

Calendar No. 66

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-26

CLEAR AND CONCISE CONTENT
ACT OF 2023

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 717

TO IMPROVE PLAIN WRITING AND PUBLIC
EXPERIENCE, AND FOR OTHER PURPOSES



MAY 11, 2023.—Ordered to be printed

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CLEAR AND CONCISE CONTENT ACT OF 2023

MAY 11, 2023.—Ordered to be printed

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

R E P O R T

[To accompany S. 717]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 717) to improve plain writing and public experience, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 717, the *Clear and Concise Content Act of 2023* (Content Act), would update and replace the Plain Writing Act of 2010 to expand the types of information agencies must publish publicly in plain writing.¹ The bill creates a broader definition of “covered content” to ensure nearly all information, guidance, instructions, and other material public information are drafted in “plain writing.” The bill would also require new government-wide reporting on qualitative and quantitative metrics to ensure agency information improves citizen experience, incorporates customer feedback as appropriate,

¹Pub. L. No. 111-274 (2010).

and meets other compliance requirements set by the Director of the Office of Management and Budget (OMB).²

II. BACKGROUND AND NEED FOR THE LEGISLATION

When federal agencies publish information on a website or require a citizen to apply for a program or benefit using an approved form, how the information is drafted and presented can be confusing or unclear. Government information intended for the public should be easy to understand, access, and use. Congress originally attempted to improve interactions with the federal government through enactment of the *Plain Writing Act of 2010* (PWA). However, the PWA generally covered only documents related to federal government benefits and services, and measured compliance only through annual reporting by individual agencies.³

The Content Act expands the types of covered content to include nearly all information, guidance, instructions, and other materially public information (except regulations) that an agency publicly posts. Agencies must also take into account communications with persons who are disabled, not proficient in English, or may be from a historically underserved or disadvantaged background. Moreover, the bill directs agencies to implement capabilities and processes to collect citizens' quantitative feedback and qualitative suggestions on the information that agencies present. As a result, the bill would ensure that official agency documents, forms, and webpages continue to improve the actual user experience, rather than reflect the static content initially approved by a federal manager.

The bill requires OMB to establish government-wide plain writing metrics to ensure agencies are meeting a consistent, high standard for clear and effective communication to taxpayers. A single report to Congress, and made available to the public, will compile these metrics, so that citizens and Congress can compare performance across agencies and categories. Lastly, the bill elevates the responsible official at agencies for implementation to an Assistant Secretary or someone equivalent, to ensure these criteria are incorporated into senior-level performance planning, program development and administration, and the agency's comprehensive communications strategy.

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D-MI) introduced S. 717, the *Clear and Concise Content Act of 2023*, on March 8, 2023, with original cosponsor Senator James Lankford (R-OK). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 717 at a business meeting on March 29, 2023. The bill was ordered reported favorably by roll call vote of 12 yeas and 0 nays, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley voting in the affirmative, and with Senators Carper, Johnson, and Marshall voting yea by proxy, for the record only.

²On August 3, 2022, the Committee approved S. 4577, the Clear and Concise Content Act of 2022. That bill is substantially similar to S. 717. Accordingly, this committee report is, in many respects, similar to the committee report for S. 4577. See S. Rept. 117-159.

³5 U.S.C. §301 note.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section designates the name of the bill as the “Clear and Concise Content Act of 2023.”

Section 2. Definitions

This section creates a new definition for “covered content” that includes any content that is necessary for obtaining any Federal benefit or service; any operations, policies or guidance an agency uses that are of material importance; provides information about how to interact with or give feedback to an agency regarding the agency’s operations, policies, or guidance; or any content that describes how to navigate or interact with any agency website, digital service, or office. The definition of “covered content” now expressly includes: a letter, publication, form, notice, guidance, policy, instruction, or official correspondence of an agency; all content necessary for public understanding, interaction, and use of an agency digital service or website; and instructions on how to submit comments, feedback, or information in response to a regulation during any portion of the rulemaking or implementation process for a regulation (though not a regulation itself). The section similarly expands the definition of “plain writing” to clarify that intended audiences include an audience who may be disabled, may not be proficient in English, or may otherwise be disadvantaged or traditionally underserved. Finally, the section includes definitions for “agency,” the “Director” (of the Office of Management and Budget), and “open Government data asset” as used elsewhere in the U.S. Code.

Section 3. Responsibilities of the Director

Subsection (a) requires the OMB Director to rescind outdated guidance and issue guidance within 180 days for compliance with the requirements of the Act.

Subsection (b) stipulates that the new guidance must: (1) establish procedures for agency review of any existing content in use on the date of enactment to determine whether it is “covered content;” (2) establish policies for agencies to ensure that all covered content is drafted in plain writing; (3) establish qualitative and quantitative metrics by which agencies individually will be measured to ensure compliance with these requirements, including for solicitation and incorporation of public feedback and data to improve public engagement and interaction; (4) prescribe processes by which agencies submit reports to OMB to support government-wide reports required under subsection (c); and (5) require agencies to solicit public feedback, collect data, and routinely test the creation or modification of covered content of the agency.

Subsection (c) requires the OMB Director to report at least every two years to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Accountability of the House of Representatives on government-wide and agency metrics. The bi-annual reports also would need to be made publicly available on a website as open government data assets. The section further requires that government-wide and agency performance plans be treated as covered content and published using plain writing.

Section 4. Agency responsibilities

Subsection (a) requires each agency head to ensure compliance with the Act, including through designation of a senior officer at the agency (not lower than Assistant Secretary or equivalent) to oversee implementation throughout each agency component.

Subsection (b) operationalizes the requirement to use plain writing in all covered content, consistent with the OMB guidance under section 3, within one year of enactment.

Under subsection (c), each agency head would be required to ensure there are opportunities and mechanisms in place, including instructions in plain writing, for feedback from individuals or entities obtaining services from or engaging in transactions with the agency.

Finally, subsection (d) directs each agency head to maintain an accessible form, survey tool, or other portion of the agency website to solicit feedback from the public on the agency's compliance with the requirement to collect feedback and data under section 3(b)(5).

Section 5. Amendments to the 21st Century Integrated Digital Experience Act

This section amends the 21st Century Integrated Digital Experience Act (P.L. 115–336) with updates to ensure all current agency websites (within 180 days) and all new agency websites (within 1 year) meet the plain writing requirements for all website content determined to be covered content.

Section 6. Limitations on judicial enforceability

Subsection (a) precludes court jurisdiction over any claim related to any act or omission arising out of the Act.

Subsection (b) clarifies that nothing in the Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any administrative or judicial action.

Section 7. Repeal

This section repeals the Plain Writing Act of 2010 one year after enactment of the bill.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 717, Clear and Concise Content Act of 2023			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 29, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	1	26	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate? No	
		Contains private-sector mandate? No	
* = between zero and \$500,000.			

S. 717 would expand the definition of “plain writing” given in the Plain Writing Act of 2010 and clarify the types of federal communications to which the definition would apply. The bill would require the Office of Management and Budget to issue guidance concerning plain writing in federal publications and on websites that offer information about federal operations, instructions for filing taxes, or obtaining benefits or services, for example. The bill also would establish evaluation metrics. Federal agencies would be required to implement the bill within one year of enactment.

Implementing S. 717 would increase administrative and training expenses throughout the federal government. CBO estimates those additional costs would total about \$5 million annually and \$26 million over the 2023–2028 period; any spending would be subject to the availability of appropriated funds.

Enacting the bill could affect direct spending by some agencies that are allowed to use fees, receipts from the sale of goods, and other collections to cover operating costs. CBO estimates that any net changes in direct spending by those agencies would be negligible because most of them can adjust amounts collected to reflect changes in operating costs.

The costs of the legislation, detailed in Table 1, fall within budget function 800 (general government).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 717

	By fiscal year, millions of dollars—						
	2023	2024	2025	2026	2027	2028	2023–2028
Estimated Authorization	1	5	5	5	5	5	26
Estimated Outlays	1	5	5	5	5	5	26

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 3—POWERS

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Subchapter I—General Provisions

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SEC. 301. DEPARTMENTAL REGULATIONS.

* * * * *

STATUTORY NOTES AND RELATED SUBSIDIARIES

* * * * *

[PLAIN WRITING IN GOVERNMENT DOCUMENTS

[Pub. L. 111–274, Oct. 13, 2010, 124 Stat. 2861, provided that:

[“SECTION 1. SHORT TITLE.

[“This Act may be cited as the ‘Plain Writing Act of 2010’.

[“SEC. 2. PURPOSE.

[“The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.

[“SEC. 3. DEFINITIONS.

[“In this Act:

[(1) AGENCY.—The term ‘agency’ means an Executive agency, as defined under section 105 of title 5, United States Code.

[(2) COVERED DOCUMENT.—The term ‘covered document’—

[(A) means any document that—

[(i) is necessary for obtaining any Federal Government benefit or service or filing taxes;

[(ii) provides information about any Federal Government benefit or service; or

[(iii) explains to the public how to comply with a requirement the Federal Government administers or enforces;

[(B) includes (whether in paper or electronic form) a letter, publication, form, notice, or instruction; and

[(C) does not include a regulation.

[(3) PLAIN WRITING.—The term ‘plain writing’ means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.

SEC. 4. RESPONSIBILITIES OF FEDERAL AGENCIES.

[(a) PREPARATION FOR IMPLEMENTATION OF PLAIN WRITING REQUIREMENTS.—

[(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act [Oct. 13, 2010], the head of each agency shall—

[(A) designate 1 or more senior officials within the agency to oversee the agency implementation of this Act;

[(B) communicate the requirements of this Act to the employees of the agency;

[(C) train employees of the agency in plain writing;

[(D) establish a process for overseeing the ongoing compliance of the agency with the requirements of this Act;

[(E) create and maintain a plain writing section of the agency’s website as required under paragraph (2) that is accessible from the homepage of the agency’s website; and

[(F) designate 1 or more agency points-of-contact to receive and respond to public input on—

[(i) agency implementation of this Act; and

[(ii) the agency reports required under section 5.

[(2) WEBSITE.—The plain writing section described under paragraph (1)(E) shall—

[(A) inform the public of agency compliance with the requirements of this Act; and

[(B) provide a mechanism for the agency to receive and respond to public input on—

[(i) agency implementation of this Act; and

[(ii) the agency reports required under section 5.

[(b) REQUIREMENT TO USE PLAIN WRITING IN NEW DOCUMENTS.—Beginning not later than 1 year after the date of enactment of this Act, each agency shall use plain writing in every covered document of the agency that the agency issues or substantially revises.

[(c) GUIDANCE.—

[(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director of the Office of Management and Budget shall develop and issue guidance on imple-

menting the requirements of this section. The Director may designate a lead agency, and may use interagency working groups to assist in developing and issuing the guidance.

“(2) INTERIM GUIDANCE.—Before the issuance of guidance under paragraph (1), agencies may follow the guidance of—

“(A) the writing guidelines developed by the Plain Language Action and Information Network; or

“(B) guidance provided by the head of the agency that is consistent with the guidelines referred to in subparagraph (A).

“SEC. 5. REPORTS TO CONGRESS.

“(a) INITIAL REPORT.—Not later than 9 months after the date of enactment of this Act [Oct. 13, 2010], the head of each agency shall publish on the plain writing section of the agency’s website a report that describes the agency plan for compliance with the requirements of this Act.

“(b) ANNUAL COMPLIANCE REPORT.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the head of each agency shall publish on the plain writing section of the agency’s website a report on agency compliance with the requirements of this Act.

“SEC. 6. JUDICIAL REVIEW AND ENFORCEABILITY.

“(a) JUDICIAL REVIEW.—There shall be no judicial review of compliance or noncompliance with any provision of this Act.

“(b) ENFORCEABILITY.—No provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any administrative or judicial action.

“SEC. 7. BUDGETARY EFFECTS OF PAYGO LEGISLATION FOR THIS ACT.

“The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010 [2 U.S.C. 931 et seq.], shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.”

* * * * *

TITLE 31—MONEY AND FINANCE

* * * * *

Subtitle II—The Budget Process

* * * * *

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

* * * * *

SEC. 1115. FEDERAL GOVERNMENT AND AGENCY PERFORMANCE PLANS.

(a) * * *

(b) * * *

(1) * * *

* * * * *

(9) describe major management challenges the agency faces and identify—

(A) planned actions to address such challenges;

(B) performance goals, performance indicators, and milestones to measure progress toward resolving such challenges; and

(C) the agency official responsible for resolving such challenges; [and]

(10) identify low-priority program activities based on an analysis of their contribution to the mission and goals of the agency and include an evidence-based justification for designating a program activity as low priority[.]; and

(11) incorporate the metrics established under section 3(b)(3) of the Clear and Concise Content Act of 2023.

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TITLE 44—PUBLIC PRINTING AND DOCUMENTS

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CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

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Subchapter I—Federal Information Policy

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SEC. 3501. PURPOSES.

* * * * *

STATUTORY NOTES AND RELATED SUBSIDIARIES

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21ST CENTURY INTEGRATED DIGITAL EXPERIENCE

* * * * *

“SEC. 3. WEBSITE MODERNIZATION.

“(a) REQUIREMENTS FOR NEW WEBSITES AND DIGITAL SERVICES.—
[Not later] *Except as provided in paragraph (9), not later than 180 days after the date of enactment of this Act [Dec. 20, 2018],* an executive agency that creates a website or digital service that is intended for use by the public, or conducts a redesign of an existing legacy website or digital service that is intended for use by the public, shall ensure to the greatest extent practicable that any new or redesigned website, web-based form, web-based application, or digital service—

“(1) is accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d);

“(2) has a consistent appearance;

“(3) does not overlap with or duplicate any legacy websites and, if applicable, ensure that legacy websites are regularly reviewed, eliminated, and consolidated;

“(4) contains a search function that allows users to easily search content intended for public use;

“(5) is provided through an industry standard secure connection;

“(6) is designed around user needs with data-driven analysis influencing management and development decisions, using qualitative and quantitative data to determine user goals, needs, and behaviors, and continually test the website, web-based form, web-based application, or digital service to ensure that user needs are addressed;

“(7) provides users of the new or redesigned website, web-based form, web-based application, or digital service with the option for a more customized digital experience that allows users to complete digital transactions in an efficient and accurate manner; **[and]**

“(8) is fully functional and usable on common mobile devices**[.]**; *and*

(9) is drafted using plain writing (as defined in section 2 of the Clear and Concise Content Act of 2023), as is required under section 4 of such Act for covered content (as defined in section 2 of such Act), by not later than 180 days after the date of enactment of such Act.

“(b) REQUIREMENTS FOR EXISTING EXECUTIVE AGENCY WEBSITES AND DIGITAL SERVICES.—[Not later] *Except as provided in paragraph (2), not later than 1 year after the date of enactment of this Act, the head of each executive agency that maintains a website or digital service that is made available to the public shall—*

“(1) review each website or digital service; and

[“(2) submit to Congress a report that includes—

[“(A) a list of the websites and digital services maintained by the executive agency that are most viewed or utilized by the public or are otherwise important for public engagement;

[“(B) from among the websites and digital services listed under subparagraph (A), a prioritization of websites and digital services that require modernization to meet the requirements under subsection (a); and

[“(C) an estimation of the cost and schedule of modernizing the websites and digital services prioritized under subparagraph (B).**]**

(2) by not later than 1 year after the date of enactment of the Clear and Concise Content Act of 2023, comply with the requirements under subsection (a).

* * * * *