

Statement of
James L. Blum
Assistant Director for Budget Analysis
Congressional Budget Office

before the
Subcommittee on Intergovernmental Relations
Committee on Governmental Affairs
United States Senate

May 14, 1985

This statement is not available for
public release until it is delivered
at 10:30 a.m. (EST) on Tuesday,
May 14, 1985.

Mr. Chairman, I am pleased to have the opportunity to comment on S. 483, the proposed Intergovernmental Regulatory Relief Act of 1985. This bill would assign important new responsibilities to the Congressional Budget Office (CBO). My statement this morning will discuss some of the potential problems we would have in fulfilling these responsibilities, drawing on our experience with preparing state and local government cost estimates.

Intergovernmental Regulatory Relief Act of 1985

The purpose of S. 483 is to establish procedures to assure that the federal government ultimately pays the total amount of additional direct costs incurred by state and local governments in complying with intergovernmental regulations. The bill would require federal reimbursement for additional costs incurred by state and local governments in complying with new regulations that take effect after the bill's date of enactment. It would also establish a 10-year phased schedule, beginning with fiscal year 1987, to reduce the existing regulatory burden through federal reimbursement of costs, a reduction in the regulatory burden, or some combination of each.

S. 483 does not authorize the appropriation of any funds for reimbursing state and local governments for costs incurred in implementing federal mandates. Instead the bill directs federal agencies and the U.S. courts not to require state and local government compliance with federal mandates unless a sufficient amount of funds has been provided to reimburse the costs that will be incurred. The bill also directs the chairmen of the

House and Senate committees with legislative jurisdiction over the basic laws that give rise to the mandated costs to propose amendments to appropriation bills to provide the necessary federal reimbursement funds.

The amount of reimbursement funds required would be based on estimates made by CBO in a report to be completed each year by September 1 (Sections 201 and 202). Title I of the bill also directs the President to submit to the Congress a report each year (30 days after the submission of his annual budget) that contains estimates of the additional costs incurred by state and local governments as a result of existing intergovernmental regulations. The estimates contained in the President's report would be made by the federal agencies responsible for issuing the regulations, apparently based on information provided by state and local governments.

Federal reimbursement would be required only for regulations that stem from a "significant law," which would be determined by CBO. The term "significant law" is defined by the bill to mean any federal law that is likely, in the judgment of the CBO Director, to result in total additional direct costs to all state and local governments of \$100 million or more in any fiscal year, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government. The term "additional direct costs" is defined to mean the amount of costs incurred by a state or local government solely in complying with an intergovernmental regulation promulgated pursuant to a federal law. These costs must exceed the amount

the state and local government would otherwise spend in the absence of the law for the particular activity involved. Any required matching of federal **financial** assistance would be excluded.

Measuring and Projecting the Costs of New Federal Mandates

S. 483 presumes that the state and local costs of implementing new federal mandates can be measured and projected accurately. Our experience with preparing state and local government costs estimates during the past two ~~years--under~~ the State and Local Government Cost Estimate Act of 1981--~~does~~ not support this presumption.

We have discovered that there is very little information about the cost **effects** of existing federal intergovernmental legislation and regulations that we could use as a guide for our cost estimates. As the Advisory Commission on Intergovernmental Relations (**ACIR**) noted in its 1982 report on Regulatory Federalism; Policy, Process, Impact, and Reform, there have been only a few studies in this area. Moreover, those studies that have been done use different definitions of federal mandates, different methodologies for estimating costs, and rely on very small samples. As a result, they have not been helpful to us in preparing our estimates of possible future costs that would be incurred by state and local governments in carrying out new federal legislation.

We have also discovered that it is often difficult to obtain useful cost information from state and local governments for proposed federal legisla-

tion. One aspect of projecting potential costs is estimating how state and local governments would implement new federal mandates. State and local program officials are often reluctant to predict what administrative steps or programmatic responses might be taken before the legislation is enacted. Therefore, CBO must make assumptions about possible state and local government responses to new federal legislation, which may not turn out to be very accurate.

In preparing our state and local government cost estimates, we have interpreted costs to be the incremental budgetary costs or savings that would be incurred by state and local governments as a result of new federal legislation. S. 483 takes a similar incremental approach to the definition of costs. In order to develop estimates of incremental effects, it is necessary to project how much state and local governments would spend in the absence of the legislation. This increases the difficulty of making cost estimates. There is great variation in the spending practices of state and local governments, and this variation must be taken into account in estimating incremental costs.

As the ACIR noted in its 1982 report, determining the costs that would be imposed on all state and local governments can be an awesome auditing and accounting task. In providing state and local cost information to House and Senate committees reporting new legislation, we frequently have to prepare our estimates in a very brief time. Accordingly, we have to take simplified analytical approaches to the cost estimating task. This involves

using whatever relevant data we can obtain from published or other readily available sources, talking with state and local program officials who have some knowledge about how the new legislation might be implemented, and making a great many assumptions and judgments. Furthermore, we do not attempt to prepare cost estimates for individual states or local governments, but rely on estimates of average impacts, often based on data from only a few jurisdictions. In short, we adapt our analytical approaches to fit the circumstances involved with each piece of legislation. While I believe the end product provides useful information to the Congress for gauging potential costs of legislation, our estimates necessarily are subject to a large degree of uncertainty.

This uncertainty is greater for cost estimates of new program proposals where there is no prior cost experience to draw on and where a lot of regulatory authority is delegated to the administering federal agency. In the latter case, our cost estimates are at best very speculative since we have no way of knowing in advance how the administering agency may choose to write new rules and regulations to implement a new federal mandate. We hope that we are able to estimate a reasonable order of magnitude, but actual costs could turn out to be very **different**.

This description of the present **state-of-the-art** in estimating the possible state and local cost effects of new legislation strongly suggests that we are not well-equipped at present to fulfill the new responsibilities contemplated by S. 483. Our cost estimates simply are not precise or

detailed enough to use as the basis for appropriations for reimbursing state and local governments for the costs of implementing new federal mandates.

The Costs of Existing Federal Mandates

S. 483 also would require reimbursement of mandated costs for any intergovernmental regulation that took effect prior to the date of enactment of the bill. The potential cost of this requirement could be billions of dollars. As I noted earlier in my statement, however, there are no reliable data available for developing a reasonable cost estimate. As the ACIR concluded in its report, additional sound research on the effects of federal mandates is required.

The annual Presidential report on actual and projected intergovernmental regulatory costs required by Title I of the bill would represent the first comprehensive study of its kind. Based on our experience in preparing state and local cost estimates, I believe this report would be an enormous undertaking. The methodological and data problems would be quite severe. The ACIR report gives a good description of some of these problems.

First, the very concept of a regulatory impact has yet to be adequately defined. S.483's definition of federal mandates or intergovernmental regulations is fairly broad and would have to be refined considerably for the purpose of the President's report. Also, the concept of costs would have to be defined more sharply. Since there is a wide range in how these concepts could be defined, this would not be an easy task and could prove to be quite lengthy and controversial.

Second, the collection of cost data also would be a very **difficult** task. In a limited study of intergovernmental regulations in four jurisdictions, the General Accounting Office (GAO) could not obtain even rough estimates of direct administrative costs. The local governments visited either were unable to provide such estimates or the GAO did not consider the estimates provided as reliable. Even more difficult would be the projection of state and local expenditures in the absence of a federal mandate. As the **ACIR** report notes, such estimates are often highly subjective and are difficult to evaluate without a thorough knowledge of local circumstances.

Title II of S. **483** directs CBO to prepare a similar report on the costs of existing intergovernmental regulations that exceed \$100 million annually in additional direct costs, or that have exceptional **fiscal** consequences for a geographic region or a particular level of government. The bill outlines a set of procedures for the preparation of the **President's** annual report but not for the CBO report. The CBO report presumably would be based on the President's report, but it could also be based on different definitions, sources of information, and estimating procedures. This could lead to different estimates of necessary reimbursements, which in turn could cause confusion, controversy, and delays in making any appropriations.

Conclusion

In recommending that all future additional costs imposed on state and local governments by federal mandates be fully reimbursed by the federal

government, the **ACIR** recognized that these additional costs are **difficult** to define and measure. It expected, however, that the CBO would be able to perfect appropriate methodologies in implementing the 1981 State and Local Government Cost Estimate Act. While we have made good progress in preparing state and local cost estimates using simplified analytical methods, we are a long way from preparing estimates with the level of detail and accuracy that would be needed for reimbursement appropriations. I am also not confident that we could do a good job at this point in evaluating the cost estimates that would be contained in the President's Title I report. This might be a task better suited to an agency with accounting and auditing skills that could review in depth the basis for these estimates.