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Unfunded Mandates Reform Act Summarized

Keith Bea and Richard S. Beth
Specialists in American National Government
Government and Finance Division

Summary

This summary of the Unfunded Mandates Reform Act (UMRA) of 1995 will assist Members of Congress and staff seeking succinct information on the statute. The term “unfunded mandates” generally refers to requirements that a unit of government imposes without providing funds to pay for costs of compliance. UMRA establishes mechanisms to limit federal imposition of unfunded mandates on other levels of government (intergovernmental mandates) and on the private sector. The act establishes points of order against proposed legislation containing an unfunded intergovernmental mandate, requires executive agencies to seek comment on regulations that would constitute a mandate, and establishes a means for judicial enforcement. This report will be updated if the act is amended.

Overview of UMRA

History of the Act. Enactment of the Unfunded Mandates Reform Act of 1995¹ (UMRA) culminated years of effort by nonfederal government officials and their advocates to control, if not eliminate, the federal imposition of unfunded mandates. Supporters contend that the statute is needed to forestall federal legislation and regulations that impose questionable or unnecessary burdens and have resulted in high costs and inefficiencies. Opponents argue that mandates may be necessary to achieve results in areas in which voluntary action may be insufficient or state actions have not achieved intended goals.

Since the mid-1980s, Congress debated legislation to slow or prohibit the enactment of unfunded federal mandates. The inclusion of the issue in the Contract with America, the blueprint of legislative action developed by the House Republican leadership when it gained the majority, practically guaranteed that action would be taken. UMRA was signed into law early in the 104th Congress, on March 22, 1995.

¹ P.L. 104-4, 109 Stat. 48 *et seq.*

Coverage of the Act. Under UMRA, federal mandates include provisions of law or regulation that impose enforceable duties, including taxes.² They also include provisions that reduce or eliminate federal financial assistance available for carrying out an existing duty. UMRA distinguishes between “intergovernmental mandates,” imposed on state, local, or tribal governments, and “private sector mandates.”³ Intergovernmental mandates include legislation or regulations that would (1) reduce certain federal services to state, local, and tribal governments (such as border control or reimbursement for services to illegal aliens); and (2) tighten conditions of assistance or reduce federal funding for existing intergovernmental assistance programs with entitlement authority of \$500 million or more. Exclusions and exemptions outside the reach of the statute are discussed later in this report.

Under UMRA, an intergovernmental mandate is considered unfunded unless the legislation authorizing the mandate meets its costs by either (1) providing new budget authority (direct spending authority or entitlement authority) or (2) authorizing appropriations. If appropriations are authorized, the mandate is considered unfunded unless the legislation ensures that in any fiscal year (1) the actual costs of the mandate will not exceed the appropriations actually provided; (2) the terms of the mandate will be revised so that it can be carried out with the funds appropriated; (3) the mandate will be abolished; or (4) Congress will enact new legislation to continue the mandate as an unfunded mandate.⁴

Contents of the Act. The act consists of five prefatory sections and four titles. The prefatory sections address matters such as the purpose, short title, and exclusions from coverage of the act. Title I amends the Congressional Budget and Impoundment Control Act, as amended, to permit Congress to (1) identify legislation proposing mandates, and (2) decline to consider legislation proposing unfunded intergovernmental mandates. Title I also sets forth thresholds for action, authorizations, and definitions. Title II requires that federal agencies assess the financial impact of proposed rules on nonfederal entities, determine whether federal resources exist to pay those costs, solicit and consider input from affected entities, and generally select the least costly or burdensome regulatory option. Title III called for a review of federal mandates to be completed within 18 months of enactment. This statutory requirement was not completed. UMRA assigned the study to the Advisory Commission on Intergovernmental Relations (ACIR), which no longer exists. The ACIR completed a preliminary report in January, 1996, but the final report was not released.⁵ Title IV authorizes judicial review of federal agency compliance with Title II provisions. The remainder of this report summarizes the requirements set forth in Titles I, II, and IV of the act.

² 2 U.S.C. 658 (5), (6), and (7); Sec. 421 of Congressional Budget and Impoundment Control Act of 1974 (hereafter designated as CBA), as amended, P.L. 93-344, 88 Stat. 297, 2 U.S.C. 658 *et seq.*

³ Compare 2 U.S.C. 658(5), 658(7); Sec. 421 of CBA.

⁴ 2 U.S.C. 658d(a)(2); Sec. 425 of CBA. UMRA provides that units of government may voluntarily comply with a mandate abolished for lack of funding. See 2 U.S.C. 658d(b).

⁵ See “ACIR Rejects Final Draft Report on Federal Mandates,” *County News*, Aug. 12, 1996, p. 3. Funds for the ACIR have not been appropriated since FY1995.

Review of Proposed Legislation (Title I)

Referred to as “Legislative Accountability and Reform,” Title I establishes requirements for committees and the Congressional Budget Office (CBO) to study and report on the magnitude and impact of mandates in proposed legislation. Title I also creates point-of-order procedures through which these requirements can be enforced and the consideration of measures containing unfunded intergovernmental mandates can be blocked.

Information Requirements. Under UMRA, congressional committees have the initial responsibility to identify federal mandates in measures under consideration. Committees may have CBO study whether proposed legislation could have a significant budgetary impact on nonfederal governments, or a financial or employment impact on the private sector.⁶ Also, committee chairs and ranking minority members may have CBO study any legislation containing a federal mandate.⁷

When an authorizing committee orders reported a public bill or joint resolution containing a federal mandate, it must provide the measure to CBO.⁸ CBO must report to the committee an estimate of mandate costs. The office must prepare full quantitative estimates if costs are estimated to exceed \$59 million (for intergovernmental mandates) or \$117 million (for private sector mandates) in any of the first five fiscal years the legislation would be in effect.⁹ Below these thresholds, CBO must prepare brief statements of cost estimates.¹⁰ For each reported measure with costs over the thresholds, CBO is to submit to the committee an estimate of

- the direct costs of federal mandates contained in it, or in any necessary implementing regulations;¹¹ and
- the amount of new or existing federal funding the legislation authorizes to pay these costs.¹²

If reported legislation authorizes appropriations to meet the estimated costs of an intergovernmental mandate, the CBO report must include a statement on the new budget authority needed, for up to 10 years, to meet these costs.¹³ For a measure that reauthorizes or amends an existing statute, the direct costs of any mandate it contains are to be

⁶ 2 U.S.C. 602(c)(2); Sec. 202 of CBA.

⁷ 2 U.S.C. 602(h)(2); Sec. 202 of CBA.

⁸ 2 U.S.C. 658b(a) and (b); Sec. 423 of CBA.

⁹ 2 U.S.C. 658c(a)(1), 658c(b)(1); Sec. 424 of CBA. The thresholds stated are the levels for 2003, as adjusted for inflation. The initial levels were \$50 million and \$100 million, respectively.

¹⁰ 2 U.S.C. 658c(c); Sec. 424 of CBA.

¹¹ 2 U.S.C. 658c(a)(1), 658c(b)(1); Sec. 424 of CBA.

¹² 2 U.S.C. 658c(a)(2)(A) and (C), 658c(b)(2); Sec. 424 of CBA.

¹³ 2 U.S.C. 658c(a)(2)(B); Sec. 424 of CBA.

measured by the projected increase over those costs required by existing law. The calculation of increased costs must include any projected decrease in existing federal aid that provides assistance to nonfederal entities.¹⁴

The committee is to include the CBO estimate in its report or publish it in the *Congressional Record*.¹⁵ The committee's report on the measure must also

- identify the direct costs to the entities that must carry out the mandate;
- assess likely costs and benefits;
- describe how the mandate affects the “competitive balance” between the public and private sectors; and
- state the extent to which the legislation would preempt state, local, or tribal law, and explain the effect of any preemption.¹⁶

These requirements apply to all proposed mandates, both intergovernmental and private sector. For intergovernmental mandates alone, the committee is to describe in its report the extent to which the legislation authorizes federal funding for the direct costs, and details on whether and how funding is to be provided.¹⁷

Points of Order for Initial Consideration. UMRA establishes that when any measure is taken up for consideration in either house, a point of order may be raised that the measure contains unfunded intergovernmental mandates exceeding the \$59 million threshold.¹⁸ This point of order applies to the measure as reported, including, for example, a committee amendment in the nature of a substitute. The point of order may also be raised if CBO reported that no reasonable estimate of the cost of intergovernmental mandates was feasible.¹⁹ A point of order also may be raised against consideration of a measure reported from committee if the committee has not published a CBO estimate of mandate costs. This point of order applies to both intergovernmental and private sector mandates.

In the Senate, either point of order may be waived by majority vote.²⁰ Otherwise, if the chair sustains the point of order, the measure may not be considered.²¹ In ruling on these points of order, the chair is to consult with the Committee on Governmental Affairs on whether the measure contains intergovernmental mandates. Also, the unfunded costs

¹⁴ 2 U.S.C. 658g; Sec. 428 of CBA.

¹⁵ 2 U.S.C. 658b(f); Sec. 423 of CBA.

¹⁶ 2 U.S.C. 658b(c) and (e); Sec. 423 of CBA. The term “direct costs” is defined at 2 U.S.C. 658(3). Sec. 421 of CBA.

¹⁷ 2 U.S.C. 658b(d); Sec. 423 of CBA.

¹⁸ 2 U.S.C. 658d(a)(2); Sec. 425 of CBA.

¹⁹ 2 U.S.C. 658d(a)(1), 658c(a)(3), 658c(b)(3); Sec. 425 of CBA.

²⁰ Sec. 904 of CBA. See 2 U.S.C. 621, Historical and Statutory Notes.

²¹ 2 U.S.C. 658d(a); Sec. 425 of CBA.

of the mandate are to be determined based on estimates by the Committee on the Budget (which may draw for this purpose on the CBO estimate).²²

For the House, UMRA provides that if either point of order is raised, the chair does not rule on it. Instead, the House votes on whether to consider the measure despite the point of order. To prevent dilatory use of the point of order, the chair need not put the question of consideration to a vote unless the Member making the point of order meets the “threshold burden” of identifying specific language that is claimed to contain the unfunded mandate.²³ Also, if several points of order could be raised against the same measure, House practices under UMRA afford means for all to be consolidated in a single vote on consideration. Finally, if the Committee on Rules proposes a special rule for considering the measure that waives the point of order, UMRA subjects the special rule itself to a point of order, which is disposed of by the same mechanism.²⁴

These procedures are intended to insure that the House, like the Senate, will always have an opportunity to determine, by vote, whether to consider a measure that may contain an unfunded mandate. Also, if the House votes to consider a measure in spite of the point of order, UMRA protects the ability of Members to offer amendments in the Committee of the Whole to strike out unfunded intergovernmental mandates, unless the special rule specifically prohibits such amendments.²⁵

Additional Enforcement Mechanisms. A point of order under the UMRA mechanism may be raised not only against initial consideration of a bill or resolution, but also against consideration of an amendment, conference report, or motion (e.g., a motion to recommit with instructions or a motion to concur in an amendment of the other house with an amendment) that would cause the unfunded costs of intergovernmental mandates in a measure to exceed the specified threshold.²⁶ UMRA does not require amendments or motions to be accompanied by CBO mandate cost estimates, but a Senator may request CBO to estimate the costs of mandates in an amendment he or she prepares.²⁷ If an amended bill or resolution or a conference report contains a new mandate or other new increases in mandate costs, the conferees are to request a supplemental estimate, which CBO is to attempt to provide.²⁸ UMRA requires no publication of these supplemental estimates.

The UMRA points of order are not applicable against consideration of appropriations bills. However, if an appropriation bill contains legislative provisions that would create unfunded intergovernmental mandates in excess of the threshold, the UMRA point of

²² 2 U.S.C. 658d(d) and (e); Sec. 425 of CBA.

²³ 2 U.S.C. 658e; Sec. 426 of CBA.

²⁴ 2 U.S.C. 658e(a), 658e(b)(3); Secs. 426(a) and 426(b)(3) of CBA.

²⁵ 2 U.S.C. 1514, adding clause 5(c) of Rule XXIII.

²⁶ 2 U.S.C. 658d(a)(2); Sec. 425 of CBA.

²⁷ 2 U.S.C. 658f; Sec. 427 of CBA.

²⁸ 2 U.S.C. 658c(d); Sec. 424 of CBA.

order may be raised against the provisions themselves. In the Senate, if this point of order is sustained, the provisions are stricken from the bill.²⁹

Exclusions and Exemptions. Legislation pertinent to the following subject matters remains exempt from the UMRA point-of-order procedures: individual constitutional rights, discrimination prohibitions, auditing compliance, emergency assistance requested by nonfederal government officials, national security or treaty obligations, emergencies as designated by the President and the Congress, and Social Security.³⁰ The provisions of Title I pertinent to federal agencies (for example, the requirement that agencies determine whether sufficient appropriations exist to provide for proposed costs) do not apply to federal regulatory agencies.³¹ Also, provisions establishing conditions of federal assistance or duties stemming from participation in voluntary federal programs are not mandates.³²

Assessment of Mandates in Regulations (Title II)

Title II requires that federal agencies prepare written statements that identify costs and benefits of a federal mandate to be imposed through the rulemaking process. The requirement applies to regulatory actions determined to result in costs of \$117 million or more in any one year (2003 figure, as adjusted for inflation). The written assessments to be prepared by federal agencies must identify the law authorizing the rule, anticipated costs and benefits, the share of costs to be borne by the federal government, and the disproportionate costs on individual regions or components of the private sector. Assessments must also include estimates of the effect on the national economy, descriptions of consultations with nonfederal government officials, and a summary of the evaluation of comments and concerns obtained throughout the promulgation process.³³ Impacts of “any regulatory requirements” on small governments must be identified; notice must be given to those governments; and technical assistance must be provided. Also, UMRA requires that federal agencies consider “a reasonable number” of policy options and select the most cost-effective or least burdensome alternative.³⁴

Judicial Review (Title IV)

The requirements in Title II pertaining to the preparation of a mandate assessment statement and notification of impact on small governments remain subject to judicial review. A federal court may compel a federal agency to comply with these requirements, but such a court order cannot be used to stay or invalidate the rule.³⁵

²⁹ 2 U.S.C. 658d(c); Sec. 425 of CBA.

³⁰ 2 U.S.C. 658a; Sec. 422 of CBA. See also 2 U.S.C. 1503.

³¹ 2 U.S.C. 658(1); Sec. 421(1) of CBA.

³² 2 U.S.C. 658(5)(A)(i)(I) and (II), 658(7)(A)(i) and (ii); Sec. 421 of CBA.

³³ 2 U.S.C. 1531-1538.

³⁴ 2 U.S.C. 1535.

³⁵ 2 U.S.C. 1571.