We have a huge national security risk, and God forbid we have a huge terrorist attack again just because we want to tell everyone “The plan is working as intended. Look away. The numbers are down.” when we literally are not even talking about it on the floor right now, but we should because it matters. The national security of our country is counting on us having adult conversations about the direction of our country, and I would encourage us to get started on this sooner rather than later for the sake of our future as a nation.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. OSSOFF). Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Senate consider the following nominations en bloc: Calendar Nos. 76, 128, and 216; that the Senate vote on the nominations en bloc without intervening action or debate; that the motions to reconsider be considered made and laid upon the table; and that the President be immediately notified of the Senate’s action.

There being no objection, the Senate proceeded to consider the nominations en bloc.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nominations of Justin L. Martinez, of Utah, to be United States Marshal for the District of Utah for the term of four years; William R. Hart, of New Hampshire, to be United States Marshal for the District of New Hampshire for the term of four years; and Shannon R. Saylor, of Virginia, to be United States Marshal for the Eastern District of Virginia for the term of four years, en bloc?

The nominations were confirmed en bloc.

LEGISLATIVE SESSION

MORNING BUSINESS

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

The PRESIDING OFFICER. The Senate is in recess until 1:30 p.m.

GAO OPINION LETTER

Mr. MARSHALL. Mr. President, I ask unanimous consent that the following GAO opinion letter be printed in the CONGRESSIONAL RECORD:

County to Program Discrimination Complaint Processing—Policy Update
File: B–334411
Date: June 5, 2023.

The U.S. Department of Agriculture’s Food and Nutrition Service (USDA/FNS) issued a memorandum titled Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update (Update), pursuant to a request for a decision as to whether the Update is 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. USDA/FNS did not submit a CRA report to Congress or the Comptroller General on the Update.

The Update announced USDA/FNS’s conclusion that the prohibitions against sex discrimination in USDA/FNS-enforced statutes prohibit discrimination on the basis of gender identity and sexual orientation as complaints of prohibited sex discrimination. We conclude that the Update meets CRA’s definition of a rule and no CRA exception applies. Therefore, the Update is subject to CRA’s submission requirement.

On May 5, 2022, the U.S. Department of Agriculture’s Food and Nutrition Service (USDA/FNS) issued a memorandum titled Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update, available at https://www.fns.usda.gov/cr/crd-01-2022 (last visited April 14, 2023). We received a request for a decision as to whether the Update is a rule for purposes of the Congressional Review Act (CRA). Letter from Senators Roger Marshall, Marsha Blackburn, John Barrasso, Tom Cotton, and James Lankford, to the Comptroller General (June 16, 2022). As discussed below, we conclude that the Update is a rule subject to CRA’s submission requirement.

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 (Jan. 31, 2006). (Washington, D.C.: Sept. 2006) (Procedures), available at https://www.gao.gov/products/gao-06-1064sp. Accordingly, we reached out to USDA/FNS for its legal views on the Update. See Letter from Assistant General Counsel, GAO, to General Counsel, USDA (July 13, 2022). Although USDA/FNS did not provide a substantive response to our request, we have found no such arguments. Based on the factual information and legal issues we reviewed, we determined that the Update is subject to CRA’s submission requirement.

The Update meets the CRA’s definition of a rule. It is an agency statement issued by the USDA/FNS and the Food and Nutrition Service and the Food and Nutrition Service Programs. Update at 1. It has future force because it directs state agencies and program operators to “adopt” recent analyses by the Department of Justice and the Department of Education, both of which had applied Bostock to find that Title IX includes a prohibitions against sex discrimination based on gender identity and sexual orientation. Title IX of the Education Amendments of 1972 (Title IX) and the Food and Nutrition Act. USDA/FNS said the Act’s nondiscrimination “sufficiently similar” to Title VII’s nondiscrimination language as to make Bostock’s holding applicable.

Based on the above determinations, the Update directed all “State agencies and program operators” who administer USDA/FNS programs to “expeditiously review their procedures” and “make any changes necessary to ensure complaints allegations of prohibited sex discrimination.”” Update at 3. The Update further instructed state agencies to “distribute [the Update] to local agencies, Program Operators and Sponsors, and all other subrecipients of Federal financial assistance.” Id. Finally, the Update “advised” state agencies and program operators “that the interpretations in this Update” do not determine the outcome in any particular case, which will depend on the specific facts and circumstances of that case.” Id.

The Congressional Review Act (CRA)
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 et seq. The rule 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 request the agency to disapprove or disapprove and disapprove and declare the rule has no force or effect. 5 U.S.C. § 801(b)(1).

CRA adopts the definition of a rule under the Administrative Procedure Act (APA), 5 U.S.C. § 551(4), which is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, establish, describe, change, suspend, or dissolve law or policy or establish organization, procedure, or practice requirements of an agency.” 5 U.S.C. § 801(3). However, CRA excludes three categories of rules from coverage: (1) rules of general 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.

USDA/FNS did not submit a CRA report to Congress or the Comptroller General on the Update. In its first response to GAO, USDA/FNS asked us to “withdraw [our] request for legal information” because of two pending lawsuits concerning the Update. First Response Letter, at 1. Although USDA/FNS did not provide a substantive response to GAO’s inquiries concerning this matter, we reviewed filings concerning the lawsuits identified in USDA/FNS’s First Response Letter to determine if the agency or other parties raised arguments concerning the applicability of CRA. We found no such arguments. Based on the factual information and legal issues we reviewed, we determined that the Update is subject to CRA’s submission requirement.

An agency action is subject to CRA if it meets the APA’s definition of a rule and no CRA exception applies. Because the Update meets the APA’s definition of a rule, and because no CRA exception applies, it is subject to CRA’s submission requirement.

The Update meets the definition of a rule. It is an agency statement issued by the USDA/FNS and all others implementing USDA/FNS programs, by instructing that discrimination based on gender identity and sexual orientation can constitute prohibited sex discrimination under Title IX and the Food and Nutrition Act. Id. at 2.

Consequently, none of CRA’s exceptions apply:
First, the Update is not a rule of particular applicability. Rules of particular applicability are those addressed to specific, identified entities that address actions that may or may not be taken, in light of the facts and circumstances. B–334411, Feb. 9, 2023. B–334411, Feb. 26, 2022. Second, the Update is addressed to recording systems in all regions and “all states,” and instructs them
to distribute the Update further to "local agencies, Program Operators and Sponsors, and all other subrecipients of Federal financial assistance," Update at 1, 3. USDA/FNS intended the Update to reach everyone implementing FNS programs and instructed that it did not "determine the outcome in any particular case." Id. at 3. Thus, the Update is not a rule. See 5 U.S.C. § 553(a)(1). Section 503 did not create a rule relating to agency management or personnel. "A rule falls within the CRA exception for rules relating to agency management or personnel if it relates to purely internal agency matters, with no effect on non-agency parties." B–334221, Feb. 9, 2023. Here, the Update relates primarily to non-agency parties. As discussed above, it is addressed to "all state directors" of USDA/FNS programs, among others, and it directs further distribution to other nonfederal entities. Update at 1. The Update’s stated purpose is to "provide direction to" such non-agency parties, to ensure their procedures comport with a USDA/FNS policy. Id. That policy, moreover, concerns the rights of private households to have their complaints of discrimination based on gender identity and sexual orientation researched and evaluated as complaints of discrimination based on sex. Id. at 3. Thus, the Update is not a rule relating to agency management or personnel. See B–333732 at 3. 2022 (USDA update to Thrifty Food Plan did not qualify for CRA’s second exception because it addressed "the amount of SNAP benefits for qualifying families"). B–333501, Dec. 14, 2021 (Centers for Disease Control and Prevention (CDC) mask requirement did not qualify for CRA’s second exception because it addressed public travelers and conveyance operators).

Third, and finally, the Update has a substantial impact on the rights and obligations of non-agency parties. We have recognized that agencies may meet the third CRA exception by implementing FNS programs and instructed that it did not "determine the outcome in any particular case." Id. at 3. Thus, the Update is a rule for CRA purposes because it meets the APA’s definition of a rule and no CRA exception applies. Therefore, the Update is subject to CRA’s requirement that it be submitted to Congress before it can take effect. **Edda Emmanuelli Perez,** General Counsel.

50TH ANNIVERSARY OF KIKKOMAN FOODS, INC.

Ms. BALDWIN. Mr. President, today I rise to recognize Kikkoman Foods, Inc., on its 50th anniversary. I am proud to honor this organization and the ongoing international exchange of food culture from Japan to Walworth, WI.

What began in 1973 as the first U.S.-based plant for the manufacturing of soy sauce has now become a strong part of the Walworth community. The Mogi family soy sauce recipe dates back over 300 years and was first introduced in the United States at a Navy Pier global business showcase. Crowds present in Chicago tried Kikkoman soy sauce for the first time. It was such a big hit that Kikkoman created a committee to investigate production in the United States. The committee settled on Walworth, WI, because they saw great potential in the proud tradition of Wisconsin agriculture and a midwestern work ethic. In addition, the Midwest region provided an optimal climate for the production of soy beans and wheat, essential components of soy sauce.

Soon, Kikkoman’s plant in Walworth aided the fusion of American and Japanese cuisine. In Walworth, soy sauce became a kitchen staple. Kikkoman continues to advance their mission of expanding the use of soy sauce as a “versatile flavor enhancer.” I appreciate the continued fusion of these two cultures and the partnerships Kikkoman in the Wisconsin community. Together, Japanese technology and American agriculture blend to create a successful overseas expansion for Kikkoman.

Today, the plant in Walworth is Kikkoman’s North American production headquarters. An estimated 34 million gallons of soy sauce annually, more brewed soy sauce than any other facility around the world.

Since its introduction to Wisconsin, Kikkoman has been an essential contributor to the Wisconsin economy and shares the same commitment to the development of Wisconsin businesses, suppliers, service providers, and contractors. Ultimately, Kikkoman is a great example of the cooperation and success of American and Japanese partnerships.

We in Wisconsin are grateful to Kikkoman for sharing the vibrant tradition of soy sauce brewing and the Japanese culinary tradition. I am honored to recognize the 50th anniversary of Kikkoman Foods, Inc., and look forward to their continued success in Wisconsin for years to come.

TRIBUTE TO KEN REICHARD

Mr. CARDIN. Mr. President, I rise to congratulate Kenneth Paul Reichard on his retirement and to thank him for his 17 years of outstanding service as my Montgomery County director and his career of selfless service to the residents of the county and all Marylanders. This Monday, the city of Rockville will officially recognize Ken—a lifelong resident—for his service. On April 14, Representative JAMIE RASKIN interviewed Ken for one of his weekly "Local Hero" podcasts. The accolades Ken is receiving are well-deserved. As Montgomery County Council President Evan Glass stated, "Ken has been a terrific advocate for Montgomery County! We are all beneficiaries of his grace, good humor and leadership." Ken is a local hero to Maryland and a personal hero to me.

Ken was born at the original Montgomery General Hospital in Olney, MD, on August 17, 1943. His parents were Kenneth Henderson Reichard of Guilford Township, Franklin County, PA, and Gladys Lydia Martin Reichard of Reid, Washington County, MD. He is a descendent of a Revolutionary War soldier, George Barnard Reichard, from Pennsylvania, who fought from 1777 to 1780. He grew up in a union household on Horners Lane in Rockville with an older brother, Lee. Ken graduated from Richard Montgomery High School, Rockville, in 1961. While he attended high school, he started working part-time at the Safeway grocery store on Bradley Boulevard in Bethesda. He quickly joined the United Food and Commercial Workers International Union—UFCW—and became the local’s youngest business agent ever when he was just 21, winning his first election by 87 votes. He traveled to other stores around the State, and it wasn’t long before he was negotiating contracts. By the time he finished his career with UFCW, he was executive assistant to...