

Change We Can...Understand!

By Lois Yurow

On October 13, President Obama signed the [Plain Writing Act of 2010](#), which was designed “to improve the effectiveness and accountability of Federal agencies . . . by promoting clear Government communication that the public can understand and use.” A paragon of brevity (though not necessarily clarity) at less than three pages, the Plain Writing Act directs federal agencies to use “plain writing” in all “covered documents” beginning no later than October 13, 2011.

To supplement that primary obligation, the statute imposes many other new requirements on federal agencies. No later than July 13, 2011, each agency head must:

- Appoint one or more senior people to spearhead the agency’s plain writing efforts;
- Explain the new requirements to agency employees and train those employees to write a new way;
- Redesign the agency website so the home page features a “plain writing” section that can offer information and receive public comments;
- Establish a process for monitoring the agency’s ongoing compliance with the statute; and
- Appoint one or more individuals to interact with the public regarding the agency’s plain writing efforts.

Also no later than July 13, 2011, each agency must explain on its website how the agency will implement and comply with the statute. Finally, no later than April 13, 2012, and annually thereafter, each agency must publish a compliance report on its website.

What is “Plain Writing”?

As defined in the statute, plain writing is “clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.” Within the next six months, the Director of the Office of Management and Budget is required to issue guidance on what that means in practice and how agencies should implement the mandate. In the meantime, agencies that want to plan ahead may rely on [writing guidelines](#) published by the Plain Language Action and Information Network (PLAIN), a group of federal employees that “promotes the use of plain language for all government communications.” Alternatively, agency heads may issue their own guidance, so long as it is consistent with the PLAIN guidelines.

Presumably, the OMB can adopt PLAIN’s writing guidance, or at least pieces of it, and avoid duplicating that group’s very thorough efforts. The statute expressly permits the OMB to get help from other agencies or interagency working groups.

[Opinionated aside: I’m a little concerned about the OMB taking the lead on developing writing guidelines. The OMB website features this sentence: “The management side of

OMB is comprised of five offices....” If you don’t know what is wrong with that, you certainly aren’t alone, but you shouldn’t take the lead on developing writing guidelines either.]

What are “Covered Documents”?

Covered documents, which can be written or electronic, are broadly defined as any letter, publication, form, notice, or set of instructions that:

- Is necessary for obtaining a federal benefit or service,
- Is necessary for filing taxes,
- Provides information about a federal benefit or service, or
- Explains how to comply with any federal government requirement.

This definition picks up a multitude of documents, including tax forms, forms for obtaining Social Security or Medicare benefits, applications for college financial aid, and instructions for all of the foregoing. It also covers any written communication directly from a federal agency to a member of the public, such as a letter to explain an agency decision about taxes or a federal benefit or service. As explained in a March 2010 [Report of the House Committee on Oversight and Government Reform](#), the statute addresses “documents Americans are most likely to encounter.”

Notably, the Plain Writing Act expressly excludes federal regulations. The statute also does not apply to legislation or internal agency communications.

The plain writing requirement applies to any new covered document and any existing covered document that is “substantially revise[d]” beginning next October. Agencies are free to continue using incomprehensible documents that they already have so long as the documents remain unchanged.

Didn’t We Try This Already?

If some of this sounds familiar, it’s because the government has attempted language makeovers before. PLAIN began its work in 1994; President Clinton issued a [Memorandum on Plain Language in Government Writing](#) in 1998; and many agencies have commenced diligent efforts to communicate more clearly. Some agencies, such as the Securities and Exchange Commission, have gone a step further and told the entities they regulate that they too should [improve their communication](#). However, as noted in the House Committee report, efforts to promote plain language in government “have waned.” Hence, the push to make the plain writing requirement more formal and emphatic.

Mind you, the Plain Writing Act does not have an enforcement mechanism. There is no private right of action and “no judicial review of compliance or noncompliance,” so it is not entirely certain that a statutory mandate will have any effect. I’d like to think there are plenty of public servants who are itching to improve their agencies’

communications—perhaps for noble reasons and perhaps only to make their own jobs easier. If the statute provides the justification they need, and forces agency heads to devote resources to the effort, we may begin to see some progress.

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