

# **CBO TESTIMONY**

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

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

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

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

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

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

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

Some public officials have concerns, however, about the kinds of legislative provisions that are covered and about how the law defines mandates, particularly as they relate

to other levels of government. UMRA's application is limited in three ways:

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

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

## The Definition of a Federal Mandate

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

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

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

## UMRA's Requirements

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

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

## Trends in Federal Mandates Since UMRA's Enactment

CBO has been reviewing bills according to the provisions of UMRA for nine years. Most of the legislation that the

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

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

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

- An increase in the minimum wage (Public Law [P.L.] 104-188, enacted in 1996). CBO estimated that the required increase would cost state and local governments (as employers) more than \$1 billion during the first five years that it was in effect.
- A reduction in federal funding to administer the Food Stamp program (P.L. 105-185, enacted in 1998). That funding cut costs the states between \$200 million and \$300 million a year, in CBO's estimation.
- A preemption of state taxes on premiums for certain prescription drug plans (P.L. 108-173, enacted in 2003). Under that preemption, states will lose about \$70 million in revenues in 2006 (the first year in which the mandate will be in effect), increasing to about \$95 million in 2010, CBO estimates.
- A temporary preemption of state authority to tax certain Internet services and transactions (P.L. 108-435, enacted in 2004). That preemption (which lasts until 2007) will result in revenue losses to state and local governments totaling at least \$325 million through 2007, according to CBO's estimates.

**Table 1.****Number of CBO's Mandate Statements for Bills, Proposed Amendments, and Conference Reports, 1996 to 2004**

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

Source: Congressional Budget Office.

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

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

- a. CBO began preparing mandate statements in January 1996 in the middle of the 104th Congress. The figures for 1996 reflect bills on the calendar in January of that year and bills reported by authorizing committees thereafter.
- b. In 1996, the thresholds, which are adjusted annually for inflation, were \$50 million for intergovernmental mandates and \$100 million for private-sector mandates. They rose to \$60 million and \$120 million, respectively, in 2004.

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

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

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

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

## Legislation That Is Not Subject to UMRA

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

- Enforces the constitutional rights of individuals,
- Establishes or enforces statutory rights that prohibit discrimination,
- Provides emergency aid at the request of another level of government,

- Requires compliance with accounting and auditing procedures for grants,
- Is necessary for national security or the ratification of a treaty, or
- Relates to title II of Social Security (Old-Age, Survivors, and Disability Insurance benefits).

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

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

## Federally Imposed Costs That Are Not Considered Mandates Under UMRA

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

### Grant Conditions

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

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

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

### **UMRA's Special Rule for Large Entitlement Programs**

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

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

CBO has reviewed scores of proposals that affect those large grant programs since UMRA was enacted. In most cases, CBO concluded that even if new conditions or reductions in federal financial assistance imposed signifi-

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

### **UMRA's Treatment of Preemptions of State and Local Law**

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

### **Proposals to Expand UMRA**

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

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

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

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

Since UMRA's enactment, lawmakers and other interested parties have proposed several additional ways to expand or change title I. Most proposals seek to increase the types of bills that would be subject to UMRA's cost-estimating and point-of-order provisions. One proposal would build on UMRA's perceived success in focusing

Congressional attention on unfunded intergovernmental mandates by expanding the law to allow for a point of order against bills that contain private-sector mandates with costs over the statutory threshold. (The law currently allows such a point of order for intergovernmental mandates.) That kind of expansion could establish an additional hurdle for private-sector mandates and could increase the demand for additional information about their costs.

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

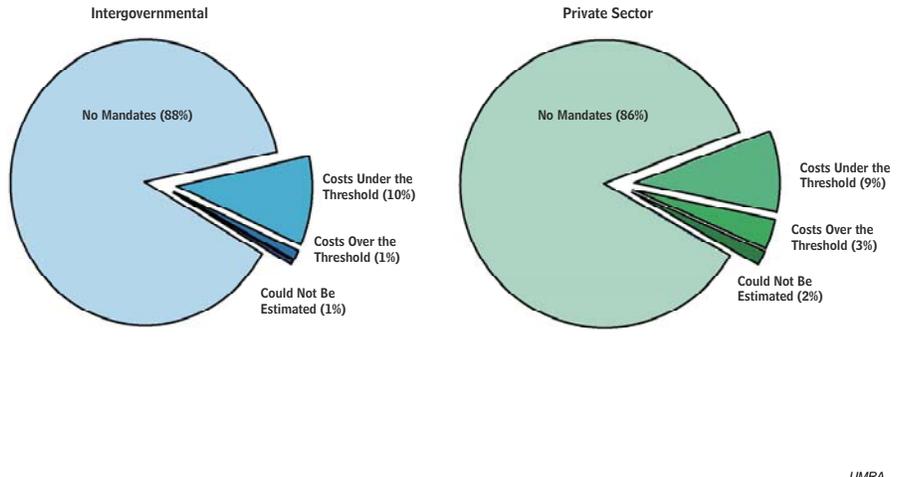
Other proposals to change or expand UMRA have included broadening the definition of an intergovernmental mandate to include new conditions on any existing grant program; narrowing the exclusions discussed above to apply only to the provisions allowing for a point of order and not to the requirement that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

# **Charts Presented at the Hearing**





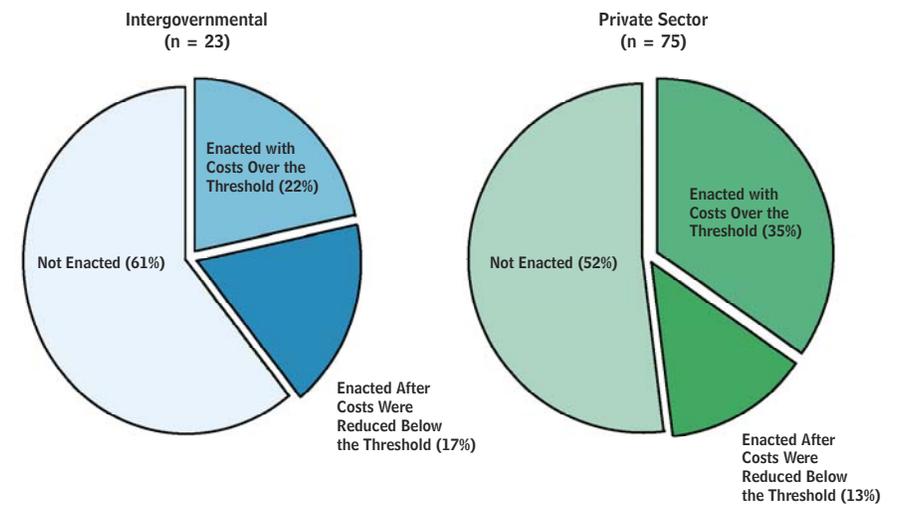
## Few of the 5,200+ Bills Reviewed by CBO Contained Either Intergovernmental or Private-Sector Mandates



UMRA 1



## Few Intergovernmental or Private-Sector Mandates with Estimated Costs Over the UMRA Thresholds Have Been Enacted from 1996 to 2004



UMRA 2

