



Insight

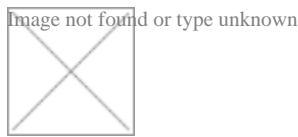
Administration Data Hiding Unfunded Mandates

SAM BATKINS | APRIL 2, 2015

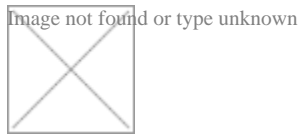
Under the Unfunded Mandates Reform Act ([UMRA](#)), the administration is required to report whether a regulation would “result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation).” However, according to the administration’s records, including the [Unified Agenda](#) of federal regulation, there are eight instances when the White House stated a rule would not trigger UMRA when the regulatory burdens easily exceeded the statutory threshold. In other words, the White House routinely omitted crucial data on unfunded state and private sector mandates.

Example 1

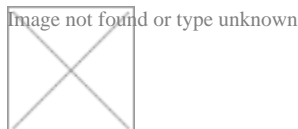
In 2014, the administration published a rule requiring rearview cameras for most automobiles to reduce the risk of “backing incidents.” In the administration’s Unified Agenda from that year, it declared “No” for the unfunded mandates section. See below.



When the White House reviewed the final rule before publication, it once again stated that the measure would not impose unfunded mandates. See below.



However, when the final rule was published in the [Federal Register](#), it conceded that it would indeed impose unfunded private sector mandates. For this particular rule, the unfunded mandates were in excess of [\\$900 million](#) annually, well above the statutory threshold. The screenshot below reveals that despite earlier administration claims, the rule does contain unfunded mandates. Yet, the public would have to search through more than 70 pages of regulatory text to discover these burdens.

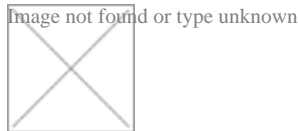


Example 2

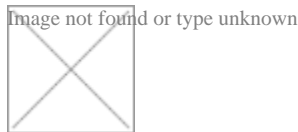
The previous rulemaking only dealt with unfunded regulatory mandates on the private sector, but the next example also includes mandates for state and local governments.

New school lunch standards were expected to impose unfunded mandates even when they were being considered in Congress. According to the Congressional Budget Office (CBO) [score](#) of the law, “The bill would impose new requirements on states and schools that implement child nutrition programs. Those requirements would be intergovernmental mandates as defined in ... UMRA.” Based on CBO [research from 2011](#), it found that just 13 laws imposed costly intergovernmental unfunded mandates during the past 15 years and two were passed in 2010: the Affordable Care Act and the school lunch law.

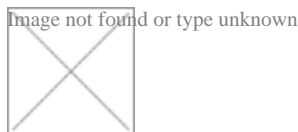
Yet, when the administration published its Unified Agenda in 2012, it stated the regulation would not impose unfunded mandates. See below.



When the White House reviewed a final version of the rule, it once again declared the regulation would not impose unfunded mandates, despite the CBO’s report and a proposed rule that conceded significant burdens for states; total costs for the proposal were more than [\\$6.8 billion](#), with annual burdens approaching \$1 billion. See below.



During the rulemaking’s development, the president [repeatedly acknowledged](#) tight state budgets across the nation. As he stated to the National Governors Association, “The recovery is underway, although I’m sure a lot of you, having to cut your budgets, don’t feel it. It’s a very difficult time for you all.” In spite of these condolences on finances, the administration finalized rules that would place even more burdens on states. Regardless of previous denials from the administration that the regulation would significantly affect state budgets, the final text of the rule admitted it would trigger UMRA. See below, buried among 81 pages of regulatory text.



There are six other regulations where we found discrepancies between White House records on unfunded mandates and what was actually reported in the regulatory text:

- Efficiency Standards for Power Supplies;
- Modification to HIPAA Privacy;
- Adoption of Operating Rules;
- Cranes and Derricks in Construction;
- Efficiency Standards for Electric Motors; and
- NESHAP for Combustion Engines

CONCLUSION

The administration's [own guidance](#) requests that Unified Agenda certify, "whether the rule is covered by section 202 of the Unfunded Mandates Reform Act." It's puzzling then, why the administration would omit or deny required data on unfunded mandates from so many regulations. These omissions raise serious questions of transparency and accountability.