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FEDERAL MANDATES

Identification Process Is Complex and Federal Agency Roles Vary

Statement for the Record by Orice M. Williams, Director
Strategic Issues

GAO-05-401T

March 8, 2005

FEDERAL MANDATES

Identification Process Is Complex and Agency Roles Vary

GAO Accountability·Integrity·Reliability
Highlights

Highlights of GAO-05-401T, a statement for the record to the Committee on Government Reform, House of Representatives

Why GAO Did This Study

The Unfunded Mandate Reform Act of 1995 (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 being provided funding to cover the costs.

Over the past 10 years, Congress has at various times considered legislation that would amend various aspects of UMRA.

This testimony is based on GAO's report, *Unfunded Mandates: Analysis of Reform Act Coverage* (GAO-04-637, May 12, 2004). Specifically, this testimony addresses (1) the process used to identify federal mandates and what are federal agencies' roles, (2) statutes and rules that contained federal mandates under UMRA, and (3) statutes and rules that were not considered mandates under UMRA but may be perceived to be "unfunded mandates" by certain affected parties.

www.gao.gov/cgi-bin/getrpt?GAO-05-401T.

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

GAO found that 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, exclusions and exceptions before being identified as containing mandates at or above UMRA's cost thresholds. The Congressional Budget Office (CBO) is required to prepare statements identifying and estimating, if feasible, the costs of mandates in legislation. While a point of order can be raised on the floor of the House or Senate against consideration of any UMRA-covered intergovernmental mandate that lacks a CBO estimate or exceeds the cost thresholds, it contains no similar enforcement for private sector mandates. Conversely, federal agencies are required to prepare mandate statements for regulations containing intergovernmental or private sector mandates that would result in expenditures at or above the UMRA threshold. The Office of Information and Regulatory Affairs, within the Office of Management and Budget, is responsible reviewing compliance with UMRA as part of the rule making process.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant 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 also contained an intergovernmental mandate.

Despite the determinations under UMRA, at least 43 statutes and 65 rules issued in 2001 and 2002 resulted in new costs or negative financial consequences on nonfederal parties. These parties may perceive such statutes and rules as unfunded or underfunded mandates even though they did not meet UMRA's definition of a federal mandate at or above UMRA's thresholds. For 24 of the statutes and 26 of the rules, CBO or the agencies estimated that the direct costs or expenditures, as defined by UMRA, would not meet or exceed the applicable thresholds. The others were excluded for a variety of reasons stemming from exclusions or exceptions specified by UMRA.

Mr. Chairman and Members of the Committee:

We are pleased to have the opportunity to comment on federal mandates and the Unfunded Mandates Reform Act of 1995 (UMRA). 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.[1] Many federal statutes and the regulations that implement them, impose requirements on state, local, and tribal governments (intergovernmental mandates) and the private sector (private sector mandates) in order to achieve certain legislative goals. Such statutes and their regulations can provide substantial benefits, as well as impose costs.

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. 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. 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. 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. 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.[3]

My statement focuses on titles I and II of the act and provides an overview of the activities of the federal entities charged with carrying out this act. For each title, I will (1) discuss the process used to identify federal

[1]Pub. L. No. 104-4, 2 U.S.C. §§658-658g, 1501-71.

[2]Pub. L. No. 104-4 pmbl. As in the act, we generally refer to the identification of federal mandates, rather than unfunded mandates, in this report.

[3]UMRA also includes two other titles. Title III of UMRA requires the Advisory Commission on Intergovernmental Relations to conduct a study reviewing federal mandates, and title IV establishes limited judicial review under the act.

mandates in statutes and rules, including the role of the federal entities; (2) provide examples of statutes and rules that contained federal mandates under UMRA; and (3) provide examples of statutes and rules that were not considered federal mandates under UMRA, but that affected parties may perceive to be "unfunded mandates." As agreed with the Committee, our statement is based primarily on our May 2004 report, which analyzes UMRA's coverage.[4]

In summary, we reported that the identification and analysis of intergovernmental and private sector mandates 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. Under title I of the act, CBO is required to prepare statements identifying and estimating the costs of mandates in legislation that meets certain criteria to identify whether or not those estimated costs meet or exceed UMRA's cost thresholds. A point of order can be raised on the floor of the House or Senate against consideration of any unfunded intergovernmental mandate exceeding UMRA's cost threshold. However, it contains no similar enforcement mechanism for private sector mandates. Under title II, federal agencies are required to prepare mandate statements for regulations containing intergovernmental or private sector mandates that would meet or exceed the UMRA 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 agencies. Second, even if the statute or rule is reviewed, UMRA limits the identification of federal mandates through multiple definitions and exclusions. As we reported, 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.

[4]GAO, *Unfunded Mandates: Analysis of Reform Act Coverage*, GAO-04-637 (Washington, D.C.: May 12, 2004). We plan to issue a follow-up report in March 2005.

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 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 on nonfederal parties that the affected parties might perceive as "unfunded mandates" even though they did not meet UMRA's definition of a mandate. 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 statutes, UMRA did not require a CBO review prior to final passage most often because the mandates were in appropriations bills, which are not subject to an automatic review by CBO. The remaining rules most often did not trigger UMRA because they were issued by independent regulatory agencies, which are not covered by the act.

Identifying Federal Mandates in Statutes Is Complex

Legislation must go through several steps to be identified as containing a federal mandate. Once mandates are identified based on UMRA's definitions, exclusions, and exceptions, CBO determines whether the mandate meets or exceeds UMRA's cost thresholds. As we reported last year, in 2001 and 2002, CBO identified few statutes containing federal mandates at or above UMRA's cost thresholds. In addition, CBO reports and testimonial evidence indicate that UMRA may indirectly impact the costs of and number of federal mandates enacted at or above UMRA's cost thresholds. However, when asked, some nonfederal parties said they continue to be subject to costs associated with laws containing mandates that do not meet the statutory definition of a mandate at or above UMRA's cost thresholds.

Legislation Must Undergo a Multistep Process to Be Identified as Containing Federal Mandates at or above Applicable Cost Thresholds

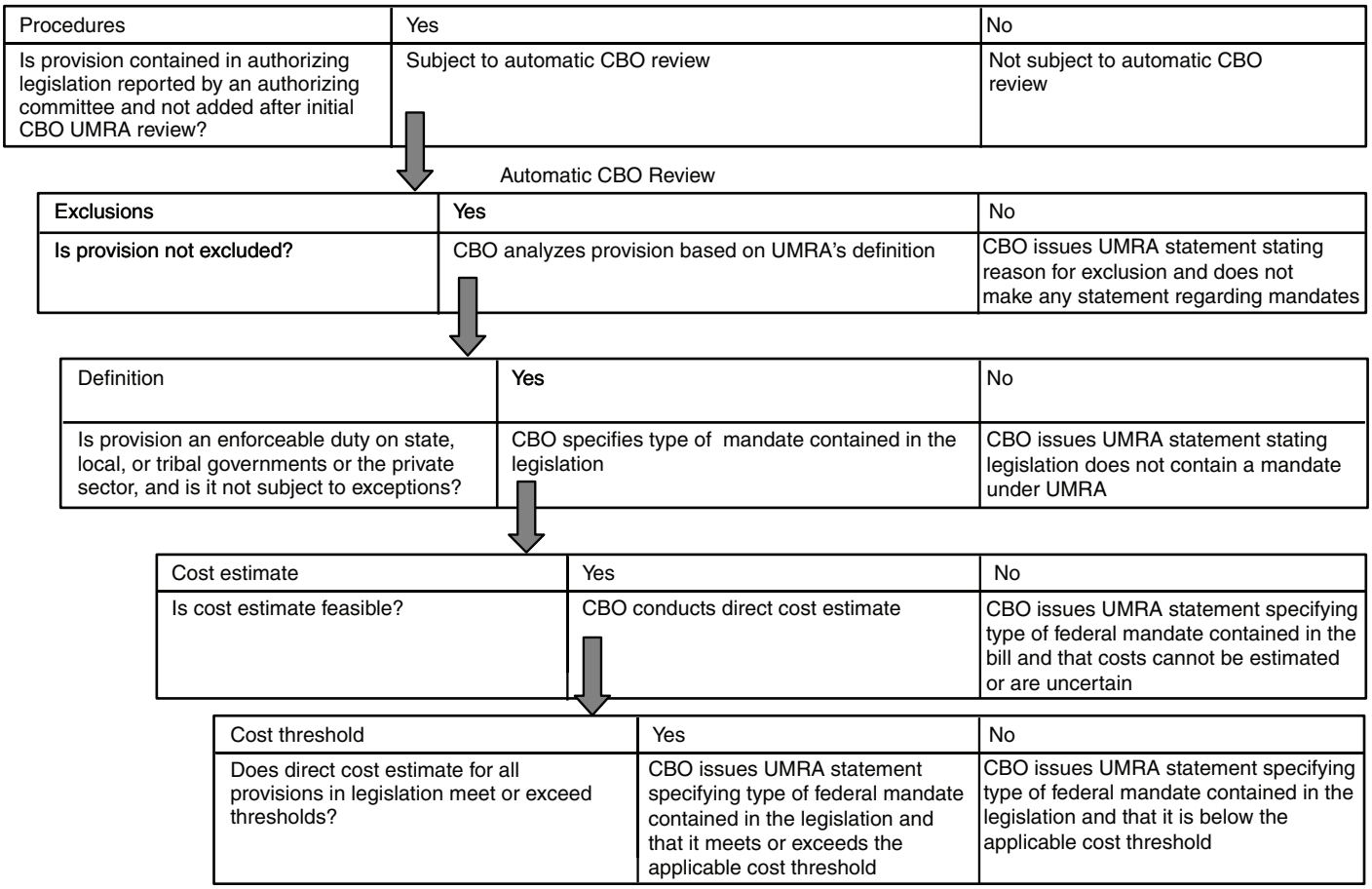
UMRA does not require CBO to automatically review every legislative provision; further, the process takes several steps to determine whether a statutory provision would be identified as a federal mandate at or above UMRA's cost thresholds (see fig. 1). Specifically, CBO does not automatically review provisions that are (1) not contained in authorizing

bills or (2) not reported by an authorizing committee.[5] This means that appropriations bills are not automatically subject to CBO review under UMRA. However, CBO told us that it will informally review provisions in appropriations bills and communicate their findings to appropriations committee clerks when CBO finds potential mandates in these bills. Although provisions contained in an authorizing bill are subject to automatic review by CBO, the bill also must be "reported" by that committee.[6]

[5]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.

[6]Reported—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.

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



Source: GAO.

UMRA also does not require an automatic CBO review of provisions added after CBO's initial review. 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.[7] For example, CBO reported that for 2002,[8] three laws were enacted that contained federal mandates not reviewed by

[7]2 U.S.C. §658c(d).

[8]U.S. Congressional Budget Office, *A Review of CBO's Activities in 2002 Under the Unfunded Mandates Reform Act* (Washington, D.C.: May 2003).

CBO prior to enactment because they were added after CBO reviewed the legislation. For example, the Terrorism Risk Insurance Act of 2002 includes a provision requiring insurers of commercial property to offer terrorism insurance, which was added to after CBO's UMRA review and thus not identified as a private sector mandate under UMRA prior to enactment.[9]

Once a decision is made about CBO's review, CBO analyzes the provision to determine whether the provision is excluded under UMRA. An exclusion applies 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).

Next CBO applies UMRA's definition of a federal mandate—a provision that would impose an enforceable duty upon state, local, or tribal governments or upon the private sector. To be identified as a mandate, a provision must

[9]Pub. L. No. 107-297.

meet this definition of a mandate and not be classified as an "exception." Generally, exceptions are defined as enforceable duties that are conditions of federal financial assistance or arise from participation in a voluntary federal program.

Once the provision is identified as a mandate under UMRA, CBO determines whether the cost estimate, if feasible, exceeds the applicable threshold ($50 million for intergovernmental and $100 million for private sector mandates, in any of the first 5 fiscal years during which the mandate would be effective).[10] If CBO determines that a cost estimate is not feasible, CBO specifies the kind of mandate contained in the provision, but reports that the agency cannot estimate the costs. For example, CBO reported that it could not estimate the costs of mandates in nine bills that ultimately were enacted during 2001 and 2002. 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.

For intergovernmental mandates that exceed the cost threshold or cost estimates that are not feasible, a point of order is available under UMRA. However, UMRA does not provide for a point of order for private sector mandates. For intergovernmental or private sector mandates below the applicable cost threshold, CBO states in its report that a mandate exists with costs estimated to be below the applicable cost threshold. Although this highlights the provision as a mandate, it does not provide for a point of order under UMRA.

UMRA also 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.[11] Congress would then have a certain time period to decide whether to continue to enforce the mandate, adopt an alternate plan, or let it expire—meaning the provision comprising the

[10]The dollar thresholds in UMRA are in 1996 dollars and are adjusted annually for inflation.

[11]2 U.S.C. § 658d(a)(2)(B).

mandate would no longer be enforceable. Our January 2004 database search has resulted in no legislation containing this language.[12]

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

Few laws containing federal mandates at or above the cost thresholds were enacted in 2001 and 2002. Further, there is some evidence that the existence of UMRA may have indirectly discouraged the enactment of some federal mandates in proosed legislation and reduced the potential costs of others. 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.[13]

As we previously reported, from 1996 through 2002, only three bills with intergovernmental mandates and 21 private sector mandates with costs over the applicable threshold became law.[14] UMRA may have indirectly discouraged the passage of legislation identified as containing mandates at or above the cost thresholds. Similarly, UMRA may have also aided in lessening the costs of some mandates that were enacted. From 1996 through 2000, CBO identified 59 proposed federal mandates with costs above applicable thresholds. Following CBO's identification, 9 were amended before enactment to reduce their costs below the applicable thresholds and 32 were never enacted. The remaining 18 mandates were enacted with costs above the threshold.

Although CBO has not done an analysis to determine the role of UMRA in reducing the costs of mandates ultimately enacted, it reported that "it was

[12]Search conducted on Lexis on January 22, 2004, for bills and committee reports containing this provision.

[13]At our request, CBO identified examples of statutes enacted in 2001 and 2002 that it 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 enacted that may have included federal mandates.

[14]The three intergovernmental mandates involved the 1996 minimum wage, a reduction in federal funding for food stamps in 1997, and a preemption of state laws on prescription drug premiums in 2003. Of the 21 private sector mandates, 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.

clear that information provided by CBO played a role in the Congress's decision to lower costs."[15] CBO also testified in July 2003 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." Similarly, 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." Finally, although points of order are rarely used, they may be perceived as an unattractive consequence of including a mandate above UMRA cost thresholds in proposed legislation.

Nonfederal Parties Perceived Some Enacted Provisions to Be Unfunded Mandates

Although CBO's annual reports for 2001 and 2002 showed that most proposed legislation did not contain federal mandates as defined by UMRA,[16] we asked CBO to compile a list of examples from among those laws enacted in 2001 and 2002 that had potential 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 be unfunded mandates. We then shared CBO's list of 43 examples with national organizations representing nonfederal levels of government, and they generally agreed that those laws contained provisions their members perceived to be mandates.[17]

As figure 2 shows, for 12 of the 43 examples, an automatic UMRA review was not required for one of the reasons I discussed earlier, such as that they were in an appropriations bill or were not reported by the 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,

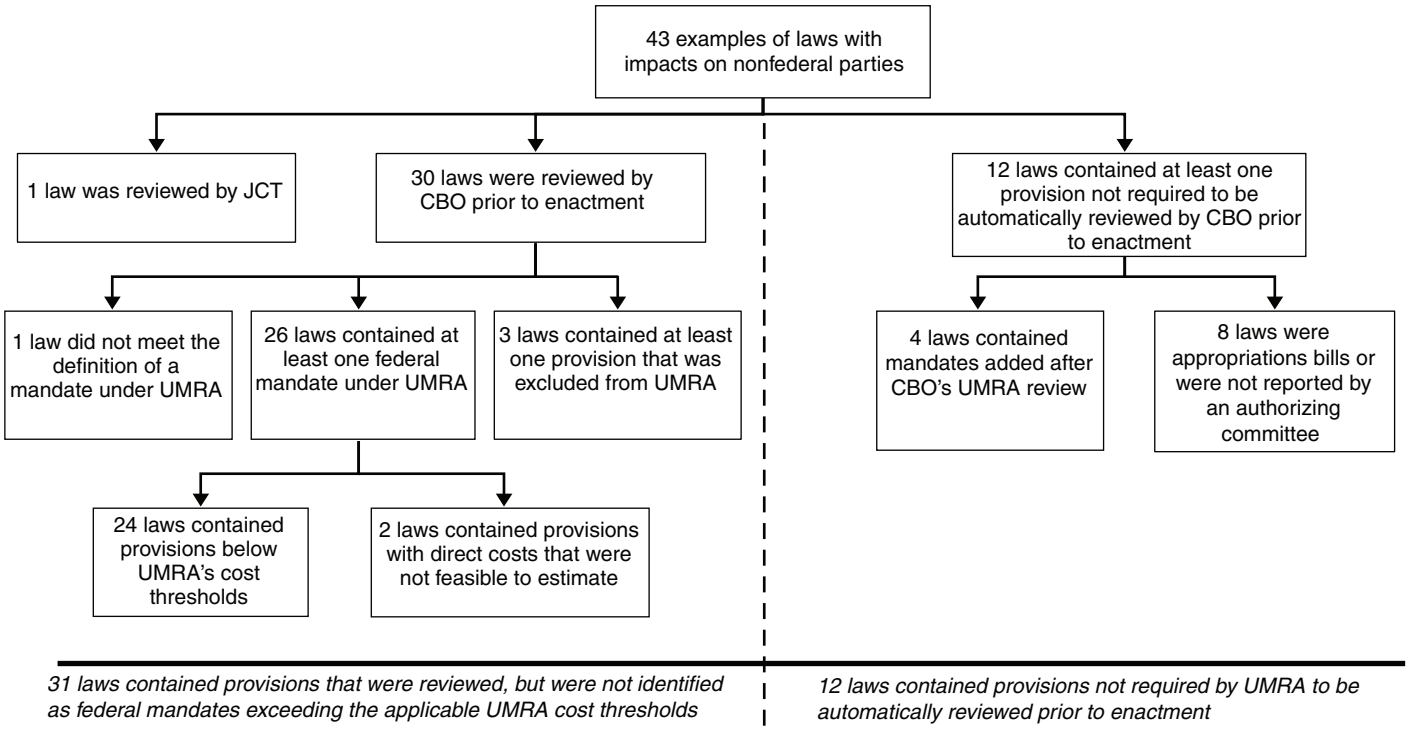
[15]U.S. Congressional Budget Office, *A Review of CBO's Activities in 2002 Under the Unfunded Mandates Reform Act*.

[16]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).

[17]We also shared this list with organizations representing the private sector, but received no response.

3 contained provisions that were excluded from UMRA coverage, 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 the Joint Committee on Taxation and found not to contain any federal mandates.

Figure 2: How Certain Examples of Laws with Impacts on Nonfederal Parties Were Treated under UMRA



Source: CBO.

Note: The number of laws in any of the categories listed does not necessarily correlate with the magnitude of perceived or actual impact on affected nonfederal parties.

Of the 12 examples of laws with provisions that CBO was not required to review prior to enactment, CBO later determined that 5 contained mandates with direct costs below UMRA's thresholds, 4 contained mandates with direct costs that could not be estimated, 1 was excluded under UMRA because it involved national security, 1 did not meet the definition of a mandate, and 1 had some provisions with costs below the threshold and some provisions excluded because it involved national

security.[18] For example, the Sarbanes-Oxley Act of 2002 contained both intergovernmental and private sector mandates but CBO determined that a cost estimate was not feasible for all mandates. Specifically, CBO estimated the costs of providing notification of blackout periods—specified periods of time when trading securities is prohibited—fell below the UMRA thresholds but provided no quantified estimate, and CBO estimated the cost of running the Public Company Accounting Oversight Board and an associated standard-setting body to be approximately $80 million per year, which would be funded from fees assessed on public companies. However, CBO stated it was uncertain if the rest of the mandates contained in Sarbanes-Oxley exceeded UMRA's cost threshold of $115 million (inflation adjusted).

Identification of Federal Mandates in Rules Is Less Complex Than for Statutes

The process for identifying federal mandates in regulations is less complex than for legislation, but additional restrictions apply to identifying federal mandates. In 2001 and 2002, agencies identified few of the major and economically significant final rules as containing federal mandates as defined by UMRA. 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. We also determined that at least 29 rules that did not contain federal mandates defined under UMRA appeared to have significant financial impacts.

UMRA Procedures for Rules Are Less Complex Than for Legislation, but More Restrictions Apply

The process for rules is less complex than for legislation. However, in addition to the definitions and seven general exclusions for legislation, there are four additional restrictions that apply to federal mandates in rules:

[18]Among the four laws containing mandates for which direct costs could not be estimated, some provisions had costs estimated to be below the applicable cost threshold and others had costs that were uncertain.

- UMRA's requirements do not apply to provisions in rules issued by independent regulatory agencies.[19]

- 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.

- The requirement to prepare an UMRA statement generally does not apply to any rule for which the agency does not publish a general notice of proposed rule making in the *Federal Register*.[20]

- 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.

UMRA generally directs agencies to assess the effects of their regulatory actions on other levels of government and the private sector. The agencies only need to identify and prepare written 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.

Within the OMB, the Office of Information and Regulatory Affairs (OIRA) is responsible for reviewing compliance with UMRA as part of its centralized review of significant regulatory actions published by federal agencies, other than certain independent regulatory agencies. Under Executive Order 12866, which was issued in September 1993, agencies are generally

[19]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).

[20]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 rule making.

required to submit their significant draft rules to OIRA for review before publishing them. In the submission packages for their draft rules, federal agencies are to designate whether they believe the rule may constitute an unfunded mandate under UMRA. According to OIRA representatives, for such rules, consideration of UMRA is then incorporated as part of these regulatory reviews, and draft rules are expected to contain appropriate UMRA statements.[21] The same analysis conducted for Executive Order 12866 may permit agencies to comply with UMRA requirements.[22] UMRA requires 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. UMRA provides OIRA a statutory basis for requiring agencies to do an analysis similar to that required by this. (Unlike laws, however, executive orders 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 Because Most Rules Did Not Trigger UMRA's Requirements

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).[23] As we previously reported, the limited number of rules identified as federal mandates during 2001 and 2002 is consistent with the previous findings in our 1998 report on UMRA and in OMB's annual reports on agencies' compliance with title II.[24]

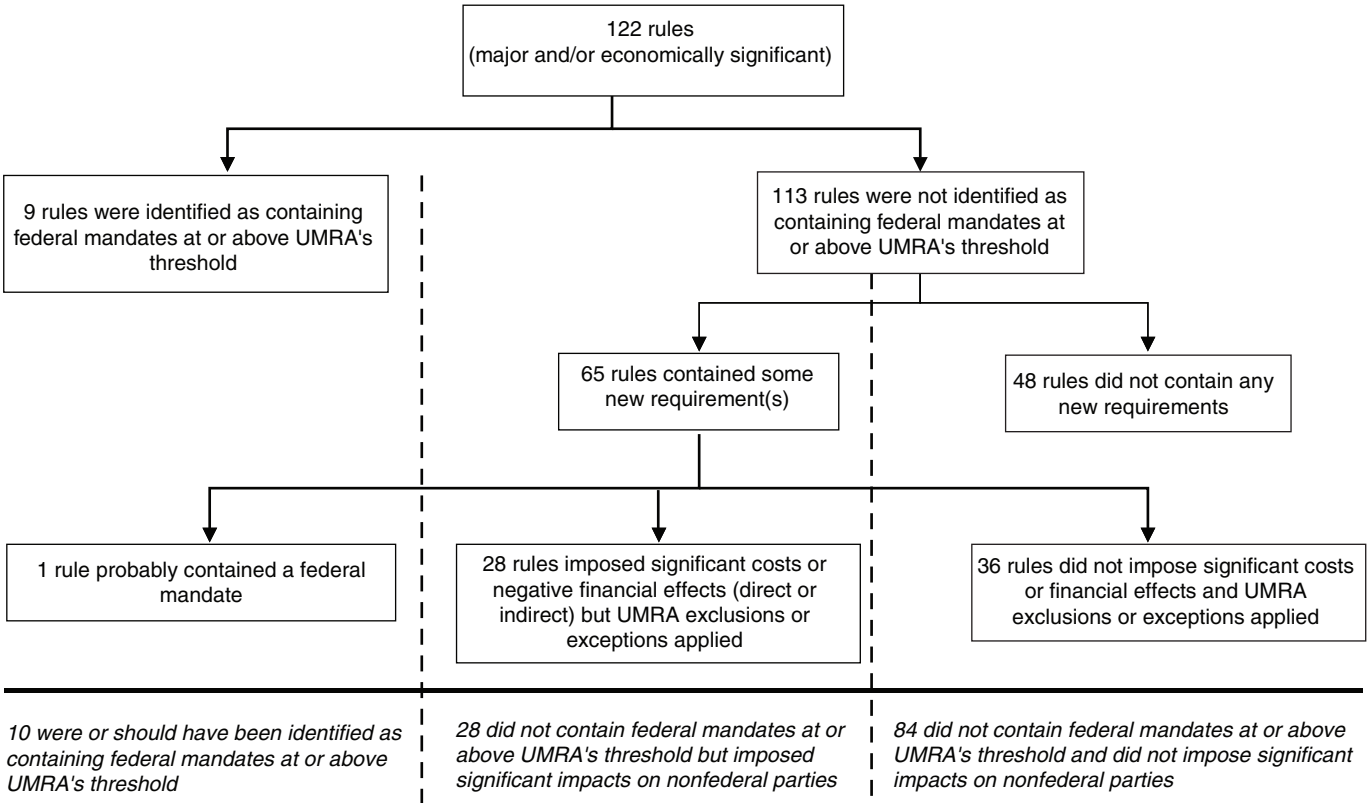
[21]OIRA also checks for related statements and certifications from agencies on the Regulatory Flexibility Act (5 U.S.C. 601-612), which requires agencies to assess the impact of forthcoming regulations on "small entities," and Executive Order 13132, which requires agencies to assess the federalism implications of their regulations, and other requirements that might be triggered by the nature of the draft rule.

[22]As pointed out in our previous report on UMRA (GAO, *Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions*, GAO/GGD-98-30 (Washington, D.C.: Feb. 4, 1998)), 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.

[23]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.

[24]See GAO/GGD-98-30. In addition, OMB produces an annual report regarding progress in regulatory reform in which OMB also examines the costs and benefits of federal regulations and unfunded mandates.

Figure 3: Final Rules Published in 2001 and 2002 That Contained Federal Mandates under UMRA



Source: GAO.

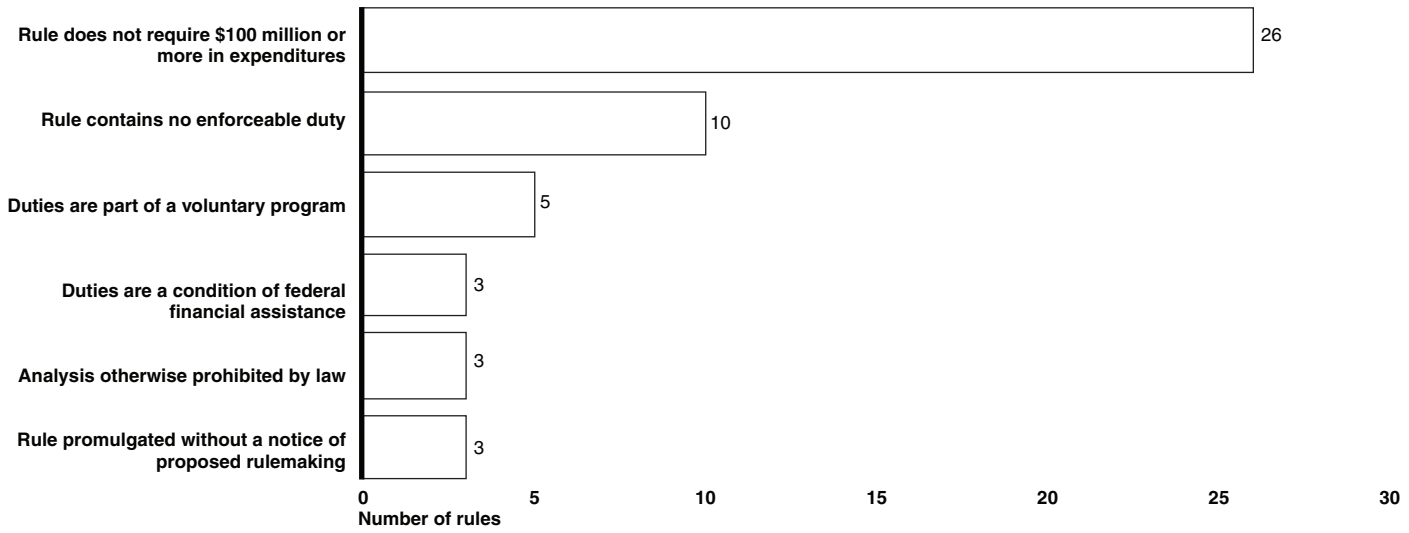
Of the nine rules that agencies identified as containing federal mandates under UMRA, only one included an intergovernmental mandate—EPA's enforceable standard for the level of arsenic in drinking water. The remaining rules imposed private sector mandates ranging from Department of Energy rules that amended energy conservation standards for several categories of consumer products, including clothes washers and heat pumps, to a Department of Transportation rule that established a new federal motor vehicle safety standard requiring tire pressure monitoring systems, controls, and displays.

Of the 113 major and/or economically significant rules in 2001 and 2002 *not* identified as including federal mandates under UMRA, we reported 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 Health and Human Services 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.

In the remaining 65 of 113 rules, we determined that the new requirements would impose costs or result in other negative effects on nonfederal parties. In 41 of the 65 published rules, the agencies cited a variety of reasons that these rules did not trigger UMRA's requirements (see fig. 4). There were 26 rules for which the agencies stated that the rule would not compel expenditures at or above the UMRA threshold and 10 rules for which the agencies stated that rules imposed no enforceable duty. For the remaining 24 rules, the agency did not provide a reason. However, independent regulatory agencies, which are not covered by UMRA, published 12 of these rules, and there is no UMRA requirement for covered agencies to identify the reasons that their rules do not contain federal mandates.

Figure 4: Reasons That Agencies Determined Their Rules Did Not Trigger UMRA's Requirements



Source: GAO.

Note: Agencies cited more than one reason for nine of the 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 published in 2001 and 2002 could have imposed significant costs or other financial effects on nonfederal parties. In these 29 rules, we reported that 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. For example, more than half of them imposed costs on individuals exceeding $100 million per year, reduced the level of federal payments to nonfederal parties by more than $100 million in a year, or had substantial indirect costs or economic effects on nonfederal parties.

For the remaining 36 of the 65 rules that imposed costs or had other financial effects on nonfederal parties in 2001 and 2002, 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, the U.S. Department of Agriculture'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.[25]

In conclusion, UMRA was intended, in part, to provide more information to Congress and agencies when placing federal mandates on nonfederal

[25]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).

parties by providing more information to help them determine the appropriate balance between desired benefits and associated costs. Based on CBO's experience, there is some evidence that UMRA is in some ways achieving this desired goal. However, UMRA's many definitions, exclusions, and exceptions result in many statutes and rules never triggering UMRA's thresholds, which means they are not identified as federal mandates.

As we reported last year, in 2001 and 2002 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 report were limited to a 2-year period, our findings on the effect and applicability of UMRA are similar to the data reported in our previous reports and those of others on the implementation of UMRA. The findings raise the question of whether UMRA's definitions, exclusions, and exceptions adequately capture and subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected nonfederal parties.

Mr. Chairman, this completes my prepared statement.

Contacts and Acknowledgments

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