

The Clear and Concise Content Act of 2023: Another step toward plain writing in the federal government

BY RACHEL STABLER

Over a decade has passed since the first federal legislation was enacted mandating that federal agencies use plain language in certain communications with the public. The Plain Writing Act of 2010 was a positive step forward, but a new — and better — law is on the horizon. The Clear and Concise Content Act of 2023 has been introduced in the Senate. This bipartisan bill has the potential to make greater strides toward plain writing in the federal government, achieving better transparency and accessibility for the public.

THE FIRST STEP: THE PLAIN WRITING ACT OF 2010

Readers may already be familiar with the Plain Writing Act of 2010, which President Barack Obama signed into law in October of that year. The Act requires federal agencies to use plain writing in “covered documents”: documents related to government services, benefits, requirements, or taxes.¹ It defines “plain writing” as “writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.”² Finally, it also requires that agencies annually report on their progress in using plain language.³

While the 2010 Act was celebrated as a victory for the plain-language movement,⁴ even its advocates acknowledged that it was “just the beginning.”⁵ Change within the federal government comes slowly, and plain writing is no exception. Indeed, a review of agency compliance about two years after the Act took effect showed that only about half the agencies had complied with the mandatory re-

porting requirement and that many were still releasing covered documents that committed the most common plain-language mistakes.⁶

Even in 2023 — 13 years after the 2010 Act became law — agencies are still struggling to use plain language. The most recent Plain Language Report Cards issued by the Center for Plain Language reflect a decrease in the agencies’ average writing grade: C, down from a B in the previous year.⁷ A quick review of agency websites shows that compliance with the reporting requirement remains lackluster.⁸ On the more positive side, though, many agencies have indeed improved — or are in the process of improving — their public communication in various ways.⁹

All of this reveals that there is still work left to be done. The 2010 Act, while a victory for the plain-language movement, has its shortcomings. Its scope is fairly limited in two ways: (1) it narrowly defines “covered documents” and (2) it applies only to documents created or substantially revised after the Act’s passage. Other shortcomings stem from a lack of oversight.¹⁰ While it requires agencies to issue annual reports, it does not require any particular content in those reports. Moreover, it directs agencies to simply post their reports on their websites; no one outside the agencies is required to review those reports. Instead, the Act puts the burden on the public to ensure compliance, envisioning a public that is aware of the Act’s existence, can recognize when a document fails to use plain writing, and will proactively inform the agency of that failure.

“Plain Language,” edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for nearly 40 years. To contribute an article, contact Prof. Kimble at WMU–Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

THE NEXT STEP: THE CLEAR AND CONCISE CONTENT ACT OF 2023

The Clear and Concise Content Act of 2023¹¹ would replace the 2010 Act, addressing its shortcomings and improving on it in numerous ways:

1. **Broader Coverage.** It broadens the type of writing that is required to be in plain language. It also requires all existing covered content — not just new or revised documents — to be in plain writing. This means that agencies must review all their content to see whether it is covered content that must be in plain writing.
2. **More Inclusive.** It defines “plain writing” to expressly include an audience who might be underserved or disadvantaged, such as those with disabilities or those who lack proficiency in English.
3. **Compliance Metrics and Testing.** It assigns the Director of the Office of Management and Budget the task of establishing metrics to determine the extent of an agency’s compliance with the requirement to use plain writing. It also requires agencies to routinely test their own covered content.
4. **Better Oversight and Reporting.** It provides additional levels of oversight: agencies must report to the Director, who then must report to Congress annually. In addition, agencies must address their plain-writing compliance metrics in the annual performance plans that 31 U.S.C. § 1115(b) requires.
5. **Active Solicitation of Public Feedback.** It requires agencies to reach out to the public and proactively solicit feedback, rather than putting the burden on the public to reach out to the agencies.

Here is a more comprehensive chart describing the differences between these laws.

	Plain Writing Act of 2010	Clear and Concise Content Act of 2023
Types of Writing Included in the Act’s Coverage	Includes “covered documents,” defined as: (1) documents that provide information about a government service or benefit; (2) documents that are necessary to file taxes or obtain a government service or benefit; (3) documents that explain how to comply with a government requirement.	Includes “covered content,” defined as: (1) content that provides information about a government service or benefit; (2) content that is necessary to file taxes or obtain a government service or benefit; (3) materially important content that is posted publicly and provides information about an agency’s operations, policies, or guidance (specifically including content explaining how to comply with government requirements); (4) content that provides information about how to interact with or give feedback to an agency about its operations, policies, or guidance; (5) content that provides information about or is necessary to use any agency website, digital service, or office; (6) instructions for submitting feedback to a regulation at any point during the rulemaking or implementation process.
Applicability	Applies only to covered documents that an agency creates or “substantially revises” after the Act takes effect.	Applies to all covered content, including existing content; also applies to agency websites and digital services that are newly created or revised.
Definition of “Plain Writing”	“[W]riting that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.”	“[W]riting that is clear, concise, well organized, and follows other best practices appropriate to the subject or field and intended audience, including an audience who may be disabled, may not be proficient in English, or may otherwise be disadvantaged or traditionally underserved.”

Oversight	Each agency designates a senior official to oversee that agency's compliance.	(1) Each agency designates a senior official (no lower than an Assistant Secretary or its equivalent) to oversee that agency's compliance. (2) The Director is appointed to create new guidance for agencies and to receive reports from agencies about their compliance with the Act.
Measuring Compliance	None	In the new guidance, the Director will establish qualitative and quantitative metrics to measure how well agencies are (1) identifying covered content, (2) using plain writing in covered content, and (3) incorporating public feedback and data to improve public engagement and interaction with the agency. Agencies must routinely test their content to determine its compliance.
Public Feedback	Agencies must provide a mechanism to allow the public to give feedback.	Agencies are required to actively solicit and incorporate public feedback.
Reporting	Agencies self-report by posting annual reports on their websites.	(1) Agencies report to the Director, who then reports to Congress (specifically, the Committee on Homeland Security and Governmental Affairs in the Senate and the Committee on Oversight and Reform in the House) annually. The Director may also publish the reports to Congress online. (2) Agencies must include their plain-writing compliance metrics in their annual performance plans (31 U.S.C. § 1115(b)).

REASON FOR OPTIMISM

This 2023 Act is substantially similar to one introduced in 2022,¹² which passed the Senate by unanimous consent in December 2022 but unfortunately didn't make it through the House before the legislative session ended. Sen. Gary Peters, D-Mich., reintroduced the bill on March 8, 2023, with Sen. James Lankford, R-Okla., again cosponsoring. Just two weeks later, the Committee on Homeland Security and Governmental Affairs unanimously ordered that the bill be reported favorably.¹³ Given its bipartisan support and the success of the 2022 version in the Senate, good reason exists to be optimistic that this 2023 Act will become law. Of course, a call or email to your local senator and representative can only help.¹⁴ With the passage of the Clear and Concise Content Act of 2023, we can take another step toward broader use of plain writing in the federal government.

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ENDNOTES

1. PL 111-274, § 3, 124 Stat 2861.
2. *Id.*
3. *Id.* § 5.
4. Siegel, *The Politics and Power of Plain Language*, 90 Mich B J 48-49 (Feb 2011); and Cheek, *The Plain Writing Act of 2010*, 90 Mich B J 52-53 (Oct 2011).
5. *The Plain Writing Act of 2010*, 90 Mich B J at 53.
6. Stabler, *What We've Got Here Is Failure to Communicate: The Plain Writing Act of 2010*, 40 J Legis 280 (2014).
7. Center for Plain Language, *2022 Federal Plain Language Report Card* <<https://centerforplainlanguage.org/2022-federal-plain-language-report-card/>> [https://perma.cc/8KD5-M85U] (posted January 9, 2023) (all websites accessed November 14, 2023).
8. For example, as of June 1, 2023, only 8 of 15 cabinet-level agencies had published the most recent annual plain-language report.
9. On YouTube, search for "Federal Plain Language Summit" sponsored by the federal employee Plain Language Action and Information Network (there have been several, including one in 2022) <<https://digital.gov/event/2022/08/24/2022-federal-plain-language-summit>> [https://perma.cc/BTJ6-ZZCG]; also see the multiple federal-agency winners over the last decade of ClearMark Awards from the Center for Plain Language <<https://centerforplainlanguage.org/awards/clearmark/>> [https://perma.cc/VNW4-SVRF]; Matveena, Morales & Sampson, *Improving Access to and Scope of Plain Language Resources*, 87 The Clarity J 28 (2023) (acknowledging that most agencies still do not, as required, have webpages devoted to plain-language resources but noting that performance is improving and providing examples from several agencies).
10. *What We've Got Here Is Failure to Communicate*, 40 J Legis 316-17.
11. Clear and Concise Content Act of 2023, S. 717, 118th Cong. (2023).
12. Clear and Concise Content Act of 2022, S. 4577, 117th Cong. (2022).
13. S. Rep. No. 118-26, at 2 (2023).
14. Congress.gov, *Find Your Member*, <<https://www.congress.gov/members/find-your-member>>.