Draft date: 8/3/24

2024 Summer National Meeting
Chicago, Illinois

NAIC/CONSUMER LIAISON COMMITTEE
Monday, August 12, 2024
11:45 a.m. – 1:45 p.m.
McCormick Place Convention Center-Grand Ballroom—Level 1

ROLL CALL

Grace Arnold, Chair	Minnesota	Chlora Lindley-Myers	Missouri
D J. Bettencourt, Vice Chair	New Hampshire	Eric Dunning	Nebraska
Mark Fowler	Alabama	Scott Kipper	Nevada
Lori K. Wing-Heier	Alaska	Justin Zimmerman	New Jersey
Peni Itula Sapini Teo	American Samoa	Alice T. Kane	New Mexico
Alan McClain	Arkansas	Adrienne A. Harris	New York
Ricardo Lara	California	Mike Causey	North Carolina
Mike Conway	Colorado	Jon Godfread	North Dakota
Andrew N. Mais	Connecticut	Judith French	Ohio
Trinidad Navarro	Delaware	Glen Mulready	Oklahoma
Karima M. Woods	District of Columbia	Andrew R. Stolfi	Oregon
Dean L. Cameron	Idaho	Michael Humphreys	Pennsylvania
Ann Gillespie	Illinois	Alexander S. Adams Vega	Puerto Rico
Doug Ommen	Iowa	Cassie Brown	Texas
Vicki Schmidt	Kansas	Jon Pike	Utah
Timothy J. Temple	Louisiana	Scott A. White	Virginia
Joy Y. Hatchette	Maryland	Mike Kreidler	Washington
Anita G. Fox	Michigan	Allan L. McVey	West Virginia
Mike Chaney	Mississippi	Nathan Houdek	Wisconsin

NAIC Support Staff: Lois Alexander

2024 NAIC Consumer Representatives

Amy Bach	United Policyholders	Adam Fox	Colorado Consumer Health Initiative
Kellan Baker	Whitman-Walker Institute	Stephanie E. Hengst	The AIDS Institute
Stephani R. Becker	Shriver Center on Poverty Law	Marguerite Herman	Individual Consumer Advocate
Ashley Blackburn	Health Care for All	Claire Heyison	Center for Budget and Policy Priorities
Brendan M. Bridgeland	Center for Insurance Research	Kara Hinkley	The Amyotrophic

Jaclyn de Medicci Bruneau	Ceres-Ceres Accelerator for Sustainable Capital Markets		Lateral Sclerosis Association
		Anna Howard	American Cancer Society, Cancer Action Network
Bonnie Burns	California Health Advocates		
Jalisa Clark	Georgetown University Law Center on Health Insurance Reforms	Anna Hyde	Arthritis Foundation
		Janay Johnson	American Heart Association
Laura Colbert	Georgians for a Healthy Future	Amy Killelea	Individual Consumer Advocate
Symone Crawford	Massachusetts Affordable Housing Alliance	Kenneth S. Klein	California Western School of Law
		Peter Kochenburger	Southern University Law School
Brenda J. Cude	University of Georgia		
Lucy Culp	The Leukemia and Center Lymphoma Society	Dorianne Mason	National Women's Law
		Erin L. Miller	Community Catalyst
		Carl E. Schmid II	HIV+ Hepatitis Policy
Deborah Darcy	American Kidney Fund Institute	Jennifer Snow	National Alliance on Mental Illness-NAMI
Michael DeLong	Consumer Federation of America	Deborah Steinberg	Legal Action Center
		Christa L. Stevens	Autism Speaks
Shamus Durac	Rhode Island Parent Information Network	Harold LM Ting	Health Care Consumer Advocate
Eric Ellsworth	Consumers' Checkbook	Wayne Turner	National Health Law Program-NHLP
Erica Eversman	Automotive Education and Policy Institute	Brent J. Walker	Coalition Against Insurance Fraud
Carly Fabian	Public Citizen		
Joseph Feldman	Individual Consumer Advocate	Richard Weber	Life Insurance Consumer Advocacy Center-LICAC
		Caitlin Westerson	United States of Care
		Jackson Williams	Dialysis Patient Citizens
		Silvia Yee	Disability Rights Education and Defense Fund

AGENDA

1.	Consider Adoption of its Spring National Meeting Minutes and Karrol Kitt Memorial—*Commissioner Grace Arnold (MN)*	Attachment One
2.	Hear a Presentation on Insurance Obstacles to Mental Health and Substance Use Disorder Care—*Joe Feldman (Individual Consumer Advocate), Jennifer Snow (NAMI), and Deb Steinberg (LAC)-20 minutes*	Attachment Two

3. Hear a Presentation on The Impact of the Enhanced Premium Tax Credit on Uninsurance, Premiums, and State Innovation—Claire Heyison (CBPP) *and Laura Colbert (GFHF)-10 minutes*

4. Hear a Presentation on Important Changes to Essential Health Benefits in the Notice of Benefit and Payment Parameters 2025—Wayne Turner *(NHLP)* and Adam Fox *(CCPI)-15 minutes*

5. Hear a Presentation the Misuse of Indexed Life and Annuity Policy Illustrations—Richard Weber *(LICAC)-10 minutes* — Attachment Three

6. Hear a Presentation on Readability Standards in State Insurance Laws—Brenda Cude *(University of Geargia)-15 minutes* — Attachments Four and Five

7. Hear a Presentation on Whether Plaintiff's Attorneys are the Cause of Rising Premiums—Kenneth Klein *(California Western School of Law)-15 minutes*

8. Hear a Presentation on Combatting Post-Disaster Fraud but Preserving Coverage-*Amy Bach (UHelp) and Brent Walker (CAIF)-15 minutes*

9. Hear a Presentation on the Progress and Challenges in U.S. Insurance Sector Disclosures in Navigating Climate Risks-*Jaclyn de Medicci Bruneau (Ceres-Ceres)-10 minutes*

10. Any Other Matters Brought Before the Committee —*Commissioner Grace Arnold (MN)*

11. Adjournment

Draft Pending Adoption

Draft: 4/1/24

NAIC/Consumer Liaison Committee
Phoenix, Arizona
March 15, 2024

The NAIC/Consumer Liaison Committee met in Phoenix, AZ, March 15, 2024. The following Liaison Committee members participated: Grace Arnold, Chair (MN); D.J. Bettencourt, Vice Chair (NH); Mark Fowler (AL); Lori K. Wing-Heier represented by Heather Carpenter (AK); Alan McClain (AR); Ricardo Lara represented by Lucy Jabourian (CA); Andrew N. Mais represented by Kurt Swan (CT); Karima M. Woods represented by Michael Ross (DC); Trinidad Navarro (DE); Dean L. Cameron represented by Randy Pipal (ID); Vicki Schmidt (KS); Kathleen A. Birrane (MD); Anita G. Fox represented by Renee Campbell (MI); Mike Chaney represented by Ryan Blakeney (MS); Chlora Lindley-Myers represented by Jo LeDuc (MO); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by John Arnold (ND); Eric Dunning represented by Martin Swanson (NE); Justin Zimmerman (NJ); Scott Kipper represented by David Cassetty (NV); Andrew R. Stolfi (OR); Michael Humphreys represented by David Buono (PA); Jon Pike (UT); Scott A. White represented by Zuhairah Tillinghast (VA); Mike Kreidler represented by Todd Dixon (WA); and Nathan Houdek represented by Sarah Smith (WI). Also participating was Gary D. Anderson (MA).

1. Adopted its 2023 Fall National Meeting Minutes

Commissioner Stolfi made a motion, seconded by Commissioner Kipper, to adopt the Liaison Committee's Nov. 30, 2023, minutes (*see NAIC Proceedings – Fall 2023NAIC/Consumer Liaison Committee*). The motion passed unanimously.

2. Received a Report on the Consumer Participation Board of Trustees

Commissioner Arnold said the Consumer Participation Board of Trustees, which consists of six regulator members and six consumer representative members, met earlier today in closed session. This is because it administers the NAIC Consumer Participation Program, which may require discussions of a confidential nature concerning personal information. The Board discussed its budget, suggested changes to the plan of operation and application, and automation of the application this year.

3. Heard a Presentation from the CFA on its Report on Uninsured American Homes

Michael DeLong (Consumer Federation of America—CFA) said that CFA's report, *Exposed: A Report on $1.6 Trillion of Uninsured American Homes,* is a statistical analysis of data from the 2021 American Housing Survey and American Community Survey that he, Sharon Cornelissen, Ph.D., and Douglas Heller published. He said the analysis of the data began with research questions asking how many households lacked homeowners' insurance; the type of household, the market value of the homes, and locations are more likely to lack homeowners' insurance; and what portion of uninsured homes belong to Black and Hispanic homeowners. The results showed 6.1 million homeowners or one in 13 (7.4%) representing $1.6 trillion in property value that is not covered by insurance. It also showed homeowners of color, rural homeowners, and homeowners in metropolitan Miami, FL, and Houston, TX, are disproportionately without insurance. DeLong said lower-valued homes are the most likely to not have insurance, with 19% of homes under $150,000 not being insured compared to 4% to 5% of homes over $150,000 not being insured. Homes built before 2000 are more likely to be uninsured than homes built after 2000. Owners of manufactured homes are the most likely not to have homeowners' insurance. Most uninsured homes have no mortgage. Homeowners with lower incomes are more likely to be uninsured. Additionally, homeowners who are people of color, along with older adults who are not white, are more prone to not having homeowners' insurance. This tendency is evident in the national averages: 7.4% of homeowners lack homeowners' insurance, with rates

for different racial groups varying—6% for white homeowners, 10.6% for Black homeowners, 13.6% for Hispanic homeowners, and 22.3% for Native American homeowners.
DeLong said homeowners' insurance is vital for protecting consumers' homes and ensuring they can recover from disasters. He said rising premiums due to climate change and reinsurance costs could force many homeowners to "go bare" and do without homeowners insurance coverage. He said the average annual insured catastrophe losses have increased 300% in the last 25 years. The U.S. property/catastrophe (P/C) reinsurance rate-on-line has increased 100% in the last 10 years. Homeowners' insurance premiums have increased 50% in the last five years. DeLong said he appreciated the NAIC data call that was spurred on by the Federal Insurance Office (FIO) and the Incorporating National Support for Unprecedented Risks and Emergencies (INSURE) Act being proposed by Rep. Adam Schiff (D-CA). He recommended that states: 1) collect more data to track preexisting and emerging inequalities in homeowners' insurance markets and promote data transparency; 2) invest in risk reduction through mitigation measures; 3) create a public reinsurance mechanism to reduce insurers' overreliance on unregulated reinsurance; and 4) conduct additional research on racial equity and the homeownership insurance gap.

Commissioner Lara asked if the data call was missing any information. Delong said it looks comprehensive and suggested it be collected regularly, constantly, and translated into action items quickly. Commissioner Lara said climate has had an effect on the Latino/Hispanic community and that he has a working group looking into homeowners getting pushed out of the urban core because they cannot find coverage in areas that burn. Carpenter asked that American Indians and Alaska Natives be included in the next report. Commissioner Stolfi asked if the research looked into why homeowners did not have insurance or was it based solely on cost. He also asked if the research looked at higher risk areas. DeLong said this was outside the scope of the report but that areas like Florida did show that to some degree.

4. Heard a Presentation from the AEPI on How Insurers Exploit State Consumer Protection Acts to Harm Consumers

Erica Eversman (Automotive Education and Policy Institute—AEPI) said P/C insurers are using consumer protection laws to encourage providers to not pay claims. Eversman said these laws are based on consumer issues like the individual consumer use of services rather than commercial use. The laws only apply to service providers such as roofers, dealerships, carpet layers, and auto repair shops. However, Eversman said insurers are using these laws to sue these providers. Consumer protection laws require consumers to sign repair service contracts to prevent service providers from forcing expensive repairs on to consumers. The laws set out all consent, signatures, and authorizations for those entitled to recover minimum standard expenses.

Penalties for noncompliance can include actual damages incurred or minimum dollar recovery of $200, double or treble actual damages, payment of the consumer's attorney fees, and precluding the seller/service provider from obtaining payment for goods/services performed but not authorized. The attorney's fees provide incentive for lawyers to take unprofitable cases. Eversman said the crucial issue is the express payments of legal fees. Consumer protection laws were supposed to give this power to the consumer. However, insurers go through this paperwork to find errors or any technical violation of the consumer protection law to avoid paying claims, recover payment made, and seek attorney fees in litigation. In a current court case, one insurer is suing one provider to recover or avoid payment on 1,700 claims where there is not one consumer complaint. This is business-to-business litigation. It is not for the consumer. It is insurer vs. provider lawsuits over technical issues. Eversman said the use of consumer protection laws by insurers to sue providers destroys the very purpose of the law. By doing so, service providers will no longer serve consumers' interests due to fear of lawsuits from insurers that create a service class obeying only insurance companies.

Eversman recommended that state insurance regulators issue a bulletin or statement that insurers cannot use consumer protection law claims or legal avenues, even in subrogation. She recommended that legislators be notified that insurers are not considered eligible to use consumer protection law and to codify this position. She

further recommended that insurers be required to notify the insurance department of any currently pending or considered litigation involving a consumer protection law to determine if consumer interests are at risk.

Buono asked what insurers are doing. Eversman said one example is that an auto body shop neglected to put the date that the car came into the shop on the document, which is a technical issue. The insurance company said it does not have to pay the claim due to that technical issue. Commissioner Arnold asked how often this is happening. Eversman said it is becoming more and more prevalent, with many insurance companies jumping on the bandwagon. She said if the consumer is satisfied, the insurance company should not penalize the repair shop for technical issues.

5. Heard a Presentation from UP on Providing Consumers with Updated Tips on Buying Property Insurance

Amy Bach, (United Policyholders—UP), said her standard tips to consumers buying homeowners insurance have always been to: 1) comparison shop based on coverage, not just price; 2) use the shopping tools the state offers; 3) request a list of all discounts the insurer offers and ask for those applicable; 4) bundle your home, auto, and/or umbrella policies with one insurance company; 5) insure one's dwelling for replacement cost value; 6) increase the deductible, and avoid filing small claims; and 7) if feasible, buy gap filler products (including peril-specific policies for flood and earthquake damage). Bach said her updated tips for guiding consumers through current home insurance affordability and availability challenges are to: 1) start shopping right away; 2) get help from a professional agent or broker; 3) reduce risk/mitigate; 4) understand the deductible options; 5) find out one's risk score and correct any errors; 6) consider all types of insurer options; 7) supplement as feasible; and 8) trim coverage.

Bach said a consumer should start shopping immediately upon receiving a non-renewal notice because the average non-renewal notice is 30 days if the consumer is not offered another policy. She recommends states change the notice to 60 days. Seeking out an experienced, proactive insurance agent or broker will help with timing. However, if an agent or broker tells a consumer their only option is the residual market or FAIR plan, then find a second agent. Bach said consumers should seek out programs in the community that offer mitigation help and/or grants. They should also do as much mitigation as possible to reduce the risk of a severe weather event damaging or destroying their home. Additionally, consumers should provide the insurer with documentation of completed mitigation steps and/or the community's risk reduction activities. Bach advised to cautiously look into raising the deductible by getting quotes for different deductible levels in order to make an informed decision and to understand how a policy with a wind and/or roof deductible affects available benefits. She said a higher deductible reduces premium. However, too high of a deductible means insurance will not cover even a moderate-sized claim.

Bach said consumers should ask their carrier for their risk score and appeal it if it is based on inaccurate information. The carrier has to tell the consumers and can help them correct any errors. Bach said to consider all types of coverage, even surplus lines, which is riskier, but desperate times call for desperate measures. If a last resort insurance plan is the only option available, consider adding supplemental policies to fill any gaps (fire, wind, water, earthquake, flood, etc.). Trim coverage by reducing or eliminating any coverage consumers can live without, such as high dollar limits on contents and other structures. Bach said not to trim Coverage A, though. She recommended regulators: 1) increase grant funding for mitigation; 2) work on advanced programs with the Insurance Institute for Business & Home Safety (IBHS); 3) require rating plans to include mitigation; 4) encourage multiple layers of deductibles; 5) step up the appeals process and regulation on surplus lines; and 6) create a FIO plan.

Commissioner Lara said federal dollars need to be released now outside of legislation to help with mitigation to bring down the risk in uninsured areas; help low-income and retired persons; or build up to current building codes. Additionally, he said a national strategy is needed to request release of funding now. Commissioner Stolfi said he

loved the new ideas, especially publicizing discounts and incentives that are and are not included, such as metal roofs as companies that say there is no discount for it even though one is allowed. Commissioner Arnold said places where programs touch homes (such as insulation in homes) need to be emphasized.

6. Heard a Presentation from NHeLP, the HIV+Hepatitis Policy Institute, Whitman-Walker Institute, and NWLC on What the New Section 1557 Means for Health Insurance Nondiscrimination Protections and Considerations for Regulators

Wayne Turner (National Health Law Program—NHeLP) said state insurance regulators need to be prepared to implement the nondiscrimination protections under the new Section 1557, which will be released by the U.S. Department of Health and Human Services (HHS) soon as it is self-implementing. Turner said the federal Affordable Care Act (ACA) addressed many nondiscrimination and civil rights issues. However, Section 1557 is the key. Changes in the 2020 Final Rule: 1) narrowed applicability by exempting a broad array of federal health care programs and activities; 2) declared an entity "principally engaged in providing health insurance shall not be considered to be principally engage in providing health care"; 3) removed provisions against discriminatory health plan benefit design; 4) eliminated regulatory protections against sex determination that included gender identity, sexual orientation, sex stereotyping, and pregnancy status; 5) sanctioned discrimination by religiously affiliated hospitals, providers, and health plans; and 6) limited enforcement for restricting the ability to file court actions. Turner said the new 2022 proposed rule clarifies that Section 1557: 1) applies to all federal programs and activities (not just the ACA); 2) provides or administers health insurance as a health program/activity; 3) applies to short-term, limited-duration plans (STLD) and limited benefit plans; and 4) applies to third-party administrators (TPAs) and pharmacy benefit managers (PBMs). Turner said the new rule builds on a presumptive discriminatory benefit design of cost sharing, medical necessity definitions, narrow networks, drug formularies, adverse tiering, exclusions, visit limits, waiting periods, service areas, utilization management, and coercive wellness programs.

Carl Schmid (HIV+Hepatitis Policy Institute) said the 2022 proposed changes in prescription drug access: 1) includes PBMs and prescription drug formularies; 2) places all or almost all drugs to treat a condition on the highest tier; 3) includes step therapy, prior authorization, and durational and quantity limits; and 4) acknowledges utilization management as a standard industry practice applied in a neutral, nondiscriminatory manner. Schmid said there was a need for enforcement of prescription drugs so state insurance regulators, the federal Centers for Medicare & Medicaid Services (CMS), and the Office of Civil Rights (OCR) must ensure compliance with Section 1557 and essential health benefits (EHBs) through plan reviews, the approval process, and complaint handling. He said that North Carolina Blue Cross Blue Shield had placed almost all HIV prescription drugs, including generics, on the highest tiers, and all had quantity limits. A complaint was filed and a review by the OCR after plan correction indicated the issuer reasoned that the plan was based on clinical practices. No action has been taken by state insurance regulators. Community Health Choice of Texas places drugs on the highest tier and does not meet treatment guideline because it excludes many antiretrovirals, breaks up single tablet regimens, and covers old, discontinued drugs. A complaint filed with CMS yielded inadequate response and actions.

Kellan Baker (Whitman-Walker Institute) said the 2016 rule included gender identity, sex stereotypes, and pregnancy under the definition of sex and gave specific examples of nondiscrimination in coverage and care. Baker said the 2020 rule eliminated regulatory protections for these and sexual orientation from various CMS rules. Based on the 2020 Supreme Court decision in *Bostock v. Clayton County*, the new rule: 1) re-establishes protections on the basis of sex stereotypes; 2) clarifies that sex-base distinctions are allowed, but only if they cause de minimis harm to beneficiaries or patients; 3) clarifies that religious/conscience exemptions will be considered on a case-by-case basis by OCR under existing federal laws; and 4) does not require providers to perform services outside of their scope of practice or area of specialty.

Dorianne Mason (National Women's Law Center—NWLC) said the new rule would remedy the 2020 rule by reinstating women's reproductive rights, including pregnancy or related conditions such as abortion. Mason said

when Indian Health Services (IHS) denied abortion information to patients, such denials included inequitable outcomes affecting patients' future help. Turner said proposals for health care refusals should be: 1) that there are no blanket exemptions from Section 1557 for religious or other covered entities; 2) that procedures for submitting requests for exemptions to the OCR should be established on a fact-sensitive, case-by-case basis; and 3) that should rescind 45 C.F.R. Section 92.6 (b), where the final rule incorporated the Danforth Amendment, Title IX's exemption for abortion-related services.

Turner recommended that state insurance regulators: 1) ensure that insurers are aware of the new protections by releasing bulletins and guidance; 2) review plans for discriminatory benefit design as part of the certification process; 3) revise the state's EHBs benchmark to eliminate exemptions that contravene Section 1557; 4) monitor and enforce compliance through the complaint process, data calls, and market conduct exams; and 5) make such data and reports public. Turner said practical tips for benefit design review include: 1) prior authorization criteria that is not clinically-based; 2) overuse of co-insurance for certain medical conditions; 3) narrow provider networks that prevent access to specialists; 4) visit limitations that cap coverage without regard for medical necessity; 5) racial bias underlying prescribing practices and automated decision-making; and 6) coverage exclusions that disproportionately affect certain populations with regard to gender-affirming care and durable medical equipment.

Commissioner Lara asked how states can further protect consumers with individual states doing artificial intelligence (AI) and big data regulations. Turner said states could require access to the insurers' black box for more information and that advance testing is important.

7. Heard a Presentation from Consumers' Checkbook/CSS, a Health Care Consumer Advocate, and the LLS on CMS Interoperability, the Prior Authorization Rule, and Federal Updates

Eric Ellsworth (Consumers' Checkbook/Center for the Study of Services—CSS) said prior authorization has the fundamental problems of having a burdensome provider submission process and an unclear or inappropriate review criteria, which delays treatment and harms consumers. Ellsworth said questionable denials occur when generally accepted criteria are not used, when proprietary criteria lacks appropriate transparency, and when reviewers are not clinically qualified. Such denials increase provider expenses, translating into higher costs. The level of difficulty in appealing denials also harms consumers, especially those in underrepresented and underserved communities.

Ellsworth said CMS' Interoperability & Prior Authorization Rule process requires: 1) electronic data exchange tools by 2027; 2) tools to convey if prior authorization is required, its requirements, status, and reasons if denied by 2027; 3) initial prior authorization decisions: expedited in 72 hours and others in seven calendar days, with qualified health plans (QHPs) being the exception at 15 days by 2026; 4) that denials must be reviewed by qualified clinicians; 5) that payers must post annual prior authorization statistics by 2026; and 6) a financial incentive for providers to use the tools by 2027.

The rule's criteria has requirements only for Medicare Advantage plans that are consistent with Medicare statutes and follow local and national coverage determinations, with some improvements in transparency by specifying the information needed for specific prior authorization decisions and the reasons for the denial. Ellsworth cited several shortcomings of the rule: 1) it excludes prescription drug prior authorization, even those covered under medical benefits; 2) the review process allows for proprietary criteria with no transparency, no decision timeline mandates for Federally-facilitated Exchange (FFE) QHPs, and no mention of "gold carding"; 3) the criteria is inconsistent across plans, which is confusing to providers and patients; 4) state-based QHPs, insured commercial plans, and federal Employee Retirement Income Security Act of 1974 (ERISA) plans are excluded; 5) the annual reporting of prior authorization statistics is too aggregated; and 6) compliance is not well defined as to state vs. federal enforcement.

Draft Pending Adoption

Harry Ting (Health Care Consumer Advocate) recommended that states: 1) make state and CMS regulations as consistent as possible regarding prior authorization decision timelines, transparency rules, reviewer qualifications, and data reporting; 2) collect data to identify outlier plans by comparing prior authorization turnaround times and approval rates by category, as well as reversal rates of adverse determinations; and 3) establish the states' role in enforcing compliance with CMS rules. Dr. Ting said other steps might be to: 1) adopt elements of the CMS rule, such as public reporting of statistics, process transparency, clinically recognized standards, and decision timelines; 2) include prescription drugs using National Council for Prescription Drug Programs (NCPDP); and 3) add gold carding to providers with high approval rates. Dr. Ting said the steps the NAIC can take are to: 1) maintain an inventory of state prior authorization regulations; 2) have the National Insurance Producer Registry (NIPR) compare outcomes under different state regulations; and 3) collaborate to promote consistency of requirements across states.

Lucy Culp (The Leukemia and Lymphoma Society—LLS), filling in for Caitlin Westerson, (United States of Care—USofCare) said other federal updates include the Association Health Plan (AHP) proposed rule, which would rescind the 2018 rule and return to pre-2018 guidance that included a more comprehensive review process. This rule is on the regulatory agenda for April and is subject to change. Culp said the short-term, limited-duration insurance (STLDI) proposed rule is currently at the Office of Management and Budget (OMB) and on the agenda for April as well. It would limit these plans to three months and only allow them to be renewed for one month beyond that. It also has implications for the ongoing deliberations on the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standard Model Act* (#171). Culp said the Notice of Benefit and Payment Parameters (NBPP) proposed rule is also at the OMB and on the agenda for April. Culp said this annual rule would allow states to add required benefits without triggering EHB cost defrayal and removed the prohibition on including adult dental benefits as EHB. Culp said the *Braidwood Management v. Becerra* (Preventive Services) case is in the Fifth Circuit, which could affirm or reverse the lower ruling that the ACA's no-cost preventive mandate was unconstitutional later this year. However, the losing party is expected to appeal any decision to the Supreme Court for consideration.

Having no further business, the NAIC/Consumer Liaison Committee adjourned.

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Insurance Obstacles to Mental Health & Substance Use Disorder Care and State Regulatory Actions to Improve Access
2024 NAIC Summer National Meeting
Resources

Meaningful Parity Act Enforcement

1. State regulators have federal authority to request comparative analyses of the design and application of non-quantitative treatment limitations (NQTLs): 42 USC 300gg-26(a)(8)(A).
    a. Examples:
        i. Virginia
            1. Guidance, questionnaire, data collection tools: https://www.scc.virginia.gov/pages/Benefits-Parity
            2. Report summarizing the comparative analyses collected by the Bureau of Insurance: https://rga.lis.virginia.gov/Published/2023/RD582/PDF
        ii. California templates (https://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/hpab/index.cfm)
        iii. Oklahoma templates, guidance, and carrier documents (https://www.oid.ok.gov/regulated-entities/financial/financial-regulation-forms/mentalhealthparity/)
    b. Examples of Remedies and Penalties for Parity Act Violations
        i. Failure to submit timely or sufficient form filings
            1. Georgia (Ga. Code § 37-1-27(i));
            2. Oklahoma (36 Okla. Stat. § 311.1).
        ii. Acts of discrimination and unfair trade practice
            1. Kentucky (Ky. Rev. Stat. § 304.17A-661(3)).
        iii. General sanctions pertaining to the business of insurance or other laws, including fines, cease and desist orders, and/or suspensions of licenses
            1. Colorado (3 Code Colo. Reg. § 702-4-2-64-14).
2. State regulators should also use their authority to (1) conduct market conduct examinations and other investigations into problematic insurance practices and potential Parity Act violations, and (2) review all consumer and provider complaints related to mental health and substance use disorder care as potential Parity Act violations.
    a. Example: Illinois requires carrier reporting, market conduct exams, and reviewing all complaints for potential parity violations (215 Ill. Comp. Stat. § 5/370c(d)(2)).
        i. NQTL Template Instruction Guide: https://idoi.illinois.gov/content/dam/soi/en/web/insurance/sites/insurance/companies/documents/phase-i-nqtl-rpt-template-instructions.pdf
        ii. Report on compliance actions: https://hfs.illinois.gov/content/dam/soi/en/web/hfs/sitecollectiondocuments/annualreportidoiihfs2024.pdf
    b. Examples:
        i. Minnesota's recent consent order following an investigation under Minn. Stat. §§ 45.027, 60A.031 (https://mn.gov/commerce/news/?id=17-624065).
        ii. Rhode Island's market conduct exam under R.I. Gen. Law § 27-13.1-5(b) (https://ohic.ri.gov/sites/g/files/xkgbur736/files/documents/Regulation-and-Enforcement/Examination-Report---BCBSRI.pdf)

Quantitative Network Adequacy Standards with Strong Consumer Protections

1. State regulators should develop and enforce both standards to measure accessibility (geographic time and distance standards) and availability (appointment wait time and provider directory accuracy standards). CMS's 2025 Notice of Benefit and Payment Parameters requires quantitative time and distance network adequacy standards for state exchange plans to be *at least* as stringent as those for the federally facilitated exchange.
    a. CMS Authority
        i. CMS's 2025 Notice of Benefit and Payment Parameters: https://www.federalregister.gov/documents/2024/04/15/2024-07274/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2025.
        ii. CMS's network adequacy standards for the federally facilitated exchange (p. 11-14): https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/final-2023-letter-to-issuers.pdf.
    b. Example: Maryland (COMAR § 31.10.44).
        i. Legal Action Center's review of the updated regulations: https://www.lac.org/resource/building-better-networks-and-improving-access-to-substance-use-disorder-and-mental-health-providers-lessons-from-maryland
2. State regulators should couple these standards with strong consumer protections for people who are forced to go out-of-network or travel unreasonable distances or times due to inadequate networks.
    a. At least 18 states have prohibitions on balance billing by out-of-network providers (at least for MH and SUD) under these circumstances (Data on file with Legal Action Center).
    b. Example: Mississippi (Miss. Admin. Code 19-3:14.05(A)(1)). As we heard during the B Committee meeting in June, Mississippi also now requires carriers to reimburse enrollees for travel, lodging, and food when they have to travel 100+ miles for an in-network appointment

Standardize and Eliminate Unnecessary Utilization Management Practices

1. State regulators should require coverage criteria (medical necessity criteria) for MH & SUD benefits be consistent with those used by the treating providers, specifically the generally accepted standards of care developed by non-profit professional societies for the relevant clinical specialty, such as the ASAM Criteria for SUD and LOCUS/CALOCUS for MH.
    a. As of Oct. 2020, 15 states required state-regulated commercial health plans to use specific criteria or LOC assessment tools to determine medical necessity for SUD treatment – 11 of which specify the ASAM Criteria. https://www.lac.org/resource/spotlight-on-medical-necessity-criteria-for-substance-use-disorders
        i. Absent adopting these requirements, state insurance regulators can still evaluate the process by which plans develop/design coverage criteria (as written) and apply/use them (in operation) for Parity Act compliance.
        ii. The application and use of these criteria can be assessed through the frequency of review (such as prior authorization or concurrent review) and the denial rates for MH and SUD benefits, compared to medical/surgical benefits.
    b. Example: California (28 Cal. Code Reg. § 1300.74.721).
2. State regulators should eliminate unnecessary prior authorizations and other utilization management practices that delay or deter access to MH and SUD treatment

a. As of 2020, at least 17 states had laws that limit state-regulated commercial plans from imposing prior authorization on SUD medications, and 10 states limited state-regulated commercial plans from imposing prior authorization on SUD services. https://www.lac.org/resource/spotlight-on-legislation-limiting-the-use-of-prior-authorization-for-substance-use-disorder-services-and-medications
b. Policymakers have used non-legislative actions to reduce prior authorization use. Example: Pennsylvania and Rhode Island insurance commissioners entered into agreements with commercial plans to remove prior authorization requirements for opioid use disorder medications.

Support Community-Based Consumer Assistance Programs

1. People need individual support and assistance to understand and navigate their insurance. This support needs to be in the community, ideally in CBOs where there is already trust and an established relationship, and culturally and linguistically effective.
    a. Example: New York Community Health Access to Addiction and Mental Health Project (CHAMP): https://www.cssny.org/programs/entry/champ. CHAMP helps consumers with:
        i. Switching or enrolling in health insurance
        ii. Understanding what mental health and substance use disorder benefits are covered by insurance and how to access them
        iii. Finding mental health and substance use disorder providers
        iv. Assisting with obtaining needed approvals (such as prior authorization, additional services, and out-of-network services)
        v. Appealing denials of mental health and substance use disorder services and medications
        vi. Providing referrals
        vii. Conducting education and outreach sessions for consumers, health advocates, and treatment providers
        viii. Identifying and addressing parity and other legal violations
2. Additionally, state regulators should partner and engage with community-based organizations to raise awareness about consumer protections like the Parity Act, identify systemic barriers to treatment, and improve policies.
    a. See 2021 report commissioned by the consumer representatives to the NAIC: https://healthyfuturega.org/wp-content/uploads/2021/08/Disparities-in-Insurance-Access-Rpt_8.21-3.pdf.
    b. Community-based organizations provide a critical link for education and outreach in diverse communities, especially those that face disproportionate barriers to accessing MH and SUD treatment.

Mental Health and Substance Use Disorder Data

1. 2022 National Survey on Drug Use and Health (NSDUH): https://www.samhsa.gov/data/report/2022-nsduh-detailed-tables
2. Suicide as leading cause of death: https://www.cdc.gov/injury/wisqars/animated-leading-causes.html
3. Overdose death rates: https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm

We are currently working with a *Baker's Dozen* of *current* consumer complaints and litigation efforts due to the misuse of indexed life and annuity **policy illustrations**

Non Sequitur by Wiley Miller

Case #1 of 13

Registered Investment Advisor with an insurance license

Website: “There's a Power in Planning With Us. For over 20 years, we have addressed the financial needs of clients and their families. Our leadership team has over 60 years of combined experience and not only has exceptional skills for managing all aspects of our business, but the right attitude to do so. Utilizing a client service approach and a commitment to lifelong learning, we always put the needs of our clients first, encouraging them to ask questions as we address their needs, together.”

Illustration Summary

- $320,000 Exchange
- $300,000 x **10** years
- Premium Financing
- Pay off financing Year **11** with policy cash values
- Tax-Free Income for up to 50 years

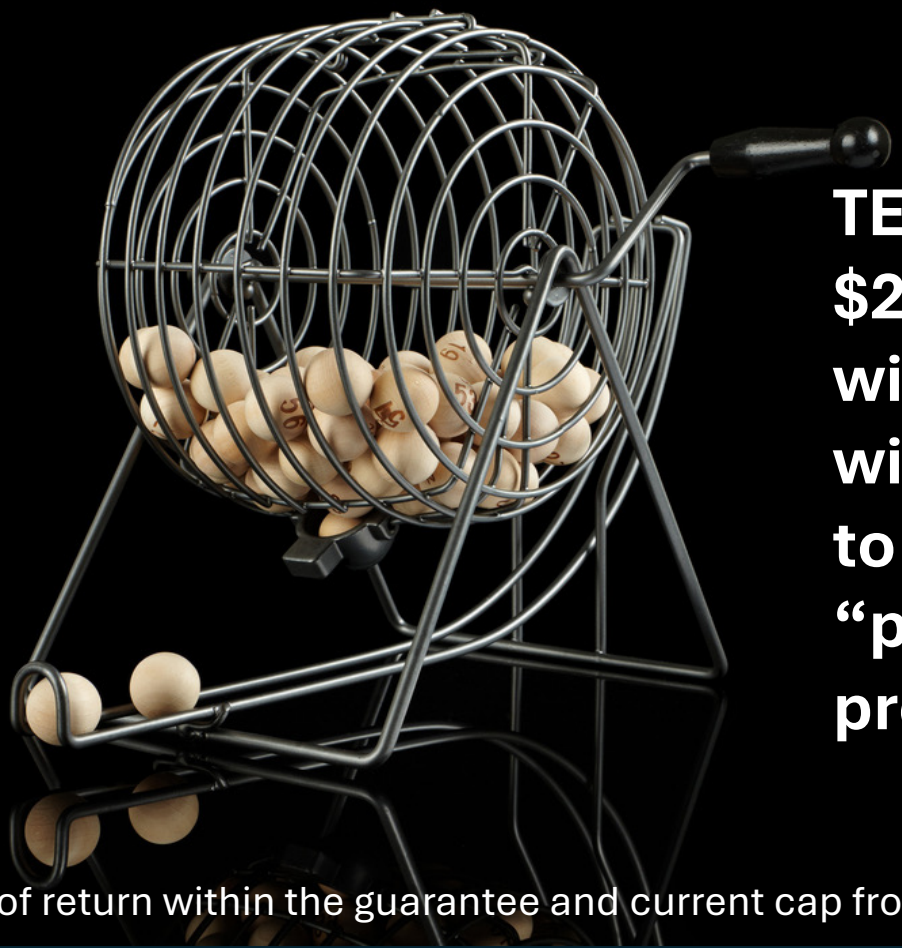
$200,000/year
Ages 70 → 120

What went wrong?

- Client “ran out of money” with which to post collateral
- YET as part of purchase – was told “you won’t need to post any collateral!”
- Actual policy credits were “off” by just 10% in 5 years
- Illustration never shows “0%” returns in current value “projection” – values always growing – customer never sees the impact of the DEBIT side of “Zero is the Hero”
- A constant (and positive) illustrated CREDITING scenario is *deceptive*
- A constant CAP or PARTICIPATION RATE is *deceptive*

Will it "work?"

Monte Carlo Analysis



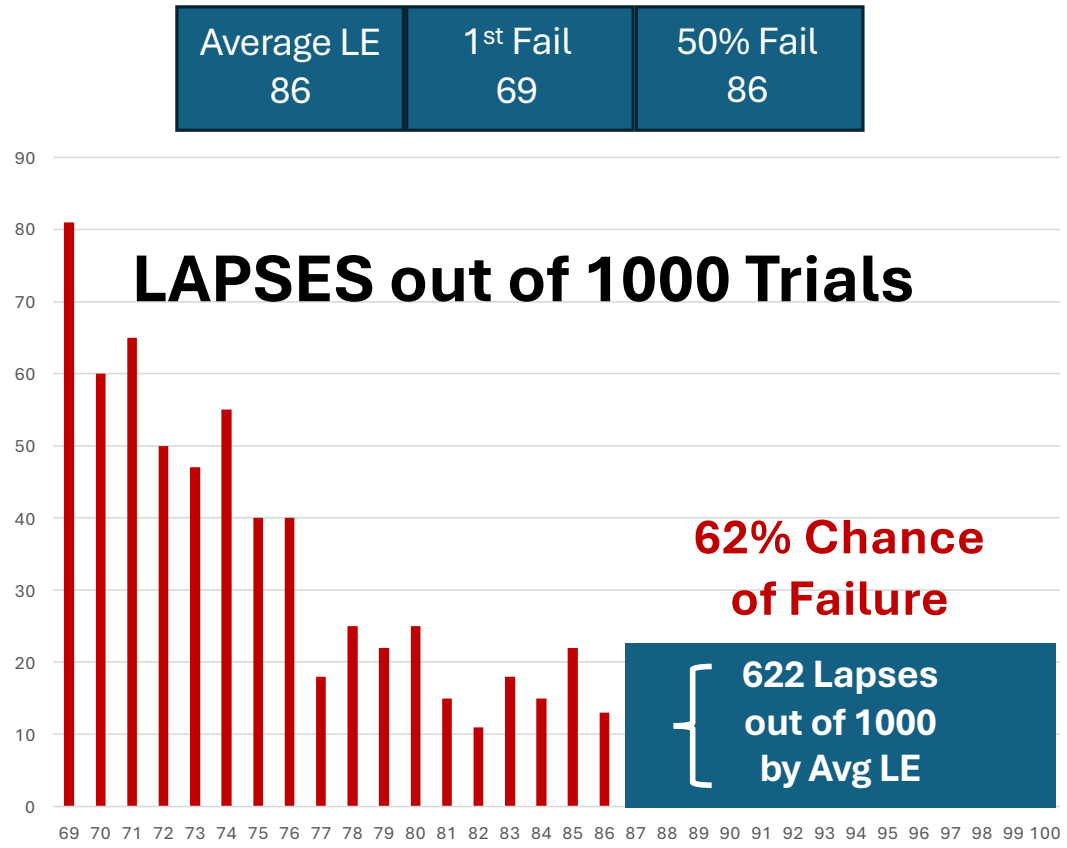
TEST the PROBABILITY $200,000 a year of withdrawals & loans will sustain the policy to at least age 100 *and* "pay off" the external premium loan.

Applying random rates of return within the guarantee and current cap from the customer's chosen asset clas

Will it “work?” As sold with “income”

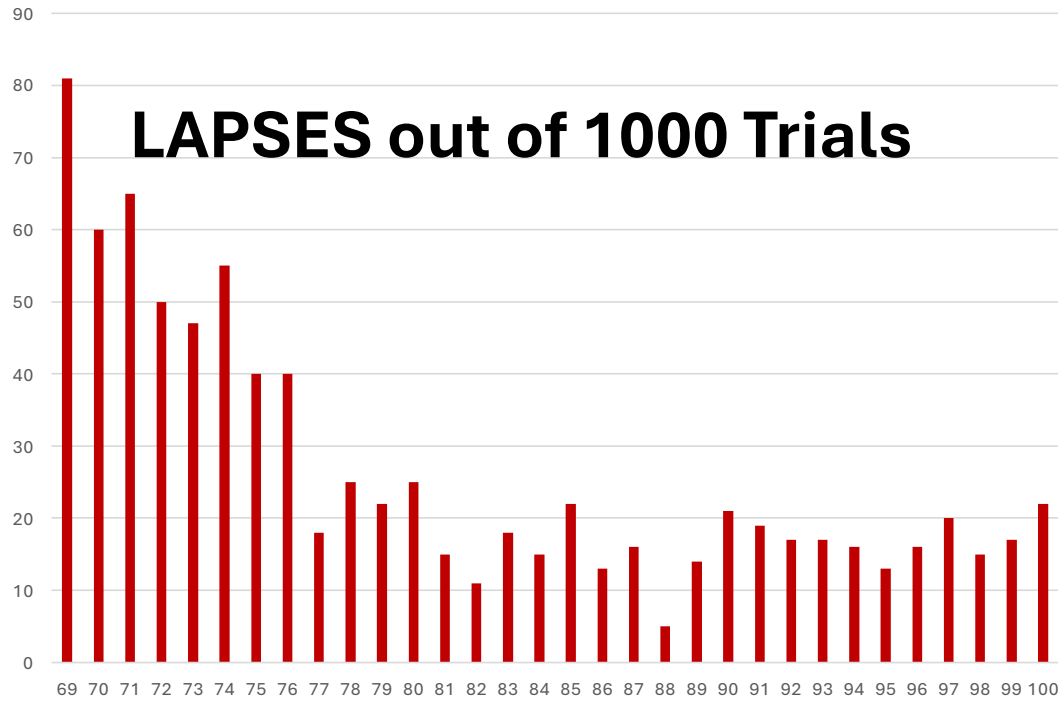
Average LE	1st Fail	50% Fail
86	69	86

Will it “work?” As sold with “income”



Will it “work?” As sold with “income”

Average LE	1st Fail	50% Fail
86	69	86

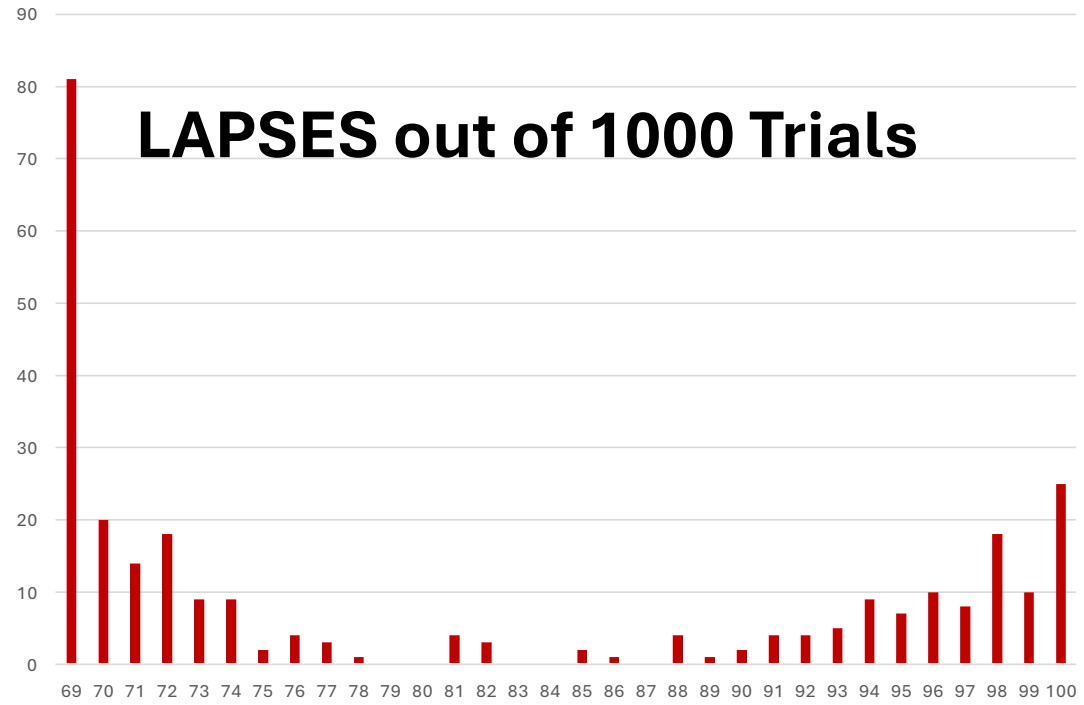


85% Chance of Failure

850 Lapses out of 1000 by Age 100

Will it "work?" As sold – NO "income"

Average LE	1st Fail	50% Fail
86	69	73

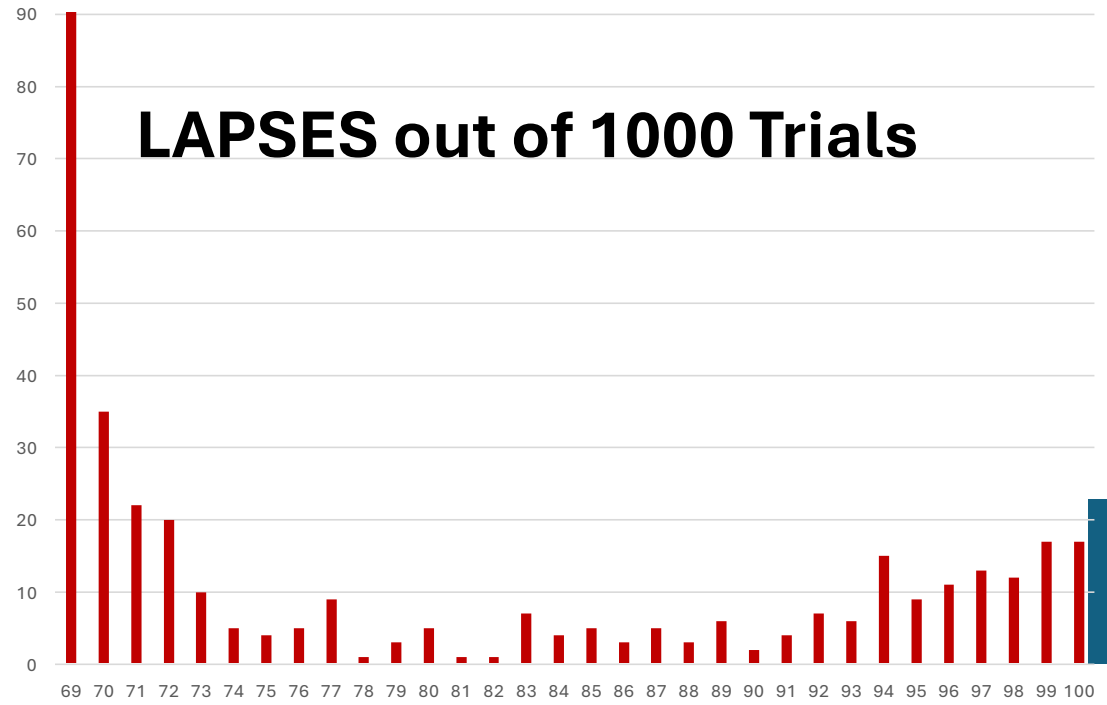


28% Chance of Failure

278 Lapses out of 1000 by Age 100

Will it "work?" As sold – NO "income"

Average LE	1st Fail	50% Fail	Lower Participation Rate
86	69	**72**	



39% Chance of Failure

394 Lapses out of 1000 by Age 100

Case #2 of 13

Registered Representative with an insurance license

"XYZ Consulting, LLC is a business advisor to businesses. Our focus is to help business owners assess, design, and implement "excellent" solutions to grow and preserve their company and personal wealth, both now and in the future."

Illustration Summary

- $92,000 Exchange
- $2.732M Borrowed
- ‘EE Split Dollar
- Interest represented as tax-deductible
- Pay off financing Year 16 with policy cash values
- Tax-Free Income for 20 years

$265,000/year

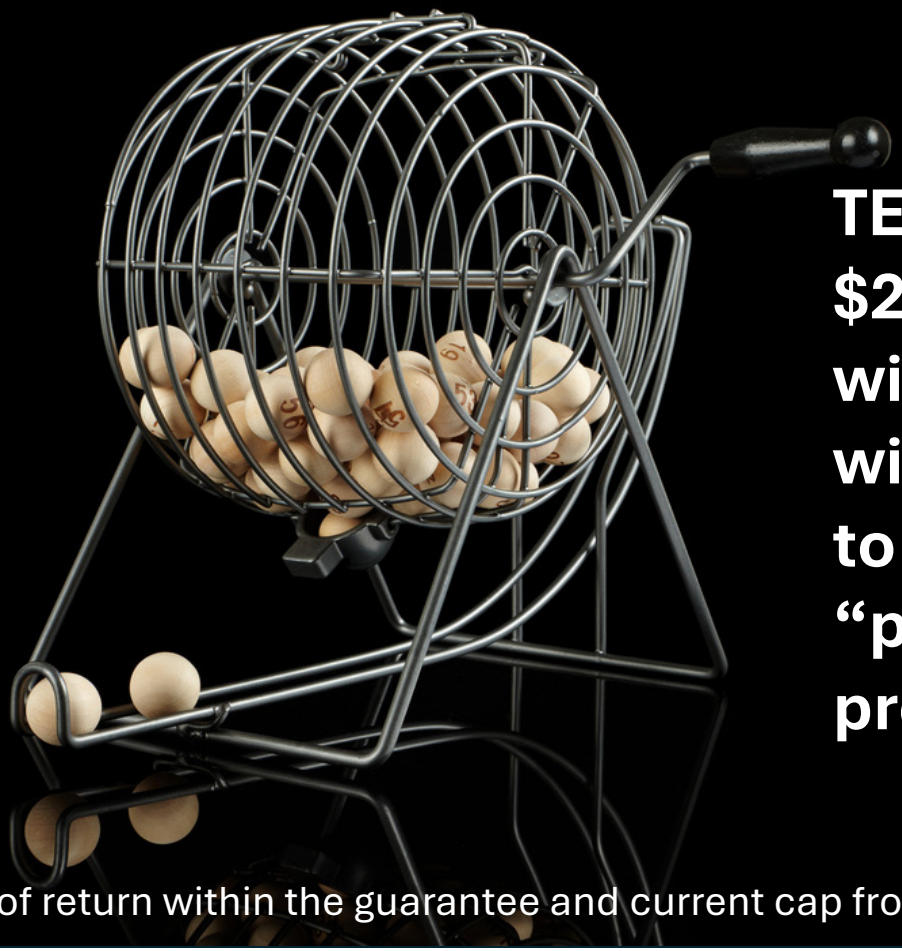
Ages 69 → 88

What went wrong?

- Explanatory material was enormously confusing
- As part of the purchase – “you can get out anytime without loss to you”
- Actual policy credits were “off” by just 12.5% in 7 years
- Illustration never shows “0%” returns in current value “projection” – values always growing – customer never sees the impact of the DEBIT side of “Zero is the Hero”
- A constant (and positive) illustrated crediting scenario is *deceptive*
- A constant CAP or PARTICIPATION RATE is *deceptive*

Will it "work?"

Monte Carlo Analysis



TEST the PROBABILITY $265,000 a year of withdrawals & loans will sustain the policy to at least age 100 *and* "pay off" the external premium loan.

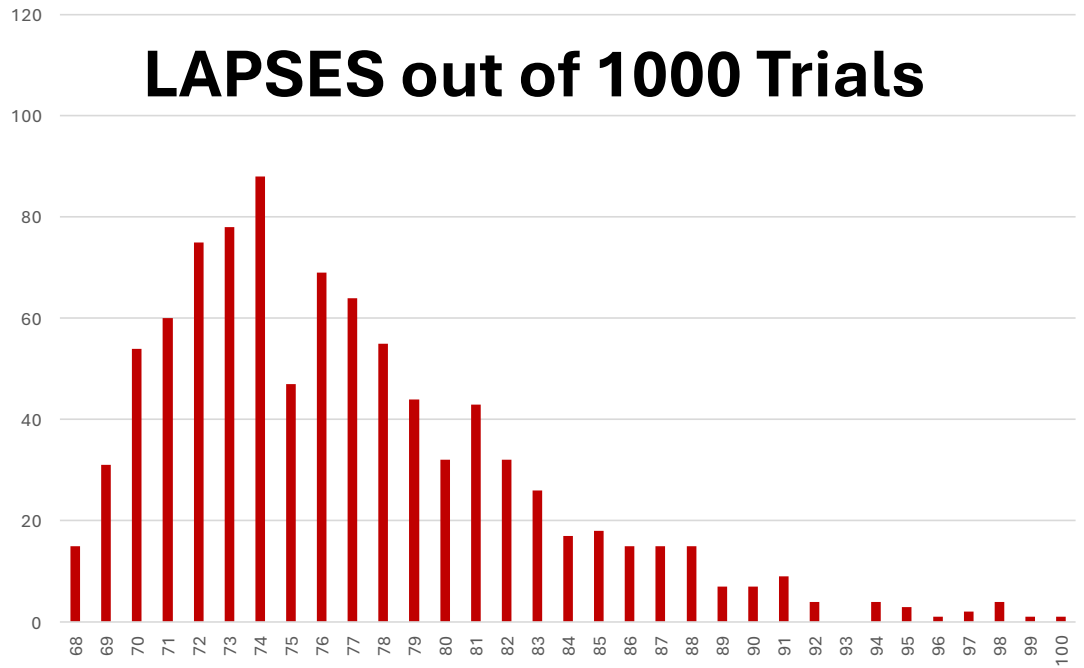
Applying random rates of return within the guarantee and current cap from the customer's chosen asset clas

Will it “work?” As sold with “income”

Average LE	1st Fail	50% Fail
88	68	76

Will it “work?” As sold with “income”

Average LE	1st Fail	50% Fail
88	68	76



94% Chance of Failure

936 Lapses out of 1000 by Age 100

Case #3 of 13

Attorney with insurance license

“Our mission is to help you develop and implement vision focused plans for minimizing taxes and maximizing benefits – for you, your family, your business, and your favorite charities.”

Illustration Summary

- $2 M purchase from a retirement plan
- Private Premium Financing
- EXIT: Pay off financing with the death benefit
- Tax-Free income for up to 35 years

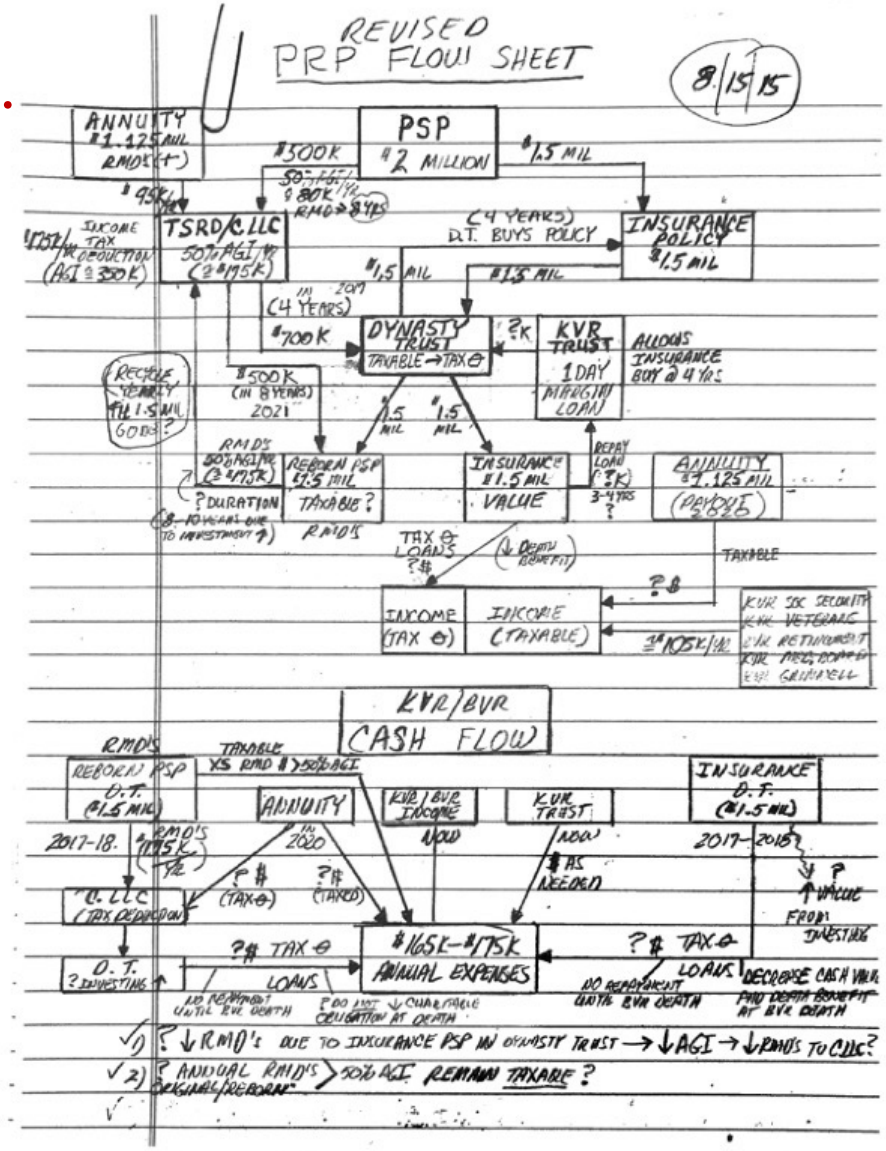
$100,000/year

Ages 65 → 100

What went wrong?

- Enormously confusing “plan” involving charitable and dynasty trusts

Here's the concept ...



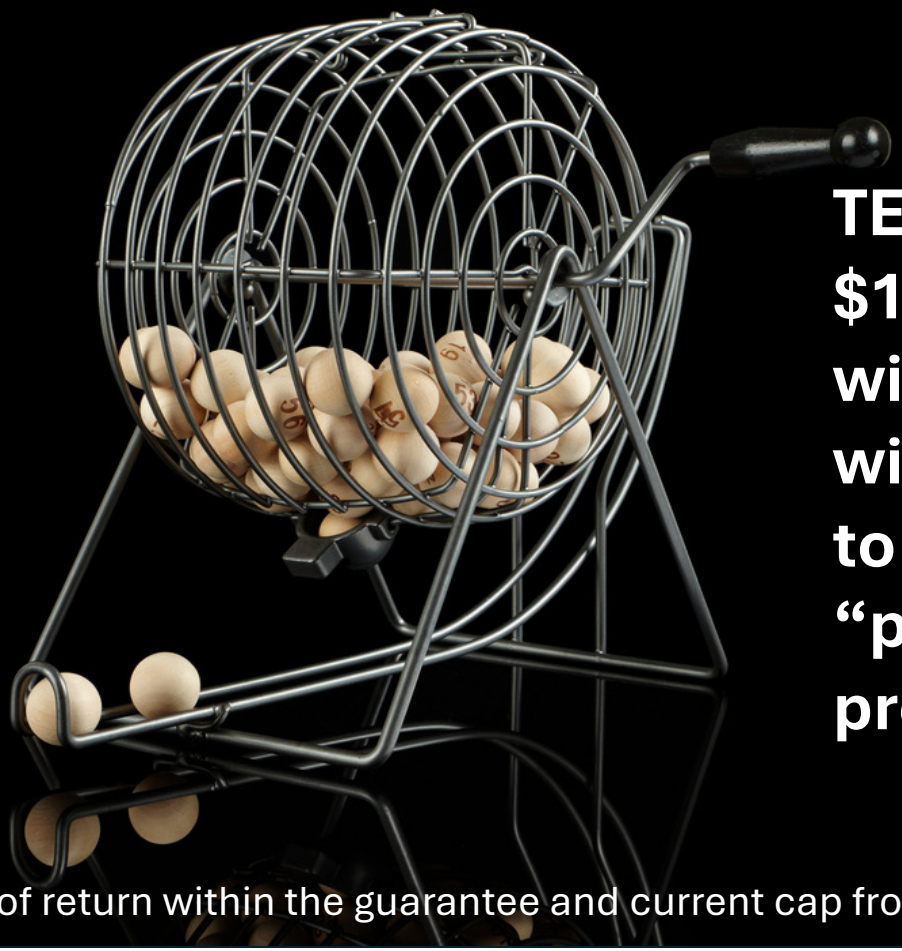
Got it?!

What went wrong?

- Enormously confusing “plan” involving charitable and dynasty trusts
- Policy wasn’t administered as described by the agent
- Fixed and Indexed accounts experienced much lower rates than illustrated
- Extremely high policy charges
- A constant (and positive) illustrated CREDITING scenario is *deceptive*
- A constant CAP or PARTICIPATION RATE is *deceptive*

Will it "work?"

Monte Carlo Analysis



TEST the PROBABILITY $100,000 a year of withdrawals & loans will sustain the policy to at least age 100 *and* "pay off" the external premium loan.

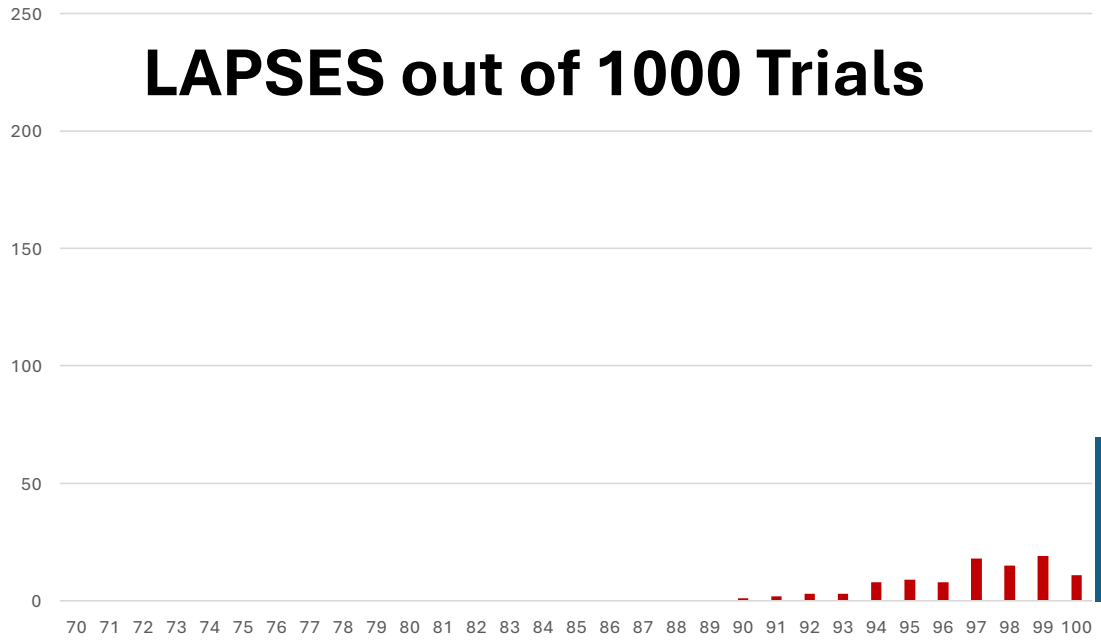
Applying random rates of return within the guarantee and current cap from the customer's chosen asset clas

Will it “work?” As sold with “income”

Average LE	1st Fail	50% Fail
91	90	97

Will it “work?” As sold with “income”

Average LE	1st Fail	50% Fail
91	90	97

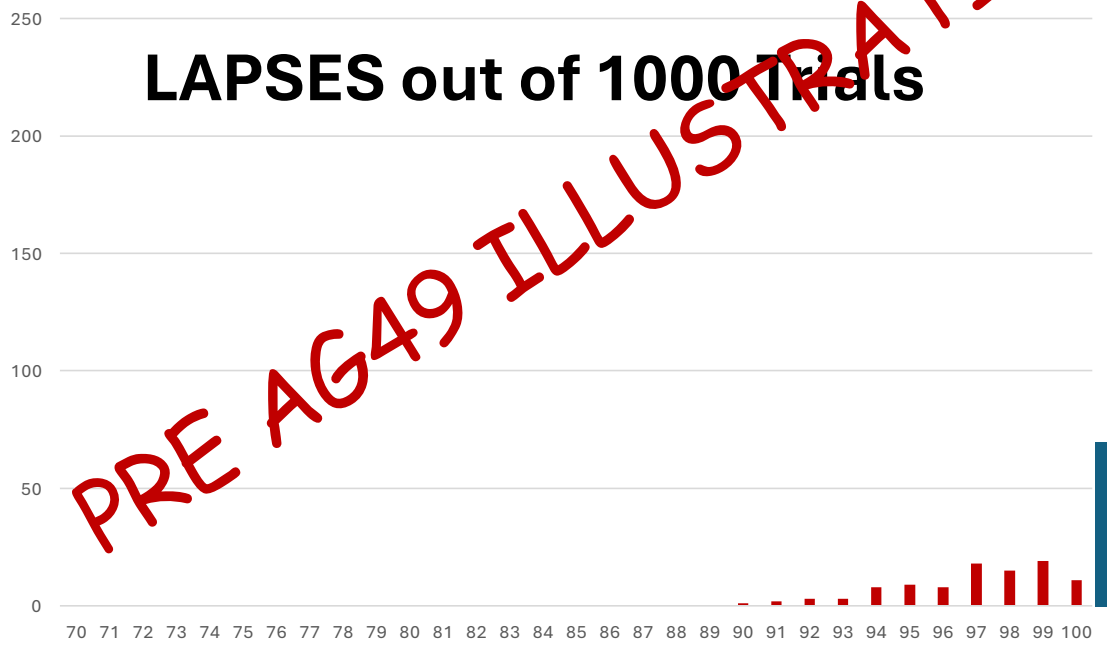


10% Chance of Failure

97 Lapses out of 1000 by Age 100

Will it “work?” As sold with “income”

Average LE	1st Fail	50% Fail
91	90	97



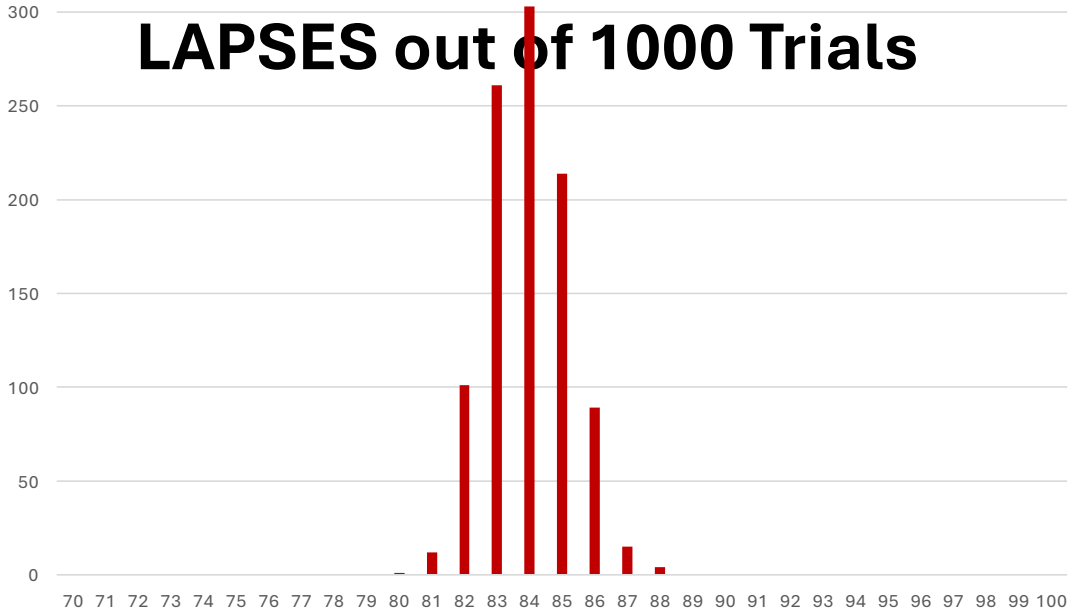
10% Chance of Failure

97 Lapses out of 1000 by Age 100

Will it “work?” As sold with “income”

In-Force

Average LE	1st Fail	50% Fail
91	80	84



100% Chance of Failure

1000 Lapses out of 1000 by Age 100

Case #13: Whaddya think?!

NAIC Model 245 regulates annuity illustrations, but few states have adopted it.

INDEXED annuities have a LOOPHOLE.

These illustrated “projections” are misleading

Flexible Premium Fixed Index Deferred Annuity

F&G ANNUITIES & LIFE

Product:	**F&G Power Accumulator 10**
Prepared For:	**Valued Client**
Initial Premium:	**$250,000 Non-Qualified**
State of Issue:	**NJ**
Assumed Issue Date:	**November 15, 2023**
Issue Age:	**50**

Hypothetical Aggregate Summary Based on Current Rates (See page 5 for guaranteed values)

Contract Year	Age	Premium	Annual Withdrawal	Account Value	Account Value Interest Crediting Rate	Minimum Guaranteed Surrender Value	Surrender Value [1]	Death Benefit
1	51	$250,000	0	272,475	8.99%	222,578	247,952	272,475
2	52		0	420,077	51.17%	226,473	384,723	420,077
3	53	0	0	420,077	0.00%	230,437	389,832	420,077
4	54	0	0	447,767	6.59%	234,469	419,364	447,767
5	55	0	0	507,559	13.35%	238,572	479,792	507,559
6	56	0	0	559,249	10.18%	242,747	533,824	559,249
7	57	0	0	635,647	13.66%	246,995	612,458	635,647
8	58	0	0	865,804	36.21%	251,318	841,737	865,804
9	59	0	0	923,078	6.62%	255,716	906,348	923,078
10	60	0	0	923,078	0.00%	260,191	914,770	923,078
		250,000	**0**					
11	61	0	0	1,002,689	8.62%	264,744	1,002,689	1,002,689
12	62	0	0	1,558,926	55.47%	269,377	1,558,926	1,558,926
13	63	0	0	1,558,926	0.00%	274,091	1,558,926	1,558,926
14	64	0	0	1,659,566	6.46%	278,888	1,659,566	1,659,566
15	65	0	0	1,870,947	12.74%	283,769	1,870,947	1,870,947
16	66	0	0	2,067,169	10.49%	288,735	2,067,169	2,067,169
17	67	0	0	2,338,529	13.13%	293,787	2,338,529	2,338,529
18	68	0	0	3,216,897	37.56%	298,929	3,216,897	3,216,897
19	69	0	0	3,420,460	6.33%	304,160	3,420,460	3,420,460
20	70	0	0	3,420,460	0.00%	309,483	3,420,460	3,420,460
		250,000	**0**					
21	71	0	0	3,702,724	8.25%	314,899	3,702,724	3,702,724
22	72	0	0	5,806,727	56.82%	320,409	5,806,727	5,806,727
23	73	0	0	5,806,727	0.00%	326,017	5,806,727	5,806,727
24	74	0	0	6,173,428	6.32%	331,722	6,173,428	6,173,428
25	75	0	0	6,921,406	12.12%	337,527	6,921,406	$6,921,406

F&G Annuity illustration

F&G ANNUITIES & LIFE

Product:	**F&G Power Accumulator 10**
Prepared For:	**Valued Client**
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9	59	0	0	923,078	6.62%	255,716	906,348	923,078
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		250,000	**0**					
11	61	0	0	1,002,689	8.62%	264,744	1,002,689	1,002,689
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14	64	0	0	1,659,566	6.46%	278,888	1,659,566	1,659,566
15	65	0	0	1,870,947	12.74%	283,769	1,870,947	1,870,947
16	66	0	0	2,067,169	10.49%	288,735	2,067,169	2,067,169
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18	68	0	0	3,216,897	37.56%	298,929	3,216,897	3,216,897
19	69	0	0	3,420,460	6.33%	304,160	3,420,460	3,420,460
20	70	0	0	3,420,460	0.00%	309,483	3,420,460	3,420,460
		250,000	**0**					
21	71	0	0	3,702,724	8.25%	314,899	3,702,724	3,702,724
22	72	0	0	5,806,727	56.82%	320,409	5,806,727	5,806,727
23	73	0	0	5,806,727	0.00%	326,017	5,806,727	5,806,727
24	74	0	0	6,173,428	6.32%	331,722	6,173,428	6,173,428
25	75	0	0	6,921,406	12.12%	337,527	6,921,406	$6,921,406

14.25% IRR

OBSERVATIONS

1. It’s not the product …

it’s the ILLUSTRATION

OBSERVATIONS

2. A consumer-focused solution to IUL illustration issues requires a different illustration paradigm

OBSERVATIONS

3. With ALL illustrations - no matter the warning - customers will focus on the most favorable illustrated ("current") outcome as a ***projection*** of future values

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The Rise of Plain Language Laws

Michael A. Blasie
Penn State Dickinson Law

The Rise of Plain Language Laws

MICHAEL A. BLASIE*

When lawmakers enacted 776 plain language laws across the United States, no one noticed. Apart from a handful, these laws went untracked and unstudied. Without study, large questions remain about these laws' effects and utility, and about how they inform the adoption or rejection of plain language.

This Article creates a conceptual framework for plain language laws to set the stage for future empirical research and normative discussions on the value of plain language. It unveils the first nationwide empirical survey of plain language laws to reveal their locations, coverages, and standards. In doing so, the Article creates a systematic method to find these laws. Then it coins a taxonomy of categories and terminology to describe their coverage and standards, thus creating a timely launchpad for future scholarship on domestic and international plain language laws. Along the way, the Article exposes the previously unknown scope of these laws—from election ballots and insurance contracts, to veterans housing and consumer contracts, to regulatory drafting and governor reports. That scope underscores the pervasive influence of plain language across public and private sectors, and over lawyers and non-lawyers alike. Moreover, the survey reveals significant intrastate and interstate variations and trends in coverages and standards. With this

* Assistant Professor of Law, Penn State Dickinson Law. Thank you to the Association of Legal Writing Directors and Legal Writing Institute for awarding this article a grant. For comments and discussion thank you to Brian Larson, Emily Zimmerman, Joseph Kimble, Wayne Schiess, David Thomson, Anne Mullins, Gail Stephenson, Marissa Meredith, Maria Termini, Emily Grant, Amy Stein, Jane Grise, Sandra Simpson, Anibal Lebron, Robin Laisure, Irene Cate, Katherine Brem, and the participants at the 2021 Southeastern Association of Law Schools Conference and 2021 Empire State Legal Writing Conference.

knowledge, for the first-time, empirical research can more precisely measure the benefits and costs of plain language laws while controlling for variables. Plus, the Article sets the stage for a forthcoming series of normative assessments on the role and design of plain language laws. Ultimately, the Article reignites a lively discourse on plain language amongst lawmakers, practitioners, and academics.

INTRODUCTION

Fifty years ago, a surge in plain language laws spread across the country.[1] But what happened next is unknown. No one investigated the extent of the surge: how many of these laws exist, what do they cover, what do they require? Equally unanalyzed is what problems lawmakers use plain language to solve. Potential answers include informing consumers, ensuring knowing assent to contracts, improving market efficiency, decreasing litigation, ensuring the populace is informed about the law, and protecting the legal system's integrity. This Article is the first nationwide empirical analysis of plain language laws. It reveals the United States is in the middle of a massive plain language experiment: fifty-two jurisdictions with fifty-two different approaches.[2] The results will inform decisions on whether plain language thrives, evolves, or dies. By providing the first systematic methodology to find plain language laws, the first classification scheme for the laws' design, and nationwide data on what these laws cover and require, this Article primes the plain language discourse in future scholarship.

Plain language convicts lawyers of the centuries-old criticism that their writing is incomprehensible.[3] Consumers struggle to understand contracts and citizens to understand laws.[4] Even lawyers hate lawyer writing.[5] To improve reader understanding, plain language focuses on writing from the reader's perspective.[6] Embracing that perspective requires dramatic changes in document format, structure, and content.[7] Supporters point to societal benefits like

[1] Joseph Kimble, *Plain English: A Charter for Clear Writing*, T. M. COOLEY L. REV. 1, 1 (1992) [hereinafter *Plain English: A Charter for Clear Writing*].

[2] Michael A. Blasie, Appendices to The Rise of Plain Language Laws (unpublished appendices) (on file with author).

[3] George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 346 (1987).

[4] *See* Bernard Black, *A Model Plain Language Law*, 33 STAN. L. REV. 255, 255-57 (1981). (discussing harms to consumers); Ellen E. Hoffman, *Getting to "Plain Language"*, 29 J. NAT'L ASS'N ADMIN. L. JUDICIARY 47, 48–57 (2009) (noting the difficulty citizens have understanding laws).

[5] Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 84–90 (2003).

[6] *Plain English: A Charter for Clear Writing*, *supra* note 1, at 11.

[7] Annetta Cheek, *Defining Plain Language*, 64 CLARITY 5, 5 (2010).

consumer protection, systematic benefits like improved justice system accessibility and transparency, professional benefits like better client service and increased public confidence in lawyers, and pragmatic benefits like efficiencies and cost-savings.[8]

Even though research and anecdotes tout these benefits, many reject the recommendation to use plain language.[9] Some find the research and anecdotes inconclusive.[10] Others worry about the costs and risks of change.[11] Still others oppose plain language, claiming it prevents effective writing.[12]

Nonetheless, many lawmakers injected plain language through targeted laws that require certain documents to use plain language.[13] Some laws are broad enough to cover nearly all documents a government writes,[14] while others apply to consumer contracts,[15] and still others are so narrow that they only cover certain product labels.[16] What these laws mean by "plain language" also varies. Some are diffuse, like those requiring a document to be understandable to a person of average intelligence and education,[17] while others are exacting, requiring counting the number of syllables or words in passages.[18]

Surprisingly, these laws remained obscure and unstudied. Most scholars discussed plain language as a concept and recommendation divorced from governing law; they encouraged or opposed lawyers adopting plain language, and disputed whether plain language

[8] *See* JOSEPH KIMBLE, WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW 64–73, 104 (2012) [hereinafter WRITING FOR DOLLARS, WRITING TO PLEASE].

[9] *See infra* Section I.D.

[10] *See id*.

[11] *See id*.

[12] *See id*.

[13] *See infra* Part III.

[14] *See, e.g*., HAW. CONST. art. XVI, § 13.

[15] *See, e.g.*, ME. REV. STAT. tit. 10, § 1121–1126 (West, Westlaw through 2021 1st Regular Sess. and 2021 1st Special Sess.).

[16] *See, e.g.*, ARIZ. ADMIN. CODE §R20-6-210 (West, Westlaw through rules published in Ariz. Admin. Reg. Vol.27, Issue 40, Oct. 1, 2021).

[17] *See, e.g.,* MINN. STAT. ANN. § 80D.04 Subd. 4 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

[18] *See, e.g.*, ARIZ. ADMIN. CODE §R20-6-213(C)(2)(c) (West, Westlaw through rules published in Arizona Administrative Register Vol. 27, Issue 40, October 1, 2021).

would help or hurt lawyers, clients, businesses, and the public.[19] Fleeting discussions of plain language laws recorded an ebb and flow patchwork of adoption: a few dozen state consumer protection and insurance laws in the 1970s,[20] the Securities and Exchange Commission's plain language push in the 1990s,[21] and the federal Plain Writing Act of 2010 that covers certain agency documents.[22] But no one analyzed the full scope of plain language laws nationwide. As a result, plain language laws lacked rigorous scholarly engagement; in fact, scholars had no common taxonomy on how to talk about these laws.

This Article is the first empirical nationwide survey of plain language laws. At its core, the Article makes two contributions. First, the Article creates a method to systematically search for plain language laws. That method delivers the inaugural reveal of 776 plain language laws, including which jurisdictions passed the laws, what documents the laws cover, and what standards the laws apply.[23] These laws exist in statutes, regulations, or constitutions spread across every state, the District of Columbia, and the federal government.[24]

Second, the Article creates a plain language law classification scheme. To describe coverage, the Article divides these laws into ten categories of private sector documents and five categories of public sector documents.[25] The survey results show these laws cover documents drafted by lawyers and non-lawyers; businesses and individuals; and all three branches of government.[26] They effect industries like healthcare, insurance, and housing, plus quintessential government roles like elections, statutory and regulatory drafting, taxes, government reports, and court notices.[27] Because some laws fit within multiple categories, the survey results show a total of 873

[19] *See infra* Section I.C, I.D.

[20] Black, *supra* note 4, at 267.

[21] SEC Updated Staff Legal Bulletin No. 7 (June 7, 1999), https://www.sec.gov/interps/legal/cfslb7a.htm [hereinafter SEC Staff Legal Bulletin No. 7].

[22] Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat 2861 (2010).

[23] *See generally* Blasie, *supra* note 2.

[24] *See id*.

[25] *See infra* Part IV, V.

[26] *Id.*

[27] *Id.*

laws across all categories.[28] To describe standards, the Article diverges from prior scholarship by recognizing four standards.[29] Some standards provide general guidance, while others import formulas that count syllables and sentence length, and still others target drafting preferences like word-choice and organization.[30]

These two contributions combine to reveal substantial interstate and intrastate variations in coverages and standards. This information is the missing foundation for empirical research on plain language laws. Now scholars can target research to assess the effects of different plain language laws—while controlling for variables like jurisdiction, coverage, and standard—to yield stronger conclusions about the costs and benefits of different laws. Ultimately, the Article triggers a more informed and robust analysis of both plain language and plain language laws. Likewise, the survey results prime future scholarship on the role of plain language in different legal doctrines and its effect on consumers, contracting parties, citizens, businesses, and governments.

This Article proceeds in five parts. Part I details the Plain Language Movement. After explaining the century-plus history of problems with legal writing, this Part details the evolution of plain language as a proposed solution in the United States. Along the way it identifies support for, skepticism to, and opposition to plain language, and the need for research on plain language laws.[31] Part II details a methodology to find and describe plain language laws. It proposes a new classification scheme for the laws' coverages and standards.[32] Part III provides a nationwide overview of plain language laws.[33] Parts IV and V dive into the public and private sector laws discovered, while identifying national trends, variations, and anomalies.[34]

[28] Blasie, *supra* note 2, at Appendix P.
[29] *See infra* Part II.B.
[30] Blasie, *supra* note 2, at Appendix P.
[31] *See infra* Part I.
[32] *See infra* Part II.
[33] *See infra* Part III.
[34] *See infra* Part IV, V.

I. THE PLAIN LANGUAGE MOVEMENT

Concerns about difficulties reading and understanding legal documents go back centuries.[35] Only recently has this problem received thorough study.[36] The leading solution is a concept known as plain language.[37] This section details the concerns about legal writing and how scholars converged on plain language as a solution. Then it explains the definition of plain language, the history of deploying it as a solution, and its debated benefits.

A. *The Centuries-Old Legal Writing Problem in the United States*

While complaints about lawyer writing are not new, recent scholarship advances plain language as a solution.[38] Concerns about writing are common—even Sumerian tablets complain of deteriorating writing skills in the young.[39] Many industries report writing skills deficits.[40] According to one report, over 800 American companies use self-study grammar courses for their employees.[41] Employers rank writing as the second largest weakness of college graduates.[42]

[35] Gopen, *supra* note 3, at 346; Debra R. Cohen, *Competent Legal Writing—A Lawyer's Professional Responsibility*, 67 U. CIN. L. REV. 491, 494 (1999); Carol M. Bast, *Lawyers Should Use Plain Language*, 69 FLA. B.J. 30, 30–32 (1995).

[36] Ian Gallacher, *"When Numbers Get Serious": A Study of Plain English Usage in Briefs Filed Before the New York Court of Appeals*, 46 SUFFOLK U. L. REV. 451, 461-61 (2013).

[37] *See infra* nn. 92–101.

[38] *See, e.g.*, Bast, *supra* note 35, at 31–32; RICHARD C. WYDICK & AMY E. SLOAN, PLAIN ENGLISH FOR LAWYERS (6th ed. 2019).

[39] STEVEN PINKER, THE SENSE OF STYLE: THE THINKING PERSON'S GUIDE TO WRITING IN THE 21ST CENTURY 6 (2014).

[40] *Plain English: A Charter for Clear Writing, supra* note 1, at 4.

[41] *Id.*

[42] *Id.*

The legal field is no different. Complaints about lawyer writing go back centuries.[43] Even colonials and the Founding Fathers criticized lawyer writing.[44]

In a profession known for caveats and subtleties, the criticism of legal writing is bright and blunt. Judges have called legal writing "appalling" and "awful."[45] Scholars who research the issue are even less forgiving: legal writing "has become synonymous with poor writing"[46] and there is "a pervasive lack of elementary writing skills among law students and lawyers."[47]

Recent empirical research agrees. A 2013 analysis of 102 plaintiff employment discrimination summary judgment motions concluded "the vast majority of plaintiffs' briefs (72%) are badly deficient . . . [d]isturbingly many fall far below the most basic professional standards, either lacking any legal research or amounting to a troubling mess of incoherent writing."[48] A 2014 search found "an alarming multitude" of judicial opinions "admonish[ing] lawyers of all levels of experience for shoddy briefs or for flouting non-negotiable substantive and procedural rules."[49] Three years later, updated

[43] Gopen, *supra* note 3, at 346 (identifying complaints throughout the centuries); Cohen, *supra* note 35, at 491, 494 n. 19 (1999) (providing examples of complaints); Bast, *supra* note 35, at 32 (describing Legal Writing Institute resolution that acknowledged over four centuries of complaints).

[44] Michael S. Friman, *Plain English Statutes – Long Overdue or Underdone?*, 7 LOY. CONSUMER L. REP. 103, 107–08 (1995).

[45] Mark K. Osbeck, *What Is "Good Legal Writing" and Why Does It Matter?*, 4 DREXEL L. REV. 417, 420 (2012).

[46] Steven Stark, *Why Lawyers Can't Write*, 97 HARV. L. REV. 1389, 1389 (1984).

[47] Matthew J. Arnold, *The Lack of Basic Writing Skills and Its Impact on the Legal Profession*, 24 CAP. U. L. REV. 227, 228 (1995).

[48] Scott A. Moss, *Bad Briefs, Bad Law, Bad Markets: Documenting the Poor Quality of Plaintiffs' Briefs, Its Impact on the Law, and the Market Failure It Reflects*, 63 EMORY L. J. 59, 80 (2013). The researcher added "[s]ome briefs are so incoherent or ungrammatical it is hard to believe the author is even a college graduate." *Id.* at 82.

[49] Heidi K. Brown, *Converting Benchslaps to Backslaps: Instilling Professional Accountability in New Legal Writers by Teaching and Reinforcing Context*, 11 LEGAL COMM. & RHETORIC: JALWD 109, 109 (2014) [hereinafter *Converting Benchslaps to Backslaps*].

research "confirm[ed] that the rash of bad briefing in federal and state courts persists."[50]

Transactional writing fairs no better.[51] Scholars launch similar critiques of transactional writing.[52] A 2013 survey of hundreds of software licensing agreements concluded the average agreement required a college education to understand and was comparable to the readability of scientific journals.[53]

The American Bar Association ("ABA") concurs. A 1992 ABA report listed legal communication as one of ten fundamental lawyering skills and recommended law schools improve legal writing education "[i]n view of the widely held perception that new lawyers today are deficient in writing skills."[54] A decade later, that "widely held perception" had not changed; in a 2003 survey, over 93% of attorneys, judges, and legal writing professors identified fundamental writing problems with new lawyers.[55]

Employers agree. A 2014 Harvard Law School survey of its eleven largest employers of litigators identified writing as a key skill

[50] Heidi K. Brown, *Breaking Bad Briefs*, 41 J. LEGAL PRO. 259, 262 (2017) [hereinafter *Breaking Bad Briefs*].

[51] *See*, *e.g.*, Chad Baruch, *Everything You Wanted to Know About Legal Writing But Were Afraid to Ask*, 17 J. CONSUMER & COM. L. 9, 11 (2013) ("[M]any contracts leave one with the unmistakable impression that the drafter's goal was to make certain that no one would ever comprehend the contract's terms.").

[52] *See, e.g.*, Gallacher, *supra* note 36, at 462 ("Corporate lawyers rely heavily on boilerplate, and most practitioners seem to have absorbed the language of their law school casebooks. They may have heard that legalese is dead, but they don't write like they believe it.") (quoting ANNE ENQUIST & LAUREL CURRIE OATES, JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER 127 (3d ed. 2009)); Baruch, *supra* note 51.

[53] Florencia Marotta-Wurgler & Robert Taylor, *Set in Stone? Change and Innovation in Consumer Standard-Form Contracts*, 88 N.Y.U. L. REV. 240, 253 (2013).

[54] *Legal Education and Professional Development—An Educational Continuum, The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. Sec. Legal Educ. & Admissions to the Bar 332.

[55] Kosse & ButleRitchie, *supra* note 5, at 84–90.

lacking in graduates.[56] A 2015 LexisNexis study of law firm supervisors found new lawyer writing and drafting skills "lacking the most."[57]

In addition to the judges, scholars, employers, and bar associations, business clients also want improvement. Such clients realize better writing saves them "time and money by increasing the ability of readers to understand and retain what they have read."[58] In particular, the business community has begun to talk about legal writing. Even a Harvard Business Review article discusses the effects of contract drafting language.[59] While the evidence suggests benefits to all clients, the effects of legal writing on clients who are individuals needs greater study.

Scholars point to several complex causes of poor legal writing.[60] Many point to educational deficits from primary school through college.[61] Others cite economic reasons, like lawyers creating complicated documents to justify fees, prove their importance, or create a need for their services.[62] Some invoke psychological barriers like resistance to change, reliance on templates and tradition, and pressure to conform with the past.[63] A few scholars argue some lawyers

[56] John C. Coates et al., *What Courses Should Law Students Take? Harvard's Largest Employers Weigh In* at 7 (HLS Program on the Legal Pro., Working Paper No. 14-20, 2014), http://nrs.harvard.edu/urn-3:HUL.InstRepos:12911341.

[57] LEXISNEXIS, HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE, 7 (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf.

[58] Matthew Salzwedel, *Face It–Bad Legal Writing Wastes Money*, 92 MICH. BAR J. 52, 52 (2013).

[59] *See generally* Shawn Burton, *The Case for Plain-Language Contracts*, 8 HARV. BUS. REV. 134 (Feb. 2018); *see also* Kate Vitasek, *Plain Language Contracts on the Rise*, FORBES (Mar 19, 2018, 7:00 AM), https://www.forbes.com/sites/katevitasek/2018/03/19/plain-language-contracts-on-the-rise/?sh=595b9e1efc66.

[60] Wayne Schiess, *Legal Writing Is Not What It Should Be*, 37 S.U. L. REV. 1, 2–22 (2009) (surveying potential causes).

[61] Kosse & ButleRitchie, *supra* note 5, at 98–99.

[62] *Id.* at 97.

[63] *Id.* at 97–98.

cannot see the problems in their own writing,[64] or believe poor writing has strategic value.[65] Still others point to pragmatic barriers like time constraints, the costs of change and training, and the lack of sufficient training and writing practice.[66]

Whatever the causes, the consequences are severe. Poorly written briefs may increase the odds of losing a motion and risk skewing the law's development.[67] Some opine poor legal writing contributes to low public opinion, respect, and trust in lawyers.[68] Others claim poor legal writing wastes resources, and risks malpractice and professional discipline.[69] Bar associations and courts have asserted writing caliber affects access to the law and how well lawyers counsel clients.[70] Others tie poor writing to oppressing consumers through incomprehensible disclosures or to inhibiting a free market economy.[71]

Complaints about legal writing inevitably circle back to law schools. Over the last forty years, legal writing education steadily

[64] Bryan A. Garner, *Why Lawyers Can't Write*, 99 ABA J. 24, 24 (2013) (explaining the Dunning-Kruger effect).

[65] Christopher T. Lutz, *Why Can't Lawyers Write?*, 15 LITIG. 26, 26-27 (1989) (stating that lawyers might strategically err on overinclusion to risk omitting important information); Stark, *supra* note 46, at 1389–90 (stating lawyers might strategically make writing complicated to conceal a weakness).

[66] Kosse & ButleRitchie, *supra* note 5, at 99–100; Cohen, *supra* note 35, at 505–17; Arnold, *supra* note 47, at 236.

[67] *See, e.g.*, Moss, *supra* note 48, at 93 (using empirical data to explain effects of bad brief writing).

[68] George Hathaway, *An Overview of the Plain English Movement for Lawyers . . . Ten Years Later*, 73 MICH. BAR. J. 26, 26 (1994) [hereinafter *An Overview of Plain English*].

[69] Cohen, *supra* note 35, at 492–93.

[70] *See, e.g.*, *Plain English Committee*, PA. BAR ASS'N, https://www.pabar.org/site/For-Lawyers/Committees-Commissions/Plain-English (last visited Aug. 3, 2021); *Illinois Supreme Court Policy on Plain Language*, (Apr. 1, 2018), https://www.illinoiscourts.gov/Resources/e44f267e-8de5-4833-9ac7-9272e70301d2/Plain_Language_Policy.pdf [hereinafter *Illinois Supreme Court Policy*].

[71] *See* Black, *supra* note 4, at 255–57 (discussing harms to consumers from incomprehensible contracts); Christopher Cox', Chairman, SEC, Keynote Address to the Center for Plain Language Symposium: Plain Language and Good Business, (Oct. 12, 2007), https://www.sec.gov/news/speech/2007/spch101207cc.htm (discussing market benefits of plain language) [hereinafter Plain Language and Good Business].

improved.[72] In 1979, the ABA recommended law schools provide at least "one rigorous legal writing experience in each year."[73] By 1992, fewer than twenty percent of schools did so, but most required two semesters of legal writing training.[74] In 2001, the ABA required law school students to have at least one "additional rigorous writing experience" on top of the first legal writing course.[75] A 2002 survey revealed the average law student receives about two credit hours of legal writing instruction each semester of the first year, and thirteen law schools required an upper-level legal writing component.[76]

While legal writing classes have the potential to infuse the profession with much-needed change, thus far they have not.[77] "[D]espite access to professors' comprehensive instruction, one-on-one writing conferences, and detailed grading rubrics, some law students submit written work product that lacks key substantive components and violates clear procedural and formatting requirements."[78] To be sure, a "notable percentage" of graduates do write well, and writing concerns are not specific to new graduates.[79] In fact, "attorneys who have been practicing law for decades represent some of the more egregious offenders."[80] Nonetheless, despite the changes to legal writing classes, there is little evidence of major improvement in lawyer writing within the field and some evidence lawyers are getting worse.[81]

[72] *See infra* nn. 73–86.

[73] ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 15 (1979).

[74] *Plain English: A Charter for Clear Writing*, *supra* note 1, at 5.

[75] Osbeck, *supra* note 45, at 419.

[76] Kosse & ButleRitchie, *supra* note 5, at 86–87.

[77] *See infra* note 81 and accompanying text.

[78] *Converting Benchslaps to Backslaps*, *supra* note 49, at 109.

[79] *Id.* at 110. For more studies reaching similar conclusions *see* Gallacher, *supra* note 36, at 455 n. 18. *See also* Kosse & ButleRitchie, *supra* note 5, at 85–86 ("Nearly 94 percent, overall, of the respondents found briefs and memoranda marred by basic writing problems . . . . A clear majority of respondents—57.3 percent—thought that new members of the profession do not write well.").

[80] *Converting Benchslaps to Backslaps*, *supra* note 49, at 109.

[81] *See* Gallacher, *supra* note 36, at 454–55 ("[T]he criticisms of legal writing continue, apparently unabated, even though for the past twenty-five years or so, law schools have been producing graduates who are carefully trained in the tech-

But none of this is to say legal writing classes are not a big step in the right direction. Indeed, many scholars argue for more.[82] With students arriving to law school with writing deficiencies,[83] one year of instruction in a low-credit class provides exposure to good writing principles, not proficiency in them.[84] Plus, because legal writing classes are relatively new to law schools, many practitioners never took them and even today many students attend law schools that do not offer comprehensive legal writing classes.[85] Complicating matters, legal writing professors and classes are often devalued by students and other professors, upper level writing instruction is rare, the curriculum and format of legal writing classes vary significantly between schools, and most students receive little professional writing training or development after graduation.[86]

Still, more change in the academy and profession may be coming as more legal organizations recognize the importance of writing. The American Bar Foundation concluded oral and written communication are the two most important lawyer skills.[87] An ABA study found lawyers spend over 20% of their time writing, more than any

nique and practice of legal writing."); Baruch, *supra* note 51, at 9 ("Despite recognition of this problem and concerted efforts by law schools to fight it, legal writing continues to deteriorate."); James E. Viator, *Legal Education's Perfect Storm: Law Students' Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creating the Urgent Need to Reconfigure the First-Year Curriculum*, 61 CATH. U. L. REV. 735, 741–42 (2012) (stating that despite "complaining insistently for some thirty years," legal writing remains poor). Admittedly, assessments of profession-wide legal writing caliber are imperfect. Few studies examine other lawyer writings like memoranda, letters, legislation, transactional documents, and emails, each of which may warrant different metrics for review. Also, research rarely accounts for whether a lone lawyer or team of lawyers authored a document, or a client's influence over authorship.

82 *See, e.g.*, Kosse & ButleRitchie, *supra* note 5, at 92–96.

83 *Id.* at 93–99.

84 *Id.* at 86–87 ("With so little required writing, it is hardly surprising that new graduates do not write as well as more senior members of the profession. After all, repetition and practice are essential to improving writing skills.").

85 *Id.* at 86, 93–99.

86 *See id.*

87 Arnold, *supra* note 47, at 230.

other activity.[88] Many state bar exams have a legal writing component.[89] And some bar association committees run writing competitions and give out awards for exceptional writing.[90] Nonetheless, even with more classes in law school, few students could graduate in three years with competency to draft a securities filing or a licensing agreement.

Any effective solution must first answer the major question: what makes good legal writing? For the first time in the centuries-long history of legal writing criticism, robust scholarship investigates this question. Three professional organizations, three specialty journals, law review articles, a "library full of books," and a growing number of professors study legal writing.[91] Rather than record complaints, legal writing scholarship investigates the causes of those complaints.

Such scholarship converges on one concept as a solution: "plain English" (also known as "plain language").[92] "That [p]lain English is something to be desired in legal writing . . . is something taken almost as an article of faith in legal writing circles."[93] Even the ABA's Sourcebook on legal writing courses promotes it.[94] Some of the most popular writing resources for practitioners center on plain language, like Richard Wydick's *Plain English for Lawyers*,[95]

[88] *Id.* at 230–31.

[89] Kathleen E. Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 TOURO L. REV. 507, 517 (2005).

[90] *See, e.g.*, *1999 Clarity*, PA. BAR ASS'N, http://www.pabar.org/site/For-Lawyers/Committees-Commissions/Plain-English/Awards/1999-Clarity (last visited Aug. 3, 2021) (rewriting jury instruction competition and Plain English award).

[91] Gallacher, *supra* note 36, at 451–52.

[92] *Id.* at 460–61, 461 n. 50–52 (2013). *See, e.g.*, Baruch, *supra* note 51 at 11 (encouraging transactional lawyers to "set aside entrenched writing habits and embrace the use of plain language"); Sean Flammer, *Persuading Judges: An Empirical Analysis of Writing Style, Persuasion, and the Use of Plain English*, 16 J. LEGAL WRITING INST. 183, 211 (2010) (showing that "judges prefer Plain English to Legalese").

[93] Gallacher, *supra* note 36, at 460.

[94] *Id.* at 462.

[95] *See generally* RICHARD C. WYDICK & AMY E. SLOAN, PLAIN ENGLISH FOR LAWYERS (6th ed. 2019).

which has sold over one million copies.[96] Plain language in transactional documents has endorsements from seasoned practitioners, like the general counsel of General Electric's aviation division.[97]

B. *Definition of Plain Language*

Despite the robust scholarship on plain language, terminology varies. Many use the terms "plain English" and "plain language" interchangeably.[98] This Article uses the term "plain language" because that term conveys the concept applies across multiple languages, but its application may differ between languages.[99]

Although plain language has no universal definition, descriptions center on the same idea: when a drafter tries to convey information to others through a written document, the more successful the document is at conveying that information to the intended audience the more the document uses plain language.[100] This Article

[96] Richard Wydick, *Ambiguity*, 95 MICH. B.J. 48, 48 (2016).

[97] Burton, *supra* note 59, at 137.

[98] *What is Plain Language?* PLAINLANGUAGE.GOV https://www.plainlanguage.gov/about/definitions/ (last visited on Dec. 16, 2021); Wayne Schiess, *Using Intensifiers Is Literally A Crime*, 96 MICH. B.J. 48, 48 (August 2017) ("'Plain Language' is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee."); Michael D. Murray, *Diagrammatics and the Proactive Visualization of Legal Information*, 43 U. ARK. LITTLE ROCK L. REV. 1, 2 n.5 (2021) ("The Proactive Law movement shares common and parallel goals with the Plain Language (or Plain English) movements . . . .").

[99] *See generally Plain Language Around the World*, PLAIN LANGUAGE ASS'N INT'L, https://plainlanguagenetwork.org/plain-language/plain-language-around-the-world/ (last visited Dec. 20, 2021) (identifying plain language efforts across multiple languages).

[100] *See* Flammer, *supra* note 92, at 185 ("The basic idea behind it is to make the document as reader-friendly as possible to get the message across"); Andrew T. Serafin, *Kicking the Legalese Habit: The SEC's "Plain English Disclosure" Proposal*, 29 LOY. U. CHI. L. J. 681, 683 (1998) (stating that plain language is the "idea that writing must be clear and readable in order for people to fully understand what is written."); *Plain English: A Charter for Clear Writing*, *supra* note 1, at 11–14 (plain language involves crafting a document "to convey your ideas with the greatest possible clarity"); Charles R. Dyer, et al. *Improving Access to Justice: Plain Language Family Law Court Forms in Washington State*, 11 SEATTLE J. SOC. JUST. 1065, 1068, 1072–73 (2013) ("The goal of using plain language is to make documents intelligible to the greatest possible number of intended readers.").

uses the following definition: plain language is drafting documents to maximize the chance the reader will understand the drafter's intended message.[101]

To maximize that chance, plain language requires drafters to consider how every feature within the drafter's control affects the reader.[102] These features include the document's language, structure, and design.[103] Language features include decisions about word choice and what information to include.[104] A common language feature is replacing legalese with everyday language.[105] Structural features cover choices like the order of information and use of headers.[106] Design features involve choices like the use of visual aids.[107]

No single authoritative source establishes all plain language features.[108] But over time, several have become common.[109] Plain language recommends presenting information in a logical order; leading with the most important information; and deploying headers,

[101] Some use a results-focused definition of plain language. For example, according to the Plain Language Association International a "communication is in plain language if its wording, structure, and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information." PLAIN LANGUAGE ASS'N INT'L, https://plainlanguagenetwork.org/ (last visited Oct. 28, 2021). This Article chooses an objective standard that stops short of whether the intended results of plain language occur. That decision separates the efficacy of plain language from its standard and catches a broader range of lawmaking approaches to codifying plain language into law. *See* Cheek, *supra* note 7, at 5–9 (discussing three ways of defining plain language through standards and advocating for a subjective standard).

[102] *Plain English: A Charter for Clear Writing*, *supra* note 1, at 11–14 (listing various plain language features).

[103] Cheek, *supra* note 7, at 5.

[104] *Id.* at 6.

[105] Flammer, *supra* note 92, at 186–87.

[106] Cheek, *supra* note 7, at 6.

[107] *Id.*

[108] *See e.g., What Is Plain Language?*, *supra* note 98 (noting a variety of definitions); Flammer, *supra* note 92, at 185 ("Like many legal terms, 'Plan English' is vague and difficult to define.").

[109] *See e.g.,* Cheek, *supra* note 7, at 9; *Plain English: A Charter for Clear Writing supra* note 1, at 14.

topic sentences, and transitions.[110] Plain language emphasizes brevity: short sentences, short paragraphs, and short sections.[111] Plain language prefers using present tense verbs and active voice.[112] At the same time, writing with simple words and phrases, while minimizing jargon, abbreviations, and definitions exemplify plain language.[113]

C. *The History of Plain Language*

Although plain language has no precise birth, its timeline contains several commonly reported landmarks.[114]

In the 1940s, plain language received its research foundation.[115] During this decade, the federal government hired professors to help agencies communicate price control regulations to businesses.[116] One of those professors, Rudolph Flesch, published a book on how to use "plain talk;" the book included a readability formula (discussed below) that assessed a document's readability by measuring the number of words in a sentence and the number of syllables in a word.[117] Even as more formulas emerged, Flesch's formula remained a staple in the plain language community.[118] The Flesch formula was a popular objective metric to measure how easy or difficult readers would find any document,[119] but the link to law was ancillary.[120] The research on formulas and "plain talk" did not focus

[110] *Organize the Information*, PLAINLANGUAGE.GOV, https://www.plainlanguage.gov/guidelines/organize/ (last visited Aug. 3, 2021).

[111] *Be Concise*, PLAINLANGUAGE.GOV, https://www.plainlanguage.gov/guidelines/concise/ (last visited Aug. 3, 2021).

[112] *Keep it Conversational*, PLAINLANGUAGE.GOV, https://www.plainlanguage.gov/guidelines/conversational/(last visited Aug. 3, 2021).

[113] *Choose Your Words Carefully*, PLAINLANGUAGE.GOV, https://www.plainlanguage.gov/guidelines/words/ (last visited Aug. 3, 2021).

[114] One author claims the earliest plain language law was in England in 1362. Friman, *supra* note 44, at 104.

[115] Cohen, *supra* note 35, at 499.

[116] *Id*. at 499 n. 46.

[117] Serafin, *supra* note 100, at 683; Cheek, *supra* note 7, at 6.

[118] Lance N. Long & William F. Christensen, *Does the Readability of Your Brief Affect Your Chance of Winning an Appeal?*, 12 J. APP. PRAC. & PROCESS 145, 148–151 (2011) (describing most common formulas and identifying Flesch's formula as the most influential and popular).

[119] Cheek, *supra* note 7, at 5–6.

[120] Friman, *supra* note 44, at 107–08.

on legal writing.[121] Indeed, many more formulas emerged as ways to evaluate elementary school material.[122]

In 1963, David Mellinkoff published *The Language of the Law*—the intellectual founding of plain language in the law.[123] Mellinkoff delivered a systematic study of law-specific language.[124] He identified specific characteristics common to legal writing like using jargon and Latin, deliberately using words with flexible meanings, and attempting extreme precision.[125] After thoroughly detailing the historical criticisms specific to lawyer writing and the corresponding problems caused by such writing,[126] Mellinkoff announced his thesis: "The argument of this book is that the language of the law should not be different [from everyday language] without a reason."[127] The remainder of the book challenged common justifications for traditional legal writing prose and suggested potential benefits of change.[128] Many books with similar advice followed.[129]

The 1970s jolted plain language into the spotlight. Specifically, when two insurance companies and a bank voluntarily revised some of their policies and loan documents with plain language, they received positive publicity and support from consumer activists.[130] Then lawmakers jumped onboard.[131] Several new federal laws required certain documents, like pension and warranty documents, to use understandable language or language likely to be understood by the average reader, although none explained how to meet these standards.[132] President Carter issued an executive order requiring federal regulations to be as simple and as clear as possible.[133] At the

[121] *Id*. at 107.
[122] *Id*.
[123] *See generally* DAVID MELLINKOFF, THE LANGUAGE OF THE LAW; Flammer, *supra* note 92, at 185.
[124] *See generally* MELLINKOFF, *supra* note 123, at 11.
[125] *Id*. at 11.
[126] *Id.* at 230–82.
[127] *Id.* at 285.
[128] *Id*. at 285–455.
[129] *See, e.g.*, BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH (2d ed. 2001); WAYNE SCHIESS, PLAIN LEGAL WRITING: DO IT (2019).
[130] Friman, *supra* note 44, at 105.
[131] *Id*.
[132] *Id.*
[133] *Id.*

same time, states began passing laws requiring plain language in insurance policies and consumer contracts.[134] The 1970s stand out as a time when large companies voluntarily experimented with plain language and when the United States experienced a surge in plain language legislation.[135] That legislation converted plain language from recommendations to laws.[136] During this decade, plain language became associated with consumer protection, disclosures, and disparate bargaining power.[137]

A major plain language landmark occurred in the 1990s when an experimental program evolved into a series of Securities and Exchange Commission ("SEC") regulations on public filings.[138] The SEC's adoption of plain language had an unprecedented scale.[139] The number and scope of regulations required changes from thousands of companies, lawyers, and SEC staff, which in turn required major training and education.[140] While still rooted as a tool to improve disclosures, these regulations marked a shift away from a consumer-protection rationale.[141] Now plain language was a tool for sophisticated investors and government regulators, two groups capable of deciphering more complex writing and who possessed more influence or bargaining power than a typical consumer.[142] The purported benefits were not just to individual transactions, but were instead market-wide to investors, companies, and regulators.[143]

More legislation followed.[144] Recent laws continue to focus on using plain language in government documents.[145] In 2010, plain

[134] *Id.*; *Plain English: A Charter for Clear Writing*, *supra* note 1, at 2.

[135] Friman, *supra* note 44, at 105–06.

[136] *Id.*

[137] *See id*.

[138] Serafin, *supra* note 100, at 681, 696 (describing experiment); SEC Staff Legal Bulletin No. 7, *supra* note 21.

[139] *Id.*

[140] Christopher Cox, Chairman, SEC, Before the Subcommittee on Contracting and Technology: Plain Language—The Benefits to Small Business (Feb. 26,2008), available at https://www.sec.gov/news/testimony/2008/ts022608cc.htm [hereinafter The Benefits to Small Business].

[141] *See id*.

[142] *See id*.

[143] *Id*.; Plain Language and Good Business, *supra* note 71.

[144] *See generally* Blasie, *supra* note 2.

[145] *See, e.g.*, Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat 2861 (2010).

language spread across the federal executive branch with the Plain Writing Act, which covered many federal agency documents.[146] In March of 2021, Massachusetts state senator Sonia Chang-Diaz proposed a law to require plain language in state government documents.[147]

During its rise, plain language also sparked robust initiatives outside legislative chambers. Bar associations formed plain language committees and projects, and international organizations like Clarity formed to promote plain language in legal writing.[148] Now organizations and agencies ranging from the Internal Revenue Services and state bar associations, to the Federal Judicial Center and National Conference of Commissioners on Uniform State Laws, have plain language projects and guidance.[149] Since 1998, the federal Judicial Conference has been restyling federal procedural rules to use plain language.[150]

Similar efforts arose, and continue to arise, in other countries.[151] Since 2007, experts from over fifty countries have promoted plain language in dozens of languages.[152] In 2019, they took "one giant leap towards a plain language standard" by proposing an international, multi-language plain language standard to the International Standards Organization.[153] The proposal is under development.[154]

[146] *Id.*

[147] An Act Providing for Plain Writing in Certain Government Documents, S. 2019 (Mass. 2021).

[148] Norman E. Plate, *Do As I Say, Not As I Do: A Report Card on Plain Language in the United States Supreme Court*, 13 T. M. COOLEY J. PRAC. & CLINICAL L. 79, 83–84 (2010); *Plain English: A Charter for Clear Writing*, *supra* note 1, at 3 (identifying plain language legal organizations).

[149] Cohen, *supra* note 35, at 503–04.

[150] 16A CHARLES ALAN WRIGHT & ARTHUR R. MILLER ET AL., FEDERAL PRACTICE & PROCEDURE: JURISDICTION AND RELATED MATTERS 7 (5th ed. 2019).

[151] *Plain English: A Charter for Clear Writing*, *supra* note 1, at 46-58 (identifying international endeavors); WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 66–103.

[152] *Membership*, INT'L PLAIN LANGUAGE FED'N https://www.iplfederation.org/membership (last visited on Dec. 16, 2021).

[153] *One Giant Step Towards a Plain Language Standard*, INT'L PLAIN LANGUAGE FED'N (June 2019), http://www.iplfederation.org/one-giant-step-towards-a-plain-language-standard/.

[154] STANDARDIZATION, https://www.iso.org/standard/78907.html (last visited Nov. 8, 2021).

D. *Plain Language Supporters, Skeptics, and Opponents*

Throughout the decades, plain language has gathered supporters, skeptics, and opponents alike. Supporters point to how plain language benefits many sectors.[155] Looking to a broad range of documents, they argue plain language benefits businesses and customers.[156] Supporters claim plain language documents allow employees to do their job more efficiently and accurately.[157] Anecdotal evidence suggests customers buy more while complaining and suing less when product documents use plain language.[158] Effective written communication translates to big savings; case studies report plain language revisions to one document, or one group of documents, saved companies hundreds of thousands of dollars or more.[159] Selective testing of plain language in legal business documents shows promise. For example, of the hundreds of forms revised by the Michigan Plain English Committee, none received feedback that the revisions changed the forms' meaning or were inferior to the originals.[160] Plus, scholars report no link between plain language adoptions and increased confusion or litigation.[161]

Famous investors like Warren Buffet and multiple SEC chairpersons backed plain language as beneficial to investors and the public.[162] As one SEC Chairman explained, the "time and money that is wasted on translating legalese into plain English is dead weight economic loss. It benefits no one, and harms millions of consumers who pay for it."[163] According to the SEC, plain language helps investors find important information and use their time more

[155] WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104–33.

[156] *Id.*

[157] Black, *supra* note 4, at 263. This position is primed for more robust empirical research.

[158] *See* WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 106–33.

[159] *Id*. For more examples see Joseph Kimble, *Notes Towards Better Legal Writing*, 75 MICH. BAR J. 1072, 1074 (1996).

[160] *Plain English: A Charter for Clear Writing*, *supra* note 1, at 19.

[161] Matt Keating, *On the Cult of Precision Underpinning Legalese: A Reflection on the Goals of Legal Drafting*, 18 SCRIBES J. LEGAL WRITING 91, 91–92 (2019).

[162] OFF. INV. EDUC. AND ASSISTANCE, SEC, A PLAIN ENGLISH HANDBOOK: HOW TO CREATE CLEAR SEC DISCLOSURE DOCUMENTS 1 (1998), https://www.sec.gov/pdf/handbook.pdf.

[163] The Benefits to Small Business, *supra* note 140.

productively.[164] Investors stop reading and throw away poorly written documents, including disclosures, because they do not have time to decipher them.[165] "When your customers routinely throw your product away, you've got a problem . . . . If time is money, then poorly written disclosure documents are wasting one of the investor's most important assets."[166] After the SEC required plain language, readers of annual reports felt they could make more informed investment decisions and were more willing to invest in the company.[167] The SEC also claims plain language improves market efficiency and honesty, which strengthen investor confidence.[168] According to the SEC, plain language increases transparency and prevents companies from hiding wrongdoing in convoluted language, like Enron did.[169]

Governments benefit too. Here again case studies show plain language in government documents bring cost savings and efficiencies from greater compliance, sometimes exceeding one million dollars from a single document revision.[170] Supporters claim using plain language when drafting laws makes their application more predictable, reduces disputes over poorly written laws, and decreases the time for lawyers and non-lawyers to determine a law's meaning.[171] Courts deploy plain language to improve access to justice and public faith in the judiciary.[172] Indeed, the National Association for Court Management's plain language reference guide redesigns court correspondence, websites, and building signage to improve access to courts and increase public trust.[173]

[164] *Id.*

[165] Plain Language and Good Business, *supra* note 71.

[166] The Benefits to Small Business, *supra* note 140.

[167] WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 165.

[168] Plain Language and Good Business, *supra* note 71.

[169] *Id.*

[170] Joseph Kimble, *Testifying to Plain Language*, 85 MICH. BAR J. 45, 45 (2006).

[171] *See* Hoffman, *supra* note 4, at 48–57.

[172] *See, e.g., Plain Language Guide: How to Incorporate Plain Language Into Court Forms, Websites, and Other Materials,* NAT'L. ASS'N. CT. MGMT., 1, 13–14 (2019), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/e777731b-4188-48dc-8213-3aec4f232b22/ReferenceGuide.pdf. (Jan. 7, 2019).

[173] *Id.* at 14.

Lawyers also benefit. Supporters argue plain language may increase respect for lawyers and the law.[174] More and more, clients prefer, expect, and better understand documents written in plain language.[175]

But not everyone agrees and skepticism remains. Even after some companies voluntarily experimented with plain language in the 1970s, others did not follow.[176] Plain language gained momentum but, "on the whole, companies were not rushing to revise their documents."[177] Since the 1970s, its voluntary adoption has been sporadic and inconsistent. For example, a Michigan survey of real estate transactional documents reported a mixed use of plain language, with some documents using it and others not.[178] Some Michigan real estate organizations and individual companies refused to revise their forms or use plain language versions awaiting use.[179] In short, "while the private sector's efforts were encouraging, there was simply not enough incentive (or disincentive) to trigger widespread use of plain English contracts."[180] Occasionally, large companies like Google and Facebook selectively used plain language, often due to pressure from consumers or consumer-focused regulators.[181]

[174] *See Plain English: A Charter for Clear Writing*, *supra* note 1, at 27. Here again, although the claim is repeated amongst supporters and has intuitive appeal, there is no conclusive data.

[175] Christopher R. Trudeau, *The Public Speaks: An Empirical Study of Legal Communication*, 14 SCRIBES J. LEGAL WRITING 121, 124–25, 137–44 (2011–2012) (summarizing empirical research and results of testing).

[176] George H. Hathaway, *Plain English in Car Loans*, 77 MICH. BAR J. 954, 954 (1998) [hereinafter *Plain English in Car Loans*].

[177] Cohen, *supra* note 35, at 501.

[178] George Hathaway, *Plain English in Real Estate Papers*, 72 MICH. BAR J. 1308, 1308–10 (1998) [hereinafter *Plain English in Real Estate Papers*]. Another Michigan survey found plain language common in credit card agreements and some car loan agreements. *Plain English in Car Loans*, *supra* note 176, at 954.

[179] *Plain English in Real Estate Papers*, *supra* note 178, at 1308–10.

[180] Friman, *supra* note 44, at 105.

[181] Rachel Lerman, *Google Updates Terms in Plain Language After EU Scrutiny*, ASSOCIATED PRESS (Feb. 20, 2020), https://apnews.com/article/business-technology-us-news-ca-state-wire-ireland-0b848cb4dfdbe14998f7eeb9fde1cd d8; Rachel Lerman, *Facebook Enlists Plain English to Clarify How it Makes Money*, ASSOCIATED PRESS (June 27, 2019), https://apnews.com/article/technology-business-social-platforms-facebook-privacy-scandal--europe-7ae0dc87eeaf 4d789fe1988b18f6bc3b.

Lawyers too may have reluctance to adopt plain language due to the same psychological, pragmatic, and educational barriers that have long inhibited legal writing improvement.[182] Lawyers may understandably be reluctant to dramatically change the way they write documents—documents they have drafted dozens of times, templates they have used for decades, versions they have seen others use hundreds of times, and styles clients are comfortable with and expect. Many may worry the change to plain language will cause litigation or confusion, or clients might reject the document.[183] Others may worry the purported benefits will not come to fruition or are not worth the cost of conversion. Likewise, clients may share the same concerns.

But there are deeper objections that go passed skepticism and amount to outright opposition. Some argue plain language uses oversimplified language or language incapable of expressing the complex ideas lawyers must communicate.[184] Other opponents worry plain language sacrifices accuracy for clarity.[185] Another criticism questions whether plain language improves comprehension or

[182] *See supra*, Part I. Plain language supporters are often unsympathetic to lawyers' skepticism. *See, e.g.,* WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 25–26 (claiming the reasons why lawyers do not use plain language is "lack of will, lack of skill, and lack of time" and in a "triumph of self-deception," lawyers estimate only 5% of the documents they read are well drafted yet estimate 95% of the documents they write are well drafted); Gallacher, *supra* note 36, at 497 ("[L]awyers are unconscious of how their writing is perceived by clients and judges and do not realize they write badly . . . . Put simply, if lawyers think they write well, they likely will see no reason to improve skills they already believe to be adequate.").

[183] Another risk is that a lawyer could misapply plain language or cause an unintended error when converting a document to plain language. But these risks are not unique to plain language. They exist whenever drafting or editing a document. Joseph Kimble, *Wrong—Again—About Plain Language*, 92 MICH. BAR J. 44, 44–45 (2013). *See also* WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 42–43 (noting errors in a plain language document are often caused by difficulties understanding the original version, not by application of plain language).

[184] Joseph Kimble, *Answering the Critics of Plain Language*, 5 SCRIBES J. LEGAL WRITING 51, 51–52 (1994–1995) (describing criticism and then responding to it).

[185] *Id.* at 53 (describing criticism and then responding to it).

reduces litigation, and asserts plain language is too text-based to accurately determine whether a reader will understand a document.[186] In a notable critique, David Crump argued there is no consensus on what plain language is: options include brevity, easy reading, making technical documents readable to professionals and lay persons, and making text interesting and engaging.[187] Crump went on to argue plain language may be inappropriate or counterproductive for many transactional documents because (1) plain language's emphasis on brevity and lay person understanding may sacrifice accuracy for precision; (2) plain language's efforts to alter certain words and phrases that have established legal meanings may cause litigation or confusion; (3) plain language prevents the values ceremonial language brings; (4) plain language prevents parties from using deliberately vague language as part of a compromise; (5) plain language undermines the efficiencies of mass-use or modular documents; (6) clients may prefer old language to plain language; and (7) implementing plain language requires costly rewrites.[188] Such criticisms provoked forceful responses from plain language advocates.[189] Notably, it is often difficult to distinguish criticisms targeted at the concept of plain language from those targeted at particular ways of implementing plain language.

Opposition to plain language is not new. In 1975, Citibank revised a promissory note using plain language despite strong resistance from its executives and attorneys.[190] Similar resistance resurfaced in the 1990s when 1,600 attorneys attended the largest-ever meeting of the ABA Business Law Section to criticize the SEC's plain language proposal, in part because some felt plain language was too simplistic for financial disclosures.[191] When a plain language expert redesigned NYC Department of Transportation forms,

[186] *Id.* at 62 (describing criticism and then responding to it).

[187] David Crump, *Against Plain English: The Case for a Functional Approach to Legal Document Preparation*, 33 RUTGERS L. J. 713, 728 (2002).

[188] *Id.* at 725–43.

[189] *See generally* Wayne Schiess, *What Plain English Really Is*, 9 SCRIBES J. LEGAL WRITING 43 (2004) (responding to Crump); Kimble, *supra* note 184 at 51–52 (responding to criticisms generally).

[190] Kali Jensen, *The Plain English Movement's Shifting Goals*, 13 J. GENDER RACE & JUST. 807, 810–11 (2010).

[191] Serafin, *supra* note 100, at 707–10.

the legal team refused the revisions because the revised forms did not use the same legal language as the originals.[192]

While the most common opposition contests the concept of plain language, separate reasoning may justify opposition to codifying plain language into law.[193] Consider Michigan, where businesses blocked attempts to pass a plain language consumer protection law for thirteen years despite multiple revisions applying different standards.[194] Driven by a worry that the laws would cause litigation, the real estate and banking industry blocked plain language mortgage reform in "an area in which archaic language still reigns supreme."[195] Litigation spikes aside, passing a plain language law creates other business risks and costs.[196] Depending on its design, a plain language law could become a source of liability if the business does not comply.[197] Also, a plain language law may require an effected business to change more quickly, rather than at the business's own pace. A plain language law might also elicit opposition from plain language supporters if its design is inconsistent with the concept of plain language.

E. *The Need for Plain Language Law Research*

In the seventy-plus years since Rudolph Flesch created his formula,[198] plain language has evolved. Decades of empirical and normative research from social scientists focus on plain language.[199]

[192] WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 34.

[193] Nick Ciaramitaro, *The Plain English Bills . . . Ten Years Later*, 73 Mich. B.J. 34, 34–35 (1994).

[194] *Id*.

[195] *Id.* at 35.

[196] J. Scott Colesanti, *Demanding Substance or Form? The SEC's Plain English Handbook as a Basis for Securities Violations*, 18 FORDHAM J. CORP. & FIN. L. 95, 97 (2012).

[197] When the SEC rolled out its plain language requirements, some opposed them because once codified these former writing guidelines become enforceable and produce liability. *Id*. at 121–22.

[198] Friman, *supra* note 44, at 107.

[199] *See* Karen A. Schriver, *Plain Language in the US Gains Momentum: 1940–2015*, 60 IEEE TRANSACTIONS ON PRO. COMMC'N 343, 343 (2017) (tracking history of plain language scientific research alongside major legal developments); WILLIAM H. DUBAY, THE PRINCIPLES OF READABILITY 25–57 (2004), https://files.eric.ed.gov/fulltext/ED490073.pdf (detailing history of literacy studies in the U.S. and research in readability and the readability formulas).

Robust discussions on plain language thrive in fields ranging from accounting and finance,[200] to healthcare,[201] to social justice.[202] Despite robust scholarship in other fields, legal scholarship on plain language is lacking. Two massive gaps hold scholarship development back, which in turn hold back plain language's evolution.

First, the effects of plain language on legal documents needs more study. So far, much of the research has been case studies into documents written for particular readers in specific contexts, like a government agency letter on a particular topic, a hospital billing statement to patients in one region, or a series of pro se court forms in another area.[203] While this research yields consistent results that suggest widespread applicability,[204] no research has shown mass market benefits across all documents, industries, and contexts. Success in hospital billing statements and government agency letters does not necessarily translate to the same benefits and costs with quintessential, lengthy, and complex legal documents like contracts. No study shows a business adopted a consistent approach to plain language in all documents, written for experts, lawyers, non-lawyers, employees, and the general public, on all topics and across all regions, with consistent benefits across the board. The absence of mass market research is no slight to plain language advocates. They

[200] *See, e.g.*, Samuel B. Bonsall IV, et al., *A Plain English Measure of Financial Reporting Readability*, 63 J. ACCT. AND ECON. 329, 329 (2017) (proposing new measure of readability of financial disclosures).

[201] *See, e.g.*, Sue Stableford & Wendy Mettger, *Plain Language: A Strategic Response to the Health Literacy Challenge*, 28 J. PUB. HEALTH POL'Y 71, 75–86 (2007) (identifying and refuting myths about plain language and proposing plain language as a tool to promote health literacy).

[202] Michela Sims, *Overcoming Tools of Oppression: Plain Language and Human Centered Design for Social Justice*, CORNERSTONE MINN. STATE UNIV. MANKATO 11–19 (2020), https://cornerstone.lib.mnsu.edu/cgi/viewcontent.cgi?article=2052&context=etds (discussing research into how plain language in technical communications effects social justice).

[203] *See, e.g.*, WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104–28 (detailing private sector and government studies); *Plain English: A Charter for Clear Writing*, *supra* note 1, at 25–27; Dyer, et al, *supra* note 100, at 1083 (describing revisions to Washington court family law forms); Maria Mindlin, *Is Plain Language Better? A Comparative Readability Study of Court Forms*, 10 SCRIBES J. L. WRITING 55, 55 (2005–2006) (investigating effect of plain language on California court pro se forms).

[204] Mindlin, *supra* note 203, at 55; *see also* WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104–28.

cannot measure what does not exist or what they cannot access. But the absence of empirical evidence in meaty complex legal documents may prevent skeptics from converting to plain language. Thus, there is an immense need for empirical research on plain language.

But effective empirical research must control for variables.[205] A sample set is ineffective if it cannot account for whether a document drafter has free range or must abide by a plain language law.[206] And, if a law applies, what does that law require? Knowledge of plain language laws' coverage and standards allows empiricists to account for these variables and reach conclusions about whether the benefits and costs of plain language vary depending on the kind of document, kind of industry, kind of reader, or kind of plain language standard.[207] Likewise, the research can compare the results in jurisdictions with plain language laws to those without such laws.[208]

Without such research, lawyers and clients are left to guess. More case studies and anecdotes are unlikely to convert supporters, skeptics, and opponents who await dispositive research to change their minds. Meanwhile, each group carries risks if they adhere to their respective insufficiently tested status quo. Plain language supporters may be failing to maximize the benefits of plain language by not advocating for or applying the optimal versions of plain language, or they may inadvertently be creating risks and confusion for clients by using plain language. Skeptics and opponents risk continuing to use untested templates that will not withstand litigation or do not optimize the document's goals.[209]

Second, there is a gap in normative assessments of plain language laws. Much of the legal scholarship has been commentary on plain language as a concept.[210] Very little has focused on plain language laws, their goals, or their designs, perhaps because no one knows how many there are and what they say. In fact, the only other

[205] *See* WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104.

[206] *See* Dyer, *supra* note 100, at 1072–77 (discussing a recent study that showed that fourteen states have mandated the use of plain langauge in court forms).

[207] *See* Hoffman, *supra* note 4, at 49–50.

[208] *See* Dyer, *supra* note 100, at 1069, 1073–78.

[209] Plain Language and Good Business, *supra* note 71.

[210] *See e.g.*, Jensen, *supra* note 190, at 809.

attempt to count plain language laws was by Professor Joseph Kimble in 1992.[211] Although the precise methodology is not stated, with the aid of research assistants, information supplied by organizations, and his tenure in the field, Professor Kimble provided "Selective Developments in Plain English," listing eighty-nine laws covering insurance, consumer protection, and election documents.[212] Knowing the full scale of plain language laws and their requirements opens the door for discourse on their role. As the above history shows, plain language is not a legal solution to a legal problem. Rather, lawmakers imported plain language from the social sciences.[213] Moreover, they imported it to solve many different legal problems from explaining laws to nonlawyers, to protecting consumers, to improving markets.[214] As the below survey results show, lawmakers deploy plain language in a massive variety of contexts like election ballots, governor reports, court hearing notices, tobacco contracts, food labels, insurance policies, and apartment leases.[215] The intended audience and goals of plain language in these contexts likely vary significantly. Moreover, important questions remain about the efficacy of design choices lawmakers make when converting plain language from a recommendation into a requirement, whether and when codifying plain language is a better decision than free market pressures, and whether lawmakers' implementation of plain language aligns with the views of legal plain language scholarship or social science scholarship.

Ultimately, research on plain language laws can resolve longstanding unsettled questions about legal writing's effects on law and society and what, if any, role plain language plays in those effects.

II. NATIONAL PLAIN LANGUAGE LAW SURVEY METHODOLOGY

As the first systematic empirical investigation of plain language laws, this Article invented a survey methodology to find, count, and categorize plain language laws.

211 *Plain English: A Charter for Clear Writing*, *supra* note 1, at 31–38.
212 *Id*.
213 *See supra*, Section I.C.
214 *See supra*, Section I.C.
215 Blasie, *supra* note 2, at Appendix P.

A. *Finding and Counting Plain Language Laws*

To define the potential universe of plain language laws, I began by defining what qualifies as a "law."[216] I considered constitutions, statutes, regulations, court rules, and procedural rules as "laws."[217] I excluded other sources like executive orders, trade association guidelines, legislative manuals, and guidance from government agencies.[218]

Next, I determined how to distinguish plain language laws from all other laws. Drawing on the plain language definition used in this Article, I only considered a law to be a plain language law if it set a writing standard that could affect a reader's understanding of the drafter's intended message. For example, the survey excludes laws that might use the below search terms exclusively to set a standard for legibility or visibility, like specifying the dimensions and font size for a sign. Although a plain language law may contain some legibility or visibility requirements, to satisfy the threshold set in this research, the law must also contain writing standards concerning reader understanding.[219]

Next, I devised a way to find plain language laws. With no prior methodologies to examine, I drew search terms from plain language legal literature. I searched for laws containing the terms "plain language," "plain English," "readable," "readability," or "Flesch."[220] Plain language scholarship regularly used the terms "plain language" and "plain English." The rare scholarship on plain language

[216] *See* Blasie, *supra* note 2, at Summary of Methodology.

[217] *See id*.

[218] *See, e.g.*, Wash. Exec. Order No. 05-03 (Mar. 24, 2005), https://www.governor.wa.gov/sites/default/files/exe_order/eo_05-03.pdf (identifying legislative drafting manuals and model jury instructions).

[219] Technical literature supports this distinction. The concept of "readability" concerns how writing affects the ease of understanding or comprehension, which differs from legibility. *See* DUBAY, *supra* note 199, at 3, 25, 27; *see also* Jonathan M. Barnes, *Tailored Jury Instructions: Writing Instructions That Match a Specific Jury's Reading Level*, 87 MISS. L. J. 193, 197–98 (2018) (noting scholars use the term "readability" in different ways and choosing to use the term to mean ease of understanding or comprehension).

[220] *See infra* note 221–22.

laws often referred to these laws as using readability tests that incorporate formulas, hence the terms "readable" and "readability."[221] The most common formula used the term "Flesch" (as in Rudolf Flesch) in its title.[222] I searched for these terms in both the "Statutes and Court Rules" and "Regulations" Westlaw databases for each state, the District of Columbia, and the federal government, for a total of 104 searches. To ensure consistent discretion, I ran the searches and reviewed the thousands of search results without the aid of research assistants, librarians, or anyone else. I then checked the "citing references" for any responsive search result to find other plain language laws or provisions that may be working in conjunction with the responsive result. I also examined neighboring statutory provisions to any responsive result to determine if lawmakers codified the plain language law in one section or across multiple sections.

After completing the searches, I then revisited legal scholarship citations to plain language laws to determine if the survey results included the laws prior scholars cited.[223] As the first attempt at a nationwide survey, I expected the results to exceed footnote references in plain language law scholarship. This expectation proved true. The survey revealed 776 plain language laws, while the next largest estimate was eighty-nine.[224] Most of the laws cited in earlier scholarship were a subset of the laws found in the survey.[225] However, a handful were not: some prior scholarship cited laws like federal laws passed in the 1970s and 1980s that did not contain any of the survey search terms.[226] I reviewed these laws to see if they satisfy this Article's plain language law criteria. They did, so I added

[221] *See, e.g.*, George D. Gopen, *I Know It When I See It: A New Way to Define the "Plain" in "Plain English"*, 45 LITIG. 21, 22 (2019) (describing readability formulas in plain language laws); Michael L. Rustad & Thomas H. Koenig, *Wolves of the World Wide Web: Reforming Social Networks' Contracting Practices*, 49 WAKE FOREST L. REV. 1431, 1457–58 (2014) (same).

[222] Friman, *supra* note 44, at 107.

[223] *See Plain English: A Charter for Clear Writing*, *supra* note 1, at 31–38; Black, *supra* note 4, at 267, 267 n. 50–56; Friman, *supra* note 44, at 105, 110 nn.35–52.

[224] *Compare* Blasie*, supra* note 2, at Appendix P, *with Plain English: A Charter for Clear Writing*, *supra* note 1, at 31–38.

[225] Blasie*, supra* note 2, at Appendices A–P.

[226] Black, *supra* note 4, at 266–78 n.56.

them to the survey results to make the results as comprehensive as possible. The addition of these laws shows, to some degree, my search terms were underinclusive.

To count the laws, I used the following method. Any responsive law counted as one law regardless of how much of that law discussed plain language. For example, a twenty-page regulation that used the term "plain language" once in one clause counted as one law, just as a statute with ten subdivisions applying different plain language standards to different kinds of documents also counted as one law. If a series of consecutive laws all concerned the same standard being applied to the same kinds of documents, then the series counted as one law. But if nonconsecutive laws worked in conjunction to create a plain language standard, then each section counted as one law. To illustrate, if one statutory section defined the term "plain language" and the next explained which documents must use plain language, those two consecutive sections counted as one law. But if those same sections were nonconsecutive with unrelated sections in between, then they counted as two.[227]

B. *Categorizing Plain Language Laws*

After finding the plain language laws, I determined what data to track. I collected data on each law's coverage and standards. There are other kinds of data in need of research, like the enforceability and penalties of these laws, but those are beyond this Article's scope.

To categorize each law's coverage, I used the following method. I began by identifying whether the law covered private sector documents or public sector documents. I determined which sector to place the law into based on the document's drafter.[228] Laws affecting documents drafted by government employees or entities covered

[227] This approach highlights compliance challenges as parties may need to reference and cross-reference several different laws that work in conjunction. It also avoids adding an additional layer of judgment and research to determine which of the nonconsecutive laws warrant combination. Sometimes lawmakers may have different codes cross-reference the same definition of plain language. But the approach has limitations. Lawmakers can codify one legislative objective in multiple nonconsecutive sections. For example, my research revealed Texas has forty-four insurance plain language laws, but those laws do not cover forty-four different kinds of insurance. *See* Blasie, *supra* note 2, at Appendix A-4.

[228] *See id*.

public sector documents.[229] By contrast, laws affecting documents drafted by private individuals or entities covered private sector documents, even when the authors drafted those documents for government readers.[230] Laws affecting both kinds of drafters fit into both categories. Distinguishing the two categories supports future research as the goals, benefits, and costs of plain language in each sector may differ, and so too may the kinds of documents covered.

Next, I slotted each law into a category describing its coverage. I examined patterns in the kinds of documents covered to determine the number and name of private sector document categories. One indicator was where lawmakers placed the law, like in an insurance code.[231] Another indicator was the industry and document covered. In total, my research revealed ten categories of private sector plain language laws: consumer protection, commercial contract, corporate and financial disclosures, employment, environment, healthcare, housing and property, individual consents and waivers, litigation, and wildlife records.[232]

To categorize public sector documents, I created five categories based on the covered document's function: all-government, executive function, judicial function, lawmaking function, and local government function.[233] The all-government category includes broad laws that cover documents with executive, lawmaking, and judicial functions.[234] If a document's function concerned the administration of laws, then it had an executive function; the creation of laws then it had a lawmaking function; the application of laws then it had a judicial function.[235] These functions do not always align with the three branches of government. For example, the lawmaking function category includes laws governing how administrative agencies draft regulations.[236] Likewise, the judicial function category includes

229 *See id*. at Appendices K–P.
230 *See id*. at Appendices A–J.
231 *See id*. at Appendix A-4.
232 *See id*. at Appendices A–J.
233 *See id*. at Appendices J–N.
234 *See id*. at Appendix K.
235 *See id*. at Appendices L–N.
236 *See id*. at Appendix N.

laws affecting the administrative hearing process.[237] The local government function category includes laws that cover documents with uniquely local government functions.[238]

I created each category and determined which laws fit into each category without the aid of research assistance. When a law fit into multiple categories, I placed the law into each category it fit. Because some laws fit into multiple categories, the Appendices list 873 plain language laws across all categories, even though the survey revealed only 776 plain language laws.[239]

The next design choice I tracked was the standards plain language laws apply. Prior legal scholarship divided plain language laws into three standards: objective standards based on a document's design, subjective standards based on how a reader reacts to a document, and a hybrid standard that combines the two.[240] But my survey results show significant variation amongst objective standards, and considerable uncertainty as to whether any law would examine a reader's subjective reaction to a document to determine compliance.[241] Therefore, I created the following four classes of plain language law standards to foster a more precise and robust analysis.

Descriptive Standard: Descriptive Standards describe the resulting document without describing the process to achieve the result. Most commonly, these standards are abstract terms or phrases.[242] For example, Descriptive Standards might require a document use "plain language"[243] or "plain English"[244] without defining either term; or the standard might require the document to be "clear and

[237] *See id*. at Appendix M.

[238] *See id*. at Appendix O.

[239] *See id*. at Appendix P.

[240] *See, e.g.*, Friman, *supra* note 44, at 106; David M. LaPraire, *Taking the "Plain Language" Movement Too Far: The Michigan Legislature''s Unnecessary Application of the Plain Language Doctrine to Consumer Contracts*, 45 WAYNE L. REV. 1927, 1929, 1931–33 (2000).

[241] *See generally* Blasie, *supra* note 2.

[242] *See id*.

[243] *See, e.g.*, 26 DEL. ADMIN. CODE. § 3001-5.2 (West, Westlaw through 25 Del. Reg. Regs. 4, Oct. 1, 2021).

[244] *See, e.g.*, N.Y. COMP. CODES R. & REGS. tit. 19, § 201.11(a)(8)(A) (West, Westlaw through XLIII N.Y. Reg. 42 (Oct. 20, 2021)) (mausoleum construction notice).

coherent"[245] or "understandable by a person of average intelligence and education."[246] Interestingly, some Descriptive Standards focus on characteristics of the intended reader. For example, Minnesota agricultural contracts must be understandable to the average person with experience in the industry.[247]

Readability Standard: Readability Standards require a document to satisfy one or more readability tests. Readability tests usually apply a formula that measures objective document features. Scholars estimate there are between 75 and 200 tests lawmakers can choose from.[248] The most common test in Readability Standards is the Flesch Reading Ease Test developed in 1949.[249] That readability test scores a document based on the number of syllables in words and the number of words in a sentence, and assumes shorter sentences and shorter words are easier to understand.[250] The score is from 0 to 100 with 0 being very difficult and 100 being very easy to read.[251] A typical Readability Standard sets a minimum numerical score on the test.[252] Some Readability Standards import external formulas like the Flesch Reading Ease Test, while others detail their own hyper-precise formula, often going as far as explaining how to count contractions or numerals.[253]

[245] *See, e.g.*, KY. REV. STAT. ANN. § 446.015 (West, Westlaw through 2021 Regular and Special Sess. And Nov. 2020 election) (statutory drafting).

[246] *See, e.g.*, MINN. STAT. ANN. § 80D.04 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (continuing care facility disclosure statement).

[247] *See, e.g.*, MINN. STAT. ANN. §§ 17.943–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (agricultural contract must be "understandable by a person of average intelligence, education, and experience within the industry").

[248] Friman, *supra*, note 44, at 107 (estimating there are 75 tests); Long & Christensen, *supra* note 118, at 148–49 (by 1980s there were 200 formulas).

[249] *Id*.

[250] *Id*. Other tests use a close variation. For example, the Dale-Chall Readability Test measures sentence length and the difficulty of words used based on a 1993 list of 3000 words fourth graders recognized. Louis J. Sirico, Jr., *Readability Studies: How Technocentrism Can Compromise Research and Legal Determinations*, 26 QUINNIPIAC L. REV. 147, 162–64 (2007) (detailing evolution of formula).

[251] Veronica J. Finkelstein & Nicole E. Crossey, *Making Every Word Count: Using Strategic Editing to Increase the Readability of Your Appellate Brief*, 67 DOJ J. FED. L. & PRAC. 85, 90 (2019).

[252] *Id.*

[253] *See, e.g.*, ARIZ. ADMIN. CODE § R20-6-213(c)(2) (2019).

Some Readability Standards have a grade level requirement instead of a numerical score.[254] Usually, such standards use the Flesch-Kincaid Grade Level formula, which assigns a grade level based on the text.[255] Kincaid developed this test in 1974 as a way for the Navy to make technical manuals more understandable.[256]

Features Standard: Features Standards are the most specific of these standards. They require using or avoiding specific writing features that can affect the structure, design, or language of a document. Features Standards usually list a series of features, but there is no uniform or predominant content to these lists.[257] New Jersey's consumer contracts law provides a good illustration. That law considers whether a document contains confusing cross-references, "[s]entences that are of greater length than necessary," "double negatives and exceptions to exceptions," confusing or illogically ordered sentences and sections, and "Old English," "middle English," Latin, French or "words with obsolete meanings or words that differ in their legal meaning from their common ordinary meaning."[258] Oregon's equivalent law requires consumer contracts to use "words that convey meanings clearly and directly," "present tense and active voice," "simple sentences," and "frequent section headings, in a narrative format."[259]

Conceptually, the main distinction between Features Standards and Descriptive Standards is who has discretion.[260] Features Standards reflect lawmakers' determination of precisely which features a document must contain or avoid.[261] Drafters have less discretion and must follow the criteria, regardless of whether the criteria helps or hurts reader understanding.[262] By contrast, Descriptive Standards grant drafters maximum discretion to achieve the required result

254 Finkelstein & Crossey, *supra* note 251, at 90.
255 *Id*.
256 Sirico, *supra* note 250, at 159–62 (detailing research and findings leading to creation of formula).
257 *See* Blasie, *supra* note 2, at Appendices A–P.
258 N.J. STAT. ANN. § 56:12-10(1)–(6) (West, Westlaw through 2021 Chapter 209).
259 OR. REV. STAT. ANN. § 180.545(1) (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).
260 *See generally* Blasie, *supra* note 2.
261 *See generally id*.
262 *See generally id*.

while offering little guidance on how to do so.[263] Functionally, whether Descriptive Standards produce different documents than Features Standards is an issue in need of research that is beyond this Article's scope. Research has yet to investigate whether drafters subject to Descriptive Standards apply the same criteria contained in Features Standards. Likewise, research is needed to determine whether Features Standards yield documents that would satisfy a Descriptive Standard.

Hybrid Standard: Hybrid Standards combine a Readability Standard with a Features Standard, or offer a choice between the two.[264] There are many kinds of Readability Standards and Features Standards. Any combination of the two is a Hybrid Standard and there is no dominant pairing.[265] An Arizona insurance law is a great example. Part of the law is a Readability Standard: covered policies must have a minimum readability test score of forty.[266] The rest of the law lays out a Features Standard: covered policies must organize sections logically, place exclusions in the section they apply to, group general provisions together, cut non-essential provisions, and place defined terms upfront.[267] They must use "everyday, conversational language," "short, simple sentences and words in common usage," "an easy-to-read style, personal pronouns, and present tense active verbs."[268] Three laws use unusual Hybrid Standards.[269] While most laws with a Hybrid Standard require satisfying both a Readability Standard and a Features Standard, one Connecticut law per-

[263] *See generally id*.

[264] *See generally id*.

[265] *See generally id*.

[266] ARIZ. ADMIN. CODE § R20-6-210(C)(2) (West, Westlaw through rules published in Ariz. Admin. Register Volume 27, Issue 40, Oct. 1, 2021).

[267] ARIZ. ADMIN. CODE § R20-6-210(D)(1) (West, Westlaw through rules published in Ariz. Admin. Register Volume 27, Issue 40, Oct. 1, 2021).

[268] ARIZ. ADMIN. CODE § R20-6-210(D)(3) (West, Westlaw through rules published in Ariz. Admin. Register Vol., Issue 40, Oct. 1, 2021).

[269] CONN. GEN. STAT. ANN. §§ 42-151-152 (West, Westlaw through 2021 Regular Sess. and 2021 June Special Sess.); 7 TEX. ADMIN. CODE § 25.4 (West, Westlaw Current through 46 Tex. Reg. 6602, Oct. 1, 2021); MINN. STAT. ANN. §§ 17.942–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

mits covered documents to comply with either a Readability Standard or a Features Standard.[270] A Texas law covering funeral contracts uses a Features Standard and multiple Readability Standards.[271] Finally, a Minnesota law on agricultural contracts uses a Hybrid Standard but does not specify a specific score or test for its Readability Standard.[272]

Authorizing Law: Rather than create a plain language standard, Authorizing Laws direct other parties (usually government agencies) to create a plain language standard.[273] Because these laws do not create a standard, they are not one of the four standards recognized in this Article. However, the below discussions occasionally refer to this fifth category to provide a complete statistical breakdown.

III. PLAIN LANGUAGE LAWS IN THE UNITED STATES

This section unveils the first national survey of plain language laws. The survey provides a nationwide overview that explains where plain language laws have the highest and lowest concentrations, what kinds of documents these laws cover, and what kinds of standards they apply.

There are at least 776 plain language laws in the United States.[274] Every state, the District of Columbia, and the federal government have plain language laws.[275] Ninety-five percent are laws of states or the District of Columbia, and five percent are federal laws.[276] They include statutes, regulations, court rules, and state constitutional provisions.[277] About seventy-seven percent of the

[270] CONN. GEN. STAT. ANN. §§ 42-151 to–152 (West, Westlaw through 2021 Regular Sess. and 2021 June Special Sess.).

[271] 7 TEX. ADMIN. CODE § 25.4 (West, Westlaw through 46 Tex. Reg. 6602, Oct. 1, 2021).

[272] MINN. STAT. ANN. §§ 17.942–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

[273] *See*, *e.g.,* Blasie, *supra* note 2, at Appendix A-4; S.C. CODE ANN. § 37-11-35.

[274] *See* Blasie, *supra* note 2, at Appendices A–P.

[275] *See id.* at Appendix P.

[276] *See id* at Appendices A–P.

[277] *See id*.

kinds of documents covered by plain language laws are private sector documents, while twenty-three percent are public sector documents.[278]

Coverage: The research yielded fourteen categories of plain language laws: ten private sector law categories and five public sector law categories.[279] Some laws fit into multiple categories. By category of document covered, here are the concentrations of plain language laws:

Category	**Number of Plain Language Laws**	**Percentage of Total Number of Plain Language Laws Across All Categories**[280]
Consumer Protection	509	58.3%
Executive Function	105	12%
Judicial Function	53	6.1%
Housing and Property	44	5%
Healthcare	38	4.4%
Lawmaking Function	33	3.8%
Corporate and Financial Disclosures	31	3.6%
Commercial Contracts	13	1.5%
Litigation	13	1.5%
Local Government Function	11	1.3%
Individual Consents and Waivers	9	1%
Wildlife Records	5	<1%
Environment	4	<1%
Employment	3	<1%
All-Government	2	<1%

[278] *See id*. at Appendix P.

[279] See *id*. at Appendices A–P.

[280] Because some plain language laws fit into multiple categories, the total number of laws across all categories (873) exceeds the total number of individual plain language laws discovered (776).

Coverage varies considerably by jurisdiction.[281] One metric to measure coverage is the number of plain language laws across all categories. Texas has the most (sixty-seven), followed by Connecticut (forty-eight), Hawaii (thirty-six), and the federal government (thirty-five).[282] Mississippi has the fewest laws (two), with Kansas and Nebraska close behind (three).[283]

But numbers alone are misleading because they do not account for each law's scope.[284] Many jurisdictions have multiple plain language laws with similar coverage.[285] Consider federal laws, where about one half cover corporate or financial disclosures (sixteen laws; 45.7%) and almost one-quarter are consumer protection laws focused on banking, loans, debt, or credit (eight laws; 22.9%).[286] Take a look at Texas. While Texas has the most plain language laws across all categories, sixty-six percent (forty-four laws) cover insurance documents.[287] By contrast, one of Nebraska's three plain language laws covers multiple kinds of insurance policies.[288] Indiana's plain language laws fall into eight categories, but one of those laws is a state constitutional provision covering the drafting of every statute.[289]

When balancing both numbers and scope, plain language law coverage still varies considerably nationwide.[290] It is virtually nonexistent in Mississippi, which has only two plain language laws, both of which are narrow uniform commercial code provisions.[291] Not far off is Kansas, which has only three plain language laws: the same pair of narrow uniform commercial code provisions and one on car rental waivers.[292] The most robust plain language law coverage is in Connecticut, California, Hawaii, New Jersey, Texas, and Vermont, which have between thirty-one and sixty-seven laws

281 *See Blasie, supra note 2,* at Appendices A–P.
282 *See id.*, at Appendix P.
283 *Id.*
284 *See, e.g., id*. at Appendix A–P.
285 *See id.* at Appendices A–O.
286 *See id*. at Appendices A-1, C, P.
287 *See id*. at Appendix P.
288 *See id*. at Appendices A-4, P.
289 *See id*. at Appendices K, P.
290 *See id*. at Appendix P.
291 *See id*. at Appendices A-5, P.
292 *See id*. at Appendices A-5, A-7, P.

spread across twelve to twenty different categories and subcategories of private sector and public sector documents.[293] Interestingly, neither Mississippi nor Kansas have plain language laws covering insurance documents and no, or very limited, coverage of other consumer documents.[294] In contrast, the states with the largest embrace of plain language laws all have laws covering insurance and other consumer documents.[295] It may be that because the original plain language law surge was in consumer protection and insurance, wherever that surge fell short plain language laws never caught on.[296]

Standards: Although the survey revealed a mix of plain language law standards, Descriptive Standards command the clear majority.

Standard	Number of Plain Language Laws	Percentage of Total Number of Laws Across All Categories
Descriptive	696	79.8%
Readability	71	8.1%
Hybrid	48	5.5%
Features	41	4.7%
Authorizing[297]	16	1.8%

The distribution of standards has a few trends. Nearly all Hybrid Standards occur in laws that cover insurance documents.[298] In fact,

[293] *See id*. at Appendices A–P.

[294] *See id*. at Appendices A-1–8, P.

[295] *See id*. at Appendices A-5, A-7, P.

[296] *See id.* at Appendices A-5, A-7, P (noting this research does not measure the actual use of plain language; it may be that in a jurisdiction, governments, businesses, and individuals voluntarily adopted plain language, or that despite the passing of these laws they rarely use plain language).

[297] These laws do not set a plain language standard; rather, they authorize government agencies to create a plain language standard. *See supra* note 273 and accompanying text.

[298] *See* Blasie, *supra* note 2, at Appendix A-4.

only three non-insurance plain language laws use Hybrid Standards.[299] Likewise, all the Authorizing Laws cover insurance documents, except one.[300]

Recall that Readability Standards require documents to satisfy a score on a particular test (usually on a 1 to 100 scale) or to meet a certain grade level threshold on a test.[301] And Hybrid Standards incorporate Readability Standards.[302] Below is a breakdown of the test scores and grade levels required.

[299] CONN. GEN. STAT. ANN. §§ 42-151 to 158 (hybrid; consumer contracts for residential leases, for buying or leasing up to $25,000 in property or services, or for up $25,000 in credit must satisfy either features test or readability test); MINN. STAT. ANN. §§ 17.942 to 17.494 (hybrid for agricultural contract but no specific readability test score required); 7 TEX. ADMIN. CODE § 25.4 (hybrid; features and multiple readability tests for non-model prepaid funeral contract).

[300] *See* Blasie, *supra* note 2, at Appendix A-4; S.C. CODE ANN. § 37-11-35.

[301] *See* s*upra,* Section II.B.

[302] *See id.*

Test Score	Number of Readability Standard Laws	Percentage of Total Readability Standard Laws Across All Categories (71)	Number of Hybrid Standard Laws	Percentage of Total Hybrid Standard Laws Across All Categories (48)	Percentage of Total Readability and Hybrid Standard Laws (119) Across All Categories
40	42	59.2%	24	50%	55.5%
45	1	1.4%	11	22.9%	10.1%
50	9	12.7%	4	8.3%	10.9%
60	3	4.2%	0	0%	2.5%
70	1	1.4%	0	0%	<1%
Grade Level	15	21.1%	3	6.3%	15.1%
Custom[303]	0	0%	6	12.5%	5%

Thirty-two plain language laws include unique descriptions about the intended reader.[304] For example, the broadest description requires the document to be understandable to the average person;[305] these laws require the document to be understandable to the "general

[303] *See id.* (the Custom category accounts for the three unique Hybrid Standard laws mentioned above, which fit within multiple coverage categories).

[304] *See infra* nn. 305–19.

[305] *See, e.g.*, ME. REV. STAT. ANN. tit. 5, § 8061 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) ("All rules and any other materials required by this subchapter to be provided to the public or to the Legislature shall, to the maximum extent feasible, use plain and clear English, which can readily be understood by the general public.").

public,"[306] a "person of average intelligence and education,"[307] or a "layperson."[308] Other laws describe the subset of the general public that will use the document. They use phrases like the average or ordinary consumer,[309] medical plan participant,[310] "person affected by

[306] *Id.* (agency rules); ME. REV. STAT. ANN. tit. 5, § 9051–A(3)(A)(1) (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (public notice of environmental agencies hearing); *see also* ALASKA ADMIN. CODE tit. 7, § 86.090(a) (LEXIS through Reg. 239, Oct. 2021) (defining "plain language" as "accurate word usage and communicates in a way that helps the public to easily understand the information"); *see also* OKLA. STAT. ANN. tit. 34, § 9(B)(2)–(3) (West, Westlaw through 2021 1st Regular Sess.) (ballot title of voter petition must "explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition;" and cannot "contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state").

[307] MINN. STAT. ANN. § 80D.04 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (continuing care facility disclosure statement); MINN. STAT. ANN. § 176.235 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (labor commissioner brochure); MINN. STAT. ANN. § 116J.0124(a) (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (human services agency program)*; see also* ALA. CODE § 22-21-368 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) ("Any proposed [dental services] contracts issued to subscribers to the plan shall be written in a form that is readable and comprehensible by a layman of reasonable and ordinary intelligence . . . .").

[308] N.J. STAT. ANN. § 52:27D-336 (West, Westlaw through 2021, Ch. 209) (continuing care facility disclosure); N.J. ADMIN. CODE § 5:19-4.1(b) (LEXIS through 53 N.J. Reg. 20, Oct. 18, 2021) (continuing care retirement facility disclosure); N.J. STAT. ANN. § 52:27D-344(a) (West, Westlaw through 2021 N.J. Laws 209) (continuing care facility contract).

[309] TEX. FIN. CODE ANN. § 154.151(d) (West, Westlaw through 2021 Regular Sess. and called Sess. of 87th Legis.) (sale contract for prepaid funeral benefits must be in "plain language designed to be easily understood by the average consumer."); VT. STAT. ANN. tit. 9, § 2482i(1) (LEXIS through 2021 Sess.) (finance lease for credit card terminal must use plain language understood by ordinary consumers).

[310] 048-0037-45 WYO. CODE R. § 10(h) (LexisNexis, LEXIS through Oct. 18, 2021) (Medicaid plan of care).

the document,"[311] or the "average reader."[312] The most precise laws identify specific characteristics about the intended reader. For example, several laws require documents to be understandable to a reader who has no specialized knowledge or has not consulted third parties.[313] On the other hand, some laws require considering the intended reader's specialized knowledge.[314] Several laws account for a reader's language abilities by requiring a document to be in plain language in the reader's primary language.[315] One of Idaho's health

[311] CAL. GOV'T CODE § 11342.580 (West, Westlaw with urgency legislation through Ch. 770 of 2021 Regular Sess.) (defining "Plain English" as described in CAL. GOV'T CODE § 11349 "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them"); *see also* W. VA. CODE § 77-6-3.2.a (2002) (human rights act waiver must be "in plain English and in a manner calculated to be understood by the average person with a similar educational and work background as the individual in question").

[312] COLO. REV. STAT. § 2-2-801 (LEXIS through 2021 Regular Sess. legislation) (laws should be "understandable to the average reader"); ALA. CODE § 17-6-81(b)–(c) (LEXIS through Acts 2021, No. 21-545, excluding 2021 Sess. Laws) (summary and ballot statements must be "understandable to the average reader"); *see also* N.J. STAT. ANN. § 19:3-6 (West, Westlaw through 2021, Chapter 272.) (public questions must be "easily understood by the voter").

[313] ALASKA STAT. § 18.23.400(a)–(b) (LEXIS through 2021 legis.) (health care information must be "in plain language that an individual with no medical training can understand."); VA. CODE ANN. § 38.2-2608(B)(1) (LEXIS through 2021 Regular Sess. And 1st. and 2nd Special Sess.) (home protection insurance contracts must be "understandable without special insurance knowledge or training"); WASH. REV. CODE ANN. § 19.144.020(2) (LEXIS through 2021 Regular Sess.) (residential mortgage loan material terms disclosure summary must be reasonably understandable to average person without third-party resources).

[314] MINN. STAT. ANN. § 17.943 (West, Westlaw through 2021 Regular Sess. And 1st Special Sess.) (agricultural contract must be "understandable by a person of average intelligence, education, and experience within the industry"); N.J. STAT. ANN. § 52:14B-4.1a(b) (West, Westlaw through 2021, Chapter 221) (notice of regulatory change must "provide adequate notice to affected persons and interested persons with some subject matter expertise").

[315] WASH. REV. CODE ANN. § 19.162.030(2)(d) (LEXIS through 2021 Regular Sess.) (pay-per-call program message must be "in plain English or the language used to promote the information delivery service"); VT. STAT. ANN. tit. 15A, § 2-406(a) (LEXIS through 2021 Sess.) (consent or relinquishment of parent or guardian must be in plain English or native language of signer); W. VA. CODE § 48-22-303(a) (LexisNexis, LEXIS through the 1st sess. of the 85th Legis.) (adoption consent or relinquishment must in plain English or signatory's "primary language"); CAL. FAM. CODE § 17406(c) (LEXIS through Ch. 1-100, 102, 103, 105-112, 114, 115, 117-123, 125-142, 145-160, 164, 173, 174, 177, 180-184, 276, 294, and 307

insurance laws requires documents to be understandable to patients with disabilities and persons with limited English proficiency.[316] Most of these characteristics are in Descriptive Standards. But one plain language law with a Features Standard[317] and two with a Readability Standard[318] also require the document to be understandable to a person of average age and intelligence.[319]

IV. PRIVATE SECTOR LAWS

Seventy-five percent of the laws across all categories (658 laws) are private sector laws.[320] These laws concentrate in nine categories:

Category	Number of Laws	Percentage of Total Number of Laws Across All Categories of Private Sector Laws
Consumer Protection	509	76.1%
Housing and Property	44	6.6%
Healthcare	38	5.7%
Corporate and Financial Disclosures	31	4.6%
Commercial	13	1.9%

of 2021 Regular Sess.) (child support notices explaining government does not represent child or have attorney-client relationship with requestor must be in plain English and will be "translated into the language understandable by the recipient when reasonable").

[316] IDAHO ADMIN. CODE r. 16.03.10.316.03 (LEXIS through Idaho Admin. Bull., Jul. 7, 2021) (Medicaid documents).

[317] 31 PA. CODE § 151.9(b)(1) (LEXIS through Oct. 2021 supp. effective through 51 Pa. B. 4250) (continuing care resident agreements and disclosures).

[318] 7 TEX. ADMIN. CODE § 84.801–.809 (West, Westlaw through 46 Tex.Reg. No. 8144, dated Nov. 26, 2021) (non-standard car installment contracts must "be easily understood by the average consumer" and not exceed an eleventh-grade reading level); 7 TEX. ADMIN. CODE § 90.101–.105 (West, Westlaw through 46 Tex.Reg. No. 8144, dated Nov. 26, 2021) (non-standard loans contracts must "be easily understood by the average consumer" and not exceed an eighth, ninth, or tenth grade reading levels).

[319] 31 PA. CODE § 151.9(b)(1) (LEXIS); 7 TEX. ADMIN. CODE §§ 84.801–.809 (Westlaw); 7 TEX. ADMIN. CODE §§ 90.101–.105 (Westlaw).

[320] Blasie, *supra* note 2, at Appendix A–I.

Litigation	13	1.9%
Individual Consents and Waiver	9	1.3%
Wildlife Records	5	< 1%
Environment	4	< 1%
Employment	3	< 1%

A. *Consumer Protection Plain Language Laws*

Consumer protection is the hub of plain language laws. With 509 laws, consumer protection plain language laws account for 76.1% of private sector plain language laws across all categories and 58.3% of all plain language laws across all categories.[321] This Article classifies them as "consumer protection" laws because they all involve documents for products or services commonly purchased by individuals from large businesses where the individual is unlikely to have any bargaining power. Most of these documents are standardized forms individual consumers cannot negotiate.[322]

The scale of consumer protection plain language laws revealed concentrations in the following sub-categories.

[321] *See id*. at Appendix P.

[322] *See id*. at Appendix A (identifying consumer protection laws that apply to standard form contracts that are likely not negotiated); *see e.g.*, CONN. GEN. STAT. ANN. § 36a-719g(a) (West, Westlaw though 2021 Regular Sess. and 2021 June Special Sess.) (mortgage explanation of fees); COLO. REV. STAT. ANN. § 25-49-103(1)(b)(II) (West, Westlaw through 1st Regular Sess. of the 73rd General Assembly) (healthcare provider description of charged services).

Sub-Category	Total Number of Laws	Percentage of Total Consumer Protection Laws Across All Sub-Categories
Insurance	212	41.7%
Uniform Commercial Code	80	15.7%
Utilities and Telecommunication	43	8.5%
Banking, Loans, Debt, and Credit	41	8%
Housing	34	6.7%
Healthcare	23	4.5%
Multi-Industry	17	3.3%
Miscellaneous	15	2.9%
Automotive	11	2.2%
Privacy	9	1.8%
Food	8	1.6%
Funerals and Cemeteries	8	1.6%
Professional Services	4	<1%
Transportation	4	<1%

Of the 509 consumer protection plain language laws, 72.7% use Descriptive Standards (370 laws), 11.6% use Readability Standards (59 laws), 9% use Hybrid Standards (46 laws), and 3.7% use Features Standards (19 laws).[323] An additional 2.9% (15 laws) use no standards; rather, they are laws authorizing insurance agencies to create plain language standards.[324]

1. Overview of Consumer Protection Laws

In 1981, Bernard Black wrote what may be the first proposed model plain language law in part because many consumer contracts

[323] *See* Blasie, *supra* note 2, at Appendices A-1–7.
[324] *Id*.

are mass-produced, non-negotiable forms consumers cannot understand even if they did read them.[325] Black contended formatting affects understanding.[326] Font, spacing, and margins can make a document difficult to read.[327] He worried important clauses may be indistinguishable from clauses covering remote contingencies, and customers may be unable to find the provisions they are looking for.[328] Black noted companies might use fine print, confusing formatting, jargon, and difficult grammar to hide pro-consumer clauses.[329]

Some lawmakers may have agreed. The concentration of plain language consumer protection laws in several areas may reflect a response to consumer complaints or consumer activist lobbying.[330] Eight states have laws focused on the renting or purchasing of cars.[331] Three of those states even have laws specific to collision damage waivers in car rental contracts.[332] Another concentration is banking, loans, debt, and credit.[333] Seventeen states, the federal government, and the District of Columbia have such laws, with the largest grouping covering mortgage documents.[334] A hefty concentration of twenty-four states have laws covering utilities and telecommunications documents involving telephone, electrical, water, sewage, or gas services.[335] Finally, thirty-nine states and the District of Columbia have a pair of model uniform commercial code provisions that use plain language in a sale of collateral notice.[336]

Perhaps the most notable concentration is multi-industry contracts, where fourteen states and the federal government have passed

[325] Black, *supra* note 4, at 255.

[326] *Id.* at 256 ("Fine print, low-contrast type, long lines, narrow mar- gins, and inadequate spacing between clauses make forms physically hard to read.").

[327] *Id.*

[328] *Id.*

[329] *Id.* at 256–57.

[330] *See infra* Sections IV.F, IV.G (the consumer protection plain language law concentrations in housing and healthcare are a subset of the housing and healthcare laws discussed more fully below).

[331] Blasie, *supra* note 2, at Appendix A-7.

[332] *Id.*

[333] *Id*. at Appendix A-1.

[334] *Id*.

[335] *Id*. at Appendix A-6.

[336] *Id*. at Appendix A-5.

laws.[337] Of all the plain language laws in the country, multi-industry plain language laws cover the largest variety and largest number of private-sector contracts.[338] As the name suggests, these laws span multiple industries.[339] Maine's law covers loans and leases of goods for up to $100,000.[340] Pennsylvania's law covers contracts for up to $50,000 for loans, the purchase or rental of property or services, or credit.[341]

At the same time, some of the narrowest plain language laws are consumer protection laws.[342] Some cover product labels like kosher food labels.[343] West Virginia has four such laws covering labels for medical cannabis, frozen desserts, dairy products, and milk products.[344] Another interesting grouping is in funeral and cemetery contracts where four states have acted.[345] Three states, the federal government, and the District of Columbia have plain language laws on privacy notices or consent forms for the release of confidential information.[346] Sometimes even accountants and lawyers get special attention. Nevada has a plain language law focused on accountant disclosures, while Oregon requires contingency agreements to use plain language, and Wisconsin requires a plain language disclosure to clients from law firms that are limited liability companies.[347] The federal government and two states have laws specific to the transportation industry, like charter bus safety information or documents involving the transportation of household goods.[348]

Two of the consumer protection plain language laws use unusual Hybrid Standards. Texas created a nationwide anomaly in a law re-

[337] *Id*. at Appendix A-8.
[338] *See id*. at Appendices A–I.
[339] *See id*. at Appendix A-8.
[340] ME. REV. STAT. ANN. tit 10, §§ 1121–1126.
[341] 73 PA. Stat. and Cons. Stat. § 2204 (West, Westlaw through 2021 Regular Sess. Act 80).
[342] Blasie, *supra* note 2, at Appendix A (listing consumer protection laws which deal with limitations and exclusions).
[343] *Id*. at Appendix A-7.
[344] *Id*.
[345] *Id*.
[346] *Id*.
[347] *Id*.
[348] *Id*.

quiring non-model prepaid funeral contracts to use plain language.[349] Its custom Hybrid Standard applies two readability tests: a minimum Flesch Reading Ease Test score of forty-seven and a maximum Flesch-Kincaid grade level score of eleventh grade.[350] The law's Features Standard also contains numerical requirements: a maximum average sentence length of nineteen words, and a maximum use of passive voice in twenty-one percent of sentences.[351]

Then there is Connecticut's consumer contracts law, another nationwide anomaly. Its custom Hybrid Standard requires consumer contracts to satisfy either a Features Standard or a Readability Standard.[352] The law's unique design runs deeper. Its readability test does not apply an external test like the Flesch Reading Ease Test.[353] Instead, the statute lays out its own test: the average number of words per sentence is less than 22; no sentence exceeds 50 words; the average number of words per paragraph is less than 75; no paragraph exceeds 150 words; and the average number of syllables per word is less than 1.55.[354]

2. INSURANCE PLAIN LANGUAGE LAWS

As the largest concentration of consumer protection plain language laws and of any kind of plain language law, insurance plain language laws warrant special discussion. Forty-six states and the District of Columbia combine to offer 212 plain language insurance laws, which account for 41.7% of all consumer protection plain language laws and 24.3% of plain language laws across all categories.[355] Only Kansas, Mississippi, Utah, Washington, and the federal government have none.[356]

Nationwide, insurance plain language law standards vary considerably. Of these laws, 42.9% use Descriptive Standards (ninety-one laws), 26.9% apply Readability Standards (fifty-seven laws),

[349] 7 TEX. ADMIN. CODE § 25.4 (West, Westlaw through 46 Tex.Reg. No. 8144, dated Nov. 26, 2021).
[350] *Id.*
[351] *Id.*
[352] CONN. GEN. STAT. ANN. § 42-152(b)–(c) (West, Westlaw through 2021 Reg. and June Special Sess.).
[353] *Id*.
[354] *Id.*
[355] Blasie, *supra* note 2, at Appendix A-4.
[356] *See id*.

3.8% use Features Standards (eight laws), and 19.8% use Hybrid Standards (forty-two laws).[357] Within these categories there is even more variation. Of the laws with Readability or Hybrid Standards that require a numerical score on a readability test (107 laws), 62.7% require a minimum score of forty (66 laws), 11.2% require a minimum score of forty-five (12 laws), 12.1% require a minimum score of fifty (13 laws), and 1% require a minimum score of seventy (1 law).[358] The South Carolina law that requires the minimum score of seventy on certain insurance documents is the highest Readability Standard score of any plain language law in the country.[359] Amongst insurance plain language laws, grade level Readability Standard thresholds range from sixth to ninth grade.[360]

The prevalence of insurance plain language laws is unsurprising. At least since 1966 even courts have recognized confusing insurance policies cause problems.[361] In 1978, the National Association of Insurance Commissioners proposed a model plain language law governing life and health insurance policies.[362] Legislatures responded by passing many insurance plain language laws.[363] The laws made insurance policies "more readable and understandable to the purchaser," and "protect[ed] the consumer from an insurance company

[357] Blasie, *supra* note 2, Appendix A-4 (6.6% (fourteen laws) authorize insurance departments to create plain language laws and therefore do not contain any standard).

[358] *Id.*

[359] S.C. CODE ANN. § 38-71-1940(C) (West, Westlaw through 2021 Act No. 116) (health carrier external review notices, statements, and forms).

[360] *See e.g.,* Blasie, *supra* note 2, Appendix A-4.

[361] Consider a 1966 Wisconsin Supreme Court decision that described an insurance policy's language as "unnecessarily cumbersome, complex and hard to read." Heater v. Fireman's Fund Ins. Co., 141 N.W. 2d 178, 180–81 (Wis. 1966) ("After a disciplined and careful reading" the Court found the language at issue was not ambiguous, but nonetheless recommended simplifying insurance contracts to make them "more readily understood by the average purchaser," which would "avoid confusion and litigation.").

[362] NAT'L A INS. COMM'RS, LIFE AND HEALTH INSURANCE POLICY LANGUAGE SIMPLIFICATION MODEL ACT (1995), https://content.naic.org/sites/default/files/model-law-575-life-health-language.pdf.

[363] Blasie, *supra* note 2, at Appendices A–4.

improperly refusing to pay policy claims."[364] Sometimes states lagging behind received a judicial nudge.[365]

Despite national momentum, insurance plain language laws played out differently across jurisdictions. Some chose to have their insurance department draft regulations, while others used the legislature to draft statutes.[366] That difference could affect design. Regulations are often procedurally easier to change.[367] By contrast, statutory amendments must pass the legislature and governor.[368] Substance might also vary. Agency regulations may include agency deference or judgment.[369] And a governor has more influence over an agency regulation, while the legislature has more influence over a statute.[370]

Interestingly, a few insurance plain language laws encourage third-party consultation.[371] For example, a Texas regulation encourages insurance companies to use plain language in certain policies and to "experiment with new language in these areas" to "increase

[364] Daly v. Paul Revere Variable Annuity Ins. Co., 489 A.2d 1279, 1282–83 (N.J. Super. Ct. Law Div. 1984), *aff'd*, 502 A.2d 48 (N.J. Super. Ct. 1985).

[365] In 1980, the New Hampshire Supreme Court recognized that "[i]n response to increased litigation spawned by the almost incomprehensible language found in many insurance policies, some states have reacted by enacting plain language laws requiring clear, simple policy language." Shea v. United Servs. Auto. Ass'n, 411 A.2d 1118, 1119–20 (N.H. 1980) (prodding the legislature, the Court quoted policy language revised under another state's plain language law "as an example of a plain language provision in effect in Massachusetts that would have avoided the issue raised in this case"); *see, e.g.*, N.H. REV. STAT. ANN. § 420-H:5 (West, Westlaw through 2021 Regular Sess.) (message received after *Shea,* years later, the New Hampshire legislature passed an insurance plain language law).

[366] *See, e.g.,* Blasie, *supra* note 2, at Appendix A-4.

[367] *See State-Level Administrative Law*, JUSTIA (April 2018), https://www.justia.com/administrative-law/state-level-administrative-law/.

[368] *See* Black, *supra* note 4, at 281 n.106.

[369] *See id.* at 286–87 (suggesting that agencies can choose whether or not to implement a law).

[370] *See* Miriam Seifter*, Gubernatorial Administration,* 131 HARV. L. REV. 483, 486–87 (2017) (describing examples of governors' influence over agencies); *see also Bill Signing Deadlines,* STATESCAPE, http://www.statescape.com/resources/legislative/bill-signing-deadlines/ (last visited Dec. 18, 2021) (describing some states do not need the governor's signature for the legislation to become law).

[371] *See* 28 TEX. ADMIN. CODE § 3.3100(a) (West, Westlaw through 46 Tex. Reg. No. 6602); *see also* S.C. CODE ANN. § 38-61-50 (West, Westlaw through 2021 Act No. 116).

policyholder understanding."[372] A South Carolina statute requires the insurance director to create plain language standards by consulting with the department of education and other state agencies.[373]

In addition to interstate variance, there is also intrastate variance. Several states apply different plain language standards to different kinds of insurance documents.[374] For example, in Virginia, a credit life insurance form must meet a Readability Standard with a minimum score of forty,[375] while life and health insurance forms must meet a Hybrid Standard with a minimum score of fifty.[376] Arizona uses a Readability Standard with a minimum score of forty for life and disability policies, but a Hybrid Standard with a minimum score of forty for auto, homeowner, and personal line dwelling insurance policies.[377]

Variations in standards may cause problems for nationwide industries, like the insurance industry. Many insurance companies do not draft their policies. Instead, a national insurance organization drafts template policies for nationwide distribution.[378] Unlike a contract rider that can amend a standard form contract to incorporate state-specific language, no rider can fix a contract that does not satisfy a plain language law because the whole policy must conform. Thus, to be useful, any template policy must satisfy the plain language law of any state, which means satisfying the most stringent standard.[379] Sure, an insurer could choose to not offer insurance in a state with a particularly strict standard, but access to a market is likely worth the low costs of having a trade association use plain

[372] 28 TEX. ADMIN. CODE § 3.3100(a) (Westlaw).

[373] S.C. CODE ANN. § 38-61-50 (Westlaw).

[374] *Id.*

[375] VA. CODE ANN. § 38.2-3735(F) (West, Westlaw through end of the 2021 Regular Session).

[376] 14 VA. ADMIN. CODE § 5-101-70(F) (West, Westlaw through 37:23 VA.R July 5, 2021).

[377] ARIZ. ADMIN. CODE § R20-6-210)(C)(2) (West, Westlaw through rules published in Ariz. Admin. Register Vol. 27, Issue 40, October 1, 2021) (auto, homeowner, and personal line dwelling); ARIZ. ADMIN. CODE § R20-6-213 (West, Westlaw through rules published in Arizona Admin. Register Volume 27, Issue 40, October 1, 2021) (life and disability).

[378] *See* Hartford Fire Ins. Co. v. California, 509 U.S. 764, 772 (1993) (Insurance Services Office consists of 1,400 property and casualty insurers and drafts standard policy forms).

[379] *See* Blasie, *supra* note 2, at Appendix A-4.

language. Therefore, it may be that regardless of what standard a jurisdiction chooses, template policies must satisfy the most stringent plain language standard even if that standard comes from the smallest market. Indeed, the most stringent plain language insurance law might affect policies in states with no plain language insurance laws.

B. *Commercial Contract Plain Language Laws*

Many plain language laws do not cover commercial transactions—transactions between two businesses or between a government and a business.[380] But thirteen laws from nine states and the District of Columbia do.[381] They make up just 1.5% of all plain language laws across all categories.[382]

About eighty-five percent (eleven laws) use Descriptive Standards.[383] Just one law uses a Readability Standard: Illinois requires agricultural production contracts to not exceed a twelfth-grade reading level.[384] None use Features Standards. Meanwhile, Minnesota's plain language law on agricultural contracts applies a one-of-a-kind custom Hybrid Standard.[385] That law requires the Commissioner of Agriculture to review the "readability" of certain agricultural contracts by considering "at least" certain factors, which include several plain language features and a readability test score.[386] But the law does not contain a minimum score needed on the readability test.[387] And each feature and the readability test score are independent factors.[388] Essentially, the law is a balancing test based on the score and the presence or absence of multiple features.[389]

[380] *See, e.g.*, 73 PA. STAT. AND CONS. STAT. ANN. § 2204(b)(8) (West, Westlaw through 2021 Regular Sess. Act 80) (exempting commercial leases from consumer contract plain language law).

[381] Blasie, *supra* note 2, at Appendix B.

[382] *See id*. at Appendix P.

[383] *See id*.

[384] 505 ILL. COMP. STAT. ANN. 17/20 (West, Westlaw through 2021 Regular Sess.).

[385] MINN. STAT. ANN. §§ 17.943–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

[386] *Id.*

[387] *Id.*

[388] *Id.*

[389] *Id.*

These commercial contract laws target very specific contracts within certain industries. For example, the District of Columbia's law targets the sale of interest in a renewable energy facility and Georgia's law covers tobacco contracts between a grower and a supplier.[390] Texas is the only jurisdiction with multiple commercial contract plain language laws: four laws covering private prison contracts with the government.[391]

No two jurisdictions have laws covering the same kind of commercial contract.[392] Thus, these laws may stem from special histories in each state, narrow policy objectives, or targeted lobbying efforts.[393]

C. *Corporate and Financial Disclosure Plain Language Laws*

The thirty-one plain language laws governing corporate and financial disclosures account for 3.6% of plain language laws across all categories.[394] Of these laws, 51.6% are federal and 48.4% are from a state or the District of Columbia.[395] The breakdown of standards in these laws is unusual. 581.% use Features Standards, 41.9% use Descriptive Standards, and none use Readability or Hybrid Standards.[396] These laws contain the largest concentration of Features Standards, are the only category where the majority of laws use Features Standards, and are the only category where the majority of laws do not use Descriptive Standards.[397]

While unusual, that concentration is unsurprising. Half the laws in this group are SEC regulations.[398] The SEC rolled out a plain language push in the 1990s,[399] chose the Features Standard, and applied that standard consistently across regulations. To help lawyers meet

[390] D.C. CODE ANN. § 34-1521(a) (West, Westlaw through Nov. 13, 2021) (sale of interest in renewable energy facility) and GA. CODE ANN. § 10-4-107.1(b)(2) (West, Westlaw through legis. passed at the 2021 Regular Sess.) (tobacco contracts between grower and company).

[391] *See* Blasie, *supra* note 2, at Appendix B.

[392] *See id.*, at Appendix B.

[393] *See id.*

[394] *See id.* at Appendix P.

[395] *See id.* at Appendix C.

[396] *Id.*

[397] *Id.*

[398] *Id.*

[399] SEC Staff Legal Bulletin No. 7*, supra* note 21.

the standard, the SEC issued an eighty-three-page plain language handbook.[400]

Yet no states matched the SEC's stance.[401] Only ten states and the District of Columbia have plain language laws covering corporate and financial disclosures.[402] And some are very narrow, like New York's law that targets franchise offering prospectuses.[403] The limited traction amongst states may be because of limited securities regulation amongst states. But another explanation is decreased need. If a company must make a public disclosure at the state and federal level that covers the same content, then there is no need for a state law as the company will use the same disclosure. The only reason for a state law would be if the state applied a different plain language standard than the federal regulation or covered a different kind of disclosure. Whatever a state's position, the SEC's regulations may nonetheless affect state filings because the federal regulations have forced lawyers who craft these documents to learn and apply plain language. They likely will not "turn off" the plain language skillset for a state filing.

D. *Employment Plain Language Laws*

Three laws spread across Oregon, South Carolina, and Washington form the only employment plain language laws in the private sector.[404] They constitute less than one percent of plain language laws across all categories. All of them use Descriptive Standards.[405]

Scarcity aside, the laws' substance is unique. Oregon's and Washington's laws require employers to convey information in plain language about worker rights, like unemployment benefits or discrimination policies.[406] Discussed below, while many public sector plain language laws involve explanations of rights or of the law,

[400] *See generally* OFF. INV. EDUC. AND ASSISTANCE, *supra* note 162.

[401] Blasie, *supra* note 2, at Appendix C.

[402] *Id*.

[403] N.Y. COMP. CODES R. & REGS. tit. 13, § 200.2(c) (West, Westlaw through Vol. XLIII, Issue 42 dated Oct. 20, 2021).

[404] Blasie, *supra* note 2, at Appendix D.

[405] *See, e.g., id*.

[406] OR. REV. STAT. ANN. § 657.260(2) (West, Westlaw through 2021 Regular Sess.) (statements in workplace describing potential disqualification from unemployment benefits for voluntarily leaving work or being discharged); WASH. REV.

these employment laws are the only ones requiring private sector companies to explain laws or legal policies to employees.[407] The third law from South Carolina affects employers who elect not to use a government form to record information about workplace injuries and illnesses. These employers must record that information on a custom form that uses plain language.[408] Like the wildlife records discussed below, this South Carolina law is unusual because it requires a private business to use plain language in a document that likely only government employees will review.[409]

E. *Environment Plain Language Laws*

Four laws from four states, all with Descriptive Standards, account for less than one percent of all plain language laws across all categories but make up all the environment plain language laws covering the private sector.[410] Some laws are very specific: Florida's law focuses on biosolids[411] and Kentucky's law on redesignation of surface area water.[412] Such specificity prompts questions about why lawmakers felt the need to target environmental documents on these particular subjects, but not others. On the other hand, other states have much broader laws: Pennsylvania's law covers summaries in environmental cleanup investigation and assessment plans,[413] and Washington's law covers environmental impact statements.[414] Environment is a category of private sector laws and a sub-category of

CODE ANN. § 49.95.020(c) (West, Westlaw through 2021 Regular Sess.) (long term care facility employee discrimination and abuse policies).

[407] Blasie, *supra* note 2, at Appendix D.

[408] *See* SC CODE ANN REGS 71-329 (West, Westlaw through State Register Volume 45, Issue 10, Oct. 22, 2021).

[409] *See id*.; *see also* Blasie, *supra* note 2, at Appendix D.

[410] *See* Blasie, *supra* note 2, at Appendix E.

[411] FLA. ADMIN. CODE ANN. r. 62-640.210(1)(i) (LEXIS through Dec. 29, 2021) (recommending regulated parties consult EPA plain English guide on biosolids).

[412] 401 KY. ADMIN. REGS. 10:026 (West, Westlaw through Admin. Register of Kentucky, Volume 48, No. 3, dated Sept. 1, 2021) (summary of effect of proposed re-designation of surface area waters on community and other users).

[413] 35 PA. STAT. AND CONS. STAT. ANN. § 6026.901 (West, Westlaw through 2021 Regular Sess.) (summary in environmental cleanup investigation and assessment plans, reports, and notices).

[414] WASH. ADMIN. CODE § 197-11-425(2) (West, Westlaw through 21-16 Washington State Register, Aug. 18, 2021) (environmental impact statements).

public sector executive function laws.[415] The laws mentioned above are unique in that they govern documents created by private individuals or entities for government and public readers.[416]

F. *Healthcare Plain Language Laws*

Thirty-eight healthcare plain language laws spread across fifteen states, the District of Columbia, and the federal government comprise 4.4% of plain language laws across all categories.[417] These laws cover documents from privacy notices and facility information, to cost disclosures and medical labels, to hearing aid sales and medical consent forms.[418] All of these laws apply Descriptive Standards except for a Minnesota law that requires health plan educational materials to not exceed a seventh-grade reading level.[419] The breadth and spread of these laws may come from complaints about difficulties navigating healthcare systems or recognition of patient vulnerabilities. Or perhaps lawmakers may see plain language's purported efficiency benefits as a way to decrease healthcare costs while increasing trust and transparency in the healthcare industry. Indeed, the Department of Health and Human Services recommends using plain language to promote health literacy.[420]

G. *Housing and Property Plain Language Laws*

Forty-four plain language housing laws account for five percent of plain language laws across all categories; they are in twenty-three states and the District of Columbia.[421]

Of all plain language housing laws, 86.6% use Descriptive Standards (thirty-nine laws).[422] Just 4.5% use a Features Standard

415 *See* Blasie, *supra* note 2, at Appendix E.
416 *See id*.
417 *Id*. at Appendices F, O.
418 *See id*.
419 MINN. R. 9500.1460(14) (West, Westlaw through Minn. State Register Vol. 46, No. 14, October 4, 2021).
420 U.S. DEP'T HEALTH AND HUMAN SERVICES, PLAIN LANGUAGE: A PROMISING STRATEGY FOR CLEARLY COMMUNICATING HEALTH INFORMATION AND IMPROVING HEALTH LITERACY (2005), https://www.michigan.gov/documents/mdch/LiteracyHHSarticle_205541_7.pdf.
421 Blasie, *supra* note 2, at Appendices G, O.
422 *Id.* at Appendix G.

(two laws).[423] The only law with a Readability Standard is an Oregon law that requires publishing residential building codes in a way that does not exceed a ninth-grade reading level.[424] Likewise, a Connecticut Law governing leases is the only one to apply a Hybrid Standard.[425] A South Carolina law requiring a government agency to create a plain language standard for continuing care contracts is the only authorizing plain language statute outside the insurance context.[426]

Housing plain language laws concentrate on particular types of housing.[427] One common kind of law covers specialty housing, like veterans housing[428] and assisted-living or nursing homes.[429] These laws may reflect a consumer-focused policy to ensure residents of these specialty homes make informed decisions or have greater access to information. Another concentration is leases.[430] These laws may reflect a tenant protection policy. Many, but not all, housing plain language laws reflect consumer protection policies.[431]

H. *Individual Consent and Waiver Plain Language Laws*

The uniqueness of nine laws that all use Descriptive Standards and cover consents and waivers—which account for barely one percent of plain language laws across all categories—reflects an expansion of the role plain language laws play.[432]

[423] *Id.*

[424] OR. REV. STAT. ANN. § 455.085(1) (West, Westlaw through 2021 Regular Sess.).

[425] CONN. GEN. STAT. ANN. § 42-151 to–158 (West, Westlaw through 2021 Regular Sess. and June Special Sess.).

[426] S.C. CODE ANN. § 37-11-35 (West, Westlaw through 2021 Act No. 116).

[427] *Id.* at Appendix G.

[428] *See, e.g.*, CAL. MIL. & VET. CODE § 1035.6 (West, Westlaw through Chapter 770 of 2021 Regular Sess.) (veterans home quarterly accounting of costs).

[429] *See, e.g.*, 16 DEL. ADMIN. CODE § 3225-10.0(10.4.2) (Westlaw through amendments included in the Del. Register of Regulations, Volume 25, Issue 4, dated Oct. 1, 2021) (assisted living facility contract).

[430] *See, e.g.*, HAW. REV. STAT. ANN. § 516D–11 (West, Westlaw through 2021 Special Sess.) (residential condominium and cooperative leases).

[431] *See, e.g.*, N.Y. GEN. BUS. LAW § 777-b(4) (McKinney, Westlaw through 2021, Ch. 1 to 440) (alteration of housing merchant implied warranty); W. VA. CODE ANN. § 46A-6-107(b) (LexisNexis, LEXIS Dec. 29, 2021 1st Special Sess.) (waiver of warranty on manufactured home).

[432] *See* Blasie, *supra* note 2, at Appendices H, O.

Some individual consent and waiver laws have consumer protection roots, ensuring the informed release of private information or contractual protections.[433] But others go further. North Dakota requires plain language in a marital agreement's explanation of rights and obligations being waived or modified.[434] Vermont has a similar requirement in agreements to relinquish parental rights.[435] West Virginia does the same for adoption agreements and human rights acts waivers.[436] Unlike consumer protection waivers, these consents and waivers have a very different context.[437] The signatories are not at a lack of bargaining power, they may be contracting with another individual, and they are likely represented by counsel. These laws may reflect a policy to require plain language whenever individuals contractually waive or alter high-stakes rights. That same policy also arises in several government plain language laws that require notices to explain rights, like privacy rights or how adoption proceedings can affect an individual's rights.[438] A worthy inquiry beyond the scope of this Article is why lawmakers singled out these particular rights as needing a plain language explanation, and whether plain language plays a role in procedural Due Process or a contractual meeting of the minds.

I. *Litigation Plain Language Laws*

Thirteen plain language laws from ten jurisdictions cover litigation-related documents and account for 1.5% of plain language laws across all categories.[439] All of them use Descriptive Standards.[440]

The kinds of documents covered vary. Some cover pleadings, like a complaint or answer.[441] But, in a peculiar fashion, the laws all

[433] *See id*. at Appendix H.

[434] N.D. CENT. CODE ANN. § 14-03.2-08(1) (West, Westlaw through 2021 Regular Sess.).

[435] VT. STAT. ANN. tit.15A, § 2-406(a) (LEXIS through Sept 30, 2021, comprising updates through the 2021 Sess.).

[436] W. VA. CODE ANN. § 48-22-303(a) (LEXIS through 1st Sess. of 85th Legis.); W. VA. CODE § 77-6-3.2.a (2002).

[437] Blasie, *supra* note 2, at Appendix H.

[438] *See id*. at Appendices L, N.

[439] *See id.* at Appendices I, P.

[440] *See id.* at Appendix I.

[441] *See, e.g.*, ALASKA ADMIN. CODE tit. 3, § 48.130(a)(2) (2000) (statement of facts and circumstances in formal complaint or protest to regulatory commission);

target only certain kinds of assertions in pleadings. For example, two of the laws cover the category of products in a complaint before the U.S. Court of International Trade,[442] and the statement of jurisdictional facts in a Washington juvenile dependency petition.[443] Curiously, the laws do not govern other statements and assertions in those pleadings. Another kind of covered document is litigation notices. Applying plain language standards to litigation notices may serve Due Process-related purposes, like informing parties of the nature of the proceeding: a West Virginia law covers the part of a notice of adoption proceeding that explains the potential loss of parental rights and the ability to appear and defend those rights.[444] Some laws even cover litigation contracts: New York litigators must use plain language to draft two different kinds of settlement agreements.[445] Like commercial contracts, these laws stand out because they cover documents capable of being written by any individual but most likely drafted by lawyers. The intended readers include opposing counsel, an opposing or related party, and/or judges. Why these laws target such specific litigation documents, or specific parts of those documents, is an interesting question worthy of future research.

J. *Wildlife Records Plain Language Laws*

One Pennsylvania law and four West Virginia laws apply Descriptive Standards to wildlife records, and make up less than one percent of plain language laws across all categories.[446] These otherwise obscure laws are unique in two respects.

HAW. CODE R. § 3-170-7 (LexisNexis 2008) (facts of alleged election violation in complaint before elections commission).

442 19 C.F.R. § 210.12(a)(12) (2018).

443 WA. JUV. CT. R 3.3(e) (1997).

444 *See*, *e.g.*, W. VA. CODE ANN. § 48-22-602(b) (West 2001) (notice of adoption proceeding explanation of potential termination of parental rights and right to appear and defend parental rights).

445 N.Y. GEN. OBLIG. LAW § 5-1706(e) (McKinney, Westlaw through 2021 Chapter 1 to 440) (transfer of structured settlement payment rights); N.Y. GEN. OBLIG. LAW § 5-336(1)(b) (McKinney, Westlaw through 2021 Chapter 1 to 440) (confidentiality terms and conditions of employment discrimination claim settlement).

446 Blasie, *supra* note 2, at Appendix J.

First, government employees are likely the only people to read these records. Pennsylvania's law covers wildlife preserve records the state Game Commission inspects.[447] West Virginia's laws cover hunting records that, presumably, game wardens or officers inspect.[448] It is unclear why these states targeted these documents and not the thousands of other documents the government reviews. Perhaps the laws respond to issues game wardens encountered with records.

Second, West Virginia's wildlife plain language laws are the only plain language laws in the country that cover documents created by any individual—anyone who happens to be transporting hunted wildlife—regardless of whether they are businessowners, professionals, or government employees.[449] Admittedly, the wildlife records are likely not lengthy documents with much writing. Nonetheless, these laws break new ground as they apply a plain language standard to individuals who may have no legal or government training on plain language.

V. PUBLIC SECTOR LAWS

Often overlooked, many plain language laws cover documents drafted by the government.[450] Apart from the Plain Writing Act of 2010,[451] scholarship rarely mentions such laws. Yet the 216 public sector plain language laws account for 24.8% of all plain language laws.[452] Two of the three largest categories of plain language laws are public sector laws.[453] Public sector plain language laws contain

[447] 58 PA. CODE § 147.286(e) (West, Westlaw through Pa. Bulletin, Volume 51, No. 41, dated Oct. 23, 2021).

[448] *See, e.g.*, W. VA. CODE R. § 58-47-3(11) (LEXIS through regulations in effect as of Nov. 2021).

[449] *Id*. ("It is illegal to transport or possess wildlife or parts of wildlife, which were killed by another hunter unless the wildlife is accompanied by a paper or tag filled out in plain English bearing the information from the hunter that killed the wildlife. The hunter's signature, address, hunting license number (if required), game tag number (if required), the date of kill, the species, and the number, and/or quantity of wildlife."). *See generally* Blasie, *supra* note 2, at Appendices A–O.

[450] Blasie, *supra* note 2, at Appendices K–O.

[451] Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (2010).

[452] Blasie, *supra* note 2, at Appendices K–P.

[453] *See id*.

some of the broadest and oldest plain language laws in the country.[454] Even some state constitutions incorporate plain language standards.[455]

Category	Number of Plain Language Laws	Percentage of Total Public Sector Laws Across All Categories
Executive Function	105	51.2%
Judicial Function	53	26%
Lawmaking Function	33	16.2%
Local Government Function	11	5.4%
All Government Documents	2	<1%

A. *All-Government Plain Language Laws*

Two states have plain language laws that apply to the entire state government.[456] In 1978, Hawaii enshrined plain language into its constitution: "Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms."[457] Illinois is the newcomer. It adopted the Plain Language in Government Act in 2017, with sections coming into effect in 2018 and 2019.[458] After years of research by a task force,[459] the Act requires the legislature, and "advises" the

[454] *See id*. at Appendix O.
[455] *See id*. at Appendices K–O.
[456] *Id*. at Appendix K.
[457] HAW. CONST. art. XVI, § 13.
[458] 20 ILL. COMP. STAT. ANN. 4090/1–99 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.).
[459] 20 ILL. COMP. STAT. ANN. 4090/15 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.) (the Act had the backing of The Chicago Bar Foundation who revitalized a Plain Language Task Force created in 2009); Chicago Bar Foundation, *Say What You Mean, and Mean What You Say,* THE CHICAGO BAR FOUND. (Sept. 28, 2018), https://chicagobarfoundation.org/blog/say-what-you-mean-and-mean-what-you-say/ ("[P]lain language increases the public's understanding of rights and benefits as well as compliance with responsibilities and

executive and judicial branches, to use plain language whenever possible in laws and public-facing documents.[460] The Act went further by charging the task force with designing training requirements and assistance to implement plain language, and to study and propose other legislation to maximize plain language benefits in government documents and contracts between private parties.[461] These laws effectively require all state government employees to acquire a new writing skillset and to apply that skillset for the public benefit.[462] The laws affect, and will continue to affect, thousands of documents.

B. *Executive Function Plain Language Laws*

The 105 laws covering executive function documents are the most common kind of public sector plain language laws (51.2% of total) and the second most common kind of plain language laws (12% of plain language laws across all categories).[463] About 91.4% of executive function laws use Descriptive Standards (96 laws), 6.7% use Readability Standards (7 laws), and 1.9% use Features Standards (2 laws).[464] None use Hybrid Standards.

The laws tend to concentrate on particular subjects:

requirements. Clear communication leads to the successful and efficient achievement of legislative and administrative goals and also promotes the rule of law, making it an essential piece of the access to justice puzzle.").

[460] 20 ILL. COMP. STAT. ANN. 4090/30 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.) (the distinction between "requiring" and "advising" may be irrelevant if the law cannot be enforced. But the use of "advises" may suggest the legislature was trying to respect the separation of powers).

[461] 20 ILL. COMP. STAT. ANN. 4090/5 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.).

[462] *Id*.

[463] Blasie, *supra* note 2, at Appendix L.

[464] *Id.*

Subcategory	Number of Plain Language Laws	Percentage of Total Executive Function Laws Across All Categories
Miscellaneous	32	30.5%
Election Materials and Process	22	21%
Government Reports and Information	13	12.4%
Environment	10	9.5%
Privacy Rights	9	8.6%
Taxes	7	6.7%
Education	6	5.7%
Administrative Agency	4	3.8%
Multi-Subject	2	1.9%

The scope of these laws ranges from vast to surprisingly specific. At one end of the spectrum, the federal government, California, Maine, and Oregon have laws requiring their agencies to use plain language in many of their public-facing documents.[465] California's law drives home the need for extensive use of plain language by covering agency contracts, forms, licenses, announcements, manuals, memoranda, and communications.[466] But other laws are far more granular. For example, a New York law targets department of education documents while a Rhode Island law is even more specific, focusing on school safety plan documents.[467]

[465] *See id*. at Appendix L (specifically the Administrative Agency Documents section).

[466] CAL. GOV'T CODE § 6219 (West, Westlaw through Chapter 770 of 2021 Regular Sess.).

[467] N.Y. EDUC. LAW § 305(26) (McKinney, Westlaw through 2018 Chapters 1 to 522); 16 R.I. GEN. LAWS ANN. § 16-21-24 (West, Westlaw through Chapter 424 of the 2021 Regular Sess. of the R.I. Legis.).

Whether broad or specific, executive function plain language laws often focus on similar kinds of documents.[468] The largest concentration is elections.[469] Sixteen states have twenty-two plain language laws on election documents, like ballots, ballot issue explanations, and voting instructions.[470] Another theme is explanations of citizen rights or obligations.[471] Illustrating this theme, some laws require using plain language in tax forms or explanations of privacy rights.[472] Another trend is using plain language to explain prior or future government actions, like environmental reports and notices, statewide health reports, and governor budget reports.[473]

The effects of executive function plain language laws are significant. These laws likely require huge numbers of government employees to change how they write, including lawyers and non-lawyers, and effect a wide swath of documents.

C. *Judicial Function Plain Language Laws*

The fifty-three laws that apply to judicial function documents constitute 26% of all categories of public sector plain language laws and 6.1% of all plain language laws across all categories (the third largest concentration).[474] Nearly all judicial function plain language laws use Descriptive Standards.[475] The sole exception is a Maine notice explaining a finding that a complaint of child abuse or neglect is substantiated; the notice cannot exceed a sixth-grade reading level.[476]

The judicial function plain language laws fall within seven subcategories:

468 *See* Blasie, *supra* note 2, at Appendix L.
469 *See id*.
470 *See id*.
471 *See id*.
472 *See, e.g*., *id*.
473 *See id*.
474 *See id*. at Appendix M; *see also supra* Part III.
475 *See* Blasie, *supra* note 2, at Appendix M.
476 10-148-201 ME. CODE R. § X (LEXIS through Oct. 1, 2021).

Subcategory	Number of Plain Language Laws	Percentage of Total Judicial Function Laws Across All Categories
Administrative Hearings	28	52.8%
Explanation of Rights	8	15.1%
Judicial Forms	6	11.3%
Trial Procedure	5	9.4%
Child Support and Adoption	3	5.7%
Case Resolutions	2	3.8%
Multi-Subject	2	3.8%

Among these laws, the largest concentration governs the administrative hearing process.[477] 52.8% (twenty-eight laws) from ten states require administrative hearing documents to use plain language.[478] Some laws apply to initiating documents like complaints.[479] But most apply to hearing notices.[480] Kentucky is the only state with a lone plain language law covering all agency hearing notices.[481] Other states have agency-specific statutes.[482] For example, Idaho's only administrative hearing plain language law applies to racing commission disciplinary hearing notices.[483] By contrast, Hawaii has fourteen plain language laws covering different administrative hearing notices or complaints.[484] Why a state would regulate one kind of hearing notice but not another is unclear. To the extent plain language has Due Process overtones, Kentucky's approach is the best choice. Singling out particular hearings may be because plain language has more traction with some agencies than others, or

[477] *See* Blasie, *supra* note 2, at Appendix M.
[478] *See id*.
[479] *See id*.
[480] *See id*.
[481] KY. REV. STAT. ANN. § 13B.050(3) (West, Westlaw through 2021 Regular and Special Sess. and Nov. 2020 election).
[482] *See* Blasie, *supra* note 2, at Appendix N.
[483] *See* IDAHO ADMIN. CODE r. 11.04.04.071 (LEXIS through Idaho Administrative Bulletin dated Apr. 7, 2021).
[484] *See* Blasie, *supra* note 2, at Appendix M.

perhaps because there was a history of complaints with the notices at a particular hearing.

Another concentration centers on explanations of the judicial process or of an individual's rights. For example, two states require plain language in notices involving child support or custody.[485] Three states require victims of sexual assault, victims of crimes, or employees injured at work to receive plain language information about their rights.[486] Several states require plain language in court forms.[487] Michigan targets forms for pro se parties,[488] while Utah requires all court forms to use plain language.[489] These laws may reflect a policy to use plain language to aid individuals, especially individuals without lawyers, on how to navigate the justice system.

Some judicial plain language laws affect judges and lawyers. Delaware's guide for self-represented litigants encourages judges to use plain language,[490] while Virginia requires certain court orders to state an election ballot question in plain language.[491] Utah requires plain language in certain juvenile court notices and filings.[492] Here again, the origin behind selective coverage is unclear and worth future investigation.

The effect of plain language on the American judicial system goes well beyond laws. On their own initiative, many judiciaries

[485] *See id*.

[486] *See id*.

[487] *See id*.

[488] MICH. COMP. LAWS ANN. § 600.2950b(1) (West, Westlaw through P.A.2021, No. 91, of the 2021 Regular Sess., 101st Legis.) (pro se forms for personal protection orders); MICH. COMP. LAWS ANN. § 600.8401a(1) (West, Westlaw through P.A.2021, No. 91, of the 2021 Regular Sess., 101st Legis.) (instruction forms for small claims court); MICH. COMP. LAWS ANN. § 600.8409(2) (West, Westlaw through P.A.2021, No. 91, of the 2021 Regular Sess., 101st Legis.) (instructions enforcing small claims court judgment).

[489] UTAH R. JUD. ADMIN. 3-117(3)(b) (West, Westlaw through Oct. 15, 2021).

[490] DEL. JUD. GUIDELINES FOR CIV. HEARINGS INVOLVING SELF-REPRESENTED LITIGANTS GUIDELINE 2 (West, Westlaw through July 1, 2021).

[491] VA. CODE ANN. § 24.2-684 (West, Westlaw through end of the 2021 Regular Sess. and 2021 Special Sess.).

[492] UTAH CODE ANN. § 75-5-309(2) (West, Westlaw through 2021 First Special Sess.) (guardianship proceeding notices); UTAH R. JUV. P. 17(b)(1) (West, Westlaw through Oct. 15, 2021) (juvenile delinquency petition statement of jurisdiction, facts supporting jurisdiction, and relief sought).

adopted plain language.[493] Sometimes those initiatives focused on court rules.[494] The federal system is nearing completion of a thirty-year project to restyle every set of federal rules with plain language.[495] Some states followed suit.[496]

Another common voluntary initiative is revising court forms.[497] The Washington Pro Se Project rewrote 211 family law forms in plain language to make them more accessible to pro se litigants.[498] Fourteen states have similar projects.[499] But form revisions are not just for pro se clients. The Michigan Supreme Court's State Court Administrative Office created fourteen divorce proceeding forms as part of a larger project to publish over 400 plain language court forms for voluntary use by Michigan lawyers.[500]

In many ways, courts have been the most receptive group to voluntarily adopt plain language.[501] Michigan judges revised their orders' certification pages to use plain language.[502] The Federal Judicial Center has a guide on plain language in class action notices.[503] In 2018, the Illinois Supreme Court issued a Policy on Plain Language "to provide guidance to judges, court staff, circuit clerks, law

[493] *See An Overview of Plain English*, *supra* note 68, at 27; *see also* FED. JUD. CENTER, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 5–6 (2010), https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf [hereinafter FED. JUD. CENTER].

[494] *See* WRIGHT & MILLER ET AL., *supra* note 150, at 7–10.

[495] *Id*.

[496] *See, e.g.*, Ariz. R. Civ. P. prefatory cmt. to the 2017 amendments (West, Westlaw through Oct. 15, 2021) (noting 2017 amendments sought to use "plain English" where possible); ME. R. UNIFIED CRIM. P. 6 n. 3 (West, Westlaw through Sept. 1, 2021) (2015 amendment helped "eliminate the awkward overuse of the term 'attorney for the State' and to replace passive voice language with more readable active voice language."); ME. R. CIV. P. 120 (West, Westlaw through Sept. 1, 2021) (2016 amendment changed numbering "to improve the readability of the rule"); 5 COLO. CODE REGS. § 1001-2:V.I (Westlaw current through Volume 44, Issue 17, Sept. 10, 2021) (describing revisions to make regulations more readable); S.C. CODE ANN. REGS. 61-9.122.30 (West, Westlaw through Volume 45, Issue 10, Oct. 22, 2021) (same).

[497] Dyer, *supra* note 100, at 1068.

[498] *Id*.

[499] *Id.* at 1073.

[500] *An Overview of Plain English*, *supra* note 68, at 28.

[501] *See id*.; *see also* FED. JUD. CENTER, *supra* note 493, at 5.

[502] *An Overview of Plain English*, *supra* note 68, at 28.

[503] FED. JUD. CENTER, *supra* note 493, at 5–6.

librarians and other justice partners when developing written materials and when communicating to members of the public about legal information, court process, rules and forms."[504] The Policy requires all informational documents and instructions to use plain language whenever practicable.[505] The Policy recognizes that "plain language increases and aids the public to understand their rights and choices so they may make informed decisions and fully participate in our legal system," and determines plain language affects "procedural fairness and access."[506]

Other initiatives focus on using plain language to enhance the fairness of trials. In 2004, Alabama's Civil Pattern Jury Instructions Committee concluded if jurors do not understand jury instructions, then the verdict and the justice system lose credibility.[507] The Committee applied a Hybrid Standard with a seventh- to ninth-grade metric.[508] Around the same time, California completed a similar project.[509] Studies have found significant improvement in juror comprehension when instructions use plain language.[510]

Whether a jurisdiction should pursue judicial function plain language laws as opposed to voluntary court-driven initiatives is an issue in need of research.

[504] *Illinois Supreme Court Policy*, *supra* note 70.

[505] *Id.*

[506] *Id.*

[507] Hon. Arthur J. Hanes, Jr. et. al., *The "Plain English" Project of the Alabama Pattern Jury Instructions Committee–Civil*, 68 ALA. L. 369, 371–72 (2007). Other states reached similar conclusions. *See also* State v. Martinez, 854 P.2d 147, 153 (Ariz. Ct. App. 1993) (finding prosecutor erred by quoting evidentiary standard in supreme court decision during closing argument, noting "we have long discouraged jury instructions that quote verbatim from appellate opinions. Such language is seldom, if ever, in its raw form appropriate for delivery to a jury either in a jury instruction or in closing argument") (citations omitted).

[508] Hanes, *supra* note 507, at 374–75.

[509] Peter M. Tiersma, *Toward More Understandable Jury Instructions—The California Experience*, 21 CRIM. JUST. 5, 8 (2006).

[510] Dylan Lager Murray, *Plain English or Plain Confusing?*, 62 MO. L. REV. 345, 347–48 (1997).

D. *Lawmaking Function Plain Language Laws*

Thirty-three laws, which make up 16.1% of public sector plain language laws and 3.8% of all plain language laws apply to lawmaking function documents.[511] Of those, 66.7% (twenty-two laws) cover administrative lawmaking documents, 27.3% (nine laws) cover legislative lawmaking documents, and 6% (2 laws) cover multi-subject lawmaking documents.[512]

All the jurisdictions with plain language laws covering the lawmaking function use Descriptive Standards except one: Oregon.[513] The Oregon legislature set the most precise and rigorous standard for itself.[514] An Oregon law applies a Readability Standard that requires all legislative digests and summaries to have a minimum score of sixty.[515]

When it comes to administrative lawmaking, many administrative procedure acts have plain language requirements. During the process of drafting, circulating, adopting, and amending regulations, thirteen states require their agencies to use plain language.[516] Where in the process the agency must use plain language varies. For example, Alaska requires its agencies to use plain language in the notice of proposed rulemaking.[517] California goes further by requiring it in the new regulation's text.[518] But other times, the laws are narrower. Consider New Mexico, whose only lawmaking plain language law

[511] *See* Blasie, *supra* note 2, at Appendices N, P.

[512] *Id.*

[513] OR. REV. STAT. ANN. § 171.134 (West, Westlaw through 2021 Legis. Sess.) ("Any measure digest or measure summary prepared by Legislative Assembly shall be written in a manner that results in a score of at least 60 on the Flesch readability test . . . .").

[514] *See id*.

[515] *Id*.

[516] Blasie, *supra* note 2, at Appendix N; Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 18, 2011) (Although no federal law requires agencies to draft regulations using plain language, this executive order declared the regulatory system "must ensure that regulations are accessible, consistent, written in plain language, and easy to understand.").

[517] ALASKA STAT. ANN. § 44.62.200(d) (West, Westlaw through Chapters 23 and 33 of the 2021 1st Regular. Sess. of the 32nd Legis.).

[518] CAL. GOV'T CODE § 11346.2(a)(1) (West, Westlaw through Chapter 770 of 2021 Regular Sess.).

concerns commission regulations implementing a particular mining law.[519]

Other jurisdictions regulate the legislature's lawmaking process.[520] Six states and the District of Columbia require plain language in statutes or other legislative documents like digests or legal summaries.[521] Colorado stands out with one law requiring the legislature to draft statutes in plain language, and another allowing plain language suggestions to citizen petitions to amend the state constitution.[522]

Oregon is the only state with laws requiring plain language in administrative and legislative lawmaking.[523]

Plain language laws governing legislative lawmaking are the oldest in the United States and have the highest concentration of state constitutional law.[524] Since 1851,[525] Indiana's Constitution required every legislative act to use plain language.[526] In 1857, Oregon did the same for every legislative act or joint resolution.[527]

[519] N.M. STAT. ANN. § 69-25A-5 (West, Westlaw through the end of the First Regular Sess. and First Special Sess., 55th Legis. 2021).

[520] Even when no law requires using plan language in the drafting process, the Movement has gained traction in legislative drafting circles. For example, several amendments to Pennsylvania statutes revised sentence and paragraph structure to improve readability. *See, e.g.*,16 PA. STAT. AND CONS. STAT. ANN. § 1605 cmt. (West, Westlaw through 2021 Regular Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1999 cmt. (West, Westlaw through 2021 Regular Sess. Act 80); 68 Pa. Cons. St., pt. II, subpt. B, Refs & Annos. Unif. L. cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1731 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1720 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1751 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1702 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80).

[521] *See* Blasie, *supra* note 2, at Appendix N.

[522] COLO. REV. STAT. § 2-2-801 (LEXIS through 2021 Regular Sess. legislation); COLO. REV. STAT. ANN. § 1-40-105(1) (West, Westlaw through the end of the Second Reg. Sess. of the 71st General Assembly).

[523] *See* Blasie, *supra* note 2, at Appendix N.

[524] *See id*.

[525] IND. CONST. of 1951 art. IV, § 20.

[526] *Id.*

[527] OR. CONST. art. IV, § 21; OR. CONST. of 1857, art. IV, § 21.

Idaho followed in 1890 with a nearly identical provision.[528] Including Hawaii, four state constitutions require plain language in the legislative lawmaking process.[529]

Some jurisdictions are dipping their toes in plain language lawmaking. When the District of Columbia created a commission to reform its criminal code, it charged the commission with incorporating "clear and plain language" into the code.[530] Maine permits retroactive review of its regulations for plain language.[531]

In addition to the large number of documents impacted, lawmaking plain language laws have the broadest effects. They impact members of legislatures and their staff, administrative agencies, and lobbyists.[532] The resulting legislative acts affect citizens, businesses, agencies, and lawyers who read them.[533] While the effects have not been thoroughly studied, according to the SEC, these effects are beneficial: when laws do not use plain language, compliance becomes more expensive because people have to hire lawyers to determine their meaning.[534] That complexity increases the chance people who are trying to comply will not because they do not fully understand the law.[535] "So the government gets less of the behavior that it wants; the people trying to be good and do what government wants get frustrated and angry; our economy is less efficient because of all the expense involved; and overall, confidence in government is eroded, because when the poorly written laws and rules are enforced, people view it as unfair and arbitrary."[536] Such effects may be more significant for small businesses or individuals who cannot consult a lawyer for every legal decision.[537]

[528] IDAHO CONST. art. III, § 17; 2 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF IDAHO 1889 2054 app. (1912).

[529] *See* Blasie, *supra* note 2, at Appendix N.

[530] D.C. CODE ANN. § 3-152(a)(1) (West, Westlaw through Sept. 22, 2021).

[531] ME. REV. STAT. ANN. tit. 3, § 973 (West, Westlaw through 2021 First Regular Sess. and 2021 First Special Sess. of the 130th Legis.).

[532] *See* Blasie, *supra* note 2, at Appendix N.

[533] The Benefits to Small Business *supra* note 140.

[534] *Id*.

[535] *Id.*

[536] *Id.*

[537] *Id.* The SEC received positive feedback when it began making plain language translations of important acts for those affected. *Id*.

E. *Local Government Function Plain Language Laws*

1.2% of plain language laws across all categories consist of eleven laws spread across ten states and require local governments to use plain language.[538] Most of these laws apply to documents that explain government actions, like zoning change notices,[539] finance board budget summaries,[540] or school budgets.[541] All the local government function laws use Descriptive Standards.[542]

These laws stand out in two respects. First, all of these laws are state statutes passed by state legislatures to govern local government.[543] So, they reflect one government affecting how another government functions.[544] Second, these laws extend plain language to local governments, which are smaller than, and thus likely have fewer resources than, state and federal governments. The time and costs of implementing plain language public sector laws is beyond this Article's scope, but is ripe for inquiry.

VI. CONCLUSION

The United States' plain language experiment currently consists of 776 laws spread across fifty-two jurisdictions that take fifty-two different approaches.[545] The results of that experiment will inform decisions on whether the United States needs more, fewer, or different plain language laws. But reaching those results requires greater scholarly attention.

With the benefit of knowing the national landscape and having a taxonomy of shared terminology and classifications, scholarship on plain language laws can flourish. This Article sets the stage for three areas begging for greater discourse.

[538] *See* Blasie, *supra* note 2, at Appendix O; *see also supra* Part III.

[539] ME. REV. STAT. ANN. tit. 30-A, § 4352(9)(B) (West, Westlaw through 2021 1st Regular Sess. and 2021 1st Special Sess. of the 130th Legis.).

[540] N.J. STAT. ANN. § 40A:5-48(a) (West, Westlaw through 2021, Chapter 209).

[541] N.C. GEN. STAT. ANN. § 115C-105.25(c) (West, Westlaw through 2019 Regular Sess. of the General Assembly).

[542] *See* Blasie, *supra* note 2, at Appendix O.

[543] *See id*.

[544] *See id*.

[545] *See id.* at Appendices A–P.

First, scholars should conduct empirical research on the effects of plain language. Questions remain about whether plain language delivers the benefits its supporters suggest and, if so, at what cost. Empirical research can also determine whether those benefits and costs vary depending on context, like the kind of document or reader. Building off the survey results, empirical research can investigate these questions to chart plain language's domestic and international future. With the benefit of this Article, researchers can collect the missing mass-market data on costs and benefits while controlling for jurisdiction, coverage, and standards. Currently, we are stuck in circular logic: some are reluctant to deploy plain language on a massive scale (especially to complex legal documents) because of the absence of empirical research on the costs and benefits of using plain language in these documents. But if no one implements plain language in these documents or on this scale, no one can measure the costs and benefits. Plain language laws force the change on a large scale, so the documents they cover may provide the missing empirical data. Future research can adopt the terms and conceptual framework provided by this Article. Relatedly, even if plain language has many benefits, another open question is whether to convert plain language into law or to leave its adoption to the free market or to bar reform. And if converting plain language into law, should that law be codified or develop in common law fashion. This Article detailed the previously unknown and extensive codified plain language laws. Future research will explore if and how courts have implemented plain language requirements by common law.

Second, scholars should investigate the normative basis for plain language. If plain language improves communication, what is the doctrinal value of improved communication? Alternatively phrased, when does the law care whether readers understand legal documents? This Article reveals that plain language is not just a tool for consumer protection.[546] Plain language laws first appeared in state constitutions in the 1800s, well before Rudolf Flesch created his formula, Mellinkoff published his book, or the 1970s consumer movement occurred.[547] Moreover, lawmakers imported plain language

[546] *See supra* Section I.E.
[547] *See, e.g.,* IND. CONST. of 1851 art. IV, § 20.

from social sciences into the legal contexts outside consumer protection, like commercial contracts, securities filings, environmental filings, and a massive array of government documents.[548] Future scholarship needs to explore how plain language fits into so many doctrines and what value it adds.

Third, scholars should research the design of plain language. The survey reveals that "plain language" has different meanings to different lawmakers.[549] There are four different standards that set very different criteria.[550] Most jurisdictions apply one standard in some contexts, and a different standard in another context.[551] Sometimes two jurisdictions have laws covering the same kind of document but apply different standards.[552] After reviewing empirical and normative scholarship, the next stage is determining which approach to plain language works best in which contexts.

[548] *See* Blasie, *supra* note 2, at Appendix P.

[549] *See id.* at Appendices A–P.

[550] *See supra* Section II.B.

[551] *Compare* Minn. Stat. Ann. §§ 17.943–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) *with* MINN. STAT. ANN. §§ 17.942–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

[552] *See, e.g.*, Blasie, *supra* note 2, at Appendix A-4 (depicting how different states treat insurance documents differently).

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NAIC CONSUMER LIAISON REPRESENTATIVE

RECOMMENDATION

TO THE NAIC EXECUTIVE (EX) COMMITTEE

(Please submit completed request form to Lois Alexander (NAIC) for processing)

RECOMMENDED BY: Brenda Cude

DATE: July 3, 2024

ISSUE:

Various NAIC committees and working groups routinely write and revise model laws and regulations that include requirements for insurers to provide information to consumers. Sometimes those models include the precise language insurers are to use. Other times the models require disclosures to consumers but are silent about whether that language must be readable. Still other models aim to require disclosures that a typical consumer could read but either describe readability in vague terms or using standards that are now outdated. While the regulators who craft the requirements are likely well intentioned, they may not have the expertise needed to craft language that ensures readability.

Accessibility of language by those with disabilities is a separate but related issue and the scope of this request could be expanded to address it.

COMMITTEE REFERRAL RECOMMENDATION:

(A)_____ (B)_____ (C)_____ (D)_____ (E)_____ (F)_____ (G)_____

I honestly have no idea which committee would take up this issue as it crosses every line of insurance and most of what NAIC does.

ACTION REQUESTED/CHARGE RECOMMENDED:

Among the recommended actions would be:

- Inventory existing NAIC models for language that addresses readability or includes requirements to provide information to consumers without expectations that that information must be readable and target those sections to be reviewed when a model is opened for revisions in the future.

- Create a resource that regulators could use to write meaningful readability requirements in future NAIC models and state-based laws and regulations.

- Query states with plain language laws re enforcement and share best practices.

- Create a web-based resource to encourage plain language.

NAIC ACTION:

RECOMMENDATION ACCEPTED: _____

RECOMMENDATION DECLINED: _____

STATUS: Referred to CIPR for input.