

United States Senate

WASHINGTON, DC 20510

October 27, 2021

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Comptroller Dodaro:

The United States Department of Agriculture (USDA) announced updates to the Thrifty Food Plan, as required in Section 4002 of the Agriculture Improvement Act of 2018, on August 16, 2021.¹ The impacts of this policy change will significantly change the Supplemental Nutrition Assistance Program (SNAP) and thus warrant rigorous oversight.

I write to seek determination of whether the aforementioned policy change constitutes a “rule” for the purposes of the Congressional Review Act (CRA). With limited exceptions, the CRA defines a “rule” as follows:

*‘[R]ule’ means the whole or 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 and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, cost, or accounting, or practices bearing on any of the foregoing[.]*²

Based upon this broad definition, the Government Accountability Office (GAO) has rightly pointed out that “agency pronouncements may be rules within the definition of 5 U.S.C § 551, and the CRA, even if they are not subject to notice and comment rulemaking requirements under section 553.”³ Similarly, the GAO has noted that nonbinding general statements of policy can be rules under the CRA as well.⁴

Though the USDA did not pursue notice and comment, the changes to the Thrifty Food Plan appear to be generally applicable within its intended range, prospective in nature, and designed to implement, interpret, or prescribe law or policy. For these reasons, I respectfully request that you evaluate whether the change to the Thrifty Food Plan announced on August 16, 2021 is a “rule” under the CRA.

¹ FNS-916. August 2021. Available at <https://FNS.usda.gov/TFP>.

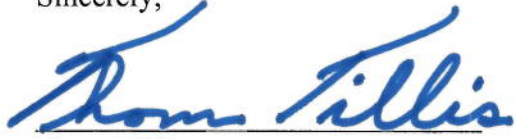
² 5 U.S.C. § 804(3); 5 U.S.C. § 551(4).

³ B-323772, Sept. 4 2012.

⁴ See B-3291d29, Dec. 5, 2017.

Because the USDA is currently applying the changes as of October 1, 2021, causing significant consequences for program users, administrators, and the national budget, please respond determinatively by January 14, 2021, regardless of whether the opinion's issuance would occur during a congressional recess.

Sincerely,

A handwritten signature in blue ink that reads "Thom Tillis". The signature is written in a cursive style with a prominent initial "T".

Thom Tillis
United States Senator