

May 18, 2021

President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President:

On February 8, 2021, 21 Senators expressed concern regarding your decision to revoke Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents (hereinafter, Public Access to Guidance EO).<sup>1</sup> The Public Access to Guidance EO implemented bipartisan, common sense transparency measure requiring agencies to create a “single, searchable, indexed database” of all guidance documents on the agency website.<sup>2</sup> The letter stressed disappointment over your characterization of that EO as one of the “harmful policies and directives that threaten to frustrate the Federal Government’s ability to confront [the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change],” and your statement that its revocation was necessary to provide Federal agencies the “flexibility to use robust regulatory action to address national priorities.”<sup>3</sup>

Since February, a number of federal agencies have taken steps to eliminate public access to guidance documents in order to comply with your directive.<sup>4</sup> We believe these actions run counter to the principles of an open, transparent government and the rule of law. For example, an April 15, 2021 final rule by the Department of the Interior (DOI) eliminated public access to government documents.<sup>5</sup> In doing so, the DOI final rule mischaracterized and inappropriately relied upon the Public Access to Guidance EO to justify its actions.<sup>6</sup>

The rule stated that DOI’s implementation of the Public Access to Guidance EO “deprives the Department and subordinate Bureaus and Offices of the necessary flexibility in determining when and how best to issue public guidance based on particular facts and

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<sup>1</sup> Letter from Senator Johnson et al, to Pres. Biden (Feb. 8, 2021), <https://www.ronjohnson.senate.gov/services/files/35fbbb20-00ef-4516-bdd2-59990f5b9807>.

<sup>2</sup> Exec. Order No. 13,891, 3 C.F.R. 55235 (2019), <https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents>.

<sup>3</sup> Exec. Order No. 13,992, 3 C.F.R. 7049 (2021).

<sup>4</sup> Clyde Wayne Crews, Jr., *Laws Have Mercy: Here Is How Biden Is Restricting Access To Regulatory Guidance Documents*, Forbes (Apr. 26, 2021, 5:19 PM), <https://www.forbes.com/sites/waynecrews/2021/04/26/laws-have-mercy-here-is-how-biden-is-restricting-access-to-regulatory-guidance-documents/?sh=176314664bbd>.

<sup>5</sup> Procedures for Issuing Guidance Documents, 43 CFR 51 (2021) <https://www.federalregister.gov/documents/2021/04/15/2021-07685/procedures-for-issuing-guidance-documents>.

<sup>6</sup> *Id.*

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circumstances.”<sup>7</sup> The rule also stated this transparency measure “unduly restricts the Department’s ability to provide timely guidance on which the public can confidently rely.”<sup>8</sup> Your administration provided no context to explain how a website providing public access to government documents could be harmful. The website also serves the dual purpose of providing stakeholders with easier access to guidance that better enables them to fulfill their regulatory obligations. Additionally, it remains unclear how the public can benefit from “timely guidance” if the public isn’t aware of the guidance.

Unfortunately, at least ten Federal agencies have now deleted the websites for the public to access to agency guidance documents.<sup>9</sup> These actions are highly concerning. In the past, efforts to promote a more open and transparent government have been bipartisan, and we see no reason why they should not be today. Again, we respectfully urge you to reconsider your revocation of the Public Access to Guidance EO, Executive Order 13891, or support our efforts to pass S. 628, the Guidance Out Of Darkness (GOOD) Act this Congress.

Respectfully,



Ron Johnson  
United States Senator



James Lankford  
United States Senator



Rob Portman  
United States Senator



Richard Burr  
United States Sen

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Clyde Wayne Crews, Jr., *Laws Have Mercy: Here Is How Biden Is Restricting Access To Regulatory Guidance Documents*, *Forbes* (Apr. 26, 2021, 5:19 PM), <https://www.forbes.com/sites/waynecrews/2021/04/26/laws-have-mercy-here-is-how-biden-is-restricting-access-to-regulatory-guidance-documents/?sh=176314664bbd>.



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