

S. 4458 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 4458) to amend title 38, United States Code, to improve the process by which the Secretary of Veterans Affairs determines whether an educational institution meets requirements relating to the percentage of students who receive educational assistance furnished by the Secretary, and for other purposes.

There being no objection, the committee was discharged, and the Senate proceeded to consider the bill.

Mr. SCHUMER. I ask unanimous consent that the bill be considered read a third time.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. SCHUMER. I know of no further debate on the bill.

The PRESIDING OFFICER. If there is no further debate on the bill, the bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 4458) was passed as follows:

S. 4458

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring the Best Schools for Veterans Act of 2022”.

SEC. 2. DETERMINATIONS RELATING TO PERCENTAGE OF STUDENTS OF EDUCATIONAL INSTITUTION WHO RECEIVE EDUCATIONAL ASSISTANCE BY DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Subsection (d) of section 3680A of title 38, United States Code, is amended to read as follows:

“(d)(1) The Secretary shall not approve the enrollment of any eligible veteran, not already enrolled, in any course for any period during which the Secretary finds that more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by the Department of Veterans Affairs under this title or under chapter 1606 of title 10, except with respect to tuition, fees, or other charges that are paid under a payment plan at an educational institution that the Secretary determines has a history of offering payment plans that are completed not later than 180 days after the end of the applicable term, quarter, or semester.

“(2) The Secretary may waive the requirements of paragraph (1), in whole or in part, if the Secretary determines, pursuant to regulations which the Secretary shall prescribe, it to be in the interest of the eligible veteran and the Federal Government.

“(3)(A) The Secretary shall establish a process by which an educational institution may request a review of a determination that the educational institution does not meet the requirements of paragraph (1).

“(B) An educational institution that requests a review under subparagraph (A)—

“(i) shall request the review not later than 30 days after the start of the term, quarter, or semester for which the determination described in subparagraph (A) applies; and

“(ii) may include any information that the educational institution believes the Depart-

ment should have taken into account when making the determination, including with respect to any mitigating circumstances.

“(C) The Under Secretary of Benefits shall issue an initial decision for each review requested under subparagraph (A) by not later than 30 days after the date of the request, to the extent feasible.

“(D) An educational institution may request the Secretary to review the decision by the Under Secretary under subparagraph (C). The Secretary shall review each decision so requested and, pursuant to such review, shall issue a final decision sustaining, modifying, or overturning the decision by the Under Secretary.

“(E) The Secretary shall carry out this paragraph without regard to any review process carried out by the Secretary under chapter 51 of this title.

“(4) Paragraph (1) shall not apply to any course offered by an educational institution if—

“(A) the majority of courses offered by the educational institution are approved under section 3672 or 3675 of this title; and

“(B) the total number of veterans and persons receiving assistance under this title or under chapter 1606 of title 10 who are enrolled in such institution equals 35 percent or less of the total student enrollment at such institution (computed separately for the main campus and any branch or extension of such institution).

“(5)(A) Paragraph (1) shall not apply to any course offered by an educational institution if—

“(i) the majority of courses offered by the educational institution are approved under section 3676 of this title; and

“(ii) the total number of veterans and persons receiving assistance under this title or under chapter 1606 of title 10 who are enrolled in such institution equals 35 percent or less of the total student enrollment at such institution (computed separately for the main campus and any branch or extension of such institution).

“(B) Notwithstanding subparagraph (A), on a case by case basis, the Secretary may apply paragraph (1) with respect to any course otherwise covered by such subparagraph if the Secretary has reason to believe that the enrollment of veterans and persons described in clause (ii) of such subparagraph may be in excess of 85 percent of the total student enrollment in such course.

“(6) The Secretary shall ensure that an educational institution that meets the requirements of paragraph (4) or (5) submits information to the Secretary on a biennial basis to verify meeting such requirements. During such biennial period in which an educational institution is covered by such verification, the Secretary may not require the educational institution to submit information with respect to meeting the requirements of paragraph (1).

“(7) Paragraph (1) shall not apply with respect to the enrollment of a veteran—

“(A) in a program of education for which fewer than 10 students are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by the Department of Veterans Affairs under this title or under chapter 1606 of title 10;

“(B) in a course offered pursuant to section 3019, 3034(a)(3), 3234, or 3241(a)(2) of this title;

“(C) in a farm cooperative training course; or

“(D) in a course described in subsection (g).”

(b) APPLICATION.—The amendment made by subsection (a) shall apply with respect to a quarter, semester, or term, as applicable, commencing on or after the date of the enactment of this Act.

Mr. SCHUMER. I ask unanimous consent that the motion to reconsider be considered made and laid upon the table.

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

MORNING BUSINESS

NOTICE OF A TIE VOTE UNDER S. RES. 27

Mr. DURBIN. Mr. President, I ask unanimous consent to print the following letter in the RECORD.

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

To the Secretary of the Senate:

PN2189, the nomination of Rachel Bloomekatz, of Ohio, to be United States Circuit Judge for the Sixth Circuit, having been referred to the Committee on the Judiciary, the Committee, with a quorum present, has voted on the nomination as follows—

(1) on the question of reporting the nomination favorably with the recommendation that the nomination be confirmed, 10 ayes to 10 noes; and

In accordance with section 3, paragraph (1)(A) of S. Res. 27 of the 117th Congress, I hereby give notice that the Committee has not reported the nomination because of a tie vote, and ask that this notice be printed in the RECORD pursuant to the resolution.

DICK DURBIN.

THRIFTY FLOOD PLAN

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

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: United States Department of Agriculture—Applicability of the Congressional Review Act to the 2021 Updates to the Thrifty Food Plan

File: B-33732

Date: July 28, 2022

DIGEST

The United States Department of Agriculture (USDA) issued a document entitled Thrifty Food Plan, 2021 (2021 TFP). The 2021 TFP updates the market baskets used to determine the value of Supplemental Nutrition Assistance Program (SNAP) benefits to purchase food from retail stores.

The Congressional Review Act (CRA) 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 the Comptroller General, and provides procedures for congressional review where Congress may disapprove of rules. We conclude the 2021 TFP meets the definition of a rule under the CRA and no CRA exception applies. Therefore, the 2021 TFP is subject to the requirement that it be submitted to Congress.

DECISION

On August 16, 2021, the United States Department of Agriculture (USDA) issued a

document entitled Thrifty Food Plan, 2021 (2021 TFP). USDA, Thrifty Food Plan, 2021 (August 2021), available at <https://FNS.usda.gov/TFP> (last visited Jul. 12, 2022). We received a request for a decision as to whether the 2021 TFP is a rule for purposes of the Congressional Review Act (CRA). Letter from Senator Tillis to the Comptroller General (Oct. 27, 2021). For the reasons discussed below, we conclude that the 2021 TFP is a rule and thus subject to the submission requirement of CRA.

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 USDA to obtain the agency's legal views. Letter from Managing Associate General Counsel, GAO, to General Counsel, USDA (Dec. 15, 2021). We received USDA's response on February 11, 2022. Letter from Associate General Counsel, USDA, to Managing Associate General Counsel, GAO (Feb. 11, 2022) (Response Letter).

BACKGROUND

Thrifty Food Plan

The Thrifty Food Plan is defined by the Food and Nutrition Act of 2008 as a diet required to feed a family of four persons. See 7 U.S.C. 2012(u). The Act uses the cost of this diet as the basis for allotments to households regardless of their actual size. Id. These allotments take the form of Supplemental Nutrition Assistance Program (SNAP) benefits to purchase food from retail stores. See 7 U.S.C. §2013. In order for a household to qualify for SNAP benefits its gross income cannot exceed the poverty line. See 7 U.S.C. §2014(c).

The 2018 Farm Bill amended the Thrifty Food Plan to require USDA to “re-evaluate and publish the market baskets of the thrifty food plan based on current food prices, food composition data, consumption patterns, and dietary guidance” by 2022 and at 5-year intervals thereafter. Agriculture Improvement Act of 2018 (2018 Farm Bill), Pub. L. No. 115-334, title IV, §4002, 132 Stat. 4490, 4624 (Dec. 20, 2018). On August 16, 2021, USDA published the 2021 TFP. USDA, Thrifty Food Plan, 2021 (August 2021), available at <https://FNS.usda.gov/TFP> (last visited Jul. 12, 2022). The 2021 TFP is the USDA update to the TFP market baskets required by the 2018 Farm Bill.

The 2021 TFP describes the approach and methods used in reevaluating the Thrifty Food Plan. Prior to the 2021 reevaluation, the market basket prices were last updated in 2006. 2021 TFP at 30. The result of the 2021 reevaluation is that the monthly cost of a market basket for the reference family of four is \$835.57. 2021 TFP at 34. This represents an increase of \$145.19 (in 2021 dollars) from the previous market basket price. See id. at 34-35. The changes to the maximum SNAP benefit allotments based on the 2021 TFP were effective beginning October 1, 2021. 2021 TFP at 51.

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. An agency can find for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest and the rule will then

take effect at a time the agency determines. 5 U.S.C. §808(2). Each house of Congress is to provide the report on the rule to the chairman and ranking member of each standing committee with jurisdiction. 5 U.S.C. §801(a)(1)(C). CRA allows Congress to review and disapprove rules issued by federal agencies 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 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). 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 did not submit a CRA report to Congress or the Comptroller General on the 2021 TFP. In its response to us, USDA stated the 2021 TFP was not subject to CRA because it was not a rule within the meaning of the APA or CRA. Response Letter, at 3-4. USDA also stated that it met the good cause exception under the CRA, and, thus, was not subject to the CRA's submission requirements. See id. at 7-8. For the reasons explained below, we conclude that the 2021 TFP is a rule under the CRA, does not meet any of the exceptions that would exclude the rule from coverage, and is, therefore, subject to the submission requirement of CRA.

ANALYSIS

To determine whether the 2021 TFP is a rule subject to review under CRA, we first address whether the 2021 TFP meets the APA definition of a rule. As explained below, we conclude that it does. The next step, then, is to determine whether any of the CRA exceptions apply. We conclude that they do not.

The 2021 TFP meets the APA definition of a rule upon which the CRA relies. First, the 2021 TFP is an agency statement as it was issued by USDA to update market basket prices that were last revised in 2006. See 2021 TFP at 1. Second, the 2021 TFP is of future effect, as it provides guidance for new market basket prices on which SNAP benefits will be based going forward, effective October 1, 2021. Id. at 51. See B-316048, Apr. 17, 2008 (finding that an agency action was of future effect because the action was prospective in nature since it was concerned with policy considerations for the future rather than the evaluation of past or present conduct). Finally, the 2021 TFP is designed to implement, interpret, or prescribe law or policy as it implements the new market baskets as required by the Food and Nutrition Act of 2008 and the 2018 Farm Bill. 2021 TFP at 4-6.

In its Response Letter, USDA asserts the 2021 TFP is exempt from the APA's rule making provisions because it relates to agency management and benefits, and, consequently, it is not a rule. Response Letter at 4. We disagree with this rationale. Specifically, USDA notes that the APA requires notice and comment for all rules “except to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” [Emphasis removed.] Response Letter, at 4 (quoting 5 U.S.C. 553(a)(2)). USDA argues that “evaluating market baskets based on current food prices is a matter relating to ‘agency management’ of [] SNAP

and relates to SNAP ‘benefits.’” Response Letter, at 4. However, the language USDA cites in 5 U.S.C. 553(a)(2) pertains to an exception to the APA's rule making process, not to the definition of a rule. Even assuming the 2021 TFP is exempt from the APA's notice and comment requirement, that does not mean it is not a rule as defined by 5 U.S.C. 551(4). See B-323772, Sept. 4, 2012 (noting the CRA is intended to include within its purview, almost all rules that an agency issues, not only those that must be promulgated according to the APA's notice and comment requirements). It should also be noted that 7 U.S.C. §2013(c) specifically directs USDA to promulgate regulations related to SNAP “in accordance with the procedures set forth in section 553 of title 5.” As discussed, the 2021 TFP is an agency statement of future effect designed to implement policy, and, therefore, meets the definition of a rule.

USDA contends that Congress did not require the 2021 TFP to be issued as a rule because Congress did not specifically require the 2021 TFP to be subject to CRA. Response Letter, at 5. We disagree with this interpretation of CRA. We conduct our analysis under CRA which requires all rules to follow the procedures outlined in 5 U.S.C. §801. All rules are subject to the procedures required by CRA, whether or not Congress specifically requires it, before they can take effect. 5 U.S.C. §801.

USDA also argues that Congress had constructive notice that the 2021 TFP would increase SNAP benefits and, as a result, USDA was not required to provide formal CRA notice to Congress. Response Letter, at 5-7. However, constructive notice is not an exception to CRA notice procedures. As discussed above, CRA is a method of congressional oversight of agency rulemaking. CRA requires agencies to submit a report to Congress about the rule. 5 U.S.C. §801(a)(1)(A). The submission of this report initiates the congressional review process which can lead to Congress disapproving a rule. 5 U.S.C. §801(b)(1). It is the report that triggers the CRA review process. As a result, constructive notice of a rule is not the same as submitting a formal report as required by CRA. While there are exceptions for waiving a delay in the effective date of a rule, 5 U.S.C. §808, there are no exceptions for submitting a report.

Having concluded that the 2021 TFP meets the APA definition of a rule, we now turn to whether any of the three CRA exceptions apply. We also address USDA's argument that the good cause exception provides an exemption from the CRA's submission requirement. As explained below, we conclude they do not.

First, the 2021 TFP is not a rule of particular applicability. Rules of particular applicability are addressed to specific, identified entities. See Administrative Conference of the United States, Miscellaneous Statements, 39 Fed. Reg. 4846, 4849 (Feb. 7, 1974) (explaining that a rule of general applicability is one with an open class but a rule of particular applicability is limited to those named). The 2021 TFP applies to all families whose income falls below the poverty line and is not addressed to specific, identified entities. Therefore, it is a rule of general applicability and not a rule of particular applicability.

Second, this is 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-31324, Oct. 22, 2019 (determining that 5 U.S.C. §804(3)(b) does not apply when the rule deals with actions a bank should take and not agency management or personnel). The 2021 TFP deals with the

amount of SNAP benefits for qualifying families and, the market basket costs in the 2021 TFP apply broadly to the contiguous 48 states and the District of Columbia.

Finally, the 2021 TFP substantially impacts the rights of non-agency parties because it has an effect on qualifying families by granting increased benefit allotments designed for them to obtain a more nutritious diet.

USDA contends the 2021 TFP meets the good cause exception under the CRA, and, therefore, USDA was not required to follow the CRA's submission requirements. Response Letter, at 7-8. In its response USDA stated that good cause existed to issue the 2021 TFP with an effective date in August 2021. *Id.* at 8. USDA further stated that this excepted it from carrying out formal CRA notice before the effective date. *Id.* While CRA does not provide an emergency exception from its procedural requirements to submit rules for congressional review, CRA and APA address an agency's need to take emergency action without delay. Agencies can waive the required delay in effective date requirement when an agency for "good cause" finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C §§553(b), 808(2). Therefore, an agency can provide for a rule to take effect immediately while still complying with the agency's statutory obligation to submit the rule to Congress for review. Asserting a good cause exception does not serve to waive the CRA's submission requirements all together. Notably, the 2021 TFP did not incorporate a finding or statement of the reasons why there is good cause for an exception to the CRA's procedural rules to submit the 2021 TFP for congressional review, nor did the 2021 TFP include an immediate effective date. Therefore, USDA did not properly apply the good cause exception.

Thus, we conclude that none of the three exceptions that would exclude the rule from CRA coverage, or the good cause exception apply, and the 2021 TFP is subject to the submission requirement of CRA.

CONCLUSION

The 2021 TFP is a rule for purposes of CRA because it meets the APA definition of a rule and no CRA exception applies. Therefore, even if exempt from the APA notice-and-comment requirements, the 2021 TFP is subject to the CRA requirement that it be submitted to Congress before it can take effect.

EDDA EMMANUELLI PEREZ,

General Counsel.

TRIBUTE TO JAMES BOLLICH

Mr. CASSIDY. Mr. President, James Bollich was born on April 15, 1921, in Mowata, LA. As a young man, he joined the U.S. Army Air Corps and participated in Louisiana maneuvers in 1941.

In 1942, he was deployed to the Philippines, and 18 days after his arrival, Congress voted to enter World War II. Mr. Bollich served as an infantryman on the island of Luzon and fought valiantly during the Battle of Bataan. He was captured by Imperial Japanese forces and was forced to endure the Bataan Death March. Mr. Bollich later spent more than 3 years as a prisoner of war in Mukden, Manchuria. On August 15, 1945, his 24th birthday, Mr. Bollich and his fellow survivors were freed by the Russian Army.

After the war, Mr. Bollich transitioned into civilian life, and attended college at the University of Southwest Louisiana. He and his wife Celia raised their family in Lafayette, LA, and worked as an exploration geologist until his retirement in 1986. He was the author of several books including "A Soldier's Story," where he detailed his time as a serviceman and a prisoner of war.

Mr. Bollich received many commendations during his military service including the Purple Heart, Bronze Star medal, Prisoner of War medal, WWII Victory medal, Presidential Unit citation with two oakleaf clusters, American Campaign Medal, Asiatic-Pacific medal with 2 bronze stars, Army Good Conduct medal, American Defense medal with one bronze star, Philippine Presidents badge, Philippine Defense medal, Philippine Liberation medal, and the Philippine Independence medal.

In one of our Nation's darkest times, James Bollich answered the call and served this country with esteem and dignity. Mr. Bollich was an American hero and should be honored as such.

TRIBUTE TO DREW TROJANOWSKI

Mr. MORAN. Mr. President, I rise today to recognize the service and career of Mr. Drew Trojanowski, an Army veteran of Phoenix, AZ. He, with honor and courage, has dedicated his life to service to our great Nation and continues to work to ensure veterans are connected with their communities and needed resources.

Drew had many accomplishments while serving in the U.S. Army from 2006 to 2015. He was a sniper, achieved the rank of staff sergeant, and deployed to Iraq and Afghanistan to support the Global War on Terrorism. He also served as a combat adviser to foreign militaries while coaching them on operations, tactics, intelligence, and civil affairs. Drew concluded his military career serving in the Arizona Army National Guard, where he aided in developing long-range plans for the Joint Counter Narco-Terrorism Task Force.

In 2015, while searching for a way to continue service after returning from Afghanistan, Drew became active in the veteran space and the Mesa Chamber of Commerce. After identifying a void between the business and veteran communities, he established the Mesa Veterans Program and Mesa Industry and Defense Council. This consortium has grown to more than 70 aerospace and defense companies.

In 2016, Mr. Trojanowski started working with U.S. Senator John McCain as a military and veteran advocate. As an advocate, he traveled throughout Arizona, learning about veterans and their service and the challenges they face post-service. He was also the primary contact for Department of Defense installations, personnel, and industry throughout Arizona.

In December 2016, Senator McCain asked Mr. Trojanowski to be his military legislative assistant and senior policy adviser. In that role, he was at the forefront of advocating for reform, resources, funding, and benefits that our military and veterans earned and deserve.

During his time with Senator McCain, Mr. Trojanowski helped author and champion the passage of significant legislation impacting American servicemembers, their families, and veterans. Drew worked on the VA MISSION Act, numerous National Defense Authorization Acts, the VA Appeals Modernization Act, the VA Accountability and Whistleblower Protection Act, the Harry W. Colmery Veterans Educational Assistance Act—also known as the Forever G.I. Bill—and the Veteran Overmedication and Prevention Act. These bipartisan bills, all of which were signed into law, serve as examples of Drew's dedication and leadership in the military and veteran community.

In 2018, Mr. Trojanowski joined the White House as a Presidential Commissioned Officer and Special Assistant to the President on the Domestic Policy Council. In this role, he oversaw the Departments of Veteran Affairs, Defense, NASA, and Labor. During his tenure, Mr. Trojanowski was the policy lead on three Executive orders and 56 regulations, including the implementation of the MISSION Act that strengthened the nationwide VA healthcare system by empowering veterans with more healthcare options and the PREVENTS initiative, a national strategy for preventing veteran suicide.

I am honored to recognize Mr. Drew Trojanowski's outstanding military service and continued service to our military, veterans, and their families. As Mr. Trojanowski begins a new chapter, I do not doubt that he will continue to be a voice for all those who serve.

ADDITIONAL STATEMENTS

RECOGNIZING THE EL DORADO HISTORIC DISTRICT COMMISSION

• Mr. BOOZMAN. Mr. President, today I rise to recognize and congratulate the El Dorado Historic District Commission on being named the 2022 Commission of the Year by the National Alliance of Preservation Commissions.

Described as an oil "boom-town" of the 1920s, the city of El Dorado is a community transformed by historic preservation. The El Dorado Historic District Commission, established in 1984, works to protect, enhance and improve districts of distinctive character, historic interest, and value to promote the health, prosperity, safety, and welfare of the city.

In 2020, the city of El Dorado and its Historic District Commission released a citywide historic preservation plan drafted by the Lakota Group, an Illinois-based urban planning and design