

Preemptions in Federal Legislation in the 111th Congress

The Unfunded Mandates Reform Act of 1995 (UMRA) requires the Congressional Budget Office (CBO) to review bills approved by Congressional committees and identify federal mandates that the legislation would impose on state, local, or tribal governments. UMRA generally defines such intergovernmental mandates as enforceable duties; CBO interprets that definition as encompassing both positive (required) and negative (prohibited) duties. Some of those intergovernmental mandates take the form of preemptions—typically negative duties that prohibit state, local, or tribal governments from taking some action or that otherwise limit the authority of those governments to apply and enforce their own laws.

UMRA authorizes the use of certain legislative procedures that are designed to make it more difficult for the Congress to pass bills containing intergovernmental mandates without also providing funding to cover the mandates' costs. In most cases, however, such hurdles are not brought into play because many mandates—even those that might significantly affect the ability of state,

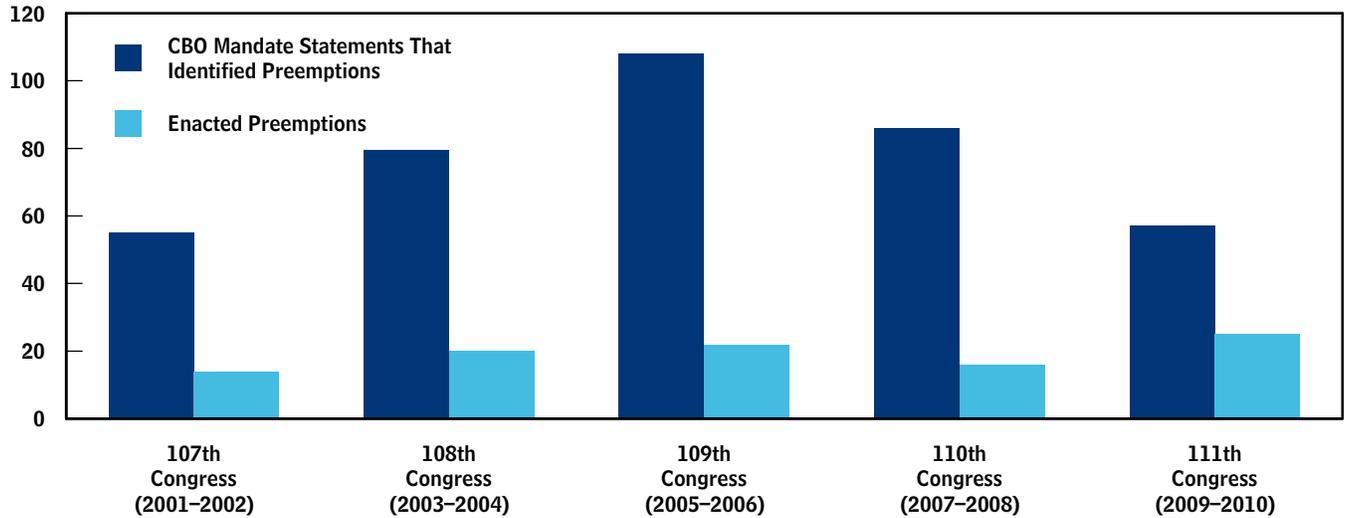
local, or tribal governments to exercise their authority in particular areas—would not impose duties that result in significant additional spending or loss of revenues. Such is the case with most preemptions.

During the 111th Congress (2009 and 2010), CBO issued 134 formal mandate statements that identified intergovernmental mandates. Of those, 43 percent identified preemptions—a proportion smaller than that identified in other recent Congresses, when half or more of the mandate statements that CBO issued noted preemptions. However, more preemptions were enacted during the 111th Congress than during other Congresses of the past 10 years (see Summary Figure 1). None of those preemptions, in CBO's estimation, will impose costs exceeding the threshold that UMRA establishes for intergovernmental mandates. That inflation-adjusted marker, which when exceeded permits Members of Congress to invoke rules that may keep legislation from advancing, was \$69 million in 2009 and \$70 million in 2010.

Summary Figure 1.

Identified and Enacted Preemptions, by Congress

(Number)



Source: Congressional Budget Office.

Notes: Preemptions are a type of intergovernmental mandate, which the Unfunded Mandates Reform Act of 1995 (UMRA) defines as an “enforceable duty” that the federal government imposes on state, local, or tribal governments. In CBO’s view, such duties may be positive (requiring some action) or, in the case of preemptions, negative—prohibiting those governments from taking some action or otherwise exerting their authority.

In the formal statements identifying mandates that CBO prepares as required by UMRA, an individual statement may identify more than one preemption. Also, the same preemption may be included in more than one bill and consequently will be identified in more than one mandate statement.