

reform that we are talking about will prompt them to increase capital spending. Three-quarters of them—76 percent—said that it is going to increase hiring. And with this reduced tax burden, businesses are going to have the money to invest in their workers.

I will tell you, with the tighter job market that is out there now as the economy has begun to improve, this will increase competition for workers, and this will increase wages. We know that is going to happen.

Every economist agrees that this kind of tax reform is going to change behavior. Some might think it doesn't improve the economy as much as others do, but everyone believes this will incentivize us to create more jobs and improve wages here in the United States of America.

There is a group called the Congressional Budget Office, a nonpartisan group up here that we work with. They have a study that says that as much as 70 percent of the benefit from that lower corporate rate is going to go to the workers in terms of higher wages, better benefits. That is the way we are going to help the middle class also—not just with regard to the tax relief directly but with regard to helping to improve job creation and increase wages. So I am excited about this. I think it can happen. I think it is something that is long overdue.

I think it is something, frankly, that should be bipartisan. This was what the Simpson-Bowles proposal, which was a totally bipartisan proposal, said we ought to do. In fact, they took the top rate down to 28 percent—lower than anybody is talking about here. But they said that we should go to this kind of taxation we are talking about in terms of international businesses, in terms of corporations, in terms of creating jobs.

Two years ago, I worked with CHUCK SCHUMER, who is now the Democratic leader here in the U.S. Senate, and we were asked to cochair a working group on taxation—particularly folks on the international side—and we came up with a consensus, which said that we have to fix this broken Tax Code. It is not working, and we need to bring this money back. We need to bring these jobs back by going through this kind of system we are talking about, a so-called territorial system. In the past, this has been bipartisan, and my hope is it can be again.

Yes, the budget provides the framework for us to get this done, not on a 60-vote basis but a 50-vote basis. But we should do it with more than 60 votes. We welcome input from our Democratic colleagues. I believe, in the end, this will be bipartisan because I do believe that the vast majority of Americans out there, as they understand this tax reform proposal will say: Yes, I think middle-class tax relief makes sense, and, yes, I think we should be bringing back the jobs and the investment to this country. I think that is going to be something that Members

will hear across this country and across this aisle. When they do, I believe we will have the opportunity to have the kind of commonsense, bipartisan tax reform we need in this country. We need to do it to be able to have a thriving American middle class, and we need to do it to have a stronger America.

I am excited about this opportunity. I look forward to working with my colleagues on both sides of the aisle.

Mr. President, I yield back my time on that, but I have another matter that I need to do, the closing business.

The PRESIDING OFFICER. The Senator from Ohio.

#### MORNING BUSINESS

Mr. PORTMAN. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### REMEMBERING WADE NELSON

Mr. DURBIN. Mr. President, Wade Nelson was a friend who began his professional life as a journalist and served at many levels in public service.

He was regarded as an honest professional in all of his life's work, a father and husband truly dedicated to his family, and a joy to count as a friend.

His colleague and friend, Bob Sectar, wrote a remembrance, which I include with this statement. It was given to those of us in attendance at Wade's memorial service at the Unity Temple in Oak Park, IL, on October 7, 2017. The speakers at the service included his wife, Ellen Warren, a respected journalist in her own right, and his sons, Ted and Emmett. They each shared touching stories of Wade as a husband and father. Rick Kogan emceed the celebration with his own signature style and Wade's friends Bern Collieran, Terry Kelleher, Hanke Gratteau, and musician Jon Webber each added great memories to the service.

As Bob Sectar wrote:

Back in the rambunctious days of Chicago newspapers, Wade Nelson worked for the legendary columnist Mike Royko who sent his "legman" to check out a tip that Cook County judges were issued cushier toilet paper than that stocked in public restrooms.

The easy part for Nelson was grabbing samples from public toilets in the Loop courthouse, now known as the Daley Center. Obtaining tissue from a judge's inner sanctum was trickier.

So, Nelson made up a pretense to interview Chief Judge John Boyle, then excused himself mid-talk to use the toilet attached to the judge's chambers. He emerged to confront the startled judge with the incriminating evidence, and a great column was born.

Charmin-gate was hardly the highlight of Nelson's days as a reporter. Yet it demonstrated the resourcefulness, spunk, and droll whimsy that propelled him on a rich career path involving being press secretary for the late U.S. Senator Alan Dixon of Illi-

nois, communications director for the federal military base closure commission, political consultant, and chief speech writer for former Chicago Mayor Richard M. Daley.

That resume hardly defines the sum of Nelson, however. Friends remember him as someone with boundless curiosity and a walking encyclopedia of knowledge about interests as varied as Midwestern architecture, jazz, the Cubs, anything Chicago related, the minutia of the small Southern Michigan town of Sturgis where his ancestors were early settlers in the 1800s, and the secret to the perfect martini.

Edward Wade Nelson Jr. grew up in west suburban River Forest, attended Fenwick High School in Oak Park and the University of Missouri where he graduated with a degree in journalism.

As a young adult and beyond, his greatest devotion was reserved for performers at Chicago's varied night club, cabaret and piano bar scene where men and women who played and sang there came to embrace Nelson as an honored guest and friend. He became an audience fixture at venues, most now long gone, like The Acorn on Oak, Toulouse, The London House, the Green Mill, and Yvette. Nelson even came to name his family pets after 20th Century jazz legends.

As Nelson climbed the rungs of journalism jobs, from City News to the suburban Wilmette Life and then the Chicago Daily News, his career tracked closely with another young reporter, Ellen Warren, who later became a White House correspondent for the old Knight-Ridder news service and then a columnist for the Chicago Tribune. They eventually married and had two sons.

Nelson moved back to River Forest, but he rejoined Dixon in the mid-1990s when the former senator chaired a politically sensitive federal commission charged with recommending the closure of surplus military bases across the country.

In subsequent years, Nelson served as a spokesman for then-Cook County Circuit Court Clerk Aurelia Pucinski, now an appellate court judge, and the Illinois State Board of Education and became a program officer and grant manager at the W.K. Kellogg Foundation, a Michigan-based non-profit specializing in education grants. Wedged in between these jobs was a multiyear stint as the chief speechwriter for Richard Daley, a difficult task making Chicago's notoriously ineloquent mayor sound eloquent.

Wade is survived by his wife and sons, Ted—and his wife, Sarah—and Emmett of Chicago; a sister, Karen Nelson of Chicago; and a brother, Ted—and his wife, Terry—of Spicewood, TX.

#### TRIBUTE TO ELAINE NEKRITZ

Mr. DURBIN. Mr. President, earlier this month, Elaine Nekritz retired after more than 14 years of service representing the 57th District in the Illinois House of Representatives. Along with being a good friend and dedicated public servant, Elaine was a real leader for her constituents in Northbrook, Arlington Heights, Wheeling, Buffalo Grove, and across her district.

Elaine's legacy in Illinois will always be visible as people travel on high-speed rail from Chicago to St. Louis and throughout the State. As the chair of the Illinois House Railroad Industry Committee, Elaine was a leader in advocating for high-speed rail before it was popular.

During her service in the State House, Elaine championed women's

rights, the environment, and criminal justice reform as well. Because of Elaine's efforts, kids who have had run-ins 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