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113TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
113–358

TAXPAYER TRANSPARENCY ACT OF 2014

FEBRUARY 25, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3308]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 3308) to require a Federal agency to include language in certain educational and advertising materials indicating that such materials are produced and disseminated at taxpayer expense, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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39–006

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Taxpayer Transparency Act of 2014".

SEC. 2. REQUIREMENTS FOR PRINTED MATERIALS AND ADVERTISEMENTS BY FEDERAL AGENCIES.

(a) REQUIREMENT TO IDENTIFY FUNDING SOURCE FOR COMMUNICATION FUNDED BY FEDERAL AGENCY.—Each communication funded by a Federal agency that is an advertisement, or that provides information about any Federal Government program, benefit, or service, shall clearly state—

(1) in the case of a printed communication, including mass mailings, signs, and billboards, that the communication is printed or published at taxpayer expense; and

(2) in the case of a communication transmitted through radio, television, the Internet, or any means other than the means referred to in paragraph (1), that the communication is produced or disseminated at taxpayer expense.

(b) ADDITIONAL REQUIREMENTS.—

(1) PRINTED COMMUNICATION.—Any printed communication described in subsection (a)(1) shall—

(A) be of sufficient type size to be clearly readable by the recipient of the communication;

(B) to the extent feasible, be contained in a printed box set apart from the other contents of the communication; and

(C) to the extent feasible, be printed with a reasonable degree of color contrast between the background and the printed statement.

(2) RADIO, TELEVISION, AND INTERNET COMMUNICATION.—

(A) AUDIO COMMUNICATION.—Any audio communication described in subsection (a)(2) shall include an audio statement that communicates the information required under that subsection in a clearly spoken manner.

(B) VIDEO COMMUNICATION.—Any video communication described in subsection (a)(2) shall include a statement with the information referred to under that subsection—

(i) that is conveyed in a clearly spoken manner;

(ii) that is conveyed by a voice-over or screen view of the person making the statement; and

(iii) to the extent feasible, that also appears in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

(C) E-MAIL COMMUNICATION.—Any e-mail communication described in subsection (a)(2) shall include the information required under that subsection, displayed in a manner that—

(i) is of sufficient type size to be clearly readable by the recipient of the communication;

(ii) is set apart from the other contents of the communication; and

(iii) includes a reasonable degree of color contrast between the background and the printed statement.

(c) IDENTIFICATION OF OTHER FUNDING SOURCE FOR CERTAIN COMMUNICATIONS.—In the case of a communication funded entirely by user fees, by any other source that does not include Federal funds, or by a combination of such fees or other source, a Federal agency may apply the requirements of subsections (a) and (b) by substituting "by the United States Government" for "at taxpayer expense".

(d) DEFINITIONS.—In this Act:

(1) FEDERAL AGENCY.—The term "Federal agency" has the meaning given the term "Executive agency" in section 133 of title 41, United States Code.

(2) MASS MAILING.—The term "mass mailing" means any mailing or distribution of 499 or more newsletters, pamphlets, or other printed matter with substantially identical content, whether such matter is deposited singly or in bulk, or at the same time or different times, except that such term does not include any mailing—

(A) in direct response to a communication from a person to whom the matter is mailed; or

(B) of a news release to the communications media.

(e) SOURCE OF FUNDS.—The funds used by a Federal agency to carry out this Act shall be derived from amounts made available to the agency for advertising, or for providing information about any Federal Government program, benefit, or service.

(f) EFFECTIVE DATE.—This section shall apply only to communications printed or otherwise produced after the date of the enactment of this Act.

SEC. 3. GUIDANCE FOR IMPLEMENTATION.

Not later than 6 months after the date of the enactment of this Act, the Director of the Office of Management and Budget shall develop and issue guidance on implementing the requirements of this Act.

SEC. 4. JUDICIAL REVIEW AND ENFORCEABILITY.

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

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

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Taxpayer Transparency Act of 2014 requires the federal government to disclose that advertisements or materials providing information on a program, benefit or service are paid for by the taxpayer. Under the bill, agencies would include a disclaimer of reasonable size and clarity on communication pieces in print, online, on radio, or on television. Any cost associated with compliance would come from existing funds. H.R. 3308 adds needed transparency to the business of government by requiring disclosure when taxpayer dollars are spent on advertising and educational materials.

BACKGROUND AND NEED FOR LEGISLATION

The federal government's expenditures on advertising are difficult to ascertain, for two reasons: (1) there is no government-wide definition of what constitutes advertising; and (2) there is no central authority to which agencies are required to report advertising-related expenditures.[1]

Advertisements provide information, but in many instances are designed to induce people to buy or use a product or service. In 2013, the administration launched a $684 million advertising campaign to gain support for the Affordable Care Act prior to open enrollment for the health care exchanges.[2] In 2003, the Department of Education initiated work on a No Child Left Behind outreach campaign because management believed details regarding the NCLB programs were not being conveyed to those who could most benefit from them.[3]

While these ad buys are of concern, advertising is hardly a new practice by the federal government. While one can debate whether individual federal advertising campaigns are overly promotional, the public should know they themselves are sponsoring a government marketing piece. The statement "This mailing was prepared, published, and mailed at taxpayer expense" must appear on mass mailings by Members of Congress.[4] Requiring a similar disclosure

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[1] Congressional Research Service, "Advertising by the Federal Government: An Overview," R41681, April 6, 2012, p. 2.

[2] *Obamacare' National Marketing Campaign To Cost Nearly $700 Million,* Associated Press, Jul. 24, 2013, at *http://washington.cbslocal.com/2013/07/24/obamacare-national-marketing-campaign-to-cost-nearly-700-million/*.

[3] Government Accountability Office, "Department of Education—Contract to Obtain Services of Armstrong Williams," B–305368, September 30, 2005, p. 1.

[4] P.L. 104–197.

to the communications materials produced by the Executive Branch will help ensure the public is better informed about the services provided by the federal government and how the federal government is promoting the use of those services.

LEGISLATIVE HISTORY

H.R. 3308 was introduced by Representative Billy Long on October 22, 2013, and referred to the Committee on Oversight and Government Reform. Similar legislation, S. 1921, was introduced on January 14, 2014, by Senator Roy Blunt, and referred to the Senate Committee on Homeland Security and Governmental Affairs.

SECTION-BY-SECTION

Section 1. Short title

The short title of the bill is the "Taxpayer Transparency Act of 2014".

Section 2. Requirements for printed materials and advertisements by federal agencies

Communications funded by a federal agency to advertise or provide information on a federal government program, benefit, or service must clearly indicate the piece was developed and distributed at taxpayer expense. For communications funded entirely by user fees—or by any other source that does not include federal funds—agencies may indicate the communication is funded by the United States Government.

Section 3. Guidance for implementation

Requires the Director of the Office of Management and Budget to develop and issue guidance within six months of enactment on implementing the bill.

Section 4. Judicial review and enforceability

Clarifies that the bill does not provide for judicial review of compliance or noncompliance with any provision in the bill. Provides that no provision of the bill shall be construed to create a right or benefit.

DIRECTED RULEMAKINGS

H.R. 3308 requires the Director of the Office of Management and Budget to develop and issue guidance within six months of enactment on implementing the bill.

DUPLICATIVE PROGRAMS

No provision of H.R. 3308 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

EXPLANATION OF AMENDMENTS

Mr. Farenthold offered an amendment in nature of a substitute to H.R. 3308. The amendment: (1) makes clear the bill applies to communications printed or otherwise produced after the date of enactment; (2) allows agencies to substitute the term 'funded by the United States Government' for products funded entirely by user fees or other sources that do not include federal funds; (3) clarifies application of the bill to communications that provide information on a federal program, benefit, or service; (4) eliminates the exceptions to the policy provided in the introduced bill; (5) clarifies that the bill does not provide for judicial review of compliance or noncompliance with any provision in the bill; and (6) requires the Director of the Office of Management and Budget to provide implementing guidance within six months of enactment.

The amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On February 11, 2014, the Committee met in open session and ordered reported favorably the bill, H.R. 3308, as amended, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill requires the federal government to disclose that advertisements or materials providing information on a program, benefit or service are paid for by the taxpayer. As such this bill does not relate to employment or access to public services and accommodations.

Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3308 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section

21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

H.R. 3308 requires the Director of the Office of Management and Budget to develop and issue guidance within six months of enactment on implementing the bill.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 3308 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 3308. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3308 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 14, 2014.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3308, the Taxpayer Transparency Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3308—Taxpayer Transparency Act of 2014

H.R. 3308 would require that communications from federal agencies to the public clearly state that the communication is composed and disseminated at taxpayer expense. Agency communications that are funded with user fees or nonfederal funds would need to clearly state that the communication is funded by the United States government. The bill would cover any type of advertisement or communication transmitted by any means that provides information about any government program, benefit, or service.

Because the legislation would apply only to communications produced after enactment, CBO estimates that this requirement on future agency communications with the public would have no significant impact on the budget. The legislation could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

H.R. 3308 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS

H.R. 3308 would require agencies to print at the bottom of advertisements and educational communications that they are "printed or published at taxpayer expense." The bill would change existing requirements for many government agencies, including the Department of Defense. The Army, for example, currently prints on its recruitment materials: "Paid for by the United States Army." The Committee has identified no legitimate reason to change these requirements for the military, and the Committee has held no hearings on the topic of this legislation.

Representative Duckworth also raised a concern during the Committee's consideration of this bill that certain agency materials, such as mental health outreach materials issued by the Department of Veterans Affairs, should include the name of the agency rather than "printed or published at taxpayer expense." This practice would be consistent with that of military agencies and would encourage veterans and servicemembers to seek out and obtain all services and benefits to which they are entitled.

Chairman Issa and Chairman Farenthold, the sponsor of the substitute amendment, committed to work with Representative Duckworth to address these concerns. Chairman Issa said:

> I would join with my colleague from Texas in saying we would enjoy working with you to make sure that we make it very clear so as not to discriminate or cause veterans or military not to be involved. So I think we can find the best language together.

These concerns should be fully addressed before any further consideration of this legislation.

ELIJAH E. CUMMINGS.
TAMMY DUCKWORTH.

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