

UNFUNDED MANDATES INFORMATION AND TRANSPARENCY ACT OF 2013

FEBRUARY 14, 2014.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 899]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 899) to provide for additional safeguards
with respect to imposing Federal mandates, and for other purposes,
having considered the same, report favorably thereon without
amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Unfunded Mandates Reform Act (UMRA) of 1995 was enacted to promote informed and deliberate decisions by Congress and federal agencies concerning the appropriateness of federal mandates and to “retain competitive balance between the public and private sectors.”¹ In accord with UMRA’s original intent, H.R. 899 aims to improve the quality of Congressional deliberations and to enhance the ability of Congress, federal agencies, and the public to identify federal mandates that may impose undue harm on state, local, and tribal governments and the private sector by providing more complete information about the cost of such mandates and by holding Congress and federal agencies accountable for imposing unfunded mandates.

BACKGROUND AND NEED FOR LEGISLATION

UMRA’s enactment was celebrated as a major legislative accomplishment that would relieve much of the burden placed upon non-federal entities by Congress and federal agencies through unfunded mandates.² It has become apparent over time, however, that UMRA—despite its good intentions and noble purpose—failed to curtail substantially the imposition of unfunded mandates. The several loopholes, exemptions and exclusions embedded in the law are largely to blame. A 2005 Government Accountability Office (GAO) report found that “[m]ost parties from the state and local governments, federal, business, and academic/think tank sectors vie[w] UMRA’s narrow coverage as a major weakness that leaves out many federal actions with potentially significant financial impacts on nonfederal parties.”³ Interviewed parties agreed that UMRA’s definitions, as well as exclusions and exemptions in the law that allow Congress and federal agencies to continue to place burdens upon state, local and tribal governments and private sector entities should be revisited.⁴ Multiple parties also informed GAO that the consultation process between agencies and affected nonfederal entities concerning regulatory mandates was inconsistent and in need of improvement.⁵

H.R. 899 is a product of a thorough examination of UMRA during the 112th Congress by the Subcommittee on Technology Information Policy, Intergovernmental Relations and Procurement Reform, chaired by Rep. James Lankford (R-OK). The Subcommittee examined the effectiveness of UMRA via three hearings featuring recognized experts on unfunded mandates, as well as representatives of states, localities and the private sector. Witnesses highlighted UMRA’s narrow coverage, exemption and loopholes as serious flaws, and suggested that legislative remedies to the UMRA statute would make it a more effective instrument to reduce unfunded legislative and regulatory mandates. H.R. 899 enhances UMRA’s utility as a tool to promote informed and deliberate decisions by Con-

¹ 2 U.S.C. § 1501.

² CRS Report

³ Government Accountability Office (GAO), *Unfunded Mandates: Views Vary About Reform Act’s Strengths, Weaknesses, and Options for Improvement*, GAO-05-454, Mar. 2005.

⁴ *Id.*

⁵ *Id.*

gress and federal agencies concerning the appropriateness of federal mandates. H.R. 899 accomplishes this in multiple ways.

To bring awareness to federal mandates imposed on entities pursuant to a condition of grant aid, H.R. 899 allows a chairman or ranking member of any Congressional committee to request CBO conduct an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of federal assistance being imposed on state, local, or tribal governments participating in the federal assistance program. The National Conference of State Legislatures is among those entities advocating that more light be shed on the cost of implementing assistance programs such as No Child Left Behind programs and the Temporary Assistance for Needy Families Block Grant. Such programs impose significant costs on participating states, but are not considered unfunded mandates under UMRA. H.R. 899 does not expand the definition of what constitutes an unfunded mandate, but it does allow the cost of certain excluded programs to be assessed. This provision was crafted in consultation with the Congressional Budget Office (CBO), which advised the Committee on how best to provide information about conditions of grant aid without overburdening CBO.⁶

H.R. 899 amends the definition of “direct costs” in UMRA to ensure that federal agencies are accounting in their UMRA analyses for such costs of federal mandates as forgone business profits, costs passed onto consumers or other entities, and behavioral changes. The Small Business and Entrepreneurship Council testified to the Subcommittee that regulatory costs impacting prices, risk-taking, economic growth and employment need to be considered in agency cost estimates.⁷ CBO has stated that its own UMRA analyses already take these factors into account.

To close one of UMRA’s loopholes, H.R. 899 subjects independent regulatory agencies to the statute. Under current law, independent regulatory agencies, such as the Consumer Financial Protection Bureau, the Securities Exchange Commission, the National Labor Relations Board, the Consumer Product Safety Commission, and the Federal Communications Commission, can impose significant costs and burdensome requirements with little meaningful accountability and oversight.

In testimony before the Subcommittee, former OIRA Administrator Dudley recommended that UMRA be aligned with Executive Order 12866. She opined that the analytical requirements of Executive Order 12866 are a more effective mechanism for holding agencies accountable for the objectives expressed in UMRA.⁸ Moreover, former OIRA Administrator Sunstein wrote in previous scholarship that executive orders are not “sufficient for real change;” and “a thoroughgoing reform effort would require legislative re-

⁶See CBO letter

⁷Unfunded Mandates and Regulatory Overreach Part II: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (testimony of Raymond Keating, Chief Economist, Small Business and Entrepreneurship Council).

⁸Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (testimony of Susan Dudley, Director, GW Regulatory Studies).

forms, not merely executive action.”⁹ To ensure that agencies regulate responsibly, H.R. 899 codifies most of those regulatory principles outlined in Executive Order 12866, and reaffirmed in Executive Order 13563.

To close another loophole in UMRA, H.R. 899 no longer allows an agency to forego UMRA analyses simply because the agency publishes a rule without first issuing a notice of proposed rulemaking. GAO has found that nearly half of final rules are not first published in the Federal Register as a notice of proposed rulemaking. Currently, rules that do have a notice of proposed rulemaking in the Federal Register qualify for an automatic UMRA exemption.¹⁰

To put the private sector on equal footing with the public sector, H.R. 899 requires agencies to consult with regulated private sector entities during the development of significant federal regulatory mandates. This consultation requirement now applies only with respect to state, local, and tribal governments. Existing OIRA guidelines on agency execution of this requirement are codified in H.R. 899 and OIRA is required to include an Appendix detailing agency consultation activities with state, local, and tribal governments and the private sector in its annual report to Congress on agency compliance with UMRA. This will help remedy what the National Conference of State Legislatures has described as a “haphazard” consultation process.¹¹ For example, OIRA previously included an appendix in its annual report to Congress, which provided examples of agency consultation with state and local governments.¹² However, in recent years, the annual report has ceased to include any evidence concerning how consultation is being carried out.¹³ In response to a July 2011 inquiry from the Subcommittee, OIRA conceded it had unilaterally decided to remove the appendix, even though this arguably constituted a failure to satisfy its current-law reporting requirements.¹⁴

To ensure that meaningful oversight over unfunded regulatory mandates is enabled and remains consistent with other regulatory oversight, H.R. 899 formally transfers responsibilities from the Director of the Office of Management and Budget (OMB) to the Administrator of the Office of Information and Regulatory Affairs (OIRA). OMB has long delegated its responsibilities under UMRA to OIRA.¹⁵ H.R. 899 would cement that relationship, while also extending OIRA’s role beyond certifying and reporting on agency regulatory actions.

⁹Robert W. Hahn & Cass R. Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis*, 150 U. PA. L. REV. 1489 (2002).

¹⁰U.S. General Accountability Office, *Federal Rulemaking: Agencies Often Published Final Action Without Proposed Rules*, August 31, 1998.

¹¹National Conference of State Legislatures, Policy Position on Federal Mandate Relief, effective through August 2011, available at <http://www.ncsl.org/Default.aspx?TabID=773&tabs=855,20,632#FederalMandate>.

¹²U.S. Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, 2008 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities, January 2009.

¹³U.S. Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, 2009, 2010 and 2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, 2009, 2010, 2011.

¹⁴Cass Sunstein email response to Chairman Lankford (July 22, 2011).

¹⁵Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (testimony of Susan Dudley, Director, GW Regulatory Studies).

To ensure that agencies continue the “look back” process, H.R. 899 also allows a chairman or ranking member of any congressional committee to request any agency conduct a retrospective analysis of an existing federal regulatory mandate. The retrospective analysis provision aims to educate Congress about the impact of a rule after it has been in effect. It will incentivize agencies to perform a proper analysis when first proposing regulations. Before the Subcommittee, GAO testified that parties they interviewed advocated for an evaluation of existing rules to better assess the effectiveness of UMRA.¹⁶ The Small Business and Entrepreneurship Council’s testimony supported an after the fact evaluation of the effectiveness and the true cost of existing regulations and mandates.¹⁷ President Obama has also stated that each agency, “should periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”¹⁸

To enhance accountability, H.R. 899 extends judicial review to the selection of the least costly or least burdensome regulatory alternative, and to the principles of Executive Order 12866. In her testimony, former OIRA Administrator Dudley advocated for expanding judicial review in this way to give agencies a greater incentive to carefully consider the “least costly, most cost-effective or least burdensome alternative” when regulating.¹⁹ The Small Business and Entrepreneurship Council testified that the current judicial review provision included in UMRA “lacks teeth” and “offers no real incentives to challenge agencies or for agencies to deal more legitimately with UMRA requirements.”²⁰ Further, former OIRA Administrator Sunstein wrote in previous scholarship that materials generated under executive order should be subject to judicial review to the extent that they are relevant to an agency’s decision under the relevant statute. He noted this would only “slightly comprom[ise] the interests of the Executive in favor of the interests of the public as a whole.”²¹

In sum, H.R. 899 makes reforms addressing key deficiencies in the law identified by experts and regulated entities.

¹⁶Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (testimony of Denise Fantone, Government Accountability Office).

¹⁷Unfunded Mandates and Regulatory Overreach Part II: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (testimony of Raymond Keating, Chief Economist, Small Business and Entrepreneurship Council).

¹⁸See, Cass Sunstein, Memo for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies re. Executive Order 13563, “Improving Regulation and Regulatory Review” (February 2, 2011).

¹⁹Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (testimony of Susan Dudley, Director, GW Regulatory Studies).

²⁰Unfunded Mandates and Regulatory Overreach Part II: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (testimony of Raymond Keating, Chief Economist, Small Business and Entrepreneurship Council).

²¹Robert W. Hahn & Cass R. Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis*, 150 U. PA. L. REV. 1489 (2002).

LEGISLATIVE HISTORY

H.R. 899, the Unfunded Mandates Information and Transparency Act of 2013, was introduced on February 28, 2013 by Rep. Virginia Foxx (NC) and referred to the Committee on Oversight and Government Reform. The bill was also referred to the Committee on Rules, the Committee on the Budget and the Committee on the Judiciary. On July 24, 2013, the Committee on Oversight and Government Reform marked-up H.R. 899 and it was favorably reported out of Committee.

Prior to the 113th Congress, similar bills to H.R. 899 were introduced to reform UMRA. In the 110th Congress, Representative Virginia Foxx (R-NC) introduced H.R. 6964, the Unfunded Mandates Information and Transparency Act of 2008, to subject more unfunded mandates to UMRA and enhance reporting requirements. In the 111th Congress, Representative Foxx and Representative Scott Garrett (R-NJ) introduced H.R. 2255, the Unfunded Mandates Information and Transparency Act of 2009, and H.R. 5818, the Mandate Prevention Act of 2010, respectively. H.R. 2255 was a reintroduction of H.R. 6964, and H.R. 5818 allowed a point of order to be raised if a private sector mandate exceeded the UMRA threshold.

In the 112th Congress, Representative Foxx introduced H.R. 373, the Unfunded Mandates Information and Transparency Act of 2011, which was referred to the Committee on Oversight and Government Reform, and subsequently, the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform. The Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, chaired by Rep. James Lankford (R-OK), examined the effectiveness of UMRA via three hearings featuring recognized experts on unfunded mandates, as well as representatives of states, localities and the private sector. These witnesses highlighted UMRA's narrow coverage, exemptions and loopholes as serious flaws, and suggested that legislative remedies to the UMRA statute would make it a more effective instrument to reduce unfunded legislative and regulatory mandates.

On February 15, 2011, at a hearing entitled, "Unfunded Mandates and Regulatory Overreach," the Subcommittee heard testimony from former Office of Information and Regulatory Affairs (OIRA) Administrator Susan Dudley; GAO Director Denise Fantone; the Mayor of Edmond, Oklahoma, Patrice Douglas; and Fairfax County, Virginia County Executive, Anthony Griffin. At the hearing, Subcommittee Ranking Member Gerald Connolly (D-VA) recognized that UMRA "did not fully stem the tide of unfunded mandates" because it was "written in a manner that exempted bills that imposed significant costs on localities."²² Full Committee Ranking Member Elijah Cummings (D-MD) asked the Mayor of Edmond, "What can the federal government do to help locals to plan better with regard to so-called unfunded mandates?"²³

²² Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform, 112th Congress (2011) (statement of Rep. Gerald Connolly).

²³ Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on

On March 30, 2011, at a hearing entitled, “Unfunded Mandates and Regulatory Overreach Part II,” the Subcommittee heard testimony from South Dakota State Senator Joni Cutler; Small Business & Entrepreneurship Council Chief Economist Raymond Keating; and the Founder and CEO of the Small Business Majority, John Arensmeyer. These witnesses testified about the impact of unfunded mandates on states and small businesses and suggested possible reforms to UMRA.

On May 25, 2011, at a hearing entitled, “Unfunded Mandates, Regulatory Burdens and the Role of the Office of Information and Regulatory Affairs,” the Subcommittee heard testimony from OIRA Administrator Cass Sunstein about the Obama Administration’s efforts to reform the regulatory system through executive order. This included what the Obama Administration views as an unprecedented “look back” at regulations to identify those that may be outdated, unnecessary, or duplicative, in order to pave the way for efforts to repeal, modify, or streamline them. Administrator Sunstein also testified about UMRA’s applicability to the public and the private sector.

After a thorough examination of UMRA through these hearings, Subcommittee Chairman Lankford held a markup on September 21, 2011, in the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, at which time H.R. 373 was reported with an amendment in the nature of a substitute. The bill was then reported from the full Oversight and Government Reform Committee, with another amendment in the nature of a substitute.

SECTION-BY-SECTION

Section 1: Short title

Unfunded Mandates Information and Transparency Act of 2013

Section 2: Purpose

The purpose of this legislation is to improve the quality of deliberations of Congress with respect to proposed federal mandates and to enhance the ability of Congress and the public to identify federal mandates that may impose undue harm on consumers, workers, employers, small businesses, and state, local, and tribal governments by providing Congress and the public more complete information about the effects of such mandates.

Section 3: Providing for Congressional Budget Office studies on policies involving changes in conditions of grant aid

Provides for a Committee chairman or ranking member to request that the Congressional Budget Office (CBO) perform an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of Federal assistance being imposed on state, local, or tribal governments.

Oversight and Govt. Reform, 112th Congress (2011) (statement of Ranking Member Elijah Cummings).

Section 4: Clarifying the definition of direct costs to reflect Congressional Budget Office practice

Amends the definition of “direct costs” to codify current CBO practice and ensures that federal agencies account for the costs of federal mandates, such as forgone business profits, costs passed onto consumers and other entities, and behavioral changes.

Section 5: Expanding the scope of reporting requirements to include regulations imposed by independent regulatory agencies

Requires independent regulatory agencies to comply with UMRA with the exception of the Board of Governors of the Federal Reserve System and the Federal Open Market Committee.

Section 6: Amendments to replace Office of Management and Budget with Office of Information and Regulatory Affairs

Transfers responsibility for ensuring agency compliance with UMRA from the Director of the Office of Management and Budget (OMB) to the Administrator of the Office of Information and Regulatory Affairs (OIRA).

Section 7: Applying substantive point of order to private sector mandates

Subjects to a point of order a private sector legislative mandate exceeding the UMRA threshold (\$146 million in 2012).

Section 8: Regulatory process and principles

Clarifies that agencies must conduct UMRA analyses unless a law “expressly” prohibits them from doing so; requires agencies to adhere to the principles of regulation in Section 1 of Executive Order 12866 and reaffirmed in Executive Order 13563 when conducting regulatory actions; defines “regulatory action” as “any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including advance notices of proposed rulemaking and notices of proposed rulemaking.”

Section 9: Expanding the scope of statements to accompany significant regulatory actions

Requires federal agencies to measure a proposed or final rule’s annual effect on State, local, or tribal governments, or on the private sector, if the rule may result in an effect of \$100,000,000 or more in any one year. This language aligns UMRA with Executive Order 12866 and requires agencies to assess such costs as forgone profits, costs passed onto consumers and other entities, and behavioral changes.

Closes an existing loophole allowing agencies to forego UMRA analyses of a final rule that is not preceded by a notice of proposed rulemaking (NPRM). If a NPRM is not issued, the agency must conduct an UMRA analysis before promulgating the final rule or within six months after promulgating the final rule.

Further aligns UMRA with Executive Order 12866 by removing the words “adjusted annually for inflation” when determining the threshold for UMRA analysis, and by adopting cost-benefit analysis requirements.

Requires that the descriptions and summaries an agency must complete under UMRA be “detailed.”

Section 10: Enhanced stakeholder consultation

The existing requirement in UMRA that agencies receive meaningful and timely input in the development of regulatory mandates from state, local, and tribal governments is extended to include private sector input. OIRA policies instructing agencies how to execute this requirement are codified.

Section 11: New authorities and responsibilities for Office of Information and Regulatory Affairs

Gives OIRA oversight responsibility for determining whether agencies have drafted their regulations in accordance with the regulatory principles adopted in this bill, and whether cost-benefit analyses are performed adequately. If OIRA determines the agency has not met these requirements, OIRA is to notify the agency and request compliance before a regulation is finalized.

Requires OIRA include in its annual report to Congress an appendix detailing agency compliance with UMRA’s requirement for consultation with state, local, and tribal governments and the private sector.

Section 12: Retrospective analysis of existing Federal regulations

Requires federal agencies to conduct a retrospective analysis of an existing federal regulation at the request of a Committee chairman or ranking minority member. It is to be submitted to the requesting member and to Congress, and is to include: a copy of the federal regulation; the continued need for the federal regulation; the nature and comments or complaints received concerning the federal regulation; an explanation of the extent to which the mandate may duplicate another federal regulation; a description of the degree to which technology or economic conditions have changed in the area affecting the federal regulation; an analysis of the retrospective costs and benefits of the federal regulation that considers studies done outside the government; and a history of legal challenges to the federal regulation.

Section 13: Expansion of judicial review

Extends judicial review to an agency’s selection of the least costly/least burdensome regulatory alternative, and permits a court to stay, enjoin, or invalidate a rule if an agency fails to complete the required UMRA analysis or to adhere to the regulatory principles.

EXPLANATION OF AMENDMENTS

No amendments were adopted.

COMMITTEE CONSIDERATION

On July 24, 2013 the Committee met in open session and ordered reported favorably the bill, H.R. 899, by roll call vote, a quorum being present.

ROLL CALL VOTES

There were two record votes during consideration of H.R. 899:

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

113TH CONGRESS—RATIO (23–18)

ROLL CALL

Meeting on: Full Committee Markup Vote #9 Date: 7/24/13

Vote on: H.R. 899—amendment (#2) Connolly—regarding treatment of corporations and individuals

Republicans	Aye	No	Present	Democrats	Aye	No	Present
Mr. Issa (CA) (Chairman)		X	.....	Mr. Cummings (MD) (Ranking)	X	.....	.....
Mr. Mica (FL)		X	.....	Mrs. Maloney (NY)	X	.....	.....
Mr. Turner (OH)		X	.....	Ms. Norton (DC)	X	.....	.....
Mr. Duncan (TN)	Mr. Tierney (MA)	X	.....	.....
Mr. McHenry (NC)		X	.....	Mr. Clay (MO)	X	.....	.....
Mr. Jordan (OH)		X	.....	Mr. Lynch (MA)	X	.....	.....
Mr. Chaffetz (UT)		X	.....	Mr. Cooper (TN)	X	.....	.....
Mr. Walberg (MI)		X	.....	Mr. Connolly (VA)	X	.....	.....
Mr. Lankford (OK)		X	.....	Ms. Speier (CA)	X	.....	.....
Mr. Amash (MI)		X	.....	Mr. Cartwright (PA)	X	.....	.....
Dr. Gosar (AZ)		X	.....	Mr. Pocan (WI)	X	.....	.....
Mr. Meehan (PA)		X	.....	Mrs. Duckworth (IL)	X	.....	.....
Dr. DesJarlais (TN)		X	.....	Ms. Kelly (IL)	X	.....	.....
Mr. Gowdy (SC)		X	.....	Mr. Davis (IL)	X	.....	.....
Mr. Farenthold (TX)		X	.....	Mr. Welch (VT)	X	.....	.....
Mr. Hastings (WA)		X	.....	Mr. Cárdenas (CA)	X	.....	.....
Mrs. Lummis (WY)		X	.....	Mr. Horsford (NV) .....		.....	.....
Mr. Woodall (GA)		X	.....	Ms. Lujan Grisham (NM)	X	.....	.....
Mr. Massie (KY)		X	.....			
Mr. Collins (GA)		X	.....			
Mr. Meadows (NC)		X	.....			
Mr. Bentivolio (MI)		X	.....			
Mr. DeSantis (FL)		X	.....			

Roll Call Totals: Ayes 17; Nays 22. Voice Vote: Failed X.
[Quorum to bring up bill = 14; Quorum to report bill = 21]

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

113TH CONGRESS—RATIO (23–18)

ROLL CALL

Meeting on: Full Committee Markup Vote #10 Date: 7/24/13

Vote on: H.R. 899—Final passage

Republicans	Aye	No	Present	Democrats	Aye	No	Present
Mr. Issa (CA) (Chairman)	X	.....	.....	Mr. Cummings (MD) (Ranking)	.....	X	.....
Mr. Mica (FL)	X	.....	.....	Mrs. Maloney (NY) .....	.....	X	.....
Mr. Turner (OH)	X	.....	.....	Ms. Norton (DC) .....	.....	X	.....
Mr. Duncan (TN) .....			.....	Mr. Tierney (MA) .....	.....	X	.....
Mr. McHenry (NC)	X	.....	.....	Mr. Clay (MO) .....	.....	X	.....
Mr. Jordan (OH)	X	.....	.....	Mr. Lynch (MA) .....	.....	X	.....
Mr. Chaffetz (UT)	X	.....	.....	Mr. Cooper (TN) .....	.....	X	.....
Mr. Walberg (MI)	X	.....	.....	Mr. Connolly (VA) .....	.....	X	.....
Mr. Lankford (OK)	X	.....	.....	Ms. Speier (CA) .....	.....	X	.....
Mr. Amash (MI)	X	.....	.....	Mr. Cartwright (PA) .....	.....	X	.....
Dr. Gosar (AZ)	X	.....	.....	Mr. Pocan (WI) .....	.....	X	.....
Mr. Meehan (PA)	X	.....	.....	Mrs. Duckworth (IL) .....	.....	X	.....
Dr. DesJarlais (TN)	X	.....	.....	Ms. Kelly (IL) .....	.....	X	.....

Republicans	Aye	No	Present	Democrats	Aye	No	Present
Mr. Gowdy (SC)	X	.....	.....	Mr. Davis (IL) .....	.....	X	.....
Mr. Farenthold (TX)	X	.....	.....	Mr. Welch (VT) .....	.....	X	.....
Mr. Hastings (WA)	X	.....	.....	Mr. Cárdenas (CA) .....	.....	X	.....
Mrs. Lummis (WY)	X	.....	.....	Mr. Horsford (NV) .....	.....	.....	.....
Mr. Woodall (GA)	X	.....	.....	Ms. Lujan Grisham (NM) .....	.....	X	.....
Mr. Massie (KY)	X	.....	.....		
Mr. Collins (GA)	X	.....	.....		
Mr. Meadows (NC)	X	.....	.....		
Mr. Bentivolio (MI)	X	.....	.....		
Mr. DeSantis (FL)	X	.....	.....		

Roll Call Totals: Ayes 22; Nays 17. Voice Vote: Passed.
 [Quorum to bring up bill = 14; Quorum to report bill = 21]

CORRESPONDENCE

PETE SESSIONS, TEXAS
CHAIRMAN
VIRGINIA FOXX, NORTH CAROLINA
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February 11, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

On July 24, 2013, the Committee on Oversight and Government Reform ordered reported H.R. 899, the Unfunded Mandates Information and Transparency Act of 2013. As you know, the Committee on Rules was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under rule X of the Rules of the House of Representatives over rules and joint rules of the House.

Because of your willingness to consult with my committee regarding this matter, I will waive consideration of the bill by the Rules Committee. By agreeing to waive its consideration of the bill, the Rules Committee does not waive its jurisdiction over H.R. 899. In addition, the Committee on Rules reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Rules for conferees on H.R. 899 or related legislation.

I also request that you include this letter and your response as part of your committee's report on the bill and in the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

Pete Sessions

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MICHELLE LUJAN GRISHAM, NEW MEXICO

February 11, 2014

The Honorable Pete Sessions
Chairman
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding the Rules Committee's jurisdictional interest in H.R. 899, the "Unfunded Mandates Information and Transparency Act of 2013," and your willingness to forego consideration of H.R. 899 by your committee.

I agree that the Committee on Rules has a valid jurisdictional interest in certain provisions of H.R. 899 and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 899. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you again for your cooperation.

Sincerely,


Darrell Issa
Chairman

cc: The Honorable John Boehner, Speaker of the House

The Honorable Elijah Cummings, Ranking Minority Member

The Honorable Louise Slaughter, Ranking Minority Member
Committee on Rules

Mr. Tom Wickham, Parliamentarian

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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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February 11, 2014

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The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman Issa,

I am writing concerning H.R. 899, the "Unfunded Mandates Information and Transparency Act of 2013," which your Committee ordered reported on July 24, 2013.

As you know, the Committee on the Judiciary was given an additional referral on this measure upon introduction. As a result of your having consulted with the Judiciary Committee concerning provisions of the bill that fall within our Rule X jurisdiction, I to agree to discharge the Committee on the Judiciary from further consideration of H.R. 899. The Judiciary Committee takes this action with our mutual understanding that, by foregoing consideration of H.R. 899 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that our committee will be appropriately consulted and involved as the bill or similar legislation moves forward. Our committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for any such request.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,


Bob Goodlatte
Chairman

cc: The Honorable John Boehner, Speaker

The Honorable John Conyers
The Honorable Elijah Cummings
The Honorable Thomas J. Wickham, Jr., Parliamentarian

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MICHELLE LUJAN GRISHAM, NEW MEXICO

February 11, 2014

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

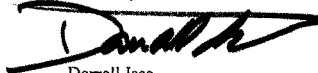
Dear Mr. Chairman:

Thank you for your letter regarding the Committee on the Judiciary's jurisdictional interest in H.R. 899, the "Unfunded Mandates Information and Transparency Act of 2013," and your willingness to forego consideration of H.R. 899 by your committee.

I agree that the Committee on the Judiciary has a valid jurisdictional interest in certain provisions of H.R. 899 and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 899. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you again for your cooperation.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable John Boehner, Speaker of the House

The Honorable Elijah Cummings, Ranking Minority Member

The Honorable John Conyers, Jr., Ranking Minority Member
Committee on the Judiciary

Mr. Tom Wickham, Parliamentarian

PAUL RYAN, WISCONSIN
CHAIRMAN
AUSTIN SMYTHE, STAFF DIRECTOR
(202) 226-7270



CHRIS VAN HOLLEN, RANKING MEMBER
THOMAS S. KAHN, MINORITY STAFF DIRECTOR
(202) 226-7200

U.S. House of Representatives

COMMITTEE ON THE BUDGET
Washington, DC 20515

February 11, 2014

The Honorable Darrell E. Issa
Chairman, Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa:

I am writing to you concerning H.R. 899, the Unfunded Mandates Information and Transparency Act of 2013. There are certain provisions in the legislation which fall within Rule X jurisdiction of the Committee on the Budget.

In the interest of permitting your committee to proceed expeditiously to floor consideration of this bill, I am willing to waive this committee's right to sequential referral. I do so with the understanding that by waiving consideration of the bill the Budget Committee does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its jurisdiction.

Please include a copy of this letter and any response in the committee report on H.R. 899 as well as in the Congressional Record during any floor consideration of this bill. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

Paul Ryan
Chairman

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
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February 11, 2014

The Honorable Paul Ryan
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding the Committee on the Budget's jurisdictional interest in H.R. 899, the "Unfunded Mandates Information and Transparency Act of 2013," and your willingness to forego consideration of H.R. 899 by your committee.

I agree that the Committee on Rules has a valid jurisdictional interest in certain provisions of H.R. 899 and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 899. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you again for your cooperation.

Sincerely,


Darrell Issa
Chairman

cc: The Honorable John Boehner, Speaker of the House
The Honorable Elijah Cummings, Ranking Minority Member
The Honorable Chris Van Hollen, Ranking Minority Member
Committee on the Budget
Mr. Tom Wickham, Parliamentarian

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill enhances UMRA’s utility as a tool to promote informed and deliberate decisions by Congress and federal agencies concerning the appropriateness of federal mandates. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 899 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 899 does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 899 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 899. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 899 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 2013.

Hon. DARRELL ISSA,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 899, the Unfunded Mandates Information and Transparency Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Ramirez-Branum.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 899—Unfunded Mandates Information and Transparency Act
of 2013*

Summary: H.R. 899 would amend the Unfunded Mandates Reform Act of 1995 (UMRA) to increase the information available to the Congress and the public with respect to federal mandates contained in proposed legislation and federal regulations. Enacting this legislation would codify in UMRA many practices currently required of most federal agencies when analyzing the potential impact of regulations. The bill also would require independent regulatory agencies to perform broad analyses (including costs and benefits) of regulations by requiring those agencies to comply with standards established in UMRA relating to the rulemaking process.

The legislation would amend the Congressional Budget Act to establish a point of order, which a Member of Congress may raise, against legislation that creates a private-sector mandate with costs

above the threshold established in UMRA.²⁴ In addition, the legislation would require CBO to conduct assessments of costs to state, local, and tribal governments resulting from any changes to conditions of certain federal assistance programs.

CBO estimates that the new requirements placed on independent regulatory agencies, such as the Federal Deposit Insurance Corporation (FDIC), would require additional resources to carry out. Expenses of the FDIC are classified as direct spending; therefore, pay-as-you-go procedures apply. Because costs incurred by the FDIC would be offset by premiums collected from insured depository institutions, CBO estimates that enacting H.R. 899 would result in no net effect on direct spending over the 2014–2023 period. Assuming the appropriation of necessary amounts, the legislation also would have a discretionary cost of \$4 million over the 2014–2018 period, CBO estimates.

CBO expects that several independent agencies would increase fees to offset the costs of implementing the additional regulatory activities required by the bill; thus, H.R. 899 would increase the costs of existing mandates on public and private-sector entities that would be required to pay those fees. Based on information from the affected agencies, CBO estimates that the additional costs of those mandates would be small and would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 899 is shown in the following table. The costs of this legislation fall within budget function 370 (advancement of commerce) and other budget functions that contain spending for salaries and expenses.

	By fiscal year, in millions of dollars—					
	2014	2015	2016	2017	2018	2014–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a						
Estimated Authorization Level	*	1	1	1	1	4
Estimated Outlays	*	1	1	1	1	4

Note: * = less than \$500,000.

^aCBO also estimates that enacting H.R. 899 would result in additional direct spending totaling less than \$500,000 annually. Because we expect FDIC premiums to increase to cover those costs, we estimate that net direct spending would not be significant.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted late in 2013, that fees and premiums will be levied to cover the additional administrative costs incurred by some regulatory agencies, that the necessary amounts will be appropriated near the start of each fiscal year, and that spending patterns will follow historical patterns for regulatory analysis activities.

H.R. 899 would amend UMRA to codify certain practices currently required under several executive orders, including Executive Orders 12866 and 13563. (Those instructions require agencies in the executive branch to analyze the effects of regulations on state, local, and tribal governments and the private sector. For significant rules with an estimated annual effect on the economy of \$100 mil-

²⁴ The intergovernmental and private-sector thresholds established in UMRA were \$50 million and \$100 million, respectively in 1996, adjusted annually for inflation. In 2013, the thresholds are \$75 million for intergovernmental mandates and \$150 million for private-sector mandates.

lion or more, agencies must prepare detailed cost-benefit analyses.) The legislation also would codify Executive Order 13579 and remove a provision in current law that exempts independent regulatory agencies, such as the FDIC, from complying with standards established in UMRA relating to the rulemaking process. Based on information from several agencies, CBO expects that the new requirements would increase the workload of independent regulatory agencies, requiring them to devote more resources to prepare broader analyses of regulations and to support judicial reviews and hearings pertaining to agency regulations.

Spending subject to appropriation: To meet the regulatory standards established in H.R. 899, CBO estimates that at least 12 independent regulatory agencies would face an increased workload and would eventually incur annual costs of about \$500,000, on average, per agency. We expect that it would take a few years to reach that level of effort, resulting in gross costs of \$18 million over the 2014–2018 period. Under current law, four of those agencies, the Federal Energy Regulatory Commission, the Federal Communications Commission, the Nuclear Regulatory Commission, and the Securities and Exchange Commission, are authorized to collect fees sufficient to offset their appropriation each year. CBO assumes that future appropriations would direct agencies to exercise that authority. Thus, CBO estimates that implementing the bill would have a net discretionary cost of \$1 million in 2014 and \$4 million over the 2014–2018 period, subject to the availability of appropriated funds.

H.R. 899 also would require CBO, at the request of any Chairman or Ranking Minority Member of a committee, to conduct an assessment of costs to state, local, and tribal governments resulting from any changes to conditions of federal assistance programs. CBO estimates that the costs to conduct any one such an assessment would probably not be significant; however, a sizable number of assessments prepared in any given year would increase administrative costs. Any such costs would be subject to the availability of appropriated funds.

Direct spending: CBO also estimates that the FDIC would incur additional costs totaling less than \$500,000 annually to implement H.R. 899. FDIC has the authority to collect premiums from insured depository institutions to support administrative expenses; therefore, CBO estimates that those increased costs would be offset over the over the 2014–23 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Expenses of the FDIC are classified as direct spending; therefore, pay-as-you-go procedures apply. Because costs incurred by the FDIC would be offset by premiums collected from insured depository institutions CBO estimates that enacting H.R. 899 would result in no net effect on direct spending over the 2014–2023 period.

Intergovernmental and private-sector impact: H.R. 899 would increase the costs of existing mandates on public and private entities that are required to pay fees assessed by certain independent agencies. The bill would expand the scope of analyses that independent agencies are required to conduct when they issue regulations. Some of those independent agencies are authorized to collect fees sufficient to offset the cost of their regulatory activities. Because we ex-

pect some of those agencies to increase fees to offset the costs of their additional regulatory activities, the bill would increase the costs of existing mandates by requiring public and private entities to pay higher fees.

Based on information from the independent agencies, the cost of implementing the additional regulatory activities would not be significant. Therefore, CBO estimates that any additional costs would be small and would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$75 million and \$150 million in 2013 respectively, adjusted annually for inflation).

Estimate prepared by: Federal costs: Daniel Hoople, Marin Burnett, Lisa Ramirez-Branum, and Susan Willie; Impact on State, local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the private sector: Marin Burnett.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONGRESSIONAL BUDGET ACT OF 1974

* * * * *

TITLE II—CONGRESSIONAL BUDGET OFFICE

* * * * *

DUTIES AND FUNCTIONS

SEC. 202. (a) * * *

* * * * *

(g) STUDIES.—

(1) * * *

* * * * *

(3) *ADDITIONAL STUDIES.*—*At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall conduct an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of Federal assistance being imposed on State, local, or tribal governments participating in the Federal assistance program concerned or, in the case of a bill or joint resolution that authorizes such sums as are necessary, an assessment of an estimated level of funding compared to such costs.*

* * * * *

TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL
PROCEDURES

* * * * *

PART B—FEDERAL MANDATES

SEC. 421. DEFINITIONS.

For purposes of this part:

(1) **AGENCY.**—The term “agency” has the same meaning as defined in section 551(1) of title 5, United States Code~~], but does not include independent regulatory agencies]~~, *except it does not include the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.*

* * * * *

(3) **DIRECT COSTS.**—The term “direct costs”—

(A)(i) in the case of a Federal intergovernmental mandate, means the aggregate estimated amounts that all State, local, and tribal governments would *incur* or be required to spend or would be prohibited from raising in revenues in order to comply with the Federal intergovernmental mandate; or

* * * * *

(B) in the case of a Federal private sector mandate, means the aggregate estimated amounts that the private sector will be required to spend *or could forgo in profits, including costs passed on to consumers or other entities taking into account, to the extent practicable, behavioral changes*, in order to comply with the Federal private sector mandate;

* * * * *

SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.

(a) **IN GENERAL.**—It shall not be in order in the Senate or the House of Representatives to consider—

(1) * * *

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of ~~the~~ **[Federal intergovernmental mandates]** *Federal mandates* by an amount that causes the thresholds specified in section 424(a)(1) or 424(b)(1) to be exceeded, unless—

(A) * * *

* * * * *

UNFUNDED MANDATES REFORM ACT OF 1995

* * * * *

**TITLE I—LEGISLATIVE
ACCOUNTABILITY AND REFORM**

* * * * *

SEC. 103. COST OF REGULATIONS.

(a) * * *

* * * * *

(c) COOPERATION OF **[OFFICE OF MANAGEMENT AND BUDGET]** *OFFICE OF INFORMATION AND REGULATORY AFFAIRS*.—At the request of the Director of the Congressional Budget Office, the **[Director of the Office of Management and Budget]** *Administrator of the Office of Information and Regulatory Affairs* shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by part B of title IV of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act).

* * * * *

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

[SEC. 201. REGULATORY PROCESS.

[Each agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).]

SEC. 201. REGULATORY PROCESS AND PRINCIPLES.

(a) *IN GENERAL.*—Each agency shall, unless otherwise expressly prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector (other than to the extent that such regulatory actions incorporate requirements specifically set forth in law) in accordance with the following principles:

(1) *Each agency shall identify the problem that it intends to address (including, if applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.*

(2) *Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.*

(3) *Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.*

(4) *If an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.*

(5) *Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation, unless expressly prohibited by law, only upon a reasoned determination that the benefits of the intended regulation justify its costs.*

(6) *Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.*

(7) *Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.*

(8) *Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.*

(9) *Each agency shall tailor its regulations to minimize the costs of the cumulative impact of regulations.*

(10) *Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.*

(b) **REGULATORY ACTION DEFINED.**—*In this section, the term “regulatory action” means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including advance notices of proposed rulemaking and notices of proposed rulemaking.*

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

[(a) **IN GENERAL.**—Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement containing—

[(1) an identification of the provision of Federal law under which the rule is being promulgated;

[(2) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—

[(A) an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

[(B) the extent to which there are available Federal resources to carry out the intergovernmental mandate;

[(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

[(A) the future compliance costs of the Federal mandate; and

[(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

[(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

[(5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;

[(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

[(C) a summary of the agency's evaluation of those comments and concerns.]

(a) *IN GENERAL.—Unless otherwise expressly prohibited by law, before promulgating any general notice of proposed rulemaking or any final rule, or within six months after promulgating any final rule that was not preceded by a general notice of proposed rulemaking, if the proposed rulemaking or final rule includes a Federal mandate that may result in an annual effect on State, local, or tribal governments, or to the private sector, in the aggregate of \$100,000,000 or more in any 1 year, the agency shall prepare a written statement containing the following:*

(1) *The text of the draft proposed rulemaking or final rule, together with a reasonably detailed description of the need for the proposed rulemaking or final rule and an explanation of how the proposed rulemaking or final rule will meet that need.*

(2) *An assessment of the potential costs and benefits of the proposed rulemaking or final rule, including an explanation of the manner in which the proposed rulemaking or final rule is consistent with a statutory requirement and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.*

(3) *A qualitative and quantitative assessment, including the underlying analysis, of benefits anticipated from the proposed rulemaking or final rule (such as the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias).*

(4) *A qualitative and quantitative assessment, including the underlying analysis, of costs anticipated from the proposed rulemaking or final rule (such as the direct costs both to the Government in administering the final rule and to businesses*

and others in complying with the final rule, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and international competitiveness), health, safety, and the natural environment);

(5) *Estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—*

(A) *the future compliance costs of the Federal mandate; and*

(B) *any disproportionate budgetary effects of the Federal mandate upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector.*

(6)(A) *A detailed description of the extent of the agency's prior consultation with the private sector and elected representatives (under section 204) of the affected State, local, and tribal governments.*

(B) *A detailed summary of the comments and concerns that were presented by the private sector and State, local, or tribal governments either orally or in writing to the agency.*

(C) *A detailed summary of the agency's evaluation of those comments and concerns.*

(7) *A detailed summary of how the agency complied with each of the regulatory principles described in section 201.*

(b) **PROMULGATION.**—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a *detailed* summary of the information contained in the statement.

* * * * *

SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT AND PRIVATE SECTOR INPUT.

(a) **IN GENERAL.**—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf), *and impacted parties within the private sector (including small business)*, to provide meaningful and timely input in the development of regulatory proposals containing significant **【Federal intergovernmental mandates】** *Federal mandates*.

* * * * *

【(c) IMPLEMENTING GUIDELINES.—No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.**】**

(c) **GUIDELINES.**—*For appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations, the following guidelines shall be followed:*

(1) *Consultations shall take place as early as possible, before issuance of a notice of proposed rulemaking, continue through the final rule stage, and be integrated explicitly into the rule-making process.*

(2) *Agencies shall consult with a wide variety of State, local, and tribal officials and impacted parties within the private sector (including small businesses). Geographic, political, and other factors that may differentiate varying points of view should be considered.*

(3) *Agencies should estimate benefits and costs to assist with these consultations. The scope of the consultation should reflect the cost and significance of the Federal mandate being considered.*

(4) *Agencies shall, to the extent practicable—*

(A) seek out the views of State, local, and tribal governments, and impacted parties within the private sector (including small business), on costs, benefits, and risks; and

(B) solicit ideas about alternative methods of compliance and potential flexibilities, and input on whether the Federal regulation will harmonize with and not duplicate similar laws in other levels of government.

(5) *Consultations shall address the cumulative impact of regulations on the affected entities.*

(6) *Agencies may accept electronic submissions of comments by relevant parties but may not use those comments as the sole method of satisfying the guidelines in this subsection.*

SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) * * *

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(c) **[OMB] CERTIFICATION.**—No later than 1 year after the date of the enactment of this Act, the **[Director of the Office of Management and Budget] Administrator of the Office of Information and Regulatory Affairs** shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The **[Director of the Office of Management and Budget] Administrator of the Office of Information and Regulatory Affairs** shall—

(1) * * *

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[SEC. 208. ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.

[No later than 1 year after the effective date of this title and annually thereafter, the Director of the Office of Management and Budget shall submit to the Congress, including the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, a written report detailing compliance by each agency during the preceding reporting period with the requirements of this title.]

SEC. 208. OFFICE OF INFORMATION AND REGULATORY AFFAIRS RESPONSIBILITIES.

(a) **IN GENERAL.**—*The Administrator of the Office of Information and Regulatory Affairs shall provide meaningful guidance and oversight so that each agency's regulations for which a written statement is required under section 202 are consistent with the principles and requirements of this title, as well as other applicable laws, and*

do not conflict with the policies or actions of another agency. If the Administrator determines that an agency's regulations for which a written statement is required under section 202 do not comply with such principles and requirements, are not consistent with other applicable laws, or conflict with the policies or actions of another agency, the Administrator shall identify areas of non-compliance, notify the agency, and request that the agency comply before the agency finalizes the regulation concerned.

(b) **ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.**—The Director of the Office of Information and Regulatory Affairs annually shall submit to Congress, including the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives, a written report detailing compliance by each agency with the requirements of this title that relate to regulations for which a written statement is required by section 202, including activities undertaken at the request of the Director to improve compliance, during the preceding reporting period. The report shall also contain an appendix detailing compliance by each agency with section 204.

SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FEDERAL REGULATIONS.

(a) **REQUIREMENT.**—At the request of the chairman or ranking minority member of a standing or select committee of the House of Representatives or the Senate, an agency shall conduct a retrospective analysis of an existing Federal regulation promulgated by an agency.

(b) **REPORT.**—Each agency conducting a retrospective analysis of existing Federal regulations pursuant to subsection (a) shall submit to the chairman of the relevant committee, Congress, and the Comptroller General a report containing, with respect to each Federal regulation covered by the analysis—

- (1) a copy of the Federal regulation;
- (2) the continued need for the Federal regulation;
- (3) the nature of comments or complaints received concerning the Federal regulation from the public since the Federal regulation was promulgated;
- (4) the extent to which the Federal regulation overlaps, duplicates, or conflicts with other Federal regulations, and, to the extent feasible, with State and local governmental rules;
- (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the Federal regulation;
- (6) a complete analysis of the retrospective direct costs and benefits of the Federal regulation that considers studies done outside the Federal Government (if any) estimating such costs or benefits; and
- (7) any litigation history challenging the Federal regulation.

SEC. [209.] 210. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

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TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) AGENCY STATEMENTS ON SIGNIFICANT REGULATORY ACTIONS.—

(1) IN GENERAL.—Compliance or noncompliance by any agency with the provisions of [sections 202 and 203(a)(1) and (2)] *sections 201, 202, 203(a)(1) and (2), and 205(a) and (b)* shall be subject to judicial review [only] in accordance with this section.

(2) LIMITED REVIEW OF AGENCY COMPLIANCE OR NONCOMPLIANCE.—(A) Agency compliance or noncompliance with the provisions of [sections 202 and 203(a)(1) and (2)] *sections 201, 202, 203(a)(1) and (2), and 205(a) and (b)* shall be subject to judicial review [only] under section 706(1) of title 5, United States Code, and [only] as provided under subparagraph (B).

(B) If an agency fails to prepare the written statement (including the preparation of the estimates, analyses, statements, or descriptions) under [section 202 or the written plan under section 203(a) (1) and (2), a court may compel the agency to prepare such written statement.] *section 202, prepare the written plan under section 203(a)(1) and (2), or comply with section 205(a) and (b), a court may compel the agency to prepare such written statement, prepare such written plan, or comply with such section.*

(3) REVIEW OF AGENCY RULES.—In any judicial review under any other Federal law of an agency rule for which a [written statement or plan is required under sections 202 and 203(a) (1) and (2), the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement or description) or written plan shall not] *written statement under section 202, a written plan under section 203(a)(1) and (2), or compliance with sections 201 and 205(a) and (b) is required, the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement, or description), to prepare such written plan, or to comply with such section may be used as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.*

* * * * *

MINORITY VIEWS

H.R. 899, the Unfunded Mandates Information and Transparency Act, would be an assault on health, safety, and environmental protections. This legislation would erect new barriers to slow down the regulatory process and would give corporations an unfair advantage in the regulatory process.

Section 5 of the bill would repeal language that excludes independent regulatory agencies from the reporting requirements of the Unfunded Mandates Reform Act (UMRA), with the exception of the Board of Governors of the Federal Reserve and the Federal Open Market Committee. The Office of Management and Budget (OMB) is responsible for overseeing the UMRA process. Since the independent agencies would be under the direction of OMB for purposes of UMRA compliance, this could compromise the independence of those agencies.

Section 7 of H.R. 899 would create a new point of order in the House of Representatives for legislation containing an unfunded mandate, making it more difficult to enact legislation.

Section 8 would incorporate a cost-benefit requirement from Executive Order 12866, but it would not include language from the same Executive Order directing agencies to perform these assessments “to the extent feasible.”

Section 10 would require agencies to provide impacted parties in the private sector—but not other stakeholders—with an advance opportunity to provide input on proposed regulations. It would require agencies to conduct consultations with private sector businesses “as early as possible, before the issuance of a notice of proposed rulemaking.” Expanding this consultation requirement only to the private sector could allow businesses to have an advantage over other stakeholders in the development of regulatory proposals.

During consideration of this bill by the Committee, Representatives Gerry Connolly and Tammy Duckworth offered an amendment that stated: “Any opportunities or rights afforded to a corporation under this section shall also be afforded to any interested individual.” The amendment was rejected.

Section 11 would codify the role of the Office of Information and Regulatory Affairs (OIRA) in reviewing agency regulations and require that if the OIRA Administrator finds that an agency did not comply with UMRA’s requirements, the Administrator must request that the agency comply before the regulation is finalized.

Section 12 would require that, “at the request of the chairman or ranking minority member of a standing or select committee of the House of Representatives or Senate, an agency shall conduct a retrospective analysis of an existing Federal regulation issued by an agency.” This provision would require agencies to divert resources toward conducting these analyses and away from fulfilling their missions.

Section 13 would expand judicial review under UMRA. The judicial review section would allow a court to review the “inadequacy or failure” of an agency to prepare a written statement under UMRA. Allowing judicial review of the adequacy of an agency’s UMRA statement would give judges the ability to second-guess the expertise of agencies. This process could be abused by regulated industries taking agencies to court over regulations they view as unfavorable.

During Committee consideration of this bill Representative Stephen Lynch offered an amendment to require agencies as part of their evaluation of any disproportionate budgetary effects of a federal mandate to include an evaluation of “any effects from sequestration on the agency’s operations.” The amendment was rejected.

ELIJAH E. CUMMINGS,
Ranking Member.

