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Committed to Advancing the Principles of Free Enterprise and Limited Government

February 8, 1999

No. 24

So, What Will This Unfunded Mandate Cost Me?

By

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The \$1.77 trillion spending budget President Clinton sent to Congress February 2 tells just part of the story of the federal government's reach in the economy. Regulatory mandates placed on Americans increase the costs of government by over a third. Legislation now being debated in the House of Representatives (H.R. 350) could help better control that cost.

Some know the problems of mandates more acutely than others. Back in 1995, governors and other state and local officials -- fed up with the federal government's imposing exceedingly costly environmental and other mandates on them -- revolted. To many state and local officials, every dollar spent on federal priorities, however beneficial and popular, compromised their ability to achieve their own budget priorities. Some even felt they could protect their own local environments without Washington's intervention, thank you very much.

Happy Governors. The complaints that Washington too often ignored the costs of its mandates were heard. The result was the 104th Congress's Unfunded Mandates Act -- the significance of which garnered it the designation "S. 1" in the Senate. The law required cost disclosure for significant mandates, and offered an opportunity to demand explicit votes on the intent to impose those costs.

Unfunded public-sector mandates weren't halted by the Unfunded Mandates Act, of course. But total rules in the federal pipeline impacting state and local governments has dipped 12 percent over the past five years, from 1,317 to 1,161.² The real innovation wasn't rule blockage at all, but rather increased *congressional*, rather than agency, accountability to the public for the impacts of rules.

But full congressional accountability and disclosure remain to be achieved for rules impacting the private sector. For example, agency rules significantly impacting small businesses increased 37% over the past five years, from 686 to 937. Yet Congress remains largely free to ignore the accompanying costs when enacting legislation that will impose many private sector mandates. And if costs become an issue down the line with constituents, its easy to blame the regulatory agencies that write the rules to implement the legislation.

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² All figures on numbers of regulations in this document were compiled by CEI from the federal Regulatory Information Service Center's *Unified Agenda of Federal Regulations*, various years' editions, for the forthcoming CEI report *Ten Thousand Commandments: A Policymaker's Snapshot of the Federal Regulatory State*, 1999 edition.

The Mandates Information Act (H.R. 350) vs. Those *Other* Unfunded Mandates. One remedy, on which House floor debate will resume February 10, is the bipartisan Mandates Information Act of 1999 (H.R. 350), sponsored by Reps. Gary Condit (D-CA), Rob Portman (R-OH), Jim Moran (D-VA) and Tom Davis (R-VA). Virtually identical to a version that passed the 105th Congress on a 279-132 vote, the bill would extend certain provisions of the Unfunded Mandates Act to mandates on the private sector. H.R. 350 would establish a point of order against any legislation that would impose costs over \$100 million annually, such as mandates impacting wages, consumer prices or small businesses. If raised, the point of order would halt further floor action unless members waive it by a simple majority vote. In other words, should any member object to the imposition of costs on the public, Congress must then explicitly vote on its intent to consider the bill despite its costs -- and indirectly vote on its belief that benefits outweigh costs. This approach doesn't necessarily stop any mandate, but it would increase accountability.

A Step Toward Ending Hidden Taxes? Legislators partial to continuing to shield mandate costs from scrutiny and wiggling out of responsibility, do so at their peril. Off-budget mandates now cost as much as \$700 billion annually. That's an amount about 40 percent the size of the entire federal budget, greater even than *pretax* corporate profits (\$640 billion in 1996) and almost as large as the combined GNPs of Canada and Mexico (\$542 billion and \$237 billion in 1995).

The Mandates Information Act would help place responsibility for costly lawmaking squarely back where it belongs -- with Congress. Nonetheless, H.R. 350 has raised the ire of some who say the measure will make it difficult to promulgate regulation. What they do not fathom is that it is not *supposed* to be easy to impulsively impose what amount to massive hidden taxes. The opponents' alarm at the point of order's "gagging" debate is quite misguided: If the simple majority vote to approve worthy, presumably chock-full-of-benefits legislation is there in the first place, then the simple majority to waive the point of order should be there, too. Thus, opponents of H.R. 350's long-overdue focus on costs, who cry "What about benefits?" need to ask *themselves* that question. Voters aren't stupid, and they *will* support costly legislation if persuaded those costs are justified, and they will punish those whom they believe stall needed legislation.

Too Easy To Scapegoat Agencies. Perhaps the real fear of the Mandates Information Act's opponents is the fact that a separate vote to explicitly consider costs weakens political cover. Today, representatives can deny responsibility for regulatory costs when speaking before their small business constituents back home: "Uh...Your hardship is the agencies' fault! They're out of control!" That little dodge would stop.

Congress Must Answer for *All* Costs. Those who never met a regulation they didn't like, those who always think more rules make sense in the abstract, deserve occasionally to be awakened from their perpetual Sim-City planner mode, just long enough to consider whether a rule really makes sense here on Earth. If even this meager reform is rejected, Congress might just as well take a roll-call vote on a resolution stipulating that: "The public has no business knowing the costs of the regulations that we impose upon them." That way voters will have it made plain to them exactly where they stand in the eyes of those they elected.

The innovation and legacy of the Mandates Information Act is not that it will stop a lot of regulations. It won't. The Mandates Information Act's lasting contribution will its unique step toward full disclosure, its potential to make Congress more answerable for *all* the costs of government.