

UNFUNDED MANDATES AND REGULATORY OVERREACH

HEARING

BEFORE THE
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION
POLICY, INTERGOVERNMENTAL RELATIONS AND
PROCUREMENT REFORM

OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 30, 2011

Serial No. 112-20

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

67-619 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
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UNFUNDED MANDATES AND REGULATORY OVERREACH

WEDNESDAY, MARCH 30, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS AND PROCUREMENT
REFORM,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:13 p.m., in room 2154, Rayburn House Office Building, Hon. James Lankford (chairman of the subcommittee) presiding.

Present: Representatives Lankford, Kelly, Chaffetz, Walberg, Labrador, Farenthold, and Connolly.

Staff present: Ali Ahmad, deputy press secretary; Molly Boyd, parliamentarian; Sharon Casey, senior assistant clerk; Katelyn E. Christ, research analyst; Linda Good, chief clerk; Hudson T. Hollister, counsel; Ryan Little, manager of floor operations; Justin LoFranco, press assistant; Mark D. Marin, senior professional staff member; Kristina M. Moore, senior counsel; Kristin L. Nelson, professional staff member; Brian Quinn and Donald Sherman, minority counsels; and Cecilia Thomas, minority counsel/deputy clerk.

Mr. LANKFORD. The committee will come to order.

The opening statements for myself and our ranking member, Mr. Connolly, I am going to have submitted for the record in writing so we can go ahead and just move on as quickly as we can. I do have one letter that I am also asking for unanimous consent to be able to submit it for the record, a letter to Doug Elmendorf. With no other reason to deny that, I would assume that we can receive that by unanimous consent on that.

[The prepared statement of Hon. James Lankford follows:]

I have listened to many people in business and in local government who tell me that something has changed in the federal government. State leadership tells me that they are losing flexibility and local decision making authority. Business people tell me that years ago, when a regulator showed up, they were there to help. Now, they are coming to find something wrong to impose a fine.

The question about unfunded mandates strikes at the core of our Constitutional duty and role as a federal government. What is the nature of our relationship with state and local governments and what are the boundaries of the regulatory framework that we set? Is it appropriate to tell a local government that they must change their budget to meet our preferences? Can we force a business to make unlimited expenditures based on our requirements? The issue is not whether agencies have the authority to regulate at all. Rather, the issue lies in the boundary of that authority and the capacity of Congress to make an informed decision related to the impact of their legislative actions.

- Congress enacted the Unfunded Mandates Reform Act of 1995 (UMRA) to “promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance” and to “curb the practice of imposing unfunded federal mandates on States and local governments,” but the effects of UMRA have been limited due to its narrow coverage and lack of accountability.
- UMRA has been largely unsuccessful in minimizing these costs because of its narrow coverage and lack of accountability for the agencies executing the requirements.
- For example, over the past ten years, only 4 rules have been classified as unfunded mandates on state, local, and tribal governments under UMRA.
- And although 66 major rules were issued in 2010, only 13 triggered UMRA.
- Further, the Congressional Budget Office (CBO) reports that between 2004 and 2009, 167 new intergovernmental federal mandates and 248 new private sector mandates were enacted with costs below UMRA’s threshold.

- These figures are telling and provide strong evidence that UMRA in its current form, isn't getting the job done.
- Statistics such as these raise many questions, including whether or not it is time to look at closing some of the loopholes, exemptions and exceptions that we heard about at the last hearing, and I understand will be hearing more about from our witnesses today.
- Further, it raises the question of whether cost estimates under UMRA are being accurately reflected.
- UMRA only captures direct costs or expenditures, not the total effects on the economy as required under Executive Order 12866.
- Also, URMA thresholds are based on adjustments for inflation, but it is my understanding that is not so for Executive Order 12866.
- While February's hearing focused on the local government entities who are continually burdened by unfunded intergovernmental mandates, today's hearing will allow us to hear from representatives of the private sector and the states, who are also affected by burdensome federal mandates.
- Indeed, President Obama stated in his recent Executive Order that regulations shall be adopted through a process that involves public participation. To that end, he specifically recognized affected stake holders in the private sector and the public as a whole as parties of interest.
- Today we will have the opportunity to hear from South Dakota State Senator Joni Cutler. Senator Cutler will be testifying on behalf of the National Conference of State Legislatures and will be able to shed light on the burdens unfunded mandates place on state's such as South Dakota in America's heartland.
- We will also have the opportunity to hear from 2 witnesses who represent small businesses and entrepreneurs across our nation – the Small Business Entrepreneurship Counsel and the Small Business Majority.
- Today's hearing builds on our first UMRA hearing, where the Subcommittee heard from recognized experts on unfunded mandates and

parties that are directly affected by them. Witnesses included the former Office of Information and Regulatory Affairs (OIRA) Administrator Susan Dudley, Government Accountability Office (GAO) Director Denise Fantone, the Mayor of Edmond, Oklahoma, Patrice Douglas and Fairfax County, Virginia County Executive, Anthony Griffin.

- They described widely recognized flaws that exist with the current UMRA statute and suggested multiple remedies and potential legislative solutions to address the concerns shared by many affected parties.
- At our last hearing, it was brought to my attention that UMRA recognizes that federal agencies should review and evaluate planned regulatory mandates to ensure that the cost estimates of the Congressional Budget Office were carefully considered when regulations are issued pursuant to a statutory mandate.
- Therefore, earlier this month, I exercised my authority under UMRA to ask the Congressional Budget Office to compare their cost analyses of legislative mandates to how agencies are evaluating the cost of regulatory mandates under those statutes.
- I would ask unanimous consent to place this letter dated March 23rd of this year into the record. Without objection, so ordered.
- I look forward to reviewing their results.

I am glad to report that the President and OMB have also engaged in this same process of evaluation with his Executive order 13563: which in part reads that, "all agencies must complete within 120 days a retrospective analyses on private business and local governments."

Further, "To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible."

It is the responsibility of this sub-committee to both accurately denote the problem and pursue a reasonable solution.

I have stated before and will state again, this is not an attack on the current administration. Many of the issues we deal with today did not originate during this administration and the solutions we propose will extend well beyond this administration. It is essential that we look at the bigger picture and the long term effects of our federal involvement in state and local governments and private business operation.

Today is designed to be another moment to discover the facts and to assist us in developing solutions.

Ground Rules of the Hearing:

Each of you has been asked to submit a written statement for the record and we have also asked you to prepare an oral opening statement, no longer than 5 minutes, so we can allow time for questions and discussion after your statements.

You will see on your desk a series of lights and a clock which will count down from 5 minutes. The lights will change from green to yellow when you have one minute and to red when your time has expired and it is time to quickly wrap up.

After the entire panel has given their oral statements, each member present will have 5 minutes to ask questions of the panel.

I will be strictly enforcing time today, since we all have a very tight schedule.

We are very grateful for the time all of you have committed to preparing your written and oral statements and the time you have given away from your family for this hearing
Do you understand the ground rules of this hearing?

DARRYL E. ROSS, CALIFORNIA
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ONE HUNDRED TWELTH CONGRESS

Congress of the United States House of Representatives

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March 23, 2011

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Douglas W. Elmendorf
Director
Congressional Budget Office
Ford House Office Building, 4th Floor
Second and D Streets, SW
Washington, DC 20515-6925

Dear Mr. Elmendorf:

The state of our federal regulatory system is a topic of renewed interest. The House Oversight and Government Reform Committee, and other House panels, are in the process of highlighting regulations that may impede job growth. This coincides with President Obama's recently issued Executive Order which, among other things, directs agencies to review existing significant regulations.¹

As you know, certain federal regulations and laws are recognized as federal mandates under the Unfunded Mandates Reform Act of 1995 (UMRA). That law requires issuing agencies to project the economic impact of certain regulations they release, and requires the Congressional Budget Office (CBO) to separately estimate the economic impact of laws under consideration by Congress.²

UMRA recognized that federal agencies should review and evaluate planned regulatory mandates to ensure that the cost estimates of the CBO are carefully considered when those mandates are promulgated pursuant to a statutory mandate.³ To that extent, Section 103(b) of UMRA directs the CBO, by request, to prepare a comparison between (1) an estimate by the relevant agency, prepared under section 202 of UMRA, of the costs of regulations implementing an Act containing a federal mandate; and (2) the cost estimate prepared by the CBO for such an Act when it was being considered by Congress.⁴

To the extent possible, as outlined above, I request that the CBO conduct a cost comparison of the following regulatory mandates and the statutory mandates under which they were promulgated (as noted in the final rule):

¹ Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011).

² 2 U.S.C. § 658, 658c, 1532

³ 2 U.S.C. § 1511.

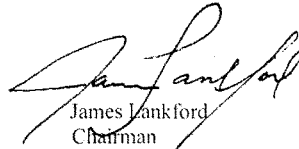
⁴ *Id.*

The Honorable Douglas W. Elmendorf
Page Two
March 23, 2011

1. Environmental Protection Agency: *National Emission Standards for Hazardous Air Pollutants (NESHAP) Portland Cement Notice of Reconsideration*⁵
2. Environmental Protection Agency: *Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program*⁶
3. Environmental Protection Agency and National Highway Traffic Safety Administration: *Joint Rule: Establish Light-Duty Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards*⁷
4. Environmental Protection Agency: *National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule*⁸
5. Department of Energy: *Energy Efficiency Standards for General Service Fluorescent Lamps and Incandescent Lamps*⁹

I ask that this request be completed by April 30, 2011. I appreciate your attention to this matter and look forward to the results. If you have any questions regarding my request, please do not hesitate to contact Kristin Nelson or Kristina Moore with the Oversight and Government Reform Committee at 202-225-5074.

Sincerely,



James Lankford
Chairman
Subcommittee on Technology, Information Policy,
Intergovernmental Relations and Procurement Reform

cc: The Honorable Elijah Cummings, Ranking Member
Oversight and Government Reform Committee

The Honorable Gerald Connolly, Ranking Member
Subcommittee on Technology, Information Policy, Intergovernmental Relations and
Procurement Reform

⁵ National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants, 75 Fed. Reg. 54,970 (September 9, 2010).

⁶ Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program, 75 Fed. Reg. 24,802 (May 6, 2010).

⁷ Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25,324 (May 7, 2010).

⁸ National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule, 71 Fed. Reg. 388 (January 4, 2006).

⁹ Energy Conservation Program: Energy Conservation Standards and Test Procedures for General Service Fluorescent Lamps and Incandescent Reflector Lamps, 74 Fed. Reg. 34,080 (July 14, 2009).

Mr. LANKFORD. Basic ground rules of the hearing: each of you has been asked to submit a written statement for the record. We have also asked you to prepare an oral opening statement no longer than 5 minutes so we can allow time for questions and discussion after your statement.

You will see on your desk a series of lights and a clock which will count down from 5 minutes. I know you all have been briefed on this already. After the entire panel has given their oral statements, we will have a few questions for you. We will do those questions in 4-minute increments and get a chance to clip through that as well. We will be strictly enforcing the time today. Obviously, we have a very tight schedule; it has been interrupted by votes. So we are grateful that you are here and that you have taken a significant amount of time to prepare your testimony.

Do you have any questions about going through the oral portion of this?

[No response.]

Mr. LANKFORD. Thank you. I would like to now read the mission statement of our committee, and then we will swear you in.

As the Oversight and Government Reform Committee, we exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. It is our solemn responsibility to hold government accountable to taxpayers because taxpayers do have the right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

We have three witnesses that we are receiving testimony from today. The Honorable Joni Cutler is a member of the South Dakota State Senate, representing the 14th District of South Dakota, serves on the Executive Committee of the National Conference of State Legislatures. Prior to her service in the State Senate, Senator Cutler served in the South Dakota State House of Representatives for 8 years. Thanks for being here.

Mr. Raymond Keating is the chief economist at the Small Business & Entrepreneur Council and serves as an adjunct professor in the Business School at Downing College.

And Mr. John Arensmeyer is the founder and CEO of the Small Business Majority. Prior to that he was the chief operating officer of a multimedia business and an attorney in New York.

Thank you all for being here. It is our typical practice here that we swear in guests when they come, so if you would please rise and raise your right hands.

[Witnesses sworn.]

Mr. LANKFORD. Thank you very much. Let the record reflect that all witnesses answered in the affirmative.

Please be seated.

I would like to receive the testimony first from Joni Cutler. Please, you have 5 minutes. Thank you.

STATEMENTS OF JONI CUTLER, SOUTH DAKOTA STATE SENATOR; RAYMOND J. KEATING, CHIEF ECONOMIST, SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL; AND JOHN C. ARENSMEYER, FOUNDER & CEO, SMALL BUSINESS MAJORITY

STATEMENT OF JONI CUTLER

Ms. CUTLER. Thank you, Mr. Chairman. Good afternoon, Chairman Lankford, Ranking Member Connolly, and distinguished members of the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform. I am Senator Joni Cutler, a member of the South Dakota Senate. I am also a member of the Executive Committee of the National Conference of State Legislatures, on whose behalf I am testifying.

NCSL is a bipartisan organization representing the 50 State legislatures and the legislatures of our Nation's commonwealth, territories, and District of Columbia. I am very appreciative of this opportunity to testify on the States' experience with unfunded and underfunded Federal mandates.

This hearing is particularly timely for three reasons: First, legislative, regulatory and fiscal burdens the Federal Government imposes on State and local governments are often overlooked and frequently underappreciated; second, we have just celebrated the 16th anniversary of the enactment of the Unfunded Mandates Reform Act and have learned much about its effectiveness and drawbacks that I will share with you today; third, Congress and the administration are embarking on an effort to rein in annual deficits and manage the national debt, and that effort will unavoidably put on the table State-Federal partnerships, intergovernmental relationships, and basic issues regarding fiscal federalism.

In 1995, NCSL and our fellow State and local organizations hailed bipartisan passage and enactment of UMRA. That law enhanced the visibility of potential unfunded Federal mandates and cost shifts, and in some instances changed the nature of the discussions leading to passage of Federal legislation. It has led to the development of an able division within the Congressional Budget Office that produces vital intergovernmental mandate analysis and an annual report on UMRA. UMRA's procedural hammer, or more so the threat of using this hammer, has seemingly acted to douse some efforts to impose unfunded mandates and shift costs to States and localities.

A reading of any annual CBO report on UMRA shows how few mandated actions exceed the law's threshold. However, UMRA's limitations make it a candidate for improvement and strengthening, and legislation accomplishing such originating in this subcommittee would be very helpful. UMRA's limits will not serve the essential conversation needed to address reduced future Federal funding or discretionary mandatory programs. Its limits and loopholes, much the result of negotiations that took place 16 years ago, omit many mandates in the eyes of State legislators and other State and local elected officials. These omissions include new conditions of grants in aid, reduction of Federal funds without commensurate reduction in program or administrative requirements, sanc-

tions for failure to comply with unfunded mandates, and creation of underfunded national expectations.

Therefore, NCSL is urging a three-pronged approach to improve UMRA, broaden cooperation and discussion on State and Federal programs. First, NCSL's policy supports legislation that would correct UMRA's limitations. For example, H.R. 2255 from the 111th Congress serves as an excellent example of bipartisan-sponsored legislation that would enjoy support from me and my fellow lawmakers if offered again in the 112th Congress.

Such legislation needs to include open-ended entitlements in any mandatory or entitlement program with capped Federal funding participation in the definition of an unfunded mandate. It should also eliminate program exclusions in the underlying current statute and include new conditions imposed through older programs under the definition of a mandate. It must also include conditions of grants in aid. And among several points made in my written testimony, a revised UMRA law should require Federal reimbursement to State and local governments for costs imposed on them by any new Federal mandates for as long as the mandate exists.

Second, the House and Senate budget resolutions for fiscal year 2012 should contain general instructions to appropriators and committees of jurisdiction to avoid creating or expanding existing unfunded or underfunded mandates. I urge this subcommittee's membership to prod your leadership and budget committee chairs to include this instruction in the fiscal year 2012 and subsequent year budget resolutions.

Third, finally, there are several pending reauthorizations before the 112th Congress. For the most part, committees other than Oversight and Government Reform have jurisdiction over them; however, any effort to reauthorize an existing program, such as No Child Left Behind, the Temporary Assistance for Needy Families Block Grant, and the SAFETEA-LU transportation program should be seen as an opportunity for this subcommittee to explore, repeal, or minimize the provisions that shift costs to States. They should also be seen as opportunities to provide program and administrative savings for all levels of government simultaneously, while maintaining essential public services.

Mr. Chairman and Ranking Member Connolly, NCSL offers to work together with you to address what are hopefully mutual concerns regarding these authorizations. Mr. Chairman, thank you for inviting me and the National Conference of State Legislatures to testify before you today. I look forward to responding to questions subcommittee members may have.

[The prepared statement of Ms. Cutler follows:]



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

TESTIMONY OF

**JONI CUTLER
SOUTH DAKOTA STATE SENATE**

ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING

UNFUNDED MANDATES AND REGULATORY OVERREACH PART II

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

**SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM**

UNITED STATES HOUSE OF REPRESENTATIVES

March 30, 2011

Chairman Lankford, Ranking Member Connolly and distinguished members of the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, I am Joni Cutler, a member of the National Conference of State Legislatures's (NCSL) Executive Committee and the South Dakota Senate. I appear before you today on behalf of NCSL, a bi-partisan organization representing the 50 state legislatures and the legislatures of our nation's commonwealths, territories, and the District of Columbia.

Thank you for the opportunity to testify before you today about the Unfunded Mandates Reform Act of 1995 (UMRA; P.L. 104-4) and our experience with unfunded and underfunded intergovernmental mandates that are placed upon state and local governments. We'd also like to thank the chairman for raising this issue, as the financial burden the federal government imposes on state and local government is often overlooked and underappreciated.

My presentation today will highlight the effectiveness and limitations of UMRA, the impact of those limitations on state budgets and the need for substantive and technical changes to the law. As mentioned in the legislation, UMRA was adopted in an effort "...to curb the practice of imposing unfunded federal mandates on state and local governments."¹ While we would argue some of the provisions within UMRA have been effective, NCSL has identified at least \$130 billion in cost shifts from the federal government on to states between federal fiscal years 2004 to 2008 using NCSL's broader definition of what constitutes an unfunded mandate.

¹ Unfunded Mandates Reform Act of 1995.

NCSL remains an adamant supporter of UMRA. It provides us with Congressional Budget Office (CBO) analyses of the intergovernmental fiscal ramifications of pending legislation. It has a procedural hammer to call further attention to potential unfunded or underfunded mandates. And, the mere procedural threat has changed some, but not all, discussions and negotiations leading up to the advancement of legislation. CBO's annual reports to Congress have consistently shown that few pieces of legislation cross UMRA's threshold. Some of that can be attributed to the procedural threat UMRA imposes – some to the threshold itself – and some to the many exclusions and the definition of a “mandate” in the underlying law. Therefore, having just passed the 16th anniversary of UMRA's enactment, NCSL believes UMRA needs to be strengthened in order to improve federal accountability, enhance consultation and place the fiscal effects of federal legislation on state and local governments under a sharper microscope.

Our call to strengthen UMRA is even more imperative when looking at state and local government fiscal conditions. Even though states face fiscal uncertainties, they must continue to balance annual and biennial budgets. In fiscal years 2009-2011, states closed general fund budget gaps of more than \$400 billion.² Those gaps represent approximately 20 percent of the states' collective general funds over these three fiscal years. NCSL information points to the need to close gaps estimated to be \$150 billion or more for fiscal years 2012-2013.³ An updated report on state fiscal conditions is due next month. I offer to share that report with this subcommittee as soon as it is available. NCSL's research also indicates that 5 to 10 percent of state general fund budgets on average are used to fill in shortfalls in federal funding for mandated activities. Combine these

² National Conference of State Legislatures. *State Budget Update: November 2010* (Denver, Colorado: NCSL, December, 2010).

³ Ibid.

shortfalls with federal maintenance of effort provisions, depressed revenues and an economic downturn and you have severe fiscal challenges – for states, and also for the federal government and localities.

State legislators view mandates more expansively than UMRA's definition. We believe there are mandates when the federal government:

- Establishes a new condition of grant in aid.
- Reduces current funds available, including a reduction in the federal match rate or a reduction in available administrative or programmatic funds, to state and local governments for existing programs without a similar reduction in requirements.
- Extends or expands existing or expiring mandates.
- Establishes goals to comply with federal statutes or regulations with the caveat that if a state fails to comply they face a loss of federal funds.
- Compels coverage of a certain population/age group/other factor under a current program without providing full or adequate funding for this coverage.
- Creates underfunded national expectations, e.g., homeland security.

The experience of state and local governments with UMRA, coupled with our view of what constitutes a mandate, suggests future review and strengthening of UMRA. There remain gaps in the fiscal protections provided to state and local governments. The law must be refined to provide broader protections to states and localities against the imposition of costly and administratively cumbersome mandates. Specifically, NCSL encourages the federal government to enact reforms that include:

- Expansion of the definition of an unfunded mandate to include all open-ended entitlements, such as Medicaid, child support and Title 4E (foster care and adoption assistance) and proposals that would put a cap on or enforce a ceiling on the cost of federal participation in any entitlement or mandatory spending program. Furthermore, any proposal that places a cap or enforces a ceiling must be accompanied by statutory offsets that reduce state spending, administrative duties or both.
- Elimination of the existing exclusions under Section 4 of UMRA. The experience of Congress in overcoming an unfunded mandate point of order by majority vote demonstrates that the protections afforded by UMRA will not prevent Congress from exercising its will in important areas such as enforcing constitutional rights or meeting national security needs. However, excluding such legislation from the requirements of UMRA precludes an official accounting of the costs imposed under such legislation.
- Expansion of the definition of mandates to include new conditions of federal funding for existing federal grants and programs, including costs not previously identified.
- Expansion of the definition of mandates to include proposals that would reduce state revenues, especially when changes to the federal tax code are retroactive or otherwise provide states with little or no opportunity to prospectively address the impact of a change in federal law on state revenues.
- Expansion of the definition of mandates to include those that fail to exceed the statutory threshold only because they do not affect all states.

- Revision of the definitions of mandates, direct costs or other provisions of the law to capture and more accurately reflect the true costs to state governments of particular federal actions.
- Enactment of legislation which would require federal reimbursement, as long as the mandate exists, to state and local governments for costs imposed on them by any new federal mandates.
- Improvement of Title II, including enhanced requirements for federal agencies to consult with state and local governments and the creation of an office within the Office of Management and Budget that is analogous to the State and Local Government Cost Estimates Unit at CBO.

UMRA has not achieved its full and intended purpose, as exclusions and exceptions have limited the act's coverage. Therefore, NCSL has endorsed legislation in previous Congresses to correct these limitations. In the 111th Congress, North Carolina Representative Virginia Foxx and Texas Representative Henry Cuellar introduced H.R. 2255, the Unfunded Mandates Information and Transparency Act of 2009, which would have closed several of the loopholes that allow legislation to fall outside the definition of an unfunded mandate as applied by UMRA. While H.R. 2255 was unable to garner extended support in the House of Representatives, it would have amended UMRA to require CBO and the Joint Commission on Taxation (JCT) to report on indirect costs, require CBO to report on the state impact of changes to conditions of grant aid and require a written report from CBO for all regulatory actions resulting in expenditures by state and local governments exceeding \$100 million in any year. NCSL is looking

forward to supporting similar legislation in the 112th Congress that would achieve UMRA's original legislative intent by closing loopholes in the current law.

It would also be immensely helpful if the fiscal year 2012 budget resolution contained a general instruction to appropriators and committees of jurisdiction to avoid imposing new or expanding existing unfunded or underfunded mandates. To this end, I respectfully encourage you to request your leadership and budget committee members to support the inclusion of language in the budget resolution accomplishing this. With discretionary spending and entitlement programs on the table to help reduce future debt, NCSL sees this as an opportunity for Congressional leadership to affirm the federal deficit will not be exported to state and local governments. While we fully expect future cuts to state-federal programs, shifting costs to states while not providing greater program flexibility or relief from maintenance of effort requirements will be detrimental to states when they are already in precarious fiscal conditions. If the budget resolution advocated for UMRA reform, this would signal a strong statement to restore balance to the intergovernmental fiscal partnership and hopefully promote intergovernmental savings.

Finally, there are several pending reauthorizations before the 112th Congress. Three of these reauthorizations – the No Child Left Behind Act; the Temporary Assistance for Needy Families Block Grant; and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) program – contain unfunded or underfunded mandates. These reauthorizations present opportunities to either repeal or minimize provisions that shift costs to states. They present opportunities to potentially achieve savings for all levels of government while providing public services deemed essential. Throughout the course of the 112th Congress, NCSL

would like to work with you, Mr. Chairman, and members of this subcommittee to address what we hope are mutual concerns regarding these reauthorizations.

Mr. Chairman, in closing I would like to add that NCSL remains steadfast in its resolve to work with federal policymakers to reduce the federal deficit and to maintain critical programs to our most vulnerable populations. Controlling the deficit is a daunting task involving difficult choices, many of which involve our intergovernmental partnerships and some of the areas where the largest cost shift occurs—Medicaid and education. NCSL recognizes the pressure for the federal government to reduce its annual deficits and curb growth in the national debt. We are also aware mandatory federal spending and restrictions on the growth of discretionary spending promote a tendency to seek the accomplishment of national goals through federal mandates on state and local governments. However, NCSL is encouraged that many federal lawmakers have recognized the difficulties posed by the cost shifts to states and we look forward to working with you on this important issue. I thank you for this opportunity to testify and would be happy to answer any questions the committee may have.

Mr. LANKFORD. Thank you very much.
Mr. Keating.

STATEMENT OF RAYMOND J. KEATING

Mr. KEATING. Chairman Lankford, Ranking Member Connolly, and members of the committee, the Small Business and Entrepreneurship Council is pleased to provide testimony today regarding the Unfunded Mandates Reform Act and how it relates to small business and the economy. My name is Raymond Keating. I am chief economist with SBE Council, a nonpartisan, nonprofit advocacy, research, and training organization dedicated to protecting small business and promoting entrepreneurship. SBE Council works with leaders at local, State, Federal, and international levels to improve the environment for entrepreneurship and enhance competitiveness.

Unfortunately, government too often erects obstacles to improving the climate for entrepreneurship and to enhancing the competitiveness of U.S. business, including regulations and mandates that raise costs, diminish incentives and resources for risk-taking, reduce opportunities and/or create uncertainty.

I am also an adjunct professor at the Business School at Dowling College in New York. In the MBA Program I frequently teach public sector economics, in which I emphasize the importance of understanding the incentives at work not just in the private sector, but in the public sector as well. And, in fact, powerful incentives exist within the governmental and political spheres when it comes to imposing mandates, given the ability to take governmental actions while others deal with the cost.

It is also critical to understand that the costs of regulations and mandates fall much harder on small businesses. Small businesses often lack adequate resources both in terms of dollars and staff to deal with the additional costs that come with governmental mandates.

For good measure, the taxes needed to fund intergovernmental mandates come from small businesses and their customers.

Given the powerful incentives at work and often substantial costs, it is important to have some kind of institutional checks and balances in the system when it comes to unfunded mandates.

UMRA, which SBE Council supported, is one of those counterbalancing measures. It has been beneficial by providing additional information about the direct costs of unfunded Federal mandates, injecting the issue of costs further into the debate, and discussion is a positive development from the small business perspective. However, problems do exist or, more accurately, shortcomings. I will name three very quickly.

First, new regulations being proposed under the Dodd-Frank Wall Street Reform and Consumer Protection Act have the potential to restrict access to and raise the cost of capital and credit for small business owners; proposed Federal Reserve rules regarding interchange fees, for example, could make a currently challenging problem much worse for small businesses. Yet, the independent regulatory agencies that will be issuing these rules and are issuing these rules are exempt from UMRA.

Second, the FCC voted in December to impose net neutrality regulations on Internet broadband providers. The FCC inserting itself into pricing and operational decisions would have consequences for investment and innovation in broadband, with small businesses likely experiencing negative consequences as consumers, content providers, and app entrepreneurs, for example. But the FCC is another independent agency not covered by UMRA.

Third, the Patient Protection and Affordable Care Act included unfunded mandate burdens far exceeding the thresholds in UMRA. Those costs affect, either directly or indirectly, small businesses. Unfortunately, recognition that this massive health care measure did exceed the threshold levels of UMRA meant little in terms of legislative reality, which raises some question about UMRA's ultimate impact.

I would like to just quickly note six problems and limitations that require some remedies. First, among the most glaring and troubling is that the law does not cover a large swath of Federal mandates, including rules issued by independent regulatory agencies. No. 2, shortcomings with UMRA's point of order provisions need to be remedied by having both informational and substantive points of order apply to legislative and agency mandates on both government and the private sector.

Third, problems regarding costs must be remedied. Indirect costs impacting such areas as prices, risk-taking, economic growth and employment need to be considered. Fourth, when it comes to agency mandates, an independent entity such as the GAO, a separate entity within OMB, or an independent office should have responsibility for evaluating the cost of such mandates. Fifth, the judicial review included in UMRA lacks teeth, to say the least, and offers no real incentives to challenge agencies or for agencies to deal more legitimately with UMRA requirements.

Sixth, UMRA needs to be built upon or amended to establish means for evaluating the effectiveness, the actual cost, and the emergence of unintended consequences of existing regulations and mandates. Requiring sunseting and periodic evaluation of existing regulations and mandates makes sense given the realities of a dynamic economy. Along with this, a required congressional vote on all rules, mandates and regulations being proposed would enhance accountability.

SBE Council appreciates the opportunity to provide input to the committee, and I look forward to your questions.

[The prepared statement of Mr. Keating follows:]



“Unfunded Mandates and Regulatory Overreach Part II”

Testimony of

**Raymond J. Keating
Chief Economist
Small Business & Entrepreneurship Council**

March 30, 2011

Before the

**Subcommittee on Technology, Information Policy, Intergovernmental
Relations and Procurement Reform**

Committee on Oversight and Government Reform

United States House of Representatives

**The Honorable James Lankford, Subcommittee Chairman
The Honorable Gerald Connolly, Ranking Minority Member**

Chairman Lankford, Ranking Member Connolly, and members of the Committee, the Small Business & Entrepreneurship Council (SBE Council) is pleased to provide testimony today regarding the 1995 Unfunded Mandates Reform Act and how it relates to small business and the economy in general.

My name is Raymond J. Keating, chief economist with SBE Council, a nonpartisan, nonprofit advocacy, research and training organization dedicated to protecting small business and promoting entrepreneurship. With nearly 100,000 members and 250,000 small business activists nationwide, SBE Council is engaged at the local, state, federal and international levels where we collaborate with elected officials, policy experts and business leaders on initiatives and policies that improve the environment for entrepreneurship and enhance competitiveness.

Unfortunately, government erects significant obstacles to improving the climate for entrepreneurship, and to enhancing the competitiveness of U.S. businesses. Taxes, regulations and mandates, excessive government spending, uncertainty surrounding monetary policy, and trade barriers, for example, all serve to raise costs, diminish incentives and resources for risk taking, reduce opportunities, and/or create uncertainty.

For our purposes today, the focus is on unfunded mandates, i.e., on federal legislation and regulations that impose costs on private-sector entities and/or other levels of government in order to achieve certain goals without covering those costs with federal funding.

In addition to being chief economist with SBE Council, I also am an adjunct professor in the business school at Dowling College in New York. One of the courses I frequently teach in the MBA program is "Public Sector Economics." In that class, I emphasize the importance of understanding the incentives at work not just in the private sector, but in the public sector as well. In fact, powerful incentives exist within the governmental and political spheres when it comes to imposing mandates on other levels of government or on the private sector. After all, considerable political costs or risks exist when government raises taxes or increases debt in order to fund a new or expanded undertaking. Therefore, the ability to take – and take credit for – governmental action, while having others – whether it be private businesses or other governmental entities – deal with the costs provides a powerful incentive to regulate and mandate.

Of course, it must be noted that such incentives are not just at work at the federal level, but also in state and local governments. States often impose unfunded mandates on localities and businesses, and local governments regulate private enterprises as well.

It is critical to understand that the costs of regulations and mandates fall much harder on small businesses. Other levels of government can tap the taxpayers to cover the costs of unfunded mandates. Large businesses, though without a doubt negatively impacted, often have the resources to better deal with the costs of mandates and regulations. However, small businesses often lack adequate resources – both in terms of dollars and staff – to deal with the additional costs that come with governmental mandates.

The U.S. Small Business Administration's Office of Advocacy provides an idea of how much more burdensome regulations are for small businesses. Advocacy's most recent regulatory impact study found that per-employee federal regulatory costs in 2008 for small businesses with fewer than 20 employees registered \$10,585, compared to \$7,755 for firms with more than 500 employees. So, on a per-employee basis, the federal regulatory burden on small businesses came in at 36 percent higher than the burden on large companies.

For good measure, the small business community has reason to be concerned about federal mandates on other levels of government, as the state and/or local taxes needed to fund such mandated activities come from small businesses and their customers.

Given the powerful incentives at work and the often-substantial costs, it is important to have some kind of institutional (whether constitutional or legislative) counterbalances, or checks and balances, in the system when it comes to unfunded mandates.

The Unfunded Mandates Reform Act (UMRA), which SBE Council supported, is one counterbalancing measure. The following from a U.S. Government Accountability Office report ("Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement," GAO-05-454, March 2005) sums up the key purpose and points of UMRA:

The Unfunded Mandates Reform Act of 1995 was enacted to address concerns expressed about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. Although UMRA was intended to curb the practice of imposing unfunded federal mandates, the act does not prevent Congress or federal agencies from doing so. Instead, it generates information about the potential impacts of mandates proposed in legislation and regulations. In particular, title I of UMRA requires Congressional committees and the Congressional Budget Office (CBO) to identify and provide information on potential federal mandates in certain legislation. Title I also provides opportunities for Members of Congress to raise a point of order when covered mandates are proposed for consideration in the House or Senate. Title II of UMRA requires federal agencies to prepare a written statement identifying the costs and benefits of federal mandates contained in certain regulations and consult with affected parties. It also requires action of the Office of Management and Budget (OMB), including establishing a 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. Title III of UMRA required the Advisory Commission on Intergovernmental Relations to conduct a study reviewing federal mandates. Title IV establishes limited judicial review regarding agencies' compliance with certain provisions of title II of the act.

In terms of the definition of an “unfunded mandate,” the GAO report added: “UMRA generally defines a federal mandate as any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments (intergovernmental mandates) or the private sector (private sector mandates) or that would reduce or eliminate the funding authorized to cover the costs of existing mandates.” As for the threshold levels in the UMRA, they were \$50 million or more for mandates on other levels of government and \$100 million or more on the private sector via legislation, and \$100 million for mandates via federal agencies. These levels are indexed for inflation, with the 2011 levels being \$71 million for intergovernmental mandates and \$142 million for private-sector mandates via congressional legislation, and \$142 million for federal agency mandates.

The UMRA has been beneficial by providing additional information about the direct costs of unfunded federal mandates. For all involved in the policymaking process, more information is always better. That’s especially the case with policymakers gaining a better understanding of the costs being imposed through regulation and mandates. Injecting the issue of costs further into the debate and discussion when it comes to regulations and mandates is a positive development from the perspective of small business growth and survivability, investment, economic growth, and job creation.

Consider the following points from a 2004 GAO analysis (“Unfunded Mandates: Analysis of Reform Act Coverage,” GAO-04-637, May 2004):

CBO stated in its July 2003 congressional testimony that “both the amount of information about the cost of federal mandates and Congressional interest in that information have increased considerably. In that respect, title I of UMRA has proved to be effective.” The Chairman of the House Rules Committee was quoted in 1998 as saying that UMRA “has changed the way that prospective legislation is drafted... Anytime there is a markup [formal committee consideration], this always comes up.” Although points of order are rarely used, they may be perceived as an unattractive consequence of including a mandate above cost thresholds in proposed legislation.

In addition, in congressional testimony in March 1999, Angela Antonelli, a former Director of the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation, reported: “During 1996 and 1997, I studied the initial implementation of UMRA to determine how well the act was living up to Congress’s intent. My research led me to conclude that the contribution of the Congressional Budget Office’s (CBO) analysis of the cost of new mandates had resulted in Members seeking more information at an earlier stage in the development of their legislative proposals and that the information provided by the CBO often helped to produce more sensible policy outcomes.”

However, problems exist with UMRA, or perhaps more accurately, there are shortcomings.

Consider the following examples of regulations and mandates that will directly and indirectly affect small businesses, but will elude or fall outside UMRA:

- The Dodd-Frank Wall Street Reform and Consumer Protection Act

New regulations being proposed (and to be proposed) under the auspices of Dodd-Frank have the potential to restrict access to, and raise the cost of, capital and credit for small business owners. Proposed Federal Reserve rules regarding interchange fees, for example, could make a currently challenging problem much worse for small business owners. The financial industry - including small banks and credit unions - and consumers - including small businesses using debit card and related banking services - will be impacted by the Federal Reserve's interchange price regulations that would reduce debit card interchange revenue by an expected 70 percent. After all, whenever government overrules prices set in the competitive marketplace, increased costs are inevitable. Those costs can come in various forms. Providers of a price-controlled good or service can reduce the supply of the product, diminish the quality (including through reduced investment and innovation), and/or raise prices of related goods or services.

Interchange fee regulation is but one of many ways that Dodd-Frank will affect small business owners and their access to capital and its cost. Yet, most of the rules to implement this legislation will be exempt from UMRA due to being issued by independent regulatory agencies, such the Federal Reserve, the Securities and Exchange Commission, and the forthcoming Consumer Financial Protection Bureau (CFPB).

- The FCC's Net Neutrality Regulations

The Federal Communications Commission (FCC) voted in December, by a 3-2 margin, to impose net neutrality regulations on Internet broadband providers. In effect, the FCC will insert itself into pricing and operational decisions. This step was taken despite the fact that a federal appeals court in April 2010 ruled that the FCC lacked such regulatory authority. For good measure, members of Congress, from both sides of the political aisle made clear that this should be a congressional decision. Clearly, a government agency inserting itself into broadband network pricing and management decisions would have a negative effect on investment and innovation in broadband, with small businesses experiencing negative consequences as consumers, content providers, app entrepreneurs, and in other roles dealing with broadband innovation and development. Nonetheless, the FCC is another independent regulatory agency not covered by UMRA.

- The Patient Protection and Affordable Care Act

The major health care measure signed into law by the President in March 2010 included unfunded mandate burdens that far exceeded the thresholds in UMRA. In a late 2009 analysis, for example, CBO reported that the private and the intergovernmental mandate costs "greatly exceeded" the threshold levels.

Regarding the private sector, CBO noted:

The most costly mandates would be the new requirements regarding health insurance coverage that apply to the private sector. The legislation would require individuals to obtain acceptable health insurance coverage, as defined in the legislation. The legislation also would penalize medium-sized and large employers that did not offer health insurance to their employees if any of their workers obtained subsidized coverage through the insurance exchanges. The legislation would impose a number of mandates, including requirements on issuers of health insurance, new standards governing health information, and nutrition labeling requirements.

And in terms of intergovernmental mandates:

The provisions of the legislation that would penalize those entities—if they did not offer health insurance to their employees and any of their workers obtained subsidized coverage through the insurance exchanges—account for most of the mandate costs.

The CBO analysis also brings up a point on mandated costs that are excluded under UMRA:

As conditions of federal assistance (and thus not mandates as defined in UMRA), the legislation would require state and local governments to comply with “maintenance of effort” provisions associated with high-risk insurance pools. New requirements in the Medicaid program also would result in an increase in state spending. However, because states have significant flexibility to make programmatic adjustments in their Medicaid programs to accommodate changes, the new requirements would not be intergovernmental mandates as defined in UMRA.

The question, of course, is: just how much flexibility does state and local governments have in actually dealing with these added costs? And the reality is: Very little.

And make no mistake, all of these costs affect, either directly or indirectly, small businesses.

While it was acknowledged that this massive health care measure did indeed exceed the threshold levels of UMRA, it mattered little in terms of legislative reality, and the measure was passed and signed into law. This raises questions about UMRA’s ultimate impact, and its lack of teeth.

Following are six key problems or limitations with UMRA that require remedies:

- First, among the most glaring and troubling is that the law does not cover a large swath of federal mandates.

UMRA “does not apply to conditions of federal assistance; duties stemming from participation in voluntary federal programs; rules issued by independent regulatory agencies; rules issued without a general notice of proposed rulemaking; and rules and legislative provisions that cover individual constitutional rights, discrimination, emergency assistance, grant accounting and auditing procedures, national security, treaty obligations, and certain elements of Social Security.” (Robert Jay Dilger and Richard S. Beth, “Unfunded Mandates Reform Act: History, Impact, and Issues,” Congressional Research Service, January 25, 2011.)

Again, that exemption for independent regulatory agencies is a stunning omission. After all, among such agencies are the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Reserve, the Federal Communications Commission, the National Labor Relations Board, and the Securities and Exchange Commission.

Given the largely informational nature of UMRA, no sound reasons exist for any of these exemptions. All regulations, rules and mandates should be covered with the understanding that more information makes for better decision-making.

- Second, there are problems with UMRA’s point-of-order provisions. They are limited to unfunded mandates through legislation, excluding agency mandates. In addition, while an informational point of order – i.e., against a measure whereby the congressional committee has not provided the estimated costs of a mandate – applies to both governmental and private-sector mandates, the substantive point of order – i.e., against the consideration of a measure exceeding the mandate threshold level – only applies to governmental mandates, not mandates on private-sector enterprises.

These shortcomings need to be remedied by having both informational and substantive points of order apply to legislative and agency mandates on both levels of government and the private sector.

In addition, some kind of supermajority vote should be required to overcome a point of order, as a necessary counterbalance given the strong incentives within government to regulate and impose mandates. Interestingly, in 2005, the Senate increased the vote needed to waive a point of order from a majority to 60 votes, but in 2007, the required vote was pushed back to a majority once more. (Robert Jay Dilger and Richard S. Beth, “Unfunded Mandates Reform Act: History, Impact, and Issues,” Congressional Research Service, January 25, 2011.) A sixty percent or two-thirds majority to waive a point of order would add some much-needed teeth to the point-of-order provision.

- Third, it is crucial that problems and limitations in terms of assessing costs be remedied. For example, UMRA is limited to estimating only direct costs. That is a worrisome shortcoming given the costs and incentive effects that regulations have on business and

investment decisions, as well as the similar costs and incentive effects that the taxes needed to fund intergovernmental mandates impose. Therefore, indirect costs, impacting such areas as prices, risk taking, economic growth and employment, need to be considered.

In addition, assessing the costs of mandates on a national basis can wind up missing instances whereby costs fall disproportionately and heavily on particular states and regions.

Also, a major error under UMRA is to have a higher threshold level for private enterprises compared to state and local governments – again, the 2011 levels being \$71 million for intergovernmental mandates and \$142 million for private-sector mandates via congressional legislation, and \$142 million for federal agency mandates. Given the role that private enterprise plays in our economy – i.e., the engine of innovation, invention, economic growth and job creation – UMRA’s threshold for private enterprises should be, at the very least, just as low as is the case for intergovernmental mandates via legislation. Again, given the potential effects on private enterprises and therefore on the overall economy, the bias under UMRA clearly should be on the low side in terms of threshold levels.

- Fourth, the incentives at work in government must be kept in mind. These incentives work against agencies doing a thorough, substantive and realistic evaluation of the costs of regulations and mandates that the agency itself is creating and imposing. When it comes to agency mandates, an independent entity – such as the GAO, a separate entity within OMB or an independent office – should have responsibility for evaluating the costs of such mandates.

Consider the following example offered in the May 2005 GAO analysis: “In one case, which we observed in a prior report, the U.S. Department of Agriculture (USDA) appeared to have developed a range of costs associated with implementing its rule on retained water in raw meat and poultry products. However, USDA provided only a lower bound estimate of \$110 million, but did not quantify median or upper bound cost estimates. Because the lower bound was so close to the inflation adjusted threshold of \$113 million, it is reasonable to assume that the median or upper bound estimate would have exceeded the threshold and been a mandate under UMRA.”

There should be no questions about the legitimacy of the efforts to estimate the costs of mandates.

- Fifth, the judicial review included in UMRA lacks any substance. As the GAO (May 2005) explained: “Specifically, the judicial review is limited to requirements that pertain to preparing UMRA statements and developing federal plans for mandates that may significantly impact small governments. However, if a court finds that an agency has not prepared a written statement or developed a plan for one of its rules, the court can order the agency to do the analysis and include it in the regulatory docket for that rule but the court may not block or invalidate the rule.” That lacks teeth, to say the least, and offers

no real incentives to challenge agencies, or for agencies to deal legitimately with UMRA requirements.

- Sixth, UMRA needs to be built upon or amended to establish means for evaluating the effectiveness, the actual costs, and the emergence of unintended consequences of existing regulations and mandates. A process for periodically evaluating the cost and effectiveness of mandates makes sense from the standpoint of getting policymaking right. Markets are constantly changing, including, for example, advancements in technology, enhanced global competition, and growing levels of entrepreneurship. Businesses need to adjust their products and strategies accordingly. The same should go for how government regulates and mandates. Requiring sunseting and periodic evaluation of existing regulations and mandates make sense given the realities of a dynamic economy. Along with this, a required congressional vote on all rules, mandates and regulations being proposed would enhance accountability, again, serving as a needed check and balance on the regulating and mandating process.

Thank you for your attention to this most important issue. SBE Council appreciates the opportunity to provide input to the Committee and I look forward to your questions.

Mr. LANKFORD. Thank you very much.
I now recognize Mr. Arensmeyer. Thank you.

STATEMENT OF JOHN C. ARENSMEYER

Mr. ARENSMEYER. Thank you, Mr. Chairman. Good afternoon, Chairman Lankford, Ranking Member Connolly, and members of the committee. Small Business Majority is a nonpartisan small business advocacy organization founded and run by small business owners. We represent the 28 million Americans who are self-employed or own businesses of up to 100 employees. Our organization uses scientific opinion and economic research to understand and represent the interests of all small businesses.

I ran two small businesses for 15 years and have run a nonprofit organization for the past 5. Other members of our senior team have long careers as entrepreneurs. As such, we are well aware there are times when small businesses are overburdened by government regulation and that regulation often affects small businesses more than big businesses. This is why we support President Obama's initiative to review government regulation on business and we support the Small Business Administration's role in monitoring compliance of the Regulatory Flexibility Act. We share the view that any regulations that impact small businesses should be carefully scrutinized and we support the requirements already in the Unfunded Mandates Reform Act that require government to analyze and report on the impacts of new regulations.

That said, there is a legitimate role for government in passing laws that address private sector business activity. Business owners are pragmatic, bottom line-oriented, and preventing or delaying all regulation that might in some way affect small business would be shortsighted and could actually remove an important tool that can stimulate small business innovation and contain costs. Indeed, our research has shown that small business supports government as a facilitator and an arbiter that sets rules of the road.

The effects of legislation on the private sector should be carefully considered as each bill is being debated, not by a blanket one-size-fits-all approach. The first items on Small Business's list of concerns are the need for customers and finding ways to deal with burdensome expenses. In many cases government can help. I am going to focus on two successful examples of this, the Patient Protection and Affordable Care Act and the Clean Air Act.

The No. 1 problem we hear from small businesses about is the cost of health care. Small businesses want to offer health coverage, but our scientific bipartisan survey show that 86 percent of them cite cost as the biggest barrier. A major study that we conducted found that, without reform, small employers would pay \$2.4 trillion over the next 10 years, costing us 178,000 jobs and \$52.1 billion in profits. This crisis compelled Congress to take action. The status quo was just simply unacceptable.

The Affordable Care Act addresses all these issues and more. While reducing the Federal deficit by more than \$200 billion over the next 10 years and more than \$1 trillion over 10 years after that. Our research shows that 4 million small businesses, that is 84 percent of all businesses, are eligible for tax credits in the law and that 33 percent of them tell us in the scientific polling we have

done that they are more likely to cover their employees because of the tax credits and the marketplaces that are being set up under the law starting in 2014.

For example, Mark Hodash, owner of Downtown Home and Garden, in Ann Arbor, Michigan, qualified for a \$15,000 tax credit this year. Knowing he had that credit gave him the confidence to add another person to his staff. His new employee, who was unemployed previously, now has a job and is contributing to the economy by paying taxes and buying goods.

Government support to the clean energy sector of the economy is also providing much-needed aid to small business. Indeed, without a strong government role in setting goals and standards, we will never successfully compete in the interconnected 21st century global economy that is becoming more and more centered on innovative clean energy solutions.

Over the last 40 years, the Environmental Protection Agency has proven itself as much a protector of the economy as of the public's health. Indeed, during the last two decades under the Clean Air, gross domestic product has increased 64 percent, while emissions of the most common air pollutants have declined by 41 percent. Between 2010 and 2015 alone, capital investments in pollution control and new generation will generate an estimated 1.46 million jobs. And the EPA's clean air standards for automobiles are projected to save owners \$3,000 per vehicle, this amount rising to \$7,400 for 2017 to 2022 model vehicles. This will have a substantial benefit for small business owners, especially for those businesses who rely on transportation.

Our bipartisan polling shows that 61 percent of small businesses agree that moving the country to clean energy is a way to restart the economy and make their businesses more competitive. A majority supports an active role for government in this process. For example, the Clean Air Act and Regulating Greenhouse Gases helps Cody Metcalf, President of LED light distributor WinderLumen LED in Windermere, Florida. Cody says if someone is paying attention to greenhouse gases, then there is more demand for our product.

As these examples show, a constructive partnership between business and government can provide economic opportunity and can help entrepreneurs cut some of the unnecessary and onerous costs of doing business. Wielding a legislative hammer, rather than employing a judicious and precise scalpel risks squashing a role for government that is often a boon to small business.

Thank you.

[The prepared statement of Mr. Arensmeyer follows:]



STATEMENT FOR THE RECORD

**BEFORE THE HOUSE SUBCOMMITTEE ON TECHNOLOGY, INFORMATION
POLICY, INTERGOVERNMENTAL RELATIONS AND PROCUREMENT
REFORM ON UNFUNDED MANDATES AND REGULATORY OVERREACH
PART II**

MARCH 30, 2011

**JOHN ARENSMEYER
FOUNDER & CEO
SMALL BUSINESS MAJORITY**

REVISED

Good afternoon Chairman Lankford, Ranking Member Connolly and members of the Subcommittee. Thank you for the opportunity to testify before the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform.

I'm John Arensmeyer, founder and CEO of Small Business Majority, a nonpartisan small business advocacy organization founded and run by small business owners and focused on solving the biggest problems facing small businesses today. We represent the 28 million Americans who are self-employed or own businesses of up to 100 employees. Our organization uses scientific opinion and economic research to understand and represent the interests of all small businesses.

I ran two small businesses for 15 years and have run a nonprofit organization for the past five. Other members of our senior team also have had long careers as entrepreneurs. As such, we are well aware there are times when small businesses are overburdened by government regulation, and that government regulation often affects small businesses more than big businesses. This is why Small Business Majority supports Executive Order 13563 "Improving Regulation and Regulatory Review," an initiative by President Obama to review government regulation on business. We also support the Small Business Administration Office of Advocacy's role in monitoring compliance with the Regulatory Flexibility Act, which requires federal agencies to analyze the impact of proposed regulations on small firms. We share the view that any regulations that impact small businesses should be carefully scrutinized and we support the requirements already in the Unfunded Mandates Reform Act that require government to analyze and report on the impacts of its new regulations.

That said, there is a legitimate role for government in passing laws that address private sector business activity. Business owners are pragmatic and bottom-line oriented, and preventing or delaying all regulation that might in some way affect small business would be short-sighted and could remove an important tool that can stimulate small business

innovation and contain costs. Indeed, our research has shown that small business supports government as a facilitator and an arbiter that sets rules of the road.

The effects of legislation on the private sector should be carefully considered as each bill is being debated; not addressed via a blanket one-size-fits-all approach. Research shows that the first things on small businesses' list of concerns are the need for markets and customers and finding ways to deal with burdensome expenses. In many case government can help.

I'm going to focus on two successful examples of this: The Patient Protection and Affordable Care Act and The Clean Air Act.

Benefits of the ACA for Small Business

The No. 1 problem we hear about from small business owners is the cost of healthcare. The Affordable Care Act is an example where government stepped in and offered benefits and financial relief to small business owners.

Small business owners want to offer health coverage, and our surveys show that most of them feel they have a responsibility to do so. We conducted surveys of small business owners in 19 states between December 2008 and August 2009.¹ Our key findings included the following:

- An average of 86% of small business owners who don't offer health coverage to their employees said they can't afford to provide it, and an average of 72% of those who do offer it said they are struggling to afford it;
- An average of 67% of respondents said reforming healthcare was urgently needed to fix the U.S. economy.

It should be noted that respondents to these surveys included an average of 15% more Republicans (39%) than Democrats (24%), while 27% identified as independent.

The exorbitant cost of insurance means that many small businesses are forced to drop coverage altogether. According to the Kaiser Family Foundation, 54% of businesses with fewer than 10 employees don't offer insurance.²

This makes small business employees a significant portion of the uninsured population. Of the 45 million Americans without health insurance in 2007, nearly 23 million were small business owners, employees or their dependents, according to Employee Benefit Research Institute estimates.³ And nearly one-third of the uninsured—13 million

¹ Small Business Majority, State Surveys Highlight Small Business Support for Healthcare Reform, August 2009, <http://www.smallbusinessmajority.org/small-business-research/opinion-research.php>.

² Kaiser Family Foundation/HRET, Employer Health Benefits Annual Survey, 2008, <http://ehbs.kff.org/2008.html>.

³ Employee Benefit Research Institute, Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 2008 Current Population, http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=3975.

people—are employees of firms with less than 100 workers.⁴ Moreover, 28% of the 22 million self-employed Americans have no insurance at all.⁵

Not only a problem for the uninsured, the cost of healthcare was a metastasizing financial burden on small business. An economic analysis we released in June of 2009 and based on modeling by MIT economist Jonathan Gruber concluded that without reform, small employers would pay \$2.4 trillion to cover healthcare costs by 2018, and 178,000 small business jobs and \$52.1 billion in profits would be lost due to those costs.⁶

This crisis compelled Congress to take action – the status quo was just unacceptable. The Affordable Care Act addresses all these issues and more, while reducing the federal deficit by more than \$200 billion over the next 10 years and more than \$1 trillion over the 10 years after that.

Without reform, we would impede our overall economic growth. Small businesses with fewer than 100 employees employ 42% of American workers.⁷ Traditionally, small businesses lead the way out of recessions. Continuing to address the healthcare crisis by implementing the Affordable Care Act was and continues to be essential to our vitality as a nation. This is an excellent example of how government can clear obstacles that threaten small business success.

Our research also shows that small business owners are more likely to provide insurance to their employees because of the tax credits and exchanges provided through the new healthcare law. In January, we released a national survey of 619 small business owners. We gauged how entrepreneurs view two critical components of the Affordable Care Act: the small business tax credits—a provision allowing businesses with fewer than 25 employees that have average annual wages under \$50,000 to get a tax credit of up to 35% of their health insurance costs beginning in tax year 2010—and health insurance exchanges—competitive online marketplaces where small businesses and individuals can band together to purchase private insurance starting in 2014.⁸ The survey found that one-third of employers who don't offer health insurance said they would be more likely to do so because of the small business tax credits, and 33% of respondents who currently do not offer insurance also said the exchange would make them more likely to do so.

We believe that once the public, and small business owners in particular, become more familiar with the new law, they will understand the financial benefits and cost savings it provides. In fact, a Kaiser Family Foundation study conducted in January 2010 found that although the public was divided overall about reform, they became more supportive when told about key provisions. After hearing that tax credits would be available to help small businesses provide coverage to employees, 73% said it made them more

⁴ Center for American Progress, *What Will Happen to Small Business if Health Care Is Repealed*, July 23, 2010, http://www.americanprogress.org/issues/2010/07/small_biz_reform.html.

⁵ *The Uninsured: A Primer*, "Kaiser Family Foundation, Oct. 2009, Page 11 (Table 9).

⁶ Small Business Majority, *Economic Research: The Economic Impact of Healthcare Reform on Small Business*, June 11, 2009, <http://www.smallbusinessmajority.org/small-business-research/economic-research.php>

⁷ U.S. Bureau of Census, *2006 County Business Patterns*

¹⁰ Small Business Majority, *Opinion Survey: Small Business Owners' Views on Key Provisions of the Patient Protection and Affordable Care Act*, Jan. 4, 2011, <http://smallbusinessmajority.org/small-business-research/small-business-healthcare-survey.php>.

supportive, and 63% felt that way after learning that people could no longer be denied coverage because of preexisting conditions.⁹

The huge number of small businesses eligible for a credit on their 2010 tax returns shows how wide-ranging the benefits of the ACA are. Small Business Majority and Families USA's study on the number of small businesses eligible for a tax credit on their 2010 tax returns shows that more than 4 million small businesses are eligible.¹⁰ That equates to 83.7% of all small businesses in the country. Perhaps even more encouraging is that nearly 1.2 million small businesses nationally are eligible to receive the maximum credit.

Those tax credits are helping small business owners, and our economy, today. For example, Mark Hodesh, the owner of Downtown Home and Garden in Ann Arbor Michigan, qualified for a \$15,000 tax credit this year. Knowing he had that credit gave Mr. Hodesh, who covers 75% of his employees' health insurance premiums, the confidence he needed to add another person to his staff. His new employee, who was unemployed previously, now has a job and health coverage and is contributing to the economy by paying taxes and buying goods. That's an excellent example of how government can create opportunity for economic growth.

Along with small business tax credits and insurance exchanges, the ACA helps entrepreneurs by controlling costs and reining in administrative expenses for small businesses. Small businesses pay 18% more on average than large businesses for comparable health policies. This is largely due to high administrative costs, which can be up to 30% of premiums. The law includes administrative simplification programs, helping to put the country on a path to lower-cost, standardized administrative transactions, processes and forms. Additionally, it establishes insurer efficiency standards that require 80% of premium dollars be spent on care, not administrative overhead and executive compensation, for small group and individual plans. For large groups plans, the standard will be 85%. All of these measures will lower the time doctors have to spend on paperwork.

The ACA also includes numerous reforms in Medicare that will reward value of care, not the volume of care. It requires the Department of Health and Human Services (HHS) to adopt value-based purchasing and payment methods for Medicare reimbursements for both physicians and hospitals, and move away from the fee-for-service system that is so costly and inefficient. What's more, cost containment measures made to Medicare will have a ripple effect to other areas of the system, further reducing costs. In addition, a provision of the Affordable Care Act includes \$200 million for small businesses to establish health and wellness programs that will empower their employees to make healthy lifestyle choices and lower the cost of health insurance.

In short, the ACA is a big relief to small business, not a burden or a cost.

⁹ Kaiser Family Foundation, Americans Are Divided About Health Reform Proposals Overall, But the Public, Including Critics, Becomes More Supportive When Told About Key Provisions, Jan. 22, 2010, <http://www.kff.org/kaiserpolls/kaiserpolls012210nr.cfm>.

¹⁰ Families USA and Small Business Majority, A Helping Hand for Small Businesses: Health Insurance Tax Credits, July, 2010, <http://smallbusinessmajority.org/small-business-research/tax-credit-study.php>.

Benefits of the environmental standards to small business

But it's not just new changes to the healthcare system that are helping small businesses. Government support to the clean energy sector of the economy is also providing much-needed aid. Without a strong government role in setting goals and standards, we will never successfully compete in the interconnected 21st century global economy that is becoming more and more centered on innovative clean energy solutions.

Over the last 40 years, the Environmental Protection Agency has proven itself as much a protector of our economy as of the public's health, and we see new EPA standards under the Clean Air Act as a key component to progressing toward a clean energy economy and to creating jobs. Indeed, during the last two decades under the Clean Air Act, Gross Domestic Product has increased by 64% while emissions of the most common air pollutants have declined by 41%.¹¹

We know that small business owners support key strategies needed to reduce pollution and transition to a clean energy economy. A national bipartisan poll of small business owners we conducted (33% Republicans, 26% Democrats and 22% independents) found that 61% of respondents agree that moving the country to clean energy is a way to restart the economy and make their businesses more competitive in the global economy.¹² The same poll found that small business owners want the government to create incentives that will help them be part of the clean energy economy, such as interest-free loans for energy-efficiency upgrades and small businesses that switch to clean energy, grants or subsidies to help small businesses upgrade to more energy-efficient equipment and free training or consultation on how to profit from the emerging clean energy industry. Numerous small businesses are already taking steps to conserve energy and many are interested in doing even more.

Contrary to claims from opponents of clean energy and environmental safeguards, reducing pollution is good for business, and the Clean Air Act has proven to be a wise investment for long-term economic growth. Studies show that the economic benefits of the Act have far exceeded the costs to businesses. According to the Office of Management and Budget, the total economic benefits of the Clean Air Act are estimated at more than 4 to 8 times the costs of compliance.¹³ Additionally, between 2010 and 2015, capital investments in pollution controls and new generation will create an estimated 1.46 million jobs or almost 300,000 year-round jobs on average for each of those five years.

Interest in the Clean Air Act and regulating greenhouse gases helps Cody Metcalf, president of LED light distributor WinderLumen LED in Windermere, Florida. Cody says that "if someone is paying attention to greenhouse gases, then there's more demand for our product," which boosts his bottom line.

¹¹ Small Business Majority economic research: THE CLEAN AIR ACT'S ECONOMIC BENEFITS: PAST, PRESENT AND FUTURE, October, 2010, http://www.smallbusinessmajority.org/energy/index_national_economic.php

¹² Small Business Majority opinion research: SMALL BUSINESSES AND CLEAN ENERGY POLICY - NATIONAL SURVEY, June, 2010, http://www.smallbusinessmajority.org/energy/index_national.php

¹³ Small Business Majority economic research: THE CLEAN AIR ACT'S ECONOMIC BENEFITS: PAST, PRESENT AND FUTURE, October, 2010, http://www.smallbusinessmajority.org/energy/index_national_economic.php

Moreover, EPA's clean air standards for 2012-16 model automobiles are projected to save owners \$3,000 over the life of the car¹⁴; this will rise to \$7,400 for 2017-22 model vehicles—something that will have a substantial benefit for small business owners, especially for those whose business relies on transportation.

It should be noted that the EPA rules specifically exempt small businesses, so that there is virtually no cost offset to the tremendous innovation benefits and cost savings that environmental standards will generate.

Another example of government regulations creating opportunities for small business comes out of California. In 2006, California passed clean energy standards, commonly known as AB 32. A study that we released last October found the AB 32 will provide significant opportunities to small businesses throughout the state. Those opportunities include:

- Increased investment in energy efficiency. The legislation will fuel demand for and increase investment in energy efficiency goods and services, thus generating new prospects for small businesses that provide them.
- Incentives for companies to go green. AB 32 will create savings and boost profit margins for new and existing “Main Street” small businesses that successfully go green and employ brand differentiation strategies to grow their businesses.
- Increased spending on non-energy purchases. AB 32 will reduce spending on energy expenses and increase demand in many sectors for goods and services, which will in turn pad small businesses coffers.
- New innovation. AB 32 is already driving investment in and development of technological innovation, and will continue this trend through its implementation.

Through these opportunities, AB 32 has helped lay the foundation for significant growth throughout California's small business community. In fact, a report we released in October of 2010 found the law will help increase revenues to small service businesses—50% of all small businesses in the state—by \$4.6 billion by 2020, and more than 15,000 jobs will be added. Because of requirements in the law that spur greater fuel and energy efficiency, consumers will spend less on electricity and gasoline, freeing up cash to spend locally on services. The financial benefit translates to an extra \$1,115 per employee for California small service businesses.¹⁵

Conclusion

¹⁴ Environmental Protection Agency study: Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, April 2010, page 1-20, www.federalregister.gov/articles/2010/05/07/2010-8159/light-duty-vehicle-greenhouse-gas-emission-standards-and-corporate-average-fuel-economy-standards.

¹⁵ Small Business Majority economic research: Economic Opportunities for Small Business Under AB 32, October, 2010, http://www.smallbusinessmajority.org/energy/index_CA_AB-32.php.

As these examples show, a constructive partnership between business and government can provide economic opportunity where none existed before and can help entrepreneurs cut some of the unnecessary and onerous costs of doing business.

A blanket solution to government regulation could damage our small businesses. Rather, each time government creates regulations it must examine how they will impact small business. That is why Small Business Majority supports the requirements already in the Unfunded Mandates Reform Act that require government to analyze and report on the impacts of its new regulations.

Wielding a legislative hammer rather than employing a judicious and precise scalpel risks quashing a role for government that is often a boon to small businesses.

Mr. LANKFORD. Thank you very much.

Based on our prior agreement that I had with the ranking member, I am going to recognize myself for 4 minutes, and we will do 4 minute questioning time on that.

Senator Cutler, thank you for being here. Thank all of you for being here, in fact, and for your testimony, both written and oral. I would like to also add that if anyone else wants to be able to submit a statement, that they can certainly do that in writing and we will receive those for the next 7 days.

Senator Cutler, you talk about statutory caps, for instance, and talk about when caps are added, you would like to have some basic statutory relief that would offset that; that it may be a situation where you are not looking for additional funds, but looking for additional offsets. Can you elaborate more on that, what you mean?

Ms. CUTLER. Well, I think, really, if I could make one point and have one takeaway point for you today, it would be that in all of this what we are really looking for is the difference between theory and effect, really, the idea that whatever is in the statute should clearly reflect the effect that it is going to have on the States, as we struggle so hard right now in these times to balance our budgets. So any time we have a cap, then we look toward what is it the States would have to do to remedy that cap, and we should be able to clearly identify through the process what it is that is going to take place at a State-by-State level; and that would be so very helpful to us in planning our budgets.

Mr. LANKFORD. You also made a statement about changing the term direct cost or expenditure to a reasonably foreseeable direct cost or indirect cost. Can you elaborate a little bit more on that as well?

Ms. CUTLER. Thank you, Mr. Chairman. Those indirect costs really are described now under the definition as an indirect cost, but in reality they still have to come up and take their place in our budgets. So by including things that are presently exempted, by identifying the cost shifts that any piece of legislation may have on shifting the burden of costs to the States that they presently don't have, and then adding to the definition those changes that are made in the programs that presently exist, we will help the States go a long way in really planning for taking care and coming into compliance with the requirements of the Federal legislation that you pass.

Mr. LANKFORD. OK, thank you.

Mr. Keating, you made some very specific recommendations. In one of them you were talking about independent agencies that are exempted from UMRA. Any specific examples that you can note? I know you have a lot in your opening statement about dealing with independent agency. You mention SEC at one point, but other examples you can give us on that?

Mr. KEATING. Well, I mentioned the FCC in terms of what they are doing in terms of net neutrality regulation; I talked about the new consumer protection agency that is being developed. These are all going to have clear impacts on the small business community, what they are putting forward. Net neutrality regulation, it is not just the big broadband providers. When you look at all the costs, again, getting to all the costs in the equation, it is going to be felt

throughout the economy and small business and entrepreneurs as well.

Mr. LANKFORD. Do you see any reason why Congress, when they are making a decision about a particular piece of legislation, should not be informed even if it affects some independent agency, why the lack of information is somehow beneficial?

Mr. KEATING. No, I don't understand that. Quite frankly, I would say that there shouldn't be any exclusions here across the board because we are talking about information here, and, in my view, more information is better. The more information you have, the better decisions you can make. So no matter what we are talking about, whether it is independent regulatory agency or legislation, or all those other areas, quite frankly, that are excluded, I don't understand why they should be, why they are excluded. We should have more information so we can make better, intelligent decisions.

Mr. LANKFORD. That would be my perception as well.

Mr. Arensmeyer, you mentioned several things that became regulatory benefits to smaller business, but in your opening statement you made several statements about there are some burdensome things that government does to small businesses, but you didn't mention any in particular. Are there any particular areas that you look at and say this does become burdensome for us?

Mr. ARENSMEYER. Well, there is always the potential, any time you are passing legislation, and we certainly endorse that Congress needs to have all the information about potential burdens. I mean, obviously, one thing that comes to mind now is that the 1089 provision that is in the health care law, it should not have been there; it is a burden with not very much benefit coming the other way, and we certainly wish that would go away as quickly as possible.

Mr. LANKFORD. OK. We are working on that.

Now I would like to recognize the ranking member, Mr. Connolly, for 4 minutes of questioning.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Keating, when Congress passed the Clean Air Act amendments of 1990, a lot of small businesses and industries claimed that the cost of electricity would skyrocket, putting extreme financial pressure on individuals and small businesses' electric bills. In fact, did that materialize?

Mr. KEATING. I would have to take a look at exactly the provisions you are talking about and what the results of it were, so I can't—

Mr. CONNOLLY. Well, is it your impression that between 1990 and now electric bills have skyrocketed, putting an undue financial burden on small businesses?

Mr. KEATING. I live in New York, so yes, I would have to answer yes to that. But I would have to take a look at specifically those provisions and see what the results were, because you have to obviously factor in a whole host of other measures that would come into play in terms of impacting the cost.

Mr. CONNOLLY. Mr. Arensmeyer, is that your impression?

Mr. ARENSMEYER. Our impression is that the opportunities that have been created by the environmental regulations of the EPA have spurred tremendous boon to new industries in this country, new industries that are likely to be able to more adequately com-

pete around the world. And all the studies that have been done about increased costs have shown that they have been small or little, and they are completely offset by improvements in energy efficiency that are driven by the desire to move toward a more energy-efficient economy.

Mr. CONNOLLY. I mention it because we heard many of the same arguments 20 years ago on Clean Air Act amendments, in terms of their impact on small businesses, almost none of which, dire predictions, that is, came true. As a matter of fact, quite the opposite.

You brought up health care and the assertion that health care imposes onerous regulations on small businesses, requiring them to offer health insurance. Do you know what percentage of small businesses fall under the 50 employee threshold?

Mr. ARENSMEYER. About 4 percent of businesses in this country have over 50 employees, and of those 4 percent, 96 percent of those already offer insurance.

Mr. CONNOLLY. So let me get this straight, Mr. Arensmeyer. Therefore, 96 percent of all small businesses are exempt from these so-called onerous regulations in requiring health care coverage for their employees.

Mr. ARENSMEYER. Correct.

Mr. CONNOLLY. And of the remaining 4 percent of small businesses in America, 96 percent already offer health care insurance.

Mr. ARENSMEYER. Correct.

Mr. CONNOLLY. And therefore would also be exempt from this onerous regulation since they already provide.

Mr. ARENSMEYER. Yes.

Mr. CONNOLLY. Thank you.

The EPA issued a tailoring rule that limits greenhouse gas pollution regulations to sources that emit more than 75,000 tons of carbon dioxide annually. Is there a single small business that would have a pollution source exceeding this extremely high threshold, Mr. Keating?

Mr. KEATING. I would have to again take a look at the details of that, but of course small businesses are going to be affected if costs rise for utility firms and manufacturing. So even if you see higher costs on larger firms and on utilities, that obviously is going to affect small businesses.

Mr. CONNOLLY. Mr. Arensmeyer.

Mr. ARENSMEYER. My understanding is that limits on the traditional emissions, sulfur dioxide, things like that, and those completely exempted. There is no possible way any small business would fall under those. And with the greenhouse gas rules, they have raised that substantially so it kind of matches up with the size of the facilities that would be covered by the traditional pollutants.

So basically even under the greenhouse gas rules there is no way any small business would be directly impacted by that. And the indirect impacts, we have seen figures like half of a cent, which is on a unit basis. And when you start to look at the energy efficiency across the whole economy, the costs are going to come down dramatically as we sort of move in that direction.

Mr. CONNOLLY. Thank you.

Senator Cutler, real quickly. I also came from local government, spent 14 years in local government. Do you see a difference between unfunded mandates with respect to State and local government, and the regulation of private industry? Are those two different things?

Ms. CUTLER. Thank you for the question. I think oftentimes there is an overlap. You can't often move one piece without a resulting effect on the other piece. So I don't know if I am getting to the heart of your question or not, but we certainly hear from our local governments often in the legislature regarding all of the things that we do and the impact that they have, and I think that is part of why we are here today, is to say we really need to make sure that all of the work that we do, that people clearly understand the impact on their business and on State government and on local government.

Mr. CONNOLLY. Thank you.

My time is up, Mr. Chairman.

Mr. LANKFORD. Thank you.

I recognize Mr. Farenthold for 4 minutes.

Mr. FARENTHOLD. Thank you very much.

I think I want to start off with Mr. Keating. You have heard Mr. Arensmeyer's testimony indicating that the Affordable Care Act and Clean Air Act have actually created more jobs. That goes very much against what I hear from the folks back home in South Texas, that the burdens the Affordable Care Act would place and that certainly the EPA's overzealous enforcement of the Clean Air Act and expansion of it in Texas, taking that over from the Texas State government is adversely affecting business. Would your members agree with Mr. Arensmeyer statement?

Mr. KEATING. No. We have some 100,000 members, and you can pick and choose your studies, but if you want to look at the greenhouse gas regulations, the overwhelming work that has been done on this shows that costs are going to skyrocket in terms of the costs of carbon-based energy. There is no way you can reduce emissions or cap emissions without, in effect, raising the costs of carbon-based energy; that is the reality of it. And when you look at how that spreads throughout the economy, it is going to be devastating, I would argue a devastating impact on small businesses, on our competitiveness.

And in terms of the Health Care Reform Act, again, our members would strongly disagree. You can go down the line, the pay or play mandate, the individual mandate, the dictates on what exactly is the government going to mandate through these exchanges that we have. We keep hearing that we are going to have more competition in choice. I think it is more of a vehicle for mandates and regulations. So all the way down the board I think these issues are major cost worries and they certainly create a tremendous amount of uncertainty for small business.

Mr. FARENTHOLD. Thank you very much.

Senator Cutler, I was wondering if, in your State, it was similar to what we experience in Texas, that the delay associated with complying with specific Federal regulations, and getting things like highway projects or building projects permitted through the various agencies really seems to take an excessive amount of time. The

numbers I hear are between 3 and 7 years, and drive the costs up significantly. Are you seeing that in your State as well?

Ms. CUTLER. Yes. In fact, one example I would like to give you is one that we don't often think of, and that is the Adam Walsh Sex Offender Registry Notification Act. I have been involved in several attempts to find out, through the rulemaking process in the Department of Justice, just what the responsibilities for coming into compliance would be. And even through two administrations and 5 years of extensions to come into compliance, I believe there are still, at this point, only four States that have been able to come into compliance; and it is not because they aren't trying. And States have a lot to lose. Their Byrne grant funds hinge on coming into compliance with Adam Walsh and SORNA, so it is an example of the very thing you are talking about.

Mr. FARENTHOLD. All right, I have less than a minute left, but I want to just do a quick question to each of the members of the panel. There are some proposals being bantered around in this Congress for perhaps a 24-month moratorium on new Federal regulations, just to give businesses time to catch up, catch their breath and get going. What would each of you feel about that?

Ms. CUTLER. Well, I think 24 months, if that is all it is, doesn't go far enough to help us; and I don't mean in terms of the time, I mean in terms of the consultation and the dialog that needs to go on and the impact of regulations and the input from the States in making those rules and regulations.

Mr. FARENTHOLD. Mr. Keating.

Mr. KEATING. Any kind of break that we can get from regulations would be much appreciated, I think, from the business community, yes.

Mr. ARENSMEYER. I guess we would feel that one-size-fits-all is not the way to go, that we strongly endorse that every piece of legislation be looked at carefully and analyzed. But because so much of what government does is in partnership with business, and I have cited two examples, pretty large examples, brings benefit, that I think this needs to be looked at on a case-by-case basis.

Mr. FARENTHOLD. Well, I am out of time. Thank you all very much.

Mr. LANKFORD. Thank you. This is a very important issue for us and I know that we have been rushing to get through all this. Both your oral and your written statements are vital and will obviously be kept in the record, so we will get a chance to refer back to them in the days to come. This is our second hearing. It is very important that both of you are here. We heard from county governments and city governments last time as well as oversight. Obviously, UMRA affects State governments and affects the private sector as well, specifically noted into that law, so it is important to be able to get your perspective, and I thank you very much for your time.

With that, other Members may submit something.

Mr. CONNOLLY. Mr. Chairman.

Mr. LANKFORD. Yes, sir.

Mr. CONNOLLY. Could I just note for the record that obviously, at least on this side of the aisle, we make a profound distinction between the issue of unfunded mandates on State and local governments and the issue of regulation on business? They are two sepa-

rate animals, they are not related, and we believe that if we are going to have hearings on unfunded mandates, they should stick to the former, not the latter.

Mr. LANKFORD. I do. I understand that very well, and we have discussed that as well, but obviously UMRA references both of them, so we want to have a chance to have hearings based on both of them together. So I appreciate very much your time.

With that, this hearing is adjourned.

[Whereupon, at 2:46 p.m., the subcommittee was adjourned.]

