

Calendar No. 43

116TH CONGRESS
1ST SESSION**S. 380****[Report No. 116–12]**

To increase access to agency guidance documents.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2019

Mr. JOHNSON (for himself, Ms. ERNST, Ms. SINEMA, Mr. LANKFORD, Mr. CRUZ, Mr. BRAUN, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MARCH 25, 2019

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To increase access to agency guidance documents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guidance Out Of
5 Darkness Act” or the “GOOD Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AGENCY.**—The term “agency” has the
4 meaning given that term in section 551 of title 5,
5 United States Code.

6 (2) **GUIDANCE DOCUMENT.**—The term “guid-
7 ance document”—

8 (A) means an agency statement of general
9 applicability (other than a rule that has the
10 force and effect of law promulgated in accord-
11 ance with the notice and comment procedures
12 under section 553 of title 5, United States
13 Code) that—

14 (i) does not have the force and effect
15 of law; and

16 (ii) sets forth—

17 (I) an agency decision or a policy
18 on a statutory, regulatory, or tech-
19 nical issue; or

20 (II) an interpretation of a statu-
21 tory or regulatory issue; and

22 (B) may include—

23 (i) a memorandum;

24 (ii) a notice;

25 (iii) a bulletin;

26 (iv) a directive;

- 1 (v) a news release;
- 2 (vi) a letter;
- 3 (vii) a blog post;
- 4 (viii) a no-action letter;
- 5 (ix) a speech by an agency official;
- 6 (x) an advisory;
- 7 (xi) a manual;
- 8 (xii) a circular;
- 9 (xiii) a frequently asked questions
- 10 sheet; or
- 11 (xiv) any combination of the items de-
- 12 scribed in clauses (i) through (xiii).

13 **SEC. 3. PUBLICATION OF GUIDANCE DOCUMENTS ON THE**

14 **INTERNET.**

15 (a) **IN GENERAL.**—On the date on which an agency

16 issues a guidance document, the agency shall publish the

17 guidance document in accordance with the requirements

18 under subsection (c).

19 (b) **PREVIOUSLY ISSUED GUIDANCE DOCUMENTS.**—

20 Not later than 180 days after the date of enactment of

21 this Act, each agency shall publish, in accordance with the

22 requirements under subsection (c), any guidance docu-

23 ment issued by that agency that is in effect on that date.

24 (c) **SINGLE LOCATION.**—

1 (1) IN GENERAL.—All guidance documents pub-
2 lished under subsections (a) and (b) by an agency
3 shall be published in a single location on an internet
4 website designated by the Director under paragraph
5 (4).

6 (2) AGENCY INTERNET WEBSITES.—Each agen-
7 cy shall, for guidance documents published by the
8 agency under subsections (a) and (b), publish a
9 hyperlink on the internet website of the agency that
10 provides access to the guidance documents at the lo-
11 cation described in paragraph (1).

12 (3) ORGANIZATION.—

13 (A) IN GENERAL.—The guidance docu-
14 ments described in paragraph (1) shall be—

15 (i) categorized as guidance docu-
16 ments; and

17 (ii) further divided into subcategories
18 as appropriate.

19 (B) AGENCY INTERNET WEBSITES.—The
20 hyperlinks described in paragraph (2) shall be
21 prominently displayed on the internet website of
22 the agency.

23 (4) DESIGNATION.—Not later than 90 days
24 after the date of enactment of this Act, the Director
25 shall designate an internet website on which guid-

1 ance documents shall be published under subsections
2 (a) and (b).

3 ~~(d) RESCINDED GUIDANCE DOCUMENTS.—On the~~
4 date on which a guidance document issued by an agency
5 is rescinded, or, in the case of a guidance document that
6 is rescinded pursuant to a court order, not later than the
7 date on which the order is entered, the agency shall, at
8 the location described in subsection (e)(1)—

9 ~~(1) maintain the rescinded guidance document;~~
10 and

11 ~~(2) indicate—~~

12 ~~(A) that the guidance document is re-~~
13 ~~scinded;~~

14 ~~(B) if the guidance document was re-~~
15 ~~scinded pursuant to a court order, the case~~
16 ~~number of the case in which the order was en-~~
17 ~~tered; and~~

18 ~~(C) the date on which the guidance docu-~~
19 ~~ment was rescinded.~~

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Guidance Out Of Dark-*
22 *ness Act” or the “GOOD Act”.*

23 **SEC. 2. DEFINITIONS.**

24 *In this Act:*

1 (1) *AGENCY.*—*The term “agency” has the mean-*
2 *ing given that term in section 551 of title 5, United*
3 *States Code.*

4 (2) *DIRECTOR.*—*The term “Director” means the*
5 *Director of the Office of Management and Budget.*

6 (3) *GUIDANCE DOCUMENT.*—

7 (A) *DEFINITION.*—*The term “guidance doc-*
8 *ument”*—

9 (i) *means an agency statement of gen-*
10 *eral applicability (other than a rule that*
11 *has the force and effect of law promulgated*
12 *in accordance with the notice and comment*
13 *procedures under section 553 of title 5,*
14 *United States Code) that—*

15 (I) *does not have the force and ef-*
16 *fect of law; and*

17 (II) *is designated by an agency*
18 *official as setting forth—*

19 (aa) *a policy on a statutory,*
20 *regulatory, or technical issue; or*

21 (bb) *an interpretation of a*
22 *statutory or regulatory issue; and*

23 (ii) *may include—*

24 (I) *a memorandum;*

25 (II) *a notice;*

- 1 (III) a bulletin;
2 (IV) a directive;
3 (V) a news release;
4 (VI) a letter;
5 (VII) a blog post;
6 (VIII) a no-action letter;
7 (IX) a speech by an agency offi-
8 cial; and
9 (X) any combination of the items
10 described in subclauses (I) through
11 (IX).

12 (B) *RULE OF CONSTRUCTION.*—The term
13 “guidance document”—

14 (i) shall be construed broadly to effec-
15 tuate the purpose and intent of this Act;
16 and

17 (ii) shall not be limited to the items
18 described in subparagraph (A)(ii).

19 **SEC. 3. PUBLICATION OF GUIDANCE DOCUMENTS ON THE**
20 **INTERNET.**

21 (a) *IN GENERAL.*—Subject to subsection (d), on the
22 date on which an agency issues a guidance document, the
23 agency shall publish the guidance document in accordance
24 with the requirements under subsection (c).

1 (b) *PREVIOUSLY ISSUED GUIDANCE DOCUMENTS.*—
 2 *Subject to subsection (d), not later than 180 days after the*
 3 *date of enactment of this Act, each agency shall publish,*
 4 *in accordance with the requirements under subsection (c),*
 5 *any guidance document issued by that agency that is in*
 6 *effect on that date.*

7 (c) *SINGLE LOCATION.*—

8 (1) *IN GENERAL.*—*All guidance documents pub-*
 9 *lished under subsections (a) and (b) by an agency*
 10 *shall be published in a single location on an internet*
 11 *website designated by the Director under paragraph*
 12 *(4).*

13 (2) *AGENCY INTERNET WEBSITES.*—*Each agency*
 14 *shall, for guidance documents published by the agency*
 15 *under subsections (a) and (b), publish a hyperlink on*
 16 *the internet website of the agency that provides access*
 17 *to the guidance documents at the location described in*
 18 *paragraph (1).*

19 (3) *ORGANIZATION.*—

20 (A) *IN GENERAL.*—*The guidance documents*
 21 *described in paragraph (1) shall be—*

22 (i) *categorized as guidance documents;*

23 and

24 (ii) *further divided into subcategories*

25 *as appropriate.*

1 (B) *AGENCY INTERNET WEBSITES.*—The
2 *hyperlinks described in paragraph (2) shall be*
3 *prominently displayed on the internet website of*
4 *the agency.*

5 (4) *DESIGNATION.*—Not later than 90 days after
6 *the date of enactment of this Act, the Director shall*
7 *designate an internet website on which guidance doc-*
8 *uments shall be published under subsections (a) and*
9 *(b).*

10 (d) *DOCUMENTS AND INFORMATION EXEMPT FROM*
11 *DISCLOSURE UNDER FOIA.*—If a guidance document
12 *issued by an agency is a document that is exempt from dis-*
13 *closure under section 552(b) of title 5, United States Code*
14 *(commonly known as the “Freedom of Information Act”),*
15 *or contains information that is exempt from disclosure*
16 *under that section, that document or information, as the*
17 *case may be, shall not be subject to the requirements under*
18 *this Act.*

19 (e) *RESCINDED GUIDANCE DOCUMENTS.*—On the date
20 *on which a guidance document issued by an agency is re-*
21 *scinded, or, in the case of a guidance document that is re-*
22 *scinded pursuant to a court order, not later than the date*
23 *on which the order is entered, the agency shall, at the loca-*
24 *tion described in subsection (c)(1)—*

- 1 (1) *maintain the rescinded guidance document;*
2 *and*
3 (2) *indicate—*
4 (A) *that the guidance document is re-*
5 *scinded;*
6 (B) *if the guidance document was rescinded*
7 *pursuant to a court order, the case number of the*
8 *case in which the order was entered; and*
9 (C) *the date on which the guidance docu-*
10 *ment was rescinded.*

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