

United States Senate
WASHINGTON, DC 20510

February 8, 2021

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

Dear Mr. President:

On January 20, 2021, you announced that certain executive orders related to Federal regulations would be revoked, including Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents.¹ Executive Order 13891 required Federal agencies to publish and make available on a searchable database their guidance documents, which explain how an agency will interpret and apply its regulations.² Without explanation, you described this executive order 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 you claimed—again without explanation—that its revocation was necessary to provide Federal agencies the “flexibility to use robust regulatory action to address national priorities.”³ These claims completely ignore the strong bipartisan support for and sound policy reflected in Executive Order 13891.

As an initial matter, Executive Order 13891 was modeled on bipartisan legislation, the Guidance Out Of Darkness Act, or the GOOD Act.⁴ The GOOD Act was approved by voice vote by the Senate Committee on Homeland Security and Governmental Affairs each of the last two Congresses.⁵ In fact, Vice President Kamala Harris, who then served as a member of the Committee, voted for the legislation.⁶ The House of Representatives also passed the companion bill by voice vote in 2018.⁷ The revocation of an executive order with such widespread and

¹ Exec. Order No. 13,992, 3 C.F.R. 7049 (2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-revocation-of-certain-executive-orders-concerning-federal-regulation/>.

² Exec. Order No. 13,891, 3 C.F.R. 55235 (2019), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-revocation-of-certain-executive-orders-concerning-federal-regulation/>.

³ Exec. Order No. 13,992, 3 C.F.R. 7049 (2021)

⁴ Maj. Press Release, S. Homeland Sec. & Governmental Affairs Comm., Johnson Applauds Executive Order to Make Federal Agency Rule-Making More Transparent (Oct 10, 2019), <https://www.hsgac.senate.gov/media/majority-media/johnson-applauds-executive-order-to-make-federal-agency-rule-making-more-transparent>.

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

⁶ S. Rep. No. 116-12, pt. 1, at 5 (2019), <https://www.congress.gov/congressional-report/116th-congress/senate-report/12/1?overview=closed>.

⁷ Guidance Out Of Darkness Act, H.R. 4809, 115th Cong. (2018), <https://www.congress.gov/bill/115th-congress/house-bill/4809/all-info>.

long-standing bipartisan support—including the support of Vice President Harris—seems inconsistent with your stated desire for compromise and to “reach across the aisle, and work together.”⁸

Your revocation of Executive Order 13891 is also contrary to sound policy. The purpose of the executive order and the GOOD Act is to promote transparency and ensure that Americans affected by Federal agency guidance know what those guidance documents are so they can more easily comply with them. This policy addresses real problems with the growing administrative state that affect both everyday Americans and other regulated entities, like states and local governments.⁹ It is only fair that people, businesses and local governments know what is required of them. Transparency will not undermine the fight against “[COVID-19], economic recovery, racial justice, and climate change,” and it is simply wrong to believe that Americans are better off not knowing which and how Federal rules and regulations apply to them.

Far from being “harmful,” this simple and straightforward bipartisan policy strengthens our country’s ability to confront problems by increasing awareness, efficiency, and accountability. For these reasons, we respectfully urge you to reconsider your revocation of Executive Order 13891, and we urge your support for enacting the GOOD Act into law this Congress.

Respectfully,



Ron Johnson
United States Senator



James Lankford
United States Senator



Rob Portman
United States Senator



Rand Paul, M.D.
United States Senator

⁸ Doyle McManus, After COVID deal, Biden’s quest for Bipartisanship looks a little less naive, LA Times, Jan. 26, 2021, <https://www.latimes.com/politics/story/2020-12-23/senators-who-drafted-covid-deal-could-be-key-allies-in-biden-quest-for-bipartisanship>.

⁹ S. Rep. No. 116-12, pt. 1, at 5 (2019).



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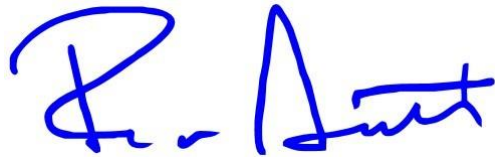
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