



555 12th Street NW, Suite 1001
Washington, D.C. 20004

1-800-552-5342
NFIB.com

July 7, 2023

The Honorable James Comer
United States House of Representatives
2410 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Comer:

On behalf of NFIB, the nation's leading small business advocacy organization, I write in support of H.R. 890, the *Guidance Out Of Darkness (GOOD) Act*. This legislation would require agencies to publicly post guidance documents in a single, searchable internet location.

According to NFIB members, "unreasonable government regulation" continues to be one of the top concerns of small businesses.¹ Small business owners do not have the resources—like departments dedicated to managing regulatory compliance—or the bandwidth to meet the demands of burdensome regulations and guidance documents.

Additionally, as the Department of Justice (DOJ) noted in a 2017 memo, agencies have evaded "required rulemaking processes by using guidance memos to create de facto regulations" and "blurred the distinction between regulations and guidance documents."² According to the DOJ memo, in those instances where a guidance document circumvented the notice-and-comment process, the agencies prevented the benefit of "more complete information about a proposed rule's effects."³

Small businesses agree that federal agencies should not utilize non-binding guidance documents to bypass the rulemaking process. However, small businesses recognize there are times when agency guidance documents serve an interpretive function. These guidance documents should be widely and readily available to the public.

Unfortunately, public access to agency guidance documents is not a standard government-wide policy. The *GOOD Act* seeks to correct this lack of transparency by requiring agencies to make guidance documents publicly available. This common-sense transparency legislation passed the House of Representatives by voice vote in 2018.⁴ Additionally, the *GOOD Act* has twice been approved by the Senate Committee on Homeland Security and Governmental Affairs by voice vote.⁵

¹ Holly Wade & Andrew Heritage, *Small Business Problems & Priorities*, NFIB Research Center, August 2020, <https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf>.

² Department of Justice, *Attorney General Jeff Sessions Ends the Department's Practice of Regulation by Guidance* (November 2017), available at <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-department-s-practice-regulation-guidance> (visited January 31, 2023).

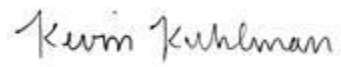
³ *Id.*

⁴ *Guidance Out Of Darkness Act*, H.R. 4809, 115th Congress, 2018, <https://www.congress.gov/bill/115th-congress/house-bill/4809/all-info>

⁵ *Guidance Out Of Darkness Act*, S. 2296, 115th Congress, 2018, (approved on Jun. 7, 2018); *Guidance Out Of Darkness Act*, S. 380, 116th Congress, 2019, (approved on Feb. 13, 2019).

NFIB supports the *Guidance Out Of Darkness Act* and believes Congress should promptly enact this legislation to increase transparency in the regulatory processes. Small businesses appreciate your continued leadership to reduce onerous regulatory burdens and red tape.

Sincerely,

A handwritten signature in black ink that reads "Kevin Kuhlman". The signature is written in a cursive style with a clear, legible font.

Kevin Kuhlman
Vice President, Federal Government Relations
NFIB