

117TH CONGRESS  
1ST SESSION

# S. 628

To increase access to agency guidance documents.

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IN THE SENATE OF THE UNITED STATES

MARCH 9, 2021

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

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## 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”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

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

1           (2) DIRECTOR.—The term “Director” means  
2 the Director of the Office of Management and Budg-  
3 et.

4           (3) GUIDANCE DOCUMENT.—

5           (A) DEFINITION.—The term “guidance  
6 document”—

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

13           (I) does not have the force and  
14 effect of law; and

15           (II) is designated by an agency  
16 official as setting forth—

17           (aa) a policy on a statutory,  
18 regulatory, or technical issue; or

19           (bb) an interpretation of a  
20 statutory or regulatory issue; and

21           (ii) may include—

22           (I) a memorandum;

23           (II) a notice;

24           (III) a bulletin;

25           (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 offi-  
6 cial; and  
7 (X) any combination of the items  
8 described in subclauses (I) through  
9 (IX).

10 (B) RULE OF CONSTRUCTION.—The term  
11 “guidance document”—

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

15 (ii) shall not be limited to the items  
16 described in subparagraph (A)(ii).

17 **SEC. 3. PUBLICATION OF GUIDANCE DOCUMENTS ON THE**  
18 **INTERNET.**

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

23 (b) PREVIOUSLY ISSUED GUIDANCE DOCUMENTS.—  
24 Subject to subsection (d), not later than 180 days after  
25 the date of enactment of this Act, each agency shall pub-

1 lish, in accordance with the requirements under subsection  
2 (c), any guidance document issued by that agency that is  
3 in effect on that date.

4 (c) SINGLE LOCATION.—

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

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

16 (3) ORGANIZATION.—

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

19 (i) categorized as guidance docu-  
20 ments; and

21 (ii) further divided into subcategories  
22 as appropriate.

23 (B) AGENCY INTERNET WEBSITES.—The  
24 hyperlinks described in paragraph (2) shall be

1 prominently displayed on the internet website of  
2 the agency.

3 (4) DESIGNATION.—Not later than 90 days  
4 after the date of enactment of this Act, the Director  
5 shall designate an internet website on which guid-  
6 ance documents shall be published under subsections  
7 (a) and (b).

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

17 (e) RESCINDED GUIDANCE DOCUMENTS.—On the  
18 date on which a guidance document issued by an agency  
19 is rescinded, or, in the case of a guidance document that  
20 is rescinded pursuant to a court order, not later than the  
21 date on which the order is entered, the agency shall, at  
22 the location described in subsection (c)(1)—

23 (1) maintain the rescinded guidance document;

24 and

25 (2) indicate—

1           (A) that the guidance document is re-  
2           scinded;

3           (B) if the guidance document was re-  
4           scinded pursuant to a court order, the case  
5           number of the case in which the order was en-  
6           tered; and

7           (C) the date on which the guidance docu-  
8           ment was rescinded.

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