

UNFUNDED MANDATES INFORMATION AND  
TRANSPARENCY ACT OF 2017

—————  
JUNE 29, 2018.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. GOWDY, 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 with an  
amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

At the end of the bill, add the following new section:

**SEC. 14. REAUTHORIZATION.**

Section 109 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1516) is amended to read as follows:

**“SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

“There are authorized to be appropriated to the Congressional Budget Office \$1,500,000 for each of fiscal years 2018 through 2024 to carry out the provisions of this title.”.

**SUMMARY AND PURPOSE OF LEGISLATION**

The Unfunded Mandates Information and Transparency Act of 2017 (UMITA), H.R. 50, amends the Unfunded Mandates Reform Act of 1995 (UMRA) to improve regulatory processes and codify regulatory principles established in Executive Order 12866. H.R. 50 extends the UMRA coverage to most independent agencies and all final rules, and increases early consultation requirements and retrospective regulatory reviews.

**BACKGROUND AND NEED FOR LEGISLATION**

Enacted in 1995, UMRA limits unfunded mandates on state, local, and tribal governments and the private sector. An unfunded mandate is an obligation imposed on one or more state, local, or tribal governments or the private sector by a federal law or regulation without federal funding to offset the costs. Unfunded mandates push costs to implement federal programs onto state, local, and tribal governments, and the private sector.

UMRA directs agencies to draft written statements for final rules that impose costs of \$100 million or more (“major rules”)<sup>1</sup> on one or more state, local, or tribal government or the private sector. If a rule reaches this threshold amount, UMRA also requires agencies to consider less expensive alternatives to achieve the rule’s objective. UMRA also requires agencies solicit input of the regulated stakeholders in promulgating a final major rule.

In December 2016, the Committee solicited input from state governors and legislators on the effects unfunded mandates have on their state, if any.<sup>2</sup> The Committee received nearly 800 responses from states, U.S. territories, and organizations representing state and local governments. The responses identified numerous costly unfunded mandates on state, local, and tribal governments and the private sector.<sup>3</sup> For example, Tennessee Governor Bill Haslam wrote the EPA provided Tennessee with only 8 percent of the \$32 million it will cost the state to implement Clean Water Act programs.<sup>4</sup> The U.S. Virgin Islands reported receiving just \$5.4 million

<sup>1</sup> 5 U.S.C. § 804(2).

<sup>2</sup> Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform (Dec. 16, 2016) (on file with the Committee).

<sup>3</sup> Letters on file with the Committee.

<sup>4</sup> Letter from Bill Haslam, Governor, Tenn., to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform (Jan. 20, 2017) (on file with the Committee).

in federal aid to pay its \$36 million in expenses to implement Clean Air Act regulations.<sup>5</sup>

During an April 2017 hearing, the Subcommittee on Intergovernmental Affairs heard testimony from elected state and local government officials. The witnesses explained challenges federal unfunded mandates impose on governments and local businesses.<sup>6</sup> North Carolina State Senator Jim Davis testified regarding the experience of a business owner from his district, in which a federal compliance officer required the business to reduce boiler system arsenic emissions from 12 parts per million (PPM) to 4 PPM.<sup>7</sup> Senator Davis testified, “After spending over \$200,000 on consultants, lawyers, and other experts . . . the business owner learned two things: One, the technology didn’t exist to reduce it to four, and secondly, arsenic occurs naturally in the air at 12 parts per million.”<sup>8</sup> It was one example of an unfunded federal mandate forcing a small business owner to waste money on compliance with nonsensical requirements, rather than investing in the business and its employees.<sup>9</sup>

The Subcommittee also heard testimony on federal officials’ apathetic attitude towards consulting with state and local officials during rulemaking.<sup>10</sup> Kentucky County Executive Gary Moore testified on behalf of the National Association of Counties:

Time and time again, we see major Federal regulations like Waters of the U.S., the ozone rule, and the Department of Labor’s overtime rule finalized with little or no consultation with State and local governments, even though these regulations have major practical and financial implications for counties.<sup>11</sup>

The Committee explored the lack of meaningful federal-state consultation at a Committee hearing held on February 27, 2018, held in collaboration with the Speaker’s Intergovernmental Task Force.<sup>12</sup> During the hearing, New Mexico Governor Susana Martinez, Utah Governor Gary Herbert, and Idaho Governor Leroy “Butch” Otter testified to a lack of partnership during federal agency rulemaking.<sup>13</sup> The Governors testified a lack of communication between federal officials and their states precludes exploring more

<sup>5</sup> Letter from Kenneth Mapp, Governor, U.S. Virgin Islands, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform. (Jan. 20, 2017) (on file with the Committee).

<sup>6</sup> *Unfunded Mandates: Examining Federally Imposed Burdens on State and Local Government: Hearing Before the Subc. on Intergovernmental Affairs of the H. Comm. on Oversight & Gov’t Reform*, 115th Cong. (Apr. 26, 2017), <https://www.gpo.gov/fdsys/pkg/CHRG-115hhr26556/pdf/CHRG-115hhr26556.pdf> [hereinafter *Unfunded Mandates: Hearing* (Apr. 26, 2017)].

<sup>7</sup> *Id.* at 14 (statement of Jim Davis, State Senator, North Carolina).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 28 (2017) (testimony of Hon. Gary Moore, Cnty. Exec., Boone Cnty., KY) (“We often find that the agencies just want to check a box instead of having meaningful discussion with us as intergovernmental partners before and throughout the rulemaking cycle.”); *id.* at 21 (statement of Wayne L. Niederhauser, Sen., Utah Sen. on behalf of Council of State Governments) (“local governments have admirable goals also, more important to citizens, more likely to be effective, and less expensive.”).

<sup>11</sup> *Unfunded Mandates: Hearing* (Apr. 26, 2017) at 18 (statement of Gary Moore, Cnty. Executive, Boone Cnty., Kentucky).

<sup>12</sup> *Federalism Implications of Treating States as Stakeholders: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 115th Cong. (Feb. 27, 2018), <https://oversight.house.gov/hearing/federalism-implications-treater-states-stakeholders/>.

<sup>13</sup> *Id.*

efficient alternatives.<sup>14</sup> Providing another example of the disparity between state government and federal government regulators, Governor Martinez testified New Mexico can review oil and gas permits in 10 days whereas it takes the U.S. Bureau of Land Management an average of 250 days. She testified this delay costs New Mexico \$1.9 million per day.<sup>15</sup> H.R. 50 enhances consultation requirements to give state, local, and tribal governments a greater voice in the federal rulemaking process.

In 1993, President Clinton signed Executive Order 12866 to provide federal agencies with additional requirements in the rulemaking process. The Executive Order recognized the private sector's contribution to economic growth and the state, local, and tribal government role and relationship to the federal government.<sup>16</sup> It requires federal agencies' rulemaking processes be constrained to certain principles.<sup>17</sup> However, federal agency compliance with the Executive Order may be limited by the nature of an executive order as executive branch policy, not law.<sup>18</sup> H.R. 50 codifies most of these rulemaking guidelines, including exploring if intended results can be achieved through modifying current regulations, identifying alternatives to direct regulation, and using the best available information to make agency decisions.

By updating UMRA and correcting agencies' misinterpretation of the law, this bill will help give effect to Congress's original intent in enacting UMRA two decades prior. In a 2011 hearing before the Subcommittee on Technology, Information Policy, Intergovernmental Relations, and Procurement Reform, the Government Accountability Office (GAO) testified agency interpretation of UMRA's cost definitions could prevent UMRA rules from being triggered.<sup>19</sup> In written testimony, GAO stated, "a rule could reduce industry gross revenues by over \$100 million in a single year, and therefore be economically significant, yet not trigger UMRA because it does not require expenditures above UMRA's threshold in any year."<sup>20</sup> H.R. 50 addresses this problem by expanding the federal mandate definition of "direct costs" to require agencies to account for variables such as foregone profits.

In a 2012 report, GAO found agencies had not published a notice of proposed rulemaking for 35 percent of major rules—those rules with an annual effect on the economy of \$100 million or more—

<sup>14</sup> *Id.* at 20 (testimony of Gary Herbert, Governor, Utah) ("the States, which are closer to the people, much more responsive to the people, quicker to act, and doing it less expensively and more effectively, are where in fact we should be working. States are finding solutions and improving people's lives."); *id.* at 62–63 (testimony of Leroy "Butch" Otter, Governor, Idaho) ("Nearly every public policy that we deal with in Idaho we have to factor in what the Federal Government wants us to do, as well as how much of the cost they want us to suffer. So I tell you when we establish public policy, we really need to see who it helps and who it harms. And sometimes there's very little attention or care paid, especially from the Federal level.")

<sup>15</sup> *Id.* at 54 (testimony of Susana Martinez, Governor, New Mexico).

<sup>16</sup> Exec. Order No. 12,866, 3 C.F.R. § 638 (1994).

<sup>17</sup> *Id.*

<sup>18</sup> See generally Peter Raven-Hansen, *Making Agencies Follow Orders: Judicial Review of Agency Violations of Executive Order 12,291*, 285 Duke L.J. (1983).

<sup>19</sup> *Unfunded Mandates and Regulatory Overreach: Hearing Before the H. Subcomm. on Tech., Information Policy, Intergovernmental Relations & Procurement Reform of the H. Comm. on Oversight & Govt. Reform*, 112th Congress (Feb. 15, 2011), <https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg67172/pdf/CHRG-112hhrg67172.pdf> [hereinafter *Unfunded Mandates and Regulatory Overreach: Hearing* (Feb. 15, 2011)].

<sup>20</sup> *Id.* at 41 (statement of Denise M. Fantone, Director Strategic Issues, Gov't Accountability Office).

issued from 2003 to 2010.<sup>21</sup> UMRA requires a written statement only for final rules “for which a general notice of proposed rule-making was published.”<sup>22</sup> H.R. 50 requires each final rule imposing an annual cost of \$100 million or more on state, local, and tribal governments and the private sector be subject to UMRA’s requirements, regardless of whether a notice of proposed rulemaking was issued.

At the 2011 hearing, the Subcommittee also heard from GAO about the impact current regulations have on stakeholders. GAO observed stakeholders it consulted “most frequently suggested agencies evaluate the effectiveness of mandates after they had been implemented . . . [and . . .] evaluation of existing rules through retrospective reviews has the potential of being able to better assess the effectiveness of UMRA, among other benefits.”<sup>23</sup>

In January 2011, President Obama’s Executive Order 13563 also identified “retrospective analyses of existing rules” as an important component to improve regulation and regulatory review. Executive Order 13563 encouraged agencies to “modify, streamline, expand, or repeal” significant regulations that are “outmoded, ineffective, insufficient, or excessively burdensome.”<sup>24</sup> H.R. 50 provides for further retrospective analyses by requiring agencies to conduct retrospective analyses on their current regulations upon a request from the chair or ranking minority member of a congressional committee.

In the 2011 hearing, GAO cited “among the most common reasons” for not complying with UMRA was “the rules were issues by independent regulatory agencies not covered by the act [UMRA].”<sup>25</sup> In its 2016 annual UMRA report to Congress, the Office of Management and Budget (OMB) noted the importance of transparent rulemaking by independent agencies, which are exempt under UMRA.<sup>26</sup> The report stated:

We emphasize . . . for the purposes of informing the public and obtaining a full accounting, it would be highly desirable to obtain better information on the benefits and costs of the rules issued by independent agencies. The absence of such information is a continued obstacle to transparency, and it might also have adverse effects on public policy. Consideration of costs and benefits is a pragmatic instrument for ensuring that regulations will improve social welfare; an absence of information on costs and benefits can lead to inferior decisions.<sup>27</sup>

H.R. 50 requires most independent agencies to comply with UMRA. H.R. 50 also subjects those agencies to the principles in Executive

<sup>21</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-13-21, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments*, 7 (2012), <https://www.gao.gov/assets/660/651052.pdf>; *Id.* at 8.

<sup>22</sup> 2 U.S.C. § 1532.

<sup>23</sup> *Unfunded Mandates and Regulatory Overreach: Hearing* (Feb. 15, 2011) (testimony of Denise M. Fantone, Director Strategic Issues, Gov’t Accountability Office).

<sup>24</sup> Exec. Order No. 13,563 § 6(a), 3 C.F.R. 215, 217 (2012), *reprinted in* 5 U.S.C. app. § 601 (Supp. V 2011).

<sup>25</sup> *Unfunded Mandates and Regulatory Overreach: Hearing* (Feb. 15, 2011) (testimony of Denise M. Fantone, Director Strategic Issues, Gov’t Accountability Office).

<sup>26</sup> Office of Mgmt. & Budget, *2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, 32 (2017), [https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative\\_reports/draft\\_2016\\_cost\\_benefit\\_report\\_12\\_14\\_2016\\_2.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/draft_2016_cost_benefit_report_12_14_2016_2.pdf).

<sup>27</sup> *Id.*

Order 12866, which means the agencies are required to conduct cost-benefit analyses of their rulemakings.

H.R. 50 aims to promote informed and deliberate decisions by Congress and federal agencies concerning the appropriateness of federal mandates.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In accordance 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 previous section.

#### 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.

#### LEGISLATIVE HISTORY

On January 3, 2017, Representative Virginia Foxx (R-NC) introduced H.R. 50, the Unfunded Mandates Information and Transparency Act of 2017, with Representative Henry Cuellar (D-TX). H.R. 50 was referred to the Committee on Oversight and Government Reform, with additional referrals to the Committee on the Budget, Committee on Rules, and the Committee on the Judiciary. The Committee on Oversight and Government Reform considered H.R. 50 at a business meeting on March 15, 2018 and ordered the bill favorably reported, as amended, by a recorded vote of 20 ayes to 10 nays.

On April 26, 2017, at a hearing entitled Unfunded Mandates: Examining Federally Imposed Burdens on State and Local Government, the Committee on Oversight and Government Reform, Subcommittee on Intergovernmental Affairs, heard testimony from Utah State Senator Wayne Niederhauser, North Carolina State Senator Jim Davis, Boone County Executive Gary Moore, Kansas City Councilman Jermaine Reed, and Supervisor of Fairfax County Board of Supervisors Jeff McKay. The witnesses highlighted specific examples of how unfunded federal mandates limit budgetary flexibility and impact their business communities. They provided suggestions as to how federal objectives can continue to be advanced without burdening states and local governments.

In the 114th Congress, Representative Foxx introduced H.R. 50, the Unfunded Mandates Information and Transparency Act of 2015, a nearly identical bill to H.R. 50. On January 27, 2015, the Committee on Oversight and Government Reform ordered H.R. 50 favorably reported by a recorded vote of 20 ayes to 13 nays, and on February 4, 2015, the House passed the bill by a recorded vote of 250 ayes to 173 nays.

In the 113th Congress, Representative Foxx introduced H.R. 899, the Unfunded Mandates Information and Transparency Act of 2014, a nearly identical bill to H.R. 50. On July 24, 2013, the Committee on Oversight and Government Reform ordered H.R. 899 favorably reported by a recorded vote of 22 ayes to 17 nays, and on

February 28, 2014, the House passed the bill by a recorded vote of 234 ayes to 176 nays.

In the 112th Congress, Representative Foxx introduced H.R. 373, the Unfunded Mandates Information and Transparency Act of 2011, a nearly identical bill to H.R. 50. On September 21, 2011, the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform of the Committee on Oversight and Government Reform considered H.R. 373, and forwarded the bill, as amended, to the Committee on Oversight and Government Reform by a recorded vote of 5 ayes to 4 nays. On November 17, 2011, the Committee ordered the bill favorably reported, as amended, by a recorded vote of 22 ayes 12 nays. H.R. 373 was included in H.R. 4078, the Red Tape Reduction and Small Business Job Creation Act, which the House passed on July 26, 2012, by recorded vote of 245 ayes to 172 nays.

The Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform held three hearings in the 112th Congress regarding unfunded mandates. On February 15, 2011, the Subcommittee held a hearing entitled, Unfunded Mandates and Regulatory Overreach; a hearing entitled, Unfunded Mandates and Regulatory Overreach on March 30, 2011; and a hearing entitled, Unfunded Mandates, Regulatory Burdens and the Role of the Office of Information and Regulatory Affairs, on May 25, 2011.

In the 111th Congress, Representative Foxx introduced H.R. 2255, the Unfunded Mandates Information and Transparency Act of 2009, a substantially similar bill to H.R. 50.

In the 110th Congress, Representative Foxx introduced H.R. 6964, the Unfunded Mandates Information and Transparency Act of 2008, a substantially similar bill to H.R. 50.

#### COMMITTEE CONSIDERATION

On March 15, 2018, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported, as amended, by a roll call vote of 20 ayes to 10 nays.

## ROLL CALL VOTES

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises there was one roll call vote during consideration of H.R. 50:

1. Motion to favorably report H.R. 50, as amended. Approved 20 to 10.

<b>ROLLCALL NO. 1</b>			
	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Gowdy (SC) (Chairman)	X		
Mr. Duncan (TN)			
Mr. Issa (CA)			
Mr. Jordan (OH)	X		
Mr. Sanford (SC)	X		
Mr. Amash (MI)	X		
Mr. Gosar (AZ)			
Mr. DesJarlais (TN)	X		
Mr. Farenthold (TX)	X		
Ms. Foxx (NC)	X		
Mr. Massie (KY)	X		
Mr. Meadows (NC)	X		
Mr. DeSantis (FL)			
Mr. Ross (FL)	X		
Mr. Walker (NC)	X		
Mr. Blum (IA)	X		
Mr. Hice (GA)	X		
Mr. Russell (OK)	X		
Mr. Grothman (WI)	X		
Mr. Hurd (TX)	X		
Mr. Palmer (AL)	X		
Mr. Comer (KY)	X		
Mr. Mitchell (MI)	X		
Mr. Gianforte (MT)	X		
Mr. Cummings (MD) (Ranking)			
Ms. Maloney (NY)		X	
Ms. Norton (DC)		X	
Mr. Clay (MO)		X	
Mr. Lynch (MA)		X	
Mr. Cooper (TN)			
Mr. Connolly (VA)		X	
Ms. Kelly (IL)		X	
Ms. Lawrence (MI)			
Ms. Watson Coleman (NJ)		X	



Mr. Krishnamoorthi (IL)			
Mr. Raskin (MD)			
Mr. Gomez (CA)			
Mr. Welch (VT)		X	
Mr. Cartwright (PA)			
Mr. DeSaulnier (CA)		X	
Ms. Plaskett (VI)			
Mr. Sarbanes (MD)		X	
Total	20	10	

## EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Representative Foxx offered an amendment to reauthorize funding of \$1.5 million to the Congressional Budget Office (CBO) each year from 2018 to 2024 to perform duties required under UMRA. This reduces funding by \$3 million originally authorized under UMRA, and funds them according to CBO's actual expenditures. The Committee adopted the Foxx amendment by voice vote.

## 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 provides for additional safeguards with respect to imposing federal mandates. As such, this bill does not relate to employment or access to public services and accommodations.

## DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII 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 bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

## FEDERAL ADVISORY COMMITTEE ACT

The Committee finds the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

## UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget and Impoundment Control Act (Pub. L. 113-67) the Committee has included a letter received from the Congressional Budget Office below.

## 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 of the House of Representatives.

## COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional

Budget Office under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 23, 2018.*

Hon. TREY GOWDY,  
*Chairman, Committee on Oversight and Government Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 50, the Unfunded Mandates Information and Transparency Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

MARK P. HADLEY  
(For Keith Hall, Director).

Enclosure.

*H.R. 50—Unfunded Mandates Information and Transparency Act of  
2017*

Summary: H.R. 50 would amend the Unfunded Mandates Reform Act of 1995 (UMRA) to increase the information available to the Congress and the public concerning federal mandates in proposed legislation and regulations. Enacting the bill would codify many current practices of federal agencies as they analyze the potential effects of proposed regulations. The bill also would broaden the coverage of UMRA to require independent regulatory agencies to comply with standards relating to rulemaking and to allow judicial review of regulatory actions that fail to comply with that law. Under current law, independent regulatory agencies are exempt from complying with UMRA.

H.R. 50 also would amend the Congressional Budget and Impoundment Control Act of 1974 to establish a point of order that a Member of Congress may raise against legislation that creates a private-sector mandate with costs above the threshold established in UMRA.<sup>1</sup> The bill also would require CBO, upon request, to assess the costs to state, local, and tribal governments resulting from legislation that would change conditions that must be met to receive federal assistance.

CBO estimates that carrying out the new requirements placed on independent regulatory agencies would require additional resources. Assuming the appropriation of necessary amounts, CBO

<sup>1</sup>The intergovernmental and private-sector cost thresholds established in UMRA were \$50 million and \$100 million, respectively, in 1996; they are adjusted annually for inflation. In 2018, the thresholds are \$80 million for intergovernmental mandates and \$160 million for private-sector mandates.

estimates implementing the bill would have a net discretionary cost of \$6 million over the 2019–2023 period.

CBO estimates that enacting H.R. 50 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any net change in direct spending would not be significant. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 50 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 50 would increase the costs of existing mandates on public and private-sector entities to pay fees, but CBO estimates that the additional costs would be small and would fall well below the annual thresholds for intergovernmental and private-sector mandates established in UMRA (\$80 million and \$160 million in 2018, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 50 is shown in the following table. The costs of the legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION <sup>a</sup>							
Estimated Authorization Level .....	0	*	1	1	2	2	6
Estimated Outlays .....	0	*	1	1	2	2	6

<sup>a</sup> In addition, CBO estimates that implementing the bill would require increased spending by some agencies that have permanent spending authority under current law. However, CBO estimates that the legislation would not have a significant effect on direct spending because CBO expects that those agencies would offset the bill's new costs by collecting additional fees. Components may not sum to totals because of rounding; \* = between zero and \$500,000.

Basis of estimate: For this estimate, CBO assumes that H.R. 50 will be enacted near the end of 2018, that the necessary amounts will be appropriated near the start of each fiscal year beginning in 2019, and that spending patterns will follow historical patterns for regulatory analysis activities.

H.R. 50 would amend UMRA to codify certain current practices, including those listed in Executive Orders 12866 and 13563. Those orders require federal agencies to analyze the effects of regulations on state, local, and tribal governments and on the private sector and to prepare detailed cost-benefit analyses of rules that would result in total economic effects estimated at \$100 million or more annually. In addition, H.R. 50 would codify Executive Order 13579 and remove a current-law provision that exempts independent regulatory agencies from complying with rulemaking standards established in UMRA.

Under current law, the adequacy of certain federal analyses and statements developed in accordance with UMRA is not subject to judicial review. Under H.R. 50, such products of the regulatory process could be challenged in the courts. CBO cannot predict the frequency or outcome of such challenges, but any resulting costs probably would be borne primarily by the Department of Justice. Any additional costs for litigation stemming from this provision would be subject to the availability of appropriations.

*Discretionary costs*

Assuming the appropriation of necessary amounts, CBO estimates implementing the bill would have a net discretionary cost of \$6 million over the 2019–2023 period.

**Independent Regulatory Agencies.** Fifteen independent agencies would be affected by H.R. 50, including the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Communications Commission (FCC).

On the basis of information from several affected agencies, CBO expects that the bill's requirements would increase the workload of independent regulatory agencies. They would be required to devote more resources to broader analyses of regulations and to support judicial reviews and hearings pertaining to agency regulations.

CBO estimates that at least 11 independent regulatory agencies that receive discretionary appropriations would face an increased workload under H.R. 50. Annual costs per agency would vary depending on their size and the number of major rules they review each year. CBO estimates that each agency would require, on average, 1 to 3 additional staff to comply with the bill's requirements (depending on its size and the number of major rules that it issues each year) and that annual salary and benefits for each staff member would total about \$150,000 (based on compensation levels in recent years).

Under current law, four of those agencies—the FCC, the SEC, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission—are authorized to collect fees sufficient to offset their annual appropriations. CBO estimates that those four agencies would incur gross costs of about \$16 million over the 2019–2023 period, and we assume that future appropriations would direct those agencies to offset those costs with fees. CBO also estimates that agencies not authorized to collect fees would eventually incur additional annual costs of less than \$500,000 each, resulting in a total cost of \$5 million over the 5-year period.

Other Agencies. H.R. 50 also would require the Office of Information and Regulatory Affairs (OIRA) to provide guidance and oversight to the independent agencies to ensure that their regulations are consistent with the requirements of UMRA. Using information from the agency, CBO expects that OIRA ultimately would require one new staff member to handle the additional workload. Using an average salary of \$150,000, CBO estimates the requirement would cost about \$1 million over the 2019–2023 period, assuming availability of appropriated funds.

Finally, H.R. 50 would require CBO, at the request of any Chair or Ranking Member of a Congressional committee, to assess costs to state, local, and tribal governments resulting from legislation that would change conditions that must be met to receive federal assistance. CBO estimates that the costs of a single assessment would not be significant; however, if CBO were required to prepare a sizable number of assessments, the agency's administrative costs would increase. CBO estimates that those costs in any given year would total well below \$500,000, and any such costs would be subject to the availability of appropriated funds.

*Mandatory costs*

Four independent regulatory agencies that would be required to meet the new regulatory standards under H.R. 50 have permanent spending authority. CBO estimates that the affected agencies, including the FDIC and the OCC, each would incur additional annual costs of \$1 million, on average, to fulfill the bill's requirements. Those agencies collect fees from the industries they regulate to cover administrative expenses. CBO estimates that such collections would largely offset the costs of implementing the bill over the 2019–2028 period.

*Pay-As-You-Go considerations:* The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that the net effects of H.R. 50 on direct spending would not be significant. Enacting the bill would not affect revenues.

*Increase in long-term direct spending and deficits:* CBO estimates that enacting H.R. 50 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

*Mandates:* H.R. 50 would increase the costs of existing mandates on public and private entities that pay fees assessed by certain independent agencies. The bill would expand the scope of analyses that independent agencies are required to conduct when they issue regulations. Such a change would increase their workload and annual operating costs. Some independent agencies collect fees sufficient to offset the cost of their regulatory activities. Because those agencies are expected to raise fees to offset the costs of their additional workload, CBO estimates that the bill would increase the cost of existing mandates on public and private entities that would be required to pay those higher fees.

Using information from the independent agencies, CBO estimates that the cost of implementing the additional regulatory activities would not be significant. Therefore, any additional cost to public and private entities would be small and would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$80 million and \$160 million in 2018 respectively, adjusted annually for inflation).

Estimate prepared by: Federal costs: Jon Sperl; Mandates: Jon Sperl.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Unit; Susan Willie, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; Theresa Gullo, Assistant Director for Budget Analysis.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 establishes the short title of the bill.

*Sec. 2. Purpose*

Section 2 describes the purposes of the bill.

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

Section 3 amends the Congressional Budget Act of 1974 by requiring the Congressional Budget Office (CBO) to perform, upon request by the Chair or Ranking Minority Member of a Standing Committee of the U.S. House of Representatives or the U.S. Senate, 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.

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

Section 4 amends the definition of “direct costs” in the Congressional Budget Act of 1974 to codify current CBO practice—calculating the costs state, local, and tribal governments “incur” as a result of mandates. The definitional change also ensures federal agencies account for private sector variables, such as future loss of business profits, costs passed onto consumers and other entities, and the private sector’s behavioral changes.

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

Section 5 amends the Congressional Budget Act of 1974 by requiring independent regulatory agencies to comply with the Unfunded Mandates Reform Act of 1995 (UMRA), with the exception of the Board of Governors of the Federal Reserve System, the Federal Open Market Committee, and the Consumer Financial Protection Bureau.

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

Section 6 amends the Unfunded Mandates Reform Act of 1995 by transferring responsibility for agency compliance with UMRA requirements from the Director of the Office of Management and Budget to the Administrator of the Office of Information and Regulatory Affairs.

*Sec. 7. Applying substantive point of order to private sector mandates*

Section 7 amends the Congressional Budget Act of 1974 by adding a point of order for legislative mandates that exceed the UMRA threshold with regard to the private sector, unless budgetary expenses are allocated.

*Sec. 8. Regulatory process and principles*

Section 8 amends the Unfunded Mandates Reform Act of 1995 by implementing a series of principles for all “regulatory actions” in accordance with the principles set out in Executive Orders 12866 and 13563. Unless otherwise expressly prohibited by law, each agency must consider the effect of a potential regulation on state, local, and tribal governments and the private sector. Specifically, each agency must:

1. Clearly identify the problem the regulation addresses and its significance;

2. Determine whether existing regulations should be modified to achieve the intended goal more effectively;
3. Identify and assess alternatives to direct regulation, such as economic incentives;
4. When a regulation is necessary, enact the regulation in the most cost-effective manner possible, considering total cost of compliance, innovation incentives, and other factors;
5. Conduct a cost-benefit analysis of a contemplated regulation and only promulgate a regulation if the benefits outweigh the costs;
6. Base each regulatory decision on the best reasonably available data;
7. Consider alternative forms of the regulation and show preference for performance-based regulations rather than prescriptive regulation;
8. Avoid promulgating a regulation that duplicates or conflicts with an existing regulation;
9. Author each regulation in a way that minimize its cumulative costs; and
10. Draft each regulation in simple, easily understood language.

This section also defines “regulatory action.”

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

Section 9 amends the Unfunded Mandates Reform Act of 1995 to require federal agencies prepare a written statement, including several specific elements, before publishing a proposed or final rule that has an effect on state, local, or tribal governments, or on the private sector, of \$100 million or more in any one year. This section aligns UMRA with Section 3 of Executive Order 12866 by removing the words “adjusted annually for inflation” from the dollar threshold.

The section also requires agencies to assess new private sector costs, such as lost future profits, costs passed onto consumers and other entities, and behavioral changes.

Section 9 also requires agencies publish the previously described written statement within six months of promulgating a final rule if the rule was not preceded by a notice of proposed rulemaking. This ensures agencies cannot avoid conducting the required analysis by foregoing a notice of proposed rulemaking.

*Sec. 10. Enhanced stakeholder consultation*

Section 10 extends the Unfunded Mandates Reform Act of 1995’s existing requirement that agencies receive meaningful and timely input during the development of regulatory mandates from state, local, and tribal governments to include the private sector. This section codifies policies instructing agencies on how to effectuate this requirement: consultations occur early in the process; a variety of state, local, and private sector input is considered in computing costs and benefits; compliance costs are addressed during consultations; and input is solicited on alternative methods of compliance, flexibility, and whether the contemplated regulation will duplicate or conflict with similar law in other levels of government.



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

Section 11 requires the Office of Information and Regulatory Affairs (OIRA) to determine if an agency's regulation, in which a written statement is required, is consistent with this bill and other laws, and does not conflict with other agencies' policies or actions. If OIRA determines the agency has not met these requirements, OIRA must notify the agency and request compliance before the regulation is finalized. Section 11 also requires OIRA submit an annual report to Congress detailing agency compliance with sections 202 and 204 of the Unfunded Mandates Reform Act of 1995.

*Section 12. Retrospective analysis of existing federal regulations*

Section 12 amends the Unfunded Mandates Reform Act of 1995 to require each federal agency to conduct a retrospective analysis of an existing federal regulation, upon request by the Chair or Ranking Minority Member of a Standing or Select Committee of the U.S. House of Representatives or the U.S. Senate. The analysis must include: a copy of the regulation; the regulation's continued necessity; the nature of comments or complaints received concerning the regulation; an explanation of the extent to which the mandate duplicates or conflicts with any other regulation or rule; a description of the degree to which technology or economic conditions have changed in the area affected by the federal regulation; analysis of retrospective direct costs and benefits, including any study conducted outside the Federal government; and litigation history challenging the regulation.

*Sec. 13. Expansion of judicial review*

Section 13 extends judicial review to determine an agency's choice of least costly, most cost-effective, or least burdensome regulatory alternative. This section permits a court to stay, enjoin, or invalidate a rule if an agency fails to complete the required UMRA analysis or to adhere to its regulatory principles.

*Sec. 14. Reauthorization*

Section 14 reauthorizes funding for the Congressional Budget Office to complete its requirements under UMRA.

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, and 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 Committees 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 prac-

licable, 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 as-*

*assessment of an estimated level of funding compared to such costs.*

\* \* \* \* \*

#### TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

\* \* \* \* \*

#### 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, the Federal Open Market Committee, or the Consumer Financial Protection Bureau.*

(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 in-

creased 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 au-



thorizing 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**

\* \* \* \* \*

**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).

\* \* \* \* \*

**[SEC. 109. AUTHORIZATIONS OF APPROPRIATIONS.**

[There are authorized to be appropriated to the Congressional Budget Office \$4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this title.]

**SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

*There are authorized to be appropriated to the Congressional Budget Office \$1,500,000 for each of fiscal years 2018 through 2024 to carry out the provisions of this title.*

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## 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 environ-*

ment, 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.

(8) An assessment of the effects that the proposed rulemaking or final rule are expected to have on private property owners, including the use and value of affected property.

(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).

\* \* \* \* \*

**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.

\* \* \* \* \*

**[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 Comptroller 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.

\* \* \* \* \*

## 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 con-

cerning 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.

\* \* \* \* \*

CORRESPONDENCE

TREY GOWDY, SOUTH CAROLINA  
CHAIRMAN

ONE HUNDRED FIFTEENTH 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  
MINORITY (202) 225-5075  
<http://oversight.house.gov>

June 25, 2018

The Honorable Steve Womack  
Chairman, Committee on the Budget  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

On March 15, 2018, the Committee on Oversight and Government Reform ordered reported H.R. 50, the *Unfunded Mandates Information and Transparency Act of 2017*, with an amendment, by recorded vote. The bill was referred primarily to the Committee on Oversight and Government Reform, with additional referrals to the Committees on Budget, Rules, and the Judiciary.

I ask you allow the Committee on the Budget to be discharged from further consideration of the bill to expedite floor consideration. 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,



Trey Gowdy

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Elijah E. Cummings  
The Honorable John Yarmouth  
The Honorable Thomas J. Wickham, Parliamentarian

STEVE WOMACK, ARKANSAS  
CHAIRMAN



JOHN YARMUTH, KENTUCKY  
RANKING MEMBER

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

June 26, 2018

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

Dear Chairman Gowdy:

Thank you for your letter regarding H.R. 50, the *Unfunded Mandates Information and Transparency Act of 2017*.

The bill contains provisions that fall within the jurisdiction of the Committee on the Budget. 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 its jurisdictional prerogatives on this or similar legislation. I also ask that the Committee on the Budget be appropriately consulted and involved as this bill or similar legislation moves forward so that the Committee may address any remaining issues that fall within its jurisdiction. The Committee on the Budget also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation. I also request that you include this letter and your response as part of your committee's report on H.R. 50 and in the *Congressional Record* during floor consideration.

Thank you for your attention to these matters. I look forward to working with you as this bill moves through the Congress.

Sincerely,

Steve Womack  
Chairman  
Committee on the Budget

cc: The Honorable Paul Ryan, Speaker  
The Honorable Elijah E. Cummings  
The Honorable John Yarmuth  
The Honorable Thomas J. Wickham, Parliamentarian

TREY GOWDY, SOUTH CAROLINA  
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

**Congress of the United States**  
**House of Representatives**

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June 27, 2018

The Honorable Pete Sessions  
Chairman, Committee on Rules  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

On March 15, 2018, the Committee on Oversight and Government Reform ordered reported H.R. 50, the *Unfunded Mandates Information and Transparency Act of 2017*, with an amendment, by recorded vote. The bill was referred primarily to the Committee on Oversight and Government Reform, with additional referrals to the Committees on Budget, Rules, and the Judiciary.

I ask you allow the Committee on Rules to be discharged from further consideration of the bill to expedite floor consideration. 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,



Trey Gowdy

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Elijah E. Cummings  
The Honorable Jim McGovern  
The Honorable Thomas J. Wickham, Parliamentarian

PETE SESSIONS, TEXAS  
CHAIRMAN

TOM COLE, OKLAHOMA  
ROB WOODALL, GEORGIA  
MICHAEL C. BURGESS, TEXAS  
DOUG COLLINS, GEORGIA  
BRADLEY BYRNE, ALABAMA  
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KEN BUCK, COLORADO  
LEZ CHENEY, WYOMING

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**Committee on Rules**  
**U.S. House of Representatives**  
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Washington, DC 20515-6269

ONE HUNDRED FIFTEENTH CONGRESS

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RANKING MEMBER

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NORMA J. TORRES, CALIFORNIA

DON SIBSON, MINORITY STAFF DIRECTOR

MINORITY OFFICE  
H-152, THE CAPITOL  
(202) 225-9061

June 27, 2018

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

Dear Chairman Gowdy,

Thank you for your letter on H.R. 50, the Unfunded Mandate and Information Technology Act of 2017, which your Committee ordered reported on March 15, 2018

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  
Chairman, House Committee on Rules

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Elijah E. Cummings  
The Honorable Jim McGovern  
The Honorable Thomas J. Wickham, Parliamentarian

BOB GOODLATTE, Virginia  
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin  
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STEVE CHABOT, Ohio  
DARRELL E. ISSA, California  
STEVE KING, Iowa  
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KEITH J. ROTHFUS, Pennsylvania

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ERIC SWALWELL, California  
TED LIEU, California  
JAMIE RASKIN, Maryland  
PRAMILA JAYAPAL, Washington  
BRAD SCHNEIDER, Illinois  
VAL DEMINGS, Florida

ONE HUNDRED FIFTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

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<http://www.house.gov/judiciary>

June 28, 2018

The Honorable Trey Gowdy  
Chairman  
Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

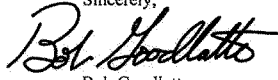
Dear Chairman Gowdy,

I write with respect to H.R. 50, the "Unfunded Mandates Information and Transparency Act." As a result of your having consulted with us on provisions within H.R. 50 that fall within the Rule X jurisdiction of the Committee on the Judiciary, I forego any 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 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 appreciate a response to this letter confirming this understanding with respect to H.R. 50 and would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during floor consideration of H.R. 50.

Sincerely,



Bob Goodlatte  
Chairman

cc: The Honorable Jerrold Nadler  
The Honorable Elijah Cummings  
The Honorable Paul Ryan, Speaker  
The Honorable Thomas Wickham, Jr., Parliamentarian



TREY GOWDY, SOUTH CAROLINA  
CHAIRMAN

ONE HUNDRED FIFTEENTH 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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MAJORITY (202) 225-5074  
MINORITY (202) 225-5051  
<http://oversight.house.gov>

June 28, 2018

The Honorable Bob Goodlatte  
Chairman, Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

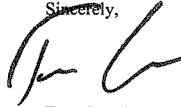
Dear Mr. Chairman:

Thank you for your letter regarding H.R. 50, the *Unfunded Mandates Information and Transparency Act of 2017*. As you know, on March 15, 2018, the Committee on Oversight and Government Reform ordered reported the bill with an amendment, by recorded vote. The bill was referred primarily to the Committee on Oversight and Government Reform, with additional referrals to the Committees on Budget, Rules, and the Judiciary.

I thank you for allowing the Committee on the Judiciary to be discharged from further consideration of the bill to expedite floor consideration. 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.

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.

Sincerely,



Trey Gowdy

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Elijah E. Cummings  
The Honorable Jerrold Nadler  
The Honorable Thomas J. Wickham, Parliamentarian

## MINORITY VIEWS

H.R. 50, the Unfunded Mandates Information and Transparency Act of 2017, is significantly flawed. The bill would be an assault on the nation's health, safety, and environmental protections, erect new barriers to unnecessarily slow down the regulatory process, and give regulated industries an unfair advantage to water down consumer protections.

Section 5 of the bill would repeal federal law 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 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 rule-making, continue through the final rule stage, and be integrated explicitly into the rulemaking process."

Committee Democrats 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.

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

date, 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.

ELIJAH E. CUMMINGS,  
*Ranking Member.*

