

Congress of the United States

Washington, DC 20515

May 18, 2001

**MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND
REGULATORY AFFAIRS AND THE RULES SUBCOMMITTEE ON TECHNOLOGY
AND THE HOUSE**

FROM: Tom Ose and John Linder

SUBJECT: Briefing Memorandum for May 24, 2001 Hearing, "Unfunded Mandates - A Five-Year Review and Recommendations for Change"

On Thursday, May 24, 2001, at 10:30 a.m., in Room 2154 Rayburn House Office Building, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Rules Subcommittee on Technology and the House will hold a joint hearing on the Unfunded Mandates Reform Act (UMRA). The hearing is entitled, "Unfunded Mandates - A Five-Year Review and Recommendations for Change."

UMRA was enacted in 1995 "[t]o curb the practice of imposing unfunded Federal mandates on States and local governments; [and] to strengthen the partnership between the Federal Government and State, local and tribal governments." The Act established new procedures designed to ensure that both the Legislative and Executive Branches fully consider the potential effects of unfunded Federal mandates before imposing them on State and local governments or the private sector.

After five years of experience under UMRA, it is time to review its effectiveness. In sum, it seems to have had a chilling effect on the imposition of new unfunded mandates by Congress, especially those imposed on State and local governments. In contrast, it seems to have had little effect on the imposition of new unfunded mandates by the Executive Branch.

Title I, Legislative Accountability and Reform, amended the Congressional Budget and Impoundment Control Act. It set forth requirements for committees and the Congressional Budget Office (CBO) to study and report on the magnitude and impact of Federal mandates proposed in legislation, including for private-sector mandates over \$100 million¹. Title I also establishes a point of order against the consideration of legislation if it contains an unfunded intergovernmental mandate exceeding \$50 million or, if a committee, when reporting a bill or joint resolution, fails to include in either the committee report or the Congressional Record a statement from CBO estimating the direct costs of any mandate contained in the legislation. The

¹This threshold and others in UMRA are adjusted annually for inflation.

new procedures were designed to ensure debate and accountability during the consideration of legislation containing unfunded intergovernmental mandates.

Title II, Regulatory Accountability and Reform, requires agencies to assess the effects of proposed and final Federal rules on State and local governments and the private sector, and to prepare a statement for any mandate requiring an expenditure of \$100 million or more in any one year. This Title also required the President to issue implementation guidelines to the agencies and the Office of Management and Budget (OMB) to certify agency compliance with the Act. Soon after enactment in March 1995, OMB issued initial guidance to the agencies. In September 1995, OMB issued additional guidelines on Sec. 204, State, Local, and Tribal Government Input. This Section exempts meetings between the Federal government and elected State and local officials and their representatives from the Federal Advisory Committee Act (FACA). Section 205, Least Burdensome Option or Explanation Required, requires agencies, for their rules with an intergovernmental or private-sector mandate, to identify and consider a reasonable number of regulatory alternatives and to "select the least costly, most cost-effective or least burdensome alternative" or explain why not.

Title III, Review of Federal Mandates, required the now-defunct Advisory Commission on Intergovernmental Relations (ACIR) to submit reports on existing intergovernmental mandates and ways of measuring their costs and benefits. Title IV, Judicial Review, set forth requirements for judicial review of agency statements on significant (\$100 million or more in any one year) regulatory actions. This review is basically limited to procedural compliance with the Act, i.e., the substance of agency analyses is not subject to judicial review for adequacy.

To date, CBO has issued four annual reports on experience under UMRA: January 1997, February 1998, February 1999, and March 2000. These reports revealed 29 bills from 1996-1999 with an intergovernmental mandate over \$50 million. Only two of these were enacted: an increase in the Federal minimum wage and a cap on the Federal contribution for administration of the Food Stamps program. There were 94 bills in the same four-year period with a private-sector mandate over \$100 million. Of these, 16 were enacted, such as an increase in the Federal minimum wage, health insurance portability, and minimum-length maternity stay.

To date, OMB has issued five annual reports on agency compliance with Title II of UMRA: March 1996, April 1997, June 1998, October 1999, and October 2000. These reports revealed from 13 to 17 proposed or final rules each year with a mandate over \$100 million. The Environmental Protection Agency (EPA) had more rules than all other agencies combined. The Department of Transportation (DOT) imposed the next most, followed by the Departments of Health and Human Services (HHS), Labor (DOL), Energy (DOE), and Agriculture (USDA). Some of these rules included: regional transport of ozone (EPA), tier 2 motor vehicle emissions (EPA), radon in drinking water (EPA), improved air bags (DOT), motor carrier hours of service of drivers (DOT), regulation of tobacco (HHS), medical privacy (HHS), ergonomics (DOL), energy efficiency standards (DOE), and food safety pathogen reduction (USDA).

The invited witnesses for the May 24, 2001 hearing are: CBO Director Dan Crippen; OMB Director Mitchell Daniels; Paul Mannweiler, IN State Representative and Immediate Past President, National Conference of State Legislatures; Raymond C. Scheppach, Executive Director, National Governors' Association; a Mayor for the U.S. Conference of Mayors; Bill Kovacs, Vice President, Environment and Regulatory Affairs, U.S. Chamber of Commerce; and Scott Holman, Sr., President and Chief Executive Officer, Bay Cast, Inc., Bay City, MI and Chairman, Regulatory Affairs Committee, U.S. Chamber of Commerce.