readily accessible for people with disabilities. See 28 C.F.R. §35.150(d).

Our approach to ADA inspections encourages consultation with the disability community and the development of thorough and effective transition plans. The information we provide to employing offices regarding barrier severity and estimated solution costs aids the transition planning process, as employing offices can utilize this information to prioritize abatement projects.

INVESTIGATION OF CHARGES OF DISCRIMINATION AND REQUESTS FOR INSPECTION

During the 116th Congress, the OGC received four ADA requests for inspection and charges of discrimination.

Two cases concerned restroom accessibility in the Library of Congress Madison Building and the Cannon House Office Building. The responsible employing offices cooperated with our office in the investigation and removed the barriers to access.

One case concerned a request for disability accommodation made to a House Committee. The responsible employing office cooperated with our office in the investigation, which did not result in any findings of violations of the ADA or the CAA.

One case concerned physical accessibility in a Committee hearing room in the Rayburn House Office Building. Ramps to a dais were excessively sloped and posed other barriers to access. The responsible employing offices fully cooperated with our office and have developed a plan to remove the barriers to access as part of an upcoming renovation of the room. We are continuing to monitor this case.

ACKNOWLEDGMENTS

The OGC ADA inspection team during the 116th Congress was comprised of Shonda Perkins, Occupational Safety and Health Inspection Coordinator; Crystal Barber, Occupational Health and Safety Specialist; Christopher Robinson, Senior Occupational Safety and Health Specialist; Mark Nester, Occupational Safety and Health Specialist; James Peterson, Occupational Safety and Health Specialist; and Kaylan Dunlap, Accessibility Specialist with Evan Terry Associates (ETA).

The OGC appreciates the cooperation of all legislative branch offices during the inspection process. We particularly appreciate the assistance and time given by the employees of the AOC, the Library of Congress, the USCP, the Office of House Employment Counsel, and the Office of Senate Chief Counsel for Employment.

Thanks to Beth Ziebarth, Smithsonian Institution's Deputy Head Diversity Officer and Director, Access Smithsonian, for providing context and history regarding the Smithsonian Accessibility Program and Smithsonian Guidelines for Accessible Design.

Dynah Haubert, OGC Associate General Counsel, is the primary author of this report.

The OGC also acknowledges the invaluable assistance provided by ETA. The OGC would not have been able to implement the barrier removal survey approach to ADA inspections without ETA's assistance and software.

JOHN D. UEIMAN,
General Counsel.

APPENDIX

ARCHITECT OF THE CAPITOL,
Washington, DC, January 26, 2023.

MR. JOHN D. UELMEN,
General Counsel, Office of Congressional Workplace Rights.

DEAR MR. UELMEN: The Architect of the Capitol (AOC) is pleased to provide this annual Americans with Disabilities Act (ADA) progress report for 2022 on removing the accessibility barriers identified in the Office of Congressional Workplace Rights (OCWR) biennial reports for the 111th, 112th, 113th, 114th, 115th, 116th and 117th Congress. This report includes data for the calendar year December 31, 2022.

The list below provides AOC's progress in correcting the accessibility barriers noted:

90 percent (189 of 209) of the 111th Congress barriers have been remediated.

97 percent (386 of 398) of the 112th Congress barriers have been remediated.

30 percent (51 of 168) of the 113th Congress barriers have been remediated.

64 percent (1,589 of 2,477) of the 114th Congress barriers have been remediated.

61 percent (676 of 1,113) of the 115th Congress barriers have been remediated.

6 percent (10 of 163) of the 116th Congress barriers have been remediated.

2 percent (6 of 259) of the 117th Congress barriers have been remediated.

The unabated barriers identified for each biennial congressional report are identified following categories:

111th Congress:

Planned, engineered solutions are being developed: 10 percent (20 of 209 barriers).

112th Congress:

Planned, engineered solutions are being developed: 3 percent (12 of 398 barriers).

113th Congress:

Planned but not yet completed: 1 percent (2 of 168 barriers).

Planned, engineered solutions have been developed: 68 percent (115 of 168 barriers).

114th Congress:

Planned but not yet completed: 20 percent (492 of 2,477 barriers).

Planned, engineered solutions are being developed: 16 percent (396 of 2,477).

115th Congress:

Planned but not yet completed: 15 percent (165 of 1,113 barriers).

Planned, engineered solutions are being developed: 24 percent (272 of 1,113 barriers).

116th Congress:

Planned but not yet completed: 66 percent (108 of 163 barriers).

Planned, engineered solutions are being developed: 28 percent (45 of 163 barriers).

117th Congress:

Planned but not yet completed: 78 percent (203 of 259 barriers).

Planned, engineered solutions are being developed: 19 percent (50 of 259 barriers).

Enclosure 1 is a detailed spreadsheet listing each accessibility barrier identified by the OCWR for the 111th, 112th, 113th, 114th, 115th, 116th and 117th Congress and the AOC's progress remediating them. This enclosure also contains the verification data from our third-party consultant for 2022. We will continue to obtain abatement verification reports and photos from our third-party consultant throughout 2023.

Enclosure 2 contains a complete list of ADA accomplishments completed by the AOC. Some highlights include:

PHYSICAL ACCESS

Continued improvement to the physical accessibility of the Capitol campus such as installation and/or renovation of handrails, ramps, thresholds, pathways, stairs, lifts, signage, sidewalks and curb cuts.

Installed accessible lifts to provide access to the Senate Chamber dais.

Installed additional ADA-compliant water bottle filling stations, beyond ADA requirements.

Installed automatic door operators to increase accessibility at doorways.

Installed ADA-complaint worksurfaces and food service countertops in the Dirksen Senate Office Building.

PROGRAM ACCESS

The U.S. Capitol Visitor Center completed an extensive overhaul of Exhibition Hall, which included a significant number of accessibility improvements such as the incorporation of braille, tactile models, touchscreen interactives, captioned video content, audio guides and large-print materials.

The U.S. Botanic Garden updated and expanded accessibility information on its website to enable a successful visit by all individuals and added speech-to-text transcription services for online educational programs.

PROGRAM MANAGEMENT

Held accessibility coordination meetings with attendance from the AOC's jurisdiction and major divisions.

Continued to evaluate and improve internal processes to ensure accessibility standards are met on design and construction projects.

Continued to work with an independent quality assurance/quality control inspector who confirms completed work is ADA compliant.

COLLABORATION WITH THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS, OFFICE OF GENERAL COUNSEL

Continued to work cooperatively with you and OCWR staff on OCWR ADA inspections, as well the existing open ADA case.

Please contact Danezza Quintero at 202.674.0260 or me at 202.226.4701 if you have questions or require further information.

Sincerely,

PATRICIA WILLIAMS, CSP,
Director, Safety and Code Compliance.

Enclosures.

GOVERNMENT ACCOUNTABILITY OFFICE LEGAL OPINION

Mr. CASSIDY. Mr. President, I rise today to formally enter a legal opinion from the Government Accountability Office into the RECORD. The contents of this legal opinion confirms that the Biden administration's reckless student loan scheme has gone too far, violated process, and must be submitted to Congress as a rule, subject to the Congressional Review Act.

The Biden administration proposes to transfer the burden of $400 billion in Federal student loans onto taxpayers, citing COVID–19. The administration continues to charge the U.S. Treasury $5 billion per month to extend the loan pause, preventing any return to repayment on student loans while it works to cancel them. Meanwhile, Americans who chose not to attend college or already sacrificed to pay off their loans will be forced to carry the burden of the student debt from those who willingly took on these loans.

GAO's determination means that the Biden administration is not playing by the laws of this land in attempting to implement their mass student loan scheme and extend the payment pause via executive fiat.

This GAO legal opinion will allow Congress to exercise its oversight prerogative and move forward with a Congressional Review Act resolution of disapproval, while we await a Supreme Court decision on the constitutionality of the policy.

I implore all of my colleagues to join me in support of a Congressional Review Act resolution of disapproval to stand for the 87 percent of Americans

who chose not to take student loans or paid off their debt responsibly.

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

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

[From the U.S. Government Accountability Office]

DECISION

Matter of: U.S. Department of Education—Applicability of the Congressional Review Act to the Department of Education's Student Loan Debt Relief Website and Accompanying Federal Register Publication.

File: B–334644.

Date: March 17, 2023.

DIGEST

The U.S. Department of Education (ED) announced actions to extend a pause on federal student loan repayment and to cancel certain loan debts on a website titled ''One-Time Federal Student Loan Debt Relief.'' ED also publicized these actions in a Federal Register document titled Federal Student Aid Programs (Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program). GAO received a request for a decision as to whether ED's actions announced on its website and in the Federal Register (collectively ED's ''Waivers and Modifications'') are a rule for purposes of the Congressional Review Act (CRA). CRA incorporates the Administrative Procedure Act's (APA) definition of a rule and requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as to the Comptroller General. ED did not submit a CRA report to Congress or the Comptroller General on its Waivers and Modifications.

We conclude that ED's Waivers and Modifications meet the definition of a rule under CRA and that no exception applies. Therefore, ED's Waivers and Modifications are subject to the requirement that they be submitted to Congress. If ED finds for good cause that normal delays in the effective date of the rule are impracticable, unnecessary, or contrary to the public interest, then its rule may take effect at such time as the agency determines, consistent with CRA.

DECISION

On August 24, 2022, President Biden announced that the U.S. Department of Education (ED) would take action to extend a then-current ''pause on federal student loan repayment,'' as well as to provide ''debt cancellation'' for certain federal student loan recipients. The White House, Fact Sheet: President Biden Announces Student Loan Relief for Borrowers Who Need It Most (Aug. 24, 2022), available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/ (last visited Mar. 10, 2023). After President Biden's announcement, ED outlined the referenced actions on a website titled ''One-Time Federal Student Loan Debt Relief.'' ED, Federal Student Aid, One-Time Federal Student Loan Debt Relief, available at https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info (last visited Mar. 10, 2023). ED also provided notice of these actions through a Federal Register document titled Federal Student Aid Programs (Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program). 87 Fed. Reg. 61512 (Oct. 12, 2022). For ease of reference, we refer collectively to ED's actions in the above-referenced website and Federal Register document as ED's ''Waivers and Modifications.'' GAO received a request for a decision as to whether ED's Waivers and Modifications are a rule for purposes of the Congressional Review Act (CRA). Letter from Chairwoman Virginia Foxx, Senators Bill Cassidy and John Cornyn, and Representatives Bob Good and Mariannette Miller-Meeks, to the Comptroller General (Sept. 23, 2022). As discussed below, we conclude that ED's Waivers and Modifications meet the definition of a rule under CRA and that no exception applies. Therefore, ED's Waivers and Modifications are subject to CRA's submission requirement. Consistent with CRA, ED may forgo the normal delay in a rule's effective date for good cause. 5 U.S.C. §808(2).

Our practice when rendering decisions is to contact the relevant agencies to obtain their legal views on the subject of the request. GAO, Procedures and Practices for Legal Decisions and Opinions, GAO–06–1064SP (Washington, D.C.: Sept. 2006), available at https://www.gao.gov/products/gao-06-1064sp. Accordingly, we reached out to ED to obtain the agency's legal views. Letter from Assistant General Counsel, GAO, to General Counsel, ED (Oct. 17, 2022). We received ED's response on February 22, 2023. Letter from General Counsel, ED, to Assistant General Counsel, GAO (Feb. 22, 2023) (Response Letter).

BACKGROUND

Federal Student Loans and the HEROES Act

ED currently administers federal student loans pursuant to at least four programs: the William D. Ford Federal Direct Loan Program, the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan Program, and the Health Education Assistance Loan (HEAL) Program. See 20 U.S.C. §§1087a–1087j, 1071–1087–4, 1087aa–1087ii; ED, Health Education Assistance Loan Program, 82 Fed. Reg. 53374 (Nov. 15, 2017). For each of these programs, Congress set forth relevant terms and conditions in title IV of the Higher Education Act of 1965 (HEA). 20 U.S.C. §1070 et seq. Among other things, HEA outlines the responsibility of borrowers to repay their loans, the consequences of failing to do so, and the possibility that ED may cancel loans under certain circumstances. See 20 U.S.C. §§1078–10, 1078–11, 1080, 1087j, 1087e, 1087dd, 1087ee. ED also implements HEA through its own regulations. See, e.g., 34 C.F.R. parts 674, 681, 682, and 685.

In the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act), Congress gave ED the power to ''waive or modify'' HEA provisions and regulations under limited emergency circumstances. Specifically, the Act states that:

''Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education . . . may waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of [HEA] . . . as the Secretary deems necessary in connection with a war or other military operation or national emergency . . . .''

20 U.S.C. §1098bb(a)(1). As a prerequisite to providing waivers or modifications under the above-quoted provision, ED must find them ''necessary to ensure'' certain objectives listed in the HEROES Act. Id. §1098bb(a)(2). The first listed objective is to ensure that ''recipients of [loans] under title IV of [HEA] . . . are not placed in a worse position . . . in relation to [such loans] because of their status as affected individuals.'' Id. The second listed objective is to ensure that ''administrative requirements placed on affected individuals . . . are minimized, to the extent possible without impairing the integrity of the [federal student loan] programs . . . to ease the burden on such students.'' Id.

The HEROES Act outlines processes for ED to inform the public about waivers and modifications. Id. §1098bb(b). In addition, the HEROES Act requires ED to provide certain information to Congress about waivers and modifications. Id. Notwithstanding section 437 of the General Education Provisions Act (GEPA) and section 553 of APA, the HEROES Act says that ED must ''by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions that [it] deems necessary'', as well as ''the terms and conditions to be applied in lieu of such [waived or modified] provisions.'' Id. Additionally, ED must provide Congress with an ''impact report'' no later than 15 months after it provides any waiver or modification. Id. §1098bb(c). This report must discuss the impact of ED's waivers or modifications ''on affected individuals'' and ''programs under title IV of the [HEA],'' as well as ED's ''recommendations for changes'' to provisions waived or modified. Id.

Finally, the HEROES Act speaks to the timing of ED's waivers and modifications. In a subsection titled ''no delay in waivers and modifications,'' the Act says ''Sections 482(c) and 492 of the [HEA] shall not apply'' to ED's waivers and modifications. Id. §1098bb(d). Ordinarily, those provisions require ED to delay the effective date of certain regulations, and to engage in a ''negotiated rulemaking'' process—including the input of students, institutions of higher education, and other affected entities—for regulations concerning federal student loans. See id. §§1089(c), 1098a.

ED's Waivers and Modifications

In its Waivers and Modifications, ED invoked the HEROES Act to take emergency actions in view of the COVID–19 pandemic. As ED explained, President Trump had declared a national emergency concerning the COVID–19 pandemic on March 13, 2020, and it remained in effect at the time of ED's actions. 87 Fed. Reg. 61512, 61513. As ED further explained, because the COVID–19 emergency declaration encompassed all areas in the United States, ''any person with a Federal student loan under title IV of the HEA'' was an ''affected individual'' under the HEROES Act. Id. In light of ''the financial harm caused by the COVID–19 pandemic,'' ED said that certain ''waivers and modifications [were] necessary to ensure that affected individuals [were] not placed in a worse position financially with respect to their student loans.'' Id. ED ''further determined'' that these Waivers and Modifications would ''help minimize the administrative burdens placed on affected individuals.'' Id.

In sum, ED's Waivers and Modifications amounted to two specific actions:

First, ED extended a then-current ''automatic suspension of payment and application of a zero percent interest rate'' for all individuals with federal direct loans or federally-held FFEL, Perkins, or HEAL loans. Id. ED explained how an automatic suspension of payment and zero percent interest rate originated with the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116–136 (Mar. 27, 2020), and how the President and ED had extended these measures through August 2022. Id. at 61513–61514. ED now announced that it was further extending these measures through December 31, 2022. Id. at 61513.

Second, ED announced that it would ''discharge certain amounts'' of federal direct loans and federally-held FFEL and Perkins loans. Id. Subject to specified income limitations and individual borrowers' submission of applications, ED announced that it would discharge up to $20,000 for borrowers who had

received a Pell Grant, and up to $10,000 for borrowers who had not received a Pell Grant. Id. ED explained that it was ''modif[ying] the provisions of'' HEA and its implementing regulations in order to make these discharges permissible. Id. at 61514.

ED indicated that the Waivers and Modifications were effective as of October 12, 2022 (i.e., immediately upon publication in the Federal Register), and that, except where otherwise indicated, they would ''expire at the end of the award year in which the COVID–19 national emergency expires . . . .'' Id. at 61513.

The Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and to the Comptroller General for review before a rule can take effect. 5 U.S.C. §801(a)(1)(A). The report must contain a copy of the rule, ''a concise general statement relating to the rule,'' and the rule's proposed effective date. Id. CRA allows Congress to review and disapprove federal agency rules for a period of 60 days using special procedures. 5 U.S.C. §802. If a resolution of disapproval is enacted, then the new rule has no force or effect. 5 U.S.C. §801(b)(1).

CRA adopts the definition of rule under the Administrative Procedure Act (APA), 5 U.S.C. §551 (4), which states 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.'' 5 U.S.C. §804(3). However, 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. Id.

ED did not submit a CRA report to Congress or the Comptroller General on its Waivers and Modifications. ED contends that the Waivers and Modifications do not meet the definition of a rule under CRA. In addition, ED relies on a provision of the HEROES Act allowing ED to modify student loan requirements ''notwithstanding any other provision of law.'' Response Letter at 1–2 (quoting 20 U.S.C. §1098bb(a)(1)–(2)).

DISCUSSION

At issue here is whether ED's Waivers and Modifications meet the definition of a rule under CRA. As explained below, we conclude that they do.

ED's Waivers and Modifications meet CRA's definition of ''rule'' as an agency statement of future effect designed to implement, interpret, or prescribe law or policy. They are an agency statement because ED published them as such on its webpage and in the Federal Register. 87 Fed. Reg. 61513. They have future effect because they temporarily extended a suspension of payment and interest terms, and because they invite borrowers to apply prospectively for the discharge of certain debt amounts. Id. And they implement law and policy by ''waiv[ing]'' and ''modif[ying] the provisions of'' HEA and its implementing regulations. Id.

Additionally, none of CRA's three statutory exceptions are applicable:

First, the Waivers and Modifications are not a rule of particular applicability. A rule of particular applicability is one addressed to specific, identified entities. See B–333732, Jul. 28, 2022 (explaining that a rule of general applicability is one with an open class but a rule of particular applicability is limited to those named). By contrast, ED's Waivers and Modifications suspended payment obligations and modified interest rates for all individuals with federal direct loans or federally-held student loans. 87 Fed. Reg. 61513. They also offer to discharge certain debt amounts for all such individuals meeting specified income limitations. Id.

Second, the Waivers and Modifications are not a rule relating to agency management or personnel. A rule relates to agency management or personnel if it applies to agency employees and not to outside parties. See e.g., B–331324, Oct. 22, 2019 (determining that 5 U.S.C. §804(3)(b) does not apply when the rule deals with actions regulated parties should take and not agency management or personnel). But here, the Waivers and Modifications relate to the student loan obligations of all ''affected individuals,'' which ED has defined broadly to include ''any person with a Federal student loan under title IV of the HEA.'' 87 Fed. Reg. 61512, 61513.

Third, and finally, the Waivers and Modifications substantially impact the rights and obligations of non-agency parties because they allow student borrowers to forego ordinary loan-repayment obligations and apply to have certain amounts of debt discharged.

ED's Response

ED asserts that the Waivers and Modifications are not subject to CRA because they are ''not a rulemaking, but a one-time, fact-bound application of existing and statutorily prescribed waiver and modification authority.'' Response Letter at 4. ED also states that its Waivers and Modifications are not subject to CRA because the HEROES Act allows ED to modify student loan requirements ''notwithstanding any other provision of law.'' Id. at 1–2 (quoting 20 U.S.C. §1098bb(a)(1)–(2)).

ED bases its first assertion upon Goodman v. FCC, 182 F.3d 987, 993–94 (D.C. Cir. 1999), as well as similar cases finding that an agency's action was an ''order'' or another type of action other than a ''rule'' within the meaning of APA's definitions that CRA incorporates. Id. However, those cases are distinguishable here. In Goodman, the Federal Communications Commission (FCC) took action to resolve several outstanding issues related to Specialized Mobile Radio (SMR) licensees. Id. at 990. The D.C. Circuit found that FCC's action was an ''order'' and ''not a rulemaking'' because it addressed the ''temporary waiver'' of existing FCC rules for already-issued licenses, whereas a rule would have had ''legal consequences 'only for the future.''' Id. at 994 (quoting Bowen v. Georgetown University Hospital, 488 U.S. 204, 216–17 (1988) (Scalia, J., concurring)). GAO has applied Goodman to find other agency actions beyond CRA's coverage, including most recently in B–334400, Feb. 9, 2023. In that case, we found that the Environmental Protection Agency's resolution of 69 small refinery petitions was an order, not a rule, because the at-issue petitions concerned specific requests for ''statutory exemptions,'' which the APA recognizes as a type of ''license'' and order. B–334400, Feb. 9, 2023.

Here, unlike in the above cases, ED's Waivers and Modifications are oriented generally toward the future and have potentially broad consequences for all loan holders, not just a specifically-identified subset thereof. They do not address existing requests from particular licensees or petitioners, as was the case in Goodman and in B–334400, nor do they apply existing law to the facts of any particular claim or request. To the contrary, ED's Waivers and Modifications substitute new benefits and requirements across the board. See 87 Fed. Reg. 61513. ED asserts that it has not previously submitted rules under the CRA process when using its HEROES Act authority. Those prior HEROES Act actions, however, are not before us and we do not interpret those instances as Congress or GAO finding that CRA did not apply. Instead, we have been asked to assess whether the current Waivers and Modifications are subject to CRA.

With regard to ED's second assertion, the Supreme Court has recognized that statutory ''notwithstanding any other provision of law'' clauses signal Congress's general intent to ''override conflicting provisions of any other [laws].'' Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993). To determine the scope of any particular ''notwithstanding'' clause, we construe the particular language and ''the design of the statute as a whole.'' See K. Mart Corp v. Cartier, Inc., 486 U.S. 281, 291 (1988); see also B–290125.2, B–290125.3, Dec. 18, 2002 (''In expounding a statute, we must . . . look to the provisions of the whole law, and to its object and policy.'') (quoting Maestro Plastics Corp. v. National Labor Relations Board, 350 U.S. 270, 285 (1956)). Generally, laws that are not contrary to the design of a ''notwithstanding'' clause will continue to apply despite that clause. Thus, in B–290125.2, B–290125.3, Dec. 18, 2002, an appropriation act directed the Department of Energy (DOE) to award a construction contract and, ''notwithstanding any other provision of law,'' to negotiate with the awardee and make contract modifications as necessary to ensure that groundbreaking occurred by a specified date. DOE argued that this ''notwithstanding'' clause overrode GAO's authority to decide bid protests under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §3551–3556 (2000). Id. However, GAO rejected DOE's argument because we found that our CICA authority did not ''interfere'' with and ''would not prevent'' DOE from performing the specific time-delimited tasks with which DOE's appropriation was concerned. Id. See also District of Columbia Federation of Civic Assn's v. Volpe, 459 F.2d 1231, 1265 (D.C. Cir. 1971), cert. denied, 405 U.S. 1030 (1972) (provision of Federal-Aid Highway Act directing construction of a bridge ''notwithstanding any other provision of law'' did not render inapplicable certain federal statutes regarding protection of historic sites).

By contrast, where a law cannot be reconciled with the intent of a ''notwithstanding'' clause, it is overridden. For example, in United States v. Novak, the Ninth Circuit considered a Mandatory Victims Restitution Act (MVRA) provision indicating that ''notwithstanding any other Federal law,'' a judgment imposing a fine ''may be enforced against all property or rights to property of the person fined . . . .'' 476 F.3d 1041, 1045, 1046 (9th Cir. Feb. 22, 2007) (quoting 18 U.S.C. §3613A(d)). The Court found that this provision overrode sections of the Employee Retirement Income Security Act of 1974 (ERISA) prohibiting the ''alienation'' of retirement savings. Id. In doing so, the Court noted the ''breadth of Congress's reference to ''all property or rights to property,'' as well as its use of express language to override a similar ''anti-alienation'' provision in the Social Security Act of 1935 (SSA), among other things. Id. at 1047; see also, e.g., Schneider v. United States, 27 F.3d 1327 (8th Cir. 1994) (judicial review precluded by Military Claims Act provision stating that agency determinations were final and conclusive ''notwithstanding any other provision of law.'').

Here, the ''notwithstanding'' clause in the HEROES Act does not exempt ED's Waivers and Modifications from CRA. CRA does not contain a ''specific reference'' to the HEROES Act. See 5 U.S.C. §801; 20 U.S.C. §1098bb(a)(1). As a basic matter, however, following CRA does not conflict with the design or policy of the HEROES Act. Congress in the HEROES Act empowered ED to address

''emergency'' situations. It did this by directing ED to waive or modify student loan provisions that it found necessary to ''ease the burden'' on loan recipients and to ''ensure'' that the emergency did not place them in a ''worse position,'' among other things. Id. §1098bb(a)(2). It also did this by directing ''no delay'' in the implementation of ED's waivers and modifications. Id. §1098bb(d).

Consistent with these aims, CRA also specifically contemplates the possibility of emergency actions requiring immediate implementation. As a general matter, rules subject to CRA may not become effective for 60 days pending Congress's review and potential enactment of a disapproval measure. 5 U.S.C. §801, 802. But Congress in CRA allowed agencies to find for ''good cause'' that normal delays are ''impracticable, unnecessary, or contrary to the public interest,'' and the agency's rule may then take effect at such time as the agency determines. 5 U.S.C. §808(2). As in B–290125.2, then, applying CRA's requirements does not ''interfere'' with and ''would not prevent'' ED from carrying out emergency actions under the HEROES Act. B–290125.2, B–290125.3, Dec. 18, 2002. If ED believes that its Waivers and Modifications must take immediate effect-as appears to be the case—then it need only make a ''good cause'' finding consistent with CRA's requirements.

Context considerations provide additional support for our conclusion that Congress did not mean to exempt HEROES Act actions from CRA. First, CRA itself contains a clause indicting that it should apply ''notwithstanding any other provision of law.'' 5 U.S.C. §806(a). While this alone is not definitive, Congress in the HEROES Act took express action to override certain other provisions without taking comparable action on CRA. Specifically, Congress said that HEA's negotiated rulemaking requirements ''shall not apply,'' and that the HEROES Act's public-reporting requirement would apply ''notwithstanding'' the normal reporting requirements applicable to ED under GEPA and APA (which GEPA references). 20 U.S.C. §1098bb(d). If we interpret the ''notwithstanding'' clause literally, as ED urges us to do, then it was not necessary for Congress to make any of these additional carve-outs because neither HEA, nor OEPA, nor APA references the HEROES Act. U.S.C. §553, 20 U.S.C. §§1089(c), 1098a, 1232. Clearly, then, Congress contemplated that procedural requirements like those in HEA, GEPA, and APA could continue in force without presenting any conflict with the ''notwithstanding'' clause; the HEROES Act needed to address these provisions specifically to exempt ED from their requirements.

ED also asserts that the HEROES Act speaks definitively ''to the role of Congress vis-à-vis waivers and modifications'' with ''its own mechanism of congressional reporting.'' Response Letter at 6. As described above, the HEROES Act requires ED to provide Congress with an ''impact report'' no later than 15 months after it provides any waiver or modification. Id. §1098bb(c). On its face, this reporting requirement does not displace the purpose of CRA and its requirements, which trigger before an agency takes action. It would be wholly consistent with both CRA and the HEROES Act for an agency to first submit a CRA report (and find ''good cause'' to forego the normal requirements), and then to take action pursuant to the HEROES Act, and then to report on the impact of such actions within 15 months. See 8–333501, Dec. 14, 2021 (finding that the Centers for Disease Control and Prevention (CDC) had to submit a CRA report in connection with new masking requirements, but that it could address the need for emergency implementation through a good cause waiver); 8–333732, Jul. 28, 2022 (''While CRA does not provide an emergency exception from its procedural requirements . . . (it] addresses an agency's need to take emergency action without delay.''). Indeed, over the course of the COVID–19 public health emergency, several agencies have submitted rules for congressional review while waiving the delay in effective date by invoking CRA's good cause exception. See, e.g., B–33486, Aug. 10, 2021; B–333381, Jul. 9, 2021; B–332918, Feb. 5,2021.

Issues before the Supreme Court

With this decision, we are not addressing the questions currently before the Supreme Court in Biden v. Nebraska, which include whether ED's Waivers and Modifications ''exceed[ed] the Secretary [of Education]'s statutory authority or [were] arbitrary and capricious.'' See Supreme Court Docket No. 22–506, Questions Presented (Dec. 1, 2022), available at https://www.supremecourt.gov/docket/docketfiles/html/gp/22-00506qp.pdf. For present purposes, we treat the Waivers and Modifications as an exercise of the HEROES Act authority that ED invoked to support them. We hold only that a valid exercise of authority under the HEROES Act is subject to CRA We need not reach the more specific conclusion about the substantive validity of ED's Waivers and Modifications at issue in the Supreme Court's decision in Biden v. Nebraska in order to reach a conclusion under CRA.

CONCLUSION

ED's Waivers and Modifications meet the definition of a rule under CRA and no exception applies. Therefore, ED's Waivers and Modifications are subject to the requirement that they be submitted to Congress. If ED finds for good cause that normal delays are impracticable, unnecessary, or contrary to the public interest, then its rule may take effect at whatever date ED chooses, consistent with CRA. 5 U.S.C. §808(2).

EDDA EMMANUELLI PEREZ,
General Counsel.

ARMS SALES NOTIFICATION

Mr. MENENDEZ. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee's intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD–423.

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

DEFENSE SECURITY
COOPERATION AGENCY,
Washington, DC.

Hon. ROBERT MENENDEZ,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23–12, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Greece for defense articles and services estimated to cost $268 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

MIKE MILLER
(For James A. Hursch, Director).

Enclosures.

TRANSMITTAL NO. 23–12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Government of Greece).

(ii) Total Estimated Value:

Major Defense Equipment * $163.3 million.

Other $104.7 million.

Total $268.0 million.

Funding Sources: National Funds ($243.0 million). Foreign Military Financing ($25.0 million).

(iii) Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:

Major Defense Equipment (MDE):

Sixty-three (63) Assault Amphibious Vehicles, Personnel Variant (AAVP–7A1).

Nine (9) Assault Amphibious Vehicles, Command Variant (AAVC–7A1).

Four (4) Assault Amphibious Vehicles, Recovery Variant (AAVR–7A1).

Sixty-three (63) 50-Caliber Machine Guns (Heavy Barrel).

Non-MDE:

Also included are MK–19 Grenade Launchers; M36E T1 Thermal Sighting Systems (TSS), supply support (spare parts), support equipment (including special mission kits/tools/Enhanced Applique Kits (EAAK)), training, technical manuals (UNCLASSIFIED), technical data, U.S. Government and contractor engineering, technical support and assistance (including Contractor Engineering Technical Services (CETS)), Integrated Logistic Support (ILS) management services, parts obsolescence remediation, calibration services transportation, Follow-on Support (FOS), Return, Repair and Reshipment of unserviceable repairable items/equipment, applicable software and apparel, and other related elements of logistics and program support.

Military Department: Navy (GR–P–SCO).

Prior Related Cases, if any: None.

Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex.

(viii) Date Report Delivered to Congress: March 17, 2023.

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece—Assault Amphibious Vehicles

The Government of Greece has requested to buy sixty-three (63) Assault Amphibious Vehicles, Personnel Variant (AAVP–7A1), nine (9) Assault Amphibious Vehicles, Command Variant (AAVC–7A1), four (4) Assault Amphibious Vehicles, Recovery Variant (AAVR–7A1), and sixty-three (63) 50-Caliber Machine Guns (Heavy Barrel). Also included are MK–19 Grenade Launchers, M36E T1 Thermal Sighting Systems (TSS), supply support (spare parts), support equipment (including special mission kits/tools/Enhanced Applique Kits (EAAK)), training, technical manuals (UNCLASSIFIED), technical data, U.S. Government and contractor engineering, technical support and assistance (including Contractor Engineering Technical Services (CETS)), Integrated Logistic Support