

CBO TESTIMONY

Statement of
James L. Blum
Deputy Director
Congressional Budget Office

on
The Unfunded Mandates Reform Act

before the
Subcommittee on Rules and Organization of the House
and the
Subcommittee on Legislative and Budget Process
Committee on Rules
U.S. House of Representatives

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NOTICE

This statement is not available for public release until it is delivered at 1:00 p.m. (EST), on Thursday, October 30, 1997.



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

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 to expand the act.

UMRA was enacted 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 new procedural requirements to stimulate 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 directed 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 and the supply of such information.

HOW WELL HAS UMRA WORKED?

From CBO's vantage point, UMRA has worked quite well. 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 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, committee staffs and individual Members are increasingly requesting our opinion before committee markups on whether proposed 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 has been working with both supporters and opponents of the bills to identify mandates and their costs before the bills are marked up by full committee.

In all, CBO has prepared more than 1,000 mandate cost statements over the past two years (see Table 1). The number of statements has been lower this year than last year, reflecting the slower pace of legislation. In both years about 10 percent of the bills and amendments we analyzed had intergovernmental mandates, and approximately 1 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	416	673	399
Number of Statements That Identified Mandates	69	50	91	55
Number of Mandates with Costs Exceeding Thresholds	11	3	38	14
Number of Mandates with Costs That Could Not Be Estimated	6	5	2	4

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.

We identified private-sector mandates in about 14 percent of the bills and amendments that we examined; nearly 4 percent had costs exceeding the \$100 million threshold. Those numbers suggest that the Congress is more likely to impose federal mandates on the private sector than mandates on state, local, and tribal governments.

Another way of looking at how well UMRA has worked is to review the number of mandates that the Congress has actually enacted since January 1996. During that time, Congressional committees reported few bills containing intergovernmental or private-sector mandates whose costs exceeded the relevant

thresholds (see Table 2). Of the seven intergovernmental mandates that did, only one—the increase in the minimum wage—was enacted into law in a form that will impose costs on state and local governments in excess of the \$50 million threshold. In four other cases, the Congress either lowered the costs below the threshold before enacting the mandates or chose not to enact them at all. Two other bills reported this year with costs over the threshold have yet to be considered by both Houses.

The track record for private-sector mandates is a bit different. Last year, the Congress passed nine of the 11 reported bills with private-sector mandates that CBO identified as costing more than \$100 million. Only one, the dairy provisions of the farm bill, was amended 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. Thus far in 1997, four such mandates, contained in the budget reconciliation bills and the reinstatement of the airline ticket tax, have been enacted.

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

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)			
<i>104th Congress, Second Session</i>			
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.
<i>105th Congress, First Session</i>			
Nuclear Waste Policy	Accelerate fees owed by state of New York	No	n.a.
Agricultural Research	Cap federal contribution for Food Stamp administration	No	n.a.
Private-Sector Mandates (Threshold of \$100 million)			
<i>104th Congress, Second Session</i>			
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)			
<i>105th Congress, First Session</i>			
Airport and Airway Trust Fund	Reinstate ticket tax	Yes	Yes
Budget Reconciliation: Medicare	Requirements on private health insurance providers	Yes	Yes
Budget Reconciliation: Retirement	Increase in 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	Change deduction for accrued vacation pay	No	n.a.
Encryption	Allow decryption	No	n.a.
Financial Service Reform	Increase Federal Home Loan Bank payments	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. Thus, for example, the five intergovernmental topics from the 104th Congress shown in this table correspond to the 11 mandate statements with costs exceeding the threshold in 1996 shown in Table 1. The 11 private-sector mandates from the 104th Congress shown in this table correspond to the 38 mandate statements in 1996 shown in Table 1.

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

- 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.

With respect to state and local governments, that record is colored to some extent by UMRA's definition of a federal mandate. Many of the costs that legislation imposes on state and local governments result from conditions of federal aid or participation in voluntary federal programs. Such aid conditions and voluntary participation are not considered federal mandates under UMRA. The act also excludes certain federal requirements, such as measures to enforce the constitutional rights of individuals or to prohibit discrimination of various types. CBO identified more than 75 bills in 1996 that would have imposed some costs on state and local governments that were not the result of mandates as UMRA defines them.

Another definitional limitation involves large entitlement programs such as Medicaid. For those programs, UMRA 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 per capita cap 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 under the program. Some people have argued that the Congress intended for UMRA's 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.

With respect to private-sector mandates, the record may be clouded by the inclusion of taxes and involuntary fees on businesses and individuals, which are considered private-sector 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 the effect of UMRA 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 perceived success of UMRA in raising the consciousness of the Congress about unfunded federal mandates for state and local governments has prompted some Members to propose expanding the act's provisions for private-sector mandates. For example, the bill sponsored by Congressman Gary Condit and others—H.R. 1010, 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, H.R. 1010 would establish a point of order against considering bills that contain private-sector mandates whose costs exceed the \$100 million threshold, regardless of whether federal funding is provided. Like the existing point of order against considering unfunded intergovernmental mandates, it would take only a simple majority of Members to vote to proceed. Thus, the new point of order would not stop the Congress from passing bills it wants to pass. But it would raise the stakes in deliberating private-sector mandates and increase the demand for additional cost information.

H.R. 1010 would direct CBO to provide expanded cost information for private-sector mandates that exceed the \$100 million threshold. CBO would be required to analyze the impact of the proposed mandates on consumers, workers, and small businesses, including any disproportionate impacts 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. Those effects are what economists call the indirect effects of mandates, such as when the mandated costs 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 estimates of the direct costs of complying with federal mandates that UMRA now requires.

CBO already includes information about significant indirect effects in many of its cost statements for private-sector mandates over the \$100 million threshold, as Table 3 shows. When sufficient time and data are available, we also provide quantitative estimates of the size of those effects. For example, CBO analyzed the indirect 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.

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 provide the Congress about various indirect costs of new legislative proposals. CBO's record at estimating the direct costs of mandates is reasonably good, but even for direct costs 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 \$0.2 billion to \$2.0 billion because we could not determine the technical and functional criteria that would be established in regulations after the bill's passage. Such informational problems would be compounded in analyzing the indirect effects of mandates.

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

Topic	Mandate	Bill Number(s)	Range of Estimated Annual Costs (Billions of dollars)	Were Indirect 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

(Continued)

TABLE 3. CONTINUED

Topic	Mandate	Bill Number(s)	Range of Estimated Annual Costs (Billions of dollars)	Were Indirect Effects Considered?
105th Congress, First Session				
Airport and Airway Trust Fund	Reinstate ticket tax	H.R. 668 S. 279	2.7	No
Budget Reconciliation: Medicare	Requirements on private health insurance providers	H.R. 2015 S. 947	0.1 to 1.8	No
Budget Reconciliation: Retirement	Increase in 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	Change deduction for accrued vacation pay	H.R. 2646	0.1 to 1.1	No
Encryption	Allow decryption	H.R. 695	0.2 to 2.0	Yes
Financial Service Reform	Increase Federal Home Loan Bank payments	H.R. 10	Greater than 0.1	Yes
Nuclear Waste Policy	Shift payment of fees	H.R. 1270 S. 104	Greater than 2.5	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
Riegle-Neal Clarification Act	Extend host-state laws	H.R. 1306	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; FCC = Federal Communications Commission.

a. Cumulative costs over five years for universal service.

b. Under H.R. 1010, if CBO determines that an estimate of mandate costs cannot be made, the point of order under section 425(a)(1) of the Unfunded Mandates Reform Act would apply.

In closing, Mr. Chairman, I can assure you that we will continue to do our best to provide good cost information to the Congress. 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.