STATEMENT OF JOHN D. GRAHAM, PH.D.
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENTAL MANAGEMENT
UNITED STATES SENATE
APRIL 14, 2005

Good afternoon, Mr. Chairman, and Members of this Committee. I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. I appreciate this opportunity to testify before you today on the Unfunded Mandates Reform Act of 1995 (the Act).

As you know, an important reason for the enactment of the Act was to ensure that Congress and the Executive Branch better understand and consider the impact of laws and regulations on our intergovernmental partners. This Administration is firmly supportive of the principles behind the Act. In fact, we have worked to increase the opportunities for our intergovernmental partners to participate fully in the regulatory process.

OIRA plays a role in the implementation of Title II of the Act, which addresses the Executive Branch. Title II begins with a general directive for agencies to assess, unless otherwise prohibited by law, the effects of their rules on other levels of government and on the private sector. Title II also describes specific analyses and consultations that

agencies must undertake for rules that result in expenditures of $100 million or more in any year (adjusted annually for inflation) by State, local, and tribal governments in the aggregate, or by the private sector. Such rules must be accompanied by written statements that describe in detail the required analyses. The analyses are to include consideration of a reasonable number of alternatives and, except in certain circumstances, the selection from among those alternatives of the "least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule." This analytic approach is at the heart of OIRA's role in the implementation of the Act, as it is generally consistent with our own regulatory review requirements under Presidential Executive Order 12866 (1993). When reviewing regulatory actions from Federal agencies, we work to ensure that the rulemaking complies with the Act's consultation and analysis requirements. However, in keeping with the spirit of the Act, we work with agencies to reduce regulatory burden, regardless of whether the expenditures imposed by a particular regulatory action rise to the Act's threshold.

The Act also directs OMB to send copies of required agency analyses to the Congressional Budget Office (CBO), and to submit an annual report to Congress on agency compliance with Title II. Our 2004 submission to CBO covered rules that met the $100 million threshold from 2002 through 2003. It contained rules from the Departments of Agriculture, Energy, Health and Human Services, Labor, and Transportation, and the Environmental Protection Agency. All were private sector mandates.

In our 2004 Report to Congress, we determined that, in Fiscal Year 2003, Federal agencies issued 17 rules that were subject to the Act because they require expenditures in any year by State, local, and tribal governments, in the aggregate, or by the private-sector, of at least $100 million in any one year (adjusted annually for inflation).

Of the 17 covered rules, The Department of Agriculture issued one proposed rule, the Department of Health and Human Services issued three proposed rules and one final rule, the Department of Transportation issued two proposed and two final rules, and the Environmental Protection Agency issued six proposed and two final rules. There were no rules meeting the Act's threshold based on their estimated impact on State, local, or tribal governments, in the aggregate. All of the rules (both proposed and final) were covered by the Act because of anticipated expenditures by the private sector.

However, we recognize that State, local, and tribal governments are often burdened by Federal regulation, either through direct requirements to incur costs or through a loss of flexibility to perform their government functions. Our intergovernmental partners play a vital role in the provision of government services. They have the major role in providing domestic public services, such as public education, law enforcement, road building and maintenance, water supply, and sewage treatment. However, over the past two decades, State, local, and tribal governments increasingly have expressed concerns about the difficulty of complying with Federal requirements without additional Federal resources.

The Act requires agencies to "develop an effective process" for obtaining "meaningful and timely input" from State, local, and tribal governments in developing rules with

significant intergovernmental mandates. The Bush Administration has worked to involve State and local governments earlier in the rulemaking process so that the consultation envisioned by the Act is meaningful.

As a result, the scope of consultation activities undertaken by Federal departments such as Homeland Security, Agriculture, Commerce, Education, Health and Human Services, the Interior, Justice, Labor, Transportation, and the Environmental Protection Agency demonstrates this Administration's commitment to building strong relationships with our intergovernmental partners based on the constitutional principles of federalism embodied in the Act. Federal agencies are actively consulting with State, local, and tribal governments to ensure that regulatory activities are consistent with the requirements of the Act. This year's report shows an increased level of engagement, as several agencies have begun major consultation initiatives.

Federal agencies are striving to increase flexibility in the implementation of programs by issuing regulations that allow for alternative compliance approaches. For example, in the Food Stamp High Performance Bonus Final Rule, USDA sets goals for improved performance in administering the program but doesn't mandate how States must achieve them. Instead, the rule creates awards for the best and most improved performers in a few separate areas.

A new proposal from HHS on the Child Care and Development Fund (CCDF) would revise the program regulations to permit States to designate multiple public and/or private

entities as eligible to receive private donations that may be certified as child care expenditures for purposes of receiving Federal CCDF matching funds. This increased flexibility will allow States to meet CCDF statutory match requirements through a combination of direct State funds and leveraged local resources.

Additionally, OMB has developed guidelines to assist Federal agencies in complying with the Act that are based on the following general principles:

- intergovernmental consultations should take place as early as possible, beginning before issuance of a proposed rule and continuing through the final rule stage, and be integrated explicitly into the rulemaking process;
- agencies should consult with a wide variety of State, local, and tribal officials;
- agencies should estimate direct costs and benefits to assist with these consultations;
- the scope of consultation should reflect the cost and significance of the mandate being considered;
- effective consultation requires trust and significant and sustained attention so that all who participate can enjoy frank discussion and focus on key priorities; and
- agencies should seek out State, local, and tribal views on costs, benefits, risks, and alternative methods of compliance, and whether the Federal rule will harmonize with and not duplicate similar laws in other levels of government.

Although much has been done to effectively implement the Act, more work remains in order to ensure that State, local, and tribal governments truly feel like intergovernmental

partners in the rulemaking process. I look forward to working with Congress toward this important goal. That concludes my prepared testimony. If you have any questions, I would be happy to answer them.