

Calendar No. 448

115TH CONGRESS
2D SESSION**S. 2296****[Report No. 115–271]**

To increase access to agency guidance documents.

IN THE SENATE OF THE UNITED STATES

JANUARY 11, 2018

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

JUNE 7, 2018

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”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

4 (2) GUIDANCE DOCUMENT.—The term “guid-
5 ance document”—

6 (A) means the whole or a part of an agen-
7 cy statement of general or particular applica-
8 bility and future effect that—

9 (i) is designed to implement, inter-
10 pret, or prescribe law or policy or describ-
11 ing the organization, procedure, or practice
12 requirements of an agency and includes the
13 approval or prescription for the future of
14 rates, wages, corporate or financial struc-
15 tures or reorganizations thereof, prices, fa-
16 cilities, appliances, services or allowances
17 therefor or of valuations, costs, or account-
18 ing, or practices bearing on any of the
19 foregoing; and

20 (ii) has not been issued through the
21 notice and comment process under section
22 553 of title 5, United States Code;

23 (B) includes—

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; and
- 5 (vii) a blog post; and

6 (C) does not include a rule, as that term
7 is defined in section 551 of title 5, United
8 States Code.

9 **SEC. 3. PUBLICATION OF GUIDANCE DOCUMENTS ON THE**
10 **INTERNET.**

11 (a) IN GENERAL.—On the date on which an agency
12 issues a guidance document, the agency shall publish the
13 guidance document on the Internet website of the agency.

14 (b) PREVIOUSLY ISSUED GUIDANCE DOCUMENTS.—
15 Not later than 60 days after the date of enactment of this
16 Act, each agency shall publish on the Internet website of
17 that agency any guidance document issued by that agency
18 during the 10-year period ending on the date of enactment
19 of this Act.

20 (c) SINGLE LOCATION.—All guidance documents
21 published under subsections (a) and (b) by an agency shall
22 be published in a single location on the Internet website
23 of the agency.

1 (d) ~~RESCINDED GUIDANCE DOCUMENTS.~~—On the
2 date on which a guidance document issued by an agency
3 is rescinded, the agency shall—

4 (1) maintain the rescinded guidance document
5 at the location described in subsection (e); and

6 (2) at the location described in subsection (e),
7 indicate—

8 (A) that the guidance document is re-
9 scinded; and

10 (B) the date on which the guidance docu-
11 ment was rescinded.

12 **SECTION 1. SHORT TITLE.**

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

15 **SEC. 2. DEFINITIONS.**

16 *In this Act:*

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

20 (2) *GUIDANCE DOCUMENT.*—

21 (A) *DEFINITION.*—*The term “guidance doc-*
22 *ument”*—

23 (i) *means an agency statement of gen-*
24 *eral applicability, other than a rule, that—*

1 (I) does not have the force and ef-
2 fect of law; and

3 (II) is designated by an agency
4 official as setting forth—

5 (aa) a policy on a statutory,
6 regulatory, or technical issue; or

7 (bb) an interpretation of a
8 statutory or regulatory issue; and

9 (ii) may include—

10 (I) a memorandum;

11 (II) a notice;

12 (III) a bulletin;

13 (IV) a directive;

14 (V) a news release;

15 (VI) a letter;

16 (VII) a blog post;

17 (VIII) a no-action letter;

18 (IX) a speech by an agency offi-
19 cial; and

20 (X) any combination of the items
21 described in subclauses (I) through
22 (IX).

23 (B) *RULE OF CONSTRUCTION.*—The term
24 “guidance document”—

1 (i) shall be construed broadly to effec-
 2 tuate the purpose and intent of this Act;
 3 and

4 (ii) shall not be limited to the items
 5 described in subparagraph (A)(ii).

6 **SEC. 3. PUBLICATION OF GUIDANCE DOCUMENTS ON THE**
 7 **INTERNET.**

8 (a) *IN GENERAL.*—On the date on which an agency
 9 issues a guidance document, the agency shall publish the
 10 guidance document in accordance with the requirements
 11 under subsection (c).

12 (b) *PREVIOUSLY ISSUED GUIDANCE DOCUMENTS.*—
 13 Not later than 180 days after the date of enactment of this
 14 Act, each agency shall publish, in accordance with the re-
 15 quirements under subsection (c), any guidance document
 16 issued by that agency that is in effect on that date.

17 (c) *SINGLE LOCATION.*—

18 (1) *IN GENERAL.*—All guidance documents pub-
 19 lished under subsections (a) and (b) by an agency
 20 shall be published in a single location on the Internet
 21 website under section 206(d) of the E-Government Act
 22 of 2002 (44 U.S.C. 3501 note) (commonly known as
 23 *regulations.gov*).

24 (2) *AGENCY INTERNET WEBSITES.*—Each agency
 25 shall, for guidance documents published by the agency

1 *under subsections (a) and (b), publish a hyperlink on*
2 *the Internet website of the agency that provides access*
3 *to the guidance documents at the location described in*
4 *paragraph (1).*

5 (3) *ORGANIZATION.—*

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

8 (i) *categorized as guidance documents;*

9 *and*

10 (ii) *further divided into subcategories*
11 *as appropriate.*

12 (B) *AGENCY INTERNET WEBSITES.—The*
13 *hyperlinks described in paragraph (2) shall be*
14 *prominently displayed on the Internet website of*
15 *the agency.*

16 (d) *RESCINDED GUIDANCE DOCUMENTS.—On the date*
17 *on which a guidance document issued by an agency is re-*
18 *scinded, the agency shall, at the location described in sub-*
19 *section (c)(1)—*

20 (1) *maintain the rescinded guidance document;*

21 *and*

22 (2) *indicate—*

23 (A) *that the guidance document is re-*
24 *scinded; and*

- 1 *(B) the date on which the guidance docu-*
- 2 *ment was rescinded.*

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