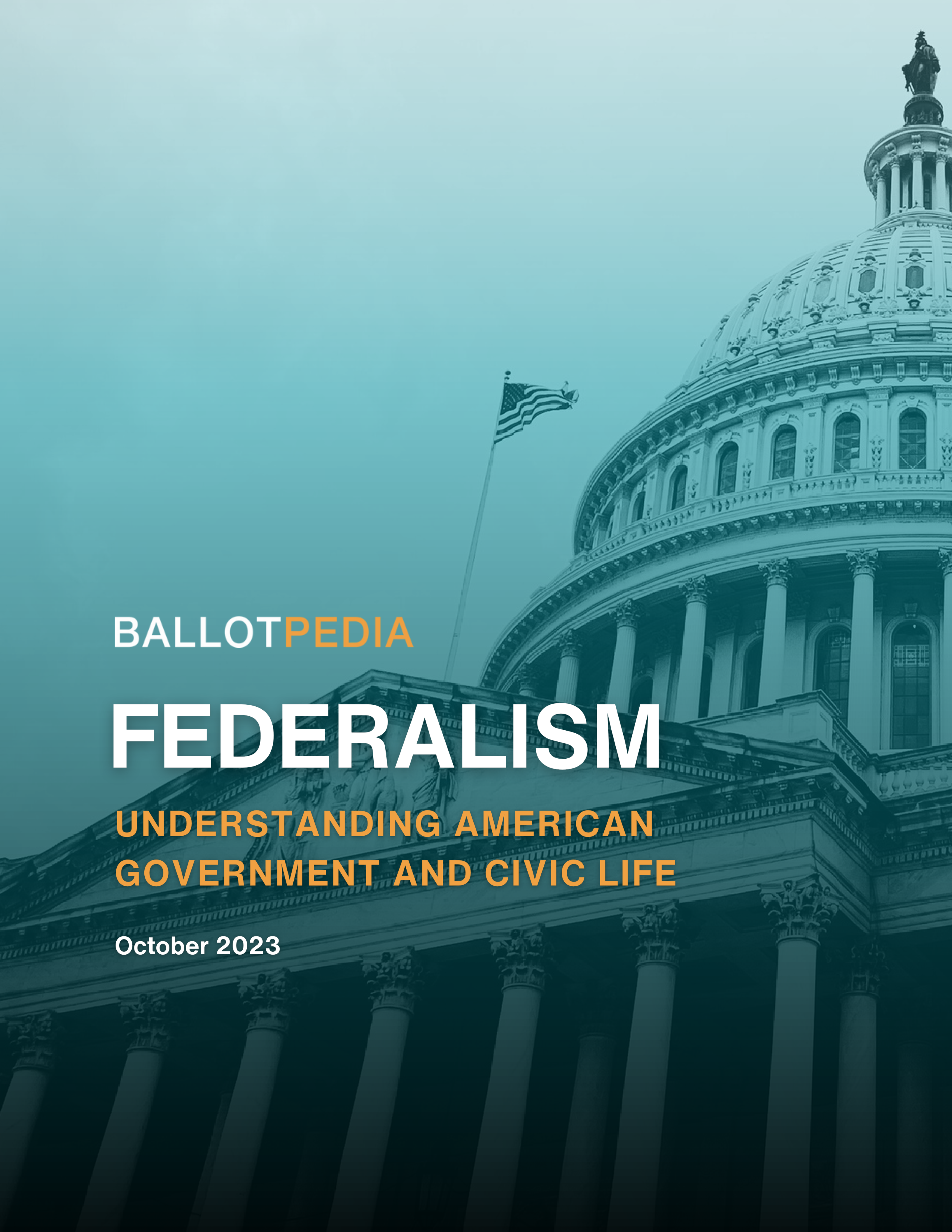

BALLOTPEDIA

FEDERALISM

UNDERSTANDING AMERICAN GOVERNMENT AND CIVIC LIFE

October 2023

Federalism: Understanding American government and civic life

Summary

This document provides a well-rounded perspective on federalism and deeper insights into the complex topic of governance.

By the end of this reading, you will have an understanding of the following concepts:

- What federalism is
- Types of federalism
- How federalism has changed
- What is an unfunded mandate?
- What is the Unfunded Mandates Reform Act (UMRA)?
- Unfunded Mandates by the numbers - metrics and data overview

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Ballotpedia's policy content and assets are a gateway to learning about policy and an unparalleled resource for in-depth, historical, clear, comprehensive, factual and neutral information on key policy areas.

Federalism:
What is it, and what isn't it?

Defining federalism

Federalism refers to a system of government that divides power between member units—like states or provinces—and a common governing authority. In the United States, the national government headquartered in Washington, D.C., is the common governing body to which the individual state governments belong.

When capitalized, Federalism may refer to support for the historical Federalist Party (one of the two earliest American political parties) and its principles; supporters of this party were called Federalists. The term federalist can also be used to describe an advocate of a federal form of government.

Federal is not national

Although used interchangeably, the terms federal and national are not necessarily the same thing. While a national government refers to the highest level of governance in a country, a federal government refers to a form of government a country can adopt.

In the U.S., what is usually called the federal government in Washington, D.C., could be more accurately described as the *national government*. On the other hand, America's governing structure, which includes local governments, state governments, and the national government, could in theory be described as *federal*.

Federalism is not confederation

Federalism and confederation share etymological roots in the Latin word for "treaty, pact, or covenant," *foedus*. Until the late 18th century, their shared meaning essentially related to the notion of a league or relationship among sovereign states agreed upon by treaty. In Federalist No. 39, James Madison referred to the U.S. Constitution as "neither a national nor a federal Constitution, but a composition of both." Subsequently, the term federalism came to refer more specifically to the political system established in the Constitutional Convention, while the term confederation came to refer, more generally, to a league of sovereign states.

In other words, the federal form of government falls somewhere between full national control and full (or near full) state autonomy under a confederation.

U.S. historical background

Prior to the ratification of the United States Constitution, the American government from March 1781 to March 1789 was organized under the Articles of Confederation. The Articles of Confederation, as the name implies, created a confederation of states that jointly established a national legislature with the power to declare war, negotiate treaties and alliances, maintain an army, and coin money. The national government was relatively weak under the Articles and lacked the authority to tax states or individuals or to regulate commercial activity. Under this arrangement, state governments retained most of their sovereignty and independence.

The United States Constitution, by contrast, established a federal system with a strong but limited national government and non-sovereign states that retain certain exclusive powers. The Supremacy Clause of the U.S. Constitution establishes the supremacy of the U.S. Constitution and national law over state constitutions and laws, and it prohibits state interference with the national government's exercise of constitutional powers. At the same time, the Tenth Amendment limits the national government's powers and protects certain state powers.

Types of federalism

The primary relationships that define a federal structure are those between individual state governments and between state governments and the national government.

- Dual federalism (also known as layer-cake federalism)
- Interlocking (cooperative) federalism
- Horizontal federalism

Dual federalism

Dual federalism (also known as layer-cake federalism) is a system of governance where the national government and state governments each have clearly defined spheres of power. Under dual federal political systems, the national government cannot interfere with matters delegated to state authority, and states cannot interfere with matters of national authority.

For example, the U.S. Constitution gives the national government authority to print currency but gives no such power to the states. On the other hand, the national government has no authority over when states hold elections for state and local government offices. Such arrangements describe a dual federal relationship where states have sole authority in some areas, and the national government has sole authority in others.

Interlocking (cooperative) federalism

Interlocking (cooperative) federalism (also known as marble-cake federalism) contrasts with dual federalism and refers to a system of governance where federal and state governments share power and collaborate on certain issues. Under an interlocking federal system, the national government might work with state government programs to fund colleges, pay veterans, or build transportation infrastructure.

An example of interlocking federalism is the joint federal-state unemployment insurance program, which provides temporary monetary benefits to eligible laid-off workers. The national government oversees the general administration of state unemployment insurance programs. The states control some specific features of their unemployment insurance programs, such as eligibility requirements and lengths of benefits. The state and national governments levy separate unemployment insurance taxes and budget money for the program.

Horizontal federalism

Horizontal federalism is a term that refers to the relationships between states or provinces under a federal government. Discussions of horizontal federalism usually relate to the effects of state actions on other states and whether limits on state powers are necessary to prevent state actions from infringing on the autonomy of other states.

Article IV of the United States Constitution sets rules for the relations between states, sometimes referred to as setting the terms of horizontal federalism. The U.S. Constitution requires every state to respect every other state's laws and institutions, including statutes, public records, and court decisions.

Arguments about federalism

If federalism is wrong or unnecessary, then why?

- **Argument: Federalism is undemocratic**: This argument posits that federalism is not compatible with democratic ideals. This idea is related to issues of judicial decision-making authority and concerns that national governments do not have the strength and unity to effectively regulate industry and capitalism.
- **Argument: Federalism allows for and promotes competition between states (and that this is bad**): This argument posits that the existence of federalism allows for and promotes what supporters view as harmful competition between states. Competition under federalism, according to this argument, incentivizes corruption and the prioritization of weak restraints on businesses at the expense of shareholders, consumers, and other stakeholders. This argument also contends that states compete in a “race for the bottom” to create rules that appeal to corporations and will never compete to limit exploitative businesses.
- **Argument: Federalism fosters corruption:** This argument posits that federalism contributes to corruption among state and local governments, which are, in this view, smaller, weaker, and more susceptible to capture from corporate interests.

If federalism is right or necessary, then why?

- **Argument: Federalism enhances democracy**: This argument posits that federalism enhances democracy because it allows decision-making to occur at the local level.
- **Argument: Federalism allows for and promotes competition between states (and this is good):** This argument posits that the existence of federalism allows for and promotes what supporters view as healthy competition between states. The federal right of individuals and businesses to leave a state or locality in search of more accommodative policies, according to this argument, forces lower levels of government to innovate competitive policies that attract citizens and capital from other areas. Supporters of this argument view the national government, on the other hand, as a monopoly that does not have to compete or quickly improve.
- **Argument: Federalism reduces corruption:** This argument suggests that federalism offers protections and institutional checks that prevent governmental corruption.

What is federalism, and what isn't it?

- **Argument: Federalism is not the same as decentralization:** This argument posits that decentralization does not promote the same public benefits as federalism.
- **Argument: Federalism is the middle-ground between disunity and centralization:** This argument contends that federalism is critically understood as a balance between total disunity and full centralization.
- **Argument: There is no final, perfect division of powers between federal, state, and local governments (and that is a good thing):** This argument suggests that uncertainty exists concerning what would be a proper division of powers between governments and posits that uncertainty is good because it creates more opportunities for citizens to engage in politics and compete for political influence.

Federalism: Unfunded mandates

Unfunded mandates are regulations or other requirements imposed by a higher level of government on a lower one without accompanying funding to cover the costs of compliance. The dynamics of such regulation and funding are important for understanding America's intergovernmental relationships within the federalism framework, where power is divided between member units and a common governing authority.

Defining unfunded mandates

The term unfunded mandates refers to regulations or other requirements that a higher level of government imposes on a lower government without accompanying appropriations to cover the cost of compliance.

For example, some local school boards have frequently argued that certain education-related laws and regulations imposed by state and federal bodies are unfunded mandates. The actual costs of such mandates to schools are difficult to estimate, but they often demand more time from school administrators and teachers to maintain compliance.

Examples of unfunded mandates

Although policymakers, experts, and implementers may disagree on the compliance costs associated with regulations and may support different definitions of the word mandate, the following federal laws are frequently cited as examples of unfunded mandates:

- **The No Child Left Behind Act:** This law increased certain student testing and reporting requirements. It required states to develop standardized tests and administer such standardized assessments to all students at certain grade levels in order to receive federal education funding. It also, in many cases, required states to spend additional money on school improvements (like teacher training) to continue receiving federal funding.
- **The Clean Air Act:** This law established national air quality standards for certain air pollutants. States had to enact implementation plans outlining enforceable, source-specific emissions limits for the pollutants identified in the legislation. States were then responsible for enforcing those plans and cutting emissions without the assistance of federal grants.
- **Medicaid**: Although state participation in Medicaid is technically optional, the program established a system in which the federal government is responsible for paying half of each state's Medicaid expenses, and participating state governments have to pay the remaining half. Consequently, when the federal government expands Medicaid spending, states have to pay more to support the program as well.

Unfunded Mandates Reform Act (UMRA)

The Unfunded Mandates Reform Act (UMRA) is a federal law that seeks to restrict the national government's ability to regulate state, local, and business activities without paying for increased costs associated with compliance.
President Bill Clinton (D) signed the UMRA into law on March 22, 1995.

Background and objectives

Local government and business entities expressed growing dissatisfaction during the 1970s and 1980s with the increase in unfunded federal mandates imposed on local governments and the private sector during the period, according to the Congressional Research Service. A 2016 Forbes report identified a total of 241 mandates or preemptions imposed on state and local governments between 1955 and 1995, 45 percent of which were enacted between 1985 and 1995. These mandates imposed new standards, requirements, and regulations for landfills, wastewater treatment, drinking water, stormwater, and compliance with the Americans with Disabilities Act, among other provisions.

Local government and business advocates at the time called for new policies to curb the financial costs and resulting inefficiencies of complying with unfunded mandates associated with new federal laws and agency regulations.

The Unfunded Mandates Reform Act (UMRA) was crafted with the intention of minimizing the imposition of unfunded federal mandates on businesses and state, local, and tribal governments, as well as improving communication and collaboration between the various levels of government and business groups.

What does the UMRA do?

The legislation restricts the national government's ability to pass certain laws that establish unfunded mandates. To accomplish this, the UMRA:

- Requires the Congressional Budget Office to estimate the direct costs of intergovernmental mandates exceeding $50 million (adjusted for inflation) and of private-sector mandates upwards of $100 million in any proposed legislation reported from committees.
- Prohibits the consideration of legislation containing intergovernmental mandates with costs estimated to exceed the threshold amounts.
- Requires federal administrative agencies, except for independent federal agencies, to estimate the impact on businesses and state and local governments of any proposed and final rules and to prepare written statements of estimated costs and benefits for mandates exceeding $100 million a year, with certain exceptions.

Scholarly analysis

The enactment of the UMRA has resulted in mixed outcomes, according to various scholars. Robert Jay Digler of the Congressional Research Service (CRS), in a 2018 analysis of the law, described what supporters of the legislation consider to be the positive effects of its implementation and continued areas for improvement:

“State and local government officials and federalism scholars generally view UMRA as having a limited, though positive, impact on intergovernmental relations. In their view, the federal government has continued to expand its authority through the 'carrots' of increased federal assistance and the 'sticks' of grant conditions, preemptions, mandates, and administrative rulemaking. Facing what they view as a seemingly ever growing federal influence in American governance, they generally advocate a broadening of UMRA’s coverage to enhance its impact, emphasizing the need to include conditions of grant assistance and a broader range of federal agency rulemaking, including rules issued by independent regulatory agencies.”

Theresa Gullo of the Congressional Budget Office (CBO) made similar observations about the positive impacts of the law on information sharing in a 2004 article for the National Tax Journal:

“Since UMRA's enactment, the quantity of detailed information provided to the Congress about federal mandates has increased. Furthermore, that information played a prominent role in the Congressional debate over several important intergovernmental issues.”

Gullo also echoed Digler's observation that many state and local government officials equate certain federal grant conditions with unfunded mandates and support expanding the law to include these provisions:

“UMRA’s success is tempered in some observers’ view, however, by the fact that the law omits certain types of requirements—many that state and local governments find onerous—from its provisions. Specifically critics charge that:

- Conditions for obtaining federal grants, even new conditions on existing grant programs, are generally not considered to be mandates;
- Certain types of provisions, some with very significant impacts on other levels of government, are specifically excluded from all of UMRA's requirements; and,
- Mandates with total costs below the statutory thresholds are not subject to the points of order, even if those mandates severely restrict state and local authority.

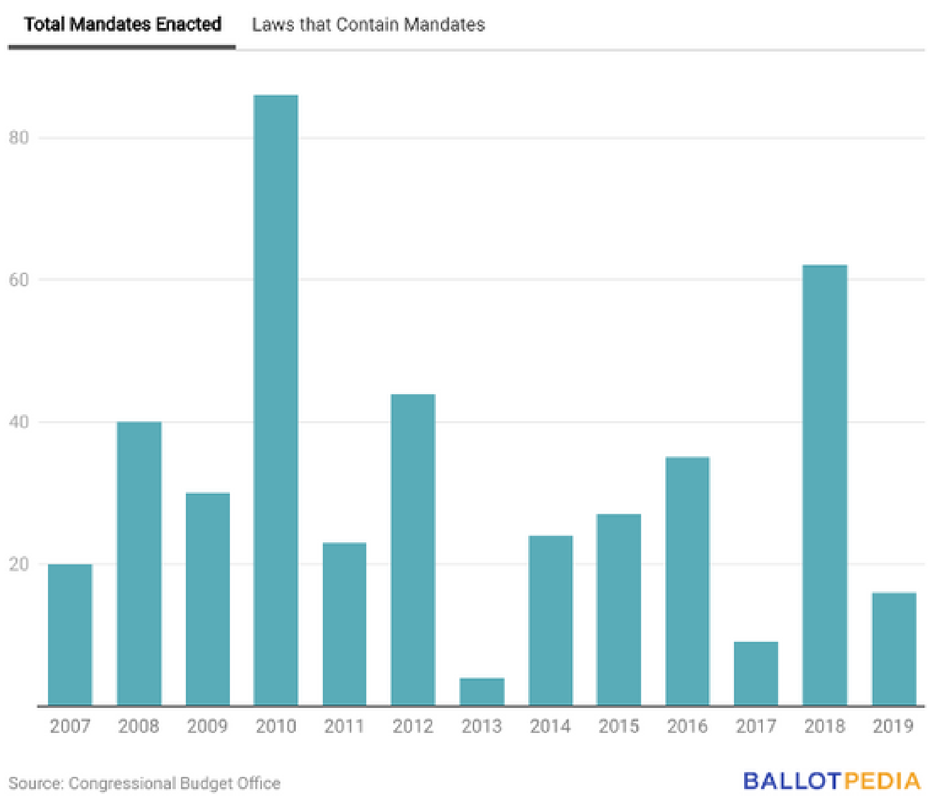
These limitations, critics argue, mean that the Congress has continued to enact legislation that has significant impacts on state and local government budgets.”

Unfunded mandates by the numbers

Governments can issue unfunded mandates that affect lower governments or private businesses. Today, we're going to focus on intergovernmental mandates. For more information on private mandates, click here.

Intergovernmental mandates enacted between 2007 and 2019

The following chart shows the total number of intergovernmental mandates (funded and unfunded) enacted each year between 2007 and 2019. **There have been a total of 420 mandates enacted within 190 laws.**



Intergovernmental mandates enacted between 2007 and 2019

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Total number of intergovernmental mandates enacted between 2007 and 2019

There have been a total of 190 laws with 420 mandates enacted between 2007 and 2019.

Year	Total Mandates Enacted	Laws that Contain Mandates
2007	20	14
2008	40	19
2009	30	18
2010	86	29
2011	23	12
2012	44	16
2013	4	3
2014	24	16
2015	27	10
2016	35	17
2017	9	6
2018	62	25
2019	16	5
	420	190

Source: Congressional Budget Office

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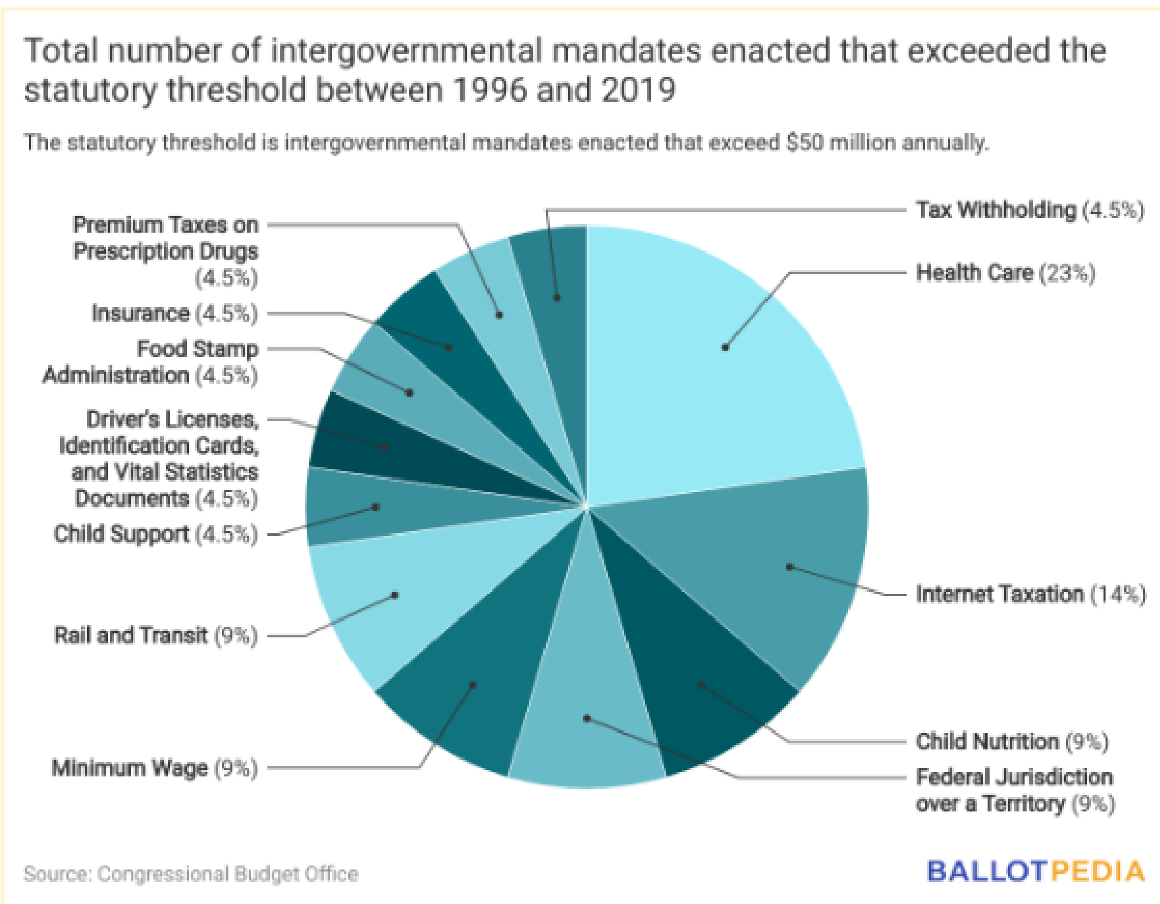
Total number of intergovernmental mandates enacted between 1996 and 2019 that exceed the Unfunded Mandates Reform Act's statutory threshold

Even though the UMRA prohibits the enactment of certain laws that impose a cost exceeding a certain inflation-adjusted threshold on a lower government, some mandates that impose a cost exceeding the statutory limit are still enacted from time to time. The UMRA does not cover all types of provisions. Likewise, laws that exceed the statutory limit are not discarded automatically. A member of Congress must raise an objection to the unfunded provision, which can still move forward with support from a sufficient legislative majority.

The following charts show the total number of intergovernmental mandates enacted between 1996 and 2019 that exceed the statutory threshold according to the topic of the mandate. The statutory threshold for intergovernmental mandates was $50 million in 1996 and $82 million in 2019. The limit is adjusted for inflation annually.



Total number of intergovernmental mandates enacted that exceed $50 million annually between 1996 and 2019

Topic	Number of Mandates	Corresponding Statutes
Child Nutrition	2	Public Law 111-296
Child Support	1	Public Law 109-171
Driver's Licenses, Identification Cards, and Vital Statistics Documents	1	Public Law 108-458
Federal Jurisdiction over a Territory	2	Public Law 114-187
Food Stamp Administration	1	Public Law 105-185
Health Care	5	Public Law 111-148
Insurance	1	Public Law 116-94
Internet Taxation	3	Public Law 108-435; 110-108; 114-125
Minimum Wage	2	Public Law 104-188; 110-28
Premium Taxes on Prescription Drugs	1	Public Law 108-173
Rail and Transit	2	Public Law 110-53; 110-432
Tax Withholding	1	Public Law 109-222

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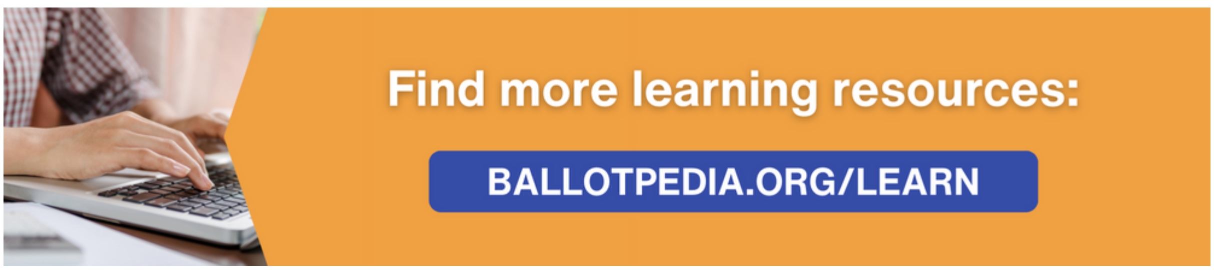
Continued reading:

Thank you for downloading our PDF on federalism.
Check out the following Ballotpedia pages to dive deeper into the key concepts of federalism:

- Federalism
- Dual federalism
- Interlocking (cooperative) federalism
- Horizontal federalism
- Market-preserving federalism
- Articles of Confederation
- Constitution of the United States
- Tenth Amendment to the U.S. Constitution
- The Federalist Papers
- Supremacy Clause
- Commerce Clause
- Unfunded mandates
- Clean Air Act
- Medicaid
- No Child Left Behind Act
- Unfunded Mandates Reform Act
- Federalism by the numbers
- Areas of inquiry and disagreement related to federalism



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