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Private-Sector Mandates in Federal Legislation

Abstract

Federal laws and regulations sometimes require non-federal entities to expend their resources to carry out national policies. The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104-4, defines many of those requirements as federal mandates. The law aims to ensure that Members of Congress receive information about the potential effects of mandates as they consider proposed legislation and that federal agencies take information about mandates into account as they weigh proposed regulations. To that end, UMRA requires the Congressional Budget Office (CBO), at certain points in the legislative process, to assess the cost of mandates that would apply to state, local, and tribal governments or to the private sector; it also requires most federal agencies to estimate those costs and other effects in the course of promulgating regulations to implement such mandates. This report describes CBO's role in assessing the impact of private-sector mandates during the legislative process and provides information about the private-sector mandates that have become law during the past decade.

Keywords

Unfunded Mandates Reform Act, UMRA, private sector, legislation, federal mandates

Comments

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Private-Sector Mandates in Federal Legislation

Summary

Federal laws and regulations sometimes require non-federal entities to expend their resources to carry out national policies. The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104-4, defines many of those requirements as federal mandates. The law aims to ensure that Members of Congress receive information about the potential effects of mandates as they consider proposed legislation and that federal agencies take information about mandates into account as they weigh proposed regulations. To that end, UMRA requires the Congressional Budget Office (CBO), at certain points in the legislative process, to assess the cost of mandates that would apply to state, local, and tribal governments or to the private sector; it also requires most federal agencies to estimate those costs and other effects in the course of promulgating regulations to implement such mandates. This report describes CBO's role in assessing the impact of private-sector mandates during the legislative process and provides information about the private-sector mandates that have become law during the past decade.¹

What Constitutes a Mandate Under the Unfunded Mandates Reform Act?

UMRA defines mandates as enforceable duties, which CBO has interpreted to include requirements for or prohibitions against certain activities. Private-sector mandates are also defined to include any reductions in the authorization of appropriations for federal aid to help entities in the private sector comply with existing mandates.² However, conditions for receiving federal

assistance or requirements for participating in a voluntary federal program are not considered mandates under UMRA.

What Role Does CBO Play in Identifying and Estimating the Cost of Private-Sector Mandates in Legislation?

As specified in UMRA, CBO reviews most legislation reported by authorizing committees to identify any mandates on the private sector, including new mandates and expansions or extensions of existing ones.³ For each piece of legislation, CBO prepares a statement indicating whether it contains private-sector mandates and, if so, whether the total annual cost of those mandates would exceed a threshold specified by UMRA in any of the first five fiscal years after the mandates would take effect. The cost threshold for private-sector mandates was initially set at \$100 million, with annual adjustments for inflation; in 2013, it equals \$150 million.

How Does CBO Estimate the Cost of Mandates on the Private Sector?

UMRA directs CBO to estimate how much the private sector would have to spend to comply with a mandate.

1. For information about mandates imposed on state, local, and tribal governments, see Congressional Budget Office, *Intergovernmental Mandates in Federal Legislation* (July 2009), and *Preemptions in Federal Legislation in the 111th and Previous Congresses* (June 2011).

2. The Congress often uses a two-step process to set appropriations for programs or agencies. The first step is an authorizing bill that governs the operation of the program or agency and that, in some cases, sets a target or limit for the appropriations; the second step is an appropriation bill that provides the funding for the program or agency. This definition of a mandate applies to the target or limit for appropriations set in an authorizing bill.

3. UMRA requires CBO to review bills and joint resolutions "of a public character" that are reported by authorizing committees [2 U.S.C. §658c(b) (2006)]. Such committees have legislative jurisdiction over the establishment, operation, and continuation of federal programs or agencies; they also control spending for programs other than those that receive annual appropriations under the aegis of the appropriations committees.

CBO estimates those costs to be the expenses that would be directly incurred by an entity that would be subject to the mandate, regardless of whether the entity would ultimately bear those costs itself or pass them on to its customers, workers, or shareholders. In addition, CBO estimates any losses of income that would result from complying with a mandate that would limit an entity's ability to generate revenue. As UMRA requires, CBO offsets its estimates of costs with any savings that would accrue to a mandated entity from complying with the mandate and identifies any funding authorized by legislation to help private-sector entities carry out the mandate.

How Common Are Private-Sector Mandates in Legislation and Public Laws?

CBO reviews hundreds of pieces of legislation for private-sector mandates each year. Most of that legislation does not contain mandates as defined in UMRA. Of the nearly 9,000 legislative proposals for which CBO has prepared mandate statements since UMRA was enacted, 16 percent contained private-sector mandates (see Figure 1). Among the proposals with mandates, 25 percent were estimated to result in total annual costs for private-sector mandates that would exceed the UMRA threshold, and 59 percent were estimated to impose mandate costs below the threshold. The other 16 percent included mandates whose total costs could not be determined, generally because the scope of a particular mandate would not be known until specific regulations were issued.

In addition to examining bills during the legislative process, since 2001 CBO has conducted an annual review after each session of Congress to determine which laws enacted during that session imposed mandates on the private sector.⁴ Between 2001 and 2011, lawmakers enacted roughly 2,300 public laws; 12 percent of them contain at least one mandate on the private sector. Of the laws with mandates, 26 percent include at least one mandate whose annual costs were estimated to exceed the UMRA threshold sometime in the first five years, 57 percent impose mandates whose total annual costs were below the threshold, and 17 percent contain mandates whose costs could not be estimated. Put another way, about 3 percent of all public laws enacted during the 2001–2011 period contain at least one private-sector

mandate whose annual costs were estimated to exceed the UMRA threshold sometime in the first five years, 7 percent include mandates with costs below the threshold, and 2 percent impose mandates whose costs could not be determined.

What Types of Private-Sector Mandates Have Been Enacted Since 2001?

The laws whose mandate costs exceeded the threshold impose various types of private-sector mandates: regulations, fees, taxes, and limits on civil actions (noncriminal legal proceedings). Many of those laws extended existing mandates that were set to expire. Some of the laws impose mandates that affect several sectors of the economy; others impose mandates that focus on a specific sector, such as trade, finance and insurance, or manufacturing.

CBO's Role in Assessing the Impact of Mandates on the Private Sector

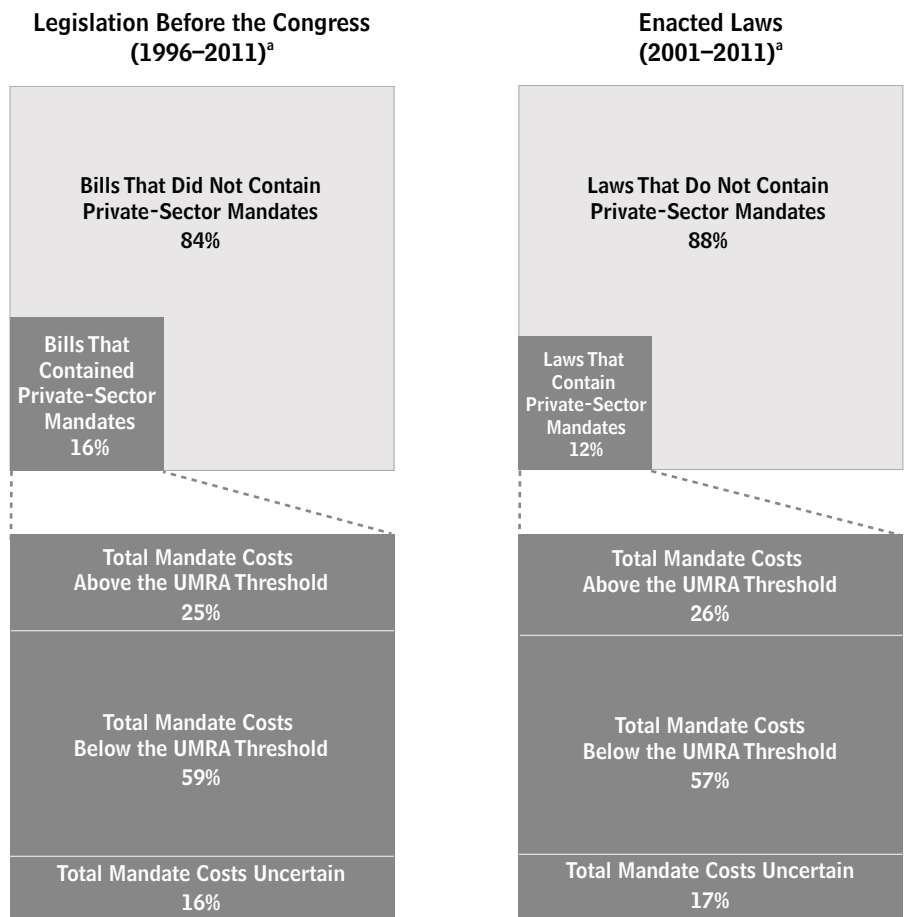
Title I of UMRA requires the Congressional Budget Office to review most bills and joint resolutions approved by an authorizing committee to identify the costs of any mandates they would impose on the private sector. (As defined in UMRA, the private sector consists of "all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions," excluding state, local, or tribal governments.)⁵ Most of CBO's estimates of mandate costs are prepared at that point in the legislative process. UMRA also directs CBO to prepare analyses of mandates at other stages of the legislative process when called upon by the Congress. Those analyses may address legislation introduced in or passed by the House of Representatives or the Senate, or legislation approved by House-Senate conference committees. In addition,

4. That review is detailed in CBO's annual report to the Congress about UMRA. For the most recent report, see Congressional Budget Office, *A Review of CBO's Activities in 2011 Under the Unfunded Mandates Reform Act* (March 2012).

5. Sec. 101(a)(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §658(9) (2006). For an entity that has some private characteristics and some links to the federal government, CBO generally classifies the organization as private or federal in accord with how it treats the organization in estimates of the federal budget. Entities that are included in the budget are not considered by CBO to be private entities under UMRA. For example, after the federal government placed mortgage finance organizations Fannie Mae and Freddie Mac in conservatorship in 2008, CBO began including their spending and revenues in its budget estimates and no longer considered them private entities under UMRA. For more information about CBO's budgetary treatment of those organizations under conservatorship, see Congressional Budget Office, *CBO's Budgetary Treatment of Fannie Mae and Freddie Mac* (January 2010).

Figure 1.

Prevalence of Private-Sector Mandates in Legislation and Public Laws Reviewed by CBO



Source: Congressional Budget Office.

Note: The annual cost threshold established in the Unfunded Mandates Reform Act of 1995 (UMRA) for private-sector mandates was \$100 million in 1996, with yearly adjustments for inflation thereafter. By 2011, that threshold had risen to \$142 million.

a. In 1996, in accord with the provisions of UMRA, CBO began reviewing legislation reported by authorizing committees to determine whether the legislation would impose mandates on the private sector or on state, local, or tribal governments. In 2001, CBO began conducting an annual review after each session of Congress to determine whether the public laws enacted in that session contain private-sector mandates.

UMRA specifies that if asked by the Chairman or Ranking Member of a committee, CBO must help the committee analyze the impact of legislative proposals or conduct special studies of mandates in such proposals.

CBO’s review of legislation involves identifying any new mandates or any extensions or expansions of existing mandates and estimating whether the annual costs of complying with all of the mandates identified in the legislation would exceed UMRA’s statutory threshold at any time in the mandates’ first five fiscal years. UMRA also

requires CBO to identify whether the legislation would authorize possible future appropriations that private entities could use to comply with any of the mandates. A statement describing the mandates, the estimate of compliance costs, and any authorized funding is included in the cost estimate for the legislation that CBO provides to the Congress. As required by UMRA, the mandate statement indicates whether those annual costs would be greater than UMRA’s statutory threshold during the five-year period after the mandates would take effect and explains the basis for CBO’s estimate. If CBO cannot

determine whether the total annual costs would exceed the threshold, it must explain why it cannot make that determination.⁶

Not all legislative provisions are subject to the requirements of UMRA, however. The law excludes provisions of authorizing legislation that enforce constitutional rights; establish or enforce statutory rights that prohibit discrimination; provide emergency aid; require compliance with accounting and auditing procedures for grants; are necessary for national security or to ratify or implement international treaty obligations; are emergencies as designated by the President and the Congress; or relate to programs created by title II of the Social Security Act (Old-Age, Survivors, and Disability Insurance benefits). If a provision of authorizing legislation is excluded from the requirements of UMRA, CBO notes the reason for the exclusion and does not include a statement about any mandates in the provision. In addition, UMRA does not expressly require a mandate review of appropriation bills.⁷

Some mandates are enacted into law without a CBO estimate for other reasons. For example, some legislative provisions are enacted without being considered by an authorizing committee, and some are included in amendments made on the floor of the House or Senate or in a conference committee after CBO's initial review. CBO does not review such provisions unless specifically requested by the Congress.

In addition to reviews of pending legislation, UMRA requires CBO, if asked by the Chairman or Ranking Member of a committee, to compare a federal agency's estimate of the costs of proposed regulations to implement a federal mandate with CBO's estimate made during the legislative process. Requests for such comparisons are rare. Moreover, several factors cause federal agencies' and CBO's estimates of mandate costs to differ in ways

that can limit their comparability. For instance, CBO and federal agencies may base their estimates on different versions of legislation: Because a bill reviewed by CBO may be amended later in the legislative process, the public law on which an agency's estimate is based may differ from the provisions that CBO analyzed. In other instances, CBO and federal agencies may not have the same information available when trying to estimate the costs of mandates. A bill may give an agency general authority to issue regulations, the details of which are not known at the legislative stage. In that case, there may be so much uncertainty about how the agency would implement the mandate that CBO has no basis to estimate its cost; hence, there may not be a CBO estimate that can be compared with the one prepared later by the agency.⁸

Identifying Mandates on the Private Sector

UMRA defines a private-sector mandate as any provision in legislation, statute, or regulation that would impose an enforceable duty on entities in the private sector or that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates. UMRA does not define "enforceable duty," but CBO has interpreted the term to mean actions that would be either required or prohibited by the sovereign authority of the United States. However, a duty that arises out of participation in a voluntary federal program or that is a condition for receiving federal assistance does not fall within UMRA's definition of a mandate, because such a duty is not compulsory.

Thus, a provision that would require companies to comply with a federal safety or environmental standard—or that would prohibit a business activity or establish a mandatory fee for businesses—would impose a mandate. For example, a bill that would limit the amount of lead in children's toys would impose a mandate on toy manufacturers, and a bill that would bar the sale of certain chemicals without a permit would impose a mandate on manufacturers of those chemicals. Legislation that would assess a fee for the use of customs services would impose a

6. Under UMRA, the staff of the Joint Committee on Taxation (JCT) conducts mandate reviews of legislative provisions reported by authorizing committees that would amend the Internal Revenue Code and estimates the costs of those mandates. Information from JCT about mandates in tax provisions is incorporated into CBO's mandate statements.

7. Under UMRA, legislative provisions in appropriation bills that would increase the direct costs of a mandate on state, local, or tribal governments are not in order for consideration on the floor of the House or Senate without a mandate statement from CBO. Consequently, CBO may be asked to review legislative provisions in an appropriation bill.

8. For more information about comparing CBO's mandate statements with estimates by federal agencies, see Congressional Budget Office, letter to the Honorable James Lankford about a [brief comparison of cost estimates for mandates as prepared by CBO and by federal agencies for selected regulatory rules](#) (May 20, 2011).

mandate on companies that import goods. (Payment of the fee counts as an enforceable duty because businesses seeking to import goods must go through customs. The government would impose those fees through its sovereign authority to regulate the shipment of goods into the country, and businesses would not have another legal option available to bring in imports.) Likewise, a bill that would raise the fee that companies pay to obtain a visa for a foreign worker would impose a mandate, because the federal program governing that activity—immigration law—is not voluntary. (A business that wants to employ certain types of foreign workers has no other option for doing so under federal law than to pay the visa fee; thus, an increase in that fee would impose a mandate.) Additionally, some legislative proposals would give industry organizations the authority to assess fees on firms in that industry. In such cases, CBO considers the authority to assess fees to be an extension of the sovereign power of the federal government.⁹ As a result, the payment of those fees would not be considered voluntary.

Some federal programs—including programs that provide funding or other forms of assistance—may impose requirements on participants that, by UMRA's definition, are not considered mandates because those programs are voluntary in nature and do not rely on the use of sovereign power. Such programs include federal loan guarantees and grants, which may involve fees and information requirements. For example, a bill that would require a researcher to submit information to obtain a federal grant would not impose a mandate, because the government does not compel someone to obtain a federal grant in order to conduct research. The decision to participate in a federal grant program is voluntary.

Proposed legislation may also place restrictions or requirements on the use of resources owned by the federal government, but CBO does not consider conditions for the use of a federal asset to be mandates under UMRA. For instance, a bill might increase the royalty payments required from companies that enter into new lease agreements to produce oil and gas on federal land. CBO considers those agreements to be voluntary business arrangements between the government and a private

entity for the use of federal land and the development of mineral resources. Private entities choose to accept the conditions of using a federal asset even if those conditions—such as royalty payments—may result in costs. If, however, a legislative provision would unilaterally alter an existing lease agreement or other contract between the government and a private entity, CBO would identify that change as a mandate.

Estimating the Costs of Mandates on the Private Sector

If a bill would impose mandates on private entities, UMRA directs CBO to determine whether the total direct cost of all the mandates in the bill would be greater than the annual threshold established in UMRA during any of the first five fiscal years after the mandates would take effect. For any given year, the cost threshold for private-sector mandates is \$100 million plus adjustments for inflation since 1996. (For 2013, the threshold is \$150 million.)¹⁰

UMRA defines direct costs as the incremental amount that entities must spend to comply with a mandate. Those costs exclude amounts that mandated entities would spend to comply with applicable laws, regulations, or professional standards in effect when the federal mandate would apply. In addition, in CBO's estimates, direct costs must be offset by any savings to mandated entities that would result from complying with the mandate, as well as any savings from other provisions in the legislation imposing the mandate that would govern the same activity as the mandate. Hence, it is possible for a bill to contain a mandate that is estimated to result in no additional net costs.

Measuring Mandate Costs

When estimating the cost of a private-sector mandate, CBO measures the total cost incurred by a mandated entity. As part of that cost, CBO measures any loss of income that would result if the mandate limited the entity's ability to produce revenue. Such losses are not explicitly included in UMRA's definition of costs, but CBO interprets UMRA's definition of a mandate to include not only requirements that would result in expenditures but also prohibitions that would result in

9. For example, under the Travel Promotion Act of 2009, a private organization would be able to impose fees on entities in the travel industry. CBO identified those fees as a mandate. See Congressional Budget Office, *cost estimate for S. 1023, the Travel Promotion Act of 2009* (June 9, 2009).

10. Thresholds related to mandate estimates are calculated on a fiscal year basis; the figures and table show information on a calendar year basis.

lost income. Thus, in cases in which legislation would ban the production or sale of a good, CBO would measure the cost of the mandate as the net income forgone because of the ban.¹¹

In estimating mandate costs, CBO measures the total cost incurred by the entities on which the mandate is imposed, regardless of who ultimately pays that cost. In general, the added costs of adhering to a mandate may prompt mandated entities to pass those costs along to others, but CBO does not project how those costs would ultimately be distributed. For instance, if a manufacturer would be expected to finance the installation of mandated equipment by raising prices, CBO would not offset its measure of costs by an estimate of the additional revenue that the manufacturer would receive from charging higher prices, nor would it assess who would bear the burden of those higher prices. Likewise, if a bill would impose a new safety standard on airlines, CBO would report the costs initially incurred by the airlines, which would include any costs that they might eventually pass on. CBO would not identify the percentage of the airlines' compliance costs that would ultimately be borne by customers, employees, or shareholders. On occasion, at the request of the Congress, CBO has analyzed how the costs of federal programs are distributed; such analyses can take a significant amount of time, however, so providing a distributional analysis for every bill is not possible given the time constraints of the legislative process.

UMRA directs CBO to assume that private entities would choose to comply with mandates as efficiently as possible. When data are available, CBO generally accounts for alternative methods or products that might help mandated entities minimize their compliance costs. For example, some legislative proposals offer more than one option for adhering to a mandate. A bill establishing a cap-and-trade program to reduce emissions of a pollutant might require the operator of a power plant to decrease emissions from its facility, buy emissions allowances, or pay a penalty. In that case, CBO would assume that the private entity would choose the compliance option resulting in the smallest additional cost.

11. For example, CBO's estimate for the Synthetic Drug Control Act of 2011 included forgone income from lost sales in the estimated cost of a ban on certain synthetic chemicals. See Congressional Budget Office, *cost estimate for H.R. 1254, the Synthetic Drug Control Act of 2011* (October 14, 2011).

Mandates in legislation could also have an impact on the broader economy—such as the nation's gross domestic product, employment, or inflation—but those economic effects are excluded from CBO's estimates. Like the ultimate distribution of mandate costs, broader economic effects are beyond the scope of the analysis that UMRA requires of CBO, and conducting such an analysis for each bill reported by an authorizing committee is not feasible under the time constraints imposed by the legislative process. However, UMRA requires Congressional committees to provide information about some of the effects of proposed mandates on the broader economy as a part of their committee reports (see Box 1).

Not all mandates have costs as defined by UMRA. The law specifically excludes from estimates of mandate costs any amounts that mandated entities would have spent anyway to comply with existing laws, regulations, or professional standards. Accordingly, CBO does not consider those amounts when assessing whether the costs of a mandate would exceed the annual threshold in UMRA. For example, a bill might require an industry to comply with a standard that was identical to one in the laws of every state or to a voluntary standard that the industry was already meeting. The new federal requirement would be a mandate, but its direct cost would be zero because no additional funds would be expended to comply with the requirement.

For roughly one out of every six bills with private-sector mandates that it reviews, CBO cannot determine whether the total cost of the bill's mandates would surpass the UMRA threshold. The reason in most cases is uncertainty about the scope of a mandate—the number of people or entities affected, the extent of the requirements they would face, or both. Such uncertainty generally arises because of insufficient information about the contents of regulations that a bill might require. Legislative proposals might give a federal agency broad discretion when issuing regulations, and without information about the scope of the regulations to be issued, CBO cannot estimate with any confidence the cost of the bill's requirements at such an early stage. For instance, a bill might direct a federal agency to issue regulations to protect the electric power system in the United States. In that case, without information about the types of protections the agency would require and the utilities to which they would apply, it would be impossible at the legislative stage to estimate the costs to mandated entities with any precision.

Box 1.**UMRA's Requirements for the Congress**

Title I of the Unfunded Mandates Reform Act (UMRA) requires authorizing committees to include information about mandates in their committee reports that accompany legislation to be considered by the House of Representatives or the Senate. Those committees are directed to identify and describe any mandates in a bill and include a statement from the Congressional Budget Office (CBO) about the estimated costs of the mandates. UMRA also requires authorizing committees to include in their reports an assessment of the costs and benefits expected to result from the mandates in a bill, including effects on health, safety, and the protection of the environment.

UMRA established rules to encourage Members of both Houses of Congress to take information about mandates into account when they consider legislation. Those rules, which may be enforced through a

point of order, prohibit Members from considering legislation that contains mandates in certain circumstances. (A point of order is an objection raised by a Member on the floor of the House or Senate that questions an action being taken as contrary to the rules of that body.) Members can raise a point of order against a bill reported by a Congressional committee if the bill lacks a statement by CBO about private-sector or intergovernmental mandates. They can also raise a point of order against legislation that would create an intergovernmental mandate with costs above the annual threshold specified in UMRA—unless the legislation would authorize or provide funding to cover those costs. (No corresponding rule exists for private-sector mandates.) If a point of order is raised in the House or Senate as provided for in UMRA, it is resolved according to the rules and procedures of the respective chamber.

CBO can, by contrast, estimate the impact *on the federal budget* of legislative provisions that direct federal agencies to issue regulations, even when the scope of the regulations is uncertain. Although the decisions that a federal agency makes during the regulatory process may have a substantial effect on costs to the private sector, the requirement to make those decisions typically does not significantly alter the cost of the regulatory process. Thus, a CBO cost estimate for such a provision might provide an estimate of the administrative cost to the federal government of issuing regulations and at the same time indicate that the total cost of the private-sector mandates could not be determined because that cost would depend on decisions made during the rulemaking process.

Measuring Mandate Savings

UMRA defines the cost of a mandate as the amount an entity would have to spend to comply with the mandate minus any savings the entity would realize from its compliance and from other provisions in the legislation that govern the same activity. If, for example, a bill would create a national standard for an industry that currently manufactures products according to different regional standards, the industry could experience both costs and

savings. Any costs that the industry would incur to modify its manufacturing processes would be considered mandate costs and netted against any savings that the industry would realize from manufacturing in accordance with a uniform standard.

UMRA's definition of the savings that a mandated entity might realize does not include the impact of any authorization of appropriations in the same bill, or any funding authorized under current law, that might be used to help pay for a mandate.¹² UMRA directs that CBO's mandate statements provide an estimate of the costs of the mandate (net of savings) and, separately, indicate the amount of any authorization (or increase in authorization) of appropriations that may be used to pay for the mandate. Consequently, CBO would not reduce its estimate of compliance costs by the amount of any funding authorized by the bill or current law to help private entities comply with a mandate. For example, if a bill would direct the federal government to condemn a parcel of land, current law requires the government to pay the

12. UMRA treats a *reduction* in an authorization of appropriations to fund existing mandates differently. Such reductions are themselves defined as mandates under the law.

Table 1.

Prevalence of Private-Sector Mandates in Public Laws, 2001–2011, by Mandate Costs and Congress

	Congress						Total, 107th–112th (2001–2011)
	107th (2001–2002)	108th (2003–2004)	109th (2005–2006)	110th (2007–2008)	111th (2009–2010)	112th (2011 only) ^a	
Public Laws Enacted	377	498	482	460	383	81	2,281
Public Laws That Contain Private-Sector Mandates	30	37	58	49	76	16	266
Total cost of mandates exceeds the annual UMRA threshold	5	6	12	14	25	6	68
Total cost of mandates falls below the annual UMRA threshold	17	24	35	27	39	10	152
Total cost of mandates could not be determined	8	7	11	8	12	0	46
Public Laws That Do Not Contain Private-Sector Mandates	347	461	424	411	307	65	2,015

Source: Congressional Budget Office.

Note: The annual cost threshold established in the Unfunded Mandates Reform Act of 1995 (UMRA) for private-sector mandates was \$100 million in 1996, with yearly adjustments for inflation thereafter. By 2011, that threshold had risen to \$142 million.

- a. The numbers shown for the 112th Congress are much smaller than those for the other Congresses for several reasons. First, CBO has not completed its tabulations for 2012, so the numbers for the 112th Congress represent actions in only one year, whereas the other columns show two years' worth of actions. Second, the number of laws enacted in the first year of a Congress is typically much smaller than the number enacted in the second year. Third, fewer laws were enacted in 2011 than in the first years of the other Congresses in this table.

landowner an amount equal to the fair market value of the land. In the case of such a bill, CBO would report the cost of the mandate—the fair market value of the land being taken—and separately report the compensation provided by the government, but it would not subtract that compensation from the cost of the mandate.

As with costs, CBO's estimates of savings include only savings that would be realized by mandated entities. Any savings that would accrue to other entities would not be used to offset the estimated costs of a mandate.

Private-Sector Mandates Reviewed by CBO

During each session of Congress, CBO prepares statements about private-sector mandates for hundreds of pieces of legislation. Since 1995, when UMRA was enacted, CBO has prepared such statements for nearly 9,000 legislative proposals. About 16 percent of the proposals contained private-sector mandates, in CBO's judgment. Of those proposals, 25 percent contained mandates whose total costs were estimated to exceed

UMRA's annual threshold sometime in the first five years, and 59 percent contained mandates whose total estimated costs were judged to fall below that threshold. For the remaining 16 percent of proposals with private-sector mandates, CBO could not determine the scale of the mandates' total costs.

In addition to reviewing legislation while the Congress is considering it, CBO conducts an assessment after each annual session of Congress to determine whether the public laws enacted during that session contain mandates.¹³ Those assessments began in 2001 for private-sector mandates. (Before then, CBO's annual assessments for private-sector mandates were limited to determining whether the mandates in legislation that it had reviewed during the previous year were enacted.)

Over the 2001–2011 period, lawmakers enacted a total of 2,281 public laws (see Table 1). Almost 12 percent of

13. See, for example, Congressional Budget Office, *A Review of CBO's Activities in 2011 Under the Unfunded Mandates Reform Act* (March 2012).

them (266 laws) impose at least one mandate on the private sector. Of those laws, 26 percent (68) include mandates with total costs above the annual threshold, 57 percent (152) have mandates with total costs below the threshold, and 17 percent (46) contain mandates whose total costs could not be determined.

Types of Private-Sector Mandates Enacted Since 2001

Public laws that contain private-sector mandates can be categorized by the type of mandate imposed: a regulation, fee, tax, or limit on civil actions (see Figure 2). Of the 68 public laws enacted between 2001 and 2011 that impose private-sector mandates with estimated costs above the UMRA threshold, 30 regulate commercial activities, 32 require the payment of fees, 27 impose a tax, and 1 sets limits on a civil action and on possible recoveries of compensation for damages. (Those numbers add up to more than 68 because some of the laws contain more than one type of private-sector mandate.)

Regulations. The 30 public laws that impose regulations on the private sector whose compliance costs were estimated to exceed the UMRA threshold cover a variety of subject areas:

- Economic activity (9 laws)—regulating the production and marketing of goods and services and the disclosure of information;
- Safety and security (8 laws)—regulating commerce to improve the safety and security of products and transportation;
- Health (5 laws)—regulating health insurance and food production;
- Workplace activity (3 laws)—regulating wages and benefits for employees;
- Environment and energy efficiency (2 laws)—regulating emissions of pollutants and the energy efficiency of consumer goods; and
- Other activity (3 laws)—regulating campaign finance, requiring contributions to affordable-housing funds, and requiring information to be reported to the federal government.

Fees. The 32 public laws that contain fee-related mandates with costs above the threshold impose several types of charges for government services:

- Customs fees (13 laws)—various fees levied on imported goods to pay for the use of customs services;
- Patent and trademark fees (6 laws)—various fees for processing applications for federal patents and trademarks;
- Health fees (3 laws)—including fees on manufacturers of pharmaceuticals and tobacco products;
- Environmental and energy-efficiency fees (3 laws)—including reclamation fees; and
- Other fees (7 laws)—including fees for visas, passports, and airline security, and increases in premiums for federal insurance programs.

Many of the public laws in this group imposed mandates that were temporary extensions of existing mandates. That was particularly true over the 2001–2011 period for customs fees, patent and trademark fees, and reclamation fees.

Taxes. The bulk of the 27 public laws that contain tax-related mandates with costs above the threshold impose the following types of taxes:

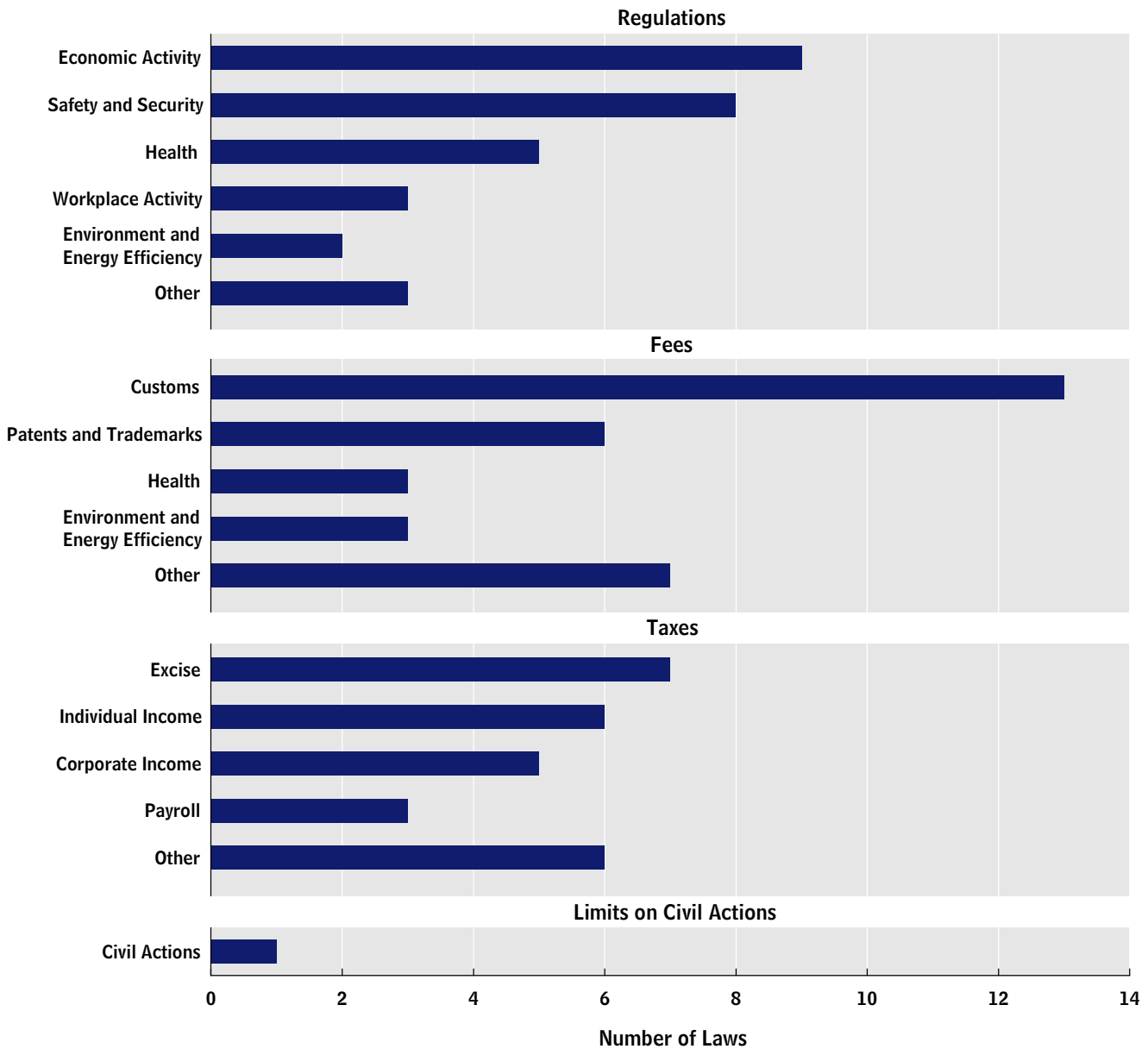
- Excise taxes (7 laws)—including taxes on tobacco products and fossil fuels;
- Individual income taxes (6 laws);
- Corporate income taxes (5 laws); and
- Payroll taxes related to employment and employees' benefits (3 laws).

Six other public laws impose mandates that do not fall within those four categories, including mandates that impose more than one type of tax.

Limits on Civil Actions. The public law containing a mandate in this category restricts the ability of U.S. citizens to recover compensation for damages in certain terrorism-related lawsuits against Libya.

Figure 2.

Number of Public Laws with Private-Sector Mandate Costs Estimated to Exceed the UMRA Threshold, 2001–2011, by Type of Mandate



Source: Congressional Budget Office.

Notes: The annual cost threshold established in the Unfunded Mandates Reform Act of 1995 (UMRA) for private-sector mandates was \$100 million in 1996, with yearly adjustments for inflation thereafter. By 2011, that threshold had risen to \$142 million.

Between 2001 and 2011, lawmakers enacted a total of 68 public laws containing mandates with costs estimated to exceed the UMRA threshold. Laws are counted more than once in this figure if they contain mandates in more than one category.

Federal Agencies That Implement Private-Sector Mandates

Another way to categorize public laws that contain mandates is to group them according to the federal agencies charged with enforcing or administering the mandates (see Figure 3). Agencies that enforce regulatory mandates imposed between 2001 and 2011 include the Departments of Transportation (5 laws), Health and Human Services (3 laws), and Labor (3 laws), among many others. Mandates that impose government fees are administered primarily by the Departments of Homeland Security (15 laws), Commerce (6 laws), and the Interior (3 laws) as well as by the Federal Deposit Insurance Corporation (3 laws). The Department of the Treasury enforces all mandates that govern taxation (17 laws), and the Department of Justice enforces the mandate that limits civil actions.

Sectors of the Economy Affected by Private-Sector Mandates

Public laws that contain private-sector mandates may also be grouped according to the sectors of the economy that those mandates affect (see Figure 4). Of the 68 public laws enacted in the 2001–2011 period with private-sector mandate costs above the threshold, 20 contain mandates that affect entities in multiple sectors of the economy. Those mandates generally impose requirements, taxes, or fees on general business operations. Seven of the economywide mandates for taxes or government fees extended existing mandates—such as the surtax to provide unemployment benefits, and fees for patent and trademark services—and have appeared in more than one public law since 2001.

Other public laws contain mandates that affect specific parts of the economy, such as the following sectors:

- Finance and insurance (12 laws)—including fees and requirements for health insurance plans; and
 - Manufacturing (11 laws)—including mandates that relate to the production of automobiles, appliances, tobacco products, pharmaceuticals, and medical devices.
- Mandates that affect individuals (9 laws) include passport fees and taxes.

This Congressional Budget Office (CBO) report was prepared in response to a request from the Chairman of the Subcommittee on Technology, Information Policy, Intergovernmental Relations, and Procurement Reform of the House Committee on Oversight and Government Reform (as constituted in the 112th Congress). In keeping with CBO's mandate to provide objective, impartial analysis, the report contains no recommendations.

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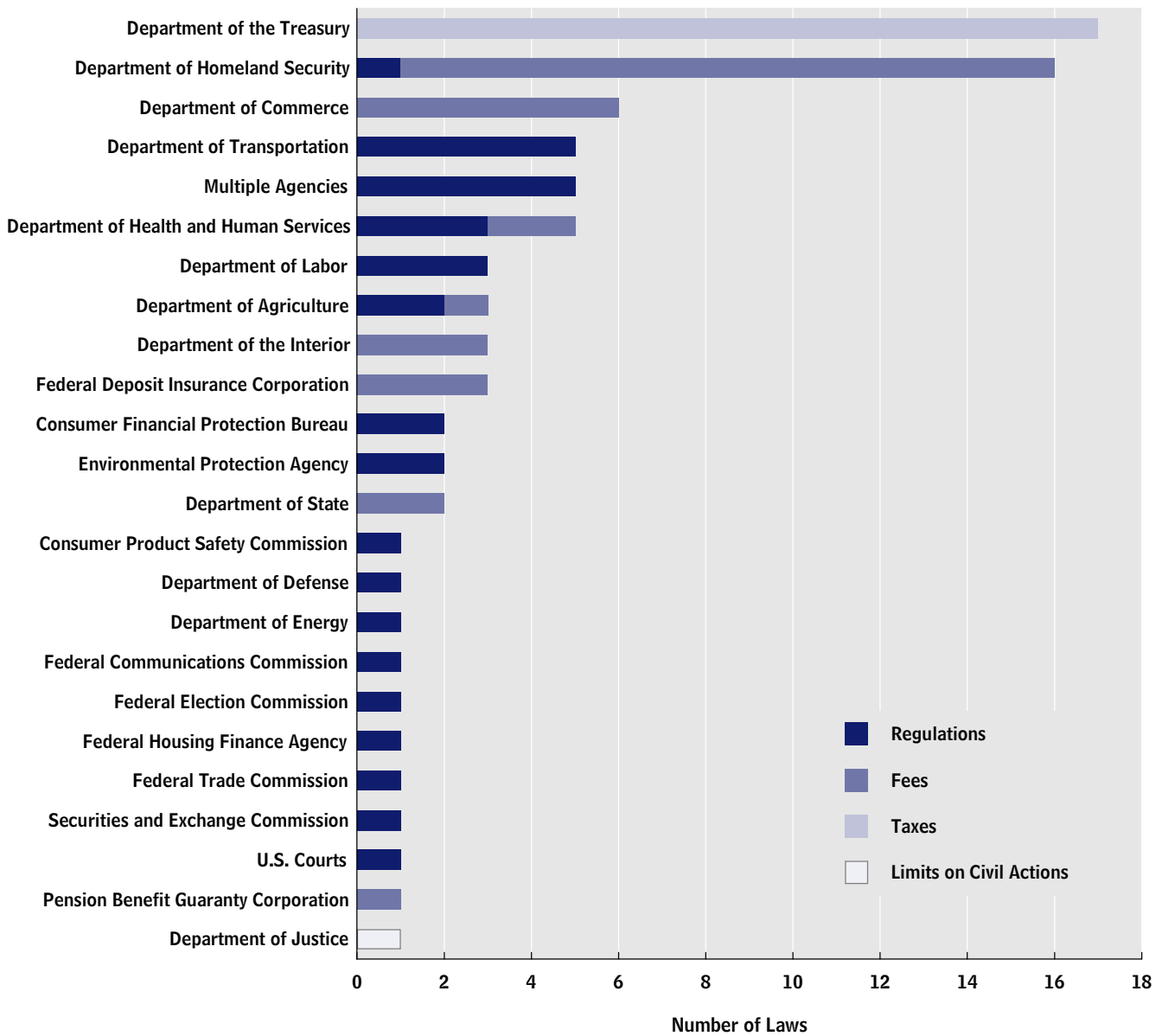
Douglas W. Elmendorf

Douglas W. Elmendorf
Director



Figure 3.

Number of Public Laws with Private-Sector Mandate Costs Estimated to Exceed the UMRA Threshold, 2001–2011, by Regulatory Agency and Type of Mandate



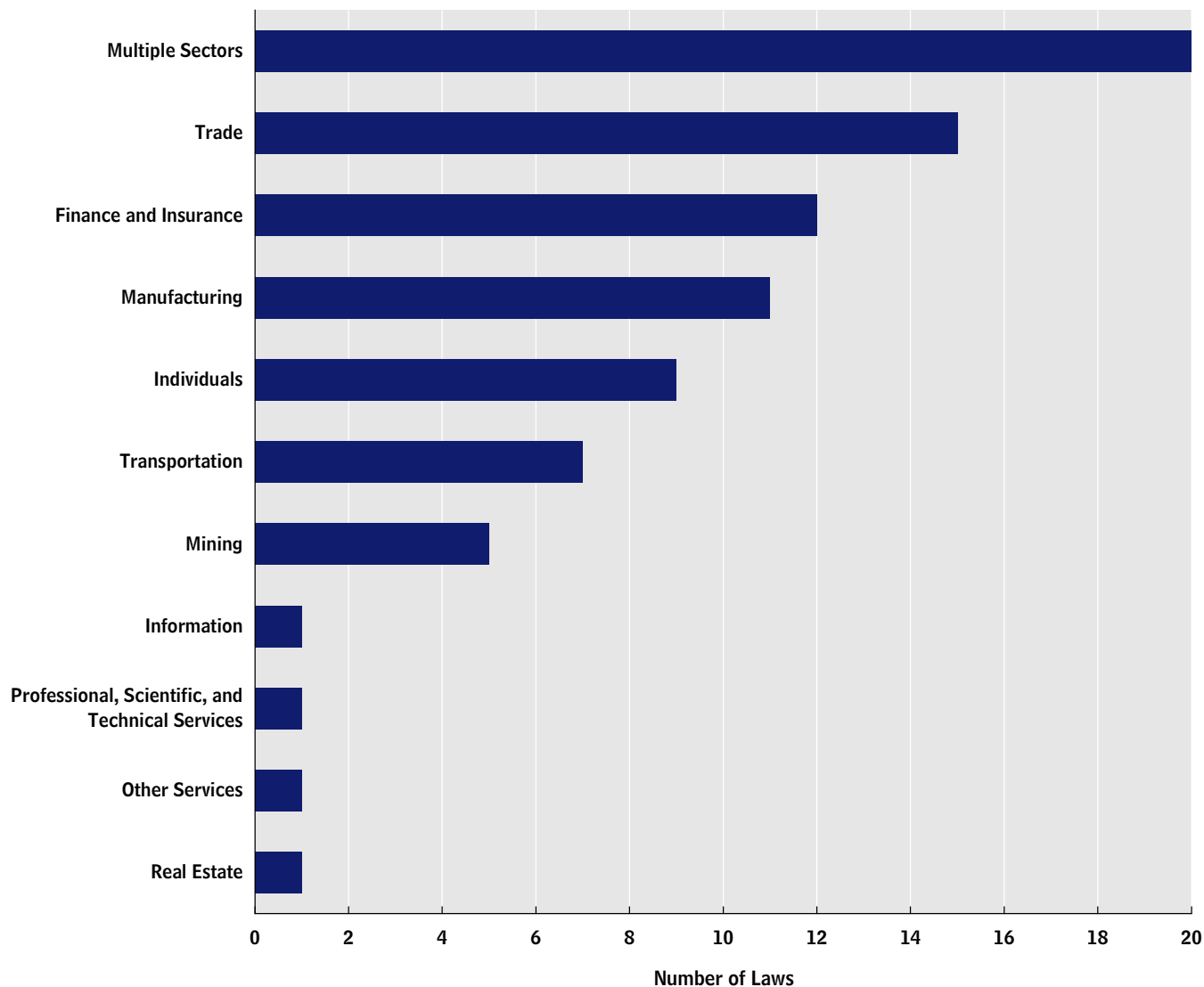
Source: Congressional Budget Office.

Notes: The annual cost threshold established in the Unfunded Mandates Reform Act of 1995 (UMRA) for private-sector mandates was \$100 million in 1996, with yearly adjustments for inflation thereafter. By 2011, that threshold had risen to \$142 million.

Between 2001 and 2011, lawmakers enacted a total of 68 public laws containing mandates with costs estimated to exceed the UMRA threshold. Laws are counted more than once in this figure if they contain mandates in more than one category.

Figure 4.

Number of Public Laws with Private-Sector Mandate Costs Estimated to Exceed the UMRA Threshold, 2001–2011, by Sector of the Economy Affected



Source: Congressional Budget Office.

Notes: The annual cost threshold established in the Unfunded Mandates Reform Act of 1995 (UMRA) for private-sector mandates was \$100 million in 1996, with yearly adjustments for inflation thereafter. By 2011, that threshold had risen to \$142 million.

Between 2001 and 2011, lawmakers enacted a total of 68 public laws containing mandates with costs estimated to exceed the UMRA threshold. Laws are counted more than once in this figure if they contain mandates in more than one category.

In general, mandates are classified by sector on the basis of the 2012 North American Industry Classification System.