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"SUPERWAIVER" PROVISION IN HOUSE TANF REAUTHORIZATION BILL COULD SIGNIFICANTLY WEAKEN PUBLIC HOUSING, FOOD STAMPS, AND OTHER LOW-INCOME PROGRAMS

By Shawn Fremstad and Sharon Parrott

TANF reauthorization legislation passed by the House of Representatives last year includes a controversial provision known as the "superwaiver."[1] This 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 a long list of low-income programs, including the Food Stamp Program and the public housing program.

The superwaiver poses serious risks. It would enable the Executive Branch and states, without any input from Congress, to alter the most fundamental aspects of federal low-income programs, including how federal funds are used, the target population for benefits, and the types and amount of benefits provided. Moreover, states could use superwaivers to shift federal resources into low-income programs previously funded with state resources and use the freed-up state funds for unrelated purposes, thereby reducing overall funding for low-income programs.

Over time, the superwaiver also 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 are used by states.

The stated goal of superwaiver proponents is that it would foster greater integration and coordination among low-income programs. While these are important goals, the superwaiver is a poor tool to achieve them. There are far less risky approaches to fostering better coordination between programs such as requiring federal agencies to help states utilize the significant program integration opportunities that exist under *current federal program rules* and providing states with new options (that would not require a waiver application) to address identified barriers to program integration.[2]

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[1] As used in this analysis, the term "superwaiver" refers to the provision approved by the House. 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] For a discussion of these more effective options, see Shawn Fremstad and Sharon Parrott, "Is the Superwaiver the Only Way? Other Less Risky Approaches Would More Effectively Promote Increased Coordination of Low-Income Programs," Center on Budget and Policy Priorities, March 2004.

Background

The superwaiver provision in the House bill would apply to a long list of federal programs, including food stamps, TANF, the Child Care and Development Block Grant, most programs authorized under the Workforce Investment Act, the public housing program, and homeless assistance programs funded under the McKinney-Vento Act and administered by the Department of Housing and Urban Development, including permanent housing for homeless persons with disabilities, transitional housing, and the Emergency Shelter Grant program.

Governors would request superwaivers by submitting an application. If the requested waiver includes a program administered by a sub-state entity, such as a city or public housing authority, that entity would have to submit the application with the governor. Federal Executive Branch officials would have virtually unfettered authority to grant waiver requests and would not need to consult with Congress before approving a waiver.[3]

With a superwaiver, a state could effectively override Congressional decisions about the level of federal resources devoted to specific programs and purposes, such as by negating provisions of federal law that target funds to particular needy populations. States could seek waivers to change the type of benefits provided by a program, the eligibility requirements for those benefits, and certain procedural requirements.

Overall Funding for Low-Income Programs Could Decline as States Use Federal Funds in Place of Their Own Funds

States could use superwaivers to shift federal resources into areas previously funded with state resources. That would allow states to withdraw state funds from such areas and use the funds for other purposes, such as bolstering their general treasuries. This practice, known as supplantation, would reduce combined federal-state funding for low-income programs.

For example, a state could supplant *state* funding for child care with *federal* funding by obtaining a superwaiver that allowed it to use federal food stamp funds for child care.[4] Because

[3] There are some limited restrictions to superwaiver authority. Program-purpose language and certain federal laws that apply generally to all federal programs — most importantly, labor standards under the Fair Labor Standards Act and civil rights laws — could not be waived. In addition, Executive Branch officials may not waive a handful of provisions that apply to specific programs and, as discussed in footnote 4, some provisions related to program financing.

[4] Some superwaiver proponents have suggested that funding shifts like these may be prohibited because of a provision in the superwaiver that limits Executive Branch authority to approve waivers that shift funds at the federal level from one federal budget account to another or that override "funding restrictions and limitations" in appropriations bills and "funding restrictions" in authorization laws. 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. For example, a state could obtain a superwaiver that allowed the state to cut food stamp benefits and redirect the savings to employment and training efforts for low-income individuals. Such a waiver would have the effect of shifting federal food stamp benefit dollars into employment and

superwaivers must be "cost-neutral" — that is, programs operated under waivers cannot increase federal costs relative to the cost of the program without the waiver — the state would need to cut food stamp benefits to free up the federal food stamp funds to be shifted to child care. States then could withdraw *state* resources from child care programs and use those freed-up state funds for purposes wholly unrelated to assisting low-income families.

Similarly, if a state obtains a superwaiver that allows it to shift federal food stamp funds from food assistance to job training, the state could then withdraw other funds it uses for job training — either state funds or federal TANF funds — and use those freed-up funds for a myriad of purposes. If the state uses food stamp funds to replace TANF funds used for job training, the freed-up TANF funds then could be used to supplant *state* funds used to support any of a number of programs for low-income families, such as after-school care, assistance for homeless families, or adult basic education programs. The freed-up state funds, in turn, could be used for *any* purpose.

Supplantation has occurred in the past, most notably in TANF. The purposes of TANF are very broad, so federal TANF funds can be used to fund many programs that historically have received state funding. While most federal TANF funding has been used to *supplement* state resources, it is clear that supplantation has occurred in a number of states as well. In a 2001 report, the General Accounting Office found that federal TANF funds had been used to supplant state funding for low-income programs during the late 1990s. That supplantation occurred even during the period of the late 1990s, a period of robust state budget surpluses, is a matter of particular concern.[5] The risks of supplantation under a superwaiver would be especially large during economic downturns, when states face substantial budget deficits.

Until recently, the TANF block grant has been a particularly attractive source of funding to use to supplant state funds since states had significant unspent TANF funds from the early years of TANF implementation. These unspent funds from prior years now are dwindling, however, and soon will run out in most states. Most states are likely to cut TANF-funded programs such as child care, transportation assistance, and welfare-to-work programs in coming years, because their current TANF expenditures exceed their annual TANF block grant

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training efforts, but states would not explicitly shift funds from the food stamp *budget account* to the Workforce Investment Act programs' *budget accounts.* 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, at page 6.

[5] U.S. General Accounting Office, *Welfare Reform: Challenges in Maintaining a Federal-State Fiscal Partnership*, GAO-01-828, August 2001. The GAO study has been cited by proponents of the superwaiver because it found that overall spending on low-income programs — including health programs such as Medicaid and SCHIP — increased in the 1990s, despite the supplantation of TANF funds. It is important to note, however, that state health care costs grew rapidly during the period studied, for reasons wholly unrelated to the TANF block grant or the ways in which state funds that were freed up by supplantation were used. Moreover, increased overall funding during the late 1990s is hardly surprising given that the economy was strong and state budgets flush. The finding that overall funding for low-income programs rose during this period does not negate the study's findings that states used TANF funds in ways that supplanted state funds, even during strong economic times.

allocation.[6] As a result, TANF no longer represents a ready source of funds to use to supplant state spending on low-income programs. The superwaiver, if approved, would create many new opportunities for supplantation using federal funds from other programs, such as the Food Stamp Program and public housing. The risks of shifting funds from programs such as these to unrelated purposes would be large.

The fiscal risks posed by the superwaiver do not stem from any greater wisdom or compassion at federal than at state levels, but from basic political and institutional realities. States face significant budget pressures, especially in bad economic times when they (unlike the federal government) must balance their budgets. The opportunity that the superwaiver would present to states to replace state funding for some low-income programs with federal funding and to use the freed-up state funds to fill budget holes could prove difficult for many states to resist, particularly when other courses involve politically painful choices.

States Could Institute Deep Benefit Cuts or Eliminate Essential Federal Protections Without Congressional Involvement

The superwaiver generally lacks provisions to prevent waivers from altering programs in fundamental ways that adversely affect low-income individuals or families. This lack of "bottom lines" could allow superwaivers to be approved that leave certain groups of low-income individuals or families without access to basic assistance when they need it most. For example, a state could use a superwaiver to:

- **Terminate or sharply reduce food stamp benefits for some categories of poor households.** States then could use the freed-up federal funds for other purposes, including substituting them for state resources in other programs.

- **Delay the provision of food stamp benefits to needy households.** Current federal food stamp rules require states to act on a family's application for food stamps within 30 days. A state facing budget difficulties might seek a superwaiver to align food stamp application processing times with those used in other programs that take considerably longer to provide benefits.

- **Shift federal homelessness assistance funds to persons with less dire housing needs, or even to unrelated programs.** Congress's intent in funding the homelessness assistance programs is to help meet the most basic needs of homeless adults and children, regardless of the state in which they live. A state could seek a superwaiver to broaden the definition of "homeless" used in these programs so that it is not limited to individuals and families that actually lack a place to sleep. This would enable the state to shift homelessness assistance funds to other populations, or even to other programs.

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[6] Many states have already made or are considering such cuts to TANF-funded programs because of shortfalls in TANF funding. See Sharon Parrott and Nina Wu, "States are Cutting TANF and Child Care Programs: Supports for Low-Income Working Families and Welfare-to-Work Programs are Particularly Hard Hit," Center on Budget and Policy Priorities, July 2003.

- **Charge much higher "minimum rents" in public housing.** This would effectively force poor families out of more-desirable public housing complexes, including complexes located in areas with more job opportunities, better schools, and less crime.

- **Weaken child care programs.** Federal law contains several provisions designed to improve the quality of child care and ensure that child care subsidies are large enough to enable families to access quality child care providers. While states certainly support these goals, states in fiscal trouble could seek waivers that allow them to provide shallower subsidies and reduce the amount they spend on initiatives to improve child care quality, with the result that many working-poor families could be forced to use lower-quality care.

Such fundamental changes in federal programs and policies would be easier to make under the superwaiver because they would not require the support of a majority in Congress. Congress would not need even to be consulted. Moreover, low-income families affected by a superwaiver proposal would likely have even less influence over a governor's decision to seek such a waiver — and the Executive Branch's decision to approve it — than they have in the normal, more open, legislative process.

It also should be noted that the House bill contains no requirement that superwaivers have any research objective or even be subject to an independent evaluation. As a result, superwaivers could be used to overturn Congressional decisions on a statewide basis in substantial numbers of states across the country without any assurance that careful, objective assessments of the impacts would be undertaken.

Federal Support for Low-Income Programs Could Erode Over Time

If states make significant changes to low-income programs through the superwaiver, political support for these programs could erode, making it much more difficult to strengthen or even maintain federal funding for the programs over time.

This could happen for two reasons. First, federal policymakers may have less interest in continuing to fund programs if they believe they have little say in how states use the funds. Second, federal policymakers may come to view funding for the set of programs under the superwaiver as basically a single, large block grant.

Block grants, particularly those that serve a myriad of purposes and provide multiple benefits, often lose political and financial support over time as federal policymakers find it increasingly difficult to see the relationship between the funding levels they provide and the services and benefits families actually receive. For example, funding for the Social Services Block Grant declined by 63 percent after adjusting for inflation between 1982 and 2004. Policymakers are more likely to increase funding for a specific benefit or service, such as child care or housing assistance, than to provide states with more resources to use however states want.

In addition, it is more difficult politically to reduce funding for programs that provide a specific benefit or service because the impact of the reductions can be quantified in terms of the number of families that would lose child care slots, food stamp benefits, subsidized housing, or other specific benefits or services.

Finally, efforts to provide funding to address identifiable low-income problems — such as the lack of child care assistance for low-income working families — could be undermined if opponents could argue that states can address such problems by shifting resources out of other areas via the superwaiver. A similar argument is already being made against increases in child care funding. Opponents of increased funding have argued that TANF block grant funds can be used to meet any additional child care needs, even though TANF funding has declined by more than 10 percent since 1996 after inflation is taken into account and many states have been forced to make substantial cuts in child care over the past few years.

Conclusion

The superwaiver has profound implications and poses serious risks. Key government programs could be radically reshaped with no input from Congress. Federal funds could be shifted to replace state funds in low-income programs, with a resulting decline in overall funding for these programs. Political support for low-income programs could erode if members of Congress decide that they have lost control over how federal funds for these programs are used. While fostering better coordination among low-income programs that serve overlapping populations is an important goal, there are far less risky approaches than the superwaiver to achieve it.