rights, the environment, and criminal justice reform as well. Because of Elaine's efforts, kids who have had runins with the law have a better shot at staying out of adult courts and avoiding getting caught in an endless criminal cycle.

Elaine was always willing to listen to colleagues and friends on both sides of the aisle, even when partnership was challenging. She helped craft bold legislation to rescue Illinois from its dire economic circumstances. As house assistant majority leader, she was a leader in working to reform pensions in our State. Fiscal responsibility was always her core value.

The people of the 57th District were lucky to have such a strong advocate. Her energy, creativity, and thoughtfulness will be missed.

I thank her for her service to Illinois and her friendship. I wish her the best of luck in her next adventures and salute her husband, Barry, for his strong partnership with his talented spouse.

VOTE EXPLANATION

Mr. MENENDEZ. Mr. President, I was unavailable for rollcall vote No. 225, on Wyden amendment No. 1302. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 226, on Capito amendment No. 1393. Had I been present, I would have voted ''nay.''

Mr. President, I was unavailable for rollcall vote No. 227, on Cantwell amendment No. 1141. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 228, on Warner amendment No. 1138. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 229, on Flake amendment No. 1178. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 230, on Baldwin amendment No. 1139. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 231, on Heitkamp amendment No. 1228. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 232, on Brown amendment No. 1378. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 233, on Paul amendment No. 1296. Had I been present, I would have voted ''nay.''

Mr. President, I was unavailable for rollcall vote No. 234, on Cardin amendment No. 1375. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 235, on Kaine amendment No. 1249. Had I been present, I would have voted ''yea.''

GAO OPINION LETTER RELATED TO INTERAGENCY GUIDANCE ON LEVERAGED LENDING

Mr. TOOMEY. Mr. President, I ask unanimous consent to have printed in the RECORD the GAO opinion letter dated October 19, 2017, related to the Interagency Guidance on Leveraged Lending of March 22, 2013, Federal Register citation 78 FR 17766.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. GOVERNMENT
ACCOUNTABILITY OFFICE,
Washington, DC, October 19, 2017.

Subject: Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation—Applicability of the Congressional Review Act to Interagency Guidance on Leveraged Lending

Hon. PAT TOOMEY,
U.S. Senate.

DEAR SENATOR TOOMEY: You asked whether the final Interagency Guidance on Leveraged Lending (Interagency Guidance or Guidance), issued jointly on March 22, 2013, by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (the Board), and the Federal Deposit Insurance Corporation (FDIC), is a rule for purposes of the Congressional Review Act (CRA). CRA establishes a process for congressional review of agency rules and establishes special expedited procedures under which Congress may pass a joint resolution of disapproval that, if enacted into law, overturns the rule. Congressional review is assisted by CRA's requirement that all federal agencies, including independent regulatory agencies, submit each rule to both Houses of Congress and to the Government Accountability Office (GAO) before it can take effect. For the reasons discussed below, we conclude that the Interagency Guidance is a general statement of policy and is a rule under the CRA.

BACKGROUND

Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires all federal agencies, including independent regulatory agencies, to submit a report on each new rule to both Houses of Congress and to the Comptroller General before it can take effect. The report must contain a copy of the rule, ''a concise general statement relating to the rule,'' and the rule's proposed effective date. In addition, the agency must submit to the Comptroller General a complete copy of the cost-benefit analysis of the rule, if any, and information concerning the agency's actions relevant to specific procedural rulemaking requirements set forth in various statutes and executive orders governing the regulatory process.

CRA adopts the definition of rule under the Administrative Procedure Act (APA), which states in relevant part that a rule is ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.'' CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. The Agencies did not send a report on the Interagency Guidance to Congress or the Comptroller General because, as they stated in their letters to our Office, in their opinion the Guidance is not a rule under the CRA.

Interagency Guidance on Leveraged Lending

On March 22, 2013, OCC, the Board, and FDIC (referred to collectively as the Agencies) issued the Interagency Guidance, which forms the basis of the Agencies' review of the leveraged lending activities of supervised financial institutions. Leveraged lending generally encompasses large loans to corporate borrowers for the purposes of ''mergers and acquisitions, business recapitalization and financing, equity buyouts, and business . . . expansions.'' Leveraged loans raise risk concerns because of the size of the loans relative to the borrower's cash flow, and are generally used to finance one-time business transactions rather than a company's ordinary course of business activities. The Guidance outlines the Agencies' minimum expectations on a wide range of topics related to leveraged lending, including underwriting standards, valuation standards, the risk rating of leveraged loans, and problem credit management.

The Interagency Guidance is ''designed to assist financial institutions in providing leveraged lending to creditworthy borrowers in a safe-and-sound manner.'' It does so by describing expectations for the sound risk management of leveraged lending activities and lists a number of considerations for financial institutions: (1) the ratio of a borrower's debt to the company's earnings before interest, taxes, amortization and depreciation; (2) the ability of the borrower to amortize its secured debt, and (3) the level of due diligence performed in evaluating the loan. The Guidance explains the types of actions that concern the Agencies and that might motivate them to initiate a supervisory action that would require an independent finding that an unsafe or unsound action has occurred.

ANALYSIS

As an initial matter, one argument raised by the Agencies is that since the Guidance explicitly states that it is not a rule or a rulemaking action, it should not be considered a rule under CRA. However, although an agency's characterization should be considered in deciding whether its action is a rule under APA (and whether, for example, it is subject to notice and comment rulemaking requirements), ''an agency's own label . . . is not dispositive.'' Similarly, an agency's characterization is not determinative of whether it is a rule under CRA.

The focus of the arguments made by the Agencies is that the Interagency Guidance is a general statement of policy and is not subject to the CRA. They assert that the Guidance is a statement that explains how they will exercise their broad enforcement discretion. They maintain that it does not establish legally binding standards, is not certain or final, and does not substantially affect the rights or obligations of third parties. As a result, they claim, the Interagency Guidance is not a rule under CRA.

The Supreme Court has described ''general statements of policy'' as ''statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' In other words, a statement of policy announces the agency's tentative intentions for the future:

''A general statement of policy . . . does not establish a 'binding norm.' It is not finally determinative of the issues or rights to which it is addressed. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what the agency seeks to establish as policy.''

The Interagency Guidance provides information on the manner in which the Agencies

will exercise their enforcement authority regarding leveraged lending activities, does not establish a ''binding norm,'' and does not determine the outcome of any Agency examination of a financial institution. Rather, the Guidance expresses the regulators' expectations regarding the sound risk management of leveraged lending activities. We agree with the Agencies that the Guidance is a general statement of policy. However, the issue presented here is whether this general statement of policy is a rule under CRA.

GAO has previously held that general statements of policy are rules under CRA. For example, in B–287557, May 14, 2001, we decided whether a ''record of decision'' (ROD) issued by the Fish and Wildlife Service in connection with a federal irrigation project was a rule under CRA. We found that the ROD was a general statement of policy regarding water flow and ecosystems issues in both the Trinity and Sacramento Rivers. The ROD modified prior policy in an attempt, in part, to restore fish habitat.

We cited to the APA definition of ''rule,'' which includes ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.'' This definition includes three key components: (1) an agency statement, (2) of future effect, and (3) designed to implement, interpret, or prescribe law or policy. We stated that this definition is broad, and includes both rules requiring notice and comment rulemaking and those that do not, such as general statements of policy.

We noted that, since CRA adopts the definition of ''rule'' from APA, it too covers both those requiring notice and comment and general statements of policy, which do not. We decided that the ROD fell squarely within CRA as an agency action that constituted a ''statement of general . . . applicability and future effect designed to implement, interpret or prescribe law or policy.'' We also noted that Congress intended CRA to cover, not only formal rulemaking, but also rules requiring notice and comment under 5 U.S.C. 553(c), rules that are not subject to notice and comment requirements, including rules that must be published in the Federal Register before taking effect (5 U S C. 552(a)(1) and (2)), and other guidance documents. Since a general statement of policy is specifically included among the types of agency actions subject to the requirements of Sections 552(a)(1) (D) and (a)(2)(B), it is clear that CRA covers general statements of policy.

Additionally, in B–316048, April 17, 2008, we considered whether a letter issued by the Centers for Medicare and Medicaid Services (CMS) to state health officials concerning the State Children's Health Insurance Program (SCHIP) was a rule under CRA. We concluded that the letter was subject to CRA because it was, in fact, a rule subject to notice and comment rulemaking requirements. However, in that decision we also discussed general statements of policy under CRA. CMS had argued that the letter was a general statement of policy ''announcing the course which the agency intends to follow'' in future adjudications, i.e., what the agency seeks to establish as policy. We explained that the definition of ''rule'' under both APA and CRA includes ''a statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' As a device that provides information on the manner in which an agency will exercise its authority or what the agency will seek to propose as policy, we noted that a general statement of policy would appear to fit squarely within this definition of a rule subject to CRA.

In deciding that a general statement of policy is a rule for CRA purposes, our prior decisions cite to the legislative history of CRA, which confirms that rules subject to CRA requirements include general statements of policy. A principal sponsor of the legislation that became CRA made clear that general statements of policy are covered by CRA, stating that ''[t]he committees intend [CRA] to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review.'' The sponsor added that documents covered by CRA include ''statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect a member of the public.''

Additionally, in a floor statement during final consideration of the bill that became CRA, another principal sponsor of the legislation pointed out that rules subject to CRA include agency general statements of policy.

''Although agency interpretive rules, general statements of policy, guideline documents, and agency policy and procedure manuals may not be subject to the notice and comment provisions of section 553(c) of title 5, United States Code, these types of documents are covered under the congressional review provisions of the new chapter 8 of title 5.

''Under section 801(a) [CRA], covered rules, with very few exceptions, may not go into effect until the relevant agency submits a copy of the rule and an accompanying report to both Houses of Congress. Interpretive rules, general statements of policy, and analogous agency policy guidelines are covered without qualification because they meet the definition of a 'rule' borrowed from section 551 of title 5, and are not excluded from the definition of a rule.''

We note that legal commentators also support the conclusion that CRA's requirements are applicable to general statements of policy. They have pointed out that federal agency actions fitting CRA's definition of a rule include ''such items as . . . general statements of policy,'' and that ''the legislative history of the Act . . . makes clear that this scope was understood and intended.''

Nonetheless, the Agencies assert that because the Guidance does not establish legally binding standards, is not certain or final, and does not substantially affect the rights or obligations of third parties, it is not a rule under CRA. They cite to our decisions in which we found that agency actions that imposed binding requirements that were ''both certain and final'' were rules for CRA purposes. However, while our decisions recognize those characteristics as indicative of certain types of rules subject to CRA requirements, they do not suggest that the absence of those characteristics requires a determination that an agency action is not a rule under CRA. Moreover, when GAO has examined the issue whether an agency's action substantially affects the rights or obligations of third parties, it has been in the context of analyzing whether the action falls within the CRA exception for agency rules of practice or procedure, not in deciding whether it meets the definition of rule.

The Agencies also cite to language in certain court decisions to suggest that policy statements are not rules under APA. However, those decisions do not support such a conclusion. Indeed, the Supreme Court has recognized that rules under the APA include '''substantive [legislative] rules' on the one hand'' as well as ''general statements of policy'' and other non-legislative rules on the other.

We can readily conclude that the Guidance does not fall within any of the three exceptions in CRA. We note here that the Interagency Guidance is of general and not particular applicability, does not relate to agency management or personnel, and is not a rule of agency organization, procedure, or practice.

CONCLUSION

The Interagency Guidance is a general statement of policy designed to assist financial institutions in providing leveraged lending to creditworthy borrowers in a sound manner. As such, it is a rule subject to the requirements of CRA.

Sincerely yours,

SUSAN A. POLING,
General Counsel.

CHRISTENING OF THE USNS ''HERSHEL 'WOODY' WILLIAMS''

Mrs. CAPITO. Mr. President, today I wish to celebrate the christening of the United States Navy's T-ESB 4 Expeditionary Sea Base, USNS *Hershel ''Woody'' Williams* taking place on October 21, 2017. This vessel is named after the proud West Virginian and last surviving Medal of Honor recipient from the Pacific theater during World War II. This ship will serve as a flexible platform to support Special Forces helicopters and aircraft, as well as counterpiracy and mine countermeasures.

This ship could not have a better namesake than Woody Williams. Woody's life is the embodiment of what it means to serve this country, both in his military service during World War II, and his service to veterans and Gold Star families in his civilian life. Corporal Williams' actions on Iwo Jima are the definition of heroism. He went forward alone, facing deadly machinegun fire from entrenched Japanese positions and fought bravely for 4 hours, taking out enemy positions one by one. His actions were crucial to his regiment's success on Iwo Jima, wiping out a heavily defended Japanese position.

In addition to Woody's wartime heroism, for which he received the Congressional Medal of Honor, he also has devoted his life to servicemembers, veterans, and their families. Through the Hershel Woody Williams Medal of Honor Foundation, he honors Gold Star families who have lost loved ones that bravely sacrificed their lives in defense of our freedom by seeking to establish Gold Star Families Memorial Monuments in all 50 States. His foundation also offers scholarships to Gold Star children and sponsors outreach programs that educate communities about Gold Star families and the sacrifice that they have made. To date, the foundation has established 26 Gold Star Families Memorial Monuments across the country, with 50 other monuments underway in 38 States. Woody also served our Nation's veterans for 33 years as a veterans service representative in the Department of Veterans Affairs.

At 94 years old, Woody continues to be an energetic, unyielding force for good. I have had the privilege of knowing Woody Williams for many years, and the christening of this mobile sea base vessel is a testament to Woody's