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SUBCOMMITTEE HEARING ON PLAIN LANGUAGE IN PAPERWORK - THE BENEFITS TO SMALL BUSINESS

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COMMITTEE ON SMALL BUSINESS
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CONTENTS

OPENING STATEMENTS

	Page
Braley, Hon. Bruce	1
Davis, Hon. David	3

WITNESSES

PANEL I:

Cox, Hon. Christopher, Chairman, U.S. Securities and Exchange Commission	4

PANEL II:

Romasco, Mr. Robert, AARP	10
McCracken, Mr. Todd, National Small Business Association	11
Hall, Mr. Keith, National Association for the Self-Employed	13
Cheek, Dr. Annetta, Center for Plain Language	15
Grundmeyer, Ms. Christine, Auxi Health Services, on behalf of the National Association for Home Care and Hospice and the Iowa Alliance in Home Care	18

APPENDIX

Prepared Statements:

Braley, Hon. Bruce	31
Davis, Hon. David	33
Cox, Hon. Christopher, Chairman, U.S. Securities and Exchange Commission	34
Romasco, Mr. Robert, AARP	40
McCracken, Mr. Todd, National Small Business Association	47
Hall, Mr. Keith, National Association for the Self-Employed	51
Cheek, Dr. Annetta, Center for Plain Language	56
Grundmeyer, Ms. Christine, Auxi Health Services, on behalf of the National Association for Home Care and Hospice and the Iowa Alliance in Home Care	65

SUBCOMMITTEE HEARING ON PLAIN LANGUAGE IN PAPERWORK - THE BENEFITS TO SMALL BUSINESS

Tuesday, February 26, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS, SUBCOMMITTEE ON
CONTRACTING AND TECHNOLOGY
Washington, DC.

The Committee met, pursuant to call, at 2:00 p.m., in Room 2360 Rayburn House Office Building, Hon. Bruce Braley [chairman of the Subcommittee] presiding.

Present: Representatives Braley, Cuellar, Clarke and Davis.

OPENING STATEMENT OF CHAIRMAN BRALEY

Chairman BRALEY. I call this meeting to order to address plain language in paperwork, the benefits to small business.

I want to thank you all for coming today.

Small businesses in this country are struggling in a flood of paper work, and the tide continues to rise. Both the volume and complexity of paper work is increasing, and it is hurting our nation's entrepreneurs.

Communications from federal entities are often confusing and difficult for small businesses to understand. Agencies such as the Small Business Administration, the Internal Revenue Service and the Centers for Medicare and Medicaid Services have complicated forms and instructions that contribute to the paper work burden, which is costing entrepreneurs nearly $50 an hour. It doesn't have to be this way.

If the goal of these communications is to produce results and establish guidelines, the government needs to account for the audience. Too often government bureaucrats issue these forms and paper work with no thought if anyone will be able to understand them. This growing problem exists not only at the federal level, but also at the state level as well.

This has caused many states to take action, and they have successfully implemented plain language policies for their administrative communications. I believe that implementing a federal plain language policy could greatly reduce the burdens that small businesses face in dealing with this growing volume of paper work.

Convoluted government communications place major burdens on small firms. According to the National Federation of Independent Businesses, small businesses cite unclear and confusing instructions as being the most common paperwork problem. That is one

reason why I introduced H.R. 3548, the Plain Language in Government Communications Act. This legislation will reduce the paperwork burdens on small businesses by promoting clear communications from the federal government that entrepreneurs and the public can understand.

The bill requires executive agencies to use plain language in any document relevant to obtaining a benefit or service, including a letter, publication, form, notice or instruction.

On January 29th, the Subcommittee on Information, Police, Census and National Archives of the Government Oversight and Reform Committee reported the legislation favorably to the full Committee. The act requires the federal government to write in a clear manner that it follows the best practices of plain language writing.

The federal plain language guidelines, which I hold in my hand, provide an outline for these best practices. Plain language applies to more than just words. It involves many aspects of documents, such as easy to read design features and logical organization.

These changes mean those agencies that create the greatest burden must enact reforms. The IRS obviously is one of the top offenders. The complexity of IRS forms and instructions is costly for our nation's entrepreneurs. According to NFIB, the average cost of tax related paperwork and record keeping for small business per hour is $74.24. Small businesses are facing more tax forms, longer instructions, and tax returns that are increasingly complex.

According to OMB, the IRS accounts for approximately 78 percent of the total federal information collection burden. The use of plain language by the Internal Revenue Service could significantly reduce the burden that small businesses face in complying with tax regulations.

Medicare is another area in which complexity is posing a problem. Doctors and other health care providers continue to struggle with increasingly complex medicare rules and regulation. GAO has reported that the information given out by CMS regarding these regulations is often difficult to use, out of date, inaccurate, and incomplete. According to GAO, Medicare bulletins to physicians are often poorly organized and contain dense legal language.

It is apparent that convoluted language is harming U.S. competitiveness in a global economy. The most recent global competitiveness report issued by the world economic forum identified our nation's complex tax regulations as being the second most problematic factor for doing business in the United States.

It is my hope that the use of plain language will reduce this problem. Small business owners do not have extensive resources to handle paper work. So any time they spend to wrestle with complex government forms and documents keeps them away from operating their businesses.

Last year, OMB found that the overall national paperwork burden increased nearly 700 million hours from fiscal year 2005 to fiscal year 2006 alone. The use of clear, easy to understand language in government paperwork could substantially reduce burdens on small businesses and provide for a more level playing field. The less time small businesses spend on paperwork, the more time they can dedicate to growing their business, creating job, and contributing to economic growth.

I have been a passionate advocate of plain language drafting for 25 years. When I was a young lawyer just starting my practice, the Iowa Supreme Court adopted plain language requirements for use in jury instructions in the State of Iowa because they recognized that jurors hearing information about the legal rules they were to follow and apply to the facts of the case were having great difficulty understanding basic legal concepts.

And I have spoken to young lawyers and aging lawyers for 25 years about the need to communicate more effectively in both their written communications and their verbal communications. So this is a passion that I brought with me to Congress, and I am very, very excited to see the interest that this topic has created because I think it would have an enormous impact on reducing the cost to the federal government.

So I would like to thank all of our witnesses today for coming to the Committee and sharing their views on this important issue, and I would like to yield at this time to my friend, Ranking Member Davis for his opening statement.

OPENING STATEMENT OF MR. DAVIS

Mr. DAVIS. Thank you, Mr. Chairman.

Good afternoon. I would like to thank you, Chairman Braley, for holding this hearing. I appreciate the witnesses coming here to testify for us today. I will keep my opening remarks brief.

I am sure there are people who have read the Federal Regulations and said, "Gee, that is plain and easy to read." I am not one of those people. As a small business owner myself, I know first hand that a quick perusal of the Federal Register is enough to make a wooden man crazy.

Federal agencies write thousands of regulations every year, and we are expected to comply with them. The sheet volume of regulations small businesses must comply with is a drain on the resources, and when those rules are written in complicated language, it only aggravates the situation.

There have been many attempts to encourage the use of plain language in the federal government. However, it does not appear that any of them have been particularly successful. The information published by the federal government is supposed to be for the benefit of its citizens so that they can understand exactly what their government is doing.

How can this be best achieved, by using Byzantine language as complicated sentence structures or by using plain language that is easy to understand? I am eager to hear the testimony of our witnesses. So I will end here.

Thank you for being with us today to testify before the Committee.

Chairman BRALEY. And with that, I would like to welcome our first witness to the hearing, the Honorable Christopher Cox. Christopher Cox is the 28th Chairman of the Securities and Exchange Commission. He was appointed by President Bush on June 2nd, 2005, and unanimously confirmed by the Senate on July 29th of 2005.

During his tenure at the SEC, Chairman Cox has brought ground breaking cases against a variety of market abuses, includ-

ing hedge fund insider trading, stock options backdating and securities scams on the Internet.

Prior to joining the Security and Exchange Commission, Chairman Cox served for 17 years in Congress where he held a number of positions of leadership in the U.S. House of Representatives.

Welcome home.

STATEMENT OF THE HONORABLE CHRISTOPHER COX, CHAIRMAN, U.S. SECURITIES AND EXCHANGE COMMISSION

Mr. COX. Thank you very much, Mr. Chairman, Ranking Member Davis. It is a privilege to be here to testify on an issue that I, too, am passionate about.

You are, of course, champions of small business here on this Committee, and with this topic in this area you have really hit the jackpot. There is nothing more important, Mr. Chairman, than reducing the cost for small business and for consumer customers. It is a great opportunity.

The time and money that is wasted on translating legalese into plain English is dead weight economic loss. It benefits no one and it harms millions of consumers who pay for it.

Of course, while you are leaders in this effort, you are not the first mavericks in Congress to take up the battle for clearly written legal rules. In fact, the very first reported appearance of the word "gobbledygook" was in 1944 when it was coined by a Congressman whose name was Maverick.

[Laughter.]

Mr. COX. U.S. Representative Maury Maverick was a Texas Democrat who wrote a memo that banned all "gobbledygook language" from his office. He said he made up the word to imitate the noise that a turkey makes.

To show just how serious he was about plain English, he added in his memo, "anyone using the words 'activation' or 'implementation' will be shot.

[Laughter.]

Mr. COX. At the SEC, we have more modest penalties in store both for our staff and for public offenders, but we are dead serious about plain English. That is because it is our job to be the investor's advocate. Investors deserve precise and clearly written rules that help them to quickly focus on what is important in making financial decisions.

Using plain English respects the fact that investors are busy people. It lets them use their time more productively. Clearly presented information also makes our markets more efficient by improving the process of price discovery on our security exchanges.

The SEC has many plain language initiatives underway. Our plain English requirements now apply to both offering documents and periodic reporting by public companies. They apply to mutual fund disclosure, and they apply to our own communications to the public.

It is the sad truth that our government's laws and rules are not only mostly written by lawyers, but seemingly they are mostly written for the benefit of lawyers. This makes compliance with the laws more expensive because people who have to follow the laws and the rules need to hire lawyers to find out what they mean.

But legalese does more than just waste time and money. When laws and rules are hard to understand, it is more likely that people who are trying to comply are simply unable to do so.

There is nowhere that certainty in the law is more important than in small business. Every day small businessmen and women across the country execute make or break business decisions in tough, competitive circumstances that depend upon knowing what the legal rules are. Small business people who are working hard each day to create the goods and services that their communities demand need to know how to navigate in a sea of regulation, and we owe it to them to provide a clear answer.

At the SEC we are taking plain English to the next level. In addition to using plain language in our writing, we are directly helping people to understand the rules and the laws that we administer. As one part of this effort, we have published the SEC's Plain English Handbook, and we are reaching out to small businesses and investors and anyone who wants help with understanding the laws that we administer and our rules.

One place that we are doing this is in one of the fastest growing segments of the securities industry, the investment advisory industry. In the past three years almost 4,000 new advisers, most of them small businesses, have registered with the SEC for the first time. Our experience has shown that these newly registered firms may not be familiar with what's required of them under the Investment Advisers Act.

So last summer we translated the Investment Advisers Act into plain English, and we e-mailed it to all of the investment advisers. We also keep it up on our public web site. One of the best features of this new plain English translation of the law is that each plain English description is hyperlinked to the actual law text so that it's easy to click back and forth and understand what a particular provision of the law means.

We are also working hard to insure that the materials that publicly registered companies provide to investors are readable and understandable. We have some empirical evidence of the fact that most retail investors are throwing away the proxy statements, the 10-ks, and the other SEC mandated disclosure documents that they receive in the mail. If your customers routinely throw your product away, you have got a problem.

There can be many reasons that our customers are dissatisfied, but the most obvious is that they are busy people. Wading through dense legalese is not their day job, and ordinarily they just do not have time for it.

If time is money, then poorly written disclosure documents are wasting one of the investor's most important assets. At the SEC, we have noticed that public companies take a great deal of care in sprucing up their catalogs and their sales materials so that customers will be interested in buying their products. Doesn't it make sense that they and we, the government, should take the same degree of care in making investor materials more readable?

Our plain English efforts are focused on areas where consumers have the most to gain. So for retail investors, including many small businesses, that means mutual funds where nearly half of the more

than three trillion dollars that Americans have invested in 401(k)s and similar plans is invested.

Just a few months ago, the Commission proposed rule changes to make mutual fund disclosures easier to understand. Under this proposal every mutual fund would include key information in plain English in the front of the mutual fund prospectus. That will make reading a mutual fund prospectus far easier than it is today.

Yet another example of how we are using plain English to help individuals in small business is our proposed new rules that require investment advisers to give clients a brochure in plain English. It would offer investors clearly presented information about the investment adviser's business practices, conflicts of interest and disciplinary history.

One further area where we are working to promote clarity is our new executive compensation disclosure regime. The Commission recently enacted new rules letting investors see clearly how the executives who work for them are paid, and the new rules explicitly require that the narrative be written in plain English.

Mr. Chairman, these are just some of the many ways that the SEC is working to promote plain English to make life better for investors, for companies large and small and for our markets, but I also want to congratulate you and this Subcommittee for your focus on the importance of plain language across the entire government. And, in particular, I appreciate your interest in legislation such as H.R. 3548, the Plain Language in Government Communications Act of 2007, which of course was authored by you, Chairman Braley.

As you know, there are similar efforts underway in the Senate led by Senator Akaka, who has introduced S. 2291. I am certain that small business would welcome a law that establishes plain language as the standard style of communication for federal documents issued to the public. It is heartening that the House bill, as you have mentioned, has already been unanimously approved by the House Oversight and Government Reform Subcommittee on Information Policy, Census, and National Archives.

Your bill, Mr. Chairman, would require the use of plain language in any new or revised document issued by a federal agency, and that is certainly a good start. I note that it would cover any documents that explain how to obtain a benefit or service, including letters, forms, notices, and instructions.

The next step, of course, would be to include regulations. I am certain that there are reasons for that modesty in the bill's objective, but I encourage the members of this Committee to aggressively pursue the goal of plain language in regulations as well. I have been fighting for this at the SEC, and as you may see from our most recent proposed rules, legalese in rule text remains alive and well even at our agency.

Finally, I would point out that the key to achieving real change in increasing the use of plain language is the adoption of objective standards for measuring whether government writing is, in fact, understandable. Fortunately, there is useful experience in the states that can guide us in doing this.

Thirty-five states have already enacted plain language laws, and you mentioned that Iowa has such a law for jury instructions.

Many of these laws have been quite successful in eliminating gobbledygook from consumer sales documents and insurance contracts. For example, Pennsylvania's Plain Language Consumer Contract Act includes specific tests of what plain language is, and penalties for non-compliance.

But Pennsylvania's admirable law also shows the need for federal action because it excludes language intended to comply with federal requirements. Of course, feasibility tests are only a rough guide. The simple yardsticks are only a rough estimate of their writing.

On the other hand, we're talking about laws, regulations, government documents, and investor communications. It is not supposed to be Hemingway. So if we lose the capacity for poetry in the process of keeping things clear and understandable, that is a price that we should happily pay.

Far better than any mathematical formula for measuring readability is testing a document on real people. That is why the SEC is planning to measure the effects of our efforts by talking to real investors. We will soon conduct a baseline survey of America's investors to find out whether they find proxy statements, 10-ks, and other SEC required disclosure documents to be readable and useful - and if not, why not? The survey will also gather ideas on what would make these documents more useful.

Mr. Chairman, the attention that you and your fellow Committee members are paying to this important subject is long overdue. Eliminating waste in government is an objective that everyone shares in theory, but it always seems difficult to find good opportunities. Here is an outstanding opportunity to achieve enormous savings for both small businesses and consumers without any countervailing loss of government interest. In fact, the government interest is advanced as well by eliminating legalese in government writing, because when it is easier to understand the rules, more people will follow them.

Thank you for inviting me to testify, and I am happy to answer your questions.

[The prepared statement of Chairman Cox may be found in the Appendix on page 34.]

Chairman BRALEY. Mr. Chairman, we had an opportunity to speak briefly before your testimony, and I was sharing with you that when I talked to people about this bill and informed them that the Securities and Exchange Commission has been at the forefront of plain language advocacy, many people are shocked by that because I think when most people think of the work that the Commission does and the nature of its complex financial circumstances, they would probably not assume that an agency like yours would be leading the charge.

So I was hoping maybe you could share with us a little bit about the institutional obstacles you have encountered and that you still encounter in trying to make this something that the entire agency embraces as something that is good for investors. It is good for the companies that you are regulating, and it is good for the consumers.

Mr. COX. Well, I suppose that one reason that people react as you suggest they do when you mention that the SEC is leading the effort for plain language is that these days when they think of the SEC they may think first of the Sarbanes-Oxley Act. Of course, the Sarbanes-Oxley Act was our handiwork here in the Congress, something that the SEC administers, but regardless of what everyone thinks of the Sarbanes-Oxley Act, no one would say it's Hemingway.

Translating legislative language into plain English is something that either the government can help with or not, but it has to be done. People who are trying to understand what they are supposed to do have to go through the exercise of taking the convoluted legalese and turning it into something actionable. They have to be able to tell their employees what to do. The customers, if it involves a contract or some closure that goes to them, likewise have to translate it into something that has relevance or meaning to them.

We live in a nation of over 300 million people. For many of them, English is not even their first language, but for all of them, except a small percentage with lawyers among them, legalese is their second language or further down the list.

So I think it's just absolutely vitally important for an agency such as the SEC, which is focused on being the investor's advocate to take that burden up ourselves, and that is why we are doing this. We are a lawyer-centric agency, however. You asked what are the institutional obstacles. That is the biggest one. There are a lot of lawyers writing for lawyers. Since the lawyers can all understand it much more easily, it ultimately becomes a shorthand for them. They do not always see the need, and so it requires a constant refocusing on who the customer is and what is the point of all of this disclosure regime.

Chairman BRALEY. Well, after being here for just one year, it became apparent to me that this is a city that is run by people under the age of 30, many of whom have excellent educations. A number of them have legal educations, and I think one of the obstacles is trying to convince them that that education will not be put to waste if they focus on plain language drafting.

One of the things that is mentioned in your excellent SEC Plain Language Handbook is this quote. "Lawyerisms are words like a 'aforementioned,' 'whereas,' 'res jeste,' and 'hereinafter.' They give writing a legal smell, but they carry little or no legal substance."

And the problem is that these words clog up many of the publications that agencies send out for people to use around this country in a variety of settings, and they become real barriers to effective understanding of what the intent of those communications are. So what type of advice do you have for other agencies in terms of trying to implement plain language techniques and how they communicate?

And I would also like to point out that there is nothing that bars a federal agency from voluntarily implementing plain language as part of its communications philosophy.

Mr. COX. I think that is the important point. We need legislation here to bring the people along who are unwilling, but we do not need legislation to get anyone who wants to be part of this movement. In the government there are a lot of public-spirited people

who understand that we are here to serve who would like to get moving with this right away.

Any federal worker that has on his or her desk Microsoft Word already has a tool that they can run what they are writing through to determine the level of readability. Flesch Reading Ease Score is referring to an algorithm developed by a lawyer named Flesch who was also a professional writer by training, and who earned his Ph.D. at Columbia University for developing this test. It is one of these mechanical tests, so it gets some people's back up to have to expose their writing to it, but I ran my testimony today through the test and found that it would comply with the state laws governing insurance contracts that are measured by the Flesch Reading Ease Score because typically they require a minimum score of 40 to 50 on the 100 point scale. I came in at just under 49 today.

Chairman BRALEY. Well, congratulations, and with that, we do have votes pending. So I would like to yield to my colleague and let him ask any questions that he might have for you.

Mr. DAVIS. Thank you, Commissioner, for being here. Thank you for your service in the Congress as well, and since we do have votes pending, I am going to ask one question.

Has the Commission received comments from the public about the improvements in readability in documents? Have you gone out to the public?

Mr. COX. Yes, we have. We have done this in informal ways so far. We have many, many sources of public comment, including as you would expect consumer help lines and that sort of thing. We have opportunities for the public to comment on our rules, and many of our recent proposed rules have had plain English requirements. So we have gotten formal comment from the public in that way.

But we want to take this, as I said, one step further, and so our Office of Investor Education and Advocacy under the direction of Kristi Kaepplein, who is here with us today, is going to do a nationwide baseline survey and get very good measures of where we are starting and, therefore, measures of whether we are improving down the road.

Chairman BRALEY. Well, Mr. Chairman, I want to thank you so much for coming and sharing some time with us today, and I would hope that if the Committee has additional questions or inquiries about the practices at your agency that we could continue to work with you and your staff and follow up with some other questions that we might have about other agencies might practically benefit from the leadership example of your agency.

Mr. COX. Thank you, and thank you and your Committee members for your excellent leadership.

Chairman BRALEY. And I would like to inform our second panel that unfortunately we are in the late states of a vote. It is a series of votes, and it will probably take around 45 minutes. So the hearing will be adjourned, and we will reconvene at that time and look forward to your testimony at that time.

Thank you.

[Recess.]

Chairman BRALEY. All right. We are back for Panel 2, and I want to thank you all for your patience. When we head back over to the

floor to vote, we never really know what is going to happen over there.

So I am very proud at this time to introduce our next panel of witnesses, and I would like to begin on our left with Mr. Robert Romasco with AARP. He is a member of the AARP Board of Audit and Finance Committee and Governance Review Committee. He also serves on the AARP's Pension Plan Review Committee.

His employment experience includes service as Senior Vice President of Customer Distribution and New Business Development at Quality, Value, Convenience, the well known QVC Television Network, and also AARP has over 39 million members and is a leading nonprofit, nonpartisan membership organization for people age 50 and older in the United States, and I am happy to report, Mr. Romasco, that I got my membership application after my 50th birthday.

So thank you very much for joining us.

STATEMENT OF ROBERT ROMASCO ON BEHALF OF AARP

Mr. ROMASCO. We are delighted that we are still being very effective at getting you those things. Thank you very much.

Chairman Braley and Ranking Member Davis, thank you for the opportunity to appear today to discuss the benefits of plain language in government communications with the public. This is an issue of particular interest to older Americans, many of whom have regular contact with the federal government, be it for veterans benefits, social security, Medicare, or other benefits and services.

We commend you, Mr. Chairman, as well as Representative Akin of this Subcommittee and other of your colleagues, for introducing H.R. 3548, the Plain Language in Government Communications Act of 2007. We urge that members of this Subcommittee and, indeed, the full Congress support enactment of this legislation this year. It will improve the federal government's effectiveness and accountability to the public by promoting reliable, understandable, and useful communication.

Interest in making government documents clear has a long but sporadic history. We understand that as far back as the 1940s federal government employees have advocated for plain language in government documents. Yet the need for plain language in government communication with the public persists.

Interest in encouraging plain language has waxed and waned over the past several decades. For example, in the 1970s the Nixon and Carter administrations encouraged greater use of plain language. And while interest dropped during the 1980s, it came back in the 1990s.

In order to insure uniform progress in this area, AARP believes a statutory requirement for government agencies to write in plain language is needed. This should include a requirement that the agencies report to Congress on their progress they are making in meeting this goal.

Some may believe the obviously desirability of using plain language in government communications makes such legislation unnecessary. Unfortunately, there is ample evidence to the contrary. AARP hearing every day from our members who cannot under-

stand the dense, legalistic correspondence they get from the government.

In most cases this lack of understanding is not the reader's fault, but rather reflects the confusing writing style of the agency. Though I am tempted to provide examples of some of the most inaccessible government writing we have uncovered, I instead will refer you to our written statement as well as those of others.

Sometimes these examples of government writing are comical, but the joke unfortunately is on the taxpayer. It is common sense that the use of plain language in government documents will save the federal government an enormous amount of time that is now spent helping people understand the information they receive. It will also reduce errors in people's response to what the government sends out. It also will reduce complaints from frustrated citizens.

In short, plain language will result in more efficient and effective government. Mr. Chairman, the goal of plain language is simple: make the documents the government uses understandable on the first read. Though the goal is simple, the benefits are tremendous. Others will testify with some very impressive statistics which will underline that concept.

Finally, AARP respectfully encourages Congress to adopt the sensible and much needed legislation.

Thank you.

[prepared statement of Mr. Romasco may be found in the Appendix on page 40.]

Chairman BRALEY. Thank you.

Our next witness is Mr. Todd McCracken. He is the President of the National Small Business Association. Mr. McCracken started with the association in 1988, previously serving as Vice President of Government Affairs. Established in 1937, NSBA is the oldest small business organization. NSBA's advocacy touches more than 150,000 companies around the nation.

Welcome.

STATEMENT OF TODD McCRACKEN, PRESIDENT, NATIONAL SMALL BUSINESS ADMINISTRATION

Mr. MCCRACKEN. Thank you very much, Chairman Braley and Ranking Member Davis. We appreciate the opportunity to be here today.

I can dispense with my introduction of the organization because which you did so ably, but as members of this Subcommittee well know, in addition to being a bedrock of our society and really the very embodiment of America's entrepreneurial spirit, small businesses constitute the backbone of the U.S. economy. Small businesses comprise 99.7 percent of all domestic employer firms and employ more than half of all private sector workers.

Between 1989 and 2003, America's small businesses generated 93.5 percent of all net new jobs. Approximately 4,000 new jobs are created every day by small businesses. Why is this important to note? Because these small businesses are the very firms that are most likely to be disadvantaged by the garbled and confusing communications they receive from the federal government.

Perplexing paperwork and the oppressive federal regulatory regime are overburdening America's small businesses. Unlike big corporations which have hordes of accountants, benefits coordinators, attorneys, personnel administrators, et cetera, at their disposal, small businesses often are at a loss to keep up with, implement, afford, or even understand the overwhelming regulatory and paperwork demands of the federal government.

While the Plain Language in Government Communications Act of 2007 would not directly address this dispiriting inequity as it does not address federal regulations, it would go a long way in easing the federal government's demands on America's small business owners. Lacking legions of paperwork soldiers, most small business owners are left alone in their battle to understand the letters, forms, notices and instructions they receive from the federal government. As you might guess, far too often the result is a slaughter. Forget death by a thousand cuts. Try a billion.

In fiscal year 2005, the American public spent 8.4 billion hours wrestling with federal paperwork requirements, and $1.1 trillion complying with federal regulations. This burden was disproportionately borne by the country's small businesses.

This burden is attributable to more than the mere act of compliance, however. It is also caused by the bewildering language used in much of this paperwork. Small business owners are not dumb. They are simply not fluent in legalese or Washingtonese. The federal government's proclivity towards arcane, ambiguous or simply incomprehensible language translates into billions of lost hours and dollars. This is money and attention that America's entrepreneurs could be putting to better use, growing their businesses, for instance, or hiring more of your constituents.

It is equally important to note that the effort to force the federal government to use the plain language in its communications must not be construed as an attempt to diminish, dilute or skirt federal requirements. Quite the contrary, the small business members of NSBA are of the opinion that clearer federal communications will ease compliance which naturally will increase compliance.

It is not the goal of most small business owners to deliberately flout or infringe their federal obligations. No matter how dizzying the mass and magnitude of the requirements are, it is simply in their best interest to comply and move on to the next task at hand. When violations do occur, more often than not they are the small business owner's inability to decipher what is being asked of them. In fact, 93 percent of the responses to a recent NSBA poll reported having trouble understanding a letter, form, notice or instructions they received from the federal government.

Simplicity is the key. The simpler the letter, form, notice, instructions or requirements, the easier it will be for small business owners to understand and comply. Of course, easier and increase compliance not only assist small business owners and other citizens. It is also in the best interest of the federal government.

In short, plain language is a common sense approach to saving the federal government and small business owners time, effort, and money.

As I previously mentioned, the Plain Language in Government Communications Act of 2007 does not extend its plain language re-

quirements to federal regulations. Convinced that clearly written and precise federal regulations would carry the same benefits as plainly written letters, forms, notices or instructions, the small business members of NSBA eventually would like to see federal regulations written in plain or at least plainer language as well. In fact, 97 percent of the respondents to the NSBA poll I mentioned previously would support legislation requiring all federal regulations be written in easy to understand, plain language.

Despite this exclusion, NSBA supports H.R. 3548. An impressive regulatory regime and mountains of mingled messages and jumbled jargon from the federal government are a plague on small businesses across the country, the very small businesses the country relies on for job creation and economic prosperity. Thankfully this plague has a cure, a cure that is plain to see and easy to understand. The small business members of NSBA believe that the Plain Language in Government Communications Act of 2007 is an important component of this cure and are pleased to support it.

Once again, I would like to thank Representative Braley for his leadership on this important initiative and for the attention of this Subcommittee, and at the appropriate time I would be happy to answer questions.

Thank you.

[The prepared statement of Mr. McCracken may be found in the Appendix on page 47.]

Chairman BRALEY. Thank you.

Our third witness is Keith Hall. He is a small business owner and a CPA and has been a member of the National Association for the Self-Employed, NASE, since 1990 where he works with the association's Tax Talk Service. He also has his own financial consulting firm in Dallas, Texas.

The National Association for the Self-Employed is the nation's leading resource for micro business, and is the largest nonprofit, nonpartisan association of its kind in the United States.

Welcome.

STATEMENT OF KEITH HALL, NATIONAL TAX ADVISOR, NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED

Mr. HALL. Thank you.

Chairman Braley, Ranking Member Davis, I appreciate the opportunity to be here. To follow up on the SEC Chairman's comments, I hope no one gets shot today because it is usually the small business guy. So watch out for that.

Again, as you mentioned, I am here as the National Tax Advisor for the National Association for the Self-Employed, representing 250,000 micro business owners across the country. The NASE is solely dedicated to the needs of micro businesses.

I am very proud to be a member of the NASE, and though I think National Tax Advisor sounds really cool, in plain language, I am just a small business guy. That is it. I have a small accounting practice in Dallas, two CPAs, two employees. Through NASE Tax Talk, we have the opportunity to answer thousands of questions every year from small business guys just like me, and I can

tell you with total confidence that we struggle with understanding government communication, especially IRS rules and regulations.

It is difficult to see why anybody would oppose simplifying the language included in government communication, and I am really glad I have a chance to tell you how important this is to small business.

The bill H.R. 3548 is way overdue and is a welcome sign of relief. Even though I am a CPA, I still struggle with some of the forms and publications required to complete a tax return. There are over 1.4 million words in the tax code, and I think that is about three times as many as in the Bible and maybe even more difficult to understand.

Obviously, trying to simplify something that is so complicated is a big task. I will say in the last several years the IRS has done a great job in helping small businesses. They have dedicated significant resources to an awesome Web site and have made a number of tax forms easier to read. They have implemented an easier annual filing for payroll tax returns, Form 944. They have simplified Form 941 and Form 940 by using plain language.

Overall, they have made a big difference for us, and all of that was made without so to speak an act of Congress: no new bill, no new deduction or exemption, no new code section, no decrease in Treasury revenue; only a commitment to making the existing rules a bit easier to understand and the forms a bit easier to fill out. And that is exactly what we are talking about.

I think the IRS has done a great job, but there is still a lot left to do. The IRS itself estimates that a small business taxpayer with a 1040 and a Schedule C spends about 57 hours completing their tax return, and if they have a home office deduction or depreciation calculation, that number can approach 100 hours.

Depreciation is a great example. Assume a small business guy buys a $1,500 computer for their business. No one disputes that there should be a tax deduction for that computer, but since it is an asset, the guy has to fill out a Form 4562, depreciation and amortization, in order to get to the deduction. Here is a two-page Form 4562, and here are 16 pages of instructions that go with the two-page form.

Now, I am a CPA, but, man, that is tough to deal with. Forty-seven hours.

Again, nobody disputes the fact that there should be a deduction for the computer. Congress has even recognized how important investing in the business is and has passed a law so that that computer can be fully deducted in the first year. The Section 179 deduction allows him to take a full deduction in the first year instead of over five years, which is great news.

But the bad news is he still has to fill out the Form 4562 and attach it to the return. There is no future expense, no future depreciation, no carryover, but you have still got to fill out that form with 16 pages of instructions. This is the perfect example of how changes added to changes added to changes over the years have made things more complicated than is necessary.

This could be fixed with one commitment to plain language. One form or publication written in plain language as required by H.R. 3548 could make this problem go away. The business use is the

same. The deduction is the same. The Treasury revenue is the same. The only difference is the small business guy now has 47 extra hours he used to have to spend on the form now he can spend using to manage his business, to get a new customer or, better yet, to generate a new job.

Now, this is an election year. In November we will choose a new President. No matter whom we choose, that person will have already told us, among other things, that they are committed to the creation of new jobs. They are all going to tell us that. It is my belief that the true effect of plain language and tax simplification is just that, new jobs.

If every small business owner had an extra 47 hours, new business, new customers, new revenue, new tax money, and new jobs would soon follow.

Again, Mr. Chairman, Ranking Member Davis, I appreciate the opportunity to be here. Thank you so much for your efforts that you are investing in my business. You truly are making a difference, and I know that is why you guys came to Washington in the first place.

Thank you very much.

[The prepared statement of Mr. Hall may be found in the Appendix on page 51.]

Chairman BRALEY. Thank you.

Our next witness is Dr. Annetta Cheek from the Center for Plain Language. She is the founder of the Center for Plain Language in Silver Spring, Maryland, and currently serves as its chair. She has been a leader in the plain language movement since her days as a federal employee and helped create the Plain Language Action and Information Network, otherwise known as PLAIN.

The Center for Plain Language is a nonprofit organization seeking to simplify government, legal and business documents, and, Dr. Cheek, I know of no one in this room better qualified to address this subject than you. So, please share your remarks with us at this time.

STATEMENT OF ANNETTA CHEEK, Ph.D., CHAIR, CENTER FOR PLAIN LANGUAGE

Dr. CHEEK. Thank you very much, Mr. Chairman, Ranking Member.

This is a very complex world that we live in today, and it is getting more and more complex. We all face many legal, financial, health, security challenges, and we can't as individuals understand all of the complexities that we need to understand to deal with all of those issues. So we have to turn to someone else for information, and the main place that we turn is the federal government.

We rely on the government for information to help us address all of those issues. We pay the cost of the government, and I believe it should be our right to be able to understand what the government tells us.

But instead, we get long sentences, convoluted language, turgid; some pilots we interviewed used the term Byzantine language from the federal government, and I will not restrain myself. I must read some examples.

This is from the Department of Justice, and I do want to say for the lawyers in the room that some of my best friends are lawyers. So even though they wrote most of this, you know.

"The amount of expenses reimbursed to a claimant shall be reduced by any amount that the claimant receives from a collateral source. In cases in which claimant receives reimbursement under this provision for expenses that also will or may be reimbursed from another source, claimant shall subrogate the United States to the claim for payment from the collateral source up to the amount for which the claimant was reimbursed under this provision."

And what this means simply is that if you get a payment from another source for expenses that we also pay you for, we will reduce our payment to you by the amount that you got from the other source. Furthermore, if you already got paid twice for the same expenses, you have to pay us back.

Here is the Small Business Administration example, and this unfortunately came off their Web site. The Web site obviously meant public consumption, public information.

"Seven (a) loans are only available on a guaranty basis. This means they are provided by lenders who choose to structure their own loans by SBA's requirements and who apply and receive a guarantee from SBA on the portion of this loan. The SBA does not fully guarantee 7(a) loans. The lender and SBA share the risk that a borrower will not be able to repay the loan in full. The guaranty is a guarantee against payment default, it does not cover imprudent decisions by the lender or misrepresentation by the borrower."

And all that the public really needs to know about this is that small businesses must get SBA 7(a) loans through approved lenders, and that by giving those lenders a partial guarantee, SBA shares with them the risk that you may not repay your loan.

And finally, one from the National Park Service Guidelines for Using a National Seashore. "When the process of freeing a stuck vehicle that has been stuck results in ruts or holes, the operator will fill the ruts or holes created by such activity before removing the vehicle from the immediate area."

I have to give the Park Service credit. This is their own rewrite. "If you make a hole while freeing a stuck vehicle, fill the hole before you drive away."

[Laughter.]

Dr. CHEEK. And that is from a regulation.

This kind of language is not only annoying. It puts citizens at risk, and it makes it difficult for federal agencies to fulfill their missions effectively and efficiently. It discourages people from complying with requirements.

One of our board members is a small businesswoman from Tulsa, and she asked 13 of her other clients, most of whom are also small business people, how they responded when they got a difficult government communication. Of the 13, 11 said they delayed dealing with it and ten said they may never fill it out at all because it was just too complex to deal with.

So this is one example of how government communication costs the citizens and it costs the government. The government has to chase after those people to get them to fill out the forms. It has to write a second document to clarify the first document that no

one could read, and I have to say having seen these many times that you usually cannot read the second document either.

Sometimes the government even loses court cases over lack of clarity in language. About ten years ago, there was a case where the Immigration and Naturalization Service was sued over the clarity in a form, and the Ninth Circuit decided that the form was so obscure that it denied the people filling it out due process under the Constitution, and as a result the INS lost a huge number of document fraud cases because of the lack of clarity in the form.

Now, the other side of the story is equally compelling. Plain language can benefit both the citizen and the government. Before I get into some examples, let me clarify what I mean by plain language because there is obviously a lot of misunderstanding. Plain language is audience focused. There are no hard rules except to be clear to your audience. If someone says if you use this plain language rule, such as the word "you," you will confuse people. That person does not know what plain language is. The only rule in plain language is to be clear to your intended audience. Everything else is technique. "You," pronouns, order of sentences, active verbs, those are all techniques. The only rule is to be clear to your audience.

So let me give you just a couple examples of benefits. The State of Arizona has been in the news a lot lately because their Department of Revenue started a plain language initiative that spread to other agencies in the state, and here are just two of the examples that they gave for savings.

One office saved $51,000 from phone calls that they did not get because their instructions were clear. Another office collected an extra $144,000 because their payment instructions were clarified.

Veterans benefits has been a major leader in plain language. They have a lot of good examples from VBA. In this one case they rewrote one letter about benefits into plain language, and as a result phone calls to the office declined 90 percent, saving them a lot of time.

But another side of the story, even better, was that more veterans applied for benefits because when they got the letter, they understood what benefits they were qualified for. So as a result of rewriting this one letter the government was able to better serve the citizens that it was supposed to be serving.

There is even one cute story about the Hill, involving Hill staff. VBA paid a contractor to study the reaction of Hill staff to plain language and classical letters. They asked the staff to answer questions after reading either a plain language letter or a traditional letter, and it turned out that the staff could answer the questions correctly in less than half the time when they were reading a plain language letter. And unanimously the staff involved in the study said they preferred the plain language letter.

So there is lots of evidence, and I have attached more to my testimony, and despite this evidence, however, most agencies find it easier to write in a bureaucratic style than to make the extra effort it takes to write clearly. The philosophy in the government is that the burden of understanding is on the reader, and actually the burden of understanding or clarity should be on the writer.

Agencies will not change this outlook on life unless there is a piece of legislation like 3548 that requires them to do that. Mr. Chairman, the Center for Plain Language strongly supports this bill. We urge the Congress to enact it. It will be an important step on the path to making the government of the people and by the people truly for the people.

Thank you.

[The prepared statement of Dr. Cheek may be found in the Appendix on page 56.]

Chairman BRALEY. Thank you.

Our fifth witness is a constituent of mine. I am very proud of have her here. Chris Grundmeyer is Vice President of Auxi Health Services in Oelwein, Iowa, in Fayette County. She is a registered nurse and works as a facility administrator at Auxi Health Services, which provides skilled nursing, therapy, and aide services to various age groups to enhance independence and wellness in the home. She currently serves as president of the board of directors of Iowa Alliance in Home Care and is a member of National Association for Home Care and Hospice. NAHC is the largest home health trade association in the nation. The Iowa Alliance in Home Care is a voice for home care in Iowa representing the vast majority of home care providers of all type throughout the state. She is testifying on behalf of both organizations, and my colleague to my right is somebody you probably have a lot in common with.

So at this time we welcome you and look forward to your testimony.

STATEMENT OF CHRISTINE GRUNDMEYER, R.N., ON BEHALF OF THE NATIONAL ASSOCIATION FOR HOME CARE AND HOSPICE AND THE IOWA ALLIANCE FOR HOME CARE

Ms. GRUNDMEYER. Thank you, Mr. Chairman, Ranking Member Davis, and Subcommittee members, for inviting me to present testimony regarding the use of plain language to reduce the paperwork burden on small businesses.

As you said, my name is Christine Grundmeyer, and I am a registered nurse. I am the administrator at Auxi Health in northeast Iowa, and I am the president of the board of directors for the Alliance in Home Care, the voice for home care in Iowa.

I am a member of the National Association for Home Care and Hospice (NAHC), the largest home health trade association in the nation.

Home health agencies are generally small businesses. The average home health agency revenue from Medicare, the primary payer of home health services, is under $1.5 million per year. Medicare standards for home health agencies address quality of care, financial reporting, and benefit administration. These requirements establish both broad parameters for operation and minute details on record keeping. Any divergence from these standards subject the home health agency to sanctions, including the potential for termination of participation in the Medicare program.

For the purposes of the testimony, I have highlighted two areas of regulation under Medicare where plain English is an elusive element. In fact, if there was a plain English requirement applied to

these areas by Medicare in the same manner that the substantive standards of the rules have been implemented, it might take 100 or more pages to define, redefine, clarify, and explain the meaning of plain language.

OASIS, let me speak to OASIS. OASIS is the manner by which home health agencies collect and report data used for outcome measures, public reporting of quality indicators, and case mix adjustment in the Medicare prospective pay system model. OASIS is a series of questions that are used to assess the patient at the start of care and periodically thereafter.

While all of the questions are included in a later quality of care analysis, only 25 are used in the PPS model to determine the case specific amount of payment. Fifteen pages of data, 76 questions occupy a seasoned nurse for upwards of an hour and a half. From this single statutory mandate has sprung 36 pages of the Federal Register on January 25th, 1999, and a series of promulgated regulations. At that level the rulemaking seems reasonable and simple. The payment model elements of OASIS bring an additional 45 pages of guidelines that overlap, sometimes repeat those interpretive guidelines in the quality of care realm.

Home health agencies must have two sets of guidelines, one which is this 800 page OASIS instruction manual open at the same time to insure the assessment and the payment standards are consistently met.

While NAHC and the Iowa Alliance in Home Care have continually reported confusion with the sets of complex and lengthy OASIS guidelines issued, the most telling sign of the complexity is the issuance of hundreds of frequently asked questions which comprise about 300 pages and 12 different categories. These are just the questions that people ask after they have the manual teaching them how to fill out the paperwork.

NAHC and the Iowa Association credit CMS for its willingness to assist the home health agencies to achieve consistent compliance. However, if CMS is continuing to ask frequently asked questions nearly a decade after the promulgation of the OASIS rule, the message should be that the rule needs a plain language adjustment. It is inconceivable that a rule that requires this level of interpretation and clarification can result in proper application and performance in the real world.

Now I'd like to speak to the Medicare patient notices. These are the two main notice requirements applicable to the Medicare home health agencies. The notices included are the home health advance beneficiary notice and the expediated determination notice. Under the guidelines established by CMS, there are times when both notices are to be presented to the Medicare beneficiaries at the same time.

Similar to the OASIS requirements addressed above, the beneficiary notice requirement includes statutory and regulatory components along with extensive interpretive guidelines. After navigating hundreds of pages of instructions, home health agencies have the dizzying task of determining which notice is to be given, when it is to be provided, what information is to be included in the notice, what action the agency must take after the notice, and how to document the entire process.

While the HHABN and the expediated determination notice requirements have been in place since 2001, home health agency staff still today report confusion on how the process is intended to work. What seems to be a simple matter on the surface, services sought covered under Medicare has become a compliance nightmare because of the endless exceptions, clarifications, overlapping instructions, new forms, and challenges to common sense. Plain English is a foreign concept in Medicare patient notice realm.

Home health agencies support proper notices to patients in changes of coverage or services. However, the current notice structure is its own great roadblock to successful patient notice because simplicity is sacrificed for a bureaucratic level of detail that nurses in home care have a great difficulty in managing while trying to provide essential care services.

This concludes my formal remarks. I am happy to answer any questions.

[The prepared statement of Ms. Grundmeyer may be found in the Appendix on page 65.]

Chairman BRALEY. Thank you very much.

And let me start with my first question directed to you. I fly back home every week, and every time I get off the plane in D.C. and go to get a cab, I get handed a notice that tells me what the fare rates are for the cabs that operate in the D.C. Metro area, and every week I read the same notice, and I have just stopped taking the notice.

I feel the same way when I go get medical care and I receive the HIPAA privacy notice, and after a while, the original intent of the regulation to put consumers of health service on notice of what their rights are loses its impact because it gets lost in the huge volume of paperwork that health care providers face every day.

What are some of the frustrations you hear from you colleagues about not just the intent of the regulation, but the burden of complying with the regulation and how that impacts the ability to provide patient care?

Ms. GRUNDMEYER. Many of the patients that we see are sick, and they do not want to have to deal with this stuff. They just want to be taken care. So that is the biggest issue for them, is, you know, I do not want this. I do not want the paper work. They see it over and over.

You are right. They do not read it. They take it. We put it in their folder. We tell them you have to have this. We must do this. So that is the biggest frustration. They do not read it.

I did not speak to HIPAA today and how it affects us. We have lots of other things, and we redo the forms every 60 days. So it is not a once a year thing. I mean, the 15-page assessment is every 60 days. It is a dilemma.

Chairman BRALEY. Dr. Cheek, one of the things that I had mentioned earlier was the federal plain language guidelines, and you alluded to this in your opening remarks, but one of the things that you hear from people who are opposed to making change in the way agencies do their business is a lot of myths and misperceptions about what plain language guidelines will actually require.

You made it very clear that the number one rule is to make sure you are writing for your intended audience, and also that the burden of making sure that that communication is clear is the writers, not the readers. That makes a lot of sense.

What are some of the misconceptions that you have encountered that have been disproved by agencies and organizations that have implemented these types of guidelines in their everyday work?

Dr. CHEEK. Well, having worked in four different federal agencies, I think I have heard them all. This material is too technical. That is a very common one. We have a great piece of evidence about that. The Johnson Space Flight Center redid their manual for contractors in a very plain style, and it covers very complex material about cryogenics and so on, and it is a wonderful model of how you can, indeed, take technical language and make it clear.

And, in fact, I think the more complex the original, the bigger the burden you have to make it clear.

And then there is one I heard from an attorney in the White House who deals with executive orders. I was trying to get them to make a commitment to plain language executive orders. They, of course, thought I was from outer space, and his comment was, "No, we cannot use language like that. It is not magisterial."

That sort of set me back. I did not think we had a monarchy anymore, but apparently we do.

And then, of course, from the attorneys there is "it is not precise." There are a lot of examples showing that, indeed, it is more precise than bureaucratic language because it is clear and direct.

That about covers the waterfront, and I do not think there is any case that we have seen that we have not been able to show that a plain language version is superior.

Chairman BRALEY. Going back to your Johnson Space Center analogy, I cannot think of a better example to refute that point than the movie "Apollo 13" where a roll of duct tape was able to circumvent a catastrophic catastrophe and also was probably communicated in very plain language by the people on the ground.

Dr. CHEEK. I am sure it was.

Chairman BRALEY. Mr. Hall and Mr. McCracken, as an attorney practicing in Iowa for 24 years, I represented a lot of small business owners, and one of the things that always struck me was when I represented clients who had employees with commercial driver's licenses and were, therefore, subject to mandatory drug and alcohol testing, and there would be very complex, precise regulations about what needed to be in internal policy manuals in order to comply with the regulation.

And when my clients would bring these problems to me, I would just say to them, "Well, isn't there some sort of example that the agency has published which is a template for how you comply with this requirement?"

And they would say no, and so then they would hire me to draft a personnel manual for them to comply with these regulations, and it seemed like an incredible waste of time to know that this was being replicated in small businesses all over the country.

What types of experiences do your members talk about in terms of the financial burden of complying with complex, difficult information that they are getting from federal agencies?

Mr. HALL. As we visit with small business, micro business owners across the country, most of what we talk about is taxes, IRS. They still go back to the confusion on the forms themselves, again, back to whether or not the information is in plain language. The vast majority of micro business owners know the rules. They know, back to my example, they know if they have bought a computer that there is a tax deduction for that.

But when they sit down at the kitchen table to try to go through the forms and the IRS form says they can expect to spend 47 hours completing that form, they lose track of the plain language that they are hoping is there to what is actually on those forms. They know the information. They know the computer is deductible, but they just lose sight of how to translate that to the form, and I think that is the main benefit of an emphasis on plain language can help with those tax forms.

Chairman BRALEY. And before you answer, Mr. McCracken, it seems to me that a lot of these commercial software applications for tax preparation adopt the approach of working in a very simple progression to help people answer questions without having a long, detailed instruction sheet, which seems to get to the same point in a different way.

Mr. HALL. I think that is exactly right, but again, what they are doing now is trading their own headaches and the cost of Advil at the kitchen table versus having to buy the software package or having to pay a tax professional to do the return. Either way, they are still out the financial resources.

Chairman BRALEY. Exactly. Mr. McCracken.

Mr. MCCRACKEN. I think you have really hit the nail on the head, and that is you have given a specific example that relates to one type of business. But the reality is there are examples just like that for every industry, whether you are a metal finisher or you are trying to run a 401(k) plan for your employees. No matter what it is, there are examples where the company, not only do they have to turn to an attorney or benefit administrator or some professional they have to pay not only to interpret the laws, but also to, as you say, give them that security they need even once they have adopted the law to make sure they continue to do it correctly.

I think it is hard to overstate the burden that that places on companies because usually not only are they paying for professional help. They are before they get to that point struggling on their own to see if they can figure out what it is they are supposed to do, and they are left often with the sense that they think they know what they are supposed to do maybe, but they are not sure.

When you are trying to run a business and you have a multitude of many things in your business environment with your employees that are full of uncertainty, to now layer on top of that what ought to be clear rules for them to follow are a whole new layer of uncertainty. So they wind up doing a myriad of things. Sometimes they hire professionals to tell them what to do and pay a good deal of money for it.

Sometimes, as an example, as I think Dr. Cheek mentioned before, they put it off. They think, well, I will figure this one out later. And they may fall into noncompliance, and sometimes they

just do the wrong thing because they take their own best guess and that is wrong.

So it may seem like to some folks that this is a relatively insignificant issues, I dare say from the small business perspective it is an enormous issue, and if the federal bureaucracy can get this one right, they will have done an enormous service to the small business community.

Thank you.

Chairman BRALEY. Mr. Romasco, one of the things that was a vivid memory to me and, I am sure, to my colleague when we were campaigning was it was right after Medicare Prescription D had been adopted, and I spent a lot of time in community pharmacies looking at long lines of community pharmacists and long lines of your members trying to make some very complex decisions without a lot of guidance, with a very detailed statute that was still fresh and a lot of people were struggling to get a handle on it. Can you give us some examples of other types of problems that your members encounter in dealing with these federal agencies?

Mr. ROMASCO. Well, I think that is a vivid one, and we spend a lot of resources ourselves in addition to the federal government trying to help our members navigate through that and, in fact, do do that on a yearly basis when it is time to re-enroll. So that is an effort that never goes away.

The second thing that I think is important is that if we think about it, and I mentioned it earlier, everyone in this room will go through veterans, Social Security, Medicare and Medicaid. So this is a national issue. If we just got those agencies to clean up their communications, we create additional capacity for them to deal with what will be an enormous flood of folks dealing with that.

It is like the circulatory system in your body. Sooner or later if it is not health and you do not clean it up, plaque builds up, and that is what happens with these regulations, communications, and I think one of the testimonies we saw, that people just slap, cut and paste, and really do not go back and say, "What am I trying to say? To whom am I trying to say it? And what is the real outcome here?" An effective, efficient government process which serves all of us and the taxpayers.

Chairman BRALEY. Thank you.

Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman.

I think we have all heard the stories, especially at this time of year. You call into an IRS office and you talk to three different people and you get three different answers. So even the people who work for the federal government cannot read and understand their own rules. It is certainly hard for small business owners and taxpayers to understand the rules. So we see that first hand.

I would like to start my questioning with Dr. Cheek. Thank you.

I understand you were a federal employee. So you got to see it on both sides. How much progress do you think is being made in implementing plain language in the federal government and how much more needs to be done?

Dr. CHEEK. Well, it's discernable progress. You know, I can see it in several different agencies. I think veterans benefits has made a lot of progress. NIH is trying. IRS is actually trying, but they

have barely scratched the surface, and it is a very difficult thing to do.

Plain language is not easy. The outcome looks easy, but getting there is very difficult, and one thing it requires is clear thought and we do not have enough of that in the federal bureaucracy. So you cannot write clearly if you are not thinking clearly.

And a lot of people are afraid of it. It is change. It is big change. It is going to be very difficult to get there. So as I said, I think we have barely begun, except that people know they have heard the word now. Ten years ago no one would have known what you were talking about. Now a lot of people have heard about plain language. So, you know, that is the first step.

And there are now enough examples that we could show people what it looks like. There are a lot of studies that give you data showing why it is valuable. So we are off to a good start, but there is just a tremendous way to go.

Mr. DAVIS. Do you see any drawbacks modifying IRS forms?

Dr. CHEEK. I do not see any drawbacks at all. It would make work for a lot of people and then in the long run it would save taxpayers a lot of time, and I think you would get, as we have heard here today, you would get people complying better with the requirements.

Mr. DAVIS. Do you see any additional cost or, on the other hand, any cost savings by simplifying forms at the federal level?

Dr. CHEEK. I think in the long run the cost savings will be tremendous. I think the process of getting there, there is going to be some costs. In the late '70s, the British government started a major project where they redid a lot of forms. It was called the Forms Project, and when it was done someone in the government, and this is in ancient history now just about, but someone in the government said that if everything we did in the government was in plain English, we would save 20 percent of the federal budget.

So I think in the long run there is savings of that magnitude to be made from plain language.

Mr. DAVIS. Are documents or the instructions to comply with the documents the bigger problem or are they equally problematic?

Dr. CHEEK. Well, they are equally problematic. I mean, I think when you get a federal form that is two pages long and you get 16 pages of instructions, no one will read the instructions. What are you thinking when you write 16 pages of instructions? No one will read it. They will fill out the form to best of their ability and send it off. If it is not right, they will either not get a benefit; they will not pay the right amount; they might get penalized. The agency has to call them up, get it straightened out.

It befuddles me how we have gone on so long getting in a deeper and deeper hole with government communication.

Mr. DAVIS. Thank you, Dr. Cheek.

Ms. Grundmeyer, thank you for being here. I am actually a respiratory therapist myself, owned the DME Company before coming to Washington, and when I owned that company I had about two-thirds of my employees doing paperwork and about one-third of my employees taking care of patients. There is something fundamentally wrong when your business is to take care of patients and pro-

vide quality care and you have to spend more time taking care of paperwork for the government.

Who in your agency is responsible for keeping up with all of the paperwork requirements?

Ms. GRUNDMEYER. Well, the nurses themselves are responsible for the OASIS when they go out and do an admission for a new patient. They are responsible for giving the notices to the patient that they are responsible for the HIPAA; they are responsible for all of the things that we are required to give them at the time of admission, and then make sure that in the time frame required they continue up with that.

I do have clinical supervisors in my office who make sure that the nurses are doing what they want to do, what they are supposed to do, not what they want to do.

Mr. DAVIS. How much time do you think on a percentage basis does a nurse actually spend taking care of patients and how much of a percentage of time do they spend taking care of paperwork?

Ms. GRUNDMEYER. I would guess that probably a third of their time is paperwork and two-thirds patient care.

Mr. DAVIS. Thank you.

Well, the Chairman has a very good piece of legislation in front of him. His bill focuses on plain language in forms and documents. Do you think we need to expand on that and actually include regulations published in the Federal Register?

Ms. GRUNDMEYER. Oh, yes. The Federal Register is difficult to interpret, and you know, then it is not just the Federal Register. Then you have SAMAS and we have CAHABA, and we have Inspections and Appeals, and you have OSHA. We have, you know, the FDA.

There is more than just one governing body looking over our shoulders, and everybody wants a different thing. There is a different interpretation.

Mr. DAVIS. I am sure you have to deal with ICD-9 coding.

Ms. GRUNDMEYER. Oh, yes.

Mr. DAVIS. And I understand that is going to go from ICD-9 to ICD-10. Who does that for you?

Ms. GRUNDMEYER. My clinical supervisors work with the nurses. We have spent probably about eight to ten days in the last year sending people to those classes to get much better versed at that, as our movement is to be paid by the coding being part of what they are doing.

So, you know, we want to insure that it is right. It is stacked correctly now. I mean there is a lot of new things coming with coding down the pikes to home care nurses.

Mr. DAVIS. Thank you.

Now, if I could ask Mr. Hall just a few questions. If you know, how much do small business owners spend on compliance with the tax code? Do you have any idea what it costs an average small business?

Mr. HALL. Well, again, just in preparing their tax return, the IRS estimates that it is 57 hours just to do their tax return. I think you had mentioned earlier or the Chairman had mentioned that that can be estimated at 50 bucks an hour, 75 bucks an hour.

Those two numbers would be 2,500 to $3,700 just to prepare the tax return.

That does not count getting their records in order necessarily, keeping track of those, researching those. It does not include sending out 1099s if they have a relationship with independent contractors. So the word I would use would be substantial.

I do not want to add any other non-plain language to the conversation, but it is definitely substantial.

Mr. DAVIS. How hard would it be for the IRS to revamp their forms to plain language?

Mr. HALL. Well, I think it would be easy, and I say easy. There are still certainly issues of the complexity of the tax code itself. That is a much bigger issue, maybe more difficult to solve because there are so many competing demands on the tax code.

So to begin with, the tax code is complicated. So by definition some of the forms are going to be, but they have proven the ability to accomplish simplification through the items I mentioned before: an easier Form 944, which gives the small business taxpayer one annual payroll tax return rather than having to do four, one each quarter.

Even the quarterly payroll tax return has been revamped with plain English, and they did an extremely effective job at that. Even the 940 as well.

So I think they have proven that that task can be accomplished, but I think Dr. Cheek mentioned that at some level people will not accomplish that task unless they are required to do so. Their commitment to small business through their Web site, I think they have done an outstanding job.

But that was also somewhat reactive because as the Internet came along, it was demanded of them. That is why I am so encouraged with this type of legislation, because it is no longer reactive. It is no longer their choice. If they were required to have those new forms, any revamping of forms required to be in plain language, I think that is the emphasis they need to accomplish the task.

Mr. DAVIS. Do you see any drawbacks from modifying IRS documents or forms?

Mr. HALL. I cannot see any drawbacks. Again, back to the only issue would be the complexity in the tax code. Having changes in the tax code or complexities for larger businesses, problems that small businesses do not face, that may translate into another set of forms.

We have a Form 1040 now is everyone can use. Over the years the IRS has developed a Form 1040A, which does not have as many lines on it, a little bit easier to do. They also have a 1040EZ, which is easy supposedly. That may be an option to separate some of the more complex issues for businesses in general from those issues faced by small business, and that could be a solution.

Mr. DAVIS. Thank you.

Mr. McCracken, how do most small businesses go about finding assistance in filling out forms and documents for the federal government?

Mr. MCCRACKEN. Well, it is, frankly, I think, a little haphazard. I think many of them begin the process if they have determined they are not going to go figure it out themselves, they usually ask

colleagues. They ask other business owners that they know. It is a relatively informal process, and then, of course, they often turn to the professionals they already have in their employ. If they have a CPA, if they have an attorney they already use, they obviously turn to those people as well first.

And sometimes those people are able to help them and sometimes they can refer them to other places that can.

Mr. DAVIS. Okay. Thank you.

One last question first to Mr. Romasco.

Would it be correct to say that simplifying language if not done correctly might not provide consumers with all of their rights and obligations? Could there be a drawback if everything is not put out there for the person to make a decision?

Mr. ROMASCO. I think the real issue is plain language does not mean vague language. I think we go back to what Chairman Braley said, Dr. Cheek said. You can write plainly and be precise. It is a question of taking the time to understand the audience and being effective.

Though I think the argument that plain language will leave something uncovered or exposure to liability or not every contingency. I think that is a false argument. I think we have seen in a number of situations both at the state and within the government and within business. You can simplify. You can make effective.

And respect the reader. You know, we need to respect our constituents, our taxpayers, our citizens. They can read. They can understand if it is put in reasonable language. And, again, Chairman Braley made a very good point earlier. Plain language is not simply words. It is format. It is presentation. It is all the tools that we use in visually communicating instructions.

And with all of those tools, we certainly can make the both complete communication, plain communication, and precise communication.

Mr. DAVIS. Thank you. A very good answer.

And I yield back.

Chairman BRALEY. At this time I would recognize Ms. Clark.

Ms. CLARK. Thank you very much, Mr. Chairman, and to a ranking member, it is a very interesting and important hearing.

Mr. Chairman, I know how passionate you are about this issue before us today since your days as a practicing attorney back in 1983 when the IRS Supreme Court adopted easy to understand wording for jury instructions. Plain language is essential to many Americans because it gets the message across in the shortest possible time. More people are able to understand your message, and there is less chance that documents will be misunderstood.

Having said that, I want to put a couple of questions before the panel and really want to focus it on what is happening with the Small Business Administration. There are regulations that you have identified that are the hardest for small business to understand, number one.

Can you give a specific example of how SBA forms could be improved while collecting information required by law or regulation?

And could you suggest one or more ways that the SBA's Web site could be more understandable?

Dr. CHEEK. Well, the only one I can take on is the Web site because I did look at the Web site extensively as I was preparing for this, and like many government Web sites, in fact, like most government Web sites, there is too much stuff on there. They seem to be giving you a dissertation when all you want is an answer.

The SBA needs to think about why people come to their Web site and what they want. They do not want to come to the Web site to read a lot about SBA. Most federal agencies write their Web sites by telling the audience what they want the audience to know, and that is not why people use the Web today. They want a quick, short answer and essentially, as with most government Web sites, they need to sit back and think why are people coming to their Web site. What do they want? And let's give it to them in the shortest, most direct manner.

Ms. CLARK. I guess no one else wants to take on those questions right now.

Mr. HALL. Well, the only thing I would add, from an SBA standpoint that is not where I spend most of my time in visiting with the members of the NASE. I have dealt with a number of small business owners who have requested financing through an SBA preferred lender, and just the paperwork itself via the Web site as well as the forms are just extremely complicated.

I think as with IRS rules and regulations, at some point over the years new regulations have been added on top of new regulations on top of new regulations, and then one regulation may conflict with another regulation, and the verbiage had to be such so that the conflict could be resolved somehow.

Now, what that means, I do not have any idea. I just spoke in non-plain language.

[Laughter.]

Mr. HALL. So as with the IRS rules, I think the SBA lending, even at the financial institution that is a preferred lender, that communication with the small business could be dramatically improved by just an emphasis on plain language.

And if that could happen and funds could be made available to small business, now we are back to creating jobs, which I think is what we are supposed to be doing.

Ms. CLARK. Thank you.

Mr. MCCRACKEN. I would just add to give some specific examples, which is what you asked for, I feel like I need to go back and review the SBA's Web site and so forth, which I did not do in preparation for this hearing. But I do think it is worth saying that, as I think Mr. Hall mentioned, most of the regulations that directly affect the small business community do not come from the SBA. In fact, there is very little regulatory authority that has housed the SBA.

But they do provide a great deal of information that ought to be as clear and as plainly presented as possible, and I am quite certain that like every other federal agency, they have a ways to go in that regard.

Ms. CLARK. Well, thank you very much for that. And, you know, Mr. Hall, I understood what you were saying even though it was not plain. What does that say about me?

[Laughter.]

Ms. CLARK. Dr. Cheek, just another question. How do you reconcile the need to write one regulation for multiple audiences, for instance, the small business managers, accountants, lawyers, and government officials?

Dr. CHEEK. Okay. Well, one thing that we would say in plain language is that you really cannot write one document to multiple audiences. You can write different parts of one document to multiple audiences, but having written regulations for a large part of my federal career, which was 25 years long, I have seen a lot of regulations where the agency would attempt to mix audiences. I have spent most of my career in Interior. So I wrote a lot of regulations dealing with land, and they would talk about landowners and they would talk about permittees who might not be landowners, and they would mix everything up.

If you are writing to multiple audiences in one document, you have to be very clear to separate the requirements for each audience into different sections of the document. It is not that complex. It is an issues of organization.

And a lot of government documents are just not well organized, but it can be done.

Ms. CLARK. I yield back, Mr. Chair. Thank you all very much.

Chairman BRALEY. Well, let me just conclude by commenting on what an insightful a panel this has been. One of the things that has been a priority for me for the past 24 years is studying persuasive communications, and when I was speaking about plain language communications to one audience and persuasive communications to another audience, it started to dawn on me that they were two sides of the same coin.

And if the goal of our federal agencies is to be able to persuade consumers of information that they can understand and act upon information that they are being given to make critical decisions that affect them, especially small business owners, I cannot think of a more important topic than the one we have been discussing today.

When you throw out the subject, plain language, it is not the type of thing that grabs a lot of news headlines, but when you hear from the witnesses we have had today about the monumental impact it can have on how to communicate more effectively with constituents all over the country, and to save the federal government potentially millions if not billions of dollars in the time federal employees spend interacting with people who cannot figure out their responsibilities, I am just very excited and optimistic about the possibilities that are presented by the things we discussed at the hearing today.

And with that, Mr. Davis, if you have any concluding remarks, you are more than welcome to make them.

Mr. DAVIS. I would like to thank the panel. Thank you for what you do in your communities. Thank you for what you do in America. Thank you for being here today.

I yield back.

Chairman BRALEY. And with that I would like to ask unanimous consent that members will have five days to submit statements and supporting materials for the record. Without objection, so ordered.

This hearing is now adjourned. Thank you all for coming.

[Whereupon, at 4:46 p.m., the Subcommittee meeting was adjourned.]

BRUCE L. BRALEY, IOWA
CHAIRMAN

DAVID DAVIS, TENNESSEE
RANKING MINORITY MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
Subcommittee on Contracting and Technology
2361 Rayburn House Office Building
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STATEMENT
of the
Honorable Bruce Braley, Chairman
Subcommittee on Contracting and Technology
House Committee on Small Business
"Plain Language in Paperwork—the Benefits to Small Business"
Tuesday, February 26, 2008

Small businesses are struggling in a flood of paperwork—and the tide continues to rise. Both the volume and complexity of paperwork is increasing—and it is hurting our nation's entrepreneurs.

Communications from Federal entities are often confusing and difficult for small businesses to understand. Agencies such as the Small Business Administration, the IRS and the Centers for Medicare and Medicaid Services have complicated forms and instructions that contribute to a paperwork burden which is costing entrepreneurs nearly $50 per hour. It doesn't have to be this way.

If the goal of these communications is to produce results and establish guidelines, the government needs to account for the audience. Too often, government bureaucrats issue these forms and paperwork with no thought if anyone will be able to understand them.

This growing problem exists not only at the federal level, but also at the states. This has caused many states to take action and they have successfully implemented plain language policies for their administrative communications. I believe that implementing a Federal plain language policy could reduce the burdens small businesses face in dealing with this growing volume of paperwork.

Convoluted government communications place major burdens on small firms. According to the National Federation of Independent Business, small businesses cite unclear and confusing instructions as being the most common paperwork problem.

This is one reason why I have introduced H.R. 3548, the Plain Language in Government Communications Act. This legislation will reduce the paperwork burdens on small businesses by promoting clear communication from the Federal government that entrepreneurs and the public can understand.

The bill requires executive agencies to use plain language in any document relevant to obtaining a benefit or service including a letter, publication, form, notice or instruction. On January 29, the Subcommittee on Information Policy, Census, and National Archives of the Oversight and Government Reform Committee reported the legislation favorably.

The Act requires the Federal government to write in a clear manner that follows the best practices of plain language writing. The Federal Plain Language Guidelines provide an outline for these best practices. Plain language applies to more than just words; it involves many aspects of documents such as easy to read design features and logical organization.

These changes will mean those agencies that creating the greatest burden must enact reforms. The IRS is obviously one of the top offenders. The complexity of IRS forms and instructions is costly for our nation's entrepreneurs. According to the National Federation of Independent Business, the average per hour cost of tax-related paperwork and recordkeeping for small businesses in $74.24. Small businesses are facing more tax forms, longer instructions, and tax returns that are increasingly complex.

According to OMB, the IRS accounts for approximately 78 percent of the total Federal information collection burden. The use of plain language by the IRS could significantly reduce the burden small businesses face in complying with tax regulations.

Medicare is another area in which complexity is posing a problem. Doctors and other healthcare providers continue to struggle with increasingly complex Medicare rules and regulations. GAO has reported that the information given out by CMS regarding these regulations is often difficult to use, out of date, inaccurate and incomplete. According to GAO, Medicare bulletins to physicians are often poorly organized and contain dense legal language.

It is apparent that convoluted language is harming U.S. competitiveness in the global economy. The most recent Global Competitiveness Report issued by the World Economic Forum identified our nation's complex tax regulations as being the second most problematic factor for doing business in the United States. It is my hope that the use of plain language will help to reduce this problem.

Small business owners do not have extensive resources to handle paperwork, so any time they spend to wrestle with complex government forms and documents keeps them away from operating their business. Last year OMB found that the overall national paperwork burden increased nearly 700 million hours from FY2005 to FY2006.

The use of clear, easy to understand language in government paperwork could substantially reduce burdens on small businesses and provide for a more level playing field. The less time small businesses spend on paperwork, the more time they can dedicate to growing their business, creating jobs and contributing to economic growth.

I would like to thank all of the witnesses today for coming to the Committee and sharing their views on this important issue.

U.S. House of Representatives
SMALL BUSINESS COMMITTEE
Subcommittee on Contracting and Technology

Tuesday,
February 26, 2008

Opening Statement of Ranking Member David Davis

Plain Language in Paperwork – The Benefits to Small Businesses

"Good Afternoon. I would like to thank Chairman Braley for holding this hearing. I appreciate the witnesses coming here to testify today. I will keep my opening remarks brief.

"I am sure there are people who have read a federal regulation and said "Gee! That sure is a plain and easy-to-read text." I am not one of those people. As a small business owner myself, I know firsthand that a quick perusal of the Federal Register is enough to make a wooden man crazy.

"Federal agencies write thousands of regulations every year, and we are expected to comply with them. The sheer volume of regulations small businesses must comply with is a drain on their resources, and when those rules are written in complicated language, it only aggravates the situation.

"There have been many attempts to encourage the use of plain language in the federal government; however it does not appear that any of them have been particularly successful. The information published by the federal government is supposed to be for the benefit of its citizens, so that they can understand exactly what their government is doing. How can this best be achieved? By using Byzantine language with complicated sentence structures? Or by using plain language that is easy to understand?

"I am eager to hear the testimony from our witnesses, so I will end here. Thank you again for your time."

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Plain Language – The Benefits to Small Business

Testimony of

Chairman Christopher Cox
U.S. Securities & Exchange Commission

Before the

Subcommittee On Contracting and Technology

Committee on Small Business

U.S. House of Representatives

February 26, 2008

Chairman Braley, Ranking Member Davis, and Members of the Subcommittee:

Thank you for inviting me to testify today. I should say at the outset, as is traditional, that my testimony today is on my own behalf as Chairman of the SEC, and does not necessarily represent the views of the Commission or individual Commissioners.

I am delighted you're focused on this topic. As the champions of small business in the Congress, you have hit the jackpot in focusing on the importance of using plain language in government rules, regulations, and paperwork. The time and money that is wasted on translating legalese into plain English is dead weight economic loss. It benefits no one, and harms millions of consumers who pay for it.

Of course, while you are leaders in this effort, you are not the first mavericks in Congress to take up the battle for clearly written legal rules. In fact, the very first reported appearance of the word "gobbledygook" was in 1944, when it was coined by a Congressman actually named Maverick. U.S. Representative Maury Maverick was a Texas Democrat who wrote a memo that banned all "gobbledygook language" from his office. He said he made up the word to imitate the noise a turkey makes. And to show you just how serious he was about plain English, he added in his memo, "Anyone using the words 'activation' or 'implementation' will be shot."

At the SEC, we have more modest penalties in store for both staff and public offenders. But we're dead serious about plain English. That's because it's our job to be the investor's advocate, and investors deserve concise and clearly written disclosure that helps them quickly focus on what's important in making financial decisions. Using plain English respects the fact that investors are busy people, and lets them use their time more productively. Clearly presented information also makes investment analysts and every other market actor more efficient. It improves the process of price discovery on our securities exchanges. And by exposing the financial doings of public companies to more direct sunlight, it makes our markets more honest – strengthening investor confidence.

The SEC has many plain English initiatives underway. Our plain English requirements now apply to both offering documents and periodic reporting by public companies. They apply to mutual fund disclosure, which benefits millions of ordinary Americans. And they apply to our own communications to the public.

It's a sad truth that our government's laws and rules are not only mostly written by lawyers, but they seem also to be written primarily for the benefit of other lawyers. This makes compliance with the laws more expensive, because people who have to follow the laws and rules need to hire lawyers to find out what they mean. But legalese does more than waste time and money. When laws and rules are hard to understand, it's more likely that people who are trying to comply won't be able to do so, because they don't fully understand what's being asked of them. So the government gets less of the behavior that it wants; the people trying to be good and do what government wants get frustrated and angry; our economy is less efficient because of all the expense involved; and overall, confidence in government is eroded, because when the poorly written laws and rules are enforced, people view it as unfair and arbitrary.

Clarity in spelling out a citizen's obligations is one of the fundamental requirements of the rule of law. When Hammurabi erected his stone tablets in the city square of Babylon 3800 years ago, civilization made a great advance. From that moment forward, the law was no longer arbitrary. For the first time, citizens could know in advance the standard to which they should conform their conduct. That is the difference between the rule of law and the rule of men.

In our own time, when we highly prize the rule of law, we face the same risk as our ancient forebears, but for a different reason. All of our laws are written down — thousands of pages of them. But there are now so many laws and rules, and they are so hard to understand, that once again it's becoming hard for citizens to know in advance the rules by which they should arrange their lives and their business affairs.

And it isn't just the hundreds of thousands of pages of law and regulations that are responsible for this. Beyond the legal text there is an ever-growing case law that is necessary to interpret poorly written statutes and regulations. Not surprisingly, this often produces competing interpretations of the many grey areas. The result is a 21st century version of pre-Hammurabian days, when the law was arbitrary because no one really understood what it was.

There is nowhere that certainty in the law is more important than in small business. Each day, every small business executes make-or-break choices that depend on knowing in advance what the legal rules are. The small business people who are working hard each day to create the goods and services that their communities demand need to know how to navigate in a sea of regulation. We owe it to them to provide a clear answer.

At the SEC, we're taking plain English to the next level. In addition to using plain language in our writing, we're directly helping people to understanding our rules, and the laws we administer. As one part of this effort, we've published the SEC's own "Plain English Handbook."

Another area in which we're reaching out to help small business understand our rules is in the investment advisory industry. This is one of the fastest growing segments of the securities

industry for small business. In the past three years, almost 4,000 new advisers registered with the SEC for the first time. Obviously, both these small businesses and the people they're advising have a strong interest in seeing to it that their job is done right. But our experience has shown that newly-registered firms may not be familiar with what's required of them under the Investment Advisers Act. And they probably don't fully understand their compliance obligations under its key provisions.

Since the first step in understanding your compliance obligations is to know what the law says, we've actually "translated" the key provisions of the Investment Advisers Act into plain English. Last summer, we delivered this plain English summary of the law to new investment advisers by email. And we added a "welcome" letter listing all of the other resources we make available to help with understanding our rules. We also put this information up on our public website.

One of the best features of the new plain-English translation of the Investment Advisers Act is that each plain English description is hyperlinked to the actual text of the law. So it's easy to click back and forth to fully understand what a particular provision of the law means. Because we've gotten such positive feedback from our newly registered investment advisers, just yesterday we emailed the plain English translation of the Advisers Act to all investment advisers who have registered with the SEC in the last six months – more than 500 new firms.

We're also working hard to ensure that the materials publicly registered companies provide to investors are readable and understandable. If we were to look at the SEC as a business, one of its most important product lines would be disclosure documents. After all, it's our rules that result in the proxy statements and the annual reports that companies mail to investors across the country. The reason we're in this business is that we firmly believe informed investors will make better choices.

But in order for investors to make better choices based on full disclosure, they have to read it. If investors can't read and understand the disclosure documents – if instead, they just throw out the proxy statement or the annual report when it comes in the mail because they don't have the time to fight with the legalese – then the entire purpose is defeated. We have some empirical evidence that in fact, most retail investors are throwing away the disclosure documents that the SEC requires, instead of reading them.

When your customers routinely throw your product away, you've got a problem. There can be many reasons that our customers might be dissatisfied, but the most obvious is that investors are busy people. Wading through dense legalese isn't their day job, and they ordinarily just don't have time for it. If time is money, then poorly written disclosure documents are wasting one of the investor's most important assets.

At the SEC, we've noticed that public companies take a great deal of care in sprucing up their catalogs and sales materials so customers will be interested in buying their products. Doesn't it make sense that they – and we, the government – should take the same degree of care in making investor materials readable?

Our plain English efforts are focused on the areas where consumers have the most to gain. For retail investors including many small businesses, that means mutual funds – where nearly half of the more than $3 trillion that Americans have in 401(k) plans and other defined contribution plans is invested. That's why, just a few months ago, the Commission proposed rule changes to make mutual fund disclosure easier to understand. The key innovation is a new summary prospectus, which would give all mutual fund investors a clear, concise description of the key information they need to make an informed investment decision.

Under this proposal, every mutual fund would include key information in plain English at the front of the mutual fund prospectus. Like the risk/return summary that is already required at the front of every mutual fund prospectus, this summary would include a fund's investment objectives and its strategies, risks, and costs. It also would include brief information regarding top ten portfolio holdings, investment advisers and portfolio managers, purchase and sale procedures and tax consequences, and how the people who sell the fund are paid. The rule changes would also encourage funds to exploit the Internet's capacity to allow investors to choose the way they view more detailed information. This will make reading a mutual fund prospectus far easier than it is today. And by standardizing the presentation of the essential information, the proposed rules intend to make comparing mutual fund information easier. We hope to have the final rules in place by late summer.

Yet another example of how we're using plain English to help individuals and small business is our proposed new rules to improve the quality of disclosure that investors receive about their investment advisers. The rules we proposed two weeks ago would require investment advisers to give clients a brochure written in plain English. The brochure would also be available on the SEC-sponsored Investment Adviser Public Disclosure web site. It would offer investors clearly presented information about an investment adviser's business practices, conflicts of interest, and disciplinary history.

One further area where we're working to promote clarity is our new executive compensation disclosure regime. In the past, executive compensation was among the most complicated subjects for investors to sort out. And it presented some of the biggest challenges when it came to analyzing and comparing data. To address this problem, the Commission recently enacted new rules aimed at letting investors see clearly how the executives who work for them are paid.

An important feature of the new rules is the narrative discussion of the company's compensation policies. The Compensation Discussion and Analysis offers an opportunity for the company to cast aside the boilerplate, and explain to the shareholders the how and why of its approach to executive pay. This helps provide context for the numbers in the tables that follow it. The new rules explicitly require that the narrative be written in plain English.

Mr. Chairman, these are just some of the many ways that the SEC is working to promote plain English to make life better for investors, for companies large and small, and for our markets. But I also want to congratulate you and this subcommittee for your focus on the importance of plain language across the entire government. And in particular, I appreciate your interest in legislation such as H.R. 3548, the *Plain Language in Government Communications Act of 2007*, which was authored by Chairman Braley. As you know there are similar efforts

underway in the Senate, led by Senator Akaka who has introduced S. 2291. I am certain that small business would welcome a law that establishes plain language as the standard style of communication for federal documents issued to the public. It's heartening that the House bill has already been unanimously approved by the House Oversight and Government Reform Subcommittee on Information Policy, Census, and National Archives.

Your bill, Mr. Chairman, would require the use of plain language in any new or revised document issued by a federal agency. That is certainly a good start. I note that the bill would cover any documents that explain how to obtain a benefit or service, including letters, forms, notices, and instructions. The next step, of course, would be to include regulations. I am certain there are reasons for that modesty in the bill's objective. But I encourage the members of this Committee to aggressively pursue the goal of plain language in regulations as well. I have been fighting for this at the SEC, but as you may see from our most recent proposed rules, legalese in rule text remains alive and well even at our agency.

Finally, I would point out that the key to achieving real change in increasing the use of plain language is the adoption of objective standards for measuring whether government writing is in fact understandable. Fortunately, there is useful experience in the states that can guide us in doing this. Thirty-five states have already enacted plain language laws, and many of them have been quite successful in eliminating gobbledeygook from consumer sales documents and insurance contracts. For example, Pennsylvania's Plain Language Consumer Contract Act includes specific tests of what plain language is, and penalties for non-compliance. But Pennsylvania's admirable law also shows the need for federal action, because it excludes language intended to comply with federal requirements.

What we don't need, of course, is a new bureaucracy of plain language police in every agency, wasting the taxpayer's money. What we do need is clearer writing – and there are easy-to-use tools that every federal worker already has at his or her own desk. In Microsoft Word, for example, you can easily subject your own writing to the Flesch-Kincaid readability algorithm. It's a feature included under the Spelling and Grammar options that can be set to pop up automatically when you use the spell check tool. Word will show both the Flesch Reading Ease score and the Flesch Grade Level.

Interestingly, this test – which was developed at Columbia University – was created by a lawyer who was also a writer by training, and he earned his Ph.D. for inventing it. The algorithm computes readability based on the complexity of the words used. Specifically, It measures the average number of syllables per word, and the average number of words per sentence.

Scores on the test range from 0 to 100. Just as in English class, getting 100 is good. The higher the score, the more readable the writing. To provide a little context, what the test administrators consider "standard writing" – the kind, for example, that appears in Readers Digest – averages about 60 to 70 on this scale. Most states that have plain English standards in force for insurance forms require a score between 40 and 50 on this test. My testimony today scores just under 49.

Sadly, in an independent review of proxy statements conducted last year, the average description of how much the company's executives were paid received a Flesch Reading Ease

score of just 34.86. If that were your grade in English class on a 100-point scale, you'd not only flunk - you'd be sent back a grade.

When compliance with government rules gives rise to this kind of writing, everyone is worse off – especially the people who are supposed to be able to read it. Fully two-thirds of American adults simply can't read at a level of 34.86, according to the Accessibility Institute at the University of Texas.

Of course, readability tests such as Flesch-Kincaid or another popular metric, the Gunning-Fog Index, are only a rough guide. Like the grammar check in Microsoft Word, they wouldn't recognize poetry if they saw it. They certainly can't tell if the proxy statement disclosures are accurate and complete, which is what the whole enterprise is ultimately about. Even Rudolf Flesch, who created the system, was worried that some people would misuse his "simple yardstick" by taking it too seriously and viewing it as more than a rough estimate.

On the other hand, these are laws, regulations, government documents, and investor communications we're talking about. It's not supposed to be Hemingway. So if we lose the capacity for poetry in the process of keeping things clear and understandable, that's a price we should happily pay.

But far better than any mathematical formula for measuring readability is testing a document on real people. That's why the SEC is planning to measure the effects of our efforts by talking to real investors.

Under the leadership of Kristi Kaepplein, the Director of the SEC's Office of Investor Education and Advocacy, the SEC will soon conduct a baseline survey of America's investors to find out whether they find proxy statements, 10-Ks, and other SEC-required disclosure documents to be useful – and if not, why not. The survey will also gather ideas on what would make these documents more useful. One of the questions we will ask is this: when your proxy statement or mutual fund prospectus comes in the mail, do you spend more than three minutes reading it? Or do you just throw it away? Periodically, we will go back into the field and ask that question again. Over time, we hope to see a significant decline in the percentage of investors who routinely put SEC documents in the trash.

Mr. Chairman, the attention that you and your fellow Committee members are paying to this important subject is long overdue. Eliminating waste in government is an objective that everyone shares in theory, but it always seems difficult to find good opportunities. Here is an outstanding opportunity to achieve enormous savings for both small business and consumers without any countervailing loss of a government interest. In fact, the government interest is advanced as well by eliminating legalese in government writing, because when it's easier to understand the rules, more people will follow them.

Thank you for inviting me to testify. I am happy to answer any questions.

TESTIMONY BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND TECHNOLOGY
SMALL BUSINESS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

ON

"PLAIN LANGUAGE IN PAPERWORK"

February 26, 2008

Washington, D.C.

WITNESS: ROBERT ROMASCO
AARP BOARD OF DIRECTORS

For further information
Contact: Jo Reed
Livable Communities
Government Relations and Advocacy

Chairman Braley, Ranking Member Davis and Members of the Subcommittee, thank you for the opportunity to appear here today to discuss the benefits of plain language in government communications with the public. This is an issue of particular interest to older Americans, many of whom have regular interaction with the federal government, whether it is in relation to veteran's benefits, Social Security, Medicare or other benefits or services.

We commend Chairman Braley and Rep. Akin, for introducing H.R. 3548, the "Plain Language in Government Communications Act of 2007," and urge Members of the Subcommittee to support enactment of this proposed legislation this year. The legislation will improve the federal government's effectiveness and accountability to the public by promoting reliably clear communication that the public can understand and use.

Interest in making government documents clear has a long, but sporadic history in the United States. We understand that as far back as the 1940s, federal government employees have advocated for plain language in government documents. In fact, Securities and Exchange Commission Chairman (SEC) Chris Cox, a fervent supporter of plain language, recently told the story of how the term "gobbledygook" was coined by a Texas Democratic Congressman named Maury Maverick who in 1944 wrote a memo that banned all "gobbledygook language" from his office. He is said to have made up the word to imitate the noise a turkey makes. He wrote in the memo that "anyone using the words 'activation' or 'implementation' will be shot." Fortunately for government employees today, Mr. Maverick no longer is available to enforce a plain language requirement. Yet the need for plain language still remains.

Interest in encouraging plain language communication has waxed and waned over the past several decades. For example, in the 1970s, the Nixon and Carter administrations encouraged greater use of plain language, and while interest dissipated during the 1980s, it was revived in the late 1990s. In order to ensure uniform progress in this area, AARP believes a statutory requirement for government agencies to write in plain language, and a requirement that the agencies report to Congress on the progress they are making in meeting this goal, is needed to help ensure compliance.

Some may believe the desirability of using plain language in government communications is so obvious that legislation encouraging such a standard is unnecessary. Unfortunately, there is ample evidence to suggest otherwise. AARP hears every day from our members who cannot understand the dense writing and legalese in correspondence they receive from the federal government. In most cases, this lack of comprehension is not the fault of the reader but rather reflects the impenetrable writing style of the government agency.

Efforts to write more clearly can yield real benefits. Consider this "before and after" example from the Medicare Beneficiary Services, which receives a substantial volume of Medicare fraud correspondence each year. To reach their customers more effectively, agency staff took a relatively short letter and made it even shorter and to the point:

Before

Investigators at the contractor will review the facts in your case and decide the most appropriate course of action. The first step taken with most Medicare health care

providers is to reeducate them about Medicare regulations and policies. If the practice continues, the contractor may conduct special audits of the providers medical records. Often, the contractor recovers overpayments to health care providers this way. If there is sufficient evidence to show that the provider is consistently violating Medicare policies, the contractor will document the violations and ask the Office of the Inspector General to prosecute the case. This can lead to expulsion from the Medicare program, civil monetary penalties, and imprisonment.

After

We will take two steps to look at this matter: We will find out if it was an error or fraud. We will let you know the result.

And, this from the Veteran's Beneficiary's Administration:

Before

"If we do not receive this information within 60 days from the date of this letter, your claim will be denied. Evidence must be received in the Department of Veterans Affairs within one year from the date of this letter; otherwise, benefits, if entitlement is established, may not be paid prior to the date of its receipt. SHOW VETERAN'S FULL NAME AND VA FILE NUMBER ON ALL EVIDENCE SUBMITTED.

Privacy Act Information: The information requested by this letter is authorized by existing law (38 U.S.C. 210 (c)(1)) and is considered necessary and relevant to

determine entitlement to maximum benefits applied for under the law. The information submitted may be disclosed outside the Department of Veterans Affairs only as permitted by law."

After

"We have your claim for a pension. Our laws require us to ask you for more information. The information you give us will help us decide whether we can pay you a pension.

What We Need: Send us a medical report from a doctor or clinic that you visited in the past six months. The report should show why you can't work. Please take this letter and the enclosed Doctor's Guide to your doctor.

When We Need It: We need your doctor's report by June 28, 1998. We'll have to turn down your claim if we don't get your report by that date.

Your Right to Privacy: The information you give us is private. We might have to give out this information in a few special cases. But we will not give it out to the general public without your permission. We've attached a form which explains your privacy rights.

If you have any questions, call us toll-free by dialing 1-800-827-1000. If you call, please have this letter with you."

We could share example after example of confusing government documents that are used with the public. But anyone who has any communication at all with government agencies is all too familiar with the dense, legalistic style of writing.

What is clear is that use of plain language in documents issued to the public will save the federal government an enormous amount of time now spent helping citizens understand the correspondence they receive. It also will reduce errors in the public's response to the information government sends out, and minimize complaints from frustrated citizens scratching their heads over highly legalistic and unclear communications. In short, plain language will result in more effective and efficient government.

And here's a success story to savor: the Arizona Department of Revenue recently identified 400 form letters it wanted to redo after learning about the Washington state "plain talk" initiative. So far, the Department has completely rewritten about 100 of them, working to simplify, organize, and shorten them, and make sure that they say what they are supposed to say in a way that doesn't require a lawyer or accountant's interpretation. The preliminary results: after rewriting its letters, the unclaimed property section received about 11,000 fewer phone calls in 2007 than the previous year. People didn't have to call for an explanation because the letter was understandable. As such, the division was able to focus its resources on other work, and was able to process about 30,000 more claims than the previous year. They were able to abandon plans to hire more staff just to answer the phones. Surveys show customer satisfaction is up as well. The initiative is now being expanded statewide and is being shared with colleagues in other states.

Mr. Chairman, the goals of plain language are simple: make documents the government uses in communication with the public understandable on the first read. Though the goal is simple, the benefits are tremendous. AARP respectfully encourages Congress to adopt this sensible and much-needed legislation.

TESTIMONY OF TODD MCCRACKEN
PRESIDENT OF

NATIONAL SMALL BUSINESS ASSOCIATION

"Plain Language in Paperwork—The Benefits to Small Business"

Before the U.S. House Committee on Small Business
Subcommittee on Contracting and Technology

February 26, 2008

Chairman Braley, Ranking Member Davis, and members of the Contracting and Technology Subcommittee: I would like to thank you for granting me this opportunity to discuss the virtues and merits of plain language in government communications from the perspective of America's small-business community. I am Todd McCracken, president of the National Small Business Association (NSBA).

NSBA reaches more than 150,000 small-business owners across the nation and is the oldest small-business advocacy organization in the United States. For more than 70 years, NSBA has worked in a nonpartisan manner to promote and protect the interests of America's small businesses. As the members of this subcommittee well know, in addition to being a bedrock of our society and the very embodiment of America's entrepreneurial spirit, small business constitutes the backbone of the U.S. economy. Small businesses comprise 99.7 percent of all domestic employer firms and employ more than half of all private-sector workers. Between 1989 and 2003, America's small businesses also generated 93.5 percent of all net new jobs.[1] Meanwhile, large companies (defined as those with more than 500 employees) *eliminated* more jobs than they created in over a third of those years (5 of the 14). In total, small businesses created 21.9 million new jobs during this period, while large companies produced 1.5 million. Approximately 4,000 new jobs are created every day by small business.

Why is this important to note? Because these small businesses are the very firms most likely to be disadvantaged by the garbled and confusing communications they receive from the federal government.

Perplexing paperwork and an oppressive federal regulatory regime are overburdening America's small businesses. Unlike big corporations—which have hordes of accountants, benefits coordinators, attorneys, personnel administrators, etc. at their disposal—small businesses often are at a loss to keep up with, implement, afford, or even understand the overwhelming regulatory and paperwork demands of the federal government. U.S. Small Business Administration (SBA) research demonstrates that, in total, companies with fewer than 20 employees pay more than $7,600 *per employee* to comply with federal regulations each year. Large firms pay about 45 percent ($2,400) less per employee.

While the *Plain Language in Government Communications Act of 2007 (H.R. 3548)*, would not directly address this dispiriting inequity—as it does not address federal regulations—it would go

a long way in easing the federal government's demands on America' small-business owners. Lacking legions of paperwork soldiers, most small-business owners are left alone in their battle to understand the letters, forms, notices, and instructions they receive from the federal government. As you might guess, far too often, the result is a slaughter. Forget death by a thousand cuts—try a billion. In Fiscal Year 2005, the American public spent 8.4 ***billion*** hours wrestling with federal paperwork requirements and $1.1 ***trillion*** complying with federal regulations. This burden was disproportionably born by the country's small businesses.

This burden is attributable to more than the mere act of compliance, however. It also is caused by the bewildering language used in much of this paperwork. Small-business owners are not dumb; they simply are not fluent in legalese or Washington-ese. The federal government's proclivity towards arcane, ambiguous, or simply incomprehensible language translates into billions of lost hours and dollars. This is money and attention that America's entrepreneurs could be putting to better use—growing their businesses, for instance, or hiring more of your constituents.

It is equally important to note that the effort to force the federal government to use plain language in its communications must not be construed as an attempt to diminish, dilute, or skirt federal requirements. Quite the contrary: the small-business members of NSBA are of the opinion that clearer federal communications will ease compliance, which naturally will increase compliance.

It is not the goal of most small-business owners to deliberately flout or infringe their federal obligations; no matter how dizzying the mass and magnitude of the requirements are, it is simply in their best interests to comply and move on to the next task at hand. When violations do occur, more often than not they are the result of the small-business owners' inability to decipher what is being asked of them. In fact, 93 percent of the respondents to an NSBA quick poll last week reported having "trouble understanding a letter, form, notice, or instructions" they received from the federal government.

Simplicity is key—the simpler the letter, form, notice, instructions, or requirement, the easier it will be for small-business owners to understand and comply. Of course, easier and increased compliance not only assists small-business owners and other citizens—it also is in the best interests of the federal government. In short, plain language is a common-sense approach to saving the federal government and small-business owners time, effort, and money.

As I previously mentioned, the *Plain Language in Government Communications Act of 2007*, does not extend its plain-language requirements to federal regulations. Convinced that clearly-written and precise federal regulations would carry the same benefits as plainly-written letters, forms, notices, or instructions, the small-business members of NSBA eventually would like to see federal regulations written in plain (or at least, plainer) language as well. In fact, 97 percent of the respondents to an NSBA quick poll last week would support legislation requiring "all federal regulations to be written in easy-to-understand, plain language." Despite this exclusion, NSBA supports *H.R. 3548*. The introduction of plain language into the federal lexicon will require some effort and convincing. If Congress is serious about changing the way the government (mis)communicates with its citizens, then there may well be a benefit to not rushing the transition.

An oppressive regulatory regime and mountain of mangled messages and jumbled jargon from the federal government are a plague on small businesses across the country—the very small businesses that the country relies on for job creation and economic prosperity. Thankfully, this plague has a cure—a cure that is plain to see and easy to understand. The small-business members of NSBA believe that the *Plain Language in Government Communications Act of 2007* is an important component of this cure, and are pleased to support it.

Once again, I would like to think Rep. Braley for his leadership on this important initiative, and for the attention of this Subcommittee. I would be happy to try and answer any questions.

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[1] Office of Advocacy, U.S. Small Business Administration, from data provided by the U.S. Bureau of the Census, Statistics of U.S. Business. [http://www.sba.gov/advo/research/dyn_b_d8903.pdf].

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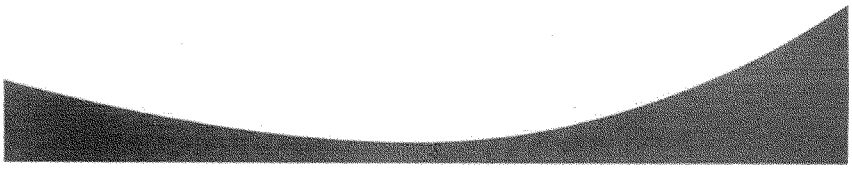
Testimony of
Keith Hall

On behalf of the
National Association for the Self-Employed

"Plain Language in Paperwork – The Benefits to Small Business."

U.S. House of Representatives, Committee on Small Business, Subcommittee on Contracting and Technology

February 26, 2008



Chairman Braley and fellow Members of Congress, I want to thank you for the opportunity to be here today to speak to you about the importance of utilizing plain language in federal government forms and publications. I am here today as a micro-business owner, a CPA who has assisted small businesses for over 25 years, and the National Tax Advisor for the National Association for the Self-Employed, an organization representing 250,000 micro-businesses all with ten employees or less. I can tell you that in each of these hats I wear, confusion and complexity surrounding government forms and publications is foremost. And no where else is this confusion more prominent than in the documentation churned out by the Internal Revenue Service.

While lack of clarity in forms and publication flourishes in the federal government, the IRS is the federal agency that micro-businesses have the most contact with and of course, are most fearful of. It is also the most infamous for their excessive paperwork and unclear instructions and forms. Though, I will note that as a CPA I have been very pleased with the efforts made by the Internal Revenue Service over the past few years to become small business friendly. The IRS's enhanced outreach and educational efforts as well as their work in the Office of Burden Reduction to simplify and minimize paperwork have made positive strides. Their commitment to their website and the availability of information has been very good and certainly recognized by the NASE and many small business owners.

However, despite steps toward improvement, with over 1.4 million words the tax code is so convoluted that is extremely difficult for taxpayers, tax practitioners and the IRS to reliably and accurately comply with or enforce the breadth of tax regulations. Currently the IRS estimates that a self-employed taxpayer, one filing Form 1040 with corresponding Schedule C, will have to spend on average over 56.9 hours in preparation and filing of their returns this year with an average cost of $440 dollars. According to a 2006 Tax Foundation study, individuals, businesses and nonprofits spent an estimated 6 billion hours complying with the federal income tax code, with an estimated compliance cost of over $265.1 billion. Businesses bear the majority of tax compliance costs, totaling nearly $148 billion or 56 percent of total compliance costs.

The majority of NASE members are one to three person businesses with over half working from their home. This is a very unique segment of the business population, in which many do their taxes on their own with assistance from tax preparation software. Thus, the NASE wanted to find out what our micro-business members felt about the current tax code. In March of 2007 we conducted a survey to determine which factor of the federal tax code they found most burdensome. Overwhelmingly respondents indicated that it was the complexity of the tax code and tax forms. Additionally, these members indicated that the simplification of the tax code is what they would most like to improve about our current system.

The IRS Form 4562, which relates to Depreciation and Amortization, and its corresponding publications are a prime example of vague forms and publications that would benefit from simplification and plain language. A small business owner who purchases a $1,500 computer will have to read 16 pages of obscure instructions to fill out this two page form. Additionally, the IRS indicates that the estimated burden for taxpayers who file this form is approximately 47 hours. Let me reiterate: 47 hours to fill out a two page form.

Minimizing the complexity of the tax code and paperwork burden faced by small business is one solution that policymakers and taxpayers alike have endorsed. The first step in this effort to reduce confusion surrounding the tax code should be to ensure that all forms and publications are in clear, concise language that is easy to understand by all. The National Association for the Self-Employed strongly supports H.R. 3548, the Plain Language in Government Communications Act. Use of plain language will allow all citizens to more accurately understand and comply with their responsibilities while also fostering more accountability within the federal government. Most importantly, it will boost the bottom line for businesses and government alike. Plain language will require less time and money spent on education, preparation and compliance.

We must remember that micro-business owners do not have the luxury of an extensive accounting and human resources department which can focus their time on recordkeeping and complying with regulation. Typically, the business owner is responsible for every aspect of their business taking on the role of CEO, HR manager, accountant and even

janitor. Every hour spent wrestling to understand complicated rules and regulations is less time spent managing and growing their business. Every dollar they spend on experts and professional assistance is less money they have to reinvest into their business.

Utilizing plain, easy to understand language in government forms and publications is not a complicated issue nor should it be controversial. It is simply the most effective and just manner of communication between our federal government and our citizenry which would produce sound benefits to our nation's economy.

Testimony Before the House Subcommittee on Contracting and Technology on HR 3548:
Plain Language in Government Communications Act

Dr. Annetta L. Cheek
Feb. 26, 2008

Mr. Chairman, I'm here today as the Chair of the non-profit Center for Plain Language. For 15 years, until I retired last year, I was the Chair of a group of federal employees, called PLAIN, dedicated to getting their agencies to write better. I'm delighted to have this chance to testify about this important plain-language bill.

I've been in the plain language "business" for over ten years, and I'm continually amazed by how we communicate in American culture. I see examples of poor communication every day. Humorous and harmless examples are all around us. Jay Leno reads them to us at night; we can read funny ads in Consumers Reports and strange headlines in the newspaper, such as "two sisters reunited after 18 years at checkout counter" and "panda mating fails; veterinarian takes over."

Despite these humorous or insignificant examples, I believe that we have a crisis of communication in this country. We are faced with many health, safety, and security challenges, and all of them are affected by how we communicate. Today's world is so complex that we must rely on others, especially the government, for information to keep us safe and healthy. And when that information is served up in overwritten, wordy, highly technical language our chances of getting the correct information on time to use it effectively are diminished.

Poor writing isn't restricted to the federal government, but the government has a higher responsibility to communicate clearly with citizens. American taxpayers pay the cost of their government, and they deserve to understand what it's doing. Let me read you a few examples of government writing, and their plain language alternatives.

The Department of Justice brings us this great example:

The amount of expenses reimbursed to a claimant shall be reduced by any amount that the claimant receives from a collateral source. In cases in which a claimant receives reimbursement under this provision for expenses that also will or may be reimbursed from another source, the claimant shall subrogate the United States to the claim for payment from the collateral source up to the amount for which the claimant was reimbursed under this provision.

And what does all this mean? Simply that

- If you get a payment from another source, we will reduce our payment to you by the amount you get from that source.
- If you already got payments from us and from another source for the same expenses, you must pay back what we paid you.

Here's an example from the Small Business Administration.

Original: 7(a) loans are only available on a guaranty basis. This means they are provided by lenders who choose to structure their own loans by SBA's requirements and who apply and receive a guaranty from SBA on a portion of this loan. The SBA does not fully guaranty 7(a) loans. The lender and SBA share the risk that a borrower will not be able to repay the loan in full. The guaranty is a guaranty against payment default. It does not cover imprudent decisions by the lender or misrepresentation by the borrower.

What this means: Small businesses get SBA 7(a) loans through approved lenders. By giving these lenders a partial guarantee, SBA shares with them the risk that you may not repay your loan.

And from the National Park Service Guidelines for using a National Seashore:

Original: When the process of freeing a stuck vehicle that has been stuck results in ruts or holes, the operator will fill the rut or hole created by such activity before removing the vehicle from the immediate area.

Rewrite by the Park Service: If you make a hole while freeing a stuck vehicle, you must fill the hole before you drive away.

And finally, a message from the Center for Medicare Services:

Original: The Open Door Initiative is a program based on a simple and fresh attitude: that the CMS desires to better hear and interact with those beneficiaries, providers, and other stakeholders interested in the delivery of quality healthcare

for our nation's seniors and beneficiaries with disabilities. This increased emphasis on responsiveness is captured through an ongoing series of 'Open Door Forums' that provide a dialogue about both the many individual service areas and beneficiary needs within CMS.

What they could have said: We want to hear from you!

Help us improve our service to you. Attend an Open Door forum near you. For information about upcoming forums, visit our website.

You get the idea. I'm sure you could contribute examples of your own. This type of language is expensive, time-consuming, and annoying. It puts citizens at risk and makes it difficult, if not impossible, for federal agencies to fulfill their missions effectively and efficiently.

Confusing communication from the government discourages people from complying with requirements or applying for benefits. One of our board members runs a small woman-owned business in Tulsa, Oklahoma. She asked 13 of her clients about their responses to difficult government communications. Of the 13, 11 said they delay dealing with difficult government documents and 10 said they might never respond. All 13 said clearer language would help them understand the government's work and how it applied to them.

One told this story. His company had to file a federal form every year under the Employee Retirement Income Security Act. Because the employee responsible didn't understand the form, he ignored it, and didn't file it four years in a row. Someone else finally took over the task. No one in-house could help him understand it. The company attorney couldn't help. The health care plan third party administrator couldn't help. Finally he took the form to a CPA firm, which filled it out for a fee of $3000. Then, because they were delinquent, they had to pay a penalty of $4000 to the Department of Labor. That penalty would have been even more if they hadn't been filing voluntarily.

The cost of poor government communication is incalculable. Agencies have to write second documents to explain the first unclear document. They have to answer calls asking for explanations. They have to chase after people who failed to respond. They may even lose court cases because their communications violated citizens' rights. About 10 years ago, the 9th circuit found an immigration form to be so obscure it violated rights of due process;

this decision negated hundreds of document fraud cases. (Walters v. Reno, 145 F.3d 1032 (9th Cir. 1998).

The other side of the story is equally compelling. We know that plain language can save the government and the public time and money and help the government fulfill its mission better. Before I give you a couple examples, let me clarify what we mean by plain language.

As this bill says, plain language is language the intended reader can understand—and use—on one reading. Plain language is audience-focused. It is not a straightjacket of required rules, such as "use active voice" and "use pronouns" and "write in short sentences." Those are all techniques—often useful techniques—but they are just that—techniques. They do not **define** plain language. Anyone who tells you that some plain language rule can result in confusing communication does not understand what plain language is. There are no hard rules in plain language except to be clear to your intended reader.

Now, let's consider a couple examples of the benefits of plain language:

A Veterans Benefits Administration office rewrote one benefits letter into plain language. Calls to the office about that letter fell by 90%, saving the office about $1000 a year in staff time, $40,000 a year nationwide. But there was another aspect to the story. More veterans applied for benefits because they understood whether they were eligible and what they needed to do. In the end, more veterans got the help they needed from their government because VBA rewrote just this one letter.
http://www.dbwriting.com/Revising%20Letters%20to%20Veterans.pdf

Arizona has been in the news lately because its Department of Revenue started a plain language effort which has now spread to other state offices. Here are some of the savings they report:

- The Department of Revenue saved $51,014 from avoided phone calls after clarifying their requirements.

- The Department of Weights and Measures collected an extra $144,000 after clarifying its payment instructions.

- The Department of Public Safety's incoming phone calls declined 90 percent after they clarified their instructions to fingerprint-card applicants.

I've attached several more examples of government savings.

So why does the government persist in using difficult language?

First, it's easier. Writing clearly takes hard work. And it requires clear thinking.

Second, it's faster to pull out last year's example and make a few updates than to redo your document.

Third, some government writers still believe that the government needs to sound official and bureaucratic. They believe in a magisterial government. They don't believe it's the writer's job to be clear to the reader; they prefer to shift the burden of communication to the reader.

There has been some progress. The federal plain language group has met monthly for over 10 years, working to promote better communication and helping offices interested in the initiative. It has provided free plain language training to over 5000 federal and contract employees and maintains an excellent website, www.plainlanguage.gov, providing technical advice, references, and training materials to anyone who cares to use them.

President Clinton issued a presidential memo requiring plain language in government documents back in 1998. http://www.plainlanguage.gov/whatisPL/govmandates/memo.cfm Vice President Gore's National Performance Review worked for over four years to spread plain language principles throughout the government. In the mid 1990s, the Small Business Administration mobilized career employees from all parts of the agency in a 10-month effort that converted all of their regulations to plain language, eliminating more than half the pages in the process. It shows what federal agencies can do when they put their mind to it. The National Institutes of Health holds an annual plain language awards program—they typically get several hundred nominations and give about 50 awards.

Despite these scattered results, most agencies still consider it's the reader's job to figure out what they're saying, not their job to be clear. They will not clean up their act and write for their readers unless you establish a legal obligation for them to do so. That is why this bill is so important.

Mr. Chairman, the Center for Plain Language strongly supports HR 3548. We urge the Congress to enact it into law as swiftly as possible. It will be an important step on the path to making this government "of the people" and "by the people" truly "for the people" as well.

Thank you.

Dr. Annetta L. Cheek
Chair
Center for Plain Language
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703 772 6785

Walters v. Reno

Maria Walters and others v. United States Immigration and Naturalization Service. No. 96-36304. United States Court of Appeals for the Ninth Circuit. 1998 U.S. App. LEXIS 9846, May 18, 1998.

In this case, the court found that certain government forms were so difficult to read that they violated due process requirements that people be given "notice" of possible legal actions against them, and of the legal consequences of their own actions. In brief, the 9th Circuit Court of Appeals found that aliens subject to deportation based on INS charges that they committed document fraud did not get due process. The forms used by INS to tell the plaintiffs that they might be deported did not "simply and plainly communicate" legal consequences to the plaintiffs. The court ordered INS to redo the forms to communicate better. The court also ordered INS to refrain from deporting any alien whose case had been processed using the deficient forms.

See the complete text of the decision here: http://tinyurl.com/yp8nek

Plain language – Saving time and money, improving performance.

Case study 1 – **Time savings by Alberta Agriculture Department (Canada) from plain language forms**

In 1993, Alberta Agriculture hired a plain language consultant to help them revise forms. By mid 1996, they had revised 92 of 646 forms. The plain language versions of the forms resulted in huge savings for the agency. Here are a few examples:

Name of Form	Original form performance	Plain language form performance	Comments
Operating Grant Application	Staff processing time – 20 minutes	Staff processing time – 3 minutes	
Grant Report	25% return rate	50% return rate	
Tree Nursery Order Form	40% error rate	20% error rate	Staff phone calls to deal with errors cut from 27 workdays to 8.5 workdays even though volume of forms increased 20%

Alberta Agriculture estimated that they saved about 10 minutes for each form filed—over 1,000,000 forms a year. That translated, in 1996 dollars, into an annual savings of almost $3.5 million. And it took the public less time to fill out the new forms.

Case study 2 – **Improved performance for Veterans Administration**

In the mid 90s, the Veterans Benefits Administration introduced a program to improve its writing. There are many examples of improved performance and lowered cost that grew out of this initiative. Here are 3.

a. The St. Petersburg office. In some cases, when a veteran owes the VA money, the veteran can apply for a waiver. Rewriting the document used to grant or deny a waiver resulted in improved performance for the office.

Decision Document	# of appeals in 6 months	% of VA decisions upheld
Old document	40	91
Plain language document	21	97

b. National program. Every several years, the Veterans Benefits Administration sends a letter to all veterans, asking them to update their beneficiaries. If a veteran dies and the VBA does not have a valid beneficiary listed in their files, the VBA must identify a valid beneficiary through research. Each research project costs the agency several thousand dollars in staff time. VBA decided to rewrite the letter into plain language to try to improve the response rate.

Letter requesting beneficiary	Response rate	Estimated savings in each mailing cycle

Old letter	43%	
Plain language letter	65%	$5 million in staff time

Case study 3 – **Improved regulations at the Federal Communications Commission**

The FCC redid its regulations governing the use of radios on pleasure boats into plainer language. A local consulting firm assessed the impact of the rewrite on people affected by the regulation. To try to control for experience, they studied responses by both new and experienced users. They asked the users to use the new and old regulations to find answers to specific questions about the FCC's requirements.

Type of user	**Old regulation – average time to answer questions, in minutes**	**Plain language regulation - average time to answer questions, in minutes**
Experienced	2.43	1.5
New	3.51	1.73

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The FCC expects this improved ease of use will translate into improved compliance.

Case study 4 – **Preferences for plain language letters among Congressional staff**

Starting in the early 90s, the Veterans Benefits Administration started a project to rewrite the over 1,000,000 letters they sent to veterans every year. However, they have never used the same letter-writing techniques with Hill staff, for fear of insulting staff with letters that some call "dumbed down."

In 2003, a DC-area plain language consulting firm decided to examine the attitudes of Hill staff (working in offices that dealt with Veterans Affairs) toward letters using the plain language techniques. They examined both performance in tasks based on the letters, and subject preferences of the test group. They tested performance on three letters, asking the Hill staff to find answers to specific questions in both a traditional version of a letter and a plain language version.

	Time to find answer to a question in the traditional version	**Time to find answer to a question in the plain language version**
Letter 1	40 seconds	30 seconds
Letter 2	1 minute, 15 seconds	15 seconds
Letter 3	45 seconds	10 seconds

Participants uniformly expressed a preference for the plain language version of the letters.

Elaine D. Stephens, RN, MPH
Chairman of the Board

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Val J. Halamandaris, JD
President

TESTIMONY

BEFORE THE
SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON CONTRACTING AND TECHNOLOGY
UNITED STATES HOUSE OF REPRESENTATIVES

ON

PLAIN LANGUAGE IN PAPERWORK-- THE BENEFITS TO SMALL BUSINESS

FEBRUARY 26, 2008

PRESENTED BY

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ON BEHALF OF THE

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Thank you Mr. Chairman, Ranking Member Davis and Subcommittee members for inviting me to present testimony regarding the use of plain language to reduce the paperwork burden on small businesses. My name is Christine Grundmeyer, and I am a registered nurse. I am the Facility Administrator of Auxi Health Services in northeast Iowa. Auxi Health is a for profit company that is an affiliate of Harden Health Care. Harden Health Care provides a continuum for services that includes assisted living, nursing home, therapy, pharmacy and hospice services. Auxi Health provides skilled nursing, therapy, aide and waiver services to various age groups to enhance independence and wellness in the home. I am president of the Board of Directors of Iowa Alliance in Home Care and a member of the National Association for Homecare and Hospice. Most recently I have been the chairman of the Alliances education committee, a position I have held for the last several years.

NAHC is the largest home health trade association in the nation. Among our members are all types and sizes of Medicare-participating care providers, including nonprofit agencies such as the VNAs, for-profit chains, public and hospital-based agencies and free-standing agencies.

The Iowa Alliance in Home Care (IAHC) is the voice for home care in Iowa, representing the vast majority of home care provider of all types throughout the state. IAHH members strive for compliance with all rules and regulations while taking great pride in the high quality of service we offer to the citizens of Iowa.

Home health agencies are, generally, small businesses. The average home health agency revenue from Medicare, the primary payer of home health services, is under $1.5 million per year. Many of the home health agencies are much smaller, serving sparsely populated areas throughout rural America. Even those home health agencies in large metropolitan cities can be small in size as their services are directed to neighborhoods rather than the city at large.

Operating a home health agency participating in the Medicare program is an extremely complicated series of tasks that requires both management and service personnel to wear many hats. Not only must the staff be capable of providing the highest quality of care in accordance with a physician-prescribed plan of care, they also must be keenly aware of the myriad of regulatory requirements that address virtually every element of day-to-day operations and performance. Effectively, home health agencies must be experts at caregiving and regulatory compliance in order to meet their full range of responsibilities.

Medicare standards for home health agencies address quality of care, financial reporting, and benefit administration. These requirements establish both broad parameters for operations and minute details on recordkeeping. Any divergence from these standards subjects the home health agency to sanctions, including the potential for termination of participation in Medicare.

While the Medicare standards are, by and large, well-intentioned and focused on necessary and important areas such as benefit integrity and appropriateness of care, the complexity of the rules, regulations, and policies easily can lead to more energies and resources applied to compliance assurance than caregiving. Further, the confusion that naturally results from a seemingly endless series of extended guidelines, interpretations, and re-interpretations leaves an impression of a waiting trap for those agencies that do not

keep a cadre of expert regulatory staff and consultants on deck 24/7 to stay on top of the latest version of compliance standards.

In developing this testimony, NAHC has focused on just two of the many Medicare-related regulatory areas that must be addressed on a daily basis by home health agencies. It is our estimation that Medicare rules, regulations, policy guidelines, and interpretations total nearly 10,000 pages. On top of these requirements are those of other federal regulatory heath-related agencies including the Occupational Safety and Heath Administration (OSHA), the Food and Drug Administration (FDA), and the Department of Health and Human Services (HHS) with the electronic billing and patient privacy standards under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

For purposes of this testimony, I highlight two areas of regulation under Medicare where "Plain English" is an elusive element. In fact, if there was a "Plain English" requirement applied to these areas by Medicare in the same manner that the substantive standards of the rules have been implemented, it might take a hundred or more pages to define, redefine, clarify, and explain the meaning of "Plain English."

The two areas of focus in this testimony are the requirements for application of a uniform patient assessment instrument, known as OASIS, and the standards for home health agencies notifying patients regarding the non-coverage of their services under Medicare. While each of these areas are appropriate matters of regulatory concern, the confusion and complex manner in which they are addressed begs for relief if the intended goals of these requirements are to be achieved.

OASIS

The label given to the uniform patient assessment instrument belies its true identity. The Outcomes Assessment and Information Set (OASIS) is the manner by which home health agencies collect and report patient data that is used for outcome measures, public reporting of quality indicators, and case-mix adjustment in the Medicare prospective payment system (PPS) model. OASIS is a series of questions that are used to assess the patient's condition at the start of care and periodically thereafter. While all the questions are included in later quality of care analyses, only 25 are used in the PPS model to determine the case-specific amount of payment.

The goals of OASIS are valid and meritorious. However, the complexity of the regulatory scheme with OASIS is a poster-child for efforts to simplify rules and their administration. The genesis of OASIS is a single statutory provision in the Social Security Act. From that start, the Centers for Medicare and Medicaid Services (CMS) has embarked on a journey of regulatory issuances, interpretative guideline publications, and a growing list of Frequently Asked Questions (FAQ) that demonstrate that simplicity and "Plain English" are a wanting commodity in OASIS.

From the single statutory mandate has sprung 36 pages of the Federal Register on January 25, 1999 and a series of promulgated regulations. 64 F.R. 3748-3784 (January 25, 1999). At that level, the rulemaking seems reasonable, simple, and capable of understanding. However, borne out of the formal rulemaking are interpretive guidelines on conducting a patient assessment with OASIS, developing a patient care plan consistent with the OASIS, and reporting OASIS data to state health officials. These interpretations

of the rules total nearly 50 additional pages along with further references sprinkled throughout hundreds of other related provisions. These are only the OASIS related guidelines that are directed to the quality of care purpose of OASIS.

The payment model elements of OASIS bring an additional 45 pages of guidelines that overlap and sometimes repeat those interpretative guidelines in the quality of care realm. As such, home health agencies must have two sets of guidelines open at the same time to ensure both patient assessment and payment standards are consistently met.

While NAHC members have continually reported confusion with the sets of complex and lengthy OASIS guidelines that have been issued, the most telling sign of this complexity is the issuance of hundreds of "Frequently Asked Questions" (FAQs) by CMS. These FAQs comprise 12 different categories of issues. Categories 1 through 4 alone contain 191 FAQs with many having FAQs within the FAQs. For example, FAQ 113 in Category 4 also contains FAQ 113.1 through 113.3. If these are the number of frequently asked questions, what is the volume of those questions that do not rise to the level of frequency to justify a FAQ?

This testimony should not be considered a criticism of CMS's attempts to bring clarity to a complex area. Instead, NAHC credits CMS for its willingness to assist home health agencies to achieve consistent compliance. However, if CMS is continuing to issue FAQs nearly a decade after the promulgation of the OASIS rule, the message should be that the rule needs a "Plain English" adjustment. It is inconceivable that a rule that requires this level of interpretation and clarification can result in proper application and performance in the real world.

MEDICARE PATIENT NOTICES

Formal written notice is required to advise Medicare beneficiaries when the home health services they seek to receive will not be covered in whole or in part. Notice also is required when coverage or services are terminated or modified. Beneficiary notice is an essential element of fair and reasonable operation of the Medicare home health benefit. However, the complexity of the notice requirements raises serious risks that their purposes will not be achieved.

There are two main notice requirements applicable to Medicare home health agencies. The primary notice form is the Home Health Advance Beneficiary Notice (HHABN). Along with the HHABN is the Expedited Determination Notice. Under the guidelines established by CMS, there are times when both notices are to be presented to the Medicare beneficiary at the same time.

Similar to the OASIS requirements addressed above, the beneficiary notice requirements included statutory and regulatory components along with extensive interpretative guidelines. After navigating hundreds of pages of instructions, home health agencies have the dizzying task of determining which notice is to be given, when is it to be provided, what information is to be included in the notice, what action the agencies must take after the notice, and how do they document the entire notice process. Complexities are added to the process when the Medicare beneficiary is not mentally competent or refuses to accept the notice. Further complications exist when the

beneficiary has an alternative payer for the services. The greatest difficulty occurs when the beneficiary's physician is unwilling to order the care desired by the beneficiary.

While the HHABN and Expedited Determination Notice requirements have been in place since 2001, home health agency staff still today report confusion on how the process is intended to work. What seems to be a simple matter on the surface—Are the services sought covered under Medicare?—has become a compliance nightmare because of the endless exceptions, clarifications, overlapping instructions, and challenges to common sense. Plain English is a foreign concept in the Medicare patient notice realm.

Home health agencies support proper patient notices in changes of coverage or services. However, the current notice structure is its own greatest roadblock to successful patient notice because simplicity is sacrificed for a bureaucratic level of detail that nurses in home care have great difficulty in managing while trying to provide essential health care services.

CONCLUSION

NAHC and IAHC look forward to working with the Subcommittee to address the use of plain language to reduce the paperwork burden on small businesses as outlined in my testimony. This concludes my formal remarks. I would be happy to answer any questions from the Subcommittee members.

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