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March 24, 2004

IS THE SUPERWAIVER THE ONLY WAY?

Other Less Risky Approaches Would More Effectively Promote Increased Coordination of Low-Income Programs

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Overview

A provision known as the "superwaiver" has emerged as one of the most contentious issues in the TANF reauthorization debate. Originally proposed by the Administration, the House included the superwaiver in TANF reauthorization legislation it passed last year.[1] The House superwaiver provision would give sweeping new authority to the Executive Branch to override, at the request of a state governor, almost any federal law or rule governing any of a long list of low-income programs, including the Food Stamp Program and the public housing program. Congress would have no role in a process that allows the Executive Branch and states to change the most fundamental aspects of these programs, including how federal funds are used, the target population for benefits, and the types and amount of benefits provided.

The stated purpose of the House superwaiver provision — which refers to superwaivers as "program coordination demonstration projects" — is to "coordinate multiple public assistance, workforce development, and other programs."[2] Proponents of the superwaiver have claimed the provision is needed to enable states and localities to improve program coordination.

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[1] As used in this analysis, the term "superwaiver" refers to the House version of the superwaiver. The TANF reauthorization bill passed by the Senate Finance Committee last year includes a scaled-down version of the House provision that is limited to three programs — TANF, the Child Care Development Block Grant, and the Social Services Block Grant — and ten states. For a detailed analysis of the House superwaiver provision, see Robert Greenstein, Shawn Fremstad, and Sharon Parrott, *"Superwaiver" would Grant Executive Branch and Governors Sweeping Authority to Override Federal Laws*, Center on Budget and Policy Priorities, June 2002.

[2] Section 601(a) of H.R. 4.

Most, if not all, critics of the superwaiver agree with the goal of improving the coordination of low-income programs. Improving coordination — through measures such as aligning application procedures across programs, adopting common rules for the treatment of income and resources in eligibility determinations, and integrating employment and other services provided under various programs such as TANF and the Workforce Investment Act (WIA) — can make programs more accessible for low-income families, yield better outcomes for families, and simplify program administration for states and other program operators.

Critics of the superwaiver *disagree*, however, that the superwaiver is a sensible, necessary, or effective way to accomplish this goal. The superwaiver poses serious risks, goes far beyond what is needed to address coordination problems caused by inconsistencies in federal rules, and does nothing to address the many barriers to coordination that do *not* arise from federal law.

Superwaiver Poses Serious Risks

The risks posed by the superwaiver are addressed in detail in a companion analysis to this report.[3] That analysis finds that the superwaiver would allow programs to be altered so substantially that states and the Executive Branch could effectively override Congressional decisions about the level of federal resources devoted to specific programs and purposes. Moreover, if states use superwaivers to shift federal resources into an area previously funded with state resources, states could withdraw state funds and reduce overall funding for low-income programs. Such a scheme would mean that federal funds directed by Congress to assist low-income people could effectively be used by states to bolster their general treasuries. Over time, the superwaiver could erode political support for low-income programs, particularly if members of Congress come to believe that it effectively cuts them out of decisions about how federal funds actually get used by states.

Superwaiver Authority is Not Needed to Address Coordination Problems Caused by Federal Law

The superwaiver addresses one specific, and increasingly less significant, type of barrier that may limit program coordination — inconsistencies between various low-income programs that result from differences in the federal laws governing those programs. Relatively few of the real barriers to program coordination in low-income programs are due to inconsistencies in federal law, however, especially now that recent changes to the Food Stamp Program have given states broad flexibility to align it with other benefit programs. For example, in nearly all areas governing eligibility and benefit delivery in the major low-income programs that states administer — TANF, Medicaid, SCHIP, food stamps, and the Child Care Development Fund — federal law now allows states to strengthen program coordination by aligning program rules.

There are, to be sure, some remaining inconsistencies in federal law that can impede state efforts to better align programs that serve similar populations or provide similar services. In

[3] Shawn Fremstad and Sharon Parrott, "Superwaiver Provision in House TANF Reauthorization Bill Could Significantly Weaken Public Housing, Food Stamps, and Other Low-income Programs," Center on Budget and Policy Priorities, March 2004.

particular, some of the barriers to improved integration of employment and training services provided under TANF and WIA are due to differences in the federal laws and rules that govern these programs.

A sweeping superwaiver provision, however, goes far beyond what is needed to address the remaining coordination problems caused by inconsistencies in federal rules. Instead, where federal rules preclude alignment and are not necessary for important policy or programmatic reasons, *Congress should either eliminate the inconsistencies or give states explicit options to address them*. Unlike the superwaiver, this more direct approach would allow states to make particular types of changes that better integrate programs *without* having to ask the federal government for waivers that may or may not be granted, that are subject to rigid "cost-neutrality" strictures and other requirements that may present problems for states or reduce the effectiveness of coordination, and that may not be extended beyond the initial period for which they were approved.

In some cases, more experimentation and evaluation are needed before establishing new state options in federal law or eliminating provisions that lead to inconsistencies. For these situations, it may be appropriate for Congress to provide tailored, program-specific waiver authority. In contrast to the superwaiver, such authority can be drafted to ensure program integrity and preserve essential "bottom-lines," such as provisions that provide basic protections for low-income families and taxpayers. This type of waiver authority already exists in the Food Stamp Program and WIA. It should be extended to TANF, which is now the largest state-administered low-income program without waiver authority.

Superwaiver Does Not Address the Most Significant Barriers to Coordination

The superwaiver does nothing to address the many barriers to coordination that do *not* arise from federal law. Three general types of such barriers to program coordination are particularly notable:

- *Inadequate understanding by both federal and state agencies of existing flexibility and the extent to which programs can be coordinated under current laws and rules.* This lack of understanding is compounded by limited federal attention to the issue of program integration. Federal agencies have done little to help states understand the flexibility they have or to provide information on best practices or models of successful coordination.

- *Other managerial barriers, including "turf" issues, leadership or lack of it, and resistance to change.* Agency staff often are reluctant to pursue coordination because of fears that they may give up some of their control over programs they operate. Several studies of successful coordination efforts have found that effective leadership can overcome barriers like this as well as perceived legal barriers to coordination.

- *Fiscal barriers related to the short- and long-term costs of coordination and alignment measures.* Some program alignment measures increase costs more because they improve access to benefits or extend benefits or services to previously ineligible families. In addition, program integration often has various short-run costs including staff and contractor time to plan efforts, rewrite rules, and reprogram computers. Because both existing waiver provisions and the superwaiver are subject to cost-neutrality requirements, they do nothing to address these fiscal issues.

Many states officials have emphasized that these other barriers play a more important role in limiting state efforts to improve program coordination than differences in federal rules for various programs.

An Alternative Set of Program Coordination Policies that Would be More Effective and Less Risky than the Superwaiver

Examination of the actual barriers to program coordination leads to a different and more fine-tuned set of policy proposals than the blunt instrument of the superwaiver. The following measures would offer a more effective and less risky approach to enhancing program coordination than the superwaiver:

- *As discussed above, in areas where federal rules preclude alignment and are not necessary for other important programmatic reasons, the inconsistencies should be eliminated or states should be given explicit state options to address them.* In a modest number of areas, there are inconsistencies among federal rules that are not in place for important programmatic reasons. Where there is little policy justification for a national rule, requiring states to seek a waiver of the federal rule makes little sense. Recent Congressional actions — including changes to the Food Stamp Act enacted in 2002 that removed a number of statutory barriers to cross-program alignment — show that Congress is willing to provide these sorts of simplifications. Such an approach to resolving inconsistencies in federal law would be less burdensome, more certain, and more equitable for states than the superwaiver.

- *Extend Waiver Authority to TANF.* There is a legitimate role for carefully designed waiver authority and demonstration projects in low-income programs. Such authority exists in Food Stamp Program and WIA, as well as Medicaid and SCHIP. The current law waiver authority in both the Food Stamp Program and WIA includes protections to ensure that waivers do not alter fundamental aspects of these programs. Surprisingly, although the AFDC program that the TANF block grant replaced had waiver authority and waivers granted under AFDC helped pave the way for the 1996 welfare reforms, TANF lacks any waiver authority. Extending waiver authority to TANF, with appropriate safeguards, would make it easier for states to coordinate TANF with WIA and the Food Stamp Program and to test further innovations in welfare reform.

- *Increase state flexibility in both TANF and WIA to allow for better alignment between the two programs.* States would be better able to align their TANF and WIA employment services if they had more underlying flexibility than now exists in these programs. Without two conflicting sets of prescriptive rules related to the types of employment services that can be provided, states could more easily operate a virtually seamless employment services program in which participants are matched to appropriate work-related programs.

- *Congress should direct the federal government to assist states in understanding the extent of the flexibility they now have and developing approaches to better align programs*. Federal agencies should be required to develop expertise and provide states with technical assistance, or to contract with outside entities to provide this assistance, to help states explore and implement program integration options.

- *The Administration should create an inter-agency task force on program coordination that includes officials from HHS, DOL, and the Department of Agriculture.* This task force could consider waiver requests that involve more than one program under current program-specific waiver authority. The task force also could work to reduce other coordination barriers that are not mandated by federal law but relate to agency policies and practices. No federal legislation is needed to establish such a task force.

- *The federal government should make planning grants available to states that want to improve program coordination.* Some agencies, such as HHS, already have research and demonstration funding that could be used in this fashion. In addition, both versions of the TANF reauthorization legislation pending in Congress provide HHS with funding for research and demonstration funding. A specific portion of this research and demonstration funding could be dedicated to program integration efforts.

Because of its sweeping nature and the risks it poses, the superwaiver has drawn intense opposition, including bipartisan concerns about the impact it would have on key programs such as housing and homelessness programs and the Food Stamp Program, and concerns about whether it undermines Congressional authority. A consensus could be built more easily around this alternative policy agenda. Moreover, these alternative policies would do much more to aid state and local program integration efforts than the superwaiver.

Improving the Coordination of Low-Income Programs is an Important Goal

For as long as there have been multiple low-income programs, there has been interest in improving coordination among them. Conflicting paperwork and other program requirements make it difficult for many parents — particularly those struggling to juggle work and family obligations — to participate in programs that could help them and can limit the overall effectiveness and efficiency of the programs. In addition, conflicting or overlapping

requirements are more difficult, costly, and time consuming for states and localities to administer. That may diminish the resources available for other services, such as working directly with clients to help them find jobs and address barriers that may limit their employability.

While states made some improvements in program coordination in the 1990's, it remains clear that low-income programs often do not operate in a coordinated fashion at the federal, state, or local level. Consider the following examples:

- All of the major means-tested benefit programs require families to provide updated information on their income — typically on some regular basis and also when there are significant changes in income — to maintain eligibility for the program. But states' rules for reporting this information tend to differ among the programs. For example, in most states, these rules are different in the Food Stamp Program and in the state's Medicaid and child care programs. This presents families with multiple, differing reporting requirements and requires different state or local agencies to process what can be duplicative reports.

- TANF and WIA share similar goals — increasing employment and reducing welfare dependency — and both provide funding for employment services to accomplish these goals. Instead of being elements of a seamless workforce system at the state and local levels, however, they typically operate as distinct programs.

- There are numerous inconsistencies in the federal rules that specify which legal immigrants may be eligible for various public benefits. For example, federal law bars states from using federal TANF funds to provide employment services and child care to most legal immigrants who have lived in the United States for less than five years, but no such bar applies to employment services funded through WIA or child care services funded through the Child Care and Development Block Grant. Similarly, legal immigrant children are eligible for Food Stamps, but states are barred from using federal funds to provide TANF assistance or health care funded through Medicaid or SCHIP to these children during their first five years in the United States.

There is little question that improving the coordination of low-income programs is an important goal that the federal government should foster. Finding ways to align and streamline program rules can reduce burdens on families that participate in these programs and simplify states' tasks in administering the programs and providing these benefits. A more complicated question involves what steps the federal government should take to foster such coordination. Answering this question requires an understanding of the key barriers to better program coordination. The next two sections of this analysis examine these barriers.

Before moving on this to question, however, it may be useful to clarify what is meant by the term "program coordination." The common understanding of program coordination is that it involves efforts to make existing programs work better together. This understanding takes as a

given that the major low-income programs serve useful purposes and that it makes sense to have distinct federal programs meeting needs such as child care, nutrition, housing, and employment and training.

A few advocates of the superwaiver seem to use the term "program coordination" to refer to something much more radical than efforts to make existing programs work better together. For them, program coordination also encompasses efforts to give states and the Executive Branch authority to eliminate nearly all of the differences between low-income programs at the federal level, so that they no longer serve specific identifiable needs, but rather simply provide one large federal funding stream that states can use as they wish to meet broad general purposes. An example of this view is contained in a recent brief by superwaiver advocates arguing that states should be able to use the superwaiver to reallocate federal funds across low-income programs.[4] As an example, the brief suggests that states should be able to cut federal housing assistance provided to low-income families and instead use the funds for substance abuse treatment or child care.

It is a misnomer to refer to those sorts of changes as "program coordination." They are more properly characterized as proposals for "program consolidation." If a state is given authority to use federal housing funds for child care and federal child care funds for housing, the state is effectively operating a single program that may or may not provide both housing and child care assistance, rather than a child care program and a housing program.

This paper examines ways to improve program coordination rather than ways to consolidate programs. Organizations representing states have not called on Congress to provide states with authority to consolidate programs, and there is little evidence that more than a handful of officials seek such authority. Moreover, there is little support in Congress for legislation that would allow the Executive Branch and states to reallocate federal funds across a broad set of federal programs.[5]

Federal Law Presents Fewer Barriers to Program Coordination than is Commonly Understood

The premise behind the superwaiver seems to be that inconsistencies in federal law are the primary barrier to better coordination of low-income programs. Superwaiver proponents have pointed, however, to few actual barriers to coordination presented by federal law. As is

[4] Pietro Nivola, Jennifer L. Noyes, and Isabel V. Sawhill, "Waive of the Future? Federalism and the Next Phase of Welfare Reform," Brookings Institution, March 2004.

[5] In fact, concern among House members about this sort of reallocation resulted in language being added to the superwaiver prohibiting waivers that would shift funds from one federal program to another program as well as waivers of certain funding restrictions and limitations in federal law. An earlier Center analysis of the superwaiver explains why these provisions likely would *not* prohibit such funding shifts. This is, in part, because states would be able to use the superwaiver to gain permission to change the type of benefits provided by any particular program, thereby *effectively* shifting federal resources from one program or purpose to another without explicitly shifting federal funds between federal budget accounts. Greenstein, Fremstad, and Parrott, *"Superwaiver" would Grant Executive Branch and Governors Sweeping Authority to Override Federal Laws*, at page 6.

discussed below, a more careful examination shows that federal law generally affords states the flexibility to align policies and procedures in the major low-income programs for families in ways that could lead to a far simpler system for families to comply with and for states to operate than exists in many states today.

Of course, there are some inconsistencies in federal laws governing low-income programs. The mere existence of such differences, however, does not mean that such differences all are illegitimate or that they all present significant barriers to program coordination. Many differences have sound policy or programmatic justifications and should not be eliminated or waived. One of the superwaiver's flaws is that it makes little serious attempt to distinguish between rules with little or no policy justification that impede coordination and rules that have strong justification and should not be waived. Nearly all rules in both categories could be overridden through a superwaiver.

Opportunities for Program Alignment under Current Federal Law and Rules

As part of a recent project undertaken by the National Governors Association's Center for Best Practices, the Hudson Institute, and the Center on Law and Social Policy (CLASP), the Center on Budget and Policy Priorities and CLASP conducted an in-depth examination of the extent to which federal laws and regulations permit, prohibit or hinder better coordination of low-income programs.[6] Working in consultation with state and local officials, the NGA Center for Best Practices, the Hudson Institute, and CLASP developed models of cross-system integration that states would be interested in pursuing in the areas of: 1) simplification and alignment of the major benefit programs for low-income families (TANF, food stamps, Medicaid, SCHIP, and child care); 2) integration of employment services funded under WIA and TANF; and 3) comprehensive services for children and families. CLASP and the Center then conducted detailed legal and programmatic analysis to ascertain whether, and to what degree, current federal laws and regulations permit, prohibit or hinder the implementation of these models. Drafts of these analyses and findings were shared with staff from NGA and Hudson Institute at various stages in the process for review and comment.

In general, the analyses found that federal law affords states extensive flexibility to align policies and procedures for a range of major programs for low-income families and children, although more significant barriers to integrating employment services under TANF and WIA were identified. While a detailed discussion of the many coordination opportunities available to states under current law would be beyond the scope of this paper, a brief overview of the broad range of coordination opportunities available is provided here. Readers interested in additional details should consult the Center and CLASP analyses provided from the NGA\Hudson Institute\CLASP project.[7]

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[6] Funded by the Annie E. Casey Foundation, the purpose of the "Cross-Systems Innovation" project is to identify the flexibility, opportunities and barriers that exist under current law with respect to cross-program integration in order to help build state and local capacity to improve program coordination and to inform the national discussion around these issues. A description of the project is available on NGA's website at: http://www.nga.org/cda/files/0402CROSSSYS.PDF.

[7] See Sharon Parrott, David Super, and Stacy Dean, *Aligning Policies and Procedures in Benefit Programs: An Analysis of the Opportunities and Challenges under Current Federal Laws and Regulations,* Center on Budget and

Most notably, the analysis of the opportunities and barriers to improving coordination of the major benefit programs found that in nearly all areas governing program eligibility and benefit delivery, federal law allows states to align program rules in ways that can better serve families and ease administrative burdens for states. Under current federal law and rules governing TANF, Food Stamps, Medicaid, SCHIP, and child care, the program coordination options available to states include the following:

- *Combined Application Forms*: States have broad flexibility to develop combined application forms that allow families to apply for all five of these programs as well as various other federal programs. Many states now have simplified applications forms for health care programs. With modest changes to these applications, they also could serve as an initial application or screening tool for food stamps, child care, and other benefits. In addition, states can use a single worker to determine eligibility for all of the programs.

- *Verification Requirements*: States have broad flexibility in establishing verification requirements in each of the programs and may use a single, simple set of verification requirements across all of the programs.

- *Eligibility Reviews*: States have flexibility to align the eligibility review dates in all five of the programs so that a single review can be conducted for all benefit programs (as long as such reviews occur at least every 12 months in Food Stamps, Medicaid, and SCHIP).

- *Reporting Rules*: Federal law gives states substantial flexibility to conform "reporting" rules — these rules specify when families must tell the state about changes in their circumstances that could affect program eligibility or benefit levels — across programs.

- *Income Definitions*: States can align rules that specify how various types of income are defined and counted in eligibility determinations. There are some minimum federal requirements in the rules states can adopt for the Food Stamp Program, but as a practical matter, these rules do not pose a significant barrier to program coordination efforts.

- *Resource Definitions*: States can align rules that specify how various types of resources are defined and counted in eligibility determinations. There are some minimum federal requirements in the rules states can adopt for the Food Stamp Program.

Policy Priorities, 2003; Mark Greenberg, Emil Parker, and Abbey Frank, *Integrating TANF and WIA Into a Single Workforce System: An Analysis of Legal Issues*, Center on Law and Social Policy, February 2004; and Rutledge Hutson, *Providing Comprehensive, Integrated Social Services to Vulnerable Children and Families: Are There Legal Barriers at the Federal Level to Moving Forward?*, Center on Law and Social Policy, February 2004.

The analysis of opportunities for integration of TANF and WIA prepared by the Center on Law and Social Policy, also found extensive opportunities under existing federal law to collocate and integrate the two programs. As studies by CLASP, the U.S. General Accounting Office, and other researchers have already shown, several states have integrated their TANF and WIA programs in substantial ways.[8] CLASP also found, however, that there were numerous inconsistencies in the federal rules governing TANF and WIA that Congress could address to promote greater integration. These inconsistencies are discussed below. A subsequent section of this paper explains why superwaiver authority would be a less effective way to address these differences than other less controversial and less risky steps that Congress and the Administration could take to enhance WIA-TANF integration.

Some Inconsistencies in Federal Rules for Programs Remain, Although Some Inconsistencies Have Important Policy or Programmatic Justifications

Of course, there are some barriers to coordination that are due to differences in federal law. In many cases, these differences have important policy or programmatic justifications. Two categories of federal rules that often differ for important policy reasons have particular relevance to the superwaiver debate: rules that define a program's fundamental nature (such as its purposes and the types of benefits or services it provides) and rules that preserve essential "bottom lines" that are in the national interest, including basic protections for low-income families that should apply regardless of state of residence, as well as rules that ensure fiscal accountability and protect the federal treasury.

A comparison of the Food Stamp Program and TANF cash assistance programs is instructive. Under the Food Stamp Program, states can seek waivers of a broad array of food stamp rules and have a myriad of choices under an array of state options that exist in the program, but there also are a set of "bottom lines" to the program that cannot be changed by states. In particular, food stamp benefits must be used for food assistance, not other services a state might want to fund with federal resources, and waivers to change elements of the food stamp rules on a statewide basis cannot result in cuts to food stamp benefits of more than 20 percent for more than five percent of a state's food stamp households. The limitations on state flexibility are more significant in the Food Stamp Program than in TANF. Under TANF, states can use federal funds for a broad array of benefits and services, and states have total discretion to decide which groups of families will receive cash assistance benefits and the amount of benefits they will receive. There is no limitation on the number of families whose benefits can be cut in any particular year and states could, if they chose, eliminate cash assistance entirely and use all of their TANF block grant funds for other types of services for low-income families.

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[8] See, e.g., Lisa Ranghelli, Nisha Patel, and Mark Greenberg, *A Means to an End: Integration of Welfare and Workforce Development Systems*, Center on Law and Social Policy, October 2003; U.S. General Accounting Office, *Workforce Investment Act: Coordination of TANF Services Through One-Stops Has Increased Despite Challenges*, GAO-02-739T (2002); Nancy Pindus, et al., *Coordination and Integration of Welfare and WorkforceDevelopment Systems*, The Urban Institute, 2000.

These seeming "inconsistencies" related to the level of state discretion in these two programs are not random or unintentional, however, but rather reflect the prevailing consensus (both in Congress and among the American public) that it is in the national interest to ensure that low-income Americans are at least able to secure a bare-bones nutritionally adequate diet, regardless of their state of residence and that the Food Stamp Program — whose benefits are funded entirely with federal funds — is the principal tool for accomplishing this goal. There is not a similar consensus that the federal government should ensure that all poor families with children have access to basic cash aid or any other service TANF might fund. In fact, when the 1996 welfare law was enacted, many policymakers supporting that law argued that it was appropriate to grant states broader flexibility with regard to cash assistance for families with children, and to impose time limits on receipt of cash aid, because families that potentially would be harmed by losses in cash aid would remain eligible for food stamps.

In a modest number of areas, there are differences that do *not* appear to serve an important policy or programmatic purpose. For example, under current federal law, to maintain eligibility for Transitional Medical Assistance (TMA) — which ensures continued health insurance coverage for many families moving from welfare to work — families must submit paperwork documenting their income and other circumstances on *three* separate occasions during a 10-month period. This requirement conflicts with the discretion that federal law accords states in the Food Stamp Program (which allows most food stamp recipients to submit updated information on their circumstances just twice a year) and the other major means-tested programs, including the other parts of Medicaid. There is little policy justification for the stricter TMA rule, which places significant paperwork burdens on low-income working families, many of whom recently transitioned off welfare. If there were, one would expect it to apply to the rest of Medicaid as well.

The TMA conflict can be easily solved with tailored legislation that gives all states the immediate ability to better coordinate TMA with other programs. The Senate Finance Committee TANF reauthorization bill includes a provision that does just that by allowing states to simplify reporting requirements for participants. The approach adopted by the Senate Finance Committee is a far more effective solution to the TMA conflict than an approach that relies on waivers. Under the Senate Finance bill, states do not need to seek federal permission to bring TMA into alignment with other programs, as they would have to do under the superwaiver.

Fortunately, inconsistencies like that produced by the TMA rule are the exception rather than the rule, particularly now that the TANF law provides states with broad flexibility in most areas of TANF program design and the Food Stamp Act has been amended (primarily in food stamp reauthorization legislation enacted in 2002) to grant states more flexibility to align various program rules with TANF, Medicaid and other programs.

There are two notable remaining sets of remaining barriers to program coordination that stem from differences in federal law: 1) differences in "household composition" rules that govern who is eligible for assistance and whose income and resources are considered when determining an applicant's eligibility; and 2) differences in the rules related to employment services funded with WIA or TANF funds.

Household Composition: In TANF, child care, and SCHIP, states have full flexibility to set the rules about which household members' income and resources are considered when determining eligibility for benefits. There are federal rules, however, in the food stamp and Medicaid programs, and these rules do differ. The Food Stamp Program generally provides benefits to *households* and considers the income and resources of everyone in the household when determining eligibility. The Medicaid program, by contrast, provides health insurance to certain types of *individuals* — children, parents, elderly individuals, and individuals with disabilities — and considers only the income and resources of those individuals and the people who are legally responsible for their support (spouses in the case of adults and parents in the case of children). These differences mean that for some households, different income information is needed to determine the *household's* eligibility for food stamps than is needed to determine an individual's eligibility for Medicaid. For example, if an aunt lives with a family with children, the aunt's income is needed to determine the household's eligibility for food stamps but is not needed to determine the children's eligibility for Medicaid.

It should be noted that these differences stem from differences in the nature of the benefits provided. Since individuals who purchase and prepare food together are pooling their food budgets, the Food Stamp Program provides benefits to all household members and takes into account the income and resources of all household members. The Medicaid program, on the other hand, provides health care coverage to *individuals*. Unlike food stamps, health care coverage is not a shared benefit — individuals who receive Medicaid can access free health care, but other members of their families cannot. Moreover, given the expense of purchasing private health care coverage and the fact that typically only those individuals legally responsible for each other (parents and spouses) share in the cost of purchasing health coverage for any particular person, the Medicaid program bases eligibility only on the income and resources of individuals with a legal duty to support a Medicaid applicant.

At the same time, these differences do complicate efforts to streamline application and other procedures across these programs. There are only two ways to "fix" this inconsistency, however — either conform the Medicaid rules to those used in the Food Stamp Program or conform the food stamp rules to those used in Medicaid. Both solutions would be highly problematic.

- If the Medicaid program were to consider the income and resources of individuals not legally required to help support a child or an adult, then a significant number of low-income individuals would *lose* eligibility for Medicaid, increasing the number of uninsured individuals. These individuals would lose Medicaid eligibility based on the income of individuals who live in the same household but who are very unlikely to be able or willing to buy private health insurance for the child, parent, elderly person, or individual with a disability who otherwise would be eligible for Medicaid.

- Alternatively, if the Food Stamp Program considered only the income and resources of nuclear family units (spouses, parents, and children who are related) when determining food stamp eligibility, the cost of the program would increase substantially. Under this policy, if an aunt lived with a family consisting of two

parents and two children, the parents and children would be eligible for one food stamp benefit while the aunt would be eligible for his or her own food stamp benefit.

Under current law, a state can apply for a waiver to change the current food stamp rules in this area. States have not applied for such waivers because conforming these rules to those used in Medicaid (and most TANF programs) would *increase* food stamp costs significantly. Since waivers must be "cost neutral," states would have to come up with large offsetting *cuts* in food stamp benefits.

TANF/WIA Differences: The other significant barrier to coordination that is due to inconsistencies in federal law is caused by differences in federal rules associated with TANF work requirements and employment services funded under the Workforce Investment Act (WIA). Many states have pointed to these differences as a major obstacle to efforts to integrate employment services funded by the two programs. As the CLASP analysis for the NGA "Cross-systems Innovation" project found, these barriers include the following:

- *WIA mandates a prescribed sequence of employment services while TANF does not.* In general, WIA has very broad eligibility criteria that encompass nearly all of the low-income population. However, WIA does include some requirements related to participant eligibility for "intensive" and "training" services.[9] Under the WIA "sequential eligibility" requirement, providers must first determine that an unemployed individual is unable to obtain employment through "core" services (such as job search and placement assistance) before approving intensive or training services. In addition, WIA generally requires training to be conducted by giving the participant a voucher or an "individual training account" that can then be used to pick from a list of training providers. In TANF, states do not have to make any specific determination before placing a recipient in intensive or training services (although there are limitations on the extent to which such services may count toward the TANF participation rates) and no requirement to use individual training accounts.

- *TANF places caps on the number of cash assistance recipients who can participate in certain types of training and on the length of that training, while WIA does not.*

- *TANF and WIA have very different sets of performance criteria for employment services.* In TANF, states are judged based on the proportion of TANF recipients who participate in a prescribed set of work activities for a specified number of hours each week. Federal law establishes a single national standard that all states must meet without allowances for differences between states. In WIA, local programs are judged based on the employment and related outcomes of WIA program participants. Performance levels in WIA are state-specific and are the product of negotiation between a state and the U.S. Department of Labor.

[9] Intensive services include comprehensive assessments and development of individual employment plans. Training services include on-the-job training, occupational skills training, and adult literacy education.

TANF and WIA share some of the same goals — increasing employment and earnings, and reducing welfare dependency — and both programs fund employment services for low-income disadvantaged adults. Yet, as these examples show, Congress has taken quite different approaches in each program toward accomplishing these goals, reflecting in part the different histories of the programs (JTPA and AFDC) that preceded WIA and TANF. These differences are not insurmountable, as shown by the several states that have integrated their TANF and WIA programs, but broader state flexibility for the delivery of employment services within these programs — along with targeted demonstration projects to test alignment strategies — would likely enhance integration efforts.

Most Remaining Program Alignment Obstacles are Not Due to Inconsistencies in Federal Law

The superwaiver would address one particular type of barrier to program coordination — federal statutory or regulatory requirements that are not consistent among programs — but do nothing to address other types of barriers that do *not* arise from federal law. Three general types of barriers to program coordination are particularly notable:

- Inadequate understanding by both federal and state agencies of existing flexibility and the extent to which programs can be coordinated, compounded by a lack of federal assistance to states on coordination matters.

- Other managerial barriers, including "turf" issues and resistance to change within states.

- Fiscal barriers, including the increased cost of some alignment measures and the federal cost-neutrality requirements that apply to waivers.

Some of the claims that have been made in support of the superwaiver provide an example of the limited understanding of the flexibility in current law. In making their case for the superwaiver, for example, proponents have pointed to a food stamp rule that counts child support payments as unearned income to the family that receives such payments, as well as to a food stamp rule that counts the earnings of children age 18 to 21 who are in school as regular earned income.[10] (The President, in a speech in Columbus, Ohio in 2002 gave the latter rule as an example of why the superwaiver is needed.) Yet superwaiver authority is not needed to modify either of these rules; both rules are waivable under *existing* food stamp waiver authority. (See the text box on page __ for an additional example of how HHS and states did not necessary understand the true extent of state flexibility to simplify eligibility procedures in Medicaid until HHS developed guidance for states on Medicaid eligibility processes.)

[10] Under standard food stamp rules, child support income is treated like other forms of unearned income, such as Social Security benefits. Thus, food stamp benefits are reduced by about 30 cents for each dollar in child support a family receives. Also under standard food stamp rules, the earnings of children age 18 and older are treated like regular household earnings — the higher a household's earnings, the lower its food stamp benefits.

In part, this lack of understanding stems from the fact that, at least in the case of the Food Stamp Program, a good part of this flexibility is new. While federal food stamp rules often were cited correctly in the past as a barrier to program simplification and alignment, recent changes made by Congress and USDA have substantially expanded the flexibility states have to set various food stamp eligibility policies and to establish simpler application and benefit retention procedures. These changes have removed many of the barriers that limited states' ability to align the Food Stamp Program with other low-income programs and thereby stood in the way of broader cross-program coordination.

The lack of understanding is compounded by limited federal attention to the issue of program integration. The federal government has done little to help states understand the flexibility they have or to provide information on best practices or models of successful coordination. For example, a recent GAO report on TANF-WIA integration concludes that "[a]lthough HHS and Labor have each provided some assistance to states on how to coordinate services, the available guidance has not specifically addressed the challenges that many continue to face."[11] The superwaiver by itself would do nothing to improve the understanding of existing options. In fact, it might slow program coordination by seeming to signal that the superwaiver is the only way to coordinate programs.

A closely related set of barriers are managerial and involve concerns over "turf," as well as the substantial time commitment that often is needed to mount an integration effort. Along these lines, a major study of WIA-TANF integration conducted for HHS found that "personality" issues among management in different state and local agencies can be a major factor in whether coordination happens:

> An underlying factor in discussions of challenges to coordination is personality issues. Personality issues are often the difference between overcoming a barrier and finding that barrier to be insurmountable to coordination. These issues are present in many of the coordination efforts reviewed, including cases where strong positive leadership or longstanding friendships between agency directors are credited with successful coordination, and cases where individuals who are resistant to change or do not work well with other managers result in less successful coordination.[12]

A final set of barriers is fiscal. Some alignment measures cost more because they increase access to benefits or extend benefits or services to previously ineligible families. In addition, integration often has various short-run costs, including staff and contractor time to plan efforts, rewrite rules, and reprogram computers. Particularly in the context of TANF and WIA, there may be moving and other costs associated with co-locating services. There is little dedicated funding for such costs. Because both existing waiver provisions and the superwaiver are subject to cost-neutrality requirements, they do nothing to address these fiscal issues.

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[11] U.S. General Accounting Office, *Workforce Investment Act: States and Localities Increasingly Coordinate Services for TANF Clients, but Better Information Needed on Effective Approaches,* GAO-02-696, July 2002.

[12] Nancy Pindus, et al., *Coordination and Integration of Welfare and WorkforceDevelopment Systems,* The Urban Institute, 2000.

Administration Letters to GAO Explain that States Currently Have "Significant Waiver Authority" and that Making Legislative Changes to Programs Provides a More "Immediate Solution" than Demonstration Projects

In November 2001, the General Accounting Office issued a report (GAO-02-58) that analyzed federal rules related to financial eligibility in a number of low-income programs. The report included comments submitted to GAO by the Office of Management and Budget (OMB), the U.S. Department of Agriculture (USDA), and HHS on a draft version of the report. The OMB and HHS comments both make the point that considerable flexibility already exists to better coordinate programs. All three sets of comments suggest that legislative changes to simplify programs would be preferable to demonstration projects.

According to OMB:

> …many Federal means-tested programs currently have significant waiver authority, such as Food Stamps. In addition, states have flexibility under the TANF block grant, SCHIP, and the Medicaid program that can be used to align program rules across programs. Many states have not fully utilized their current law flexibility. Thus, legislative authority for demonstration projects may not be necessary for states to pursue many simplification strategies.
>
> ….While demonstrations are one approach to address program simplification, program reauthorization is also an opportunity to propose such changes to program rules that may more immediately and effectively address simplification. Demonstrations may require years of operation and evaluation where legislative changes to streamline and simplify program rules may provide a more immediate way to enact change. Furthermore, OMB will continue to be concerned that any approaches taken to simplify eligibility rules of Federal programs will not have the potential to increase costs or undermine program integrity.

Comments submitted by HHS made the point that federal agencies and states often do not understand the extent of flexibility under current law:

> ...a lesson was learned by the Department's Center for Medicaid and Medicare Services (CMS) as it it developed recent guidance to states on eligibility processes. The CMS discovered that there is much that States can and should do, under existing rules, to make their eligibility processes more seamless and to eliminate procedural "cracks" that eligible persons commonly fall through. The CMS learned that much could be accomplished with clear Federal guidance, and with States' willingness to commit necessary resources to the endeavor.

USDA also cautioned against demonstration projects and suggested that program reauthorization offered a better opportunity to simplify programs:

> Given the fact that the [Food Stamp Program] is intended to serve a broader population of low income people than any of the other programs reviewed, and that the program is also intended to operate as a national safety net with uniform standards of eligibility across the country, the Department of Agriculture believes that making legislative changes to the program that would simplify and streamline it is a better approach than mounting a series of demonstration projects.
> We believe that Food Stamp reauthorization offers an opportunity to make changes that would provide immediate solutions to the issues raised in this report rather than using demonstration projects which are likely to be of limited utility to Food Stamp participants, and would require years of operation and evaluation.

States' Experience with Welfare Reform Waivers Illustrates Uncertainty of Waivers

States generally cannot rely on waivers to make lasting policy changes. Waivers are granted for a temporary period of time. When a waiver expires, there is no assurance it will be renewed by the Administration then in office, particularly when that Administration is different from the one that granted the waiver in the first place. In addition, Congress may make changes to federal law that effectively override existing waivers.

States' experience with welfare reform waivers illustrates the uncertainty of waivers. Under the old AFDC program, many states obtained welfare reform waivers to modify their welfare programs in various ways. The 1996 welfare law replaced AFDC with TANF and included provisions that were inconsistent with some of the reforms that states had put in place under their welfare reform waivers. The welfare law did not allow states to obtain extensions (beyond their scheduled expiration dates) of any waiver provisions that were inconsistent with the new TANF law.

In most states, these waivers have now expired. Even though many of the projects operated under the waivers were found to be effective in rigorous evaluations, the Administration opposed Congressional proposals to extend the waivers, and neither the TANF reauthorization bill that the House approved last year nor the bill the Senate Finance Committee passed last year include a provision to extend these waivers. As a result, many states now must institute substantial alterations in effective welfare reform programs that they have successfully operated for a number of years.

The food stamp rules related to the treatment of child support income and the earnings of young adults cited above illustrate how fiscal barriers impede program coordination. States can obtain waivers of both provisions under existing food stamp waiver rules. However, such waivers are subject to cost-neutrality rules that prohibit waivers from imposing additional costs on the federal government. Since waiving these rules would increase the amount of benefits paid to certain households, states would need to impose offsetting benefit *cuts* to ensure that the waivers are cost-neutral. States understandably are reluctant to do this, unless there is a particularly strong reason for increasing benefits for one set of households while reducing them for another. The superwaiver proposal would leave this cost-neutrality impediment in place.

Improving Program Coordination: Alternatives to the Superwaiver

Improving program coordination can make programs more accessible for low-income families, simplify program administration for states and other program operators, and yield better outcomes. As explained above, federal law gives states substantial flexibility to coordinate programs, although some legal barriers to program coordination remain. The most significant barriers are due not to inconsistencies in federal law but to lack of information about options, limited funds, and lack of cooperation between agencies. The following recommendations would help to address these types of barriers, as well as those legal barriers to coordination that remain at the federal level.

- *Federal agencies should help states understand the extent of the flexibility they now have and assist states in developing approaches to better align programs.* While many states are interested in exploring ways to better align low-income programs, federal agencies have done little to help states understand the options they have, identify the benefits and costs of various types of program integration efforts, and learn from the experiences of states that have taken successful steps to align low-income programs. To provide technical assistance to states, federal agencies will have to strengthen their own cross-program knowledge or contract with outside entities with such knowledge. Few federal agency staff currently possess extensive cross-program expertise.

- *The Administration should create an inter-agency task force on program coordination that includes officials from HHS, DOL, and the Department of Agriculture.* This task force could consider cross-program waiver requests under current program-specific waiver authority and work to reduce coordination barriers that are not mandated by federal law but relate to agency policies and practices. This task force also could develop simplified procedures related to plans that states must submit for allocating shared costs across multiple programs or purchasing cross-program computer systems. An inter-agency board for the consideration of waivers affecting more than one program is not unprecedented and has existed under previous Presidents, including Presidents Reagan, Clinton, and the first President Bush.

- *The federal government should make planning grants available to states that want to improve program coordination.* Some agencies, such as HHS and DOL, receive research and demonstration project funding. In fact, both the Senate Finance bill and the House bill call for $100 million per year in new research and demonstration, though under the bills this funding could be used only for marriage-related initiatives. Some research and demonstration funding should be directed toward efforts to help states experiment with ways to integrate and streamline low-income benefit programs.

- *In areas where federal rules preclude alignment and are not necessary for important programmatic reasons, the inconsistencies should be eliminated or states should be given explicit state options to address them.* In a modest number of areas, there are inconsistencies among federal rules that are not necessary for important programmatic reasons. The differences described in the previous section between reporting rules for Transitional Medical Assistance and Food Stamps are an example. Where there is little policy justification for a national rule, requiring states to seek a waiver of the federal rule makes little sense. States should be allowed eliminate such inconsistent rules without having to seek a waiver. Recent Congressional actions — including extensive changes to the Food Stamp Act that remove various barriers to alignment, as well as changes to Transitional Medical Assistance included in the Senate Finance Committee's TANF reauthorization bill — show that Congress is receptive to adopting these sorts of simplifications.

Such an approach to resolving inconsistencies in federal law would be less burdensome, more certain, and more equitable for states than the superwaiver. Under the superwaiver, the federal government could approve or deny superwaiver applications or withhold approval until a state agrees to make certain program changes that the Administration then in office favors for ideological or other reasons. In addition, as part of a superwaiver request, a state would need to develop "performance objectives" for the proposed project, show that the project would not result in any increased costs to the federal government, conduct "ongoing and final evaluations" of the project, and make "interim and final" reports to the federal government. By contrast, new state options in these programs would not require any of these actions; any state could simply adopt a program integration option and would not have to conduct additional evaluations or provide additional reports beyond those that federal law already requires. States that adopt options provided in federal law to coordinate programs better also would have more certainty that these changes could be made on a lasting basis. Unlike superwaivers, which would be subject to a five-year limitation and would then have to be resubmitted for approval periodically — possibly to different Administrations — state options are not time-limited (unless Congress acts to change the law or remove the options).

Despite the Administration's support for the superwaiver, letters written by Administration officials to GAO in 2001 suggest that they agree that legislative changes are superior to waivers in this regard. As detailed in the text box on page 16, in comments on a GAO report, OMB officials explained that: "While demonstrations are one approach to address program simplification, program reauthorization is also an opportunity to propose such changes to program rules that may more immediately and effectively address simplification." OMB went on to say that "[d]emonstrations may require years of operation and evaluation where legislative changes to streamline and simplify program rules may provide a more immediate way to enact change."

- *Increase state flexibility in both TANF and WIA to foster better alignment between the two programs.* States would be better able to align their TANF and WIA employment services if they had more underlying flexibility than now exists in these programs. Without two conflicting sets of prescriptive rules related to the types of employment services that can be provided, states could more easily operate a virtually seamless employment services program in which participants are matched to appropriate work-related programs.[13]

[13] The TANF work provisions included in the House-passed TANF reauthorization bill would make it *more difficult* than under current law to align employment services funded with TANF and WIA resources. Under the House bill, there would be more limitations than under current law on the extent to which TANF recipients participating in vocational educational training would count toward the TANF work participation rates. These additional restrictions would mean that fewer individuals participating in WIA-approved training programs would satisfy the TANF work requirements and be "countable" toward a state's TANF work participation rate.

If Congress is unwilling to provide this broader flexibility nationally, demonstration projects could be a useful mechanism to explore ways to create a unified set of performance outcomes for both TANF and WIA-funded employment programs. Because there is significant uncertainty about how best to craft a more coordinated set of performance standards for TANF and WIA employment programs, this is an area where experimentation and evaluation is warranted. There are two ways such demonstration projects could be authorized by Congress. Congress could simply extend waiver authority to TANF (discussed below), and that waiver authority, coupled with existing waiver authority in WIA, would allow states to apply to alter the performance measurement system for employment services under the two programs. Alternatively, Congress could authorize a set of demonstration projects specifically designed to test ways to integrate the TANF and WIA rules related to the types of employment services that can be provided and the performance outcome structure under the two programs.

- *Extend Waiver Authority to TANF*. There is a legitimate role for waiver authority and demonstration projects in low-income programs. As noted, such authority exists in Food Stamp Program and WIA, as well as Medicaid and SCHIP. The current law waiver authority in both the Food Stamp Program and WIA includes protections to ensure that waivers do not alter fundamental aspects of these programs. Surprisingly, although the AFDC program that the TANF block grant replaced had waiver authority and waivers granted under AFDC helped pave the way for the 1996 welfare reforms, TANF lacks any waiver authority. Extending waiver authority to TANF, with appropriate safeguards, would make it easier for states to coordinate TANF with WIA and to test further innovations in welfare reform.

  Any new waiver authority should be carefully crafted to avoid the pitfalls associated with the proposed superwaiver. In crafting program-specific waiver authority, Congress should identify those aspects of a program that are fundamental or necessary for the protection of families or federal financial interests and prohibit waivers of those program components. Under current food stamp waiver authority, for example, waivers that would allow states to use federal food stamp funds to supplant other state expenditures on low-income families and waivers that cut food stamp benefits deeply for a significant share of recipients are not permissible. If waiver authority were extended to TANF, provisions of TANF law such as those that define the basic purposes of TANF, require states to have standards and procedures to ensure against program fraud and abuse, provide labor and civil rights protections, and ensure that families are not sanctioned when they are unable to comply with work requirements due to a lack of child care should not be waivable.

- *Give states flexibility to align eligibility rules for legal immigrants in TANF and Medicaid with immigrant eligibility rules in the Food Stamp Program, the Child Care and Development Block Grant, federal housing assistance programs, and*

WIA. Prior to the 1996 welfare law, all of these programs had consistent eligibility rules for legal immigrants. The welfare law and subsequent amendments to the law have resulted in inconsistent immigrant eligibility requirements among the programs that have little or no policy justification. For example, states may not use federal TANF funds to provide employment services and child care to most legal immigrants who have lived in the United States for less than five years, but no such bar applies to employment services funded through WIA or child care services funded through the Child Care and Development Block Grant. Similarly, legal immigrant children are eligible for Food Stamps, but states are barred from using federal funds to provide TANF assistance or health care funded through Medicaid or SCHIP to these children.

This alternative agenda would do more than the superwaiver to foster coordination of low-income programs. It also has the benefit of being much less controversial than the superwaiver, which has drawn intense opposition and bipartisan concern about the impact it could have on key programs and the extent to which it would shift authority from Congress to the Executive branch. Moreoever, the alternative agenda poses few of the considerable risks of the superwaiver.

Conclusion

The superwaiver is a poor tool for addressing barriers to coordination that arise from inconsistencies in federal law. Where appropriate, Congress should either eliminate such inconsistencies directly or give states options to address the inconsistencies. In cases where the benefits of such an approach are questionable or it is unclear how to address such barriers, tailored, program-specific waiver authority should be made available and used to test new alternative solutions.

The superwaiver is a poor tool for the job of program coordination for an additional reason, as well: it does nothing to address the many barriers to coordination that do *not* arise from federal law. The policy alternatives detailed in this analysis offer a more effective and less risky approach to enhancing program coordination than the superwaiver.