History and Evaluation of the Unfunded Mandates Reform Act

Abstract - The Unfunded Mandates Reform Act of 1995 (UMRA) made two important changes in the way information about the budgetary impact of federal mandates is provided to and used by the Congress: it increased the supply of information about such costs and signaled Congressional willingness to use that information by establishing new points of order procedures for certain bills. Since UMRA’s enactment, the quantity of detailed information provided to the Congress about federal mandates has increased. Furthermore, that information played a prominent role in the Congressional debate over several important intergovernmental issues. By focusing the mandates debate narrowly, however, the act’s long-term usefulness in discouraging the federal imposition of costs on other levels of government may be limited.

INTRODUCTION

The Unfunded Mandates Reform Act (UMRA)—passed in 1995 as one of the first actions of the 104th Congress—is intended to focus more attention on the costs of mandates imposed by the federal government on other levels of government or the private sector. The act’s supporters had many goals for the legislation, including ensuring that the Congress had information about the costs of mandates before it decided whether to impose them, and encouraging the federal government to provide funding to cover the costs of intergovernmental mandates. To accomplish those goals, title I of UMRA established requirements for reporting on federal mandates and new legislative procedures designed to increase both the supply of information about the costs of mandates and Congressional demand for such information.

This paper analyzes how provisions of Title I of UMRA have been implemented by the Congressional Budget Office (CBO), particularly as they relate to intergovernmental mandates. In the eight years since UMRA took effect, both the amount of information about mandate costs and interest in that information have increased significantly. In addition while the bill’s explicit enforcement mechanism—the point of order—rarely has been used, several pieces of legislation that originally contained expensive unfunded mandates

1 The information presented in this paper is based on data gathered for CBO’s annual reports on UMRA. Those reports can be found at www.cbo.gov.
have been amended to either eliminate the mandates entirely or to lower their costs. In many of those cases, information about mandate costs provided by CBO played a role in Congressional decisions. By increasing information about mandates and by influencing some of the decisions made by the Congress, Title I of UMRA has proved to be effective.

Still, UMRA has its critics. They argue that while the law has had some success, that success should be weighed against the law’s limitations. Those limitations—a narrow definition of mandate, a high cost threshold, and broad exclusions—allow the Congress to continue to enact legislation that significantly affects other levels of government.

THE BASIC REQUIREMENTS OF UMRA

UMRA contains four titles that address how various parts of the federal government should handle proposed and existing mandates on state, local, and tribal governments.

- **Title I, Legislative Accountability and Reform**, requires CBO and authorizing committees in the Congress to develop and report information about the existence and costs of mandates in proposed legislation. It also establishes a mechanism to bring that information to the attention of the Congress before legislation is considered on the floor of the House or Senate.

- **Title II, Regulatory Accountability and Reform**, applies to actions of federal agencies in implementing federal law. It requires most federal agencies in the executive branch (except some independent regulatory agencies) to assess the effects of their regulatory actions on state, local, and tribal governments. It also requires that statements about such effects accompany certain significant regulations, that agencies seek input from other levels of government when developing regulations, and that agencies consider alternatives that would ease the financial burden of regulations.

- **Title III, Review of Federal Mandates**, required the Advisory Commission on Intergovernmental Relations (ACIR) to prepare three reports: a baseline study of the costs and benefits of federal mandates to state, local, and tribal governments; a review of the impact of unfunded federal mandates on those governments, along with recommendations for easing, consolidating, or terminating mandates; and an annual report identifying federal court rulings that required state, local, or tribal governments to undertake additional responsibilities and activities.²

- **Title IV, Judicial Review**, allows for limited judicial review of certain agency actions and rules developed under title II of UMRA.

The remainder of this paper focuses on Title I of UMRA, and CBO’s role in implementing the provisions of that title.

**TITLE I IN DETAIL**

Title I of UMRA attempts to ensure that the Congress has more information about the potential direct costs of federal mandates before enacting legislation. That title defines mandates and their direct

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² ACIR completed and released the report on judicial mandates in July 1995 (ACIR, 1995). The commission also published a preliminary report in January 1996 on the impact of federal mandates on state and local governments (ACIR, 1996). ACIR received its last Congressional appropriation in fiscal year 1996 and was terminated at the end of that year.
Defining Mandates and Their Costs

Under UMRA, a mandate is any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments or the private sector, or that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates. Duties that are imposed as a condition of federal assistance or that arise from participation in a voluntary federal program are not mandates. 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 assistance would be a mandate but only if states lacked the flexibility to offset the new costs or the loss of federal funding with reductions elsewhere in the program.

Excluded from UMRA’s procedures are legislative provisions that concern constitutional rights, discrimination, emergency aid, accounting and auditing procedures for grants, national security, treaty ratification, and title II of Social Security (Old–Age, Survivors, and Disability Insurance benefits).

The law defines direct costs as amounts that mandated entities—governmental or private–sector—would be required to spend to comply with an enforceable duty, including amounts that states, localities, and tribes “would be prohibited from raising in revenues.” Direct costs exclude amounts that mandated entities would spend to comply with applicable laws, regulations, or professional standards in effect when the federal mandate was adopted. In addition, direct costs must be offset by direct savings to the mandated entities that would result from complying with the mandate as well as savings from other provisions in the legislation that govern the same activity as the mandate.

Mandate Cost Statements: CBO’s Role

UMRA requires CBO to provide statements to Congressional authorizing committees about whether reported bills contain federal mandates. If the total direct costs of all mandates in a bill are above a specified threshold in any of the first five fiscal years after the mandate takes effect, CBO must provide an estimate of those costs (if feasible) and the basis of its estimate. The statutory thresholds are $50 million for intergovernmental mandates and $100 million for private–sector mandates (in 1996 dollars), adjusted annually for inflation.

CBO’s statement must also include an assessment of whether the bill authorizes or otherwise provides funding to cover the costs of any new federal mandate. In the case of intergovernmental mandates, the cost statement must, under certain circumstances, estimate the appropriat-

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3 CBO has been providing estimates of the impact of federal legislation on state and local governments since 1982. The State and Local Government Cost Estimates Act of 1981 required CBO to estimate the costs that state and local governments would incur to carry out or comply with “any significant bill or resolution.” During 1982–1995, CBO provided the Congress with more than 7,000 such estimates. UMRA repealed the State and Local Government Cost Estimates Act, narrowed the types of intergovernmental impacts that CBO is required to identify, and required more in–depth analysis of those impacts. It also lowered the cost that triggers the need for an intergovernmental estimate from $200 million a year to $50 million (adjusted annually for inflation). In practice, CBO continues to provide the Congress, when feasible, with estimates of all budgetary effects on state and local governments, regardless of their cost or whether they result from mandates as defined by UMRA.
tions needed to fund such authorizations for up to 10 years after the mandate takes effect.

Authorizing committees must publish CBO’s mandate statements in their reports or in the Congressional Record before a bill is considered on the floor of the House or Senate. Conference committees must ensure “to the greatest extent practicable” that CBO prepares statements for conference agreements or amended bills if they contain mandates not previously considered by either House or if they impose greater direct costs than the version considered earlier. At the request of a Senator, CBO must estimate the costs of intergovernmental mandates contained in an amendment the Senator may wish to offer.

The Congress may also call on CBO to prepare analyses at other stages of the legislative process. If asked by the Chairman or Ranking Member of a committee, CBO will help that committee analyze the impact of proposed legislation, conduct special studies of legislative proposals, or compare a federal agency’s estimate of the costs of proposed regulations to implement a federal mandate with CBO’s estimate made when the law was enacted.

**Enforcement Mechanisms**

Section 425 of UMRA sets out rules for both the House and Senate that prohibit consideration of legislation unless certain conditions are met. For all reported legislation, consideration is not “in order” unless the committee has published a CBO mandate statement. That is, UMRA prohibits the consideration of a reported bill unless the committee has published a CBO statement about the costs of any mandates.

For reported legislation that contains intergovernmental mandates with direct costs above the threshold, the rules preclude consideration unless the legislation provides direct spending authority or authorizes appropriations sufficient to cover those costs. An authorization of appropriations will not be sufficient unless the authorized amounts are specified for each year (up to 10 years) after the effective date. The legislation also must provide a way to terminate or scale back the mandate if the federal agency determines that the appropriated funds are not sufficient to cover those costs.

Finally, although UMRA does not specifically require CBO to analyze the cost of mandates in appropriation bills, considering legislative provisions in such bills—or amendments to them—that increase the direct costs of intergovernmental mandates is not in order unless an appropriate CBO mandate statement is available.

Those rules are not self-enforcing, however; a Member must raise a point of order to enforce them. In the House, if a Member raises a point of order, the full House votes on whether to consider the bill even though there is a mandate. In the Senate, if a point of order is raised, the bill may not be considered unless either the Senate waives the point of order or the chair of the Senate overrules it. Over the last eight years, the UMRA point of order has been raised a dozen times in the House of Representatives; it has never been raised in the Senate.

**INTERGOVERNMENTAL MANDATES SINCE 1996**

Title I of UMRA requires CBO to estimate the costs of federal mandates in bills that are considered by authorizing committees. CBO must provide a detailed cost estimate for each bill that contains intergovernmental mandates whose costs would total $50 million or more per year. That threshold is in 1996 dollars and is adjusted each year for inflation; for 2004, it is $60 million.

Since UMRA took effect in 1996, CBO has provided mandate cost statements for nearly all of the bills reported by authorizing committees. It also has given informa-
tion to Members of Congress and Congressional staff about mandates at other stages in the legislative process—before bills are introduced, when amendments are considered on the floor of the House or Senate, and when conference committees develop their reports.

Over the past eight years, several patterns about federal mandates and their costs have become clear.

- Most of the legislation that the Congress considered in the past eight years did not contain federal mandates as UMRA defines them. Of the more than 4,700 bills and other legislative proposals that CBO reviewed between 1996 and 2004, 12 percent (551 bills) contained intergovernmental mandates.
- Most of those mandates would not have imposed costs greater than the thresholds set by UMRA. Only about nine percent (49) of the bills with intergovernmental mandates—or one percent of the bills that CBO reviewed—had annual costs of $50 million or more, by CBO’s estimate. Few of the bills with mandates, however, contained federal funding to offset the costs of the mandates.
- At least half of the intergovernmental mandates that CBO identified were explicit preemptions of state or local authority. In most of those cases, the costs to comply with the preemptions were not significant.
- The proportion of bills with mandate costs exceeding the UMRA thresholds has varied over the past eight years. Looking at bills that contain intergovernmental mandates, the share of those with costs above the statutory threshold has averaged about nine percent, ranging from a high of 16 percent in 1996 to a low of four percent in 2000.
- Few mandates with costs over the UMRA thresholds were enacted in the past eight years. Only three intergovernmental mandates with annual costs of at least $50 million became law: an increase in the minimum wage (in 1996); a reduction in federal funding to administer the Food Stamp program (in 1997); and a preemption of state premium taxes on certain prescription drug plans (in 2003). Those enacted mandates represent less than one percent of the intergovernmental mandates that the Congress has considered since UMRA took effect.
- In some cases, lawmakers have altered legislative proposals to reduce the costs of federal mandates before enacting them. Several intergovernmental mandates that CBO identified as having costs above the thresholds when they were approved by authorizing committees were amended before enactment to bring their costs below the thresholds. For many of those mandates—such as a requirement that driver’s licenses show Social Security numbers, a moratorium on certain taxes on Internet services, and preemptions of state securities fees—it was clear that information provided by CBO played a role in the Congress’s decision to lower the costs.

**AMENDMENTS TO UMRA**

Lawmakers have proposed expanding title I in only a couple of ways. One proposal would build on UMRA’s perceived success in focusing Congressional attention on unfunded intergovernmental mandates by expanding the law’s procedural requirements for private–sector mandates (particularly the provision that allows Members of Congress to raise a point of order against a bill that contains an intergovernmental mandate with costs above the threshold). Other proposals would expand UMRA’s definition of a mandate as
it relates to large federal entitlement programs administered by state or local governments. Both of those proposals were included in the Mandates Information Act, which was considered by the Congress in 1998 and 1999 but never enacted.

To date, the Congress has made only one change to UMRA in the eight years since the law took effect. The State Flexibility Clarification Act, enacted in 1999, requires authorizing committees and CBO to provide more information in committee reports and mandate statements for legislation that would “place caps upon, or otherwise decrease, the federal government’s responsibility to provide funding to state, local, or tribal governments” under various large entitlement grant programs (such as Medicaid, Temporary Assistance for Needy Families, or Food Stamps). Under that law, if a bill or joint resolution would limit or reduce federal spending for such a program, the authorizing committee must state specifically how it intends for the states to implement the change and to what extent the legislation provides additional flexibility, if any, to offset states’ costs.

CHALLENGES TO CBO IN IMPLEMENTING UMRA

UMRA’s provisions generally have been straightforward to carry out. Sometimes, however, determining clearly whether a bill would impose a mandate as defined in the law or whether the costs of a mandate would exceed the statutory thresholds has been surprisingly difficult.

**What is a Voluntary Federal Program?**

Determining what constitutes a mandate under UMRA can be complicated. For example, the law defines a mandate as “an enforceable duty except . . . a duty arising from participation in a voluntary federal program.” Although an activity may be voluntary on the part of a government, the federal program regulating that activity is not. In that case, a bill imposing new requirements on states would constitute a mandate under UMRA. For example, a municipality may choose whether to operate its own solid waste facility, but if it does, that facility would be subject to federal flow control requirements. Because the federal government is exercising its sovereign authority over those activities, the requirements, in CBO’s view, would be defined as mandates.

In contrast, other federal programs that are truly voluntary in nature may impose requirements on participants that, by UMRA’s definition, are not mandates. For example, a bill to reform public housing programs required local public housing agencies (PHAs) to submit a plan to the Department of Housing and Urban Development (HUD) and to follow certain operating requirements. Because PHAs are part of an existing voluntary federal pro-

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<td><strong>TOTAL NUMBER OF CBO MANDATE STATEMENTS FOR BILLS, PROPOSED AMENDMENTS, AND CONFERENCE REPORTS, 1996–2003</strong></td>
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<td>Total Number of Statements Transmitted</td>
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<td>Source: Congressional Budget Office.</td>
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<td>Note: The numbers in this table represent official mandate statements transmitted to the Congress by CBO. CBO 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, and occasionally, more than one formal CBO statement is issued for each mandate topic.</td>
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<td><em>The threshold, which is adjusted annually for inflation, was $50 million for intergovernmental mandates in 1996. It rose to $59 million in 2003.</em></td>
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gram that local governments do not have to participate in, any new requirements imposed on them are also voluntary and, thus, not mandates under UMRA. The distinction between what is voluntary and what is mandatory are not always clear.

Those definitions are particularly hard to apply to legislative proposals affecting tribal governments. For many programs, such as those in the areas of housing and law enforcement, control over the provision of services and the nature of the service provided is primarily in the hands of federal agencies, such as the Bureau of Indian Affairs (BIA). Tribes are allowed varying levels of input, but unlike state governments, they do not always control the essential elements of those programs.

The nature of the relationship between tribes and the federal government makes it difficult to determine whether the tribes are participating in a voluntary federal program. For example, when a tribe asks the federal government (through the BIA) to take land into trust for the tribe, it must follow certain procedures established by the bureau. Should those procedures be considered mandates, or is the whole process a voluntary federal program? The question becomes particularly relevant when the Congress imposes additional requirements on the tribes as part of that process. CBO has tended to view such requirements, because they involve the federal government’s sovereign powers, as mandates. However, little in the language or the legislative history of UMRA sheds light on how to apply the law in these cases.

**How Should “Mandates” That States Can Opt Out Of Be Treated?**

Over the years, CBO has reviewed a number of bills that would impose mandates on state, local, or tribal governments but also would allow those governments to opt out of complying, usually by enacting new legislation. Unlike most voluntary federal programs, in which states and localities incur costs only if they choose to participate (or opt in), those opt-out provisions would impose a mandate unless the governments took some other action to avoid those costs. UMRA is unclear about how to measure the costs of such mandates.

In the case of one early version of the Internet Tax Freedom Act in 1998, for example, a state that already imposed sales taxes on Internet access as of a specified date would be able to avoid the tax moratorium imposed by the bill, but only if the state enacted a new law expressly reinstating the existing tax. CBO was uncertain about whether giving eligible states the opportunity to opt out of the moratorium effectively eliminated some of the cost (lost revenue) of the mandate. If so, the direct costs of the mandate would total only the foregone revenues from the states and cities not given the opportunity to opt out, plus the administrative costs to enact new laws in the states that did have that opportunity. However, any of the states that failed to enact the necessary law within a year would incur additional losses because they, too, would be precluded from imposing taxes on Internet services.

UMRA does not clearly indicate whether the potential foregone revenues of those states should be included in the direct costs of the mandate. On the one hand, it could be argued that states would be able to choose whether to abide by the moratorium—and that the fiscal consequences of that choice would be their own responsibility, and not that federal government. On the other hand, a state’s failure to act would result in a restriction of its sovereign power to tax. Thus, it could be argued that any loss of revenue should count as a cost of a mandate under UMRA. In these cases, CBO provides as
much information as possible about the fiscal consequences of the proposal and does not determine whether the threshold would be exceeded.

Are Preemptions Mandates?

When reviewing legislation, CBO identifies any language that clearly demonstrates an intention to preempt conflicting state or local laws as a mandate. UMRA defines a mandate, in part, as any provision that would impose an “enforceable duty” on state, local, or tribal governments. Although the term “preemption” is not found in UMRA, CBO interprets “mandate” to encompass both positive and negative duties; that is, a mandate may take the form of a prohibition on state and local governments.

CBO considers only explicit (or “express”) preemptions to be mandates under UMRA. However, representatives of state and local governments often use the term preemption more broadly and include federal actions that are not typically considered preemptions even by the courts. For example, some state and local officials view a federal requirement to try certain juveniles as adults as a preemption, even though such a requirement is a condition of federal assistance for juvenile justice programs. Because UMRA does not define most conditions of aid as mandates, some legislative provisions that those groups identify as preemptions are not considered mandates by CBO.

Sometimes a preemption is implied rather than stated explicitly. In those cases, CBO is not in a position to identify the preemption as a mandate, often because the preemption does not become clear until well after enactment. Frequently, rulemaking by federal agencies and court decisions—rather than the legislative language reviewed by CBO—ultimately determine whether and how federal laws will preempt state and local authority. Such agency rules and court decisions are outside the scope of CBO’s work under Title I of UMRA and often occur years after CBO has reviewed the legislative proposals.4

How to Estimate Total Direct Costs?

Even when CBO determines that a legislative proposal contains a federal mandate, the agency faces numerous challenges in estimating the costs of the mandate. In some cases, accurately determining how many state and local governments or entities in the private sector would be affected by a mandate is impossible. In other cases, the entities that would be subject to a mandate are diverse and would not be affected uniformly, making it difficult to total the incremental costs of compliance for all parties that would be affected. In other instances, it may be impossible to estimate the costs of a mandate at the legislative stage, before regulations to implement it have been developed. Even the mandated parties may not be able to estimate costs reliably without knowing what the regulations to carry out the mandate will entail.

Fortunately, UMRA requires CBO to determine whether the costs of complying with mandates would exceed specific thresholds and to provide cost estimates, if feasible, only for mandates that would do so. If UMRA required CBO to provide more–detailed estimates for each mandate, the agency’s job would be considerably more difficult and time consuming.

MEASURING UMRA’S SUCCESS

UMRA has been called a “stop, look, and listen” approach to federal mandating (Posner, 1997). The law does not prohibit

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4 For a more extensive discussion of CBO treatment of preemptions under UMRA, see CBO (2001).
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the enactment of new mandates, nor does it require that the costs of federal mandates be reimbursed as some envisioned when a federal mandates law was first being contemplated in the early 1990s. Whether UMRA's approach to dealing with mandates can be deemed a success, depends on who you ask.

On the One Hand...

In the eight years since UMRA took effect, both the amount of information about the cost of federal mandates and Congressional interest in that information have increased considerably. In that respect, title I of UMRA has proved to be effective. Moreover, numerous pieces of legislation that originally contained a significant number of unfunded mandates were amended before enactment to either eliminate the mandate altogether or to lower its costs.

In this regard, title I of UMRA is doing what it was designed to do. More information is available to the Congress and there is more demand for that information. In addition, the Congress now has a tool to highlight mandates and, if it chooses, to force a separate vote on whether to enact them. The Congress has used these mechanisms over the last eight years to defeat some mandates or to alter or minimize their costs.

Few intergovernmental mandates with costs over the UMRA threshold have been enacted into law since UMRA's enactment. Only three mandates with annual costs of at least $50 million became law: an increase in the minimum wage (1996); a reduction in federal funding to administer the Food Stamp program (1997); and a preemption of state authority to assess a premium tax on certain prescription drug insurance coverage (2003). Those enacted mandates represent far less than one percent of the intergovernmental mandates that the Congress has considered since UMRA took effect.

Furthermore, four intergovernmental mandates that CBO identified as having costs over the threshold when they were approved by authorizing committees were amended before enactment to bring their costs below the thresholds: a requirement for mental health parity in insurance plans (1996), a requirement that driver's licenses contain Social Security numbers (1996), a preemption of state authority to assess fees on certain securities transactions (1997), and a prohibition on certain Internet-related taxes (1998). In all of these cases, there is evidence that lawmakers altered the legislative proposals specifically to reduce the costs of federal mandates before enacting them.

Perhaps the best example of UMRA's deterrent effect is the Internet Tax Freedom Act (ITFA). Beginning in 1997, CBO reviewed a number of bills that dealt with taxes related to the Internet. The bills would have prohibited the collection of some state and local taxes for a specific period, and CBO determined that all of them would have imposed an intergovernmental mandate as defined by UMRA. Because the different versions of the tax moratorium varied in terms of scope and approach, CBO's estimates of the revenue losses to states and localities also varied.

For one early version of ITFA, CBO estimated that the direct costs of the bill's mandate would have exceeded the threshold for intergovernmental mandates (U.S. Congress, 1997). That version of the proposal would have prohibited certain taxes that states and localities were levying on Internet-related communications, transactions, and services. It was clear that at least one significant source of state revenues—taxes on Internet access services and online services—would have been affected, and several others might also have been affected. For that reason, CBO estimated that the prohibition would have caused revenue losses exceeding the statutory threshold at some point during its first five years.
After receiving this information, the Congress amended the bill and ultimately enacted a version of ITFA that was narrower in scope and specifically allowed states that were currently collecting a sales tax on Internet access to continue to do so. Thus, CBO estimated that the law would not cause revenue losses exceeding the threshold.

Another example of UMRA’s influence is the Immigration Control and Financial Responsibility Act of 1995 (U.S. Congress, 1996). Early versions of that bill contained a provision that would have required state agencies issuing driver’s licenses or identification documents either to print Social Security numbers on those items or to collect and verify the number before issuance. Those requirements would have been effective within one year of the bill’s enactment. CBO determined that this requirement was an enforceable duty on states and was, thus, an intergovernmental mandate, and estimated that the total costs of the mandate would fall between $80 million and $200 million in the first year, depending on how many existing driver’s licenses had to be renewed. CBO concluded that the provision’s immediate effective date would have placed large administrative pressures on state agencies either to redesign and reissue driver’s licenses, or to develop a computer system to verify Social Security numbers with the Social Security Administration.

Upon hearing that much of the cost of the provision resulted from its immediate effective date, and faced with the threat of a point of order because the bill contained an unfunded intergovernmental mandate, an amendment was offered (and passed) on the Senate floor that tied the provision’s effective date to states’ existing cycle for driver’s licence renewals. CBO estimated that the amendment would reduce the influx of drivers seeking new licenses, give states much more time to implement the new requirement, and, thus, bring the costs of the provision well below the threshold; CBO estimates the costs to total about $10 million to $20 million over the six years following the enactment of the bill. No point of order was raised against the bill, as amended, and it was ultimately enacted into law.\(^5\)

**On the Other Hand...**

UMRA’s success is tempered in some observers’ view, however, by the fact that the law omits certain types of requirements—many that state and local governments find onerous—from its provisions. Specifically critics charge that:

- Conditions for obtaining federal grants, even new conditions on existing grant programs, are generally not considered to be mandates;
- Certain types of provisions, some with very significant impacts on other levels of government, are specifically excluded from all of UMRA’s requirements; and,
- Mandates with total costs below the statutory thresholds are not subject to the points of order, even if those mandates severely restrict state and local authority.

These limitations, critics argue, mean that the Congress has continued to enact legislation that has significant impacts on state and local government budgets.

**Grant Conditions Are Not Mandates**

According to UMRA, the conditions attached to most forms of federal assistance (including most grant programs) are not mandates. Yet complying with such conditions of aid can sometimes be costly. States often consider new condi-

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\(^5\) The mandate requiring states to put Social Security numbers on driver’s licenses was repealed in 1999.
tions on existing grant programs to be duties not unlike mandates. The two most 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. Such requirements, which are potentially costly for state and local governments, are clearly conditions for receiving federal assistance and, thus, are not considered mandates under UMRA. That federal assistance is substantial, however; the federal government appropriated about $34 billion in 2004 for elementary and secondary education programs, most of which was authorized under those two laws.

Over the past eight years, CBO identified hundreds of bills that would impose those types of requirements on state, local, or tribal governments. In most cases, however, CBO estimated that such associated costs would not be significant or would be covered by the federal funding authorized in the bills. Still, many critics of UMRA believe that the definition of mandate should be expanded to include new conditions on existing grant programs and that the law should be expanded to encourage the Congress to appropriate the funds it authorizes for those programs.

**Some Significant Mandates Are Excluded**

As mentioned above, UMRA does not apply to legislative provisions that cover constitutional rights, discrimination, emergency aid, accounting and auditing procedures for grants, national security, treaty ratification, and title II of Social Security (Old–Age, Survivors, and Disability Insurance benefits). About two percent of the bills that CBO reviewed in the past eight years contained provisions that fit within those exclusions. Many of the excluded provisions related to national security or Social Security and generally did not contain costly mandates.

Yet some of the excluded provisions (for example, the election reform bills enacted in 2001, which concerned the constitutional right of citizens to vote) imposed costly requirements on state and local entities; because of the scope of UMRA’s exclusions, CBO did not estimate those costs as part of its review, and the requirements were not subject to the point of order established by that law. Critics of UMRA have suggested that even if certain bills and provisions are not subject to the points of order, any provisions that would meet the definition of mandate should have a cost estimate prepared by CBO prior to its consideration on the House or Senate floor.

**Preemptions Generally Do Not Meet Cost Thresholds**

Finally, federal preemptions of state law generally do not meet the cost threshold requirement established in UMRA, unless the preemption affects state taxing authority. As a result, UMRA has not proven to be a useful tool to discourage federal preemptions even though CBO identifies such impacts as intergovernmental mandates. Some critics of UMRA have suggested that points of order should apply to all mandates, regardless of the total direct cost they impose on other levels of government.

**Acknowledgments**

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