

116TH CONGRESS
2D SESSION

S. 3412

To require a guidance clarity statement on certain agency guidance, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2020

Mr. LANKFORD introduced the following bill; which was read twice and
referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To require a guidance clarity statement on certain agency
guidance, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guidance Clarity Act
5 of 2020”.

6 **SEC. 2. GUIDANCE CLARITY STATEMENT REQUIRED.**

7 (a) DEFINITIONS.—In this section:

8 (1) AGENCY; RULE.—The terms “agency” and
9 “rule” have the meanings given those terms in sec-
10 tion 551 of title 5, United States Code.

(2) GUIDANCE.—The term “guidance”—

(A) means an agency statement of general applicability, intended to have a future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation; and

(B) does not include—

(i) a rule promulgated pursuant to notice and comment under section 553 of title 5, United States Code;

(ii) a rule exempt from rulemaking requirements under section 553(a) of title 5, United States Code;

(iii) a rule of agency organization, procedure, or practice;

(iv) a decision of an agency adjudication under section 554 of title 5, United States Code, or any similar statutory provision;

(v) internal guidance directed to the issuing agency or other agency that is not intended to have a substantial future effect on the behavior of regulated parties; or

1 (vi) internal executive branch legal ad-
2 vice or legal opinions addressed to execu-
3 tive branch officials.

4 (b) REQUIREMENT.—Each agency shall include a
5 guidance clarity statement as described in subsection (c)
6 on any guidance issued by that agency on and after the
7 date of enactment of this Act.

8 (c) GUIDANCE CLARITY STATEMENT.—A guidance
9 clarity statement required under subsection (b) shall—

10 (1) be displayed prominently on the first page
11 of the document; and

12 (2) include the following: “The contents of this
13 document do not have the force and effect of law
14 and are not meant to bind the public in any way.
15 This document is intended only to provide clarity to
16 the public regarding existing requirements under the
17 law or agency policies.”.

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