From Syria, and we have no background information on any of the folks coming in from Syria, we have had right at 200 people come in from Syria so far this year.

From Pakistan, we have had over 500.

From Somalia, we have had over 1,600.

From China, we have had right at 10,000 people this year. If I go back 2 years ago, from China, it was 450.

Yes, there is a huge shift that is actually occurring of Middle Eastern men, North African men, men from Russia and from China who are accelerating across our southern border, because right now apparently the administration's plan is ''working as intended,'' and we have thousands of people who are still crossing our border.

I have heard even some recent reporting in the news on this that the numbers are way down. The numbers are way down. But apparently the press doesn't take the time to be able to look and see that the numbers have actually been split out into two different categories. The numbers are not down. In fact, the numbers right now would average somewhere around 450,000 a month—right now.

The highest month during the peak of the immigration surge under the Obama administration, the highest month that happened during that time period when there was chaos and cameras that were focused on the Southwest border—the highest month was 69,000. The administration is now saying ''Our plan is working'' when there are 150,000 a month coming across the border.

It is not working. It is fudging the numbers. It is trying to tell the American people: Look away. It is trying to say ''We are doing a whole new set of enforcement on the border'' when really what is happening is that people are being released into the country the same as they have always been released into the country for the last 2 years. The difference is, they are told: Hey, if you show up for your hearing 3 years from now, we may be more strict to you. But at the border, they are moving through just the same, being waved through.

I bring this up to this body to ask a simple question: Have we learned nothing from 9/11? Thousands of Americans died because a group of individuals overstayed their visas here in the United States. No one went to check on them. No one went to track them and just ignored the realities of what could be there.

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 have people coming in from all over the world who may be coming to work here or may be coming in for nefarious reasons. We don't know. We literally don't know if these folks are fleeing poverty or fleeing justice because we have no criminal history on these individuals coming in from around the world—none.

In fact, as frightening as it may seem, right now the current policy happening at the southwest border is if someone shows up without any identification or with a photocopy of an ID that they say is theirs, it is being accepted as real.

They can literally come in and say, I am from Mauritania or Somalia or Syria or Iran or China or Russia, and this is my name, and they have no ID. We are creating for them a new ID card that is an American ID card and handing them a new identity and saying ''Show up at your hearing 3 years from now, in the future. Travel anywhere you want in the country. You can use this card to fly, to travel, or to show as ID'' when we literally have no idea if that is what their name is or that is the country they are from. That is the plan that is ''working as intended'' right now on our southwest border. I think it is a huge national security vulnerability.

We need to talk about asylum. We need to talk about how we are going to define the national security risks of the United States. This body needs to have a real conversation about what legal immigration looks like and what we are going to say to the world about illegal immigration.

If any of these individuals were to travel into Canada right now, the Canadians already have a clear law dealing with asylum. These folks would not be accepted into Canada because it would violate their basic asylum rules on how they handle it. But they are being literally waved into our country with no ID, with no criminal background check, and released into the country under the promise that they will show up at a hearing 3 to 7 years in the future. Can somebody explain to me why that is logical?

If these same folks moved into Germany and said they wanted to claim asylum, Germany would put them in what they call a humanitarian center, where they would stay. They wouldn't be released into Germany. Germany would never do that. They would stay in that one humanitarian area while they process through their asylum claim, and if they didn't qualify for asylum, they would be sent back to their original country, and that is usually within about 2 to 3 months. We are instead handing them a brandnew ID, which we have no idea is their real name, releasing them into the country, and saying: We hope you show up 3 to 7 years from now at your hearing. Can somebody tell me that is wise?

I am not asking for something crazy or something, quite frankly, the rest of the world doesn't already do, but for some reason, this body is locked up to talk about what everyone sees as obvious, and we refuse to even debate the issues of asylum and national security.

This is not caustic and hard; this is reasonable, where most Americans are. But we 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. Without objection, it is so ordered.

GAO OPINION LETTER

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

Matter of: U.S. Department of Agriculture, Food and Nutrition Service—Applicability of the Congressional Review Act to Food and Nutrition Service Policy Memorandum CRD 01–2022, Application of Bostock v. Clayton

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

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

U.S. GOVERNMENT
ACCOUNTABILITY OFFICE,
Washington, DC.

DECISION

Matter of: U.S. Department of Agriculture, Food and Nutrition Service—Applicability of the Congressional Review Act to Food and Nutrition Service Policy Memorandum CRD 01–2022, Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update.
File: B–334411.
Date: June 5, 2023.

DIGEST

The U.S. Department of Agriculture, Food and Nutrition Service (USDA/FNS) published a memorandum titled Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update (Update). GAO received 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. Based on this conclusion, the Update directed state agencies and program operators to handle complaints alleging 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.

DECISION

On May 5, 2022, the U.S. Department of Agriculture, Food and Nutrition Service (USDA/FNS) issued a memorandum titled Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update (Update), available at https://www.fns.usda.gov/cr/crd-01-2022 (last visited Apr. 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, GAO–06–1064SP (Washington, D.C.: Sept. 2006) (Procedures), available at https://www.gao.gov/products/gao-06-1064sp. Accordingly, we reached out to USDA/FNS to obtain the agency's legal views. Letter from Assistant General Counsel, GAO, to General Counsel, USDA (July 13, 2022). Although USDA/FNS did not provide a substantive response with its legal views due to ongoing litigation, we determined we have sufficient information to issue a decision on this matter. Letter from General Counsel, USDA, to Assistant General Counsel, GAO (Aug. 4, 2022) (First Response Letter); Letter from General Counsel, USDA, to Assistant General Counsel, GAO (Oct. 20, 2022) (Second Response Letter).

BACKGROUND

Prohibitions Against Sex Discrimination in USDA/FNS Programs

USDA/FNS administers federal programs to increase food security and reduce hunger among children and low-income people. USDA/FNS, Our Agency, About FNS, available at https://www.fns.usda.gov (last visited Apr. 10, 2023). Laws such as Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §1681–1688, and the Food and Nutrition Act of 2008, as amended, 7 U.S.C. §§2011 et seq., include prohibitions against sex discrimination. Update at 1. USDA/FNS enforces those prohibitions. Id. Moreover, where USDA/FNS has delegated certain program responsibilities to states and other nonfederal entities, these states and entities may process complaints alleging sex discrimination. See, e.g., 7 C.F.R. §271.4 (assigning states the responsibility to administer the Supplemental Nutrition Assistance Program (SNAP)), §272.6 (states may process SNAP applicants' discrimination complaints).

In the Update, USDA/FNS announced that it had reevaluated the prohibitions on sex discrimination ''in all FNS programs'' due to the Supreme Court's decision in Bostock v. Clayton County, 590 U.S. ____, 140 S. Ct. 1731 (2020). Update at 1, 2. The Supreme Court in Bostock held that the prohibition in Title VII of the Civil Rights Act of 1964 against sex discrimination in employment includes a prohibition against discrimination on the basis of gender identity and sexual orientation. Bostock, at 1741. ''In light of Bostock,'' USDA/FNS explained in the Update that ''discrimination based on gender identity and sexual orientation can [also] constitute prohibited sex discrimination under Title IX [of the Education Amendments of 1972] and the Food and Nutrition Act.'' Update at 2. With respect to Title IX, USDA/FNS indicated that it was ''adopting'' 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 prohibition against discrimination based on gender identity and sexual orientation. With respect to the Food and Nutrition Act, USDA/FNS said the Act's nondiscrimination provision is ''sufficiently similar'' to Title VII's nondiscrimination language as to make Bostock's holding applicable. Id.

Based on the above determinations, the Update directed all ''State agencies and program operators'' who administer USDA/FNS programs to ''expeditiously review their program discrimination complaint procedures'' and ''make any changes necessary to ensure complaints alleging discrimination on the basis of gender identity and sexual orientation are processed and evaluated as [sex discrimination] complaints.'' 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 interpretation outlined in [the Update] does 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(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. See 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 a 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.

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. When GAO informed USDA that those lawsuits did not prevent us from carrying out our responsibility to assist Congress, and that we would proceed to issue a legal decision, USDA nevertheless ''respectfully decline[d] to comment'' on the questions we posed. Second Response Letter, at 1–2. Although USDA/FNS did not provide a substantive response to GAO's inquiries concerning this matter, we reviewed filings in the lawsuits identified in the agency'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 we have sufficient information to issue a decision on this matter.

DISCUSSION

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, the Update is subject to CRA's submission requirement.

The Update meets the APA definition of a rule. It is an agency statement issued by the FNS/Civil Rights Division to the Regional and State Directors of all Food and Nutrition Service programs. Update at 1. It has future effect because it directs state agencies and program operators to ''make any changes necessary'' to their complaint-handling processes and ''distribute this memorandum'' to additional personnel, among other things. Id. at 3. It prescribes policy for 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.

Additionally, 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–334221, Feb. 9, 2023; B–333732, July 28, 2022. Here, by contrast, the Update is addressed to directors 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 has general applicability. See, e.g., B–333732, July 28, 2022 (explaining that USDA Thrifty Food Plan updates addressed to ''all families'' lacked particular applicability).

Second, the Update is not 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 processed 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, July 28, 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 when implementing ''new internal procedures'' to ensure compliance with an ''existing statutory obligation.'' B–330190, Dec. 19, 2018. Thus, in B–330190, we considered a Department of Justice (DOJ) memorandum that adopted a zero tolerance policy with regard to prosecuting certain individuals who violated 8 U.S.C. §1325(a) by entering the country illegally. Id. We found that DOJ's memo did not ''alter individual rights'' because there was no underlying change in the legal rights of individuals crossing the border. Id. Here, the Update purports merely to ''clarify'' existing requirements of anti-discrimination provisions. Update, at 1. However, unlike in B–330190, the Update forwards a novel interpretation of the law with respect to USDA/FNS-enforced statutes.

Prior to Bostock, sex discrimination under Title VII of the Civil Rights Act of 1964 was not universally understood to include discrimination on the basis of gender identity and sexual orientation; rather, the Supreme Court's decision established that understanding as a matter of law. Bostock, at 1741, 1754. Importantly, the Update itself is not even a direct application of Bostock, but an extension of its holding (in the Title VII context) to the context of USDA/FNS-enforced statutes. The Update explains how USDA/FNS ''determined'' that discrimination on the basis of gender identity and sexual orientation can constitute sex discrimination under the statutes USDA/FNS enforces, and the implication is that USDA/FNS had not reached or announced that determination previously. Update at 3.

The Update does not qualify for CRA's third exception, as it creates new policy and, in doing so, has a substantial impact on the rights and obligations of non-agency parties. See B–333732 at 5 (USDA Thrifty Food Plan update had substantial impact by ''granting increased benefit allotments'' to families); B–333501 at 5 (CDC mask requirement had substantial impact by ''impos[ing] new requirements on people who are traveling to wear masks''). Namely, it expands the obligations of state agencies and program operators by requiring them to ''review'' their discrimination complaint procedures and ''make any changes necessary.'' Update at 3. The Update also expands the rights of FNS benefit applicants by requiring that an applicant's complaint alleging discrimination on the basis of gender identity and/or sexual orientation be processed and evaluated as a complaint of discrimination based on sex, which was not required prior to the Update.

CONCLUSION

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 of 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 and produces 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, the Walworth Kikkoman production facility serves as an important example of the coprosperity and success of American and Japanese partnerships.

We in Wisconsin are grateful to Kikkoman for sharing the vibrant tradition and well-respected values 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 district 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. For the better part of two decades, Ken has been a lifeline to Montgomery County, helping to make sure that no citizen is left behind.

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 Ken was handling labor grievances and negotiating contracts. By the time he finished his career with UFCW, he was executive assistant to