112TH CONGRESS 1ST SESSION

H.R. 1349

To establish an advisory committee to issue nonbinding governmentwide guidelines on making public information available on the Internet, to require publicly available Government information held by the executive branch to be made available on the Internet, to express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 4, 2011

Mr. ISRAEL introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To establish an advisory committee to issue nonbinding governmentwide guidelines on making public information available on the Internet, to require publicly available Government information held by the executive branch to be made available on the Internet, to express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet, and for other purposes.

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

SECTION 1. SHORT TITLE.

- 2 This Act may be cited as the "Public Online Informa-
- 3 tion Act of 2011".

4 SEC. 2. TABLE OF CONTENTS.

- 5 The table of contents for this Act is as follows:
 - Sec. 1. Short title.
 - Sec. 2. Table of contents.
 - Sec. 3. Definitions.
 - Sec. 4. Purposes.
 - Sec. 5. Findings of Congress.
 - Sec. 6. Establishment of Public Online Information Advisory Committee.
 - Sec. 7. Executive branch Internet publication mandate.
 - Sec. 8. Legislative and judicial information.
 - Sec. 9. Government Printing Office.

6 SEC. 3. DEFINITIONS.

- 7 In this Act:
- 8 (1) AGENCY.—The term "agency" means an
- 9 Executive agency or an independent regulatory agen-
- 10 cy.
- 11 (2) EXECUTIVE AGENCY.—The term "Executive
- agency" means any of the following:
- 13 (A) An Executive department, as defined
- in section 101 of title 5, United States Code.
- 15 (B) A military department, as defined in
- section 102 of such title.
- 17 (C) A Government corporation, as defined
- in section 103 of such title.
- 19 (D) Any other establishment in the execu-
- 20 tive branch of the Government (including the

- 1 Executive Office of the President), other than 2 an independent regulatory agency.
- 3 (3) Independent regulatory agency.—The term "independent regulatory agency" means an 4 5 independent establishment, as defined in section 104 6 of title 5, United States Code.
 - (4) RECORD.—The term "record" has the meaning provided the term "records" in section 3301 of title 44, United States Code.
- 10 Public RECORD.—The term (5)"public record" means any record, regardless of form or for-12 mat, that an agency discloses, publishes, dissemi-13 nates, or makes available to the public.
- 14 ADMINISTRATOR.—The (6)E-GOVERNMENT term "E-Government Administrator" means the Ad-15 ministrator of the Office of Electronic Government 16 17 established under section 3602 of title 44, United 18 States Code.

19 SEC. 4. PURPOSES.

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- 20 The purposes of this Act include the following:
- 21 (1) To establish an advisory committee to issue 22 nonbinding guidelines for all three branches of Gov-23 ernment regarding making public information avail-24 able on the Internet, with sufficient flexibility to 25 adapt to changes in technology.

- 1 (2) To empower the E-Government Adminis-2 trator to establish binding rules concerning making 3 publicly available Government information held by 4 Executive agencies to be made available on the 5 Internet; and to empower independent regulatory 6 agencies to do the same.
 - (3) To express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet.
 - (4) To encourage the Government Printing Office to make all of its publications available on the Internet in the formats most useful to the public, after having considered the formats identified by the Public Online Information Advisory Committee.

15 SEC. 5. FINDINGS OF CONGRESS.

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- 16 Congress finds the following:
- 17 (1) The Federal Government holds a vast re-18 pository of public information. Throughout the Na-19 tion's history, the Government has attempted to 20 make that information available to the public, 21 whether through the United States Postal Service, 22 the Federal Depository Library Program, the Presi-23 dential Library System, Agency Reading Rooms, 24 under the Freedom of Information Act, or by other 25 means. Providing this information to the general

- public is a public good: Informed citizens are informed voters. However, even with these efforts,

 Government information is too often hard to find,

 difficult to understand, expensive to obtain in useful

 formats, and available in only a few locations.
 - (2) The advent of the Internet presents the opportunity for the Government to make information readily available to many more Americans. The Internet is ubiquitous, turning every computer into a portal to the world's largest library. The Government has made some efforts to take advantage of this new medium. As the public moves online, the Government must do so as well.
 - (3) In addition to the traditional means of disseminating public information, the Federal Government should make all of its public information available on the Internet. It should do so in ways that take advantage of modern technology, that anticipate the public's needs, and that provide access to the greatest number of people. The Government should strive to make its information available on the Internet in real-time and in machine processable formats.
 - (4) The creation of this vast new information library will empower citizens to gain a better under-

- standing of how their Government functions and
 what it does in their name. It will also give
 innovators new tools to build on this information
 and provide better goods and services to the American people. Government services will be provided
 more efficiently, saving the taxpayers money and allowing them to be more involved in the lives of their
 communities.
- 9 (5) Accomplishing these goals requires signifi-10 cant coordination. It also requires the creation of 11 new authorities and responsibilities within the Gov-12 ernment, and the identification of appropriate tech-13 nology standards.

14 SEC. 6. ESTABLISHMENT OF PUBLIC ONLINE INFORMATION

- 15 ADVISORY COMMITTEE.
- 16 (a) Establishment.—There is hereby established
- 17 an advisory committee to be known as the "Public Online
- 18 Information Advisory Committee" (hereafter in this Act
- 19 referred to as the "Advisory Committee").
- 20 (b) Purposes.—The purposes of the Advisory Com-
- 21 mittee are—
- (1) to coordinate and encourage the Govern-
- 23 ment's efforts to make Government information
- from all three branches of Government available on
- 25 the Internet; and

1	(2) to issue nonbinding guidelines on how the
2	Government should make public information avail-
3	able on the Internet, and update those guidelines as
4	appropriate.
5	(c) Membership.—
6	(1) In General.—The Advisory Committee
7	shall be composed of 19 members (including the
8	Chair), as follows:
9	(A) Six members shall be appointed by the
10	E-Government Administrator.
11	(B) Six members shall be appointed by the
12	Director of the Administrative Office of the
13	Courts.
14	(C) Three members shall be appointed by
15	the Chairman, in consultation with the Ranking
16	Member, of the Committee on Homeland Secu-
17	rity and Governmental Affairs of the Senate.
18	(D) Three members shall be appointed by
19	the Chair, in consultation with the Ranking
20	Member, of the Committee on Oversight and
21	Government Reform of the House of Represent-
22	atives.
23	(E) The Chair shall be appointed by the
24	Administrator of General Services, after confer-
25	ring with the E-Government Administrator, the

- Director of the Administrative Office of the
 Courts, the Chairman of the Committee on
 Homeland Security and Governmental Affairs
 of the Senate, and the Chair of the Committee
 on Oversight and Government Reform of the
 House of Representatives.
 - (2) VICE CHAIR.—A Vice Chair shall be selected from among the members of the Advisory Committee by the Chair.
 - (3) LIMITATION ON GOVERNMENT EMPLOYEE MEMBERS.—Not more than six members of the Advisory Committee may be Government employees.
 - (4) TERMS OF OFFICE.—Each member of the Advisory Committee shall be appointed for a renewable term of five years, except that one-third of the members initially appointed shall be appointed for a three-year term, one-third of such members shall be appointed for a four-year term, and one-third of such members and the Chair shall be appointed for a five-year term.
 - (5) Initial appointments.—The initial appointments of members of the Advisory Committee shall be made not later than 90 days after the date of the enactment of this Act.

1	(6) Meetings.—The Advisory Committee shall
2	meet no fewer than six times per year.
3	(d) Powers of Advisory Committee.—
4	(1) In general.—From time to time, the Ad-
5	visory Committee shall examine its legislative char-
6	ter, structure, and funding, and shall make rec-
7	ommendations to Congress, the President, and the
8	Courts regarding how it could be restructured to
9	better accomplish its mission of making Government
10	information available to the public on the Internet.
11	The recommendations shall be published in print
12	and on the Internet.
13	(2) Specific powers.—In order to carry out
14	its purposes, the Advisory Committee is authorized
15	to do the following:
16	(A) Hold hearings.
17	(B) Issue recommendations to Congress.
18	(C) Issue recommendations to agencies.
19	(D) Issue reports, guidelines, and memo-
20	randa.
21	(E) Articulate guidelines on how the Gov-
22	ernment should make public records available
23	on the Internet, update those guidelines as ap-
24	propriate, and inquire into Government compli-
25	ance with those guidelines.

1	(F) Hold or host conferences and
2	symposia.
3	(G) Enter into cooperative agreements
4	with outside experts to obtain relevant advice or
5	expertise, and oversee staff.
6	(H) Establish subcommittees.
7	(I) Establish rules of procedure.
8	(3) Relationship to faca.—The Advisory
9	Committee shall not be subject to the control of any
10	advisory committee management officer designated
11	under section 8(b)(1) of the Federal Advisory Com-
12	mittee Act.
13	(e) Operations.—
14	(1) Open government procedures.—In ad-
15	dition to the rules in the Federal Advisory Com-
16	mittee Act (5 U.S.C. App.), in the interest of im-
17	proving transparency, the Advisory Committee shall
18	adhere to the following rules that supplement and
19	modify such Act (in accordance with section 4(a) of
20	such Act):
21	(A) Subcommittees shall have the same du-
22	ties and obligations as the full committee as de-
23	lineated under sections 10 through 13 of such
24	Act. Subcommittees shall similarly be bound by
25	the terms of this section.

1	(B) All information made available on the
2	Internet shall be done so by state-of-the-art
3	methods.
4	(C) Information required to be made avail-
5	able on the Internet shall be done so in a timely
6	fashion.
7	(D) Notice of all meetings shall be avail-
8	able on the Advisory Committee's website, with
9	agendas available on the Internet at least 3
10	days prior to any meeting.
11	(E) All records available for public copying
12	under section 10 of the Act shall also be made
13	available on the website of the Advisory Com-
14	mittee.
15	(F) The Advisory Committee shall make
16	available on the Internet and to any person, at
17	no cost, transcripts of Advisory Committee pro-
18	ceedings.
19	(G) Videos recordings of proceedings shall
20	be made available on the Internet.
21	(H) Documents submitted to the Advisory
22	Committee shall be made publicly available un-
23	less the Advisory Committee determines that

those materials would disclose matters de-

- scribed in section 552(b) of title 5, United

 States Code.
 - (I) The Advisory Committee shall make publicly available the names and brief biographies of its members.
 - (J) All members of the Advisory Committee shall file financial disclosure forms, which shall be made available on the Advisory Committee website after redactions to remove personally identifiable information, such as social security numbers.
 - (K) All members of the Advisory Committee shall have to state and publicly disclose conflicts of interest. These statements must be updated whenever new conflicts arise or on an annual basis, whichever is more frequent. These disclosures shall be placed on the Internet.
 - (2) Support services.—The General Services Administration shall be responsible for providing all support services to the Advisory Committee, including quarters and staff, and for requesting funds from Congress on behalf of the Advisory Committee. Nothing in this section shall prevent the Advisory Committee from communicating with Congress directly regarding funding or other matters.

1	(3) Duration.—The Advisory Committee is a
2	continuing body and is not subject to termination as
3	provided in section 14 of the Federal Advisory Com-
4	mittee Act (5 U.S.C. App.).
5	(4) APPLICATION OF FACA.—Except as other-
6	wise provided in this section, the Federal Advisory
7	Committee Act (5 U.S.C. App.) shall apply to the
8	Advisory Committee.
9	(f) Reports.—The Advisory Committee shall issue
10	a report on its activities every two years, or as appro-
11	priate, whichever is more frequent.
12	(g) AUTHORIZATION.—There is authorized to be ap-
13	propriated to the General Services Administration such
14	sums as may be necessary for the operations of the Advi-
15	sory Committee.
16	SEC. 7. EXECUTIVE BRANCH INTERNET PUBLICATION MAN-
17	DATE.
18	(a) Online Publication Requirements.—
19	(1) Free availability.—
20	(A) Except as provided in subparagraph
21	(B), the Government shall make public records
22	available on the Internet at no charge (includ-
23	ing a charge for recovery of costs) to the public.

1	(B) Subparagraph (A) shall not apply in
2	the case of a charge imposed by Federal law be-
3	fore the date of the enactment of this Act.
4	(2) Permanence.—Public records shall be per-
5	manently available on the Internet.
6	(3) Current technology.—Current informa-
7	tion technology capabilities shall be applied to the
8	means by which records are made available on the
9	Internet, and the formats in which they are avail-
10	able.
11	(4) Searchable List.—Each agency shall
12	publish on the Internet a comprehensive, searchable,
13	machine processable list of all records it makes pub-
14	licly available. With respect to those records, the list
15	shall include at least the following information:
16	(A) Where the records can be found.
17	(B) Whether the records are available to
18	the public at no cost or for a fee (and the
19	amount of the fee, if applicable).
20	(C) Brief descriptions of the records.
21	(b) Rulemaking Authority.—
22	(1) In General.—Nothing in the grant of au-
23	thority in this subsection shall be construed to limit
24	the Government's obligation to make records pub-
25	liely available as required by law.

1 (2) Executive agencies.— (A) The Director of the Office of Manage-2 3 ment and Budget shall delegate to the E-Gov-4 ernment Administrator the authority to administer all functions under this section, except 6 that any such delegation shall not relieve the 7 Director of responsibility for the administration 8 of such functions. 9 (B)The E-Government Administrator, 10 after consulting with the Office of Information 11 and Regulatory Policy, shall promulgate such 12 regulations as are necessary to ensure that all 13 public records held by Executive agencies are 14 available on the Internet in the formats and by 15 the means the E-Government Administrator 16 designates. In promulgating the regulations, the 17 E-Government Administrator shall consider the 18 guidelines issued by the Public Online Informa-19 tion Advisory Committee. 20 (C) In the regulations promulgated under 21 subparagraph (B), the E-Government Adminis-22 trator shall include— 23 (i) rules on how Executive agencies

shall publish records on the Internet, in-

cluding the format and timeframe; and

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1	(ii) procedures through which Execu-
2	tive agencies may object to placing public
3	records on the Internet, in accordance with
4	the exceptions under paragraph (4), and a
5	method by which the objections can be re-
6	viewed.
7	(D) The regulations promulgated under
8	subparagraph (B) shall not preclude Executive
9	agencies from making additional records avail-
0	able on the Internet beyond those required by
1	the regulations, or in additional formats beyond
2	those required by the regulations, or on a more
3	rapid timeframe than required by the regula-
4	tions. In addition, each Executive agency head
5	shall designate a person within the agency re-
.6	sponsible for Internet publication of public
7	records.
8	(E) The Director of the Office of Manage-
9	ment and Budget shall ensure that the E-Gov-
20	ernment Administrator has adequate staff and
21	resources to properly fulfill all the Administra-
22	tor's functions under this Act.
23	(3) Independent regulatory agencies.—
24	(A) A Chief Information Officer of an

independent regulatory agency (hereafter in this

section referred to as a "CIO") or an official designated by the head of an independent regulatory agency shall promulgate such regulations as are necessary to ensure that public records are available on the Internet in the formats and by the means the CIO designates. In promulgating the regulations, the CIO or other official shall consider the guidelines issued by the Public Online Information Advisory Committee, as well as regulations promulgated by the E-Government Administrator under paragraph (1).

- (B) The regulations promulgated under subparagraph (A) shall not preclude the heads of offices within an independent regulatory agency from making additional records available on the Internet beyond those required by the regulations, or in additional formats beyond those required by the regulations, or on a more rapid timeframe than required by the regulations.
- (C) The head of the independent regulatory agency shall ensure that the CIO or the official designated by the head of the independent regulatory agency has adequate staff

and resources to properly fulfill all of the CIO's
functions under this Act.

(4) Exceptions.—

- (A) IN GENERAL.—The regulations promulgated under this subsection may contain exceptions, in accordance with this paragraph, to the requirement that all public records be made available on the Internet.
- (B) Scope of exceptions.—The exceptions may be no broader than the exceptions recognized under section 552 of title 5, United States Code (popularly referred to as the "Freedom of Information Act").
- (C) Additional Exceptions By Request.—In addition to the exceptions provided under subparagraph (B), the regulations shall provide for the E-Government Administratoror, in the case of an independent regulatory agency, the CIO or official designated by the head of the agency, to grant narrow case-by-case exceptions to the Internet publication requirement if an agency requests an exception and the agency demonstrates that—

L	(i) there is a clear and convincing rea-
2	son for the record to not be made available
3	on the Internet: and

- (ii) on balance, the harm cause by disclosure significantly outweighs the public's interest in having the record available on the Internet.
- (D) AVAILABILITY OF SEGREGABLE POR-TIONS.—If the E-Government Administrator, CIO, or official designated by the head of an independent regulatory agency approves a request for an exception with respect to a public record under subparagraph (C), any reasonably segregable portion of the public record shall be made available on the Internet in a timely fashion after deletion of the portions that are subject to the exception. The amount of information deleted shall be indicated on the portion of the record that is made available on the Internet, unless including that indication would significantly harm the interest protected by the exception. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

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- 1 (\mathbf{E}) DISCLOSURE OFWITHHELD RECORDS.—The E-Government Administrator, 2 CIO, or official designated by the head of an 3 4 independent regulatory agency shall maintain a 5 list of records not made available on the Inter-6 net by reason of an exception under subpara-7 graph (C) and publish such list on the Internet. excluding any records the identification of 8 9 which would significantly harm the interest pro-10 tected by the exception.
 - (5) Publication.—Regulations promulgated under this subsection shall be published in the Federal Register and on the relevant agency website.
 - (6) APPLICABILITY.—Regulations promulgated under this subsection shall apply only to public records generated, updated, or released after the date of the enactment of this Act.
- 18 (7) EFFECTIVE DATE.—Regulations promul-19 gated under this subsection shall take effect no 20 sooner than 3 years after the date of the enactment 21 of this Act.
- 22 (c) Reports to Congress.—At least once every 23 four years, the E-Government Administrator and each 24 independent regulatory agency CIO shall review the excep-25 tions provided under subsection (b)(4) to making public

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- 1 records available on the Internet and, if warranted, make
- 2 recommendations to the President and to Congress re-
- 3 garding whether Federal law should be changed. The re-
- 4 port shall be made publicly available, including being pub-
- 5 lished on the Internet.
- 6 (d) Inspector General Reviews.—The Inspector
- 7 General of each agency shall conduct periodic reviews re-
- 8 garding agency compliance with Internet publication re-
- 9 quirements, no less often than once every four years. The
- 10 reviews shall be published on the Internet.
- 11 (e) Enforcement of Public Access by Private
- 12 Individuals or Organizations.—
- 13 (1) Requests.—Private individuals or organi-
- zations may request that an Executive agency place
- public records on the Internet, including the com-
- prehensive searchable list of publicly available
- records referred to in section 7(a)(4), in accordance
- with Federal regulations. An agency has 30 days to
- respond to the request in writing or to place the
- record on the Internet. If an agency denies the re-
- 21 quest in whole or in part, the private individual or
- organization may file a complaint in Federal court.
- 23 (2) JURISDICTION.—(A) On complaint, the dis-
- trict court of the United States in the district in
- 25 which the complainant resides, or has his principal

place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from refusing to publish agency records on the Internet, or refusing to publish it in an appropriate format, and to order the Internet online publication of any agency records improperly withheld. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exceptions provided under subsection (b)(4), and the burden is on the agency to sustain its action.

- (B) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within 30 days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.
- (3) Attorney fees.—The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this subsection in which the complainant has substantially prevailed.

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(4) Special counsel.—Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees, litigation costs, and interest, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, a Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. A Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(5) CONTEMPT.—In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and

- 1 in the case of a uniformed service, the responsible
- 2 member.

3 SEC. 8. LEGISLATIVE AND JUDICIAL INFORMATION.

- 4 It is the sense of Congress that judicial and legislative
- 5 agencies (within the meaning of section 3701 of title 31,
- 6 United States Code) should adopt or adapt the rec-
- 7 ommendations of the Advisory Committee for their own
- 8 use. In addition, judicial and legislative agencies are en-
- 9 couraged to consider the guidelines issued by the Public
- 10 Online Information Advisory Committee and the regula-
- 11 tions promulgated by the E-Government Administrator.

12 SEC. 9. GOVERNMENT PRINTING OFFICE.

- 13 It is the sense of Congress that the Government
- 14 Printing Office should make all of its publications perma-
- 15 nently available on the Internet in a multiplicity of for-
- 16 mats that best meet the needs of the public. In doing so,
- 17 the Government Printing Office is strongly encouraged to
- 18 consider the recommendations of the Public Online Infor-
- 19 mation Advisory Committee and the E-Government Ad-
- 20 ministrator.

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