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The Unfunded Mandates Reform Act: A Primer

Congress enacted the Unfunded Mandates Reform Act of 1995 (UMRA, P.L. 104-4) to “strengthen the partnership between Federal, State, local, and tribal governments by ensuring that the impact of legislative and regulatory proposals on those governments are given full consideration in Congress and the Executive Branch before they are acted upon,” the law’s accompanying Senate report stated.

To do this, UMRA targeted so-called “unfunded mandates,” or federal legislation and/or regulation that either imposes a cost on state, local, or tribal governments or impedes those entities’ ability to collect revenue without a corresponding funding mechanism from the federal government. UMRA’s definition of unfunded mandates also includes mandates affecting the private sector. Among other things, UMRA:

- defines unfunded mandates;
- requires that the Congressional Budget Office (CBO) estimate the direct costs to state, local, and tribal governments and the private sector of mandates in certain legislative proposals whose anticipated effects exceed specific dollar thresholds;
- allows Members of Congress in both chambers to bring a point of order for certain legislation containing an intergovernmental mandate (which can result in the chamber declining to consider the legislation); and
- directs certain federal agencies to assess the costs, benefits, and compliance costs of mandates included in some regulatory proposals whose anticipated effects exceed specific dollar thresholds.

This In Focus summarizes UMRA’s major provisions, found in Titles I and II of the law. For a comprehensive discussion of UMRA, see CRS Report R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues*.

Background

The concept of unfunded mandates—and their reform—gained prominence with some groups in the 1970s and 1980s. Groups such as the National League of Cities and National Governors Association lobbied for financial relief from what they considered burdensome federal requirements on state and local governments. According to a 1998 article in the journal *Public Administration Review*, by the mid-1990s, major state and local government advocacy groups “had been pursuing anti-mandates legislation ... for the better part of a decade.”

UMRA’s Senate report suggests some Members of Congress agreed with these groups. During this period, there was a shift in how some federal aid was distributed (e.g., in 1986 Congress reorganized the general revenue sharing program, which had transferred \$83 billion from the federal government to state and local governments over 15

years, into multiple grant programs with greater congressional directives). Referring to these trends, the report argued, “Over the last decade or so, State and local governments have gotten less of the Federal carrot and more of the Federal stick.”

Defining “Unfunded Mandates”

UMRA defines an “unfunded mandate” as a provision in legislation, statute, or regulation that:

- would impose an enforceable duty on either a state, local, or tribal government or on the private sector; or
- would reduce or eliminate the amount of authorization of appropriations for federal financial assistance to a state, local, or tribal government or to the private sector for the purposes of complying with a previous mandate.

UMRA does not define “enforceable duty.” However, CBO (which UMRA tasks with providing cost estimates for mandates in reported legislation) has interpreted the term to refer to actions by public and private entities that would be either required or prohibited by federal law or regulation.

Provisions in legislation, statute, or regulation that “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease” federal funding for existing intergovernmental grants with annual entitlement authority of \$500 million or more could be considered an intergovernmental mandate. This applies if a state, local, or tribal government “lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.”

Exceptions and Exclusions

Title I of UMRA provides certain exceptions to its requirements and definitions. In most cases, enforceable duties that arise as a condition of receiving federal assistance or from participation in a voluntary federal program are not considered mandates. (Federal courts have defined federal grant assistance as voluntary under UMRA’s provisions.)

UMRA does not apply to rules from independent regulatory agencies or rules issued with no notice of proposed rulemaking. UMRA exempts legislative provisions and rules relating to individual constitutional rights, discrimination, emergency assistance, grant accounting and auditing procedures, national security, treaty obligations, and elements of Social Security legislation.

CBO Legislative Mandate Cost Estimates

Title I of UMRA requires that for all bills or joint resolutions reported by an authorizing committee, CBO must submit a statement that:

- includes whether CBO estimates that the direct cost of any intergovernmental mandates equals or exceeds \$50 million (adjusted annually for inflation—the 2023 threshold was \$99 million) in the fiscal year in which the mandate would first occur or in any of the four following fiscal years; and
- includes whether CBO estimates that the direct cost of any private sector mandates equals or exceeds \$100 million (adjusted annually for inflation—the 2023 threshold was \$198 million) in the fiscal year in which the mandate would first occur or in any of the four following fiscal years.

CBO must estimate the amount of direct costs resulting from the mandate. UMRA defines “direct costs” as the aggregate amount that either state, local, or tribal governments or the private sector would be required to spend to comply with the mandate or, in the case of state, local, and tribal governments, the aggregate amount of revenue those governments would be prohibited from raising due to the mandate. CBO must identify any increase in federal appropriations or other spending that has been provided to fund the mandate. The mandate is considered unfunded unless estimated costs are fully funded.

UMRA also allows CBO to study the budgetary and financial impact of any legislative proposal containing a federal mandate at the request of the chair or ranking member of a House or Senate committee.

Points of Order

Title I of UMRA provides Members of Congress in both chambers the chance to raise two points of order. Members may raise a point of order for any reported bill or joint resolution containing either an intergovernmental or private sector mandate but for which the reporting committee has not published a CBO mandated cost estimate.

Even if the informational requirement of the first point of order is met, a point of order against consideration may still be raised for any legislative proposal or conference report that would increase the direct costs of an intergovernmental mandate (but not a private sector mandate) above UMRA’s annual thresholds. Unlike the informational point of order, this point of order can be raised for any legislative proposal or conference report, not only for a reported bill or joint resolution.

Because federal mandates are created through authorization bills, UMRA’s points of order generally do not apply to bills reported by the House and Senate committees on appropriations. However, if an appropriations bill, resolution, amendment, or conference report contains legislative provisions that would either increase the direct costs of a federal intergovernmental mandate that exceeds the threshold, or cause those costs to exceed the threshold, a point of order may be raised against the provisions.

Regulatory Requirements

UMRA’s Title II requires federal agencies to publish a statement before promulgating a notice of proposed rulemaking likely to cause an intergovernmental or private sector mandate requiring expenditures of at least \$100 million in any one year (adjusted annually for inflation):

- assessing the mandate’s anticipated costs and benefits;
- estimating future compliance costs of the mandate and any disproportionate budgetary effects on particular regions, state and local governments, or segments of the private sector; and
- estimating the mandate’s effect of the national economy.

For regulatory actions requiring such a statement, UMRA directs the issuing agency to identify and consider a “reasonable number” of alternatives and select the least costly, most cost-effective, or least burdensome option. The same exemptions and exclusions identified earlier also apply to UMRA’s regulatory requirements. In addition, agencies that are otherwise prohibited by law from considering cost estimates in adopting a rule and rules that have not had a notice of proposed rulemaking are exempt from UMRA’s requirements.

Issues for Congress

Some have suggested that UMRA’s scope should be broadened in several respects. For example, the National Conference of State Legislatures has argued that federal programs under UMRA’s exemptions and exclusions can still impose costs on state, local, and tribal governments. Since UMRA does not include these costs as “mandates,” they do not require a CBO cost estimate.

Relatedly, a 2011 Government Accountability Office (GAO) report “consistently found that agencies’ rules seldom triggered UMRA.” GAO noted that the most common reasons for this were rules not meeting UMRA’s expenditure threshold; rules not having a notice of proposed rulemaking; participation in the program was voluntary; or the rule was issued by an independent regulatory agency.

A 2005 GAO report that gathered feedback on UMRA noted that state and local governments expressed concern about UMRA’s directive that CBO estimate only the direct costs of a mandate. These respondents argued that the indirect costs of federal mandates, such as forgone business profits and the resulting missed tax revenue, can have significant effects on state and local governments.

Congress may consider whether to amend some of UMRA’s exemptions and exclusions. Some bills in recent Congresses have sought to do so. In the 115th Congress, the Unfunded Mandates Information and Transparency Act of 2018 (H.R. 50), which passed the House, would have expanded UMRA’s definition of direct costs, eliminated the regulatory analysis exemption for independent regulatory agencies, and allowed a point of order against consideration to be raised for legislation containing a private sector mandate above UMRA’s thresholds and not, as UMRA allows, solely for legislation containing an intergovernmental mandate. Legislation seeking to amend similar aspects of UMRA was introduced in the 116th Congress (H.R. 300 and S. 4077), the 117th Congress (H.R. 701 and S. 170), and the 118th Congress (H.R. 3230).

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