114TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 114–011
Part 1

UNFUNDED MANDATES INFORMATION AND TRANSPARENCY ACT OF 2015

FEBRUARY 2, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 50]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 50) to provide for additional safeguards with respect to imposing Federal mandates, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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49–006

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Unfunded Mandates Reform Act (UMRA) of 1995 was enacted to promote informed and deliberate decisions by Congress and federal agencies concerning the appropriateness of federal mandates and to "retain competitive balance between the public and private sectors."[1] In accord with UMRA's original intent, H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, aims to improve the quality of Congressional deliberations and to enhance the ability of Congress, federal agencies, and the public to identify federal mandates that may impose undue harm on state, local, and tribal governments and the private sector. The bill accomplishes this objective by providing more complete information about the cost of such mandates, and by holding Congress and federal agencies accountable for imposing unfunded mandates.

BACKGROUND AND NEED FOR LEGISLATION

UMRA was enacted to relieve much of the burden placed upon nonfederal entities by Congress and federal agencies through unfunded mandates. It has become apparent over time, however, that UMRA—despite its good intentions and noble purpose—failed to curtail substantially the imposition of unfunded mandates. The several loopholes, exemptions and exclusions embedded in the law are largely to blame. A 2005 Government Accountability Office (GAO) report found that "[m]ost parties from the state and local governments, federal, business, and academic/think tank sectors vie[w] UMRA's narrow coverage as a major weakness that leaves out many federal actions with potentially significant financial impacts on nonfederal parties."[2] Interviewed parties agreed that UMRA's definitions, as well as exclusions and exemptions in the law that allow Congress and federal agencies to continue to place burdens upon state, local and tribal governments and private sector entities, should be revisited.[3] Multiple parties also informed GAO that the consultation process between agencies and affected nonfederal entities concerning regulatory mandates was inconsistent and in need of improvement.[4]

H.R. 50 is a product of a thorough examination of UMRA during the 112th Congress by the Subcommittee on Technology Information Policy, Intergovernmental Relations and Procurement Reform, chaired by Rep. James Lankford (R–OK). The Subcommittee examined the effectiveness of UMRA via three hearings featuring recognized experts on unfunded mandates, as well as representatives of states, localities and the private sector. Witnesses highlighted UMRA's narrow coverage, exemption and loopholes as serious flaws, and suggested that legislative remedies to the UMRA statute would make it a more effective instrument to reduce unfunded legislative and regulatory mandates. H.R. 50 enhances UMRA's utility as a tool to promote informed and deliberate decisions by Congress

[1] 2 U.S.C. § 1501.
[2] Government Accountability Office (GAO), Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement, GAO–05–454, Mar. 2005.
[3] *Id.*
[4] *Id.*

and federal agencies concerning the appropriateness of federal mandates. H.R. 50 accomplishes this in multiple ways.

To bring awareness to federal mandates imposed on entities pursuant to a condition of grant aid, H.R. 50 allows a chairman or ranking member of any Congressional committee to request the Congressional Budget Office (CBO) conduct an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of federal assistance being imposed on state, local, or tribal governments participating in the federal assistance program. The National Conference of State Legislatures is among those entities advocating that more light be shed on the cost of implementing assistance programs such as No Child Left Behind programs and the Temporary Assistance for Needy Families Block Grant. Such programs impose significant costs on participating states, but are not considered unfunded mandates under UMRA. H.R. 50 does not expand the definition of what constitutes an unfunded mandate, but it does allow the cost of certain excluded programs to be assessed. This provision was crafted in consultation with the CBO, which advised the Committee on how best to provide information about conditions of grant aid without overburdening CBO.

H.R. 50 amends the definition of "direct costs" in UMRA to ensure that federal agencies are accounting in their UMRA analyses for such costs of federal mandates as forgone business profits, costs passed onto consumers or other entities, and behavioral changes. The Small Business and Entrepreneurship Council testified to the Subcommittee that regulatory costs impacting prices, risk-taking, economic growth and employment need to be considered in agency cost estimates.[5] CBO has stated that its own UMRA analyses already take these factors into account.

To close one of UMRA's loopholes, H.R. 50 subjects independent regulatory agencies to the statute. Under current law, independent regulatory agencies, such as the Consumer Financial Protection Bureau, the Securities Exchange Commission, the National Labor Relations Board, the Consumer Product Safety Commission, and the Federal Communications Commission, can impose significant costs and burdensome requirements with little meaningful accountability and oversight.

In testimony before the Subcommittee, former Office of Information and Regulatory Affairs (OIRA) Administrator Susan Dudley recommended that UMRA be aligned with Executive Order 12866. She opined that the analytical requirements of Executive Order 12866 are a more effective mechanism for holding agencies accountable for the objectives expressed in UMRA.[6] Moreover, former OIRA Administrator Cass Sunstein wrote in previous scholarship that executive orders are not "sufficient for real change;" and "a thoroughgoing reform effort would require legislative reforms, not

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[5] *Unfunded Mandates and Regulatory Overreach Part II: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (testimony of Raymond Keating, Chief Economist, Small Business and Entrepreneurship Council).

[6] *Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (testimony of Susan Dudley, Director, GW Regulatory Studies).

merely executive action."[7] To ensure that agencies regulate responsibly, H.R. 50 codifies most of those regulatory principles outlined in Executive Order 12866, and reaffirmed in Executive Order 13563.

To close another loophole in UMRA, H.R. 50 prevents an agency from completing UMRA analyses simply because the agency publishes a rule without first issuing a notice of proposed rulemaking. GAO has found that nearly half of final rules are not first published in the Federal Register as a notice of proposed rulemaking. Currently, rules that do have a notice of proposed rulemaking in the Federal Register qualify for an automatic UMRA exemption.[8]

To put the private sector on equal footing with the public sector, H.R. 50 requires agencies to consult with regulated private sector entities during the development of significant federal regulatory mandates. This consultation requirement now applies only with respect to state, local, and tribal governments. Existing OIRA guidelines on agency execution of this requirement are codified in H.R. 50 and OIRA is required to include an Appendix detailing agency consultation activities with state, local, and tribal governments and the private sector in its annual report to Congress on agency compliance with UMRA. This will help remedy what the National Conference of State Legislatures has described as a "haphazard" consultation process.[9] For example, OIRA previously included an appendix in its annual report to Congress, which provided examples of agency consultation with state and local governments.[10] However, in recent years, the annual report has ceased to include any evidence concerning how consultation is being carried out.[11] In response to a July 2011 inquiry from the Subcommittee, OIRA conceded it had unilaterally decided to remove the appendix, even though this arguably constituted a failure to satisfy its current-law reporting requirements.[12]

To ensure that meaningful oversight over unfunded regulatory mandates is enabled and remains consistent with other regulatory oversight, H.R. 50 formally transfers responsibilities from the Director of the Office of Management and Budget (OMB) to the Administrator of OIRA. OMB has long delegated its responsibilities under UMRA to OIRA.[13] H.R. 50 would cement that relationship, while also extending OIRA's role beyond certifying and reporting on agency regulatory actions.

To ensure that agencies continue the "look back" process, H.R. 50 also allows a chairman or ranking member of any congressional

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[7] Robert W. Hahn & Cass R. Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis,* 150 U. Pa. L. Rev. 1489 (2002).

[8] U.S. General Accountability Office, *Federal Rulemaking: Agencies Often Published Final Action Without Proposed Rules,* August 31, 1998.

[9] National Conference of State Legislatures, *Policy Position on Federal Mandate Relief,* effective through August 2011, *available at* http://www.ncsl.org/Default.aspx?TabID=773&tabs=855,20,632#FederalMandate.

[10] U.S. Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, *2008 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities,* January 2009.

[11] U.S. Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, *2009, 2010* and *2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,* 2009, 2010, 2011.

[12] Cass Sunstein email response to Chairman Lankford (July 22, 2011).

[13] *Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (testimony of Susan Dudley, Director, GW Regulatory Studies).

committee to request any agency conduct a retrospective analysis of an existing federal regulatory mandate. The retrospective analysis provision aims to educate Congress about the impact of a rule after it has been in effect. It will incentivize agencies to perform a proper analysis when first proposing regulations. Before the Subcommittee, GAO testified that parties they interviewed advocated for an evaluation of existing rules to better assess the effectiveness of UMRA.[14] The Small Business and Entrepreneurship Council's testimony supported an after the fact evaluation of the effectiveness and the true cost of existing regulations and mandates.[15] President Obama has also stated that each agency, "should periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." [16]

To enhance accountability, H.R. 50 extends judicial review to the selection of the least costly or least burdensome regulatory alternative, and to the principles of Executive Order 12866. In her testimony, former OIRA Administrator Dudley advocated for expanding judicial review in this way to give agencies a greater incentive to carefully consider the "least costly, most cost-effective or least burdensome alternative" when regulating.[17] The Small Business and Entrepreneurship Council testified that the current judicial review provision included in UMRA "lacks teeth" and "offers no real incentives to challenge agencies or for agencies to deal more legitimately with UMRA requirements." [18] Further, former OIRA Administrator Sunstein wrote in previous scholarship that materials generated under executive order should be subject to judicial review to the extent that they are relevant to an agency's decision under the relevant statute. He noted this would only "slightly comprom[ise] the interests of the Executive in favor of the interests of the public as a whole." [19]

In sum, H.R. 50 makes reforms addressing key deficiencies in the law identified by experts and regulated entities.

LEGISLATIVE HISTORY

H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, was introduced on January 6, 2015 by Rep. Virginia Foxx (R–NC) and referred to the Committee on Oversight and Gov-

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[14] *Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (testimony of Denise Fantone, Government Accountability Office).

[15] *Unfunded Mandates and Regulatory Overreach Part II: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (testimony of Raymond Keating, Chief Economist, Small Business and Entrepreneurship Council).

[16] See, Cass Sunstein, Memo for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies re. Executive Order 13563, "Improving Regulation and Regulatory Review" (February 2, 2011).

[17] *Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (testimony of Susan Dudley, Director, GW Regulatory Studies).

[18] *Unfunded Mandates and Regulatory Overreach Part II: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (testimony of Raymond Keating, Chief Economist, Small Business and Entrepreneurship Council).

[19] Robert W. Hahn & Cass R. Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis,* 150 U. Pa. L. Rev. 1489 (2002).

ernment Reform. The bill was also referred to the Committee on Rules, the Committee on the Budget and the Committee on the Judiciary. On January 27, 2015, the Committee on Oversight and Government Reform ordered H.R. 50 favorably reported, without amendment. Rep. Loretta Sanchez (D–CA) is an original cosponsor.

The legislation has passed the House on three prior occasions: as Title IV of H.R. 4078, the Red Tape Reduction and Small Business Job Creation Act, in the 112th Congress and as both a standalone bill (H.R. 899) and as a subsection of H.R. 4, the Jobs for America Act, in the 113th Congress.

During the 113th Congress, H.R. 899, the Unfunded Mandates Information and Transparency Act of 2013, was introduced on February 28, 2013 by Rep. Virginia Foxx (R–NC) and referred to the Committee on Oversight and Government Reform. The bill was also referred to the Committee on Rules, the Committee on the Budget and the Committee on the Judiciary. On July 24, 2013, the Committee on Oversight and Government Reform considered H.R. 899 and it was favorably reported out of Committee.

In the 112th Congress, Representative Foxx introduced H.R. 373, the Unfunded Mandates Information and Transparency Act of 2011, which was referred to the Committee on Oversight and Government Reform, and subsequently, the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform. The Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, chaired by Rep. James Lankford (R–OK), examined the effectiveness of UMRA via three hearings featuring recognized experts on unfunded mandates, as well as representatives of states, localities and the private sector. These witnesses highlighted UMRA's narrow coverage, exemptions and loopholes as serious flaws, and suggested that legislative remedies to the UMRA statute would make it a more effective instrument to reduce unfunded legislative and regulatory mandates.

In the 110th Congress, Representative Virginia Foxx (R–NC) introduced H.R. 6964, the Unfunded Mandates Information and Transparency Act of 2008, to subject more unfunded mandates to UMRA and enhance reporting requirements. In the 111th Congress, Representative Foxx and Representative Scott Garrett (R–NJ) introduced H.R. 2255, the Unfunded Mandates Information and Transparency Act of 2009, and H.R. 5818, the Mandate Prevention Act of 2010, respectively. H.R. 2255 was a reintroduction of H.R. 6964, and H.R. 5818 allowed a point of order to be raised if a private sector mandate exceeded the UMRA threshold.

On February 15, 2011, at a hearing entitled, "Unfunded Mandates and Regulatory Overreach," the Subcommittee heard testimony from former Office of Information and Regulatory Affairs (OIRA) Administrator Susan Dudley; GAO Director Denise Fantone; the Mayor of Edmond, Oklahoma, Patrice Douglas; and Fairfax County, Virginia County Executive, Anthony Griffin. At the hearing, Subcommittee Ranking Member Gerald Connolly (D–VA) recognized that UMRA "did not fully stem the tide of unfunded mandates" because it was "written in a manner that exempted bills

that imposed significant costs on localities."[20] Full Committee Ranking Member Elijah Cummings (D–MD) asked the Mayor of Edmond, "What can the federal government do to help locals to plan better with regard to so-called unfunded mandates?"[21]

On March 30, 2011, at a hearing entitled, "Unfunded Mandates and Regulatory Overreach Part II," the Subcommittee heard testimony from South Dakota State Senator Joni Cutler; Small Business & Entrepreneurship Council Chief Economist Raymond Keating; and the Founder and CEO of the Small Business Majority, John Arensmeyer. These witnesses testified about the impact of unfunded mandates on states and small businesses and suggested possible reforms to UMRA.

On May 25, 2011, at a hearing entitled, "Unfunded Mandates, Regulatory Burdens and the Role of the Office of Information and Regulatory Affairs," the Subcommittee heard testimony from OIRA Administrator Cass Sunstein about the Obama Administration's efforts to reform the regulatory system through executive order. This included what the Obama Administration views as an unprecedented "look back" at regulations to identify those that may be outdated, unnecessary, or duplicative, in order to pave the way for efforts to repeal, modify, or streamline them. Administrator Sunstein also testified about UMRA's applicability to the public and the private sector.

After a thorough examination of UMRA through these hearings, Subcommittee Chairman Lankford held a markup on September 21, 2011, in the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, at which time H.R. 373 was reported with an amendment in the nature of a substitute. The bill was then reported from the full Oversight and Government Reform Committee, with another amendment in the nature of a substitute.

SECTION-BY-SECTION

Section 1. Short title

Unfunded Mandates Information and Transparency Act of 2015

Section 2. Purpose

The purpose of this legislation is to improve the quality of deliberations of Congress with respect to proposed federal mandates and to enhance the ability of Congress and the public to identify federal mandates that may impose undue harm on consumers, workers, employers, small businesses, and state, local, and tribal governments by providing Congress and the public more complete information about the effects of such mandates.

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[20] *Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (statement of Rep. Gerald Connolly).

[21] *Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Govt. Reform,* 112th Congress (2011) (statement of Ranking Member Elijah Cummings).

Section 3. Providing for Congressional Budget Office studies on policies involving changes in conditions of grant aid

Provides for a Committee chairman or ranking member to request that the Congressional Budget Office (CBO) perform an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of Federal assistance being imposed on state, local, or tribal governments.

Section 4. Clarifying the definition of direct costs to reflect Congressional Budget Office practice

Amends the definition of "direct costs" to codify current CBO practice and ensures that federal agencies account for the costs of federal mandates, such as forgone business profits, costs passed onto consumers and other entities, and behavioral changes.

Section 5. Expanding the scope of reporting requirements to include regulations imposed by independent regulatory agencies

Requires independent regulatory agencies to comply with UMRA with the exception of the Board of Governors of the Federal Reserve System and the Federal Open Market Committee.

Section 6. Amendments to replace Office of Management and Budget with Office of Information and Regulatory Affairs

Transfers responsibility for ensuring agency compliance with UMRA from the Director of the Office of Management and Budget (OMB) to the Administrator of the Office of Information and Regulatory Affairs (OIRA).

Section 7. Applying substantive point of order to private sector mandates

Subjects to a point of order a private sector legislative mandate exceeding the UMRA threshold.

Section 8. Regulatory process and principles

Clarifies that agencies must conduct UMRA analyses unless a law "expressly" prohibits them from doing so; requires agencies to adhere to the principles of regulation in Section 1 of Executive Order 12866 and reaffirmed in Executive Order 13563 when conducting regulatory actions; and defines "regulatory action" as "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including advance notices of proposed rulemaking and notices of proposed rulemaking."

Section 9. Expanding the scope of statements to accompany significant regulatory actions

Requires federal agencies to measure a proposed or final rule's annual effect on State, local, or tribal governments, or on the private sector, if the rule may result in an effect of $100,000,000 or more in any one year. This language aligns UMRA with Executive Order 12866 and requires agencies to assess such costs as forgone profits, costs passed onto consumers and other entities, and behavioral changes.

Closes an existing loophole allowing agencies to forego UMRA analyses of a final rule that is not preceded by a notice of proposed rulemaking (NPRM). If a NPRM is not issued, the agency must conduct an UMRA analysis before promulgating the final rule or within six months after promulgating the final rule.

Further aligns UMRA with Executive Order 12866 by removing the words "adjusted annually for inflation" when determining the threshold for UMRA analysis, and by adopting cost-benefit analysis requirements.

Requires that the descriptions and summaries an agency must complete under UMRA be "detailed."

Section 10. Enhanced stakeholder consultation

The existing requirement in UMRA that agencies receive meaningful and timely input in the development of regulatory mandates from state, local, and tribal governments is extended to include private sector input. OIRA policies instructing agencies how to execute this requirement are codified.

Section 11. New authorities and responsibilities for Office of Information and Regulatory Affairs

Gives OIRA oversight responsibility for determining whether agencies have drafted their regulations in accordance with the regulatory principles adopted in this bill, and whether cost-benefit analyses are performed adequately. If OIRA determines the agency has not met these requirements, OIRA is to notify the agency and request compliance before a regulation is finalized.

Requires OIRA include in its annual report to Congress an appendix detailing agency compliance with UMRA's requirement for consultation with state, local, and tribal governments and the private sector.

Section 12. Retrospective analysis of existing Federal regulations

Requires federal agencies to conduct a retrospective analysis of an existing federal regulation at the request of a Committee chairman or ranking minority member. It is to be submitted to the requesting member and to Congress, and is to include: a copy of the federal regulation; the continued need for the federal regulation; the nature and comments or complaints received concerning the federal regulation; an explanation of the extent to which the mandate may duplicate another federal regulation; a description of the degree to which technology or economic conditions have changed in the area affecting the federal regulation; an analysis of the retrospective costs and benefits of the federal regulation that considers studies done outside the government; and a history of legal challenges to the federal regulation.

Section 13. Expansion of judicial review

Extends judicial review to an agency's selection of the least costly/least burdensome regulatory alternative, and permits a court to stay, enjoin, or invalidate a rule if an agency fails to complete the required UMRA analysis or to adhere to the regulatory principles.

EXPLANATION OF AMENDMENTS

Ranking Member Elijah E. Cummings (D–MD) offered an amendment to remove the provision that provides for consultation with impacted parties within the private sector, including small businesses. The amendment would instead require consultation with veterans, law enforcement officers, and religious groups (who are already covered under H.R. 50). The Cummings amendment was not adopted.

COMMITTEE CONSIDERATION

On January 27, 2015, the Committee met in open session and ordered reported favorably the bill, H.R. 50, by roll call vote, a quorum being present.

ROLL CALL VOTES

There was one recorded vote during consideration of H.R. 50:

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

RATIO 25-18

RECORDED VOTE

Vote on: Favorably Report H.R. 50 to the House **Vote # : 3**

Date: 1-27-15

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) *(Chairman)*	X			MR. CUMMINGS (MD) *(Ranking)*		X	
MR. MICA (FL)	X			MRS. MALONEY (NY)		X	
MR. TURNER (OH)				MS. NORTON (DC)		X	
MR. DUNCAN (TN)	X			MR. CLAY (MO)		X	
MR. JORDAN (OH)				MR. LYNCH (MA)		X	
MR. WALBERG (MI)	X			MR. COOPER (TN)			
MR. AMASH (MI)	X			MR. CONNOLLY (VA)		X	
MR. GOSAR (AZ)	X			MR. CARTWRIGHT (PA)		X	
MR. DesJARLAIS (TN)	X			MS. DUCKWORTH (IL)			
MR. GOWDY (SC)	X			MS. KELLY (IL)		X	
MR. FARENTHOLD (TX)	X			MS. LAWRENCE (MI)		X	
MRS. LUMMIS (WY)				MR. LIEU (CA)			
MR. MASSIE (KY)	X			MRS. WATSON COLEMAN (NJ)		X	
MR. MEADOWS (NC)	X			MS. PLASKETT (VI)		X	
MR. DeSANTIS (FL)	X			MR. DeSAULNIER (CA)		X	
MR. MULVANEY (SC)	X			MR. BOYLE (PA)		X	
MR. BUCK (CO)	X			*Vacancy*			
MR. WALKER (NC)	X			*Vacancy*			
MR. BLUM (IA)	X						
MS. HICE (GA)	X						
MR. RUSSELL (OK)							
MR. CARTER (GA)							
MR. GROTHMAN (WI)	X						
MR. HURD (TX)	X						
MR. PALMER (AL)	X						

Roll Call Totals

Ayes: 20 Nays: 13 Present:

Passed_____X_____ Failed_____

CORRESPONDENCE

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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January 28, 2015

The Honorable Tom Price
Chairman
Committee on the Budget
207 Cannon HOB
Washington, D.C. 20515

Dear Mr. Chairman:

On January 27, 2015, the Committee on Oversight and Government Reform ordered reported without amendment H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, by a vote of 20 to 13. The bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on the Budget.

I ask that you allow the Budget Committee to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Budget represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,

Jason Chaffetz
Chairman

cc: The Honorable John A. Boehner, Speaker
The Honorable Elijah E. Cummings
The Honorable Chris Van Hollen
The Honorable Thomas J. Wickham, Parliamentarian

THOMAS PRICE, M.D., GEORGIA
CHAIRMAN

RICHARD MAY, STAFF DIRECTOR
(202) 226-7270

CHRIS VAN HOLLEN, RANKING MEMBER

THOMAS S. KAHN, MINORITY STAFF DIRECTOR
(202) 226-7200

U.S. House of Representatives
COMMITTEE ON THE BUDGET
Washington, DC 20515

January 28, 2015

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz:

Thank you for your letter regarding H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, which was ordered reported by the Committee on Oversight and Government Reform on January 27, 2015.

In order to expedite House consideration of H.R. 50, the Committee on the Budget will forgo action on the bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on Oversight and Government Reform as well as in the *Congressional Record* during floor consideration. We appreciate your cooperation and look forward to working with you as this bill moves through the Congress.

Sincerely,

Thomas Price, M.D.
Chairman

cc: The Honorable John A. Boehner, Speaker
The Honorable Elijah E. Cummings
The Honorable Chris Van Hollen
The Honorable Thomas J. Wickham, Parliamentarian

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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http://oversight.house.gov

January 28, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

On January 27, 2015, the Committee on Oversight and Government Reform ordered reported without amendment H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, by a vote of 20 to 13. The bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on the Judiciary.

I ask that you allow the Judiciary Committee to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,

Jason Chaffetz
Chairman

cc: The Honorable John A. Boehner, Speaker
The Honorable Elijah E. Cummings
The Honorable John Conyers, Jr.
The Honorable Thomas J. Wickham, Parliamentarian

January 28, 2015

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz,

Thank you for your letter regarding H.R. 50, the "Unfunded Mandates Information and Transparency Act of 2015," which your Committee ordered reported on January 27, 2015.

As a result of your having consulted with the Committee and in order to expedite the House's consideration of H.R. 50, I agree to discharge our Committee from further consideration of this bill so that it may proceed expeditiously to the House floor for consideration. The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 50 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and asks that you support any such request.

I would request that you include a copy of our letters in the *Congressional Record* during the floor consideration of this bill.

Sincerely,

Bob Goodlatte
Chairman

cc: The Honorable John Boehner, Speaker
The Honorable John Conyers
The Honorable Elijah Cummings
Thomas J. Wickham, Jr., Parliamentarian

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225-5074
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http://oversight.house.gov

January 29, 2015

The Honorable Pete Sessions
Chairman
Committee on Rules
H-312, The Capitol
Washington, D.C. 20515

Dear Mr. Chairman:

On January 27, 2015, the Committee on Oversight and Government Reform ordered reported without amendment H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, by a vote of 20 to 13. The bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on Rules.

I ask that you allow the Rules Committee to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Rules represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,

Jason Chaffetz
Chairman

cc: The Honorable John A. Boehner, Speaker
The Honorable Elijah E. Cummings
The Honorable Louise M. Slaughter
The Honorable Thomas J. Wickham, Parliamentarian

Committee on Rules
U.S. House of Representatives
H-312 The Capitol
Washington, DC 20515-6269

January 29, 2015

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz:

On January 27, 2015, the Committee on Oversight and Government Reform ordered reported H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015. As you know, the Committee on Rules was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under rule X of the Rules of the House of Representatives over rules and joint rules of the House.

Because of your willingness to consult with my committee regarding this matter, I will waive consideration of the bill by the Rules Committee. By agreeing to waive its consideration of the bill, the Rules Committee does not waive its jurisdiction over H.R. 50. In addition, the Committee on Rules reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Rules for conferees on H.R. 50 or related legislation.

I also request that you include this letter and your response as part of your committee's report on the bill and in the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

Pete Sessions

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill enhances UMRA's utility as a tool to promote informed and deliberate decisions by Congress and federal agencies concerning the appropriateness of federal mandates. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to provide for additional safeguards with respect to imposing Federal mandates.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. Based on cost estimates from similar legislation from the 113th Congress, however, the Committee believes that enactment of this bill would result in no net effect on direct spending over the 2015–2024 period. Assuming the appropriation of necessary amounts, the Committee estimates that the legislation would also have a discretionary cost of less than $5 million over the 2015–2019 period.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee believes that this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONGRESSIONAL BUDGET ACT OF 1974

* * * * * * *

TITLE II—CONGRESSIONAL BUDGET OFFICE

* * * * * * *

DUTIES AND FUNCTIONS

SEC. 202. (a) ASSISTANCE TO BUDGET COMMITTEES.—It shall be the primary duty and function of the Office to provide to the Com-

mittees on the Budget of both Houses information which will assist such committees in the discharge of all matters within their jurisdictions, including (1) information with respect to the budget, appropriation bills, and other bills authorizing or providing new budget authority or tax expenditures, (2) information with respect to revenues, receipts, estimated future revenues and receipts, and changing revenue conditions, and (3) such related information as such Committees may request.

(b) ASSISTANCE TO COMMITTEES ON APPROPRIATIONS, WAYS AND MEANS, AND FINANCE.—At the request of the Committee on Appropriations of either House, the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate, the Office shall provide to such Committee any information which will assist it in the discharge of matters within its jurisdiction, including information described in clauses (1) and (2) of subsection (a) and such related information as the Committee may request.

(c) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS.—

(1) At the request of any other committee of the House of Representatives or the Senate or any joint committee of the Congress, the Office shall provide to such committee or joint committee any information compiled in carrying out clauses (1) and (2) of subsection (a), and, to the extent practicable, such additional information related to the foregoing as may be requested.

(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

(A) a significant budgetary impact on State, local, or tribal governments;

(B) a significant financial impact on the private sector; or

(C) a significant employment impact on the private sector.

(3) At the request of any Member of the House or Senate, the Office shall provide to such member any information compiled in carrying out clauses (1) and (2) of subsection (a), and, to the extent available, such additional information related to the foregoing as may be requested.

(d) ASSIGNMENT OF OFFICE PERSONNEL TO COMMITTEES AND JOINT COMMITTEES.—At the request of the Committee on the Budget of either House, personnel of the Office shall be assigned, on a temporary basis, to assist such committee. At the request of any other committee of either House or any joint committee of the Congress, personnel of the Office may be assigned, on a temporary basis, to assist such committee or joint committee with respect to matters directly related to the applicable provisions of subsection (b) or (c).

(e) REPORTS TO BUDGET COMMITTEES.—

(1) On or before February 15 of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate, a report for the fiscal year commencing on October 1 of that year, with respect to fiscal policy,

including (A) alternative levels of total revenues, total new budget authority, and total outlays (including related surpluses and deficits), (B) the levels of tax expenditures under existing law, taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year, and (C) a statement of the levels of budget authority and outlays for each program assumed to be extended in the baseline, as provided in section 257(b)(2)(A) and for excise taxes assumed to be extended under section 257(b)(2)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985. Such report shall also include a discussion of national budget priorities, including alternative ways of allocating new budget authority and budget outlays for such fiscal year among major programs or functional categories, taking into account how such alternative allocations will meet major national needs and affect balanced growth and development of the United States.

(2) The Director shall from time to time submit to the Committees on the Budget of the House of Representatives and the Senate such further reports (including reports revising the report required by paragraph (1)) as may be necessary or appropriate to provide such Committees with information, data, and analyses for the performance of their duties and functions.

(3) On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing (A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and (B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.

(f) USE OF COMPUTERS AND OTHER TECHNIQUES.—The Director may equip the Office with up-to-date computer capability (upon approval of the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate), obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements.

(g) STUDIES.—

(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

(2) FEDERAL MANDATE STUDIES.—

(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a legislative proposal containing a Federal mandate.

(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and

(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities, as appropriate.

(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in subparagraph (B)(iii)(I);

(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services.

(3) ADDITIONAL STUDIES.—At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall conduct an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of Federal assistance being imposed on State, local, or tribal governments participating in the Federal assistance program concerned or, in the case of a bill or joint resolution that authorizes such sums as are necessary, an assessment of an estimated level of funding compared to such costs.

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TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

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PART B—FEDERAL MANDATES

SEC. 421. DEFINITIONS.

For purposes of this part:

(1) AGENCY.—The term "agency" has the same meaning as defined in section 551(1) of title 5, United States Code[, but does not include independent regulatory agencies], *except it does not include the Board of Governors of the Federal Reserve System or the Federal Open Market Committee*.

(2) AMOUNT.—The term "amount", with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

(3) DIRECT COSTS.—The term "direct costs"—

(A)(i) in the case of a Federal intergovernmental mandate, means the aggregate estimated amounts that all State, local, and tribal governments would *incur or* be required to spend or would be prohibited from raising in revenues in order to comply with the Federal intergovernmental mandate; or

(ii) in the case of a provision referred to in paragraph (5)(A)(ii), means the amount of Federal financial assistance eliminated or reduced;

(B) in the case of a Federal private sector mandate, means the aggregate estimated amounts that the private sector will be required to spend *or could forgo in profits, including costs passed on to consumers or other entities taking into account, to the extent practicable, behavioral changes,* in order to comply with the Federal private sector mandate;

(C) shall be determined on the assumption that—

(i) State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations; and

(ii) reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees; and

(D) shall not include—

(i) estimated amounts that the State, local, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

(II) to comply with or carry out State, local, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the State, local, and tribal governments, or by the private sector, as a result of—

(I) compliance with the Federal mandate; or

(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate.

(4) DIRECT SAVINGS.—The term "direct savings", when used with respect to the result of compliance with the Federal mandate—

(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.

(5) FEDERAL INTERGOVERNMENTAL MANDATE.—The term "Federal intergovernmental mandate" means—

(A) any provision in legislation, statute, or regulation that—

(i) would impose an enforceable duty upon State, local, or tribal governments, except—

(I) a condition of Federal assistance; or

(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B); or

(ii) would reduce or eliminate the amount of authorization of appropriations for—

(I) Federal financial assistance that would be provided to State, local, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the

extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority, if the provision—

(i)(I) would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to State, local, or tribal governments under the program; and

(ii) the State, local, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

(6) FEDERAL MANDATE.—The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (5) and (7).

(7) FEDERAL PRIVATE SECTOR MANDATE.—The term "Federal private sector mandate" means any provision in legislation, statute, or regulation that—

(A) would impose an enforceable duty upon the private sector except—

(i) a condition of Federal assistance; or

(ii) a duty arising from participation in a voluntary Federal program; or

(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

(8) LOCAL GOVERNMENT.—The term "local government" has the same meaning as defined in section 6501(6) of title 31, United States Code.

(9) PRIVATE SECTOR.—The term "private sector" means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

(10) REGULATION; RULE.—The term "regulation" or "rule" (except with respect to a rule of either House of the Congress) has the meaning of "rule" as defined in section 601(2) of title 5, United States Code.

(11) SMALL GOVERNMENT.—The term "small government" means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

(12) STATE.—The term "State" has the same meaning as defined in section 6501(9) of title 31, United States Code.

(13) TRIBAL GOVERNMENT.—The term "tribal government" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

* * * * * * *

SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider—

(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); and

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of [Federal intergovernmental mandates] *Federal mandates* by an amount that causes the thresholds specified in section 424(a)(1) *or 424(b)(1)* to be exceeded, unless—

(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct costs of such mandate, and—

(i) identifies a specific dollar amount of the direct costs of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under subsection (e) for each fiscal year;

(ii) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under clause (i); and

(iii)(I) provides that for any fiscal year the responsible Federal agency shall determine whether there are insufficient appropriations for that fiscal year to provide for the direct costs under clause (i) of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

(aa) a statement that the agency has determined, based on a re-estimate of the direct costs

of such mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of such mandate; or

(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in subclause (I) by Congress no later than 30 days after the statement or recommendations are submitted to Congress; and

(III) provides that such mandate shall—

(aa) in the case of a statement referred to in subclause (I)(aa), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

(bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under subclause (I)(bb) unless Congress provides otherwise by law; or

(cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

(b) RULE OF CONSTRUCTION.—The provisions of subsection (a)(2)(B)(iii) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

(c) COMMITTEE ON APPROPRIATIONS.—

(1) APPLICATION.—The provisions of subsection (a)—

(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

(B) shall apply to—

(i) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(ii) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(iii) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

(iv) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

(2) CERTAIN PROVISIONS STRICKEN IN SENATE.—Upon a point of order being made by any Senator against any provision listed in paragraph (1)(B), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

(d) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this section, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this part to a pending bill, joint resolution, amendment, motion, or conference report.

(e) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this section, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

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UNFUNDED MANDATES REFORM ACT OF 1995

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TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

* * * * * * *

SEC. 103. COST OF REGULATIONS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the cost estimates provided by the Congressional Budget Office will be carefully considered as regulations are promulgated.

(b) STATEMENT OF COST.—At the request of a committee chairman or ranking minority member, the Director shall, to the extent practicable, prepare a comparison between—

(1) an estimate by the relevant agency, prepared under section 202 of this Act, of the costs of regulations implementing an Act containing a Federal mandate; and

(2) the cost estimate prepared by the Congressional Budget Office for such Act when it was enacted by the Congress.

(c) COOPERATION OF [OFFICE OF MANAGEMENT AND BUDGET] *OFFICE OF INFORMATION AND REGULATORY AFFAIRS*.—At the request of the Director of the Congressional Budget Office, the [Director of the Office of Management and Budget] *Administrator of the Office of Information and Regulatory Affairs* shall provide data and cost estimates for regulations implementing an Act containing a Federal

mandate covered by part B of title IV of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act).

* * * * * * *

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

[SEC. 201. REGULATORY PROCESS.

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

SEC. 201. REGULATORY PROCESS AND PRINCIPLES.

(a) IN GENERAL.—Each agency shall, unless otherwise expressly prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector (other than to the extent that such regulatory actions incorporate requirements specifically set forth in law) in accordance with the following principles:

(1) Each agency shall identify the problem that it intends to address (including, if applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) If an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(5) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation, unless expressly prohibited by law, only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(6) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(7) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(8) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(9) Each agency shall tailor its regulations to minimize the costs of the cumulative impact of regulations.

(10) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

(b) REGULATORY ACTION DEFINED.—In this section, the term "regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including advance notices of proposed rulemaking and notices of proposed rulemaking.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

[(a) IN GENERAL.—Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement containing—

[(1) an identification of the provision of Federal law under which the rule is being promulgated;

[(2) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—

[(A) an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

[(B) the extent to which there are available Federal resources to carry out the intergovernmental mandate;

[(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

[(A) the future compliance costs of the Federal mandate; and

[(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

[(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth,

full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

[(5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;

[(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

[(C) a summary of the agency's evaluation of those comments and concerns.]

(a) IN GENERAL.—Unless otherwise expressly prohibited by law, before promulgating any general notice of proposed rulemaking or any final rule, or within six months after promulgating any final rule that was not preceded by a general notice of proposed rulemaking, if the proposed rulemaking or final rule includes a Federal mandate that may result in an annual effect on State, local, or tribal governments, or to the private sector, in the aggregate of $100,000,000 or more in any 1 year, the agency shall prepare a written statement containing the following:

(1) The text of the draft proposed rulemaking or final rule, together with a reasonably detailed description of the need for the proposed rulemaking or final rule and an explanation of how the proposed rulemaking or final rule will meet that need.

(2) An assessment of the potential costs and benefits of the proposed rulemaking or final rule, including an explanation of the manner in which the proposed rulemaking or final rule is consistent with a statutory requirement and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(3) A qualitative and quantitative assessment, including the underlying analysis, of benefits anticipated from the proposed rulemaking or final rule (such as the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias).

(4) A qualitative and quantitative assessment, including the underlying analysis, of costs anticipated from the proposed rulemaking or final rule (such as the direct costs both to the Government in administering the final rule and to businesses and others in complying with the final rule, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and international competitiveness), health, safety, and the natural environment).

(5) Estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future compliance costs of the Federal mandate; and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural

or other types of communities, or particular segments of the private sector.

(6)(A) A detailed description of the extent of the agency's prior consultation with the private sector and elected representatives (under section 204) of the affected State, local, and tribal governments.

(B) A detailed summary of the comments and concerns that were presented by the private sector and State, local, or tribal governments either orally or in writing to the agency.

(C) A detailed summary of the agency's evaluation of those comments and concerns.

(7) A detailed summary of how the agency complied with each of the regulatory principles described in section 201.

(b) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a *detailed* summary of the information contained in the statement.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

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SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT *AND PRIVATE SECTOR* INPUT.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf*), and impacted parties within the private sector (including small business),* to provide meaningful and timely input in the development of regulatory proposals containing significant **[**Federal intergovernmental mandates**]** *Federal mandates*.

(b) MEETINGS BETWEEN STATE, LOCAL, TRIBAL AND FEDERAL OFFICERS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

[(c) IMPLEMENTING GUIDELINES.—No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.**]**

(c) GUIDELINES.—For appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations, the following guidelines shall be followed:

(1) Consultations shall take place as early as possible, before issuance of a notice of proposed rulemaking, continue through the final rule stage, and be integrated explicitly into the rulemaking process.

(2) Agencies shall consult with a wide variety of State, local, and tribal officials and impacted parties within the private sector (including small businesses). Geographic, political, and other factors that may differentiate varying points of view should be considered.

(3) Agencies should estimate benefits and costs to assist with these consultations. The scope of the consultation should reflect the cost and significance of the Federal mandate being considered.

(4) Agencies shall, to the extent practicable—

(A) seek out the views of State, local, and tribal governments, and impacted parties within the private sector (including small business), on costs, benefits, and risks; and

(B) solicit ideas about alternative methods of compliance and potential flexibilities, and input on whether the Federal regulation will harmonize with and not duplicate similar laws in other levels of government.

(5) Consultations shall address the cumulative impact of regulations on the affected entities.

(6) Agencies may accept electronic submissions of comments by relevant parties but may not use those comments as the sole method of satisfying the guidelines in this subsection.

SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) IN GENERAL.—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 202, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) EXCEPTION.—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) **[**OMB**]** CERTIFICATION.—No later than 1 year after the date of the enactment of this Act, the **[**Director of the Office of Management and Budget**]** *Administrator of the Office of Information and Regulatory Affairs* shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The **[**Director of the Office of Management and Budget**]** *Administrator of the Office of Information and Regulatory Affairs* shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

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[SEC. 208. ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.

[No later than 1 year after the effective date of this title and annually thereafter, the Director of the Office of Management and Budget shall submit to the Congress, including the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, a written report detailing compliance by each agency during the preceding reporting period with the requirements of this title.]

SEC. 208. OFFICE OF INFORMATION AND REGULATORY AFFAIRS RESPONSIBILITIES.

(a) IN GENERAL.—The Administrator of the Office of Information and Regulatory Affairs shall provide meaningful guidance and oversight so that each agency's regulations for which a written statement is required under section 202 are consistent with the principles and requirements of this title, as well as other applicable laws, and do not conflict with the policies or actions of another agency. If the Administrator determines that an agency's regulations for which a written statement is required under section 202 do not comply with such principles and requirements, are not consistent with other applicable laws, or conflict with the policies or actions of another agency, the Administrator shall identify areas of non-compliance, notify the agency, and request that the agency comply before the agency finalizes the regulation concerned.

(b) ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.—The Director of the Office of Information and Regulatory Affairs annually shall submit to Congress, including the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives, a written report detailing compliance by each agency with the requirements of this title that relate to regulations for which a written statement is required by section 202, including activities undertaken at the request of the Director to improve compliance, during the preceding reporting period. The report shall also contain an appendix detailing compliance by each agency with section 204.

SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FEDERAL REGULATIONS.

(a) REQUIREMENT.—At the request of the chairman or ranking minority member of a standing or select committee of the House of Representatives or the Senate, an agency shall conduct a retrospective analysis of an existing Federal regulation promulgated by an agency.

(b) REPORT.—Each agency conducting a retrospective analysis of existing Federal regulations pursuant to subsection (a) shall submit to the chairman of the relevant committee, Congress, and the Comp-

troller General a report containing, with respect to each Federal regulation covered by the analysis—

(1) a copy of the Federal regulation;

(2) the continued need for the Federal regulation;

(3) the nature of comments or complaints received concerning the Federal regulation from the public since the Federal regulation was promulgated;

(4) the extent to which the Federal regulation overlaps, duplicates, or conflicts with other Federal regulations, and, to the extent feasible, with State and local governmental rules;

(5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the Federal regulation;

(6) a complete analysis of the retrospective direct costs and benefits of the Federal regulation that considers studies done outside the Federal Government (if any) estimating such costs or benefits; and

(7) any litigation history challenging the Federal regulation.

SEC. [209.] *210.* EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

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TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) AGENCY STATEMENTS ON SIGNIFICANT REGULATORY ACTIONS.—

(1) IN GENERAL.—Compliance or noncompliance by any agency with the provisions of **[**sections 202 and 203(a) (1) and (2)**]** *sections 201, 202, 203(a)(1) and (2), and 205(a) and (b)* shall be subject to judicial review **[**only**]** in accordance with this section.

(2) LIMITED REVIEW OF AGENCY COMPLIANCE OR NONCOMPLIANCE.—(A) Agency compliance or noncompliance with the provisions of **[**sections 202 and 203(a) (1) and (2)**]** *sections 201, 202, 203(a)(1) and (2), and 205(a) and (b)* shall be subject to judicial review **[**only**]** under section 706(1) of title 5, United States Code, and **[**only**]** as provided under subparagraph (B).

(B) If an agency fails to prepare the written statement (including the preparation of the estimates, analyses, statements, or descriptions) under **[**section 202 or the written plan under section 203(a) (1) and (2), a court may compel the agency to prepare such written statement.**]** *section 202, prepare the written plan under section 203(a)(1) and (2), or comply with section 205(a) and (b), a court may compel the agency to prepare such written statement, prepare such written plan, or comply with such section.*

(3) REVIEW OF AGENCY RULES.—In any judicial review under any other Federal law of an agency rule for which a **[**written statement or plan is required under sections 202 and 203(a) (1) and (2), the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate,

analysis, statement or description) or written plan shall not] *written statement under section 202, a written plan under section 203(a)(1) and (2), or compliance with sections 201 and 205(a) and (b) is required, the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement, or description), to prepare such written plan, or to comply with such section may* be used as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.

(4) CERTAIN INFORMATION AS PART OF RECORD.—Any information generated under sections 202 and 203(a) (1) and (2) that is part of the rulemaking record for judicial review under the provisions of any other Federal law may be considered as part of the record for judicial review conducted under such other provisions of Federal law.

(5) APPLICATION OF OTHER FEDERAL LAW.—For any petition under paragraph (2) the provisions of such other Federal law shall control all other matters, such as exhaustion of administrative remedies, the time for and manner of seeking review and venue, except that if such other Federal law does not provide a limitation on the time for filing a petition for judicial review that is less than 180 days, such limitation shall be 180 days after a final rule is promulgated by the appropriate agency.

(6) EFFECTIVE DATE.—This subsection shall take effect on October 1, 1995, and shall apply only to any agency rule for which a general notice of proposed rulemaking is promulgated on or after such date.

(b) JUDICIAL REVIEW AND RULE OF CONSTRUCTION.—Except as provided in subsection (a)—

(1) any estimate, analysis, statement, description or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review; and

(2) no provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action.

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MINORITY VIEWS

The substance of H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, and the procedure the Committee used to consider it, are significantly flawed.

As written, H.R. 50 would be an assault on the nation's health, safety, and environmental protections, would erect new barriers to unnecessarily slow down the regulatory process, and would give regulated industries an unfair advantage to water down consumer protections. The majority needlessly rushed consideration of this bill without providing Members adequate time for consideration and thoughtful deliberation.

Section 5 of the bill would repeal language that excludes independent regulatory agencies from the reporting requirements of the Unfunded Mandates Reform Act (UMRA), with the exception of the Board of Governors of the Federal Reserve and the Federal Open Market Committee. The Office of Management and Budget (OMB) is responsible for overseeing the UMRA process. Since the independent agencies would be under the direction of OMB for purposes of UMRA compliance, this could compromise the independence of those agencies.

Section 7 of H.R. 50 would create a new point of order in the House of Representatives for legislation containing an unfunded mandate, making it more difficult to enact legislation.

Section 9 of the bill would incorporate a cost-benefit requirement from Executive Order 12866, but it would not include language from the same Executive Order directing agencies to perform these assessments "to the extent feasible."

Section 10 would require agencies to provide private sector entities with an advance opportunity to affect proposed regulations. It would require agencies to consult with private sector entities "as early as possible, before the issuance of a notice of proposed rulemaking, continue through the final rule stage, and be integrated explicitly into the rulemaking process." The Committee report for H.R. 899 in the 113th Congress stated that this requirement would, "put the private sector on equal footing with the public sector" and that this requirement would apply to "regulated private sector entities."

We agree that agencies should consult with regulated industries regarding proposed rules that are expected to impact those entities, but regulated industries should not receive an advantage in the rulemaking process over other stakeholders. During consideration of this bill by the Committee, I offered an amendment that would have included early consultation with "representatives of other impacted parties including veterans, law enforcement officers, and religious groups." The amendment was rejected.

Section 11 would codify the role of the Office of Information and Regulatory Affairs (OIRA) in reviewing agency regulations and re-

quire that if the OIRA Administrator finds that an agency did not comply with UMRA's requirements, the Administrator must request that the agency comply before the regulation is finalized.

Section 12 would require that, "[a]t the request of the chairman or ranking minority member of a standing or select committee of the House of Representatives or the Senate, an agency shall conduct a retrospective analysis of an existing Federal regulation promulgated by an agency." This provision would require agencies to divert resources toward conducting these analyses and away from fulfilling their missions.

Section 13 would expand judicial review under UMRA and would allow a court to review the "inadequacy or failure" of an agency to prepare a written statement under UMRA. Allowing judicial review of the adequacy of an agency's UMRA statement would give judges the ability to second-guess the expertise of agencies. UMRA currently prohibits courts from using the law to stay, enjoin, invalidate, or otherwise affect an agency rule. H.R. 50 would fundamentally change the law by eliminating this prohibition. This process could be abused by regulated industries taking agencies to court over regulations they view as unfavorable.

In terms of process, the Committee considered this legislation on the same day as our initial organizational meeting. The Committee held no subcommittee markup, it held no subcommittee or full Committee hearings this Congress, and it has not held hearings on similar legislation since 2011. The Committee has many new Members who did not have a meaningful opportunity to examine H.R. 50. The minority members of the Committee were notified on Friday, January 23, 2015, at 6 p.m. that the bill would be considered the following Tuesday, January 27, 2015.

ELIJAH E. CUMMINGS

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