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110TH CONGRESS }
2d Session

SENATE

{ REPORT
110-412

PLAIN LANGUAGE IN GOVERNMENT
COMMUNICATIONS ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2291

TO ENHANCE CITIZEN ACCESS TO GOVERNMENT INFORMATION
AND SERVICES BY ESTABLISHING PLAIN LANGUAGE AS THE
STANDARD STYLE OF GOVERNMENT DOCUMENTS ISSUED TO
THE PUBLIC, AND FOR OTHER PURPOSES



JULY 10 (legislative day, JULY 9), 2008.—Ordered to be printed

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Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2291]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2291) to enhance citizen access to Government information and services by establishing plain language as the standard style of Government documents issued to the public, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

I. Purpose & Summary	Page 1
II. Background	2
III. Legislative History	5
IV. Section-by-Section Analysis	6
V. Estimated Cost of Legislation	6
VI. Evaluation of Regulatory Impact	7
VII. Changes in Existing Law	8

I. PURPOSE & SUMMARY

The purpose of S. 2291, the Plain Language in Government Communications Act (“Plain Language Act”), is to improve the effectiveness and accountability of Federal agencies by promoting clear Government communication that the public can understand and use.

II. BACKGROUND

The problem

Federal agencies issue documents that explain what the agencies do, the requirements of federal laws and programs, how members of the public can obtain various benefits, and for many other purposes. Too often, these documents are difficult for the public to understand and use because they are poorly organized and unnecessarily complex. Such writing costs the public both time and money; time spent trying to understand the documents and money that agencies spend answering questions from frustrated members of the public. As Christopher Cox, Chairman of the Securities and Exchange Commission, testified at a House hearing on the benefits of plain language, “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.”¹

Clear communication also is important for transparent and accountable government. As Chairman Cox testified, when rules are hard to understand, people are less likely to comply because they do not understand their obligations, and people who try to comply become frustrated and angry. When poorly written rules are enforced, people view it as arbitrary and unfair, and their confidence in government is eroded.² According to Chairman Cox, “Clarity in spelling out a citizen’s obligations is one of the most fundamental requirements of the rule of law.”³

The benefits of writing documents in plain language

Studies demonstrate the value of plain language. As an example, the U.S. Department of Veterans Affairs rewrote selected form letters in plain language and tracked the effects. One unit of a field office sent out a form letter rewritten to be more clear and readable, while another unit continued sending out the original form letter. More people responded to the plain language letter than the original letter (45 percent versus 29 percent). Additionally, all of the responses to the plain language letter were complete, while 18 percent of the responses to the original letter were incomplete.⁴ Another Veterans Affairs office rewrote a form letter into plain language. They tracked telephone calls to the office seeking help with the letter before and after it was rewritten. These calls dropped more than 80 percent after the plain language version was issued, from more than 1,100 in a year to less than 200.⁵

State programs to promote clear communication with members of the public are yielding impressive results as well. For example, the State of Arizona recently rewrote 100 form letters, working to organize, simplify, and shorten them. After rewriting its letters, the State Unclaimed Property Section received 11,000 fewer telephone calls in 2007 than 2006, allowing the staff to process 30,000 more

¹ See Statement of Christopher Cox, Chairman, U.S. Securities and Exchange Commission before House Committee on Small Business, Subcommittee on Contracting and Technology, February 26, 2008 (hereafter “Cox Testimony”), at p. 1.

² See *ibid.* at p. 2.

³ See *ibid.*

⁴ See Reva Daniel, “Revising Letters to Veterans,” *Technical Communication* (1st Q. 1995), pp. 69–75, 72–73, available online at <http://www.dbwriting.com/Revising%20Letters%20to%20Veterans.pdf>.

⁵ See *ibid.* at pp. 73–74.

claims than the previous year.⁶ Likewise, the Washington State “plain talk” initiative is improving government efficiency. The Washington Department of Revenue rewrote information about the State “use tax,” which had been widely misunderstood and ignored. Now, three times as many businesses are paying the tax, bringing in an additional \$800,000 revenue over two years.⁷

The Plain Language Act

The Plain Language Act builds upon past and current plain language efforts in the federal government. On June 1, 1998, President Clinton issued a memorandum directing federal agencies to use plain language. That memorandum required plain language to be used in “all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce” by October 1, 1998. Later deadlines were provided for issuing regulations in plain language and for reissuing documents written prior to October 1, 1998.⁸

Vice President Gore oversaw implementation of the plain language requirements and coordinated the federal government’s Plain Language Action Network (PLAN).⁹ The Clinton memorandum remains in effect, and many agencies maintain plain language programs. PLAN (now the Plain Language Action and Information Network or PLAIN) continues promoting plain language in federal government communications and providing plain language writing workshops.¹⁰ Although many agencies have made progress, the plain language initiative has been implemented unevenly.

Despite the progress that has been made, a wide variety of organizations have called on Congress to pass legislation to reinforce the existing plain language programs because their members continue to lose time and money struggling to understand federal government documents.¹¹ The following organizations have sent or joined letters in support of the Plain Language Act: the AARP, Disabled American Veterans, National Small Business Association, Small Business Legislative Council, Women Impacting Public Pol-

⁶See Amanda Crawford, “Revenue Department Sees Effects of Plain Talk,” *The Arizona Republic*, January 6, 2008, available online at <http://www.governor.state.az.us/er/documents/News/StateTargetsBureaucrataseToImproveCommunication.pdf>.

⁷See “Washington State Sees Results from ‘Plain Talk’ Initiative,” *USA Today*, December 10, 2006, available online at http://www.usatoday.com/news/nation/2006-12-10-washington-plain-talk_x.htm.

⁸See Memorandum from President William J. Clinton to Heads of Executive Departments and Agencies regarding Plain Language in Government Writing, June 1, 1998, available at <http://www.plainlanguage.gov/whatisPL/govmandates/memo.cfm>.

⁹See Brian Friel, “Gore orders agencies to write in plain English,” *Government Executive*, June 2, 1998; John Broderick, “Reinventing Government: The Role of Plain Language,” available online at <http://www.odu.edu/al/jpbroder/jpbcladenglish.doc>, at 1–2.

¹⁰See Joanne Locke, “A History of Plain Language in the United States Government,” 2004, available at www.plainlanguage.gov/whatisPL/history/locke.cfm; Statement of Annetta Cheek, Chair of the Center for Plain Language before House Committee on Small Business, Subcommittee on Contracting and Technology, February 26, 2008 (hereafter “Cheek testimony”), at p. 5; Cox Testimony, at p. 2–4 (discussing plain language initiatives at the Securities and Exchange Commission).

¹¹See Statement of Todd McCracken, President of the National Small Business Association before House Committee on Small Business, Subcommittee on Contracting and Technology, February 26, 2008, at p. 2 (“The federal government’s proclivity towards arcane, ambiguous, or simply incomprehensible language translates into billions of lost hours and dollars.”); Statement of Robert Romasco, Member of the Board of Directors of the AARP before House Committee on Small Business, Subcommittee on Contracting and Technology, February 26, 2008 (hereafter Romasco Testimony) (“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 the impenetrable writing style of the government agency.”).

icy, American Association of Law Libraries, American Library Association, Special Libraries Association, American Nurses Association, Association for Business Communication, Association of Professional Communication Consultants, Strategic Communication Inc., and Usability Professionals' Association.¹²

Codifying plain language requirements would guarantee over time consistent use of plain language in all federal agencies.¹³ The Plain Language Act includes provisions designed to ensure full implementation across the federal government. The Office of Management and Budget (OMB) would develop and issue guidelines for plain language writing, so that all agencies will have a single set of standards to reference.

OMB raised concerns about the burden that this legislation will place on that agency. The Committee intends that OMB would play a coordinating and facilitating role. However, agencies would be primarily responsible for implementing the plain language requirements and OMB would not be responsible for reviewing agency communications for compliance or directly overseeing the plain language requirements. To further address OMB's concerns, Senator Akaka intends to offer a substitute amendment to S. 2281, prior to its passage by the Senate. Section 4(b) of the substitute amendment would permit the Director of OMB to designate a lead agency and to use interagency working groups to assist OMB in carrying out its responsibilities under the Act.

After agencies submit initial reports directly to Congress, OMB would review agencies' reports on compliance with the legislation and report to Congress on agencies' progress. This reporting system would enhance OMB's coordination role while facilitating congressional oversight. OMB may have agencies combine their reports on compliance with this Act with the annual compliance reports required under the E-Government Act.

The Plain Language Act would place no restrictions or requirements on OMB's development of the plain language guidance. OMB may adapt the plain language guidelines developed by PLAIN or by the Securities and Exchange Commission if appropriate, and it may rely on the expertise of PLAIN, any agency, or other organization, such as the Center for Plain Language, in developing the guidelines.

The Plain Language Act defines "plain language" with reference to the "intended audience." As Annetta Cheek, Chair of the Center for Plain Language, testified at the House hearing, "[t]here are no hard rules in plain language except to be clear to your intended reader."¹⁴ Writing in plain language does not require deleting complex information; rather it means organizing and presenting information in a way that improves readability. Specialized vocabulary, such as legal or scientific terms, may be appropriate when addressing an audience that understands the terms. However, when addressing a general audience, specialized terms should be explained

¹²All letters available upon request to the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia.

¹³See, e.g., Romasco Testimony ("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.")

¹⁴See Cheek Testimony, at p. 4.

or avoided if not necessary to accurately present the information conveyed.

The Plain Language Act's definition of "covered document" is based upon the definition of new documents covered by the Clinton memorandum. The definition is broad and is intended to encompass most written communications with the public except regulations. The list of types of documents specifically included in the definition—letters, publications, forms, notices, and instructions—is intended to illustrate rather than to limit the types of documents covered. The definition covers written communications provided to members of the public electronically, for example written website content or email communication, as well as printed documents.

Unlike the Clinton memorandum, however, the Plain Language Act would not require rewriting existing documents in plain language or writing regulations in plain language. The legislation would exclude these requirements in order to reduce the burden on agencies and OMB. Likewise, the Committee recognizes that many regulations are technical and complicated, so implementing plain language writing for rulemaking may require additional planning and training beyond what is necessary for other documents. Accordingly, the Plain Language Act would allow agencies to focus their efforts first on other types of writing. However, the Plain Language Act is not intended to discourage any executive branch plain language writing requirements or programs that would not be required by the Act.

To further reduce the burden of the legislation, agencies would be given one year from the date of enactment to comply with plain language requirements, which is a significantly longer time period than the Clinton memorandum provided.

OMB raised concerns that this legislation would lead to litigation. The Committee does not intend to create any individually enforceable right. Rather, it will be the responsibility of agencies, OMB, and Congress to ensure that the plain language requirements are implemented. To address OMB's concern, the substitute amendment that Senator Akaka intends to offer would add a new Section 6, specifying that there shall be no judicial review of compliance with the Act, and that the Act creates no right or benefit enforceable in any administrative or judicial action.

III. LEGISLATIVE HISTORY

On November 1, 2007, Senator Akaka introduced the Plain Language Act (S. 2291), which was referred to the Committee on Homeland Security and Governmental Affairs. Senators McCaskill, Carper, and Levin are original cosponsors of the legislation. Senators Obama, Clinton, Tester, Voinovich, Collins, and Cochran have joined as cosponsors of the Plain Language Act as well.

On April 10, 2008, the Committee considered S. 2291 and ordered the bill reported favorably by voice vote without amendment. Members present for the vote were Lieberman, Levin, Akaka, Carper, Landrieu, McCaskill, Tester, Collins, Voinovich, and Sununu.

Representative Braley introduced a companion bill (H.R. 3548) in the House of Representatives on September 17, 2007, which was referred to the House Committee on Oversight and Government Reform. On February 26, 2008, the House Small Business Com-

mittee, Subcommittee on Contracting and Technology, held a hearing on the benefits of plain language.

The House Committee on Oversight and Government Reform ordered the legislation to be reported as amended on March 13, 2008. The House of Representatives passed H.R. 3548 on April 14, 2008, and it currently is pending in the Senate.

IV. SECTION-BY-SECTION ANALYSIS

Section 1 titles the bill.

Section 2 identifies the purpose of the Act as improving Federal agencies' effectiveness and accountability to the public by promoting clear government communication that the public can understand and use.

Section 3 defines the terms "agency," "covered document," and "plain language."

Section 4(a) requires that not later than one year after the date of enactment agencies use plain language in any covered document that the agency issues or substantially revises.

Section 4(b) directs OMB to develop guidance on implementing the requirements of Section 4(a) and issue it as a circular. In the interim before the guidance is issued, agencies would be directed to follow PLAIN's plain language guidelines, the Plain English Handbook published by the Securities and Exchange Commission, or any guidance issued by the agency head that is consistent with the PLAIN guidelines.

Section 5(a) requires the head of each agency to submit an initial report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform within six months of enactment. The initial report would designate a senior official responsible for implementing the requirements of the Act and describe the agency's plan to train employees in plain language writing, meet the deadline for compliance with the Act, and ensure ongoing compliance.

Section 5(b) requires the agency to submit reports to OMB on compliance with this legislation. OMB would review those reports and submit a report on the agencies' compliance to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform, annually for the first two years after the date of enactment and once every three years thereafter. OMB would notify each agency of the date by which the agency's report is required to enable it to meet its reporting deadline.

V. ESTIMATED COST OF LEGISLATION

APRIL 15, 2008.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2291, the Plain Language in Government Communications Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 2291—Plain Language in Government Communications Act of 2007

S. 2291 would amend federal law to require all federal agencies within one year to use plain language (clear and readily identifiable to the intended reader) in all documents, including letters, publications, and forms. The legislation also would require the Office of Management and Budget (OMB) to provide governmentwide guidance on this matter. Finally, S. 2291 would require each agency to designate a coordinator for its efforts to use plain language, review its compliance with the legislation, train employees to use plain language, and prepare reports to the Congress on compliance with the legislation.

CBO estimates that implementing S. 2291 would cost up to \$2 million a year for agencies to implement the additional employee training and reporting requirements, subject to the availability of appropriated funds. The bill could also affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration. CBO estimates, however, that any increase in spending by those agencies would not be significant.

Most provisions of the bill would codify and expand current practices of the federal government. Executive Order 12866 and the Presidential Memorandum on Plain Language (June 1, 1998) currently require government agencies to write in language that is comprehensible to readers. Based on information from OMB, CBO estimates that implementing this bill would not significantly increase the cost of preparing various paper or electronic documents used throughout the government.

S. 2291 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On April 8, 2008, CBO provided a cost estimate for H.R. 3548, the Plain Language in Government Communications Act of 2007, as ordered reported by the House Committee on Oversight and Government Reform on March 13, 2008. Both pieces of legislation are similar and the estimated costs are the same.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact that would be incurred in carrying out this legislation. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VII. CHANGES IN EXISTING LAW

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

