

The Plain Writing Act of 2010

Getting Democracy to Work for You

By Annetta L. Cheek

Editor's Note: The Act is one year old in October, so we celebrate it with this column.

The Center for Plain Language, a 501(c)(3) organization in the Washington, D.C. area, was founded in 2003 with a mission of getting the government and business to write more clearly to the people they serve. Most of the original founders were federal employees who had become frustrated by years of struggling to get their own agencies to think about their readers. After the Center spent a few more years without making much headway, we took on a formidable challenge: get Congress to pass a bill requiring the government to write more clearly.

Early in 2006, we started visiting Capitol Hill, looking for someone to help. It was clear that most people we saw thought we had a snowball's chance in you-know-where of making this happen. They thought it just wasn't bill material (never mind all the silly bills Congress comes up with on its own). We tried several approaches, like emphasizing government performance, since that was a hot topic at the time and many Congressmen liked GPRA—the Government Performance and Results Act.

We got no nibbles on that approach, so we started visiting people who cared about small business. By then we had partnered with the National Small Business Association,

whose CEO, Todd McCracken, believed that clearer language from government would benefit his constituency. One of the Center's board members, John Spotila, had been general counsel of the Small Business Administration under President Clinton, and a lot of folks he had known back then were working on the Hill in various offices that had an interest in small-business issues. Eventually, one of those old acquaintances recommended that we talk with a Democratic freshman from Iowa, Bruce Braley. We were told that, as a freshman, Braley would be looking for issues he might find to be worthy.

Fortunately for us, Representative Braley was indeed interested in the issue. As a former trial attorney, he had been subjected to convoluted legalese in his daily work and thought that confusing language from the government did a disservice to the American people. Since he had a deep personal commitment to the issue, Braley was an ideal sponsor.

To support Representative Braley's effort, we needed to find other organizations—preferably ones that were a lot bigger than the Center—to join the cause. We'd already gotten the National Small Business Association. Over the next few months, we added Consumers Union, Disabled American Veterans, American College of Surgeons, and several other health- and writing-related organizations. Most importantly, we added AARP.

Getting organizational support works much like getting the support of someone in Congress. You call people. Ideally, you call someone you already know. Failing that, you call someone who knows someone you know—in our case, a Center board member from the Veterans Benefits Administration introduced us to an acquaintance at the Disabled American Veterans who just happened to be the executive director. Another board member, then at the Food and Drug Administration, knew people in the health world. And we knew several folks at AARP

who were longtime advocates of plain language, especially Nancy Smith, then vice president of AARP Financial. She had been the director of consumer education at the Securities and Exchange Commission under Arthur Levitt—a strong supporter of plain language—in the Clinton years.

In some cases, we knew no one. I made a lot of cold calls—not my favorite activity. Some people didn't want to listen. Common Cause, for example, turned up their collective noses at the idea. Consumers Union, on the other hand, immediately saw the importance of the effort to their own mission.

Having lined up significant organizational support, Representative Braley felt comfortable introducing a bill early in 2007. Upon introducing the bill, Braley said, "Writing government documents in plain language will increase government accountability and will save Americans time and money. Plain, straightforward language makes it easy for taxpayers to understand what the federal government is doing and what services it's offering."¹

In 2008, we landed our Senate sponsor, Daniel Akaka of Hawaii, who introduced a companion bill in the U.S. Senate. While the bill passed the House by a healthy margin—376 to 1—it failed to reach the Senate floor because Robert Bennett of Utah placed a hold on it. We had several visits with Senate staff, but we never could figure out exactly why Bennett held the bill. (He probably would not have objected if it had applied only to English-language documents.) At any rate, despite our best efforts, including help from two law professors, one each at Brigham Young University and the University of Utah, we failed to move Bennett to lift his hold. Holds don't happen in the House; it's a peculiarity of the "gentlemanly" tradition in the Senate that holds are respected. Even if a bill would likely pass on the Senate floor, when there's a hold, it doesn't move. So the 110th Congress closed with no plain-language act in place.

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Early in the 111th Congress (which started in January 2009), both sponsors from the previous Congress reintroduced their bills. Again, the House version passed, 386 to 33, and again the Senate version was held by Bennett. Fortunately for plain language in the government, Bennett was up for re-election in 2010. And when his party did not select him to run because his politics did not pass muster in the extremely conservative political climate of the day, he became a lame duck. Then Braley did the unconventional: he crossed the Mall and met with Bennett. And after Braley made some relatively minor changes in the bill, Bennett lifted his hold. Once the bill came to the Senate floor, it passed unanimously. It was signed a few days later by President Obama.²

The Plain Writing Act defines “plain writing” to mean writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and the intended audience. It covers both paper and electronic information. Although it does not apply to federal regulations (there were

political obstacles), it applies to any other document that:

- (1) is necessary for obtaining any federal-government benefit or service or for filing taxes;
- (2) provides information about any federal-government benefit or service; or
- (3) explains to the public how to comply with a requirement that the federal government administers or enforces.

To achieve its purpose, the Act sets out a series of steps that each agency must take. It also requires the Office of Management and Budget to develop and issue guidance on implementing the Act. In a rather unusual move, OMB designated the U.S. federal group that advocates for plain language³—the group that originally created the Center for Plain Language—rather than an established agency as the interagency working group to help with developing guidance. And that guidance was issued in April 2011.⁴

What a great victory! After a four-year campaign (short as these things go), we had

a law supporting plain language in the federal government. We achieved that with a lot of help from people who believed in the importance of clear government communication, but without having any paid lobbyists. At a reception celebrating the Act’s passage, a high-level House staffer told us that we had been very effective in our dealings with Congress because we knew what we were talking about, we obviously cared deeply about the issue, we were flexible, and we kept coming back time and again.

But we all know this is just the beginning. Federal agency writers are not going to be converted to plain language overnight. Indeed, most of them don’t have the skill to write in plain language, so the government faces a massive training task—but one that will repay itself many times over. Some agencies will do well on their own; others will have to be watched, helped, and prodded. That’s the next job for the Center for Plain Language, but it’s also a job for everyone subjected to poor government communications. Every agency must have a webpage, linked from its homepage, where you can comment on its plain-language efforts. You can find a list at <http://www.plainlanguage.gov/pLaw/fedGovt/index.cfm>. So next time you get some annoying, poorly written, convoluted document from the government, send it back and tell them it doesn’t comply with the Plain Writing Act of 2010. ■

Last Month’s Contest

Last month, I invited you to identify the ambiguity in the sentence below, fix it, and explain your assumption. I promised a copy of *Lifting the Fog of Legalese* to the first two persons who submitted an “A” revision:

“Highway...includes...bridges, sidewalks, trailways, crosswalks, and culverts on the highway.”

Some of you may have recognized that the sentence is from MCL 691.1401(e). In fact, it’s the subject of litigation that’s pending (as I write this) in the Supreme Court.

Of course, the ambiguity is caused by the trailing modifier *on the highway*. Does it modify just *culverts* or all the items in the series?

The first winner is David Jarvis, a paralegal at Miller Canfield, who submitted this revision:

“Highway...includes...the following if located on or under the surface of the highway: bridges, sidewalks, trailways, crosswalks, and culverts.”

The second winner is Judge William Richards of the 46th District Court. He assumed a different interpretation and fixed the ambiguity with a vertical list using bullets (a much-neglected technique in legal writing and drafting).

“The term ‘highway’ includes all the following:

- bridges;
- sidewalks;
- trailways;
- crosswalks; and
- culverts on the highway.”

Again, next month’s column will take another look at this example. In the meantime, notice the prepositional mess in the original. Culverts aren’t “on” the highway, are they? Neither are bridges. Neither are sidewalks, really.

A final thought, or opinion: in cases like this, the doctrine of the last antecedent should play a small part, if any.

—JK

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FOOTNOTES

1. 154 Cong Rec H2238 (daily ed April 14, 2008) (Statement of Rep Braley) <<http://www.gpo.gov/fdsys/pkg/CREC-2008-04-14/pdf/CREC-2008-04-14-pt1-PgH2237.pdf>>. All websites cited in this article were accessed September 13, 2011.
2. Pub L No 111-274, 124 Stat 2861 (October 13, 2010) <<http://www.gpo.gov/fdsys/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf>>.
3. <<http://www.plainlanguage.gov>>.
4. <<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-15.pdf>>.