

GAO

Testimony

Before the Subcommittee on Technology,  
Information Policy, Intergovernmental Relations, and  
Procurement Reform, Committee on Oversight and  
Government Reform, House of Representatives

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FEDERAL MANDATES

Few Rules Trigger  
Unfunded Mandates  
Reform Act

Statement of Denise M. Fantone, Director  
Strategic Issues



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Highlights of [GAO-11-385T](#), a testimony before the Subcommittee on Technology, Information Policy, Intergovernmental Relations, and Procurement Reform, Committee on Oversight and Government Reform, House of Representatives

## Why GAO Did This Study

Many federal programs and initiatives involve shared responsibilities—and benefits—for the federal, state, local and tribal governments, and the private sector. Federal statutes and rules often require nonfederal parties to expend their resources in support of certain national goals. The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address some of the concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve these goals without being provided funding to cover the costs. UMRA generates information about how these potential federal mandates could affect other levels of government and the private sector as Congress and agency decision makers consider proposed legislation and regulations.

Congress has asked GAO to evaluate the effectiveness of UMRA procedures and requirements several times since it was enacted. Based on that body of work, this testimony focuses on Title II of UMRA regarding federal mandates in rules and (1) describes the exceptions and exclusions in the act when identifying a federal mandate and (2) summarizes GAO findings on UMRA's implementation over the years and views of knowledgeable parties on potential improvements.

GAO is not making recommendations in this testimony.

View [GAO-11-385T](#) or key components. For more information, contact Denise M. Fantone at (202) 512-6806 or [fantoned@gao.gov](mailto:fantoned@gao.gov).

February 15, 2011

## FEDERAL MANDATES

### Few Rules Trigger Unfunded Mandates Reform Act

## What GAO Found

UMRA's process for identifying whether a rule contains a federal mandate is complex, and there are 14 reasons why a rule would not be identified as containing a federal mandate. These include definitions, exceptions, and exclusions. For example, requirements in rules are not considered federal mandates under UMRA if they (1) arise in a rule issued by an independent regulatory agency, such as the Securities and Exchange Commission, (2) are a condition of receiving federal financial assistance, (3) require compliance with accounting or auditing procedures, or (4) provide for emergency assistance. If UMRA applies, the federal agency is then required to prepare a written statement about the anticipated effects of the mandates contained in the rule and consult with affected parties.

GAO consistently found that agencies' rules seldom triggered UMRA. In 2004 GAO reported that 65 rules, or over half of the 113 final major rules published in calendar years 2001 and 2002 that had not triggered UMRA, had impacts on nonfederal parties that those affected might perceive as unfunded mandates. GAO analyzed each of those rules to identify how it was treated under UMRA's mandate identification process. Among the most common reasons the rules did not trigger UMRA's requirements were that (1) the rule did not meet the UMRA dollar threshold for expenditures, (2) the rule was published in final form without going through the proposed rule stage, (3) participation in the federal program was considered voluntary, and (4) the rule was issued by one of the independent regulatory agencies, which are not covered by the act. It is important to note that GAO also found that the remaining rules that had not triggered UMRA included no new requirements that would impose costs or have a negative financial effect on state, local, and tribal governments or the private sector. These rules often involved payments from the federal government to nonfederal parties.

In 2005, when GAO asked knowledgeable parties from academia, advocacy groups, business, federal agencies, and state and local governments about UMRA, they frequently raised concerns about the act's coverage and the quality of analyses of federal mandates. Their comments suggested that there is merit in considering whether features of the law that determine if a rule includes a federal mandate subject to UMRA need to be retained, modified, or eliminated. Additionally, the parties we spoke with suggested that evaluation of existing rules through retrospective reviews has the potential of being able to better assess the effectiveness of UMRA, among other benefits.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to discuss the Unfunded Mandates Reform Act of 1995 (UMRA),<sup>1</sup> specifically, at your request, Title II which applies to federal mandates contained in federal agencies' rules. Congress has asked GAO to evaluate the effectiveness of UMRA procedures and requirements several times since it was enacted.<sup>2</sup> In 2004 and 2005, we analyzed the act's procedures for identifying federal mandates in depth, and we also were asked to seek the views of diverse parties familiar with UMRA and report on the most frequently cited targets for improvement.<sup>3</sup> Drawing on that work, my remarks today will (1) describe the exceptions and exclusions for identifying whether a rule contains a federal mandate that triggers UMRA, and (2) summarize GAO findings on UMRA's implementation over the years and the views of knowledgeable parties on ways to improve the act.

My testimony today is based on prior reports and testimonies prepared at the request of Congress since UMRA was enacted. We used multiple methodologies to develop our findings for these reports. To describe the applicable procedures, definitions, and exclusions for identifying federal mandates in rules under UMRA, we reviewed the act, other related guidance documents, and Office of Management and Budget (OMB) reports on the implementation of UMRA. To identify rules that were and were not identified as containing federal mandates under UMRA and analyze the reasons for those determinations, we reviewed major final rules published over various periods of time. We also interviewed a diverse group of parties from the academic, business, federal agency, public interest advocacy, and state and local governments sectors knowledgeable about the implementation of UMRA to obtain their views. We conducted our work for these reports in accordance with generally accepted government auditing standards. A more detailed discussion of scope and methodology is available in each of the reports cited in the related products list.

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<sup>1</sup>Pub. L. No. 104-4, 109 Stat. 48 (1995) (codified in scattered sections of Title 2 of the United States Code).

<sup>2</sup>App. I contains the highlights pages from some of GAO's reports and testimonies, and a list of the related GAO products is included at the end of this statement.

<sup>3</sup>GAO, *Unfunded Mandates: Analysis of Reform Act Coverage*, GAO-04-637 (Washington, D.C.: May 12, 2004) and *Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement*, GAO-05-454 (Washington, D.C.: Mar. 31, 2005).

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What we have consistently found is that the complex UMRA process provides many reasons for not identifying a rule as having federal mandates subject to the act and, as a result, federal agencies' rules seldom trigger UMRA's reporting and consultation requirements. Comments we obtained from multiple parties representing different sectors suggested that there is merit in considering whether features of the law that determine if a rule includes a federal mandate subject to UMRA need to be retained, modified, or eliminated. Additionally, the parties we spoke with suggested that evaluation of existing rules through retrospective reviews has the potential of being able to better assess the effectiveness of UMRA, among other benefits.

As we noted in previous reports, many federal programs and initiatives involve shared responsibilities—and benefits—for the federal government, state, local and tribal governments, and the private sector. To aid in the implementation of these programs and initiatives and to share their costs, federal statutes and regulations often require nonfederal parties to expend their resources in support of certain national goals. Nevertheless, Congress and others in the public policy arena have struggled to determine the appropriate balance of fiscal responsibility between the federal government, state, local and tribal governments, and the private sector in carrying out these federal mandates and this continues to be a challenge and source of debate.

UMRA was enacted to address some of the concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. However, the act does not preclude the implementation of such mandates. Rather, UMRA generates information about how these potential federal mandates could affect other levels of government and the private sector as Congress and agency decision makers consider proposed legislation and regulations.<sup>4</sup> For regulatory mandates, UMRA also includes a consultation requirement. Agencies must develop a process to permit elected officers and representatives of state, local, and tribal governments to provide input in the development of regulatory proposals containing significant intergovernmental mandates. The act also requires actions by

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<sup>4</sup>The provisions governing potential mandates in legislation appear under Title I of UMRA and those regarding mandates in rules under Title II. UMRA also includes two other titles. Title III of UMRA required the Advisory Commission on Intergovernmental Relations to conduct a study reviewing federal mandates. Title IV establishes limited judicial review under the act.

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OMB, including establishing a pilot program to identify and test new ways to reduce reporting and compliance burdens for small governments and annual reporting to Congress on agencies' compliance with UMRA.

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## Why a Rule Would Not Be Identified as Containing a Federal Mandate

The UMRA process under Title II focuses first on determining whether a rule contains provisions that would be identified as federal mandates under UMRA and therefore subject to the act's other requirements. This process for the identification and analysis of federal mandates is complex. Federal rules must pass through multiple steps and meet multiple conditions before UMRA requirements apply. These include procedures, definitions, and other categories of exclusions. For example, the provisions in a rule are not considered federal mandates under UMRA if they (1) arise in a rule issued by an independent regulatory agency, such as the Commodity Futures Trading Commission or the Securities and Exchange Commission; (2) are a condition of receiving federal financial assistance; (3) require compliance with accounting or auditing procedures; or (4) provide for emergency assistance. In total, there are 14 reasons why an agency would *not* identify its rule as containing a federal mandate subject to UMRA, as illustrated in table 1.

**Table 1: Reasons Why a Rule Would Not Be Identified as Containing a Federal Mandate under UMRA**

<b>Exclusions</b>	<b>The rule...</b>
<b>Definition of mandate and exceptions</b>	
1.	Contains no enforceable duty (unavoidable requirement) upon state, local, or tribal governments or upon the private sector
2.	Contains duties that are a condition of federal financial assistance
3.	Involves participation in a voluntary federal program
4.	Is issued by an independent regulatory agency
<b>Procedures</b>	
5.	Does not go through the proposed rule stage <sup>a</sup>
<b>Exclusions</b>	
6.	Enforces constitutional rights of individuals
7.	Enforces rights prohibiting discrimination
8.	Requires compliance with accounting and auditing procedures
9.	Provides for emergency assistance
10.	Is necessary for national security or foreign affairs
11.	Is designated as emergency legislation
12.	Relates to certain programs under the Social Security Act
<b>Threshold</b>	
13.	Requires no <i>expenditure</i> of \$100 million or more (adjusted for inflation) in any 1 year <sup>b</sup>
<b>Other</b>	
14.	Is subject to a statute that prohibits consideration of costs and benefits

Source: GAO summary of UMRA provisions. For the full text of these provisions, see UMRA, e.g., 2 U.S.C. §§ 658, 1503.

<sup>a</sup>Agencies can publish final regulatory actions without notices of proposed rulemaking using either good cause, categorical, or statute-specific exceptions to the Administrative Procedure Act's notice and comment requirements. See 5 U.S.C. §§ 553(b)(B), 553(d)(3).

<sup>b</sup>The UMRA threshold in Title II is triggered only by direct expenditures, not costs or effects on the economy, as in other rulemaking requirements such as Executive Order 12866. The dollar thresholds in UMRA are in 1996 dollars and are adjusted annually for inflation. For 2011, the threshold is \$142 million. The same threshold applies to determining whether a rule includes an intergovernmental mandate or a private sector mandate.

If a rule passes through all of these exceptions and exclusions, UMRA requirements apply. Federal agencies are then required to prepare a written statement about the federal mandates contained in the rule and consult with affected parties. The written statement is to contain

1. identification of the provision of federal law under which the rule is being promulgated;

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2. a qualitative and quantitative assessment of the anticipated costs and benefits of the federal mandate (including those on state, local and tribal governments or the private sector) and the effect of the mandate on health, safety, and the natural environment;
  3. estimates by the agency (if reasonably feasible) of future compliance costs of the federal mandate and any disproportionate budgetary effects upon particular regions, governments, types of communities or particular segments of the private sector;
  4. estimates of the effect on the national economy; and
  5. a description of the extent of the agency's prior consultation with elected representatives of affected state, local, and tribal governments, including a summary of their comments and concerns and the agency's evaluation of those comments and concerns.

For such rules, agencies are also to identify and consider a reasonable number of regulatory alternatives and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rules (or explain why that alternative was not selected).

UMRA recognizes that statements prepared in response to other rulemaking statutes and orders may be used to satisfy some or all of UMRA's requirements. For example, agencies could also be required to prepare estimates of a rule's effects or conduct additional consultation and outreach to potentially affected parties in response to requirements such as Executive Order 12866 (on regulatory planning and review), the Regulatory Flexibility Act (regarding effects of rules on small entities) and Executive Order 13132 (on federalism).

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## Few Rules Trigger UMRA

UMRA's many definitions, exclusions, and exceptions result in many rules that never trigger the act's thresholds and thus not identified as federal mandates. Given all the conditions needed to trigger the act, it is not surprising that our reviews over the years reported that relatively few final rules contained federal mandates subject to UMRA. Although the scope of our reports was limited to rules issued during specific time periods, our findings on the effect and applicability of UMRA have been consistent over time.

Our findings are also generally consistent with OMB's annual reports to Congress on agencies' compliance with UMRA. As illustrated in table 2 below, agencies identified about 13 percent of the 452 major final rules issued in fiscal years 2000 through 2009 as containing federal mandates

under UMRA.<sup>5</sup> Of those that triggered UMRA, the majority of those mandates were on the private sector. OMB's reports identified only 5 final major rules containing intergovernmental mandates that triggered UMRA's requirements during that 10-year period.

**Table 2: Number of Final Major Rules That Triggered UMRA, by Fiscal Year**

Fiscal Year	Final major rules <sup>a</sup>	Final major rules that triggered UMRA	
		Number	Percentage
2000	31	12	39
2001	87	0	0
2002	31	1	3
2003	37	7	19
2004	45	4	9
2005	45	2	4
2006	28	2	7
2007	40	11	28
2008	42	8	19
2009	66	12	18
<b>Totals</b>	<b>452</b>	<b>59</b>	<b>13</b>

Source: OMB annual reports to Congress on agency compliance with the Unfunded Mandates Reform Act

<sup>a</sup>OMB's reported numbers only include major rules reviewed by OMB under Executive Order 12866; they do not include major rules published by independent regulatory agencies.

In 2004, we reported that 65 rules, or over half of the 113 final major rules published in calendar years 2001 and 2002 that had not triggered UMRA, had impacts that those affected by the rules might perceive as unfunded mandates.<sup>6</sup> We analyzed each of those rules to identify how they were treated under UMRA's mandate identification process. Among the most common reasons the rules did not trigger UMRA were

- the estimated direct expenditures, as defined by UMRA, would not meet the applicable thresholds;
- the rules did not go through the proposed rule stage;
- participation in the federal program was considered voluntary; and

<sup>5</sup>OMB has not yet released a report covering rules issued in fiscal year 2010.

<sup>6</sup>See [GAO-04-637](#).



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- the rules were issued by independent regulatory agencies not covered by the act.

Often agencies cited more than one reason, or more than one reason could have applied to a given rule.<sup>7</sup> Some of the rules that had not triggered UMRA appeared to have potentially similar financial impacts on affected nonfederal parties. For example, a rule could reduce industry gross revenues by over \$100 million in a single year, and therefore be economically significant, yet not trigger UMRA because it does not require expenditures above UMRA's threshold in any year.

It is important to note that the remaining rules that had not triggered UMRA included no new requirements that would impose costs or have a negative financial effect on state, local, and tribal governments or the private sector. As part of these rules the federal government often provided nonfederal parties with substantial payments, such as loans or Medicare payments.

In 2005, when we obtained the views of a diverse group of parties from academia, advocacy groups, business, federal agencies, and state and local governments about UMRA's strengths and weaknesses, they frequently raised concerns about coverage and the quality of analyses of mandates. UMRA's narrow coverage stood out as the primary issue for most sectors, and one worth revisiting, because it excludes so many actions from coverage and contributes to complaints about unfunded or underfunded mandates. However, a few parties, primarily from the public interest advocacy sector, viewed UMRA's narrow coverage as a strength that should be maintained. In general, the comments we heard raised the question of whether UMRA—given its current procedures, definitions, and exclusions—adequately captures and scrutinizes federal actions that might impose significant financial or other burdens on affected nonfederal parties. The parties suggested that there is merit in considering whether features of UMRA that determine if a rule includes a federal mandate need to be retained, modified, or eliminated.

As for the underlying purpose of UMRA—generating information about the nature and size of federal mandates—the parties we consulted generally agreed there needed to be better evaluation and research on federal

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<sup>7</sup>Agencies did not always provide a reason, for example when the rule was published by an independent agency not covered by UMRA. Even for covered agencies, there is no UMRA requirement to identify the reason rules do not contain federal mandates.

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mandates and more complete estimates of the cost of mandates on nonfederal entities, both direct and indirect. The parties most frequently suggested that agencies evaluate the effectiveness of mandates after they had been implemented. Representatives of practically every sector indicated that more needed to be done to understand the costs and benefits of federal mandates. In their comments, they suggested that evaluation of existing rules through retrospective reviews has the potential of being able to better assess the effectiveness of UMRA, among other benefits. The two broad categories for potential improvements of the act raised by the parties—addressing coverage and definitional issues as well as more attention to retrospective reviews of existing regulations—have also been highlighted by our broader body of work on other regulatory requirements.<sup>8</sup>

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## Observations

Our work on federal, state, and local governments' fiscal stresses raises broader questions about the allocation of fiscal responsibilities within our federal system.<sup>9</sup> The federal government partners with state and local governments to achieve national priorities through implementation of a variety of programs. The interconnectedness of intergovernmental programs requires that all levels of government remain aware of, and ready to respond to, fiscal pressures. The combined long-term fiscal challenges further complicate the process of sorting out competing demands for federal funds and other fiscal resources. Actions will be needed by all in coming years, and the challenges cannot simply be shifted from one level of government to another.

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<sup>8</sup>See, for example, GAO, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington, D.C.: July 16, 2007), and *Regulatory Reform: Prior Reviews of Federal Regulatory Process Initiatives Reveal Opportunities for Improvements*, [GAO-05-939T](#) (Washington, D.C.: July 27, 2005).

<sup>9</sup>GAO's state and local fiscal model simulations show that state and local governments' long-term fiscal position will steadily decline through 2060 absent policy changes. See GAO, *State and Local Governments: Fiscal Pressures Could Have Implications for Future Delivery of Intergovernmental Programs*, [GAO-10-899](#) (Washington, D.C.: July 30, 2010).

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Mr. Chairman, this concludes my prepared statement. I would be pleased to address any questions you or other members of the subcommittee might have.

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## Contacts and Acknowledgments

For further information, please contact Denise M. Fantone at (202) 512-6806 or [fantoned@gao.gov](mailto:fantoned@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include Barbara Lancaster; Andrea Levine; Joseph Santiago; and Jared Sippel.

April 14, 2005



## Highlights

Highlights of GAO-05-533T, a testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia; Committee on Homeland Security and Governmental Affairs, U.S. Senate

### Why GAO Did This Study

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. UMRA generates information about the nature and size of potential federal mandates but does not preclude the implementation of such mandates. At various times in UMRA's 10-year history, Congress has considered legislation to amend aspects of the act to address ongoing questions about its effectiveness.

This testimony is based on GAO's reports, *Unfunded Mandates: Analysis of Reform Act Coverage* (GAO-04-637, May 12, 2004) and *Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement* (GAO-05-454, March 31, 2005). Specifically, this testimony addresses (1) UMRA's procedures for the identification of federal mandates and GAO's analysis of the implementation of those procedures for statutes enacted and major rules issued in 2001 and 2002, and (2) the views of a diverse group of parties familiar with UMRA on the significant strengths and weaknesses of the act as the framework for addressing mandate issues and potential options for reinforcing the strengths or addressing the weaknesses.

[www.gao.gov/cgi-bin/gettrpt?GAO-05-533T](http://www.gao.gov/cgi-bin/gettrpt?GAO-05-533T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Orice M. Williams, (202) 512-5837, [williamso@gao.gov](mailto:williamso@gao.gov).

## UNFUNDED MANDATES

### Analysis of Reform Act's Coverage and Views on Possible Next Steps

#### What GAO Found

The identification and analysis of intergovernmental and private sector mandates is a complex process under UMRA. Proposed legislation and regulations are subject to various definitions, exceptions, and exclusions before being identified as containing mandates at or above UMRA's cost thresholds. Also, some legislation and rules may be enacted or issued via procedures that do not trigger UMRA reviews. In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. Despite the determinations under UMRA, at least 43 other statutes and 65 rules resulted in new costs or negative financial consequences that affected nonfederal parties might perceive as unfunded or underfunded federal mandates.

GAO obtained information from 52 knowledgeable parties, who provided a significant number of comments about UMRA, specifically, and federal mandates, generally. Their views often varied across and within the five sectors we identified (academic/think tank, public interest advocacy groups, business, federal agencies, and state and local governments). Overall, the numerous strengths, weaknesses, and options for improvement identified during the review fell into several broad themes, including, among others, UMRA-specific issues such as the act's coverage and enforcement, and more general issues about the design, funding, and evaluation of federal mandates. UMRA's coverage was, by far, the most frequently cited issue by parties from the various sectors. Parties across most sectors said that UMRA's numerous definitions, exclusions, and exceptions leave out many federal actions that might significantly impact nonfederal entities and suggested that they should be revisited. However, a few parties, primarily from the public interest advocacy sector, viewed UMRA's narrow coverage as a strength that should be maintained. Another issue on which the parties had particularly strong views was the perceived need for better evaluation and research of federal mandates and more complete estimates of both the direct and indirect costs of mandates on nonfederal entities. The most frequently suggested option to address these evaluation issues was more post-implementation evaluation of existing mandates or "look backs" at their effectiveness.

Going forward, the issue of unfunded mandates raises broader questions about assigning fiscal responsibilities within our federal system. The long-term fiscal challenges facing the federal and state and local governments and the continued relevance of existing programs and priorities warrant a national debate to review what the government does, how it does business, and how it finances its priorities. Such a reexamination includes considering how responsibilities for financing public services are allocated and shared across the many nonfederal entities in the U.S. system.

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**Highlights**

Highlights of [GAO-05-454](#), a report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

#### Why GAO Did This Study

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided federal funding to cover the costs. UMRA generates information about the nature and size of potential federal mandates on nonfederal entities to assist Congress and agency decision makers in their consideration of proposed legislation and regulations. However, it does not preclude the implementation of such mandates.

At various times in its 10-year history, Congress has considered legislation to amend various aspects of the act to address ongoing questions about its effectiveness. Most recently, GAO was asked to consult with a diverse group of parties familiar with the act and to report their views on (1) the significant strengths and weaknesses of UMRA as the framework for addressing mandate issues and (2) potential options for reinforcing the strengths or addressing the weaknesses. To address these objectives, we obtained information from 52 organizations and individuals reflecting a diverse range of viewpoints. GAO analyzed the information acquired and organized it into broad themes for analytical and reporting purposes.

GAO makes no recommendations in this report.

[www.gao.gov/cgi-bin/getrpt?GAO-05-454](http://www.gao.gov/cgi-bin/getrpt?GAO-05-454).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Orice M. Williams at (202) 512-5837, or [williams@gao.gov](mailto:williams@gao.gov).

March 2005

## UNFUNDED MANDATES

### Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement

#### What GAO Found

The parties GAO contacted provided a significant number of comments about UMRA, specifically, and federal mandates, generally. Their views often varied across and within the five sectors we identified (academic/think tank, public interest advocacy, business, federal agencies, and state and local governments). Overall, the numerous strengths, weaknesses and options for improvement identified during the review fell into several broad themes, including UMRA-specific issues such as coverage and enforcement, among others, and more general issues about the design, funding, and evaluation of federal mandates. First, UMRA coverage was, by far, the most frequently cited issue by parties from the various sectors. Parties across most sectors that provided comments said UMRA's numerous definitions, exclusions, and exceptions leave out many federal actions that may significantly impact nonfederal entities and should be revisited. Among the most commonly suggested options were to expand UMRA's coverage to include a broader set of actions by limiting the various exclusions and exceptions and lowering the cost thresholds, which would make more federal actions mandates under UMRA. However, a few parties, primarily from the public interest advocacy sector, viewed UMRA's narrow coverage as a strength that should be maintained.

Second, parties from various sectors also raised a number of issues about federal mandates in general. In particular, they had strong views about the need for better evaluation and research of federal mandates and more complete estimates of both the direct and indirect costs of mandates on nonfederal entities. The most frequently suggested option to address these issues was more post-implementation evaluation of existing mandates or "look backs." Such evaluations of the actual performance of mandates could enable policymakers to better understand mandates' benefits, impacts and costs among other issues. In turn, developing such evaluation information could lead to the adjustment of existing mandate programs in terms of design and/or funding, perhaps resulting in more effective or efficient programs.

Going forward, the issue of unfunded mandates raises broader questions about assigning fiscal responsibilities within our federal system. Federal and state governments face serious fiscal challenges both in the short and longer term. As GAO reported in its February 2005 report entitled *21st Century Challenges: Reexamining the Base of the Federal Government* ([GAO-05-325SP](#)), the long-term fiscal challenges facing the federal budget and numerous other geopolitical changes challenging the continued relevance of existing programs and priorities warrant a national debate to review what the government does, how it does business and how it finances its priorities. Such a reexamination includes considering how responsibilities for financing public services are allocated and shared across the many nonfederal entities in the U.S. system as well.

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**Highlights**

Highlights of [GAO-05-401T](#), a statement for the record to the Committee on Government Reform, House of Representatives

### Why GAO Did This Study

The Unfunded Mandate Reform Act of 1995 (UMRA) was enacted to address concerns expressed by state and local governments about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs.

Over the past 10 years, Congress has at various times considered legislation that would amend various aspects of UMRA.

This testimony is based on GAO's report, *Unfunded Mandates: Analysis of Reform Act Coverage* ([GAO-04-637](#), May 12, 2004). Specifically, this testimony addresses (1) the process used to identify federal mandates and what are federal agencies' roles, (2) statutes and rules that contained federal mandates under UMRA, and (3) statutes and rules that were not considered mandates under UMRA but may be perceived to be "unfunded mandates" by certain affected parties.

[www.gao.gov/cgi-bin/getrpt?GAO-05-401T](http://www.gao.gov/cgi-bin/getrpt?GAO-05-401T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Orice M. Williams, 202 512-5837; [williamso@gao.gov](mailto:williamso@gao.gov).

March 8, 2005

## FEDERAL MANDATES

### Identification Process Is Complex and Agency Roles Vary

#### What GAO Found

GAO found that the identification and analysis of intergovernmental and private sector mandates is a complex process under UMRA. Proposed legislation and regulations are subject to various definitions, exclusions and exceptions before being identified as containing mandates at or above UMRA's cost thresholds. The Congressional Budget Office (CBO) is required to prepare statements identifying and estimating, if feasible, the costs of mandates in legislation. While a point of order can be raised on the floor of the House or Senate against consideration of any UMRA-covered intergovernmental mandate that lacks a CBO estimate or exceeds the cost thresholds, it contains no similar enforcement for private sector mandates. Conversely, federal agencies are required to prepare mandate statements for regulations containing intergovernmental or private sector mandates that would result in expenditures at or above the UMRA threshold. The Office of Information and Regulatory Affairs, within the Office of Management and Budget, is responsible reviewing compliance with UMRA as part of the rule making process.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant rules issued were identified as containing federal mandates at or above UMRA's thresholds. All 5 statutes and 9 rules contained private sector mandates as defined by UMRA. One final rule also contained an intergovernmental mandate.

Despite the determinations under UMRA, at least 43 statutes and 65 rules issued in 2001 and 2002 resulted in new costs or negative financial consequences on nonfederal parties. These parties may perceive such statutes and rules as unfunded or underfunded mandates even though they did not meet UMRA's definition of a federal mandate at or above UMRA's thresholds. For 24 of the statutes and 26 of the rules, CBO or the agencies estimated that the direct costs or expenditures, as defined by UMRA, would not meet or exceed the applicable thresholds. The others were excluded for a variety of reasons stemming from exclusions or exceptions specified by UMRA.

United States Government Accountability Office

## UNFUNDED MANDATES

### Analysis of Reform Act Coverage



Highlights of GAO-04-637, a report to the Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

#### Why GAO Did This Study

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and rules that require state, local, and tribal governments or the private sector to expend resources to achieve legislative goals. UMRA generates information about the nature and size of potential federal mandates to assist Congress and agency decision makers in their consideration of proposed legislation and rules. However, concerns about actual or perceived federal mandates continue. To provide information and analysis regarding UMRA's implementation, GAO was asked to (1) describe the applicable procedures, definitions, and exclusions under UMRA for identifying federal mandates in statutes and rules, (2) identify statutes and final rules that contained federal mandates under UMRA, and (3) provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as "unfunded mandates," and the reasons these statutes and rules were not federal mandates under UMRA. GAO focused on statutes enacted and final rules issued in 2001 and 2002 to address the second and third objectives.

[www.gao.gov/cgi-bin/getrpt?GAO-04-637](http://www.gao.gov/cgi-bin/getrpt?GAO-04-637).

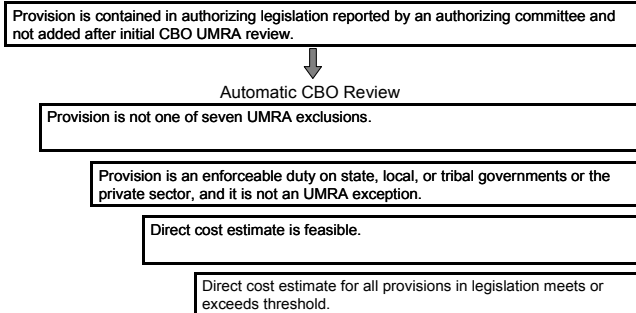
To view the full product, including the scope and methodology, click on the link above. For more information, contact Patricia A. Dalton at (202) 512-6806 or [daltonp@gao.gov](mailto:daltonp@gao.gov).

#### What GAO Found

UMRA generally requires congressional committees and the Congressional Budget Office (CBO) to identify and estimate the costs of federal mandates contained in proposed legislation and federal agencies to do so for federal mandates contained in their rules. Identification of mandates is a complex process with multiple definitions, exclusions, and cost thresholds. Also, some legislation and rules may be enacted or issued via procedures that do not trigger UMRA reviews.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. Of the other federal actions in those 2 years, at least 43 statutes and 65 rules contained new requirements on nonfederal parties that might be perceived as "unfunded mandates." For 24 of those statutes and 26 of those rules, CBO or federal agencies had determined that the estimated direct costs or expenditures would not meet or exceed applicable thresholds. For the remaining examples of statutes, most often UMRA did not require a CBO review prior to their enactment. The remaining rules most often did not trigger UMRA because they were issued by independent regulatory agencies. Despite the determinations made under UMRA, some statutes and rules not triggering UMRA's thresholds appeared to have potential financial impacts on affected nonfederal parties similar to those of the actions that were identified as containing mandates at or above the act's thresholds.

#### Proposed Legislation Must Pass Multiple Steps to Be Identified as Containing Federal Mandates at or Above UMRA's Cost Thresholds



Source: GAO.

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# Related GAO Products

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*Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews.* [GAO-09-205](#). Washington, D.C.: April 20, 2009.

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*Regulatory Reform: Prior Reviews of Federal Regulatory Process Initiatives Reveal Opportunities for Improvements.* [GAO-05-939T](#). Washington, D.C.: July 27, 2005.

*Unfunded Mandates: Analysis of Reform Act's Coverage and Views on Possible Next Steps.* [GAO-05-533T](#). Washington, D.C.: April 14, 2005.

*Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement.* [GAO-05-454](#). Washington, D.C.: March 31, 2005.

*Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement (Appendix IV, E-Supplement).* [GAO-05-497SP](#). Washington, D.C.: March 31, 2005.

*Federal Mandates: Identification Process Is Complex and Federal Agency Roles Vary.* [GAO-05-401T](#). Washington, D.C.: March 8, 2005.

*Unfunded Mandates: Analysis of Reform Act Coverage.* [GAO-04-637](#). Washington, D.C.: May 12, 2004.

*Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions.* [GAO/GGD-98-30](#). Washington, D.C.: February 4, 1998.



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