H.R. 50
The Unfunded Mandates Information and Transparency Act

- The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to promote informed and deliberate decisions by Congress and federal agencies on the appropriateness of federal mandates and to curb the practice of imposing unfunded federal mandates on state and local governments, and the private sector.

- In the 112th Congress, the Committee held three hearings to examine UMRA and learned that it has been largely unsuccessful in living up to its original intent. It failed to keep onerous mandates off the backs of local governments and the private sector due largely to its loopholes, exemptions, and narrow coverage.

- H.R. 50 is bipartisan legislation that amends UMRA to enhance transparency, accountability, and awareness with respect to federal regulatory and legislative mandates. The bill aims to close loopholes in the current law and would require more comprehensive cost estimates of newly proposed regulatory mandates.
    - Last Congress, an identical piece of legislation passed the House with a bipartisan vote.

- H.R. 50 is supported by the National Federation of Independent Businesses, the National Conference of State Legislatures, the Small Business & Entrepreneurship Council, and the U.S. Chamber of Commerce.

- The bill requires independent regulatory agencies to comply with UMRA.
    - **Need for change:** Regulations imposed by independent regulatory agencies can impose significant costs and burdensome requirements, but agencies such as the Consumer Product Safety Board, the National Labor Relations Board, and the Federal Communications Commission are not required to conduct cost-benefit analyses of regulations.
    - According to an analysis by the Congressional Research Service, in FY 2010, FY2011, and FY2012, nine independent agencies issued 57 major rules, but none of those rules included monetized costs and benefits (26 included monetized estimates of costs; 0 included monetized estimates of benefits).

- H.R. 50 codifies principles of regulation in Executive Order 12866 (issued by President Clinton),and cost-benefit analysis, which were reaffirmed in Executive Order 13563 (issued by President Obama).
    - **Need for change:** <u>President Obama's former chief regulatory officer, the Office of Information and Regulatory Affairs (OIRA) Administrator, Cass Sunstein, wrote in scholarship that executive orders are not "sufficient for real change"</u>; <u>"a thoroughgoing reform effort would require legislative reforms, not merely executive action"</u>; and "by itself, [an executive order] will not do a great deal to change the system of regulation."
    - To underscore these points, former OIRA Administrator Sunstein testified before the full Committee last Congress that legislation "has more longevity than executive orders."

- The bill closes the <u>loophole that currently allows an agency to forgo UMRA analyses</u> if the agency never issued a notice of proposed rulemaking for a federal regulatory mandate.

- **Need for change:** In a 2012 report, GAO found that 35% of major rules issued between 2003 and 2010 were not first published in the Federal Register as a notice of proposed rulemaking. These rules were exempt from UMRA requirements.

- Agencies are required to consult with state, local, and tribal governments while developing significant regulatory mandates. H.R. 50 extends this requirement to the private sector.

- The bill allows the chairman or ranking member of any Congressional committee to request an agency conduct a retrospective analysis of an existing federal regulatory mandate.
  - **Need for change:** President Obama has acknowledged that each agency "should periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

- The bill extends judicial review to the selection of the least costly/least burdensome alternative to a regulatory mandate and to the regulatory principles of 12866.
  - **Need for change:** The Small Business and Entrepreneurship Council testified before the Committee that the current judicial review provision included in UMRA "lacks teeth" and "offers no real incentives to challenge agencies or for agencies to deal more legitimately with UMRA requirements."
  - At a full Committee hearing, former Administrator Sunstein admitted that agencies have issued rules that were maybe "not a good idea at the beginning," but the agency issued it anyway, "declared victory" and moved on. Extending judicial review under UMRA will ensure agencies have proper accountability.

- H.R. 50 allows the chairman or ranking member of any Congressional committee to request that the Congressional Budget Office (CBO) conduct an assessment comparing the authorized level of funding in a bill or resolution to the prospective costs of carrying out any changes to a condition of Federal assistance being imposed on State, local, or tribal governments participating in the Federal assistance program.
  - **Need for change:** Federal legislative mandates under UMRA do not include mandates that are imposed as a result of changes to conditions of grant aid, such as No Child Left Behind. Groups like the National Conference of State Legislatures have identified this as a weakness in UMRA.

- To reflect current CBO practice, H.R. 50 expands the definition of direct costs to ensure forgone profits, costs passed on to consumers, and behavioral changes are included.
  - **Need for change:** Requiring these costs to be included in cost estimates generated by CBO and regulatory agencies will help ensure that analyses are more complete and provide a more accurate description of the full effects of legislation and regulations.
  - Former OIRA Administrator, John Graham, testified before the Committee that agencies already have their thumb on the scale towards bolstering benefits; therefore, all aspects of costs should be included.