



March 14, 2018

The Honorable Trey Gowdy
Chairman
House of Representatives Committee on
Oversight and Government Reform
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
House of Representatives Committee on
Oversight and Government Reform
Washington, DC 20515

RE: Committee markup of H.R. 4809, the Guidance Out of Darkness Act

Dear Chairman Gowdy and Ranking Member Cummings:

The Coalition for Sensible Safeguards (CSS), an alliance of over 175 labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, has serious concerns about H.R. 4809, the Guidance Out of Darkness Act (GOOD Act). While there is no doubt that we appreciate and strongly agree with the overall intent of the legislation in bringing more sunlight to agency guidance, we are concerned about its workability.

In trying to define guidance, the GOOD Act misses the mark as there remains a lack of clarity on what constitutes agency guidance and which entity makes that determination. The legislation needs to be explicit in deferring to agencies to determine what constitutes agency guidance. If the bill fails to do so, there could be an extremely large universe of notices, memorandums, bulletins, directives, etc. that could fall under the retrospective and transparency requirements of the bill. As a result, agencies could become swamped in searching for every single document that could potentially be considered a guidance under the current definition in H.R. 4809 and slow down mission critical work to protect the public. The Coalition urges the Committee to adopt language in the Senate version of the GOOD Act that was voted out of the Homeland Security and Government Affairs Committee. Specifically, the Coalition supports the language in §2(2)(A)(i)(II) which reads “is designated by an agency official as setting forth.”

The transparency requirements of this bill are important and agencies should be tasked with posting and maintaining current and rescinded guidance on agency websites. It's not only important for transparency, but also for accountability.

Nonetheless, it is entirely unnecessary for Congress to define guidance documents in a highly prescriptive manner in order to accomplish the transparency goals of this legislation. We encourage the committee to continue to work on and refine H.R. 4809, with a focus on preserving agency discretion when defining guidance while also narrowing the universe of documents to those that intend to formally communicate statutory or regulatory interpretation. An approach that preserves agency discretion but also focuses on the document's purpose will better balance the bill's goals and its practicality.

There is a potential solution here to put a good policy in place, and we stand ready to be a helpful resource in the committee reaching a solution that will make the legislation more manageable, practical, and useful. However, for these reasons, we have serious concerns about H.R. 4809, the Guidance Out of Darkness Act.

Sincerely,

A handwritten signature in black ink that reads "Robert Weissman". The signature is written in a cursive, flowing style.

Robert Weissman, President
Public Citizen
Chair, Coalition for Sensible Safeguards