

**Calendar No. 738**

115TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 115-447

UNFUNDED MANDATES INFORMATION AND  
TRANSPARENCY ACT OF 2017

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

H.R. 50

TO PROVIDE FOR ADDITIONAL SAFEGUARDS WITH RESPECT TO  
IMPOSING FEDERAL MANDATES, AND FOR OTHER PURPOSES



DECEMBER 19, 2018.—Ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

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Mr. JOHNSON, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

**R E P O R T**

[To accompany H.R. 50]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which 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, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 50, the Unfunded Mandates Information and Transparency Act of 2017, amends the Unfunded Mandates Reform Act of 1995 (UMRA) to expand the scope and application of UMRA's analytical and procedural requirements to better and more completely account for costs imposed by Federal policies on state, local, tribal, and private sector entities.

## II. BACKGROUND AND THE NEED FOR LEGISLATION

### *Growing Concern*

Except in rare instances, the division of authorities between the Federal Government on the one hand and non-Federal entities on the other has tended toward the former.<sup>1</sup> One of the potential consequences of this accumulation of authority at the Federal level over subordinate authorities is the imposition of requirements to administer Federal policies without the necessary resources to do so, resulting in so-called “unfunded mandates.” Whereas prior to the 1970s, Federal mandates were often structured through subsidization as a means to encourage participation (voluntary grant-in-aid funding), more recently Federal policymakers were “increasingly relying on ‘new, more intrusive, and more compulsory’ programs and regulations” which came to be known as unfunded mandates.<sup>2</sup>

In the early 1980s, state and local advocates (and affiliated interest groups) began to highlight the growing problem of Federal unfunded mandates from both Federal regulation and Federal statutes. Then-mayor of New York City Ed Koch, in 1980, wrote an article noting:

that as a Member of Congress [I] voted for many [F]ederal mandates “with every confidence that we were enacting sensible permanent solutions to critical problems” but now . . . [have] come to realize that . . . “a maze of complex statutory and administrative directives has come to threaten both the initiative and the financial health of local governments throughout the country.”<sup>3</sup>

Koch referred to this problem as the “mandate millstone.” In 1993, the U.S. Advisory Commission on Intergovernmental Relations (ACIR) issued a report that identified 63 statutes as sources of significant costs.<sup>4</sup> The National Performance Review, an initiative of the Clinton Administration, “identified 172 laws that imposed requirements . . . on state and local governments.”<sup>5</sup> Between 1983 and 1990, ACIR estimated, new Federal mandates cost on the order of between \$8.9 billion and \$12.7 billion.<sup>6</sup>

These same critics of the growing Federal unfunded mandate burden, now armed with an increasing body of evidence of the problem, began advocating for a statutory solution and doing so in an increasingly public way. On October 27, 1993, a coalition of

<sup>1</sup> See Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (Oxford Univ. Press 1987).

<sup>2</sup> Robert Jay Dilger, Cong. Research Serv., R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues* (2018) (quoting U.S. Advisory Comm’n on Intergovernmental Relations, A-95, *Regulatory Federalism: Policy, Process, Impact, and Reform* (1984)), available at <http://www.library.unt.edu/gpo/acir/Reports/policy/a-95.pdf>.

<sup>3</sup> *Id.* at 3 (citing Edward I. Koch, *The Mandate Millstone*, 37 Nat’l Affairs, 42, 44 (1980)).

<sup>4</sup> U.S. Advisory Comm’n on Intergovernmental Relations, A-126, *Federal Regulation of State and Local Governments: The Mixed Record of the 1980s* (1993), available at <http://www.library.unt.edu/gpo/acir/Reports/policy/a-126.pdf>.

<sup>5</sup> Office of the Vice President, Department of Defense National Performance Review Accompanying Report (1993), available at <https://babel.hathitrust.org/cgi/pt?id=umn.31951d003716495;view=1up;seq=3>.

<sup>6</sup> Timothy J. Conlan & David R. Beam, *Federal Mandates: The Record of Reform and Future Prospects*, 18 Intergovernmental Perspective 4, 9–10 (1992).

state and local interests organized “National Unfunded Mandates Day” with participation of “[o]ver 300 cities and 128 counties.”<sup>7</sup>

*The Unfunded Mandates Reform Act*

Eventually this public and direct lobbying effort culminated in S. 1, the Unfunded Mandates Reform Act of 1995 (UMRA). Introduced on January 4, 1995, by Senators Dirk Kempthorne and John Glenn, UMRA was simultaneously reported out of the Senate Governmental Affairs and Senate Budget Committees just five days later (without committee report) by a combined vote of 30–4.<sup>8</sup> That same week, the House Government Reform and Oversight Committee reported H.R. 5, the House-companion, by voice vote and without hearings.<sup>9</sup> President Clinton signed UMRA into law on March 22, 1995.<sup>10</sup> UMRA had eight stated purposes:

(1) to strengthen the partnership between the Federal Government and State, local, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and tribal governments, and the private sector by (A) providing for the development of information about the nature and size of mandates in proposed legislation; and (B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates;

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments, by (A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and trib-

<sup>7</sup> Timothy J. Conlan, James D. Riggle, & Donna E. Schwartz, *Deregulating Federalism? The Politics of Mandate Reform in the 104th Congress*, 25 *Publius: The J. of Federalism* 3, 26 (1995).

<sup>8</sup> 141 Cong. Rec. 1, 891, 898 (1995) (Statement of the Chairman on the Reporting By the Governmental Affairs Committee of S. 1, Unfunded Mandates Reform Act of 1995); and 141 Cong. Rec. 1, 1092, 1099 (1995) (Statement of the Senate Committee on the Budget on S. 1, Unfunded Mandate Reform Act of 1995).

<sup>9</sup> H.R. Rep. No. 104–1, pt. 2, 53–56 (1995).

<sup>10</sup> Unfunded Mandates Reform Act of 1995, 5 U.S.C. §§3109 (1995).

al governments to provide input when Federal agencies are developing regulations; and (B) requiring that Federal agencies prepare and consider estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments and the private sector before adopting such regulations, and ensuring that small governments are given special consideration in that process; and

(8) to begin consideration of the effect of previously imposed Federal mandates, including the impact on State, local, and tribal governments of Federal court interpretations of Federal statutes and regulations that impose Federal intergovernmental mandates.<sup>11</sup>

UMRA aimed to accomplish these purposes by establishing procedural requirements prompting analysis and consideration of impacts of pending Federal policy on state, local, and private sector entities. Within Congress, UMRA requires the Congressional Budget Office (CBO) to estimate direct costs of legislation reported by a committee, when exceeding \$50 million and \$100 million (adjusted for inflation) of intergovernmental mandate and private sector mandate costs, respectively. For proposed or final regulations, agencies must similarly consider “the effects on state and local governments and the private sector . . . and to prepare a written statement of estimated costs and benefits for any mandate requiring an expenditure exceeding \$100 million in any given year.”<sup>12</sup>

#### *The Unfunded Mandates Information and Transparency Act*

From the earliest days of the debate on unfunded mandates, much of the discussion centered on how to define the appropriate scope of the term.<sup>13</sup> “[A] general consensus” exists that where Federal policies “impose unavoidable costs . . . in the absence of sufficient compensatory funding,” these fit squarely within the definition of an unfunded mandate. Where there is less of a consensus, and where UMRA’s requirements do not apply, are conditions of grants-in-aid because strictly speaking the grant itself is considered voluntary. However, some scholars have made the case that changes in conditions of grants-in-aid can, and have, for administration of programs that initially entailed “major commitments of state resources,” these are effectively unavoidable.<sup>14</sup> By referencing “enforceable duty” in its definitions, UMRA’s scope is understood to exclude grant conditions.<sup>15</sup>

The Unfunded Mandates Information and Transparency Act of 2017 (UMITA) is an attempt to address this, and other deficiencies raised by stakeholders, in the more than twenty-year-old Act.<sup>16</sup> In addition to expanding the definition of unfunded mandate to include changes in conditions of grants-in-aid, UMITA also: provides a more fulsome criteria for agencies to employ in considering the

<sup>11</sup> 2 U.S.C. § 1501 (1995).

<sup>12</sup> Dilger, *supra* note 2.

<sup>13</sup> U.S. Gov’t Accountability Office, GAO–05–454, *Unfunded Mandates: Views Vary About Reform Act’s Strengths, Weaknesses, and Options for Improvement* (2005), available at <https://www.gao.gov/new.items/d05454.pdf>.

<sup>14</sup> Paul L. Posner, *The Politics of Unfunded Mandates: Whither Federalism?* 12–13 (Georgetown University Press, 1998).

<sup>15</sup> 2 U.S.C. § 658(7)(A) and 2 U.S.C. § 658(7)(B).

<sup>16</sup> See generally U.S. Cong., House Comm. on Oversight and Gov’t Reform, *Unfunded Mandates Information and Transparency Act of 2017*, report to accompany H.R. 50, 115th Cong., 2nd sess., June 29, 2018, H. Rept. 115–798, pt. 1, 2–6 (2018).

effects of proposed rules, based on longstanding principles in Executive Order 12866; applies to independent agencies (but omits the Board of Governors of the Federal Reserve System, the Federal Open Market Committee, and the Consumer Finance Protection Board) whereas they were previously exempted; expands the definition of “direct costs” to include economic effects such as foregone profits; allows a chair or ranking minority member of a committee to request an agency conduct a retrospective analysis of an extant regulation; allow judicial review of agency compliance with the Act’s requirements; and extends the “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.”<sup>17</sup> In addition, UMITA transfers responsibility for agency coordination and compliance with the Act’s requirements from the Director of the Office of Management and Budget to the Administrator of the Office of Information and Regulatory Affairs, and reauthorizes funding for CBO’s responsibilities under UMRA through 2023.

### III. LEGISLATIVE HISTORY

Representative Virginia Foxx (R–NC) introduced H.R. 50, with Representative Cuellar (D–TX) on January 3, 2017. The bill passed the House on July 13, 2018, by recorded vote of 230–168.

On July 16, 2018, the Act was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered H.R. 50 at a business meeting on September 26, 2018. At the business meeting, Senator Michael Enzi (R–WY) offered an amendment which was adopted by voice vote with Johnson, Portman, Lankford, Enzi, Hoeven, McCaskill, Carper, Heitkamp, Peters, Hassan, Harris, and Jones present.

The Committee ordered H.R. 50, as amended, reported favorably on September 26, 2018, by roll call vote of 8 yeas to 6 nays. Senators voting in the affirmative were Johnson, Portman, Paul, Lankford, Enzi, Hoeven, Daines, and Heitkamp. For the record only, Senator Kyl voted yea by proxy. Senators voting in the negative were McCaskill, Carper, Peters, Hassan, Harris, and Jones.

### IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

#### *Section 1. Short title*

This section designates the short title of the Act as the “Unfunded Mandates Information and Transparency Act of 2018.”

#### *Sec. 2. Purposes*

This section states that the purpose of the Act is to promote higher quality debates on Federal mandates and enhance the increase Congress and the public’s ability to identify Federal Mandates that impose undue harm.

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

This section amends the Congressional Budget Act of 1974. The amendment authorizes any chairman or ranking member of a Sen-

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<sup>17</sup>*Id.* at 16.

ate or House committee to request that the CBO conduct a study comparing authorized level of funding in a bill to the estimated costs of carrying out any changes to a condition of Federal assistance being imposed on a governmental entity participating in the Federal assistance program or a study on the estimate level of funding compared to costs.

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

This section amends section 421(3) of the Congressional Budget Act of 1974 by expanding the definition of direct costs to include foregone profits, costs to consumers, and other behavioral changes.

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

This section amends 421(1) of the Congressional Budget Act of 1974. The amendment expands the reporting requirements by including all independent regulatory agencies except for the Board of Governors of the Federal Reserve, the Federal Open Market Committee, and the Bureau of Consumer Financial Protection.

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

This section amends the Unfunded Mandates Reform Act of 1995. This amendment replaces references to the Office of Management and Budget with Office of Information and Regulatory Affairs (OIRA).

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

This section amends section 421(a)(1) of the Congressional Budget Act of 1974 by expanding the scope of the existing point of order to include private sector effects.

*Sec. 8. Regulatory process and principles*

This section amends section 201 of the UMRA. New subsection (a) requires each agency to assess the effects of Federal regulation on government entities and the private sector. The subsection requires the assessment to identify the problems the regulation intends to address; determine whether existing regulations have contributed to the problem that the new regulation intends to address; encourages agencies to create regulations that are the most cost effective; determine the cost and benefits of the regulation; ensure the regulations are easy to understand; and base each decision on the best scientific methods. New subsection (b) defines “regulatory action.”

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

This section amends section 202(a) of the UMRA. New subsection (a) requires agencies to prepare a written statement that must follow before promulgating any general notice of proposed or final rule making and list requirements for the written statement. The written statement must include the text of the rule and an explanation of the need for the rule; a prediction of the costs and bene-



fits of the rule; a qualitative and quantitative analysis of the expected benefits and costs of the rule; estimates of future compliance costs; and summaries of private sector concerns and the agencies evaluation of those concerns. Subsection (b) amends section 202(b) of the UMRA by inserting “detailed” before “summary”.

*Sec. 10. Enhanced stakeholder consultation*

This section amends section 204 of the UMRA. New subsection (c) creates guidelines for agencies to follow when implementing subsection (a) and (b). Agencies must consult with stakeholders as early as possible before the issuing a notice of proposed rule and continue through the final rule stage; agencies must consult with a wide variety of government agencies and private actors while considering issues that may differentiate varying points of view; and agencies should have the scope of these consultations reflect the estimate of costs and benefits with the consultations.

Any consultation with a non-Federal party involving a significant Federal mandate must be posted on the agency website within five days of the consultation and any non-Federal party comments must be posted with five days of submission. Agencies must seek out the views of government entities and private stakeholders and solicit ideas about alternative approaches to the regulation.

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

This section amends section 208 of the UMRA. New subsection (a) describes the general duties of the Administrator of OIRA.

New subsection (b) requires the Administrator of OIRA to annually submit a report to Congress and the appropriate congressional committees. The report must describe how each agency is complying with requirements of this Act.

*Sec. 12. Retrospective analysis of existing federal regulations*

This section requires agencies to conduct a retrospective analysis of one of its existing regulations at the request of a Chairman or Ranking Minority Member.

*Sec. 13. Expansion of judicial review*

This section allows for judicial review of an agency’s compliance with UMRA’s regulatory analysis principles.

*Sec. 14. Reauthorization*

This section reauthorizes funding for the CBO’s analytical responsibilities under UMRA.

## V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

## VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 13, 2018.*

Hon. RON JOHNSON,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, 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,

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 legislation would codify many current practices of federal agencies as they analyze the potential effects of proposed regulations. The act 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 act 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 estimates implementing the act would have a net discretionary cost of \$7 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 H.R. 50 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.

<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.

H.R. 50 would increase the costs of existing mandates on public and private-sector entities required 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—					
	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION <sup>a</sup>						
Estimated Authorization Level .....	1	1	1	2	2	7
Estimated Outlays .....	1	1	1	2	2	7

<sup>a</sup> In addition, CBO estimates that implementing the act 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 act's new costs by collecting additional fees.

**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 spending 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 act would have a net discretionary cost of \$7 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 act'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. The act also would require agencies to post records of consultations conducted with nonfederal entities, as well as comments submitted by those entities, on a public website within five days.<sup>2</sup>

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 that they review each year. CBO estimates that each agency would require, on average, one to three additional employees to comply with the act'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 new 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 \$17 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 \$6 million over the five-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 a 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 costs would increase. CBO estimates that those costs in any year, and over the next five years, would be below \$500,000, and any such spending 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 each of the affected agencies, including the FDIC and the OCC, would incur additional an-

<sup>2</sup>Under current law, most federal agencies post this information to the federal website [www.regulations.gov](http://www.regulations.gov), which houses a publicly accessible docket with documents and other information for each regulation promulgated by a federal agency. However, most agencies generally do not post such information online within five days, as would be required by H.R. 50. CBO estimates that doing so would require additional resources.

nual costs of \$1 million, on average, to fulfill the act'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 act 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 H.R. 50 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 act would expand the scope of analyses that independent agencies are required to conduct when they issue regulations, which would increase their workload and annual operating costs. Some independent agencies are authorized to collect fees sufficient to offset the costs of their regulatory activities. Because we expect those agencies to raise fees to offset the costs of their additional workload, 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 additional fees would range from \$2 million to \$8 million per year over the 2019–2023 period and would therefore 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).

Previous CBO estimate: On May 23, 2018, CBO transmitted a cost estimate for H.R. 50, the Unfunded Mandates Information and Transparency Act of 2017, as ordered reported by the House Committee on Oversight and Government Reform on March 15, 2018. The two versions of the legislation are similar; however, the Senate version would require the affected agencies to post records of consultations conducted with nonfederal entities, as well as comments submitted by those entities, on a public website within five days. The House version did not contain this requirement. Because meeting this deadline would require agencies to spend additional amounts, CBO's estimated cost of this version of the legislation is greater than the House version by about \$1 million over the 2019–2023 period.

In the House version of H.R. 50, CBO stated that the increased cost of existing mandates on public and private-sector entities would be less than \$500,000 per year. The correct estimate of those costs, which is included here and ranges from \$2 million to \$8 million per year over the 2019–2023 period, applies to both versions of the bill.

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

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates 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.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**UNITED STATES CODE**

\* \* \* \* \*

**TITLE 2—THE CONGRESS**

\* \* \* \* \*

**CHAPTER 17—CONGRESSIONAL BUDGET OFFICE**

\* \* \* \* \*

**SEC. 602. DUTIES AND FUNCTIONS.**

(a) \* \* \*

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(2) \* \* \*

(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, to the extent practicable, conduct an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of Federal assistance being imposed on State, local, or tribal governments participating in the Federal assistance program concerned or, in the case of a bill or joint resolution that authorizes such sums as are necessary, an assessment of an estimated level of funding compared to such costs.*

\* \* \* \* \*

**CHAPTER 17A—CONGRESSIONAL BUDGET AND FISCAL OPERATIONS**

\* \* \* \* \*

**Subchapter II—Fiscal Procedures**

\* \* \* \* \*

**Part B—Federal Mandates**

**SEC. 658. DEFINITIONS.**

(1) **AGENCY.**—The term “agency” has the same meaning as defined in section 551(1) of title 5[, 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 Bureau of Consumer Financial Protection.*

(2) \* \* \*

(3) \* \* \*

(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) \* \* \*

(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;

\* \* \* \* \*

**SEC. 658D. LEGISLATION SUBJECT TO POINT OF ORDER.**

(a) \* \* \*

(1) \* \* \*

(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 658c(a)(1) or 658c(b)(1) of this title to be exceeded, unless—

\* \* \* \* \*

**CHAPTER 25—UNFUNDED MANDATES REFORM**

\* \* \* \* \*

**Subchapter I—Legislative Accountability and Reform**

**SEC. 1511. COST OF REGULATIONS.**

(a) \* \* \*

(b) \* \* \*

(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 **[2 U.S.C. 658 et seq.]**.

\* \* \* \* \*

**Subchapter II—Legislative Accountability and Reform**

**SEC. 1531. **[REGULATORY PROCESS]** *REGULATORY PROCESS AND PRINCIPLES*.**

**[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).<sup>1</sup>

(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 the agency (normally published in the Federal Register) that promulgates or is ex-



*pected to lead to the promulgation of a final rule or regulation, including advance notices of proposed rulemaking and notices of proposed rulemaking.*

**SEC. 1532. 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 1534 of this title) 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 6 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 the 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 underlying analysis, of benefits anticipated from the proposed rulemaking or final rule (such as the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias).

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

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

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

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the United States 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 principals 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.

SEC. 1533. \* \* \*

**SEC. 1534. STATE, LOCAL, AND TRIBAL 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) \* \* \*

**【(c) IMPLEMENTING GUIDELINES.—No later than 6 months after March 22, 1995, 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 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) *A record of any consultation with any non-Federal party during the development of regulatory proposals containing a significant Federal mandate shall be posted on the website of the agency within five days after the consultation. Any comments submitted by a non-Federal party shall be posted on the website of the agency within five days after the date of submission to the agency.*

(5) *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 alternatives 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.*

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

(7) 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. 1535. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.**

(a) \* \* \*

(b) \* \* \*

(c) **[OMB] CERTIFICATION.**—No later than 1 year after March 22, 1995, 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. 1536. 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 1532 of this title; 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. 1537. \* \* \***

**SEC. 1538. [ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.] OFFICE OF INFORMATION AND REGULATORY AFFAIRS RESPONSIBILITIES.**

**[No later than 1 year after March 22, 1995, 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 subchapter.]**

(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 Administrator 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.*

**UNFUNDED MANDATES REFORM ACT OF 1995**

\* \* \* \* \*

**TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM**

**SEC. 101 \* \* \***

**SEC. 102 \* \* \***

**SEC. 103. COSTS OF REGULATION.**

(a) \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

**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.] *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.*

**TITLE II—REGULATORY ACCOUNTABILITY AND REFORM**

**SEC. 201. [REGULATORY PROCESS]REGULATORY PROCESS AND PRINCIPLES.**

[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).]

(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 this title) 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 6 months after promulgating any final rule that was not preceded by a general notice of proposed rulemaking, if the proposed rulemaking or final rule includes a Federal mandate that may result in an annual effect on State, local, or tribal governments, or to the private sector, in the aggregate of \$100,000,000 or more in any 1 year, the agency shall prepare a written statement containing the following:*

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

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

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

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

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

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

(B) *any disproportionate budgetary effects of the Federal mandate upon any particular regions of the United States 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.

**SEC. 203. \* \* \***

**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) \* \* \*

(c) **【IMPLEMENTING GUIDELINES】** *GUIDELINES*.—

**【No later than 6 months after March 22, 1995, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.】**

*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 rule-making 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) *A record of any consultation with any non-Federal party during the development of regulatory proposals containing a significant Federal mandate shall be posted on the website of the agency within five days after the consultation. Any comments submitted by a non-Federal party shall be posted on the website of the agency within five days after the date of submission to the agency.*

(5) *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.*

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

(7) *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) \* \* \*

(b) \* \* \*

(c) **【OMB】** *CERTIFICATION*.—No later than 1 year after March 22, 1995, 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. \* \* \***

**SEC. 207. \* \* \***

**SEC. 208. [ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE] OFFICE OF INFORMATION AND REGULATORY AFFAIRS RESPONSIBILITIES.**

[No later than 1 year after March 22, 1995, 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 subchapter.]

(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 Administrator 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. 208. \* \* \***

**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 of the United States 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**

\* \* \* \* \*

**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) 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 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 action may be used*

as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.

\* \* \* \* \*

**SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.**

(a) IN GENERAL.—

(1) \* \* \*

(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) of this title to be exceeded, unless—

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