CBO TESTIMONY

Statement of
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on
The Unfunded Mandates Reform Act

before the
Committee on Governmental Affairs
United States Senate

June 3, 1998

NOTICE

This statement is not available for public release until it is delivered at 10:00 a.m. (EDT), Wednesday, June 3, 1998.

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Mr. Chairman and Members of the Committee, thank you for this opportunity to provide the views of the Congressional Budget Office (CBO) on how well the Unfunded Mandates Reform Act (UMRA) has worked since it took effect in January 1996 and to comment on some proposals for expanding the act.

UMRA was enacted with several goals: to focus more attention on the costs of federal mandates; to ensure that the Congress carefully weighs those costs before imposing them on state, local, and tribal governments or on the private sector; and to encourage the federal government to provide financial assistance for the costs of intergovernmental mandates. To accomplish those goals, the act established various procedures to direct Congressional attention to the costs of federal mandates and to curb the practice of imposing mandates on other governments without paying for them. The act also required the Congressional Budget Office to provide mandate cost statements for all bills reported by committees. In effect, UMRA was designed to increase both the Congressional demand for cost information about mandates and the supply of such information.

HOW WELL HAS UMRA WORKED?

From CBO's vantage point, UMRA has been quite effective. Both the demand for and the supply of information on the costs of federal mandates have increased since the act took effect. Over the past two and a half years, CBO has provided mandate cost statements for virtually all bills reported by authorizing committees. We have also provided mandate statements for many proposed floor amendments and some conference committee reports. Moreover, before proposed legislation is marked up, committee staffs and individual Members are increasingly requesting our opinion about whether the legislation would create any new federal mandates and, if so, whether their costs would exceed the thresholds set by UMRA. (Those thresholds are $50 million per year for intergovernmental mandates and $100 million per year for private-sector mandates, indexed annually for inflation.) In many instances, CBO is able to inform the sponsor about the existence of a mandate and provide informal guidance on how the proposal might be restructured to either eliminate the mandate or reduce its cost. For example, in the case of the Internet Tax Freedom Act (S. 442 and H.R. 1054), CBO worked with both supporters and opponents of the bills to identify mandates and their costs before the bills were marked up by full committee.

During 1996 and 1997, CBO prepared more than 1,200 mandate cost statements (see Table 1). About 11 percent of the bills and amendments we analyzed contained intergovernmental mandates, and nearly 2 percent had mandate costs exceeding the $50 million threshold. Those percentages are close to our experience in estimating the costs of federal legislation for state and local governments, which we have been doing since 1983.

TABLE 1. CBO MANDATE STATEMENTS FOR BILLS, PROPOSED AMENDMENTS, AND CONFERENCE REPORTS, 1996 AND 1997

	Intergovernmental Mandates		Private-Sector Mandates	
	1996	1997	1996	1997
Total Number of Statements Transmitted	718	521	673	498
Number of Statements That Identified Mandates	69	64	91	65
Mandate costs exceeded threshold	11	8	38	18
Mandate costs could not be estimated	6	7	2	5

SOURCE: Congressional Budget Office.

NOTE: The numbers in this table represent official statements transmitted to the Congress by the Director of CBO. CBO prepared more intergovernmental statements than private-sector 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 that are not included in this table. Mandate statements may cover more than one mandate provision, and more than one formal CBO statement is usually issued for each mandate topic.

A larger share of the bills and amendments that we examined during 1996 and 1997, about 13 percent, contained private-sector mandates; nearly 5 percent had costs exceeding the $100 million threshold. Those numbers suggest that the Congress has more frequently considered imposing costs above the legislated threshold on the private sector than on other levels of government.

Thus far in 1998, the share of bills and amendments reviewed by CBO that contain intergovernmental and private-sector mandates has risen to 15 percent and 20 percent, respectively. However, the number with costs exceeding the relevant thresholds remains steady—at nearly 2 percent and 5 percent, respectively.

Another way to evaluate the impact of UMRA is to review the number of mandates that have actually been enacted since January 1996. During that time, Congressional committees have reported few bills containing intergovernmental or private-sector mandates whose costs exceed the relevant threshold (see Table 2). Because different bills can contain similar mandates (for example, when companion bills are reported separately in the House and Senate), the 19 statements that CBO prepared for intergovernmental mandates with costs above the threshold identified eight mandates in all. Of those eight intergovernmental mandates, only one—the increase in the minimum wage—was enacted in a form that will impose costs on state and local governments of more than $50 million in a year. In four other cases, the Congress either lowered the costs below the threshold before passing the legislation or chose not to pass it at all. Three other bills reported in 1997 with costs over the threshold are still pending final action. One additional bill analyzed by CBO in 1998 that would impose costs exceeding the threshold for intergovernmental mandates is the Fair Minimum Wage Act (S. 1805).

The track record for private-sector mandates is a bit different. In 1996, the Congress passed nine of the 11 reported bills with private-sector mandates that CBO identified as costing more than $100 million. Only one of those mandates, the dairy provisions of the farm bill, was amended on the floor to reduce mandate costs below the threshold. Two bills with significant private-sector mandates, involving sports franchises and nuclear waste, were not enacted into law. In 1997, four private-sector

TABLE 2. REPORTED BILLS WITH MANDATES THAT EXCEED THE STATUTORY THRESHOLDS

Topic	Mandate	Was a Version Enacted into Law?	Did Enacted Version Exceed Threshold?
Intergovernmental Mandates (Threshold of $50 million)			
104th Congress, Second Session			
Amendments to Fair Labor Standards Act	Increase federal minimum wage	Yes	Yes
Securities Regulatory Reform	Preempt state securities fees	Yes	No[a]
Immigration Reform	Require Social Security numbers on driver's licenses	Yes	No[b]
Health Insurance Reform	Mental health parity in insurance plans	Yes	No[c]
Occupational Safety and Health	Apply OSHA requirements to state and local workplaces	No	n.a.
105th Congress, First Session			
Agricultural Research	Cap federal contribution for Food Stamp administration	No	n.a.
Internet Tax Freedom	Prohibit certain Internet-related taxes	No	n.a.
Nuclear Waste Policy	Accelerate fees owed by state of New York	No	n.a.
Private-Sector Mandates (Threshold of $100 million)			
104th Congress, Second Session			
Amendments to Fair Labor Standards Act	Increase federal minimum wage	Yes	Yes
Health Insurance Reform	Health insurance portability	Yes	Yes
Health Insurance Reform	Mental health parity in insurance plans	Yes	Yes
Health Insurance Reform	Minimum-length maternity stay	Yes	Yes
Immigration Reform	Requirements on immigrants' sponsors	Yes	Yes
Welfare Reform	Earned income credit provisions and requirements on immigrants' sponsors	Yes	Yes
Small Business Jobs Protection	Miscellaneous tax provisions	Yes	Yes
Telecommunications Reform	Interconnection, universal service, and blocking of certain programs	Yes	Yes
Farm Bill	Fees and dairy requirements	Yes	No
Professional Sports Franchises	Requirements on owners and leagues	No	n.a.
Nuclear Waste Policy	Fees and training requirements	No	n.a.

(Continued)

TABLE 2. CONTINUED

Topic	Mandate	Was a Version Enacted into Law?	Did Enacted Version Exceed Threshold?
	Private-Sector Mandates (Threshold of $100 million) (Continued)		
	105th Congress, First Session		
Airport and Airway Trust Fund	Reinstate ticket tax	Yes	Yes
Biomedical Research	Prohibit manufacture of certain drugs	No	n.a.
Budget Reconciliation: Medicare	Requirements on private health insurance providers	Yes	Yes
Budget Reconciliation: Federal Employee Retirement	Increase required contributions to retirement	Yes	Yes
Budget Reconciliation: Revenue	Several (tax related)	Yes	Yes
Caribbean Trade	Change deduction for accrued severance pay	No	n.a.
China MFN	Increase tariff rates	No	n.a.
Education Savings Act and IRS Restructuring and Reform Act	Change deduction for accrued vacation pay	No	n.a.
Encryption	Allow decryption	No	n.a.
Financial Services Reform	Restrict investment activity of Federal Home Loan Banks	No	n.a.
Nuclear Waste Policy	Shift payment of fees	No	n.a.

SOURCE: Congressional Budget Office.

NOTES: Mandates in this table are those identified by the Congressional Budget Office when a bill was reported by an authorizing or conference committee. In most cases, more than one formal CBO statement was issued for each mandate topic.

OSHA = Occupational Safety and Health Administration; n.a. = not applicable; MFN = most favored nation; IRS = Internal Revenue Service.

a. The original version preempted state securities registration requirements, including the collection of certain fees. The enacted version limits the scope of that preemption and allows states to continue to collect certain fees for three years or until they change or amend their own securities laws.

b. The original version required driver's licenses to include Social Security numbers by October 1, 1997, and would have resulted in a large influx of people seeking early renewals. The enacted version allows states to implement the new requirements over an extended period of time, thereby eliminating the influx of renewals and significantly reducing costs.

c. The original version required parity for all aspects of health care coverage, including limits on lifetime and annual expenditures, copayments, deductibles, and restrictions on the number of visits. The enacted version delayed implementation until January 1, 1998, and required parity only for limits on lifetime and annual expenditures.

mandates with costs exceeding the threshold—contained in the budget reconciliation bills and the reinstatement of the airline ticket tax—were enacted. Thus far in 1998, the reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA) is the only bill with private-sector mandates above the threshold to pass both Houses. Other 1998 bills that, by CBO's estimate, contain private-sector mandates that would exceed the cost threshold include the National Tobacco Policy and Youth Smoking Act, the Fair Minimum Wage Act, the Parent and Student Savings Account PLUS Act, and the Campaign Reform and Election Integrity Act.

Although not conclusive, CBO's experience suggests that UMRA has been effective in helping to curb the practice of imposing unfunded mandates on state and local governments. Besides floor actions to reduce the costs of intergovernmental mandates, a number of changes have been made in committee or before markups to eliminate or minimize mandate costs after consultation with CBO.

Many of the costs that legislation imposes on state and local governments result from conditions of federal aid or participation in voluntary federal programs, which are not considered federal mandates under UMRA. The act also excludes certain federal requirements, such as measures to enforce people's constitutional rights or to prohibit various types of discrimination. CBO identified more than 75 bills in 1996 and more than 85 in 1997 that would have imposed costs on state and local governments by some mechanism other than a mandate as UMRA defines it.

A special definition applies to large entitlement programs such as Medicaid. For those programs, the act defines an increase in grant conditions or a decrease in federal funding as a mandate only if the state or local governments that administer the program lack the flexibility to make changes to offset the new costs or lower funding. In the case of Medicaid, CBO determined that imposing a cap on per capita spending did not constitute a mandate as defined in UMRA because states have the flexibility under current law to offset any loss of federal funds by reducing their own financial or programmatic responsibilities for Medicaid. Some people have argued that the Congress intended for that flexibility provision to apply only to new flexibility provided by the same legislation that imposes the added costs or lower funding. That is not our interpretation of UMRA as we read the law. But I am aware that the Chairman and Ranking Minority Member of this Committee have introduced a bill (S. 2068) that would amend UMRA to make that clarification.

With respect to private-sector mandates, the record reflects the inclusion of taxes and involuntary fees on businesses and individuals, which UMRA considers mandates. Many of the most significant private-sector mandates that CBO has identified have been of that type, including the reinstatement of the airline ticket tax and various provisions in the budget reconciliation bills.

A third way to evaluate UMRA's effect would be to record the amount of time spent in committee and floor debates on the cost of federal mandates and whether they should be imposed. We have not undertaken such an analysis, but our casual impression from following floor debates on television and in the *Congressional Record* is that deliberation on those matters has increased.

EXPANDING UMRA

The act's perceived success in raising Congressional consciousness about unfunded intergovernmental mandates has prompted some Members to propose expanding its provisions for private-sector mandates. For example, the bill sponsored by Senator Abraham and others—S. 389, the Mandates Information Act of 1997—would set new procedural constraints for private-sector mandates and direct CBO to provide additional types of cost information about them.

Specifically, S. 389 would establish a point of order against considering bills that contain private-sector mandates with costs over the $100 million threshold, regardless of whether federal funding is provided. Like the existing point of order against considering unfunded intergovernmental mandates, only a simple majority vote of Senators would be needed to waive a point of order. Thus, the new point of order would not be a significant obstacle to a bill's passage. But it would raise the stakes in deliberating private-sector mandates and increase the demand for additional cost information.

S. 389 would also direct CBO to provide expanded cost information for private-sector mandates above the threshold. CBO would be required to analyze the impact of the proposed mandates on consumers, workers, and small businesses, including any disproportionate impact on particular regions and industries. The analysis would include the effects on consumer prices, workers' wages and benefits, employment opportunities, and the profitability of small businesses. Such effects might occur when the costs of a mandate imposed on one party are passed along to other parties in the form of higher prices for finished goods or lower prices for intermediate inputs, including lower wages for workers. Such effects go beyond the direct costs of complying with federal mandates, which CBO is now required to estimate.

CBO already includes information about significant economic effects in many of its cost statements for private-sector mandates above the threshold (see Table 3). When sufficient time and data are available, we also provide quantitative estimates of the size of those effects. For example, CBO analyzed the additional effects of proposed mental health parity requirements, including possible reductions in workers' take-home pay, health insurance coverage, and fringe benefits. Similarly, CBO's analysis of proposed increases in the minimum wage included the possible impact on employment levels of low-wage workers. In addition, our analyses of the farm bill and the telecommunications reform bill noted that the costs of the mandates would be passed on to consumers.

TABLE 3. REPORTED BILLS WITH PRIVATE-SECTOR MANDATES THAT EXCEED THE STATUTORY THRESHOLD

Topic	Mandate	Bill Number(s)	Estimated Annual Costs (Billions of dollars)	Were Other Effects Considered?
	104th Congress, Second Session			
Amendments to Fair Labor Standards Act	Increase federal minimum wage	H.R. 940 H.R. 1227 H.R. 3265 H.R. 3448 S. 413	4.0	Yes
Health Insurance Reform	Health insurance portability	H.R. 3070 H.R. 3103 H.R. 3160 S. 1028	0.3 to 0.5	Yes
Health Insurance Reform	Mental health parity in insurance plans	H.R. 3103	9.0 to 15.0	Yes
Health Insurance Reform	Minimum-length maternity stay	S. 969	0.2	Yes
Immigration Reform	Requirements on immigrants' sponsors	H.R. 2202 S. 269	Up to 0.6	No
Welfare Reform	Earned income credit provisions and requirements on immigrants' sponsors	H.R. 3507 H.R. 3734 S. 1795	Up to 0.8	No
Small Business Jobs Protection	Miscellaneous tax provisions	H.R. 3448	0.3 to 1.0	No
Telecommunications Reform	Interconnection, universal service, and blocking of certain programs	S. 652	Greater than 7.0[a]	Yes
Farm Bill	Fees and dairy requirements	H.R. 2854	Greater than 0.8	Yes
Professional Sports Franchises	Requirements on owners and leagues	H.R. 2740	Greater than 0.1	No
Nuclear Waste Policy	Fees and training requirements	H.R. 1936	Greater than 2.7	No
Memorandum: Mandates with Uncertain Costs[b]				
Intermodal Transportation	Certification of freight containers	H.R. 4040	n.a.	No
Invasive Species	Requirements on vessels	H.R. 3217	n.a.	No
	105th Congress, First Session			
Airport and Airway Trust Fund	Reinstate ticket tax	H.R. 668 S. 279	2.7	No
Biomedical Research	Prohibit manufacture of certain drugs	Draft bill	0.1 to 0.3	Yes

(Continued)

TABLE 3. CONTINUED

Topic	Mandate	Bill Number(s)	Estimated Annual Costs (Billions of dollars)	Were Other Effects Considered?
	105th Congress, First Session (Continued)			
Budget Reconciliation: Medicare	Requirements on private health insurance providers	H.R. 2015 S. 947	0.1 to 1.8	No
Budget Reconciliation: Federal Employee Retirement	Increase required contributions to retirement	H.R. 2015 S. 947	0.2 to 0.6	No
Budget Reconciliation: Revenue	Several (tax related)	H.R. 2014 S. 949	9.0 to 16.0	No
Caribbean Trade	Change deduction for accrued severance pay	H.R. 2644	0.1	No
China MFN	Increase tariff rates	H.J. Res. 79	Greater than 0.1	No
Education Savings Act and IRS Restructuring and Reform Act	Change deduction for accrued vacation pay	H.R. 2646 H.R. 2676	0.1 to 1.1	No
Encryption	Allow decryption	H.R. 695	0.2 to 2.0	Yes
Financial Services Reform	Restrict investment activity of Federal Home Loan Banks	H.R. 10	Greater than 0.1	Yes
Nuclear Waste Policy	Shift payment of fees	H.R. 1270 S. 104	Greater than 2.3	No
Memorandum: Mandates with Uncertain Costs[b]				
21st Century Patent System Improvement	Extend surcharge, authorize fee increase	H.R. 400	0.02 to 0.14	No
Terrorism	Prohibit financial transactions	H.R. 748	n.a.	No
Worker Paycheck Fairness	Require authorizations and reports	H.R. 1625	n.a.	No
Nuclear Regulatory Commission	Extend authority to collect fees	H.R. 2015	0 to 0.3	No
Children’s Protection from Violent Programming	Blockable programming, FCC regulations	S. 363	n.a.	No

SOURCE: Congressional Budget Office.

NOTES: The mandates in this table are those identified by the Congressional Budget Office when a bill was reported by an authorizing or conference committee. In many cases, more than one formal CBO statement was issued for each mandate topic.

n.a. = not applicable; MFN = most favored nation; IRS = Internal Revenue Service; FCC = Federal Communications Commission.

a. Cumulative costs over five years for universal service.

b. Under S. 389, if CBO determined that a mandate's costs could not be estimated, the point of order under section 425(a)(1) of the Unfunded Mandates Reform Act would apply.

The more time that we have to analyze proposed mandates, and the more scholarly work that has been done on the topic being analyzed, the more information we can give the Congress about the full effects of new legislative proposals. CBO's record at estimating the costs of mandates is reasonably good, although we sometimes find it difficult to make estimates with a high degree of confidence. For example, our estimate of the cost of mandates in H.R. 695—the Security and Freedom Through Encryption (SAFE) Act, as reported by the House Permanent Select Committee on Intelligence—ranged from $200 million to $2 billion because we could not determine ahead of time what technical and functional criteria would be established in regulations after the bill's passage. Such informational problems would be compounded in analyzing the additional effects called for in S. 389.

In closing, Mr. Chairman, I can assure you that we will continue to do our best to provide the Congress with reliable cost information. But I also want to alert you that in certain cases, some information may be slow in coming or may be less specific than desired. As the Congress requires additional CBO analyses for each reported bill, the amount of time needed to perform both those analyses and our core estimates of budget and mandate costs could lengthen, or the quality of our work could suffer. The changes to UMRA proposed in S. 389 would require CBO staff members to spend more time analyzing and writing about how mandated entities would react to the cost of a private-sector mandate. Nevertheless, based partly on the small number of bills that would be affected, we do not anticipate now that the increased duties imposed by S. 389 would necessarily require additional resources or a further diversion of existing resources from our budget work.