

PLAIN LANGUAGE REGULATIONS: HELPING THE AMERICAN PUBLIC UNDERSTAND THE RULES

HEARING

BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS
OF THE

COMMITTEE ON
GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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WEDNESDAY, MARCH 1, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2247, Rayburn House Office Building, Hon. Candice Miller (chairman of the subcommittee) presiding.

Present: Representatives Miller and Lynch.

Staff present: Ed Schrock, staff director; Rosario Palmieri, deputy staff director; Kristina Husar and Joe Santiago, professional staff members; Alex Cooper, clerk; Krista Boyd, minority counsel; and Teresa Coufal, minority assistant clerk.

Mrs. MILLER OF MICHIGAN. I would like to call the meeting to order. Good morning, everyone. We certainly appreciate your attendance here today.

The American public is often frustrated by regulations because they don't understand, often times, what these rules actually mean. Citizens are so confused by the "language of the bureaucrats" that they question whether or not a regulation applies to them. Americans want regulators to write the rules in simple English—easy to read and easy to understand and easy to follow, and, therefore, easy for them to actually comply with the rules.

For centuries actually, government officials have proposed that rules be written in plain language. In fact, James Madison wrote in the Federalist papers that "it will be of little avail to the people if the laws be so voluminous that they cannot be read or so incoherent that they cannot be understood."

If the Founding Fathers read the Code of Federal Regulations today, they would be simply amazed at the complexity of the regulations put forth by our government.

One agency drafted a rule that said—this was an example we pulled out here. This is what this rule said: "When the process of freeing a vehicle that has been stuck results in ruts or holes, the operator will fill the rut or hole created by such activity before removing the vehicle from the immediate area." I think anyone seeing this has to read it several times before understanding what the requirement actually said.

Plain language techniques are used to clarify requirements and remove clutter, so stating this example plainly, the rule should

have read: "If you make a hole while freeing a stuck vehicle, you must fill the hole before you drive away."

The use of plain language in crafting regulations is a common sense approach to saving the Federal Government and the American people time, effort, and money. By writing the regulation in plain language, everyone, from the small business owner who must comply with the regulation to the agency that enforces it, will know the regulation's purpose, requirements, and consequences.

Every year, Federal agencies write and enforce thousands of rules that range from allowing boat races on various waterways to registering food facilities to prevent bioterrorism. However, the average American citizen or small business owner affected by these rules often times does not fully understand their impact and their compliance requirements. Many regulations use ambiguous terms, complex sentences, and jargon that only a few understand.

You shouldn't have to be a lawyer to figure out if you qualify for a small business loan. Citizens can find themselves facing sanctions and penalties because they fail to understand the requirements within the rules. They want to comply with the law, but the complexity of many rules inherently causes a failure to comply.

And I wanted to give one other example, as well, if you can bear with me. Before using plain language, a Department of Commerce rule said: "After notification of the NMFS," which is the National Marine Fisheries Service, "this final rule requires all CA/ORDGN vessel operators to have attended one skipper education workshop after all workshops have been convened by NMFS in September 1997. CA/ORDG and vessel operators are required to attend Skipper Education Workshops at annual intervals thereafter unless that requirement is waived by the NMFS. NMFS will provide sufficient advance notice to vessel operators by mail prior to convening workshops."

After they actually revised the rule trying to use plain language techniques, any vessel operator would know that the requirements of that rule were, "after notification from NMFS, vessel operators must attend a Skipper Education Workshop before beginning to fish each fishing season."

Congress knows that American citizens and businesses still struggle to understand the many rules that they need to follow, which are confusing and unreadable.

The need for readable regulations continues. Therefore, I am pleased to announce that Mr. Lynch, who is my Ranking Member and should be here shortly, and I have introduced a piece of bipartisan regulation—excuse me—legislation, H.R. 4809, which is the Regulation and Plain Language Act of 2006.

This will require agencies to incorporate the concepts of plain language into their rulemaking process. By requiring agencies to use plain language, the public will be able to participate in the regulatory process in a more meaningful and substantive manner.

I am eager to have a dialog about how regulators can incorporate these concepts in drafting regulations for the American public. As one of today's witnesses wrote in 1996, "using plain language 1, streamlines procedures and paperwork, and 2, reduces confusion, complaints, and claims and improves customer satisfaction."

And I certainly look forward to the testimony of all our witnesses today.
[The prepared statement of Hon. Candice S. Miller follows:]

**Statement of Chairman Candice S. Miller
Chairman
Subcommittee on Regulatory Affairs
Committee on Government Reform
Washington, DC
March 1, 2006**

Good morning, ladies and gentlemen.

The American public is often frustrated by regulations because they don't understand what the rules mean. Citizens are so confused by the "language of the bureaucrats" that they question whether or not a regulation applies to them. Americans want regulators to write the rules in simple English—easy to read and understand, easy to follow and, therefore, easy for them to comply with the rules.

For centuries, government officials proposed that rules be written in plain language. In fact, James Madison wrote in the Federalist Papers that, "It will be of little avail to the people...if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood."

If the Founding Fathers read the Code of Federal Regulations today, they would be simply amazed at the complexity of the regulations put forth by our government.

One agency drafted a rule that said—"When the process of freeing a vehicle that has been stuck results in ruts or holes, the operator will fill the rut or hole created by such activity before removing the vehicle from the immediate area." Anyone seeing this has to read it several times before understanding what the requirement was.

Plain language techniques are used to clarify requirements and remove clutter. Stating this example plainly, the rule should read—"If you make a hole while freeing a stuck vehicle, you must fill the hole before you drive away."

The use of plain language in crafting regulations is a common sense approach to saving the federal government and the American public time, effort, and money. By writing a regulation in plain language, everyone—from the small business owner who must comply with the regulation to the agency that enforces it—will know the regulation's purpose, requirements, and consequences.

Every year, federal agencies write and enforce thousands of rules that range from allowing boat races on various waterways to registering food facilities to prevent bioterrorism. However, the average American citizen or small business owner affected by these rules oftentimes does not fully understand their impact and their compliance requirements. Many regulations use ambiguous terms, complex sentences, and jargon, that only a few understand.

You shouldn't need a lawyer to figure out if you qualify for a small business loan. Citizens find themselves facing sanctions and penalties because they fail to understand the requirements within the rules. They want to comply with the law, but the complexity of many rules inherently causes a failure to comply.

I have to ask you to bear with me here. Before using plain language, a Department of Commerce rule said, "After notification of NMFS, this final rule requires all CA/OR DGN vessel operators to have attended one Skipper Education Workshop after all workshops have been convened by NMFS in September 1997. CA/OR DGN vessel operators are required to attend Skipper Education Workshops at annual intervals thereafter, unless that requirement is waived by NMFS. NMFS will provide sufficient advance notice to vessel operators by mail prior to convening workshops."

After revising the rule using plain language techniques, any vessel operator would know the requirements of that rule—"After notification from NMFS, vessel operators must attend a skipper education workshop before beginning to fish each fishing season."

Congress knows that American citizens and businesses still struggle to understand the many rules that they need to follow which are confusing and unreadable. The need for readable regulations continues. Therefore, I am pleased to announce that Mr. Lynch and I have introduced legislation—H.R. 4809, the "Regulation in Plain Act of 2006"—that will require agencies to incorporate the concepts of plain language into their rule making process. By requiring agencies to use plain language, the public will be able to participate in the regulatory process in a more meaningful and substantive manner.

I am eager to have a dialogue about how regulators can incorporate these concepts in drafting regulations for the American public. As one of today's witnesses wrote in 1996, using plain language (1) streamlines procedures and paperwork, and (2) reduces confusion, complaints, and claims, and improves customer satisfaction.

I look forward to the testimony of all of our witnesses today. I'll now recognize Mr. Lynch for his opening statement.

Mrs. MILLER OF MICHIGAN. Before we start our witnesses, their testimony, let me just remind you of the light system that we have. Do they have their lights there? Oh, you see them here?

These lights, when they light up, you will see—you have 5 minutes for your testimony, but we have a little bit of time here, so if you go over a little bit, I am not going to hold you to that. But when you see the yellow light, you will know that you have 1 minute remaining on that, so—and as you know, we do have a joint session of the House at 11 o'clock, so we have that time constraint as well.

And because we are members of the Government Reform Committee, we have a policy that we swear in all of our witnesses before testimony is given.

So if you could all rise and raise your right hand.

[Witnesses sworn.]

Mrs. MILLER OF MICHIGAN. Thank you. I appreciate that.

Our first witness is Mr. Joseph Kimble, and the staff had written me a very nice intro, but I think I am just going to read it from the back of the book that you just gave me here.

Joseph Kimble has taught legal writing for more than 20 years at Thomas Cooley Law School, and we appreciate you coming from Michigan. That is a fantastic law school.

Mr. KIMBLE. Thank you.

Mrs. MILLER OF MICHIGAN. He has also lectured throughout the United States and abroad. He is the editor-in-chief of the Scribes Journal of Legal Writing; the long-time editor of the Plain Language column in the Michigan Bar Journal; the president of the International Organization, Clarity; and the drafting consultant of all Federal Court rules.

He recently led the work of redrafting the Federal Rules of Civil Procedure. He lives in Okemos, MI, where he spends time listening to blues and playing a little bit of basketball.

So we welcome you, Mr. Kimble, to our hearing today. We look forward to your testimony, and actually before you start, as Ranking Member Lynch has joined us now, if you would like to give your opening statement before we begin, you are recognized.

Mr. LYNCH. Thank you, Madam Chair. I appreciate it.

One thing I find here in Washington is they schedule everything at the same time, so you have to constantly go back and forth.

I am delighted to be here and, Madam Chair, I just want to thank you for your great work on this issue, and for holding this hearing.

I have long remarks. I won't give them. But I think Governor Al Smith of New York year ago in talking about how convoluted the regulatory process was in New York at that time said it best. He said, "in order for us to guarantee the citizens the liberties, the freedoms, the rights that they deserve through their government, they must have a government that they can understand." And I think that is the object of this bill, and I think that is the object of our efforts here in a general sense of this committee, and I am delighted to be working with Chairman Miller on this, so—and I certainly welcome your remarks. Thank you.

Mrs. MILLER OF MICHIGAN. Thank you. Professor Kimble.

**STATEMENT OF JOSEPH KIMBLE, LAW PROFESSOR, THOMAS
COOLEY SCHOOL OF LAW**

Mr. KIMBLE. Thank you. Thank you, Madam Chair. Welcome from Michigan and from Thomas Cooley Law School. And thank you to Mr. Lynch for this opportunity. I am delighted to have the chance to testify about this very important plain-language bill.

I would like to talk mainly about two things: the benefits that this bill will produce, and some of the bad opposing arguments that you are likely to hear.

First, the benefits. I have spent considerable time collecting empirical studies about the benefits of plain language. I have collected dozens of them. And they appear in the two articles that I have included in the record, and I think you have little blue off-prints up there—"Writing for Dollars, Writing to Please," one article and the other is "Answering the Critics of Plain Language." I might mention that I have even since I have written those two articles, I have collected more studies and I will be merging them into a book later this year, so stay tuned.

Now, for the most part, I will stand on the evidence of those two articles. But let me give you just a couple of examples.

In "Writing for Dollars," on page 9, for instance, you will find a study done by the Department of Veterans Affairs. They revised one letter—just one form letter, mind you—and tested the results. In 1 year, in one regional VA call center, the number of calls received dropped from about 1,100 in 1 year to about 200.

Now, this was one paper at one office of one government agency. Multiply that one paper by every form, letter, notice, flyer, bulletin, booklet, manual, and other public document sent out in huge numbers by every office, division, department, and agency of the government. I mean it is incredible.

Plain language may not be a sexy subject, but I believe that the cost of poor communication is the great hidden waste in government—untold millions and billions.

And it is not just the cost to government, as you have mentioned. Think of the ill-will created by unclear public information, the confusion and anger and frustration that it causes people who have to make phone calls, who can't fill out a form, who don't understand their rights or benefits, who make mistakes in trying to follow procedures and so on.

Let me highlight a couple of the other studies in "Writing for Dollars." For instance, the one on page 12, involving U.S. Naval officers. Officers who read a plain-language version of a memo, besides having significantly higher comprehension, took 17 percent to 23 percent less time to read it. The researchers figured that if all Naval personnel routinely read plain documents, the time saved would amount to \$250 to \$350 million a year—just in time saved.

Or how about the study of Army officers on page 28? The researchers found that readers of a plain-language memo were twice as likely to comply with it on the same day that they received it. And, again, one study after another summarized in those two articles.

In short, there is now compelling evidence that plain language saves money—enormous amounts of money—and pleases readers. It is much more likely to be read and understood and heeded in

much less time. I think it could even help to restore faith in public institutions.

So why shouldn't we do this? Don't readers of public documents have the right to understand the rights and requirements that affect their lives from cradle to grave? And that leads to my second topic—opposing arguments, bad opposing arguments that you may likely hear.

You will hear, for instance, that you can't write plainly and at the same time be precise and accurate. Don't believe it. It is a great myth. And my articles I think have the empirical evidence. In fact, the evidence is just the opposite. Plain language is more precise than traditional legal and official style. I hesitate to say legalese and officialese, but—because plain language lays bare all of the ambiguities and inconsistencies and uncertainties and mistakes that traditional style, with all its excesses, tends to cover up. It happens every time you peel back the layers, as anyone who has been involved in a plain-language project can tell you. It happened repeatedly as we worked through the Federal Rules of Civil Procedure.

You will also hear that plain language is beneath the dignity of professional writers. Thus, we get various disparaging descriptions—baby talk, dumbing down, unsophisticated, anti-intellectual, ugly and drab. Don't believe it.

In fact, once again, just the reverse is true. Any second-rate writer can make things more complicated. Only the best minds and the best writers can cut through. It takes skill and hard work to write in plain language. And besides, have you ever heard anyone complain that a public document is too clear, too simple? Remember what Walt Whitman said, "the art of art, the glory of expression, is simplicity. Noting is better than simplicity."

Far from being beneath the dignity of good writers, plain English is—or should be—the American idiom.

Next, you may hear that government information sometimes deals with complex subjects and needs to use technical terms. That is true, but why compound the difficulty with poor writing? As for technical terms, of course some writing needs to use technical terms, but they are a small part, a tiny part of most documents. And even then, you can usually explain technical terms in a way that most readers will understand.

Finally, you will hear the argument that this bill will require some up-front costs to train writers. I suppose that is true. But why shouldn't our public writers acquire the skills needed to communicate clearly with the public. That is their job. And there are resources available at reasonable rates.

The Federal interagency group PLAIN offers basic training for free. That is pretty reasonable for government employees, and, of course, there are lots of books and articles out there on how to write plainly. And whatever the up-front costs might be, I hope I have made the case that they will pale in comparison with benefits.

Just two points in conclusion. If you would like to see the difference between overcomplicated writing and plain language, you have already given—Madam Chair have already given a couple of examples. If you would like to see another familiar example, check out pages 34 to 37 of "Writing for Dollars." I rewrote the exit-seat

card that you will find in the exit row of most airplanes. It is a hoot. And as a matter of fact, we had some slides ready to show you the before and after—

Mrs. MILLER OF MICHIGAN. They are in the packet.

Mr. KIMBLE [continuing]. But the technology failed us, but they are in the package, and you will see some slides for this exit seat card. And, of course, it goes—the original goes for about what?

Mrs. MILLER OF MICHIGAN. Six pages.

Mr. KIMBLE. Six pages, seven slides. You know, the person lacks sufficient mobility, strength, or dexterity in both arms and legs and hands to reach upwards, sideways, and down where to the location of the emergency exit, and exit slide operating mechanisms, blah, blah, blah. It goes on like that for about 6 pages, and you will see at the end my re-write, which is about half a page. And that card is copied verbatim from the Code of Federal Regulations.

The American public needs and deserves clear information from its government. They deserve government writers who have the will and the skill to accomplish that. And this bill can help to make it happen. We need this bill, or it won't happen. The bill may seem like a small thing, but it has tremendous implications in all the ways that I have tried to describe. Thank you.

[The prepared statement of Mr. Kimble follows:]

Testimony Before the House Subcommittee on
Regulatory Affairs: Plain-Language Bill

Joseph Kimble

March 1, 2006

Madam Chair, welcome from Michigan and Thomas Cooley Law School. I'm delighted to have the chance to testify about this important plain-language bill.

Just a word about my background. I have taught legal writing and drafting for 21 years at Thomas Cooley. I'm the editor in chief of *The Scribes Journal of Legal Writing*. I have been the editor of the "Plain Language" column in the *Michigan Bar Journal* for 18 years. I'm the president of the international organization Clarity and a founding director of the new Center for Plain Language, here in D.C. I have worked on plain-language jury instructions for the Sixth Circuit and for the State Bar of Michigan. Most recently, I led the work of redrafting the Federal Rules of Civil Procedure. So I think I have some experience with plain language.

I'd like to talk mainly about two things: the benefits that this Bill will produce, and some of the bad opposing arguments that you are likely to hear.

First, the benefits. I have spent a considerable time collecting empirical studies about the benefits of plain language. I have collected dozens of them. They appear in the two articles that I included in the record: *Writing for Dollars*, *Writing to Please* and *Answering the Critics of Plain Language*. I might mention that I have since collected more studies and will be merging everything into a book later this year.

Now, for the most part, I'll stand on the evidence of those two articles. But let me give you a couple of examples. In *Writing for Dollars*, on page 9, you'll find a study done by the Department of Veterans Affairs. They revised one letter — just one form letter, mind you — and tested the results. In one year, in one regional VA call center, the number of calls received dropped from about 1,100 to about 200. This was one paper at one office of one government agency. Multiply that one paper by every form, letter, notice, flyer, bulletin, booklet, manual, and other public document sent out in huge numbers by every office, division,

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department, and agency of the government. It's incredible. Plain language may not be a sexy subject, but I believe that the cost of poor communication is the great hidden waste in government. Untold millions and billions.

And it's not just the cost to government. Think of the ill-will created by unclear public information — the confusion and anger and frustration that it causes people who have to make phone calls, who can't fill out a form, who don't understand their rights or benefits, who make mistakes in trying to follow procedures.

Let me highlight a couple of the other studies — for instance, the one on page 12, involving U.S. Naval officers. Officers who read a plain-language version of a memo, besides having significantly higher comprehension, took 17% to 23% less time to read it. The researchers figured that if all Navy personnel routinely read plain documents, the time saved would amount to \$250 to \$350 million a year.

Or how about the study of Army officers on page 28. The researchers found that readers of a plain-language memo were twice as likely to comply with it on the same day they received it.

In short: there is now compelling evidence that plain language saves money — enormous amounts of money — and pleases readers. It is much more likely to be read and understood and heeded — in much less time. I think it could even help to restore faith in public institutions.

So why shouldn't we do this? Don't readers of public documents have the right to understand the rights and requirements that affect their lives from cradle to grave? That leads to my second topic — opposing arguments.

You'll hear that you can't write plainly and at the same time be precise and accurate. Don't believe it. It's a great myth. And my articles have the empirical evidence. In fact, the evidence is just the opposite. Plain language is *more* precise than traditional legal and official language — I hesitate to say legalese and officialese — because plain language lays bare all the ambiguities, inconsistencies, uncertainties, and mistakes that traditional style, with all its excesses, tends to cover up. It happens every time you peel back the layers, as anyone who has been involved in a plain-language project can tell you. It happened repeatedly as we worked through the Federal Rules of Civil Procedure.

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again, just the reverse is true. Any second-rate writer can make things more complicated; only the best minds and the best writers can cut through. It takes skill and hard work to write in plain language. And besides, have you ever heard anyone complain that a public document is too clear? Too simple? Remember what Walt Whitman said: “The art of art, the glory of expression, is simplicity. Nothing is better than simplicity.” Far from being beneath the dignity of good writers, plain English is — or should be — the American idiom.

Next, you may hear that government information sometimes deals with complex subjects and needs to use technical terms. That’s true, but why compound the difficulty with poor writing? As for technical terms, of course some writing needs to use technical terms, but they are a tiny part of most documents. And even then, you can usually explain technical terms in a way that most readers will understand.

Finally, you’ll hear the argument that this Bill will require some up-front costs to train writers. I suppose that’s true. But why shouldn’t our public writers acquire the skills needed to communicate clearly with the public. That’s their job. And there are resources available at reasonable rates. The federal interagency group PLAIN offers basic training for free — more than reasonable — for government employees. And whatever the up-front costs might be, I hope I’ve made the case that they will pale in comparison with the benefits.

Two points in conclusion. If you’d like to see the difference between overcomplicated writing and plain language, check out pages 34–37 of *Writing for Dollars*. I rewrote the exit-seat card that you’ll find in the exit row of most airplanes. It’s a hoot. And that card is copied verbatim from the Code of Federal Regulations.

The American public needs and deserves clear information from its government. They deserve government writers who have the will and the skill to accomplish that. And this Bill can help to make it happen. We need this Bill — or it won’t happen. The Bill may seem like a small thing, but it has tremendous implications in all the ways that I have tried to describe.

Mrs. MILLER OF MICHIGAN. Thank you very much. Our next witness this morning is Dr. Annetta Cheek. Dr. Cheek is the vice chair of the Center for Plain Language, and is the founder and chair of the U.S. Plain Language Action and Information Network.

Dr. Cheek is an anthropologist by training, earning a Ph.D. from the University of Arizona in 1974. Most of her Federal career has been in writing and implementing regulations. She became interested in the plain language movement and has worked to spread the use of plain language across the government.

Dr. Cheek, the floor is yours.

**STATEMENT OF DR. ANNETTA CHEEK, VICE-CHAIR, CENTER
FOR PLAIN LANGUAGE**

Ms. CHEEK. Thank you very much. It is an honor to be here to support this bill.

Poor writing isn't restricted to the Federal Government, but I think the Government has a high responsibility to communicate clearly with the American public.

I am stunned at a lot of the material that I read, particularly in regulations, and I will do a few readings myself, if you will bear with me. Here is a great one from the Department of Justice, which is a primary source for poorly written regulations. "The amount of expenses reimbursed to a claimant under this subpart shall be reduced by any amount that the claimant receives from a collateral source. In cases in which a claimant receives reimbursement under this subpart 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 subpart."

You obviously would need your lawyer to help you understand that. We think it says, "if you get a payment from another source, we will reduce our payment by that amount to you, by the amount you get. If you already got payments from us and from another source for the same expenses, you must pay us back."

There are now over 200,000 pages in the Code of Federal Regulations. You should take an opportunity sometime to look at them all together in a library. It is a huge volume of poorly written material. And the big problem with them is that agencies and the private sector use them as the model for other documents. Joe's example of the exit card is prime example. The airlines are not required to use exactly the same language in the regulation, but they do. And this is multiplied hundreds of thousands of times across the country.

I think there are two reasons for this. First, it is easier. Writing clearly is hard work. It is not simple. The product looks simple, but the process is not simple, and part of the problem is you have to think clearly before you can write clearly.

Second, a lot of people, particularly in the private sector, think it is safer to just copy the language of the regulation. If they take the trouble and time and effort to rewrite it, they also believe that they may be running the risk of being accused of not complying, so it is just safer to go ahead and copy that lousy language, even

if the implication is that people are not going to understand, and, therefore, they may not be getting the job done.

Let us take a quick look at a few more examples, because I think the best way to bring this message home is to look at some examples, and again we would have had slides, but fortunately, I made copies, and I will skip the first two, because they are the longest ones, and I will skip one of the others, because you already read it for me.

Here is one from the Bureau of Indian Affairs, and this one and the one you read, which was a Park Service reg, the agency has redone the reg into plain language.

“If the location of the land is in a State other than the State in which the tribe’s reservation is located, the tribe’s justification of anticipated benefits from the acquisition will be subject to greater scrutiny.”

And they rewrote it to say: “If the land is in a different state than the tribe’s reservation, we will scrutinize your justification of anticipated benefits more thoroughly.”

And then my second one was the stuck vehicle, which was the Park Service reg. Then I have two more short examples.

These, unfortunately, are Department of Justice regulations that they have not rewritten, and I have taken a stab at doing it myself.

“When a filing is prescribed to be filed with more than one of the foregoing, the filing shall be deemed filed as of the day the last one actually receives the same.”

We think it means “we consider a filing to have occurred when all those who must receive the filing have received it.”

And finally, “no payment shall be made to or on behalf of more than one individual on the basis of being the public safety officer’s parent as his mother or on that basis as his father.”

Again, we think this means “we will pay only one person claiming to be the public safety officer’s father and only one claiming to be the mother.” This was about benefits going to the parents of deceased policemen and firemen and so on.

But that one is still on the books. These few examples show what is possible when we take the time to write clear regulation, but I would challenge you to find even 5,000 pages out of those 200,000 that are written in a way that the intended reader can understand them.

If we get this bill, the benefits to the American people will be incalculable, and the savings for the Federal Government will be huge.

A veteran who needs medical help will be able to understand what she needs to do. A small business owner will be able to claim tax benefits and other considerations to which he is entitled. A school wanting to comply with the No Child Left Behind Act will be able to figure out what to do without reading the regulation five times. A senior citizen or hospital or pharmacy will be able to understand immediately what Medicare or drug benefits apply.

There are many Federal employees who want to bring the benefits of plain language to the American public. By passing a plain language bill, you will give them a powerful tool and more importantly you will improve the lives of millions of Americans.

Thank you very much.

[The prepared statement of Ms. Cheek follows:]

**Testimony Before the House Subcommittee on
Regulatory Affairs: Plain-Language Bill**

Dr. Annetta L. Cheek

March 1, 2006

Madame Chair, I'm here today representing the Center for Plain Language. The Center is a private-sector nonprofit organization dedicated to promoting clearer communication in both the public and private sectors. I'm delighted to have this chance to testify about this important plain-language bill.

I have been involved in plain language issues since the mid 1990s. I am the vice-chair of the Center for Plain Language, and the Chair of a group of federal employees, called PLAIN, dedicated to getting their agencies to write better. I spent over four years at Vice President Gore's National Performance Review working to spread plain language principles throughout the government. I have worked on regulations for 20 years in four different federal agencies. I currently work at the Federal Aviation Administration, and spend all my time on plain language issues.

I believe there is a crisis of communication in America today. Every time I read a product guarantee, credit card agreement, computer or camera manual, Medicare statement, phone bill, federal regulation, I am stunned at how much time I have to spend trying to understand this material. And I know that I'm lucky—if I work at it, I can understand. Considering literacy issues in this country, I'm sure many can't.

While poor writing isn't restricted to the federal government, I believe the government has a higher responsibility to communicate clearly with citizens. American taxpayers bear the cost of the government, and they deserve to understand what the government is doing. When I read text like the following, I am stunned that we would expect citizens to understand our language:

The amount of expenses reimbursed to a claimant under this subpart shall be reduced by any amount that the claimant receives from a collateral source. In cases in which a claimant receives reimbursement under this

subpart 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 subpart.

That's from a regulation of the Department of Justice. And what does it mean? Simply that

1. If you get a payment from another source, we will reduce our payment by the amount you get.
2. If you already got payments from us and from another source for the same expenses, you must pay back what we paid you.

Besides being expensive, time-consuming, and annoying, often our complex government language can impact health and safety. Today, protecting health and safety are two of the most important missions of government, and if we don't communicate clearly about these issues we fail in our duty to the public. Consider this example from a FEMA website giving citizens advice about dealing with cold weather hazards:

Winter Preparedness Safety Tips: Timely preparation, including structural and non-structural mitigation measures to avoid the impacts of severe winter weather, can avert heavy personal, business and government expenditures. Experts agree that the following measures can be effective in dealing with the challenges of severe winter weather.

To FEMA's credit, they later revised this page to read:

Winter Preparedness Safety Tips
Severe winter weather can be extremely dangerous. Consider these safety tips to protect your property and yourself.

I could give you thousands—indeed hundreds of thousands—of similar examples from the government. Regulations in particular are a fertile source of examples of complex and obscure writing. Regulations could be said to be the language of the federal government. Regulations tell Americans how to get benefits, how to meet safety standards, and how to pay their taxes.

There are now over 200,000 pages in the Code of Federal Regulations. Agencies and the private sector use them as models when drafting related documents. Their impact flows down to everyone affected by regulations. Consider Professor Kimble's example of the airline exit cards. The language on the card is taken directly from a federal regulation. Airlines don't have to use the exact regulatory language, but more often than not they do. And that's what usually happens in both the public and private sector when someone writes a document carrying out a regulatory requirement. There are two reasons for this.

First, it's easier. Writing clearly is hard work. Most people don't bother rewriting federal regulatory language into something easy to understand—it's too much work.

Second, and more importantly, they don't want to risk being criticized or penalized for failing to comply with some requirement. The safest way to make sure they comply is to just quote the regulation. No one considers that this may make it hard for the reader to understand.

Unclear or unreadable regulations make work for the reader and for the agency that issues them. Worse yet, the reader who doesn't understand may comply incorrectly or simply not comply at all. Overall, writing regulations in a clear and easily readable style would result in a huge savings of time and effort for the federal government and for citizens affected by them and by the documents modeled after them.

Since at least the late 1970s, there have been efforts to move the government toward a better model of writing. And regulations have been the main focus of these efforts. The group of federal employees working on plain language issues—PLAIN--has met at least monthly for 10 years. PLAIN members are working tirelessly to promote better communication within their agencies and to provide help to other federal employees interested in the initiative. The group has provided free training to introduce plain language to over 5000 federal and contract employees.

Despite these efforts, most federal regulations are still complex, bureaucratic, and difficult to understand, even in those agencies making an effort to communicate more clearly. The agencies find it easier to write in the usual bureaucratic style than to make the extra effort to communicate effectively. They will not take on the task of cleaning up their act and

writing their regulations in a way that allows the intended reader to understand them unless you establish a legal obligation for them to do so.

Let's take a quick look at a few final examples to show what's possible in writing federal regulations. In the first four, the agency itself rewrote the regulation. The last two are my suggested revisions.

Regulation 1

Sec. 11.55 Reconsideration of a denial or grant of exemption.

... if a petition for exemption is denied, the petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 30 days after the petitioner is notified of the denial of the exemption. A petition for reconsideration under this section must be based on the existence of one or more of the following: (1) A finding of a material fact that is erroneous.(2) A necessary legal conclusion that is without governing precedent or is a departure from or contrary to law, FAA rules, or precedent.(3) An additional fact relevant to the decision that was not presented in the initial petition for exemption. In order for a petition under paragraph (1) or (3) of this section to be based on this ground, the petition for reconsideration must state the reason the additional fact was not presented in the initial petition.

11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Yes, you may petition FAA to reconsider your petition denial. You must submit your request to the address to which you sent your original petition, and FAA must receive it within 60 days after we issued the denial. For us to accept your petition, show the following:

- (a) That you have a significant additional fact and why you did not present it in your original petition;
- (b) That we made an important factual error in our denial of your original petition; or
- (c) That we did not correctly interpret a law, regulation, or precedent.

FAA regulation

Regulation 2

Sec. 3502.1 Who may hold leases and permits.

(a) Leases and permits may be held only by citizens of the United States, associations (including partnerships and trusts) of such citizens, corporations organized under the laws of the United States or of any State or territory thereof. Citizens of a foreign country may only hold

interest in leases or permits through stock ownership, stock holding or stock control.

(b) Citizens of a foreign country may only hold interests in leases and permits for leasable minerals if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. A list of those countries denying similar or like privileges is available from any Bureau office.

(c) A mineral lease or permit shall not be issued to a minor. Leases or permits may be issued to a legal guardian or trustee of a minor.

3502.10 Who may hold permits and leases?

You may hold an interest in permits or leases under this part only if you meet the requirements of 30 U.S.C. 184. You must be:

- (a) An adult citizen of the United States;
- (b) An association (including partnerships and trusts) of such citizens;
- (c) A corporation organized under the laws of the United States or of any U.S. State or territory;
- (d) A legal guardian of a minor United States citizen;
- (e) A trustee of a trust where the beneficiary is a minor but the trustee is qualified to hold a permit or lease; or
- (f) any other person authorized to hold a lease under 30 U.S.C. 184.

BLM regulation

Regulation 3

If the location of the land is in a state other than the state in which the tribe's reservation is located, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny.

If the land is in a different State than the tribe's reservation, we will scrutinize the tribe's justification of anticipated benefits more thoroughly.

Bureau of Indian Affairs regulation

Regulation 4

When the process of freeing a vehicle that has been stuck results in ruts or holes, the operator will fill the rut or hole created by such activity before removing the vehicle from the immediate area.

If you make a hole while freeing a stuck vehicle, you must fill the hole before you drive away.

National Park Service regulation

Regulation 5

When a filing is prescribed to be filed with more than one of the foregoing, the filing shall be deemed filed as of the day the last one actually receives the same.

Department of Justice regulation

Suggested rewrite:

We consider a filing to have occurred when all those who must receive the filing receive it.

Regulation 6

No payment shall be made to (or on behalf of) more than one individual on the basis of being the public safety officer's parent as his mother, or on that basis as his father.

Department of Justice regulation

Suggested rewrite:

We will pay only one person claiming to be the public safety officer's father and only one claiming to be the mother.

These few examples show what's possible when we try to write clear regulations. But I would challenge anyone to find even 5000 out of the 200,000 pages of federal regulations written in a clear style.

In closing, I want to urge you to think of the impact clearer regulations will have on the American people, not as a whole, but as individuals. Clearer regulations will mean that –

- a veteran who needs medical help will be able to understand what she needs to do

- a family wanting to drive an off-road vehicle in a national park will be sure that they're going to follow the rules and not injure plants or wildlife

- a small business owner will be able to claim tax benefits and other special considerations to which he's entitled

- a school wanting to comply with the No Child Left Behind Act will be able to figure out what to do without reading the regulation five times

- a senior citizen, hospital, or pharmacy will be able to understand immediately what Medicare or drug benefits apply

There are many Federal employees who want to bring the benefits of plain language to all agency regulations. By passing a plain language law, you will give them a powerful tool and, most importantly, you will improve the lives of millions of Americans.

Mrs. MILLER OF MICHIGAN. Thank you, Dr. Cheek.

And our final witness this morning is Mr. Todd McCracken. Mr. McCracken currently serves as the president of the National Small Business Association, which is the Nation's oldest small business association. As director of its government affairs branch, Mr. McCracken develops their policies on a variety of government-related issues and the strategies to implement them.

He is a native of New Mexico. Mr. McCracken is a graduate of Trinity University in San Antonio, with a B.A. in Economics. Mr. McCracken, we certainly welcome you and look forward to your testimony, sir.

**STATEMENT OF TODD MCCRACKEN, PRESIDENT, NATIONAL
SMALL BUSINESS ASSOCIATION**

Mr. MCCRACKEN. Thank you very much. I appreciate the opportunity to be here.

As you said, I represent the small business community, and I think there is, you know, there is no other constituency of the country that has on which these regulations and the way they are written has a more profound effect, because they not only have to deal with them as individuals, they have to deal with the regulations as businesses, and they deal with the broad cross section, from tax rules individually and tax rules in their businesses and all the government agencies that influence them.

And small businesses are much more profoundly affected by regulations and their readings of them than large businesses are. As you are probably aware, a recent study published by the SBA's Office of Advocacy showed that the typical small company, defined as fewer than 20 employees, pays on average—it costs them on average \$7,000 per employee to comply with Federal regulations. That is 60 percent more than the average large company. And a lot of those costs are in the—you know—paying somebody to figure out what they are supposed to do, whether it is paying somebody to figure out how to run their 401(k) plan or paying an accountant to do their taxes.

I mean many of the smallest companies, especially sole proprietors, ought not have to pay a CPA to figure out how to do their tax return, but an extremely high percentage of them do. I don't have an exact number, but anecdotally, it is extremely high.

So the impact on the small business community is enormous, and it is not just the money. I throw out a \$7,000 figure, but the reality is in a small company, the business owner is the CFO, the CEO, the CIO, and now they are dealing with all these regulations day in and day out. They simply don't have the time and the wherewithal to figure out what they are supposed to be doing. And time really is at the crux of what small business life is all about.

They want to spend their time on how to reach new markets, develop new products, get new customers rather than trying to figure out what they are supposed to be doing in complying with the Federal Government.

So the lack of plain language really does have a huge impact on the small business community—and I think has been extremely well stated by the folks who came before me.

And one of the things I want to sort of take a little bit of time to point out is that not just—to talk about not just the end product, and how small businesses can figure out what to comply with, but also of the regulatory process.

The reality is that one of the reasons—certainly not the only reason—but one of the reasons that dollar figure for small companies is so much larger than for bigger companies is because the regulatory process is so fundamentally skewed to larger companies.

I mean they have a much better ability to have an impact on the regulatory process because, to a large degree, of the language that is used. I mean they are able to hire experts and attorneys to file comments, to figure out how exactly this is going to affect their company or not affect their company, and really have an impact while that regulation is under development. The typical small company, even if they are aware the regulatory process is ongoing certainly does not have the wherewithal to have the level of input that the larger companies do as the regulation is developed.

Plain language I think is not a panacea, but clearly would help with that if the proposed regulations are written in a way that a small company could really understand how this would affect them, and give that input. I mean and it is not just a matter of reducing the burden. I think in that comment period, the Federal Government really I think is—or should be—looking for a way to craft a better regulation to improve it, to make sure that it really affects the way people run their businesses and operate their lives, and it is as efficient as possible.

And if people don't understand what they are trying to do or why they are trying to do it or how it is going to affect my company, they can't provide that kind of input.

One of the ways that we do that now is through a so-called panel process, where they actually—some agencies, not all—but some agencies are required to have small business experts come in and give them input early on in the process.

But this is a way I think to really amplify that and to bring that benefit to all agencies, not just those handful that are required to do these panels.

But my last comment I think comes down to enforcement. I mean, the Regulatory Flexibility Act, as you may know, was passed in 1980 and really did almost nothing to affect the lives of small businesses and the regulatory process for 16 years, because Congress didn't give it any teeth. I mean there was nobody who was saying, you know, you have to follow this law. You have to do these things the Congress laid out. It wasn't until 1996 when it finally got judicial review and a little bit more authority also for the SBA's Office of Advocacy that law has finally begun to have a real impact.

And so what I would say is even though we have on the books, through an Executive order, a requirement that agencies do plain English and there have been some limited attempts at that, it is clearly insufficient, and I think the primary reason is really a lack of enforcement. There is nobody that is telling them they have to do it.

So that really is the key moving forward we believe is to have something that is clearly a hammer I guess at the end of the day to make sure this is done.

Thank you very much.

[The prepared statement of Mr. McCracken follows:]

Testimony of Todd McCracken

President

**On Behalf of
The National Small Business Association**



House Government Reform Subcommittee on Regulatory Affairs

Hearing:

**“Plain Language Regulations: Helping the American Public
Understand the Rules”**

March 1, 2006

1156 15th Street, N.W., Suite 1100
Washington, DC 20005
202-293-8830

Chairwoman Miller, Ranking Member Lynch and Members of the Government Reform
Regulatory Affairs Subcommittee:

On behalf of the 150,000 small-business owners represented by the National Small
Business Association, I would like to thank you for the opportunity to appear to discuss
the necessity of plain language in crafting regulations as a common-sense approach to
saving the federal government and small businesses time, effort and money.

I. The Burden and the Current Rules

Small businesses in the United States face many challenges that hinder their overall
success. One of these obstacles is trying to understand, interpret and comply with the
overwhelming array of federal regulations. Time and again, we hear from small
businesses about their desire to have a more simplified approach to complying with
federal regulations and their paperwork requirements. Yet, more often than not, small-
business owners find themselves buried under mountains of paperwork when they could
be helping their customers, hiring new employees and expanding their businesses.

Small businesses experience a hard time dealing with the complexity of ambiguous
terms, intricate technical language and difficult sentences. The increased burden causes
them to have trouble understanding the requirements. This forces them to spend more
time trying to interpret the rules and ensure they are completing the forms accurately thus
avoiding being fined by the agency for noncompliance. The best thing for small
businesses is simplicity: simplicity in instructions, in requirements, in consequences and

an overall reduction in the size of the paperwork and the time necessary to complete the forms.

On June 1, 1998, at a Small Business Week event Vice President Gore announced a Presidential Memorandum calling on all new government regulations to be written in plain language, making government writing clearer and easier for Americans to understand. President Clinton signed the Executive Memorandum directing agencies to: (1) write any new document that tells the public how to get a benefit or comply with a requirement in plain language by October 1, 1998; (2) write all new government regulations in plain language by January 1, 1999; and (3) revise all existing letters and notices into plain language by 2002. The goal of Executive Order 12866 is for regulations to be simple and easy to understand with the hope of minimizing the potential for uncertainty. However, regulators are still using the usual bureaucratic jargon instead of writing rules complying with the “plain English” guidelines.

II. Time and Simplicity are the Key

While small business owners agree compliance assistance is necessary, it also must be streamlined and put into plain-language. It is unrealistic for small businesses to comply if the only methods of communication are huge envelopes that are packed with books and pamphlets. Although small business owners appreciate the efforts and hard work put into creating detailed instruction manuals, agency officials must consider the time it will take for the recipient to read through a 195- page instruction manual and decipher poorly organized, difficult to read forms that contain an abundance of technical terms. Most

small-business owners do not have the training or experience to translate legalese and decipher the convoluted directions that accompany most government forms.

With the already disconnected nature of Washington, the government should not use a specialized language understood by those only on the inside. It is every citizen's right to understand what the government is doing. But regular, every-day people are not getting a clear, precise message about what the government is doing, what it requires, and what services it offers. Instead, citizens are finding themselves faced with various sanctions and penalties because they are struggling to understand the many rules they need to follow. Small-business owners are smart, entrepreneurial, creative and quick students. They are not, however, regulation specialists.

III. Past Experience with Regulatory Rules Proves No Enforcement

Enforcement is an issue the small-business community has tried to address over the years. Beginning in 1980 with the passage of the Regulatory Flexibility Act (RFA) which required agencies to review the impact of proposed rules and include in published regulatory agendas those likely to have a "significant economic impact on a substantial number of small entities." The U.S. Office of Advocacy was charged to monitor agency compliance with the new law. Over the next decade and a half, the office carried out its mandate, but it was soon clear that the law wasn't strong enough.

In 1995, the third White House Conference on Small Business examined the RFA's weaknesses. The Administration's National Performance Review recommended that

agency compliance with the RFA be subjected to judicial review. In March 1996, President Clinton acted on the recommendations and signed into public law (104-121) the Small Business Regulatory Enforcement Fairness Act (SBREFA). This gave the courts jurisdiction to review agency compliance with the RFA, requiring the Environmental Protection Act (EPA) and Occupational Safety and Health Administration (OSHA) to convene small business advocacy review panels, and affirming the chief counsel's authority to file *amicus curiae* briefs in appeals brought by small entities from final agency actions.

IV. OIRA as the Enforcer

Even with the RFA and SBREFA on the books, Advocacy struggled to get agencies to account properly for the impact on their regulations on small businesses. President Bush issued Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," which requires agencies to establish written procedures to measure the impact of their regulatory proposals on small businesses, that they consider Advocacy comments on proposed rules and notify Advocacy when a draft rule may have a significant small business impact. The White House's Office of Information and Regulatory Affairs (OIRA) is responsible for reviewing agency regulations and has the power to stop a rule from moving forward. OIRA was given the authority and duty of preventing needless and redundant information requests from being imposed on the public. While the agencies are required to demonstrate the necessity of the data request and to publish it in the Federal Register for public comment, a strong OIRA is necessary to provide an adequate check for these agencies. OIRA and Advocacy work together to

hold government accountable and reduce the overall burden of small businesses. E.O. 13272 provides a renewed incentive for agencies to upgrade their compliance with the RFA and give proper consideration to small entities in the agency rulemaking process.

V. Agency Compliance

Making compliance easier is crucial to the success of small business. Office of Advocacy statistics show that it annually costs the smallest of businesses almost \$7,000 per employee to comply with federal regulations. That cost places a burden on small business that is 60 percent greater than costs incurred by large corporations. All Cabinet-level departments, except for the Department of State and the Department of Homeland Security, submitted a written plan to Advocacy for review in compliance with section 3(a) of E.O. 13272. Understandably so, Advocacy was less satisfied with the response to E.O. 13272 by independent regulatory agencies. Of the 75 independent regulatory agencies, 16 responded to the requirements of the E.O. Eight provided written procedures to Advocacy, six claimed not to regulate small entities, and two claimed to be exempt from the Executive Order. We are pleased Advocacy continues to work closely with all federal regulatory agencies to train them on the RFA and increase compliance with both the RFA and E.O. 13272.

VI. SBREFA Review Panel

Significant rulemaking improvements have resulted from the SBREFA panel process. These panels occur before the rule is published for public comment. SBREFA review panels consist of representatives from the agency, Advocacy, and OIRA. The panel reaches out to small entities likely to be affected by the proposal, seeks their input, and

prepares a report with recommendations for reducing the potential impact on small businesses. Because agencies are required to convene these panels, small businesses are able to shed light on agencies' underlying assumptions, rationale, and data behind their draft rulemaking. The use of plain language would also improve the panel process. This would ensure getting useful input from all small businesses and not just a few on a panel for a few agencies. Plain language would ensure small businesses spend less time and energy figuring out just what it is that the government wants and how to comply. Without SBREFA panels, rules would be promulgated in forms costing small businesses millions in unnecessary regulatory costs.

VII. Conclusion

Congress and the administration must examine the mountains of paperwork faced by small businesses. In order to make the entire process less burdensome, forms need text to be clear and understandable. Small businesses need to be able to use forms without getting lost and irritated. Plain language would help.

Just as small businesses are held accountable for their actions, agencies also must be accountable. OIRA must take the steps to help agencies comply and enforce Executive Order 12866, SBRPA and SBREFA.

I would like to thank Chairwoman Miller for holding this hearing, bringing this issue to the forefront and for the opportunity to testify.

Mrs. MILLER OF MICHIGAN. Well, we certainly appreciate all of your testimony. Again, because we have the joint session at 11 a.m., we will have about 10 more minutes here with our hearing.

You know I first became actually interested in this whole concept of plain language in the job that I had before I came to Congress. I was a Michigan Secretary of State, as Dr. Kimble recalls. You probably still have my name on your driver's license there, but my principal responsibility actually was serving as the chief elections officer. And I could remember before I got the job looking at some of the ballot proposals that we had on our statewide ballots and you know really important issues like amending our State constitution or whatever, and I mean honestly, you could not understand—you know, you would read it and read it, and then you thought, well, if you voted no, it meant yes. Or if you vote yes, it meant no.

And it just wasn't plain, and I thought that was so ridiculous. And then I like to think of myself as sort of a common sense approach to government, whatever my jobs were, so I certainly have had an interest in this and am very appreciative of the bipartisan effort that Congressman Lynch and I have with the piece of legislation that we have just introduced.

But could you, Professor Kimble, perhaps give us—or any of you—could you give us some ideas or observations of any Federal agencies that are really doing well in trying to write plain language?

Mr. KIMBLE. Well, Dr. Cheek would know more about that, because she works with Federal agencies.

Ms. CHEEK. I think at this point probably the Veterans Administration, particularly Veterans Benefits. They have had a massive project since about 1993 or 1994 called reader-focused writing, but that has focused not so much on regulations, though they have done a couple regulations over. That is focused mainly on their letters to veterans.

And I think overall, they do the best job of letters. When agencies ask me where can I get advice about letters, I send them to Veterans Benefits.

Mrs. MILLER OF MICHIGAN. You used the DOJ as an example—

Ms. CHEEK. As a bad example.

Mrs. MILLER OF MICHIGAN [continuing]. As a bad example, with all those attorneys there, but that is—

Ms. CHEEK. I am afraid so. You know some of the strongest supporters of plain language are attorneys and some of the strongest opponents are attorneys. And DOJ is certainly a homeland of obscure writing, no question about it.

NIH has been doing a lot with their public medical information. IRS has finally started working on some of their forms trying to get them to be written more clearly.

With regulations it is pretty thin. They are scattered. Securities and Exchange Commission wrote a regulation requiring financial institutions to write parts of their financial disclosure documents in plain language, and their reg itself is pretty good.

The Department of Interior has a big handful of clear regulations. FAA, which is where I work now, has a couple that are good and overall have improved. But I think the regulatory aspects lag behind even the few puny efforts in the public information area.

Mrs. MILLER OF MICHIGAN. I might ask Mr. McCracken. You know we actually—this subcommittee has had a number of different hearings about—and we have cited the—some of the numbers that you used in your testimony about \$7,000 per employee for small businesses just to comply with the regulations and those kinds of things.

Has your association had much conversation, not only of the burden of regulatory acts, government burden on regulatory acts on small businesses, etc., but have you really looked at just the plain language. Have you had quite a bit of discussion about the inability of people to even understand these regulations?

Mr. MCCRACKEN. We have, and we have been searching for solutions. We are hopeful that your legislation can take us in that direction, but clearly when you get small business owners in a room to talk about Federal regulations, it quickly moves to that. It is not simply a question of the rule itself is too burdensome, although that clearly is often the case, but the lack of understanding of what they are even supposed to do, combined with the frustration that they are then, you know, fined based on their inability to understand what they are supposed to do.

I would really like to also add onto—I think it was Dr. Cheek that made the comment about these regulations then providing a model for what other people do, too. I think that is really important to understand, because small business owners often look to others, whether they are law firms or trade associations or someone else to provide them sort of interpretation sometimes of these regulations, which is itself I think sort of sad.

But to the extent they do, often those folks also feel somewhat inhibited in reinterpreting them for people, because they feel like they have some liability if they get it wrong.

So I would encourage that to be something that the committee might be—might look at is could there be some provision to hold harmless some of those advisors if they are making a good faith effort to interpret the regulations as they see them, because that also could really help. It wouldn't improve necessarily the Federal regulation, but it would certainly improve the ability of small business owners and others to figure out what they are supposed to do.

Mrs. MILLER OF MICHIGAN. Thank you. Representative Lynch.

Mr. LYNCH. Sure. Just a couple things. As you mentioned, Mr. McCracken, that there were earlier efforts to try to get at this problem I think by Executive order and by memorandum as recently as 1998—President Clinton. But there has been no teeth, as you say. There has been no enforcement.

Given the fact—and this is a question for all three of you here, and thank you very much for coming here and helping us with this.

Mr. KIMBLE. Pleasure.

Mr. LYNCH. Given the fact that a lot of this depends on the audience—in other words, the problem we are having is that the general tax code, which should be understood by the average taxpayer, is written in terms that are more akin to the technical specs for the Space Shuttle, you know, so you have—it is the audience. And, you know, and some of the technical specs for NASA and for the Nuclear Regulatory Commission and for their audience must necessarily be complex.

So in terms of the enforcement part of this, how do you see that working from industry to industry, where the audience is so different and the necessity there is very disparate in terms of what must be conveyed, what information must be conveyed. Do you have any recommended models that might address that issue?

Mr. MCCRACKEN. I don't have a specific model. Maybe someone else does.

Ms. CHEEK. Well, I would like to make clear—and this is often misunderstood—that plain language, our definition of plain language is it is language that the intended reader can understand the first time, so it is not the same for everybody. It is audience specific.

And what it comes down to, frankly, is testing a few documents to make sure that they can really read it. Now, obviously, we can't test all documents, but I think Veterans Benefits is a very good model, because they tested a few documents, and with a kind of testing called protocol testing, which means each document would be tested with just three or four people and you would sit down and you would say read the first sentence and then tell me what it means rather than asking do you understand this, because people naturally will say, oh, yeah, sure, I understand, even when they don't.

And because they tested the documents, just a few of them, they found out what the principles were that they needed to follow in writing other documents.

So now, they just test very occasionally to make sure they are still on track. It is not that huge a burden, and the payoff in time saved is tremendous.

So I think that model works. It is not the easiest thing, and there are other ways that aren't as effective that you can also use, but I think that is a good model.

Mr. KIMBLE. Exactly right. Testing is a very important part of plain language and again it involves some modest up-front costs to have readers look over a form or look over a letter, typical readers, and the—and as soon as—it can be done with as few as 10 or 15 people. And the problems in the document will surface almost immediately. And imagine again, against those up-front costs, the savings if you can reduce the error rate on a form letter that goes out by the thousands and the hundreds of thousands. If you can reduce the error rate by 10 or 20 percent, you are talking again huge amounts of money saved.

Ms. CHEEK. Actually, you can do it with 9 people, and then that way you don't have to go to OMB to get permission under the Paperwork Reduction Act.

Mr. MCCRACKEN. And I don't believe, for the most part, Federal regulators set out to write documents no one could understand, so I do believe that if there is some testing and some lessons learned, that will carry over even to the documents that aren't specifically tested.

Mr. KIMBLE. And a little bit of training.

Mr. LYNCH. Yeah. OK.

Ms. CHEEK. I was teaching a class the other day to a bunch of people that write Exhibit 300's, which are these horrible financial documents that go to OMB to justify IT expenses. And I had pulled

out some examples from last year, some sentences to use as examples in the class, and I read this one, and the one guy starts, you know, sort of scratching around in his seat, and I said, did you write that? He said, yes. I said, well, what does it mean? He said, I don't know.

Mrs. MILLER OF MICHIGAN. That is scary.

Mr. LYNCH. A little honesty.

Mrs. MILLER OF MICHIGAN. OK. Well, we certainly appreciate all of you traveling to Washington and testifying today. It has been very interesting, and again the bill number, which we just dropped in the hopper last night while we were voting, is H.R. 4809, and this is our bipartisan legislation. It is pretty simple. It basically is requiring Federal agencies to write regulations in plain, understandable English and it defines plain language actually for the first time in Federal law, so anything that any of you can do to talk to some other Members of Congress to assist us with this would be very helpful as well.

We appreciate your attendance.

Ms. CHEEK. Thank you.

Mr. KIMBLE. Thank you.

Mrs. MILLER OF MICHIGAN. Thanks so much.

[Whereupon, at 10:50 a.m., the subcommittee was adjourned.]

