NOT VOTING—4

Durbin	Fetterman
Feinstein	McConnell

The amendment (No. 14) was rejected.

The PRESIDING OFFICER (Ms. HASSAN). The Senator from Minnesota.

S. 316

Ms. KLOBUCHAR. Madam President, I rise in support of the legislation repealing the 1991 and 2002 authorizations for use of military force against Iraq. I am pleased about the vote.

I want to thank Senator TIM KAINE and Senator TODD YOUNG for leading this bipartisan legislation as well as Chair BOB MENENDEZ for moving it through the Senate Foreign Relations Committee.

With this bill, we are asserting Congress's constitutional power to determine when to begin and end wars. These AUMFs were passed 32 and 21 years ago respectively. The Gulf war ended in a matter of months, and the Iraq war that began more than a decade later has been over for 12 years. It is time for Congress to act.

Open-ended AUMFs serve no strategic purpose and undermine Congress's authority to determine if and when to send our troops into battle, which is a major decision that we should make.

On top of that, they come with great risk. It is far too easy for a Presidential administration to treat an AUMF as blanket permission to enter into or to stoke conflicts abroad. It doesn't matter which party is in the White House—our Constitution grants war powers to Congress.

We also must recognize that the situation on the ground has changed. Iraq is now a sovereign democracy and America's strategic partner in the Middle East. If we want to work with them to advance stability in the region—and we should—what kind of signal does it send to have our laws identify Iraq as an enemy nation?

Repealing the AUMFs will not halt our military's strategic operations in Iraq, and it will not harm our national defense; but it will offer a measure of closure to the veterans and servicemembers who sacrificed so much on the battlefield.

I will not soon forget when I went to Baghdad and Fallujah and saw firsthand the bravery and commitment of our troops. The Minnesota soldiers I met over there—as, I am sure, the Presiding Officer met with New Hampshire soldiers—never once complained about their missions. Instead, they asked me to call their moms and dads at home to tell them they were OK.

And not a day goes by that I don't think of that afternoon at the Baghdad Airport. By circumstance, we were getting on a plane. I saw a group standing, and I went over there. They were members of the Duluth National Guard, whom I have met many times since. They were there, saluting, as six caskets, draped in American flags, were loaded onto a plane to be flown home.

Our troops did their jobs and more. Let's do ours. It is time to bring an end to the AUMFs and the war.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

MORNING BUSINESS

(At the request of Mr. SCHUMER, the following statement was ordered to be printed in the RECORD.)

CONFIRMATION OF GORDON P. GALLAGHER

● Mr. DURBIN. Madam President, today, the Senate voted to confirm Judge Gordon Gallagher, nominated to the U.S. District Court for the District of Colorado.

Judge Gallagher earned his B.A. from Macalester College and his J.D. from the University of Denver College of Law. After graduating from law school, he began a litigation career focused on criminal work. He spent a year with Underhill & Underhill, P.C., and then joined the Mesa County District Attorney's Office, where he prosecuted a wide range of felonies and misdemeanors. Judge Gallagher later entered solo legal practice, focusing on criminal defense work. During this time, he served as a contract attorney with Alternate Defense Counsel, which provides representation to indigent defendants when the local public defender is conflicted out of a matter. In total, he has tried approximately 275 cases to verdict, including 250 jury trials.

While remaining a practicing attorney, Judge Gallagher also serves as a part-time Federal magistrate judge for the District of Colorado, a position he has held since 2012. In this role, Judge Gallagher has presided over approximately a dozen criminal misdemeanor and petty offense bench trials. He also supervises the District's pro se intake division, helping to expedite consideration and resolution of pro se matters. Judge Gallagher was unanimously rated ''well qualified'' by the ABA and received a bipartisan vote in committee. He has the strong support of his home State Senators—Mr. BENNET and Mr. HICKENLOOPER—and the Colorado legal and law enforcement community.

Given his significant trial experience and deep knowledge of Western Colorado, I strongly support the nomination of Judge Gallagher and am glad to see him confirmed.●

(At the request of Mr. SCHUMER, the following statement was ordered to be printed in the RECORD.)

VOTE EXPLANATION

● Mr. DURBIN. Madam President; I was necessarily absent for rollcall vote No. 63, motion to proceed to S.316, a bill to repeal the authorizations for use of military force against Iraq. Had I been present for the vote, I would have voted yea.

I was necessarily absent for rollcall vote No. 64, Confirmation of the nomination of Gordon Gallagher to be U.S. District Judge for the District of Colorado. Had I been present for the vote, I would have voted yea.

I was necessarily absent for rollcall vote No. 65, on the Paul Amendment No. 2, to repeal the 2001 Authorization for Use of Military Force. Had I been present for the vote, I would have voted nay.

I was necessarily absent for rollcall vote No. 66, on the Graham Amendment No. 14 to provide for more targeted authority under the Authorizations for Use of Military Force Against Iraq Resolution of 2002. Had I been present for the vote, I would have voted nay.●

GOVERNMENT ACCOUNTABILITY OFFICE LEGAL OPINION

Mr. CASSIDY. Madam 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:

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/factsheet-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 Ranking Members Fox and Burr, Senators Cassidy and Cornyn, and Members of Congress Good and 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, GA0–06–1064SP (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 carveouts because neither HEA, nor GEPA, nor APA references the HEROES Act. 5 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 B–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); B–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/qp/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.

ADDITIONAL STATEMENTS

RECOGNIZING THE BISMARCK CAPITAL ICE CHIPS

● Mr. CRAMER. Madam President, this is a time of year when sports seasons wrap up and tournaments and final competitions crown new champions. I have the privilege today of recognizing one team of outstanding figure skaters from Bismarck, ND. They are the Capital Ice Chips, 22 high school girls under the age of 18 who this month skated their way to the gold medal in the U.S. National Synchronized Skating championships.

The Ice Chips are not strangers to this national competition, which was held in Peoria, IL. They have qualified for nationals for the past 13 years and have stood on the winners podium nine times. This year, they were on the top step for the first time after competing against 12 other teams hailing from much larger metropolitan areas in California, New York, Illinois, New Jersey, and Arizona.

The 20-year-old Bismarck Figure Skating Club has been dominant in national competitions because it begins training young skaters as young as preschoolers. With considerable support from parents and top-notch teachers and coaches at every stage of learning, these young skaters also start synchronized skating at an early age. Most of this year's Capital Ice Chips are veteran skaters who have attended many regional and national competitions.

I want to commend the coaches, notably Rebecca Gallion, who has been with the Bismarck Figure Skating Club for all of its 20 years, as well as Selena Morris and Hayley Trom. Previous skaters have become instructors and coaches and have been instrumental in helping the Ice Chips advance to the level of excellence on display at the national competition this year.

The skaters on the Capital Ice Chips national championship team are Emily Appert, Elyse Bock, Nora Carlson, Gabriella Deeter, Chloe Dwyer, Isabelle Ersland, Brooklyn Gallion, Tatum Gietzen, Ella Haar, Miah Hamar, Kamri Hopfauf, Ashlyn Iverson, Nora Luckenbill, Taryn Nelson, Addison Rakness, Kadence Rambur, Addisen Renton, Morgan Schatz, Lexi Stenberg, Reece Theel, Ethnie Zahn, and Kinzie Zahn.

North Dakota's legendary winters bring out a love of winter sports, including those played on ice rinks across my State. Figure and synchronized skating require teamwork and discipline in these young athletes, and I congratulate the Capital Ice Chips for their dedication and hard work that earned them this championship. I join the rest of North Dakota in thanking the Bismarck Figure Skating Club and the Capital Ice Chips for inspiring all of us to achieve excellence. They have demonstrated what can be achieved by combining faith and passion with determination and teamwork.●

TRIBUTE TO ALEX RAY, LISA MURE, SUSAN MATHISON, AND STEVE RAND

● Ms. HASSAN. Madam President, I am honored to recognize Alex Ray and Lisa Mure of Holderness and Susan Mathison and Steve Rand of Plymouth as March's Granite Staters of the Month. The group of friends started a nonprofit, Common Man for Ukraine, that has raised more than $2.6 million for Ukrainian children impacted by Putin's unconscionable invasion of Ukraine.

Following the onset of the war, the group wanted to figure out how they could help the Ukrainian people. Through their membership with the Plymouth Rotary Club, Alex and Steve connected with Rotarian leaders in Poland, which was already seeing an influx of Ukrainian refugees fleeing the conflict. And then Alex, Susan, Steve, and Lisa jumped into action. Within just 2 weeks, the four friends were on the ground in Poland and Ukraine meeting with Ukrainian and Polish Rotary Club leaders about the needs of local displaced person camps, orphanages, and safehouses for displaced children.

When the group returned to New Hampshire, they began to raise funds, with the first donation being $500 from the Plymouth Rotary Club. Since then, they have raised more than $2.6 million to purchase 750 tons of food for their partners in Poland. The NH Fisher Cats AA baseball team also hosted a benefit game to raise funds.

The group has not let up in their efforts over the past year. They have visited Poland and Ukraine three more times to evaluate the changing needs on the ground in coordination with their Rotarian partners. In addition to packing warehouses with essential goods, they also delivered those relief supplies themselves to safehouses and orphanages for children impacted by the war. This past Christmas, they brought personal solar lanterns, food, generators, and presents to 21 Ukrainian orphanages, so that the children could experience literal and symbolic light throughout the various power outages. When the Granite Staters arrived with the supplies, the children excitedly came outside in the cold to greet them, and they were able to share Christmas greetings and carols despite the language barrier. The four volunteers bravely returned to Ukraine on the war's February anniversary to deliver supplies to 14 additional orphanages and safehouses.

The work that Alex, Susan, Steve, and Lisa have done with their nonprofit organization is an incredible testament to the impact that Granite Staters can have, even across the world, when they are helping others. They refused to stand by during a devastating war and the subsequent refugee crisis, instead boldly finding a way to directly help Ukrainian children. Alex, Susan, Steve, and Lisa embody the Granite State spirit of taking on a challenge directly in order to make a real difference, and I know that they will continue to make New Hampshire proud through their work in Poland and Ukraine.●

TRIBUTE TO PASTOR HAN BYEONG CHEOL

● Mr. OSSOFF. Madam President, I rise today to commend Pastor Han