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Is the Era of Unfunded Federal Mandates Over?

The current Congress has imposed few of these costly requirements. But it may be premature for state, local and tribal governments to stop worrying.

[A Congressional Budget Office report](#) issued in late March includes a rather surprising revelation: With the exception of the Affordable Care Act and another law affecting child nutrition passed in 2010, Congress has not passed any significant bill imposing unfunded mandates on state, local or tribal governments since 2008.

When the Unfunded Mandates Reform Act (UMRA) was passed in 1995, the problem was considered so important that the bill that became this law was the first to be introduced in the new Republican-controlled House after that party took over Congress for the first time in 40 years. The reason? Republicans desperately wanted to amend the Constitution to require a balanced federal budget, but states and localities raised concerns that the federal budget might be balanced simply by passing responsibilities — and costs — down to state and local governments.

UMRA requires the Congressional Budget Office (CBO) to disclose the cost of any mandate as defined by the law, including intergovernmental and private-sector mandates that exceed statutory thresholds, before a bill can be considered on the floor of the House or the Senate. For 2013, that threshold was \$75 million for intergovernmental mandates and \$150 million for private-sector mandates. The notion was that highlighting the cost would have a chilling effect on mandates.

The most striking figure in the new CBO report (which carries the not-so-catchy title of “A Review of CBO’s Activities in 2013 Under the Unfunded Mandates Reform Act”) is the small number of laws enacted in 2013 that contained intergovernmental mandates. In fact, there were only four mandates in the 72 bills that became law in 2013; none of these had costs above the threshold. One other bill — immigration legislation involving verification of employment eligibility — would have had costs exceeding the threshold, but it did not become law.

This 2013 experience compares to an average of 45 intergovernmental mandates per year in the prior four years, with only seven (in two bills, both in 2010) with costs above the statutory threshold. So, judging from the activity reported by the CBO, Congress has, for all intents and purposes, virtually stopped imposing costly mandates on state, local and tribal governments.

Further, CBO reports that only 13 laws containing 18 intergovernmental mandates above the threshold have been enacted in the 18 years since UMRA took effect. There is no record of the pace of intergovernmental mandates prior to the imposition of UMRA, but if the problem of unfunded mandates prompted the enactment of UMRA, the problem seems to have all but gone away.

There are several possible reasons for why this has occurred. First, the 1995 law simply may have worked as intended. With more information about the cost of mandates available to federal lawmakers, Congress has refrained from enacting mandates, or at least has taken action to lower the

costs of the ones it does enact.

The other possible explanations suggest that more caution is in order. For one thing, it seems likely that the narrow definition of a mandate is partly at issue here. UMRA, for example, does not cover most “conditions of assistance” even if meeting those conditions might cost state and local governments a lot of money. This means that the requirements in the No Child Left Behind Act do not meet the UMRA definition of a mandate because states could (theoretically) choose to forego the federal funding. Similarly, changes to Medicaid have not been identified as mandates because large portions of the program are optional expansions that states have the authority to change. UMRA also does not cover legislation that supports the guarantee of a federal constitutional right; if UMRA had been around when the Americans with Disabilities Act was passed, for example, the requirements in that law would not have been identified as mandates.

In addition, as has been well documented, the current Congress not only has failed to pass unfunded mandates — it has failed to do lots of things. The 113th Congress passed 72 bills last year, 40 percent fewer than the number passed in 2009 and less than half of the number passed in 2005. This is a rare positive attribute of a so-called “do nothing” (or, to be fair, “do little”) Congress: no laws, no mandates.

In the future, if we return to government controlled by a single party (or even a unified Congress), state and local governments worried about unfunded mandates imposed by Washington will have to return to a vigilant stance. For the time being, however, the highly partisan and dysfunctional nature of lawmaking in Congress appears to have at least one silver lining.

BY [PHILIP JOYCE](#) | APRIL 16, 2014