Nuquist might have considered a chapter titled ''Titans of the Trail.'' Instead, she opted for the less obvious and more graceful approach of weaving their stories throughout her chapters as their ages and achievements suggest.

To cite a few examples, the aforementioned Dean was probably the editor of the very first guidebook. Dr. Louis J. Paris was ''the glue that held the GMC together in the early years.'' Charles P. Cooper, ''the hardest working executive the Club has had,'' spent weeks, in all weather, nailing hand-painted white discs to trees and rail-crossing posts. ''The GMC was his hobby,'' writes Nuquist, but, judging by his actions, it was much more than that.

The same could easily be said of Nuquist, for whom, over nearly half a century, the Long Trail has meant work, play, adventure, friendships, family and joy. All of which makes reading her new book nearly as much fun as hiking the trail itself.

CONFIRMATION OF KIRSTJEN NIELSEN

Mr. VAN HOLLEN. Mr. President, I rise in opposition to the nomination of Kirstjen Nielsen to serve as Secretary of Homeland Security. While I believe that Ms. Nielsen has a solid understanding of the Department that she seeks to lead, I am not yet convinced that she will be a counterweight to the rabid anti-immigration policies coming out of the White House.

I appreciated the opportunity to speak to Ms. Nielsen prior to the vote about my concern over the status of the Dreamers and temporary protected status, TPS, recipients. Dreamers were brought to this country through no fault of their own and are in limbo after the President abruptly canceled DACA and set arbitrary renewal and termination deadlines. TPS recipients, many of whom have been here for almost two decades, would have their lives endangered if forced to return to their home countries.

While I understand that Ms. Nielsen cannot make ironclad commitments on how she would handle these issues, I could not in good faith support her nomination without clearer guidance and assurances about how she and the administration intend to resolve these matters. Many of my colleagues who supported her predecessor, General Kelly, have complained bitterly that promises he made to them have not been kept. Moreover, both as General Kelly's chief of staff at DHS and later as his deputy at the White House, I have to assume the Ms. Nielsen has been very involved in the development and implementation of the immigration policies of this administration. My vote yesterday was not so much a vote against Ms. Nielsen, as it was a vote to protest the anti-immigration policies flowing from the Trump administration.

I am hopeful that, in the coming months, Ms. Nielsen will be able to provide a check on the worst impulses of this White House. I am not yet convinced that will happen and hope to be proven wrong. I do look forward to working with Ms. Nielsen once she is sworn in.

GAO CFPB RESPONSE

Mr. TOOMEY. Mr. President, I ask unanimous consent that a letter from the Government Accountability Office, GAO, be printed in the RECORD.

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

U.S. GOVERNMENT
ACCOUNTABILITY OFFICE,
Washington, DC, December 5, 2017.

Subject: Bureau of Consumer Financial Protection: Applicability of the Congressional Review Act to Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act

Hon. PATRICK J. TOOMEY,
U.S. Senate.

DEAR SENATOR TOOMEY: You asked whether a Bulletin issued by the Bureau of Consumer Financial Protection (CFPB or the Bureau) on March 21, 2013, on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act 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 Comptroller General before it can take effect. For the reasons discussed below, we conclude that the Bulletin is a general statement of policy and a rule under the CRA.

BACKGROUND

CFPB Bulletin

When consumers finance automobile purchases from an auto dealership, the dealer often facilitates indirect financing through a third-party lender, referred to as an indirect auto lender. In the Bulletin, CFPB ''provides guidance about indirect auto lenders' compliance with the fair lending requirements of the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B.'' Specifically, the Bulletin relates to policies used by some indirect auto lenders that allow dealers to mark up the interest rate charged to the consumer above the indirect auto lender's ''buy rate.'' The lender then compensates the auto dealer based on the difference in interest revenues between the buy rate and the actual rate charged to the consumer in the contract executed with the auto dealer. In the Bulletin, CFPB states that the incentives created by such policies allow for a significant risk for pricing disparities on the basis of race, national origin or other prohibited bases.

The fair lending requirements of ECOA make it illegal for a creditor to discriminate in any aspect of a credit transaction on the basis of race or national origin, among other characteristics. The term ''creditor'' is defined to include ''any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.'' Regulation B, which implements ECOA, further defines a creditor to expressly include an ''assignee, transferee, or subrogee of the creditor'' who ''in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit.'' In the Bulletin, CFPB states that there are a variety of practices used by indirect lenders, but that information collected ''suggests that the standard practices of indirect auto lenders likely constitute participation in a credit decision under the ECOA and Regulation B.''

In the Bulletin, CFPB discusses the legal theories under which indirect auto lenders who are determined to be creditors under ECOA could be held liable for pricing disparities on a prohibited basis when such disparities exist within an indirect auto lender's portfolio. In its final section, the Bulletin states that indirect auto lenders ''should take steps to ensure that they are operating in compliance with the ECOA and Regulation B as applied to dealer markup and compensation policies,'' and then lists a variety of steps and tools that lenders may wish to use to address significant fair lending risks.

The 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 nonagency parties. CFPB did not send a report on the Bulletin to Congress or the Comptroller General because, as stated in their letter to our Office, in their opinion the Bulletin is not a rule under CRA.

ANALYSIS

At issue here is whether a nonbinding general statement of policy, which provides guidance on how CFPB will exercise its discretionary enforcement powers, is a rule under CRA. CFPB states, and we agree, that the Bulletin ''is a non-binding guidance document'' that ''identifies potential risk areas and provides general suggestions for compliance'' with ECOA and Regulation B. Moreover, the Bulletin is a general statement of policy that offers clarity and guidance on the Bureau's discretionary enforcement approach.

CFPB argues, however, that because the Bulletin has no legal effect on regulated entities, the CRA does not apply. The Bureau asserts that ''taken as a whole, the CRA can logically apply only to agency documents that have legal effect.'' It suggests that there are two categories of general statements of policy: (1) those that are intended as binding documents, to which CRA applies, and (2) those, like the Bulletin, that are nonbinding and not subject to CRA. CFPB claims that the Bulletin is the type of general statement of policy that is not a rule under CRA. However, as explained below, CRA requirements apply to general statements of policy which, by definition, are not legally binding.

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, as stated by the D.C. Circuit Court of Appeals in Pacific Gas & Electric Company v. Federal Power Commission, 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 Bulletin provides information on the manner in which CFPB plans to exercise its discretionary enforcement power. It expresses the agency's views that certain indirect auto lending activities may trigger liability under ECOA. For example, it states that an indirect auto lender's own markup and compensation policies may trigger liability under ECOA if they result in credit pricing disparities on a prohibited basis, such as race or national origin. It also informs indirect auto lenders that they may be liable under ECOA if a dealer's practices result in unexplained pricing disparities on prohibited bases where the lender may have known or had reasonable notice of a dealer's discriminatory conduct. In sum, the Bulletin advises the public prospectively of the manner in which the CFPB proposes to exercise its discretionary enforcement power and fits squarely within the Supreme Court's definition of a statement of policy.

Moreover, as the Pacific Gas & Electric Company decision quoted above makes plain, general statements of policy by definition are not legally binding, and our prior decisions have held that non-binding general statements of policy are rules under CRA. For example, we recently decided that Interagency Guidance on Leveraged Lending, issued jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (referred to collectively as the Agencies), was a rule under CRA (Interagency Guidance decision). We found that the Interagency Guidance was a general statement of policy describing the Agencies' expectations for the sound risk management of leveraged lending activities. It explained the types of financial transactions that concern the Agencies and that might motivate them to initiate a supervisory review. The Bulletin similarly states CFPB's concerns that indirect lenders' markup and dealer compensation policies may result in discriminatory lending practices, and sets forth its expectations that indirect auto lenders take steps to ensure that these policies do not result in pricing disparities on prohibited bases.

We reached our conclusion in the Interagency Guidance decision, and in other prior GAO decisions, by examining CRA's definition of a ''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.'' This definition has three key components: (1) an agency statement, (2) of future effect, and (3) designed to implement, interpret, or prescribe law or policy. We noted 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 decided that the Interagency Guidance fell squarely within CRA as an agency action that constituted a ''statement of general . . . applicability and future effect designed to implement, interpret or prescribe . . . policy.'' Similarly, the CFPB Bulletin at issue here is a statement of general applicability, since it applies to all indirect auto lenders; it has future effect; and it is designed to prescribe the Bureau's policy in enforcing fair lending laws.

Additionally, in a decision issued in 2001, we decided that 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 whose essential purpose was to set policy for the future. In deciding that a general statement of policy is a rule for CRA purposes, this and other prior decisions cite to the legislative history of CRA, which confirms that rules subject to CRA requirements include general statements of policy.

CFPB did not raise any claims that the Bulletin would not be a rule under CRA pursuant to any of the three exceptions, and we can readily conclude that the Bulletin does not fall within any of the those exceptions. The Bulletin 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 Bulletin is a general statement of policy designed to assist indirect auto lenders to ensure that they are operating in compliance with ECOA and Regulation B, as applied to dealer markup and compensation policies. As such, it is a rule subject to the requirements of CRA.

If you have any questions about this opinion, please contact Robert J. Cramer, Managing Associate General Counsel.

Sincerely yours,

THOMAS H. ARMSTRONG,
General Counsel.

TRIBUTE TO STANLEY SPEAKS

Mr. WYDEN. Mr. President, today I wish to honor a longtime public servant and regional director of the northwest region of the Bureau of Indian Affairs in my State, Mr. Stanley Speaks. Stan has served the tribes of Oregon and the Pacific Northwest well since 1982. His distinguished career with the Federal Government spanned more than 59 years and has resulted in highly recognized and extraordinary accomplishments that stem from his established knowledge, experience, and management leadership.

Stan graduated from Northeastern State University in Tahlequah, OK, and later obtained a master's degree in education administration. By 1959, he had begun his long career with the Bureau of Indian Affairs. He served as the regional director in western Oklahoma and Kansas and came to the northwest region in 1982. There he served 14 agencies, 3 irrigation projects, and oversaw a trust land base of 6.3 million acres, covering five Northwest States. Stan also had the fiduciary trust responsibility to 45 Northwest Tribes with a membership totaling 115,000 Native-American people. As a Tribal member of the Chickasaw Nation of Oklahoma, Stan was inducted into the Chickasaw National Hall of Fame in 2002.

Stan has devoted his life's work to the advancement of Tribes and Indian people. He has worked hard to uphold and protect Tribal treaty rights, and through his stewardship of trust property and natural resources, trust income has helped meet the individual and family needs of Tribal members. He became the regional director at a time when the Western Oregon Tribes were being restored.

Stan has long been a champion for Tribal veterans. He has supported housing, the expansion of veterans benefits, and access to healthcare. He, along with his lovely wife, Lois, are a staple at the annual veterans dinner sponsored by the Cow Creek Band of Umpqua Indians each July.

He has assisted the federally recognized Tribes in my home State of Oregon with both advice and financial assistance on a variety of business and economic development ventures. His efforts have created hundreds of job opportunities for Indian and non-Indian people in every Tribal community across Oregon and the Northwest.

Stan has achieved countless victories for Native Americans, which will have long lasting beneficial impacts for years to come. He has been critical in maintaining the relationship between the Federal Government and Indian Tribes. Oregon has benefited from Stanley Speaks' career management and leadership contributions. His legacies of achievement for our Tribes will live on to benefit not only this generation, but for generations yet to come. I thank Stan for his service to Indian Country and to this Nation.

TRIBUTE TO CHARLOTTE BOBICKI

Mr. BENNET. Mr. President, I wish to recognize and thank a dedicated community leader and civil servant, Charlotte Bobicki. She served as my regional representative in Alamosa, CO, and the San Luis Valley for 8 years.

Charlotte began her career as a first grade teacher in Albuquerque, NM. In the early 1960s, she taught second grade in Yellow Springs, MD, while her husband, Tom, served in the Army at Fort Detrick, MD.

In the late sixties, Charlotte and Tom returned to Alamosa, CO, where she was born and had attended college. Charlotte taught fifth and sixth graders at Alamosa Evans Intermediate School. She then worked with special education students before transitioning to Alamosa Middle School, where she taught math and science and served as the assistant principal. Later she became principal at Polston Primary School.

In 1997, Charlotte was elected as an Alamosa County Commissioner, where she served two 4-year terms. In 2005, Senator Ken Salazar hired her as his regional representative in Alamosa. When I was appointed to the Senate, I asked Charlotte to continue as the regional representative to Alamosa for the San Luis Valley, and she has served in that role for the last 8 years. Since