than $26 to comply with the Clean Water Act and the Safe Drinking Water Act.

[1] The prepared statement of Ms. Landkamer appears in the Appendix on page 00.

[2] The survey entitled "Unfunded Mandates: A Snapshot Survey," March 2005, appears in the Appendix on page 00.

Now, this may not be too much to spend to ensure that our public buildings and transportation systems are accessible, or to purchase new voting equipment, or to ensure the privacy of health information or safe drinking water. However, the costs continue to add up. If the examples highlighted in this survey are extrapolated across the entire Nation, then counties have spent at least $40 billion since fiscal year 2003 to comply with just a few major unfunded mandates, and far more than that, to comply with all of the Federal mandates.

Mr. Chairman, I was with you in the Rose Garden when the Unfunded Mandate Reform Act was signed into law. We applauded it then and we still do today. Unfortunately, many of the unfunded mandates continue to be enacted without heightened scrutiny. The following 10 loopholes in the Act are explained in further detail in my written testimony, but let me briefly go through the 10.

First. It identifies only the anticipated cost of proposed new mandates, not the actual cost.

Second. It dismisses the cost of mandates that enforce a constitutional right and provide for the national security. For example, counties administer elections and ensure the safety of our citizens. However, the importance of these responsibilities should not get the Federal Government off the hook in paying its share.

Third. It excludes grant conditions, even though local governments rarely have the chance to opt out.

Fourth. It does not address the costs that State and local governments bear because the Federal Government has failed to address a national problem such as uncompensated health care, the costs of which are skyrocketing.

Fifth. Agencies have inconsistent interpretations of their responsibilities under the Act.

Sixth. It does not apply to mandates on an appropriations bill or rules that are issued by an independent agency.

Seventh. Congress can satisfy the Act by authorizing funds for a program even if these funds are not appropriated.

Eighth. It excludes Federal legislation that indirectly reduces State and local tax bases or drives up costs.

Ninth. A mandate that costs a single jurisdiction tens of millions of dollars would still be considered de minimis if it fails to meet the nationwide threshold specified by the Act.

Tenth. It is not surprising that the unfunded mandate point of order has never been raised in the Senate since it only takes 50 votes to override. We support the provision of the Senate budget resolution that would increase this threshold to 60, and view it as a first step toward strengthening the Act.

I would like to highlight one mandate that is creating challenges for my county, Blue Earth County, and counties across this Nation. The Help America Vote Act requires counties to purchase new voting equipment by the end of this year. The Federal Government was supposed to issue standards for this equipment 2 years ago, and has not, leaving counties uncertain about when we will be able to comply.

Now, counties are committed to guaranteeing access to the polls and ensuring the integrity of the vote, and to make certain that we are purchasing the right equipment, it is critical for the Federal

Government to release those standards and give counties more time to meet those deadlines. The deadline is the 1st of January and there is not enough time.

Mr. Chairman, I thank you for the opportunity to share the views of the National Association of Counties. I look forward to working with you to strengthen and close loopholes in the Unfunded Mandates Reform Act.

This concludes my testimony and I am ready to answer questions. Thank you.

Senator VOINOVICH. Thank you very much. Mr. Licata.

TESTIMONY OF HON. NICK LICATA,[1] CITY COUNCIL MEMBER, SEATTLE, WASHINGTON, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

Mr. LICATA. Thank you, Chairman Voinovich and Senator Coburn, for the opportunity to speak to you today. I am Nick Licata, a City Council member from Seattle, Washington, and I am here to testify on behalf of the National League of Cities about how federally funded mandates financially squeeze municipalities and often hinder our ability to provide services to our residents. Please note that my extensive written remarks have been submitted for inclusion in the Congressional Record.

Before I begin my remarks, I would also like to thank the Senator from Ohio for examining unfunded mandates and, in particular, for requesting the GAO study of the Unfunded Mandates Reform Act.

Now, as early as 1991, NLC adopted as policy the position that Federal mandates that imposed direct costs must be accompanied by adequate Federal funding. Local governments nationwide recognized the passage of the Unfunded Mandates Reform Act, UMRA, in 1995 the key partnership tool with the Federal Government.

Ten years later, America's cities and towns are financially burdened by unfunded mandates and preemptions of State or local authority in some form. Some quick examples are the No Child Left Behind Act, Individuals with Disabilities Education Act, Federal tax reform, Internet tax, and environmental regulations.

As recently as last night, the House Committee on Energy and Commerce voted to pass a multi-billion unfunded mandate to local governments. It did that when it rejected an amendment to strike a provision from the energy bill forcing local governments to clean up water contaminated by the gas additive MTBE. In the last Congress, there were also legislative proposals to require local governments to enforce civil immigration laws, essentially a Federal function, or risk the denial of reimbursement from the Federal Government.

Now, let me share with you what is happening in Seattle as a result of homeland security, which has the unintended consequence of an unfunded mandate. Our taxpayers and public utility ratepayers have picked up more than half the costs emanating from homeland security mandates and guidelines. Since September 11, 2001, they have paid out close to $46 million, or 53 percent of the total costs. I am prepared to answer in detail the findings of a re-

[1] The prepared statement of Mr. Licata appears in the Appendix on page 00.

port prepared by our city auditor, and this document is included in Appendix A of this testimony. And I believe this is the first and maybe the only concluded study of homeland security unfunded mandate costs in municipalities across the country.

Briefly, there are three factors that contribute to the federally unfunded homeland security costs. They are as follows:

In order to adequately protect our citizens, the city complies with the post-September 11 guidelines from the Federal Government, regulatory agencies, and professional organizations. There are no Federal grants available to cover these costs.

Second, in order to provide our heightened security measures, additional ongoing staffing for homeland security must be hired. Seattle has spent close to $18 million since September 11 for which there were no Federal grants available.

And, third, in order to conduct vulnerability assessments of our city's operations and critical infrastructure, eight of our city departments indicated they have unmet infrastructure needs because the grants from Federal agencies, including the Department of Homeland Security and the Environmental Protection Agency, restrict the city's flexibility.

Please keep in mind that during this time Seattle has spent an additional $46 million unexpected security costs since September 11, we have cut our local budget by over $100 million due to the downturn in the national economy. As a result, services have been reduced to our residents. And Seattle is not alone in this situation. I have attended a number of NLC meetings and talked to representatives from municipalities across the country, and the same story is repeated again and again in city after city.

I and other municipal elected officials believe that the GAO, the CBO, and other reports have confirmed that the financial threshold exemptions under UMRA disguise an accurate assessment of unfunded mandates. And let me conclude by identifying four NLC proposals for addressing this problem.

Amend UMRA to increase to 60 the number of Senate votes it takes to enact legislation that imposes unfunded Federal mandates. The State and Local Government Association sent a letter to the conferencees on the budget resolution supporting a supermajority in the U.S. Senate to override an unfunded mandate point of order.

Second, Congress should not allow any Federal statutes to preempt a local law unless the Federal law specifically states there is such a conflict.

Third, Congress should reconsider the threshold amount established in UMRA. While the $50 million threshold, adjusted for inflation annually, may seem low by Congress' estimate, its cumulative effect damages the fiscal health of our municipalities.

And, last, NLC would like Congress to enact clear and unequivocal language that mandates that Federal agencies consult with State, local municipalities, and local government officials in the development of the proposed rules.

Thank you for the opportunity to testify.

Senator VOINOVICH. Thank you very much. There seems to be a consensus here among the witnesses about the state of unfunded mandates relief legislation. [Laughter.]

And before I forget, I would challenge the organizations to get together and come back to me and this Subcommittee with a consensus on what it is that you folks think we need to get done. And I assure you that if you do that, all of you—in other words, I know that the National Governors' Association wanted to be here. They are not here. They are very interested in this issue. The U.S. Conference of Mayors I know is very interested in this. I have talked to Mayor Plasquellic. He is very interested in this. And I think it would be really good if you put together a little task force and sat down and you got your respective reports and just see how they kind of coincide with each other, and then come back here with your priorities in terms of what things you think are going to make the most difference in terms of our improving this legislation. Which leads to my first question: What is it you think would be the No. 1 issue that we need to deal with?

I am pleased the budget includes a program to reverse the point of order. I applaud that provision of the bill. However, some of us are going to have some other problems with the budget. But I can tell you that the budget enforcement mechanisms that I worked very hard to get into that budget, plus Senator Gregg's going along with the 60 votes, are very important things to me and will come into my consideration when they finally get out of conference committee.

So who wants to start?

Mr. LICATA. Well, I will jump in and say that the $50 million threshold, I think, is one of the critical elements. That is in our estimation too high and that we need to lower that threshold.

Also, communication is critical. The Federal agencies need to talk to local officials about these rules. Without the communication, often we are in the dark, and we only find out at the last moment.

Senator VOINOVICH. You heard me ask the question of John Graham about what procedure is in place to get the input of State and local governments, and I saw some heads out there saying they did not agree. So your opinion is that in terms of regulations dealing with State and local governments, there is no procedure in some of these agencies to sit down and talk to you about the impact it is going to have?

Mr. LICATA. Inconsistent and inadequate would be our experience.

Mr. HURSON. I would echo that. I think that was a very good question, Mr. Chairman. While CBO in particular has been excellent in trying to work in terms of consultation, in general it is sporadic. And I think that sort of came through in the answer in terms of what kind of treatment we get from agencies in terms of consultation. That is a very important and significant point.

Senator VOINOVICH. OK. What else?

Ms. LANDKAMER. It is significant. There is no doubt about that. And I think it is critical for us to come back to you and talk about priorities, and we would love to do that.

Mr. HURSON. I am sure that NCSL will be committed to doing that kind of task force. I think it is an excellent idea.

The one thing I would highlight is the first thing we mentioned. We do think there are some definitional problems. We are not getting all of the things we need covered by UMRA. Things are slip-

ping underneath the definitions, and we need to tighten the definitions up in such a way that we truly do get at some of these unfunded mandates. Particularly for States, Medicaid is the Pac-Man of all these budgets. It is eating us alive. It is eating the Federal Government alive. It is eating State budgets alive. And very small changes in Medicaid requirements have huge effects upon State budgets, and we do not have the flexibility to absorb the costs because of balanced budget requirements.

And again, it is a definitional issue, and I think if we tightened up some of the definitions, we would be well on our way to reforming UMRA in a good way.

Senator VOINOVICH. Again, in the definition area, I know when we passed UMRA initially, there was a lot of debate about the definition. But it's been 10 years now, and we can go back and say, here is what has happened because certain things were excluded or were not included.

Mr. HURSON. It is a good time to review it. It really is.

Ms. LANDKAMER. I agree with everything my colleagues have said, and I do think the lookback is critical to see what works, what the definitions are, and actually what the cost of mandates have been, because I don't think we have looked at that.

Senator VOINOVICH. Senator Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Well, I would make note that we just passed out of Committee S. 21, which should offer, especially Seattle, some leverage in terms of homeland security and more of the requirement for it to be on needs-based, risk-based, rather than just on population-based granting. And I think you are going to be pleased with that. We will see how the appropriators do with that, but it is our hope that bill will get through both the Senate and the House and get some common sense into the funding.

My experience from the people I have dealt with in Oklahoma, it is not that there is minimal consultation. Most of the time there is no consultation from the Federal Government. And when you find out what the rules are, it is when they are published in the *Federal Register,* and you have 30 days to try to mobilize and to change those.

And I would just tell you that I would tend to agree with what you said. I would apologize for not being here. I am trying to shuffle between three committees today. But common sense is the thing that is lacking. It looks good up here, but you have to remember this is a very small, hollow network that does not rely on common sense and does not see the results of things that are put out.

So I look forward to working with the Chairman on that. I look forward to going through this to see what the GAO has said and understand that and try to change it.

I think the threshold problem is more difficult than the definitional problem for us in Congress, because I think Federal agencies can get around the threshold problem, but I do not think they will be able to get around the definitional problems. And if we can tighten those up, I think they would be great.

With that, I guess I don't really have any questions other than to say I am sorry we have not done our job to make sure you can do your job.

Mr. LICATA. I would like to thank Senator Coburn and others for the S. 21 bill. We really do appreciate the emphasis on threat regarding homeland security, and I hope there is successful passage of that legislation.

I again want to thank Chairman Voinovich and the other Senators for their concern about this issue. I think we will take up your challenge to get together and come back to you with some solid proposals that we can all work together on and do something about this problem.

Senator COBURN. Could I address Medicaid again?

Senator VOINOVICH. Certainly. I have some more questions, too.

Senator COBURN. I just think the points you raised on Medicaid is the prime example, and we need total reform in Medicaid. But we do not need to reform it just here. We need the input of the States as we make this a more flexible problem for the States to decide how they care for the people in their State. It is different in every State; the requirements and the needs are different. And one of the things I am going to be working on is to try to do that over the next couple of years, at least build a consensus in terms of reforming Medicaid so that it is more flexible, so that you have the ability to really do what you want to do in the State to help those that are depending on us.

Senator VOINOVICH. On the Medicaid issue, I have a little difference of opinion than some of my colleagues. I voted against the amendment to create the commission to study it because I felt that what we were doing was limiting the increase of Medicaid over the next 5-year period. And I was assured by the former Governor of Utah, Mike Leavitt, that he was negotiating with your respective organizations on five major flexibilities that would give you some things that we asked him to do when I was governor of the State of Ohio.

Mr. HURSON. Well, Secretary Leavitt actually is meeting with us tomorrow on just those issues. He is speaking at NCSL's Spring Forum here in Washington. So, yes, we are working with him on all kinds of Medicaid reform.

Senator VOINOVICH. But I think that former Governor Leavitt gets it. I know one of the things that I had in our State when we reformed Medicaid, I wanted to charge a fee for Medicaid, and they said you cannot do that. And there are a lot of small provisions there that we could do, and it is amazing that a lot of our health clinics throughout the State of Ohio today have a sliding scale. Somebody comes in, they find out what their income is, and there is a sliding scale and the recipients pay according to their ability. But you are hamstrung with so many of these regulations that you are getting money out of DC.

Mr. HURSON. Mr. Chairman, that is absolutely true. In the State legislature I am the Chairman of our Health Committee, and I will tell you that we are looking very closely at what federally qualified health clinics can do and really using them more as a safety net. But the thing with Medicaid is that it is a partnership. We have to do this together. It is a situation where it has to be reformed.

If we are ever going to solve the deficit at the Federal level, and in terms of the State budgets, it has got to be a partnership. But we know it has to be reformed. You talk about the clinics. They are the answer, in my opinion, about how we can go about creating a new system of health care that is not bound by all these rules and bound by all these controls, because what we are trying to do is get health services to people and not be bound by a lot of rules. I think we can find a way to do that in a much less expensive way if we work together.

Senator COBURN. Mr. Chairman, just to roll on the Medicaid, right now Medicare and Medicaid dictate health care in America. Health care does not dictate Medicaid and Medicare. It is exactly backwards. We are going to spend $2.3 trillion this year in our economy—that is close to 18 percent of our GDP—on health care. That is 40 percent more than any Nation in the world does per capita. And one out of every three dollars we spend does not help one person get well.

Certainly we can do it better, and if we do it better, we are going to free $700 billion a year to use in other areas, both at the State and the Federal level. And I am committed to see that happens.

Now, that is a big task, but there is no prevention incentive for providers. We do not pay them for prevention. We pay them to treat acute disease and chronic disease. Prevention will save us tons. Half of Medicare and Medicaid spending in the year 2050 is going to be on diabetes alone. And diabetes today is a preventable disease, and yet there is no leadership at the Federal Government level in terms of prevention of that, and colon cancer and all these other diseases that we know are preventable.

So I believe—and I hope through my Subcommittee and your Subcommittee that we are going to be able to discover some of the areas where we can change this. And it is a burden on the States, but it is not just a burden on the State Governments. It is a burden on every business in your State.

Last month alone, 15,000 jobs were not created in this country because of the sole cost of health care insurance for individuals who would have been hired, many in Ohio, because they cannot afford that premium so, therefore, they do not add another person to the payroll even though they need it.

Senator VOINOVICH. I agree with you 100 percent, Senator Coburn. I recall when I was governor we did really well with job creation and, in fact, Ohio led the country in new facilities and plant expansions. But my governor today is contending with some things that I did not have to contend with: Escalating health care costs that are just driving businesses away. Natural gas costs have escalated substantially, and you are all feeling it on the local level. This litigation tornado that is cutting through our society is raising our costs. The competition with China today in terms of their currency and intellectual property rights. I mean, there are a number of things that impact on your local lives. People in the State are saying, well, governor, take care of it. Governor Taft in Ohio, I feel sorry for him. There are just too many factors beyond his control. He can change around the direction in IT jobs, biomedical and all other high-tech jobs. But on the basic things, if we do not do something on the national level on some of these issues, they are fin-

ished. We will see more and more jobs leave this country because of the fact that businesses can no longer compete because of our regulatory environment.

As I mentioned, you ought to look at the new ambient air standards. No one is really getting it. I tried to get Clear Skies passed here, and I did not get the kind of support that I should have, I think, from State and local governments. And I said the reason why is because you do not get it yet. But when you get it, you are going to be really concerned about this because it is going to impact negatively on your ability to keep jobs, get businesses to expand, and get businesses to come into your communities.

Senator COBURN. I would just add one comment. Almost 7 percent of the cost of health care today, 6.8 percent, is $130 billion worth of tests that doctors order every year that patients do not need but doctors need. And that is directly related to the tort system failure in this country. And we could lower the cost tomorrow by 7 percent, health care across the board in this country, if we just had malpractice reform in this country.

Senator VOINOVICH. I would like to ask you a question about something specifically. Some of you said that we have not used UMRA, point of order in the Senate. But I was interested to hear testimony that, in fact, Senators, at least their staffs, check with CBO to find out whether or not this is an unfunded mandate or not and that legislation is changed because of it or amendments are made to try and alleviate that pressure on State and local governments.

I will tell you that, without UMRA, we probably would not have been able to stop last year, with the help of your respective organizations, the Internet tax moratorium. And I just want to point out that the bill will expire in 2007. However, some States that are now turning high-speed Intenet access will lose their ability to do so this year. Fortunately, Ohio and Washington are grandfathered in and won't lose that ability. But Michigan and Maryland will lose some revenue. Have you looked at this issue at all?

Mr. HURSON. I cannot say that our State, but I know that NCSL is very active on this issue, as you know. But we actually list the ban as a mandate as well.

Let me just make one quick comment that I think is important to State and local governments. This always happens when you have a problem, but UMRA has done a lot of good things. We think we are on the right road. The question now is reanalyzing it after 10 years of experience and fixing things that may not have been what we expected to happen. But, generally speaking, it has been a very positive experience for our organization and for States that we have something in place that does the review.

As I said in my testimony, we think CBO has done a really good job of making sure that a lot of laws are analyzed. So to be positive, we are going in the right direction. We just need to reform it.

Senator VOINOVICH. Well, we look forward to your recommendations, and I am going to have my staff go through all the reports and come back to me with their recommendation on what their priorities are, and then what I will do is wait to see from you what you think they are. And let's get the team together. We have not really worked on anything for a long time, but last year we got an

Internet tax moratorium, and I have said to Mayor Plasquellic and I have said to other leaders of the organizations that you have unbelievable power. You have unbelievable power. If you all work together, prioritize your issues, and come to Congress on a bipartisan basis, you can move mountains. But each of your groups individually have great difficulty in doing that, and I think that is something that I want to underscore. This might be a great issue to get the team back together to talk about some other things that we ought to be working on together.

I cannot do it here. Tom cannot do it over there. But, if we have a legislative proposal up here and you folks are lobbying for it together and on a bipartisan basis, you will move mountains. You will make a difference.

So I am looking forward to working with you. Thank you very much. The hearing is adjourned.

[Whereupon, at 11:45 a.m., the Subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR LAUTENBERG

Mr. Chairman, thank you for calling this hearing.

When I arrived at the Senate 22 years ago, I discovered that my desk had once been used by Harry Truman.

He has always been a hero to me because he wasn't afraid to tackle a problem. He famously said, "The Buck Stops Here."

The Federal Government has been too quick to pass the buck to States and local governments in the form of unfunded mandates like the No Child Left Behind Act. This is wrong.

Congress should not order State and local governments to provide programs without offering the resources to pay for them.

But we must be clear about what rally constitutes an "unfunded mandate."

The Congressional Budget Office has determined that unfunded mandates include an increase of the minimum wage, user fees for customs, fees on tobacco products, and the Sarbanes-Oxley Corporate Reform Act.

It's one thing to say we shouldn't order States to provide health insurance for their citizens without providing the resources to do it—or impose tough new requirements on schools without adequately funding them.

But the idea that Congress should not be able to raise the minimum wage, or balance the budget, or force big companies to protect shareholders and consumers, I think is misguided.

Mr. Chairman, these issues take on new urgency this year because if approved, this year's budget would demand a new 60-vote point of order to pass an unfunded mandate.

That means 60 votes to increase the minimum wage . . . 60 votes to discourage young people from smoking—60 votes to enforce corporate accounting standards.

So I say to my colleagues: We need to be very careful about what we are doing here.

Mr. Chairman, it isn't just my priorities that would be endangered. Some on the other side are engaged in a misguided attempt to cut Medicaid, for example. Under current law, that could be an unfunded mandate as well.

We should combat real unfunded mandates without hampering the Senate's proper business.

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia; Committee on Homeland Security and Governmental Affairs, U.S. Senate

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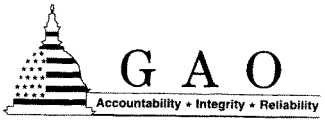
UNFUNDED MANDATES

Analysis of Reform Act's Coverage and Views on Possible Next Steps

Statement of Orice M. Williams, Director
Strategic Issues



GAO-05-533T

April 14, 2005

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Highlights

Highlights of GAO-05-533T, a testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia; Committee on Homeland Security and Governmental Affairs, U.S. Senate

UNFUNDED MANDATES

Analysis of Reform Act's Coverage and Views on Possible Next Steps

Why GAO Did This Study

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. UMRA generates information about the nature and size of potential federal mandates but does not preclude the implementation of such mandates. At various times in UMRA's 10-year history, Congress has considered legislation to amend aspects of the act to address ongoing questions about its effectiveness.

This testimony is based on GAO's reports, *Unfunded Mandates: Analysis of Reform Act Coverage* (GAO-04-637, May 12, 2004) and *Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement* (GAO-05-454, March 31, 2005). Specifically, this testimony addresses (1) UMRA's procedures for the identification of federal mandates and GAO's analysis of the implementation of those procedures for statutes enacted and major rules issued in 2001 and 2002, and (2) the views of a diverse group of parties familiar with UMRA on the significant strengths and weaknesses of the act as the framework for addressing mandate issues and potential options for reinforcing the strengths or addressing the weaknesses.

www.gao.gov/cgi-bin/getrpt?GAO-05-533T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Orice M. Williams, (202) 512-5837, williamso@gao.gov.

What GAO Found

The identification and analysis of intergovernmental and private sector mandates is a complex process under UMRA. Proposed legislation and regulations are subject to various definitions, exceptions, and exclusions before being identified as containing mandates at or above UMRA's cost thresholds. Also, some legislation and rules may be enacted or issued via procedures that do not trigger UMRA reviews. In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. Despite the determinations under UMRA, at least 43 other statutes and 65 rules resulted in new costs or negative financial consequences that affected nonfederal parties might perceive as unfunded or underfunded federal mandates.

GAO obtained information from 52 knowledgeable parties, who provided a significant number of comments about UMRA, specifically, and federal mandates, generally. Their views often varied across and within the five sectors we identified (academic/think tank, public interest advocacy groups, business, federal agencies, and state and local governments). Overall, the numerous strengths, weaknesses, and options for improvement identified during the review fell into several broad themes, including, among others, UMRA-specific issues such as the act's coverage and enforcement, and more general issues about the design, funding, and evaluation of federal mandates. UMRA's coverage was, by far, the most frequently cited issue by parties from the various sectors. Parties across most sectors said that UMRA's numerous definitions, exclusions, and exceptions leave out many federal actions that might significantly impact nonfederal entities and suggested that they should be revisited. However, a few parties, primarily from the public interest advocacy sector, viewed UMRA's narrow coverage as a strength that should be maintained. Another issue on which the parties had particularly strong views was the perceived need for better evaluation and research of federal mandates and more complete estimates of both the direct and indirect costs of mandates on nonfederal entities. The most frequently suggested option to address these evaluation issues was more post-implementation evaluation of existing mandates or "look backs" at their effectiveness.

Going forward, the issue of unfunded mandates raises broader questions about assigning fiscal responsibilities within our federal system. The long-term fiscal challenges facing the federal and state and local governments and the continued relevance of existing programs and priorities warrant a national debate to review what the government does, how it does business, and how it finances its priorities. Such a reexamination includes considering how responsibilities for financing public services are allocated and shared across the many nonfederal entities in the U.S. system.

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to provide testimony today on federal mandates and the Unfunded Mandates Reform Act of 1995 (UMRA).[1] As you know, UMRA was enacted to address concerns expressed by state and local governments about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without providing funding to cover the costs.[2] Many federal programs and initiatives, in areas ranging from homeland security to health care and environmental protection, involve shared responsibilities—and benefits—for the federal government, state, local, and tribal governments, and the private sector. Determining the appropriate balance of fiscal responsibility between the federal government, state, local, and tribal governments, and the private sector in carrying out these federal mandates is a constant challenge. As the budgets of federal, state, and local governments become more constrained, balancing the costs of legislative actions with increasingly limited fiscal resources has brought this debate to the forefront.

Mr. Chairman, my testimony today focuses on the findings from two reports we issued over the past year at your request.[3] We believe that both are important to this committee in the context of considering possible revisions to UMRA. The first report, issued in May 2004, focused on UMRA's procedures for identifying federal mandates and our analysis of the implementation of those procedures for statutes enacted and major rules issued in 2001 and 2002. Building upon the work of the first report, the second report, which is being released publicly today, focuses on the views of a diverse group of parties from the academic/think tank, business, federal agency, public interest advocacy groups, and state and local governments sectors on the strengths and weaknesses of UMRA and their suggested options for reinforcing the strengths or addressing the weaknesses. While the information gathered for this second report reflects only the perspectives of those individuals who participated in our review,

[1]Pub. L. No. 104-4.

[2]Pub. L. 104-4 pmbl. As in the act, we generally refer to the identification of federal mandates, rather than unfunded mandates, in this statement.

[3]*GAO, Unfunded Mandates: Analysis of Reform Act Coverage*, GAO-04-637 (Washington, D.C.: May 12, 2004) and *Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement*, GAO-04-454 (Washington, D.C.: Mar. 31, 2005).

this information comes from organizations and individuals recognized as being knowledgeable about the implementation of UMRA and/or federal mandate programs.

In summary, our May 2004 report concluded that while information provided under UMRA about potential mandates may have helped to discourage or limit federal mandates, proposed legislation and regulations must pass through multiple steps and meet multiple conditions before being identified as containing mandates at or above UMRA's thresholds. In 2001 and 2002, the period of our review, we found that 5 of 377 statutes and 9 of 122 major or economically significant rules were identified as containing federal mandates at or above UMRA's thresholds. Despite the determinations made under UMRA, we found that some of the statutes and rules that had not triggered UMRA's requirements appeared to have potential financial impacts on affected nonfederal parties similar to those of actions that were identified as mandates at or above UMRA's thresholds. For example, at least 43 statutes and 65 rules issued in 2001 and 2002 resulted in new costs or other negative financial impacts that affected parties might perceive as unfunded or under funded mandates even though they did not meet UMRA's definition of a mandate.

In our most recent report, we found a wide variety of views and perspectives on UMRA specifically and federal mandates more generally. Not surprisingly, the comments provided fell into several broad categories or themes, specifically, (a) UMRA coverage, (b) UMRA enforcement, (c) other UMRA issues including the use and usefulness of the information generated under the Act and consultations with state and other governments, and (d) broader issues involving federal mandates included the design and funding of federal mandates and evaluating those mandates. Those issues discussed most frequently were UMRA's coverage, enforcement, and the evaluation of federal mandates. While there was some broad-based support by parties across most sectors that these are issues that warrant review and reconsideration, there was less agreement about suggested options for dealing with them.

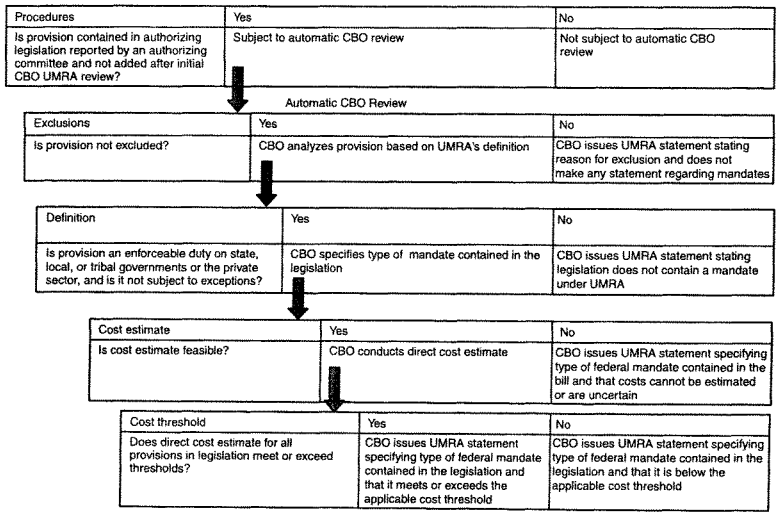
Identification of Mandates Under UMRA Is Complex

The procedures under UMRA for the identification and analysis of intergovernmental and private sector mandates are very complex. Moreover, some potential mandates are enacted through procedures that never require them to be reviewed under UMRA. For example, UMRA does not require the automatic review of potential mandates contained in appropriation bills, nor does the act cover rules that were issued as final

without having been preceded by a notice of proposed rulemaking. Even if proposed legislation or regulations are reviewed under UMRA, those provisions are subject to various definitions, exclusions, and exceptions before being identified as containing mandates at or above UMRA's cost thresholds. For example, UMRA does not apply to legislative provisions that cover constitutional rights, discrimination, emergency aid, accounting and auditing procedures for grants, national security, treaty ratification, and certain parts of Social Security. As figure 1 illustrates, a provision in legislation must pass through a multiple step process before the Congressional Budget Office prepares required statements identifying and estimating the costs of mandates in legislation that meet certain criteria and determines whether or not those estimated costs meet or exceed UMRA's thresholds.[4]

[4]UMRA has several titles. Title I requires congressional committees and the Congressional Budget Office to identify and provide information on potential federal mandates in certain legislation. Similarly, title II of UMRA requires federal agencies to prepare a written statement identifying the costs and benefits of federal mandates contained in certain regulations and consult with affected parties. For legislation, the thresholds are direct costs (in the first 5 fiscal years that the relevant mandates would be effective) of $50 million or more for intergovernmental mandates and $100 million or more for private sector mandates, while the threshold for regulations is expenditures of $100 million or more in any year. The dollar thresholds are in 1996 dollars and are adjusted annually for inflation.

Figure 1: The Multistep Process Necessary for CBO to Identify Federal Mandates in Proposed Legislation



Source: GAO.

Based on UMRA's requirements, we found that few provisions in statutes or rules are considered mandates as defined by UMRA. As mentioned previously, in 2001 and 2002, the period of our review, only 5 of the 377 statutes enacted and 9 of the 122 major rules issued contained federal mandates at or above UMRA's thresholds. All 5 statutes and 9 rules contained private sector mandates and only one final rule—an Environmental Protection Agency standard on arsenic in drinking water—contained an intergovernmental mandate.

Despite the determinations made under UMRA, nonfederal parties affected by federal actions viewed many more federal actions in statute and regulation as containing unfunded or under funded mandates. When we explored this issue, we found that some of the statutes and rules that had not triggered UMRA's requirements appeared to have potential financial impacts on affected parties similar to those of actions that had been flagged as containing mandates at or above UMRA' s thresholds. Specifically, we identified at least 43 statutes and 65 rules issued in 2001 and 2002 that resulted in new costs or other negative financial impacts on nonfederal parties that the affected parties might perceive as unfunded or under funded mandates even though they did not meet UMRA's definition of a mandate or did not meet or exceed UMRA's thresholds. For these statutes and rules, CBO or federal agencies most often had determined that the estimated direct costs or expenditures, as defined by UMRA, would not meet or exceed the applicable thresholds or that one or more of the other definitions, exclusions, or exclusions applied. These findings raised the question of whether UMRA, given its procedures, definitions, and exclusions, adequately captures and subjects to scrutiny federal statutory and regulatory actions that might impose significant financial or other burdens on affected nonfederal parties. To begin to address this question, you asked us to obtain the views of a diverse group of parties knowledgeable about UMRA and federal mandates.

Views of Parties Regarding UMRA and Unfunded Mandates

Parties from the various sectors provided a variety of comments but they generally fell into several broad themes. UMRA's coverage was the most frequently cited theme, with comments provided by all the sectors (academic/think tank, business, federal agencies, public interest advocacy groups, and state and local governments). Issues involving enforcement were the second most frequently cited but with far fewer parties providing comments. Other themes that emerged from the comments included the use and usefulness of the information generated under UMRA, UMRA's analytic framework, and consultation under UMRA. Finally, issues involving the design and funding and evaluation of federal mandates also emerged as themes.

UMRA Coverage Generally Viewed as a Weakness but a Few Parties Disagree

Given the findings from our May 2004 report, it's not surprising that UMRA's coverage, including its numerous definitions, exclusions, and exceptions, was the most frequently cited issue by parties from all five sectors. Most parties from the state and local governments, federal agency, business, and

academic/think tank sectors viewed UMRA's narrow coverage as a major weakness that leaves out many federal actions with potentially significant financial impacts on nonfederal parties. However, a few parties, from public interest advocacy groups and academic/think tank sectors, considered some of the existing exclusions important or identified UMRA's narrow scope as one of the Act's strengths.

The comments about weaknesses in UMRA's coverage ranged from general to specific. For example, some parties commented, in general, about the number of exclusions and exemptions. Others provided more specific comments, including points regarding issues with the exclusion of indirect costs and UMRA's cost thresholds for legislative and regulatory mandates, which result in excluding many federal actions that may significantly impact nonfederal entities. Others raised more fundamental concerns about the exclusions for appropriations and other legislation not covered by the Act and for rules issued by independent regulatory agencies, which are also not covered by UMRA but can result in provisions that contain mandates. CBO estimates that in 2004, 5 of the 8 laws containing federal mandates (as defined by UMRA) that it did not review before enactment, were appropriations acts.[5] Finally, parties from the state and local government sector also identified concerns about gaps in UMRA's coverage of federal preemption of state and local authority.[6] Although some preemptions are covered by UMRA such as those that preempt state or local revenue raising authority, they are covered only for legislative actions and not for federal regulations. According to CBO's 2005 report on unfunded mandates, "Over half of the intergovernmental mandates for

[5]CBO, *A Review of CBO's Activities in 2004 Under the Unfunded Mandates Reform Act* (Washington D.C.: March 8, 2005).

[6]Preemption refers to the power of the federal government to enact statutes that override state laws. This power derives from the supremacy clause of the United States Constitution, which states that "The Laws of the United States...shall be the supreme Law of the Land...any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. For example, the Internet Tax Freedom Act prohibits states from enacting a tax on Internet access or multiple or discriminatory taxes on electronic commerce between October 1998 and November 2004 and preempts any state or local laws enacted during this period. Pub. L. No. 105-277, Div. C, Tit. XI, § 1101 (1998) (amended 2004). Title I of UMRA only applies to legislation that prohibits states from raising revenue, such as the Internet Tax Freedom Act. 2 U.S.C. § 658(3)(A)(i). Other preemptions of states' regulatory authority are not subject to UMRA's enforcement scheme.

which CBO provided estimates [in 2004] were preemptions of state and local authority."[7]

Despite the widespread view in several sectors that UMRA's narrow coverage leaves out federal actions with potentially significant impacts on nonfederal entities, there was less agreement by parties about how to address this issue. The options ranged from general to specific but those most frequently suggested were:

- Generally revisit, amend, or modify the definitions, exceptions, and exclusions under UMRA and expand UMRA's coverage.
- Clarify UMRA's definitions and ensure their consistent implementation across agencies to ensure that all covered provisions are being included.
- Change the cost thresholds and/or definitions that trigger UMRA by, for example, lowering the threshold for legislative or executive reviews and expanding cost definitions to include indirect costs.
- Eliminate or amend the definitional exceptions for conditions of federal financial assistance or that arise from participation in voluntary federal programs.
- Expand UMRA coverage to all preemptions of state and local laws and regulations, including those nonfiscal preemptions of state and local authority.

As I mentioned previously, while most parties thought UMRA's narrow coverage was a weakness, a few parties from academic/think tank and public interest advocacy groups sectors view UMRA coverage differently. They viewed UMRA's narrow scope as one of its primary strengths. In fact, rather than expanding UMRA's coverage, these parties said that it should be kept narrow and that the exceptions and exclusions are needed. Between 1996 and 2004, CBO reports that of 5,269 intergovernmental statements, 617 had mandates and of 5,151 private sector statements, 732 had

[7]CBO's March 2005 UMRA report.

mandates.[8] Of the mandates identified by CBO, about 9 percent of the intergovernmental mandates and almost 24 percent of private sector mandates had costs that would exceed the thresholds. As discussed at our January 26, 2005, symposium on UMRA and federal mandates, some parties also identified a number of suggestions that they could not support, namely any attempt to expand UMRA to cover constitutional or civil rights or excluding private sector mandates.

UMRA Enforcement

Issues involving UMRA enforcement were the second most frequently cited issue but with far fewer parties from each sector commenting. Parties across and within sectors had differing views on both the enforcement mechanisms provided in the law itself and the level of effort exercised by those responsible for implementing UMRA's provisions. Many of the comments focused on the point of order—one of the primary tools used to enforce UMRA requirements in title I of UMRA. Although the point of order provides members of Congress the opportunity to raise challenges to hinder the passage of legislative provisions containing an unfunded intergovernmental mandate, views were mixed about its effectiveness. Those representing state and local government and federal agency sectors said that the point of order should be retained because it has been successful in reducing the number of unfunded mandates by acting as a deterrent to their enactment, without greatly impeding the process. Conversely, some parties primarily from academic/think tank, business, and federal agency sectors did not believe the point of order has been effective in preventing or deterring the enactment of mandates and suggested otions to strengthen it. Moreover, others commented about its infrequent use.[9]

[8]According to CBO's 2005 report, the numbers represent official mandate statements transmitted to Congress by CBO. CBO prepared more intergovernmental mandate statements than private-sector mandate statements because in some cases it was asked to review a specific bill, amendment, or conference report solely for intergovernmental mandates. These numbers also exclude preliminary reviews and informal estimates for other legislative proposals. Finally, mandate statements may cover more than one mandate. Similarly, CBO may address a single mandate in more than one statement.

[9]In the last 10 years, at least 13 points of order under UMRA were raised in the House of Representatives and none in the Senate. Only 1 of the 13, regarding a proposed minimum wage increase as part of the Contract with America Advancement Act in 1996, resulted in the House voting to reject consideration of a proposed provision.

Some parties said the point of order needs to be strengthened by making it more difficult to defeat. One suggested revision was to require a three-fifths vote in Congress, rather than a simple majority, to overturn a point of order. This change was believed to strengthen the "institutional salience of UMRA" and to ensure that no mandate under UMRA could be enacted if it was supported only by a simple majority. As you know, on March 17, 2005, the Senate approved the fiscal year 2006 budget, which included a provision that would increase to 60 the number of votes needed to overturn an UMRA point of order in the Senate. [10]

A few parties from the federal agency and academic/think tank sectors commented on another enforcement mechanism for regulatory mandates—UMRA's judicial review provision, which subjects any agency compliance or noncompliance with certain provisions in the Act to judicial review. Most felt that this mechanism does not provide meaningful relief or remedies if federal agencies have not complied with the requirements of UMRA because of its limited focus. Specifically, judicial review is limited to requirements that pertain to preparing UMRA statements and developing federal plans for mandates that may significantly impact small government agencies. Furthermore, if a court finds that an agency has not prepared a written statement or developed a plan for one of its rules, the court can order the agency to do the analysis and include it in the regulatory docket for that rule; but the court may not block or invalidate the rule. The few parties commenting about judicial review suggested expanding it to provide more opportunities for judicial challenges and more effective remedies when noncompliance of the Act's requirements occur. A few parties primarily from the academic/think tank and public interest advocacy groups sectors said that efforts to limit or stop implementation of mandates through legal action might be unwarranted, because UMRA was not intended to preclude the enactment of federal mandates. They were primarily concerned about litigation being used to slow down the regulatory process.

Commenting parties from business, federal agency, and state and local governments sectors questioned some federal agencies' compliance with UMRA requirements and the effectiveness of enforcement mechanisms to address this perceived noncompliance. They mentioned the failure of some agencies to consult with state, local and tribal governments when

[10]As of April 11, 2005, the fiscal year 2006 budget was in conference negotiations with the House of Representatives.

developing regulations that may have a significant impact on nonfederal entities. Likewise, at least one party of each of the three sectors expressed concerns about the lack of accurate and complete information provided by federal agencies, which are responsible for determining whether a rule includes a mandate and whether it exceeds UMRA's thresholds. The perceived lack of compliance with certain UMRA requirements generated several suggested changes to UMRA. However, the only suggestion that had support across parties from multiple sectors was to replicate CBO's role for legislative mandates by creating a new office within OMB that would be responsible for calculating the cost estimates for federal mandates in regulations.

Parties Across All Sectors Raise Other Issues Regarding UMRA, but Little or No Consensus Emerges

Parties from all sectors also raised a number of other issues about the use and usefulness of UMRA information (in decreasing the number of unfunded mandates), UMRA's analytic framework, and federal agency consultations with state, local, and tribal governments, but there was no consensus in their views about how these issues should be addressed. The parties provided mixed but generally positive views about the use and usefulness of UMRA information. Some parties commented that the Act does increase awareness of unfunded mandates but thought more could be done to increase its usefulness. However, the only option that attracted multiple supporters was a suggestion for a more centralized approach for generating information within the executive branch similar to the suggestions mentioned about improving enforcement. Parties also provided a number of comments about the provisions of UMRA that establish the analytic framework for cost estimates, which generated a few suggested options aimed at improving the quality of information generated such as including indirect costs for threshold purposes and clarifying certain definitions (e.g. "federal mandates" and "enforceable duty"). UMRA's consultation also emerged as a recurring theme within and across certain sectors. The comments generally were about a perceived lack of consistency across agencies when consulting with state and local governments.

Sectors Also Raise Concerns About Federal Mandates in General

Parties from all sectors also raised a number of broader issues about federal mandates—namely, the design and funding and evaluation of federal mandates—and suggested a variety of options. While most of the comments were about the evaluation of federal mandates, some parties also raised concerns about the design and funding of mandates, which varied across sectors. Issues raised include: (1) costs for mandates may

vary across different affected nonfederal entities, (2) mismatches between the funding needs of parties compared to federal formulas, and (3) effects of the timing of federal actions and program changes on nonfederal parties. Most often, the comments focused on a perceived mismatch between the costs of federal mandates and the amount of federal funding provided to help carry them out. Others raised issues about the need to address the incentives for the federal government to "over leverage" federal funds by attaching (and often revising) additional conditions for receiving the funding.

Parties, primarily from the academic/think tank sector, suggested a wide variety of options to address their concerns, but there was no broad support for any option. For example, while some parties across four sectors suggested providing waivers or offsets to reduce the costs of the mandates on affected parties or "off ramps" to release them of some responsibilities to fulfill the mandates in a given year if the federal government does not provide sufficient funding. Others said that compliance with federal mandates should not be made contingent on full federal funding and off ramps and waivers can introduce other issues. The option of building into the design of federal mandates "look back" or sunset provisions that would require retrospective analyses of the mandates' effectiveness and results was also suggested.

About half the parties, representing most sectors commented on the evaluation of federal mandates and offered suggestions to improve mandates, whether covered by the Act or not. Not surprisingly parties in the academic/think tank sector, who felt that the evaluation of federal mandates was especially important because there is a lack of information about the effects of federal mandates on affected parties, provided most of the comments. The issues raised included concerns about the lack of focus on evaluating the effectiveness (results) of the mandates; the questionable accuracy and completeness of cost estimates, particularly ones prepared by federal agencies, and the lack of evaluation of the impact of mandates.

All of these issues are related and the concerns expressed touched upon the need to adequately evaluate mandates in the context of costs, benefits, impacts, and effectiveness of the mandated actions to achieve desired goals. Parties across the sectors suggested that various forms of retrospective analysis are needed for evaluating federal mandates after they are implemented. Some suggestions for retrospective analysis focused on costs and effectiveness of mandates, including comparing them to the estimates and expected outcomes. Others from the state and local

governments sector also suggested focusing on the cumulative costs and effects of mandates—the impact of various related federal actions, which when viewed collectively, may have a substantial impact although any one may not exceed UMRA's thresholds. Finally, parties primarily from the academic/think tank sector suggested examining local and regional impacts of mandates and analyzing the benefits of federal mandates, when appropriate, not just costs.

Observations Regarding Next Steps

As Congress reevaluates UMRA on its 10-year anniversary, the information we provided over the past year provides some useful insights. First, although parties from various sectors generally focused on the areas of UMRA and federal mandates that they would like to see fixed, they also recognized positive aspects and benefits of UMRA. In particular, they commented about the attention UMRA brings to potential consequences of federal mandates and how it serves to keep the debate in the spotlight. I also found it notable that no one suggested repealing UMRA.

Second, when considering changes to UMRA itself, UMRA's narrow coverage stands out as the primary issue for most sectors because it excludes so many actions from coverage under UMRA and contributes to complaints about unfunded or under funded mandates as discussed in both of our reports. Even with an issue such as coverage on which there was some general agreement across most sectors, the variety of suggested options indicates that finding workable solutions will require including all affected parties in the debate.

Third, one of the challenges for Congress and other federal policy makers is to determine which issues and concerns about federal mandates are best addressed in the context of UMRA and which are best considered as part of more expansive policy debates on federal mandates and federalism. On broader policy issues concerning federal mandates, various parties recognized that UMRA is only part of the solution and the issue raises broader public policy questions about structuring and funding mandates in general. These parties made it clear that retrospective analysis is needed to ensure that mandates are achieving their desired goals, which could help provide additional accountability for federal mandates and provide information that could lead to better decisions regarding the design and funding of mandate programs.

Finally, as we move forward in an environment of constrained fiscal resources, the issue of unfunded mandates raises broader questions about

the assignment of fiscal responsibilities within our federal system. Reconsideration of such responsibilities begins with the observation that most major domestic programs, costs, and administrative responsibilities are shared and widely distributed throughout our system. Part of this public policy debate includes a reexamination of the federal government's role in our system and a need to sort out how responsibilities for these

kinds of programs should be financed in the future.[11] If left unchecked, unfunded mandates can weaken accountability and remove constraints on decisions by separating the enactment of benefit programs from the responsibility for paying for these programs. Likewise, 100 percent federal financing of intergovernmental programs can pervert fiscal incentives necessary to ensure proper stewardship at the state and local level for shared programs.

Mr. Chairman, once again I appreciate the opportunity to testify on these important issues and I would be pleased to address any questions you or other members of the committee might have.

Contacts and Acknowledgements

If additional information is needed regarding this testimony, UMRA or federal mandates, please contact Orice M. Williams at (202) 512-5837 or williamso@gao.gov or Tim Bober at (202) 512-4432 or bobert@gao.gov. Other key contributors to the work which was associated with this testimony were Tom Beall, Kate Gonzalez, and Boris Kachura.

[11]For a broader discussion of our work on 21st century challenges see, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington, D.C.:February 2005).

STATEMENT OF JOHN D. GRAHAM, PH.D.
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENTAL MANAGEMENT
UNITED STATES SENATE
APRIL 14, 2005

Good afternoon, Mr. Chairman, and Members of this Committee. I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. I appreciate this opportunity to testify before you today on the Unfunded Mandates Reform Act of 1995 (the Act).

As you know, an important reason for the enactment of the Act was to ensure that Congress and the Executive Branch better understand and consider the impact of laws and regulations on our intergovernmental partners. This Administration is firmly supportive of the principles behind the Act. In fact, we have worked to increase the opportunities for our intergovernmental partners to participate fully in the regulatory process.

OIRA plays a role in the implementation of Title II of the Act, which addresses the Executive Branch. Title II begins with a general directive for agencies to assess, unless otherwise prohibited by law, the effects of their rules on other levels of government and on the private sector. Title II also describes specific analyses and consultations that

agencies must undertake for rules that result in expenditures of $100 million or more in any year (adjusted annually for inflation) by State, local, and tribal governments in the aggregate, or by the private sector. Such rules must be accompanied by written statements that describe in detail the required analyses. The analyses are to include consideration of a reasonable number of alternatives and, except in certain circumstances, the selection from among those alternatives of the "least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule." This analytic approach is at the heart of OIRA's role in the implementation of the Act, as it is generally consistent with our own regulatory review requirements under Presidential Executive Order 12866 (1993). When reviewing regulatory actions from Federal agencies, we work to ensure that the rulemaking complies with the Act's consultation and analysis requirements. However, in keeping with the spirit of the Act, we work with agencies to reduce regulatory burden, regardless of whether the expenditures imposed by a particular regulatory action rise to the Act's threshold.

The Act also directs OMB to send copies of required agency analyses to the Congressional Budget Office (CBO), and to submit an annual report to Congress on agency compliance with Title II. Our 2004 submission to CBO covered rules that met the $100 million threshold from 2002 through 2003. It contained rules from the Departments of Agriculture, Energy, Health and Human Services, Labor, and Transportation, and the Environmental Protection Agency. All were private sector mandates.

In our 2004 Report to Congress, we determined that, in Fiscal Year 2003, Federal agencies issued 17 rules that were subject to the Act because they require expenditures in any year by State, local, and tribal governments, in the aggregate, or by the private-sector, of at least $100 million in any one year (adjusted annually for inflation).

Of the 17 covered rules, The Department of Agriculture issued one proposed rule, the Department of Health and Human Services issued three proposed rules and one final rule, the Department of Transportation issued two proposed and two final rules, and the Environmental Protection Agency issued six proposed and two final rules. There were no rules meeting the Act's threshold based on their estimated impact on State, local, or tribal governments, in the aggregate. All of the rules (both proposed and final) were covered by the Act because of anticipated expenditures by the private sector.

However, we recognize that State, local, and tribal governments are often burdened by Federal regulation, either through direct requirements to incur costs or through a loss of flexibility to perform their government functions. Our intergovernmental partners play a vital role in the provision of government services. They have the major role in providing domestic public services, such as public education, law enforcement, road building and maintenance, water supply, and sewage treatment. However, over the past two decades, State, local, and tribal governments increasingly have expressed concerns about the difficulty of complying with Federal requirements without additional Federal resources.

The Act requires agencies to "develop an effective process" for obtaining "meaningful and timely input" from State, local, and tribal governments in developing rules with

significant intergovernmental mandates. The Bush Administration has worked to involve State and local governments earlier in the rulemaking process so that the consultation envisioned by the Act is meaningful.

As a result, the scope of consultation activities undertaken by Federal departments such as Homeland Security, Agriculture, Commerce, Education, Health and Human Services, the Interior, Justice, Labor, Transportation, and the Environmental Protection Agency demonstrates this Administration's commitment to building strong relationships with our intergovernmental partners based on the constitutional principles of federalism embodied in the Act. Federal agencies are actively consulting with State, local, and tribal governments to ensure that regulatory activities are consistent with the requirements of the Act. This year's report shows an increased level of engagement, as several agencies have begun major consultation initiatives.

Federal agencies are striving to increase flexibility in the implementation of programs by issuing regulations that allow for alternative compliance approaches. For example, in the Food Stamp High Performance Bonus Final Rule, USDA sets goals for improved performance in administering the program but doesn't mandate how States must achieve them. Instead, the rule creates awards for the best and most improved performers in a few separate areas.

A new proposal from HHS on the Child Care and Development Fund (CCDF) would revise the program regulations to permit States to designate multiple public and/or private

entities as eligible to receive private donations that may be certified as child care expenditures for purposes of receiving Federal CCDF matching funds. This increased flexibility will allow States to meet CCDF statutory match requirements through a combination of direct State funds and leveraged local resources.

Additionally, OMB has developed guidelines to assist Federal agencies in complying with the Act that are based on the following general principles:

- intergovernmental consultations should take place as early as possible, beginning before issuance of a proposed rule and continuing through the final rule stage, and be integrated explicitly into the rulemaking process;
- agencies should consult with a wide variety of State, local, and tribal officials;
- agencies should estimate direct costs and benefits to assist with these consultations;
- the scope of consultation should reflect the cost and significance of the mandate being considered;
- effective consultation requires trust and significant and sustained attention so that all who participate can enjoy frank discussion and focus on key priorities; and
- agencies should seek out State, local, and tribal views on costs, benefits, risks, and alternative methods of compliance, and whether the Federal rule will harmonize with and not duplicate similar laws in other levels of government.

Although much has been done to effectively implement the Act, more work remains in order to ensure that State, local, and tribal governments truly feel like intergovernmental partners in the rulemaking process. I look forward to working with Congress toward this important goal. That concludes my prepared testimony. If you have any questions, I would be happy to answer them.

CBO TESTIMONY

Statement of
Elizabeth Robinson
Deputy Director

A Review of CBO's Activities Under the Unfunded Mandates Reform Act

before the
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
U.S. Senate

April 14, 2005

This document is embargoed until 10 a.m. (EDT), Tuesday, April 14, 2005. The contents may not be published, transmitted, or otherwise communicated by any print, broadcast, or electronic media before that time.

CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to discuss the Unfunded Mandates Reform Act of 1995 (UMRA) and the role of the Congressional Budget Office (CBO) in implementing that legislation. CBO's review of its activities in 2004 under that law was released last month, and in January the agency published an issue brief that focused specifically on intergovernmental mandates. My statement this afternoon will summarize those reports' major conclusions, highlighting in particular those aspects of UMRA that pertain to intergovernmental mandates.

The federal government sometimes requires state, local, and tribal governments and the private sector to expend resources to achieve certain goals. In 1993, for example, the National Voter Registration Act required states to simplify and expand the procedures for registering citizens to vote. Since that time, states have spent millions of dollars to comply with those requirements.

Similarly, the federal government sometimes prohibits state and local governments from engaging in activities that generate income. In 2004, for example, the Internet Tax Nondiscrimination Act temporarily prohibited states from imposing taxes on various forms of Internet access. That preemption, CBO estimates, will result in losses of revenue by state and local governments totaling more than $325 million through 2007.

UMRA focuses attention on the costs of such federal mandates. In particular, UMRA was intended to promote informed decisions by the Congress about the appropriateness of federal mandates and about the desirability of providing financial assistance for the costs of intergovernmental mandates.

Since UMRA took effect in 1996, the Congress has enacted few federal mandates that impose significant costs. Although the Congress has rarely used the law's explicit enforcement mechanisms when considering bills, it has changed several pieces of legislation before enactment to either eliminate mandates or lower their costs.

Some public officials have concerns, however, about the kinds of legislative provisions that are covered and about how the law defines mandates, particularly as they relate to other levels of government. UMRA's application is limited in three ways:

- The law does not apply to certain broad policy areas, such as national security, constitutional rights (including voting rights), and parts of the Social Security program;
- New conditions imposed on federal grant programs are not considered mandates in most cases; and
- The law focuses on mandates with costs above a specified level, so UMRA's enforcement mechanisms do not affect many preemptions of state and local authority.

As a result, some federal requirements that state and local officials view as burdensome to their jurisdictions are not considered unfunded mandates under UMRA. Those requirements include, for example, provisions of the No Child Left Behind Act, the Individuals with Disabilities Education Act, the Help America Vote Act, and the State Criminal Alien Assistance Program, as well as many changes to the Medicaid program.

The Definition of a Federal Mandate

According to UMRA, a federal mandate can take several forms: an enforceable duty, certain changes in large entitlement grant programs, or a reduction in federal funding for an existing mandate.

- *An enforceable duty.* Any provision in legislation, statute, or regulation that would compel or explicitly prohibit action on the part of state, local, or tribal governments or the private sector is a mandate unless that duty is imposed as a condition for receiving federal aid or arises from participating in a voluntary federal program.
- *Certain changes in large entitlement programs.* In the case of some large entitlement programs (those that provide $500 million or more annually to state, local, or tribal governments), a new condition on or a reduction in federal financial assistance can be a mandate—but only if states lack the flexibility to offset the new costs or the loss of federal funding with reductions elsewhere in the program.

- *A reduction in federal funding for an existing mandate.* A provision to reduce or eliminate the amount of federal funding authorized to cover the costs of an existing mandate would itself be considered a mandate under UMRA.

UMRA's Requirements

Title I of UMRA requires CBO to prepare mandate statements for bills that are approved by authorizing committees. In those statements, CBO must address whether the direct costs of federal mandates in a bill would be greater than the thresholds established in the law and identify any funding that the bill would provide to cover those costs. In 2004, the period covered by CBO's recent report, those thresholds, which are adjusted annually for inflation, were $60 million for intergovernmental mandates and $120 million for mandates imposed on the private sector. (This year, they are $62 million and $123 million, respectively.) If CBO cannot estimate the cost of a mandate, its statement must indicate that such an estimate is not feasible and explain why.

UMRA also established procedural rules for both the House and the Senate that enforce the law's requirements under title I. The rules are designed to make it more difficult for the Congress to consider legislation unless it has some information about any mandates that the legislation contains. Such rules are generally enforced through the use of points of order. Thus, a point of order can be raised in the House or Senate against the consideration of legislation if the committee reporting a bill has not published a statement by CBO on intergovernmental and private-sector mandates. In addition, Members of Congress may raise a point of order against legislation that creates an intergovernmental mandate with costs above the threshold specified in UMRA unless the legislation authorizes or provides funding to cover those costs. Although such procedural requirements do not preclude the Congress from passing bills that contain mandates, they may establish additional steps and possible hurdles that can help focus policymakers' deliberations on unfunded mandates.

Trends in Federal Mandates Since UMRA's Enactment

CBO has been reviewing bills according to the provisions of UMRA for nine years. Most of the legislation that the Congress considered during that time did not contain federal mandates as UMRA defines them. Of the roughly 5,200 bills and other legislative proposals that CBO reviewed between 1996 and 2004 (mostly when they were reported out of committee), 617, or 12 percent, contained intergovernmental mandates, and 732, or 14 percent, contained private-sector mandates (see Table 1). Those percentages have varied only slightly from one Congress to another.

Most of the mandates that CBO examined would not have imposed costs higher than the thresholds set by UMRA. About 1 percent of the bills that CBO reviewed had intergovernmental mandates whose costs exceeded the threshold established in the law, and another 1 percent had costs that could not be estimated. For private-sector mandates, about 3 percent of the bills had mandates whose costs were above the statutory threshold, and another 2 percent had mandates whose private-sector costs could not be estimated.

In the past nine years, policymakers enacted five intergovernmental mandates whose costs, in CBO's estimation, were above the UMRA threshold:

- An increase in the minimum wage (Public Law [P.L.] 104-188, enacted in 1996). CBO estimated that the required increase would cost state and local governments (as employers) more than $1 billion during the first five years that it was in effect.

- A reduction in federal funding to administer the Food Stamp program (P.L. 105-185, enacted in 1998). That funding cut costs the states between $200 million and $300 million a year, in CBO's estimation.

- A preemption of state taxes on premiums for certain prescription drug plans (P.L. 108-173, enacted in 2003). Under that preemption, states will lose about $70 million in revenues in 2006 (the first year in which the mandate will be in effect), increasing to about $95 million in 2010, CBO estimates.

- A temporary preemption of state authority to tax certain Internet services and transactions (P.L. 108-435, enacted in 2004). That preemption (which lasts until 2007) will result in revenue losses to state and local governments totaling at least $325 million through 2007, according to CBO's estimates.

Table 1.

Number of CBO's Mandate Statements for Bills, Proposed Amendments, and Conference Reports, 1996 to 2004

	1996[a]	1997	1998	1999	2000	2001	2002	2003	2004	Total, 1996-2004
Intergovernmental Mandates										
Total Number of Statements Transmitted	718	521	541	573	706	389	649	615	557	5,269
Number of Statements That Identified Mandates	69	64	64	81	77	50	60	86	66	617
Mandates whose costs would exceed the threshold[b]	11	8	6	4	3	4	6	7	9	58
Mandates whose costs could not be determined to exceed the threshold	6	7	7	0	1	3	5	5	2	36
Private-Sector Mandates										
Total Number of Statements Transmitted	673	498	525	556	697	389	645	613	555	5,151
Number of Statements That Identified Mandates	91	65	75	105	86	66	73	100	71	732
Mandates whose costs would exceed the threshold[b]	38	18	18	20	6	18	19	24	14	175
Mandates whose costs could not be determined to exceed the threshold	2	5	9	13	7	8	14	18	10	86

Source: Congressional Budget Office.

Notes: The numbers in this table represent official mandate statements transmitted to the Congress by CBO. CBO prepared more intergovernmental mandate statements than private-sector mandate statements because in some cases it was asked to review a specific bill, amendment, or conference report solely for intergovernmental mandates. (In those cases, no private-sector analysis was transmitted to the requesting Member or Committee.) CBO also completed a number of preliminary reviews and informal estimates for other legislative proposals, which are not included in this table.

Mandate statements may cover more than one mandate. Also, because the same mandate sometimes appears in multiple bills, CBO may address a single mandate in more than one statement.

a. CBO began preparing mandate statements in January 1996 in the middle of the 104th Congress. The figures for 1996 reflect bills on the calendar in January of that year and bills reported by authorizing committees thereafter.

b. In 1996, the thresholds, which are adjusted annually for inflation, were $50 million for intergovernmental mandates and $100 million for private-sector mandates. They rose to $60 million and $120 million, respectively, in 2004.

- A requirement that state and local governments meet certain standards for issuing driver's licenses, identification cards, and vital-statistics documents (P.L. 108-458, enacted in 2004). CBO estimates that state and local government will have to spend more than $100 million over the 2005-2009 period to comply with those standards and that the costs in a least one year of the next five will exceed the UMRA threshold. The act authorizes the appropriation of funds to provide grants to state and local governments to pay for those costs.

During the past nine years, the Congress has considered and enacted more legislation that contained private-sector mandates than legislation containing intergovernmental mandates. Twenty-six private-sector mandates whose costs CBO determined to be higher than the statutory threshold have been enacted since 1996:

- Eight revenue-raising provisions in the tax code, which require individuals or firms to pay more in taxes;

- Five mandates that affect health insurance—requirements for portability of insurance coverage, minimum time for maternity stays, changes in Medicare coverage, and parity in insurance coverage providing mental health and other medical benefits, as well as various requirements that apply to drug manufacturers;
- Five mandates that affect specific industries—telecommunications reform, changes in milk pricing, country-of-origin labels for certain foods, a new safety requirement for automobiles, and new requirements for credit agencies, lenders, and merchants that handle credit transactions;
- Four mandates involving fees—specifically, a fee on manufacturers and importers of tobacco products, increases in existing fees and new fees for certain patent and trademark services, new filing fees for H-1B visas, and a fee on airline travel to fund airport security;
- Two mandates—one increasing the minimum wage and the other raising federal employees' contributions for retirement—that affect a worker's take-home pay; and
- One mandate that imposes new requirements on sponsors of immigrants and one that changes procedures for collecting and using campaign contributions.

Legislation That Is Not Subject to UMRA

In enacting UMRA, the Congress recognized that instances might arise in which budgetary considerations—such as who would bear the costs of legislation—should not be part of the debate about a legislative proposal. For that reason, not all legislation is subject to UMRA's requirements. The law excludes from a review for possible mandates any legislation that:

- Enforces the constitutional rights of individuals,
- Establishes or enforces statutory rights that prohibit discrimination,
- Provides emergency aid at the request of another level of government,
- Requires compliance with accounting and auditing procedures for grants,
- Is necessary for national security or the ratification of a treaty, or
- Relates to title II of Social Security (Old-Age, Survivors, and Disability Insurance benefits).

About 2 percent of the bills that CBO reviews each year contain provisions that fit within those exclusions. Most such provisions involve national security, constitutional rights, or Social Security and would not impose substantial costs, in CBO's estimation.

One exception to that general rule, however, was the Help America Vote Act (P.L. 107-252, enacted in 2002). That law, which concerned the constitutional rights of citizens to vote, imposed costly requirements on state and local governments. However, because of UMRA's exclusions, CBO did not identify those requirements as mandates or estimate their costs as part of its review, and the requirements were not subject to a point of order. P.L. 107-252 authorized appropriations to help states carry out the requirements, and $3.1 billion has been appropriated for that purpose.

Federally Imposed Costs That Are Not Considered Mandates Under UMRA

Certain types of federal requirements and programs, including some that state and local governments find onerous or not adequately funded, do not fall within UMRA's definition of a mandate. In particular, conditions for obtaining most federal grants—even new conditions on existing grant programs—are generally not considered mandates under the law. And although UMRA contains a special provision for large entitlement programs (such as Medicaid and Temporary Assistance for Needy Families) under which grant conditions or reductions in funding could be considered mandates, that provision has applied to few of the legislative changes to those programs. Provisions for similar "carve-outs" of programs affecting private-sector entities are not found in UMRA.

Grant Conditions

According to UMRA, the conditions attached to most forms of federal aid (including most grant programs) are not mandates. Yet complying with such conditions can sometimes be burdensome. In particular, states consider

new conditions on existing grant programs to be duties not unlike mandates. Two often-cited examples of such conditions are the requirements for receiving federal funding under the No Child Left Behind Act and the Individuals with Disabilities Education Act. Those laws require school districts to undertake many activities—including, respectively, designing and implementing statewide achievement tests and preparing individualized education plans for disabled children—but only if they wish to receive certain federal education grant funds. The federal assistance that states receive if they comply is substantial: the federal government appropriated about $36 billion in 2005 for elementary and secondary education programs, most of it authorized under those two laws.

CBO has identified hundreds of bills that would impose requirements on state, local, or tribal governments if they chose to accept federal assistance. In most cases, however, such associated costs would not be significant, according to CBO's estimates, or would be covered if the federal funding authorized in the bills was appropriated.

UMRA's Special Rule for Large Entitlement Programs

Although conditions for receiving federal grants are generally not mandates under UMRA, the law makes an exception for some large grant programs. Federal entitlement programs that provide $500 million or more annually to state, local, or tribal governments receive unique treatment under UMRA. Specifically, any legislative proposal that would increase the stringency of conditions for, or cap or decrease federal financial assistance under, such programs would be a mandate if those governments lacked the authority to offset the new costs by amending their responsibilities for financing and carrying out those programs.

That special definition of a mandate currently applies to nine programs: Medicaid; Temporary Assistance for Needy Families; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Payments for Job Opportunities and Basic Skills; and Child Support Enforcement.

CBO has reviewed scores of proposals that affect those large grant programs since UMRA was enacted. In most cases, CBO concluded that even if new conditions or reductions in federal financial assistance imposed significant costs, state or local governments generally had enough flexibility to offset those costs by changing either benefit levels or enrollment requirements. In 1997, for example, upon reviewing the President's proposal for a cap on federal Medicaid spending per beneficiary, CBO determined that it did not contain a mandate as defined in UMRA. Although the main effect of that proposal was to limit the federal government's financial responsibility under Medicaid, CBO determined that the cap did not constitute a mandate because states had the flexibility to offset the loss of federal funds by making programmatic changes. For example, they could eliminate or reduce some optional services (such as prescription drugs or dental services) or choose not to serve some optional beneficiaries (such as the medically needy or children or pregnant women) who had family income above certain levels. Those options give states substantial flexibility: some estimates indicate that more than half of Medicaid spending by the states is for optional services or optional categories of beneficiaries. That flexibility varies by state, and such changes often are politically unpalatable or would run counter to other policy goals. Nevertheless, the additional costs resulting from federal actions—though quite real—could be offset by changes in state or local policies.

UMRA's Treatment of Preemptions of State and Local Law

In its mandate statements for bills, CBO identifies explicit preemptions of state law as intergovernmental mandates; over the past nine years, about half of the intergovernmental mandates that CBO identified were such preemptions. However, mandates whose total direct costs are below the statutory threshold—which is usually the case with preemptions of state law—are not subject to the point of order under UMRA that relates to the threshold, even if those mandates may restrict state and local authority. As a result, the legislative hurdles set up by UMRA have not greatly affected the consideration or enactment of such preemptions. (The only exceptions involved preemptions that would significantly affect states' taxing authority, such as those in the Internet Tax Freedom Act of 1997 and the Medicare Prescription Drug and Modernization Act of 2003.)

Proposals to Expand UMRA

The Unfunded Mandates Reform Act has increased both the demand for and the supply of information regarding

the costs of federal mandates. Moreover, that information has played a role in Congressional debate about several issues over the past nine years. In many of those cases (such as requirements that driver's licenses show Social Security numbers, a moratorium on certain taxes on Internet services, the preemption of state security fees, and requirements in the farm bill affecting the contents of milk), the information provided by CBO under UMRA played a role in the Congress's decisions to reduce costs.

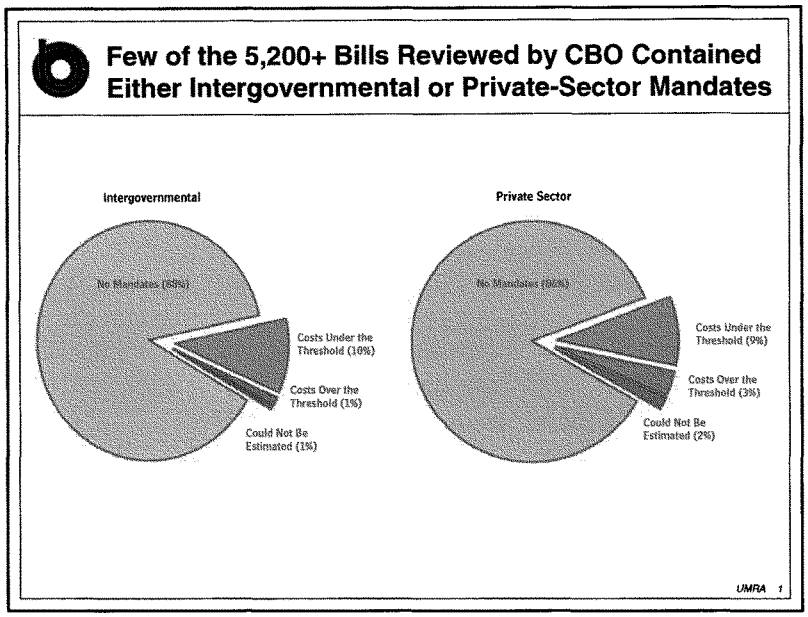
To date, lawmakers have made only one, relatively minor, change to UMRA. The State Flexibility Clarification Act of 1999 (P.L. 106-141) requires authorizing committees and CBO to provide more information in committee reports and mandate statements for legislation that would affect the large entitlement grant programs discussed above. In general, that requirement for additional information applies to few bills and has affected no legislation reported by authorizing committees since the requirement was enacted.

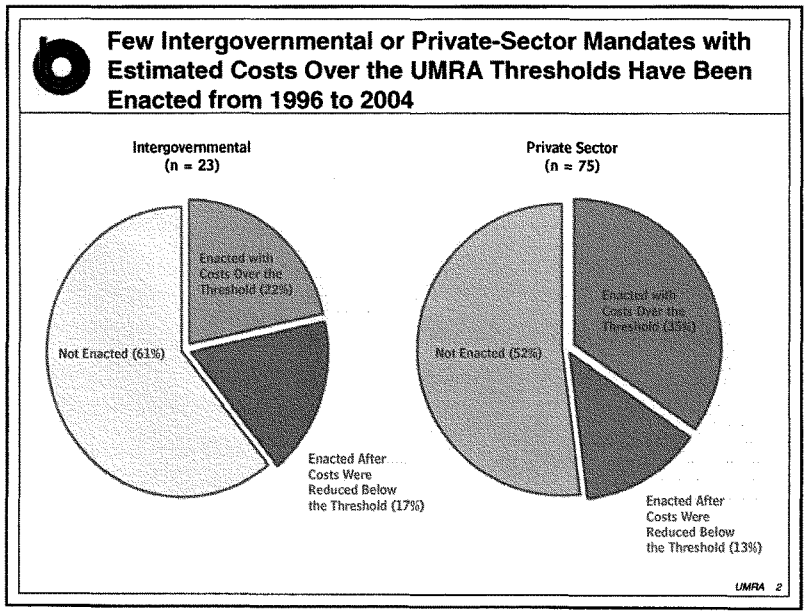
The Senate-passed budget resolution (S.Con.Res. 18) for fiscal year 2006 also contains a change to UMRA. S.Con.Res. 18 would increase the number of votes necessary to sustain a point of order under UMRA in the Senate from a simple majority to a 60-vote supermajority.

Since UMRA's enactment, lawmakers and other interested parties have proposed several additional ways to expand or change title I. Most proposals seek to increase the types of bills that would be subject to UMRA's cost-estimating and point-of-order provisions. One proposal would build on UMRA's perceived success in focusing Congressional attention on unfunded intergovernmental mandates by expanding the law to allow for a point of order against bills that contain private-sector mandates with costs over the statutory threshold. (The law currently allows such a point of order for intergovernmental mandates.) That kind of expansion could establish an additional hurdle for private-sector mandates and could increase the demand for additional information about their costs.

Another proposal would expand UMRA's definition of a mandate so that a change to an entitlement program that imposed new conditions on states or that decreased federal funding by more than the UMRA threshold would constitute an intergovernmental mandate unless the bill making the change also gave states and localities additional flexibility to offset the new costs. Both of those proposals were included in the Mandates Information Act, which was considered by the 105th and 106th Congresses and introduced in the 107th Congress—but was not enacted.

Other proposals to change or expand UMRA have included broadening the definition of an intergovernmental mandate to include new conditions on any existing grant program; narrowing the exclusions discussed above to apply only to the provisions allowing for a point of order and not to the requirement that CBO provide cost information; and eliminating the threshold so that any mandate—regardless of its costs—could trigger a point of order. Such a change would allow a point of order to be raised whenever the Congress was considering bills that would preempt state and local authority.


Few of the 5,200+ Bills Reviewed by CBO Contained Either Intergovernmental or Private-Sector Mandates
Intergovernmental
No Mandates (88%)
Costs Under the Threshold (10%)
Costs Over the Threshold (1%)
Could Not Be Estimated (1%)
Private Sector
No Mandates (86%)
Costs Under the Threshold (9%)
Costs Over the Threshold (3%)
Could Not Be Estimated (2%)
UMRA 1


Few Intergovernmental or Private-Sector Mandates with Estimated Costs Over the UMRA Thresholds Have Been Enacted from 1996 to 2004
Intergovernmental
(n = 23)
Enacted with Costs Over the Threshold (22%)
Not Enacted (61%)
Enacted After Costs Were Reduced Below the Threshold (17%)
Private Sector
(n = 75)
Enacted with Costs Over the Threshold (35%)
Not Enacted (52%)
Enacted After Costs Were Reduced Below the Threshold (13%)
UMRA 2

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A
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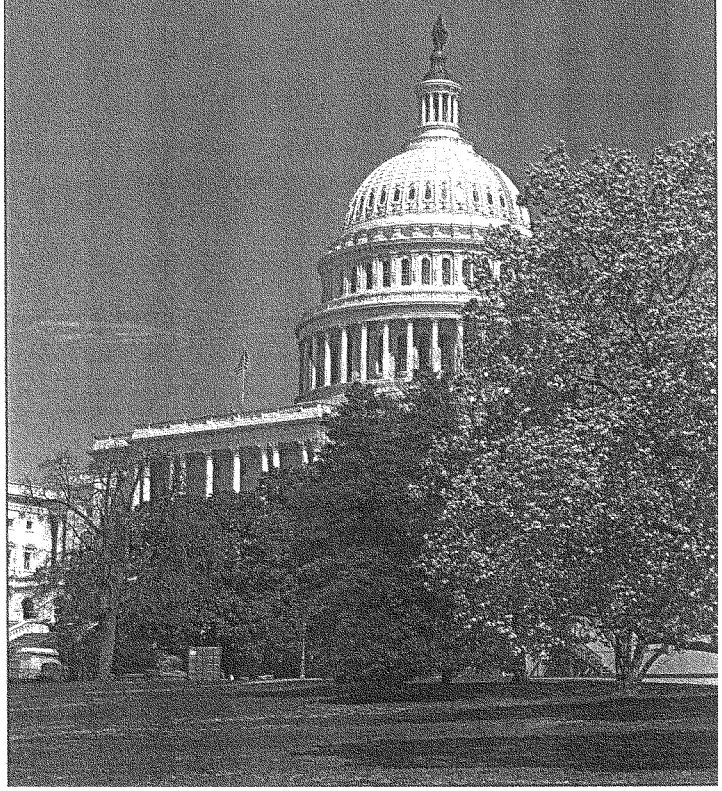
REPORT

MARCH 2005

A Review of CBO's Activities in 2004 Under the Unfunded Mandates Reform Act



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CBO

REPORT

A Review of CBO's Activities in 2004 Under the Unfunded Mandates Reform Act

March 2005

The Congress of the United States ■ Congressional Budget Office

Preface

This report is the Congressional Budget Office's (CBO's) annual review of its activities under the Unfunded Mandates Reform Act of 1995 (UMRA). The report covers legislation considered by the Congress in 2004 that would impose mandates on state, local, or tribal governments or on the private sector.

The report was prepared by Theresa Gullo, Chief of the State and Local Government Cost Estimates Unit of CBO's Budget Analysis Division, under the supervision of Robert Sunshine, and by Patrice Gordon, Chief of the Private-Sector Mandates Unit of CBO's Microeconomic and Financial Studies Division, under the supervision of Roger Hitchner. The mandate statements referred to in the report were prepared by the CBO staff members listed in Appendix C.

Leah Mazade edited the report, and Loretta Lettner proofread it. Ernestine McNeil drafted the tables; Maureen Costantino took the cover picture and prepared the final version for publication. Annette Kalicki and Simone Thomas prepared the electronic version for CBO's Web site (www.cbo.gov).

Douglas Holtz-Eakin
Director

March 2005

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Note

In this report, thresholds are calculated on a fiscal year basis, and tables reflect calendar years.

A Review of CBO's Activities in 2004 Under the Unfunded Mandates Reform Act

Introduction

The Unfunded Mandates Reform Act (UMRA), enacted a decade ago, established procedures for providing information about proposed federal mandates.[1] That act defines a mandate as any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments or the private sector; that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates; or that would increase the stringency of conditions or make cuts in federal funding for certain mandatory programs. Duties that are imposed as a condition of federal assistance or that arise from participating in a voluntary federal program generally are not mandates as defined by UMRA.

Title I of UMRA increased the amount of information available about legislation containing such federal mandates by requiring that the Congressional Budget Office (CBO) provide the Congress with estimates of proposed mandates' costs. Title I also required that authorizing committees add information about mandates to their reports, including mandate statements prepared by CBO. In those statements, CBO must address whether the federal mandates contained in a bill would impose direct costs that are greater than the thresholds established in the mandates law. (In 2004, those thresholds, which are adjusted annually for inflation, were $60 million for intergovernmental mandates and $120 million for private-sector mandates.) If CBO cannot estimate the cost of a mandate, its statement must indicate that such an estimate is not feasible and explain why.

UMRA also established procedural rules for both the House and Senate that enforce the requirements of title I of UMRA. The rules are designed to make it more difficult for the Congress to consider legislation unless it has some information about any mandates that the legislation contains. Those rules are enforced through the use of points of order. Thus, a point of order can be raised in the House or Senate against the consideration of legislation if the committee reporting a bill has not published a statement by CBO on intergovernmental and private-sector mandates. In addition, Members of Congress may raise a point of order against legislation that creates an intergovernmental mandate with costs above the threshold specified in UMRA—unless the legislation authorizes or provides funding to cover those costs. If a point of order is raised under UMRA, each House resolves the issue according to its established rules and procedures. Although such procedural requirements do not preclude the Congress from passing bills that contain mandates, they may introduce additional hurdles that can help focus policymakers' deliberations on unfunded mandates. (See Appendix A for a more detailed description of title I of UMRA.)

This report is CBO's annual assessment of its mandate-related activities, updating information provided in its eight previous reports on UMRA.[2] Specifically, the report:

1. The Congressional Budget Office (CBO) has been estimating the effect of federal legislation on state and local governments since 1982. Initially, the State and Local Government Cost Estimates Act of 1981 required CBO to estimate the costs that state and local governments would incur to carry out or comply with "any significant bill or resolution." UMRA repealed that law, narrowed the types of intergovernmental mandates that CBO must identify, and required more in-depth analysis of their impact. UMRA also lowered the cost that triggers the need for an intergovernmental estimate from $200 million a year to $50 million (adjusted annually for inflation). In practice, CBO continues to provide the Congress, when feasible, with estimates of all proposed federal budgetary effects on state and local governments, regardless of their cost and regardless of whether they stem from mandates as defined by UMRA.

2. CBO's previous reports on UMRA can be found at www.cbo.gov.

- Identifies mandates that were enacted into law in 2004;
- Provides an overview of all mandate statements prepared by CBO in 2004; and
- Shows trends in the number of federal mandates considered by the Congress since 1996.

By CBO's estimate, few mandates with costs that exceeded the UMRA thresholds were enacted into law in 2004. Furthermore, most of the legislation that the Congress considered last year did not contain federal mandates as UMRA defines them. Those results are consistent with the pattern of experience under UMRA: since the law was enacted, CBO has reviewed more than 570 pieces of legislation each year, on average, and identified intergovernmental mandates in an average of 12 percent of them and private-sector mandates in an average of 14 percent.

Public Laws Enacted in 2004 That Contain Mandates

The Congress and the President enacted 300 public laws in 2004, 21 of which contained one or more intergovernmental mandates as defined by UMRA and 19 of which contained one or more private-sector mandates (see Table 1 on page 7 and Table 2 on page 10).

Intergovernmental Mandates

Most of the intergovernmental mandates—those that impose duties on state, local, or tribal governments—that were enacted in 2004 will not impose significant costs on those governments.[3] In CBO's estimation, only two will impose costs that exceed UMRA's annual threshold of $60 million:

- The Internet Tax Nondiscrimination Act (Public Law 108-435), which temporarily preempts states' authority to tax certain Internet services and transactions (CBO estimated in 2003 that this preemption would result in revenue losses to state and local governments totaling at least $325 million through 2007); and
- The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), which requires state and local governments to comply with federal standards for driver's licenses, identification cards, and vital-statistics documents. (CBO estimates that state and local governments will have to spend more than $100 million over the 2005-2009 period to comply with those standards and that the costs in at least one year of the next five will exceed the UMRA threshold. The act authorizes the appropriation of funds to provide grants to state and local governments to pay for those costs.)

Four laws enacted in 2004 contained intergovernmental mandates that were not reviewed by CBO before they were enacted. Three of the laws were appropriation acts—the Consolidated Appropriations Act, 2004; the District of Columbia Appropriations Act, 2005; and the Consolidated Appropriations Act, 2005—which are not generally governed by UMRA; as a result, CBO did not analyze the costs those mandates would impose before the bills were enacted. The fourth bill—the Prevention of Child Abduction Partnership Act—was not reported by an authorizing committee and thus was not reviewed by CBO. None of those mandates, however, in CBO's estimation—and none of the remaining 15 public laws that were enacted in 2004 and that contained intergovernmental mandates—will impose significant costs on other levels of government.

Private-Sector Mandates

Like the intergovernmental mandates, most of the private-sector mandates in public laws enacted in 2004 have costs that CBO estimates will be below the UMRA threshold. Of the 19 public laws with private-sector mandates that were enacted in 2004, CBO estimates that two will impose mandates with costs above the annual threshold of $120 million:

- The American Jobs Creation Act of 2004 (Public Law 108-357), which imposes a fee on manufacturers and importers of tobacco products to finance buyout payments to tobacco growers, extends through 2014 the customs user fees that were scheduled to expire after March 1, 2005, and contains several revenue-raising provisions used to offset tax cuts in the act; and
- The Consolidated Appropriations Act, 2005 (Public Law 108-447), increases some existing fees and establishes new ones for certain patent and trademark services. It also requires companies and other entities to

3. For a more in-depth discussion of the treatment of intergovernmental mandates under UMRA, see Congressional Budget Office, *Identifying Intergovernmental Mandates*, Economic and Budget Issue Brief (January 6, 2005).

pay certain fees when filing a petition for an H-1B visa, including a filing fee and a fraud prevention and detection fee, and imposes several additional mandates on the private sector.[4]

In the case of four private-sector mandates enacted in 2004, CBO could not determine whether compliance costs would exceed the threshold. The mandates are a one-year extension on the ban on imports from Burma; new recordkeeping requirements for individuals who manufacture, prescribe, or administer medical products authorized for use in emergencies; a limit on the hours that crew members on towing vessels may work; and an extension of the mandate on air carriers to honor tickets for suspended air service.

Four laws contained private-sector mandates that CBO did not review before their enactment in the 108th Congress. Two of those laws are appropriation acts. (As noted earlier, UMRA does not generally require CBO to analyze the cost of mandates in appropriation bills.) The Consolidated Appropriations Act, 2004, includes two mandates—fees imposed on companies that sell, use, or distribute pesticides and a prohibition against requiring federal contractors to post bonds related to the closing of a national laboratory. The Consolidated Appropriations Act, 2005, contains several mandates, three of which were not formally reviewed by CBO before they were enacted—a prohibition on some air carriers' providing mail service in Alaska, a requirement that satellite carriers retransmit local television signals, and new fees for employers' filing of a petition for an H-1B visa. Another law—an act to amend the Livestock Mandatory Price Reporting Act—contains a mandate that was reviewed in the 106th Congress. (That act extends certain reporting requirements for meat packers.) The fourth law, the Coast Guard and Maritime Transportation Act of 2004, includes a provision that establishes new filing and certification procedures for certain investor-owned vessels. That provision was added after the legislation had been considered in committee.

Mandate Statements Prepared by CBO in 2004

Last year, CBO provided mandate cost statements to the Congress for nearly all of the bills reported by authorizing committees and for many other proposed bills and amendments. In all, CBO reviewed more than 550 bills and other legislative proposals to determine whether they contained federal mandates (see Table 3 on page 16). As in previous years, most of that legislation did not contain federal mandates as defined by UMRA; only about 12 percent (66 bills) had intergovernmental mandates, and 13 percent (71 bills) contained mandates that applied to the private sector. (Appendix B lists all of the bills and proposals containing mandates that were reviewed by CBO in 2004.) Over half of the intergovernmental mandates for which CBO provided estimates were preemptions of state and local authority.

Mandates Considered in 2004 That Had Estimated Costs Above the Statutory Thresholds

Most of the mandate-containing legislation that the Congress considered in 2004 would not have imposed costs that exceeded UMRA's annual thresholds, in CBO's estimation. Only 2 percent (nine bills) had intergovernmental mandates with costs higher than the $60 million annual threshold; another two bills (less than 1 percent) had mandates whose costs could not be determined. Similarly, CBO estimated that only about 3 percent (14) of the bills that contained private-sector mandates would have imposed costs greater than the $120 million threshold. For another 2 percent (10 bills), CBO could not determine whether the costs of their mandates would have exceeded the threshold.

As a result of action in both the House and Senate, the Congress may consider the same or similar mandates in more than one piece of legislation. Consequently, the number of different mandates included in legislation is smaller than the total number of mandates presented in the mandate statements that CBO prepared.

Intergovernmental Mandates

In 2004, nine bills contained five intergovernmental mandates whose costs exceeded UMRA's threshold (see Table 4 on page 17):

- A requirement that state and local governments meet certain standards for issuing driver's licenses, identification cards, and vital-statistics documents (H.R. 10, five versions; enacted in Public Law 108-458);

4. The H-1B visa allows a U.S. company to employ a foreign individual for up to six years in a specialty occupation.

- A prohibition on displaying Social Security numbers on certain public documents (H.R. 2971);
- A requirement to pay overtime for certain workers (H.R. 4520);
- A requirement that certain public transportation agencies train employees in security procedures (H.R. 5082); and
- An increase in the minimum wage (a proposed Senate amendment to H.R. 4).

Private-Sector Mandates

CBO provided 14 statements for legislation in 2004 that contained 13 separate private-sector mandates with costs above the statutory threshold (see Table 4):

- New procedures and medical criteria to qualify for a cause of action in personal injury and wrongful death claims arising from asbestos exposure, and—to pay for claims under the new procedures—assessments levied on defendant companies and their insurers and the mandatory transfer of assets from private trust funds (S. 2290);
- Safety requirements for owners and operators of commercial motor vehicles that transport nine to 15 passengers (H.R. 3550);
- A requirement that Fannie Mae and Freddie Mac contribute to a fund that supports underserved markets (S. 1508);
- Several provisions that would boost tax revenues related to alcohol fuels by amending the Internal Revenue Code (H.R. 3971);
- Several tax provisions that would increase revenues by amending the Internal Revenue Code regarding tax shelters and deductions for certain fines, penalties, and other items (S. 882);
- A requirement that television broadcast stations increase the amount of their local and public affairs programming (S. 2820);
- An increase in the minimum wage paid to employees covered by the Fair Labor Standards Act (a proposed Senate amendment to H.R. 4);
- New safety standards for manufacturers of motor vehicles and manufacturers of tires (S. 1978);
- An increase in the number of workers covered by the overtime pay provisions of the Fair Labor Standards Act (H.R. 4520—Senate version);
- A net increase in patent and trademark fees (H.R. 1561—Senate version; enacted in Public Law 108-447);
- New requirements under the Employee Retirement Income Security Act of 1974 that would affect sponsors, administrators, and fiduciaries of private pension plans (S. 2424; some provisions enacted in Public Law 108-218);
- New fees for manufacturers and importers of tobacco products—one that would fund the administrative costs incurred by the Food and Drug Administration to regulate tobacco products and the other to be deposited in a trust fund to finance payments to tobacco growers (H.R. 4520—Senate version; the trust fund fee was enacted in Public Law 108-357); and
- New requirements for telecommunications carriers and mobile-phone service providers to protect the privacy of wireless subscribers (S. 1963).

Mandates Considered in 2004 Whose Costs Could Not Be Determined

For a number of intergovernmental and private-sector mandates, CBO could not determine whether their costs would exceed UMRA's thresholds. In some cases, uncertainty about the mandate's scope (both how extensive its requirements would be and who would be affected) made it impossible to estimate the mandate's costs. In other instances, estimating the costs of extending an existing mandate was difficult. UMRA does not specify whether CBO should measure the cost of the extension relative to the mandate's current costs or assume that the mandate will expire and that it must measure the costs of the mandate's extension as if the requirement were new. In the case of customs user fees, for example, the mandate's costs would be either zero or well above the threshold, depending on the comparison that CBO had used. As it has done in similar cases, CBO reported a bill's costs using both comparisons to ensure that lawmakers received as much information as possible about potential mandates.

Intergovernmental Mandates

CBO could not determine whether the costs of two intergovernmental mandates—a requirement that chemical facilities conduct vulnerability assessments (S. 994) and new requirements for compacts between states and tribes that govern gaming activities on tribal lands (S. 1529)—exceeded the threshold (see Table 4). In both cases, unknown factors precluded a determination. CBO had no basis for predicting what regulations the Department of Homeland Security or the Department of the Interior would issue to implement the mandates. In addition, because the negotiation of gaming compacts between states and tribes is so complex, CBO could not foresee the outcome of that process.

Private-Sector Mandates

Threshold determinations could not be made by CBO for eight separate private-sector mandates in 10 bills (see Table 4):

- A requirement that chemical facilities undertake specific measures to protect against terrorist attacks or other categories of chemical releases (S. 994);
- A prohibition on distributing and broadcasting to the public certain violent television programs during specific hours unless those programs can be electronically blocked (S. 2056);
- An extension through 2014 of the requirement to pay fees for customs services (H.R. 4520, enacted in Public Law 108-357);
- A prohibition on a person's commercial use of information from a database generated by another person if proper authorization has not been granted (H.R. 3872 and H.R. 3261);
- New requirements applicable to nuclear facilities and shippers of hazardous materials that are designed to address security threats (H.R. 10—House Judiciary Committee);
- Requirements that operators of marine terminals and certain vessels maintain waste receptacles and keep records of waste disposal (S. 2488);
- A one-year extension of the ban on all imports from Burma (H.J. Res. 97 and S.J. Res. 39, enacted in Public Law 108-272); and
- A prohibition on the purchase, sale, or display of a Social Security number to the general public (H.R. 2971).

In five of the eight cases, CBO could not determine the costs of mandates in the legislation because it had no basis for predicting what regulations would be issued to implement the mandates. In two instances—the prohibitions on misappropriating databases and on imports from Burma—CBO did not have enough information to determine the scope and incremental impact of the prohibitions. In the case of customs user fees, CBO estimated the amount to be collected in fees; however, because the mandate would have extended an existing requirement, CBO did not make a threshold determination.

Mandate Statements Prepared Since UMRA Went Into Effect

CBO has been reviewing bills according to the provisions of UMRA for nine years. Most of the legislation that the Congress considered between 1996 and 2004 did not contain federal mandates as UMRA defines them. Of the roughly 5,200 bills and other legislative proposals that CBO reviewed during that period, 617 (12 percent) contained intergovernmental mandates, and 732 (14 percent) contained private-sector mandates (see Table 5 on page 21). Those percentages have varied only slightly from one Congress to another.

Most of the mandates that CBO examined would not have imposed costs higher than the thresholds set by UMRA. About 1 percent of the bills that CBO reviewed had intergovernmental mandates whose costs exceeded the threshold established in the law, and another 1 percent had costs that could not be estimated. For private-sector mandates, about 3 percent of bills had mandates whose costs were greater than the statutory threshold. About 2 percent of bills had mandates whose private-sector costs could not be estimated.

UMRA does not apply to legislative provisions that cover constitutional rights, discrimination, emergency aid, accounting and auditing procedures for grants, national security, treaty ratification, and title II of Social Security (Old-Age, Survivors, and Disability Insurance benefits). About 2 percent of the bills that CBO reviewed in each year of the 1996-2004 period contained provisions that fit within those exclusions. Many of the provisions ap-

plied to national security or Social Security and in general did not contain costly mandates.

In the nine years that UMRA has been in place, five intergovernmental mandates with costs above the threshold have become law:

- An increase in the minimum wage (Public Law 104-188, enacted in 1996). CBO estimated that this requirement would cost state and local governments more than $1 billion during the first five years it was in effect.
- A reduction in federal funding to administer the Food Stamp program (Public Law 105-185, enacted in 1998). CBO estimated that those funding cuts would cost states between $200 million and $300 million a year.
- A preemption of state taxes on premiums for certain prescription drug plans (Public Law 108-173, enacted in 2003). CBO estimated that the preemption would result in states' losing revenues of about $70 million in 2006 (the first year in which the mandate is effective), increasing to about $95 million in 2010.
- A temporary preemption (until 2007) of states' authority to tax certain Internet services and transactions (Public Law 108-435, enacted in 2004). CBO estimates that because of the preemption, state and local governments through 2007 will lose revenues totaling at least $325 million.
- A requirement that state and local governments meet federal standards for issuing driver's licenses, identification cards, and vital-statistics documents (Public Law 108-458, enacted in 2004). In CBO's estimation, that requirement will impose costs totaling more than $60 million in at least one year of the next five.

Since UMRA became law, the Congress has considered and enacted more legislation that contained private-sector mandates than legislation containing intergovernmental mandates. Twenty-six private-sector mandates whose costs CBO determined were higher than the statutory threshold have been enacted since 1996:

- Eight revenue-raising provisions in the tax code, which require individuals or firms to pay more in taxes;
- Five health insurance mandates requiring portability of insurance coverage, a minimum time for maternity stays, changes in Medicare coverage that impose new requirements on private health insurance providers, parity in insurance coverage that provides mental health and other medical benefits, and assessments by drug manufacturers to determine the safety and efficacy of drugs and biological products for use in children and to establish dosing and administration protocols;
- Five mandates affecting specific industries—telecommunications reform, changes in milk pricing, country-of-origin labels for certain foods, a new safety requirement for automobiles, and new requirements for credit agencies, lenders, and merchants that handle credit transactions;
- Four mandates involving fees—specifically, a fee on manufacturers and importers of tobacco products, increases in existing fees and new fees for certain patent and trademark services, new filing fees for H-1B visas, and a fee on airline travel to fund airport security operations;
- Two mandates—one increasing the minimum wage and the other raising federal employees' contributions for retirement—that affect a worker's take-home pay;
- One mandate that imposes new requirements on sponsors of immigrants; and
- One mandate that changes procedures for collecting and using campaign contributions.

Table 1.

Laws Enacted in 2004 That Contain Intergovernmental Mandates

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-199	Consolidated Appropriations Act, 2004	Prohibits the state of New Mexico from requiring federal contractors to post bonds for work related to the closing of the Sandia National Laboratories	No	No
		Restricts the use of local funds by the District of Columbia and preempts certain local authority	No	No
		Prohibits states from adopting emissions standards for certain engines	No	No
108-203	Social Security Protection Act of 2004	Preempts state laws that prohibit the exchange of information between the Social Security Administration and state and local law enforcement officers; requires state and local governments to notify new employers if their positions are not covered by the Social Security program	Yes	No
108-237	Standards Development Organization Advancement Act	Expands existing preemption of state antitrust laws	Yes	No
108-276	Project BioShield Act of 2004	Preempts state laws that limit damages and litigation costs in some cases against biomedical contractors	Yes	No
108-277	Law Enforcement Officers Safety Act	Preempts state laws regarding concealed weapons and requires law enforcement agencies to certify certain officers	Yes	No
108-293	Coast Guard and Maritime Transportation Act of 2004	Requires operators of certain vessels with automatic identification systems to incorporate electronic charts and displays into their equipment	Yes	No
108-326	An act to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa	Exempts the interest on bonds issued by American Samoa from state, local, and territorial taxes	Yes	No
108-335	District of Columbia Appropriations Act, 2005	Restricts the use of local funds by the District of Columbia and preempts certain local authority	No	No

Continued

Table 1.

Continued

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-357	American Jobs Creation Act of 2004	Imposes a fee on manufacturers and importers of tobacco products, including Indian tribes	Yes	No
108-370	Prevention of Child Abduction Partnership Act	Preempts state and local liability laws	No	No
108-375	Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005	Increases the cost of an existing mandate in the Soldiers and Sailors Civil Relief Act by increasing the number of active-duty service members	Yes	No
		Preempts certain state authority to tax and exempts certain satellite data from state and local public access-to-information laws	Yes	No
108-378	An act to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam	Preempts local authority and imposes a specific structure on the judiciary of Guam	Yes	No
108-386	2004 District of Columbia Omnibus Authorization Act	Requires the D.C. school board to submit a detailed plan for allocation of education funds	Yes	No
108-405	Justice for All Act	Codifies into federal law certain rights for crime victims in the District of Columbia	Yes	No
108-419	Copyright Royalty and Distribution Reform Act	Requires state, local, or tribal governments, if subpoenaed by the copyright royalty judges, to appear or provide evidence	Yes	No
108-435	Internet Tax Nondiscrimination Act	Prohibits states from charging taxes on Internet access; requires states that currently collect such taxes to stop doing so in one to two years	Yes	Yes
108-447	Consolidated Appropriations Act, 2005 (Division E—Department of the Interior and Related Agencies Appropriations Act, 2005)	Preempts local land-use regulations as they relate to the use of land held in trust by the Department of the Interior for an Indian tribe	No	No

Continued

Table 1.

Continued

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-447 (Continued)	(Division J—Other Matters)	Expands an existing mandate requiring the District of Columbia to give preference to charter schools in disposing of surplus city property; expands an existing mandate requiring audits of the D.C. Public Charter Schools Board	No	No
108-454	Veterans Benefits Improvement Act	Requires employers to extend health benefits to certain reservists for an additional six months and therefore increases the cost of an existing mandate	Yes	No
108-458	Intelligence Reform and Terrorism Prevention Act of 2004	Requires state and local governments to comply with federal standards for driver's licenses, identification cards, and vital-statistics documents	Yes	Yes
108-487	Intelligence Authorization Act of 2005	Preempts certain state laws related to income taxes	Yes	No
108-496	Federal Employee Dental and Vision Benefits Enhancement Act of 2004	Preempts state and local laws governing health insurance coverage and benefits for federal employees	Yes	No

Source: Congressional Budget Office.

a. In 2004, the threshold for intergovernmental mandates, which is adjusted annually for inflation, was $60 million.

Table 2.

Laws Enacted in 2004 That Contain Private-Sector Mandates

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-199	Consolidated Appropriations Act, 2004	Increases pesticide maintenance fees and establishes pesticide registration service fees for companies that sell, use, or distribute pesticides in the United States	No	No
		Prohibits any entity from requiring federal contractors to post bonds for work related to the closing of the Sandia National Laboratories	No	No
108-203	Social Security Protection Act of 2004	Prohibits anyone from offering for a fee information provided free of charge by the Social Security Administration unless such individual makes clear that the information is available free of charge and complies with standards prescribed by the Commissioner regarding such notice	Yes	No
		Imposes a processing charge on private attorneys to whom the Social Security Administration disburses fees related to their representation of successful Supplemental Security Income claimants	Yes	No
108-218	Pension Funding Equity Act of 2004	Requires the administrators of multiemployer defined-benefit plans to provide notices about plan funding to participants, beneficiaries, labor organizations, and employers associated with the plan	Yes	No
108-272	An act approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003	Extends the ban on all imports from Burma for one year	Yes	Uncertain
108-276	Project BioShield Act of 2004	Requires people who manufacture, distribute, prescribe, or administer medical products authorized for use in emergencies to maintain records on their safety and effectiveness	Yes	Uncertain

Continued

Table 2.

Continued

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-282	An act to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes	Requires manufacturers, packagers, and labelers of processed foods to display on the label the names of the major food allergens from which the ingredients are derived	Yes	No
		Imposes mandates on some manufacturers of generic animal drugs for minor uses or for use in minor species by providing additional market exclusivity to innovators and potentially delaying the time at which the generic products could enter the market	Yes	No
108-293	Coast Guard and Maritime Transportation Act of 2004	Requires operators of certain vessels with automatic identification systems to incorporate electronic charts and displays into their equipment	Yes	No
		Prohibits the use on a vessel's bridge of electronic or other devices that interfere with communications and navigation equipment	Yes	No
		Prescribes the maximum hours of service for individuals engaged in work on a towing vessel that is at least 26 feet in length	Yes	Uncertain
		Requires owners and operators of certain vessels to prepare and submit a plan for responding to a worst-case discharge of oil or a hazardous substance and for responding to a substantial threat of such a discharge	Yes	No
		Requires charterers of documented vessels engaged in coastwise commercial trade and fishing to submit reports to the Secretary of Transportation regarding the qualifications of their vessels	Yes	No
		Requires towing vessels to be subject to inspection by the Coast Guard	Yes	No
		Establishes new filing and certification requirements for certain investor-owned vessels	No	No

Continued

Table 2.

Continued

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-304	Sports Agent Responsibility and Trust Act	Prohibits a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract; requires an agent to get a signature from a student athlete or the athlete's parent or legal guardian on a specific disclosure document before entering into an agency contract; requires an agent and a student athlete to inform the student's educational institution of the agency contract	Yes	No
108-311	Working Families Tax Relief Act of 2004	Extends the mandate requiring private group health plans and health insurance issuers to cover mental health and medical benefits equally through the end of calendar year 2005	Yes	No
108-357	American Jobs Creation Act of 2004	Extends through 2014 the customs user fees that were scheduled to expire after March 1, 2005	Yes	Extends a mandate with costs above the threshold
		Imposes a fee on manufacturers and importers of tobacco products to finance buyout payments to tobacco growers	Yes	Yes
		Amends the Internal Revenue Code[b]	Yes[c]	Yes
108-358	Anabolic Steroid Control Act of 2004	Adds two dozen new substances to the list of anabolic steroid substances, the manufacturing and distribution of which are regulated under the Controlled Substances Act	Yes	No
108-374	American Indian Probate Reform Act of 2004	Imposes a mandate on certain individuals (distant relatives) who would otherwise inherit interests in Indian trust or restricted land under current law	Yes	No
		Allows the Secretary of the Interior to partition certain fractionated parcels of Indian lands for sale without the express permission of all interest owners	Yes	No

Continued

Table 2.

Continued

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-375	Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005	Increases the cost of existing mandates by expanding the number of active-duty service members covered under the Soldiers and Sailors Civil Relief Act (which requires creditors to reduce the interest rate on service members' obligations to 6 percent when such obligations predate active-duty service and allows courts to temporarily stay certain civil proceedings, such as evictions, foreclosures, and repossessions)	Yes	No
108-384	Brown Tree Snake Control and Eradication Act of 2004	Requires federal agencies to implement a system of predeparture quarantine protocols for inspecting passengers, baggage, and cargo leaving from Guam and other areas infested with brown tree snakes, which imposes new requirements on travelers and shippers of goods departing from those locations	Yes	No
108-419	Copyright Royalty and Distribution Reform Act of 2004	Requires entities in the private sector, if subpoenaed by the copyright royalty judges, to appear or provide evidence	Yes	No
108-444	An act to amend the Livestock Mandatory Price Reporting Act of 1999 to modify the termination date for mandatory price reporting	Extends for one year a mandate requiring certain meatpackers to report market prices for livestock	No (Reviewed in 106th Congress)	No
108-447	Consolidated Appropriations Act, 2005	Increases fees and establishes new fees for certain patent and trademark services	Yes	Yes
		Increases the stringency of immigration requirements for certain U.S. employers who are petitioners for L-1 visas[d]	Yes	No
		Requires companies and other entities to pay certain fees when filing a petition for an H-1B visa, including a filing fee and a fraud prevention and detection fee[e]	No	Yes
		Prohibits certain air carriers from carrying packaged mail in Alaska	No	No

Continued

Table 2.

Continued

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-447 (Continued)	Consolidated Appropriations Act, 2005	Requires satellite carriers to retransmit analog and digital television signals of all local broadcast stations in certain states	No	No
		Requires satellite companies to reallocate their retransmission of local analog television channels in such a way that satellite subscribers can receive all of the local analog channels with only one satellite antenna (or dish) and associated equipment; requires satellite companies to transmit all local digital channels to a single dish	Yes	No
		Requires satellite companies to notify subscribers of their privacy rights and to comply with requirements and prohibitions regarding those rights	Yes	No
		Requires satellite companies to submit to television network stations a list of their subscribers who are receiving signals of "significantly viewed" stations as determined by the Federal Communications Commission	Yes	No
		Requires satellite companies to replace "distant-into-local" signals with "local-into-local" signals for certain subscribers, to send notices to certain subscribers of their ineligibility for those signals, and to submit a list of those subscribers to television networks; requires satellite carriers to send additional notices to subscribers, networks, and stations concerning signal carriage	Yes	No
108-454	Veterans Benefits Improvement Act of 2004	Requires providers of entrepreneurship courses to maintain records of enrolled veterans, including information on when they complete, interrupt, or terminate their education	Yes	No
		Increases by six months the amount of time that employers are required to continue to provide health insurance coverage to reservists who are mobilized	Yes	No

Continued

Table 2.

Continued

Public Law Number	Name	Mandate	Was Mandate Reviewed by CBO Before It Was Enacted?	Do Costs Exceed Threshold?[a]
108-458	Intelligence Reform and Terrorism Prevention Act of 2004	Extends the requirement for air carriers to honor tickets for suspended air service	Yes	Uncertain
		Imposes new regulations to enhance and improve the security of air cargo	Yes	No
		Requires financial institutions to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds	Yes	No
		Prohibits passengers and crew from carrying butane lighters on board passenger aircraft	Yes	No

Source: Congressional Budget Office.

a. In 2004, the threshold for private-sector mandates, which is adjusted annually for inflation, was $120 million.

b. Seven tax provisions that were mandates were enacted in the American Jobs Creation Act of 2004 (Public Law 108-357). Those mandates:

- Repeal the exclusion for extraterritorial income;
- Alter tax law relating to reportable transactions and tax shelters;
- Reform the tax treatment of leasing transactions with parties that are generally exempt from tax;
- Tax aviation-grade kerosene;
- Require registration of pipeline and vessel operators for exemption of bulk transfers and impose a penalty for failure to display such registration;
- Modify the heavy vehicle use tax; and
- Modify the charitable contribution rules for donations of patents and other intellectual property.

Each of those mandates is estimated to impose costs that exceed the statutory threshold in at least one of the next five years.

c. The Joint Committee on Taxation estimates the costs of federal mandates in legislative provisions that affect the tax code. Such information is incorporated in CBO's mandate statements.

d. The L-1 intracompany visa allows executives, managers, and employees with specialized skills to transfer from a foreign company to a U.S. office, subsidiary, or affiliated company to perform temporary services.

e. The H-1B visa allows a U.S. company to employ a foreign individual for up to six years in a specialty occupation.

Table 3.

Number of CBO's Mandate Statements for Bills, Proposed Amendments, and Conference Reports in 2004

	Intergovernmental Mandates	Private-Sector Mandates
Total Number of Statements Transmitted	557	555
Number of Statements That Identified Mandates	66	71
Mandates whose costs would exceed the threshold[a]	9	14
Mandate whose costs could not be determined to exceed the threshold	2	10

Source: Congressional Budget Office.

Notes: The numbers in this table represent official mandate statements transmitted to the Congress by CBO. The Unfunded Mandates Reform Act (UMRA) requires CBO to complete mandate statements for every bill and joint resolution of a public character reported by an authorizing committee. UMRA also requires CBO to review amendments and other legislative proposals when requested. CBO prepared a number of preliminary reviews and informal estimates for other legislative proposals that are not included in this table.

Mandate statements may cover more than one mandate. Also, because the same mandate sometimes appears in multiple bills, CBO may address a single mandate in more than one statement.

a. In 2004, the thresholds, which are adjusted annually for inflation, were $60 million for intergovernmental mandates and $120 million for private-sector mandates.

Table 4.

Status of 2004 Mandates Estimated to Have Costs That Exceed the Statutory Thresholds or Whose Costs Could Not Be Determined to Exceed Them

Topic	Mandate	Was a Version Enacted into Law?	Did the Enacted Version Exceed the Threshold?[a]
	Intergovernmental Mandates with Costs Above the Statutory Threshold[b]		
Intelligence Reform	Requires state and local governments to comply with federal standards for issuing driver's licenses, identification cards, and vital-statistics documents	Yes (P.L. 108-458)[c]	Yes
Social Security Number Protection	Prohibits the display of Social Security numbers on certain public documents	No	n.a.
Minimum Wage	Requires state and local governments to pay overtime wages for certain workers	No	n.a.
Transportation Security	Requires certain public transportation agencies to train employees in security procedures	No	n.a.
Minimum Wage	Requires state and local governments as employers to pay a higher minimum wage	No	n.a.
	Intergovernmental Mandates Without a Threshold Determination		
Security of Chemical Facilities	Requires facilities to conduct vulnerability assessments; preempts state and local laws that provide public access to information	No	n.a.
Indian Gaming	Imposes new conditions on state and tribal compacts and new administrative requirements for tribes	No	n.a.
	Private-Sector Mandates with Costs Above the Statutory Threshold		
Asbestos Compensation	Prohibits individuals from bringing or maintaining a civil action that alleges injury due to asbestos exposure; requires defendant companies and their insurers to pay annual assessments to the Asbestos Fund; requires asbestos settlement trusts to transfer their assets to the Asbestos Fund	No	n.a.
Commercial Motor Vehicle Safety	Expands certain safety requirements to cover owners and operators of commercial motor vehicles that transport nine to 15 passengers	No	n.a.

Continued

Table 4.

Continued

Topic	Mandate	Was a Version Enacted into Law?	Did the Enacted Version Exceed the Threshold?[a]
Private-Sector Mandates with Costs Above the Statutory Threshold (Continued)			
Federal Housing Enterprise Regulatory Reform	Requires Fannie Mae and Freddie Mac to contribute to a fund that supports underserved markets by providing grants to address housing needs and by supporting flexible mortgage loan products for those markets	No	n.a.
Highway Reauthorization Taxes	Amends several provisions of tax law related to alcohol fuels; replaces the reduced tax rate on alcohol fuels with an excise tax credit and makes several changes intended to reduce the evasion of fuel taxes	No	n.a.
Internal Revenue Code Reform	Includes revenue-raising provisions that amend the Internal Revenue Code regarding tax shelters and deductions for certain fines, penalties, and other amounts	No	n.a.
Minimum Requirements for Public Interest Programming	Requires television broadcasters to increase the amount of local and public affairs programming	No	n.a.
Minimum Wage	Requires employers covered by the Fair Labor Standards Act to increase the minimum wage paid to their employees	No	n.a.
Motor Vehicle Safety	Requires manufacturers of motor vehicles to comply with new safety standards for motor vehicles; requires manufacturers of tires to use additional test equipment to comply with new safety performance criteria	No	n.a.
Overtime Pay	Increases the number of workers covered by the overtime pay provisions of the Fair Labor Standards Act	No	n.a.
Patent and Trademark Fees	Increases existing fees and establishes new fees for certain patent and trademark services	Yes (P.L. 108-447)[c]	Yes
Private Pension Plans	Amends ERISA to make several changes in the operations of private pension plans affecting plans' sponsors, administrators, and fiduciaries	Yes (One provision)[d]	No

Continued

Table 4.

Continued

Topic	Mandate	Was a Version Enacted into Law?	Did the Enacted Version Exceed the Threshold?[a]
	Private-Sector Mandates with Costs Above the Statutory Threshold (Continued)		
Tobacco Product Fees	Imposes new fees on manufacturers and importers of tobacco products (one fee funds the administrative costs incurred by the FDA in regulating tobacco products, and the other is deposited in a trust fund to finance buyout payments to tobacco growers)	Yes (Trust fund fee)[e] (P.L. 108-357)[c]	Yes
Wireless Telephone Number Privacy	Prohibits telecommunications carriers from disclosing on billing information the wireless numbers of individuals who request privacy; requires mobile-phone service providers to send notices to their subscribers and receive prior written authorization before publishing a subscriber's number in a wireless telephone directory	No	n.a.
	Private-Sector Mandates Without a Threshold Determination		
Chemical Facilities Security	Requires owners and operators of certain chemical facilities to undertake specific measures to protect those facilities against terrorist attacks, criminal acts, or other categories of chemical releases	No	n.a.
Children's Protection from Violent Programming	Prohibits the distribution to the public of certain violent programs during specific hours unless those programs can be electronically blocked	No	n.a.
Customs User Fees	Extends through 2014 customs user fees that were scheduled to expire after March 1, 2005	Yes (P.L. 108-357)[c]	Extends a mandate with costs above the threshold[f]
Misappropriation of Database Information	Prohibits a person's commercial use of information from a database generated by another person if proper authorization has not been granted	No	n.a.
Nuclear and Hazardous Materials Security	Requires nuclear facilities to comply with new regulations designed to address security threats; requires shippers of hazardous materials to comply with new security regulations	No	n.a.

Continued

Table 4.

Continued

Topic	Mandate	Was a Version Enacted into Law?	Did the Enacted Version Exceed the Threshold?[a]
	Private-Sector Mandates Without a Threshold Determination (Continued)		
Marine Debris Reduction	Requires operators of marine terminals and certain vessels to maintain waste receptacles and keep records of waste disposal	No	n.a.
Sanctions Against Burma	Extends the ban on imports from Burma for one year	Yes (P.L. 108-272)[c]	Uncertain
Social Security Number Privacy and Identity Theft Prevention	Prohibits the purchase, sale, or display of a Social Security number to the general public, including the display of such a number on any card, tag, or employee identification issued to another person to provide access to any goods, services, or benefits	No	n.a.

Source: Congressional Budget Office.

Notes: The mandates in this table were identified by the Congressional Budget Office when a bill was reported by an authorizing committee or when CBO was asked to formally review a bill. In some cases, CBO issued more than one formal mandate statement for a topic.

P.L. = public law; n.a. = not applicable; ERISA = Employee Retirement Income Security Act of 1974; FDA = Food and Drug Administration; Fannie Mae = Federal National Mortgage Association; Freddie Mac = Federal Home Loan Mortgage Corporation.

a. In 2004, the thresholds, which are adjusted annually for inflation, were $60 million for intergovernmental mandates and $120 million for private-sector mandates.

b. In addition to the statements noted here, CBO prepared a mandate statement for the Internet Tax Nondiscrimination Act (Public Law 108-435) in 2003. See Congressional Budget Office, *A Review of CBO's Activities in 2003 Under the Unfunded Mandates Reform Act* (April 2004).

c. The full names and dates of enactment of the public laws referred to in this table are (in order of law number):

- Public Law 108-218, the Pension Funding Equity Act of 2004, enacted April 10, 2004;
- Public Law 108-272, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, enacted July 7, 2004;
- Public Law 108-357, the American Jobs Creation Act of 2004, enacted October 22, 2004;
- Public Law 108-447, the Consolidated Appropriations Act, 2005, enacted December 8, 2004; and
- Public Law 108-458, the Intelligence Reform and Terrorism Prevention Act of 2004, enacted December 17, 2004.

d. One provision requiring administrators of multiemployer defined-benefit plans to provide notices was enacted in Public Law 108-218.

e. Only the fee for deposit in the tobacco trust fund was enacted in Public Law 108-357.

f. The Unfunded Mandates Reform Act does not specify whether CBO should measure the cost of the extension relative to the mandate's current costs or assume that the mandate will expire and that it must measure the costs of the mandate's extension as if the requirement were new.

Table 5.

Number of CBO's Mandate Statements for Bills, Proposed Amendments, and Conference Reports, 1996 to 2004

	1996[a]	1997	1998	1999	2000	2001	2002	2003	2004	Total, 1996-2004
Intergovernmental Mandates										
Total Number of Statements Transmitted	718	521	541	573	706	389	649	615	557	5,269
Number of Statements That Identified Mandates	69	64	64	81	77	50	60	86	66	617
Mandates whose costs would exceed the threshold[b]	11	8	6	4	3	4	6	7	9	58
Mandates whose costs could not be determined to exceed the threshold	6	7	7	0	1	3	5	5	2	36
Private-Sector Mandates										
Total Number of Statements Transmitted	673	498	525	556	697	389	645	613	555	5,151
Number of Statements That Identified Mandates	91	65	75	105	86	66	73	100	71	732
Mandates whose costs would exceed the threshold[b]	38	18	18	20	6	18	19	24	14	175
Mandates whose costs could not be determined to exceed the threshold	2	5	9	13	7	8	14	18	10	86

Source: Congressional Budget Office.

Notes: The numbers in this table represent official mandate statements transmitted to the Congress by CBO. CBO prepared more intergovernmental mandate statements than private-sector mandate statements because in some cases it was asked to review a specific bill, amendment, or conference report solely for intergovernmental mandates. (In those cases, no private-sector analysis was transmitted to the requesting Member or Committee.) CBO also completed a number of preliminary reviews and informal estimates for other legislative proposals, which are not included in this table.

Mandate statements may cover more than one mandate. Also, because the same mandate sometimes appears in multiple bills, CBO may address a single mandate in more than one statement.

a. CBO began preparing mandate statements in January 1996 in the middle of the 104th Congress. The figures for 1996 reflect bills on the calendar in January of that year and bills reported by authorizing committees thereafter.

b. In 1996, the thresholds, which are adjusted annually for inflation, were $50 million for intergovernmental mandates and $100 million for private-sector mandates. They rose to $60 million and $120 million, respectively, in 2004.

APPENDIX

A

Key Provisions in Title I of the Unfunded Mandates Reform Act

Title I of the Unfunded Mandates Reform Act of 1995 (UMRA) attempts to ensure that the Congress has information about the potential direct costs of federal mandates before it enacts legislation. UMRA thus requires the Congressional Budget Office (CBO) and the Congress's authorizing committees to develop and report information about the existence and costs of mandates in proposed legislation. The law also establishes mechanisms to bring that information to the attention of the Congress before legislation is considered on the floor of the House or Senate.

Defining Mandates and Their Costs

Under UMRA, a mandate is any provision in legislation or in a statute or regulation that would impose an enforceable duty on state, local, or tribal governments or the private sector, or that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates. Duties that are imposed as a condition of federal assistance or that arise from participation in a voluntary federal program are not mandates. In the case of some large entitlement programs under which $500 million or more is provided annually to state, local, or tribal governments, a new condition on or reduction in federal assistance would be a mandate only if states lacked the flexibility to offset the new costs or the loss of federal funding with reductions elsewhere in the program.

The scope of UMRA is further narrowed by the fact that legislative provisions dealing with constitutional rights, discrimination, emergency aid, accounting and auditing procedures of grants, national security, treaty ratification, and title II of Social Security (Old-Age, Survivors, and Disability Insurance benefits) are excluded from UMRA's procedures.

UMRA defines "direct costs" as amounts that mandated entities—governmental or private-sector—would be required to spend to comply with the enforceable duty, including amounts that states, localities, and tribes "would be prohibited from raising in revenues." Direct costs exclude amounts that mandated entities spend to comply with applicable laws, regulations, or professional standards in effect when the federal mandate is adopted. Moreover, in calculating a mandate's direct costs, such costs must be offset by any direct savings that the mandated entities would receive from compliance with the mandate or from other provisions of the same legislation that govern the same activity as that affected by the mandate.

Mandate Cost Statements: CBO's Role

The law requires CBO to provide a statement to Congressional authorizing committees about whether a reported bill contains one or more federal mandates. If the total direct costs of all mandates in a bill are above a specified threshold in any of the first five fiscal years in which the mandate is in effect, CBO must provide an estimate of those costs (if feasible) as well as the basis for its estimate. The statutory thresholds, expressed in 1996 dollars, are $50 million for intergovernmental mandates and $100 million for private-sector mandates, adjusted annually for inflation.

CBO's mandate statement must also include an assessment of whether the bill authorizes or otherwise provides funding to cover the costs of any new federal mandate. In the case of intergovernmental mandates, the cost statement must, under certain circumstances, estimate the appropriations needed to fund such authorizations for up to 10 years after the mandate takes effect.

Authorizing committees must publish CBO's mandate statements in their reports or in the *Congressional Record* before a bill is considered on the floor of the House or Senate. Conference committees must, "to the greatest extent practicable," ensure that CBO prepares statements for conference agreements or amended bills if they contain mandates that have not previously been considered by either House or if they impose greater direct costs than the version considered earlier. At the request of a Senator, CBO must estimate the costs of any intergovernmental mandates contained in an amendment that the Senator might wish to offer.

The Congress may also call on CBO to prepare analyses at other stages of the legislative process. At the request of the Chairman or Ranking Minority Member of a committee, CBO is required to help the committee analyze the impact of proposed legislation, conduct special studies of legislative proposals, or compare a federal agency's estimate of the costs of proposed regulations to implement a federal mandate with the estimate that CBO made when the law was enacted.

Enforcement Mechanisms

Section 425 of UMRA sets out rules for both the House and Senate that prohibit consideration of legislation unless certain conditions are met. For all reported legislation, consideration is not "in order" unless the committee has published a mandate statement prepared by CBO. That is, UMRA prohibits the Congress from considering a reported bill if the committee has not published such a statement about the costs of any mandates.

For reported legislation containing intergovernmental mandates whose direct costs are estimated to exceed the threshold, UMRA's rules preclude consideration unless the legislation provides direct spending authority or authorizes appropriations sufficient to cover those costs. An authorization of appropriation will not be sufficient unless the authorized amounts are specified for each year (up to 10 years) after the mandate's effective date and the legislation provides a way to terminate or scale back the mandate if the federal agency determines that the appropriated funds are not sufficient to cover those costs.

Finally, although UMRA does not specifically require CBO to analyze the cost of mandates in appropriation bills, it is not in order to consider legislative provisions in such bills—or amendments to them—that increase the direct costs of intergovernmental mandates unless an appropriate CBO-prepared statement is available.

Those rules are not self-enforcing, however: a Member must raise a point of order to enforce them. In the House, if a Member raises a point of order, the full House votes on whether to consider the bill, regardless of whether there is a violation. If a point of order is raised in the Senate, the bill may not be considered unless either the Senate waives the point of order or the Chair of the Senate overrules it.

APPENDIX

B

Bills Reviewed by CBO in 2004 That Contain Mandates

This appendix lists legislation reviewed by the Congressional Budget Office (CBO) in 2004 that would impose federal mandates, regardless of whether the estimated costs of those mandates would be higher or lower than the thresholds in the Unfunded Mandates Reform Act and regardless of whether the legislation was enacted.

Table B-1 lists in numerical order bills that CBO identified as having intergovernmental mandates; it includes various versions of the same bill if that bill was considered by more than one committee. Table B-2 provides the same information for bills with private-sector mandates.

Table B-1.

Bills Reviewed by CBO in 2004 That Contain Intergovernmental Mandates

Bill Number (Committee)	Name	Mandate
	Intergovernmental Mandates with Costs Above the Statutory Threshold[a]	
H.R. 10 (Armed Services)	9/11 Recommendations Implementation Act	Requires document verification, national databases, and numerous security measures for driver's licenses and birth and death certificates; preempts state and local authority to allow public access to birth and death certificates and prohibits states from displaying Social Security numbers; preempts state authority to accept consular identifications and to not enforce immigration laws
H.R. 10 (Permanent Select Committee on Intelligence)	9/11 Recommendations Implementation Act	Requires document verification, national databases, and numerous security measures for driver's licenses and birth and death certificates; preempts state and local authority to allow public access to birth and death certificates and prohibits states from displaying Social Security numbers; preempts state authority to accept consular identifications and to not enforce immigration laws
H.R. 10 (Financial Services)	9/11 Recommendations Implementation Act	Requires document verification, national databases, and numerous security measures for driver's licenses and birth and death certificates; preempts state and local authority to allow public access to birth and death certificates and prohibits states from displaying Social Security numbers; preempts state authority to accept consular identifications and to not enforce immigration laws; preempts state laws related to bankruptcy and other financial transactions
H.R. 10 (Government Reform)	9/11 Recommendations Implementation Act	Requires document verification, national databases, and numerous security measures for driver's licenses and birth and death certificates; preempts state and local authority to allow public access to birth and death certificates and prohibits states from displaying Social Security numbers; preempts state authority to accept consular identifications; requires states to verify immigration status

Continued

Table B-1.

Continued

Bill Number (Committee)	Name	Mandate
	Intergovernmental Mandates with Costs Above the Statutory Threshold (Continued)[a]	
H.R. 10 (Judiciary)	9/11 Recommendations Implementation Act	Requires document verification, national databases, and numerous security measures for driver's licenses and birth and death certificates; preempts state and local authority to allow public access to birth and death certificates and prohibits states from displaying Social Security numbers; preempts state authority to accept consular identifications and to not enforce immigration laws; requires states to coordinate background checks for certain private security guards; requires states to coordinate an assistance program for certain nonprofit organizations; requires nuclear facilities to meet standards as developed by the Secretary of Homeland Security
H.R. 2971	Social Security Number Privacy and Identity Theft Prevention Act of 2004	Restricts the use and display of Social Security numbers by state and local agencies
H.R. 4520	Jumpstart Our Business Strength (JOBS) Act	Requires overtime pay for certain workers; prohibits the use of off-shore contracts by states; preempts state laws governing tobacco; imposes fees on manufacturers and distributors of tobacco products, including Indian tribes
H.R. 5082	Public Transportation Terrorism Prevention and Response Act of 2004	Requires public transportation agencies to participate in an information clearinghouse; requires certain public transportation agencies to train employees in security procedures
S.A. 2945	The Fair Minimum Wage Act of 2004 (proposed as an amendment to H.R. 4, the Personal Responsibility, Work, and Family Promotion Act of 2003)	Requires employers, including state and local governments, to increase the minimum wage paid to their employees
	Intergovernmental Mandates with Costs Below the Statutory Threshold[a]	
H.R. 218	Law Enforcement Officers Safety Act of 2003	Preempts state and local laws regulating concealed weapons
H.R. 339	Personal Responsibility in Food Consumption Act	Prohibits states from entering into or continuing certain civil suits for obesity and health-related conditions; preempts state authority to hear such cases
H.R. 982	An act to clarify the tax treatment of bonds and other obligations issued by the government of American Samoa	Exempts interest on American Samoa bonds from state and local taxes

Continued

Table B-1.

Continued

Bill Number (Committee)	Name	Mandate
	Intergovernmental Mandates with Costs Below the Statutory Threshold (Continued)[a]	
H.R. 1084	Volunteer Pilot Organization Protection Act of 2004	Preempts state tort laws to exempt volunteer pilots and organizations from liability for injuries that may occur during the course of volunteer activities
H.R. 1417 (Passed by the Senate)	Copyright Royalty and Distribution Reform Act of 2004	Subjects state, local, and tribal governments to subpoena powers of copyright royalty judges
H.R. 1787	Good Samaritan Volunteer Firefighter Assistance Act of 2004	Preempts state tort laws to exempt certain individuals who donate fire control and rescue equipment from liability for injuries and damages that such equipment may cause
H.R. 2179	Securities Fraud Deterrence and Investor Restitution Act of 2004	Preempts state laws regarding homestead exemptions to allow certain properties to be seized by federal authorities
H.R. 2400	A bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure	Imposes a specific structure on the judiciary of Guam
H.R. 2440	Indian Healthcare Improvement Act Amendments of 2004	Preempts state licensing laws in cases in which a health care professional is licensed in one state but is performing services in another state under a funding agreement in a tribal health program
H.R. 2671	Clear Law Enforcement for Criminal Alien Removal Act of 2003	Preempts state liability laws to ensure immunity for law enforcement officers against lawsuits related to the enforcement of immigration laws; preempts state authority to determine whether state and local law enforcement officers may enforce immigration laws
H.R. 2699	National Uniformity for Food Act of 2004	Preempts state laws governing the contents of food labels
H.R. 2824	Internet Tobacco Sales Enforcement Act	Requires tribal governments that sell tobacco to keep records and report information
H.R. 2844	Continuity in Representation Act of 2004	Requires states to change election laws
H.R. 2929	Securely Protect Yourself Against Cyber Trespass Act	Preempts state laws prohibiting the use of certain types of software
H.R. 3143	International Consumer Protection Act of 2004	Preempts state laws that require third-party notification when information is disclosed

Continued

Table B-1.

Continued

Bill Number (Committee)	Name	Mandate
	Intergovernmental Mandates with Costs Below the Statutory Threshold (Continued)[a]	
H.R. 3261 (Judiciary)	Database and Collections of Information Misappropriation Act	Preempts state laws that protect the collection of information
H.R. 3261 (Energy and Commerce)	Database and Collections of Information Misappropriation Act	Preempts state laws that protect the collection of information
H.R. 3369	Nonprofit Athletic Organization Protection Act of 2003	Preempts state tort laws to protect nonprofit athlete organizations from liability for certain injuries that may occur during practice or competition
H.R. 3550 (Transportation and Infrastructure)	Transportation Equity Act: A Legacy for Users	Preempts state laws that restrict the operating hours of utility service vehicles
H.R. 3550 (Passed by the House)	Transportation Equity Act: A Legacy for Users	Preempts state laws that restrict the operating hours of utility service vehicles
H.R. 3589	A bill to create the office of Chief Financial Officer of the Government of the Virgin Islands	Requires the appointment of a chief financial officer for the government of the Virgin Islands
H.R. 3779	Safeguarding Schoolchildren of Deployed Soldiers Act of 2004	Preempts local residency requirements for schools
H.R. 3797 (Government Reform)	2004 District of Columbia Omnibus Authorization Act	Creates a new reporting requirement for the District of Columbia's school board
H.R. 3797 (Senate Governmental Affairs)	2004 District of Columbia Omnibus Authorization Act	Creates a new reporting requirement for the District of Columbia's school board
H.R. 4200	National Defense Authorization Act for Fiscal Year 2005	Increases the cost of existing mandates included in the Soldiers and Sailors Civil Relief Act by increasing the number of active-duty service members; preempts state authority to tax certain benefits of defense employees and the application of state licensing requirements for certain lawyers
H.R. 4501	Satellite Home Viewer Extension and Reauthorization Act of 2004	Establishes procedures for appeals that preempt state law
H.R. 4571	Lawsuit Abuse Reduction Act of 2004	Preempts state laws governing court procedures

Continued

Table B-1.

Continued

Bill Number (Committee)	Name	Mandate
	Intergovernmental Mandates with Costs Below the Statutory Threshold (Continued)[a]	
H.R. 4634	Terrorism Insurance Backstop Extension Act of 2004	Extends requirements on states to repay the federal government for the cost of assistance received; preempts state laws regulating insurance
H.R. 4658	Servicemembers and Veterans Legal Protections Act of 2004	Preempts state taxing authority
H.R. 4661	Internet Spyware (I-SPY) Prevention Act of 2004	Preempts state lawmaking ability
H.R. 4768	Veterans Health Programs and Facilities Enhancement Act of 2004	Preempts state and local authority to regulate land use of property leased by the Department of Veterans Affairs
H.R. 5107	Justice for All Act of 2004	Codifies into federal law certain rights for victims of crimes in the District of Columbia
H.R. 5121	A bill to further protect the United States' aviation system from terrorist attacks	Requires state and local law enforcement officers who are armed to identify themselves with a special credential when traveling on aircraft
S. 556	Indian Healthcare Improvements Act Amendments of 2004	Preempts state licensing laws in cases in which a health care professional is licensed in one state but is performing services in another state under a funding agreement in a tribal health program
S. 1508	Federal Housing Enterprise Regulatory Reform Act of 2004	Preempts state statute-of-limitations laws and state contract law
S. 1545	Development, Relief, and Education for Alien Minors Act	Increases the number of students that public and private universities must track in the Student Exchange Visitor Information System
S. 1932	Artists' Rights and Theft Prevention Act of 2004	Preempts state and local civil and criminal tort laws
S. 1963	Wireless 411 Privacy Act	Preempts state laws with respect to wireless telephone directories
S. 1978	Surface Transportation Safety Reauthorization Act of 2003	Creates a unified registration system for states to register motor carriers; requires states to issue learner's permits in their programs for commercial driver's licenses
S. 2035	Guard and Reserve Readiness and Retention Act of 2004	Requires employers to extend health insurance for certain workers
S. 2056	Broadcast Decency Enforcement Act of 2004	Prohibits transmission of certain violent programming

Continued

Table B-1.

Continued

Bill Number (Committee)	Name	Mandate
	Intergovernmental Mandates with Costs Below the Statutory Threshold (Continued)[a]	
S. 2145	SPY BLOCK Act	Requires states' attorneys general to notify the Federal Trade Commission when they file suits regarding certain types of computer activity; preempts state laws regarding spyware; prohibits states from creating certain civil penalties
S. 2165	A bill to specify the end strength for active-duty personnel of the Army as of September 30, 2005	Increases the costs of existing mandates included in the Soldiers and Sailors Civil Relief Act by increasing the number of active-duty service members
S. 2273	Rail Security Act of 2004	Preempts state hiring authority and liability laws
S. 2275	High Risk Nonprofit Security Enhancement Act of 2004	Requires state agencies to receive and evaluate certain applications for federal assistance to increase security
S. 2281	VOIP [Voice-over-Internet-protocol] Regulatory Freedom Act of 2004	Prohibits states from regulating certain telephone services for two years
S. 2290	Fairness in Asbestos Injury Resolution Act of 2004	Preempts state authority to hear asbestos cases and gives subpoena power to asbestos fund administrators; requires government entities to comply with those subpoenas
S. 2386 (Select on Intelligence)	Intelligence Authorization Act for Fiscal Year 2005	Preempts state laws related to income tax
S. 2386 (Armed Services)	Intelligence Authorization Act for Fiscal Year 2005	Preempts state laws related to income tax
S. 2400	National Defense Authorization Act for Fiscal Year 2005	Increases the costs of existing mandates included in the Soldiers and Sailors Civil Relief Act by increasing the number of active-duty service members
S. 2453	Public Transportation Terrorism Prevention Act of 2004	Requires certain transit agencies to participate in an information clearinghouse
S. 2488	Marine Debris Research and Reduction Act	Requires all ports (terminals) to maintain trash receptacles for plastic debris
S. 2657	Federal Employee Dental and Vision Benefits Enhancement Act of 2004	Preempts state and local laws governing coverage levels and benefit requirements

Continued

Table B-1.

Continued

Bill Number (Committee)	Name	Mandate
	Intergovernmental Mandates with Costs Below the Statutory Threshold (Continued)[a]	
S. 2820	SAVE LIVES Act	Requires seven public broadcasting stations to vacate their current television channels more quickly than under current law
S. 2840	National Intelligence Reform Act of 2004	Requires entities in the public sector, if subpoenaed by either of the federal authorities created by the legislation—the Inspector General of the National Intelligence Authority or the Privacy and Civil Liberties Oversight Board—to provide testimony, documents, or other evidence
	Intergovernmental Mandates Whose Costs Could Not Be Determined to Exceed the Statutory Threshold[a]	
S. 994	Chemical Facilities Security Act of 2003	Requires facilities to conduct vulnerability assessments; preempts state and local laws that provide public access to certain information
S. 1529	Indian Gaming Regulatory Act Amendments of 2004	Imposes new conditions on state and tribal compacts and new administrative requirements for tribes

Source: Congressional Budget Office.

a. In 2004, the threshold for intergovernmental mandates, which is adjusted annually for inflation, was $60 million.

Table B-2.

Bills Reviewed by CBO in 2004 That Contain Private-Sector Mandates

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Above the Statutory Threshold[a]	
H.R. 1561 (Senate Judiciary)	United States Patent and Trademark Fee Modernization Act of 2004	Increases existing fees and establishes new fees for certain patent and trademark services
H.R. 3550 (Transportation and Infrastructure)	Transportation Equity Act: A Legacy for Users	Expands certain safety requirements to cover owners and operators of commercial motor vehicles that transport nine to 15 passengers
H.R. 3550 (Passed by the House)	Transportation Equity Act: A Legacy for Users	Expands certain safety requirements to cover owners and operators of commercial motor vehicles that transport nine to 15 passengers
H.R. 3971	Highway Reauthorization Tax Act of 2004	Levies a tax on aviation-grade kerosene; requires registration of pipeline and vessel operators; modifies the heavy vehicle use tax
H.R. 4520 (Ways and Means)	American Jobs Creation Act of 2004	Extends through 2014 customs user fees that are scheduled to expire; extends the provisions of the Mental Health Parity Act of 1996 through the end of calendar year 2005 (that act prohibits group health plans that provide both medical and surgical benefits and mental health benefits from imposing aggregate lifetime limits or annual limits on coverage of mental health benefits that are different from those used for medical and surgical benefits); imposes several revenue-raising taxes
H.R. 4520 (Passed by the Senate)	Jumpstart Our Business Strength (JOBS) Act	Extends through 2013 customs user fees; extends the provisions of the Mental Health Parity Act of 1996 through the end of calendar year 2005; increases the number of workers covered by the overtime regulations under the Fair Labor Standards Act that are scheduled to take effect; requires chief executive officers or other corporate officers to include a declaration of compliance with the corporation's annual federal income tax returns; authorizes the Food and Drug Administration to regulate the sale, marketing, and advertisement of tobacco products; imposes two fees on manufacturers and importers of tobacco products
S. 882	Tax Administration Good Government Act of 2004	Amends the Internal Revenue Code to revise procedures for safeguarding taxpayers

Continued

Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Above the Statutory Threshold (Continued)[a]	
S. 1508	Federal Housing Enterprise Regulatory Reform Act of 2004	Requires the government-sponsored enterprises for Housing—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—to pay higher assessment fees for the operation of a new federal regulator; requires Fannie Mae and Freddie Mac to contribute 5.0 percent of their annual net earnings to a fund that provides grants to address the needs of underserved markets and supports new mortgage loan products or increased underwriting flexibility for existing loan products that support underserved markets; requires them to register at least one class of their capital stock with the Securities and Exchange Commission under the Securities Act of 1934; requires Fannie Mae and Freddie Mac to disclose to shareholders each quarter the fair value of the shareholders' equity interest in the enterprise; prohibits Fannie Mae and Freddie Mac from purchasing, servicing, selling, or dealing in any mortgages that require arbitration
S. 1963	Wireless 411 Privacy Act	Prohibits telecommunications carriers from disclosing on billing information the wireless numbers of individuals who request privacy; requires providers of commercial mobile-phone services to send notices to their subscribers and receive written authorization before publishing a subscriber's number in a wireless telephone directory
S. 1978	Surface Transportation Safety Reauthorization Act of 2003	Imposes new safety requirements on manufacturers of motor vehicles and manufacturers of tires; requires certain motor carriers to pay a new registration fee; increases registration fees for persons transporting certain hazardous materials

Continued

Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Above the Statutory Threshold (Continued)[a]	
S. 2290	Fairness in Asbestos Injury Resolution Act of 2004	Prohibits individuals from bringing or maintaining a civil action that alleges injury due to asbestos exposure; requires defendant companies and their insurers to pay annual assessments to the Asbestos Fund; requires asbestos settlement trusts to transfer their assets to the Asbestos Fund; provides the fund's administrator with the power to subpoena testimony and evidence; prohibits persons from manufacturing, processing, or distributing in commerce certain products containing asbestos; prohibits health insurers from denying, terminating, or altering any terms of a claimant's or beneficiary's coverage on account of participating in the bill's medical monitoring program or as a result of information discovered through such medical monitoring
S. 2424	National Employee Savings and Trust Equity Guarantee Act of 2004	Amends the Employee Retirement Income Security Act to require certain notifications and changes in the administrative procedures of private pension plans
S. 2820	SAVE LIVES Act	Requires television broadcasters to increase the amount of local and public affairs programming and to vacate certain channels to make those frequencies available for communication by public safety agencies
S.A. 2945	The Fair Minimum Wage Act of 2004 (proposed as an amendment to H.R. 4, the Personal Responsibility, Work, and Family Promotion Act of 2003)	Requires employers to increase the minimum wage paid to their employees
	Private-Sector Mandates with Costs Below the Statutory Threshold[a]	
H.R. 10 (Financial Services)	9/11 Recommendations Implementation Act	Requires financial institutions to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds; requires operators of certain payment systems to establish policies and procedures designed to identify and prevent transactions in connection with unlawful Internet gambling
H.R. 339	Personal Responsibility in Food Consumption Act	Prohibits the private sector from pursuing certain civil lawsuits concerning obesity or related health conditions
H.R. 1417 (Senate Judiciary)	Copyright Royalty and Distribution Reform Act of 2004	Requires entities in the private sector, if subpoenaed by the copyright royalty judges, to appear or provide evidence

Continued

Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Below the Statutory Threshold (Continued)[a]	
H.R. 1716 (Veterans' Affairs)	Veterans Earn and Learn Act of 2004	Requires providers of entrepreneurship courses to maintain records of enrolled veterans, including information on when they complete, interrupt, or terminate their education
H.R. 2179	Securities Fraud Deterrence and Investor Restitution Act of 2004	Prohibits mutual fund companies from charging any fees under rule 12b-1 on mutual funds that are closed to new investors except fees for shareholder-servicing activities;[c] imposes requirements on persons involved in the securities industry regarding additional disclosures, consumer information, and corporate governance
H.R. 2391 (Senate Judiciary)	Intellectual Property Protection Act of 2004	Limits the right of copyright owners to collect compensation from persons who use or manufacture a technology for making limited changes to a motion picture for a private home viewing; requires manufacturers, licensees, and licensors of such technology to provide a clear and conspicuous notice that the performance of the motion picture is altered from the original
H.R. 2824	Internet Tobacco Sales Enforcement Act	Imposes new requirements on certain tobacco distributors and sellers regarding reporting, shipping, recordkeeping, and tax collection
H.R. 2929	Securely Protect Yourself Against Cyber Trespass Act	Requires persons who transmit information-collection programs to or execute them on another person's computer to receive consent from the owner or authorized user of that computer before installing hidden software that is capable of collecting personal information
H.R. 3143 (Judiciary)	International Consumer Protection Act of 2004	Exempts entities from liability for providing information to the Federal Trade Commission about possible unfair or deceptive practices of third parties, limiting the ability of the third party to sue
H.R. 3479	Brown Tree Snake Control and Eradication Act of 2004	Imposes new requirements on travelers and shippers of goods departing from Guam and other areas infested with brown tree snakes by requiring federal agencies to implement a system of predeparture quarantine protocols for inspecting passengers, baggage, and cargo leaving from those areas

Continued

Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Below the Statutory Threshold (Continued)[a]	
H.R. 3574	Stock Option Accounting Reform Act	Requires companies that grant some compensation through stock options to recognize as an expense in their annual report to the Securities and Exchange Commission the fair value of certain options to purchase stock granted to the chief executive officer and the four most highly compensated executives of the company
H.R. 3706 (Resources)	John Muir National Historic Site Boundary Adjustment Act	Should no owner be found, imposes a mandate on the private sector if the National Park Service condemns a parcel of land to establish ownership and annexes that land to include it in the John Muir Historic Site
H.R. 3706 (Senate Energy and Natural Resources)	John Muir National Historic Site Boundary Adjustment Act	Should no owner be found, imposes a mandate on the private sector if the National Park Service condemns a parcel of land to establish ownership and annexes that land to include it in the John Muir Historic Site
H.R. 3752	Commercial Space Launch Amendments Act of 2004	Imposes additional requirements on commercial space flight licensees and participants engaging in manned space flights, including medical standards, training requirements, and disclosure of passenger risk
H.R. 3866 (Judiciary)	Anabolic Steroid Control Act of 2004	Adds about two dozen new substances to the list of anabolic steroid controlled substances, regulated by the Controlled Substances Act
H.R. 3866 (Energy and Commerce)	Anabolic Steroid Control Act of 2004	Adds about two dozen new substances to the list of anabolic steroid controlled substances, regulated by the Controlled Substances Act
H.R. 4077	Piracy Deterrence and Education Act of 2004	Limits the right of copyright owners to collect compensation under copyright law from persons who use or manufacture a technology for making limited changes to a motion picture for a private home viewing; requires manufacturers, licensees, and licensors of such technology to provide a clear and conspicuous notice that the performance of the motion picture is altered from the original

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Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Below the Statutory Threshold (Continued)[a]	
H.R. 4200	National Defense Authorization Act for Fiscal Year 2005	Increases the number of service members eligible for certain relief under the Soldiers and Sailors Civil Relief Act (creditors must reduce the interest rate on service members' obligations to 6 percent when such obligations predate active-duty service, and courts may temporarily stay certain civil proceedings, such as evictions, foreclosures, and repossessions); imposes new conditions on certain export licenses
H.R. 4251	Maritime Transportation Amendments of 2004	Subjects towing vessels to inspection by the Coast Guard; requires them to comply with new safety standards and to have an adequate supply of potable water
H.R. 4501	Satellite Home Viewer Extension and Reauthorization Act of 2004	Requires satellite companies to carry transmission of local television channels to a single dish, replace the transmission of distant network signals with programming using local signals for certain subscribers, notify television broadcast stations of plans to begin satellite service using the retransmission of local signals in their broadcast markets, and give the stations the right to elect transmission of their signals
H.R. 4518	Satellite Home Viewer Extension and Reauthorization Act of 2004	Requires satellite companies to submit to television network stations a list of their subscribers who receive signals of "significantly viewed" stations and to submit an updated list of those subscribers monthly to the Federal Communications Commission
H.R. 4586	Family Movie Act of 2004	Limits the right of copyright owners to collect compensation under copyright law from persons who use or manufacture a technology for making limited changes to a motion picture for a private home viewing; requires manufacturers, licensees, and licensors of such technology to provide a clear and conspicuous notice that the performance of the motion picture is altered from the original
H.R. 4600	Junk Fax Prevention Act of 2004	Requires senders of unsolicited fax advertisements to include an opt-out notice that contains a cost-free method of opting out (for example, a local telephone number or a toll-free number)

Continued

Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Below the Statutory Threshold (Continued)[a]	
H.R. 4634	Terrorism Insurance Backstop Extension Act of 2004	Extends requirements that certain insurers offer terrorism insurance and that certain insurers and their policyholders repay the federal government for the cost of assistance (in the form of assessments and surcharges); expands two of those requirements to apply to group life insurers
H.R. 4658	Servicemembers and Veterans Legal Protections Act of 2004	Increases from 18 months to 24 months the amount of time mobilized reservists are eligible to continue their health insurance; requires that termination of a lease by a service member also terminates the obligation of a dependent under that lease
H.R. 5011	Military Personnel Financial Services Protection Act	Bans the future sale of periodic payment plans for mutual funds; requires insurers and purveyors of life insurance products to make certain disclosures when selling or soliciting life insurance products on military installations
S. 741 (Passed by the Senate)	An act to amend the Federal Food, Drug, and Cosmetic Act with regards to new animal drugs, and for other purposes	Requires manufacturers, packagers, and labelers of processed foods regulated by the Food and Drug Administration to modify labels of processed foods that contain major food allergens to display the names of those allergens from which ingredients are derived; may delay entry of products from some manufacturers of generic animal drugs for minor uses or for use in minor species by providing additional market exclusivity to drug innovators
S. 741 (House Energy and Commerce)	An act to amend the Federal Food, Drug, and Cosmetic Act with regards to new animal drugs, and for other purposes	Requires manufacturers, packagers and labelers of processed foods regulated by the Food and Drug Administration to modify labels of processed foods containing major food allergens to display the names of those allergens from which ingredients are derived; may delay entry of products from some manufacturers of generic animal drugs for minor uses or use in minor species by providing additional market exclusivity to drug innovators
S. 1529	Indian Gaming Regulatory Act Amendments of 2004	Requires sellers, dealers, buyers, and lessors (including individuals who sell or lease class II gambling devices, such as electronic bingo machines, and private-sector entities contracted to operate tribal casinos) to register class II devices with the National Indian Gaming Commission

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Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Below the Statutory Threshold (Continued)[a]	
S. 1545	Development, Relief, and Education for Alien Minors Act of 2003, or the DREAM Act	Increases the number of students that colleges and universities must track in the Student and Exchange Visitor Information System (which was created to collect timely information on foreign students who come to the United States for educational or student-exchange purposes)
S. 1582	Valles Caldera Preservation Act of 2004	Allows the Secretary of Agriculture to use a declaration of taking to acquire certain privately held mineral interests of the Baca Ranch, should negotiations for a sale fail
S. 1635	L-1 Visa (Intracompany Transferee) Reform Act of 2004[b]	Imposes new conditions on employers of L-1 visa holders; generally increases the stringency of employment and immigration requirements for L-1 visas
S. 1721 (Indian Affairs)	American Indian Probate Reform Act of 2004	Amends federal probate law governing the inheritance of Indian lands, imposing a mandate on certain individuals who would otherwise inherit interest in Indian lands under current law; allows the Secretary of the Interior to partition certain fractionated parcels of Indian lands for sale without the express permission of all interest owners
S. 1721 (House Resources)	American Indian Probate Reform Act of 2004	Amends federal probate law governing the inheritance of Indian lands, imposing a mandate on certain individuals who would otherwise inherit interest in Indian lands under current law; allows the Secretary of the Interior to partition certain fractionated parcels of Indian lands for sale without the express permission of all interest owners
S. 1784	Methamphetamine Blister Pack Loophole Elimination Act of 2003	Requires retailers of over-the-counter pseudoephedrine and phenolpropanolamine products to record and report transactions of those products sold in blister packages in quantities that exceed 9 grams
S. 2013	Satellite Home Viewer Extension Act of 2004	Requires satellite companies to submit to television network stations a list of their subscribers who are receiving signals of "significantly viewed" stations and to submit an updated list of those subscribers monthly to the Federal Communications Commission

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Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Below the Statutory Threshold (Continued)[a]	
S. 2035	Guard and Reserve Readiness and Retention Act of 2004	Requires both private- and public-sector employers to extend the amount of time that certain reservists may elect to continue their health insurance after separating from that employment
S. 2145	Software Principles Yielding Better Levels of Consumer Knowledge (SPY BLOCK) Act	Regulates computer software used to collect personal information, monitor the behavior of computer users, or produce pop-up advertisements on personal computers
S. 2165	A bill to specify the end strength for active-duty personnel of the Army as of September 30, 2005	Increases the number of service members eligible for certain relief under the Soldiers and Sailors Civil Relief Act (creditors must reduce the interest rate on service members' obligations to 6 percent when such obligations predate active-duty service, and courts may temporarily stay certain civil proceedings, such as evictions, foreclosures, and repossessions)
S. 2273	Rail Security Act of 2004	Requires Amtrak to submit a plan that addresses the needs of families of passengers involved in a fatal accident; in the event of a fatal accident, requires Amtrak to provide a passenger list to federal authorities and a toll-free number for use by families of passengers
S. 2279	Maritime Transportation Security Act of 2004	Requires vessel owners to make seamen who transport nuclear materials in the navigable waters of the United States undergo criminal-background checks
S. 2281	VOIP Regulatory Freedom Act of 2004	Requires providers of voice-over-Internet-protocol telephone services to provide 911 and enhanced 911 services for their subscribers
S. 2393	Aviation Security Advancement Act	Requires all air carriers to offer bereavement fares at the lowest fare offered by the air carrier for the flight for which the bereavement fare is requested; requires air carriers to at least double the volume of cargo that is screened or inspected; prohibits passengers from carrying butane lighters on board passenger aircraft; requires operators of all-cargo aircraft to maintain a barrier between the flight deck and the cargo compartment, screen persons and bags to be transported on an aircraft, search aircraft prior to the first flight of the day, and secure any aircraft that is unattended overnight; prohibits flight crew members who are not assigned to the flight deck of all-cargo aircraft from possessing a key to a flight-deck door

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Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates with Costs Below the Statutory Threshold (Continued)[a]	
S. 2400	National Defense Authorization Act for Fiscal Year 2005	Increases the number of service members eligible for certain relief under the Soldiers and Sailors Civil Relief Act (creditors must reduce the interest rate on service members' obligations to 6 percent when such obligations predate active-duty service, and courts may temporarily stay certain civil proceedings, such as evictions, foreclosures, and repossessions)
S. 2603	Junk Fax Prevention Act of 2004	Requires senders of unsolicited fax advertisements to include an opt-out notice that contains a cost-free method of opting out (for example, a local telephone number or a toll-free number)
S. 2644	Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004	Requires satellite companies to reallocate their transmission of local television channels through a single dish, retransmit a distant digital signal only if they retransmit a local analog signal in that same market and notify those customers that are receiving a distant digital signal when they are no longer eligible to receive it, notify subscribers of their privacy rights, provide broadcast television network stations with a list of subscribers who are no longer eligible to receive a distant digital signal, and announce the sponsor of commercial or political advertising that originates with the satellite company; requires television network stations to notify a satellite company when a household is no longer eligible to receive a distant digital signal
S. 2840	National Intelligence Reform Act of 2004	Requires entities in the private sector, if subpoenaed by either of the federal authorities created by the legislation—the Inspector General of the National Intelligence Authority or the Privacy and Civil Liberties Oversight Board—to provide testimony, documents, or other evidence
	Private-Sector Mandates Whose Costs Could Not Be Determined to Exceed the Statutory Threshold[a]	
H.J. Res. 97	Approving renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003	Extends the ban on imports from Burma for one year

Continued

Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates Whose Costs Could Not Be Determined to Exceed the Statutory Threshold (Continued)[a]	
H.R. 10 (Judiciary)	9/11 Recommendations Implementation Act	Requires shippers of hazardous materials to comply with new security regulations and prohibits them from discharging or discriminating against employees who provide information or assist in an investigation regarding a violation related to the security of shipments of extremely hazardous materials; requires nuclear facilities to comply with new regulations designed to address security threats
H.R. 2971	Social Security Privacy and Identity Theft Prevention Act of 2004	Prohibits the purchase, sale, or display of a Social Security number to the general public, including the display of a Social Security number on any card or tag; prohibits certain private entities from refusing to do business with an individual because the individual will not provide his or her Social Security number; prohibits consumer-reporting agencies from providing Social Security numbers, or any derivative of such numbers, except in a full consumer report furnished in accordance with the Fair Credit Reporting Act
H.R. 3261 (Judiciary)	Database and Collections of Information Misappropriation Act	Prohibits any person from making a substantial part of information in certain databases available to the public in commercial affairs without proper authorization
H.R. 3261 (Energy and Commerce)	Database and Collections of Information Misappropriation Act	Prohibits any person from making a substantial part of information in certain databases available to the public in commercial affairs without proper authorization
H.R. 3872	Consumer Access to Information Act of 2004	Prohibits a person's use of information from a database generated by another person without proper authorization when the database was generated at some cost or expense, the value of the information on the database is highly time sensitive, the use constitutes "free-riding" on the originator's costly efforts to generate or collect the data, the use is in direct competition with a product or service offered by the originator, and such use might eliminate the incentive to produce the product or service
S. 994	Chemical Facilities Security Act of 2003	Requires owners and operators of certain chemical facilities to assess a facility's vulnerabilities, develop and implement a site security plan, certify completion of the assessment plan, and be subject to periodic review

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Table B-2.

Continued

Bill Number (Committee)	Name	Mandate
	Private-Sector Mandates Whose Costs Could Not Be Determined to Exceed the Statutory Threshold (Continued)[a]	
S. 2056	Broadcast Decency Enforcement Act of 2004	Requires owners of commercial television broadcast stations whose national audience exceeds 35 percent of households to divest themselves of such licenses as may be necessary to come into compliance with that limitation; prohibits the distribution to the public of certain violent programs unless they can be electronically blocked during certain hours; prohibits the airing of such programming during certain hours if the Federal Communications Commission determines that electronic blocking is not effective
S. 2488	Marine Debris Research and Reduction Act	Requires terminal operators to provide receptacles for the disposal of plastics and to log the waste received; requires vessels under 40 feet to maintain waste receptacles and waste management plans; requires vessels that weigh less than 400 gross tons to maintain records of waste disposal
S.J. Res. 39	Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003	Extends the ban on imports from Burma for one year

Source: Congressional Budget Office.

a. In 2004, the threshold for private-sector mandates, which is adjusted annually for inflation, was $120 million.

b. The L-1 intracompany visa allows executives, managers, and employees with specialized skills to transfer from a foreign company to a U.S. office, subsidiary, or affiliated company to perform temporary services.

c. Rule 12b-1 fees are charged by some mutual funds to pay for advertising, marketing, services performed by an administrator, or commissions to a broker or other salesperson.

APPENDIX

C

Primary Contributors to CBO's Analyses of Mandates

The following Congressional Budget Office (CBO) staff participated in the preparation of the mandate statements that CBO produced for bills and other legislative proposals in 2004:

Intergovernmental Mandates

Budget Analysis Division

Theresa Gullo	Chief, State and Local Government Cost Estimates Unit (202-225-3220)
Leo Lex	Health, human resources, income security, Social Security, training, employment
Melissa Merrell	Administration of justice, community development, disaster relief, national security
Marjorie Miller	Agriculture, natural resources, Indian affairs, water resources
Sarah Puro	Commerce, education, housing, general government
Gregory Waring	Transportation, general science, space and technology, energy, environment
Ernestine McNeil	Secretarial support

Private-Sector Mandates

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David Auerbach	Health
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Anna Cook	Health
Noelia Duchovny	Health
Phil Ellis	Health
Meenakshi Fernandes	Health, income security
Julie Lee	Health
Noah Meyerson	Labor, income security
Lyle Nelson	Health
Robert Nguyen	Health
Peter Richmond	Health, income security
Ralph Smith	Labor, income security
Chapin White	Health
Ronald Moore	Secretarial support
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Robert Murphy	General Counsel (202-225-1971)
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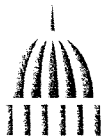

NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

TESTIMONY OF

DELEGATE JOHN HURSON

MARYLAND HOUSE OF DELEGATES

PRESIDENT, NATIONAL CONFERENCE OF STATE LEGISLATURES ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING

THE UNFUNDED MANDATES REFORM ACT OF 1995

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,

UNITED STATES SENATE

APRIL 14, 2005

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Testimony of Delegate John Hurson
April 14, 2005

Chairman Voinovich, Ranking Member Akaka and distinguished members of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, I am John Hurson, President of the National Conference of State Legislatures (NCSL) and a member of the Maryland House of Delegates. I appear before you today on behalf of NCSL, a bi-partisan organization representing the fifty state legislatures and the legislatures of our nation's commonwealths, territories, possessions and the District of Columbia.

Thank you for the opportunity to testify before you today about the Unfunded Mandates Reform Act of 1995 (UMRA). Thank you Mr. Chairman for your efforts and leadership as Governor of Ohio that helped UMRA become a reality a decade ago and for your continued commitment in the United States Senate to review how it is working. I underscore the bipartisan and bicameral collaboration that led to its enactment.

My presentation today will highlight the effectiveness and limitations of UMRA, the impact of those limitations on state budgets and the need for substantive and technical changes to UMRA. I request that a copy of NCSL's March 10, 2005 *Mandate Monitor* be submitted for the record to accompany my testimony.

Mr. Chairman, NCSL continues to applaud the success of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) and the work of the Congressional Budget Office (CBO) in bringing attention to the fiscal effects of federal legislation on state and local governments, improving federal accountability and enhancing consultation. CBO's March 2005 report that identified only 5 laws that crossed UMRA's threshold speaks loudly for its effectiveness. The hundreds of fiscal analyses completed by CBO show a commitment to carry out the spirit and letter of the law. Both of these facts, however, mask some of the statute's shortcomings.

The Government Accountability Office's May 2004 analysis of UMRA, conducted at your request, concluded that "...there are multiple ways that both statutes and final rules containing what affected parties perceive as 'unfunded mandates' can be enacted or

published without being identified as federal mandates with costs or expenditures at or above the thresholds established in UMRA."[1] In addition, the report found that, "The findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected nonfederal parties."[2]

Because of UMRA's limitations, much is slipping under the radar. As a result, the federal government continues to effectively shift costs to state governments, thereby intensifying pressures on state budgets.

NCSL has identified a $51 billion cost shift in federal funding to states for fiscal years 2004 and 2005 collectively and a potential $30 billion cost shift in FY 2006. This does not take into account the possible adoption of proposed changes in federal Medicaid spending—a proposed net $45 billion reduction in federal spending over 10 years—the potential impact of any federal tax reform that could impose direct compliance costs or even restrict state revenues, or the impact of numerous regulatory mandates or pre-UMRA mandates. (The minimum cost shift for FY 2004 of $25.7 billion represented 5 percent of state general revenue funds. For FY 2005, the percentage impact was essentially the same.)

Mr. Chairman, legislators view mandates more expansively than UMRA's definition. We believe there are mandates when the federal government:

- Establishes direct federal orders without sufficient funding to pay for their implementation.
- Establishes a new condition of grant in aid.
- Reduces current funds available, including a reduction in the federal match rate or a reduction in available administrative or programmatic funds, to state and local governments for existing programs without a similar reduction in requirements.
- Extends or expands existing or expiring mandates.

- Establishes goals to comply with federal statutes or regulations with the caveat that if a state fails to comply they face a loss of federal funds.
- Compels coverage of a certain population/age group/other factor under a current program without providing full or adequate funding for this coverage.
- Establishes overly prescriptive regulatory procedures that move beyond the scope of congressional intent.
- Enacts legislation that indirectly increases costs for states.
- Creates underfunded national expectations, e.g., homeland security.

To illustrate the problem, I would like to provide you examples of provisions contained in 3 bills enacted during the 108th Congress that were not considered intergovernmental mandates under UMRA, but did create a cost shift to the states.

On October 22, 2004, President Bush signed H.R. 4520—*the American Jobs Creation Act of 2004*. In its final version, the bill contained a $.75 excise tax on hepatitis A and influenza vaccines sold by manufacturers, producers, or importers thereof. Because Medicaid is a major purchaser of these vaccines, the tax will indirectly increase state spending for the Medicaid program by approximately $90 million over the 2005-2009 period.[3] Indirect costs are not considered mandates under UMRA. Therefore, this provision was not considered an intergovernmental mandate.

In 2004, Congress reauthorized the Individuals with Disabilities Education Act (IDEA). Since enacting IDEA in 1975, Congress has never met its commitment to fund 40 percent of the average per-pupil expenditure (APPE) for children with disabilities. Formally recognizing Congress' responsibility, the IDEA conference committee stated in its 2004 report that, "A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals." As such, the new law establishes a seven-year "glide path" to move the federal government towards funding 40 percent of the APPE by FY 2011.[4] However, with the ink less than 6 months dry, the federal government is already $1.8 billion behind for FY 2005 in fulfilling its most recent promise. The authorized level was $12.3 billion

and Congress appropriated $10.5 billion.[5] Failure by the federal government to provide 40 percent APPE places on average an additional $10 billion annually on the back of state budgets. This does not take into account that some research has shown that the cost of educating a child with special needs is twice that of the non-special needs student population. Adjusting for this fact, the gap in funding for IDEA would be more in the range of $30 billion annually. CBO considers any requirements under IDEA as a condition of grant aid. However, states are really not in a position to refuse participation in the grant program. Any state that refused to participate in IDEA would be open for suit in federal court for not complying with civil rights law.

CBO determined that the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (P.L. 108-173) contains an intergovernmental mandate as it relates to a preemption of state taxes on premiums for prescription drug coverage. The law also contains a number of other provisions that will increase state expenditures that were not determined to be intergovernmental mandates. For example, all prices negotiated under the MMA are not included in the calculation of the Medicaid "best price." States will find it more difficult to negotiate supplemental rebates because the dual-eligibles will no longer be a part of their prescription drug portfolio. Indexing the Part B premium will also result in increased state costs and states expect to see increased administrative costs related to the requirement to conduct eligibility determinations for the low-income subsidy for Medicare Part D.

These are just a few examples of how the federal government can shift costs to states outside of the UMRA process. These actions have resulted in substantial costs to state and local governments. Collectively, actions such as these erode state legislators' control over their own states' budgets.

As such, NCSL urges Congress to consider refining the law to broaden its scope and increase its effectiveness. Specifically, NCSL encourages the federal government to consider reforms that include:

- Expansion of the definition of an unfunded mandate to include all open-ended entitlements, such as Medicaid, child support and Title 4E (foster care and adoption assistance) and proposals that would put a cap on or enforce a ceiling on the cost of federal participation in any entitlement or mandatory spending program. Furthermore, any proposal that places a cap on or enforces a ceiling must be accompanied by statutory offsets that reduce state spending, administrative duties or both.
- Elimination of the existing exclusions under Section 4 of UMRA. The experience of Congress in overcoming an unfunded mandate point of order by majority vote demonstrates that the protections afforded by UMRA will not prevent Congress from exercising its will in important areas such as enforcing constitutional rights or meeting national security needs. However, excluding such legislation from the requirements of UMRA precludes an official accounting of the costs imposed under such legislation.
- Expansion of the definition of mandates to include new conditions of federal funding for existing federal grants and programs, including costs not previously identified.
- Expansion of the definition of mandates to include proposals that would reduce state revenues, especially when changes to the federal tax code are retroactive or otherwise provide states with little or no opportunity to prospectively address the impact of a change in federal law on state revenues.
- Expansion of the definition of mandates to include those that fail to exceed the statutory threshold only because they do not affect all states.
- Revision of the definitions of mandates, direct costs or other provisions of the law to capture and more accurately reflect the true costs to state governments of particular federal actions.
- Enactment of legislation which would require federal reimbursement, as long as the mandate exists, to state and local governments for costs imposed on them by any new federal mandates.
- Improvement of Title II, including enhanced requirements for federal agencies to consult with state and local governments and the creation of an office within the Office of Management and Budget that is analogous to the State and Local Government Cost Estimates Unit at the Congressional Budget Office.

- Improvement of the Joint Committee on Taxation's consultation with state and local governments.
- Consideration of the cumulative impact of mandates.

Mr. Chairman, in closing I would like to add that NCSL remains steadfast in its resolve to work with federal policymakers to reduce the federal deficit and to maintain critical programs. Controlling the deficit is a daunting task involving difficult choices, many of which involve our intergovernmental partnerships and some of the areas where the largest cost shift occurs—Medicaid and education. We recognize that the pressure for mandatory federal spending and restrictions on the growth of discretionary spending promote a tendency to seek the accomplishment of national goals through federal mandates on state and local governments. However, NCSL is encouraged that you and other federal lawmakers have recognized the difficulties posed by the cost shifts to states and we look forward to working with you on this important issue. I thank you for this opportunity to testify and would be happy to answer any questions members of the subcommittee may have.

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1 Government Accountability Office, *Unfunded Mandates: Analysis of Reform Act Coverage*, Report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Governmental Affairs, U.S. Senate, (Washington, D.C.: GAO, May 2004).

2 Ibid.

3. Congressional Budget Office, *H.R. 4520: American Jobs Creation Act of 2004*, (Washington, D.C.: CBO, August 2, 2004).

4. Tetreault, Yvette; Federal Funds Information for States; *Issue Brief 04-57: IDEA Reauthorization*, (Washington, D.C.: FFIS, December 8, 2004).

5. Ibid.

STATEMENT OF

THE HONORABLE COLLEEN LANDKAMER
COMMISSIONER, BLUE EARTH COUNTY, MINNESOTA

FIRST VICE PRESIDENT
NATIONAL ASSOCIATION OF COUNTIES

ON THE TENTH ANNIVERSARY OF THE
UNFUNDED MANDATES REFORM ACT

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT
OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON BEHALF OF THE
NATIONAL ASSOCIATION OF COUNTIES

APRIL 14, 2005
WASHINGTON, D.C.

Chairman Voinovich, Ranking Member Akaka, members of the subcommittee, I would like to thank you for the opportunity to participate in this hearing.

I am Colleen Landkamer, and I have served for the past seventeen years as a county commissioner for Blue Earth County, Minnesota. I am also proud to serve as First Vice President of the National Association of Counties (NACo).

The National Association of Counties is the only national organization that represents county governments in the United States. From its headquarters on Capitol Hill, NACo is a full service organization that provides legislative advocacy, research, financial products and services, and technical assistance to member counties across the country.

As you know, county governments play a vital and growing role in the lives of America's families, bringing crucial services to communities from rural America to our suburbs and central cities. When Americans need a police officer, a firefighter, or an emergency medical technician, they call upon county government. When Americans commute to work or drive their sons and daughters to school or a soccer game they take county highways and county bridges. When Americans face health emergencies, more often than not, they depend on our county hospitals. When Americans seek fair hearings in our judicial system, they go to county courts. When Americans elect our local, state and federal leaders, county governments ensure the integrity and fairness of the election. On September 11, 2001, county governments and county workers were the first to respond.

County governments play a critical role in the American federal system of government. As elected officials, we can best serve our mutual constituents by working in partnership among local governments, states and the federal government to meet our shared objectives, among them a cleaner environment, safer streets, better health care, improved opportunity for all, responsible taxes and transparent, accountable government.

Our system of government is designed to foster vigorous local government that has the authority and responsibility to govern in the way that is best for each community. Too often, however, the federal government decides that it knows best how to handle the issues that face local governments across the country and dictates a one-size-fits-all approach. Even worse, all too often, the federal government not only takes decisions out of our hands and puts them in the hands of someone who is hundreds of miles away in Washington, D.C., but then sends the bill to states and local government.

Mr. Chairman, the federal government imposes fewer, and less burdensome, federal mandates today than it would have without the Unfunded Mandates Reform Act. You should be proud of your role as a lead advocate for, and architect of, the law that we now seek your aid in strengthening.

However, I am here today to testify that counties continue to struggle under the burden of unfunded federal mandates and the law needs to be strengthened.

I would like to submit for the record a copy of a recent snapshot survey conducted by the National Association of Counties that provides a glimpse of the unfunded mandate burden facing counties. At the request of Chairman Tom Davis of the House Committee on Government Reform, NACo asked counties about the costs of ten significant federal mandates for fiscal years 2003 through 2005 and selected 30 counties from among those that responded as most representative of all counties. These counties provided information on an average of six mandates for which costs were identifiable within their county budget. The average per capita cost for those six mandates over the three-year span was $137 per person, or $548 for a family of four. NACo estimates that if this per capita cost were averaged across the entire nation, the unfunded burden on counties of this limited glimpse into unfunded mandates over a three-year period would be more than $40 billion. Again, this is for an average of just six mandates per county for which costs are readily quantifiable; a comprehensive review would certainly run into the hundreds of billions of dollars nationwide.

I would like to discuss briefly what this survey for my own county. In Blue Earth County, Minnesota, we are proud to have the lowest property tax burden in the nine-county region. However, seventy percent of our own source revenues are derived from the property tax, much of which we spend to comply with unfunded mandates. For example, over the past three years, we have spent approximately:

- $8.38 per family of four to comply with Americans With Disabilities Act;
- $7.79 per family of four to implement the Help America Vote Act;
- $26.11 per family of four to comply with provisions of the Clean Water Act and the Safe Drinking Water Act;
- $11.14 per family of four under the Resource Conservation and Recovery Act; and
- $2.93 per family of four to comply with the Health Insurance Portability and Accountability Act.

Eight dollars per family of four may not be too much to ensure that our public buildings and transportation systems are accessible or to purchase new voting equipment, nor three dollars per family too much to ensure the privacy of health information, nor twenty-six dollars too much to ensure safe drinking water. However, the costs of all of these mandates add up. Nearly seven dollars out of every ten that Minnesota counties spend are for programs that have been mandated by the federal and state government.

In Blue Earth County, you can see that unfunded federal mandates shift the costs of programs from the federal income tax to county property taxes.

The Unfunded Mandates Reform Act was a landmark achievement in the history of federalism and has largely been very successful. It recognized and denounced the practice of imposing unfunded federal mandates. It requires the Congress to estimate the costs, then specifically debate and vote on most unfunded mandates before enacting them. The Government Accountability Office has reported that the mandate cost estimates prepared by the Congressional Budget Office are a useful tool for members of

Congress from both chambers to determine the impact of potential mandates on states and local governments and that the unfunded mandate point of order has been used in both chambers as an effective deterrent.

The Congressional Budget Office has reported that the federal government enacted five laws that contained intergovernmental mandates under UMRA over the past decade. However, counties are struggling with the costs of many more federal mandates that have failed to trigger provisions of UMRA. The following is a list of ten loopholes through which mandates continue to be enacted without facing heightened scrutiny under UMRA:

1. **UMRA identifies only the anticipated costs of proposed new mandates, not the actual costs of mandates after they have been imposed.** The Congressional Budget Office is only responsible for preparing mandate cost estimates on proposed legislation and federal agencies are only responsible for determining the costs of mandates that would result from proposed rules. No entity of the federal government is responsible for taking a broader view to determine whether the estimates of CBO or of federal agencies were correct, to "look back" at the costs of mandates that were enacted prior to the passage of UMRA, or to examine unfunded mandates in the broader context of intergovernmental relations.

   NACo's snapshot survey demonstrates that counties continue to struggle under the weight of mandates that were adopted prior to passage of the Unfunded Mandates Reform Act, including the Clean Air Act; the Clean Water Act; the Safe Drinking Water Act; the Resource Conservation and Recovery Act; the Americans With Disabilities Act; and the Endangered Species Act. Under the Clean Water Act, for example, one of the largest issues for counties currently is Phase II stormwater regulations. This has caused a huge financial drain on our nation's counties. Counties are increasingly required to monitor and treat runoff from construction sites, car washes, and other sources of groundwater pollution. Counties also face new regulatory mandates under the Clean Air Act. Within the last year, new ozone and fine particle standards have increased the burden on counties for monitoring air quality and addressing sources of pollution. All of these federal requirements have become more strict and expensive to implement, especially for counties with fewer resources. While the Environmental Protection Agency works diligently to estimate the implementation costs for state and local governments prior to issuing regulations there is no process for determining later whether the actual costs were higher or lower.

   There was an entity that could have performed this role had it not been disbanded soon after the enactment of UMRA. The Advisory Commission on Intergovernmental Relations was conducting a major study on the role of federal mandates in intergovernmental relations when it lost its federal appropriation for FY 1997. NACo urges the committee to consider either restoring the commission or investing other entity with the responsibility to perform further research on unfunded mandates.

2. **UMRA dismisses the costs of mandates that require state and local governments to enforce a constitutional right, provide for the national security, or that otherwise qualify for an exclusion.** The federal government has an important obligation to ensure that constitutional rights are protected and to protect the national security, even if doing so requires calling upon the resources of state and local government. However, the importance of the cause does not diminish the cost to states and local governments and should not get the federal government off the hook for paying its share of the cost. The exclusions do a great disservice to transparency in government and to states, counties and cities throughout the nation.

   When the Help America Vote Act was enacted, the committee report that accompanied it to the Senate floor indicated that the legislation contained no mandate under UMRA and the legislation was not subject to a mandate point of order. Despite the expressed intent of many members of this chamber at the time the mandates were enacted, the law has not been fully funded. While I believe that every individual has a right to vote and to have that vote counted, I do not believe that the importance of the franchise should absolve the federal government of responsibility for paying its share of the cost of new voting equipment. The Help America Vote Act is particularly burdensome for counties because with the deadline for compliance less than nine months away, the law has still not been fully funded and costs are rapidly escalating because the federal government has not met its promised commitment to issue voting system standards and provide for independent testing of voting equipment.

3. **UMRA excludes grant conditions, even new conditions on existing funding, conditions that would cut funding to implement mandates, and conditions that are unrelated to the grant.** With the exception of a few large entitlement programs, the law does not consider grant conditions to be mandates. In our experience, this is a distinction without a meaningful difference. To participate in a federal program, states must generally require all of their local governments to participate. Grant requirements, then, become not a condition but a mandated responsibility for local government.

   Often, the federal government imposes a new condition on existing funding, unilaterally changing the terms of a contract that a state or local government may not have accepted had the condition been imposed at the start. This practice is at its most egregious when the condition is unrelated to the original purpose of the grant. Withholding funding is often used to achieve a policy goal, not simply to target federal funding, as it is among the most effective enforcement mechanisms in the federal arsenal.

4. **Not all federal mandates are imposed explicitly by law.** While counties bear the expense of incarcerating and prosecuting those who commit violations of state or local law, counties have no authority to deport criminal illegal aliens. The Constitution of the United States specifies that the federal government has

exclusive jurisdiction over immigration law. Counties have no option but to jail these individuals at county expense while they await deportation or other federal immigration action.

The State Criminal Alien Assistance Program (SCAAP) provides reimbursement for some – but far from all – of the costs associated with incarcerating illegal immigrants who have committed violations of the law and now reside in our county jails. Historically, states and counties receive less than half of the costs expended in housing undocumented criminal aliens in reimbursement from the SCAAP program. If the federal government were to eliminate SCAAP, as the administration has proposed, the provisions of UMRA would not apply. Nevertheless, NACo insists that it would be an unfunded mandate if the federal government were to abandon its responsibility for illegal immigrants who are being held in county jails because of failures in federal immigration policy.

Counties also spend billions of dollars every year on uncompensated health care for undocumented immigrants. The federal government denies coverage for undocumented immigrants under both Medicare and Medicaid, yet requires county hospitals to treat all patients regardless of citizenship status or ability to pay. Counties must bear the costs associated with providing health care for undocumented immigrants despite our lack of authority over eligibility for these federal programs or the ability to control their presence within our borders.

5. **Agencies have inconsistent interpretations of their responsibilities under UMRA.** Because a single division within the Congressional Budget Office is charged with preparing mandate cost estimates for the legislative branch, interpretation and enforcement is consistent. The role of the Office of Management and Budget, however, is limited to guidance and oversight. Consequently, federal agencies differ on their interpretations of UMRA and mechanisms to consult in preparing their analysis of the mandate impact of rules, much as if each authorizing committee was asked to prepare its own interpretation of what classifies as a mandate and to decide how to consult with state and local government. The Environmental Protection Agency is consistent in its consultation with local governments in the preparation of written statements on the costs of mandates; the Administration for Children and Families makes no such habit.

   The committee may wish to consider strengthening the role of OMB to ensure consistent application of UMRA across the executive branch.

6. **UMRA does not apply to mandates that are not approved by an authorizing committee or rules that are issued by an independent agency.** The procedural mechanisms of the Unfunded Mandates Reform Act apply only when legislation is considered through regular order in the United States Senate and House of Representatives. UMRA does not apply to mandates that are inserted into legislation or strengthened after a bill has been approved by the committee of

jurisdiction or to mandates in appropriations legislation. For example, provisions of the Public Health Security and Bioterrorism Response Act required that community water systems conduct vulnerability assessments to identify potential threats, assess the critical assets of the system, evaluate the likelihood and consequences of an attack, and develop a prioritized set of system upgrades to increase security. These requirements were never included in legislation that was reported by an authorizing committee. In March 2002, the Federal Communications Commission issued a declaratory ruling classifying cable modem fees as an information service not be subject to cable franchise fees, costing local governments an estimated $350 million to $500 million each year.

7. **UMRA can be satisfied by authorizing funds, even if funds are never appropriated.** Perhaps the easiest way to enact an unfunded mandate without paying for it is to authorize "such sums as may be necessary". Every advocate who has ever lobbied for full funding for a federal program knows that the authorizing legislation does not require the appropriations committee to provide full funding for a program, or even to provide any funding at all. In many instances, Congress authorizes but does not appropriate sufficient funds to reimburse states and local governments for the costs of unfunded mandates. The State Criminal Alien Assistance Program is a key example of this problem.

   Options for the committee to consider to close this loophole include creating an enforcement mechanism in the appropriations process or permitting states and local governments to opt out of a mandate that has not received sufficient funding.

8. **UMRA excludes indirect mandates.** States and local governments often incur costs as an indirect result of federal legislation.

   Perhaps the most compelling examples are related to the Endangered Species Act. New species listings have been known to decimate a local economy, wreaking havoc with the county tax base and dramatically increasing the need for numerous public services. However, three provisions of the American Jobs Creation Act, enacted last year, are far more typical as they will drive up the cost of products and services purchased by counties across the country. The first increased the excise tax on vaccines and will significantly increase costs for county hospitals and other public health care providers. The second was a set of provisions designed to crack down on tax shelters, the costs of which companies that lease equipment to local governments will probably pass along by charging state and local governments higher prices for many of their leases. We worked to minimize the effects of these provisions on traditional leasing but the remaining costs will likely still be significant and have not been estimated. The third would have prevented local governments from using fleet credit cards to purchase gasoline without having to pay the fuel excise tax and submit separate claims for reimbursement. We are working toward a fix to this problem in the upcoming surface transportation bill, but the provision as it originally passed the Congress would have driven up costs for local governments significantly.

9. **UMRA applies a nationwide threshold regardless of the impact on a specific government or region.** To highlight an example from the jurisdiction of this subcommittee, the Congress could impose a mandate of more than $60 million on the District of Columbia and it would be considered de minimis under the Unfunded Mandate Reform Act. Anywhere in the country, a federal mandate can have a disproportionate impact on a local government without exceeding the de minimis threshold. This is frequently an issue under the Endangered Species Act and in federal environmental law, where rulemaking can have a devastating effect on a single county or region but fail to attain heightened scrutiny under UMRA.

10. **UMRA imposes only a majority point of order.** NACo applauds the provision of the Senate-passed budget resolution that would temporarily require a supermajority vote to override an unfunded mandate point of order. We believe that a point of order designed to protect state and local government budgets should require the same threshold as points of order designed to achieve discipline in the federal budget. If the provision appears in a final budget resolution it will be a significant first step toward strengthening the Unfunded Mandates Reform Act. NACo urges the committee to consider making that supermajority requirement permanent an important component of legislation to strengthen UMRA.

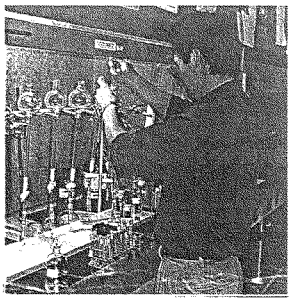
We hope that this list is useful to you and look forward to working with you to develop and enact legislation that will strengthen UMRA in the 109th Congress. We urge you to build on the success of the legislation by expanding its current framework to improve the collection of data on unfunded mandates both during the legislative and rulemaking processes and through retroactive analysis of the impact and to strengthen the enforcement power of the point of order both in the authorizing and in the appropriations process.

Mr. Chairman, that concludes my testimony. I thank you for the opportunity to share the views of the National Association of Counties on this important issue and look forward to any questions that you and other members of the committee may have.

National Association of Counties

Unfunded Mandates:

A Snapshot Survey



March 2005

NACO National Association of Counties
Counties Care for America

National Association of Counties

Founded in 1935, the National Association of Counties (NACo) is the only national organization in the country that represents county governments. With headquarters on Capitol Hill in Washington, D.C., NACo's primary mission is to ensure that the county government message is heard and understood in the White House and in the halls of Congress.

NACo's purpose and objectives are to:

- Serve as a liaison with other levels of government;
- Improve public understanding of counties;
- Act as a national advocate for counties; and
- Help counties find innovative methods for meeting the challenges they face.

This special report is a joint effort between the Legislative Affairs Department and the Research Division of the National Association of Counties

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Introduction

On January 21, 2005, Congressman Tom Davis, Chairman of the Committee on Government Reform of the U.S. House of Representatives, asked the National Association of Counties to provide information on the impact of unfunded mandates on county governments. In his letter he notes that "NACo is uniquely positioned to aid the committee" in collecting such information and expressed concern that many mandates "may constitute a substantial and unnecessary burden on governments."

During a two-week period from January 26 through February 11, NACo collected information from member counties from across the country who devoted significant staff time to collecting, analyzing and compiling data for their governments. This report provides information from a snapshot of a few high-profile mandates and provides a narrow glimpse of the enormous burden that these and hundreds of additional mandates impose on America's counties.

On this 10th anniversary of the Unfunded Mandates Reform Act, we hope that this snapshot survey will be a useful tool in reigniting discussion about intergovernmental mandates and the fiscal burdens that the federal government places on states, counties and municipal governments.

Angelo Kyle
President
Board Member, Lake County, IL

Larry E. Naake
Executive Director

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Unfunded Mandates:
A Snapshot Survey

President Clinton signed the Unfunded Mandates Reform Act, Public Law No. 104-4 into law on March 22, 1995. Its preamble reads as follows:

> An Act
>
> To curb the practice of imposing unfunded Federal mandates on States and local governments: to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations . . .

On January 21, 2005, Congressman Tom Davis, Chairman of the U.S. House of Representatives Committee on Government Reform, asked the National Association of Counties to provide information on the costs of unfunded mandates on county governments. NACo conducted a survey during a two-week period from January 26 through February 11 to provide a snapshot of the continuing unfunded mandate burden facing counties on the tenth anniversary of the Unfunded Mandates Reform Act.

Part I

The Survey

The National Association of Counties (NACo), working with the Chairman's staff, developed a survey instrument and response form that was sent to a small sample group of counties across the country. These counties varied in size from some of the smallest, with populations of less than 20,000, to some of the largest, with populations of 1 million or more. The survey included a list of 10 common federal mandates. Each county was asked to estimate the cost to them of each mandate for their Fiscal Years 2003, 2004 and projected 2005. The following federal mandates were included in the survey:

1. **Clean Air Act (CAA)** (42 U.S.C. 7401). Requires compliance with federal air pollution standards, including monitoring air quality, retrofitting stationary and mobile sources of pollution, and obtaining required permits.

2. **Clean Water Act (CWA)** (33 U.S.C. 1251). Requires compliance with federal regulations related to wastewater treatment and discharges into navigable waterways and wetlands, sets standards for improving and maintaining water quality, regulates and requires permits for point source discharges, and controls discharges to public waters by county-owned wastewater treatment works.

3. **Drinking Water (DW)** The Safe Drinking Water Act (42 U.S.C. 201) establishes maximum contaminant levels for the contaminants that are assumed to occur in public water systems and specifies treatment techniques to be used. This item includes related costs due to a requirement in the Bioterrorism Act (P.L. 107-188) that community water systems serving populations greater than 3,300 conduct vulnerability assessments to identify potential threats, assess the critical assets of the system, evaluate the likelihood and consequences of an attack, and develop a prioritized set of system upgrades to increase security.

4. **Resource Conservation and Recovery Act (RCRA)** (42 U.S.C. 6901). Governs regulation of solid and hazardous waste including cleanup of landfills, superfund sites and underground storage tanks.

5. **Americans With Disabilities Act (ADA)** (P.L. 101-336). Prohibits discrimination and requires accommodations of state and local government services, public accommodations, transportation and commercial facilities for persons with disabilities. Mandates the establishment of TDD/telephone relay services.

6. **Help America Vote Act (HAVA)** (P.L. 107-252). Requires that voting equipment used in an election for federal office meet federal minimum standards in such areas as accessibility and audit capacity and specifies certain practices in election administration.

7. **Endangered Species Act (ESA)** (P.L. 93-205). Requires federal agencies to ensure that the actions that they authorize, fund or carry out will not jeopardize a listed species. Provides for the designation of "critical habitat" for listed species which may require special management and consideration. Makes it unlawful for a person to kill, harass or harm a listed species in any way, including degrading its habitat.

8. **Health Insurance Portability and Accountability Act (HIPAA)** (P.L. 104-191). Provisions establish national standards for electronic health care transactions and require the adoption of security and privacy standards for medical records.

9. **Uncompensated Health Care (UHC)** The Emergency Medical Treatment and Active Labor Act (42 U.S.C. 1395dd) requires hospitals to screen and treat individuals presenting to the hospital with an emergency medical condition, and

restricts transfers of such individuals, regardless of ability to pay. Costs also include several provisions of federal law limit that federal funding of Medicare, Medicaid and the State Children's Health Insurance Program for certain persons, including the incarcerated, illegal immigrants, and certain categories of legal immigrants.

10. **Incarceration of Criminal Illegal Aliens (ICIA).** The federal government has exclusive jurisdiction over immigration law. Counties do not have the authority to deport criminal illegal aliens yet bear the expense of incarcerating and prosecuting those who commit violations of state or local law. The State Criminal Alien Assistance Program, governed by Section 242 of the Immigration and Nationality Act, 8 U.S.C. § 1231(i), as amended, and Title II, Subtitle C, Section 20301, Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), provides reimbursement for part of the costs of incarceration of criminal illegal aliens.

In addition to the list of mandates, the survey packet included examples of expenses that might be included in the cost estimate for each mandate, as well as a sample worksheet that could be completed or used as a guide to determine the costs of each mandate. The sample worksheet directed counties to include such operating costs as salaries, fringe benefits, office supplies, building and equipment; indirect costs such as personnel and training; billable costs such as contractual and professional services; and any other costs associated with the mandate such as debt service. The worksheet directed counties to subtract revenue from fees generated by the mandate and revenue received from the state, as well as the federal government, so that the final figure reflects only the use of county own source revenues to comply with the federal mandate.

Sixty counties provided responses to the survey. No county that responded was able to provide costs for each of the 10 mandates; some counties gave costs for most of the mandates while others responded to just a few. This report will provide information on all responses received for each mandate and will highlight the responses from 30 counties, ranging in size from a population of 17,598 to 1.5 million.

Part II

Observations

1. It was difficult for many counties to collect the information about the costs of federal mandates to their governments. There were several reasons, but the primary reason appears to be that the county chart of accounts and recordkeeping systems do not differentiate between constitutional, state and federally required activities and those aspects of those activities that are undertaken at the initiative of the county. In addition, the components of the costs for many mandates are spread throughout the governmental budget and are difficult to capture to provide a comprehensive view of the true cost of each mandate. As a result, some survey responses may not provide accurate estimates of the actual cost of the mandate to

the county. No county that responded was able to provide costs for each of the mandates included in the survey.

2. Many counties are not carrying out all of the listed mandates. In some instances, compliance with the mandate is carried out by the state government or a regional or governmental authority. In others, the mandate may require activities in which the county already engaged or may simply not apply to the county. However, a nonexistent or minimal response does not necessarily suggest that the county did not incur significant costs for a mandate; the county may simply have been unable to collect the data.
3. During the period of time covered by this survey many counties were planning and implementing compliance expenditures for two relatively recent mandates. These are the Help America Vote Act accessibility requirements and the Health Insurance Portability and Accountability Act. These activities are clearly visible in many county budgets and in the responses to this survey.

Part III

The Results

Sixty counties provided information during the two-week response period for the survey. Their responses indicate that each of the mandates included in the survey impose significant costs on counties. Information on the responses returned to NACo for each mandate are provided below.

Clean Air Act (42 U.S.C. 7401)
The Clean Air Act imposes a number of mandates on counties related to complying with federal air pollution standards, including monitoring air quality, retrofitting stationary and mobile sources of pollution, and obtaining required permits. Counties are affected in a number of ways, especially when they are named as in non-attainment. Some specific examples of activities that counties fund in compliance with the Clean Air Act include employer trip reduction programs; reformulated gasoline programs; setting reduced speed limits; burning and lawn maintenance restrictions; regulating residential hot water heaters; requiring high efficiency units in new construction; updating transportation planning procedures and adopting lean fuel fleets. In addition to the more readily quantifiable costs of implementing policies to help reduce air pollution, there are intangible costs of a nonattainment designation. The second punch comes in the form of an unwanted stigma as the designation hinders economic development within the county.

Within the last year, new designations for ozone and PM 2.5 (Particulate Matter) have affected a wide variety of counties including suburban and rural counties. Many of these newly designated counties have limited experience and capacity to address the requirements being imposed on them. Technical assistance available from the EPA is insufficient to meet the need.

Twenty one counties were able to provide specific costs incurred by their county for implementation of the Clean Air Act. Their estimates range from negligible to very significant:

	2003	2004	2005	Population
Cochise County, AZ	$47,129.00	$51,695.00	$53,200.00	122,161
Pima County, AZ	$60,000.00	$60,000.00	$60,000.00	892,798
Colusa County, CA	$100,000.00	$100,000.00	$100,000.00	19,678
Broward County, FL		$348,000.00	$574,000.00	1,731,347
Lee County, FL	$3,287,616.00	$4,500,396.00	$3,575,937.00	492,210
Marion County, FL		$141,671.00		280,288
Scott County, IA		$2,500.00		159,414
Montgomery County, MD	$580,438.00	$1,211,052.00	$712,465.00	918,881
Anoka County, MN		$77,360.00		314,074
Blue Earth County, MN	$5,000.00	$5,000.00	$5,000.00	57,306
Clay County, MS	$2,087.00	$1,429.00	$1,758.00	21,625
Gaston County, NC	$54,104.00	$120,853.00	$118,025.00	193,097
Douglas County, NE	$68,717.00	$65,692.00		467,703
Clark County, NV	$2,026,791.00	$4,159,656.00	$2,466,717.00	1,576,541
Clermont County, OH	$51,234.00	$6,315.00	$6,338.00	185,799
Montgomery County, OH	$651,075.00	$723,675.00	$1,123,775.00	555,187
Arlington County, VA			$252,000.00	187,873
Gloucester County, VA	$14,574.00	$29,571.00	$14,568.00	36,698
Henrico County, VA	$56,285.00	$9,500.00	$9,500.00	271,083
Fairfax County, VA	$13,060,379.00	$13,747,767.00	$14,435,155.00	1,000,405
Pulaski County, VA			$46,259.34	35,030

Colusa County, California, estimated costs to be roughly $100,000 per year, or a total of $60.98 for a family of four. For Lee County, Florida, the readily quantifiable costs over the three-year period were $92.35 per family of four. In Fairfax County, Virginia, the per-family cost was roughly $164.91.

Clean Water Act (33 U.S.C. 1251)
The Clean Water Act requires states to designate the uses of water, develop water quality criteria to protect those uses, monitor the condition of waters, and report on water quality. Local governments are required, either directly by the federal government or indirectly through state implementation of federal laws, to treat sewage to national standards and to control discharges from combined sewers and stormwater drains. These federal requirements, especially those dealing with stormwater, have become more and more strict and expensive to implement. Under the Clean Water Act, one of the largest challenges for counties is implementation of Phase II stormwater regulations; these have caused huge financial drains on our nation's counties. In many cases, these costs have been unnecessary. Under Phase II, eligibility is determined by census numbers and proximity to an urban center, rather than by finding and identifying the specific county systems that negatively impact water quality. This negates the role of the Clean Water Act by overregulating smaller counties that are not negatively impacting water quality and could better use their limited financial resources in other areas.

In too many instances, federal environmental law imposes a "one-size-fits-all" approach on all local governments. For example, in 1987 Congress required that all stormwater be handled in the same manner as polluted water from industrial plans. While this mandate may have been appropriate for humid or wet watersheds, it was not useful for dry/acid areas. Counties in the Southwest, which for most part have limited rainfall, have had to spend large amounts each year to monitor runoff from infrequent rainstorms.

Twenty seven counties provided costs for implementation of the Clean Water Act, and many of the estimates were quite high per family of four:

	2003	2004	2005	Population
Pima County, AZ	$163,000.00	$163,000.00	$163,000.00	892,798
Mesa County, CO	$54,981.00	$18,872.00	$293,133.00	124,676
Broward County, FL	$1,650,000.00	$1,327,000.00	$2,604,000.00	1,731,347
Hillsborough County, FL	$79,479.00	$82,905.00	$87,303.00	1,073,407
Lee County, FL	$11,500,354.00	$12,183,243.00	$11,931,081.00	492,210
Marion County, FL		$69,408,967.00		280,288
Putnam County, FL	$139,955.00	$184,695.00	$139,200.00	71,841
Habersham County, GA	$21,270.00	$21,908.00	$25,345.00	38,446
Hamilton County, IN			$631,000.00	216,826

McPherson County, KS	$15,192.00	$16,104.00	$17,151.00	29,346
Sedgwick County, KS	$62,314.00	$89,020.00	$71,216.00	462,896
Montgomery, MD	$527,621.00	$661,314.00	$614,848.00	918,881
Anoka County, MN		$38,680.00		314,074
Blue Earth County, MN	$65,094.00	$66,489.00	$67,884.00	57,306
Clay County, MS	$9,603.00	$9,782.00	$9,692.00	21,625
Gaston County, NC		$2,000.00	$3,000.00	193,097
Ward, ND	$705,000.00	$705,000.00	$705,000.00	56,721
Clark County, NV	$193,399.00	$236,839.00	$389,347.00	1,576,541
Clermont County, OH	$784,702.00	$741,102.00	$820,202.00	185,799
Montgomery County, OH	$5,461,621.00	$5,570,853.00	$5,682,270.00	555,187
Chester County, PA	$113,667.00	$113,667.00	$113,667.00	457,393
Monroe County, PA	$195,000.00	$200,000.00	$210,000.00	154,495
Arlington, VA	$13,150,000.00	$20,600,000.00	$48,600,000.00	187,873
County of Gloucester, VA	$627.00	$627.00	$5,627.00	36,698
County of Henrico, VA	$16,009,614.00	$23,169,301.00	$32,535,754.00	271,083
Fairfax County, VA	$554,431.00	$583,612.00	$612,792.00	1,000,405
Kitsap County, WA	$1,444,074.00	$4,838,033.00	$3,169,003.00	240,719

Marion County, Florida, provided a single figure for FY 2004 exceeding $69 million, or $990.54 for a family of four. Arlington County, Virginia, provided a three-year total of more than $82 million, or $1,753.31 per family of four. The three-year total for Henrico County, Virginia, was nearly $72 million, or $1058,20 per family of four.

Drinking Water (Safe Drinking Water Act and Bioterrorism Act)
The Safe Drinking Water Act regulates drinking water standards. Among other requirements, it establishes maximum levels for contaminants known to occur in public water systems and establishes public notification procedures. Federal rules for what constitutes safe drinking water are often not logical and dictate measures for achieving it that are not cost-effective. As owners and operators of drinking water systems, counties are responsible for testing and monitoring 84 contaminants. In one well-known example, Columbus, Ohio, has been required under federal law to monitor 40 pesticides in its drinking water system that are no longer used in the area – including one that is mainly used in Hawaii in pineapple plantations.

Also included in these estimates are implementation costs for vulnerability assessments required under the Bioterrorism Act. Community water systems that serve populations over 3,300 identify potential threats to their water systems, assess the critical assets of the system, evaluate the likelihood and consequences of an attack, and develop a prioritized set of system upgrades to increase security.

Twenty one counties provided estimates for drinking water mandates:

	2003	2004	2005	Population
Cochise County, AZ	$54,177.00	$57,607.00	$59,900.00	122,161
Colusa County, CA	$36,605.00	$36,000.00	$36,000.00	19,678
Brevard County, FL	$15,000.00	$15,000.00	$15,000.00	505,711
Hillsborough County, FL	$62,956.00	$66,616.00	$76,112.00	1,073,407
Marion County, FL		$206,567.00		280,288
McPherson County, KS	$12,430.00	$13,173.00	$14,033.00	29,346
Anoka County, MN		$58,818.00		314,074
Blue Earth County, MN	$56,456.00	$58,202.00	$59,948.00	57,306
Clay County, MS	$1,762.00	$501.00	$2,185.00	21,625
Gaston County, NC	$7,522.00	$7,720.00	$7,720.00	193,097
Northhampton County, NC	$23,400.00	$21,200.00	$17,180.00	21,782
Douglas County, NE	$46,562.00	$46,150.00		467,703
Clark County, NV	$20,499,400.00	$20,499,400.00	$20,499,400.00	1,576,541
Clermont County, OH	$211,436.00	$278,808.00	$244,200.00	185,799
Montgomery County, OH	$919,680.00	$938,074.00	$956,835.00	555,187
Chester County, PA	$299,699.00	$303,116.00	$285,392.00	457,393
Monroe County, PA	$15,000.00	$15,000.00	$15,000.00	154,495
Arlington, VA	$5,900,000.00	$5,900,000.00	$5,900,000.00	187,873
County of Gloucester, VA	$18,604.00	$32,206.00	$19,621.00	36,698
County of Henrico, VA	$8,500.00	$2,564,981.00	$708,500.00	271,083
Prince George County, VA	$316.00	$2,882.00	$1,000.00	34,305

Arlington County, Virginia, estimated the cost of complying with federal drinking water mandates at nearly $6 million per year or a total of $376.95 per family of four. Clark County, Nevada, estimated the cost at $20.5 million per year, or $156.03 over three years per family of four. Colusa County, California, provided an estimate of $22.08 per family of four. The three-year, per-family estimate from Montgomery County, Ohio, was $20.28.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act governs regulation of solid and hazardous waste including cleanup of landfills, superfund sites and underground storage tanks holding petroleum products or other chemicals. Counties often own landfills and are subject to federal standards regarding location; operating criteria; groundwater monitoring; corrective actions; closure and post-closure care.

For Superfund sites, some of the incurred costs include institutional controls such as effective zoning around sites, setting and enforcing easements and covenants and overseeing building and/or excavation near Superfund sites. Other potential costs arise through post-closure monitoring such as testing for groundwater contamination.

Twenty six counties provided costs associated with the Resource Conservation and Recovery Act. Their responses vary significantly among counties and, for some counties, from year to year:

	2003	2004	2005	Population
Pima County, AZ	$190,000.00	$190,000.00	$190,000.00	892,798
Butte County, CA	$20,000.00	$20,000.00	$20,000.00	212,010
Colusa County, CA	$94,580.00	$115,685.00	$148,523.00	19,678
Mesa County, CO	$2,195,631.00	$3,022,676.00	$2,722,732.00	124,676
Brevard County, FL	$74,367,045.00	$70,580,626.00	$66,696,990.00	505,711
Broward County, FL	$306,000.00	$28,000.00	$640,000.00	1,731,347
Lee County, FL	$9,365,001.00	$12,527,861.00	$10,178,193.00	492,210
Marion County, FL		$340,238.00		280,288
Putnam County, FL	$165,557.00	$401,699.00	$519,414.00	71,841
Habersham County, GA	$72,900.00	$72,900.00	$72,900.00	38,446
McPherson County, KS	$122,641.00	$122,641.00	$130,000.00	29,346
Sedgwick County, KS	$405,727.00	$419,567.00	$382,880.00	462,896
Natchitoches Parish, LA	$3,200.00	$3,200.00	$3,200.00	39,002

Montgomery, MD	$1,039,557.00	$1,115,137.00	$1,077,752.00	918,881
Anoka County, MN		$7,099.00		314,074
Blue Earth County, MN	$52,598.00	$53,204.00	$53,810.00	57,306
Clay County, MS	$264,269.00	$263,563.00	$263,417.00	21,625
Gaston County, NC	$90,000.00	$90,000.00	$90,000.00	193,097
Randolph County, NC	$1,930,000.00	$12,400.00	$12,400.00	135,151
Clermont County, OH	$493,149.00	$388,233.00	$78,688.00	185,799
Montgomery County, OH	$359,208.00	$345,628.00	$1,403,470.00	555,187
Fairfax County, VA	$3,210,208.00	$3,379,166.00	$3,548,124.00	1,000,405
County of Gloucester, VA	$111,166.00	$135,306.00	$146,348.00	36,698
County of Henrico, VA	$2,348,426.00	$3,092,345.00	$3,469,645.00	271,083
Prince George, VA	$16,487.00	$15,769.00	$15,000.00	34,305
Arlington, VA			$400,000.00	187,873

The largest costs were reported from Brevard County, Florida. Their average annual cost was $70.5 million, or $418.51 per family of four – so the three-year cost per family adds up to a whopping $1,674.04. Mesa County, Colorado reported an annual cost of $63.69 per family, or $254.77 over three years. The three-year cost per family for Clay County, Mississippi adds up to $146.36.

Americans With Disabilities Act

The Americans With Disabilities Act requires county governments to improve physical access to government facilities, programs and events and in many cases to make significant policy changes to ensure that all people with disabilities can take part in the full array of programs and services provided by the county. Counties are also required to employ communication tools such as auxiliary aids and services to ensure access to programs and services by individuals with disabilities.

Counties are not required to take any action that would result in a fundamental alteration to the nature of the service, program, or activity in question or that would result in undue financial and administrative burdens. However, there is a great deal of uncertainty about the determination of an undue burden. Many counties are having difficulty planning and budgeting for improvements as they are not certain whether or when such improvements may be required.

Most counties who participated in the survey were able to quantify some costs related to the Americans With Disabilities Act. The following information was provided by 38 counties:

	2003	2004	2005	Population
Cochise County, AZ	$2,057.00	$302,658.00	$114,200.00	122,161
Pima County, AZ	$309,000.00	$279,000.00	$411,000.00	892,798
Butte County, CA	$250,000.00	$30,000.00	$50,000.00	212,010
Colusa County, CA	$6,000.00	$8,990.00	$13,600.00	19,678
Kern County, CA	$45,000.00	$45,000.00	$220,000.00	713,087
Mesa County, CO	$148,584.00	$57,446.00	$44,060.00	124,676
Brevard County, FL	$73,818.00	$75,214.00	$67,731.00	505,711
Escambia County, FL		$32,612.00		295,886
Hillsborough County, FL	$6,537,148.00	$6,537,148.00	$6,537,148.00	1,073,407
Lee County, FL	$1,615,558.00	$1,664,025.00	$2,163,512.00	492,210
Marion County, FL		$17,669.00		280,288
Putnam County, FL	$2,500.00	$2,500.00	$2,500.00	71,841
Sarasota County, FL	$5,000.00	$12,000.00	$5,000.00	346,793
Fulton County, GA	$783,782.00	$899,921.00	$693,401.00	818,322
Polk County, IA	$19,809.00	$72,134.00	$48,711.00	388,606
Scott County, IA	$40,000.00	$12,000.00	$2,500.00	159,414
Hamilton County, IN			$1,520.00	216,826
McPherson County, KS	$10,800.00	$18,640.00	$22,000.00	29,346
Sedgwick County, KS	$931,000.00	$931,000.00	$931,000.00	462,896
Natchitoches Parish, LA		$10,000.00		39,002
Calvert County, MD	$15,068.00	$15,460.00	$68,500.00	84,110
Montgomery, MD	$1,962,000.00	$3,090,000.00	$2,562,000.00	918,881
Waldo County, ME	$7,939.20	$15,892.14	$22,000.00	38,248
Anoka County, MN		$32,000.00		314,074
Blue Earth County, MN	$40,000.00	$40,000.00	$40,000.00	57,306
Clay County, MS	$1,618.00	$160.00	$200.00	21,625
Gaston County, NC			$55,208.00	193,097
Randolph County,	$16,000.00	$16,000.00	$16,000.00	135,151

NC				
Richland County, ND		$31,362.00		17,598
Douglas County, NE	$10,695.00	$10,695.00		467,703
Clark County, NV	$109,739.00	$32,459.00		1,576,541
Chester County, PA	$21,750.00	$18,700.00	$23,050.00	457,393
Monroe County, PA	$4,000.00	$4,000.00	$56,000.00	154,495
County of Henrico, VA	$16,778.00	$5,395.00	$230,061.00	271,083
Fairfax County, VA	$2,458,194.00	$2,587,573.00	$2,716,951.00	1,000,405
Marinette County, WI	$388,000.00	$54,000.00	$25,000.00	43,237
Monongalia County, WV	$0.00	$5,000.00		84,370
Wood, WV		$8,000.00		87,336

The highest total cost was reported by Hillsborough County, Florida (an estimated $6.5 million each year, or a total of $73.08 per family of four). Estimated costs for Marinette County, Wisconsin in FY 2005 are only $25,000, or just $2.31 per family of four. However, in FY 2003 the county spent $388,000, or $35.90 per family. Montgomery County, Maryland reported $8.54 per family of four in FY 2003; that figure went up the following year to $13.45.

Help America Vote Act

The Help America Vote Act requires most counties in the nation to purchase new voting equipment that permits all voters to cast a secret ballot regardless of disability. The accelerated timetable nationwide and lack of federal standards are driving up the cost for counties to purchase equipment. In addition, counties are working in cooperation with the states to merge existing voter registration databases into a statewide list and to implement new voting procedures, such as provisional ballots.

Thirty six provided information on their costs related to the Help America Vote Act. The counties who responded represent a broad mix of states that have moved forward with reform, those that are nearing compliance and those have not yet budgeted for or issued contracts on voting equipment. Some of the figures that counties provided below do not include the full cost of purchasing voting equipment:

	2003	2004	2005	Population
Cochise County, AZ	$53,626.00	$48,390.00	$36,090.00	122,161
Butte County, CA	$40,000.00	$850,000.00	$2,000,000.00	212,010
Colusa County, CA	$3,050.00	$9,590.00	$46,350.00	19,678

Kern County, CA	$5,000,000.00			713,087
Mesa County, CO		$19,535.00	$157,700.00	124,676
Brevard County, FL		$43,000.00	$2,442,500.00	505,711
Escambia County, FL		$344,663.00		295,886
Hillsborough County, FL				1,073,407
Lee County, FL	$6,200,000.00	$100,000.00	$300,000.00	492,210
Polk County, IA		$20,000.00	$750,000.00	388,606
Scott County, IA		$3,500.00	$200,000.00	159,414
Idaho County, ID	$34,480.00	$36,560.00	$36,560.00	15,413
Hamilton County, IN			$25,000.00	216,826
Lake County, IN			$2,120,900.00	487,476
Sedgwick County, KS	$44,700.00	$29,600.00	$29,350.00	462,896
Calvert County, MD		$9,300.00	$77,158.00	84,110
Anoka County, MN		$793,178.00		314,074
Blue Earth County, MN		$55,000.00	$56,650.00	57,306
Durham County, NC			$5,000.00	236,781
Gaston County, NC			$21,441.00	193,097
Northhampton County, NC			$8,000.00	21,782
Richland County, ND		$2,522.00		17,598
Rolette County, ND		$7,931.77	$0.00	13,732
Ward County, ND		$22,225.00	$2,825.00	56,721
Williams County, ND	$2,368.38	$17,757.27	$5,000.00	19,316
Clark County, NV		$997,566.00	$131,825.00	1,576,541
Clermont County, OH			$7,110.00	185,799
Montgomery County, OH		$300,000.00	$2,000,000.00	555,187
Chester County, PA	$1,168,935.00	$8,208,611.00	$1,648,480.00	457,393
Monroe County, PA	$10,000.00	$44,000.00	$45,000.00	154,495
County of Gloucester, VA	$1,785.00	$1,788.00	$58,788.00	36,698

Fairfax County, VA	$184,388.00	$194,092.00	$203,797.00	1,000,405
Prince George, VA		$6,783.00	$7,340.00	34,305
Kitsap County, WA		$8,768.00		240,719
Greenbrier, WV			$490,000.00	34,656
Monongalia County, WV		$4,000.00		84,370

The highest cost was reported by Chester County, Pennsylvania, which spent in excess of $8 million of its own source revenue on HAVA compliance in FY 2004. Over the three-year period, the total cost for a family of four in Chester County is $96.42. Idaho County, Idaho, is spending $27.92 per family of four. Greenbrier County, West Virginia, is spending $56.56 per family of four in FY 2005. Montgomery County, Ohio, is spending $2.3 million for FY 2004-FY 2005, or $16.57 per person. Taxpayers in Butte County, California, are spending $54.53 per family of four to update their voting equipment over the three-year period and voters in Lake County, Indiana are paying $17.40 per family in FY 2005.

Endangered Species Act

The Endangered Species Act protects threatened and endangered species and the habitats in which they are found. Unfortunately, the goal of conserving species and protecting biodiversity is often met at the expense of local taxpayers. Among the costs to counties are compliance with provisions of the ESA ensuring that civic construction projects and development authorized under local land-use planning do not harm endangered species. Much more difficult to quantify are the costs to the county of reduced economic development when county planning is disrupted. If Congress deems preservation of endangered species a national priority, then Congress should ensure that the costs associated with its achievement are not disproportionately borne by those who happen to live in a county that contains endangered species habitat.

Twenty counties were able to quantify costs related to the Endangered Species Act for at least one fiscal year. Those costs were:

	2003	2004	2005	Population
Cochise County, AZ	$29,185.00	$29,185.00	$29,185.00	122,161
Pima County, AZ		$1,500,000.00		892,798
Butte County, CA	$150,000.00	$175,000.00	$200,000.00	212,010
Colusa County, CA	$10,000.00			19,678
Kern County, CA	$12,000.00	$12,000.00	$15,000.00	713,087
Mesa County, CO	$10,000.00	$10,000.00	$19,000.00	124,676
Brevard County, FL	$1,027,795.00	$1,020,512.00	$1,141,041.00	505,711
Broward County, FL	$263,000.00	$328,000.00	$402,000.00	1,731,347
Escambia County, FL		$16,200.00		295,886
Lee County, FL	$91,383.00	$92,475.00	$195,226.00	492,210
Idaho County, ID	$6,000.00	$6,000.00	$6,000.00	15,413
Sedgwick County, KS	$5,500.00	$5,500.00	$5,500.00	462,896
Anoka County, MN		$58,020.00		314,248
Blue Earth County, MN	$5,000.00	$5,000.00	$5,000.00	57,306
Gaston County, NC		$3,000.00	$500.00	193,097
Clark County, NV			$6,729,281.00	1,576,541
Clermont County, OH	$5,000.00	$5,000.00	$5,000.00	185,799
Chester County, PA	$45,880.00	$45,880.00	$45,880.00	457,393
County of Gloucester, VA	$8,250.00	$8,250.00	$8,250.00	36,698
Kitsap County, WA	$1,158,106.00	$374,646.00	$2,421,104.00	240,719

Clark County, Nevada, has budgeted $6.7 million for FY 2005, or $17.07 per family of four. Of the twenty, only Brevard County, Florida, and Kitsap County, Washington reported spending more than $1 million for each of the three years (spending a total of $25.23 and $65.70, respectively, for a family of four). Pima County, Arizona, spent approximately $1.5 million in FY 2004, or $6.72 per family of four. The costs were not just limited to the east and west coast, however; counties reported costs from states such as Pennsylvania, Ohio, Kansas and Minnesota.

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act established national standards for electronic health care payment and claim processes. It set forth specific provisions for standardized health information transactions; standardization of code

sets; national identifiers for providers, health plans/payers and employers; and security and privacy of health information.

Counties maintain and conduct transactions using individual health information in their role as health and human service providers and plan administrators. HIPAA has required significant changes in day-to-day operations in many counties as well as extensive changes to management information systems that represent a significant unfunded mandate to county governments.

Thirty four counties provided data for at least one year on costs incurred as a result of the Health Insurance Portability and Accountability Act:

	2003	2004	2005	Population
Cochise County, AZ	$148,000.00	$169,569.00	$175,000.00	122,161
Pima County, AZ	$676,000.00	$437,000.00	$257,000.00	892,798
Butte County, CA	$25,000.00	$350,000.00	$450,000.00	212,010
Colusa County, CA	$28,450.00	$28,450.00	$28,450.00	19,678
Kern County, CA	$50,000.00	$80,000.00	$50,000.00	713,087
Mesa County, CO	$62,500.00	$71,699.00	$102,250.00	124,676
Escambia County, FL		$21,591.00		295,886
Lee County, FL	$133,196.00	$63,862.00	$46,114.00	492,210
Marion County, FL		$870.62		280,288
Fulton County, GA	$69,485.00	$75,122.00	$78,127.00	818,322
Polk County, IA	$34,380.00	$39,000.00	$39,000.00	388,606
Hamilton County, IN			$1,100.00	216,826
McPherson County, KS	$6,400.00	$9,800.00	$12,000.00	29,346
Sedgwick County, KS	$41,566.00	$47,567.00	$47,567.00	462,896
Montgomery, MD	$42,825.00	$50,000.00	$241,000.00	918,881
Anoka County, MN		$276,500.00		314,074
Blue Earth County, MN	$12,000.00	$15,000.00	$15,000.00	57,306
Clay County, MS	$37,568.00	$21,338.00	$17,895.00	21,625
Gaston County, NC			$870,596.00	193,097
Randolph County, NC	$8,900.00	$8,800.00	$8,800.00	135,151
Richland County, ND	$2,690.00	$7,150.00		17,598

Rolette County, ND	$300.00			13,732
Williams County, ND		$300.00		19,316
Douglas County, NE	$163,831.00	$3,963.00		467,703
Clark County, NV	$983,114.00	$1,880,578.00	$688,288.00	1,576,541
Clermont County, OH		$30,000.00	$5,000.00	185,799
Chester County, PA	$232,660.00	$78,300.00	$133,600.00	457,393
Monroe County, PA	$5,000.00	$15,000.00	$25,000.00	154,495
County of Gloucester, VA	$6,200.00	$11,192.00	$7,625.00	36,698
County of Henrico, VA	$256,875.00	$106,367.00	$76,965.00	271,083
Fairfax County, VA	$1,016,721.00	$1,070,233.00	$1,123,744.00	1,000,405
Prince George, VA		$1,500.00		34,305
Kitsap County, WA	$72,142.00	$14,465.00	$144,650.00	240,719
Marinette County, WI	$45,078.00	$1,330.00		43,237

The highest cost was reported by Gaston County, North Carolina, which expects to spend $18.03 per family of four in FY 2005. Both of the counties from California that provided figures expect to spend at least $15 per family of four to implement HIPAA over the three-year period-Colusa County ($17.35) and Butte County ($15.57). Cochise County, Arizona, expects to spend $16.13 per family. Fairfax County, Virginia reported costs in excess of $1 million per year, or $12.84 per family of four over the three-year period.

Uncompensated Health Care

Uncompensated health care is a tremendous burden on the budgets of our nation's counties. As the providers of last resort, counties are responsible for a large population of indigent and uninsured individuals. Because the federal government has not taken responsibility for ensuring universal medical insurance coverage and restricts the use of its funds for services provided to many legal immigrants as well as illegal immigrants and individuals who are incarcerated, counties are left paying the tab for millions of individuals who seek treatment but do not have the means to pay.

The Emergency Medical Treatment and Active Labor Act, which requires stabilization of a patient regardless of citizenship status or ability to pay, is the clearest example of a direct mandate on counties to provide care without federal funding. However, the federal government also imposes mandates when it limits or restricts eligibility for Medicare and/or federal Medicaid funding. Many costs are also incurred by counties as a direct result of federal immigration policy that fails to prevent illegal immigration.

Uncompensated health care was by far the largest mandate cost reported by most counties. The following information was provided by 38 counties:

	2003	2004	2005	Population
Cochise County, AZ	$2,057.00	$302,658.00	$114,200.00	122,161
Pima County, AZ	$309,000.00	$279,000.00	$411,000.00	892,798
Butte County, CA	$250,000.00	$30,000.00	$50,000.00	212,010
Colusa County, CA	$6,000.00	$8,990.00	$13,600.00	19,678
Kern County, CA	$45,000.00	$45,000.00	$220,000.00	713,087
Mesa County, CO	$148,584.00	$57,446.00	$44,060.00	124,676
Brevard County, FL	$73,818.00	$75,214.00	$67,731.00	505,711
Escambia County, FL		$32,612.00		295,886
Hillsborough County, FL	$6,537,148.00	$6,537,148.00	$6,537,148.00	1,073,407
Lee County, FL	$1,615,558.00	$1,664,025.00	$2,163,512.00	492,210
Marion County, FL		$17,669.00		280,288
Putnam County, FL	$2,500.00	$2,500.00	$2,500.00	71,841
Sarasota County, FL	$5,000.00	$12,000.00	$5,000.00	346,793
Fulton County, GA	$783,782.00	$899,921.00	$693,401.00	818,322
Polk County, IA	$19,809.00	$72,134.00	$48,711.00	388,606
Scott County, IA	$40,000.00	$12,000.00	$2,500.00	159,414
Hamilton County, IN			$1,520.00	216,826
McPherson County, KS	$10,800.00	$18,640.00	$22,000.00	29,346
Sedgwick County, KS	$931,000.00	$931,000.00	$931,000.00	462,896
Natchitoches Parish, LA		$10,000.00		39,002
Calvert County, MD	$15,068.00	$15,460.00	$68,500.00	84,110
Montgomery, MD	$1,962,000.00	$3,090,000.00	$2,562,000.00	918,881
Waldo County, ME	$7,939.20	$15,892.14	$22,000.00	38,248
Anoka County, MN		$32,000.00		314,074
Blue Earth County, MN	$40,000.00	$40,000.00	$40,000.00	57,306
Clay County, MS	$1,618.00	$160.00	$200.00	21,625

Gaston County, NC			$55,208.00	193,097
Randolph County, NC	$16,000.00	$16,000.00	$16,000.00	135,151
Richland County, ND		$31,362.00		17,598
Douglas County, NE	$10,695.00	$10,695.00		467,703
Clark County, NV	$109,739.00	$32,459.00		1,576,541
Chester County, PA	$21,750.00	$18,700.00	$23,050.00	457,393
Monroe County, PA	$4,000.00	$4,000.00	$56,000.00	154,495
County of Henrico, VA	$16,778.00	$5,395.00	$230,061.00	271,083
Fairfax County, VA	$2,458,194.00	$2,587,573.00	$2,716,951.00	1,000,405
Marinette County, WI	$388,000.00	$54,000.00	$25,000.00	43,237
Monongalia County, WV	$0.00	$5,000.00		84,370
Wood County, WV		$8,000.00		87,336

The highest reported cost was from Lee County, FLorida, which in FY 2005 expects to spend more than $155 million, or $315.52 per person ($1,262.06 for a family of four) in uncompensated health care costs for which the federal government is not meeting its commitment. The total three-year cost reported by Lee County is an enormous $2.952.59 per family of four. Quite a few counties report multimillion-dollar gaps over the three-year period, including Kern County, California ($412.29 per family of four); Henrico County, Virginia ($245.88 per family) and Fulton County, Georgia ($142.72 per family). Clark County, Nevada, reports $325.38 per family of four over just two years and Durham County, North Carolina, expects to spend $139.02 per family of four in FY 2005.

Incarceration of Criminal Illegal Aliens

The federal government has exclusive jurisdiction over immigration law. Counties do not have the authority to deport criminal illegal aliens yet bear the expense of incarcerating and prosecuting those who commit violations of state or local law. The State Criminal Alien Assistance Program provides only partial reimbursement for some of the costs associated with the incarceration of illegal aliens.

Fourteen counties provided estimates:

	2003	2004	2005	Population
Cochise County, AZ	$282,837.00	$226,096.00	$360,000.00	122,161
Pima County, AZ	$1,785,000.00	$1,785,000.00	$1,785,000.00	892,798

Butte County, CA	$100,000.00	$100,000.00	$100,000.00	212,010
Colusa County, CA	$49,021.00	$28,012.00	$30,000.00	19,678
Kern County, CA	$30,000,000.00	$7,500,000.00	$7,500,000.00	713,087
Lee County, FL	$1,177,002.00	$1,272,825.00	$1,400,000.00	492,210
Idaho County, ID	$101,000.00	$169,906.00	$194,334.00	462,896
Montgomery County, MD	$3,958,700.00	$4,655,700.00	$1,102,030.00	918,881
Northhampton County, NC	$2,000.00	$2,500.00	$3,000.00	21,782
Rolette County, ND	$300.00	$5,050.00	$4,750.00	13,732
Douglas County, NE	$4,431,744.00	$4,416,623.00		467,703
Clark County, NV	$10,156,304.00	$12,491,644.00	$17,179,706.00	1,576,541
Monroe County, PA	$20,000.00	$22,000.00	$25,000.00	154,495
County of Henrico, VA	$68,480.00	$71,904.00	$75,499.00	271,083

In Kern County, California, a family of four is spending an unbelievable $252.42 over three years for the costs of incarcerating criminal illegal aliens. Clark County, Nevada, reported costs between $10 million and more than $17 million per year; the per-family cost for that period is $25.26. While the problem of illegal immigration is generally associated with border counties, Douglas County, Nebraska, provided figures indicating that between fiscal years 2003 and 2004, its residents paid $75.68 per family of four.

Part IV

Profile Overview

To help develop the conclusions in this report, this section provides profiles of 30 counties. Although no county reported a cost for every mandate, overall their responses are significant. A few counties did not provide information for each of the fiscal years requested, but their data is included for those years reported.

The 30 counties were selected because they represent diverse demography, geography, size, and types of counties, i.e., urban, suburban, sun belt, rural, etc. There are no counties from the Northeastern geographic area, since these county governments are relatively weak and perform few services. In nearly every Northeastern state, the federal mandates selected are performed either by the state or other levels of local government.

The counties profiled in this section are:

County	State	2003 Population
Cochise	AZ	122,161
Pima	AZ	892,798
Butte	CA	212,010
Colusa	CA	19,678
Kern	CA	713,087
Mesa	CO	124,676
Brevard	FL	505,711
Lee	FL	492,210
Fulton	GA	818,322
Habersham	GA	38,446
Polk	IA	388,606
Scott	IA	159,414
Sedgwick	KS	462,896
Calvert	MD	84,110
Montgomery	MD	918,881
Blue Earth	MN	57,306
Clay	MS	21,625
Northhampton	NC	21,782
Richland	ND	17,598
Douglas	NE	467,703
Clark	NV	1,576,541
Clermont	OH	185,799
Montgomery	OH	555,187
Chester	PA	457,393
Monroe	PA	154,495
Arlington	VA	187,873
Fairfax	VA	1,000,405
Henrico	VA	271,083
Prince George	VA	34,305
Kitsap	WA	240,719
Total		11,202,820

Part V

County Profiles

Cochise County, Arizona
2003 Population 122,161

In Cochise County, AZ, the budget grew from $132 million in FY 2003 to $156 million in proposed 2005. The total cost for eight reported mandates grew from $1,595,011 in FY2003 to $1,935,419 projected for FY2005. The costs of compliance with ADA experienced significant increases during the three years. ADA costs went from $2,057 in FY2003 to $302,658 in FY2004 and $114,200 for FY2005. The top four consistently high mandate expenditures for each year were:

	2003	**2004**	**2005**
Total budget	$132,012,144	$151,194,860	$156,246,507
ADA	$2,057	$302,658	$114,200
HIPAA	$148,000	$169,569	$175,000
UHC	$918,000	$989,000	$1,107,844
ICIA	$282,837	$226,096	$360,000

Pima County, Arizona
2003 Population 892,798

In Pima County, AZ, the budget grew from $989,568,000 in FY2003 to $1,097,722,000 in proposed 2005. Expenditures for eight listed mandates decreased from $7.2 million in 2003 to $3 million in 2005. Changes were reflected in a major decrease in spending for uncompensated health care from 2003 to 2005. HIPAA compliance expenditures also decreased significantly, going from $676,000 in 2003 to $257,000 in 2005. The top four mandates reported are:

	2003	**2004**	**2005**
Total Budget	$989,568,000	$1,031,616,000	$1,097,722,000
ADA	$309,000	$279,000	$411,000
HIPAA	$676,000	$437,000	$257,000
UHC	$7,200,000	$6,800,000	$3,000,000
ICIA	$1,785,000	$1,785,000	$1,785,000

Butte County, CA
2003 Population 212,010

The budget in Butte County, CA grew from $318,905,310 in FY 2003 to $330,000,000 proposed for 2005. During that time there were significant increases in expenditures for those listed Federal mandates carried out by the county. The total cost for the six mandates for which Butte County responded increased from $585,000 in FY 2003 to $2,820,000 in FY 2005. These expenditures increased primarily because of growing expenditures for HIPAA and HAVA. The top three mandates reported are:

	2003	**2004**	**2005**
Total budget	$318,905,310	$324,414,900	$330,000,000
ADA	$250,000	$30,000	$50,000
HAVA	$40,000	$850,000	$2,000,000
HIPAA	$25,000	$350,000	$450,000

Colusa County, CA
2003 Population 19,678

The Colusa County, CA budget decreased each year from $44,385,697 in FY 2003 to $39,043,724 in proposed 2005. During this same period of time the amount spent for 9 listed mandates also decreased from $44,385,697 in FY 2003 to $41,484,163 in FY 2004 to $39,043,724 in FY 2005. Although there were fluctuations in expenditures for uncompensated health care, increasing from 2003 to 2004 and then decreasing for 2005, there were steadily growing costs for HAVA and RCRA compliance.

	2003	**2004**	**2005**
Total budget	$44,385,697	$42,484,162	$39,043,724
HAVA	$3,050	$9,590	$46,350
RCRA	$94,580	$115,685	$148,523
UHC	$183,599	$318,331	$270,362

Kern County, CA
2003 Population 713,087

Kern County, CA increased its budget from $974,200,000 in FY 2003 to $1,040,000,000 in proposed 2005. During that same period of time, the amount that was expended for six mandates that the county reported decreased from $30,000,000 in FY 2003 to $7,500,000 in 2005, largely because of a dramatic decrease in the funds it was expending for the incarceration of illegal aliens. Also contributing to the decrease from FY 2003 to 2005 is the 2003 expenditure of $5,000,000 for HAVA. No subsequent expenditures were

reported in 2004 and 2005. Increases in expenditures for ADA in 2005 were also reported. The top three mandates reported are:

	2003	2004	2005
Total Budget	$974,200,000	$982,300,000	$1,040,000,000
ADA	$45,000	$45,000	$220,000
HAVA	$5,000,000	0	0
ICIA	$30,000,000	$7,500,000	$7,500,000

Mesa County, CO
2003 Population 124,676

Mesa County, CO increased its budget from $124,006,642 in FY2003 to $134,436,353 in proposed 2005. During this same period of time the amount spent complying with 7 reported mandates increased from $3,774,855 in FY 2003 to $4,278,774 in FY 2005. Major increases in funding for HAVA up from $0 in FY2003 to $157,700 in 2005 and large growing expenditures for UHC and RCA were reported. The top five mandates reported are:

	2003	2004	2005
Total Budget	$124,009,642	$122,763,781	$134,436,353
ADA	$148,584	$57,446	$44,060
HAVA		$19,535	$157,700
CWA	$54,98	$18,872	$293,133
RCRA	$2,195,631	$3,022,676	$2,722,732
UHC	$740,659	$797,467	$936,899

Brevard County, FL
2003 Population 505,711

The Brevard County, FL budget increased from $738,714,845 in FY2003 to $827,589,033 for proposed 2005. The amount that was spent for compliance with four listed mandates performed by the county decreased from $75,483,658 in FY 2003 to $70,363,262 in FY 2005. Major increases in the county's expenditures for HAVA compliance and ongoing expenses for RCRA and ESA require a large percentage of the county budget. The top three mandates are:

	2003	2004	2005
Total Budget	$738,714,845	$749,724,267	$827,589,033

HAVA	0	$43,000	$2,442,500
RCRA	$74,367,045	$70,580,626	$66,696,990
ESA	$1,027,795	$1,020,512	$1,141,041

Lee County, FL
2003 Population 492,210

The budget for Lee County, FL increased from $1,508,931 in FY2003 to $1,781,123,986 in proposed 2005. During that same period of time the amount that the county spent to comply with 9 listed mandates increased from $130,170,110 in FY 2003 to $185,090,063 in FY 2005. Continually increasing costs for UHC and compliance with HAVA and CWA were large costs for the county. The top five mandates are:

	2003	**2004**	**2005**
Total Budget	$1,508,931,377	$1,565,284,842	$1,781,123,986
ADA	$1,615,558	$1,664,025	$2,163,512
HAVA	$6,200,000	$100,000	$300,000
CWA	$11,500,354	$12,183,243	$11,931,081
RCRA	$9,365,001	$12,527,861	$1,178,193
UHC	$96,800,000	$111,100,000	$155,300,000

Fulton County, GA
2003 Population 818,322

The budget for Fulton County, GA increased from $933,107,278 in FY2003 to $1,013,969,571 in proposed 2005. During that period of time, the amount of the county budget devoted to complying with three listed mandates increased from $10,307,793 to $10,836,028. The UHC mandate was the most costly to the county. The three reported mandates are:

	2003	**2004**	**2005**
Total Budget	$933,107,278	$943,379,010	$1,013,969,571
ADA	$783,782	$899,921	$693,401
HIPAA	$69,485	$75,122	$78,127
UHC	$9,454,526	$9,677,865	$10,064,500

Habersham County, GA
2003 Population 38,446

The budget for Habersham County, GA increased from $12,606,851 in FY 2003 to $13,995,883 in proposed 2005. During the same period of time, the amount of the county budget required for compliance with the two mandates reported increased slightly from $94,170 to $98,245. The two mandates reported are:

	2003	**2004**	**2005**
Total Budget	$12,606,851	$12,887,275	$13,995,883
CWA	$21,270	$21,908	$25,345
RCRA	$72,900	$72,900	$72,900

Polk County, IA
2003 Population 388,606

The budget for Polk County, IA decreased from $180,973,712 in FY2003 to $179,902,114 for proposed 2005. During that same period of time the amount of the county budget that was required for it to comply with two listed mandates increased from $54,189 to $77,711. The two mandates reported are:

	2003	**2004**	**2005**
Total Budget	$180,973,712	$166,768,681	$179,902,114
ADA	$19,809	$72,134	$48,711
HIPAA	$34,389	$39,000	$39,000

Scott County, IA
2003 Population 159,414

The budget for Scott County, IA fluctuated between FY 2003 and proposed 2005, but stayed close to its high of $59,104,761 in 2003 for the remainder of the period surveyed. The amount of the county budget required to comply with 4 listed mandates increased from $70,000 to $232,500 in 2005. HAVA compliance was the majority of the increase for 2005. The mandates reported on are:

	2003	**2004**	**2005**
Total Budget	$59,104,761	$58,342,138	$59,912,361

ADA	$40,00	$12,000	$2,500
HAVA	$0	$3,500	$200,000
CAA	0	$2,500	0
UHC	$30,000	$30,000	$30,000

Sedgwick County, Kansas
2003 Population 462,896

The budget of Sedgwick County, KS increased from $285,977,079 in FY2003 to $320,706,798 in proposed 2005. During this same period of time the amount of the budget required to comply with 7 listed mandates reported by the county increased from $1,490,807 in FY 2003 to $4,656,747 in FY 2005. ADA, RCRA and UHC are the mandates that required the highest percentage of the county expenditures. The top four reported mandates are:

	2003	**2004**	**2005**
Total Budget	$285,977,079	$304,372,757	$320,706,798
ADA	$931,000	$931,000	$931,000
HIPAA	$41,566	$47,567	$47,567
RCRA	$405,727	$419,567	$382,880
UHC	0	$3,192,234	$3,192,234

Calvert County, MD
2003 Population 84,110

The budget for Calvert County, MD increased from $147,448,552 in FY2003 to $160,735,567 in proposed 2005. During that same period of time, the amount of the budget that the county spent on 3 listed mandates increased from $212,989 to $487,258. Increases in expenditures for HAVA compliance, ADA compliance and the cost of UHC account for the increases. The mandates reported are:

	2003	**2004**	**2005**
Total Budget	$147,448,552	$151,643,504	$160,735,567
ADA	$15,068	$9,300	$68,500
HAVA	0	$75,122	$77,158
UHC	$197,921	$351,436	$341,600

Montgomery County, MD
2003 Population 918,881

The budget for Montgomery County, MD increased from $1,070,500,000 in FY2003 to $1,217,800,000 for proposed 2005. The amount required for compliance with 7 listed mandates went from $9,706,141 in FY 2003 up to $12,728,203 in FY 2004 and back down to $8,875,095 in 2005. ADA compliance, RCRA, ICIA and UHC were the major portion of the expenditures in this county. The top five reported mandates are:

	2003	**2004**	**2005**
Total Budget	$1,070,500,000	$1,117,600,000	$1,217,800,000
ADA	$1,962,000	$3,090,000	$2,562,000
CAA	$580,438	$$1,211,052	$614,848
RCRA	$1,039,557	$1,115,137	$1,077,752
UHC	$1,595,000	$1,945,000	$2,665,000
ICIA	$3,958,600	$4,655,700	$1,102,030

Blue Earth County, MN
2003 Population 57,306

The budget of Blue Earth County, MN increased from $ 56,722,626 in FY2004 to $57,526,579 in proposed 2005. The amount required to comply with eight listed mandates for the two years reported was $297,895 and $303,292. The expenditures for the mandates were fairly consistent for both years reported, with costs for CWA, HAVA and RCRA representing the largest percentage of the budget. The four top mandates reported are:

	2003	**2004**	**2005**
Total Budget		$56,722,626	$57,526,579
HAVA		$55,00	$56,650
CWA		$66,489	$67,884
DW		$58,202	$59,948
RCRA		$53,204	$53,810

Clay County, MS
2003 Population 21,625

The budget for Clay County, MS increased from $108,002,404 in FY2003 to $118,550,948 in proposed 2005. During that time the amount of the county budget required for it to comply with 7 listed mandates decreased from $497,477 to $495,147. The most costly mandates to the county are RCRA and UHC. The top three mandates reported are:

	2003	**2004**	**2005**
Total Budget	$108,002,404	$108,368,933	$118,550,958
RCRA	$264,269	$263,563	$263,417
HIPAA	$37,568	$21,338	$17,895
UHC	$180,570	$119,866	$200,000

Northhampton County, NC
2003 Population 21,782

The budget for Northhampton County, NC increased from $21,461,356 in FY 2003 to $23,138,094 in proposed 2005. During the same period the amount required for the county to comply with 4 listed mandates increased from $36,000 in FY 2003 to $41,309 in 2004. The mandates reported are:

	2003	**2004**	**2005**
Total Budget	$21,461,356	$23,794,207	$23,138,094
HAVA			$8,000
DW	$23,400	$21,200	$17,190
UHC	$10,600	$11,500	$13,129
ICIA	$2,000	$2,500	$3,000

Richland County, ND
2003 Population 17,598

The budget for Richland County, ND increased from $9,748,084 in FY 2003 to $10,081,364 in proposed 2005. During that period, the reported costs spiked dramatically in FY 2004. The total for four reported mandates went up tenfold from $3,823 in FY 2003 to $43,692 in FY 2004 and back down to $4,800 in FY 2005. The mandates reported are:

	2003	2004	2005
Total Budget	$9,748,084	$9,471,541	$10,081,364
ADA		$31,362	
HAVA		$2,522	
HIPAA	$2,690	$7,150	
UHC	$1,133	$2,658	$4,800

Douglas County, NE
2003 Population 467,703

The budget for Douglas County, NE increased from $245,299,250 in FY2003 to $257,405,238 in 2004. During this period of time, the amount of the county budget required for compliance with 6 listed mandates decreased from $4,740,581 to $4,562,155. During those two years, the most costly mandates were ICIA and HIPAA. The top four mandates reported are:

	2003	2004	2005
Total Budget	$245,299,250	$257,405,238	
CAA	$68,717	$65,692	
DW	$46,562	$46,150	
HIPAA	$163,831	$3,963	
ICIA	$4,431,744	$4,416,623	

Clark County, NV
2003 Population 1,576,541

The budget for Clark County, NV increased from $2,248,457,358 in FY2003 to $3,342,685,144 in proposed 2005. During this period of time, the amount reported to comply with 8 listed mandates increased from $98,537,507 to a high of $103,974,490 in FY 2004 and then decreased to $48,084,564 in 2005, largely because costs for uncompensated health care were not reported for FY 2005. The costs of complying with HAVA, DW and UHC represent the largest portion of these mandates. The top five mandates reported are:

	2003	2004	2005
Total Budget	$2,248,457,358	$2,289,442,872	$3,342,685,144

HAVA		$997,566	$131,825
CAA	$2,026,791	$4,159,656	$2,466,717
DW	$20,499,400	$20,499,400	$20,499,400
UHC	$64,568,790	$63,676,348	
ICIA	$10,156,304	$12,491,644	$16,179,706

Clermont County, OH
2003 Population 185,799

The budget for Clermont County, OH increased from $247,996,209 in FY2003 to $275,818,131 in proposed 2005. During that period of time the amount spent on complying with 6 listed mandates decreased from $1,545,521 to $1,449,458 to $1,166,538. The environmental mandates were the most costly to the county. The top three were reported as follows:

	2003	**2004**	**2005**
Total Budget	$247,996,209	$261,945,404	$275,818,131
CWA	$784,702	$741,102	$820,202
DW	$211,436	$278,808	$244,200
RCRA	$493,149	$388,233	$78,688

Montgomery County, OH
2003 Population 555,187

The budget in Montgomery County, OH increased from $723,334,201 in FY2003 to $746,184,801 in 2004. During that same period of time the amount required to comply with 6 reported federal mandates has increased from $11,891,584 in FY 2003 to $12,378,230 to $15,666,350 in FY 2005. The expenditures for HAVA, CWA and UHC were the most expensive. These top three mandates reported are:

	2003	**2004**	**2005**
Total Budget	$723,334,201	$746,184,801	$779,600,000
HAVA		$300,000	$2,000,000
CWA	$5,461,621	$5,570,853	$5,682,270
UHC	$4,500,000	$4,500,000	$4,500,000

Chester County, PA
2003 Population 457,393

The budget for Chester County, PA increased from $352,607,590 in FY2003 to $385,357,687 for proposed 2005. During that period of time the amount required to achieve compliance with 6 listed mandates spiked from a low of $1,882,591 up to $8,768,274 and then back down to $2,250,069 in FY 2005. HAVA compliance costs were the primary reason for the increase in 2004. The top three reported mandates are:

	2003	**2004**	**2005**
Total Budget	$352,607,590	$363,316,969	$385,357,687
HAVA	$1,168,935	$8,208,611	$1,648,480
DW	$299,699	$303,116	$285,392
HIPAA	$232,660	$78,300	$133,600

Monroe County, PA
2003 Population 154,495

The budget for Monroe County, PA increased from $73,539,210 in FY2003 to $77,961,132 in proposed 2005. During that period of time, the amount required to comply with 6 listed mandates increased from $249,000 in FY 2003 to $285,000 in FY 2004 to $376,000 in FY 2006. The largest expenditure was for compliance with the CWA. Costs for compliance with HAVA requirements are also present in the budget. The top five mandates reported are:

Total Budget	$73,539,210	$76,851,271	$77,961,132
ADA	$4,000	$4,000	$56,000
HAVA	$10,000	$44,000	$45,000
CWA	$195,000	$200,000	$210,000
HIPAA	$5,000	$15,000	$25,000
ICIA	$20,000	$22,000	$25,000

Arlington County, VA
2003 Population 187,873

The budget of Arlington County, VA increased from $372,100,000 in FY2003 to $388,900,000 in proposed 2005. For FY 2003 and 2004 only two mandates were reported. These costs for these two mandates increased from $19,050,000 to $26,500,000. For proposed FY2005, 4 of the 10 listed mandates were reported, so the total figure spiked up to $55,152,000. The mandates as reported are:

	2003	**2004**	**2005**
Total Budget	$372,100,000	$364,200,000	$388,900,000
CAA			$252,000
CWA	$13,150,000	$20,600,000	$48,600,000
DW	$5,900,000	$5,900,000	$5,900,000
RCRA			$400,000

Fairfax County, VA
2003 Population 1,000,405

The budget for Fairfax County, VA increased from $4.1 billion in FY2003 to $4.6 billion in proposed 2005. The amount required for compliance with 6 listed mandates increased steadily over the three-year period from $20,484,321 to $21,562,443 to $22,640,563. Compliance with environmental mandates and HIPAA represented the major costs reported for the county's budget. The top four mandates reported are:

	2003	**2004**	**2005**
Total Budget	$4.1 billion	$4.4 billion	$4.6 billion
ADA	$2,458,194	$2,587,573	$2,716,951
CWA	$13,060,379	$13,747,767	$14,435,155
RCRA	$3,210,208	$3,379,166	$3,548,124
HIPAA	$1,016,721	$1,070,233	$1,123,744

Henrico County, VA
2003 Population 271,083

The budget for Henrico County, VA increased from $805,569,724 in FY 2003 to $865,307,958 for proposed 2005. The amount required to comply with 8 listed mandates

increased from $24,342,973 in FY 2003 to $34,757,044 in FY 2004 to $45,909,831 in FY 2005. Evidence of compliance with HAVA appears in FY2005 and major increases in budgets for ADA compliance and the CWA are evident. The top four mandates reported are:

	2003	2004	2005
Total Budget	$805,569,724	$871,763,307	$865,307,958
HAVA			$3,455,500
CWA	$16,009,614	$23,169,301	$32,535,754
RCRA	$2,348,426	$3,092,345	$3,469,645
UHC	$5,578,015	$5,737,251	$5,348,407

Prince George County, VA
2003 Population 34,305

The budget for Prince George County, VA decreased from $97,953,257 in FY2003 to $88,337,441 for proposed 2005. During that same period of time the amount spent to comply with 5 listed mandates increased from $23,249 in FY 2003 to $30,670 in FY 2004 and then decreased somewhat to $29,085. Costs associated with compliance with HAVA and HIPAA are evident. The top four reported mandates are:

	2003	2004	2005
Total Budget	$97,953,257	$92,950,557	$88,337,441
HAVA		$6,783	$7,340
RCRA	$16,487	$15,769	$15,000
HIPAA		$1,500	
UHC	$6,466	$3,736	$5,745

Kitsap County, WA
2003 Population 240,719

The budget for Kitsap County, WA increased from $72,370,117 in FY2003 to $85,040,713 for proposed 2005. The amount required to comply with 5 listed mandates increased dramatically from $2,284,567 in FY 2003 to $5,136,161 in FY 2004 and increased the following year to $6,359,131. Environmental mandates such as the CWA

and the ESA represent the major costs to the county. Evidence of compliance with HIPAA is also present. The top four mandates reported are:

	2003	2004	2005
Total Budget	$72,370,117	$72,906,148	$85,040,713
CWA	$1,444,074	$838,033	$3,169,003
RCRA			$624,374
ESA	$1,158,106	$374,646	$2,421,104
HIPAA	$72,142	$14,465	$144,650

Part VI

Totals

Totals Expended by 30 Counties By Mandate for FY2003-FY2005

Mandate	FY2003 Costs	FY2004 Costs	FY2005 Costs	Total Costs
CAA	$19,996,751	$24,644,677	$22,801,845	$67,443,273
CWA	$50,310,745	$69,267,035	$105,309,234	$224,887,014
DW	$28,087,993	$30,736,921	$28,800,540	$87,625,454
RCRA	$94,105,031	$95,502,609	$91,346,498	$280,954,138
ADA	$15,401,598.00	$16,750,340.00	$16,993,625.00	$49,145,563
HAVA	$12,704,699	$10,950,257	$13,602,850	$37,257,806
ESA	$2,812,849.00	$3,603,198.00	$11,213,217.00	$17,629,264
HIPAA	$4,094,003	$4,656,163	$3,744,650	$12,494,816
UHC	$216,044,261	$233,771,724	$211,980,520	$661,796,505
ICIA	$52,031,088	$32,572,304	$29,560,235	$114,163,627

Totals Reported Expenditures by 30 Counties for FY2003 – FY2005

2003	2004	2005
$495,589,018	$522,455,228	$535,353,214

Total Costs of Reported Mandates to 30 Counties for FY2003-FY2005

$1,553,397,460

Part VII

Findings

As expected, the costs of mandates vary greatly by county geography and demographics. For many Sunbelt Counties and retirement destination counties, uncompensated health care is a huge mandate. For those counties, it is by far the mandate that requires the largest percentage of funding often reaching 7 to 8 percent of their budgets.

The next group of mandates that have the highest costs for counties are the environmental mandates. These include the Clean Air Act, Clean Water Act, Drinking Water mandates and the Resource Conservation and Recovery Act. For some counties, the amounts expended on these mandates represented the majority of their mandate budgets, exceeding 8 percent of the county budget in one Florida county.

The costs associated with compliance with the HIPAA and HAVA mandates were generally not spread out over the three-year period, but rather were evident in whichever budget year the county chose to ramp up their efforts and achieve compliance. For some counties the bulk was funded in FY2003 or 2004 but others have it funded in their proposed 2005 budgets. Funding for HAVA compliance generally costs counties between .3 to 2 percent of their total county budgets.

The 30 counties included in the profile section of this report represent one percent of the 3,066 counties in the nation. They are representative by demographics, by geography and by population of all counties. The unfunded costs they reported that were expended from their county own source revenues for compliance with federal mandates are a snapshot of what the costs may be like for many other similar counties.

The average profiled county reported costs for only six mandates. Considering that, in 1996, the Advisory Commission on Intergovernmental Relations identified more than 200 federal mandates reaching into nearly all activities of local government, this is a small glimpse of the total costs that counties bear for unfunded federal mandates.

For the 30 counties included in this sample the three-year total cost of an average of six unfunded federal mandates per county was **$1,553,397,460.**

The 30 counties included in this report have a total population of 11,202,820. At an average per capita cost of $137 for the three-year period averaged across a total population of 295,000,000, the nationwide cost of this limited glimpse of unfunded mandates would be **$40 billion.** This is likely a small percentage of the total burden of unfunded mandates facing counties.

To strengthen and promote cities as centers of opportunity, leadership, and governance.

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STATEMENT OF

COUNCILMEMBER NICK LICATA

CITY OF SEATTLE, WASHINGTON

on behalf of

THE NATIONAL LEAGUE OF CITIES

before the

Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

on

"PASSING THE BUCK: A REVIEW OF THE UNFUNDED MANDATES REFORM ACT"

APRIL 14, 2005

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Thank you, Chairman Voinovich, Ranking Member Akaka, and members of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia for the opportunity to speak with you today. I am Nick Licata, Councilmember from Seattle, Washington. I am pleased to testify on behalf of the National League of Cities on "Passing the Buck: A review of the Unfunded Mandates Reform Act." Before I begin my remarks, I would like to thank the Senator from Ohio for his tireless efforts in examining unfunded mandates and in particular for requesting the Government Accounting Office's (GAO) study of the Unfunded Mandates Reform Act.

The National League of Cities (NLC) is the nation's oldest and largest association representing municipal interests in Washington, D.C. NLC represents more than 16,000 cities of all sizes – from our largest member New York City with a population of 8 million to our smallest member Vernon, California with a population of 91. As the representative of the nation's local leaders, NLC has a vital interest in clarifying the roles and responsibilities of local government and how federal mandates impact the stability of municipalities and the delivery of key services to the residents of America's cities.

I am prepared to testify before you as a member of NLC' Finance, Administration, and Intergovernmental Relations Policy and Advocacy Steering Committee. I am also relying on my sixteen years as an experienced insurance broker, local government consultant, and my work related to public safety and key services to the residents of Seattle since I was elected to the city council in 1998.

NLC Support of the Unfunded Mandates Reform Act

The National League of Cities recognizes two basic types of federal mandates: those that impose costs directly on municipal governments, and those that, while not imposing costs directly on cities, intrude upon the autonomy of local governments. NLC opposes both types of unfunded mandates. As early as December 16, 1991, NLC adopted, as a preamble to its National Municipal Policy[1], the position that ***federal mandates that impose direct costs must be accompanied by adequate federal funding.*** NLC also adopted policy which states:

> The federal government should avoid policies that impose disproportionate responsibilities on local governments or increased financial liability without recognizing the fiscal impact of those policies. In particular, federal policies should not mandate new costs for local governments without providing adequate funds to reimburse local governments for these new mandates. (*National Municipal Policy* §1.00 (A))

[1] The National Municipal Policy (NMP) contains the formally adopted positions taken by the organization on national issues. As a national membership organization, NLC focuses its policy positions on federal actions, programs, and proposals which directly impact municipalities.

On October 27, 1993, NLC, along with other state and local government associations, launched National Unfunded Mandates Day with a press conference followed by a meeting at the White House with President Bill Clinton. Local elected officials in cities and towns across the country participated in this public awareness campaign by holding more than 100 local press conferences highlighting the soaring costs of federal mandates and the disregard for the local priorities these mandates impacted. The event was the result of years of committed advocacy from many organizations, governments, and individuals that culminated with the passage of the Unfunded Mandates Reform Act (UMRA). Local governments nationwide recognized the passage of the UMRA in 1995 as a key partnership tool with the federal government.

America's cities and towns were particularly hopeful that Title I of UMRA, which requires the Congressional Budget Office (CBO) to prepare an intergovernmental mandate statement approved by the authorizing committee, would deter the federal government from passing the costs of its programs to municipalities. After all, UMRA was passed to ensure that Congress was informed about the costs of mandates before it imposed them. This legislation rightfully encourages the federal government to justify said costs and possibly provide funding to cover impositions made on state and local governments.

The Current State of Unfunded Mandates and America's Cities

Ten years later, America's cities and towns are still feeling effects of legislation that imposes unfunded mandates on localities. A recent report released by the CBO reviews cost reporting activities under UMRA. It stated that of the legislation CBO reviewed between 1996 and 2004, 617 proposals (12%) contained intergovernmental mandates and only 1% of the bills imposed costs higher than the thresholds set in UMRA[2]. The report went on to say that since 1996, five intergovernmental mandates with costs above the designated amount have become law despite the CBO review and report.

Additionally, more than half of the intergovernmental mandates identified by CBO explicitly preempted state or local authority in some form. Some of these preemptions were captured in CBO reviews. This was the case with the *Internet Tax Nondiscrimination Act*, passed in 2004, which temporarily prohibits states from imposing taxes on various forms of Internet access. Last month, Congress heard testimony from CBO Director Douglas Holtz-Eakin, who reported that this legislation will likely result in a loss of state and local revenue that could total more than $325 million through 2007[3]. In many cases, legislation that preempts nonfederal governments is not captured by CBO's reviews because this legislation often does not have direct costs that exceed UMRA's threshold. This is one area that remains of great concern to states and localities

2 Congressional Budget Office. A Review of CBO's Activities in 2004 Under the Unfunded Mandates Reform Act. March 2005.

3 Douglas Holtz-Eakin. Director Congressional Budget Office. Testimony before the U.S. House of Representatives. Committee on Government Reform Statement. March 8, 2005.

as it seems to highlight an erosion of the principle of federalism and UMRA does not allow us to document these types of mandates.

State and local governments have been given very few options to opportunities to repair the loss of revenue caused by mandates and the despairing economy. A May 2004 report from the Center on Budget and Policy Priorities found that despite a $20 billion federal fiscal relief package to the states in 2003 following the economic downturn of 2001 (and I emphasize states, not cities and other localities) "it pale[d] in comparison to the more than $175 billion in state costs and forgone revenues over the 2002-2005 period that are attributable to federal policies."[4]

In March 2004, Senator Voinovich asked the Government Accounting Office (GAO) to analyze UMRA's effectiveness. The report was released and found that 43 statutes and 65 rules, proposed by Congress in 2001 and 2002 would have resulted in some new cost on "nonfederal parties, and of those only 24 statutes and 26 rules required a CBO review.

The report concluded that UMRA may not adequately capture all federal mandates that are imposed on states and localities. The study raised questions about the need to modify UMRA's definitions and exclusions, in order to more accurately assess the burden federal mandates have on the intergovernmental system, as well as the private sector. Specifically, the minimum cost threshold of $50 million in legislation and $100 million for rules/regulations was highlighted as being possibly problematic. At the request of Senator Voinovich, GAO will release an additional update to their report on UMRA to be published in the spring of 2005.

Some of the more famous examples of mandates on local governments can be found in the Individuals with Disabilities Act, No Child Left Behind Act, the Internet Tax Nondiscrimination Act, environmental regulations, federal tax changes, and many others. I will highlight those areas of unfunded mandates and focus in particular on Seattle's struggle with the unfunded mandates tied to homeland security.

Current Unfunded Mandates:

- *Individuals with Disabilities in Education Act (IDEA)*
  Since its passage, NLC has pressed Congress to fully fund the Individuals with Disabilities in Education Act (IDEA). While Congress has recently increased funding for IDEA, the federal government is still contributing less than one-half of the 40 percent match it promised when it passed the legislation in 1975. As a result, local governments and school districts have been forced to bear the cost of this unfunded federal mandate by taking money from their general education budget to provide IDEA-related services. NLC continues to lobby Congress to meet its federal obligation to fully fund IDEA and relieve cash-strapped localities from the burden of making up for the federal funding shortfall.

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[4] Iris J. Lav and Andrew Brecher, *Passing Down the Deficit: Federal Policies Contribute to the Severity of the State Fiscal Crisis*, Center on Budget and Policy Priorities, May 12, 2004.

- *No Child Left Behind Act*
  NCLB is a law that imposes significant demands and requirements upon state and local government educational entities without providing the promised federal dollars to meet the requirements. The President's fiscal year 2006 budget proposes a modest increase in funding disadvantaged schools. To date, NCLB has been under-funded by $9.4 billion from its authorized dollar amount.

- *Federal Tax Changes*
  Federal funds comprise up to half of state and local budgets. Congress and the Administration have identified federal tax reform as a legislative priority this session. However, Congress failed to appreciate that the federal tax cuts enacted since 2001 have had the effect of reducing state and local revenues because of the linkages between the federal and state tax codes. As a result, states that have not "decoupled" their tax structure from the federal system have lost an estimated $9 to $10 billion.[5] In addition, localities and states will also incur administrative costs to redraft their tax codes for conformity.

- *Internet Tax*
  In 2004, CBO found that the Internet Tax Nondiscrimination Act, which prohibited states from imposing taxes on sales from Internet access cost state and localities roughly $325 million in revenues through 2007. The CBO analysis found that substantial revenue losses could result from the inability of state and local governments to collect transactions taxes (including sales and use taxes and gross receipts taxes) on certain types of telecommunications services. Revenue losses would also stem from the free inclusion of content (movies, music, and written works) with Internet access in response to the tax exemption provided by the bill.

- *Environmental Regulations*:
  A study prepared by the National Academy of Public Administration found an annual funding gap of at least $1 billion for states to implement EPA regulated federal programs. In addition, a 2003 report to Congress by the Office of Management and Budget found, "Over the past seven years, seven rules have imposed costs of more than $100 million per year (adjusted for implementation) on State, local and tribal governments."[6] For fiscal year 2006, the Administration's budget proposes a further reduction for the Clean Water State Revolving Fund.

<u>Recently Proposed Unfunded Mandates by Congress</u>

- *MTBE-Liability Waiver in the Energy Bill*
  This week, the House of Representatives is again attempting to pass an energy bill that contains an onerous provision that would impose a $29 billion unfunded mandate on local governments to clean up water contaminated by the gas additive

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[5] Center on Budget and Policy Priorities, p. 3.
[6] National Conference of State Legislators, "Mandate Monitor", March 2004.

Methyl Tertiary Butyl Ether (MTBE). In addition to imposing a multi-billion dollar unfunded mandate on local governments, MTBE-liability waiver would invalidate any MTBE-related lawsuit that has been filed by since September 5, 2003, thereby precluding municipalities and other local governments from recouping the costs of cleaning MTBE-contaminated drinking water supplies. This provision, in the energy bill, would force cash-strapped local governments to bear the cost of cleaning MTBE contaminated drinking water supplies.

The Senate has excluded this liability waiver from its version of the energy bill and I ask, on behalf of NLC, that members of this panel oppose passing this unfunded mandate on to local governments.

- *Immigration Enforcement*
  Last Congress, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act and the Homeland Security Enhancement Act were introduced in the House and Senate, respectively. Both bills would have mandated that local governments enforce (civil) immigration laws – and essential federal function - or risk the denial of reimbursement from the federal government. The proposed bills would have imposed huge unfunded mandates, preempted state and local laws, increased liability due to racial profiling, and degraded effective community policing programs.

  On behalf of NLC, I ask that you oppose legislative efforts to pass similar bills in this Congress. NLC opposes shifting the costs and responsibilities of immigration law enforcement to local governments, since local and state governments received no more than 35 percent of the costs related to the detainment of non-documented persons, according to the Bureau of Justice Assistance.

Seattle, Homeland Security, and Unfunded Mandates

Since September 11, 2001, local governments across the nation have worked hard – and invested scarce resources – to improve security for their citizens. A March 7, 2005 report prepared by the Seattle's Office of City Auditor with assistance from the Department of Finance found the City spent $85.5 million has been spent on homeland security between September 2001 and December 2005. Just under half (46 percent) of the total funding for homeland security activities are from federal grant sources. The vast majority of the balance, $45.5 million or 53 percent of the total, has been funded directly by City taxpayers and ratepayers. Ours is the perfect example of a city trying to not only secure its citizenry but also to comply with federal requirements. However, it is also a true example of a municipality having to rely on its local General and Operating funds in order to meet the terms of federal guidelines because federal grants and funding does not meet our public safety needs.

Seattle's resident population is nearly 570,000, but it accommodates approximately 1.5 million people each workday within its 91 square miles, which includes, including 193 miles of waterfront.

The Department of Homeland Security has identified Seattle as a potential terrorist target. In response, Seattle has taken important steps to improve its preparedness and response capacities. Seattle has invested in these steps, despite the economic recession in the Puget Sound region that began in 2001 that forced the city to make approximately $122 million to its General Fund.

The audit, which is included as Appendix A to this testimony, noted three factors that contribute to the homeland security costs:

1) The City's efforts to achieve compliance with post-9/11 guidelines from the federal government, regulatory agencies, and professional organizations for which there are no grant sources currently available.

2) The costs of additional ongoing staffing for homeland security, for which there is no federal grant support has totaled over $17.5 million since 9/11.

3) Grants from federal agencies, including the Department of Homeland Security and the Environmental Protection Agency, provided funds for the City to conduct vulnerability assessments of City operations and critical infrastructure. However, due to the prohibition of using Urban Area Security Initiative (UASI) funding for capital projects, eight City departments indicated that they have infrastructure needs for which grant funds are not available.

In addition, Seattle departments responsible for homeland security have identified sustainability issues such as maintaining security staffing, labor and training costs associated with operating and maintaining grant-funded equipment and vehicles, and other costs as a concern.

Seattle has reorganized some of its public safety resources to improve its preparedness and response to homeland security emergencies. Changes include transferring police officers from other functions within the department to create a Homeland Security Section within its Bureau of Emergency Preparedness and reorganizing internally to expand the city's incident response capabilities. City taxpayers have assumed $14.9 million in new homeland security costs for the General Fund since 2001. To put that in funding level context, during the last four budgets, the City's General Fund has faced a gap of approximately $122 million.

Despite the budget challenges associated with homeland security, the City of Seattle greatly appreciates the resources provided by Congress and the Administration. In particular, the UASI funds provide critical homeland security funding to the Seattle region and is an essential tool. I urge this Subcommittee to support this valuable program. I also urge this Subcommittee to work to distribute a greater percentage of homeland security funding to our high-density urban areas where the Department of Homeland Security has determined there is greater threat. The funding should allow greater flexibility for local governments to implement homeland security plans.

Ways to Improve UMRA

One of NLC's primary concerns regarding UMRA is how the financial threshold and exemptions under UMRA obfuscates an accurate assessment of unfunded mandates. The March 2004 GAO study concluded that, "[t]he findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected non-federal parties."[7] These findings highlight the deficiency of UMRA, which was designed to discourage the imposition of new laws and regulations that pass the costs on to state and local governments.

NLC has worked with GAO to identify the flaws in the statute and to put forward recommendations for improvement. NLC is looking forward to the release of the next report that examines whether and how UMRA's procedures, definitions, and exclusions fail to capture the true federal fiscal burden placed on state and local governments. We hope the report would endorse our recommendations, and more importantly that Congress will adopt them.

First, Congress should amend UMRA to increase to 60 the number of Senate votes it takes to enact legislation that imposes unfunded federal mandates. This proposal was approved last month by the Senate Budget Committee. In the last ten years, the Senate never used UMRA once as a budget point of order.

Second, Congress should not allow any new federal statute to preempt a local law unless the new federal law specifically states that there is a direct conflict between state and local law.

Third, Congress should reconsider the threshold amount established in UMRA. While the $50 million threshold (which has been adjusted for inflation annually) may seem low by Congress' estimation, the cumulative effects of unfunded mandates that fail to meet the UMRA's financial threshold do great damage to the fiscal posture of localities.

Finally, NLC would like Congress to enact clear and unequivocal language that mandates federal agency consultation with state and local government associations and officials in the development of the proposed rule pursuant.

On behalf of the National League of Cities, I thank you for the opportunity to submit this testimony on this most critical issue.

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[7] *Unfunded Mandates: Analysis of Reform Act Coverage*, Government Accounting Office, May 2004, page 36.

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Testimony of Councilmember Nick Licata (Seattle, Washington)
on behalf of the National League of Cities
Senate Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
April 14, 2005

Appendix A

City of Seattle: Homeland Security Funding and Liabilities

Past Presidents: **Karen Anderson**, Mayor, Minnetonka, Minnesota • **Clarence E. Anthony**, Mayor, South Bay, Florida • **William H. Hudnut, III**, Mayor, Town of Chevy Chase, Maryland • **Sharpe James**, Mayor, Newark, New Jersey • **Brian J. O'Neill**, Councilman, Philadelphia, Pennsylvania • ***Directors:*** **Lorraine Anderson**, Councilmember, Arvada, Colorado • **Tommy Baker**, Alderman, Osceola, Arkansas • **Vickie Barnett**, Mayor, Farmington Hills, Michigan • **Phil Bazemore**, Mayor Pro Tem, Mamoe, North Carolina • **Daniel Beardsley, Jr.**, Executive Director, Rhode Island League of Cities and Towns • **Thomas Bredewag**, Executive Director, Iowa League of Cities • **Kenneth Busche**, Executive Director, Colorado Municipal League • **Rosemounda Butler**, Council Member, West Columbia, South Carolina • **Nora Campos**, Councilmember, San Jose, California • **Roosevelt Coats**, Councilman, Cleveland Ohio • **Jim Condos**, Council Chair, South Burlington, Vermont • **Lisa Dooley**, Executive Director, West Virginia Municipal League • **Clay Ford, Jr.**, Mayor Pro Tem, Gulf Breeze, Florida • **Eddy Ford**, Mayor, Farragut, Tennessee • **Danny George**, Executive Director, Oklahoma Municipal League, Inc. • **Matthew Graller**, Executive Director, Indiana Association of Cities and Towns • **Ken Harward**, Executive Director, Association of Idaho Cities • **Lester Heitke**, Mayor, Willmar, Minnesota • **Jim Higdon**, Executive Director, Georgia Municipal League • **Ruth Hopkins**, Councilmember, Prairie Village, Kansas • **Ted Jennings**, Mayor, Brewton, Alabama • **Ronald Loveridge**, Mayor, Riverside, California • **Joseph Maestas**, Councilor, Espanola, New Mexico • **Michael McGlynn**, Mayor, Medford, Massachusetts • **James Mitchell**, Jr., Council Member, Charlotte, North Carolina • **Joe Moore**, Alderman, Chicago, Illinois • **Ed Oakley**, Councilmember, Dallas, Texas • **Margaret Peterson**, Councilmember At Large, West Valley City, Utah • **Dottie Reeder**, Mayor, Seminole, Florida • **Terry Riley**, Council Member, Kansas City, Missouri • **John Russo**, City Attorney, Oakland, California • **Ron Schmitt**, Councilor, Sparks, Nevada • **Doug Scott**, Mayor, Rockford, Illinois • **Liberato Silva**, Vice Mayor, Flagstaff, Arizona • **Shep Stahel**, Mayor Pro Tem, Plano, Texas • **Charlieta Tavares**, Council Member, Columbus, Ohio • **Ted Tedesco**, Mayor, Ames, Iowa • **Dick Traini**, Assembly Chairman, Anchorage, Alaska • **Jacques Wigginton**, Councilmember, Lexington, Kentucky • **Evelyn Woodson**, Councilor, Columbus, Georgia

City of Seattle
Office of City Auditor
Susan Cohen, City Auditor

City of Seattle
Homeland Security Funding and Liabilities

Prepared by the Office of City Auditor with assistance from the Department of Finance
March 7, 2005

Executive Summary

$85.5 Million Total Costs. Homeland security is evolving into a core City function. Since September 2001, the City of Seattle has received considerable funding from the federal government to support new homeland security efforts. Also, public safety, utility, and general government departments have redirected funds and redeployed City staff to focus on homeland security. We found that between September 2001 and December 2005, the City of Seattle will have spent $85.5 million on homeland security activities. This report represents the City's first comprehensive attempt to capture the full costs of its homeland security efforts to date.

Tax/Rate Payers Funded Over Half Total Costs ($45.5 million). Approximately 47% of the total funding for homeland security activities came from grant sources. The City has also relied on significant contributions from its General, Operating, and Capital Improvement (CIP) funds to support its homeland security activities. Combined, City taxpayers and ratepayers have funded $45.5 million, or 53% of the total homeland security funding.

Three factors contribute to the large share (53%) of new homeland security costs that the City has had to absorb:

- The City's efforts to achieve compliance with post-9/11 guidelines from the federal government, regulatory agencies, and professional organizations.
- The costs of additional ongoing staffing for homeland security, for which there is no federal grant support.
- The costs of physical security enhancements that have been recommended as a result of the City's vulnerability assessments but are not funded by grants.

Ongoing Funding Challenges. The City recognizes the need to address sustainability issues related to its homeland security efforts including ongoing staffing costs and equipment maintenance and replacement.

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Background

Seattle's Homeland Security Challenges

Seattle's size, its location and its critical infrastructure present considerable challenges to ensuring homeland security. These challenges are exacerbated by the constraints of a tight City budget.

Large Urban Area. Urban centers, such as Seattle, face the greatest risk of terrorist attack. The federal government uses the following criteria to distribute grant funding:

- current threat estimates,
- critical assets within the urban area, and
- population density.

The city of Seattle comprises 91 square miles, including 193 miles of waterfront. While approximately half a million people live in the City, its population grows to roughly 1.5 million each workday.

Seattle's Critical Infrastructure. The City has a diverse topography with extensive waterways, and it operates and maintains over 150 bridges. This includes three bascule bridges over the Lake Washington Ship Canal and one swing bridge over the Duwamish River. The openings and closings of these bridges have a major impact on commuters and Seattle's maritime industries.

The City's utilities also contribute to the unique characteristics of Seattle's critical infrastructure. The City-operated electric utility, Seattle City Light, serves over 700,000 customers and has a service area of 130 miles. Four large dams with unique security concerns generate 70-75% of the power supply for the City of Seattle.

Seattle's water utility serves over 1,300,000 customers in Seattle and in 25 other cities and districts. Two City-owned watersheds span over 100,000 acres of land and range in elevation from nearly sea-level to 6,000 feet.

Economic Condition. Seattle's general government and public safety functions are supported by its General Fund, which has suffered from a recession in the Puget Sound region that began in 2001.[1] The regional recession led to declines in sales tax and solid waste utility tax revenues, as well as a significant slow-down in the growth of Business and Occupation Tax revenues. Taxes comprise approximately 86% of the revenue in the City's General Fund, and consequently, since 2002, the City has sustained about $122 million in cuts to its General Fund, including some reductions in public safety.

[1] The region lost 6.7 percent of its jobs between December 2000 and September 2003. During the same time period, the United States as a whole lost only 2.1 percent of its jobs and Washington state lost only about 3.0 percent.

Seattle's Homeland Security Activities Overview

Urban Areas Security Initiative (UASI) Program. The Urban Areas Security Initiative (UASI) Program is one of the federal government's primary terrorism preparedness programs for state and local governments. The program emphasizes terrorism prevention, protection and response activities, providing both resources and support to assist key urban areas nationwide in reducing vulnerabilities and enhancing their capabilities.

In 2003, Seattle was one of seven cities in the nation to receive the UASI I grant that went directly to cities. Seattle/King County was one of 30 urban areas across the country to receive UASI II grants passed through their states, and one of 50 urban areas to participate in the UASI 04 and UASI 05 programs. The Seattle urban area has received $57.6 million from the four UASI programs, with the City of Seattle receiving $32.3 million of that amount.

UASI I and II awards to the City totaled over $21 million. These awards provided necessary equipment and training for first responders in the Police and Fire Departments, as well as equipment, training and infrastructure protection for the DoIT, Seattle Department of Transportation, Seattle City Light, Seattle Public Utilities, Seattle Center, the Department of Planning and Development, Seattle-King County Public Health, and the City's partners at the Washington State Department of Transportation and the University of Washington. DoIT received funds to manage a multi-jurisdictional project to improve electronic communications among Emergency Operations Centers and the executive offices in Seattle, the State of Washington, and King, Pierce, and Snohomish Counties.

The UASI '04 award includes the acquisition of marine vessels for the Police Department and Fire Department.[2] This award also funded equipment and infrastructure protection for DoIT and the Fleets and Facilities Department, and provided additional support for the UASI II initiative to improve communications among regional Emergency Operations Centers and executive offices. Additionally, the Police Department received resources to develop a curriculum to train elected and appointed officials and senior managers who are responsible for departments' emergency management during an activation of the City's Emergency Operations Center.

Regional Coordination. The UASI grant program required Seattle to create multi-jurisdictional and multi-disciplinary collaborations, including members from contiguous jurisdictions and mutual aid partners. The Urban Area Working Group (UAWG) was created following the award of UASI II to the Seattle Urban Area, which required the State of Washington to administer the grant as the "state-administering agency" (SAA). UAWG membership includes:

City of Seattle (Core member)	Pierce County
King County (Core member)	Snohomish County
State of Washington (SAA)	

[2] Funding for one of the fireboats supplements resources approved in Seattle's 2003 Fire Facilities & Emergency Response Levy.

These jurisdictions made formal commitments to work together to develop and coordinate efforts for building an enhanced and sustainable capacity to deter, prevent, pre-empt, protect, respond to, and recover from threats or acts of terrorism and Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) events, while supporting and enhancing an all-hazards response capability. Consistent with federal requirements for homeland security, each jurisdiction initially performed an individual assessment that identified vulnerabilities, capabilities and needs.

In May 2003, the City and its surrounding jurisdictions participated in TOPOFF2, the second of five congressionally mandated anti-terrorism exercises. The 36-hour exercise simulated the emergency response to a "dirty bomb" situation. Over 3,600 people participated including representatives from local state and federal agencies. Seattle also engaged in an exercise that tested how City government information technology networks would respond if attacked.

Organizational Changes. The Chief of Police, Seattle Police Department, established a Technical Assistance Working Group (TAWG). Membership includes representatives from the following:

Seattle Police Department	City Council
Seattle Fire Department	Seattle City Light
Department of Information Technology	Seattle Public Utilities
Seattle Department of Transportation	Fleets and Facilities Department
Office of International Relations	Office of Policy and Management
Department of Finance	Seattle Center
Human Services Department	Department of Parks and Recreation
Seattle-King County Public Health	

The TAWG meets biweekly to coordinate homeland security activities related to the UASI program, recommend funding proposals with UASI grant resources, and monitor the progress of UASI projects.

To better organize for prevention of, protection from, and response to homeland security incidents, the City has reorganized some existing resources to address this emerging City priority. The Seattle Police Department (SPD) transferred officers from other functions within the department to create a Homeland Security Section within its Bureau of Emergency Preparedness. This unit focuses on threats and vulnerabilities of facilities, infrastructure and other key sites in the City. SPD also reorganized internally to expand its incident response capabilities including:

- Creating a Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) Cadre in Seattle and coordinating a regional CBRNE cadre.
- Enhancing the capabilities of Seattle's bomb and arson squad, tactical support, and harbor patrol.
- Enhancing response capability at high profile events.

In addition, security officer positions have been established in the Seattle Public Utilities, Seattle City Light, Seattle Department of Transportation, and the DoIT.

Methodology

In December, 2004, data for all relevant City departments was gathered from members of the City's Technical Advisory Working Group (TAWG). The TAWG identified all post-9/11 costs (the projected expenditure amounts for 9/11/01 through 12/31/05) related to their anti-terrorist activities. Information was captured by category of spending and by fund source. The categories of spending are defined as follows:

- **Equipment** such as personal protective equipment for first responders and utility workers, communications equipment such as radios, command vehicles and marine security vessels.
- **Labor** including staff added or reorganized to respond to homeland security, overtime charges and departmental overhead associated with homeland security, and homeland security grants administration.
- **Regional Communications Interoperability** to link Emergency Operations Centers and the business offices of the Mayor of Seattle, Executives of King, Pierce, and Snohomish counties and the Governor.
- **Information Technology** such as interoperable communications equipment and systems that allow for the sharing of data, including associated consultant costs.
- **Security Enhancements** (Infrastructure Hardening) such as enhancements to critical City buildings, bridges and technology systems.
- **Training** such as specialized incident response training for first responders.
- **Exercises** including staff, consulting, and supplies associated with homeland security mobilization and response exercises.
- **Planning** including staff, consulting, and supplies associated with homeland security planning and project management activities.

Data Review. Efforts were made to reconcile the UASI grant amounts to ensure their accuracy. The amounts provided by the departments as General Fund, Operating Fund, or Capital were reviewed in an attempt to ensure completeness. City departments also provided narrative information that described their homeland security activities and identified sustainability issues.

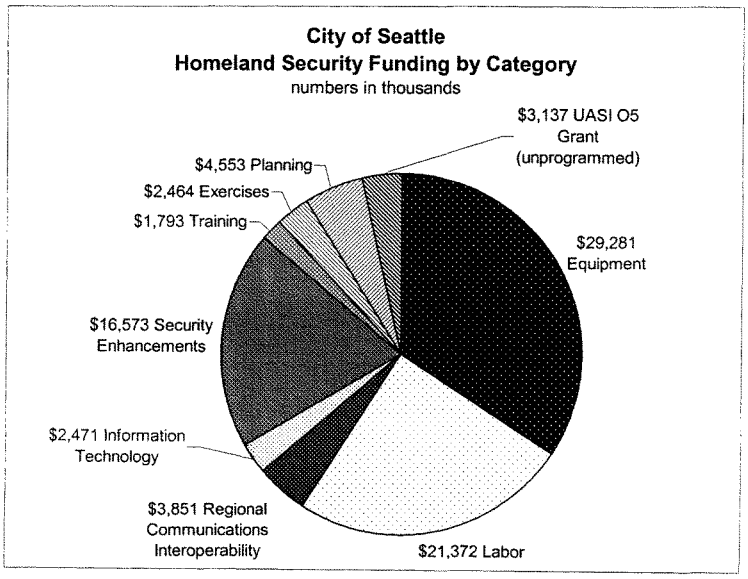
Mix of Specific and Generalized Data. Some reported costs are attributable to specific homeland security activities, while others are reported at a more generalized, program level. An example of the latter is that we assumed that all the activities of SPD's Homeland Security section would not have occurred but for the events of 9/11.

Some Incremental City Costs Not Captured. Some incremental City costs attributable to homeland security efforts were not captured in this report. For example, the Police Department did not estimate costs for additional stadium security required since 9/11; and they did not estimate costs for additional security required for the 2005 Pacific Rim Sports Summit.

Cost Summary Analysis

$85.5 Million Total Homeland Security Spending. Between September 2001 and December 2005, the City of Seattle will have spent approximately $85.5 million on homeland security activities. Of that amount:

- $29 million will support major equipment purchases including police and fireboats, incident response vehicles, specialized security and emergency response equipment, communications equipment, and an audible public warning system.
- Over $21 million will support additional staff required to operate homeland security equipment, to provide enhanced security for critical infrastructure, and to support terrorism preparedness and response. These labor costs are largely paid for with City funds, and are discussed in more detail below.
- By the end of 2005, the City expects to spend a total of $16.6 million in post 9/11 security enhancements to its critical infrastructure. This includes new security measures at critical facilities, electronic security systems, and structural enhancements to City facilities.
- Expenditures in the remaining categories, Regional Communications Interoperability, Information Technology, Training, Exercises and Planning total $15 million.
- An award of $3.1 million (Seattle share) for UASI '05 was received by the City in December 2004 and has not yet been programmed.

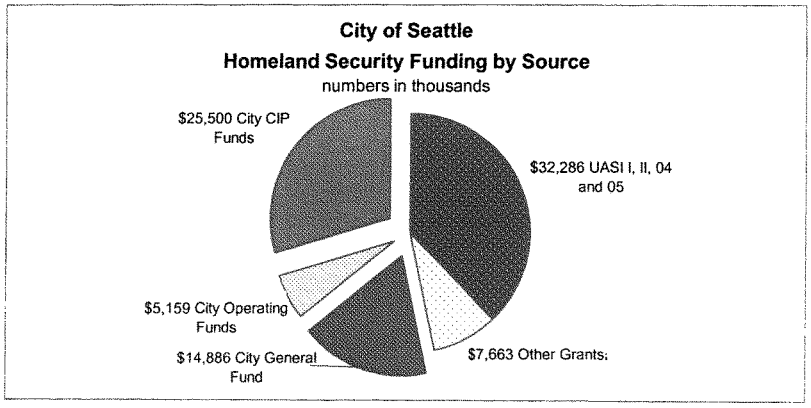


Sources of Homeland Security Funding. Just under half (47%) of the total funding for homeland security activities is from grant sources. The balance, or 53% of the total, has been funded directly by City taxpayers and ratepayers.

Grants. Combined, the four UASI programs represent 38% of the total. The City also received homeland security grants from other sources, including, but not limited to State Homeland Security Grants[3] (SHSG), Environmental Protection Agency (EPA), Department of Justice, Metropolitan Medical Response System (MMRS)[4], and Washington State Emergency Management. Grants and reimbursable activities totaled $7.6 million and represent 9% of the City's total homeland security funding.

City Sources. The City relies on significant contributions from its General, Operating, and Capital Improvement Program (CIP) funds to support its homeland security activities. Combined, these City sources represent over $45.5 million, 53% of the total homeland security funding. City taxpayers have assumed $14.9 million in new homeland security costs for the General Fund since 2001. During the last four budgets, the City's General Fund has faced a gap of approximately $122 million. Therefore, the City has had to shift resources from other General Fund programs to cover these new homeland security costs. Taxpayers absorbed an additional $11.5 million in capital costs for homeland security funded through the 2003 Fire Levy.[5]

City utility ratepayers have also assumed a significant portion of homeland security costs. Seattle City Light ratepayers have paid costs for new security measures totaling $5.4 million, representing $2.2 million in operating fund expenditures and $3.2 million in capital costs. Seattle Public Utility ratepayers have paid $1.3 million in operating fund expenditures and $10.3 million in capital costs.



[3] administered by the Department of Homeland Security Office of Domestic Preparedness
[4] administered by the Department of Homeland Security Directorate of Emergency Preparedness and Response
[5] CIP funded expenditures from all sources total $25.5 million.

Financial Liabilities for the City's General, Operating, and Capital Funds

Three factors contribute to the large share (53%) of new homeland security costs that the City has had to absorb:

- The City's efforts to achieve compliance with post-9/11 guidelines from the federal government, regulatory agencies, and professional organizations.
- The costs of additional ongoing staffing for homeland security, for which there is no federal grant support.
- The costs of physical security enhancements that have been recommended as a result of the City's vulnerability assessments but are not funded by grants.

Compliance with Guidelines. City departments identified the following organizations that have promulgated new homeland security guidelines for which there are no grant sources currently available to achieve compliance with these guidelines:

- North American Electric Reliability Council (NERC)
- Federal Energy Regulatory Commission (FERC)
- National Institute for Occupational Safety and Health (NIOSH)
- National Fire Protection Association (NFPA)
- FBI Hazardous Devices protocols

Labor. City departments identified additional ongoing staffing for homeland security efforts. Labor costs that are not covered by grants total over $17.5 million since 9/11. They include:

- Police Department's new Emergency Preparedness Bureau
- Enhanced security at large public gatherings and events with wide media coverage
- Enhanced Police monitoring of vulnerable sites throughout the city
- Police's explosive detection canine team
- Enhanced watershed and utility security
- Information Technology (IT) staff to monitor cyber intrusions, and to operate and maintain homeland security IT systems and networks.
- Enhanced security at Seattle Center (public events, public entertainment facilities)

Security Enhancements. Grants from federal agencies including the Department of Homeland Security and the Environmental Protection Agency provided funds for the City to conduct vulnerability assessments of City operations and critical infrastructure. Many vulnerabilities have been addressed with grant-funded improvements to the City's critical infrastructure. However, due to the prohibition of using UASI funding for capital projects, eight City departments indicated that they have infrastructure needs for which grant funds are not available.

In addition, the City's recent Fire Levy will fund a portion of one of the two new homeland security fireboats (the balance is funded by UASI 04), as well as emergency supplies, water and power for community centers.

Sustainability Issues

Homeland security is evolving into a core City function. Sustaining this level of effort presents funding challenges that the City recognizes (See Appendix 2 City of Seattle, Department of Finance, Statement on Sustainability of Homeland Security Activities).

Departments have identified sustainability issues related to homeland security activities including:

- Maintaining security staffing that is currently grant-funded
- Labor costs and other costs associated with operating and maintaining grant-funded equipment and vehicles
- Eventual replacement of grant-funded equipment, vehicles, and supplies
- Maintaining homeland security unit in the Seattle Police Department
- Maintaining heightened responses by police and fire personnel to public gatherings and events that could present a threat of terror
- Administering homeland security grants
- Additional costs associated with potential new or emerging homeland security threats.

Appendix 1

Citywide Homeland Security Expenditure Summary

(numbers in thousands)

Category	UASI I, II, 04	UASI 05	Other Grants	General Fund	Operating Fund	CIP Fund	Total All Sources 9/11/01-12/31/05
Equipment	$16,287		$1,052	$247	$142	$11,553	$29,281
Labor	$835		$2,982	$14,270	$3,024	$260	$21,372
Regional Communications Interoperability	$2,937		$375	$125	$410	$4	$3,851
Info Tech	$2,431				$40		$2,471
Security Enhancements	$1,747		$328	$68	$747	$13,683	$16,573
Training	$346		$1,027		$420		$1,793
Exercises	$1,100		$1,309	$15	$40		$2,464
Planning	$3,466		$590	$161	$336		$4,533
UASI 05 (unprogrammed)		$3,137					$3,137
Total All Categories	$29,150	$3,137	$7,663	$14,886	$5,159	$25,500	$85,495

Appendix 2

City of Seattle, Department of Finance, Statement on Sustainability of Homeland Security Activities

February 3, 2005

The opportunities presented by the homeland security grant funding have brought with them the challenge of sustaining the new initiatives over time. Sustainability issues raised by the grant spending have been identified as maintaining the security staffing that was initiated for SCL and SDOT and operating, maintaining and replacing equipment and vehicles that have been purchased with grant money. In addition, there is the challenge of managing within budgeted resources while maintaining heightened responses by police and fire personnel to public gatherings and events that could present a threat of terror.

One of the City's conditions of funding new positions with UASI resources was that the grant would be used as one-time seed money for a position, thus allowing sufficient time for the departments to build the ongoing costs into their budgets. While the two positions in SCL and SDOT are the only ones that have been supported with UASI resources, all departments involved in this study may identify additional staffing needs as the new security operations learn more about the vulnerabilities in their departments. The grant management positions are the exception to the rule of funding only start-up staffing costs, as one or both will continue to be funded from UASI resources until the City's program administration needs have ended.

Most of the equipment that has been obtained is subject to normal depreciation, will require regular maintenance and must eventually be replaced. Some departments that bought large stocks of equipment are creating lifecycle cost models and developing sustainability formulas. Departments are also identifying ongoing operations and maintenance costs for information technology equipment. The sources of funding needed to support these costs are as varied as the departments that have acquired the equipment. The utilities will build these costs into their revenue requirements, those departments with access to flexible grant resources may be able to support these costs at least temporarily through those means, while the general government departments are likely to put these costs in competition for General Fund resources. General Fund has already been budgeted for operation and maintenance of police and fire IT projects in the 2005-2006 biennium, but it is likely that some costs to sustain UASI-purchased equipment will be absorbed within departments' ongoing budgets.

Sustainability is an issue that must remain at the forefront of managing these grant resources. Nevertheless, lack of an identified future funding source to replace important grant-purchased security needs has not stood in the way of preparing City departments with equipment and technology that will help to protect and respond to their identified vulnerabilities.

United States Government Accountability Office
Washington, DC 20548

June 24, 2005

The Honorable George V. Voinovich
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

Dear Mr. Chairman,

On June 2, 2005, you requested that we respond to questions for the official record submitted by Senators Coleman and Lautenberg regarding your Subcommittee's April 14, 2005, hearing, "Passing the Buck: A Review of the Unfunded Mandates Reform Act." Our responses are included in this correspondence. To address the questions, we relied primarily on information from the two reports we prepared at your request in May 2004 and March 2005 on the Unfunded Mandates Reform Act of 1995 (UMRA) and federal mandates in general.[1]

Responses to Questions for the Official Record from Senator Norm Coleman

1. Ten years ago, mayors, governors and other state and local leaders worked real hard to convince Congress to pass the Unfunded Mandates Reform Act. Has this legislation helped?

As we reported in May 2004, there is some evidence that the information provided under UMRA, and the spotlight that information places on potential mandates, may have helped to discourage or limit federal mandates. The Congressional Budget Office's (CBO) annual reports on UMRA indicate that, at least with regard to the legislative process, UMRA sometimes has such an indirect preventive effect on the passage of legislation containing intergovernmental mandates at or above UMRA's cost threshold.[2] Overall, only five proposed intergovernmental mandates with costs above the applicable threshold had become law from UMRA's enactment through

[1] GAO, *Unfunded Mandates: Analysis of Reform Act Coverage*, GAO-04-637 (Washington, D.C.: May 12, 2004), and *Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement*, GAO-05-454 (Washington, D.C.: March 31, 2005).
[2] The statutory threshold in UMRA for intergovernmental mandates is $50 million (in 1996 dollars, adjusted annually for inflation) in any of the first 5 fiscal years the mandate would be effective. For 2004, the threshold was $60 million.

2004. CBO also reported that UMRA may have aided in lessening the costs of some mandates before enactment. Although CBO has not done an analysis to determine the role of UMRA in reducing the costs of mandates ultimately enacted, the agency stated that "it was clear that information provided by CBO played a role in the Congress's decision to lower costs." There is also some testimonial evidence regarding the effectiveness of UMRA as a deterrent to including unfunded mandates in legislation. Further, although UMRA points of order are rarely used, they may be perceived as an unattractive consequence of including a mandate above UMRA's cost thresholds in proposed legislation.

However, we also reported that there are many ways that statutes and regulations with significant financial effects on nonfederal parties can be enacted or published without being identified as containing federal mandates at or above UMRA's thresholds because of the Act's procedures, definitions, and exclusions. In our March 2005 report, we noted that knowledgeable parties from five sectors—academic/think tank, public interest advocacy, business, federal, and state and local governments—most frequently raised issues involving UMRA's coverage when asked to comment on strengths and weaknesses of the Act. Parties across most of the sectors thought that the Act's narrow coverage was a significant weakness. Nevertheless, despite this and other concerns raised by the parties about UMRA, they recognized positive aspects and benefits of the Act. In particular, the parties commented about the attention UMRA brings to potential consequences of federal mandates and how it serves to keep the debate in the spotlight. We also found it notable that no one suggested repealing UMRA.

2. This year's Senate budget resolution raises the number of votes necessary to overcome an unfunded mandates point of order from a simple majority to 60 votes. Do you think this will be an effective tool to limit the number of unfunded mandates imposed on local and state governments?

Congress has enacted few intergovernmental mandates, as defined by UMRA, with costs over UMRA's threshold since the Act became law (only five), so it is not clear that increasing the number of votes needed to waive an unfunded mandates point of order in the Senate to 60 would have much effect on limiting the overall number of mandates. However, it is also true that, since UMRA took effect, no Senator has raised an unfunded mandates point of order. It is unclear whether this is in part because the Senate could have waived the point of order and continued consideration of the bill with a simple majority vote. If so, increasing the required number of votes might make it more likely that a Senator would be willing to raise a point of order to challenge a proposed mandate. It is also possible that increasing the difficulty of waiving a point of order could enhance the deterrent effect.

3. What other changes do you recommend to strengthen UMRA and reduce the number of unfunded mandates our cities face?

We made no recommendations regarding potential changes to UMRA in our two most recent reports because they provided descriptive information and analysis, and the issues involving UMRA addressed in those reports are part of a broader public policy debate to be had by Congress. However, our March 2005 report (GAO-05-454) provides a useful starting point for considering possible changes. That report

presents the views of a diverse group of parties familiar with UMRA on the significant strengths and weaknesses of the Act and their suggested options for reinforcing the strengths or addressing the weaknesses.

When considering changes to UMRA itself, the Act's narrow coverage stood out as the primary issue for most sectors. The parties generally expressed concern that many federal actions are excluded from UMRA's coverage, which contributes to complaints about unfunded or underfunded mandates, although a few parties, primarily from the public interest advocacy sector, said that the Act's narrow coverage should be maintained or reinforced. The parties also identified issues and options regarding other aspects of UMRA, such as enforcement of the Act and consultations with state and local governments. While there was some broad-based support by parties across most sectors that these are issues that warrant review and reconsideration, there was less agreement among the parties about the specific options for dealing with them. The variety of suggested options indicates that finding workable solutions will require including all affected parties in the debate.

Various parties also recognized that reexamining UMRA is only part of the solution to broader policy issues concerning federal mandates. For example, the parties suggested that retrospective analysis is needed to ensure that federal mandates are achieving their desired goals and to better gauge the mandates' benefits and costs. As we noted in our testimony on April 14, such analysis could help provide additional accountability for federal mandates and provide information that could lead to better decisions regarding the design and funding of mandates.

4. What is the single most burdensome federal mandate/barrier your community has to contend with? What kind of a financial burden does it carry?

(Not applicable to GAO.)

5. In your opinion, how much do federal mandates cost your community annually?

(Not applicable to GAO.)

6. What would be the one federal mandate that, if changed, would provide you with the greatest amount of relief?

(Not applicable to GAO.)

Responses to Questions for the Official Record from Senator Frank R. Lautenberg

1. Would expanding UMRA and making unfunded mandates subject to a 60-vote point of order expand CBO's power over the political process?

While such changes might direct more attention to the information that CBO provides under UMRA, the Act gives CBO no direct power over the political process, nor does it intrude on the constitutional right of Congress to consider legislation. The information that CBO is responsible for providing about potential mandates helps to

inform congressional debate, but Congress maintains the authority to act on the proposed legislation. Also, although UMRA prohibits consideration of legislation on the floor of the House or Senate unless certain conditions are met, it is up to members of Congress to take action to enforce UMRA's rules by raising a point of order. The point of order is not self executing. CBO's determination regarding whether a bill contains an intergovernmental mandate above UMRA's threshold is not final in either the House or the Senate. When raised in the House of Representatives, the point of order is voted on by the full House. When raised in the Senate, the presiding officer makes an initial ruling on the point of order (in consultation with the Committee on Homeland Security and Governmental Affairs), but the ruling can be appealed to the full Senate and overruled by 60 votes.

2. Are UMRA's provisions open to different interpretations? Would this tend to politicize appointments to CBO, which has jurisdiction over UMRA?

There are some aspects of the mandate identification process under UMRA that are not necessarily clear and can pose challenges to CBO in implementing its responsibilities under UMRA. However, we believe these are primarily analytical challenges, not things that would politicize CBO's role. Further, as noted in our response to the previous question, under UMRA CBO's role is to support Congress in its consideration of potential mandates in legislation by providing information. Actual decision making power regarding mandates in legislation ultimately resides with Congress.

3. Because OMB—one arm of the Administration—is responsible for evaluating whether another administration regulation is an unfunded mandate, can the administration basically waive UMRA at will?

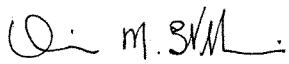
Title II of UMRA, regarding the regulatory process, places the primary responsibility for implementing the Act's requirements on the rulemaking agencies, not OMB. OMB's responsibilities under UMRA are related to the requirements on agencies, and, while OMB therefore monitors and reports on agencies' compliance with the Act, UMRA does not permit OMB to waive UMRA at will.[3] Further, title IV of UMRA permits limited judicial review of an agency's compliance or noncompliance with UMRA, under which a court may compel an agency to prepare the UMRA written statement required by the Act.

Under title II of UMRA, each agency, unless otherwise prohibited by law, is responsible for assessing the effects of its regulatory actions on state, local, and tribal governments, and the private sector. If a rule contains a federal mandate, UMRA requires the agency to prepare a written statement containing specific descriptions and estimates. UMRA also includes requirements for agencies to obtain input from state, local, and tribal governments in the development of regulatory proposals containing significant federal intergovernmental mandates. The related

[3] Note also that in our September 2003 report on the OMB regulatory review process, we examined 85 rules that had been changed, returned, or withdrawn after being submitted to OMB by nine health, safety, or environmental agencies, but in none of these cases did we find that OMB had changed the agency's UMRA determinations. See GAO, *Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews*, GAO-03-929 (Washington, D.C.: September 22, 2003).

responsibilities placed on OMB by UMRA include (1) collecting the written statements prepared by agencies on federal mandates in rules and periodically forwarding them to CBO and (2) submitting annual reports to Congress detailing agencies' compliance with title II. OMB's reports to Congress provide information on the rules that the agencies have identified as containing federal mandates and also discuss agencies' efforts to consult with state, local, and tribal governments in the development of significant rules.

Sincerely yours,



Orice M. Williams
Director
Financial Markets and Community Investment

(450426)

Questions for Dr. Elizabeth Robinson, CBO:

Passing the Buck: A Review of the Unfunded Mandates Reform Act
Thursday, April 14, 2005
Questions from Senator Frank R. Lautenberg

Question 1: Are all revenue raising provisions considered unfunded mandates under the Unfunded Mandates Reform Act (UMRA)? What kinds are and are not?

Answer: UMRA defines a mandate as "an enforceable duty, except a condition of federal assistance or a duty arising from participation in a voluntary federal program." Enforceable duties, and thus mandates, include requirements to pay taxes and certain fees. In deciding whether a revenue-raising provision is a mandate, CBO considers whether those fees, taxes, or charges are mandatory or are associated with an activity or action that is required by the federal government.

If the federal government exercises its sovereign power to assess a charge, the duty to pay such a tax is a mandate. For example, a bill that would increase the fee paid by air carriers to obtain a certificate of operation would be a mandate under UMRA. Such a certificate is required by law if a carrier wants to operate within the United States. The higher fee is thus a private-sector mandate, and the cost is measured as the difference between the old fee and the new fee.

Some legislative proposals to increase federal collections, however, are not mandatory and thus are not mandates under UMRA. Fees or charges imposed as part of voluntary federal programs are generally recorded in the federal budget as offsetting receipts that are credited against direct spending. They are not classified as revenues and are not considered mandates under UMRA. For example, a bill that would increase entrance fees for national parks would not be a mandate. Entering a national park is voluntary, and the fee to enter is simply part of a voluntary commercial transaction between the federal government and an individual.

Question 2: Would expanding UMRA and making unfunded mandates subject to a 60-vote point of order expand CBO's power over the political process?

Answer: The Congressional Budget Office is responsible for providing federal budget and mandate cost estimates for bills (other than appropriation bills) when they are reported by a full committee of either House. However, CBO does not make judgments about the application of any procedural objections (points of order) that could be raised in the legislative process on the basis of those findings. UMRA specifies that the presiding officer of the Senate shall consult with the Committee on Governmental Affairs and the Committee on the Budget on questions concerning the applicability of the points of order to a pending bill.

Passing the Buck: A Review of the Unfunded Mandates Reform Act
Thursday, April 14, 2005
Questions from Senator Norm Coleman

Question 1: Ten years ago, mayors, governors, and other state and local leaders worked real hard to convince Congress to pass the Unfunded Mandates Reform Act. Has this legislation helped?

Answer: In the 10 years since UMRA took effect, both the amount of information about the cost of federal mandates and Congressional interest in that information have increased considerably. Moreover, numerous pieces of legislation that originally contained a significant unfunded mandate were amended to either eliminate the mandate altogether or to lower its costs. Examples of legislation that was amended to reduce mandate costs include legislation requiring state governments to include a Social Security number on driver's licenses (1996), a preemption of state security fees (1997), a moratorium on certain taxes on Internet services (1998), and a requirement in the farm bill affecting the contents of milk (1996).

Question 2: This year's Senate budget resolution raises the number of votes necessary to overcome an unfunded mandates point of order from a simple majority to 60 votes. Do you think this will be an effective tool to limit the number of unfunded mandates imposed on local and state governments?

Answer: Such a change would clearly raise the procedural hurdle that potential mandates would have to overcome. The existing point of order in UMRA has never been raised in the Senate. Raising the stakes from a simple majority to 60 votes for the UMRA point of order may make it more likely that it will be raised or that it will deter the inclusion of mandates in some legislation.

CBO does not, however, make judgments about the application of any procedural objections (points of order) that could be raised in the legislative process on the basis of those findings. UMRA specifies that the presiding officer of the Senate shall consult with the Committee on Governmental Affairs and the Committee on the Budget on questions concerning the applicability of the points of order to a pending bill.

Question 3: What other changes do you recommend to strengthen UMRA and reduce the number of unfunded mandates our cities face?

Answer: While CBO does not make policy recommendations, we can provide you with a summary of changes to UMRA that have been considered by the Congress or proposed by other interested parties.

To date, lawmakers have made only one, relatively minor, change to UMRA. The State Flexibility Clarification Act of 1999 (P.L. 106-141) requires authorizing committees and CBO to provide more information in committee reports and mandate statements for legislation that would affect the large entitlement grant programs discussed above. In general, that requirement for additional information applies to few bills and has affected no legislation reported by authorizing

committees since the requirement was enacted.

Since UMRA's enactment, lawmakers and other interested parties also have proposed several additional ways to expand or change title I. Most proposals seek to increase the types of bills that would be subject to UMRA's cost-estimating and point-of-order provisions. One proposal would build on UMRA's perceived success in focusing Congressional attention on unfunded intergovernmental mandates by expanding the law to allow for a point of order against bills that contain private-sector mandates with costs over the statutory threshold. (The law currently allows such a point of order for intergovernmental mandates.) That kind of expansion could establish an additional hurdle for private-sector mandates and could increase the demand for information about their costs.

Another proposal would expand UMRA's definition of a mandate so that a change to an entitlement program that imposed new conditions on states or that decreased federal funding by more than the UMRA threshold would constitute an intergovernmental mandate unless the bill making the change also gave states and localities additional flexibility to offset the new costs. Both of those proposals were included in the Mandates Information Act, which was considered by the 105th and 106th Congresses and introduced in the 107th Congress--but was not enacted.

Other proposals to change or expand UMRA have included broadening the definition of an intergovernmental mandate to include new conditions on any existing grant program; narrowing the exclusions discussed above to apply only to the provisions allowing for a point of order and not to the requirement that CBO provide cost information; and eliminating the threshold so that any mandate--regardless of its costs--could trigger a point of order. Such a change would allow a point of order to be raised whenever the Congress was considering bills that would preempt state and local authority.

Question 4: What is the single most burdensome federal mandate/barrier your community has to contend with? What kind of financial burden does it carry?

Answer: Not applicable to CBO

Question 5: In your opinion, how much do federal mandates cost your community annually?

Answer: CBO has not attempted to calculate the costs to state and local governments of complying with all federal mandates. For the reasons summarized below, it is difficult to estimate such costs because of widespread differences among the states about what constitutes a federal mandate and because of the difficulty of isolating the incremental costs of federal mandates.

Most Attempts to Estimate the Total Cost of Mandates Use a More Expansive Definition of "Mandate" than UMRA's Definition. Many surveys of state and local governments do not use the same definition of "mandate" that is contained in UMRA. They use a more expansive definition that includes many activities UMRA defines as "voluntary." For example, the NACO

survey released in March of this year includes "issuing permits and source registrations" as a federal mandate under the Clean Air Act. Under the definitions in UMRA, however, such activities are voluntary on the part of states because, under the Clean Air Act, states may choose to enforce the program within their borders or they may decide not to be the regulator of this program and let the federal government enforce the program.

Results are Rarely Comparable. State and local governments usually have a great deal of discretion in determining what is a mandate. For example, the NACO survey published in March of 2005 provided counties that were asked to fill out the survey with "examples" of mandates within broad categories such as "Clean Air Act." But it was up to the counties to decide which activities to include in their cost estimates; There is no way to insure that all counties included the same activities, making it impossible to aggregate the estimates.

Most Governments Report Total Costs, Not the Incremental Costs of the Federal Mandates. CBO believes that no reliable method exists to estimate the incremental costs of many federal mandates. Federal mandates are often designed to achieve goals that state and local governments share. It is difficult, therefore, to estimate the additional, or incremental, costs that a mandate imposes. In the absence of federal mandates, for example, state and local governments still have to provide safe drinking water to their citizens and they still have to run elections. Nevertheless, In order to calculate the costs of federal mandates to provide safe drinking water, for example, one would have to be able to isolate the additional expenditures that federal standards require water systems to make above and beyond the expenditures that they would have made without such standards. In CBO's view, it would be virtually impossible in many cases for state and local governments to separate out federal requirements from what they would have done in the absence of those requirements.

Question 6: What would be the one federal mandate that, if changed, would provide you with the greatest amount of relief?

Answer: Not Applicable to CBO

NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

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Maryland House of Delegates
President, NCSL

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Minnesota
Staff Chair, NCSL

William T. Pound
Executive Director

June 24, 2005

The Honorable Norm Coleman
United States Senate
320 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Coleman:

Thank you for the opportunity to answer your follow-up questions regarding the April 14, 2005 hearing—*Passing the Buck: A Review of the Unfunded Mandates Reform Act*. The National Conference of State Legislatures (NCSL) is encouraged that you and other federal lawmakers have recognized the difficulties posed by the cost shifts to states and we look forward to working with you on this important issue.

Question 1: Ten years ago, mayors, governors and other states and local leaders worked real hard to convince Congress to pass the Unfunded Mandates Reform Act. Has the legislation helped?

The Unfunded Mandates Reform Act (UMRA) of 1995 has raised awareness of the problem of unfunded mandates, improved federal accountability, and enhanced consultation between the federal government and states and localities. In particular, the hundreds of fiscal analyses completed by the Congressional Budget Office (CBO) show a commitment to carry out the spirit and letter of the law. CBO's March 2005 report that identified only five laws that crossed UMRA's threshold speaks loudly for its effectiveness. Both of these facts, however, mask some of the statute's shortcomings. The Government Accountability Office's May 2004 analysis of UMRA concluded that, "...there are multiple ways that both statutes and final rules containing what affected parties perceive as 'unfunded mandates' can be enacted or published without being identified as federal mandates with costs or expenditures at or above the thresholds established in UMRA."[i] In addition, the report found that, "The findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected nonfederal parties."[ii] Because of UMRA's limitations, much is slipping under the radar.

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Question 2: This year's Senate budget resolution raises the number of votes necessary to overcome an unfunded mandates point of order from a simple majority to 60 votes. Do you think this will be an effective tool to limit the number of unfunded mandates imposed on local and state governments?

Raising the necessary votes from a simple majority to 60 votes is an effective way to strengthen the enforcement of UMRA. It should be noted, however, that a point of order against an intergovernmental mandate has never been raised in the Senate.

Question 3: What other changes do you recommend to strengthen UMRA and reduce the number of unfunded mandates states or cities face?

NCSL encourages the federal government to enact reforms that:

- Expand the definition of an unfunded mandate to include all open-ended entitlements, such as Medicaid, child support and Title 4E (foster care and adoption assistance) and proposals that would put a cap on or enforce a ceiling on the cost of federal participation in any entitlement or mandatory spending program. Further, any proposal that places a cap or enforces a ceiling must be accompanied by statutory offsets that reduce state spending, administrative duties or both.
- Review the existing exclusions under Section 4 of UMRA. Excluding legislation from the requirements of UMRA precludes an official accounting of the costs imposed under such legislation.
- Expand the definition of mandates to include new conditions of federal funding for existing federal grants and programs, including costs not previously identified, including mandated results.
- Expand the definition of mandates to include proposals that could reduce state revenues, especially when changes to the federal tax code are retroactive or otherwise provide states with little or no opportunity to prospectively address the impact of a change in federal law on state revenues.
- Expand the definition of mandates to include those that fail to exceed the statutory threshold only because they do not affect all states.
- Expand the scope of UMRA to include indirect costs.
- Require that mandate statements accompany appropriations bills.
- Require federal reimbursement, as long as the mandate exists, to state and local governments for costs imposed on them by any new federal mandates.
- Improve Title II, including enhanced requirements for federal agencies to consult with state and local governments and the creation of an office within the Office of Management and Budget that is analogous to the State and Local Government Cost Estimates Unit at the Congressional Budget Office.
- Restrict the preemption of state laws.
- Repeal or modify certain existing mandates as recommended by other NCSL resolutions.

Question 4: What is the single most burdensome federal mandate/barrier your community has to contend with? What kind of a financial burden does it carry?

Currently, the Individuals with Disabilities Education Act (IDEA) is the most burdensome federal mandate. However, over the next decade the cost of implementing the provisions of No Child Left Behind (NCLB) will eclipse the cost of IDEA.

Since enacting IDEA in 1975, Congress has never met its commitment to fund 40% of the average per pupil expenditure (APPE) for children with disabilities. In 2004, formally recognizing Congress' responsibility, the conference committee on the reauthorization of IDEA stated in its report that, "A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals." As such, the new law establishes a seven year "glide path" to move the federal government towards funding 40% of the APPE by FY 2011.[iii] The federal government is already $1.8 billion behind for FY 2005 in fulfilling its most recent promise. The authorized level was $12.3 billion and Congress appropriated $10.5 billion.[iv] The President's FY 2006 budget proposal would increase that deficit by an additional $3.5 billion. In addition, failure by the federal government to provide 40% APPE places a $10 billion shortfall annually on the back of state budgets. This is in addition to the shortfall identified by research from the Center on Special Education Funding (CSEF) which indicates that the actual cost to educate a special education student is not 140 percent of APPE but nearly 200 percent of APPE. Adjusting for this fact, the gap in funding for IDEA would be more in the range of $30 billion annually. CBO considers any requirements under IDEA a condition of grant aid. However, states are really not in a position to refuse participation in the grant program. Any state that refused to participate in IDEA would be open for suit in federal court for not complying with civil rights law.

No Child Left Behind has expanded the target of federal education policy, while the federal government has provided only marginal financial increases to meet its mandates. Since NCLB's passage, the total federal increase in K-12 appropriations is equal to about 2 percent of aggregate K-12 revenue. This increase barely covers the administrative costs related to compliance with NCLB let alone the cost of brining every child to academic proficiency.

Question 5: In your opinion, how much do federal mandates cost your community annually?

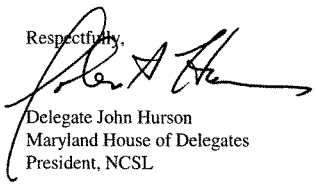
For FYs 2004 and 2005, NCSL has identified a cost shift to states of $25 billion and $26 billion, respectively, and a potential $30 billion cost shift in FY 2006. There is additional research that strongly suggests the cost shift to states is double these amounts. This does not take into account the adoption of proposed reductions in federal Medicaid expenditures, the potential impact of any federal tax reform that could impose direct compliance costs or even restrict state revenues, the capping or reduction in funding regarding mandatory and entitlement programs, or the impact of numerous regulatory mandates or pre-UMRA mandates.

Question 6: What would be on the one federal mandate that, if changed, would provide you with the greatest amount of relief?

Changes to the Individuals with Disabilities Education Act (IDEA) or complying with promised levels of funding would provide states with the most relief. However, as mentioned above the cost to implement the No Child Left Behind Act (NCLB) will most likely eclipse these costs over the next decade.

For additional information, please have your staff contact Molly Ramsdell (202-624-3584; molly.ramsdell@ncsl.org) in NCSL's Washington, D.C. office.

Respectfully,



Delegate John Hurson
Maryland House of Delegates
President, NCSL

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i Government Accountability Office, *Unfunded Mandates: Analysis of Reform Act Coverage*, Report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Governmental Affairs, U.S. Senate, (Washington, D.C.: GAO, May 2004).

ii Ibid.

iii Tetreault, Yvette; Federal Funds Information for States; Issue Brief 04-57: IDEA Reauthorization; (Washington, D.C.: FFIS, December 8, 2004).

iv Ibid.

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Minnesota
Staff Chair, NCSL

William T. Pound
Executive Director

June 24, 2005

The Honorable Frank Lautenberg
United States Senate
324 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Lautenberg:

Thank you for the opportunity to answer your follow-up questions regarding the April 14, 2005 hearing—*Passing the Buck: A Review of the Unfunded Mandates Reform Act*. The National Conference of State Legislatures (NCSL) is encouraged that you and other federal lawmakers have recognized the difficulties posed by the cost shifts to states and we look forward to working with you on this important issue.

Question 1: Should the requirements of No Child Left Behind be covered by the Unfunded Mandates Reform Act? Have states received sufficient funds to comply with the mandates?

The requirements of No Child Left Behind (NCLB) should be covered by the Unfunded Mandates Reform Act. NCLB has expanded the target of federal education policy, while the federal government has provided only marginal financial increases to meet its mandates. Since NCLB's passage, the total federal increase in K-12 appropriations is equal to about 2 percent of aggregate K-12 revenue. This increase barely covers the administrative costs related to compliance with NCLB let alone the cost of bringing every child to academic proficiency. These increases are not sufficient to cover the requirements of the law.

States are required to test all students. There is federal money available to test all students. However, Title I only provides funds for remediation for Title I-eligible (low income) pupils, or 30 percent of the population. Funds for remediation have neither been authorized nor appropriated for the other 70 percent of the K-12 population. Based on NCLB's definition of "full-funding", the Congressional Research Service (CRS) estimated full funding at $30 billion in FY 2004. With only $12 billion appropriated that year, this created an $18 billion shortfall in funds for Title I-eligible pupils (the 30 percent) in FY 2004 alone. (Note: Similar to the Individuals with Disabilities Education Act (IDEA), the federal government defines "full funding" under NCLB as 40 percent of the national average per pupil expenditures (APPE) for each Title I eligible student. This is the definition on which CRS based its estimate.)

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In February 2005, NCSL's NCLB Task Force made 43 recommendations to facilitate and modify NCLB implementation issues. Even if the flaws in federal funding were fixed, substantial flaws would still impede the workability of this law. More realistic funding must be coupled with major substantive revamping.

Question 2: Since tax cuts impose costs on states, should these be considered unfunded mandates under UMRA?

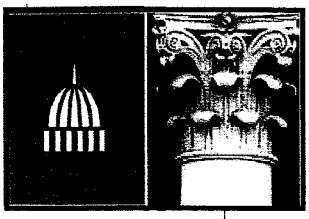
In general, NCSL does not believe that tax cuts directly impose costs on states as long as any federal tax changes are made prospectively and states have adequate transition time—possibly 3 to 5 years— to adapt to the changes.

There is a notable informational disconnect regarding the accounting for the impact of federal tax cuts on state and local government revenue bases and capacity to carry out constitutional and statutory responsibilities. Thus, there is a glaring need for a congressional agency, such as CBO or the Joint Committee on Taxation, to be tasked with measuring potential impacts of federal tax reform on state and local governments.

For additional information, please have your staff contact Molly Ramsdell (202-624-3584; molly.ramsdell@ncsl.org) in NCSL's Washington, D.C. office.

Respectfully,

Delegate John Hurson
Maryland House of Delegates
President, NCSL



Mandate Monitor

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An Information Service of the NCSL Budgets and Revenue Committee

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In March 2004, the National Conference of State Legislatures produced the first edition of its new Mandate Monitor. The first issue reported the results of an NCSL study of the costs of existing mandates and other federal cost shifts to state and local governments. This is the first issue of 2005. It contains a summary of the cost shift to states during the 108th Congress, a prospective look at fiscal year (FY) 2006 and an updated catalog of existing mandates. The next edition of the Mandate Monitor will be published in mid-April and will focus on current legislative proposals before the 109th Congress.

Introduction

The Unfunded Mandates Reform Act of 1995 (UMRA) was adopted in an effort "...to curb the practice of imposing unfunded Federal mandates on States and local governments."[2] Since its enactment, only five provisions of law have met the UMRA definition of an intergovernmental mandate exceeding the statutory threshold.[a] Three of them were adopted by the 108th Congress (see page 6). Although the provisions of UMRA have been effective, NCSL has identified a $51 billion cost shift in federal funding to states for fiscal years 2004 and 2005 collectively and a potential $30 billion cost shift in FY 2006. There is additional research that strongly suggests the cost shift to states is double these amounts. This does not take into account the adoption of proposed changes in federal Medicaid spending (a net $45 billion reduction in federal spending over 10 years), the potential impact of any federal tax reform that could impose direct compliance costs or even restrict state revenues, the capping or reduction in funding regarding mandatory and entitlement programs, or the impact of numerous regulatory mandates or pre-UMRA mandates.

The fact that these costs are not considered mandates under UMRA can be attributed to a number of reasons, including: new mandates being considered as a condition of grant aid; changes to entitlement programs; reductions in federal payments for such things as administrative costs or increases in administrative requirements without an increase in funds; and Congress' failure to appropriate the authorized level of funding. In addition, exemptions included in

[a] The threshold is $50 million (in 1996 dollars). Adjusted annually for inflation, the threshold for FY 2004 was $60 million.

UMRA (see attachment 1) have created a vast and growing void in reporting the fiscal effects of federal mandates. Furthermore UMRA does not require the review of amendments made to a bill after it is reported out of committee.

In order to identify the true cost shift in federal funding to the states, NCSL's *Mandate Monitor* uses a definition of "unfunded mandate" that is broader than the one included in the Unfunded Mandate Reform Act of 1995 (UMRA). According to the Congressional Budget Office (CBO), "[UMRA] defines a mandate as any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments or the private sector, or that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates. Duties that arise as a condition of federal assistance or from participation in a voluntary federal program are not mandates. In the case of large entitlement grant programs, a new condition or a reduction in federal assistance is a mandate, but only if states lack the "flexibility" to offset the new costs or the loss of federal funding with reductions elsewhere in the program. Certain provisions--such as those enforcing constitutional rights or those necessary for national security--are excluded from UMRA's procedures (see attachment 1).

Direct costs are defined as amounts that mandated entities would be required to spend to comply with the enforceable duty. They also include amounts that states, localities, and tribes "would be prohibited from raising in revenues. Direct costs exclude amounts that would be spent under current laws and programs. They are offset by any direct savings from compliance with the mandate."[3]

State legislators view unfunded mandates more expansively. They interpret almost any federal decision that requires them to spend state or local funds as a cost shift. This includes legislation that:

- Establishes a condition of grant in aid.
- Reduces current funds available (including a reduction in the federal match rate or a reduction in available administrative or programmatic funds) to state and local governments for existing programs without a similar reduction in requirements.
- Extends or expands existing or expiring mandates.
- Establishes durational goals to comply with federal statutes or regulations with the caveat that if a state fails to comply it faces a loss of federal funds—a condition of grant aid.
- Creates a loss in state/local funds.
- Compels coverage of a certain population/age group/other factor under a current program without providing full or adequate funding for this coverage.
- Creates underfunded national expectations, e.g., homeland security.

The General Accountability Office echoed the viewpoint of state legislators in a May 2004 report when stating, "...There are multiple ways that both statutes and final rules containing what affected parties perceive as 'unfunded mandates' can be enacted or published without being identified as federal mandates with costs or expenditures at or above the thresholds established in UMRA."[4] The report also concluded that, "The findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected non-federal parties."[5]

COST SHIFTS TO THE STATES IN 2003-2004

Below are some specific examples of legislation enacted or actions taken during the 108th Congress that were not considered intergovernmental mandates under UMRA, but did meet the *Mandate Monitor* definition and created a cost shift to the states.

American Jobs Creation Act of 2004 (P.L. 108-357). On October 22, 2004 President Bush signed H.R. 4520—the American Jobs Creation Act of 2004. In general, the legislation was drafted to head off the $4 billion in trade sanctions imposed by the European Union after the World Trade Organization ruled that Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) tax breaks provided to U.S. corporations were illegal. In its final version, the bill contained several measures that will impact state spending. In particular, a $.75 excise tax on hepatitis A and influenza vaccines sold by manufacturers, producers, or importers thereof. Because Medicaid is a major purchaser of these vaccines, the tax will indirectly increase state spending for the Medicaid program by approximately $90 million over the 2005-2009 period.[6] The bill also expands voluntary Medicaid coverage for people with sickle cell disease—adding an estimated $28 million to state spending for Medicaid for the same time period.[7]

Regarding the two provisions above, under UMRA, states are considered to have the "flexibility" within the Medicaid program to offset any new costs with reductions elsewhere in the program. In addition, the excise tax on the vaccines is not considered a "direct" cost but an "indirect" cost to the Medicaid program.

It is worth noting that UMRA considers the cost of each mandate separately and not the collective impact.

Individual with Disabilities Education Act (P.L. 108-446). In 2004, Congress reauthorized the Individuals with Disabilities Education Act (IDEA). Since enacting IDEA in 1975, Congress has never met its commitment to fund 40% of the average per-pupil expenditure (APPE) for children with disabilities. Formally recognizing Congress' responsibility, the conference committee stated in its 2004 report that, "A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals." As such, the new law establishes a seven year "glide path" to move the federal government towards funding 40% of the APPE by FY 2011.[8] However, with the ink less than 6 months dry, the federal government is already $1.8 billion behind for FY 2005 in fulfilling its most recent promise. The authorized level was $12.3 billion and Congress appropriated $10.5 billion.[9] The President's FY 2006 budget proposal would increase that gap by an additional $3.5 billion. In addition, failure by the federal government to provide 40% APPE places, on average, an additional $10 billion annually on the back of state budgets. This does not take into account research which has shown that the cost of educating a child with special needs is twice that of the non-special needs student population, not 40 percent. Adjusting for this fact, the gap in funding for IDEA would be more in the range of $30 billion annually. CBO considers any requirements under IDEA a condition of grant aid; however, states are really not in a position to refuse participation in the grant program. Any state that refused to participate in IDEA would be open for suit in federal court for not complying with civil rights law.

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (P.L. 108-173). While CBO determined that the MMA contains an intergovernmental mandate as it relates to a preemption of state taxes on premiums for prescription drug coverage, the law also contains a number of other provisions that will increase state expenditures. For example, all prices negotiated under the MMA are not included in the calculation of the Medicaid "best price." States will find it more difficult to negotiate supplemental rebates because the dual-eligibles will no longer be a part of their

prescription drug portfolio. Indexing the Part B premium will also result in increased state costs and states expect to see increased administrative costs related to the requirement to conduct eligibility determinations for the low-income subsidy for Medicare Part D. Again, with Medicaid states are considered to have the flexibility to offset the new costs or the loss of federal funding with reductions elsewhere in the program and many of these provisions are not considered to have a direct impact on state spending.

Reprogramming Funds. Former Health and Human Services Secretary Tommy Thompson reprogrammed $55 million of the FY 2004 bioterrorism funds administered by the Centers for Disease Control and Prevention (CDC). Many states anticipated receiving these funds and will have to find another way to pay for the activities.

OVERALL IMPACT ON STATE GENERAL REVENUE FUNDS

The minimum cost shift for FY 2004 of $25.7 billion represented 5 percent of state general revenue funds. For FY 2005, the percentage impact was essentially the same.

POTENTIAL COST SHIFTS TO STATES IN FY 2006 AND BEYOND

Using NCSL's definition of an unfunded mandate, the President's FY 2006 budget request, if enacted, would result in a 20 percent increase in the cost shift to the states, for a total of at least $30 billion. (See table 1). This does not take into account the adoption of proposed changes in federal Medicaid spending (a net $45 billion reduction in federal spending over 10 years), which would not take effect until FY 2007.

In general, Medicaid and education continue to be areas where significant costs are being shifted to the states. Education alone has accounted for close to two-thirds of the cost shift in FYs 2004 and 2005 and it appears that trend will continue in FY 2006. In addition, given the President's proposal to reduce the deficit by 50 percent by 2009, reduce discretionary spending by 1 percent in FY 2006, cap discretionary spending—except defense and homeland security—for the next five year, and decrease mandatory spending by $137 billion over the next 10 years, states could be facing a minimum cost shift of over $300 billion over the next decade. Again, this reflects our most conservative analysis of the fiscal impact.

Table 1: Cost Shift(s) in Federal Funds to States: Select Programs

(For questions regarding the FY 2004 or FY 2005 figures, please refer to earlier editions of the *Mandate Monitor*.)

	Minimum FY 2004 Cost Shift	Minimum FY 2005 Cost Shift	Minimum FY 2006 Cost Shift[b]	Subtotals FY 2006 Cost Shift
Agriculture				**-$254,000,000**
Food Stamps	-$197,000,000	-$197,000,000	-$254,000,000	
CBO Determined Mandates				**-$220,000,000**
Preemption on state taxes on premiums for prescription drug coverage[c]			-$60,000,000	
New Driver's License Standards[c]			-$60,000,000	
Extend the moratorium on taxes on Internet access[c]			-$100,000,000	
Education				**-$20,485,000,000**
Individuals with Disabilities Education Act (IDEA)[d]	-$9,800,000,000	-$10,223,000,000	-$9,927,000,000	
No Child Left Behind (NCLB)[e]	-$9,600,000,000	-$7,760,000,000	-$9,408,000,000	
Comprehensive School Reform[f]			-$213,000,000	
Safe and Drug-Free Schools-state grant program[f]			-$441,000,000	
Education Technology State Grants[f]			-$496,000,000	
Environment				**-$361,000,000**
Clean Water SRF		-$250,000,000	-$361,000,000	
Health				**-$295,000,000**
CDC-Bioterrorism	-$55,000,000		-$130,000,000	
CDC Preventive Health and Services Block Grant[f]			-$131,000,000	
HRSA Emergency Medical Services for Children[f]			-$20,000,000	
HRSA State Planning Grant Program[f]			-$11,000,000	
HRSA Trauma Care Program[f]			-$3,000,000	
Health – Medicaid				**-$6,960,000,000**
State Drug Costs for Dual-Eligibles[g]	-$6,000,000,000	-$6,600,000,000	-$6,600,000,000	
Phase Down of Safe Harbor Tax			-$231,000,000	
Medicaid-Reduce the Targeted Case Management (TCM) Match to 50 percent			-$129,000,000	
Homeland Security				**-$420,000,000**
State Formula Grants		-$600,000,000	-$420,000,000	
Justice				**-$301,000,000**
SCAAP[f]			-$301,000,000	
Labor				**-$146,000,000**
Worker Grants			-$146,000,000	
Other				**-$1,604,000,000**
Help America Vote Act (HAVA)		-$600,000,000	[h]	
Economic and Community Development Program			-$1,604,000,000	
Total	**-$25,652,000,000**	**-$26,230,000,000**	**-$31,046,000,000**	

[b] Figures are based on the President's FY 2006 budget proposal.

[c] Determined under UMRA to be intergovernmental mandates that exceed the threshold.

[d] Assumes the federal government's commitment to fund 40% APPE.

[e] Assumes funding at authorized levels.

[f] The president's FY 2006 budget eliminates funding for this program. This figure restores funding at FY 2005 levels. See detailed description that follows.

[g] This number is derived by starting with $4.1 billion in 2000--a Kaiser estimate of state drugs costs for dual eligibles—and assumes that every state's prescription drug costs for dual-eligibles grow at a rate of 10 percent per year which is expected to be low. Because of the uncertainty of the impact of the MMA, the cost to states to provide prescriptions for dual-eligibles was held constant in FY 2006 at the FY 2005 level.

[h] States are still owed an estimated $600 million to implement HAVA requirements. Because the authorization for appropriation ended in FY 2005, NCSL decided this cost shift should remain in FY 2005. Many states still consider this a cost shift in FY 2006.

DETAILED EXPLANATION OF THE FY 2006 COST SHIFT TO STATES

The information below indicates that the cost shift in funding could be as high as double or triple the $30 billion minimum estimate.

AGRICULTURE

Food Stamps Program: The enactment of the Farm Security and Rural Investment Act of 2002 (P.L 107-171) extended the existing cap set by the 105th Congress (P.L. 105-185) on federal contributions to administrative costs to the Food Stamps program. It also mandated new semi-annual reporting requirements. A July 1999 General Accounting Office (GAO) report—Food Stamp Program: States Face Reduced Federal Reimbursements for Administrative Costs—calculated that the cap set by the 105th Congress provided a minimum savings of $227 million annually for the federal government. The actual cost to states has now been documented at $197 million annually. Under the President's budget proposal, these costs would continue in FY 2006. In addition, the President's FY 2006 budget includes a legislative proposal that would cut $57 million in the program by limiting categorical eligibility to recipients of TANF cash assistance and SSI. This cut would impact 11 states—Delaware, Maine, Maryland, Massachusetts, Michigan, North Dakota, Oregon, South Carolina, Texas, Washington and Wisconsin.

CBO DETERMINED MANDATES

Preempts state taxes on premiums for prescription drug coverage: This mandate was contained in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173). CBO reported that this provision would "...result in revenue losses to states that would grow from $60 million 2006 to $90 million in 2010."[10]

Establishes standards for state-issued driver's licenses, identification cards, and birth certificates: These mandates were contained in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458). While these standards will be developed through the federal rulemaking process, CBO estimates that state and local governments will have to spend more than $60 million in at least one of the next five years to meet those standards.[11] The law authorizes appropriations to help cover the cost of these requirements; however, the President's budget does not provide for such funds.

Extends the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce: This mandate was contained in the Internet Tax Non-discrimination Act (P.L. 108-435). CBO determined that it will result in revenue losses to state and local governments totaling at least $80 to $120 million annually through 2007.[12]

EDUCATION

Individual with Disabilities Education Act—Special Education: Congress recently reauthorized the Individuals with Disabilities Education Act (IDEA). The new law establishes a seven-year "glide path" to move the federal government toward funding 40% APPE by 2011.[13] However, with the ink less than 6 months dry, the federal government is already $1.7 billion behind in fulfilling its most recent promise.[14] And with the President's budget proposal they would add an additional $3.5 billion to the gap. In addition, Congress' failure to provide 40% APPE places on average an additional $10 billion annually on the back of state budgets. This does not take into account that some research has shown that the cost of educating a child with special needs is twice that of the non-special needs student population. Adjusting for this fact, the gap in funding would be more in the range of $30 billion annually. The figures for IDEA in table 1 are based on the federal government providing 40% APPE in FY 2006—an estimated $21

billion. The President's budget proposal only provides $11.1 billion leaving a gap of $9.9 billion.

No Child Left Behind Act: The President's budget proposes $13.3 billion for grants to Local Education Agencies (LEAs) to implement NCLB, approximately $9.4 billion under the authorized appropriation for grants to LEAs for mandated activities. The FY 2005 omnibus appropriations bill provided $12.7 billion in grants to Local Education Agencies (LEAs) to implement the No Child Left Behind Act, approximately $7.7 billion under the authorized level. NCSL's recent report on NCLB indicates that increased federal funding covers only administrative costs related to NCLB and funds no remediation, improvement or other related costs.

Comprehensive School Reform, Safe and Drug-Free Schools-State Grant Programs and Education Technology Grants: States use the funds from these three grant programs to implement requirements under NCLB. Because NCLB is currently underfunded, states will have to absorb these costs.

ENVIRONMENT

Environment: The president's FY 2006 budget reduces funding for the Clean Water State Revolving Fund (SRF) by $361 million. Infrastructure payments resulting from loans made through the Clean Water SRF assist states and localities in meeting federal standards.

HEALTH

Centers for Disease Control (CDC) Bioterrorism: The President's FY 2006 HHS budget **reduces** funds for the public health preparedness and capacity building grants administered by the Centers for Disease Control and Prevention (CDC) by $130 million.

CDC Preventive Health Service Block Grant: This grant program was created in an effort to consolidate other preventive health grant programs. States were provided additional flexibility and less funding. The Presidents budget eliminates funding for this program. This program received $132 million in FY 2005. States will have to continue to provide these services even thought the President had proposed to eliminate funding for the program.

HRSA Trauma Care Program, Universal Newborn Hearing Screening and Emergency Medical Services for Children (EMSC) Program: The President's budget proposal eliminates funding for all three programs. The Administration feels that the first two programs are duplicative of activities funded by the much larger Maternal and Child Health Care Block Grant and that the objectives of this program can be achieved by states through the Maternal and Child Health (MCH) Block Grant. The President proposed level funding for the MCH Block Grant in FY 2006. States will have to cover more activities under an existing grant program.

HOMELAND SECURITY

State Homeland Security Grant Program: Although the President's FY 2006 budget proposal contains a 3 percent increase in homeland security funding, state formula grants for first responders are targeted for a $420 million reduction, with those funds redirected to high-threat urban areas.

JUSTICE

State Criminal Alien Assistance Program: The State Criminal Alien Assistance Program (SCAAP) received appropriations of $301 million in FY 2005. The president's FY 2006 budget proposal eliminates funding for this program. Annual costs to state and local governments are estimated to be two to three times greater than recently appropriated levels.

LABOR

Workforce Grants: The President's FY 2005 budget proposal for the Department of Labor includes a proposal to consolidate three state formula grants for training and employment services. The consolidation comes with an annual loss of over $161 million dollars.

MEDICAID

State Drug Costs for Dual-Eligibles. Table 1 assumes level costs for states from FY 2005 to FY 2006 for prescription drug coverage for dual-eligibles in FY 2006. There have been reports that states may not incur savings, particularly in FY 2006. This can be attributed to the "...clawback payments, higher Medicaid caseloads, diminished ability to do disease management for dual eligibles and to control the prescription drug cost of Medicaid beneficiaries who remain eligible for drug coverage, and administrative costs associated with taking applications for the Part D low-income subsidy. Some states may also incur costs as a result of supplementing the Part D benefit for dual eligibles."[15] NCSL will adjust this number when new figures become available.

Table 2: Proposed Medicaid Savings in President's FY 2006 Budget Proposal

The federal government has proposed to curtail intergovernmental transfers (IGTs) and other financing mechanisms under Medicaid—saving the federal government $60 billion over 10 years. The Administration proposes to use $15 billion of the savings from policy changes to improve health care coverage. According to a document released by HHS, Medicaid savings include:

- $15 billion through use of Average Sale Price (ASP) to reimburse pharmacies;
- $4.5 billion from closing loopholes on asset transfers for long-term care eligibility;
- $11.9 billion from ensuring that Medicaid pays for only net provider expenditures;
- $3.3 billion by limiting payment to government providers to actual costs;
- $6.2 billion by phasing down of existing "safe harbor" for state taxes on providers from 6 percent to 3 percent;
- $1.4 billion by bringing managed care organizations into line with other provider classes as it relates to taxes;
- $6.0 billion in savings by establishing an allotment for state administrative claiming;
- $4 billion from matching targeted case management (TCM) at uniform rates; and
- $7.7 billion by avoiding state-to-Federal cost shifts for TCM and other services

Reforms to Medicaid Financing Mechanisms. The President's budget proposal curtails intergovernmental transfers (IGTs) and other financing mechanisms under Medicaid—saving the federal government a net $45 billion over 10 years. (See table 2). However, only $360 million of these costs (Phase down of safe harbor tax and the reduction in the targeted case management (TCM)

rate to 50 percent) are reflected in the FY 2006 budget. Most of the reforms would not impact state spending until 2007 and as a result are not reflected in table 1.

In addition, prior to the release of the President's budget, the Centers for Medicare and Medicaid Services (CMS) announced that, due to findings by the CMS actuary regarding Medicaid growth in FY 2004 (9 percent, instead of the projected 11 percent), they were revising the projected annual Medicaid growth rate over the next ten years from 7.8 percent to 7.6 percent, although CBO continues to project the annual growth rate for Medicaid to be 7.8 percent. This will result in $73 billion less in projected federal Medicaid spending over the ten year period. In total, this would mean a combined $133 billion reduction in federal Medicaid spending over the 10 year period. Again this is not reflected in table 1.

OTHER

Help America Vote Act—Election Reform: The president's FY 2006 budget does not include any funds to implement the Help American Vote Act (HAVA). While the authorization for appropriation ended in FY 2005, Congress still has not met its obligation to fully fund the requirements. This cost shift remains at approximately $600 million.

Economic Development: The President proposes to consolidate 18 existing economic and community development programs—including the Community Development Block Grant (CDBG) and the Community Service Block Grant (CSBG)—from seven federal agencies into two new programs: (1) Strengthening America's Communities Initiative, a unified economic and community development grant program, and (2) The Economic Development Challenge Fund, a bonus grant program for development-ready communities. As it relates to the latter program, a development-ready community is identified as one that has already taken steps to improve conditions in ways that have been proven to attract businesses, including:

- Improving schools by meeting No Child Left Behind adequate yearly progress goals;
- Reducing regulatory barriers to business creation and housing development; and
- Reducing violent crime rates within the community.

In particular the budget provides $3.7 billion in FY 2006 for the two programs. In FY 2005, the 18 programs collectively were funded at over $5 billion.

A number of the 18 programs are long-standing programs. The consolidation includes a $1.6 billion reduction in funding and includes a new competitive grant program. Until more details on the program are available, NCSL is going to consider this a cost shift to the states.

How this table was compiled: The mandates reported in NCSL's December *1994 Mandate Catalog* were verified for accuracy and existence in current statute. (Note, the number of pre-UMRA laws NCSL identified is in line with the number of unfunded mandates identified by the United States Advisory Commission on Intergovernmental Relations (ACIR) in March 1996). Those laws NCSL was not able to identify in statute were eliminated. NCSL then added the laws that CBO identified as having an intergovernmental mandate, those not meeting and exceeding the threshold. NCSL also included those laws that create a cost shift to the states that CBO did not determine to be an intergovernmental mandate.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
		Agriculture	
2001-2002	*P.L.107-171*	**Farm Security and Rural Investment Act of 2002**	Extends the existing cap set by the 105th Congress (P.L. 105-185) on federal contributions to administrative costs to the Food Stamps program. It also mandated new semi-annual reporting requirements.
1999-2000	*P.L.106-78*	**Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002; Livestock Mandatory Reporting Act of 1999**	Preempts any state not in compliance with Title IX of this law—the Livestock Mandatory Reporting Act of 1999.
1997 – 1998	*P.L.105-185*	**Agricultural Research, Extension, and Education Reform Act of 1998**	Reduces federal funds to administer the Food Stamp Programs.
1995-1996	*P.L.104-127*	**Federal Agriculture Improvement and Reform Act**	Preempts state dairy price controls. Note, the Northeast Dairy Compact expired with the enactment of the Farm Security and Rural Investment Act of 2002
1985-1986	*P.L.99-198* *Section 1767*	**Virus, Serum, Toxin Act**	Requires USDA to exempt from federal licensing requirements any animal biologic prepared solely for distribution within the state of production and licensed by such state under a state regulatory program determined by the Secretary of Agriculture to meet certain criteria. Legislation provides deadline for state action, but would be subject to federal licensing procedures even if intended only for intrastate use.
1975-1976	*P.L. 94-582*	**United States Grain Standards Act**	Preempts state laws and requires official inspection of weighing by federally licensed personnel of all grain exported from the United States but permits the Federal Grain Inspection Service to delegate to state agencies the authority to perform official inspection.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
		Banking	
1999-2000	*P.L. 106-102*	**Gramm-Leach-Bliley Act**	Requires a majority of states to adopt uniform licensing requirements for insurance sales.
		Education	
2003-2004	*P.L. 108-446*	**Individuals with Disabilities Education Improvement Act of 2004**	IDEA remains a longstanding unfunded mandate that establishes requirements for states without providing adequate or even promised funding levels to achieve its goals.
2001-2002 *(This is the most recent reauthorization with amendment, original authorization was in 1965)*	*P.L. 107-110*	**No Child Left Behind Act (NCLB)** **Formerly Improving America's Schools Act of 1994** *(P.L. 103-382)* **Goals 2000: Educate America Act** *(P.L. 103-227) – made obsolete with NCLB* **Formerly Elementary and Secondary Education Act of 1965**	To ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments.[16] In particular, among other requirements, NCLB requires annual testing of all students in grades 3 through, and testing at least once in grades 10 through12. In a significant departure from past versions of ESEA, under NCLB, assessments apply to all students in public schools, not only to those in schools that receive Title I funds. (The federal definition of 'Title I schools' captures about 35 percent of all public schools.) States also are required to develop and administer science assessments and must test the English proficiency of Limited English Proficient (LEP) students. States must report assessment results before the beginning of the following school year. In addition to the above and many additional requirements, virtually all public school teachers and paraprofessionals must meet rigorous qualification requirements by 2006. The testing requirement is the only substantial requirement of NCLB with its own line item in the federal budget, and the sufficiency of its funding level is hotly debated. Potentially more financially burdensome for states are the accountability requirements of NCLB. These requirements mandate that states 1) determine whether all schools, not only Title I schools, are making Adequate Yearly Progress (AYP) toward a goal of 100% proficiency for all students in 12 years (federal sanctions for failure to meet AYP are permitted to apply only to Title I schools); 2) develop both annual measurable objectives and intermediate goals; 3) monitor whether local educational agencies (LEAs) meet the required AYP thresholds; 4) collect and report

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
			on individual student, school, district and state test data (among other requirements, these reports must include information by disaggregated student groups - i.e., sex, race, socioeconomic status, English learners, and special education population); and 5) state educational agencies (SEAs) are required to provide technical assistance for schools that are identified for school improvement[17]
1997-1998	*PL 105-17* *(This is the most recent re-authorization. With amendments, original authorization was in 1975)*	**Individuals with Disabilities Education Act (IDEA)** **Formerly Education for all Handicapped Children**	Requires local school systems to provide a free appropriate education for children with disabilities. Provides that federal aid to states for elementary and high school education will be available only after a state has a federally approved plan for educating children with disabilities. Requires participating states to establish specific administrative procedures by which parents or legal guardians may challenge the identification, evaluation, or educational placement of the children.[18] Amendments during the 99th Congress expanded mandated service to infants and toddlers.
1993-1994	*P.L.103-66*	**Budget Reconciliation: Student Loan Program**	Requires states in which there are institutions with a default rate of over 20% to assume some responsibility for the costs of student loan defaults.
1991-1992	*P.L.102-325*	**College Work Study Program** (Now the Federal Work Study Program (FWS).	Requires assurances that an institution will inform all eligible students of the opportunity to perform community service. Also increases the federal share from 70% to 75% for institutional or public interest employment. Requires institutions, including proprietary institutions, to use at least 5% of FEW allocations to compensate students employed in community service.
	P.L.102-325	**Higher Education Act Reauthorization**	Calls for increased state responsibility for licensing and oversight of postsecondary institutions.
	P.L.102-325	**Supplemental Educational Opportunity Grants (SEOG)**	Increases the institutional match for this financial award program for undergraduates who demonstrate financial need—students with the lowest Expected Family Contributions (EFCs). For 1992-93, the match was 15%. In 1993, the match increased to 25%.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1989-1990	*P.L.101-226*	**Drug-Free Schools and Community Act**	Requires school anti-drug policy for all federal funds.
	P.L.101-392	**Carl D. Perkins Vocation and Applied Technology Education Act**	Requires states to adhere to federal earmarking in distribution of funds. Requires states to make certain grants to secondary and post-secondary schools (although waivers could be obtained under certain circumstances). Imposes state organization and planning responsibilities. Requires states to develop and implement core standards and performance measures for secondary and post-secondary vocational education. Requires states to: 1) conduct programs for professional development for teachers, 2) provide vocational programs geared to single parents, 3) eliminate sex bias in vocational education, and 4) offer vocational education programs to juvenile and adult offenders in correctional institutions.
			Energy
1991-1992	*P.L.102-486* *P.L.95-619* *P.L.94-163*	**Energy Policy Act of 1992 (EPACT)** *(the first comprehensive federal energy policy legislation since the* **National Energy Act of 1978)** **National Energy Policy and Conservation Act** *(1975)*	Requires states to use alternatively fueled vehicles under certain conditions and requires states to establish minimum energy codes for commercial buildings. The 1978 law requires states to implement energy conservation plans for commercial buildings and multiple family dwellings. If a state does not adequately implement plan, the secretary will promulgate one in accordance with the requirements of Sec. 8214. Provides assistance in developing state energy conservation programs. Provides energy conservation grants for schools and hospitals, including energy audits.
1987-1988	*P.L.100-12*	**National Appliance Energy Conservation Act**	Establishes uniform federal appliance efficiency standards. Permits state appliance standards under strict conditions.
1981-1982	*P.L.97-425*	**Nuclear Waste Policy Act of 1982**	Provides for state participation in decisions relating to the disposal and storage of high-level radioactive waste and spent nuclear fuel. Provides financial assistance from the Nuclear Waste Fund. (Yucca Mountain)
1979-1980	*P.L.96-573* *P.L.86-373*	**Low-Level Radioactive Waste Policy Act** *(Amends the* **Atomic Energy Act of 1954)**	Defines the responsibilities of states for disposal of low-level radioactive waste. Amendments in 1985 gave states responsibility for the disposal of their low-level radioactive waste.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
1977-1978	*P.L.95-39*	**National Energy Extension Service Act** (*Amends the* **Energy Reorganization Act of 1974,** *P.L.93-438)*	Requires each state to establish a research center at a state university to assist the Energy Extension Services. States are to submit plans to the director of their energy outreach program. There is a requirement for general compliance with this act.
Environment			
Note: All the major environmental laws have expired: Clean Air Act (1998), Clean Water Act (1994), Safe Drinking Water Act (2003), RCRA (1988), CERCLA (1995), FIFRA (1991), and ESA (1992)			
2001-2002	*P.L.107-188*	**Public Health Security and Bioterrorism Preparedness Act of 2002**	Requires assessments of water supplies in communities of more than 3,300 people. Requires registration with the federal government of the possession, use and transfer of listed agents and toxins.
1995-1996	*P.L.104-182* *P.L.99-339* *P.L.93-523*	**Safe Drinking Water Act Amendments** (and previous versions, original Act passed in 1974, amended in 1986 and 1996)	Requirements on states include to conduct assessments of water supplies, certify water system operators, provide emergency water supplies, map critical aquifer areas, establish wellhead protection areas, survey Class V wells, test contaminants of public water systems, and enforce the use of nonlead materials.
1991-1992	*P.L.102-386*	**Federal Facilities Compliance Act**	Waives sovereign immunity and allows states to sanction the federal government for violations of laws pertaining to the management of solid and hazardous waste. The law states, however, that these funds may be used only for environmental projects, unless a state constitution has conflicting requirements or the states has a statute in effect requiring the funds be used in a different capacity.
1989-1990	*P.L.101-549* *P.L.95-95* *P.L.91-604* *P.L.88-206*	**Clean Air Act Amendments** **Formerly the Air Pollution Control Act of 1955** *(P.L.84-159)*	Established health based air quality standards for certain pollutants and requires states to adopt and enforce plans to achieve those standards by a specified deadline.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1987-1988	*P.L.100-4* *P.L.95-217* *P.L.92-500*	**Clean Water Act** **Formerly known as the Federal Water Pollution Control Act**	In general, this law establishes the basic structure for regulating discharges of pollutants into the waters of the United States. It gives EPA the authority to implement pollution control programs such as setting wastewater standards for industry. Mandates on states include the development of individual control strategies for toxic pollutants in streams that are not meeting water quality standards. A number of the requirements on states were further defined in the rule making process. The 1987 amendments included a phase-out of the construction grants program, replacing it with the State Water Pollution Control Revolving Fund, more commonly known as the Clean Water State Revolving Fund (SRF).
	P.L.100-572	**Lead Contamination Control Act of 1988**	Requires states to establish a program to assist local education agencies to test for and remedy lead contamination in drinking water from water coolers and other sources.
1985-1986	*P.L.99-519*	**Asbestos Hazard Emergency Response Act of 1986**	Requires all schools to conduct inspection for asbestos-containing materials and develop management plans, transport and disposal. Requires states to use EPA models to develop accreditation programs for inspectors, management plan developers and abatement contractors. Schools must implement their management plans within two years and 8 months.
	P.L.99-499 *P.L.96-510*	**The Superfund Amendments and Reauthorization Act** *(SARA) in 1986 amended the* **Comprehensive Environmental Response Compensation and Liability Act of 1980 (Superfund)**	Requires state inventories of underground storage tanks for petroleum and other regulated substances and establishes a program for responding to releases from such tanks. A state may assume responsibility for the program within its boundaries. President may enter into an agreement with a state to take remedial actions after hazardous substances have been released. States are reimbursed for part of the costs. Requires states to take a leading role in emergency planning and community right-to-know activities.
1983-1984	*P.L.98-616* *P.L.94-580*	**Resources Conservation and Recovery Act (RCRA)** **Formerly the Solid Waste Control Act adopted in 1965**	Requires each state to compile, publish and submit to the administrator an inventory of each hazardous waste site within each state. If the requirements set are not met, grants available may be withheld.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1981-1982	*P.L.97-58*	**Marine Mammal Protection Act of 1972**	Preempts enforcement of state laws relating to taking of marine mammals unless conservation and management responsibility has been transferred to the states.
1979-1980	*P.L.96-464*	**Coastal Zone Management Act of 1972**	Encourages and assists states in managing their coastal lands and environments; federal government may withhold grant funds if states do not comply with coastal zone management requirements.
	P.L.96-366	**Fish and Wildlife Conservation Act**	Prohibits any funds from being made available to reimburse a state for costs in connection with conservation programs for non-game species unless the state has approved non-game species conservation plan; changes in state laws could be required in order for a state fish and game agency to meet certain elements required for such plans.
1977-1978	*P.L.95-87*	**Surface Mining Control and Reclamation**	Each state having within its borders coal-mined lands eligible for reclamation under this subchapter may submit to the secretary a state reclamation plan and annual projects to carry out the purposes of this subchapter. Section 1235 restricts the secretary from approving, funding or continuing to fund a state abandoned mine reclamation program unless that state has an approved state regulatory program pursuant to section 1253.
1973-1974	*P.L.93-205*	**Endangered Species Act of 1973**	Cooperative agreements with states in administering state conservation programs for endangered and threatened species; states may lose federal funding if state conservation programs are inconsistent with federal requirements.
1969-1970	*P.L.91-503*	**Sport Fish Restoration Act**	Prohibits any money to be given to a state for fish restoration until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, assents to the provisions of this chapter and passes laws for the conservation of wildlife. These laws must include a prohibition against the diversion of license fees paid by hunters for any other purposes than the administration of said state's fish and game department. States are required to submit a plan. Amendments in 1984 require coastal states to allocate amounts apportioned to them under the act between marine and freshwater fish projects in the same proportion as the estimated number of resident marine and freshwater anglers.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
	P.L.91-90	**National Environmental Policy Act of 1969** *(as amended Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)*	Authorizes a state agency or official to prepare the required statement when it covers a major federal action which is funded under a state grants programs and 1) the state agency or official has jurisdiction and responsibility for the action and responsible federal official, 2) participates in statement preparation, 3) independently evaluates it, and 4) involves other affected state or federal land management agencies.
Earlier laws, with subsequent amendments	*PL16 USC 715*	**Migratory Bird Conservation Act** *(original law was enacted in 1929)*	No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under this subchapter unless the state in which the area lies shall have consented by law to the acquisition by the United States of lands in that state for conservation of birds. Provides for cooperation with sates in enforcement. Requires that either the governor or a state agency approve proposed acquisitions under the act.
	16 USC 669-6691	**Federal Aid in Wildlife Restoration** *(Pittman-Robertson Act of 1937), has been amended several time.*	Provides aid, derived from a 11% federal excise tax on sporting arms, ammunition and archery equipment and a 10% tax on handguns—to states for management and restoration of wildlife and for hunter safety programs. Prohibits funds from being provided to a state for wildlife restoration projects until its legislature, or other state agency authorized by the State constitution, prohibits the diversion of license fees paid by hunters for any other purpose than administration of the state fish and game department.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
			Health
2003-2004	*P.L.108-173*	**Medicare Prescription Drug, Improvement, and Modernization Act of 2003**	CBO reported that the provision that preempted state taxes on premiums for prescription drug coverage did constitute an unfunded mandate. CBO reported that this provision would "…result in revenue losses to states that would grow from $60 million 2006 to $90 million in 2010."[19] While CBO determined that the MMA contains an intergovernmental mandate as it relates to a preemption of state taxes on premiums for prescription drug coverage, the law also contains a number of other provisions that will increase state expenditures. For example, all prices negotiated under the MMA are not included in the calculation of the Medicaid "best price." States will find it more difficult to negotiate supplemental rebates because the dual-eligibles will no longer be a part of their prescription drug portfolio. Indexing the Part B premium will also result in increased state costs and states expect to see increased administrative costs related to the requirement to conduct eligibility determinations for the low-income subsidy for Medicare Part D. Includes a reduction in federal Medicaid payments (a monthly claw back beginning in October 2006) as state spending on duel eligibles is reduced.
	P.L. 108-357	**American Jobs Creation Act of 2004.**	Establishes an excise tax on vaccines for hepatitis A and influenza. Expands optional Medicaid coverage for people with sickle cell disease. Provides taxpayers the option of deducting their state and local sales taxes in lieu of their state and local income tax from their federal tax liability for 2004 and 2005. According to CBO the tax on hepatitis A and influenza "would increase state spending for Medicaid by about $90 million over the 2005-2009 period. Expanding optional Medicaid services for people with sickle cell disease would increase state spending by approximately $28 million over the 2005-2009 period.[20]
2001-2002	*P.L.107-188*	**Public Health Security and Bioterrorism Preparedness Act of 2002:**	Places requirements on states with regard to administration of smallpox vaccinations. Requires assessments of water supplies in communities of more than 3,300 people. Requires registration with the federal government of the possession, use and transfer of listed agents and toxins. Preempts state laws that conflict with quarantine requirements for communicable diseases.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
	P.L.107-313	**Mental Health Parity Reauthorization Act of 2002** Extends the **Mental Health Parity Act of 1996** *P.L.104-204)*	Extends medical health parity provisions through 2003.
1999-2000	*P.L.106-402* *P.L.100-146* *P.L.91-517*	**Developmental Disabilities Assistance and Bill of Rights Act of 2000 and previous versions.**	Requires states to establish a planning council to serve as an advocate for developmentally disabled people and to develop and submit a plan for the provisions of services to such people. Provides for other new requirements. States do receive grant funds; requires a 25% state match.
1997-1998	*P.L.105-78*	**Department of Labor, HHS, Education and Related Agencies Appropriations Act, 1998 – Hyde Amendment**	Amends the Hyde amendment to prohibit the expenditure of federal funds for health benefits coverage that includes abortion services. Adds to the exceptions for pregnancies that result from an act of rape or incest, an exception for cases where the physical health of the mother would be endangered if the pregnancy goes to term.
1995-1996	*P.L.104-191*	**Health Insurance Portability and Accountability Act of 1996**	Contains reporting and administrative requirements. Most of the details were contained in rules issued later.
1993-1994	*P.L.103-112*	**Department of Labor, HHS, Education and Related Agencies Appropriations Act, 1994 – Hyde Amendment**	This mandate results from the Health Care Financing Administration's interpretation of language in the FY 1994 Labor HHS-Education appropriation bill. States will be required to pay for abortions for low-income women in cases of rape and incest or to save the life of the mother.
1991-1992	*P.L.102-321*	**ADAMHA Reorganization Act—Includes the Synar Amendment**	Reauthorizes programs and splits the block grant into separate block grants, Mental health Services and Substance Abuse. Also establishes within the Mental Health Services Block Grant a comprehensive mental health services program for children with serious emotional disturbance. The Synar Amendment requires states to adopt and enforce laws that prohibit the sale of tobacco to individuals under the age of 18. States that do not comply, face having up to 40% of their Substance Abuse Prevention and Treatment block grant funds withheld.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1989-1990	*P.L.101-239*	**Budget Reconciliation Act of 1989**	Requires states to provide coverage for pregnant women and children up to age 6 in families with incomes up to133% of the poverty line. Requires states to reimburse providers of obstetric and pediatric care at levels to ensure services to Medicaid recipients. Sets requirements for state coverage of early screening, diagnostic and treatment services. Requires state coverage of early screening, diagnostic and treatment services. Requires states to treat any problem found in such screening if treatment was allowed by Medicaid (regardless of whether treatment was included in a state's basic package). Requires states to notify Medicaid recipients who were eligible for programs such as WIC. Requires states to pay Medicare Part A (hospital) for working disabled people under certain circumstances.
1987-1988	*P.L.100-203*	**Nursing Home Reform Act** *(Contained in the Omnibus Budget Reconciliation Act of 1987 (OBRA 87))*	In general, the first major revisions of the federal standards for nursing home care since the 1965 creation of both Medicare and Medicaid. Sets requirements for Medicaid and Medicare nursing homes, such as: states must specify approved nurse aide training and competency evaluation programs; establish a registry of nurse aides 1) who have satisfactorily completed training and/or 2) who have been involved in neglect of abuse of residents in nursing facilities. Secretary of HHS will review and certify all state-owned nursing facilities. States are required to review and certify non-state-owned nursing homes. States must maintain procedures and staff to investigate complaints against facilities. States must also monitor noncompliant nursing homes. Secretary of HHS and states must make reviews and certifications available to the public. For Medicaid nursing homes only, states must establish pre-admission screening procedures for the mentally ill and mentally retarded seeking admission to a nursing facility. These evaluations must be performed annually. States will have to cover about 25% of the costs for these evaluations.
	P.L.100-175	**Amends to the Older Americans Act of 1965**	Requires states to designate an agency to develop, submit and administer a plan for use of grants for programs and aging.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
		Health-Medicaid	
2003-2004	*P.L. 108-357*	**American Jobs Creation Act of 2004.**	Establishes an excise tax on vaccines for hepatitis A and influenza. Expands optional Medicaid coverage for people with sickle cell disease. Provides taxpayers the option of deducting their state and local sales taxes in lieu of their state and local income tax from their federal tax liability for 2004 and 2005. According to CBO the tax on hepatitis A and influenza "would increase state spending for Medicaid by about $90 million over the 2005-2009 period. Expanding optional Medicaid services for people with sickle cell disease would increase state spending by approximately $28 million over the 2005-2009 period.[21]
1999-2000	*P.L.106-554*	**Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act**	Increases state-specific ceilings on amount of payment adjustments to DSH hospitals. Directs the secretary to issue regulations closing upper payment limit (UPL) loopholes.[22]
1997-1998	*P.L.105-33*	**Balanced Budget Act of 1997 (BBA 97)**	Establishes the State Children's Health Insurance Program (SCHIP), a block grant to states for coverage of uninsured low-income children ineligible for Medicaid. Lowers state-specific ceilings on amount of payment adjustments to DSH hospitals.[23]
1995-1996	*P.L.104-193*	**Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)**	Repeals AFDC program and replaces it with TANF, ending the linkage between eligibility for cash assistance and for Medicaid. Requires states to cover families meeting July 16, 1996, AFDC eligibility criteria allowing higher eligibility thresholds. Bars Medicaid coverage for five years for legal immigrants who entered the U.S. prior to August 22, 1996. Coverage after the five-year ban allowed at state option.[24]
1993-1994	*P.L.103-66*	**Omnibus Budget Reconciliation Act (OBRA 93)**	Establishes standards for state use of formularies to limit prescription drug coverage. Imposes facility-specific ceilings on the amount of payment adjustments to DHS hospitals. Tightens prohibitions against transfers of assets in order to qualify for Medicaid nursing home coverage. Requires recovery of nursing home payments from beneficiary estates.[25]

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1991-1992	*P.L.102-234*	**Medicaid: Voluntary Contributions and Provider Taxes Amendments of 1991**	Restricts state use of provider taxes and voluntary contribution for purposes of determining Medicaid match. Imposes ceiling on Medicaid payment adjustments to DSH hospitals.[26]
1989-1990	*P.L.101-508*	**Omnibus Budget Reconciliation Act of 1990 (OBRA 90)**	Requires states to phase in (by 2002) coverage of children ages 6 through 18 in households with incomes below 100% of poverty. Requires states to phase in coverage of Medicare premiums for low-income Medicare beneficiaries with incomes between 100% and 120% of the federal poverty level (FPL).[27]
	P.L.101-239	**Omnibus Reconciliation Act of 1989 (OBRA 89)**	Requires states to cover pregnant women and children under age 6 in families with income at or below 133% of the FPL. Requires states to cover services provided by federal qualified health centers (FQHCs). Expands EPDST benefits for children under age 21 to include diagnostic and treatment services not covered under state Medicaid program for adult beneficiaries.[28]
1987-1988	*P.L.100-485*	**Family Support Act of 1988**	Requires states to extend 12-months transitional Medicaid coverage to families leaving AFDC rolls due to earnings from work. Required states to cover two-parent families meeting state AFDC income and resource standards.[29]
	P.L.100-360	**Medicare Catastrophic Coverage Act of 1988**	Requires states to phase in coverage for pregnant women and infants with incomes below 100% of the FPL. Requires states to phase in coverage of Medicare premiums and cost-sharing for low-income Medicare beneficiaries (QMBs) with incomes below 100 percent of the FPL.[30]
	P.L.100-203	**Omnibus Reconciliation Act of 1987 (OBRA 87)**	Enacted nursing home reforms (see Health).
1985-1986	*P.L.99-272*	**Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85)**	Requires states to cover pregnant women in two-parent families (whether employed or not) who meet state AFDC income and resource standards.[31]
	P.L.99-643	**SSI Improvement Amendments of 1986**	State Medicaid plans in those states using eligibility rules that were in effect in Dec. 1972 must be amended to continue Medicaid eligibility for individuals who are eligible for SSI benefits under Section 1619 (a) or 1619 (b) and who were, in the month preceding the first month of such eligibility, eligible for Medicaid.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1983-1984	*P.L.98-369*	**Deficit Reduction Act of 1984**	Requires states to cover children born after September 30, 1983 up to age 5, in families that meet state AFDC income and resource standards. Requires states to cover first-time pregnant women and pregnant women in two-parent unemployed families that meet state AFDC income and resource standards.[32]
1981-1982	*P.L.97-35*	**Omnibus Reconciliation Act of 1981**	Reduces federal matching percentages from 1982-1984. Extends Boren amendment payment standards to inpatient hospitals (the Boren amendment has been repealed). Required states to make payment adjustments to DHS hospitals. Enacted section 1915(c) home and community-based waiver and section 1915(b) freedom of choice waiver for mandatory managed care.
1975-1976	*P.L.94-439*	**Department of Labor and Health, Education and Welfare Appropriations Act for FY 1977**	Enacts the Hyde Amendment, which prohibits federal Medicaid payments of medically necessary abortions except when the life of the mother would be endangered.[33]
1971-1972	*P.L.92-603*	**Social Security Amendments of 1972**	Requires states to extend Medicaid to SSI recipients or to elderly and disabled who meet state 1972 eligibility requirements.[34]
			Housing
1987-1988	*P.L.100-242* *P.L.97-35* *P.L.96-399* *P.L.96-153* *P.L.95-128* *P.L.93-383*	**Amendments to the US Housing Act** *(original act was adopted in 1937)*	Extends refinancing insurance authority to cover nursing homes, intermediate care facilities, and board and care homes. Provides that if the state agency is not empowered to certify the need for a nursing home, intermediate care facility, board and care home, or hospital, then the secretary shall accept in lieu of certification a feasibility study that demonstrates such need. Requires state approval or an independent certification of need for hospital mortgage insurance. Prohibits annual contract contributions to public housing that are not exempt from all real estate and personal property taxes levied by the state or local taxing jurisdiction. State usury laws regarding any loan, mortgage or advance, were repealed in the 96th Congress. However, states may enact legislation to override federal preemptions.
	P.L.100-430	**Fair Housing Amendments of 1988** *(the original Fair Housing Act was contained in the Civil Rights Act of 1968, P.L. 90-284)*	Prohibits discrimination in housing. Requires states to pass conforming statute or lose enforcement power.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
1983-1984	*P.L.98-181* *P.L.94-205*	**Real Estate Settlement Procedures Act of 1974 (RESPA)**	Shifts the state law governing estate settlements toward the consumer in several states where certain laws to the consumer's detriment currently exist.
1981-1982	*P.L.97-35*	**Amendments to the Housing & Community Development Act of 1974**	Prohibits discrimination based on race, color, national origin, sex, age or handicap. Penalty for noncompliance is loss of federal assistance.
1977-1978	*P.L.95-128*	**Federal National Mortgage Association Charter Act**	Contains provisions, applicable to both the Federal National Mortgage Association and the Government National Mortgage Association, that preempt state and local laws to 1) permit FNMA and GNMA to conduct business without regard to qualifications or similar statutes in any states; 2) provide an exemption from taxation; and 3) permit the settlement or extinguishment, upon default, of any redemption, equitable, legal or other right, title, or other interest borrower.
1973-1974	*P.L.93-383*	**National Manufactured Housing Construction and Safety Standards**	Requires the state to have a plan approved for compliance with the Act whereby the state will then qualify for federal grants.
Human Services			
1997-1998	*P.L.105-200*	**Child Support Performance and Incentive Act of 1998**	Provides for an alternative penalty procedure for states that fail to meet federal child support data processing requirements, reform federal incentive payments for effective child support performance, and provide for a more flexible penalty procedure for states that violate interjurisdictional adoption requirements, among others.
	P.L.105-521	**Child Support Enforcement Act**	Makes it a federal crime to fail to pay child support. Parents who flee a state owing at least $5,000 or have failed to pay support for at least one year could face six months in jail and/or fines of up to $5,000. Repeat offenders could get up to two years in jail and fines of up to $250,000.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1995-1996	*P.L.104-193*	**Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)-** *includes the Child Care and Development Block Grant Amendments of 1996, Federal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*	Provides for various new mandates, repeals others. This includes but is not limited to: imposes a five-year ban on eligibility for federal means-tested public benefits; places limits on the receipt of Food Stamp benefits to 3 months out of 36 months for able-bodied childless adults not fulfilling work requirements; includes requirement that states suspend various licenses for failure to meet child support requirements; requires states to deliver Food Stamp benefits through an electronic benefit system; and requires states to operate an automated centralized unit to collect and process child support payments.
1993-1994	*P.L.103-296*	**Social Security Independence and Program Improvements Act of 1994**	Makes the SSA an independent agency. Restricts SSI and SSDI payments for alcoholics or drug abusers to no more than three years, regardless of availability of treatment. No additional funding is provided, even though the treatment population is greatly expanded.
	P.L.103-383	**Full Faith and Credit for Child Support Orders Act**	Provides that a state court may not modify an order of another state court requiring the payment of child support unless the recipient of child support payments resides in the state in which modification is sought or consents to the seeking of modification in that court.
	P.L.103-66	**Omnibus Budget Reconciliation Act (OBRA 93): AFDC, SSI Fees**	Reduces enhanced matching rates for all AFDC administrative costs to 50% effective April 1, 1994. Under prior law, administrative expenses are limited to 50% for all but three types of expenditures: verification of alien immigration status (100% federal match), management information system (90% federal match) and fraud and abuse control activities (75% federal match). States will be required to pay a fee for federal administration of state supplemental security benefits (or can send a separate check at their own expenses) The fee will be set at $1.67 per monthly payment in 1994 at $3.33 in 1995, and at $5.00 thereafter.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
	P.L.103-382	**Multiethnic Placement Act of 1994 (Title VI of ESEA Reauthorization)**	Prohibits an agency or entity that receives federal assistance and is involved in adoptive or foster care placements from delaying or denying the placement of a child solely on the basis of race, color or national origin of the adoptive or foster parent or parents involved. Permits consideration of the child's race, color or national origin when such factors are: 1) considered in conjunction with other factors; and 2) relevant to the child's best interest. Withholds adoption assistance funds from agency in cases of noncompliance.[35]
1989-1990	*P.L.101-147*	**Amends the Child Nutrition Act of 1966** *(P.L.89-642)* **and Extends the National School Lunch Act**	Requires state education agencies to provide information to school boards and public officials concerning benefits and availability of school breakfast programs. Mandates automatic eligibility for WIC to women and children receiving food stamps, AFDC or Medicaid. Requires WIC offices to refer eligible people for Medicaid. Requires states to purchase infant formula by the lowest cost system (requirement would be waived under certain conditions). Requires states to spend a share of federal money on activities to promote breast feeding and required state WIC agencies to provide training in breast feeding promotion to staff of local agencies. Authorizes start-up funds to increase participation by schools. Under the original Child Nutrition Act, state administrative expense funds are available only to states that agree to maintain state funding levels for administrative costs of the child nutrition program.
1987-1988	*P.L.100-203* *P.L.99-272* *P.L.99-514* *P.L.98-369*	**AFDC grants-Match Rate and Caseload-** *100th Congress made changes in the Omnibus Reconciliation Act of 1987 (OBRA 87)*	State must develop plan for aid and services to needy families with children.
	P.L.100-294 *P.L.99-401* *P.L.93-247*	**Amendments to the Child Abuse Prevention and Abuse Treatment Act (CAPTA)**	Amendments in the 100th Congress include that for a state to qualify for assistance, it must adopt child abuse and neglect law under general guidelines in section 503.

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Date	Citation	Title	Notes
	P.L.100-203	**Child Support Referees** – *100th Congress made changes in the Omnibus Reconciliation Act of 1987 (OBRA 87)*	Requires states to adopt a plan for child and spousal support as described in section 654, in order to qualify for appropriation.
	P.L.100- 485	**Family Support Act of 1988**	Establishes the Job Opportunities/Basic Skills (JOBS) program as a replacement for WIN, expands Medicaid coverage to a larger cross-section of poor women and children, and institutes some significant changes in state Child Support Enforcement.
	P.L.100-203 *P.L.99-598* *P.L.99-554* *P.L.98-378* *P.L.93-647*	**Child Support Enforcement** *100th Congress made changes in the Omnibus Budget Reconciliation Act of 1987 (OBRA 87)-*	Requires states, in order to qualify for assistance, to submit a plan for spousal and child support enforcement. These plans must be approved. States must use various enforcement techniques such as imposing liens against property for overdue support and withholding state tax refunds.
	P.L.100-77	**Steward B. McKinney Homeless Assistance Act**	This act affects Title V-C of the Public Health Services Act, Community Mental Health Services for the Homeless.
	P.L.100-203 *P.L.96-272*	**Foster Care and Adoption Assistance Programs**—*100th Congress made changes in the Omnibus Budget Reconciliation Act of 1987 (OBRA 87)*	Requires states, in order to qualify for payments, to adopt foster care and adoption assistance plan as described in section 671.
1985-1986	*P.L.99-425* *P.L.98-558* *P.L.97-35*	**Community Services Block Grant** – *99th Congress made changes in the Human Services Reauthorization Act of 1986*	State legislatures must hold hearings on the use and distribution of funds.
	P.L.99-198	**Temporary Food Assistance Act of 1983**	Requires states to match in cash or in kind under USDA regulations, any federal funds received and not paid to or applied for the direct expenses of emergency feeding organizations.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
	P.L.99-500 *P.L.99-591* *P.L.89-642*	**Child Nutrition Act of 1966**	States would be ineligible to receive grants through the Special Supplemental Food Program for Women, Infants and Children (WIC) if the secretary determines that state or local sales taxes are collected with the state on purchases in the WIC program.
1981-1982	*P.L.97-35*	**National School Lunch Act** – *97th Congress made changes in the Omnibus Budget Reconciliation Act of 1981 (OBRA 81)*	Limits school lunch program assistance under section 4 to states in which the amount of the state revenues appropriated or used specifically for program purposes is at least equal to 30% of the section 4 funds made available to such state in the 1980-81 school year.
	P.L.97-35	**Supplemental Security Income for the Aged, Blind and Disabled** – *97th Congress changes made in the Omnibus Budget Reconciliation Act of 1981 (OBRA 81)*	States must maintain supplementary payment levels effect in March 1983 in order to meet pass-along requirement. Alternatively, states may meet the requirement by maintaining total expenditures for the 12-month period following a federal cost of living adjustment that is at least equal to the total state expenditures for the 12-month period before COLA.
1971-1972	*P.L.92-603*	**Amendments to the Old Age Survivors and Disability Insurance (OASDI) Program**	Requires states to submit a plan for aid to go to aged, blind or disabled to be approved by the Secretary of HHS.
1967-1968	*P.L.90-248*	**Child Welfare Services**	To qualify for payments, states and the secretary of HHS must jointly develop a plan for child welfare services as described in section 621.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
Human Services—Food Stamps			
2003-2004	*P.L.108-199*	**Consolidated Appropriations Act, 2004**	As it relates to homeless assistance grants, requires that all awards coordinate and integrate homeless programs with other mainstream health, social services and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program. Prohibits states from adopting emissions standards for certain engines.
2001-2002	*P.L.107-171*	**Farm Security and Rural Investment Act of 2002** – *includes changes to the Food Stamp Program*	Extends an existing cap on federal contribution to administrative costs for the Food Stamp program. Requires semi-annual reporting, which may require a state to make changes.
1997-1998	*P.L.105-185*	**Agriculture Research, Extension, and Education Reform Act of 1998** – *includes changes to the Food Stamp Program*	Caps federal contributions for food stamp administration.
	P.L.105-379	**An Act to Amend the Food Stamp Act of 1977**	Requires states to match Food Stamp records with Social Security information for deceased individuals.
1993-1994	*P.L.103-66*	**Omnibus Budget Reconciliation Act of 1993 (OBRA 93)** -*includes changes to the Food Stamp Program*	Reduces enhanced matching rates for all food stamp program administrative costs to 50% effective April 1, 1994. Under prior law, administrative expenses are limited to 50% for all but three types of expenditures: verification of alien immigration status (100% federal match,) management information systems (63% federal match), and fraud and abuse control activates (75% federal match).
1985-1986	*P.L.99-198*	**Food Security Act of 1985** —*amends the Food Stamp Act of 1977*	Effective Oct. 1 of first calendar year after Dec. 23, 1985, in which a state legislature is convened in a regular session, prohibits states from participating in food stamp programs if state or local taxes are collected on food purchased on food stamps.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
		Immigration	
1999-2000	*P.L.106-311*	**Amends the Immigration and Nationality Act**	Increase the fee from $500 o $1,000 for employers who are petitioners for the employment of workers with H-1B visas. This includes states.
1995-1996	*P.L.104-132*	**Terrorism Prevention Act**	Places limits on documents for alien certification. Authorizes state and local law enforcement agencies to arrest and detain certain illegal aliens.
	P.L.104-193	**The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)**	Reduces immigrant eligibility for public benefits. Most states pick up the cost for these individuals either through state replacement programs or an increase cost at public hospitals, food banks and other services.
1985-1986	*P.L.99-605* *P.L.96-212*	**Immigration and Nationality Act**	States must submit plan to director of Refugee Settlement, report annually, and meet other standards in Section 1522. States may receive assistance to help refugees with English skills, job training, etc.
	P.L.99-605	**Refugee Resettlement Act**	Requires states to provide resettlement services for immigrants during the five-year period during which they are ineligible for normal federally sponsored aid programs.
1981-1982	*P.L.97-470*	**Migrant and Seasonal Agriculture Worker Protection Act**	States must comply with the provisions of this act in order to receive federal funds in conjunction with cooperative agreements. Any delegate to a state agency must be made pursuant to a written state plan that complies with this act.
1979-1980	*P.L.96-212*	**Immigration and Nationality Act**	States must comply with the comprehensive act dealing with immigration procedures in order to have certain delegate authority.
		Justice	
2003-2004	*P.L. 108-79*	**Prison Rape Elimination Act of 2003**	Requires states and other entities, if subpoenaed, to participate in certain legal hearings. Does provide funding, but the funding is accompanied by the adoption of national standards, which makes the funds a condition of grant aid. The legislation also adds new conditions for existing grant programs.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
	P.L.108-277	**Law Enforcement Officers Safety Act of 2003**	Requires state and local law enforcement agencies to provide an annual certification or identification process for law enforcement retirees to show that they have met state or agency training and qualifications to carry a firearm.
2001-2002	*P.L.107-252*	**Help America Vote Act (HAVA)**	Provides funding to states for elections and includes mandates for reform.
	P.L.107-57	**USA Patriot Act of 2001**	Deters and punishes terrorist acts in the United States and around the world. Enhances law enforcement investigatory tools, and for other purposes. Preempts state law.
	P.L.107-273	**21st Century Department of Justice Appropriations Act**	Eliminates federal interest payments to states related to cost for incarcerating illegal aliens.
	P.L.107-77	**Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2002**	Expands existing reporting requirements regarding certain people traveling to the United States.
1999-2000	*P.L.106-386*	**Victims of Trafficking and Violence Protection Act of 2000**	Preempts state laws and requires certain property to be forfeited to the federal government. Broadens existing mandates governing notification requirements when protecting orders are issued.
	P.L.106-398	**The Floyd D. Spense National Defense Authorization Act for FY 2001**	Requires names and social security numbers of felons to be submitted for certain purposes.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1993-1994	*P.L.103-159*	**Brady Handgun Violence Prevention Act**	Provides for a waiting period before the purchase of a handgun, and establishes a national instant criminal background check system to be contacted by firearm dealers before the transfer of any handgun. Waiting period to be replaced by instant computerized background check after five years. The attorney general shall establish for each state a timetable by which the state should be able to provide criminal records on-line to the national system. Requires states, five years after enactment of this act, to achieve criminal history files for all cases in which there has been an event within the last five years and to continue to maintain a system. Funding authorized ($200 million/year). The FY 1995 appropriations bill for Commerce-Justice State Departments contained $100 million for grants to states to improve criminal history records (P.L.103-317).
	P.L.103-209	**National Child Protection Act**	An authorized criminal justice agency of a state shall report child abuse crime information to or index child abuse information in, the national criminal background check system. The attorney general shall require, as a part of a state timetable, that the state 1) by no later than the date that is 3 years after the date of enactment of this act, have in a computerized criminal history file at least 80% of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last five years; 2) continue to maintain at least an 80% reporting rate of final dispositions in all identifiable child abuse cases in which there has been an event of activity within the preceding five years; and 3) take steps to achieve full disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions. The attorney general shall establish guidelines for state background check procedures. Some grant money may be available for this project. However, effective one year after the date of enactment of this act, the attorney general may reduce, by up to 10%, the allocation to a state for a fiscal year under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 that is not in compliance with the timetable for that state.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
	P.L.103-31	**National Voter Registration Act of 1993 (NVRA)**	Requires that each state establish procedures to register to vote in elections for federal office by application made simultaneously with an application for a motor vehicle driver's license, by mail application, and through agency-based registration and agencies providing services to the disabled. These agencies include offices that provide services under the food stamp, Medicaid, WIC and AFDC programs. States may choose to provide registration at unemployment compensation offices. The legislation exempts any state that has no registration requirement to vote in a federal election or any state that permits registration at a polling place at the time of voting in a federal election. To qualify for the exemption, states must have enacted such a provision by March 11, 1993. Sets requirements for the content of the registration form. Lists provisions for mail-in registration. Sets standards for clearing and updating voter logs. State and local governments would be eligible for reduced postal rates. Effective date: Jan. 1, 1995, in all states except those with constitutional provisions that would require a separate state and federal voter roll. These states are given an extra year to amend their constitutions. Permits a private party to sue to enforce the law and allows attorneys' fees if the government does not prevail.
	P.L.103-141	**Religious Freedom Restoration Act**	This bill protects the free exercise of religion. Proponents argue that, where a compelling state interest in shown, exemptions may be granted.
	P.L.103-322	**Violent Crime Control and Law Enforcement Act of 1994**	Bans the manufacture of 19 assault weapons. Expands the federal death penalty to cover about 60 offenses. Creates new federal insurance and telemarketing fraud categories. Prohibits the sale or transfer of a firearm to or possession of certain firearms to juveniles. States must require sexually violent predators to register a current address with a designated state law enforcement agency upon release from prison, being placed on parole, or being placed on supervised release. States failing to implement these requirements in the time allotted lost 10% of funds allocated under Section 506 of the Omnibus Crime Control and Safe Streets Act. Imposes a $5,000 per day fine on state departments of motor vehicles that release identifying information about individuals who have obtained a license or registered their vehicles. Requires state court clerks to report to the IRS information on individuals who post case bond in excess of $10,000. Authorizes numerous grant programs for prevention and law enforcement.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
1991-1992	*P.L.102-519*	**Anti-Car Theft Act**	Provides start-up funds to link state motor vehicle departments by computer so each state will have access to other states' lists of valid titles. States, before issuing titles to out-of-state vehicles, will have to check with the state or origin to verify that the title is legitimate. Makes armed carjacking a federal offense.
	P.L.102-166	**Civil Rights Act**	Amends the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment. Extends protections of Title VII (equal employment opportunity), ADA, Rehabilitation Act, and Age Discrimination in Employment Act of 1967 to state employees working for elected officials.
	P.L.102-344	**Voting Rights Language Assistance Act**	Requires communities to provide bilingual assistance to voters if that community has more than 10,000 citizens who share a minority language or if more than 5% of the voting-age citizens are members of a language minority.
	P.L.102—586 *P.L.93-415*	**Juvenile Justice and Delinquency Prevention Act of 1974**	Requires deinstitutionalization of status offenders, separation of juveniles for adults.
1989-1990	*P.L.101-336*	**Americans with Disabilities Act of 1990**	Title II specifies that no qualified individuals with disabilities may be discriminated against by a public entity, i.e., state and local governments. With respect to public transportation provided by public entities, all new and fixed routes buses must be accessible unless a transit authority can demonstrate undue burden.
1985-1986	*P.L.99-410*	**Uniformed and Overseas Citizens Absentee Voting Act** (see HAVA update)	Uniformed voters and overseas voters must be permitted to use absentee registration procedures and vote by absentee ballots for all federal elections. Applications must be received by the appropriate state official not less than 30 days before the election.
1977-1978	*P.L.95-478*	**Age Discrimination Act**	Prohibits discrimination based on age in programs receiving federal assistance. Funding is to be cut in the event of noncompliance.
1971-1972	*P.L.92-318*	**Civil Rights Act of 1964**	Prohibits discrimination against any person under any program or activity receiving federal financial assistance.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
		Labor	
1995-1996	*P.L.104-188*	**Small Business Job Protection Act of 1996**	Increases the minimum wage paid by employers. Makes other amendments to the Fair Labor Standards Act.
1993-1994	*P.L.103-3* *P.L.93-259*	**Family and Medical Leave Act**	Requires employers to provide up to 12 weeks of unpaid, job-protected leave per year—with health insurance—for the adoption of a child or the serious illness of the employee or an immediate family member. This bill applies to employers with more than 50 employees. Changes made in the 93rd Congress include establishing minimum standards for wages, overtime compensation, equal pay, recordkeeping and child labor for nearly every workplace in the United States. Includes Federal and State employees in the minimum wage coverage and defines such employees.
1989-1990	*P.L.101-433*	**Older Worker's Benefit Protection Act**	Requires adjustments in public employee benefit programs in order to provide equal benefits to older and younger Americans.
1980-1982	*P.L.97-300*	**Wagner Peyser Act**	Establishes a national system of public employment offices. In order to be eligible for federal assistance, a state must designate or authorize the creation of a state agency to submit to the Secretary of Labor a detailed state plan for carrying out the provisions of the act in cooperation with the United States Employment Service.
1979-1980	*P.L.96-466*	**Veterans Rehabilitation and Education Amendments of 1980**	States must comply with the provisions in these sections in order to receive federal funds for the implementation and operation of veteran's employment services and outreach program.
1977-1978	*P.L.95-523*	**Full Employment and Balanced Growth Act of 1978**	Prohibits discrimination on the basis of sex, age, race, color, religion, national origin or handicap against people seeking to participate in or receive the benefits of any state program or activity funded pursuant of the act.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1973-1974	*P.L.93-508*	**Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA)**	To be eligible for any contract in the amount of $25,000 or more, entered into by any federal department or agency for the procurement of personal property and non-personnel services for the United States, the sate must abide by the required provisions that affirmative action shall be taken to employ and advance qualified, special disabled veterans and veterans of the Vietnam era.
	P.L.93-112	**Rehabilitation Act of 1973**	To be eligible for any contract in excess of $2,500, entered into by any federal department or agency for the procurement of personal property and non-personnel services for the United States the state must comply with requirements that affirmative action shall be taken to employ and advance in employment qualified individuals with handicaps.
1971-1972	*P.L.92-303* *P.L.91-173*	**Black Lung Benefits Act**	States must comply with the general policies outlined in the act to be eligible for federal funding for development and enforcement of health and safety regulations, workmens' compensation and occupational disease laws, and promotion of federal-state coordination in mine safety. Certain duties may be delegated to the states if they meet the national standards.
1969-1970	*P.L.91-173* *P.L.95-164*	**Federal Mine Safety and Health Act of 1977**	States must comply with the provisions of this comprehensive act dealing with the protection of the health and safety of miners or be subject to both civil and criminal penalties.
	P.L.91-373	**Social Security Act of 1935**	States must have unemployment compensation law approved by the secretary of Labor under the Federal Employment Tax Act to receive federal grants.
	P.L.91-596	**Occupational Safety and Health Act of 1970**	The state, if it desires to assume responsibility for development and enforcement of occupational safety and health standards, must submit a state plan to be approved by the secretary.
1965-1966	*P.L.89-286*	**McNamara O'Hara Service Contract Act**	States entering into contracts in excess of $2,500 with the United States or agencies or departments thereof, which have as their principal purpose the furnishing of services in the United States through use of service employees, are subject to the labor standards of this act.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
1961-1962	*P.L.87-581*	**Contract Work Hours and Safety Standards Act (CWHSSA)**	States, as employers of laborers and mechanics working in conjunction with a contract financed at least partially by the United States must comply with the provisions of this act.
Earlier Laws	*P.L.75-308*	**National Apprenticeship Act of 1937**	Sponsors of state apprenticeship programs registered with the United States Department of Labor must comply with regulatory provisions requiring equal opportunity and affirmative actions. Apprentices in these programs must be selected recruited, employed and trained without regard to their race, color, religion, national origin or sex.
Revenue and Tax			
2003-2004	*P.L.108-136*	**National Defense Authorization Act for Fiscal Year 2004**	Prohibits states from charging fees to process naturalization applications for certain individuals in the armed services.
	P.L.108-203	**Social Security Protection Act of 2003**	Exempts the Railroad Retirement Investment Trust from state and local taxes. Provides for other mandates and preempts other state laws.
	P.L.108-375	**National Defense Authorization Act for Fiscal Year 2005**	Preempts state and local authority by prohibiting state and local governments from collecting a tax or service fee on the health benefits of certain defense employees. Sets new requirements for both public and private colleges and universities for receiving federal aid. Requires certain state workers compensation boards to supply information and comply with subpoena requests.
	P.L 108-435	**Internet Tax Non-discrimination Act**	Extends the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce. CBO determined that it will result in revenue losses to state and local governments totaling at least $80 to $120 million annually through 2007.[36]
	P.L.108-487	**Intelligence Authorization Act for Fiscal Year 2005**	Preempt certain state laws related to income taxes.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
2001-2002	*P.L.107-16*	**Economic Growth and Tax Relief Reconciliation Act of 2001**	Makes tax changes.
	P.L.107-104	**An Act to Amend chapter 90 of title 5, U.S. Code, relating to federal long-term care insurance**	Preempts state authority to tax certain long-term care policies.
	P.L.107-75 *P.L.105-277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act)*	**Internet Tax Nondiscrimination Act**	Created and later extended the prohibition on collecting certain types of state and local taxes.
1999-2000	*P.L.106-489*	**Amends title 46 of the U.S. Code**	Prohibits state and local governments from imposing taxes on wages due or accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel. However, this section does not prohibit withholding wages of a seaman on a vessel in the coastwise trade between ports in the same state if the withholding is under a voluntary agreement between the seaman and the employer of the seaman.
	P.L.106-170	**Ticket to Work and Work Incentives Improvement Act of 1999**	Increases some excise taxes—having to do with select life insurance, annuity or endowment contracts— paid by state and local entities. Preempts state privacy laws by deeming certain practices of the SSA as meeting state laws.
1997-1998	*P.L.105-2*	**Airport and Airway Trust Fund Tax Reinstatement Act**	Requires state and local governments to pay tax on airline travel.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
	P.L.105-134	**Amtrak Reform and Accountability Act of 1997**	Preempts state and local taxes on Amtrak tickets.
1995-1996	*P.L.104-88*	**ICC Termination Act**	Prohibits a state or political subdivision from collecting or levying a tax, fee, head charge or other charge on 1) a passenger traveling in interstate commerce by motor carrier; 2) the transportation of a passenger traveling in interstate commerce by motor carrier; 3) the sale of passenger transportation in interstate commerce by motor carrier; or 4) the gross receipts derived from such transportation.
1989-1990	*P.L.101-453*	**Cash Management Improvement Act**	Designed to ensure greater efficiency and equity in the exchange of funds between the federal government and the states. Authorizes a payment option through which the federal government and the states will pay each other interest when they hold the other's funds.
1985-1986	*P.L.99-514*	**Tax Reform Act of 1986**	States may provide an alternative formula for allocation of the state ceiling in determining the volume cap for the issuance of tax exempt private activity bonds. Requires that issuers (including states) or tax exempt bonds rebate excess arbitrage profit to the United States. Requires that an information statement, Form 8938, be filed with the IRS for all governmental bond issues. Requires that the information statement include a certification by a state law designated official that the bond meets the volume cap requirement of the I.R.C.
1983-1984	*P.L.98-67* *P.L.97-248*	**Tax Equity and Fiscal Responsibility Act of 1982**	Requires state and local governments. making income tax refunds, to report certain information to the IRS. State and local governmental units are required to file information returns on magnetic media, rather than paper.
		Transportation	
2003-2004	*P.L.108-176*	**Flight 100-Century of Aviation Reauthorization Act**	Requires state and local governments to notify the FAA, at least 30 days in advance, if they intend to close an airport. Provides for penalties.
	P.L.108-293	**Coast Guard Authorization Act of 2003**	Requires public vessels to install electronic charting equipment.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
	P.L. 108-458	**Intelligence Reform and Terrorism Prevention Act of 2004**	Establishes standards for state-issued driver's licenses, identification cards, and birth certificates. While these standards will be developed through the federal rulemaking process, CBO estimates that state and local governments will have to spend more than $60 million in at least one of the next five years to meet those standards.[37] The law does authorize the appropriation of funds to help fund these activities, however, the President's FY 2006 budget does not provide for such funds.
2001-2002	*P.L.107-71*	**Aviation and Transportation Security Act**	Requires airport authorities to implement stricter security measures.
	P.L.107-295	**Maritime Transportation Security Act of 2002**	Requires any owner or operator of a vessel or facility that the secretary believes may be involved in a transportation security incident (but not owned or operated by the Department of Defense) to prepare and submit to the secretary a security plan .
	P.L.107-298	**Real Interstate Driver Equity Act of 2002**	Exempts ground transportation carriers that provide prearranged service from state licensing and fee requirements as long as the carriers are properly licensed in their home state and meet all federal interstate transportation requirements.
	P.L.107-173	**Enhanced Border Security and Visa Entry Reform Act**	Requires manifests for arriving and departing commercial vessels or aircraft.
1999-2000	*P.L.106-346*	**FY 2001 DOT Appropriations Act**	Requires that each state have a law in effect that complies with the criteria established under Section 163 (Incentive Grant Program for 0.08 BAC),of title 23 of the U.S. Code. Each state must enact and enforce a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the state shall be deemed to have committed the *per se* offense of driving while intoxicated or an equivalent *per se* offense. States that do not adopt .08 BAC laws by FY 2004 would have certain highway construction funds withheld.
	P.L.106-528	**Airport Security Improvement Act of 2000**	Requires owners and operators of public airports to improve airport security. This includes eliminating airport access weakness, employee training, and improvement in security databases.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
	P.L.106-69	**Department of Transportation and Related Agencies Appropriations Act, 2000**	Prohibits states from selling information about drivers to marketers without the driver's express consent.
	P.L.106-159	**Motor Carrier Safety Improvement Act of 1999**	Requires states to conform to specific procedures when issuing commercial driver's licenses.
1997-1998	*P.L.105-287*	**Armored Care Reciprocity Amendments of 1998**	Requires states to extend reciprocity for other states' weapons licenses for armored car drivers.
1993-1994	*P.L.103-305*	**Federal Aviation Administration Authorization Act of 1994**	Preempts most state authority related to the price, route or service of an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether such property has had or will have a prior or subsequent air movement).
1991-1992	*P.L.102-240*	**Intermodal Surface Transportation Efficiency Act (ISTEA—Highway Mass Transit Reauthorization)**	Authorizes federal-aid highway and mass transit programs, funded primarily through fuel taxes. Effective Sept. 30, 1996, states must join the International Fuel Tax Agreement (IFTA) which uses a base state registration for the collection of fuel use taxes and is overseen by the IFTA board. Provides grant money to states to establish motorcycle helmet and seatbelt laws. States not participating in the grant program by FY 1994 would be required to spend 1.5% of their highway money on highway safety programs.
	P.L.102-250 *P.L.98-559* *P.L.96-129* *P.L.95-402* *P.L.94-474* *P.L.93-633*	**Hazardous Materials Transportation Act**	Preempts state regulation of transportation of hazardous materials that is inconsistent with federal requirements. A state may obtain a waiver of preemption if, on application to the department, DoT determines that the state requirements provide for equal or greater protection than federal requirements and do not unreasonably burden interstate commerce.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1987-1988	*P.L.100-223*	**Contracting for Engineering And Design Services-Airport and Airway Safety and Capacity Expansion Act of 1987**	Provides a new assurance that contracts for engineering and design services are to be awarded in accordance with qualifications based requirements established under Title IX of the Federal Property and Administrative Services Act or equivalent procedure prescribed for or by the airport sponsor.
	P.L.100-17	**Surface Transportation and Uniform Relocation Assistance Act of 1987**	Mandates that procurement of engineering and design services for federal-aid highway projects conform to the requirements of the Federal Property and Administrative Services Act of 1949. Directs the secretary of Transportation to issue regulations establishing and requiring a standardized contract clause in all federal-aid highway contracts. Requires states to establish highway safety programs that are in accordance with federal guidelines. Provides for other related matters.
	P.L.100-17	**Minimum Drinking Age**	Requires states to establish a minimum drinking age of 21 or have a portion of highway funds withheld by DoT.
	P.L.100-17 *P.L.97-424* *P.L.94-280* *P.L.93-643*	**Surface Transportation and Uniform Relocation Assistance Act of 1987 –** *amends the Highway Improvement Act of 1982*	Interstate highway construction funds will not be apportioned to states that do not allow heavy duty vehicles of up to 80,000 pounds gross to use interstate highways. However, maximum allowable weight must not exceed that permitted by the bridge formula or 80,000 pounds.
1985-1986	*P.L.99-516*	**Amendments to the National Gas Pipeline Safety Act of 1968**	State may adopt added or more stringent safety standards compatible with federal standards for intrastate natural gas pipeline safety only if they have been certified under section 1674 (a).
	P.L.99-579	**Motor Vehicle Information and Cost Saving Act**	States may not license any motor vehicle for use following a transfer of ownership unless title issued to the transferee is made by a secure process and provides space for the disclosure of the vehicles mileage.
	P.L.99-570	**Commercial Motor Vehicle Driver's License**	States must adopt and administer a program for testing and ensuring the fitness of commercial motor vehicle operators based on federal standards.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States

Date	Citation	Title	Notes
1983-1984	*P.L.98-547* *P.L.92-513*	**Motor Vehicle Theft Law Enforcement**	States may not establish or continue in effect theft protection standards with respect to motor vehicles or major replacement parts that are not identical to federal standards.
	P.L.98-89 *P.L.98-369* *P.L.98-557*	**Recreational Boating Safety Program**	States are to designate a lead agency for carrying out the recreational boating safety program supported by federal funds, allocated in part by the amount of a states spending on boating safety. The federal funds are conditioned upon states having approved programs for enforcement, education and casualty reporting. Separate provisions provide for federal approval of state numbering system.
	P.L.98-554	**Commercial Motor Vehicle Standards**	After Oct. 1989, states may not have in effect any laws or regulations for commercial motor vehicle safety standards that differ from the federal standards but do not unduly burden interstate commerce, and are not incompatible with federal regulations and provide safety benefits.
	P.L.98-17 *P.L.98-554* *P.L.97-424*	**Commercial Motor Vehicle Width and Length Limit**	States must not restrict operation of or deny reasonable access to trucks and buses on the "designated network" that meet federal length and width limits. Exemptions can be made. DOT may seek injunctive relief.
1983-1984	*P.L.98-89*	**Vessel Safety Standards**	States may not establish or continue in effect laws or regulations concerning vessel safety that are not identical to federal standards unless issued an exemption under section 4305.
1981-1982	*P.L.97-424*	**Motor Carrier Safety Assistance Programs**	States may receive federal funds for adoption and enforcement of regulations and standards for commercial motor vehicle safety.
1979-1980	*P.L.96-423* *P.L.91-458*	**Rail Safety Programs**	Section 205 laws, rules, regulations, orders and standards shall be nationally uniform to the extent practicable.

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Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
	P.L.96-106	**Control of Outdoor Advertising and Junkyards**	States must control outdoor advertising and junkyards along federal highway systems. DOT may withhold 10% of the highway funds apportioned under 23 USC 104 for failure to comply.
1977-1978	*P.L.95-504*	**Airline Deregulation Act of 1978**	To receive federal financial assistance for its air transportation activities, a state must conform to the provisions of this system, which relies on competitive market forces to determine the quality, variety and price of air services.
1971-1972	*P.L.92-513*	**Motor Vehicle Information and Cost Saving Act**	Prohibits states from establishing laws or regulations for motor vehicle bumper standards that are not identical to federal standards, except that vehicles procured for state use may have higher standards.
	P.L.92-574	**Noise Control Act of 1972**	States may not adopt or enforce any standard applicable to noise emissions resulting from operation of any equipment or facility of a railroad engaged in interstate commerce unless such standards are identical to federal standards, and unless the EPA in consultation with the Secretary of Transportation, determines that such a standard, is necessitated by special local conditions and is not in conflict with federal standards.
1965-1966	*P.L.89-563*	**National Traffic and Motor Vehicle Safety Act**	Prohibits states from establishing or continuing in effect laws or regulations for motor vehicle equipment standards that are not identical to federal standards except that vehicles procured for state use may have higher standards.
1957-1958	*P.L.85-606*	**Federal Civil Defense Act**	Authorizes the administrator to withhold funds for failure to expend funds in accordance with regulations, terms and conditions in the act. The administrator shall make no contribution of federal funds without first obtaining adequate assurance that labor standards will be maintained upon construction work financed with a federal contribution under this act.
Veterans			
2003-2004	*P.L.108-454*	**Veteran's Benefits Improvement Act**	Requires employers to extend health benefits to certain reservists for an additional 6 months.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
2001-2002	*P.L.107-330*	**Veterans Benefits Act of 2002**	Requires that duty performed with the National Guard to carry out homeland security activities qualify as military service. Provides some National Guard members with exemptions from certain financial obligations.
1999-2000	*P.L.106-117*	**Veterans Millennium Health Care and Benefits Act**	Prohibits public hospitals from suing veterans for payments.
1977-1978	*P.L.95-202*	**GI Bill Improvements Act**	Limits the determination of the amount of education assistance paid to a veteran and educational assistance allowances to state residents.
		Other	
1999-2000	*P.L.106-384*	**A bill to amend chapter 36 of title 39, United States Code, to modify rates relating to reduced rate mail matter, and for other purposes**	Eliminates available reduced rates for some agencies of state and local governments.
	P.L.106-210	**Muhammad Ali Boxing Reform Act**	Requires state boxing commissions to establish certain procedures.
	P.L.106-197	**An Act to exempt certain reports from automation elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, and for other purposes**	Requires states to report encryption information to the Administrative Office of the U.S. Courts.
	P.L.106-81	**Wireless Communications and Public Safety Act of 1999**	Requires states to provide an equal standard of liability for users, providers and dispatchers of wireless and wireline 911 services.
1987-1988	*P.L.100-690*	**Anti-Drug Abuse Act of 1988**	Requires a health warning label to be placed on alcoholic beverages and preempts state legislation requiring a warning label other than the label required by federal law.
1979-1980	*P.L.96-22*	**Partial Relinquishing of Legislative Jurisdiction**	Authorizes the United States to relinquish to a state such measure of legislative jurisdiction or lands or interest as necessary to establish concurrent jurisdiction. The relinquishment may be by filing a notice with the governor or as prescribed by law.

Table 3. Federal Intergovernmental Mandates: Cost Shift to the States			
Date	**Citation**	**Title**	**Notes**
Source: National Conference of State Legislatures, Washington, D.C., March 2005.			

Table 3. Laws NCSL has not been able to verify if the provisions still exist in statute or if they have been repealed.			
Date	**Citation**	**Title**	**Notes**
1993-1994	*P.L.103-149*	South African Democratic Transition Support Act of 1993	Section 4 (c) (2) (A) repeals a law that permits states and localities to enforce state or local anti-apartheid policies prohibiting the procurement of products manufactured or fabricated in South Africa without affecting federal transportation fund. This becomes effective at the end of FY 1995.
1995-1996		Commercial Motor Vehicle Safety Act of 1986	Establishes minimum national standards for licensing and testing of commercial and school bus drivers. States' not in compliance could lose highway grants.
1988		Drug Free Workplace Act of 1988	Requires certification by all federal grantees and contractors or a drug-free workplace and creation of a employee awareness, sanction and treatment programs.
		Ocean Dumping Ban Act of 1988	Outlaws remaining ocean dumping of municipal sewage sludge.
1983-1984	*P.L.98-369*	Tax Reform Act of 1984	State and local governmental units are required to report mortgage interest received from individuals on form 1098, Mortgage Interest Statement. A form 1099-A, Information Return for Acquisition or Abandonment of Secured Property, must be made by any state or local governmental unit that lends money secured by property and, in full or partial satisfaction of the debt, acquires an interest in any property that is security for the debt or has reason to know that the property has been abandoned.
		Child Abuse Amendments of 1984	Overturns a federal court ruling and authorizes the promulgation of "baby doe" regulations to protect seriously ill newborns

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Table 3. Laws NCSL has not been able to verify if the provisions still exist in statute or if they have been repealed.

1981-1982	*P.L.97-424*	**Proof of Payment of Heavy Vehicle Use Act**	Interstate construction and reconstruction apportionment may be reduced by up to 25% to any state that does not require proof of payment of federal heavy vehicle use tax in part of the state's heavy vehicle registration.
1979-1980	*P.L.96-543* *P.L.74-521*	**Merchant Marine Act of 1936**	Head of each state maritime academy shall assure that the training of future merchant marine officers include programs for naval science training in the operation of merchant marine vessels as a naval and military auxiliary.
1977-1978	*P.L.95-620*	**Power Plant & Industrial Fuel Use Act**	Requires receivers of federal assistance to comply with purposes of the act relating to conservation of petroleum and natural gas.
1969-1970	*P.L.91-373*	**Federal Unemployment Tax Act**	Sets unemployment tax and basic policies to be followed in order to obtain secretary's approval of certification for tax credit against the federal unemployment tax.
1965-1966	*P.L.89-174*	**Local Rent Control**	Preempts state and local rent control laws in the case of subsidized multi-family projects with mortgages insured or held by HUD.
1963-1964	*P.L.88-365*	**Urban Mass Transportation Act of 1964**	Requires the following in order to receive federal loans or grants for urban mass transportation systems: state must 1) have the legal, financial and technical capacity to carry out the proposed project; 2) have satisfactory continuing control, through operation or lease or otherwise, over the use of facilities and equipment; and 3) act in accordance with the labor standards of the Davis-Bacon Act.

Source: National Conference of State Legislatures, Washington, D.C., March 2005.

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Attachment 1

UMRA Exemptions

There are seven exclusions under UMRA, conditions under which CBO is not required to review legislation. The law does not apply if the legislation:

1. Enforces constitutional rights of individuals;
2. Establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;
3. Requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the federal government;
4. Provides for emergency assistance or relief at the request of any state, local, or tribal government or any official of a state, local or tribal government;
5. Is necessary for the national security or the ratification or implementation of international treaty obligations;
6. The President designates as emergency legislation and that the Congress so designates in statute; or
7. Relates to the old-age, survivors and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 (relating to old-age, survivors, and disability insurance)).[38]

Sources:

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Congressional Budget Office, *CBO's Activities Under the Unfunded Mandates Reform Act*, 1996-2000, (Washington, D.C.: CBO, May 2001).

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Congressional Budget Office, The Experience of the Congressional Budget Office During the First Year of the Unfunded Mandates Reform Act, (Washington, D.C.: CBO, January 1997).

Notes:

1. Table 1 in the March 8, 2005 edition incorrectly reported the cost shift from the Phase Down of the Safe Harbor Tax as $231 million. The correct figure is -$231 million. Subtotals and totals were adjusted to reflect this change. The total for the minimum FY 2005 cost shift was incorrectly reported at $25.8 billion. The correct figures is $26.2 billion.
2. Unfunded Mandates Reform Act of 1995.
3. Congressional Budget Office, *An Assessment of the Unfunded Mandates Reform Act in 1997,*(Washington, D.C.: CBO, February 1988).
4. General Accountability Office, Unfunded Mandates, Analysis of Reform Act Coverage, A report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce, and the district of Columbia, Committee on Governmental Affairs, United States Senate, (Washington, D.C.: GAO, May 2004).
5. Ibid.
6. Congressional Budget Office, H.R. 4520: *American Jobs Creation Act of 2004,* (Washington, D.C.: CBO, August 2, 2004).
7. Ibid.
8. Tetreault, Yvette; Federal Funds Information for States; Issue Brief 04-57: IDEA Reauthorization; (Washington, D.C.: FFIS, December 8, 2004).
9. Ibid.
10. Medicare Prescription Drug and Modernization Act of 2003; (Washington, D.C.: CBO, July 2003).
11. Congressional Budget Office, *Cost Estimate for H.R. 10, the 9/11 Recommendations Implementation Act),* (Washington, D.C.: CBO, October 5, 2004).
12. Congressional Budget Office, *Cost Estimate for S. 150, the Internet Tax Nondiscrimination Act,* (Washington, D.C.: CBO, September 9, 2003).
13. Tetreault, Yvette; Federal Funds Information for States; Issue Brief 04-57: IDEA Reauthorization; (Washington, D.C.: FFIS, December 8, 2004).
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17. Senator Angela Monson, Oklahoma, NCSL President; Speaker Martin Stephens, Utah, NCSL President-Elect; State Legislative Presiding Officers to the Chairs of State Education Committees; and Legislative Education Staff regarding Legal questions regarding NCLB Act, correspondence, July 7, 2003.
18. ACIR, The Role of Federal Mandates in Intergovernmental Relations, A Preliminary ACIR Report for Public Review and Comment, (Washington, D.C.: ACIR, January 1996).
19. Medicare Prescription Drug and Modernization Act of 2003; (Washington, D.C.: CBO, July 2003).
20. Congressional Budget Office, H.R. 4520: *American Jobs Creation Act of 2004,* (Washington, D.C.: CBO, August 2, 2004).
21. Congressional Budget Office, H.R. 4520: *American Jobs Creation Act of 2004,* (Washington, D.C.: CBO, August 2, 2004).
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23. Ibid.
24. Ibid.
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31. Ibid.
32. Ibid.
33. Ibid.
34. Ibid.
35. Summary provided by the Congressional Research Service, (Washington, D.C.: CRS, October 25, 1994).
36. Congressional Budget Office, *Cost Estimate for S. 150, the Internet Tax Nondiscrimination Act*, (Washington, D.C.: CBO, September 9, 2003).
37 Congressional Budget Office, *Cost Estimate for H.R. 10, the 9/11 Recommendations Implementation Act)*, (Washington, D.C.: CBO, October 5, 2004).
38. Unfunded Mandates Reform Act of 1995.

United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Governmental Affairs, U.S. Senate

May 2004

UNFUNDED MANDATES

Analysis of Reform Act Coverage

GAO-04-637

May 2004

GAO
Accountability Integrity Reliability

Highlights

Highlights of GAO-04-637, a report to the Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

UNFUNDED MANDATES

Analysis of Reform Act Coverage

Why GAO Did This Study

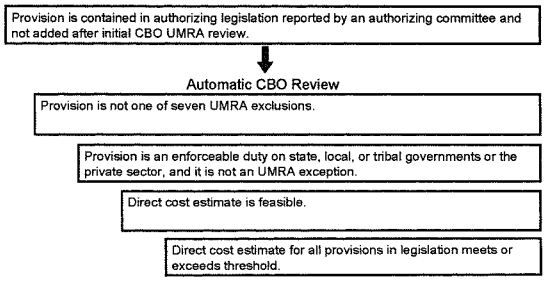
The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and rules that require state, local, and tribal governments or the private sector to expend resources to achieve legislative goals. UMRA generates information about the nature and size of potential federal mandates to assist Congress and agency decision makers in their consideration of proposed legislation and rules. However, concerns about actual or perceived federal mandates continue. To provide information and analysis regarding UMRA's implementation, GAO was asked to (1) describe the applicable procedures, definitions, and exclusions under UMRA for identifying federal mandates in statutes and rules, (2) identify statutes and final rules that contained federal mandates under UMRA, and (3) provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as "unfunded mandates," and the reasons these statutes and rules were not federal mandates under UMRA. GAO focused on statutes enacted and final rules issued in 2001 and 2002 to address the second and third objectives.

What GAO Found

UMRA generally requires congressional committees and the Congressional Budget Office (CBO) to identify and estimate the costs of federal mandates contained in proposed legislation and federal agencies to do so for federal mandates contained in their rules. Identification of mandates is a complex process with multiple definitions, exclusions, and cost thresholds. Also, some legislation and rules may be enacted or issued via procedures that do not trigger UMRA reviews.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. Of the other federal actions in those 2 years, at least 43 statutes and 65 rules contained new requirements on nonfederal parties that might be perceived as "unfunded mandates." For 24 of those statutes and 26 of those rules, CBO or federal agencies had determined that the estimated direct costs or expenditures would not meet or exceed applicable thresholds. For the remaining examples of statues, most often UMRA did not require a CBO review prior to their enactment. The remaining rules most often did not trigger UMRA because they were issued by independent regulatory agencies. Despite the determinations made under UMRA, some statutes and rules not triggering UMRA's thresholds appeared to have potential financial impacts on affected nonfederal parties similar to those of the actions that were identified as containing mandates at or above the act's thresholds.

Proposed Legislation Must Pass Multiple Steps to Be Identified as Containing Federal Mandates at or Above UMRA's Cost Thresholds



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To view the full product, including the scope and methodology, click on the link above. For more information, contact Patricia A. Dalton at (202) 512-6806 or daltonp@gao.gov.

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Abbreviations

CBO	Congressional Budget Office
DOD	Department of Defense
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
GSA	General Services Administration
HHS	Department of Health and Human Services
JCT	Joint Committee on Taxation
NASA	National Aeronautics and Space Administration
NCSL	National Conference of State Legislatures
NRC	Nuclear Regulatory Commission
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
PCAOB	Public Company Accounting Oversight Board
RISC	Regulatory Information Service Center
SEC	Securities and Exchange Commission
TSA	Transportation Security Administration
UMRA	Unfunded Mandates Reform Act of 1995
USDA	United States Department of Agriculture
VA	Department of Veterans Affairs

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United States General Accounting Office
Washington, D.C. 20548

May 12, 2004

The Honorable George V. Voinovich
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman,

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns expressed by state and local governments about federal statutes and regulations that require these nonfederal parties to expend resources to achieve legislative goals without being provided federal funding to cover the costs.[1] Although UMRA was intended to "curb the practice of imposing unfunded Federal mandates,"[2] the act does not prevent Congress or federal agencies from doing so.[3] Rather, UMRA generates information about the nature and size of potential federal mandates on other levels of government and the private sector to assist Congress and agency decision makers in their consideration of proposed legislation and regulations. UMRA requires congressional committees and the Congressional Budget Office (CBO) to identify and provide information on potential federal mandates in certain legislation and federal agencies to identify the costs and benefits of federal mandates contained in certain regulations.

Concerns about actual or perceived federal mandates continue. In the fall of 2003, for example, the presence of an intergovernmental mandate as defined by UMRA was one of the issues raised by senators opposing the Internet Tax Nondiscrimination Act (S. 150).[4] The proposed legislation

[1]Pub. L. No. 104-4, 2 U.S.C. §§658-658g, 1501-71.

[2]Pub. L. No. 104-4 pmbl.

[3]Although UMRA defines a federal mandate, it includes no specific definition of an unfunded mandate. Therefore, as in the act, we generally refer to the identification of federal mandates, rather than unfunded mandates, in this report.

[4] The Senate passed an amended version of this legislation in April 2004. The House passed a related version of this legislation, H.R. 49, in September 2003.

would have permanently extended and expanded a federal moratorium prohibiting state and local governments from levying new taxes on Internet access and electronic commerce and also eliminated the "grandfather" protection for existing access taxes granted under the previous statutory moratorium, which expired November 1, 2003.[5] Pursuant to UMRA, CBO estimated that repealing the grandfather clause would result in revenue losses for as many as 10 states and several local governments totaling from $80 million to $120 million annually, beginning in 2007, and that a change in the definition of Internet access under the legislation could result in additional substantial revenue losses for states and local governments. In recent months, criticisms of the No Child Left Behind Act of 2001 because of perceived "unfunded mandate" implications have also received increasing attention.[6] No Child Left Behind contains a number of new or expanded requirements, such as the design and implementation of statewide achievement tests, imposed upon states and local educational agencies that receive federal assistance.

You asked us to provide information and analysis regarding UMRA's implementation and identify options for refining the act. As agreed with your staff, this report addresses the first portion of that request, in which you asked us to describe and provide examples of how federal statutes and rules with potentially significant financial implications for state, local, and tribal governments or the private sector may be enacted or issued without being identified as federal mandates under UMRA.[7] Specifically, you asked us to: (1) describe the applicable procedures, definitions, and exclusions for identifying federal mandates in statues and rules under UMRA, (2) identify statutes and final rules that contained federal mandates under UMRA, and (3) provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as "unfunded mandates," and the reasons these statutes and rules were not federal mandates under UMRA. In the body of this report, we address the three objectives separately for title I, which covers the legislative process, and title II, which covers the regulatory process.

[5]Pub. L. No. 105-277.

[6]Pub. L. No. 107-110.

[7]We are continuing our work on the other parts of the request, to be reported separately.

We reviewed UMRA and related guidance documents, analyses, and reports on the act's implementation, interviewed persons knowledgeable about the implementation of UMRA in OMB, CBO, and other congressional offices, and examined and analyzed sets of statutes and final rules. As agreed with your staff, we focused on statues enacted and final rules published during 2001 and 2002. We conducted our review from August 2003 through February 2004 in Washington, D.C., in accordance with generally accepted government auditing standards. We have not previously reported on the implementation of title I. We reported on the implementation of title II in February 1998, concluding that UMRA appeared to have had a limited direct impact on agencies' rulemaking actions.[8]

Results in Brief

The identification and analysis of federal mandates on state, local, and tribal governments or the private sector is a complex process under UMRA. Proposed legislation and regulations must pass through multiple steps and meet multiple conditions before being identified as containing mandates at or above UMRA's thresholds, and there are some important differences in the provisions regarding legislation compared to those for regulations. For example, under title I of the act, CBO prepares mandate statements identifying and estimating the costs of mandates in legislation that meets certain criteria, whether or not those estimated costs meet or exceed UMRA's thresholds ($50 million for intergovernmental and $100 million for private sector mandates, in any of the first 5 fiscal years the mandate would be effective).[9] Under title II, however, federal agencies are only required to prepare mandate statements for regulations containing intergovernmental or private sector mandates that would result in expenditures of $100 million or more in any year. Also, for proposed legislation a point of order can be raised on the floor of the House or Senate against consideration of any UMRA-covered mandate that lacks a CBO estimate or any unfunded intergovernmental mandate exceeding UMRA's threshold.

For both legislation and regulations, there are two general ways that provisions would not be identified as federal mandates at or above UMRA's thresholds. First, some legislation and regulations may be enacted or issued via procedures that do not trigger UMRA reviews by CBO or

[8]U.S. General Accounting Office, *Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions*, GAO/GGD-98-30 (Washington, D.C.: Feb. 4, 1998).

[9]The dollar thresholds in UMRA are in 1996 dollars and are adjusted annually for inflation.

agencies. For example, UMRA does not require CBO to review potential mandates in appropriations bills, and UMRA does not apply to final rules that agencies issue without having published a notice of proposed rulemaking or to any rules issued by independent regulatory agencies. Second, even if the statute or rule is reviewed, UMRA limits the identification of federal mandates through multiple definitions, exclusions, and costs thresholds. For example, if the requirements on nonfederal parties arise from participation in a voluntary federal program or are a condition of federal financial assistance, as was the case with No Child Left Behind, those requirements are not considered federal mandates under UMRA.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. All 5 statutes and 9 rules contained private sector mandates as defined by UMRA. One final rule—an Environmental Protection Agency (EPA) standard on arsenic in drinking water—also contained an intergovernmental mandate. At least with regard to legislation, CBO reports and testimonial evidence indicated that the existence of UMRA might hinder the introduction of intergovernmental mandates or lead lawmakers to reduce the costs of some of those mandates before enactment.

Of the other federal actions in those years, at least 43 statutes and 65 rules resulted in new costs or other negative financial impacts on nonfederal parties that might be perceived by those parties to have "unfunded mandates" implications. We analyzed each of these examples to identify how they were treated under UMRA's mandate identification process. For 24 of the statutes and 26 of the rules, CBO or federal agencies had determined that the estimated direct costs or expenditures, as defined by UMRA, would not meet or exceed the applicable thresholds. For the remaining examples of statutes, most often UMRA did not require a CBO review prior to their enactment. The remaining rules most often did not trigger UMRA because they were issued by independent regulatory agencies not covered by the act.

Despite the determinations made under UMRA, some of the statutes and rules that had not triggered UMRA's requirements appeared to have potential financial impacts on affected nonfederal parties similar to those of actions that had been flagged as containing federal mandates at or above the thresholds. Examples in the intergovernmental area included the Economic Growth and Tax Relief Reconciliation Act of 2001[10] and No Child Left Behind, both of which did not meet UMRA's definition of a mandate. Among other examples, the Sarbanes-Oxley Act of 2002 was not identified as containing a federal mandate at or above the UMRA threshold because total costs were uncertain.[11] However, the direct costs of one provision were estimated at $80 million annually, while the costs of other provisions could not be estimated. The Department of Commerce estimated that a rule restricting fishing off Alaska to protect sea lions could reduce industry gross revenues by $225 million to $401 million per year. However, the rule did not trigger UMRA's requirements because it did not require expenditures of $100 million or more in any year and there was no notice of proposed rulemaking.

This report provides descriptive information and analysis regarding UMRA's implementation, focusing specifically on the coverage and identification of federal mandates under UMRA. We are making no specific recommendations for executive action nor identifying any specific matters for consideration by Congress at this time. As requested, we will be continuing our work on other aspects of UMRA.

On April 22, 2004, we provided a draft of this report to the Director of the Office of Management and Budget (OMB) for his review and comment. On April 29, 2004, an OMB representative notified us that OMB had no comments on our report.

[10]Pub. L. No. 107-16.

[11]Pub. L. No. 107-204.

Background

Many federal statutes, and the regulations that implement them, impose requirements on state, local, and tribal governments or private sector parties in order to achieve certain legislative goals. Such statutes and their regulations can provide substantial benefits, as well as imposing costs. OMB's 2003 final report on the costs and benefits of federal regulations estimated that the total annual quantified benefits of major rules issued from October 1, 1992, to September 30, 2002, ranged from $146 billion to $230 billion, while the total annual quantified costs ranged from $36 billion to $42 billion.[12]

Title I of UMRA focuses on the legislative process, and title II focuses on the regulatory process. For both legislation and regulations, UMRA was intended to provide more information on and prompt more careful consideration of the costs and benefits of federal mandates that affect nonfederal parties. UMRA generally defines a federal mandate as any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments or the private sector or that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates. However, as discussed in the body of this report, some other definitions, exclusions, and thresholds in the act vary according to whether the mandate is in legislation or a rule and whether a provision imposes an intergovernmental or private sector mandate.

If legislation or a rule contains a federal mandate, as defined by UMRA, a major consequence is that other requirements in the act are triggered. Under title I, when a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution that contains any federal mandates to the full legislative body, the committee is required to provide the bill or resolution to the Director of CBO and identify the mandates it contains. UMRA then requires CBO to analyze each of these bills and resolutions—and, on request, other legislative proposals—for the presence of such mandates and to estimate their associated costs. CBO prepares UMRA statements that are to be included in the authorizing committees' reports. The CBO mandate statements must also include an

[12]Office of Management and Budget, Office of Information and Regulatory Affairs, *Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (Washington, D.C.: 2003).

assessment of whether the legislation authorizes or otherwise provides funding to cover the costs of any new federal mandates.

UMRA's specific enforcement mechanism for the requirements of title I is a point of order, which a member of Congress may raise to indicate that a rule of procedure has been or will be violated.[13] Generally, a point of order is available under UMRA if there is no CBO UMRA statement for the legislation or if the legislation contains an unfunded intergovernmental mandate with costs over UMRA's threshold or if it was not feasible to estimate the costs of the intergovernmental mandate. However, points of order are not available under UMRA for private sector mandates that exceed the cost threshold or if the private sector mandates' costs are not feasible to estimate.[14] UMRA's rules are not self-enforcing and a point of order must be actively raised to hinder the passage of unfunded federal mandates. Specifically raising an UMRA point of order may serve to heighten the profile of "unfunded mandate" implications in the challenged legislation. As of March 2004, 13 points of order had been raised in the House of Representatives and no points of order had been raised in the Senate under UMRA. Only 1 of these 13, regarding the minimum wage in the Contract with America Advancement Act in 1996, resulted in the House voting to reject consideration of a proposed provision.

For rules that contain federal mandates, title II of UMRA requires the agencies to prepare written statements containing specific descriptions and estimates, including a qualitative and quantitative assessment of the anticipated costs and benefits of the mandate. For such rules, agencies are to "identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule" or explain why that alternative was not selected.[15] UMRA requires OMB to

[13]The point of order is a parliamentary term used in committee or on the floor of either chamber of Congress to object to an alleged violation of a rule and to demand that the chair enforce the rule. When raised in the House of Representatives, the point of order is voted on by the full House. When raised in the Senate, the Presiding Officer makes an initial ruling on an UMRA point of order, but the ruling can be appealed to the full Senate and overruled by a simple majority. If a point of order is sustained against a measure, amendment, or motion, it may not be considered; if sustained against a provision in a measure, the provision is immediately deleted.

[14] See 2 U.S.C. §658d of UMRA for more specific information on the availability of a point of order.

[15]2 U.S.C. §1535.

collect the written statements prepared by the agencies on federal mandates in rules and periodically forward them to CBO. UMRA also requires OMB to submit annual reports to Congress detailing agencies' compliance with title II. OMB's Office of Information and Regulatory Affairs (OIRA) has the primary responsibility for monitoring agencies' compliance with this title.

CBO and OMB regularly produce reports on, respectively, activities under titles I and II of UMRA.[16] CBO has prepared an annual report on its activities under title I each year since UMRA's enactment. Included in these reports is information on two requirements placed on CBO by title I, identifying (1) proposed legislation that would have imposed federal mandates on another level of government or the private sector and (2) the subset of the legislation examined by CBO that was found to contain mandates with costs at or above the relevant thresholds. Although not required by UMRA to do so, CBO also reviews all statutes enacted to identify mandates enacted into law for its annual reports. Since 2001, OMB has fulfilled its requirement to report to Congress on compliance with title II in the same document used to fulfill a statutory requirement for reporting to Congress on the costs and benefits of federal regulations. OMB's reports provide information on the rules that agencies have identified as containing federal mandates and also discuss agencies' efforts to consult with state, local, and tribal governments in the development of significant rules.

Scope and Methodology

To describe the applicable procedures, definitions, and exclusions for identifying federal mandates in statues and rules under UMRA, we reviewed the act, other related guidance documents, and CBO and OMB reports on the implementation of UMRA. We also interviewed persons knowledgeable about the implementation of UMRA in OMB, CBO, and other congressional offices. To identify statutes and final rules that were and were not identified as containing federal mandates under UMRA and analyze the reasons for those determinations, we focused our review on statutes enacted and final rules published during 2001 and 2002, as agreed with your staff.

[16]Title III of UMRA included requirements for the Advisory Commission on Intergovernmental Relations (ACIR) to report on various issues related to federal mandates, but Congress terminated funding for the commission in 1996.

For our review and analysis of the implementation of title I, we relied on information provided to us by the CBO officials responsible for preparing UMRA statements on proposed legislation and the annual CBO reports on UMRA. At our request, CBO identified from that 2-year period the 5 statutes that contained federal mandates at or above UMRA's cost thresholds and 43 examples of statutes that were not so identified but nevertheless contained provisions having impacts on nonfederal parties. We did not ask CBO to compile a comprehensive list of all statutes in those years that might have impacts on nonfederal parties. For our review and analysis of the implementation of title II, we reviewed all 122 major and/or economically significant final rules—generally, those that would have an annual effect on the economy of $100 million or more or raise other significant economic or policy issues—that federal agencies issued during 2001 and 2002. Parallel to the information on statutes provided by CBO, we focused on identifying two sets of final rules—those that were identified as containing federal mandates at or above UMRA's threshold and those that were not but included provisions affecting nonfederal parties that might be perceived by those parties as potential "unfunded mandates." To determine whether the statutes and final rules we examined were perceived by affected parties as potentially having "unfunded mandate" implications, we shared them with the following national organizations representing nonfederal levels of government: National Association of Counties, National Conference of State Legislatures (NCSL), National Governors Association, the National League of Cities, and the U.S. Conference of Mayors.[17] We then analyzed the statutes and rules to identify how they had been treated under UMRA, in particular identifying the application of procedural, definitional, and other provisions of UMRA that guide the identification of federal mandates.

The scope of our review was limited to a 2-year period and, within that period, only to examples of legislation enacted and rules that were finalized (i.e., we did not include all legislation considered by Congress or rules that were proposed but not finalized). Therefore, the examples we reviewed might not illustrate all possible ways that a statute or rule with a perceived mandate could be enacted or issued without being identified as a federal mandate under UMRA. However, the representatives from external public sector organizations who reviewed the statutes and rules we examined generally concurred that they were perceived as potential "unfunded

[17]We also shared our lists with organizations representing the private sector, but received no formal responses from them.

mandates" and that we did not exclude any major examples that they believed should have been included. It is also important to recognize that perceived "unfunded mandates" could result from nonstatutory, nonregulatory federal actions, such as Homeland Security threat level adjustments, which are not covered by UMRA and therefore were outside the scope of our specific objectives. (See app. I for a more detailed description of our objectives, scope, and methodology.)

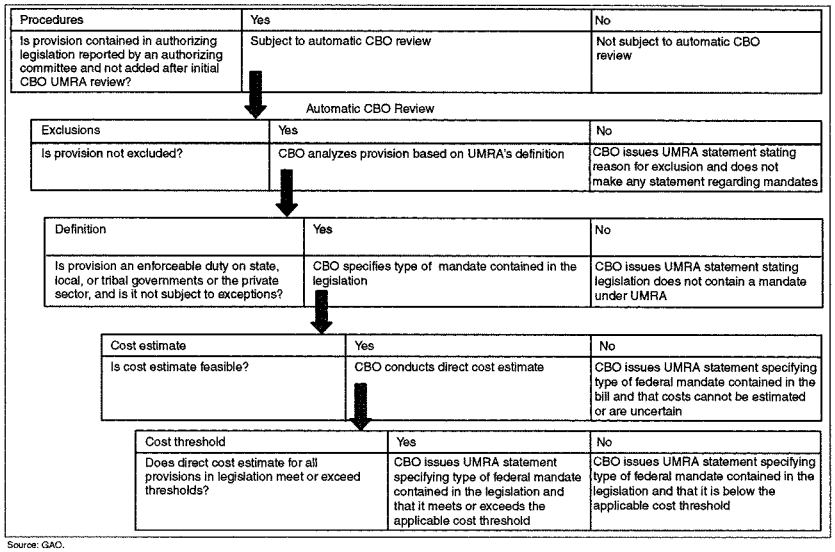
Identification of Federal Mandates in Statutes under Title I

Statutory provisions that impose requirements on nonfederal parties might not be identified as federal mandates under UMRA because some legislative actions do not trigger a review and even if the provisions are subject to review, UMRA circumscribes the definition of a federal mandate. When legislation containing "mandates" does undergo UMRA's formal scrutiny, it has to meet three definitional requirements, not fall into any of seven exclusions, and impose costs at or above certain thresholds to be identified as containing federal mandates exceeding the cost thresholds under UMRA. In 2001 and 2002, 5 of the 377 statutes enacted were identified as containing provisions that were federal mandates exceeding the thresholds. From the remaining statutes, CBO identified 43 examples that had some kind of impact on nonfederal parties but were not identified during the legislative process as containing federal mandates at or above UMRA's thresholds. For 24 of those examples, this was because their estimated direct costs were below the thresholds. There is some evidence that the existence of UMRA served to hinder the introduction of intergovernmental mandates, or led to their modification before enactment in the past. There is also evidence that suggests that some of CBO's cost estimates under UMRA may have led lawmakers to reduce the cost of some mandates before enactment.

Legislation Must Undergo a Multistep Process to Be Identified as Containing Federal Mandates at or Above Applicable Cost Thresholds

The type of legislation that a provision is contained in and how the legislation is considered determines if it is subject to automatic review by CBO. If provisions are subject to automatic CBO review, they are analyzed based on UMRA's definitional requirements and exclusions. The feasibility of developing a cost estimate and the level of the cost estimate is then compared to applicable thresholds. Figure 1 depicts this general sequence of conditions that must be met before a statutory provision would be identified as a federal mandate at or above UMRA's cost thresholds.

Figure 1: A Multistep Process Has to Be Followed for CBO to Identify Federal Mandates in Proposed Legislation



Source: GAO.

The following sections discuss these procedures, exclusions, definitions, and cost thresholds in more detail.

UMRA Procedures Do Not Require All Legislative Provisions to Be Automatically Reviewed by CBO

Provisions that are (1) not contained in authorizing bills, or (2) not reported by an authorizing committee are not automatically subject to CBO review before going to the floor (see fig. 1), and thus a CBO UMRA statement may not be issued. For example, appropriations bills are not automatically subject to CBO review under UMRA. In addition, even if a provision is contained in an authorizing bill, it still must be "reported" by that committee—as opposed to going directly to the full House or Senate or

"discharged" by the committee without a vote to send it to the full House or Senate—to be subject to automatic CBO review.

CBO was not required to review seven bills that contained federal mandates during 2001 and 2002 that ultimately became law because they either were appropriations bills or were authorizing bills not reported by authorizing committees. For example, a provision prohibiting states from issuing a permit or lease for certain oil and gas drilling in the Great Lakes was not reviewed by CBO prior to enactment because it was contained in the Energy and Water Development Appropriations Act of 2002.[18]

Although UMRA does not require an automatic CBO review of provisions not contained in authorizing bills or bills not reported by authorizing committees, CBO told us that it initiates an informal review of provisions in appropriations bills and the results of these informal reviews are communicated to appropriations committee clerks when CBO finds potential mandates in these bills. During these informal reviews, CBO does not estimate costs unless CBO already has cost data from an earlier review or unless Congress requests it. CBO will also review any legislation on request.

UMRA does not require automatic CBO review of provisions added after CBO's initial review. Amendments containing mandates may be added to legislation after CBO issues its statement about whether the legislation contains any federal mandates. UMRA states, however, that "the committee of conference shall insure to the greatest extent practicable" that CBO prepare statements on amendments offered subsequent to its initial review that contain federal mandates.[19] According to CBO's annual report for 2002, three laws were enacted in 2002 that contained federal mandates not reviewed by CBO prior to enactment because they were added after CBO reviewed the legislation. For example, a provision requiring insurers of commercial property to offer terrorism insurance was added to the Terrorism Risk Insurance Act of 2002 after CBO's UMRA review, and thus not identified as a private sector mandate under UMRA prior to enactment.[20]

[18] Pub. L. No. 107-66.

[19] 2 U.S.C. §658c(d).

[20] Pub. L. No. 107-297.

There is one other important caveat regarding legislative provisions for which a CBO UMRA review is not required. The Joint Committee on Taxation (JCT), rather than CBO, has jurisdiction over proposed tax legislation and produces revenue estimates for all such legislation considered by either the House or the Senate. In addition, JCT examines legislative provisions that affect the tax code for federal mandates and estimates their costs. According to a JCT legislative counsel, a statement regarding the existence of federal mandates should be included in the House or Senate committee report. Also, according to CBO, JCT estimates of revenue impacts are included in CBO cost estimates for legislation.

When Provisions Are Reviewed, They Are Subject to Many Definitional Requirements and Exclusions

A provision must meet the formal definition of a mandate and not be not be classified as an "exception" to be identified as a federal mandate. UMRA defines a federal mandate as a provision that would impose an enforceable duty upon state, local, or tribal governments (intergovernmental mandate) or upon the private sector (private sector mandate). Exceptions are defined as enforceable duties that are conditions of federal financial assistance or arise from participation in a voluntary federal program.

UMRA does include as intergovernmental mandates certain conditions on federal assistance programs and reductions in the authorization of appropriations for federal financial assistance and the control of borders under certain conditions.[21] A provision would also meet the definition of a intergovernmental mandate if it relates to an existing federal program of $500 million or more (annually) to state, local, and tribal governments if the provision would increase the stringency of conditions of funding, place caps or reduce the funding and the state, local, or tribal governments cannot modify their financial or programmatic responsibilities regarding the federal program.

A private sector mandate is also a provision that would reduce or eliminate the amount of authorization of appropriations for federal financial

[21]Specifically, UMRA includes reductions in appropriations to state, local, or tribal governments for complying with previously imposed duties unless they are reduced or eliminated by the amount of reduction; or the control of borders by the federal government; or reimbursement to state, local, or tribal governments for various costs associated with illegal aliens, when such a reduction or elimination would result in increased costs to state, local, or tribal governments for costs associated with illegal aliens; except if the state, local, or tribal governments have not cooperated with the federal government to locate, apprehend, and deport illegal aliens.

assistance that would be provided to the private sector for the purposes of ensuring compliance with such an enforceable duty.

UMRA also excludes certain provisions from its application. Specifically, UMRA does not apply to any provision in legislation that:

1. enforces Constitutional rights of individuals;

2. establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

3. requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the federal government;

4. provides for emergency assistance or relief at the request of any state, local, or tribal government or any official of a state, local, or tribal government;

5. is necessary for the national security or the ratification or implementation of international treaty obligations;

6. the President designates as emergency legislation and that Congress so designates in statute; or

7. relates to the old age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 relating to old-age, survivors, and disability insurance).

If provisions are excluded, CBO will state the reason for the exclusion and make no statement regarding mandates in those provisions.

If a provision is not excluded and meets the definition of a federal mandate without exception under UMRA, CBO identifies the provision as a federal mandate under UMRA, and then determines if a cost estimate is feasible. For intergovernmental mandates, if a cost estimate is feasible, the direct costs (to state, local, or tribal governments) of all mandates contained within the legislation must equal or exceed $50 million (in 1996 dollars) in any of the first 5 fiscal years that the relevant mandates would be effective for CBO to determine that the mandate meets or exceeds UMRA's cost

threshold. The same requirements apply for private sector mandates, except that the cost threshold is $100 million (in 1996 dollars) or more. CBO adjusts both the intergovernmental and private sector cost thresholds annually for inflation. If an intergovernmental mandate exceeds the cost threshold, a point of order is available under UMRA. However, if a private sector mandate exceeds the cost threshold, a point of order is not available. If an intergovernmental or private sector mandate is below the applicable threshold, CBO states that a mandate (intergovernmental or private) exists with costs estimated to be below the threshold. Although this highlights the provision as mandate, it does not provide for a point of order under UMRA.

Cost Estimates May Not Be Feasible or Complete

Developing a cost estimate for federal mandates must be feasible, and their direct costs must meet or exceed applicable cost thresholds for CBO to identify them as such under UMRA. However, in some instances, it is not feasible to develop a cost estimate.

CBO indicated in its annual report for 2002 that common reasons why a cost estimate may not be feasible include (1) the costs depend on future regulations, (2) essential information to determine the scope and impact of the mandate is lacking, (3) it is unclear whom the bill's provisions would affect, and (4) language in UMRA is ambiguous about how to treat extensions of existing mandates. If a cost estimate for legislation is not feasible, CBO specifies the kind of mandate it contains, but that the agency cannot estimate its costs. This does not prevent the legislation from moving through the legislative process, but in the case of an intergovernmental mandate, UMRA would still allow a member of Congress to raise a point of order.

CBO reported that it could not estimate the costs of mandates in nine bills that ultimately were enacted during 2001 and 2002. Of these nine laws, seven contained intergovernmental mandates and two contained both private sector and intergovernmental mandates. For example, CBO could not estimate the costs of provisions requiring manufacturers of medical devices to comply with certain labeling and notification conventions and to submit their registrations electronically contained in the Medical Device User Fee and Modernization Act of 2002.[22] CBO stated that since many of the requirements in the act would depend on the future actions of the

[22]Pub. L. No. 107-250.

Secretary of Health and Human Services, CBO could not determine whether their direct costs would exceed UMRA's threshold.

Even if costs can be estimated, UMRA focuses only on the direct costs imposed by federal mandates in legislation. According to UMRA, such costs are limited to spending that results directly from the mandates imposed by the legislation, rather than from the legislation's broad effects on the economy. The direct costs of a federal mandate also include any new revenues that state and local governments are prohibited from raising. While CBO has estimated the indirect costs of some federal mandates, CBO is limited to including only direct costs when determining if the aggregate total costs of federal mandates in legislation meet or exceed the applicable cost thresholds under UMRA. CBO testified in July 2003 that, "federal mandates often have secondary effects, including the effects on prices and wages when the costs of a mandate imposed on one party are passed along to other parties, such as customers or employees." CBO told us that if it determined that indirect costs (including secondary effects) would be significant, it would include the estimate in its UMRA statement, but that its determination of whether a mandate meets or exceeds the applicable thresholds is based only on direct costs. Therefore, although information on indirect costs may be available, legislation with significant total costs (direct and indirect) on nonfederal parties may not be identified as exceeding the cost thresholds under UMRA.

CBO may conclude that legislation contains a federal mandate and is funded because the legislation authorizes funds to be appropriated to carry out or comply with the mandates. However, if the appropriation subsequently provided is less than the amount authorized, the federal mandate's costs may be at or above the threshold.

UMRA contains a mechanism designed to help curtail mandates with insufficient appropriations, but it has never been utilized. UMRA provides language that could be included in legislation that would allow agencies tasked with administering funded mandates to report back to Congress on the sufficiency of those funds.[23] Congress would then have a certain time

[23] 2 U.S.C. § 658d(a)(2)(B).

period to decide whether to continue to enforce the mandate, adopt an alternate plan, or let it expire, meaning the provision comprising the mandate would no longer be enforceable. A CBO official did not recall any legislation ever containing this provision, and our database search has also resulted in no legislation found containing this provision.[24]

CBO Identified Few Laws in 2001 and 2002 as Containing Federal Mandates at or Above UMRA's Cost Threshold, But UMRA May Have an Indirect Effect

Although few laws have been identified as containing federal mandates at or above applicable cost thresholds, there is some evidence that UMRA has a discouraging effect on the enactment of intergovernmental mandates and the magnitude of costs to nonfederal parties in proposed legislation.

Of 377 laws enacted in 2001 and 2002, CBO identified at least 44 containing a federal mandate under UMRA. Of these 44, CBO identified 5 containing mandates at or above the cost thresholds, and all were private sector mandates (see tables 1 and 2 below). From 1996 to 2000, CBO identified 18 mandates (2 intergovernmental and 16 private sector) with costs at or above cost thresholds that became law.

Table 1: Legislation Enacted in 2001 and 2002 that CBO Identified as Containing Federal Mandates Under UMRA

	2001		2002			Both Years		
Number of laws enacted	108		269			377		
Type of mandate(s)	Intergovernmental	Private[a] sector	Intergovernmental	Private sector	Both types	Intergovernmental	Private[a] sector	Both types
Laws with mandate	12	At least 1	8	11	12	20	At least 12	12
Laws with mandate at or above cost threshold	0	1	0	4	0	0	5	0

Source: CBO.

[a]CBO's annual report for 2001 did not separately report the number of laws that contained private sector mandates, but did report 1 law containing a private sector mandate above the cost threshold. Adding the 11 laws that CBO identified as containing private sector mandates in 2002 yields at least 12 laws during 2001 and 2002 that contained private sector mandates (exclusive of laws that contained both private sector and intergovernmental mandates).

[24] Search conducted on Lexis on January 22, 2004, for bills and committee reports containing this provision.

Table 2: Laws Enacted in 2001 and 2002 that CBO Identified as Containing Federal Mandates Meeting or Exceeding UMRA's Cost Threshold

Law	Mandate	Cost information
Aviation and Transportation Security Act of 2001 (Pub. L. No. 107-71)	Imposes a user fee to fund aviation-security programs; requires security enhancements on aircraft; imposes additional security procedures	CBO estimated that the direct costs to air carriers (net of savings) would range from $313 million in 2002 to $1.0 billion in 2006.
Bipartisan Campaign Reform Act of 2002 (Pub. L. No. 107-155)	Bans "soft-money" collections by national political parties Changes procedures for collection and use of campaign contributions	CBO estimated that net direct costs to the private sector (including national political parties and broadcasters) could exceed $300 million in a Presidential election year.
Farm Security and Rural Investment Act of 2002 (Pub. L. No. 107-171)	Requires that some foods carry labels indicating their country of origin Establishes new minimum prices for fluid milk in different regions	CBO estimated that increased costs to milk handlers could total $1.3–1.5 billion annually. Most of this cost would be passed to consumers. CBO estimated that the costs to retailers and suppliers to provide origin labeling could be as high as $1 billion annually.
Job Creation and Worker Assistance Act of 2002 (Pub. L. No. 107-147)	Extends the requirement that health insurers cover mental health and medical benefits equally Limits nonaccrual accounting Alters treatment of indebtedness for S corporations	CBO estimated that the direct costs of extending the requirement to cover mental health would be $270 million in 2002 for the private sector (group health plans) and would increase premiums for group health insurance. CBO estimated the direct costs of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation to be $200 million in 2002.
Anton's Law of 2002 (Pub. L. No. 107-318)	Requires automobile manufacturers to install a lap and shoulder-belt harness in the center-rear seating position of certain vehicles	CBO estimated that auto manufacturers would spend as much as $1 billion to install new belts.

Source: CBO.

UMRA May Have Discouraged the Enactment of Proposed Unfunded Intergovernmental Mandates and Helped Reduce the Costs of Some Mandates

UMRA may have indirectly discouraged the passage of legislation identified as containing intergovernmental mandates at or above UMRA's cost threshold. Since 1996 only three proposed intergovernmental mandates with annual costs above the applicable threshold had become law (an increase in the minimum wage in 1996, a reduction in federal funding for Food Stamps in 1997, and a preemption of state laws on premiums for prescription drug coverage in 2003).

Between 1996 and 2002, CBO reported that 21 private sector mandates with costs over the applicable threshold were enacted. Of these, 8 involved taxes, 4 concerned health insurance, 4 dealt with regulation of industries, 2 affected workers' take home pay, 1 imposed new requirements on sponsors of immigrants, 1 changed procedures for the collection and use of

campaign contributions, and 1 imposed fees on airline travel to fund aviation security.

UMRA may have also aided in lessening the costs of some mandates. From 1996 through 2000, CBO identified 59 proposed federal mandates with costs above applicable thresholds. Subsequent to CBO identification, 9 were amended before enactment to reduce their costs below the applicable thresholds, while 18 mandates were enacted with costs above the threshold, and 32 were never enacted. Although CBO has not done an analysis to determine the role of UMRA in reducing the costs of mandates ultimately enacted, it did state in its report that "it was clear that information provided by CBO played a role in the Congress's decision to lower costs."

There is also some testimonial evidence regarding the effectiveness of UMRA on legislation. CBO stated in its July 2003 congressional testimony that "both the amount of information about the cost of federal mandates and Congressional interest in that information have increased considerably. In that respect, title I of UMRA has proved to be effective." The Chairman of the House Rules Committee was quoted in 1998 as saying that UMRA "has changed the way that prospective legislation is drafted... Anytime there is a markup [formal committee consideration], this always comes up." Although points of order are rarely used, they may be perceived as an unattractive consequence of including a mandate above cost thresholds in proposed legislation. The director of policy and federal relations at the National League of Cities stated, "This is like a shoal out in the water. You know it is there, so you steer clear of it." [25]

[25]See *Congressional Quarterly Weekly Reports*, p. 2318 (Washington, D.C.: Sept. 5, 1998).

Nonfederal Parties Perceived Some Enacted Provisions as Having Unfunded Mandate Implications

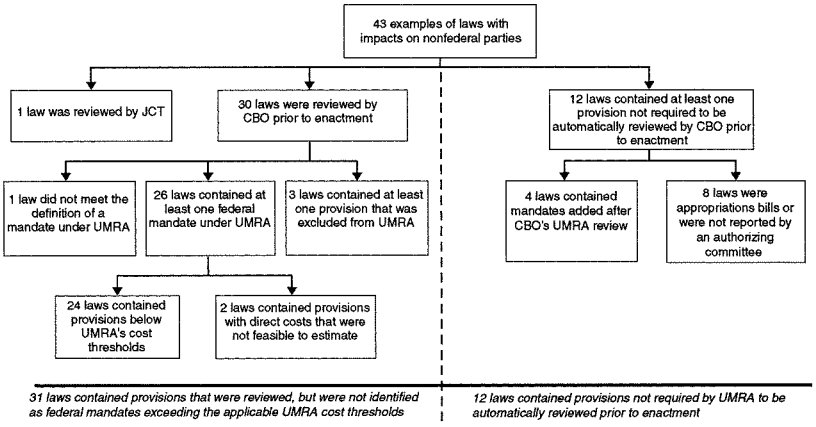
Overall, CBO's annual reports from 2001 and 2002 showed that most proposed legislation did not contain federal mandates as defined by UMRA. Further, most of the proposed legislation with mandates would not have imposed costs exceeding the thresholds set by UMRA.[26] We asked CBO to compile a list of examples from among those laws enacted in 2001 and 2002 that it perceived as having impacts on nonfederal parties but were not identified as containing federal mandates meeting or exceeding UMRA's cost thresholds. We then analyzed these 43 examples to illustrate the application of UMRA's procedures, definitions, and exclusions on legislation that was not identified as containing mandates at or above UMRA's threshold, but might be perceived to have "unfunded mandates" implications. We shared CBO's list of 43 examples with national organizations representing nonfederal levels of government, and they generally agreed that those laws contained provisions perceived by their members as mandates.[27]

For 12 of the 43 examples, an automatic UMRA review was not required of at least some provisions prior to enactment because of the legislative process used to enact the bill, for example, not being reported by an authorizing committee. Out of the remaining 31 laws that did undergo a cost estimate, 24 were found to contain mandates with costs below applicable thresholds, 3 contained provisions that were excluded, 2 contained provisions with direct costs that were not feasible to estimate, 1 contained a provision that did not meet UMRA's definition of a mandate, and 1 was reviewed by JCT and found not to contain any federal mandates (see fig. 2). It should be noted that the number of laws in any of the categories listed do not necessarily correlate with the magnitude of perceived or actual impact on affected nonfederal parties.

[26]For more detailed information on all legislation from 2001 and 2002 identified by CBO as including federal mandates, see CBO's annual reports on its activities under UMRA (www.cbo.gov).

[27] We also shared this list with organizations representing the private sector, but received no response.

Figure 2: How Certain Examples of Laws with Impacts on Nonfederal Parties Were Treated Under UMRA



Source: CBO.

Of the 12 examples of laws with provisions that CBO was not required to review prior to enactment, CBO later determined how they would have been characterized under UMRA: 5 laws contained mandates with direct costs below UMRA's thresholds, 4 laws contained mandates with direct costs that could not be estimated, 1 was excluded under UMRA for national security so would not be reviewed for the presence of mandates, 1 did not meet the definition of a mandate, and 1 had some provisions with costs below the threshold and some provisions excluded (again, for national security).[38] (See app. II for more detailed information on the 43 examples.)

[38]Among the four laws containing mandates for which direct costs could not be estimated, some provisions had cost(s) estimated to be below the applicable cost threshold and others had cost(s) that were uncertain.

Some Legislation Had Potentially Significant Impacts on Nonfederal Parties

Although cost estimates of the full impact (including direct and indirect costs) are not available for all 43 examples discussed previously, table 3 describes 10 laws among the 43 that we consider important to highlight and/or have multiple uncertainties surrounding the magnitude of their potential impacts on nonfederal parties.

Table 3: Selected Examples of Statutes with Potentially Significant Impacts on Nonfederal Parties

GAO ID	Rule	Description of potential impacts on nonfederal parties	Reason(s) the statute was not identified as containing a federal mandate exceeding costs thresholds
L1	Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16)	Increases tax credits and phases out the estate and generation-skipping transfer tax, which impacts state tax revenues.	Did not meet the definition of a mandate (no enforceable duty on state, local, or tribal governments or the private sector). JCT determined that the act did not contain any intergovernmental mandates or revenue raising provisions in excess of UMRA thresholds.
L7	USA PATRIOT Act of 2001 (Pub. L. No. 107-56)	Multiple provisions preempting state and local laws in regard to disclosure of financial and consumer reporting information, and liability laws relating to education agencies and institutions. Restricts states' authority to issue licenses for operating motor vehicles to transport hazardous materials, and prohibits certain parties from shipping or receiving biological toxins in interstate or foreign commerce.	Some provisions were not reviewed prior to enactment because mandates were added after CBO review. Some provisions were excluded for national security. After enactment, CBO estimated that provisions that were mandates had costs below thresholds.
L18	No Child Left Behind Act of 2001 (Pub. L. No. 107-110)	Imposes various requirements including state standards and assessments, progress requirements, and other provisions, and provides grants associated with these requirements.	Did not meet the definition of a mandate because the requirements were a condition of federal financial assistance.
L22	Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188)	Contains multiple provisions requiring assessments of water supplies and other measures including extending prescription drug application fees, and registration requirements for food processors.	Provisions were not reviewed prior to enactment because an authorizing committee did not report them. After enactment, CBO stated some provisions were funded, some were estimated to be below thresholds, and the costs of others were uncertain.
L25	Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204)	Established the Public Company Accounting Oversight Board (PCAOB), and required new financial disclosures of public companies.	CBO stated the costs of several provisions were uncertain, but the operations of the PCAOB and another standard-setting body would be $80 million per year and would be funded by fees assessed on public companies.

(Continued From Previous Page)

GAO ID	Rule	Description of potential impacts on nonfederal parties	Reason(s) the statute was not identified as containing a federal mandate exceeding costs thresholds
L32	Medical Device User Fee and Modernization Act of 2002 (Pub. L. No. 107-250)	Allows the assessment of user fees from manufactures of medical devices to defray the cost to the Food and Drug Administration of administering the approval of devices. Requires medical device manufacturers to comply with certain labeling and notification conventions and to submit their registrations electronically.	CBO stated that some costs were below the threshold and others were uncertain because they depended on the future actions of a government agency.
L34	Help America Vote Act of 2002 (Pub. L. No. 107-252)	Places a number of requirements on state and local governments regarding federal elections including standards for voting systems, computerized databases, and procedural development for provisional voting. The act also authorized grants for these requirements.	Some provisions excluded because they enforced the constitutional rights of individuals. For some other provisions, CBO stated that any costs to state, local, or tribal governments would be incurred voluntarily from participating in grant programs.
L36	Homeland Security Act of 2002 (Pub. L. No. 107-296)	Contains provisions including the preemption of state and local laws in regard to disclosure of information, and requirements for training for airlines.	CBO estimated some costs would be below the threshold and others were uncertain. A mandate requiring air carriers to provide flight attendants with a method of communicating with pilots was added after CBO review, and thus its costs were not estimated prior to enactment. After enactment, CBO stated the costs of this mandate were uncertain.
L37	Terrorism Risk Insurance Act of 2002 (Pub. L. No. 107-297)	Requires commercial property insurers to offer terrorism insurance, and requires insurers and policyholders to pay assessments.	CBO estimated some costs were below thresholds, while others were uncertain. The mandate requiring insurers to offer terrorism insurance was added after CBO review, and thus its costs were not estimated. After enactment, CBO stated that the costs of this mandate were uncertain.
L41	Veterans Benefits Act of 2002 (Pub. L. No. 107-330)	Establishes a temporary exemption of some National Guard members from certain financial obligations.	CBO stated the costs of this mandate were uncertain since the number of National Guard members called to active duty in the future is uncertain. CBO stated other costs were below applicable thresholds.

Source: GAO.

The following paragraphs provide more detailed descriptions regarding 2 of these 10 examples. One law contained a definitional exception and was not identified as containing any mandates. The other law was identified as containing both intergovernmental and private sector mandates.

The No Child Left Behind Act is a well-known example that has intergovernmental implications, but was not identified as a federal

mandate under UMRA. No Child Left Behind provides federal grants for a host of education programs, requires states to design and implement standards and assessments, and provides financial penalties for states that fail to achieve certain standards over 2 consecutive years. CBO stated that the bill does not contain any federal mandates as defined by UMRA because any costs incurred by state, local, or tribal governments would result from complying with conditions of financial aid, a definitional exception under UMRA.

Though it does not meet the UMRA definition of a federal mandate, No Child Left Behind is still perceived as an "unfunded mandate" by some interested parties. In a recent radio advertisement, the president of the National Education Association described this act as a "huge unfunded federal mandate."[29] In response to our query, NCSL listed No Child Left Behind as one of the most important statutes that was not identified as a federal mandate, but should have been. A recent newspaper article identified 15 states with resolutions, bills, or studies that "protest" in one form or another against the act.[30] According to the article, some states claim that significant impacts resulting from No Child Left Behind may include the loss of funds if schools fail to make enough progress, extra costs for tutoring and teacher training, and costs associated with possible longer school days and summer school, all of which may be required to meet standards set by the act.

Another example among the 10 laws is the Sarbanes-Oxley Act of 2002. CBO identified this law as containing both intergovernmental and private sector mandates. The intergovernmental mandate's costs were estimated to not exceed the cost threshold, but the private sector mandates' costs were uncertain, and could possibly exceed UMRA's thresholds. Among the mandates contained in the law were provisions such as: (1) allowing PCAOB to assess fees on public companies, (2) establishing new standards for auditors and audit committees of public companies, (3) requiring public corporations to make enhanced financial disclosures to the Securities and

[29]National Education Association radio advertisement, *First Order of Business* (Washington, D.C.: January 2004).

[30]See, *Washington Post*, "More States Are Fighting 'No Child Left Behind Law'" (Washington, D.C.: Feb. 19, 2004): A3.

Exchange Commission (SEC), (4) requiring notices of blackout periods[31] from pension plan administrators to investors, and (5) prohibiting insider trades during pension fund blackout periods if stock was acquired based on connection of service as a director or executive officer.

CBO indicated that the only costs associated with Sarbanes-Oxley's federal mandates that the agency could estimate were for the notification of blackout periods by pension administrators, and the costs of operating PCAOB. CBO estimated the costs of providing notification of blackout periods fell below the UMRA thresholds but provided no quantified estimate, and CBO estimated the cost of running PCAOB and an associated standard-setting body to be approximately $80 million per year which would be funded from fees assessed on public companies. CBO stated it was uncertain if the rest of the mandates contained in Sarbanes-Oxley exceeded UMRA's cost threshold of $115 million adjusted for inflation.

Identification of Federal Mandates in Rules under Title II

Procedurally, the identification of federal mandates under title II of UMRA is simpler than under title I. Although regulatory agencies generally are to assess the intergovernmental and private sector effects of all their actions, under UMRA title II they only need to publicly identify and prepare UMRA "written statements" on those rules that the agencies believe include a federal intergovernmental or private sector mandate that may result in expenditures of $100 million or more (adjusted for inflation) in any year. However, there are 14 definitional exceptions, exclusions, or other restrictions applicable to the identification of federal mandates in rules, compared to 10 that are applicable to identifying mandates in legislation. Agencies identified 9 of the 122 major and economically significant final rules published in 2001 and 2002 as containing federal mandates as defined by UMRA. However, based on our review of the published rules, we determined that 65 of the remaining rules imposed new requirements on nonfederal parties. Agencies cited, or could have cited, a variety of reasons that these 65 rules did not contain federal mandates under UMRA. Nevertheless, at least 29 of the 65 rules appeared to have significant financial impacts on affected nonfederal parties of $100 million or more in any year.

[31]Blackout periods are the specified time periods when trades (purchase, sale, acquisition, or transfer of any equity security) are prohibited.

UMRA Procedures for Rules Are Less Complex than for Legislation, But More Restrictions Apply to Identifying Federal Mandates

UMRA's process of identifying and reporting on rules with federal mandates is more straightforward than that for legislation. UMRA generally directs agencies to assess the effects of their regulatory actions on other levels of government and the private sector. However, the agencies only need to identify and prepare written UMRA statements on those rules that the agencies have determined include a federal mandate that may result in expenditures by nonfederal parties of $100 million or more (adjusted for inflation) in any year. Thus, unlike CBO's reviews of proposed legislation, one cost threshold applies to both intergovernmental and private sector mandates in rules, and there is no public identification of potential federal mandates in rules before agencies determine whether such mandates exceed the threshold. As is the case for legislation, UMRA contains many definitions and exclusions that affect the extent to which agencies' rules are considered to have federal mandates at or above the threshold.

The three definitional provisions and seven general exclusions from UMRA that we previously identified as applicable to legislation also apply to federal rules. However, there are four additional restrictions to the identification of federal mandates in rules (i.e., in an UMRA statement):

- UMRA's requirements do not apply to provisions in rules issued by independent regulatory agencies.[32]
- Preparation of an UMRA statement, and related estimate or analysis of the costs and benefits of the rule, is not required if the agency is "otherwise prohibited by law" from considering such an estimate or analysis in adopting the rule.

[32]According to the Paperwork Reduction Act, these include agencies such as the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Trade Commission, the Nuclear Regulatory Commission, the Securities and Exchange Commission, and "any other similar agency designated by statute as a Federal independent regulatory agency or commission" (44 U.S.C. 3502(5)).

- The requirement to prepare an UMRA statement does not apply to any rule for which the agency does not publish a general notice of proposed rulemaking in the *Federal Register*. This means that UMRA does not cover interim final rules and any rules for which the agency claimed a "good cause" or other exemption available under the Administrative Procedure Act of 1946 to issue a final rule without first having to issue a notice of proposed rulemaking.[33]

- UMRA's threshold for federal mandates in rules is limited to *expenditures*, in contrast to title I which refers more broadly to direct costs. Thus, a rule's estimated annual effect might be equal to or greater than $100 million in any year—for example, by reducing revenues or incomes in a particular industry—but not trigger UMRA if the rule does not compel nonfederal parties to spend that amount. Under title I, though, the direct costs of a mandate in legislation also include any amounts that state and local governments are prohibited from raising in revenues to comply with the mandate. However, as in reviews of legislation, indirect costs of rules are not considered when determining whether a mandate meets or exceeds UMRA's threshold.

Two of these restrictions on UMRA's scope in the regulatory process are essentially procedural. If a rule's path to issuance was through an independent regulatory agency or a final rule with no prior proposed rule, any "mandate" included in the rule would not be subject to identification and review under UMRA.

OIRA Monitors Agencies' Compliance with Title II Requirements

OIRA is responsible for the centralized review of significant regulatory actions published by executive branch agencies, other than independent regulatory agencies. Under Executive Order 12866, which was issued in September 1993, agencies are generally required to submit their significant draft rules to OIRA for review before publishing the rules. As part of this regulatory review process, OIRA monitors agencies' compliance with UMRA. In the submission packages for their draft rules, federal agencies are to designate whether they believe the rule may constitute an unfunded

[33]5 U.S.C. 553. See also U.S. General Accounting Office, *Federal Rulemaking: Agencies Often Published Final Actions Without Proposed Rules*, GAO/GGD-98-126 (Washington, D.C.: Aug. 31, 1998).

mandate under UMRA. According to OIRA representatives, consideration of UMRA is then incorporated as part of these regulatory reviews, and draft rules are expected to contain appropriate UMRA certification statements.[34]

OIRA's guidance to agencies notes that the analytical requirements under Executive Order 12866 are similar to the analytical requirements under UMRA, and thus the same analysis may permit agencies to comply with both analytical requirements.[35] However, OIRA representatives pointed out that UMRA might also require agency consultations with state and local governments on certain rules, and this is something that OIRA will look for evidence of when it does its regulatory reviews. The officials also pointed out that UMRA provides OIRA a statutory basis for requiring agencies to do an analysis similar to that required by the executive order (which can be rescinded or amended at the discretion of the President).

Agencies Identified Few Final Rules Published in 2001 and 2002 as Containing Federal Mandates

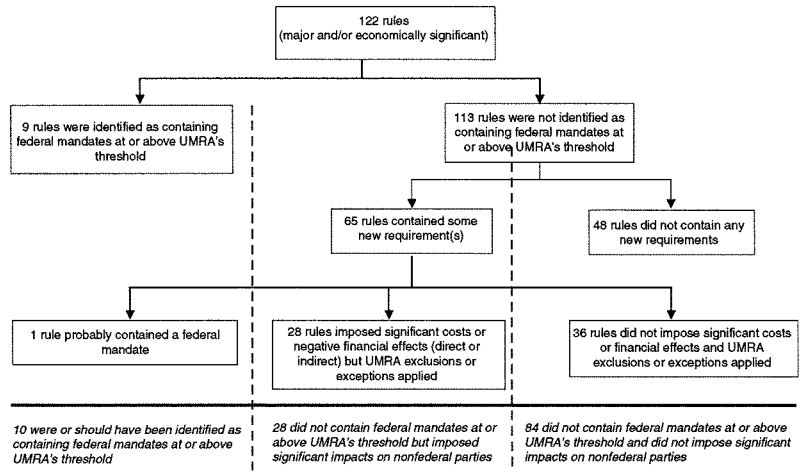
Federal agencies identified 9 of the 122 major and/or economically significant final rules that federal agencies published in 2001 or 2002 as containing federal mandates under UMRA (see fig. 3).[36]

[34] OIRA also checks for related statements and certifications from agencies on the Regulatory Flexibility Act (5 U.S.C. 601-612), which requires agencies to assess the impact of forthcoming regulations on "small entities," Executive Order 13132 which requires agencies to assess the federalism implications of their regulations, and other requirements that might be triggered by the nature of the draft rule.

[35] As pointed out in our previous report on UMRA (GAO/GGD-98-30), the committee reports for the Senate bill that ultimately resulted in UMRA indicate that Congress was aware that, in many respects, the bill duplicated existing requirements, including those already required under Executive Order 12866.

[36] Although we refer broadly to "final rules," these also included other regulatory actions with legal effect (such as interim rules, temporary rules, and some notices), in contrast to proposed rules that do not have legal effect.

Figure 3: Few Final Rules Published in 2001 and 2002 Contained Federal Mandates Under UMRA



Source: GAO.

Only one of the nine rules that agencies identified as containing federal mandates under UMRA—EPA's enforceable standard for the level of arsenic in drinking water systems—included an intergovernmental mandate. The remaining rules imposed private sector mandates:

- four Department of Energy rules that amended energy conservation standards for several categories of consumer products, including clothes washers and heat pumps;
- three EPA rules that adopted emission standards to reduce air pollution from various sources, including paper and pulp mills and heavy-duty highway engines and vehicles; and

- a Department of Transportation (DOT) rule that established a new federal motor vehicle safety standard that required tire pressure monitoring systems, controls, and displays.

In each of these final rules, the agencies addressed the applicable UMRA analytical and reporting requirements. (See app. III for more detailed information on these rules.) The limited number of rules identified as federal mandates during 2001 and 2002 is consistent with the findings in our 1998 report on UMRA and in OMB's annual reports on agencies' compliance with title II.[37]

Most Often Rules with Financial Effects on Nonfederal Parties Did Not Trigger UMRA's Requirements Because They Did Not Require Expenditures at or Above UMRA's Threshold

Of the 113 major and/or economically significant rules not identified as including federal mandates under UMRA, we determined that 48 contained no new requirements that would impose costs or have a negative financial effect on state, local, and tribal governments or the private sector. Often, these were economically significant or major rules because they involved substantial transfer payments from the federal government to nonfederal parties. For example, the Department of Agriculture (USDA) published a final rule that expanded loans, loan deficiency payments, and working assistance loans for certain agricultural commodities, such as cotton and honey, and was expected to increase federal outlays by about $1.1 billion annually. The Department of Health and Human Services (HHS) published a notice updating the Medicare payment system for home health agencies that was estimated to increase federal expenditures to those agencies by $350 million in fiscal year 2002.

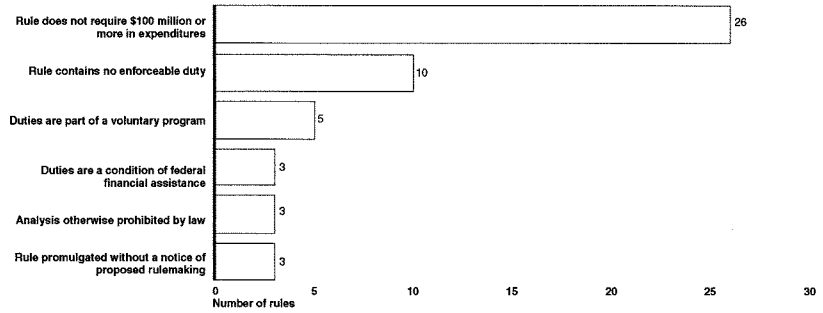
However, we determined that 65 of the 113 rules contained new requirements that would impose costs or result in other negative financial effects on state, local, and tribal governments or the private sector. We shared this list of rules with national organizations representing other levels of government affected by these rules.[38] Representatives of those organizations generally confirmed that all of the 65 rules were perceived by their members to have at least some "unfunded mandates" implications.

[37]See GAO/GGD-98-30.

[38]We also shared our lists with organizations representing the private sector, but received no formal responses from them.

In 41 of the 65 published rules, the agencies cited a variety of reasons for determining that these rules did not trigger UMRA's requirements (see fig. 4). There were 26 rules in which the agencies stated that the rule would not compel expenditures at or above the UMRA threshold and 10 rules in which the agencies stated that rules imposed no enforceable duty. For 24 of the 65 rules, the agency did not provide a reason. However, independent regulatory agencies, which are not covered by UMRA, published 12 of these 24 rules, and there is no UMRA requirement for covered agencies to identify the reasons that their rules do not contain federal mandates.

Figure 4: Agencies' Reasons for Determining that Their Rules Did Not Trigger UMRA's Requirements



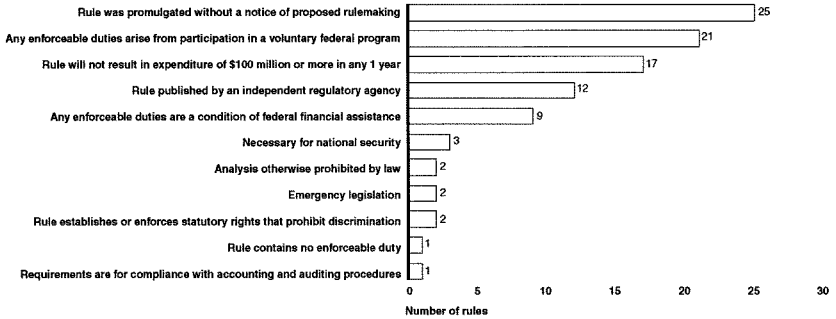
Source: GAO.

Note: Agencies cited more than one reason for nine of the rules.

Our review of the 65 rules indicated that agencies did not cite all of the applicable reasons they could have for determining that the rules did not trigger UMRA's requirements (see fig. 5). For example, although in only 3 of the 65 rules did the agencies identify the absence of a notice of proposed rulemaking as the reason the rule did not trigger UMRA, this reason applied to another 25. Similarly, although 5 rules cited the exclusion that any enforceable duties would occur as a consequence of participation in a voluntary federal program, another 21 rules could have claimed this exclusion. Between what agencies cited or could have cited, 47 of the 65 rules (72 percent) had more than one applicable reason. (For each of the

65 rules, app. IV identifies the reasons that agencies cited or could have cited for their rules not triggering UMRA.)

Figure 5: Reasons that Agencies Could Have Claimed for Their Rules Not Triggering UMRA



Source: GAO.

Note: More than one unclaimed reason applied to 29 rules.

Some Rules that Did Not Trigger UMRA Had Potentially Significant Effects on Nonfederal Parties

At least 29 of the 65 rules with new requirements appeared to result in significant costs or other negative financial effects on state, local, and tribal governments or the private sector. In these 29 rules, the agencies either explicitly stated that they expected the rule could impose significant costs or published information indicating that the rule could result, directly or indirectly, in financial effects on nonfederal parties at or above the UMRA threshold. (Appendix V provides more detailed information on each of the 29 rules that were not identified as federal mandates under UMRA, but that could impose significant costs or have other negative financial effects on state, local, and tribal governments or the private sector.)

These 29 rules not identified as federal mandates under UMRA, but with significant financial impacts on nonfederal parties, can be roughly categorized as follows:

- 9 that imposed costs on individuals—a category included in UMRA's definition of the private sector—exceeding $100 million in any year;[39]
- 5 that reduced the level of federal payments to nonfederal parties by more than $100 million in any year;
- 4 with substantial indirect costs or economic effects on nonfederal parties;
- 4 from independent regulatory agencies that imposed substantial fees or other costs on regulated entities;
- 3 published by DOT on aviation security in the aftermath of the September 11, 2001, terrorist attacks, which the agency noted "may impose significant costs," although it did not prepare quantified estimates;
- 2 with voluntary options that might increase Medicaid costs to states by over $125 million in some years;
- 1 amending the Federal Acquisition Regulations that could result in nonfederal costs ranging from $92 million to $377 million annually, depending on the "uncertainty of manufacturers to distribute these costs over the general population;" and
- 1 USDA rule imposing private-sector costs to limit retained water in raw meat and poultry products.

Table 4 provides more detailed information about selected examples from among the 29 rules.

[39]UMRA section 421(9) defines the private sector as including all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but not including state, local, or tribal governments.

Table 4: Selected Examples of Final Rules with Significant Impacts on Nonfederal Parties that Did Not Trigger UMRA

GAO ID	Rule	Description of potential impacts on nonfederal parties	Reason(s) the rule did not trigger UMRA
R1	EPA final rule on identification of dangerous levels of lead in most pre-1978 housing and child-occupied facilities	The rule set standards for the identification of lead-based paint hazards, residential lead dust cleanup levels, and amendments to dust and soil sampling requirements. EPA estimated that the total costs of actions that might be taken based on these hazard standards (over a 50-year span) would be $69 billion for the final dust and soil standards, $20 billion for paint interventions, and $14 billion for testing.	EPA determined that the rule "in and of itself" did not mandate any action (no enforceable duty) or directly impose any costs (require expenditures of $100 million or more in any year).
R11	HHS final rule on revision to Medicaid upper payment limit requirements	The rule revised Medicaid's upper payment limits for hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services. The revisions would potentially reduce the federal share of payments made by states to these facilities by nearly $55 billion over 10 years.	The rule did not require states to spend $100 million or more in any year.
R20	Department of Commerce emergency interim rule to implement Steller sea lion protection measures in fisheries of the exclusive economic zone off Alaska	The rule restricted times and places for fishing. The agency estimated that, as a result of these restrictions, there could be a reduction in fishing industry gross revenues of $225 million to $401 million per year.	The rule did not require the private sector to spend $100 million or more in any year, and there was no notice of proposed rulemaking.
R107	SEC final rule accelerating filing deadlines for annual and quarterly reports and adding requirements for additional reporting and disclosure	SEC stated that these amendments would increase costs to some affected reporting companies. In the proposed rule, SEC estimated that the initial costs could range from $29.9 million to $11.9 billion, and the on-going annual costs could range from $75.5 million to $686.8 million.	The rule was issued by an independent regulatory agency.
R115	HHS notice on Medicare program monthly actuarial rates and monthly supplementary medical insurance premium rate	Increased the cost of premiums for individuals enrolled in Medicare's Supplemental Medical Insurance (SMI), with an estimated cost to enrollees of over $2 billion for 2003.	The agency said that this notice had "no consequential effect" on state, local, or tribal governments and that the private sector costs fell below UMRA's threshold as well. Also, there was no notice of proposed rulemaking, and SMI is a voluntary federal program.

Source: GAO.

We determined that 1 of the 29 rules, a USDA rule on retained water in raw meat and poultry products, probably was a federal mandate under UMRA. The rule establishes a requirement of zero retained water, unless the water retention is unavoidable in processes necessary to meet food safety

requirements. USDA did not mention UMRA in the rule but estimated that, if extensive modifications to chilling systems were needed throughout the poultry industry, the fixed costs could run to "well over $100 million." USDA provided only a "lower bound" estimate of $110 million in private-sector costs for the first year of implementation (representing the costs of reducing retained water in the range of 1 percent to 1.5 percent). While that estimate was under the $113 million UMRA threshold (adjusted for inflation) in 2001, the agency did not quantify median or upper bound cost estimates, which reference to a lower bound estimate implies. Because the lower bound estimate was so close to the UMRA threshold, it is reasonable to assume that a median or upper bound estimate would probably have equaled or exceeded the threshold, and the rule would have been a private sector mandate under UMRA. No other UMRA exclusion appeared to apply to this rule. However, to address the requirements of Executive Order 12866 the agency provided an analysis of the costs and benefits of the rule, as well as an analysis of the regulatory alternatives considered. As noted earlier, OIRA guidance points out that the same analysis may permit agencies to comply with both the executive order's and UMRA's requirements.

For the remaining 36 of the 65 rules, either the agencies provided no information on the potential costs and economic impacts on nonfederal parties or the costs imposed on them were under the UMRA threshold. For example, a Federal Emergency Management Agency interim final rule on a grant program to assist firefighters included some cost-sharing and other requirements on the part of grantees participating in this voluntary program. In return for cost-sharing of $50 million to $55 million per year, grantees could obtain, in aggregate, federal assistance of approximately $345 million. Similarly, USDA's interim rule on the noninsured crop disaster assistance program imposed new reporting requirements and service fees on producers estimated to cost at least $15 million. But producers were expected to receive about $162 million in benefits.

Even when the requirements of UMRA did not apply, agencies generally provided some quantitative information on the potential costs and benefits of the rule to meet the requirements of Executive Order 12866. Rules published by independent regulatory agencies were the major exception because they are not covered by the executive order. In general, though, the type of information that UMRA was intended to produce was developed and published by the agencies even if they did not identify their rules as federal mandates under UMRA.[40]

Conclusions

UMRA was intended to restrain the imposition of unfunded federal mandates on state, local, and tribal governments and the private sector, primarily by providing more information and focusing more attention on potential federal mandates in legislation and regulations. There is some evidence that the information provided under UMRA and the spotlight that information places on potential mandates may have helped to discourage or limit federal mandates. CBO's annual reports indicate that, at least with regard to the legislative process, UMRA sometimes does have such an indirect preventive effect.

However, there are multiple ways that both statutes and final rules containing what affected parties perceive as "unfunded mandates" can be enacted or published without being identified as federal mandates with costs or expenditures at or above the thresholds established in UMRA. Our review demonstrated that many statutes and final rules with potentially significant financial effects on nonfederal parties were enacted or published without being identified as federal mandates at or above UMRA's thresholds. Further, if judged solely by their financial consequences for nonfederal parties, there was little difference between some of these statutes and rules and the ones that had been identified as federal mandates with costs or expenditures exceeding UMRA's thresholds. Although the examples cited in our review were limited to a 2-year period, our findings on the limited effect and applicability of UMRA are similar to the data reported in previous GAO, CBO, and OMB reports on the implementation of UMRA. The findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and

[40]One exception might be that OMB's guidance to agencies for regulatory analyses prepared under Executive Order 12866 does not include instructions regarding distributional effects of regulations that are as specific as those called for in UMRA. See 2 U.S.C. §1532(a)(3).

subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected nonfederal parties.

This report provides descriptive information and analysis regarding UMRA's implementation, focusing specifically on the coverage and identification of federal mandates under UMRA. We are making no specific recommendations for executive action nor identifying any specific matters for consideration by Congress at this time. As requested, we will be continuing our work on other aspects of UMRA.

As agreed with your office, unless you publicly announce the contents of this report earlier, we will not distribute it until 30 days from the date of this letter. We will then send copies of this report to the Director of OMB and will provide copies to others on request. It will also be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-6806 or daltonp@gao.gov. Key contributors to this report were Curtis Copeland, Naved Qureshi, Michael Rose, and Tim Bober.

Patricia A. Dalton

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Director
Strategic Issues

Appendix I

Objectives, Scope, and Methodology

In this report, you asked us to describe and provide examples of how federal statutes and rules with potentially significant financial implications for state, local, and tribal governments or the private sector may be enacted or issued without being identified as federal mandates under titles I and II of UMRA, which respectively address the legislative and regulatory processes. Our specific reporting objectives were to:

1. Describe the applicable procedures, definitions, and exclusions for identifying federal mandates in statutes and rules under UMRA.

2. Identify statutes and final rules that contained federal mandates under UMRA.

3. Provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as "unfunded" mandates, and the reasons these statutes and rules were not federal mandates under UMRA.

As agreed with your staff, we focused on statutes enacted and final rules published during 2001 and 2002 to address the second and third objectives.

To address the first objective, regarding the procedures, definitions, and exclusions applicable to the identification of federal mandates under titles I and II of UMRA, we reviewed the act and other related guidance documents and reports on the implementation of UMRA. These other related documents included the various annual reports on UMRA prepared by CBO and OMB, materials used in a congressional parliamentary process training seminar on unfunded mandates and points of order, and OMB's March 1995 guidance to federal agencies on the implementation of title II. We also interviewed persons knowledgeable about the implementation of UMRA in congressional offices, CBO, and OMB.

To address the second and third objectives regarding statutes that were and were not identified as federal mandates under title I of UMRA, we consulted with the CBO officials responsible for preparing UMRA statements on individual bills. The CBO officials identified the 5 statutes enacted during 2001 and 2002 that contained federal mandates at or above UMRA's cost thresholds. At our request, they also identified 43 examples of statutes enacted during that 2-year period that they believed, based on professional judgment, had potential intergovernmental or private sector impacts but had not been identified as containing mandates at or above UMRA's thresholds. (We did not ask CBO to compile a comprehensive list

of all statutes passed by the 107th Congress that may have had intergovernmental or private sector impacts.) To assure that this set of examples was relevant for our purposes and to confirm CBO's characterization of the potential impacts of these statutes and the reasons why provisions were or were not identified as federal mandates, we reviewed available source material on each of these statutes. In particular, we examined the detailed descriptions and information on each statute that were contained in CBO mandate statements, cost estimates, annual reports, and testimony, as well as other relevant information on each statute from the Legislative Information System of Congress.

To address the second and third objectives regarding final rules that were and were not identified as federal mandates under title II of UMRA, we conducted a content analysis of all 122 major and/or economically significant final rules that agencies published in 2001 or 2002 to identify the rules that could have significant financial effects on nonfederal parties and determine why they were or were not considered federal mandates.[1] We chose not to review other rules because, by definition, they were less likely to have significant effects on nonfederal parties, although arguably some could have had a significant effect. To arrive at our final set of 122 rules, we relied primarily on the list of 119 major rules published during the 2-year period, as identified in GAO's compilation of reports on federal agency major rules.[2] Our Office of General Counsel takes several steps to assure the completeness of the list of major rules; however, to generally corroborate that this list of major rules included those that could have significant effects on nonfederal parties, we also compared GAO's major rules list to the rules identified as "economically significant" by the

[1]The terms "major" and "economically significant" rules are defined, respectively, by the Congressional Review Act and Executive Order 12866. However, both definitions are similar and refer generally to rules that will have an annual effect on the economy of $100 million or more or raise other significant policy issues.

[2]The Congressional Review Act requires agencies to submit their major rules to Congress and to us before those rules can take effect. We are required to prepare a report on each major rule to assure that the agency has complied with procedural requirements regarding cost-benefit analysis, regulatory flexibility analysis, and specified sections of UMRA. Pursuant to the Congressional Review Act, we provide these reports on major rules to the standing committees of jurisdiction of both Houses of Congress. The database is publicly available at www.gao.gov under GAO Legal Products.

Regulatory Information Service Center (RISC).[3] As a result of this exercise, we supplemented our initial list with 3 additional rules.[4] We then reviewed the *Federal Register* notices that agencies published for all 122 of these rules to confirm that they were major and/or economically significant and to identify whether, and to what extent, they imposed requirements on nonfederal parties. On the basis of our comparisons and reviews, we concluded that these data were sufficiently reliable for our purposes.

Because we were asked to identify rules that affected parties might perceive as intergovernmental or private sector mandates, even if not technically identified as such under UMRA, our initial screening used a broader definition of a potential mandate than delineated in UMRA. For this screening, we used the information in the published rules to make a team consensus judgment on whether a nonfederal party (state, local, and tribal governments or the private sector) might consider provisions of the rule to impose requirements or mandates that had at least some costs or negative financial effects. In particular, we focused on identifying rules that imposed new requirements and costs (direct or indirect) on affected parties. For each rule identified as including a potential "mandate," team members then independently reviewed the text of each rule to code the reasons agencies may have cited that their rules were not federal mandates under UMRA, as well as other reasons available under UMRA that might have applied to these rules. The team members generally concurred in their initial coding, and, based on team discussions, we were able to resolve any differences and determine a team consensus judgment on the appropriate coding for each rule.

To provide corroboration that the examples of statutes CBO identified and final rules we identified to address objective three were perceived by

[3]RISC is part of the General Services Administration, but works closely with OMB to provide the President, Congress, and the public with information on federal regulatory policies. Its major project has been to coordinate the development and publication of the *Unified Agenda of Federal Regulatory and Deregulatory Actions*, which is published twice a year.

[4]Discrepancies between the two lists were expected because, although most rules defined as "major" under the Congressional Review Act are also defined as "economically significant" under Executive Order 12866, there is not an exact match. The major rules include those published by independent regulatory agencies not covered by the executive order, and rules from nonindependent agencies may be identified as economically significant for purposes of OMB regulatory reviews without necessarily triggering the $100 million impact threshold that would define them as major.

affected parties as having "unfunded mandate" implications, we shared our draft lists of examples with national organizations representing other levels of government.[5] These organizations included the National Association of Counties, National Conference of State Legislatures, National Governors Association, the National League of Cities, and the U.S. Conference of Mayors. Their representatives generally concurred that the statutes and rules we focused on were perceived by their members to have "mandate" implications and that we had not left out any major examples from our time period that they believed were important.

One limitation of our review was that, in agreement with your staff, we focused on statutes enacted and final rules published during 2001 and 2002. Those statutes and rules may not reveal all of the ways in which provisions with significant cost effects might not be identified as federal mandates. Neither CBO nor we reviewed the many bills that were not enacted and rules that were proposed, but not finalized, during 2001 and 2002. However, our findings and the specific examples we identified were sufficient to illustrate how statutes and rules with potentially significant effects on nonfederal parties might not be identified as federal mandates under UMRA. In addition, our findings for this review were consistent with those in prior GAO, CBO, and OMB reports on the implementation of UMRA. In general, we also recognize that perceived "unfunded mandates" could also result from other nonstatutory, nonregulatory federal actions, such as Homeland Security threat level adjustments. However, UMRA does not cover such nonstatutory or nonregulatory actions, so they were out of the scope of this review.

We conducted our review from August 2003 through February 2004 in Washington, D.C., in accordance with generally accepted government auditing standards. On April 22, 2004, we provided a draft of this report to the Director of the Office of Management and Budget (OMB) for his review and comment. On April 29, 2004, an OMB representative notified us that OMB had no comments on our report. We also provided the draft to CBO officials for their technical review. We incorporated their comments and suggestions as appropriate.

[5]We also shared our lists with organizations representing the private sector, but received no formal responses from them.

Appendix II

Examples of Statutes with Impacts on Nonfederal Parties that Were Not Mandates at or Above UMRA Thresholds

CBO provided us the following examples of laws enacted in 2001 and 2002 that it believed had impacts on nonfederal parties, but were not identified as federal mandates at or above applicable cost thresholds (see table 5). A number of groups representing nonfederal parties generally agreed that these examples were statutes perceived to have "unfunded mandate" implications.

Table 5: Examples of Statutes with Impacts on Nonfederal Parties that Were Not Identified as Federal Mandates at or above Applicable Cost Thresholds

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L1	Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16)	(Intergovernmental) Increases the unified tax credit and reduces the tax rates to phase out the estate and generation-skipping transfer tax.	Did not meet the definition of a mandate (no enforceable duty on state, local, or tribal governments or the private sector). JCT determined that the act did not contain any intergovernmental mandates or revenue raising provisions in excess of UMRA thresholds.
L2	Supplemental Appropriations Act, 2001 (Pub. L. No. 107-20)	(Intergovernmental) Places new reporting requirements on the District of Columbia.	CBO did not review provision prior to enactment. Not contained in an authorizing bill. Contained in an appropriations bill. CBO estimated costs were below threshold.
L3	ILSA Extension Act of 2001 (Pub. L. No. 107-24)	(Private Sector) Requires the President to impose certain sanctions on U.S. entities or foreign companies that have invested more than a specified amount of money in developing the petroleum and natural gas resources of Libya or Iran. The act allows the President discretion to make exceptions in applying such sanctions.	CBO estimated costs were below threshold.
L4	Authorization for Use of Military Force (Pub. L. No. 107-40)	(Private Sector) The act is intended to constitute specific statutory authorization to use U.S. armed forces within the meaning of the War Powers Resolution.	Excluded for national security. CBO did not review provision prior to enactment because an authorizing committee did not report it.
L5	Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42)	(Private sector) Sets forth certain insurance requirements, including limiting air carrier liability for losses to no more than $100 million in the aggregate for all claims arising as a result of an act of terrorism.	CBO did not review provision prior to enactment because an authorizing committee did not report it. Did not meet definition of a mandate.

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GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L6	Defense Production Act Amendments of 2001 (Pub. L. No. 107-47)	(Private Sector) Provides the President the authority to require preferential performance on contracts and orders to meet approved national defense requirements, and to allocate materials, services, and facilities as necessary to promote the national defense in a major national emergency.	Excluded for national security.
L7	USA PATRIOT Act of 2001 (Pub. L. No. 107-56)	(Intergovernmental) Prohibits state, local, tribal, or territorial governments from disclosing that they have reported a suspicious financial transaction to a federal agency. (Intergovernmental) Preempts state liability laws and regulations relating to consumer reporting agencies that disclose consumer reports for counterterrorism purposes. (Intergovernmental) Requires education agencies and institutions to disclose records to the Attorney General in a terrorism investigation or prosecution; preempts state liability laws relating to those agencies. (Intergovernmental) Restricts states' authority to issue licenses for operating motor vehicles to transport hazardous materials. (Private Sector) Prohibits certain parties from shipping or receiving biological toxins in interstate or foreign commerce.	CBO did not review some provisions prior to enactment because some mandates were added to the bill after it was reviewed by CBO. After enactment, CBO estimated that provisions that were mandates had costs below thresholds. For provisions reviewed prior to enactment, CBO estimated costs for some to be below threshold, and some other provisions were excluded for national security.
L8	Energy and Water Development Appropriations Act, 2002 (Pub. L. No. 107-66)	(Intergovernmental) Prohibits states from issuing a permit or lease for certain oil and gas drilling in the Great Lakes.	CBO did not review provisions prior to enactment. Not contained in an authorizing bill. Contained in an appropriations bill. CBO estimated costs were below threshold.
L9	Internet Tax Nondiscrimination Act (Pub. L. No. 107-75)	(Intergovernmental) Extends the prohibition on collecting certain types of state and local taxes.	CBO estimated costs were below threshold.
L10	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. No. 107-76)	(Private Sector) Requires some tobacco producers to have their product graded by the government for a fee.	CBO estimated costs were below threshold.

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GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L11	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Pub. L. No. 107-77)	(Intergovernmental) Expands an existing requirement that transportation officials report to the Immigration and Naturalization Service certain information about people traveling to the United States; authorizes the Attorney General to extend that requirement to cover any public or private carrier transporting people by land to the United States. (Private Sector) Increases the entry fee for certain passengers arriving by airplane and authorizes the Attorney General to charge and collect a $3 entry fee on commercial vessel passengers; authorizes the Attorney General to require arrival and departure manifests in advance for land travel (train or bus) as well as travel by air or water.	CBO did not review provisions prior to enactment. Not contained in an authorizing bill. Contained in an appropriations bill. CBO estimated costs were below threshold.
L12	Department of Transportation and Related Agencies Appropriations Act, 2002 (Pub. L. No. 107-87)	(Intergovernmental) Requires the Washington Metropolitan Area Transit Authority to change the name of the National Airport station and to change all signage and related documentation. (Intergovernmental) Perhaps contained grants that were perceived as "under funded."	CBO estimated costs were below threshold.
L13	District of Columbia Appropriations Act, 2002 (Pub. L. No. 107-96)	(Intergovernmental) Places new reporting and other requirements on the District of Columbia.	CBO did not review provisions prior to enactment. Not contained in an authorizing bill. Contained in an appropriations bill. CBO estimated costs were below threshold.
L14	An act to amend chapter 90 of Title 5, United States Code, relating to Federal long-term care insurance (Pub. L. No. 107-104)	(Intergovernmental) Preempts state authority to tax certain federal long-term care policies.	CBO estimated costs were below threshold.
L15	National Defense Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-107)	(Intergovernmental) Allows the Secretary of Defense, under some circumstances, to waive compliance with state or territorial fish and game laws at military installations or facilities. (Intergovernmental) Preempts certain California state laws that would prohibit or restrict the construction or approval of a road or highway on an easement within the Camp Pendleton Marine Corps base.	CBO estimated costs were below threshold.

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L16	Intelligence Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-108)	(Intergovernmental) Establishes the Commission on Preparedness and Performance of the Federal Government for the September 11 Acts of Terrorism and gives it authority to subpoena testimony and evidence.	CBO estimated costs were below threshold.
L17	Best Pharmaceuticals for Children Act (Pub. L. No. 107-109)	(Private Sector) Extends the time period that drug manufacturers are prohibited from marketing generic versions of certain drugs by 6 months; repeals waiver of user fees for all applications for pediatric supplements; and requires drug manufacturers to revise labeling of drugs based upon findings of pediatric studies.	CBO estimated costs were below threshold.
L18	No Child Left Behind Act of 2001(Pub. L. No. 107-110)	(Intergovernmental) Calls for designing and implementing statewide standards and assessments and various other requirements.	Did not meet UMRA's definition of a mandate because the requirements were a condition of federal financial assistance.
L19	District of Columbia Family Court Act of 2001 (Pub. L. 107-114)	(Intergovernmental) Places new reporting and administrative requirements on the mayor and court system of the District of Columbia.	CBO estimated costs were below threshold.
L20	Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. No. 107-173)	(Private Sector) Requires manifests for arriving and departing commercial vessels or aircraft. (Private Sector) Increases fees for certain visas.	CBO estimated costs were below threshold.
L21	Clergy Housing Allowance Clarification Act of 2002 (Pub. L. No. 107-181)	(Private Sector) Restricted the amount of rental-allowance income that members of the clergy may exclude for tax purposes to no more than the fair rental value of the home (including furnishings) plus utilities.	Not reported by an authorizing committee. CBO did not review provision prior to enactment. CBO estimated costs were below threshold.

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L22	Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188)	(Intergovernmental) Preempts state laws that conflict with quarantine requirements for communicable diseases. (Intergovernmental) Requires assessments of water supplies in communities of more than 3,300 people. (Intergovernmental) Extends prescription drug application fees. (Intergovernmental and Private Sector) Requires registration with the federal government of the possession, use, and transfer of listed agents and toxins. (Private Sector) Requires that certain facilities engaged in manufacturing, possessing, packing, or holding food for consumption in the United States register with the Department of Agriculture. (Private Sector) Requires that if food has been refused admission into the United States, owners or consignees of the food must affix a label stating such on the container. (Private Sector) Requires importers of certain drugs and their devices to register annually with the federal government. (Private Sector) Allows prescription drug application fees to be raised under certain conditions.	CBO did not review provisions prior to enactment. Not reported by an authorizing committee. CBO estimated the costs of preemption of state laws was below the threshold, the costs of the water assessments were funded, and other costs were uncertain.
L23	Terrorist Bombings Convention Implementation Act of 2002 (Pub. L. No. 107-197)	(Private Sector) The act would establish a sentence of life in prison or death for those who are convicted of participating in bombings in public places, government facilities, public transportation systems, or infrastructure facilities. In addition, the act would establish minimum prison sentences and criminal fines for those who provide or collect funds with the intent that such funds be used to carry out terrorism crimes.	Excluded for treaty implementation.

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L24	Approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982 (Pub. L. No. 107-200)	(Intergovernmental) Approves the placement of a nuclear waste site in Nevada (additional costs to Nevada and neighboring states could result from existing federal mandates).	CBO estimated costs were below threshold.
L25	Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204)	(Intergovernmental) Allows the Public Company Accounting Oversight Board to conduct operations and maintain offices in any state without regard to any conflicting state law. (Private sector) Establishes the Public Company Accounting Oversight Board to regulate the accounting industry and a standard-setting body to write national standards for accounting practices; the two regulatory bodies will assess fees on public companies to cover their costs. (Private sector) Requires that auditors and audit committees of public companies comply with new standards. (Private sector) Prohibits insider trades of stock during pension fund blackout periods if the stock was acquired in connection with service as a director or executive officer. (Private sector) Requires pension plan administrators to notify plan participants, beneficiaries, and the insurer of employer securities of an impending blackout period. (Private sector) Requires that public corporations make enhanced financial disclosures to the Securities and Exchange Commission.	CBO did not review intergovernmental provision prior to enactment because it was added to the bill after it was reviewed by CBO. CBO estimated the costs of notification of blackout periods by pension plan administrators were below applicable thresholds, and other costs were uncertain.

United States Government Accountability Office

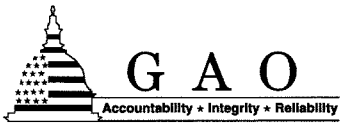
GAO

Report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

March 2005

UNFUNDED MANDATES

Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement



GAO-05-454

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Highlights

Highlights of GAO-05-454, a report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided federal funding to cover the costs. UMRA generates information about the nature and size of potential federal mandates on nonfederal entities to assist Congress and agency decision makers in their consideration of proposed legislation and regulations. However, it does not preclude the implementation of such mandates.

At various times in its 10-year history, Congress has considered legislation to amend various aspects of the act to address ongoing questions about its effectiveness. Most recently, GAO was asked to consult with a diverse group of parties familiar with the act and to report their views on (1) the significant strengths and weaknesses of UMRA as the framework for addressing mandate issues and (2) potential options for reinforcing the strengths or addressing the weaknesses. To address these objectives, we obtained information from 52 organizations and individuals reflecting a diverse range of viewpoints. GAO analyzed the information acquired and organized it into broad themes for analytical and reporting purposes.

GAO makes no recommendations in this report.

www.gao.gov/cgi-bin/getrpt?GAO-05-454.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Orice M. Williams at (202) 512-5837, or williamsoo@gao.gov.

March 2005

UNFUNDED MANDATES

Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement

What GAO Found

The parties GAO contacted provided a significant number of comments about UMRA, specifically, and federal mandates, generally. Their views often varied across and within the five sectors we identified (academic/think tank, public interest advocacy, business, federal agencies, and state and local governments). Overall, the numerous strengths, weaknesses and options for improvement identified during the review fell into several broad themes, including UMRA-specific issues such as coverage and enforcement, among others, and more general issues about the design, funding, and evaluation of federal mandates. First, UMRA coverage was, by far, the most frequently cited issue by parties from the various sectors. Parties across most sectors that provided comments said UMRA's numerous definitions, exclusions, and exceptions leave out many federal actions that may significantly impact nonfederal entities and should be revisited. Among the most commonly suggested options were to expand UMRA's coverage to include a broader set of actions by limiting the various exclusions and exceptions and lowering the cost thresholds, which would make more federal actions mandates under UMRA. However, a few parties, primarily from the public interest advocacy sector, viewed UMRA's narrow coverage as a strength that should be maintained.

Second, parties from various sectors also raised a number of issues about federal mandates in general. In particular, they had strong views about the need for better evaluation and research of federal mandates and more complete estimates of both the direct and indirect costs of mandates on nonfederal entities. The most frequently suggested option to address these issues was more post-implementation evaluation of existing mandates or "look backs." Such evaluations of the actual performance of mandates could enable policymakers to better understand mandates' benefits, impacts and costs among other issues. In turn, developing such evaluation information could lead to the adjustment of existing mandate programs in terms of design and/or funding , perhaps resulting in more effective or efficient programs.

Going forward, the issue of unfunded mandates raises broader questions about assigning fiscal responsibilities within our federal system. Federal and state governments face serious fiscal challenges both in the short and longer term. As GAO reported in its February 2005 report entitled *21st Century Challenges: Reexamining the Base of the Federal Government* (GAO-05-325SP), the long-term fiscal challenges facing the federal budget and numerous other geopolitical changes challenging the continued relevance of existing programs and priorities warrant a national debate to review what the government does, how it does business and how it finances its priorities. Such a reexamination includes considering how responsibilities for financing public services are allocated and shared across the many nonfederal entities in the U.S. system as well.

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Table

Table 1: UMRA Themes with Highest Frequency of Comments 9

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United States Government Accountability Office
Washington, D.C. 20548

March 31, 2005

The Honorable George V. Voinovich
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

Dear Mr. Chairman,

Many federal programs and initiatives, in areas ranging from homeland security to health care and environmental protection, involve shared responsibilities—and benefits—for the federal government, state, local and tribal governments, and the private sector. To aid in the implementation of these programs and initiatives, and to share their costs, federal statutes and regulations often require nonfederal parties to expend their resources in support of certain national goals. For example, the Pipeline Safety Improvement Act of 2002 included intergovernmental and private sector mandates that, among other things, required operators of natural gas and hazardous-liquid pipelines to adhere to minimum safety standards, create an employee qualification program and conduct facility risk analysis.[1] Similarly, the Environmental Protection Agency issued regulations in 2001 setting new enforceable standards for the maximum level of arsenic in drinking water that affected both publicly-owned and privately-owned water systems.[2]

Determining the appropriate balance of fiscal responsibility between the federal government, state, local and tribal governments, and the private sector in carrying out these federal mandates is a constant challenge. As the budgets of federal, state, and local governments become more constrained, balancing the costs of legislative actions with increasingly limited fiscal resources has brought this debate to the forefront. As we move forward into the 21st Century, we have observed that the federal government will be pressed by its own long-term fiscal challenges to

[1] Pub. L. No. 107-355.

[2] "National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring," 66 Fed. Reg. 6976 (Jan. 22, 2001).

engage in a serious reexamination of what the government does, how it does business and how it finances its priorities. Such a reexamination can also usefully consider how responsibilities should be allocated and shared across state and local governments as well.[3]

As we rethink the federal role, many in the state and local governments and business sectors would view unfunded mandates as among the areas warranting serious reconsideration. The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided federal funding to cover the costs.[4] UMRA generates information about the nature and size of potential federal mandates on other levels of government and the private sector to assist Congress and agency decision makers in their consideration of proposed legislation and regulations. However, it does not preclude the enactment of such mandates. As we approach the 10-year anniversary of the enactment of UMRA, questions about the effectiveness of this legislation have been raised by affected parties.

In May 2004, at your request, we reported on the identification of federal mandates in federal statutes and rules under UMRA. On the basis of our review of the act's provisions, and an analysis of statutes enacted and final rules published during 2001 and 2002, we noted that UMRA appears to have indirectly discouraged or limited mandates in some cases. Our report, however, also raised questions about the various types of mandates that are not covered by the act but may have potentially significant fiscal impacts on affected parties.[5] Similarly, the Congressional Budget Office (CBO), which plays an important role in implementing UMRA provisions regarding statutory mandates, has reported on the narrow scope of the act's coverage and difficulties in implementing UMRA.[6] Nonfederal observers, including parties affected by federal mandates, also increasingly have expressed

[3] GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington, D.C.: February 2005).

[4] Pub. L. No. 104-4, 2 U.S.C. §§658-658g, 1501-71.

[5] GAO, *Unfunded Mandates: Analysis of Reform Act Coverage*, GAO-04-637 (Washington, D.C.: May 12, 2004).

[6] CBO is charged with estimating the costs of intergovernmental and private sector mandates in certain legislation.

concerns about the fiscal burdens of federal mandates and the difficulty of accurately assessing the true impact of mandates.

You asked GAO to provide more information and analysis regarding these and other issues related to federal mandates. Specifically, you asked us to consult with a diverse group of knowledgeable parties familiar with the act and to report their views with regard to (1) the significant strengths and weaknesses of UMRA as the framework for addressing federal mandates issues, including why the parties believed the issues they identified were significant, and (2) potential options suggested for reinforcing the strengths or addressing the weaknesses.[7] This report discusses those objectives for each of the broad themes that emerged from our consultations with the parties. Specifically, this report focuses on (a) UMRA coverage, (b) enforcement, (c) other UMRA issues, including the use and usefulness of the information generated under the act, UMRA's analytic framework, and consultations with state, local and tribal governments, and (d) broader issues involving federal mandates, including the design and funding of federal mandates and evaluating those mandates. As requested we also report for each of those themes, to the extent possible, on the level of agreement or disagreement among the parties concerning the perceived strengths and weaknesses and the suggested options for reinforcing the strengths or addressing the weaknesses. We also provide observations on the broader implications of the unfunded mandates issues raised by our sources for the allocation of financial responsibilities in our intergovernmental system.

To address the objectives, we used a two-step data collection process to obtain input on UMRA and federal mandates' issues and options from a diverse and extensive set of organizations and individuals that were knowledgeable about federal mandates and UMRA.[8] First, we obtained feedback from participating parties about UMRA strengths and weaknesses and options using a structured data collection approach. We analyzed the information obtained from those parties and organized it into broad themes. Second, we supplemented our initial round of information collection with a symposium on federal mandate issues held at GAO on

[7] Throughout this report, we simply use the term "issues" when referring to strengths and weaknesses in the aggregate.

[8] In all, there were 52 organizations and individuals responding to our request for views, and they are referred to collectively as "parties" throughout this report.

January 26, 2005.[9] The purpose of this symposium was to have a more in-depth discussion about the issues most frequently raised during our initial data collection effort. The three themes discussed at the symposium were coverage, enforcement, and funding and design. Twenty-six individuals representing all five sectors attended.

For purposes of structuring our examination of agreement or disagreement in the views of participating parties on specific issues and options, we classified each participating party into one of five sectors—academic scholars and think tanks (20 parties), business (5 parties), federal (10 parties including executive and legislative branch agencies), public interest advocacy group (6 parties), and state and local governments (11 parties).[10] Although most of the parties providing input represented a larger set of organizations within their related sector, the information gathered represents just the views of those parties who chose to participate in this review. As such, the information provides only a rough gauge as to the prevalence of opinion about a given issue or option or the extent to which there is agreement among and within particular sectors. We conducted our review from August 2004 through February 2005 in Washington, D.C., in accordance with generally accepted government auditing standards. (Appendix I provides a more detailed description of our objectives, scope, and methodology. Appendices II and III identify, respectively, the parties who contributed to our review and those who participated in the symposium. Appendix IV, which is available as an electronic supplement, provides a comprehensive list of the comments and suggested options provided by the parties.)

[9] Forty-nine of the 52 parties provided responses in the initial data collection effort and the three other parties who were unable to participate in the first round of data collection were able to participate in the subsequent symposium.

[10] Despite our efforts to solicit a comparable level of input from the different sectors, fewer identified parties from some sectors chose to participate in our review than others. However, some parties who chose not to participate recommended contacts whom we classified in another sector, which allowed us to partially mitigate the extent of non-participation. For example, business associations recommended parties in the academic/think tank sector as persons knowledgeable about private sector perspectives on mandates issues.

Results in Brief

Parties from the five sectors—academic/think tank, public interest advocacy, business, federal, and state and local governments—identified a number of issues about UMRA and its implementation that warrant examination. Issues involving UMRA's coverage were the most frequently raised, by the parties we contacted. Parties across most sectors thought UMRA's narrow coverage was a significant weakness that should be addressed. Many suggested broadening UMRA's coverage including reconsidering UMRA's definitions, exclusions, and exemptions such as conditions of federal financial assistance and preemptions of state and local authority. However, a few parties, primarily from the public interest advocacy sector, said many of the exclusions were important and that the act's narrow coverage should be maintained or reinforced by adding exclusions for mandates regarding health and environmental protection. Two suggestions—excluding private sector mandates and excluding civil rights-related mandates—were strongly opposed by parties from several sectors.

UMRA establishes various responsibilities and enforcement mechanisms for Congress and federal agencies. While mentioned by far fewer parties than coverage, issues involving compliance with and enforcement of UMRA requirements were the second most frequently cited across all sectors. Generally, the Congressional procedures were viewed as having a greater impact on mandate decision making than those applying to federal agencies. UMRA sets out rules for both the House and Senate that prohibit consideration of mandate legislation unless certain conditions are met. The primary enforcement mechanism for legislative action is the point of order—a procedural mechanism that can be used by a member of Congress to challenge a mandate during the legislative process. Parties from various sectors had mixed views about the deterrent value of the point of order in the enactment of certain mandates, but most suggested maintaining or strengthening it, including a suggestion to increase the number of votes needed to overcome a point of order from a majority to a supermajority. UMRA also sets out requirements that federal agencies prepare written statements that identify, among other things, mandates that exceed UMRA's threshold for regulations. Unlike the Congressional process, however, there is nothing comparable to the point of order to deter agencies from imposing mandates at or above the UMRA threshold. Finally, a few parties commented about the ineffectiveness of UMRA's judicial review provision, which they said does not provide meaningful remedies even if a court determines that federal agencies have not complied with UMRA. Although

the parties suggested numerous options to strengthen UMRA enforcement, none received broad-based support from parties within and across sectors.

The other themes that received a significant number of comments were the use and usefulness of information (e.g. has it helped decrease the number of mandates?), UMRA's analytic framework, and the agencies' consultation with state, local, and tribal governments. All the sectors provided mixed, but generally positive, comments about the use and usefulness of UMRA information in policy debates. Comments about the information provided by CBO were generally positive and parties from the academic/think tank and state and local governments sectors suggested creating a single entity within the executive branch to determine if there are covered mandates in proposed federal regulations, instead of leaving this determination to the agency alone. Second, parties from all sectors commented about UMRA's analytic framework, including concerns about how UMRA defines costs and the inherent difficulty in estimating certain mandate costs. To address their concerns, some suggested broadening mandate cost estimates to include indirect costs and others suggested including benefits, where possible, along with cost estimates. Lastly, parties from all sectors commented about the inconsistent application of UMRA's consultation requirements by some federal agencies.

In addition to comments provided about UMRA, parties from most sectors raised a number of broader policy issues concerning design and funding of federal mandates and the evaluation of those mandates. While views about the design and funding varied across sectors, most of the comments focused on perceived funding gaps between costs of federal mandates and the amount of funding provided to carry them out. Many observed that there is a lack of evaluation and research on federal mandates and generally agreed that retrospective evaluation of federal mandates was needed to ensure that mandates were achieving their intended goals and to better measure the actual costs incurred by nonfederal entities.

As we move forward, the issue of unfunded mandates raises broader questions about the assignment of fiscal responsibilities within our federal system. Federal and state governments face serious fiscal challenges both in the short and longer term. As we reported in our report on 21st century challenges, the long-term fiscal challenges facing the federal budget and numerous other geopolitical changes challenging the continued relevance of existing programs and priorities warrant a national debate to review what the government does, how it does business, and how it finances its

priorities.[11] Such a reexamination includes considering how responsibilities for financing public services are allocated and shared across the many nonfederal entities in our system as well.

Background

The Unfunded Mandates Reform Act of 1995 was enacted to address concerns expressed about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. Although UMRA was intended to curb the practice of imposing unfunded federal mandates, the act does not prevent Congress or federal agencies from doing so. Instead, it generates information about the potential impacts of mandates proposed in legislation and regulations. In particular, title I of UMRA requires Congressional committees and the Congressional Budget Office (CBO) to identify and provide information on potential federal mandates in certain legislation. Title I also provides opportunities for Members of Congress to raise a point of order when covered mandates are proposed for consideration in the House or Senate. Title II of UMRA requires federal agencies to prepare a written statement identifying the costs and benefits of federal mandates contained in certain regulations and consult with affected parties. It also requires action of the Office of Management and Budget (OMB), including establishing a program to identify and test new ways to reduce reporting and compliance burdens for small governments and annual reporting to Congress on agencies' compliance with UMRA. Title III of UMRA required the Advisory Commission on Intergovernmental Relations to conduct a study reviewing federal mandates.[12] Title IV establishes limited judicial review regarding agencies' compliance with certain provisions of title II of the act.

UMRA generally defines a federal mandate as any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments (intergovernmental mandates) or the private sector (private sector mandates) or that would reduce or eliminate the funding

[11] GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington D.C.: February 2005).

[12] This statutory requirement was not completed. Although a preliminary report was completed in January 1996, a final report was not released. Congress terminated funding for the commission in 1996.

authorized to cover the costs of existing mandates. However, some other definitions, exclusions, and thresholds in the act apply and may vary according to whether the mandate is in legislation or a rule and whether a provision imposes an intergovernmental or private sector mandate. For example, UMRA includes definitional exceptions for enforceable duties that are conditions of federal financial assistance or that arise from participation in a voluntary federal program. UMRA also excludes certain types of provisions, such as any provision that enforces Constitutional rights of individuals, from its application. When, in aggregate, the provisions in proposed legislation or regulations equal or exceed UMRA's thresholds, other provisions and analytical requirements in UMRA apply. For legislation, the thresholds are direct costs (in the first 5 fiscal years that the relevant mandates would be effective) of $50 million or more for intergovernmental mandates and $100 million or more for private sector mandates, while the threshold for regulations is expenditures of $100 million or more in any year.[13]

GAO has issued two previous reports addressing UMRA and federal mandates. In our May 2004 report we provided information and analysis regarding the identification of federal mandates under titles I and II of UMRA.[14] In that report, we described the complex procedures, definitions, and exclusions under UMRA for identifying federal mandates in statutes and rules. For calendar years 2001 and 2002, we also identified those statutes and rules that contained federal mandates under UMRA and provided examples of statutes and rules that were not identified as federal mandates but that affected parties might perceive as "unfunded mandates" and the reasons these statutes and rules were not federal mandates under UMRA. In February 1998, we reported on the implementation of title II.[15] In that report, we found that UMRA appeared to have had little effect on agencies rulemaking and most significant rules promulgated were not subject to title II requirements. Both of these reports had relatively consistent findings—that only a limited number of statutes and rules have been identified as federal mandates under UMRA.

[13] The dollar thresholds in UMRA are in 1996 dollars and are adjusted annually for inflation.

[14] GAO-04-637.

[15] GAO, *Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions*, GAO/GGD-98-30 (Washington, D.C.: Feb. 4, 1998).

UMRA Coverage

UMRA's coverage, which includes its numerous definitions, exclusions, and exceptions, was the issue most frequently commented on by parties from all five sectors (see table 1).[16] Most parties from the state and local governments, federal, business, and academic/think tank sectors viewed UMRA's narrow coverage as a major weakness that leaves out many federal actions with potentially significant financial impacts on nonfederal parties. Conversely, a few parties, from the public interest sector and academic/think tank sector, considered some of the existing exclusions important or identified UMRA's narrow scope as one of the act's strengths. While there was no clear consensus across sectors on how to address coverage, some suggestions designed to expand UMRA's coverage had support from parties across and within certain sectors.

Table 1: UMRA Themes with Highest Frequency of Comments

Theme	Number of comments provided
Themes focused specifically on UMRA	
Scope of UMRA's coverage of federal actions	52
UMRA enforcement	42
UMRA analytical framework	23
Uses and usefulness of information UMRA generates	25
UMRA consultation requirements	14
Themes focused on federal mandate issues and programs in general	
Design and funding of federal mandates	24
Evaluation and research needs regarding federal mandates	23

Source: GAO.

Note: Comment frequency is provided only as a rough gauge of the relative prevalence of themes addressed by participating parties comments.

[16] Coverage issues were also raised in other literature regarding federal mandates that we reviewed.

Parties from Most Sectors Shared Concerns That UMRA's Coverage Was Too Narrow, but Had Mixed Views on How to Address It

UMRA does not apply to legislative provisions that cover constitutional rights, discrimination, emergency aid, accounting and auditing procedures for grants, national security, treaty ratification, and certain parts of Social Security.[17] CBO estimates that about 2 percent of the bills that it reviewed from 1996 to 2004 contained provisions that fit within UMRA's exclusions. All sectors other than the public interest advocacy sector said they viewed UMRA's narrow coverage as a significant weakness because it precludes an official accounting of the costs to nonfederal parties associated with many federal actions. This issue was described by one party who noted that any of the exclusions, as well as the exemptions, in UMRA may be justified in isolation, but suggested that it is their cumulative impact that raises concerns.

Some parties from the business, academic/think tank, public interest advocacy, and state and local governments sectors made general comments on the clarity of certain UMRA definitions and exemptions and whether this results in different interpretations across agencies. One party who said UMRA's coverage was narrow often cited UMRA's definitional exceptions for mandates, including conditions of federal financial assistance (such as grant programs) or that arise from participation in voluntary federal programs, saying some laws enacted under these exceptions imposed significant mandates. A prominent example of a grant condition excluded from UMRA cited by parties in the state and local government sector is the No Child Left Behind Act of 2001, which places various requirements on states and localities, including that their schools measure the progress of students through annual tests based on challenging academic standards and that teachers are highly qualified as defined in the act. Other parties commented about various other definitional issues involving the exclusion of certain types of costs (indirect costs) and UMRA's cost thresholds for legislative and regulatory mandates, which result in excluding many federal actions that may significantly impact nonfederal entities.[18]

[17] UMRA contains additional definitional exceptions, exclusions, or other restrictions applicable to the identification of federal mandates in legislation and 14 such restrictions applicable to the identification of federal mandates in rules. Often, more than one of these applicable restrictions applies. See GAO-04-637.

[18] We discuss cost definitions and cost thresholds in greater detail in the analytic framework section of this report.

Other parties cited the general exclusions for appropriations and other legislation not covered by the act and for rules issued by independent regulatory agencies, which are also not covered by UMRA. CBO estimates that 5 of the 8 laws containing federal mandates (as defined by UMRA) that it did not review before enactment, were appropriations acts.[19] A few parties from academic/think tank and state and local government sectors commented about UMRA's lack of coverage for certain tax legislation that may reduce state or local revenues. Even though federal tax changes may have direct implications for state tax revenue for the majority of states whose income tax is directly linked to the federal tax base, these impacts are not considered as mandates under UMRA because states have the option of decoupling their tax systems from federal law. Finally, parties from the state and local government sector also identified concerns about gaps in UMRA's coverage of federal preemption of state and local authority.[20] Although some preemptions are covered by UMRA such as those that preempt state or local revenue raising authority, they are covered only for legislative actions and not for federal regulations. According to CBO's 2005 report on unfunded mandates, "Over half of the intergovernmental mandates for which CBO provided estimates were preemptions of state and local authority."[21]

[19] CBO, *A Review of CBO's Activities in 2004 Under the Unfunded Mandates Reform Act* (Washington D.C.: March 8, 2005).

[20] Preemption refers to the power of the federal government to enact statutes that override state laws. This power derives from the supremacy clause of the United States Constitution, which states that "The Laws of the United States...shall be the supreme Law of the Land...any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. For example, the Internet Tax Freedom Act prohibits states from enacting a tax on internet access or multiple or discriminatory taxes on electronic commerce between October 1998 and November 2004 and preempts any state or local laws enacted during this period. Pub. L. No. 105-277, Div. C, Tit. XI, § 1101 (1998) (amended 2004). Title I of UMRA only applies to legislation that prohibits states from raising revenue, such as the Internet Tax Freedom Act. 2 U.S.C. § 658(3)(A)(i). Other preemptions of states' regulatory authority are not subject to UMRA's enforcement scheme.

[21] CBO's March 2005 UMRA report.

Despite the widespread view in several sectors that UMRA's narrow coverage leaves out federal actions with potentially significant impacts on nonfederal entities, there was less agreement by parties about how to address this issue. The options ranged from general to specific but those most frequently suggested were:

- Generally revisit, amend, or modify the definitions, exceptions, and exclusions under UMRA and expand its coverage.
- Clarify UMRA's definitions and ensure their consistent implementation across agencies to ensure that all covered provisions are being included.
- Change the cost thresholds and/or definitions that trigger UMRA by for example lowering the threshold for legislative or executive reviews and expanding cost definitions from beyond direct to cover indirect costs as well.
- Eliminate or amend the definitional exceptions for conditions of federal financial assistance or that arise from participation in voluntary federal programs.
- Expand UMRA coverage to all preemptions of state and local laws and regulations, including those nonfiscal preemptions of state and local authority.

The level of agreement for each suggested option varied across sectors. The first option came from parties in every sector except public interest advocacy. Although parties representing businesses did not comment on preemption during our data collection, the business sector has generally been in favor of federal preemptions for reasons such as standardizing regulation across state and local jurisdictions. (See appendix V for a more complete list of suggested options by theme.)

The results of our January symposium confirmed support for generally revisiting and expanding UMRA coverage. See appendix VI for a list of the symposium results. The symposium participants also raised a cautionary note about potential consequences of some of the suggested options. For example, if UMRA coverage were expanded by changing exclusions and limitations or lowering or eliminating UMRA thresholds or including regulations issued by independent agencies, the workloads of CBO and the regulatory agencies would increase substantially.

Another issue raised by a few parties that evoked some reaction at the symposium was whether private sector mandates should be included in UMRA. Some parties, from the federal agency, academic/think tank and public interest advocacy sectors, questioned whether private sector mandates should be included in UMRA. According to one party, the inclusion of the private sector seems contrary to the intent of the action, which they viewed to be intergovernmental mandates. Parties from the state and local government and academic/think tank sectors indicated during our symposium that they would not support dropping private sector mandates from UMRA. They pointed out, for example, that intergovernmental and private sector mandates can be interrelated, in particular that businesses, which can be affected by private sector mandates, are a key revenue source for state and local governments.

Some in the Academic/Think Tank and Public Interest Advocacy Sectors View UMRA's Coverage as a Strength and Take Issue with Certain Recommendations to Expand or Change Coverage

Contrary to the view that UMRA's coverage was too narrow, some parties from academic/think tank and public interest advocacy sectors viewed UMRA's narrow scope as one of its primary strengths. Rather than expanding UMRA's coverage, these parties said that it should be kept narrow. One party expressed concern that eliminating any of UMRA's exceptions and exclusions might make the identification of mandates less meaningful, saying, "The more red flags run up, the less important the red flag becomes." Between 1996 and 2004, CBO reports that of the 5,269 intergovernmental statements, 617 had mandates; of the 5,151 private sector statements, 732 had mandates.[22] Of the mandates identified by CBO, 9 percent of the intergovernmental mandates and 24 percent of private sector mandates had costs that would exceed the thresholds.

Specifically, these parties argued in favor of maintaining UMRA's exclusions or expanding them to include federal actions regarding public health, safety, environmental protection, workers' rights, and the disabled. Unlike the parties that viewed UMRA's exclusions as too expansive, some

[22] According to CBO's 2005 report, The numbers represent official mandate statements transmitted to congress by CBO. CBO prepared more intergovernmental mandate statements than private-sector mandate statements because in some cases it was asked to review a specific bill, amendment, or conference report solely for intergovernmental mandates. These numbers also exclude preliminary reviews and informal estimates for other legislative proposals. Finally, mandate statements may cover more than one mandate. Similarly, CBO may address a single mandate in more than one statement.

parties from the public interest advocacy sector and the academic/think tank sector focused on the importance of the existing exclusions, particularly those dealing with constitutional and statutory rights, such as those barring discrimination against various groups.[23] During our January symposium, parties from multiple sectors took issue with any suggestion that the constitutional and statutory rights exclusions in UMRA be repealed. One party stated that the concept of unfunded mandates should not apply to laws intended to protect such fundamental rights. Another party suggested that the narrow scope of UMRA was generally useful, noting that, "One of the strengths of UMRA has been that it doesn't try to be more ambitious than it needs to be." Conversely, parties from most sectors opposed further limiting UMRA's coverage.

UMRA Enforcement

Enforcement of UMRA's provisions was the second most frequently cited issue but with far fewer parties from each sector commenting. Parties across and within sectors had differing views on both the mechanisms provided in the law itself and the level of effort exercised by those responsible for implementing the provisions. With regard to Congressional procedures, some parties observed that the opportunity provided for lawmakers to raise a point of order had a deterrent effect, while others described it as ineffective or underutilized. With regard to federal regulations, some questioned the agencies' compliance with the provisions of the act. Finally, parties had mixed views about the judicial review provision under title IV, which provides limited remedies against agencies that fail to prepare UMRA statements, among other things. Parties from various sectors also suggested options to strengthen the issues raised about UMRA enforcement, but none was suggested by parties from a majority of sectors.

Mixed Views About the Usefulness and Need to Change Point of Order Mechanism

One of the primary tools used to enforce UMRA requirements in title I is the point of order—a parliamentary term used by a member of Congress in committee or on the floor of either chamber of Congress to raise an objection about proceeding to vote when a rule of procedure has been or will be violated. Once raised, an UMRA point of order prevents legislative

[23] UMRA does not apply to any provision in legislation or rules that enforces Constitutional rights of individuals or establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.

action on a covered mandate unless overcome by a majority. The point of order, which provides members of Congress the opportunity to raise challenges to hinder the passage of legislative provisions containing an unfunded intergovernmental mandate, was the most frequently cited enforcement issue with varying views about its effectiveness.

Those representing state and local government and federal agency sectors said that the point of order should be retained because it has been successful in reducing the number of unfunded mandates by acting as a deterrent to their enactment, without greatly impeding the process. One party commented that the threat of a point of order against a legislative proposal has caused members and staff to rethink and revise many proposals that would have likely imposed unfunded federal mandates on the states in excess of the threshold set in the law. This is consistent with the information presented in our May 2004 on UMRA, which quoted the Chairman of the House Rules Committee as saying that UMRA "has changed the way that prospective legislation is drafted..." We also reported that "although points of order are rarely used, they may be perceived as an unattractive consequence of including a mandate above cost thresholds in proposed legislation."[24]

Conversely, parties primarily from academic/think tank, business, and federal sectors did not believe the point of order has been effective in preventing or deterring the enactment of mandates. Moreover, others commented about its infrequent use. In the last 10 years, at least 13 points of order under UMRA were raised in the House of Representatives and none in the Senate. Only 1 of the 13, regarding a proposed minimum wage increase as part of the Contract with America Advancement Act in 1996, resulted in the House voting to reject consideration of a proposed provision.

Some parties said the point of order needs to be strengthened by making it more difficult to defeat. One suggested revision was to require a three-fifths vote in Congress, rather than a simple majority, to overturn a point of order. This change was believed to strengthen the "institutional salience of UMRA" and to ensure that no mandate under UMRA could be enacted if it was supported only by a simple majority. On March 17, 2005 the Senate approved the fiscal year 2006 budget, which included a provision that would increase to 60 the number of votes needed to overturn an UMRA

[24] GAO-04-637.

point of order in the Senate. As of March 28, the fiscal year 2006 budget was in conference negotiations with the House of Representatives.

Parties Question Agencies' Compliance with UMRA, But Cited Solutions Lacked Broad-Based Support

Commenting parties from state and local government, business, and federal agency sectors questioned some federal agencies' compliance with UMRA requirements and the effectiveness of enforcement mechanisms to address this perceived noncompliance. They mentioned the failure of some agencies to consult with state, local and tribal governments when developing regulations that may have a significant impact on nonfederal entities, which is discussed later in the report. Likewise, at least one party of the business, federal, and state and local government sectors each expressed concerns about the lack of accurate and complete information provided by federal agencies, which are responsible for determining whether a rule includes a mandate and whether it exceeds UMRA's thresholds.

The perceived lack of compliance with certain UMRA requirements generated several suggested changes to UMRA to address this problem. The only suggestion that had support across parties from multiple sectors, however, was to create a new office within OMB to calculate the cost estimates for federal mandates in regulations. They suggested that this office have responsibilities similar to the State and Local Government Cost Estimates Unit at CBO. However, the parties did not specify whether the office should exist as an office within OMB's Office of Information and Regulatory Affairs or exist separately.

Parties Who Find Judicial Review Provision Too Limited Support Revision

A few parties from the federal and academic/think tank sectors commented that UMRA's judicial review provision does not provide meaningful relief or remedies if federal agencies have not complied with the requirements of UMRA because of its limited focus. In general, title IV subjects to judicial review any agency compliance or noncompliance with certain provision in the act. Specifically, the judicial review is limited to requirements that pertain to preparing UMRA statements and developing federal plans for mandates that may significantly impact small governments. However, if a court finds that an agency has not prepared a written statement or developed a plan for one of its rules, the court can order the agency to do the analysis and include it in the regulatory docket for that rule but the court may not block or invalidate the rule.

The few parties commenting about judicial review suggested expanding it to provide more opportunities for judicial challenges and more effective remedies when noncompliance of the act's requirements occur. However, one party from the public interest advocacy sector said that a benefit of the existing judicial review is that the remedy for noncompliance is to provide the required statement versus impeding the regulatory process. Similarly, when this issue was discussed at the symposium, a few parties primarily from the academic/think tank and public interest advocacy sectors said that efforts to limit or stop implementation of mandates through legal action might be unwarranted, because as noted earlier, UMRA was not intended to preclude the enactment of federal mandates. They were concerned about legal actions being used to slow down the regulatory process through litigation.

Parties Across All Sectors Raise Other Issues, But Little or No Consensus Emerges

Parties from all sectors also raised a number issues about the use and usefulness of UMRA information (e.g., has it helped decrease the number of mandates?), UMRA's analytic framework, and federal agency consultations with state, local, and tribal governments, but there was no consensus in their views about how these issues should be addressed. The parties provided mixed but generally positive views about the use and usefulness of UMRA information; the only option that attracted multiple supporters was a suggestion for a more centralized approach for generating information within the executive branch. Parties also provided a number of comments about the UMRA provisions that establish the analytic framework for cost estimates, which generated a few suggested options. UMRA's consultation provision generated the fewest comments, which focused primarily on a general concern about a perceived lack of consistency across agencies when consulting with state and local governments.

Parties in Most Sectors Had Mixed but Generally Positive Views About the Usefulness of Information Generated under UMRA and Suggested Few Changes

Parties from all sectors commented about the use and usefulness of information generated by UMRA. While most of the comments about information generated under title I were positive, some parties raised concerns about the quality and usefulness of some of the information and suggested improvements. While many of the comments were about UMRA information in general, most of the positive comments from a majority of the sectors were specific to the usefulness of information generated under title I by CBO in particular. For example, one party, who characterized UMRA as a success, credited the act with bringing unfunded mandates to

the forefront of Congressional debates and slowing down the enactment of new unfunded mandates. Parties from several sectors praised the value and quality of CBO's analyses of mandates and the attention that CBO's cost estimates under UMRA bring to the fiscal effects of federal legislation.

However, some parties from academic/think tank, public interest advocacy, and state and local governments sectors had more mixed views about the usefulness of information generated under UMRA. One party characterized the information as "marginally effective" in reducing costly and cumbersome rules and a few parties shared similar views about legislative mandates. Specifically, some of these parties commented that while the information may increase awareness of unfunded or under funded mandates, UMRA has been less successful in actually changing legislation to reduce the number of mandates.

The parties from various sectors suggested several options to improve the use and usefulness of information under UMRA, but there was no agreement across or within sectors on any particular option. Only the suggestion to provide for a centralized review of regulatory mandates was suggested by more than two parties. (As discussed previously, this was also suggested as a way to improve UMRA enforcement.)

Parties Cite UMRA's Analytic Constraints

Parties from all sectors agreed that UMRA's provisions work to constrain the analysis of mandate costs, which may impact the quality of the estimates. For example, parties from the academic/think tank, federal, and state and local governments sectors commented that the act excludes the consideration of the indirect costs of mandates, which can be significant for regulated entities. Moreover, others commented that certain definitions under UMRA are not clearly understood or easily interpreted, which can impact estimates. For example, some parties said that terms such as "federal mandates" and "enforceable duty" are not clearly defined and thus open to interpretation by the agencies.

Others noted that there can be differences in the cost analyses for legislative and regulatory mandates in areas such as making determinations about whether a mandate exceeds UMRA cost thresholds when ranges are used. For example, CBO has developed its own criteria for applying the act and has extended its general practice of providing point estimates for mandates rather than ranges when possible, as it does for its federal budget estimates. The federal agencies are left to their own discretion in deciding whether to use estimate ranges for costs and how to apply them to the

threshold. In one case, which we observed in a prior report, the U.S. Department of Agriculture (USDA) appeared to have developed a range of costs associated with implementing its rule on retained water in raw meat and poultry products. However, USDA provided only a lower bound estimate of $110 million, but did not quantify median or upper bound cost estimates. Because the lower bound was so close to the inflation adjusted threshold of $113 million, it is reasonable to assume that the median or upper bound estimate would have exceeded the threshold and been a mandate under UMRA.

Some parties expressed frustrations with the inherent uncertainties of estimating mandate costs. In particular, some parties commented that cost estimates are sometimes difficult or not feasible to calculate because they rely on future actions. That is, CBO sometimes finds that cost estimates for legislative mandates are difficult or not feasible to prepare, which can happen because CBO's analysis is generally done before bills are approved and regulations needed to implement them have been developed. For example, in 2004, CBO reported that of the 66 intergovernmental mandates, 2 could not be estimated; of the 71 private sector mandates, 10 could not be estimated. In many of these cases, CBO reported that the costs could not be determined because it had no basis for predicting what regulations would be issued to implement them.

The parties offered a variety of suggested options to address their concerns about estimation, but only a few had support across or within the sectors. There was, however, some overlap between options suggested addressing UMRA coverage and enforcement issues and options to address estimation issues. For example, some parties suggested revising UMRA's cost or expenditure definitions and thresholds, including revisiting the exclusion of indirect costs from UMRA estimates, which may affect both the actual estimation process and whether a legislation or regulation will be identified as containing a federal mandate at or above UMRA's thresholds. Parties from several sectors suggested examining or monitoring the implementation of UMRA's estimation process for federal agencies' regulations through an independent agency.

Sectors Had Few Comments and Suggested Options Regarding UMRA Consultation Provisions

A few parties had comments regarding UMRA's requirement that federal agencies consult with elected officers of state, local and tribal governments (or their designees) on the development of proposals containing significant intergovernmental mandates. Parties from all five sectors commented on the consultation provisions, and these comments generally focused on the

quality of consultations across agencies, which was viewed as inconsistent. A few parties commented that UMRA had improved consultation and collaboration between federal agencies and nonfederal levels of government. A few commenters also raised concerns that UMRA's consultation provisions focus on state, local and tribal governments, but exclude other constituencies that might be affected by proposed federal mandates. While several parties primarily from the state and local government sector suggested options for improving consultation, the only one mentioned by more than 2 parties was a suggestion for agencies to replicate CBO's consultation approach for legislative mandates, which some parties characterized as collaborative.

Sectors Also Provide More General Concerns About Federal Mandates

Parties from all sectors also raised a number of broader issues about federal mandates—namely, the design and funding and evaluation of federal mandates—and suggested a variety of options.

Several Potential Design and Funding Issues Surfaced, But No Options With Broad Appeal to Address Them

Specific comments about the design and funding of federal mandates varied across sectors. Most often, the comments focused on a perceived mismatch between the costs of federal mandates and the amount of federal funding provided to help carry them out. Some parties from several sectors suggested that the problem they are concerned about is not so much unfunded federal mandates as underfunded mandates. When this issue was addressed at the symposium, a few parties pointed out that this issue is broader than UMRA, dealing with such issues as how to address the imbalance between mandate costs and available resources, how to generate the resources to meet these needs, and how to address the incentives for the federal government to "over leverage" federal funds by attaching (and often revising) additional conditions for receiving the funding. Some parties also raised concerns about the varying cost of some mandates across various affected nonfederal entities, mismatches between the funding needs of parties compared to federal formulas, and the effects of the timing of federal actions and program changes on nonfederal parties.

Parties, primarily from the academic/think tank sector, suggested a wide variety of options to address their concerns, but there was no broad support for any option. Parties across four sectors suggested providing waivers or offsets to reduce the costs of the mandates on affected parties

or "off ramps" to release them of some responsibilities to fulfill the mandates in a given year if the federal government does not provide sufficient funding. However, when this was discussed at the symposium, parties said that compliance with federal mandates should not be made contingent on full federal funding. They said, for example, that it is an appropriate role for the federal government to require compliance with certain mandates even if they are not fully funded. These parties also said that state and local governments do not always comply with mandates under existing laws. Some of the symposium participants also pointed out potential pitfalls of "off ramps" noting that they could actually provide an incentive to under fund mandates and that it might be difficult to manage who would determine that federal funding does not cover the costs of a mandate in a given year and how that determination would be made. During the symposium, the option of building into the design of federal mandates "look back" or sunset provisions that would require retrospective analyses of the mandates' effectiveness and results was discussed.

Most Sectors Commented on Evaluation and Research Needs Regarding Federal Mandates Sectors

About half the parties, representing all sectors except federal agencies, commented on the evaluation of federal mandates and offered suggestions to improve mandates, whether covered by the act or not. This issue received the most focus from parties in the academic/think tank sector, who felt that the evaluation of federal mandates was especially important because there is a lack of information about the effects of federal mandates on affected parties.

Four issues emerged from the comments provided by the various sectors concerning evaluations. First, parties from four of the five sectors commented about the lack of evaluation of the effectiveness (results) of mandates and the implications of mandates, including benefits, non-fiscal effects and costs. According to some parties, if mandate-related evaluations were conducted more often, policy decisions regarding mandates, both specifically and collectively, could meaningfully consider mandate costs, benefits and other relevant factors. Second, they expressed concerns about the accuracy and completeness of mandate cost estimates. This concern was raised primarily by parties in the public interest advocacy and business sectors. While they agreed that estimating costs was difficult, they felt examining the quality of the estimates was necessary. Third, parties primarily from the academic/think tank and state and local governments sectors raised issues about the impacts and costs of federal mandates. They noted that while much attention has been focused on the actual costs of mandates, it is important to consider the broader

implications of federal mandates on affected nonfederal entities beyond direct costs, including a wide range of issues such as opportunity costs, forgone revenues, shifting priorities, and fiscal trade-offs. Finally, a few parties were concerned about whether some agencies have compromised the effectiveness of certain regulations by designing them to ensure that their costs do not meet or exceed UMRA's cost threshold.

Parties across the sectors suggested that various forms of retrospective analysis are needed for evaluating federal mandates after they are implemented. First, parties in all sectors except the federal sector suggested retrospective analyses on the costs and effectiveness of mandates, including comparing them to the estimates and expected outcomes. Second, parties in the state and local sector suggested conducting retrospective studies on the cumulative costs and effects of mandates—the impact of various related federal actions, which when viewed collectively, may have a substantial impact although any one may not exceed UMRA's thresholds. Third, parties in the academic/think tank sector suggested examining local and regional impacts of mandates. According to one party, mandate costs could have a significant effect on a particular state or region without exceeding UMRA's overall cost threshold. Finally, parties in the academic/think tank sector suggested analyzing the benefits of federal mandates, when appropriate, not just costs.

Observations

As Congress begins to reevaluate UMRA on its 10-year anniversary, some of the issues raised by the various sectors we contacted may provide a constructive starting point. While the sectors provided a wide variety of comments, their views were often mixed across and within certain sectors. Given the wide-ranging view of opinions, it will be challenging to find workable solutions that will be broadly supported across sectors that often have differing interests and perspectives.

Although parties from various sectors generally focused on the areas of UMRA and federal mandates that they would like to see fixed, they also recognized positive aspects and benefits of UMRA. In particular, they commented about the attention UMRA brings to potential consequences of federal mandates and how it serves to keep the debate in the spotlight. We also found it notable that no one suggested repealing UMRA. One challenge for Congress and other federal policy makers is to determine which issues and concerns about federal mandates can be best addressed in the context of UMRA and which ones are best considered as part of more expansive policy debates.

When considering changes to UMRA itself, one issue stood out, UMRA's narrow coverage. This was clearly an issue for certain parties within all sectors based on the comments. The various definitions, exceptions, and exclusions were a source of frustration for many who responded to our review, especially those most affected by federal mandates. Although the parties in most sectors generally agreed that UMRA's coverage should be expanded given its narrow focus, parties in the public interest advocacy sector disagree. Even among those that believe that UMRA's coverage is too narrow, identifying suggested options that had broad-based support was challenging. Most parties simply suggested revisiting, amending, or modifying UMRA to expand coverage. Others provided more specific suggestions, including expanding UMRA to cover conditions of financial assistance, such as grants, and all preemptions of state and local authority. However, certain proposed changes were strongly opposed by certain parties in the public interest advocacy and academic sectors, such as dropping the exclusions for civil rights-related provisions. Likewise, parties from the business and state and local governments sectors opposed any further narrowing of UMRA.

On broader policy issues concerning federal mandates, most parties supported the need for more evaluation and research on federal mandates. More retrospective analysis to ensure that mandates are achieving their desired goals could enable policymakers to better gauge the mandates' benefits and costs, determine whether the mandates are providing the desired and expected results at an acceptable cost and assess any unanticipated effects from the implementation of mandate programs. Such analysis could be done not only for individual mandates but also for the cumulative, aggregate costs and other impacts that major mandates may be having for the budgetary priorities of regulated entities, such as state or local governments. Such information could help provide additional accountability for federal mandates and provide information which could lead to better decisions regarding the design and funding of mandate programs. Some suggested that the design of mandates could incorporate "look back" or sunset provisions that would require retrospective analyses of mandate results periodically.

As we move forward, the unfunded mandates issue raises broader questions about the assignment of fiscal responsibilities within our federal system. The federal government, as well as states, faces serious fiscal challenges both in the short and longer term. In February 2005, we issued our report on 21st century challenges. Given the long-term fiscal challenges facing the federal budget as well as numerous other geopolitical changes challenging the continued relevance of existing programs and priorities, we called for a national debate to review what the government does, how it does business and how it finances its priorities.[25] Such a reexamination should usefully consider how responsibilities should be allocated and shared across the many nonfederal entities in our system as well.

As we rethink the federal role, many in the state and local or business sector would view unfunded mandates as among the areas warranting serious reconsideration. Unfunded mandates potentially can weaken accountability and remove constraints on decisions by separating the enactment of benefit programs from the responsibility for paying for these programs. Similar objections, however, could also be raised over 100 percent federal financing of intergovernmental programs, since this could vitiate the kind of fiscal incentives necessary to ensure proper stewardship at the state and local level for shared programs.

Reconsideration of responsibilities begins with the observation that most major domestic programs, costs and administrative responsibilities are shared and widely distributed throughout our system. The fiscal burdens of public policies in areas ranging from primary education to homeland security are the joint responsibility of all levels of government and, in some cases, the private sector as well. As we reexamine the federal role in our system, there is a need to sort out how responsibilities for these kinds of programs should be financed in the future. Sorting out fiscal responsibilities involves a variety of considerations. Issues to be considered include the fiscal capacity of various levels of government to finance services from their own resources both now and over the long term as well as the extent to which the benefits of particular programs or services are broadly distributed throughout the nation. Moreover, consideration should also be given to the fiscal capacity of various levels of government and other entities to finance their share of responsibilities in our system, both now and over the longer term.

[25] GAO-05-325SP.

The following kinds of questions can be raised as part of this reexamination of fiscal responsibilities

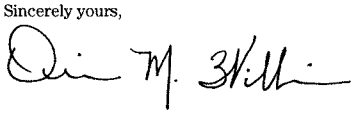
- What governmental activities should fall entirely within the purview of the federal or state/local governments and what activities should be shared responsibilities?
- If the federal government "mandates" activities to be undertaken by state/local governments, under what circumstances is it appropriate for the federal government to finance them and what share of the costs should be borne by federal and nonfederal sources?
- Are the potential revenue sources available to the various level of government adequate to finance their responsibilities?

Because issues involving UMRA and unfunded mandates are part of a broader public policy debate to be had by Congress, we are making no recommendations in this report.

As agreed with your office, unless you publicly announce the contents of this report earlier, we will not distribute it until 30 days from the date of this letter. We will then send copies of this report to the Ranking Member, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate; the Chair and Ranking Member of the Government Reform Committee, House of Representatives; the Directors of OMB and CBO and others on request. It will also be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me or Tim Bober at (202) 512-6806 or williamso@gao.gov or bobert@gao.gov. Key contributors to this report were Tom Beall, Kate Gonzalez, Boris Kachura, Paul Posner, and Michael Rose.

Sincerely yours,



Orice M. Williams
Director
Strategic Issues

Appendix I

Objectives, Scope, and Methodology

For this report, you asked us to provide more information and analysis regarding the Unfunded Mandates Reform Act of 1995 (UMRA) and federal mandates in general. Specifically, you asked us to consult with a diverse group of knowledgeable parties familiar with the act and to report their views on (1) the significant strengths and weaknesses of UMRA as the framework for addressing federal mandates issues, including why the parties believed the issues they identified were significant, and (2) potential options suggested for reinforcing the strengths or addressing the weaknesses. For both of those central objectives, you also asked that we report, to the extent possible, on level of agreement among the various individuals and organizations, which we refer to as "parties" throughout the report.

To address our objectives, we primarily used a structured data collection approach to obtain feedback from a diverse set of organizations and individuals knowledgeable about the implementation of UMRA and/or federal mandate programs. To identify prospective parties, we first built upon our recognition of knowledgeable parties based on our past work on unfunded mandates by conducting extensive literature reviews on federal mandates issues. Second, as we contacted the individuals, we asked each of them to recommend other knowledgeable parties for us to contact. In total, 52 individuals and organizations participated in the review. (See app. II for the list of organizations and individuals who provided information responding to our research questions.)

The parties provided us their input through a variety of means, including group meetings, individual interviews, and written responses. We sought and obtained viewpoints from organizations and individuals across a broad spectrum of interested communities that we classified into five sectors for purposes of structuring our analyses. These sectors were: academic centers and think tanks; businesses; federal agencies (including executive and legislative branch agencies); public interest advocacy groups; and state and local governments. (For a comprehensive list of their comments and suggested options, see appendix IV, which is available as an electronic supplement to this report.)

We reviewed all the information provided by those various parties and organized it on the basis of the topics they addressed. To facilitate analysis and discussion of the considerable amount of information provided by the sources, we first itemized the input, to the extent possible, into a set of discrete separable points. In some instances, if a party's comments were part of a more lengthy discussion addressing a larger issue, we kept the

material together to avoid losing the context of the input. Next, we identified seven broad topical areas or themes, which we used to classify the specific comments, observations, issues, and options that were provided:

1. uses and usefulness of information UMRA generates,
2. UMRA coverage of federal actions,
3. UMRA enforcement,
4. UMRA's analytic framework,
5. UMRA consultation requirements,
6. design and funding of federal mandates, and
7. evaluation and research needs regarding federal mandates.

These themes were further characterized as falling into one of two sets. The first five themes captured input specifically on UMRA and its provisions, and the remaining two themes captured input that was focused on issues about federal mandates in general.

We then analyzed and independently coded the resulting master table on the parties' input using the themes listed above.[1] Any differences in the coding were discussed and a team consensus code determined. If the party's input touched on more than one theme (for example, options might have been suggested regarding both enforcement of UMRA and how to improve estimates), we assigned multiple codes. Therefore, items with multiple codes are repeated under each relevant theme subsection in this document. This coding into themes was not intended to be precise or to limit suggested options to only certain topics. The coding was simply intended to help group together items that included input relevant to a given topic.

To ensure that our organization and characterization of the information that the parties provided accurately reflected their views, we provided each

[1] Some of the parties' feedback did not fit within any of the seven more distinct themes. We coded that information as "other".

contributor an opportunity to review our summary of their input. They generally concurred with the accuracy of our characterization of their views and, in a few instances, supplemented or clarified their original comments by providing additional information, which we incorporated into our master list of parties' responses. (Again, see app. IV, which is an electronic supplement for a complete list of the information provided by all of the contributing parties.)

We supplemented the information obtained through this broad data gathering effort with a half-day symposium held at GAO on January 26, 2005, involving 26 experts from across all five sectors. (See app. III for a list of the symposium participants.) The overall objectives of the symposium were to provide an opportunity for the participants from different sectors and viewpoints to engage each other, to discuss in more depth the issues and options previously identified, to identify additional options for augmenting strengths or addressing weaknesses, and to elaborate on the relative priorities of the options suggested. To meet these objectives in the limited time available, the discussions at the symposium were structured to focus mainly on the three themes that appeared to attract the greatest number and/or variety of comments during our initial data collection, as well as to address themes from both the UMRA-specific and general mandate sets: UMRA coverage, UMRA enforcement, and the design and funding of federal mandate programs.[2] To encourage open and candid input from the various parties, we are not attributing any input from either our general data collection effort or the symposium to specific organizations or individuals.

While our initial data collection effort and the symposium collectively yielded information of considerable breath and depth on UMRA and UMRA-related issues and options, the information we gathered only represents the views of those organizations and individuals who chose to participate in this review. For this reason and related issues, this information provides only a rough gauge as to the prevalence of opinion about given issues or options or the extent to which there is agreement among and within particular sectors about those issues and options. Despite our efforts to solicit a comparable level of input from the different sectors, fewer identified parties from some sectors chose to participate in our review than others. When parties who chose not to participate

[2] We also provided time for an "open forum" to give participants an opportunity to discuss any other UMRA or mandate-related issues and options they wished to raise.

recommended other contacts that they considered as knowledgeable about UMRA and mandates issues, we sought the participation of the recommended contacts, which allowed us to partially mitigate the extent of non-participation.

Also, given the variety of methods and sources used to collect the views, we structured our analyses of prevalence and agreement to avoid double counting the same response provided by different representatives of an organization at different points in time. We did this by categorizing the input on an identified issue or option that we received from a specific entity, whether it came from multiple sources or a single source, as the view of a party. To illustrate this categorization process, a reference to "one party" may represent the views of many representatives of a given organization obtained through a number of meetings or interviews, while another such "one party" reference may represent the views of one person through a single written response.[3] Similarly, in examining the comments classified each theme, if the same issue was identified as a strength by one party and a weakness by another party, we counted the comments as applying to the same issue. While these steps help address some of the difficulties in examining the prevalence of views and agreement between parties, it is a very imprecise assessment.

We conducted our review from August 2004 through February 2005 in Washington, D.C., in accordance with generally accepted government auditing standards.

[3] Unless noted otherwise, our reported "counts" in the body of this report refer to the number of parties who gave a particular response. However, we do report all responses by all representatives of an organization in appendix IV.

Appendix II

Parties Providing Input to GAO's Review

Organizations

Note: Multiple officials and/or staff members of these organizations may have contributed information for our review.

1. American Association of People with Disabilities (AAPD)
2. American Federation of State, County, and Municipal Employees (AFSCME)
3. American Public Power Association (APPA)
4. The Arc of the United States
5. Association of Metropolitan Sewerage Agencies (AMSA)
6. Center on Budget and Policy Priorities (CBPP)
7. Congressional Budget Office (CBO)
8. Congressional Research Service (CRS)
9. Council of State Governments (CSG)
10. Federal Funds Information for States (FFIS)
11. International City/County Management Association (ICMA)
12. Mercatus Center
13. National Association of Counties (NACO)
14. National Association of Protection and Advocacy Systems (NAPAS)
15. National Association of State Budget Officers (NASBO)
16. National Conference of State Legislatures (NCSL)
17. National Governors Association (NGA)
18. National League of Cities (NLC)

19. Natural Resources Defense Council (NRDC)
20. Office of Advocacy, Small Business Administration
21. Office of Management and Budget (OMB)
22. OMB Watch
23. Regulatory Brown Bag (regulatory staff from the Departments of Justice, Labor, Transportation, and Veterans Affairs, the Environmental Protection Agency, and the Federal Communications Commission)
24. U.S. Chamber of Commerce
25. U.S. Conference of Mayors (USCM)

Individuals

1. Bob Adler, University of Utah
2. Katherine Baiker, Dartmouth College
3. Bob Behn, Harvard University
4. Richard Belzer, Regulatory Checkbook
5. Neil Bergsman, State of Maryland (former Maryland Budget Director)
6. Howard Chernick, Hunter College, CUNY
7. Timothy Conlan, George Mason University
8. David Driesen, Syracuse University
9. Michael Greve, American Enterprise Institute
10. Thomas Hopkins, Rochester Institute of Technology
11. Elizabeth Keating, Harvard University
12. Cornelius Kerwin, American University

13. John Kincaid, Meyner Center for the Study of State and Local Government
14. Greg Lashutka, Nationwide
15. Bill Leighty, Virginia Governor's Office
16. Mark Ragan, Nelson A. Rockefeller Institute of Government
17. Andrew Reschovsky, University of Wisconsin-Madison
18. Brian Riedl, The Heritage Foundation
19. Stephen Slivinski, Cato Institute
20. Claudio Ternieden, American Association of Airport Executives
21. Jim Tozzi, Center for Regulatory Effectiveness
22. Edward Zelinsky, Cardozo Law School

Appendix III

Participants in GAO Federal Mandates Symposium, January 26, 2005

1. Keith Bea, Congressional Research Service
2. Richard Belzer, Regulatory Checkbook
3. Neil Bergsman, State of Maryland
4. Richard Beth, Congressional Research Service
5. Jay Cochran, III, Mercatus Center
6. Timothy Conlan, George Mason University
7. Curtis Copeland, Congressional Research Service
8. David Driesen, Syracuse University
9. Patrice Gordon, Congressional Budget Office
10. Teri Gullo, Congressional Budget Office
11. Thomas Hopkins, Rochester Institute of Technology
12. Cornelius Kerwin, American University
13. Greg Lashutka, Nationwide
14. Iris Lav, Center on Budget and Policy Priorities
15. Bruce Lundegren, U.S. Chamber of Commerce
16. Paul Marchand, The Arc of the United States
17. Alysoun McLaughlin, National Association of Counties
18. Eric Olson, Natural Resources Defense Council
19. Scott Pattison, National Association of State Budget Officers
20. David Quam, National Governors Association
21. Mark Ragan, Nelson A. Rockefeller Institute of Government

22. Molly Ramsdell, National Conference of State Legislatures

23. Amy Scott, Council of State Governments

24. Robert Shull, OMB Watch

25. Claudio Ternieden, American Association of Airport Executives

26. Yvette Tetreault, Federal Funds Information for States

Appendix IV

Parties' Feedback on UMRA and Federal Mandates

This e-supplement is available on our Web site at http://www.gao.gov/cgi-bin/getrpt?GAO-05-497SP.

Summary of Parties' Suggested Options

Once the strengths, weaknesses and options were identified and reviewed, GAO developed a thematic framework for classifying and organizing this information.

Below is a summary list of the options provided by participating parties organized by theme. The list of options presented under each theme is intended to be a complete accounting of the suggested options associated with that theme. The lists are not in any particular order and do not to reflect the relative frequency with which participating parties identified the same or similar option. Options appear on these lists if mentioned by even one participating party. See appendix I for further information about the procedures followed in the organization of this information and associated qualifications concerning its use. See appendix IV e-supplement for a detailed listing of options as suggested by participants as part of their response to perceived strengths and weaknesses.

1: Uses and Usefulness of Information UMRA Generates

- Provide for more centralized review of regulatory mandates.
- Analyze benefits, as well as costs, of mandates.
- Apply the Data Quality Act criteria to information generated under UMRA
- Congress should track "unfunded mandates," defined broadly.
- Congress and OMB should develop more expertise on regulations and how to govern them.
- The most important point is to clarify in advance what consequences federal actions will have.
- Although additional program evaluation of federal mandates would help, this was not the initial intent of UMRA.
- Research into the scope and scale of unfunded mandates will not be informative unless and until the law has adequate incentives for compliance and accounting.
- It would be useful for the GAO to provide an annual report documenting the total budgetary shortfall of unfunded mandates.

- Make the potentially affected nonfederal parties aware when there is a finding that proposed legislation contains a mandate.
- Enhance the work of CBO's State and Local Government Cost Estimates Unit by providing the unit more timely access to bills and joint resolutions that may impose unfunded federal mandates.

2: UMRA Coverage of Federal Actions

- Generally amend, modify or revisit the definitions, exceptions, and exclusions under UMRA and "close loopholes."
- Eliminate/amend exceptions for conditions of federal financial assistance and participation in voluntary programs.
- Expand UMRA to cover appropriations bills and other legislation currently not covered.
- Expand UMRA to cover changes in conditions of existing programs.
- Cover rules issues by independent agencies.
- Amend UMRA to include federal tax actions that reduce state revenues.
- Amend UMRA to include federal preemptions.
- Amend/eliminate the national security exclusions.
- Amend/eliminate the civil rights exclusions.
- Change cost thresholds and definitions for purposes of identifying mandates that trigger UMRA's threshold.
- Expand the definition of an unfunded mandate to include all open-ended entitlements, such as Medicaid, child support, and Title 4E (foster care and adoption assistance) and proposals that would put a cap on or enforce a ceiling on the cost of federal participation in any entitlement or mandatory spending program.
- Expand the definition of mandates to include those that fail to exceed the statutory threshold only because they do not affect all states.

- Broaden the definitions in UMRA to apply to federal processes that do not result in published rules but have the effect of a mandate. A wider definition of UMRA's applicability is needed to address such processes.
- UMRA hasn't been as successful in dealing with previous mandates as in discouraging new mandates, but I am not sure how UMRA could be changed to address that.
- UMRA should authorize CBO to identify and estimate the costs of potential mandates in final agency rules. This would be a purely informational function.
- UMRA should authorize CBO to identify and estimate the costs of potential mandates in U.S. Supreme Court rulings. The information provide by CBO analyses of judicial intergovernmental mandates would allow the Congress to provide compensatory funding to state and local governments and/or to amend statutes that produce unintended judicial mandates.
- Under title II, amend the limitation of UMRA not applying to rules without a notice of proposed rulemaking.
- The Joint Committee on Taxation, responsible for performing costs estimates of tax legislation, should provide additional information on the costs of mandates outside of UMRA's strict definition, as CBO endeavors to do.
- Establish an institutional entity whose responsibilities include analysis of federal policies and actions that affect state and local governments.
- [Require] substantive reporting on legislative, government-sought judicial and regulatory preemptions regardless of cost thresholds.
- Don't expand UMRA's coverage; keep it narrow.
- Retain the current rights exclusions.
- Add new exclusions.
- Drop or differentiate coverage of private sector mandates.

- Clarify definitions under UMRA and ensure consistency of implementation.

3. UMRA Enforcement

- Maintain the current point of order mechanism.
- Strengthen the point of order mechanism.
- Reconsider the usefulness of the point of order mechanism.
- Require roll call votes for legislation imposing an unfunded federal mandate.
- Put some backbone into the UMRA requirements that committees provide. information, e.g., set up a hurdle for consideration of legislation if committees leave out required information.
- Open the CBO methodology for comment, perhaps through the Federal Register or by requiring an independent examination of the process used by CBO.
- There may be a need to "toughen up" UMRA. Making the "roar" of UMRA a little bigger might at least increase attention to these issues. However, it is not certain one could get Congress to pay more attention legislatively, nor can you legislate Congress from imposing mandates. In short, it is not certain that there are any procedural fixes that could address the problem of unfunded mandates.
- It is not certain that fixing or simplifying UMRA's procedures would address the underlying purposes of the act.
- Generally strengthen enforcement of agency compliance with title II.
- Reassign oversight responsibilities for agencies' compliance with title II.
- Apply the Federal Data Quality Act to agencies' UMRA analyses.
- Create more accountable means of estimating mandate costs.
- Improve title II, including enhanced requirements for federal agencies to consult with state and local governments and the creation of an office within the Office of Management and Budget that is analogous to the

State and Local Government Cost Estimates Unit at the Congressional Budget Office.

- Revisit the provisions of title II.
- The Office of Information and Regulatory Affairs should return a rule that is not in compliance with UMRA to the agency from which it came. If an agency is unsure whether a rule contains a significant mandate, it should err on the side of caution and prepare a mandates impact statement prior to issuing the regulation.
- Expand judicial review provisions

4. UMRA Analytical Framework

- Implement some form of third-party, independent review of the UMRA estimates, data, and processes.
- Revisit the exclusion of indirect costs from UMRA estimates.
- Expand the title II definition to include more than just expenditures for purposes of triggering the UMRA threshold.
- Consider new approaches to address uncertainties in the estimation of potential effects of mandates.
- Analyze the benefits, as well as the costs, of federal mandates in UMRA estimates.
- Examine/monitor the implementation of the UMRA estimation process and mandate determinations by different agencies.
- Amend UMRA so that Federal regulatory agencies would not be allowed to avoid congressional mandates by mischaracterizing the cost of a rulemaking.
- Congress should amend UMRA to lower the fiscal impact threshold for federal agency intergovernmental mandates from $100 million to $50 million.
- UMRA estimates should be done on a regional/local level basis also, not just at an aggregate national level.

- Federal agencies should look into the cost-benefit ratio of their mandates.
- Other agencies should consider emulating CBO's approach of more centralized reviews of statutes and direct contacts with state and local governments when preparing estimates.
- Enhance the work of CBO's State and Local Government Cost Estimates Unit by providing more timely access to bills and joint resolutions that may impose unfunded federal mandates.
- Require UMRA-like estimates when major changes in grant conditions and/or formulas occur.
- Clarify what constitutes a mandate and whether a bill's effect on the costs of existing mandates should be counted as a new mandate cost when the bill itself contains no new enforceable duty.

5. UMRA Consultation Requirements

- Replicate on the regulatory side approaches CBO uses for reviews of statutory mandates.
- Bring more uniformity and consistency to the consultation process.
- Do more to involve State and local governments early in the rulemaking process.
- Provide more training and education to agencies' regulatory staffs and their contractors who prepare many of the rulemaking studies and materials, such as regulatory impact analyses.
- State and local governmental authority to reject mandates or litigate based on noncompliance with clear statutory criteria would dramatically improve states' ability to ensure that federal agencies take seriously their duty to consult.
- More parties may need to be covered by the consultation provision (e.g., not just focused on state, local, and tribal governments).
- Intergovernmental communications should be documented and made part of the rulemaking proceeding while deliberation about the proposal is still going on. If not, the decision making process is opaque.

- To avoid elevating the position of one particular voice in the debate, amend the consultation provisions of UMRA so the act does not require federal agencies to consult with state, local and tribal governments before a regulation is proposed.

6. Design and Funding of Federal Mandates

- Ensure sufficient federal funding for mandated services
- Provide state and local governments waivers, offsets, etc.
- Compliance with federal mandates should not be made contingent on full federal funding.
- Cap the costs of mandates on state and local governments.
- Provide more flexibility in the design of mandate programs.
- Design federal mandate programs with sunset provisions.
- Restrict the preemption of state laws.
- Something bigger than just amending UMRA is needed to address this policy issue. Question whether an entitlement approach and model for federal funding (as with the Medicaid program) makes sense as public policy for providing federal assistance. An eligibility-based system becomes an entitlement program under which costs are hard to control. In contrast, a block grant model lets states experiment with flexible approaches and cap some costs. However, it is questionable whether there would ever be a way to modify the federal model for these programs so they weren't entitlements.
- This dilemma can't be solved by just another federal statute or amendment to UMRA. Discipline is the only real solution to curbing the practice of Congress adding, and often changing, lots of conditions that come with federal programs and funding.
- Most states have created a budget that is dependent on the federal funding, and measures need to be taken to wean the state system off the federal revenue.
- The federal government should consider using a "zero-based budgeting" approach to funding for federal mandates. Such an approach would flip

the usual arrangement so that states would get no federal funds (e.g., federal highway funds) until they do what is required under federal statutes.

- There hasn't been sufficient consideration of user fees. For example, if there is a permitting program that is delegated to the states, the applicants should bear the cost of the permitting process, not the states.
- Incongruous to require cost-benefit analysis for regulations but only require cost estimate for legislation. Address the incongruity of requiring cost-benefit analysis for regulations but only requiring cost estimates for legislation.
- Cost-effectiveness of UMRA has not been explored. Explore the cost-effectiveness of UMRA.

7. Evaluation and Research Needs Regarding Federal Mandates

- Do retrospective analyses of the costs and/or effects of mandates.
- Do a study/provide data on the cumulative impact of federal mandates.
- Do studies/provide data on the local/regional impacts of mandates.
- Analyze benefits, as well as costs, of federal mandates.
- Federal agencies should look into the cost-benefit ratio of their mandates.
- It might help to provide more training and education to agencies' regulatory staffs and their contractors who prepare many of the rulemaking studies and materials, such as regulatory impact analyses.
- A first step in getting states to do what laws mandate is simply to report, in a straightforward way, what states are or are not doing (e.g., have a "national scorecard" or central point of contact where one could go to get such information).
- GAO's report on UMRA should try to bring a little more clarity to the mandates issue. It would be valuable to discuss conceptually what an unfunded mandate is and identify the associated federalism issues.

- Do research on whether the statute [UMRA] has changed agencies' regulations.
- Help Congress and the general public to recognize that these numbers [the UMRA estimates] are soft.
- We question whether the federal agencies that are imposing the mandates should also evaluate the mandates. We advocate third-party review of the benefits of agency mandates, and their cost estimates or some similar mechanism to have someone look at the agencies' mandates, estimates and data./

Appendix VI

Results of Federal Mandates Symposium Balloting Process

GAO conducted two information collection efforts to arrive at our findings regarding UMRA and federal mandates' strengths, weaknesses and options. The first was an effort focusing on 52 organizations and individuals that are knowledgeable about UMRA and federal mandates. We solicited information from these parties regarding the strengths, weaknesses and options. On the basis of our analysis of the information provided by these parties, we identified seven major themes.

The second information collection effort was a symposium held on January 26, 2005. All the parties we contacted during our initial data collection phase were invited to attend. In addition, we sent each of them a discussion draft presenting all of the issues (strengths and weaknesses) and options suggested to address those issues. The symposium was divided into four sessions with three of the four sessions focused on the themes most frequently cited. Sessions 1 and 2 focused on UMRA-specific themes (coverage and enforcement, respectively), Session 3 dealt with broader federal mandates issues (design and funding), and Session 4 was an open session for other issues that participants wanted to raise.

Each session was opened with a brief overview provided by GAO and was followed by an open discussion among the participants. To obtain a general sense of which suggested options had the greatest or least amount of support among the symposium participants, we used a balloting process at the end of each session. We provided the participants a ballot that was to be completed at the end of each session. Each ballot listed the options suggested for that theme collected during our initial information collection effort. Second, the participants were asked to review the ballot and provide any additional options during the course of the discussion that they wanted to be added to the ballot and considered in the balloting process. At the conclusion of a session, we asked each participant to identify (a) the three options having their greatest support and (b) the three options they could not support.

The results of that balloting for the symposium sessions are presented below. As mentioned previously, all the suggested options on the ballot were provided by the parties we contacted during the initial data collection phase or added by participants during the symposium. In accord with the voting instructions, we present for each session the top three options getting the most votes. These results reflect the views of symposium participants only and are provided to convey a general sense of their preferences. Due to variation in vote tallies for each of these options, these

results should not be construed as showing options achieving a consensus among symposium participants.

Symposium Session 1: UMRA Coverage

Options that participants indicated had their greatest support:

- Generally amend, modify or revisit the definitions, exceptions, and exclusions under UMRA and "close loopholes."
- Amend UMRA to include federal preemptions.
- Move to definition of whether it will cost state and local governments money to comply-so as to include federal tax changes that affect state revenue system, requirements that are a condition of federal fiscal assistance and similar issues.

Options that participants indicated they could not support:

- Don't expand UMRA's coverage; keep it narrow.
- Amend or eliminate the civil rights exclusions in UMRA.
- Add new exclusions for mandates regarding public health, safety, environmental protection, workers' rights, and disability.

Symposium Session 2: UMRA Enforcement

Options that participants indicated had their greatest support:

- Create an office within the OMB that is analogous to the State and Local Government Cost Estimate Unit at CBO.
- Require program legislation to contain mandate cost authorizations; provide that a mandate (including mandate pursuant to regulations) not funded at the authorized level for a fiscal year is held in abeyance unless the funding or obligations are altered to remove the inconsistency.
- Add processes for accounting for cumulative effects of regulatory activities in similar fields, (e.g., environmental regulations) including a requirement to collect data on actual costs.

Options that participants indicated they could not support:

- Maintain the current point of order mechanism (i.e., keep the status quo).
- Empower the states to either reject mandates on their own authority or litigate congressional and/or agency noncompliance with clear statutory criteria.
- Cap the magnitude of actual state and local outlays at a level equal to the Congress's or an agency's prior estimate of those burdens to eliminate incentives to underestimate the impacts and provide a level of discipline to determinations of whether proposals contain significant unfunded mandates.

Symposium Session 3: Design and Funding of Federal Mandate Programs

Options that participants indicated had their greatest support:

- Restrict the preemption of state laws.
- Consider the effects of the timing of federal actions and program changes on state governments. Recognize that states (and the populations served by federal-state programs) are very diverse.
- Create a mechanism, similar to section 610 of the Regulatory Flexibility Act, where agencies would evaluate the effectiveness of a mandate after a certain period of time (e.g., 5 or 10 years).

Options that participants indicated they could not support:

- As an option for addressing the funding of mandates, consider waivers or swaps. Amend UMRA so that, if a mandate is legislated, then state and local governments gain certain waiver rights or a regulatory "off ramp" when faced with costly mandates.
- Remind states that participation in some of the federal mandate programs is voluntary and, therefore, states can opt out of the programs if participation is considered too costly.

- The federal government should consider using a "zero-based budgeting" approach to funding for federal mandates. Such an approach would flip the usual arrangement so that states would get no federal funds (e.g., federal highway funds) until they do what is required under federal statutes.