

CBO PAPER

AN ASSESSMENT
OF THE
UNFUNDED MANDATES REFORM ACT
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PREFACE

This paper reviews the activities of the Congressional Budget Office (CBO) during 1998 in carrying out the Unfunded Mandates Reform Act of 1995. It also examines how the law has worked and some proposals for reforming Congressional treatment of unfunded mandates.

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SUMMARY

The Unfunded Mandates Reform Act of 1995 (UMRA), which has been in effect for three years, established procedures intended to make sure that the Congress considers whether the legislation it passes would impose unfunded mandates on state, local, and tribal governments or the private sector. As required by UMRA, the Congressional Budget Office (CBO) has provided the Congress with almost 1,800 mandate statements over the past three years, primarily for bills reported from authorizing committees. Those statements assess whether the bills, amendments, and other legislative proposals contain federal mandates and, if so, how much they would cost the affected parties.

1998 in Review

In 1998, CBO analyzed and provided mandate statements for more than 500 bills and legislative proposals. About 1 percent of those bills contained intergovernmental mandates with costs that exceeded the threshold set in UMRA (\$50 million in 1996 dollars in any year). About 3 percent contained mandates on the private sector with costs above the private-sector threshold (\$100 million a year in 1996 dollars). Those percentages are similar to what CBO experienced during the first two years that UMRA was in place. Often, the same mandate is contained in multiple bills; thus, CBO identified a total of six intergovernmental mandates and 10 private-sector mandates in 1998 whose costs would exceed the relevant thresholds.

Costs to State, Local, and Tribal Governments

About 170 of the bills that CBO examined last year included provisions, such as conditions of a federal grant, that are not mandates as defined by UMRA but could still result in costs to state, local, and tribal governments. In addition, more than 75 bills contained provisions that, if enacted, would result in benefits or savings to those governments. Of the 240 public laws enacted in 1998, about 12 percent contained intergovernmental mandates, although only one of those mandates—a cap on federal financial contributions to states to administer the Food Stamp program—had costs above the threshold. Many of the intergovernmental mandates that CBO identified in 1998, and about half of those enacted into law, were preemptions of state or local laws. Although such preemptions limit the authority of those governments, none require them to spend significant amounts of money.

The only major new issue that CBO encountered last year in carrying out UMRA was determining how to estimate the costs of a federal mandate when state, local, or tribal governments can opt out of it. Traditionally, when a voluntary federal program is created, those governments face costs only if they choose to participate (opt in). Some of the bills that CBO examined in 1998, however, would create

federal programs in which those governments must participate unless they take specific action to opt out—such as enacting a new law. UMRA is unclear about whether the costs of failing to opt out are direct costs of a federal mandate.

Mandates on the Private Sector

The Congress's track record with private-sector mandates is different from its record with intergovernmental mandates. Over the 1996-1998 period, the number of reported bills containing private-sector mandates with costs over the threshold has consistently been higher than the number with intergovernmental mandates. In 1998, CBO identified three times as many bills with private-sector mandates above the threshold as intergovernmental mandates. In addition, with nine bills CBO could not determine whether costs would exceed the statutory threshold. Reasons included ambiguous language in some bills, uncertainty about who would be affected by the bill's provisions, ambiguous language in UMRA as it relates to extensions of existing mandates, and the dependence of costs on future regulations.

Of the 10 private-sector mandates originally identified as being over the threshold in 1998, four were enacted into law. Reform of the Internal Revenue Service and reauthorization of surface transportation programs were enacted as stand-alone bills. The other two—protection for medical patients and taxpayer relief—were originally part of separate bills but were folded into the Omnibus Consolidated and Emergency Supplemental Appropriations Act. The patient protection provision was enacted in a form that would not result in costs over the threshold.

Proposals to Change UMRA

In 1998, the Congress continued to consider legislation that would bolster UMRA's procedural constraints on considering legislation that contains private-sector mandates. One such proposal, the Mandates Information Act (MIA), would establish a point of order against considering bills that contain private-sector mandates whose costs exceed \$100 million a year. As with the existing point of order against considering unfunded intergovernmental mandates, only a simple majority vote of Members would be necessary to overcome the objection. Companion versions of MIA were passed in the House and reported in the Senate. The House version would allow a point of order regardless of whether a bill provided federal funding to offset the cost of a mandate. The Senate version of MIA would apply the point of order only against unfunded private-sector mandates.

The House version contained at least three provisions that were not part of the Senate bill. First, in determining the costs of a mandate, costs attributable to higher taxes or tariffs would be excluded if they did not raise net revenues. Second,

protections would be added to discourage dilatory use of the point of order in the House (in essence, limiting debate on the question of consideration to one point of order for a given measure). And third, the point of order against legislative provisions in appropriation bills would be extended to cover private-sector mandates above the threshold. Currently, a point of order lies against such a provision if it increases the cost of intergovernmental mandates by an amount greater than the threshold.

Both the House and Senate versions of MIA would direct CBO to provide additional types of cost information about private-sector mandates over the threshold. CBO would be required to analyze the effect of those mandates on consumers, workers, and small businesses, including any disproportionate impact on particular regions or industries. In addition, both versions of MIA would clarify UMRA's definition of an intergovernmental mandate with respect to entitlement programs. The legislation would amend UMRA so that any new federal requirement or reduction in funding for certain large entitlement programs (such as Medicaid) would constitute an intergovernmental mandate unless the legislation that created the mandate also provided new flexibility for state and local governments to offset the additional costs.

INTRODUCTION

The Unfunded Mandates Reform Act of 1995 (UMRA), which took effect on January 1, 1996, made two changes in the way information about the budgetary impact of federal mandates is provided to and used by the Congress. First, it increased the supply of information about such costs by encouraging the Congressional Budget Office (CBO) to place a higher priority on estimating the costs of federal legislation on state, local, and tribal governments and, for the first time, to estimate the costs of mandates on the private sector. Second, the law signaled Congressional willingness to use that information by establishing procedural requirements designed to make imposing unfunded mandates more difficult. (The provisions of title I of UMRA are summarized in Appendix A.)

This paper is CBO's third annual assessment of its mandate-related activities. The paper provides an overview of UMRA's third year, catalogs the bills considered during calendar year 1998 that CBO determined contained federal mandates, and examines recent proposals to change UMRA.

AN OVERVIEW OF UMRA'S THIRD YEAR

As it has done since the beginning of calendar year 1996, in 1998 CBO provided mandate cost statements to the Congress for most of the bills reported by authorizing committees, as well as for many other proposed bills and amendments. In all, CBO reviewed more than 500 bills and other legislative proposals to determine whether they contained federal mandates (see Table 1). About 12 percent (64 bills) had intergovernmental mandates, approximately 1 percent (six bills) had mandates whose costs exceeded the \$50 million a year threshold, and another 1 percent (seven bills) had costs that could not be determined. CBO also identified private-sector mandates in about 14 percent of the bills and amendments it examined; more than 3 percent (18 bills) had costs over the \$100 million threshold for such mandates, and nearly 2 percent (nine bills) had costs that could not be determined. Those percentages are similar to CBO's experience in the previous two years.

In many cases, the same or similar mandates are contained in multiple bills or proposals. Consequently, CBO's mandate statements for different bills sometimes identify the same mandate. In 1998, the 13 bills with intergovernmental mandates whose costs were over the threshold or could not be determined contained six mandates. Those six were a reduction in the federal contribution to administer the Food Stamp program, a requirement to upgrade runway equipment at airports, a prohibition on Internet gambling (including some forms of state lotteries), a moratorium on state and local taxation of the Internet, an increase in the minimum wage, and requirements on states regarding the settlement of tobacco suits. (See Appendix B for a list of all of the bills and proposals reviewed by CBO in 1998 that contained intergovernmental mandates.)

TABLE 1. NUMBER OF CBO MANDATE STATEMENTS FOR BILLS, PROPOSED AMENDMENTS, AND CONFERENCE REPORTS IN 1998

	Intergovernmental Mandates	Private-Sector Mandates
Total Number of Statements Transmitted	541	525
Number of Statements That Identified Mandates	64	75
Mandate costs exceeded threshold ^a	6	18
Mandate costs could not be estimated	7	9

SOURCE: Congressional Budget Office.

NOTE: The numbers in this table represent official statements transmitted to the Congress by CBO. CBO prepared more intergovernmental statements than private-sector statements because in some cases it was asked to review a specific bill, amendment, or conference report solely for intergovernmental mandates. In those cases, no private-sector analysis was transmitted to the requesting Member or committee. CBO also 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 provision, and frequently more than one formal CBO statement is issued for each mandate topic.

a. The thresholds are \$50 million a year (in 1996 dollars) for intergovernmental mandates and \$100 million a year (in 1996 dollars) for private-sector mandates. Those amounts are adjusted annually for inflation.

Only one of those intergovernmental mandates with costs above the threshold was enacted into law in 1998 (the reduction in federal funding for Food Stamp administration). The other five either were not enacted or were modified before enactment to reduce their costs below the threshold (see Table 2).

Many of the intergovernmental mandates that were proposed last year—at least half of the 64 that CBO identified—took the form of preemptions of state and local laws or regulations. In those cases, CBO generally concluded that although the preemptions would limit state and local authority in a particular area, they would not require those governments to spend significant amounts of money to comply with the mandate. Thus, the mandates would not have direct costs, as defined by UMRA, that exceeded the statutory threshold. One such preemption that limits state and local authority but does not require large expenditures is the Biomaterials Access Assurance Act of 1998 (P.L. 105-230). It replaces applicable state tort laws with uniform liability standards for suppliers of materials used in medical implants. Although that new federal law will supersede state laws governing civil liability, the states will incur no cost as a result of the preemption. Rather, the authority of state law in those cases is removed.

TABLE 2. STATUS OF MANDATES THAT EXCEED THE STATUTORY THRESHOLDS, 1998

Topic	Mandate	Was a Version Enacted into Law?	Did Enacted Version Exceed Threshold? ^a
Intergovernmental Mandates			
Food Stamps	Cap federal contribution for Food Stamp administration	Yes	Yes
Airport Runway Safety	Require upgrades to runway safety equipment	No	n.a.
Internet Gambling	Prohibit gambling over the Internet (including some forms of state lotteries)	No	n.a.
Internet Tax Moratorium	Prohibit certain Internet-related taxes	Yes	No
Minimum Wage	Increase minimum wage	No	n.a.
National Tobacco Policy	Impose requirements on states regarding tobacco settlements	No	n.a.
Private-Sector Mandates			
Bankruptcy Reform	Change procedures for administering bankruptcy estates	No	n.a.
Campaign Finance Reform	Change procedures for collection and use of campaign contributions	No	n.a.
China MFN status	Increase tariff rates	No	n.a.
Internal Revenue Service Restructuring and Reform	Establish several revenue-raising provisions	Yes	Yes
Internet Gambling	Prohibit gambling over the Internet and other interactive computer systems	No	n.a.
Minimum Wage	Require certain employers to raise the minimum wage paid to employees	No	n.a.
National Tobacco Policy	Set fees and other requirements on tobacco manufacturers, distributors, retailers, and importers	No	n.a.
Patient Protection	Impose new requirements on managed health care and other forms of health insurance	One provision ^b	No

(Continued)

TABLE 2. CONTINUED

Topic	Mandate	Was a Version Enacted into Law?	Did Enacted Version Exceed Threshold? ^a
Private-Sector Mandates (Continued)			
Reauthorize Federal Surface Transportation Programs	Establish excise tax provisions	Yes	Yes
Taxpayer Relief Act of 1998	Establish revenue-raising provision	One provision ^c	Yes

SOURCE: Congressional Budget Office.

NOTES: The mandates in this table are those identified by the Congressional Budget Office when a bill was reported by an authorizing or conference committee or when CBO was asked to do a formal review. In some cases, more than one formal CBO statement was issued for each mandate topic.

n.a. = not applicable; MFN = most favored nation.

- a. The thresholds are \$50 million a year (in 1996 dollars) for intergovernmental mandates and \$100 million a year (in 1996 dollars) for private-sector mandates. Those amounts are adjusted annually for inflation.
- b. The Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) contained a provision requiring some health plans to pay for reconstructive surgery following mastectomy.
- c. The Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) contained a provision that changes the tax treatment of distributions from regulated investment companies and real estate investment trusts.

The 18 bills that CBO identified as having private-sector mandates over the cost threshold contained a total of 10 mandates. Those mandates covered a wide range of topics: new procedures for handling bankruptcy cases, new procedures for collecting and administering campaign finances, an increase in tariffs on goods imported from China, tax provisions in the Internal Revenue Service Restructuring and Reform Act, a prohibition on Internet gambling, an increase in the minimum wage, fees and new requirements on tobacco manufacturers and distributors, new requirements on certain forms of health insurance, excise tax provisions related to transportation, and tax provisions in the Taxpayer Relief Act. For nine other bills (containing six mandates), CBO could not determine whether the costs exceeded the \$100 million annual threshold.

Four of the private-sector mandates originally identified as having costs above the threshold were enacted in 1998. Much like the ones that were enacted in 1997, three of those mandates either reinstated excise taxes or involved revenue-raising provisions included in a bill to maintain its budget neutrality. The fourth mandate

imposed new requirements on health insurance providers but was amended in a way that reduced costs below the threshold. It and one of the revenue-raising provisions were originally included in bills considered by authorizing committees but were eventually passed in the Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277).

Another 15 of the bills that CBO examined in 1998 (about 3 percent of the total) were judged to be wholly or partially excluded from UMRA's procedures—generally because they would enforce the constitutional rights of individuals, would be necessary for national security, or would be required for the ratification or implementation of treaty obligations. Those and other exclusions are spelled out in section 4 of UMRA and apply to both intergovernmental and private-sector mandates.

As CBO found in previous years, UMRA appeared to be helpful in some instances last year in limiting the imposition of unfunded mandates on state and local governments. Most of the efforts to eliminate or minimize mandate costs occurred before the proposals were considered on the floor of the House or Senate—either during committee consideration or before full committee markup. In a number of cases, committee and Member staff consulted with CBO and requested data on mandate costs.

Intergovernmental Mandates

The following sections provide greater detail about the six intergovernmental mandates in 1998 whose costs exceeded the threshold or could not be determined.

Food Stamps. A provision in the Agriculture Research, Extension, and Education Reform Act (S. 1150) would limit the federal government's responsibility to provide funding to the states for administrative costs of the Food Stamp program. UMRA defines cuts in federal funding for certain entitlement grant programs (including Food Stamps) as a mandate if the state, local, or tribal governments that participate in the program cannot change their financial or programmatic responsibilities in such a way that they can continue to provide the services required by the program. Because states have limited authority to alter their responsibilities under the Food Stamp program, CBO determined that the funding reductions imposed by S. 1150 would constitute a mandate, with costs totaling between \$200 million and \$300 million a year. That provision was enacted into law on June 23, 1998 (as P.L. 105-185).

Airport Runway Safety Equipment. The Wendell H. Ford National Air Transportation System Improvement Act (S. 2279) would direct the Federal Aviation Administration to draft a new rule amending the current regulations that govern permits for certain public airports. The rule would require installing new equipment

in some cases and improving runway safety areas. Based on information from the Federal Aviation Administration, CBO assumed that the provision would be interpreted to mean that all airports, including those now exempt, must meet the current standards for runway safety areas. CBO estimated that the costs to previously exempt airports would total \$1.2 billion, assuming the use of current technology. That provision was dropped from S. 2279 before the bill was folded into the omnibus appropriation act (P.L. 105-277).

Internet Gambling. The Internet Gambling Prohibition Act of 1997 (S. 474), as reported by the Senate Committee on the Judiciary on October 23, 1998, would prohibit gambling conducted over the Internet or through an interactive computer service. The bill defined an interactive computer service as any information service, system, or provider of software that enables access by multiple users to a computer server. CBO determined that this definition was sufficiently broad that it would encompass computer networks used in a number of gaming activities now operated by state, local, and tribal governments, and thus, the prohibition in S. 474 would be an intergovernmental mandate as defined in UMRA. In addition, providers of Internet services—including many public entities, such as colleges and libraries—could be required by law enforcement agencies to block subscribers' access to sites with gambling. CBO estimated that the net cost of those intergovernmental mandates would total more than \$6.5 billion in 1999 and would grow to almost \$8 billion in 2003. S. 474 was never debated on the Senate floor.

Internet Tax Moratorium. Beginning in 1997, CBO reviewed a number of bills (H.R. 1054, H.R. 3529, H.R. 3849, H.R. 4105, and S. 442, all called the Internet Tax Freedom Act) that dealt with taxes related to the Internet. The bills would prohibit the collection of some state and local taxes for a specific period, and CBO determined that all of them would impose an intergovernmental mandate as defined in 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.

In the case of H.R. 1054 (as approved by the Subcommittee on Telecommunications, Trade, and Consumer Protection of the House Committee on Commerce on October 9, 1997), CBO estimated that the direct costs of the bill's mandate would exceed the threshold for intergovernmental mandates. H.R. 1054 would prohibit certain taxes that states and localities now levy on Internet-related communications, transactions, and services. It was clear that at least one significant state revenue source—taxes on Internet-access service and on-line services—would be affected, and several others might be affected. For that reason, CBO estimated that the prohibition would cause revenue losses exceeding the statutory threshold at some point during the first five years after the bill's enactment.

All of the other versions of the Internet Tax Freedom Act that CBO reviewed in 1998 were narrower in scope than H.R. 1054. Although they contained a prohibition on the collection of some taxes, many allowed states to reinstate their sales taxes on Internet access in certain circumstances. However, CBO could not determine whether those bills exceeded the threshold for various reasons, including uncertainty about whether a state's ability to opt out of the prohibition effectively eliminated some of the costs of the mandate and whether taxes assessed but not collected should be counted as direct costs of the mandate.

The version of the Internet Tax Freedom Act that was finally enacted (on October 19, 1998, as part of the omnibus appropriation act) allowed states that were currently collecting a sales tax on Internet access to continue doing so. Thus, CBO does not expect that the act will cause revenue losses exceeding the threshold.

Minimum Wage. CBO reviewed two bills in 1998—both titled the Fair Minimum Wage Act of 1998—that would increase the federal minimum wage by at least \$1 per hour. S. 1573, as introduced by Senator Kennedy on January 27, 1998, would raise the minimum wage in three annual steps of 50 cents each and adjust it thereafter to reflect increases in the consumer price index. S. 1805, introduced by Senator Kennedy on March 19, 1998, would raise the minimum wage to \$6.15 per hour in two annual steps of 50 cents. CBO determined that both bills would impose an intergovernmental mandate with costs exceeding the threshold because they would require employers—including state, local, and tribal governments—to pay higher minimum wages than they now have to. CBO estimated that over five years, S. 1573 would cost those governments \$3.2 billion, and S. 1805 would cost them \$2.1 billion. Neither of the bills was enacted into law.

National Tobacco Policy. The National Tobacco Policy and Youth Smoking Reduction Act (S. 1415) would impose a number of mandates on state, local, and tribal governments. The intergovernmental mandate with the greatest potential cost was a preemption of the ability of state, local, and tribal governments to pursue certain legal claims based on the health-related effects of tobacco. States could opt out of that prohibition if they had a tobacco claim pending, but they would thereby relinquish their claim to payments from the trust fund created by the bill. Local and tribal governments would not be able to opt out of the prohibition, and they would not directly share in payments from the trust fund. Furthermore, neither they nor a state would be able to file a new tobacco claim after the bill's enactment.

The net costs of that mandate would equal any lost revenues from forgone legal claims minus payments to states from the trust fund. Because the outcomes of pending or potential lawsuits could not be estimated precisely, CBO could not determine whether the net costs of the mandate would exceed the threshold. S. 1415 was considered by the Senate for several weeks in May and June 1998 but was not

enacted. It was recommitted to the Senate Committee on Commerce, Science, and Transportation on June 17.

Private-Sector Mandates

Four of the 10 private-sector mandates in 1998 with costs over the threshold involved federal taxes or tariffs. First, the Internal Revenue Service Restructuring and Reform Act of 1997 (H.R. 2676) contained several revenue-raising provisions that would impose mandates on the private sector. Those provisions were used to maintain the budget neutrality of two other bills, the Parent and Student Savings Account Plus Act (S. 1133) and the Trade and Tariff Act of 1998 (S. 2400). Second, the Taxpayer Relief Act of 1998 and its abbreviated version, H.R. 4738, contained revenue provisions related to real estate investment trusts that would impose mandates with costs over the threshold. Third, the Joint Committee on Taxation determined that the excise tax provisions in the Building Efficient Surface Transportation and Equity Act of 1998 (H.R. 2400) were private-sector mandates. Fourth, provisions in House Joint Resolution 121—disapproving the extension of nondiscriminatory (or most-favored-nation) treatment to China—would impose a mandate by increasing tariff rates on goods imported from that country.

The other six private-sector mandates over the cost threshold are described below. They cover a broad range of public policy issues, including changes to the bankruptcy-filing system, campaign finance reform, an increase in the minimum wage, and new requirements on health insurance providers. Three of them also involved intergovernmental mandates with costs above the statutory threshold.

Bankruptcy Reform. During 1998, the Congress examined bills to limit the use of the bankruptcy system by people who can afford to pay some portion of their debt. CBO prepared mandate estimates for two of those bills: the Bankruptcy Reform Act of 1998 (H.R. 3150), as reported by the House Committee on the Judiciary on May 18, and the Consumer Bankruptcy Reform Act of 1998 (S. 1301), as reported by the Senate Committee on the Judiciary on June 4. Although the Senate and House bills differ, both would incorporate means-testing in the bankruptcy system. In other words, people whose income exceeded certain thresholds could be required to repay their debt over time out of their future income rather than having an option to discharge certain debt immediately, leaving their future income unencumbered.

CBO estimated that the direct costs to the private sector of complying with the mandates in H.R. 3150 and S. 1301 would exceed the statutory threshold in each of their first five years. The lion's share of costs would be imposed on private trustees who administer bankruptcy estates, providers of debt-relief counseling services, and attorneys. Most of the mandate costs would stem from new requirements to investigate and verify financial information provided by people who file for

bankruptcy. Costs would also be imposed on debt-relief counselors by the enactment of new consumer-protection regulations. For the mandates in S. 1301, total costs could amount to between \$200 million and \$525 million in 1999 and would probably increase over the five-year period. H.R. 3150 passed the House on June 10, 1998, and S. 1301 passed the Senate on September 23, 1998. A conference was held, and the House agreed to the conference report on October 9; however, the Senate did not complete action on the conference report before the Congress adjourned.

Campaign Finance Reform. The Campaign Reform and Election Integrity Act of 1998 (H.R. 3485) would make numerous changes to federal campaign finance laws. It would amend the Federal Election Campaign Act of 1971 by revising current restrictions on contributions and expenditures in federal elections. The bill contained mandates on several private-sector groups, but the most costly ones would affect such groups as labor unions and tax-exempt organizations, as well as corporations and national banks that assess mandatory dues or fees on their stockholders or employees. The bill would require those organizations to obtain written authorization from their members, employees, or stockholders (as appropriate) before collecting any portion of dues or fees for political activities. H.R. 3485 would also require corporations and tax-exempt organizations to notify their stockholders or members by mail each year about the total amount they intend to spend on political activities in the coming 12 months.

CBO estimated that the net direct costs to the private sector would exceed the statutory threshold in 1999 (the first year that the mandates would be effective) as organizations incurred one-time costs to set up systems for obtaining authorizations and sending out annual notices. After 1999, CBO estimated, costs would fall well below the threshold. The House Committee on Oversight reported H.R. 3485 on March 18, 1998. The bill was brought to the House floor under suspension of the rules on March 30 and was defeated.

Internet Gambling. The Internet Gambling Prohibition Act of 1997 (S. 474) contained various private-sector mandates in addition to the intergovernmental mandates discussed above. The bill would expand the prohibitions in the Federal Interstate Wire Act to cover gambling conducted using the Internet and other computer means. Expanding those prohibitions would affect a number of private parties: individuals, businesses that provide computer users with access to the Internet, entities involved in the business of wagering or betting that use interactive computer services, and certain parties that conduct on-line contests for which prizes are awarded. The bill would also prohibit some legal wager-based businesses—such as horse and greyhound racing tracks—from placing or receiving bets over interactive computer services or the Internet. Further, the bill would allow law enforcement officials to require that Internet service providers block their subscribers' access to gambling Web sites.

CBO estimated that the direct costs of those various private-sector mandates would total at least \$2 billion a year and could rise as high as \$5.5 billion a year by 2003. Commercial providers of Internet services and participants in the horse and greyhound racing industries would shoulder most of those costs. The bill was never debated on the Senate floor.

Minimum Wage. CBO determined that the two versions of the Fair Minimum Wage Act of 1998 discussed above (S. 1573 and S. 1805) also contained private-sector mandates. The mandates would result because all employers covered by the Fair Labor Standards Act would have to pay higher minimum wages than they are required to now. CBO estimated that the direct cost to the private sector of S. 1805 (phasing in an increase in the minimum wage to \$6.15 per hour by 2000) would be about \$31 billion over the first five years. The direct cost to the private sector of S. 1573 (phasing in an increase in the minimum wage to \$6.65 per hour by 2000) would amount to about \$45 billion over the first five years. Neither bill was enacted, however.

National Tobacco Policy. Several comprehensive tobacco bills, broadly based on the settlement between the tobacco industry and a group of state attorneys general, were introduced in the Congress last year. CBO prepared a preliminary cost estimate for the National Tobacco Policy and Youth Smoking Reduction Act (S. 1415) on May 21, 1998. The bill contained a number of significant mandates on the private sector, particularly on manufacturers of tobacco products. Specifically, the bill would require five major manufacturers to make an initial payment totaling \$10 billion into a trust fund. It would also require tobacco manufacturers and importers to make annual payments to the federal government and to pay additional penalties if youth smoking did not fall below specified levels. The costs to manufacturers in the first year would total over \$14 billion. Further, the bill would impose a number of other mandates on tobacco manufacturers, distributors, retailers, importers, and other private-sector entities. Those mandates include limitations on advertising and sales, requirements for licensing and labeling, and restrictions on indoor smoking. As noted earlier, S. 1415 was considered by the Senate but not passed.

Patient Protection. CBO prepared estimates for three bills that would establish federal standards for managed care and other forms of health insurance:

- o The Patients' Bill of Rights Act (H.R. 3605 and S. 1890) sponsored by Congressman Dingell and Senator Daschle;
- o The Patients' Bill of Rights Act (S. 2330) introduced by Senate Majority Leader Lott; and

- o The Patient Protection Act of 1998 (H.R. 4250) introduced by then House Speaker Gingrich.

Those bills contained provisions that would improve access to emergency and specialty care, require health plans to provide more information to consumers, expand point-of-service options, and require grievance and appeals processes. Provisions imposing new functions and operating practices on private insurers and health plans would create private-sector mandates. One important difference among the proposed bills is their scope. H.R. 3605 (and its companion bill, S. 1890) has the broadest application: its provisions would apply to group health plans and insurers offering coverage in the group market as well as insurers offering coverage in the individual market. H.R. 4250 would apply mainly to group health plans and insurers offering group coverage. S. 2330 is more restrictive in scope: its provisions related to patient access would apply to self-insured group health plans. (Other provisions in the bill would apply to groups similar to those covered in H.R. 3605.) The bills also differ significantly in their details. CBO estimated that the direct costs of the mandates in each bill would exceed the statutory threshold for private-sector mandates.

Private-Sector Costs That Could Not Be Estimated. Of the 75 bills or proposals identified last year as containing private-sector mandates, CBO was unable to determine whether nine of them (12 percent) had costs exceeding the threshold. The uncertainty arose for one or more reasons: ambiguous language in the bill, uncertainty about who would be affected by the bill's provisions, ambiguous language in UMRA as it relates to extensions of existing mandates, and the dependence of costs on future regulations. Those nine bills contained six separate mandates, which are described below.

Airport Improvement Reauthorization Act of 1998. H.R. 4057 contained several mandates on domestic and foreign air carriers, the final users of certain aircraft parts, and owners and operators of cargo aircraft. CBO determined that the cost of most of the mandates in the bill would be negligible. The mandate whose costs were uncertain would require that all civil aircraft parts that exceed their useful life be permanently marked when they are removed from an aircraft. The method of marking would be determined by the Federal Aviation Administration after the bill's enactment. Since both the method of marking and the number of parts that would be affected by the mandate are not yet known, CBO had no basis for estimating the costs of the mandate.

Extension of Nuclear Regulatory Fees. The Nuclear Regulatory Commission Authorization Act for Fiscal Year 1999 (H.R. 3532) would authorize funding for the Nuclear Regulatory Commission (NRC) and provide a five-year extension of the requirement that it recover 100 percent of its costs through user fees and annual charges. A similar bill, the NRC Fairness in Funding Act of 1998 (S. 2090), would

also extend the NRC's authority to collect annual charges from its licensees to offset its entire general fund appropriation. The NRC's existing authority to impose those fees was set to expire at the end of fiscal year 1998, at which time the commission would be authorized to collect only annual charges and only up to 33 percent of its budget.

CBO determined that H.R. 3532 (as reported by the House Committee on Commerce on April 29, 1998) would impose both an intergovernmental and a private-sector mandate by extending the NRC's authority to collect fees from utilities. The intergovernmental mandate would not impose costs above the threshold because only a small number of public utilities would be affected. But the private-sector mandate could exceed the threshold depending on how its direct costs were measured. UMRA is unclear about how to define the costs associated with extending an existing mandate that has not yet expired. If the private-sector costs of extending the NRC mandate were measured against the costs that would be incurred under current law, they would total about \$300 million annually, beginning in fiscal year 1999. By contrast, measured against the fees paid for fiscal year 1998, the mandate would impose no additional costs on the private sector because the fees under H.R. 3532 would not differ much from those now in effect. The bill was reported to the House on August 6, 1998, and received no further consideration. However, the Energy and Water Development Appropriations Act for Fiscal Year 1999 (P.L. 105-245) extended the NRC's authority to recover 100 percent of its costs through user fees and annual charges for that year.

Financial Regulatory Relief and Economic Efficiency Act of 1998. S. 1405 would make numerous changes to the relationship between financial institutions and the federal agencies that are responsible for regulatory and monetary policy. Most significantly, the bill would permit the Federal Reserve System to pay interest on the reserves that it holds on deposit and would repeal the legal provision that prohibits depository institutions from paying interest on commercial demand deposits. The bill would impose a private-sector mandate by amending the Trust Indenture Act so that indenture trustees would have to mail each holder of an indenture security a form once a year requesting change-of-address information. However, the bill did not clearly define to whom those forms would have to be sent. The term "indenture security holder" may apply either to a relatively small group of registered security holders or to a significantly larger group of beneficial (individual) security holders. As a result of that uncertainty, the cost of the mandate could not be estimated. The Senate Committee on Banking, Housing, and Urban Affairs reported the bill on September 24, 1998, but the Congress did not give it any further consideration.

Freedom from Religious Persecution Act of 1998. H.R. 2431 (which was ordered reported by the House Committee on International Relations on March 25, 1998, and by the House Judiciary and Ways and Means Committees on May 6) contains mandates on U.S. exporters who sell to countries identified as engaging in religious

persecution. In addition, the bill would extend current mandates that prohibit nearly all economic relations with Sudan. Because the precise export restrictions relating to religious persecution would not be determined until a later date, the direct costs of the bill's mandates could not be estimated. The bill would also prohibit two types of exports, depending on the specific findings of the Secretary of State: exports to identified responsible entities within a country that has been deemed to carry out religious persecution and exports of products that facilitate persecution. The Secretary's findings cannot be predicted, so CBO could not estimate their direct costs to the private sector. The bill was signed into law on October 27, 1998 (as P.L. 105-292).

National Highway Traffic Safety Administration Reauthorization Act of 1998. H.R. 2691 (as reported by the House Committee on Commerce on March 25, 1998) contains private-sector mandates on manufacturers and retailers of motor vehicle equipment and on domestic and foreign automakers. It would prohibit retailers from selling or leasing a product when a manufacturer has sent them a defect notice related to motor vehicle safety. Motor vehicle equipment includes a variety of products, ranging from child safety seats to jacks to brake fluid. Retailers affected by the mandate include everyone who sells such products, ranging from toy stores to auto parts stores. Because of a lack of reliable information about current retail practices, CBO was unable to estimate the direct cost of complying with that mandate. The bill passed the House under suspension of the rules on April 21, 1998. The Senate did not consider it.

Northern Mariana Islands Covenant Implementation Act. S. 1275 would amend the covenant act between the United States and the Commonwealth of the Northern Mariana Islands, a U.S. territory, to reform the islands' immigration laws. The bill (as ordered reported by the Senate Committee on Energy and Natural Resources on May 20, 1998) contains two private-sector mandates on employers. One would limit the number of temporary alien workers who could legally be present in the territory. The other would increase the minimum wage that employers would have to pay their workers. The amount of that increase would be determined by an industry committee established after enactment of the legislation. With no way to predict the resulting increase in wage rates, CBO could not determine whether the direct cost to employers of those mandates would exceed the annual threshold. The bill was placed on the Senate calendar but was never considered by the full Senate.

TRENDS OVER THE FIRST THREE YEARS

CBO has been reviewing bills according to the provisions of UMRA for three years. Over that time, its experience has been very consistent (see Table 3). Each year from 1996 to 1998, about 10 percent to 12 percent of the bills reviewed contained inter-governmental mandates. About 1 percent had costs over the threshold established

TABLE 3. NUMBER OF CBO MANDATE STATEMENTS FOR BILLS, PROPOSED AMENDMENTS, AND CONFERENCE REPORTS, 1996-1998

	Intergovernmental Mandates			Private-Sector Mandates		
	1996 ^a	1997	1998	1996 ^a	1997	1998
Total Number of Statements Transmitted	718	521	541	673	498	525
Number of Statements That Identified Mandates	69	64	64	91	65	75
Mandate costs exceeded threshold ^b	11	8	6	38	18	18
Mandates costs could not be estimated	6	7	7	2	5	9
Number of Bills Subject to UMRA's Exclusions ^c	30	12	15	30	12	15

SOURCE: Congressional Budget Office.

NOTES: The mandates in this table are those identified by the Congressional Budget Office when a bill was reported by an authorizing or conference committee or when CBO was asked to do a formal review. In some cases, more than one formal CBO statement was issued for each mandate topic.

UMRA = Unfunded Mandates Reform Act.

- a. CBO began preparing mandate statements in January 1996 in the middle of the 104th Congress. These numbers reflect bills on the calendar in January 1996 and bills reported by committee thereafter.
- b. The thresholds are \$50 million a year (in 1996 dollars) for intergovernmental mandates and \$100 million a year (in 1996 dollars) for private-sector mandates. Those amounts are adjusted annually for inflation.
- c. Under section 4 of UMRA, the law does not apply to legislation that enforces the constitutional rights of individuals, prohibits discrimination, requires compliance with accounting and auditing systems for grants, provides for emergency assistance requested by state and local governments, is necessary for national security or the ratification of an international treaty, is designated as emergency legislation by the President or the Congress, or relates to Social Security.

in the law, and another 1 percent had costs that could not be estimated. Likewise, about about 13 percent to 14 percent of the bills reviewed each year contained private-sector mandates, with 3 percent to 5 percent having costs over the statutory threshold. About 1 percent of the bills had private-sector costs that could not be estimated. In addition, less than 5 percent of the bills reviewed each year were not subject to UMRA under the exclusions specified in section 4, primarily because they would be necessary for national security or for ratification or implementation of treaty obligations.

In the three years that UMRA has been in place, only two intergovernmental mandates with costs over the threshold have become law: the Minimum Wage Increase Act (P.L. 104-188) in 1996 and the Agriculture Research, Extension, and Education Reform Act (P.L. 105-185) in 1998. CBO estimated that the first law would impose costs on state and local governments totaling about \$1 billion over the first five years that the mandate was in effect, and the second law would cost state

governments administering the Food Stamp program a total of \$1.1 billion over the same period.

COSTS TO STATE AND LOCAL GOVERNMENTS FROM 1998 LEGISLATION

As the above figures indicate, few of the mandates that the Congress considers in a given year are actually enacted into law. Likewise, not all of the impact on state and local budgets from Congressional action is the result of mandates as defined by UMRA. Although the law does not require CBO to provide information about how many mandates are enacted or to estimate other, nonmandate costs, CBO does so whenever possible.

Mandates Enacted into Law

Of the 240 public laws enacted in 1998, 29 (or 12 percent) contain intergovernmental mandates as defined by UMRA (see Table B-2 in Appendix B). Only one—the Agriculture Research, Extension, and Education Reform Act—contains a mandate that, by CBO’s estimate, will impose costs on state and local governments in excess of the threshold. Several intergovernmental mandates that CBO identified were ultimately folded into the omnibus appropriation act before it was enacted in October.

About half of the mandates enacted into law take the form of preemptions of state and local laws. As noted above, however, none of those mandates will require significant expenditures by state, local, or tribal governments. Nine of the public laws enacted in 1998 contained intergovernmental mandates that were not reviewed by CBO at some point during the legislative process, primarily because those mandates were added to the bills after they were reported by full committee (the point at which CBO mandate statements are required by law).

Other Impacts on State, Local, and Tribal Governments

CBO identified more than 170 bills in 1998 containing provisions that would have resulted in additional costs to state, local, or tribal governments that were not the result of mandates as defined by UMRA. Most of those provisions dealt with conditions for receiving federal aid or participating in a voluntary federal program. In such cases, state, local, and tribal governments are subject to the conditions only if they choose to participate in the program or accept federal funds. Examples in 1998 range from the costs that result from accepting title to federal land (in the Miles Land Exchange Act, H.R. 1021) to the conditions surrounding the receipt of new federal grant money (in the National Salvage Motor Vehicle Protection Act, S. 852). CBO estimated that none of those bills would have a significant effect on the budgets

of state, local, or tribal governments. CBO also identified more than 75 bills that would provide benefits or result in budgetary savings for those governments.

An Unresolved Issue: Determining the Cost of a Mandate
When State, Local, or Tribal Governments Can Opt Out

Overall, CBO has had little trouble applying UMRA's provisions to the legislative proposals that arise each year. In some cases, however, as noted above, CBO has not been able to determine clearly whether a bill would impose a mandate as defined in the law or whether the cost would exceed the statutory thresholds. One example of that difficulty last year had to do with determining the direct cost of a mandate when states and localities can opt out. During 1998, CBO reviewed a number of bills that would impose mandates on state, local, or tribal governments but would also 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 the costs. UMRA is unclear about how to measure the costs of such mandates.

In the case of the Internet Tax Freedom Act of 1998 (H.R. 3529), 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 if the state enacted a new law expressly reinstating the existing tax within a year's time. 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 forgone 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 forgone 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 responsibility, not the federal government's. On the other hand, in the absence of H.R. 3529, a state's failure to enact a new law would have no fiscal consequences, whereas with the bill, its 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. CBO reviewed a number of similar opt-out provisions in 1998 and expects to see more in the future.

PROPOSALS TO CHANGE UMRA: AN UPDATE

During 1998, the Congress considered parallel legislation in the House and the Senate that would bolster UMRA's procedural constraints on Congressional consideration of legislation containing private-sector mandates. Those bills—titled the Mandates Information Act of 1998 (MIA)—would also clarify UMRA's definition of an intergovernmental mandate with respect to large entitlement programs. H.R. 3534 was passed by the House on May 19, 1998. S. 389 was reported to the Senate on September 2 by the Committee on Governmental Affairs and discharged by the Committee on the Budget on October 2, but it was not considered by the full Senate before adjournment.

In general, the legislation would establish a point of order against considering bills that contain private-sector mandates whose costs exceed \$100 million a year. As with the existing point of order against considering unfunded intergovernmental mandates, a simple majority vote of Members would be necessary to overcome the objection. Thus, the new point of order would not stop the Congress from passing bills that a majority of Members wanted to pass. But it would impose a hurdle for the Congress to clear during consideration of bills that contain private-sector mandates and could increase the demand for additional information about the costs of mandates. The House bill would allow a point of order on mandates over the threshold regardless of whether they were funded. The Senate bill (as reported by the Committee on Governmental Affairs) would apply the point of order on mandates over the threshold only if they were unfunded.

The version of MIA passed by the House contained four other significant changes to the Unfunded Mandates Reform Act. Those changes would exclude mandate costs related to taxes or tariffs, change the definition of intergovernmental mandates as it relates to large entitlement programs, clarify the use of a point of order for mandates in the House, and make UMRA apply to private-sector mandates in appropriation bills. (The provision about large entitlement programs was also included in S. 389 as reported to the Senate.) In addition, both versions of the bill would require the Congressional Budget Office to provide more in-depth information about the costs of private-sector mandates over the threshold.

Excluding Taxes and Tariffs from the Cost Threshold

The House adopted an amendment to H.R. 3534 offered by Congressman Dreier in the Rules Committee that would prevent a point of order from being raised with respect to certain individual revenue provisions in a bill. Instead, a point of order could be raised on the basis of revenue provisions only if the net increase in revenue from all such provisions in the bill exceeded the statutory threshold.

The amendment was intended to avoid the problem of triggering a point of order when a tax increase is proposed to offset some other tax cut. An example is the Taxpayer Relief Act of 1998, which, according to the Joint Committee on Taxation, would decrease governmental receipts by \$80 billion over the 1999-2003 period. The act contained a provision that would impose a new private-sector mandate by changing the tax treatment of certain deductible liquidating distributions by regulated investment companies and real estate investment trusts. The costs of that provision would exceed the threshold for private-sector mandates. But under the Dreier amendment, the act would not be subject to a point of order on that mandate because net revenues would decline.

Opponents of the amendment disliked the special treatment that would be afforded to tax bills. They argued that a bill raising taxes on one economic sector would be subject to a point of order under UMRA if it dedicated the new revenues to any purpose other than relieving tax burdens on another sector. They preferred to see either no special exclusion or one that also granted special treatment to mandatory spending. As an example, they cited the National Tobacco Policy and Youth Smoking Reduction Act. Its tax mandates would not be subject to the new private-sector point of order if the revenues were used to lower other taxes, but they would be subject if the revenues were used to fund related spending, such as a youth antismoking program.

Changing the Definition of an Intergovernmental Mandate for Certain Programs

An amendment was added to H.R. 3534 on the House floor that would change the special definition of an intergovernmental mandate for large entitlement grant programs. That definition is spelled out in section 421(5)(B) of UMRA. For programs such as Medicaid, UMRA defines an increase in the stringency of grant conditions or a decrease in federal funding as a mandate only if the state or local governments that administer the program lack the flexibility to make changes to offset the new costs or loss of funding. For most large entitlement programs, such federal changes would not constitute a mandate because states have the flexibility under current law to offset those changes by reducing the amount of money they spend or the services they provide.

Under the amendment, however, changes to large entitlement grant programs would be intergovernmental mandates unless the same bill that made the change also gave states new flexibility within the program to offset the cost. That amendment was identical to a stand-alone bill (S. 2068) introduced by Senators Thompson and Glenn and later adopted in the Senate Governmental Affairs Committee as an amendment to S. 389.

Tightening Point-of-Order Rules in the House

In the House, points of order raised under UMRA are disposed of by a vote on whether to continue considering the measure. The House has recognized that this mechanism could be used as a delaying tactic. Members might attempt to raise a point of order under UMRA whether or not the measure contained a mandate, or Members could raise repeated points of order for the same measure. UMRA provides some protection against such practices by directing the chair to not recognize a point of order unless the Member raising it can specify precise language on which to base the point of order.

The House version of MIA included provisions to clarify and strengthen those defenses against dilatory use of mandate-related points of order. When a Member raises a point of order in the House about a private-sector mandate, debate on the question of consideration would be limited to one point of order per measure. Thus, the House could engage in one 20-minute debate on whether to proceed with consideration of the measure. If a point of order failed to adequately specify its premise under UMRA, the 20 minutes of debate would give the House an opportunity to become aware of all mandate provisions in the measure that were of concern to Members. The House would then vote on whether to continue consideration of the measure containing those provisions regardless of whether they were included in the point of order initially raised.

Expanding UMRA's Application to Appropriation Bills

The procedures in UMRA apply to authorizing legislation, which is where mandates are typically established and their funding authorized. In general, UMRA exempts appropriation bills from its point-of-order rules. However, UMRA does permit points of order against legislative provisions in appropriation bills if they increase the costs of intergovernmental mandates by an amount greater than the statutory threshold. The Mandates Information Act would extend that point of order to provisions in appropriation bills that contain private-sector mandates.

Requiring Additional Information from CBO

MIA would also direct the Congressional Budget Office to provide expanded cost information about private-sector mandates that exceed the threshold. CBO would be required to analyze the effect of the proposed mandates on consumers, workers, and small businesses, including any disproportionate impact on particular regions or industries. That analysis would also include the effect on consumer prices; workers' wages, benefits, and employment opportunities; and the profitability of small

businesses. Such effects go beyond the direct costs of complying with a federal mandate, which CBO is now required to estimate.

In 1998, CBO included information about significant indirect effects in some of its cost statements for private-sector mandates. For example, analyses of bankruptcy reform and campaign finance reform noted that the costs of the mandates would be passed on to other parties. When sufficient time and data have been available, CBO has also estimated the size of some indirect effects, as it did for the minimum wage bills. Typically, however, time constraints and lack of data mean that CBO can include such extensive analyses only for topics that have already been widely researched.

APPENDIX A: KEY PROVISIONS IN TITLE I OF THE UNFUNDED MANDATES REFORM ACT

Title I of the Unfunded Mandates Reform Act of 1995 (UMRA) attempts to ensure that the Congress has more information about the potential direct costs of federal mandates before enacting legislation. The act also establishes procedures designed to make it more difficult for the Congress to enact legislation that imposes unfunded mandates on other levels of government.

Defining Mandates and Their Costs

The act defines a mandate as 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 arise as a condition of federal assistance or from participation in a voluntary federal program are not mandates. In the case of large entitlement programs, a new grant condition or a reduction in federal assistance is a mandate only if states lack the flexibility to offset the new costs or the loss of federal funding with reductions elsewhere in the program. Certain provisions—such as those enforcing constitutional rights or those necessary for national security—are excluded from UMRA's procedures.

Direct costs are defined as amounts that mandated entities would be required to spend to comply with the enforceable duty. They also include amounts that states, localities, and tribes "would be prohibited from raising in revenues." Direct costs exclude amounts that would be spent under current laws and programs. They are offset by any direct savings resulting from compliance with the mandate.

Mandate Cost Statements: CBO's Role

The law requires the Congressional Budget Office (CBO) to provide a statement 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 in which the mandate is effective, CBO must provide an estimate of those costs (if feasible) and the basis of its estimate. The statutory threshold is \$50 million for intergovernmental mandates and \$100 million for private-sector mandates, adjusted annually for inflation. 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.

The CBO 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 appropriations needed to fund such authorizations for up to 10 years after the mandate takes effect.

Conference committees must, "to the greatest extent practicable," ensure 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 Minority Member of a committee, CBO will help committees 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 them from considering legislation that contains mandates unless certain conditions are met. Consideration of a reported bill is not "in order" unless the committee has published a CBO statement about the costs of mandates. It is also not in order to consider any bill, amendment, motion, or conference report that would create an intergovernmental mandate, or would increase the direct costs of an existing intergovernmental mandate by more than \$50 million, unless the legislation provides direct spending authority or authorizes appropriations sufficient to cover the costs. Such authorizations would have to be specified for each year (up to 10 years) after the effective date; in the Senate, they would also have to be consistent with the estimated costs of the mandate in the legislation as determined by the Senate Budget Committee. In addition, any bill, amendment, motion, or conference report that authorizes the appropriation of funds to pay for an intergovernmental mandate that it contains whose costs exceed the threshold is not in order unless it provides a way to terminate or scale back the mandate if agencies determine 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, it is not in order to consider legislative provisions in such bills—or amendments to them—that increase the direct costs of intergovernmental mandates unless an appropriate CBO 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 regardless of whether there is a violation. 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 overrules it.

**APPENDIX B: LIST OF BILLS AND LAWS IN 1998 THAT CONTAIN
INTERGOVERNMENTAL MANDATES**

The tables in this appendix provide a list of bills before the Congress last year (Table B-1) and laws enacted last year (Table B-2) that contain a mandate of any size on state, local, or tribal governments. Table B-2 also notes whether enacted laws include a mandate that the Congressional Budget Office did not review.

TABLE B-1. BILLS BEFORE THE CONGRESS IN 1998 THAT CONTAIN ANY INTERGOVERNMENTAL MANDATES

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Exceeding the \$50 Million Threshold		
H.R. 1054	Internet Tax Freedom Act	Preempts for at least six years certain state and local taxes on Internet-access service, on-line services, and communications or transactions using the Internet or on-line services
S. 474	Internet Gambling Prohibition Act of 1997	Prohibits Internet gambling, including some forms of state lotteries and off-track betting
S. 1150	Agriculture Research, Extension, and Education Reform Act of 1998	Limits federal government's responsibility to provide funding for administrative costs of Food Stamp program
S. 1573	Fair Minimum Wage Act of 1998	Increases minimum wage paid by employers
S. 1805	Fair Minimum Wage Act of 1998	Increases minimum wage paid by employers
S. 2279	Wendell H. Ford National Air Transportation System Improvement Act of 1998	Requires many airports to upgrade runway safety areas; prohibits Alaska from collecting fees on certain aircraft
Intergovernmental Mandates with Costs Below the \$50 Million Threshold		
H.R. 6	Higher Education Act Amendments of 1998	Prohibits creditors (including state, local, and tribal governments) from garnishing grants, loans, or work-study assistance
H.R. 10	Financial Services Competition Act of 1998	Preempts certain state banking, insurance, and securities laws
H.R. 218	Community Protection Act of 1998	Preempts state concealed-weapon laws by creating national standard

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 872 (Judiciary Committee)	Biomaterials Access Assurance Act of 1998	Preempts state tort laws by setting out uniform liability standards for suppliers of materials used in medical implants; establishes new procedures for courts to follow to determine whether a supplier is exempt from liability
H.R. 872 (Commerce Committee)	Biomaterials Access Assurance Act of 1998	Preempts state tort laws by setting out uniform liability standards for suppliers of materials used in medical implants
H.R. 1151 (Senate)	Credit Union Membership Access Act	Preempts state laws regulating credit unions and establishes national safety, soundness, and audit requirements
H.R. 1151 (House)	Credit Union Membership Access Act	Preempts state laws regulating credit unions and establishes national safety, soundness, and audit requirements
H.R. 1689	Securities Litigation Uniform Standards Act of 1998	Preempts state securities laws so class actions involving certain types of securities fraud can be maintained only in federal courts
H.R. 1690	Amend Title 28, United States Code, with Respect to the Enforcement of Child Custody and Visitation Orders	Requires state courts to enforce child visitation rulings made in courts of other states
H.R. 1836	Federal Employees Health Care Protection Act of 1998	Preempts state and local authority to regulate health care plans that provide coverage for Federal Employees Health Benefits program

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 2000	Amend the Alaska Native Claims Settlement Act to Make Certain Clarifications to the Land Bank Protection Provisions and for other purposes	Exempts some native Alaskan land from state and local property taxes
H.R. 2281	Digital Millennium Copyright Act of 1998	Requires copyright owners who employ mechanisms to prevent reproduction of their works to give broadcasters the necessary means to copy the works under specific conditions
H.R. 2294	Federal Courts Improvement Act of 1998	Increases fees for filing petitions in U.S. Court of Federal Claims. (State, local, and tribal governments would face those fees when they were petitioners in federal cases.)
H.R. 2327	Drive for Teen Employment Act of 1998	Prohibits employers from allowing minors to drive more than 50 miles from their place of employment
H.R. 2400	Building Efficient Surface Transportation and Equity Act of 1998	Requires Virginia, Maryland, and District of Columbia to accept title to Wilson Bridge; subjects all interstate school bus operations to federal motor carrier safety regulations
H.R. 2625	Act to rename Washington National Airport	Requires Metropolitan Washington Airports Authority to change the name of Washington National Airport to Ronald Reagan Washington National Airport
H.R. 2652	Collections of Information Antipiracy Act	Preempts state laws regarding protection of collectors of information

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 2843	Aviation Medical Assistance Act of 1998	Preempts state and local liability laws to limit the liability of air carriers and individuals who provide medical assistance during an in-flight emergency; directs the Federal Aviation Administration to consider whether automatic external defibrillators should be required at airports, most of which are publicly owned
H.R. 3117	Civil Rights Commission Act of 1998	Extends subpoena power of U.S. Civil Rights Commission, allowing it to subpoena records and testimony of state, local, and tribal governments
H.R. 3249	Federal Retirement Coverage Corrections Act	Requires District of Columbia government to correct errors associated with misclassifying employees in retirement plans
H.R. 3485	Campaign Reform and Election Integrity Act of 1998	Requires states to notify Federal Elections Commission if they decide not to include citizenship checkoff on voter registration applications
H.R. 3494	Protection of Children from Sexual Predators Act of 1998	Requires state or local Internet providers to report Internet child pornography if they discover it
H.R. 3532	Nuclear Regulatory Commission Authorization Act for Fiscal Year 1999	Extends authority of Nuclear Regulatory Commission to collect user fees and annual charges from utilities, some of which are publicly owned

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 3783	Child On-line Protection Act	Requires public providers of interactive computer services to notify customers that parental-control protections are available
H.R. 3844	Wireless Communications and Public Safety Act of 1998	Requires certain levels of state liability for wireless communication providers and users of 911 services
H.R. 3849 (Judiciary Committee)	Internet Tax Freedom Act of 1998	Prohibits state public utility commissions from regulating prices of Internet access or on-line services
H.R. 3888	Telecommunications Competition and Consumer Protection Act of 1998	Preempts state telephone anti-slamming laws that impose more restrictive requirements than those imposed by the bill
H.R. 4005	Money Laundering Deterrence Act of 1998	Preempts state law by limiting civil liability of independent public accountants who audit financial institutions
H.R. 4023	Bill to provide for the Conveyance of the Forest Service Property in Kern County, California, in exchange for county lands suitable for inclusion in Sequoia National Forest	Preempts state and local laws governing environmental remediation
H.R. 4057	Airport Improvement Program Reauthorization Act of 1998	Prohibits states from forbidding certain disaster-counseling services
H.R. 4243	Government Waste, Fraud, and Error Reduction Act of 1998	Preempts some state laws regulating debt-collection agencies
H.R. 4250	Patient Protection Act of 1998, with a proposed amendment	Preempts state authority to regulate health care

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 4257	Amend the Fair Labor Standards Act of 1938 to Permit Certain Youth to Perform Certain Work with Wood Products	Preempts certain state child labor laws
H.R. 4382	Mammography Quality Standards Reauthorization Act of 1998	Requires mammogram facilities (including state and local public facilities) to provide written notifications to patients
S. 8	Superfund Cleanup Acceleration Act of 1998	Preempts state liability laws for certain parties for future cleanup costs at Superfund sites; establishes new requirements for state of Idaho
S. 263	Bear Protection Act of 1998	Prohibits state and local governments from trading in bear parts
S. 391	Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998	Requires affected tribes to spend judgment funds in specified ways
S. 967	Amend the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act to Benefit Alaska Natives and Rural Residents	Preempts Alaska state law to increase land exempt from state and local property taxes
S. 1031	Federal Law Enforcement Officers' Good Samaritan Act of 1998	Preempts certain state tort liability laws regarding use of force by federal officers responding to nonfederal crimes
S. 1173	Intermodal Surface Transportation Efficiency Act of 1998	Preempts certain state laws relating to liability of an employer requesting safety performance records of job applicants; extends federal motor carrier safety regulations to certain vehicles

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Below the \$50 Million Threshold (Continued)		
S. 1260	Securities Litigation Uniform Standards Act of 1998	Preempts state securities laws so class actions involving certain types of securities fraud can be maintained only in federal courts
S. 1275	Northern Mariana Islands Covenant Implementation Act	Preempts immigration and minimum wage laws of Commonwealth of the Northern Mariana Islands
S. 1754	Health Professions Education Partnerships Act of 1998	Preempts state statutes of limitation governing loan repayments
S. 1754 (Revised)	Health Professions Education Partnerships Act of 1998	Preempts state statutes of limitation governing loan repayments
S. 2037	Digital Millennium Copyright Act of 1998	Requires copyright owners who employ mechanisms to prevent reproduction of their works to give federally licensed broadcasters the necessary means to copy the works
S. 2090	NRC Fairness in Funding Act of 1998	Extends the Nuclear Regulatory Commission's authority to collect fees from utilities, some of which are publicly owned
S. 2119	Olympic and Amateur Sports Act Amendments of 1998	Prohibits state courts from granting injunctive relief against U.S. Olympic Committee when adjudicating certain lawsuits
S. 2238	Muhammed Ali Boxing Reform Act	Requires state boxing commissions to establish certain procedures
S. 2326	Children's On-line Privacy Protection Act of 1998	Prohibits states from imposing liability regulations inconsistent with provisions of the bill

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs Below the \$50 Million Threshold (Continued)		
S. 2330	Patient's Bill of Rights Act of 1998	Preempts state insurance laws that limit high-deductible health plans
S. 2402	Direct the Secretaries of Agriculture and Interior to Convey Certain Lands in San Juan County, New Mexico, to San Juan College	Requires San Juan College to pay for survey
Intergovernmental Mandates with Costs That Could Not Be Estimated		
H.R. 1054	Draft substitute amendment to Internet Tax Freedom Act	Preempts for at least six years certain state and local taxes on Internet-access service, on-line services, and communications or transactions using the Internet or on-line services
H.R. 3529 (Judiciary Committee)	Internet Tax Freedom Act of 1998	Preempts for three years certain state and local taxes, including taxes on Internet-access and on-line services
H.R. 3849 (Commerce Committee)	Internet Tax Freedom Act	Preempts for three years certain state and local taxes, including taxes on Internet-access and on-line services
H.R. 4105 (Senate passed)	Internet Tax Freedom Act	Preempts for three years certain state and local taxes, including taxes on Internet-access and on-line services. Prohibits state public utility commissions from regulating prices of Internet-access or on-line services
S. 442 (Finance Committee)	Internet Tax Freedom Act	Preempts for six years certain state and local taxes on on-line services, Internet-access service, or communications or transactions using the Internet

(Continued)

TABLE B-1. CONTINUED

Bill Number	Name	Mandate
Intergovernmental Mandates with Costs That Could Not Be Estimated (Continued)		
S. 442 (Commerce Committee)	Internet Tax Freedom Act	Preempts for two years certain state and local taxes, including taxes on Internet-access and on-line services
S. 1415	Preliminary estimate of the National Tobacco Policy and Youth Smoking Reduction Act	Imposes numerous requirements on state, local, and tribal governments, including prohibition on tobacco suits

SOURCE: Congressional Budget Office.

TABLE B-2. LAWS ENACTED IN 1998 THAT CONTAIN ANY INTERGOVERNMENTAL MANDATES

Public Law	Name or Topic	Mandate	Does Law Contain a Mandate Not Reviewed by CBO?	Do Costs Exceed Threshold?
105-154	Act to rename Washington National Airport	Requires Metropolitan Washington Airports Authority to change the name of Washington National Airport to Ronald Reagan Washington National Airport	No	No
105-170	Aviation Medical Assistance Act of 1998	Preempts state and local liability laws to limit the liability of air carriers and individuals who provide medical assistance during an in-flight emergency; directs the Federal Aviation Administration to consider whether automatic external defibrillators should be required at airports, most of which are publicly owned	No	No
105-172	Wireless Telephone Protection Act	Allows federal forfeiture to occur irrespective of state law	Yes	No
105-174	1998 Supplemental Appropriations and Rescissions Act	Requires Albuquerque to construct a road according to specific standards Imposes numerous requirements on District of Columbia Control Board, Mayor, and City Council	Yes Yes	No No
105-178	Transportation Equity Act for the 21st Century	Preempts state or local laws that are different from federal regulations on liability for using drivers' safety records in hiring motor carrier drivers	No	No
105-185	Agriculture Research, Extension, and Education Reform Act of 1998	Limits federal government's responsibility to provide funding for administrative costs of Food Stamp program	No	Yes

(Continued)

TABLE B-2. CONTINUED

Public Law	Name or Topic	Mandate	Does Law Contain a Mandate Not Reviewed by CBO?	Do Costs Exceed Threshold?
105-200	Child Support Performance and Incentive Act of 1998	Requires national medical support notices for state and local employees	Yes	No
105-216	Homeowner's Protection Act of 1998	Requires mortgage lenders and loan services to notify borrowers of right to cancel mortgage insurance; provides for automatic cancellation of mortgage insurance under certain circumstances	No	No
105-219	Credit Union Membership Access Act	Preempts state laws regulating credit unions and establishes national safety, soundness, and audit requirements	No	No
105-223	Bill to establish U.S. Capitol Police Memorial Fund	Preempts state gift-tax laws for families of two officers shot at the Capitol	Yes	No
105-230	Biomaterials Access Assurance Act of 1998	Preempts state tort laws by setting out uniform liability standards for suppliers of materials used in medical implants; establishes new procedures for courts to follow to determine whether a supplier is exempt from liability	No	No
105-244	Higher Education Act Amendments of 1998	Prohibits creditors (including state, local, and tribal governments) from garnishing grants, loans, or work-study assistance	No	No
105-245	Energy and Water Development Appropriations Act for Fiscal Year 1999	Extends authority of Nuclear Regulatory Commission to collect user fees and annual charges from utilities, some of which are publicly owned	No	No

(Continued)

TABLE B-2. CONTINUED

Public Law	Name or Topic	Mandate	Does Law Contain a Mandate Not Reviewed by CBO?	Do Costs Exceed Threshold?
105-248	Mammography Quality Standards Reauthorization Act of 1998	Requires mammogram facilities (including state and local public facilities) to provide written notifications to patients	No	No
105-261	Defense Authorization Act for Fiscal Year 1999	Exempts certain federal employees in three states from paying income taxes to the states in which they are employed	Yes	No
105-266	Federal Employees Health Care Protection Act of 1998	Preempts state and local authority to regulate health care plans that provide coverage for Federal Employees Health Benefits program	No	No
105-271	Year 2000 Information and Readiness Disclosure Act	Preempts state liability laws to give limited protection from lawsuits to firms that share information about Year 2000 computer problem	Yes	No
105-274	District of Columbia Courts and Justice Technical Corrections Act	Preempts District of Columbia code to impose requirements on courts and Department of Corrections	Yes	No
105-276	VA, HUD, and Independent Agencies Appropriations and HUD Reauthorization Act	Preempts some state and local laws governing zoning and employment	No	No
105-277	Omnibus Consolidated and Emergency Supplemental Appropriations Act	Imposes various mandates on District of Columbia Mayor, school district, and University of the District of Columbia	Yes	No
		Preempts state liability laws dealing with on-line privacy	No	No

(Continued)

TABLE B-2. CONTINUED

Public Law	Name or Topic	Mandate	Does Law Contain a Mandate Not Reviewed by CBO?	Do Costs Exceed Threshold?
105-277	Omnibus Consolidated and Emergency Supplemental Appropriations Act (Continued)	Prohibits California from collecting overdue fees and assessing fees in the future for container chassis	No	No
		Requires certain county commissioners to establish nonprofit charitable public trust related to Canyon Ferry Reservoir	Yes	No
		Places moratorium on state taxes on Internet access for three years; grandfathers some existing taxes	No	No
		Prohibits state courts from granting injunctive relief against U.S. Olympic Committee when adjudicating certain lawsuits	No	No
		Requires state or local Internet providers to give notice that parental-control programs are available	No	No
		Restricts use of tribal lands in Kansas City, Kansas	Yes	No
105-287	Armored Car Reciprocity Amendments of 1998	Requires states to extend reciprocity for other states' licenses for armored car drivers	No	No
105-304	Digital Millennium Copyright Act of 1998	Requires copyright owners who employ mechanisms to prevent reproduction of their works to give broadcasters the necessary means to copy the works under specific conditions	No	No

(Continued)

TABLE B-2. CONTINUED

Public Law	Name or Topic	Mandate	Does Law Contain a Mandate Not Reviewed by CBO?	Do Costs Exceed Threshold?
105-314	Child Protection and Sexual Predator Punishment Act	Requires state or local Internet providers to report Internet child pornography if they discover it	No	No
105-333	Alaska Native Claims Settlement Act and Land Bank Protection Act of 1998	Exempts bonds of Native Alaska Corporation from determination of eligibility for federal assistance programs; could increase state spending for those programs	No	No
		Exempts some native Alaskan land from state and local property taxes	No	No
105-334	Drive for Teen Employment Act of 1998	Prohibits employers from allowing minors to drive more than 50 miles from their place of employment	No	No
105-353	Securities Litigation Uniform Standards Act of 1998	Preempts state securities laws so class actions involving certain types of securities fraud can be maintained only in federal courts	No	No
105-379	Act to require state Food Stamp agencies to take actions to ensure that food stamps are not issued for deceased individuals	Requires states to match Food Stamp records with Social Security information on deaths	Yes	No
105-387	Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998	Requires affected tribes to spend judgment funds in specified ways	No	No
105-392	Health Professions Education Partnerships Act of 1998	Preempts state statutes of limitation governing loan repayments	No	No

SOURCE: Congressional Budget Office.

APPENDIX C: CONTRIBUTORS TO CBO'S ANALYSES OF MANDATES

Intergovernmental Mandates

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