



Issue Brief: UNFUNDED MANDATES

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Background

In 1995, following two years of one of the most effective and aggressive joint lobbying efforts by organizations representing state and local governments, including the National League of Cities (NLC), the U.S. Conference of Mayors (USCM), the National Association of Counties (NACo), the Government Finance Officers Association (GFOA), the National Governors Association (NGA), the National Conference of State Legislatures (NCSL), the Council of State Governments and International City/County Management Association, Congress passed and President Bill Clinton signed the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law # 104-4).

The UMRA requires the Congressional Budget Office (CBO) to calculate the projected costs of any proposed federal legislative mandate. If those costs exceed \$50 million, Congress must appropriate money, raise taxes or create an entitlement; otherwise, a member of Congress can object to the mandate. However, regardless of the CBO estimate, members of Congress can still, by a separate majority vote of the House or the Senate, maneuver around these roadblocks to enact legislation containing an unfunded mandate. In addition, the UMRA does not apply to mandates created pursuant to certain kinds of legislation, including: legislation addressing certain broad policy areas, such as national security, constitutional rights and Social Security; legislation requiring new conditions associated with federal grant programs; and legislation creating costly preemptions for states and local governments.

The Unfunded Mandates Reform Act – 10 Years Later

On March 22, 2005, the UMRA celebrated its 10th anniversary. Lawmakers at the federal, state and local levels, many of whom were involved in efforts to enact the legislation, took time to reflect on the Act and consider whether it is achieving its intended result. Most agree that the UMRA has served a valuable purpose – raising awareness about unfunded mandates included in proposed legislation, and holding members of Congress accountable for imposing new mandates on states and local governments. However, there has also been acknowledgement that certain mandates, which shift considerable costs onto states and local governments, often escape the purview of the UMRA as currently written.

At a March 2005 hearing before the House Committee on Government Reform, entitled “Is Uncle Sam Still Passing the Buck? A 10-year Retrospective on the UMRA”, House committee chair Tom Davis (R-Virginia) captured these sentiments best, noting “while the UMRA has been a significant step in the right direction, it has not proven to be a ‘silver bullet’. Indeed, many have begun to express concern that the UMRA is not an effective tool in preventing the imposition of unfunded mandates as a result of exclusions in coverage and various loopholes that exist in law.”

In April 2005, the chair of Senate Subcommittee on Oversight of Governmental Management, George Voinovich (R-Ohio), also held a hearing to review the UMRA.

Committee witnesses from the CBO and the Government Accountability Office (GAO) suggested that while the UMRA has made a difference in making Congress more cognizant of federal unfunded mandates, states and localities are still being burdened by costly, unfunded federal requirements.

For example, CBO cited a report it issued in March 2005 noting that Congress has enacted fewer federal mandates that impose significant costs on states and localities since the UMRA took effect in 1996. One reason, according to the report, is that Congress amended several pieces of legislation before their enactment to comply with the Act’s \$50 million mandate threshold. However, the report went on to state that of the legislation CBO reviewed between 1996 and 2004, 617 legislative initiatives (12%) contained intergovernmental mandates and 1% of the bills imposed costs higher than the

\$50 million threshold set forth in the UMRA. The report also noted that since 1996, five laws greater than the \$50 million threshold have been enacted into law. These include:

- An increase in the minimum wage (P.L. 104-188, enacted in 1996). CBO estimates that the required increase will cost state and local governments (as employers) more than \$1 billion during the first five years that it was in effect.
- A reduction in federal funding to administer the Food Stamp Program (P.L. 105-185, enacted in 1998). CBO estimates that this reduction in funding will cost the states between \$200 million and \$300 million a year.
- A preemption of state taxes on premiums for certain prescription drug plans (P.L. 108-173, enacted in 2003). CBO estimates that under this preemption, states will lose about \$70 million in revenues in 2006 increasing to approximately \$95 million in 2010.
- A temporary preemption of state authority to tax certain Internet services and transactions (P.L. 108-435, enacted in 2004). CBO estimates that this preemption will result in revenue losses to state and local governments totaling at least \$325 million through 2007.
- A requirement that state and local governments meet certain standards for issuing driver's licenses, identification cards, and vital statistics documents. (P.L. 108-458, enacted in 2004). CBO estimates that state and local governments will have to spend more than \$100 million over the 2005-2009 period to comply with those standards.

The GAO also testified on the effectiveness of the UMRA. As discussed above, the GAO found that in 2001 and 2002 only five of 377 laws contained mandates above the UMRA thresholds. However, over the same time period, 43 other laws were passed that might be perceived as intergovernmental mandates because they "resulted in new costs or negative financial consequences" but were not identified as such because they fell outside the scope of the definitions of unfunded federal mandates under the UMRA or were made part of the Act's exceptions.

Local and state elected officials who were called to testify before these House and Senate committees consistently told members of Congress that the UMRA has not been the perfect solution to the problem of unfunded mandates, and presented evidence demonstrating that state and local governments are still faced with significant costs as a result of unfunded burdens imposed at the federal level.

For example, NCSL testified that its association identified a \$51 billion cost shift for fiscal years 2004 and 2005 combined and a potential \$30 billion cost shift in FY 2006. NCSL cited three examples of legislation enacted in 2003-2004 that were not considered intergovernmental mandates under UMRA because of the Act's definitions, exceptions and exclusions, but nonetheless shifted considerable costs onto states. These included the *American Jobs Creation Act of 2004*, the reauthorized *Individuals with Disabilities in Education Act* and the *Medicare Prescription Drug, Improvement and Modernization Act of 2003*. NLC, NACo and USCM highlighted other recently enacted laws that also escaped the UMRA but nevertheless impose considerable burdens on local governments. These included the *No Child Left Behind Act* as well as the *Help America Vote Act*.

2005 Congressional Action on the UMRA

Federal lawmakers in both the House and the Senate are acknowledging that greater recognition of the burdens imposed on state and local governments is necessary, and are considering possible amendments to the UMRA to provide greater protections to state and local governments against unfunded federal mandates.

Senator Lamar Alexander (R-Tennessee), both a former Governor of Tennessee and an advocate for state and local governments during his tenure as Senator, proposes amending the UMRA to require 60 votes in the Senate to impose unfunded mandates, rather than just a simple majority. He also wants to ensure that federal laws do not preempt local laws unless the federal legislation makes clear that there is a direct conflict between state and federal law. Other proposed changes supported by state and local governments include reconsidering the \$50 million threshold amount established in the UMRA, as well as reexamining many of the Act's exclusions and exceptions. Senator Voinovich and Representatives

Tom Davis and Michael Turner (R-Ohio), all of whom have backgrounds in state and local government and chair committees with jurisdiction over the issue of unfunded mandate reform, have echoed the need to begin to reexamine the effectiveness of the UMRA.

State and Local Action

As the budgets of state and local governments become more constrained, GFOA will continue to work with its state and local partners to highlight to Congress the UMRA's limitations and loopholes and its need for reform.

Related GFOA Policy Statements (see www.GFOA.org)

- Mandate legislation (1986)
- Federal Preemption of State and Local Policies (1990)
- Federal Preemption of State and Local Taxing Authority (1997)

Additional Resources

- March 2005 CBO report at <http://www.cbo.gov/showdoc.cfm?index=6134&sequence=1&from=0>
- May 2004 GAO report at <http://www.gao.gov/new.items/d04637.pdf>
- National Conference of State Legislatures' Mandate Monitor at <http://www.ncsl.org/programs/press/mandatemonitor.pdf>
- Center on Budget and Policy Priorities at <http://www.cbpp.org/5-12-04sfp-fact.htm>
- Testimony before the House Committee on Government Reform at <http://reform.house.gov/GovReform/Hearings/EventSingle.aspx?EventID=23036>
- Testimony before the Senate Subcommittee on Oversight of Governmental Management at <http://hsgac.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=225>
- National Association of Counties Unfunded Mandates: A Snapshot Survey http://www.naco.org/Template.cfm?Section=Finance_and_Intergovernmental_affairs&template=/ContentManagement/ContentDisplay.cfm&ContentID=15246