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111TH CONGRESS *1st Session*	SENATE	REPORT 111–102

PLAIN WRITING ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 574

TO ENHANCE CITIZEN ACCESS TO GOVERNMENT INFORMATION AND SERVICES BY ESTABLISHING THAT GOVERNMENT DOCUMENTS ISSUED TO THE PUBLIC MUST BE WRITTEN CLEARLY, AND FOR OTHER PURPOSES

DECEMBER 9, 2009.—Ordered to be printed

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DECEMBER 9, 2009.—Ordered to be printed

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

R E P O R T

[To accompany S. 574]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 574) to enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 574, the Plain Writing Act, is to improve the effectiveness and accountability of Federal agencies by promoting clear Government communication that the public can understand and use. The bill requires agencies to write documents released to the public in plain writing, or writing that the intended audience can readily understand and use because that writing is clear, concise, well-organized, and follows other best practices of plain writing.

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, the public finds these documents difficult to understand and use because the materials are poorly organized and unnecessarily complex.

Unclear writing wastes both time and money. The public wastes time and money trying to understand unclear documents. Members of the public also waste time and money because they make unintended mistakes filling out government forms or fulfilling government requirements, or because they have to hire attorneys to help them understand government documents.[1] Todd McCracken, President of the National Small Business Administration, once testified that the federal government's use of "incomprehensible language translates into billions of lost hours and dollars," which are spent "wrestling with federal paperwork requirements."[2] Federal agencies waste time and money as well answering questions from frustrated members of the public and because unclear documents lead to higher rates of mistakes and noncompliance.[3]

Clear communication also is important for transparent and accountable government. As Annetta Cheek, Chair of the Center for Plain Language, has testified, "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."[4] As former Chairman of the Securities and Exchange Commission Christopher Cox testified, when poorly written rules are enforced, people view it as arbitrary and unfair, and their confidence in government is eroded. According to Chairman Cox, "Clarity in spelling out a citizen's obligations is one of the most fundamental requirements of the rule of law."[5]

The benefits of plain writing

Studies demonstrate the value of plain writing. The U.S. Department of Veterans Affairs, for example, rewrote selected form letters in plain writing 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.

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[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* 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 (hereafter "McCracken testimony"), at p. 2; *see also* Statement of Keith Hall, National Association for the Self-Employed before House Committee on Small Business, Subcommittee on Contracting and Technology, February 26, 2008, at p. 3 (describing the federal paperwork burden on micro-businesses and arguing that plain writing would "boost the bottom line for businesses and government alike. Plain language will require less time and money spent on education, preparation and compliance.").

[3] *See* McCracken testimony, at p. 2 (arguing that noncompliance with government requirements often is "the result of the small-business owners' inability to decipher what is being asked of them."); 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. 3 ("Confusing communication from the government discourages people from complying with requirements or applying for benefits.").

[4] *See* Cheek testimony, at p. 1.

[5] *See* Cox testimony, at p. 2.

More people responded to the plainly written letter than the original letter (45 percent versus 29 percent). Additionally, all of the responses to the plainly written letter were complete, while 18 percent of the responses to the original letter were not.[6] Another Veterans Affairs office rewrote a different form letter in plain writing. The office tracked telephone calls seeking help with the letter before and after it was rewritten. These calls dropped more than 80 percent after the plain writing version was issued, from more than 1100 in a year to fewer than 200.[7]

State programs to promote clear communication with members of the public are yielding impressive results as well. For example, the State of Arizona rewrote 100 form letters to organize, simplify, and shorten them. After rewriting its letters, the State Unclaimed Property Section received 11,000 fewer telephone calls in 2007 than in 2006, allowing the staff to process 30,000 more claims than in the previous year.[8] The Washington State "plain talk" initiative has similarly improved government efficiency. The Washington Department of Revenue rewrote information about the State "use tax"–a tax citizens had widely misunderstood and ignored. After the rewrite, three times as many businesses paid the tax, bringing the State an additional $800,000 in revenue over two years.[9]

The Plain Writing Act

More than a decade ago, the federal government took its first comprehensive steps toward mandating plain writing. On June 1, 1998, President Clinton issued a memorandum directing federal agencies to use plain language in government writing. That memorandum directed agency officials to use plain writing 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 and for reissuing documents written prior to October 1, 1998.[10]

Vice President Gore oversaw implementation of these requirements and coordinated the federal government's Plain Language Action Network (PLAN),[11] which was subsequently renamed the Plain Language Action and Information Network (PLAIN). The Clinton memorandum remains in effect, and many agencies maintain plain language programs. PLAIN continues promoting plain

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[6] *See* Reva Daniel, "Revising Letters to Veterans," *Technical Communication* (1st Q. 1995), pp. 69–75, 72–73, *available online at* www.dbwriting.com/Revising%20Letters%20to%20Veterans.pdf.

[7] *See ibid.* at pp. 73–74.

[8] *See* 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/StateTargetsBureaucrateseToImproveCommunication.pdf.

[9] *See* "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.

[10] *See* 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.

[11] *See* 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.

writing in federal government communications and providing plain writing training workshops.[12]

Although many agencies have made progress, the plain writing requirement has been implemented unevenly.[13] As one example provided at a House hearing on plain writing, a federal agency wrote to beneficiaries of a federal program:

> 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.

According to a witness at the hearing, this means, "If you receive payments from us and another source for the same expenses, you must pay us back the amount received from the other source."[14]

This inconsistency has led a wide variety of organizations to call on Congress to pass legislation to reinforce the existing plain writing programs. Many organizations contend that their members continue to lose time and money struggling to understand federal government documents.[15] The following organizations have sent or joined letters in support of plain writing requirements: the AARP, Disabled American Veterans, National Small Business Association, Small Business Legislative Council, Women Impacting Public Policy, National Association of the Self Employed, American Association of Law Libraries, American Library Association, Special Libraries Association, American Nurses Association, American Dental Association, Association for Business Communication, Association of Professional Communication Consultants, Strategic Communication Inc., and Usability Professionals' Association.[16]

The Plain Writing Act heeds that call and seeks to codify plain writing requirements, thereby promoting the more consistent use of plain writing in all federal agencies.[17]

Under the bill, the Office of Management and Budget (OMB) would develop and issue guidelines for plain writing, giving all agencies a single set of standards to reference. The Committee believes that standard, centralized OMB guidance would allow for the most efficient and effective implementation of S. 574's plain writing requirements and that OMB—in particular the Office of Informa-

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[12] *See* Joanne Locke, "A History of Plain Language in the United States Government," 2004, *available at* www.plainlanguage.gov/whatisPL/history/locke.cfm; Cheek testimony, at p. 5; Cox Testimony, at pp. 2–4 (discussing plain language initiatives at the Securities and Exchange Commission).

[13] *See, e.g.*, 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), at pp. 1–3 (describing federal government plain writing efforts but arguing that legislation is needed to ensure government-wide compliance); Cheek testimony at pp. 5–6 (describing plain writing intitiatives but concluding, "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.").

[14] *See* Cheek testimony, at p. 2.

[15] *See* McCracken testimony, at p. 2; Romasco Testimony at p. 3 ("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.").

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

[17] *See, 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.").

tion and Regulatory Affairs (OIRA)—has or can readily develop the appropriate expertise to formulate the guidance. OIRA has responsibility for overseeing the "[d]issemination of and access to government information" as well as the "quality, utility, and analytic rigor of information used to support public policy."[18] Should OMB need assistance in developing the guidance, the bill provides OMB great flexibility and places no restrictions on the development of the guidance. Therefore, for example, OMB could consult with federal employees active in PLAIN or could adapt the guidelines that PLAIN developed.

As reported, S. 574 would require agencies to submit initial reports directly to Congress, and follow up reports to OMB, which would review agencies' reports on compliance with the legislation and report to Congress on agencies' progress. Agencies would be primarily responsible for implementing the plain writing requirements, and OMB would not be responsible for reviewing agency communications for compliance or directly overseeing the plain writing requirements. Additionally, agencies would be required to include in their reports information on agency plans to communicate the Act's requirements to employees, train employees in plain writing, meet the requirements of the Act, and ensure ongoing compliance with the Act.

The Plain Writing Act defines "plain writing" with reference to the "intended audience." As Annetta Cheek, Chair of the Center for Plain Language, testified at the 2008 House hearing, "[t]here are no hard rules in plain language except to be clear to your intended reader."[19] Plain writing 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 or avoided if not necessary to accurately present the information conveyed.

The Plain Writing Act's definition of "covered document" is intended to broadly encompass written communications with the public. The definition covers written communications provided to members of the public electronically—for example, website content or emails—as well as printed documents. Unlike the Clinton memorandum, however, the bill excepts regulations from its definition of "covered document." This will reduce the burden on OMB and federal agencies in implementing the Plain Writing Act. Additionally, the Committee recognizes that many regulations are technical and complicated, so implementing plain writing in rulemaking may require additional planning and training beyond what is necessary for other documents. Accordingly, the Plain Writing Act would allow agencies to focus their efforts first on other types of writing. However, the Plain Writing Act is not intended to discourage any executive branch plain writing requirements or programs supplemental to those 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

[18] *See* website of the Office of Management and Budget Office for Information and Regulatory Affairs, *at* http://www.whitehouse.gov/omb/regulatory__affairs/default.
[19] *See* Cheek Testimony, at p. 4.

writing 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 writing requirements are implemented. To address OMB's concern, Senator Akaka offered, and the Committee adopted, an amendment to add a new section 6 to the bill, 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, Levin, Obama, Clinton, Tester, Voinovich, Collins, and Cochran cosponsored S. 2291. The Committee considered S. 2291 and ordered it to be reported favorably by voice vote on April 10, 2008.

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 Committee, Subcommittee on Contracting and Technology, held a hearing on the benefits of plain language writing. The House Committee on Oversight and Government Reform ordered the legislation to be reported as amended on March 13, 2008, and the House of Representatives passed H.R. 3548 on April 14, 2008.

On March 11, 2009, Senator Akaka introduced the Plain Writing Act (S. 574). Senators Voinovich, Carper, Levin, McCaskill, and Tester are original cosponsors of the legislation. Ranking Minority Member Collins has joined as a cosponsor as well.

On April 1, 2009, the Committee considered S. 574 and ordered the bill reported favorably by voice vote with an amendment, described above, clarifying 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. Members present for the vote were Chairman Lieberman; Senators Akaka, Carper, Pryor, Tester, Burris and Bennet; Ranking Minority Member Collins; and Senators Coburn and Voinovich.

Representative Braley introduced a companion bill (H.R. 946) in the House of Representatives on February 10, 2009, which was referred to the House Committee on Oversight and Government Reform.

IV. SECTION-BY-SECTION ANALYSIS

Section 1 titles the bill.

Section 2 identifies the purpose of the Act as improving the effectiveness and accountability of Federal agencies 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 writing."

Section 4(a) requires that not later than one year after the date of enactment agencies use plain writing 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 are directed to follow the writing guidelines PLAIN developed or any guidance provided 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 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.

Section 6 specifies that there shall be no judicial review of compliance or noncompliance with the Act, and that the Act creates no right or benefit enforceable in any administrative or judicial action.

V. ESTIMATED COST OF LEGISLATION

APRIL 3, 2009.

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. 574, the Plain Writing Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 574—Plain Writing Act of 2009

S. 574 would amend federal law to require all federal agencies within one year to use plain writing (clear, concise, well-organized, and readily identifiable to the intended reader) in all documents except for regulations. The legislation also would require the Office of Management and Budget (OMB) to provide government-wide guidance on this matter. Finally, S. 574 would require each agency to designate a coordinator to 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. 574 would cost about $3 million a year for agencies to provide additional employee training and prepare reports for the Congress, 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 net 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. In addition, current laws such as the Paperwork Reduction Act, requires information collection forms to be "written using plain, coherent, and unambiguous terminology." 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. 574 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.

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.

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