

Unfunded Mandates Reform Act of 1995

(P.L. 104-4)

The Unfunded Mandates Reform Act of 1995 was signed by President Clinton on March 22, 1995, at which time it became Public Law No. 104-4. That law requires analyses designed to determine the propriety of legislative and regulatory measures that do not provide federal funding but may impose significant costs upon state, local, and tribal governments. There must also be a demonstration that alternatives were considered by the entity seeking to impose the mandate and the justification for the option ultimately chosen.

The following summary of the Unfunded Mandates Reform Act of 1995 comes from the Thomas Internet website of the Library of Congress (<http://thomas.loc.gov>).

Unfunded Mandates Reform Act of 1995

Title I: Legislative Accountability and Reform
Title II: Regulatory Accountability and Reform
Title III: Review of Federal Mandates
Title IV: Judicial Review

- Prohibits the application of this Act to any provision in legislation before the Congress or a proposed or final Federal regulation that:
 - (1) enforces constitutional rights of individuals;
 - (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of age, race, color, religion, sex, national origin, handicap or disability;
 - (3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;
 - (4) provides for emergency assistance or relief at the request of any State, local, or tribal government;
 - (5) is necessary for the national security or the ratification or implementation of treaty obligations;
 - (6) is designated as emergency legislation or is necessary for national security or international treaty purposes; or
 - (7) relates to old-age, survivors and disability insurance.

Title I: Legislative Accountability and Reform

- Amends the Congressional Budget and Impoundment Control Act of 1974 with respect to unfunded Federal mandates, with applicability limited as above.

(Sec. 101)

- Includes tribal governments and the private sector within the purview of mandate analysis by the Congressional Budget Office (CBO) and congressional committees.
- Requires authorization committees to provide the CBO Director with any legislation ordered to be reported, identifying any Federal mandate in it and including certain information in the report accompanying such legislation, information such as:
 - (1) statements on whether the legislation is intended to preempt any State, local, or tribal law (and the effect of such preemption);
 - (2) individual mandate descriptions;
 - (3) cost-benefit analyses; and
 - (4) statements regarding Federal financial assistance to State, local, and tribal governments for meeting mandate costs.

- Requires appropriate statements to be prepared by the CBO Director for legislation passed or reported by a conference committee in an amended form with a mandate not previously considered or with an increase in the direct cost of a previously considered mandate.
- Requires the CBO Director, for each piece of reported legislation, to prepare and submit to the authorizing committee when feasible certain statements estimating the direct costs of mandate compliance and the amount of authorization or budget authority for new or increased Federal financial assistance provided to State, local, or tribal governments to meet such costs, if the estimates indicate at least a \$50 million per fiscal year direct cost of all intergovernmental mandates in the legislation, or a \$100 million per fiscal year direct cost of private sector mandates.
- Requires the CBO Director to report on the reasons where it is not feasible to make such estimates in appropriate cases.
- Makes it out of order for the House or Senate to consider:
 - (1) any reported legislation unless it has a CBO Director report (not including supplemental statements); or
 - (2) any reported legislation that would increase the direct costs of Federal intergovernmental mandates by an amount that exceeds applicable thresholds, unless it provides new budget, entitlement, or direct spending authority or includes an authorization of appropriations in an amount equal to or exceeding the direct costs of the mandate and makes other specified arrangements for each fiscal year with regards to the mandate.
- Disallows the application of such provisions to any appropriations legislation, with certain exceptions for any legislative provision increasing direct costs of a Federal intergovernmental mandate in any legislation reported by an appropriations committee.
- Makes it out of order in the House to consider a rule or order that waives the application of such provisions.
- Provides for the disposition of points of order.
- Provides that at the request of a Senator, the CBO Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal intergovernmental mandate contained in an amendment of the Senator.
- Specifies that the above outlined provisions added by this Act to the Congressional Budget and Impoundment Control Act of 1974 apply to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute only if enactment of the bill, joint resolution, amendment, motion, or conference report would result in a:
 - (1) net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or
 - (2) net increase in the aggregate amount of direct costs of Federal intergovernmental mandates or Federal private sector mandates other than as described above.

(Sec. 102)

- Amends the Congressional Budget and Impoundment Control Act of 1974 to provide that, upon an appropriate request, the CBO Director shall:
 - (1) consult with and assist the committee in analyzing the budgetary or financial impact of any proposed legislation that may have a significant impact on the State, local, or tribal government involved or on the private sector; and
 - (2) study a legislative proposal containing a Federal mandate.
- Requires the CBO Director to conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.
- Requires any congressional committee that anticipates considering any legislative proposal establishing, amending, or reauthorizing any Federal program likely to have a significant impact on any State, local, or tribal government or on the private sector to include its views and estimates on that proposal to the applicable budget committee.

(Sec. 103)

- Expresses the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the cost estimates provided by CBO will be carefully considered as regulations are promulgated.
- Declares that at the request of:
 - (1) a committee chairman or ranking minority member, the CBO Director shall, if practicable, prepare a comparison between agency and CBO mandate cost estimates;
 - (2) the CBO Director, the Director of the Office of Management and Budget (OMB), shall cooperate in providing mandate cost estimates and related data.

(Sec. 104)

- Amends the Congressional Budget and Impoundment Control Act of 1974 to repeal existing requirements for CBO that mandate cost estimates that are superseded by this Act.

(Sec. 106)

- Expresses the sense of the Senate that:
 - (1) the Federal Government should not shift certain costs to the States, and States should end the practice of shifting costs to local governments;
 - (2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and
 - (3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

(Sec. 107)

- Amends House rules with regard to the Committee of the Whole and Committee on Rules:
 - (1) to make it always in order in the former, unless specifically waived according to the rule governing consideration of that measure, to strike from the portion of any bill open to amendment any Federal mandate whose direct costs exceed the prescribed threshold; and
 - (2) to require the latter to include in its reports on waived points of order a separate item identifying all waivers of points of order relating to Federal mandates.

(Sec. 109)

- Authorizes appropriations to CBO.

Title II: Regulatory Accountability and Reform

- Requires each Federal agency, unless otherwise prohibited by law, to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

(Sec. 202)

- Requires Federal agencies, unless otherwise prohibited by law, to prepare written statements before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in State, local, or tribal government and private sector expenditures, in the aggregate, of \$100 million or more in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published.
- Requires such statement to:
 - (1) identify the provision of Federal law under which the rule is being promulgated; and
 - (2) contain specified estimates and analyses.

(Sec. 203)

- Requires agencies to have developed an appropriate plan for notifying affected small governments of applicable regulatory requirements and allowing officials of such governments to provide input on the development of regulatory proposals with intergovernmental mandates before establishing any regulatory requirements having a potential significant or unique affect on small governments.
- Authorizes appropriations.

(Sec. 204)

- Directs each agency, to the extent permitted in law, to permit elected officials and other representatives of State, local, and tribal governments to provide input on development of regulatory proposals containing significant Federal intergovernmental mandates.

(Sec. 205)

- Provides that, with certain exceptions, before an agency promulgates any rule for which a written statement above is required, it must select the least costly, most cost-effective, or least burdensome regulatory alternative for achieving the rule's objectives.
- Requires the OMB Director to certify to the Congress agency compliance with such provisions and include in such certification agencies and rulemakings that fail to adequately comply.
- Directs the OMB Director to:
 - (1) collect agency statements prepared above for forwarding to the CBO Director after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared;
 - (2) establish pilot programs in at least two agencies to test innovative approaches for reducing reporting and compliance burdens on small governments; and
 - (3) submit annual reports to the Congress on agency compliance with this title.

Title III: Review of Federal Mandates

- Directs the Advisory Commission on Intergovernmental Relations to:
 - (1) study the issues involved in calculating the total costs and benefits to State, local, and tribal governments of compliance with Federal laws;
 - (2) investigate and review the role of Federal mandates in intergovernmental relations and their impact on State, local, tribal governments, the private sector, and on working men and women, as well as the role of unfunded State mandates on local governments;
 - (3) make appropriate recommendations to the President and the Congress with regard to, among other things, allowing flexibility where the terms of compliance are unnecessarily rigid or complex and consolidating or simplifying Federal mandates in order to facilitate compliance; and
 - (4) periodically submit to the Congress and the President a report on any Federal court case which required a State, local, or tribal government to undertake responsibilities or activities beyond those such government would otherwise have undertaken to comply with Federal law.

(Sec. 306)

- Authorizes appropriations.

Title IV: Judicial Review

- Sets forth requirements for judicial review under this Act.