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Revised August 10, 2005

## SUPERWAIVER WOULD HARM THE FOOD STAMP PROGRAM AND PLACE BENEFITS FOR LOW-INCOME FAMILIES AT RISK

The House of Representatives' TANF reauthorization bill (H.R. 240) contains a proposal to grant sweeping authority to the Executive Branch to waive, at a governor's request, most provisions of federal law related to a range of low-income and other domestic programs. This "superwaiver" proposal is identical to a provision that the House passed in 2002 and 2003. Though contained in TANF legislation, the superwaiver is not primarily about TANF: states could submit superwaiver proposals entirely unrelated to TANF that cover an array of other programs, including the Food Stamp Program, child care, job training, adult education programs, homelessness programs, and public housing.<sup>1</sup>

If enacted, this waiver authority would open the door to radical changes in the Food Stamp Program. Food Stamps would no longer remain a program with a national benefit structure designed to target food assistance to needy households.

The Food Stamp Program already grants states broad waiver authority. The current waiver authority includes some limitations and protections that Congress carefully designed as part of the 1996 welfare law in order to meet certain basic program goals and prevent abuse of the waiver authority. The superwaiver would effectively eliminate these safeguards. Under the superwaiver::

- unlimited benefit cuts would be permitted;
- substantial numbers of current recipients could lose eligibility;
- states could redirect unlimited food stamp funds to uses other than food assistance; and
- in return for granting a waiver, the federal government could impose a cap on a state's food stamp funding that would be tantamount to converting the program to a block grant.

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<sup>1</sup> Under the House bill, the Secretaries of Health and Human Services (HHS), Agriculture, Education, Labor, and Housing and Urban Development could approve waivers altering statutory and regulatory provisions related to: the Food Stamp Program, the Child Care and Development Block Grant, public housing, the Employment Service under the Wagner-Peyser Act, most job training programs under the Workforce Investment Act, the Temporary Assistance for Needy Families (TANF) block grant, the Social Services Block Grant, adult education programs under the Adult Education and Family Literacy Act, homelessness programs under the McKinney-Vento Act, and a small program known as the Job Opportunities for Low-income Individuals program.

## Superwaiver Poses Serious Risks to the Food Stamp Program

Under the superwaiver virtually all of the Food Stamp Program's rules could be changed, and benefits could be cut with no protections for current participants. Furthermore, unlimited amounts of food stamp funds could be redirected to uses other than food assistance, compromising the Food Stamp Program's ability to meet the nutritional needs of low-income families.

### Unlimited Benefit Cuts Would be Permitted

Current food stamp policy gives states broad discretion to alter food stamp eligibility criteria through waivers. For routine matters, the U.S. Department of Agriculture (USDA) can waive its regulations. Beyond that, the Food Stamp Act provides USDA with extremely broad authority to approve demonstration projects that override statutory food stamp rules in ways that can result in large benefit reductions for a significant share of households, as long as such changes are tested on a limited geographic basis (rather than statewide). Furthermore, broad statewide waivers of federal food stamp law also are granted; under a waiver involving statewide policy changes, states can change most food stamp rules, but there is a limit on the percentage of a state's food stamp caseload whose benefits can be cut by more than 20 percent.<sup>2</sup>

Congress included this protection in the 1996 welfare law to ensure that waivers do not eliminate or sharply reduce food stamps on a statewide basis for major categories of households that meet all program eligibility criteria and are fully complying with work requirements and other program rules. This is an appropriate protection in a program that is designed to enable poor families and individuals to obtain a minimum adequate diet and in which the federal government pays 100 percent of the benefit costs.

Under the superwaiver, by contrast, there would be no limit on the extent to which a waiver could reduce benefits for entire categories of food stamp households.

### Current Recipients Could Lose Eligibility

Under the current waiver authority, households and individuals who are eligible for food stamps and fully complying with all program requirements cannot be removed from the program. The superwaiver, on the other hand, would give states unfettered authority to terminate eligibility for any group of households. States could, for example, lower the program's income limit to below the poverty line or eliminate entire categories of current recipients. This would undercut the Food Stamp Program's ability to assist needy households in securing a nutritionally adequate diet.

### States Could Transfer Unlimited Food Stamp Funds Out of Food Assistance

Of particular concern, under the superwaiver, states could divert resources currently dedicated to food stamp benefits and spend them in other ways. For example, states could reduce food stamp

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<sup>2</sup> The rule is that a waiver that would cut benefits by more than 20 percent for more than five percent of households needs to be limited so the waiver area does not cover more than 15 percent of a state's food stamp households.

benefits sharply or terminate them for some categories of poor households and shift the funds to child care or employment programs. States could accomplish this by using the superwaiver to direct federal funds from food stamp benefits to what is known as the Food Stamp Employment and Training Program<sup>3</sup> — and then expanding the Food Stamp Employment and Training program to cover more TANF recipients.

Such a strategy would likely prove appealing to states struggling to come up with the resources to meet the intensified TANF work requirements that Congress is likely to impose on them as part of the welfare reauthorization legislation. Congressional Budget Office estimates indicate that the TANF work requirements in the House welfare bill could add \$8 billion in new state costs over five years.

States also could use funds diverted from food stamp benefits through a superwaiver to substitute for federal TANF funds in financing their welfare-to-work programs for TANF recipients. States could use the freed-up TANF funds to replace state funds in another program that serves low-income families. The state funds that are freed up in this manner could then be used for purposes entirely unrelated to low-income families. This practice, known as “supplantation,” could prove highly attractive to states facing budget shortfalls or seeking to free up state funds for other spending or tax initiatives. In short, the superwaiver may enable creative state budget directors to convert the Food Stamp Program into something of a slush fund. (See the box on page 9 for further explanation of how the superwaiver could enable states to do this.)

This risk of supplantation is not theoretical. The General Accounting Office has documented that supplantation is now occurring under the TANF block grant in a number of states.<sup>4</sup> The superwaiver would substantially expand the opportunities for supplantation.

### States Could Tax Food Stamps to Raise Revenues

Food stamp superwaivers could benefit state treasuries in other ways as well. In the mid-1980s, Congress prohibited states from charging sales tax on food purchased with food stamps. Congress reasoned that because the federal government provides food stamp funds to promote the food purchases of poor households, these funds should not be partially diverted to state treasuries through taxes on food stamp purchases. Current food stamp waiver authority does not permit this provision to be waived. Under the superwaiver, it could be waived.<sup>5</sup>

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<sup>3</sup> The Food Stamp Program provides \$110 million a year nationally in federal grants to states for Food Stamp Employment and Training (FSET). The Food Stamp Program also funds 50 percent of state employment and training costs for food stamp recipients above the FSET grant amount that a state receives, as well as 50 percent of child care, transportation, or other costs associated with participating in a FSET program.

<sup>4</sup> U.S. General Accounting Office, *Welfare Reform: Challenges in Maintaining a Federal-State Fiscal Partnership*, GAO-01-828, August 2001.

<sup>5</sup> Sixteen states currently impose a sales tax on food and grocery sales.

## States Could Delay Providing Food Stamps to Newly Eligible Families

Under current law, states must act on regular food stamp applications — and if a family is eligible, make food stamps available — within 30 days. Congress established this requirement in part to ensure that poor families and children do not go without adequate food while waiting for help.

Under the current food stamp waiver authority, this requirement cannot be waived; under the superwaiver, it could be. During periods when states encounter budget difficulties and some state social services agencies face shrinking administrative budgets, states might seek superwaivers to “align” food stamp processing times with those used in other programs that take considerably longer to provide benefits. Superwaivers also could be used to place eligible families on waiting lists.

## Food Stamp Funding Could be Capped, as Under a Block Grant

The superwaiver legislation requires that any waiver proposal be cost-neutral to the federal government on a year-by-year basis (or, with special approval, over a five-year period). This is consistent with the federal government’s longstanding policy that waivers of rules in major federal public benefit programs should not cost the federal government more than would have been spent in the absence of the waiver.

In the past under both Democratic and Republican administrations, USDA and HHS (in consultation with the Office of Management and Budget) have devised ways to enforce waiver cost-neutrality while preserving the affected programs’ basic funding structures. Under the longstanding approach, a waiver is considered cost-neutral if the specific changes that are made do not raise overall federal costs. If federal costs for an affected program rise for reasons unrelated to the waiver, such as an economic downturn that makes more people eligible for services, the cost-neutrality of the waiver is not affected.

The Bush Administration has not indicated how it would implement cost neutrality under the superwaiver. Since early 2002, however, the Administration has shifted cost-neutrality methodologies to approve Medicaid waivers that operate very differently from the model just described. Under waivers that provide states flexibility to expand prescription drug coverage to certain categories of low-income seniors, states have been required to accept a hard cap on federal Medicaid funding for all services they provide to all seniors on Medicaid.<sup>6</sup> If spending on Medicaid for seniors is higher than anticipated for any reason — such as faster-than-expected increases in health care costs, the onset of a new disease, or the discovery of a new treatment — the state must choose between cutting services for elderly Medicaid beneficiaries and financing the additional spending entirely out of state funds.

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<sup>6</sup> More precisely, HHS estimates the amount of federal funds that states would have spent without the waiver on all Medicaid services for all seniors over a five-year period; once this federal cap is reached, the federal government will provide no additional matching funds. See Kaiser Commission on Medicaid and the Uninsured, *The Financing of Pharmacy Plus Waivers: Trade Offs Between Expanding Rx Coverage and Global Caps in Medicaid*, May 2003, and Center for Medicaid Services, *Pharmacy Plus Section 1115 Waiver Research and Demonstration Projects Technical Guidance and Fact Sheet* at <http://www.cms.hhs.gov/medicaid/1115/RXFACTSHEET41202.pdf>.

More recently, the Administration has encouraged a number of states (including Florida, Tennessee, South Carolina, New Hampshire, and Vermont) to submit Medicaid waivers that would enable them to make large reductions in eligibility and benefits and institute far-reaching structural changes in the program in exchange for a cap on federal funding. Senior members of Congress from both parties have expressed concerns about the approval of such major changes in state Medicaid programs, without Congressional oversight.

There is risk that this or a future Administration would adopt a similar approach to cost neutrality under the superwaiver. Yet capping food stamp funding would compromise the program's ability to respond to an economic downturn, higher-than-expected food prices, or other factors that cause food stamps to expand and contract naturally.

The Food Stamp Program is the most responsive of all means-tested programs to changes in poverty and unemployment: if more households in a state qualify for food stamps because of an increase in poverty (as can occur during a recession) or strong state population growth, the Food Stamp Program automatically responds by serving more people. Conversely, when poverty declines, the program automatically contracts.

Since March 2001, for example, food stamp caseloads have increased by 68 percent in South Carolina and 53 percent in Oregon, two states where unemployment has risen sharply. In contrast, caseloads have fallen in Hawaii, where the unemployment rate has declined.

For the federal and state officials who would be responsible for calculating cost-neutrality under a superwaiver, these types of state-level variations in food stamp participation would be all but impossible to predict. If food stamp costs rose more quickly than expected, states that had a waiver with capped funding either would have to bear all of the added costs themselves or take cost-cutting steps such as reducing benefits, terminating some households from the program, or placing applicants on waiting lists.

### **The Food Stamp Program Already Contains Substantial Flexibility**

The premise behind the superwaiver seems to be that inconsistencies in federal law are the primary barrier to better coordination of low-income programs. Yet superwaiver proponents have pointed, however, to few actual barriers to better coordination of low-income programs. In remarks in 2002, President Bush cited an example of a way that the superwaiver could, in his view, help states improve the Food Stamp Program, but the specific example he cited is already allowable under current food stamp waiver rules (see box below).

Since 2002, when the superwaiver was first included in the House TANF bill, policy makers have found that inconsistencies in federal law are not a major problem for states in integrating services for low-income families. In 2004, the NGA Center for Best Practices, the Center for Law and Social Policy (CLASP), and the Hudson Institute undertook a project to identify the areas in which

### President's Example of Food Stamp "Inflexibility" Proves Opposite Point

In May 2002, when the House was first considering the superwaiver as part of the TANF reauthorization bill, President Bush discussed the superwaiver and the Food Stamp Program in a speech in Columbus, Ohio. He cited the case of an Ohio family with a 17-year old daughter who was in high school and worked part time. Even through the daughter's earnings apparently would have put the family over the food stamp income limit, the family was able to receive food stamps because the Food Stamp Program does not count the earnings of a student under 18. But when the daughter turned 18, her earnings began to count and the family lost its food stamps.

Declaring "that's not what a compassionate America is all about" and [w]hen people need help we need to help them," the President stated that Ohio should have the flexibility to allow the family to continue receiving food stamps while the daughter transitioned to full-time employment.

Yet Ohio already has the flexibility to make this change. Under current food stamp law, if Ohio wants to liberalize current food stamps rules in this manner, it need only apply for a waiver to do so. At least one other state already has such a waiver. No new superwaiver authority is needed here.

states themselves would like to align and simplify rules across programs. For the major means-tested benefit programs — food stamps, TANF, Medicaid, SCHIP, and child care — this group identified the following areas those in which states would like to better align program rules: application procedures, rules related to when families need to tell caseworkers about changes in their circumstances, income and asset-related policies, and the steps recipients need to take to retain eligibility. The Center on Budget and Policy Priorities was asked to conduct the legal analysis to determine the extent to which states can align rules in these areas under current law and the extent to which federal rules impede states' ability to integrate.

The Center's analysis showed that, in most areas, current law already provided states with ample flexibility and explicit options that would allow them to streamline and align policies in these areas. The findings from the paper were presented at a forum that was hosted by the NGA Center for Best Practices, the Hudson Institute and CLASP and included officials from state human service agencies as well as researchers and federal agency officials. Many forum participants — including those who did and did not support the superwaiver — were surprised at the extent to which federal law afforded states significant flexibility to align rules in these areas. One state human service director commented that states often did not understand the flexibility afforded them under existing federal rules.

A key reason for this is that recent changes to the Food Stamp Program have greatly expanded states' flexibility to align food stamps with other benefit programs. State flexibility over the Food Stamp Program was expanded substantially by the 1996 welfare law and an array of changes in federal regulations in the years that followed. Those measures have given states increased flexibility over how benefits are determined and delivered, program administration, work requirements and sanctions, and ways to strengthen coordination between food stamps, TANF and Medicaid. States have significant flexibility to design their own approaches and coordinate with other programs.

The 2002 Farm Bill went farther. It added at least 10 new state food stamp options, including major new options enabling states to align food stamp rules still more closely with their TANF or Medicaid rules. As of September 2004, every state in the nation had adopted at least one of the new options, and many states had adopted an array of them.

Finally, if these state options do not go far enough, a state may apply under current law for a waiver to alter its food stamp program. Many policymakers appear to be unaware of how expansive state flexibility, and especially the program's waiver authority, is.<sup>7</sup> That the program already provides states substantial flexibility is reflected in the fact that in the three years since the superwaiver proposal was unveiled, superwaiver proponents have been unable to identify significant changes in the Food Stamp Program that states would like to make but are barred from instituting under current law and waiver authority.

Since state flexibility is quite broad under the current program, the central question the superwaiver raises is not whether states should receive flexibility through state options and waiver authority to tailor their food stamp rules. States already have such flexibility. Rather, the central question the superwaiver poses is whether states should be given broad authority to transfer funds away from food assistance to needy families and provided unlimited authority to reduce food stamp benefits and effectively use federal food stamp funds for purposes unrelated to those that Congress intended.

### **Protections in Superwaiver Proposal Would Be Inadequate**

The House bill includes several restrictions on the types of superwaivers that could be granted. However, other than the cost-neutrality requirement discussed above, few of these restrictions would likely prove meaningful.<sup>8</sup>

For example, the appropriate Secretary would be required to determine that a superwaiver project "has a reasonable likelihood of achieving the objectives of the programs to be included in the project." This language is sufficiently vague that it would likely have little practical effect. The administration in power would have sole authority to determine what this language means.

Federal agencies can take a very expansive view of which waiver proposals meet the statutory purposes of the covered programs, as a recent GAO report shows.<sup>9</sup> The report found that HHS had approved waivers for the State Children's Health Insurance Program (SCHIP) that are inconsistent with the basic purposes that Congress set for the program.<sup>10</sup> GAO reported that "HHS has allowed [Arizona] to use unspent SCHIP funding to cover adults without children, despite

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<sup>7</sup> See Center on Budget and Policy Priorities, *States Have Significant Flexibility in the Food Stamp Program*, June 17, 2002.

<sup>8</sup> In addition to the restrictions discussed here, the superwaiver could not be used to waive provisions of law that relate to civil rights, health or safety standards, labor standards under the Fair Labor Standards Act, environmental protection, or the prohibition of discrimination. It also could not be used to waive state maintenance-of-effort requirements or requirements that a state pass through to a sub-state entity part or all of an amount paid to the state. There are also a few program-specific restrictions, such as the few food stamp-specific restrictions discussed in this paper.

<sup>9</sup> See U.S. General Accounting Office, *Medicaid and SCHIP: Recent HHS Approvals of Demonstration Waiver Projects Raise Concerns*, GAO-02-817, July 2002, and Center on Budget and Policy Priorities, *GAO Report Raises Concerns about Recent Health Care Waivers: Findings Relevant to Current "Superwaiver" Debate*, October 2002.

<sup>10</sup> The SCHIP program, which was created in 1997, provides matching funds to states to expand health insurance coverage to low-income children whose families have incomes above a state's Medicaid limits.

SCHIP's statutory objective of expanding health coverage to low-income children. In our view, HHS' approval of the waiver ... is not consistent with this objective and is not authorized.”<sup>11</sup>

Following issuance of the GAO report, key Congressional leaders from both parties — including Senators Charles Grassley and Max Baucus, the chairman and ranking minority member of the Senate Finance Committee — made clear that these waivers violate Congressional intent. Nevertheless, HHS has continued to grant such waivers. The HHS Office of the General Counsel has taken a particularly radical position, asserting that HHS may grant Medicaid or SCHIP waivers that do not meet those programs' statutory purposes as long as the waivers meet the purposes of any of programs authorized under the Social Security Act that are covered by waiver authority under that Act.

An Administration could use similar logic under the superwaiver provision to approve waivers that meet the objectives of any of the programs included in a state's superwaiver request, and thereby to rewrite federal laws and alter the fundamental nature of federal programs without Congressional involvement.

Also likely to have little practical effect are restrictions in the superwaiver proposal on the uses of program funds. The Executive Branch would not be authorized to approve waivers that would shift funds at the federal level from one federal budget account to another. (A budget account usually consists of funds for one program or a set of related programs administered by the same federal agency.) This prohibition would likely have little meaning, since states would be able to use the superwaiver to shift federal funds to different uses — and to different state programs — without formally moving the funds from one federal budget account to another. For example, as noted earlier, since the Food Stamp Program has employment and training and child care components, funds for food assistance could be cut and shifted to employment programs for families receiving TANF and food stamps without funds being formally transferred to another budget account.

Second, the Executive Branch could not approve waivers that would override “funding restrictions” in laws that govern the programs included in the superwaiver. This language apparently applies primarily to funding restrictions in appropriations bills; authorization statutes for food stamps and the other programs the superwaiver would cover generally do not contain much in the way of explicit funding restrictions. Furthermore, the language of the superwaiver proposal makes clear that the legislation permits waivers that override virtually all statutory provisions related to who is eligible for a program, the benefits or services the program provides, and how the program operates, even if such provisions of law effectively restrict how states may use program funds.<sup>12</sup>

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<sup>11</sup> There is evidence that expanding coverage for *parents* increases the probability that parents will enroll their children in health insurance and take the steps necessary to maintain their children's coverage. When Congress created SCHIP, it authorized the use of funds to cover both children and their parents under certain circumstances. There is, however, no reason to believe that providing health insurance to childless adults will have similar effects on child insurance rates.

<sup>12</sup> The Executive Branch could not approve waivers that would override “funding restrictions or limitations” in appropriations bills or “funding restrictions” in authorization laws that govern the programs included in the superwaiver. However, the superwaiver legislation explicitly allows waivers of “program requirements such as application procedures, performance standards, reporting requirements, or eligibility standards.” For more discussion of this issue, see *Superwaiver Would Grant Executive Branch and Governors Sweeping Authority to Override Federal Laws*, Center on Budget and Policy Priorities, June 2002, at page 6.



### How States Could Use Food Stamps for Other Purposes Under the Superwaiver

Under the superwaiver, a state could shift substantial amounts of funds from food stamp benefits to other uses without formally transferring the money out of the food stamp budget account.

- States could reduce food stamp benefits and use the savings to fund welfare-to-work programs for welfare recipients who receive food stamps, as nearly all welfare recipients do. Since the Food Stamp Program has an employment and training component and food stamp funds would be used for employment programs for families receiving food stamps, such a funding shift would satisfy the requirement that a food stamp superwaiver be consistent with the objectives of the Food Stamp Act. The shift could be made without transferring the money out of the food stamp account. Such a shift of funds would likely prove attractive to states that are seeking added resources for work programs and child care but do not wish to increase substantially the level of state funds devoted to these purposes.
- Furthermore, instead of using funds diverted from food stamp benefits solely to help cover the increased costs of operating welfare-to-work programs, states could use some or all of the shifted funds to *replace* federal TANF funds in financing these work programs. A state could then use the freed-up federal TANF funds to substitute for *state* funds in another program for low-income families — and use the freed-up state funds for purposes entirely unrelated to such families, such as financing pork-barrel or other spending projects or a tax cut.
- To come up with the food stamp benefit dollars to shift to employment programs without violating the cost-neutrality rules that would apply to the superwaiver, states would have to reduce food stamp benefits. The superwaiver would enable them to do so. Once states are allowed to use the superwaiver to undo the national food stamp benefit structure — and eliminate or sharply reduce benefits for categories of households that meet the program’s rules — creative state budget directors can readily find ways to use the freed-up food stamp resources to benefit state treasuries or favored parts of state budgets.
- Given the strong budget pressures that many states face — and the pressure in many states to locate resources to finance various spending and tax initiatives (or to avert tax increases or budget cuts in popular programs) — the risk of the Food Stamp Program becoming a significant source of funds for other purposes would be high. There is a strong prospect that the superwaiver would lead over time to substantial reductions in food assistance for low-income households, with adverse effects on poor families and children and diminished food sales for farmers and food processors and retailers.

In addition to these general restrictions, the superwaiver proposal contains four limitations that apply specifically to food stamp waivers. Superwaivers could not be used to weaken sanctions against individuals or households that have committed fraud or failed to comply with work requirements. They could not be used to change federal rules regarding which immigrants are ineligible for benefits. Superwaivers also could not be used to alter food stamp “quality control” procedures, under which states can be subject to federal fiscal sanctions if their food stamp error rates are too high.

Finally, food stamp benefits could not be provided to households in the form of cash. This provision is very narrowly drawn, though: while food stamp benefits could not be provided in cash, waivers that effectively convert food stamp benefit dollars into funding for other programs (such as

employment and training programs) would be allowed. Thus, while food stamp benefit dollars could not be converted directly to cash benefits, these benefit dollars could be converted to other forms, without any requirement that the converted funds be used for food purchases.

## **Conclusion**

The superwaiver would undermine the Food Stamp Program's national benefit structure by allowing states to overturn virtually all of the current program rules, including those designed to ensure that poor families can obtain adequate nutrition. The superwaiver also would allow states to shift unlimited amounts of money out of food assistance for low-income families into other programs.

As a result, the superwaiver could cause significant damage to the Food Stamp Program and pose serious risks to the vulnerable people it serves, as well as to farmers and food retailers who could be affected by a decline in food purchases. Greater coordination among low-income programs is surely desirable, but the flexibility that states already have under current food stamp law — which was greatly broadened in 1996 and 2002 — enables them to pursue that goal without the large risks that the superwaiver poses.