CENTER ON BUDGET AND POLICY PRIORITIES

820 First Street, NE, Suite 510, Washington, DC 20002
Tel: 202-408-1080 Fax: 202-408-1056 center@cbpp.org http://www.cbpp.org

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"SUPERWAIVER" WOULD GRANT EXECUTIVE BRANCH AND GOVERNORS SWEEPING AUTHORITY TO OVERRIDE FEDERAL LAWS

by Robert Greenstein, Shawn Fremstad, and Sharon Parrott

Overview

The TANF reauthorization bill passed by the House of Representatives on May 16 contains a proposal to grant sweeping authority to the Executive Branch to override, at a governor's request, nearly all provisions of federal law that govern a range of low-income and other domestic programs. Under this "superwaiver" proposal, Executive Branch officials would have virtually unfettered authority to approve waivers that effectively rewrite federal laws and alter the fundamental nature of affected programs. The Executive Branch could approve waivers that allow states to use federal funds in ways not authorized by Congress and negate provisions of federal law that target program funds to particular needy populations. Although the superwaiver proposal is included in TANF reauthorization legislation, it is not primarily about TANF. States could submit superwaiver proposals entirely unrelated to TANF that cover an array of other federal programs and funding streams, including the Food Stamp Program, child care, job training, adult education programs, homelessness programs, and public housing.

If enacted, the superwaiver proposal would alter the balance of power between Congress and the Executive Branch in the Executive Branch's favor. The superwaiver provision would allow any Administration, in conjunction with one or more governors, to make unilateral changes in programs that Congress might not — or had already declined to — approve. This sweeping waiver authority would mean that the Executive Branch could ignore compromises reached with Congress through the legislative process by soliciting superwaiver applications that adopt the Administration's preferred position, rather than the legislative compromise, and then granting such waivers in an unlimited number of states. Given the few restrictions that would be placed on Executive Branch authority to waive the federal laws governing these programs, the superwaiver would significantly weaken Congressional control over the programs and hence over a substantial amount of federal funds.

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Under the superwaiver, Executive Branch officials would have virtually unfettered authority to approve waivers that effectively rewrite federal laws and alter the fundamental nature of federal programs.

Congressional Budget Office data show that the programs covered by the House superwaiver provision involve projected expenditures of $65 billion in fiscal year 2003 and $670 billion over ten years.

Since its unveiling by the White House in February, the superwaiver has been modified several times. These modifications address only a few of the fundamental concerns that have been raised about the superwaiver concept. The most recent modification — which prohibits waivers that would shift funds from one federal budget account to another or that override "funding restrictions" in federal laws — was made to address concerns, particularly from Republican members of the House Appropriations Committee, that the superwaiver would allow the Executive Branch to encroach too heavily on Congressional powers. As explained below, however, the effect of the new language is much more limited than some Members of Congress and journalists appear to have thought. The bar on waiving "funding restrictions" would do little to limit the extent to which the authorization statutes governing these programs could be overridden. Furthermore, the restriction on shifting funds from one federal budget account to another would *not* prohibit Executive Branch officials from granting state requests to shift federal funds to other uses; superwaivers could be used to accomplish such shifts since the Executive Branch could allow funds in a given program to be used in ways not authorized under federal law, without formally transferring the funds to a different budget account.

For these and other reasons that this analysis explores, the superwaiver poses serious risks that states could shift funding in ways that result in significant reductions in overall resources for low-income programs. This risk stems not from a lack of wisdom or compassion at state levels but from basic political and institutional realities. Under the superwaiver proposal, states could replace some *state* funding currently being used for low-income programs with *federal* funds from programs covered by the superwaiver. Such a funding shift would be hard to resist for states that face significant budget pressures, especially in bad economic times when they (unlike the federal government) must balance their budgets.

This analysis examines the superwaiver proposal, with emphasis on the superwaiver provisions in the bill passed by the House. It finds:

- *Superwaivers could alter the fundamental nature of affected programs.* Almost any programmatic provision that relates to the affected programs could be waived. Among the types of statutory requirements that could be waived are requirements that statewide food stamp waivers not be used to terminate eligibility or sharply cut benefits for categories of households that may lack political appeal in a state but are eligible for food stamps under federal law and are fully complying with all program requirements. States could seek to make such changes in their food stamp programs to secure more funds to meet the substantially intensified work participation rate requirements that would be imposed on states under the House welfare bill or to free up state funds that could be used elsewhere in state budgets. As another example, superwaivers could be used to override federal rules in public housing that tenants pay 30 percent of income for rent and to raise rents to higher levels. The increased rent collections could then be used for purposes set forth in a superwaiver request.

- *States would be able to replace some <u>state</u> funding currently being used for low-income*

programs with federal funds from programs covered by the superwaiver. As a result, superwaiver authority would likely lead in some areas to a reduction in the total amount of resources provided for low-income families and communities from federal and state sources combined. (For an example of how this could be done, see the box on page 4.) States often face substantial budget pressures, especially in bad economic times when they — unlike the federal government — must balance their budgets. The opportunity the superwaiver would present states to replace state funding for some low-income programs with federal funds and to use the freed-up state funds to fill budget holes would likely prove attractive, especially when alternative policy courses involve politically painful choices. The inclusion of the Food Stamp Program in the superwaiver makes the potential for, and the likelihood of, such funding shifts quite large.

- *The Executive Branch could waive basic targeting requirements that Congress has set for various low-income programs to insure that federal funds serve those most in need.* The superwaiver would allow most of the targeting rules in the affected programs to be waived. Resources could be shifted from poor families to families that have higher incomes and lesser need but represent more powerful constituencies. For example, some public housing funds could be shifted from rental assistance for poor families to homeownership assistance for lower-middle-income families.

- *Superwaivers would not be limited to demonstration projects to test new ideas.* Unlike many past demonstration projects that have been conducted on a limited geographical basis and accompanied by rigorous independent evaluations, superwaivers overturning longstanding provisions of federal law in various programs could be approved and implemented on a statewide basis in an unlimited number of states across the country. Furthermore, the superwaiver proposal lacks any requirement for superwaivers to include an independent evaluation.

- *Democratic processes would be weakened.* Superwaiver authority would replace what are largely transparent Congressional legislative processes with largely behind-closed-doors Executive Branch deliberations and decisions. Congress would have no role in a process that would effectively allow Governors and the Executive Branch to create new federal laws that had never been voted on by Congress. Moreover, in many states, the state legislature would have no role or only a limited role in the superwaiver process. Low-income families and individuals who would be affected would have less opportunity to participate in the decision-making process through their elected representatives.

The Superwaiver Proposal in the House Welfare Bill

The Administration included a superwaiver proposal in the welfare plan it unveiled in February, and versions of the superwaiver proposal were subsequently included in companion welfare reauthorization bills that the House Ways and Means Committee and House Education and the Workforce Committee approved in April. These versions of the superwaiver were superseded, however, by the superwaiver provisions in the TANF reauthorization bill the House of Representatives approved on May 16. The House-passed bill expands the number of programs and the amount of federal resources included in the superwaiver well beyond what the two House Committees had approved.

Under the House-passed bill (H.R. 4737), the Secretaries of Health and Human Services,

How the Superwaiver Could Seriously Damage the Food Stamp Program

The Food Stamp Program already has broad waiver authority, which was written into the Food Stamp Act by the 1996 welfare law. That waiver authority, however, includes important safeguards that Congress carefully designed in 1996 to ensure that waivers do not undermine the program's fiscal integrity or the most fundamental elements of the program's national benefit structure, which maintains a nutritional safety net under low-income families and elderly and disabled people regardless of their state of residence.

The superwaiver, by contrast, would sweep these safeguards away. States would be able to use the superwaiver to make changes in the Food Stamp Program that undo the national food stamp benefit structure by eliminating or sharply reducing benefits for entire categories of households, even if these households are fully complying with all work and other program requirements that Congress has established. States would have a strong incentive to take such action, partly as a result of other aspects of the pending welfare legislation. If a state reduced food stamp benefits for low-income families, it would be able to use the freed-up food stamp resources to help address difficult state budget problems, such as how to finance the cost of the increased work requirements the welfare legislation would impose on states, how to close state budget deficits, or how to finance popular tax or spending initiatives.

A state could do this by shifting substantial amounts of funds from food stamp benefits to other uses. That could readily be done without formally transferring the money out of the food stamp budget account.

- Under the superwaiver, states could shift large sums from food stamp benefits to welfare-to-work programs for welfare recipients who receive food stamps, as nearly all welfare recipients do. Since food stamp funds would be used for employment programs for families that are 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 (and 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.
- Moreover, instead of using funds shifted 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 programs. A state could then use the freed-up TANF funds to substitute for state funds in another program. As a result, the superwaiver also would enable states to use food stamp funds to some degree as a form of revenue sharing. (This use of federal funds to replace state funds — known as "supplantation" — is allowable in TANF, as a result of a loophole in federal law. The General Accounting Office has reported that some states are already engaging in this practice and using some TANF funds to substitute for state funds. Under the superwaiver, opportunities for supplantation would be greatly expanded through the conversion of food stamp benefit dollars to other uses such as financing welfare-to-work programs.)

To come up with the food stamp benefit dollars to shift to employment programs without violating the cost-neutrality rules that apply to the superwaiver, states would have to reduce food stamp benefits. The superwaiver would enable them to do so. Once states can use the superwaiver to undo the national food stamp benefit structure and eliminate or sharply reduce benefits for categories of households that meet all of the program's eligibility rules, creative state budget directors can readily find ways to use the freed-up food stamp resources to benefit state treasuries.

Given the strong budget pressures that many states face — and the pressure in many states to locate resources for various tax and spending initiatives — the risk of the Food Stamp Program becoming a significant source of funds for other purposes would be high. There is a strong prospect the superwaiver would lead over time to substantial reductions in food assistance for low-income households. These reductions in assistance could result in increases in hunger among poor families and children and diminished food sales for farmers and food processors and retailers.

Agriculture, Education, Labor, and Housing and Urban Development could approve waivers altering statutory and regulatory provisions related to the following programs:

- the Food Stamp Program,
- the Child Care and Development Fund,
- Public housing,
- the Employment Service under the Wagner-Peyser Act,
- most employment and job training programs under the Workforce Investment Act,[1]
- the Temporary Assistance for Needy Families (TANF) block grant,
- the Welfare-to-Work program administered by the Department of Labor,
- the Social Services Block Grant,
- adult education programs under the Adult Education and Family Literacy Act,
- 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, and transitional housing and emergency shelter grant programs, and
- a small program known as the Job Opportunities for Low-income Individuals program.

A few rules would apply to superwaiver applications. If an application included a program administered by a sub-state entity, such as a city or public housing authority, that sub-state entity would have to submit the application jointly with the Governor. Superwaivers also would have to meet a "year-by-year" cost-neutrality measure or, at the request of a state and with the concurrence of the Director of the Office of Management and Budget, a five-year cost-neutrality standard. In other words, a state could not receive more in federal funding for the programs included in its superwaiver application than it would have received in the absence of the superwaiver.

The opportunity for states to replace state funding for some low-income programs with federal funds — and use the freed-up state funds to fill budget holes — could prove difficult for many states to resist, particularly during the periods when other courses involve politically painful choices.

Superwaivers could be approved for up to five years and presumably could be renewed for additional five-year periods. If a state's superwaiver application was not denied within 90 days, a state could proceed with the waivers in the application without explicit federal approval.[2] No consultation with Congress on these waiver requests would be required. Federal agencies would simply submit after-the-fact reports to Congress on the superwaivers they had approved.

Few Restrictions Placed on Executive Branch Authority to Waive Federal Law or Authorize Alternative Uses of Funds

Other than requiring cost-neutrality, the bill places only modest restrictions on the types of superwaivers that states could seek and the Executive Branch could grant. The relevant Secretaries would not be able to waive provisions of law applicable to these programs that relate to civil rights or the prohibition of discrimination, health or safety standards, labor standards under the Fair Labor Standards Act, or environmental protection. The Secretaries also would not be able 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. Finally, there are a few provisions of law affecting a few of the covered

programs that could not be waived, although these provisions generally deal with process issues or with sanctions for non-compliance with program rules; for example, superwaivers could not weaken food stamp work requirements or reduce the penalties imposed on recipients who fail to comply with those requirements.

In addition to these restrictions, three new provisions related to the use of program funds under a superwaiver were added just before the House passed its version of the TANF reauthorization bill. First, the Executive Branch could not 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 federal program or for a set of related federal programs administered by the same federal agency.) Second, the Executive Branch could not approve waivers that would override "funding restrictions or limitations" in *appropriations* bills. Third, the new language bars waivers of "funding restrictions" in *authorization* laws that govern the programs included in the superwaiver, although the language specifies that this does *not* bar waivers of "program requirements," such as who is eligible for a program and the benefits or services that a program provides.

This new language limits the scope of superwaivers considerably less than a cursory reading of the language might suggest.

- *The bar on waiving "funding restrictions" in <u>authorization</u> statutes is likely to do little to limit the extent to which those statutes can be overridden.* Authorization statutes for the programs under the superwaiver generally do not contain much in the way of explicit funding restrictions, which are more characteristic of appropriations bills. Moreover, the Executive Branch would decide what provisions of authorization statutes constitute "funding restrictions" — for which no standard definition exists and which the Administration could interpret quite narrowly — and what provisions are "program requirements," which the Administration could define broadly to allow for the waiver of nearly all provisions in those laws. Furthermore, while the legislation does not define exactly what a program requirement is, it stipulates that program requirements — which can be waived — include eligibility standards, application procedures, performance standards, and reporting requirements. It thus appears that virtually *all* provisions related to eligibility criteria, benefits and services, program operations, and the like *could* be waived, even if they have the effect of restricting how states can use program funds.

- *This language would generally prohibit the shifting of funds directly from one federal program to another, but would <u>not</u> prohibit Executive Branch officials from granting state requests to use funds in a particular program in ways not authorized under federal law.* And because superwaivers could be used to alter the fundamental nature of affected programs, states would be able to use the superwaiver to shift federal funds to different uses — and even to different *state* programs — without formally moving the funds from one federal budget account to another. As one example, states could use superwaivers to institute reductions in food stamp benefits and effectively use the savings to replace federal TANF funds or state funds being used in welfare-to-work programs. By so doing, states could free up TANF or state funds for other uses. (As explained in the box on page 8, states could shift funds in this fashion without moving the funds out of the food stamp account.)

The superwaiver provision of the House bill also includes two other apparent requirements, but these requirements are vague and their practical impact is unclear. State waiver requests would need to "coordinate" two or more of the covered programs. The statutory language does not define "coordination;" the Administration in power would

have sole authority to determine what that term means. In addition, the relevant cabinet Secretaries would need to determine that a 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 may have little practical effect; its interpretation, as well, would be left to the Administration in power.

As an example of how broadly the purpose clauses of federal legislation can be interpreted, the Administration has acknowledged that it is considering adopting an interpretation of existing waiver authority in the child support enforcement program that would allow states to use federal child support funds for marriage-promotion programs.[3] The statutory purposes of the child support program are to collect child support owed by non-custodial parents to their children, to locate non-custodial parents, and to establish paternity. Although these statutory purposes are unambiguous and do not include marriage promotion, the Administration apparently intends to construe the program's purposes broadly enough to authorize the shifting of child support enforcement funds to marriage-promotion activities.

Is the Superwaiver the Right Mechanism for Providing Additional State Flexibility or Encouraging Program Coordination?

Some of the programs included in the superwaiver proposal already have substantial waiver authority, such as the job training programs under the Workforce Investment Act and the Food Stamp Program. Other programs, such as the Social Services Block Grant, provide very broad flexibility to states in their basic program structures. There are, to be sure, areas in which states could use further flexibility to define certain program parameters or better align programs that serve similar populations or provide similar services. These matters can be addressed, however, without the radical shift in governance and risks to low-income families that the superwaiver poses.

The scope of the federal requirements and standards that could be swept away — outside normal Congressional processes and through closed-door discussions between Executive Branch political appointees and governors' staffs — is unprecedented.

The food stamp title of the farm bill just approved by Congress provides an example of how states can be provided options to foster program coordination. That legislation accords states an important new option to conform their definitions of what counts as income and what counts as assets in the food stamp program to the definitions they use in their TANF or Medicaid programs. This will enable states to establish a uniform definition of income and assets across all three programs. Similarly, food stamp legislation enacted in 2000 granted states an option to substitute their TANF or Medicaid rules regarding the vehicles that households can own for the federal food stamp rules in this area — and to align the vehicle rules across the three programs. Such options are more beneficial to states than waiver authority, because states do not have to apply for federal approval; they can implement these options without having to request and secure federal permission. Where appropriate, other cross-program options that do not require federal approval can be built into the low-income programs.

As another example of how program coordination can be fostered, Congress could give states options to better coordinate procedures under TANF and job training programs or provide tailored waiver authority in this area. This is an area where some states have called for improved coordination. The Labor Department is currently soliciting public comments (through June 30) on how linkages between the Workforce Investment Act and TANF can be strengthened.

The President's Example of the Need for the Superwaiver

Under current law, the earnings of a student under 18 are not counted when a family's food stamp eligibility and benefit level are determined. In a speech in Columbus, Ohio on May 10, President Bush pointed to this rule as an example of why superwaiver authority is needed. President Bush cited the case of an Ohio family of three with a 17-year old part-time working daughter who is in high school. The family was able to receive food stamps even though the daughter's earnings apparently would have put the family over the income limit for the food stamp program. 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 flexibility to allow the family to continue receiving food stamps while the daughter transitioned to full-time employment.

The President's anecdote made good press. But the President failed to mention that current food stamp law already gives Ohio flexibility to make this change. If Ohio wants to liberalize current food stamp rules in this manner, it can apply for a waiver under existing food stamp waiver authority. At least one other state already has such a waiver. No superwaiver is needed here.

Furthermore, given the President's interest in liberalizing this food stamp rule, federal law could be changed to exclude student income for a longer period, either nationally or at state option. The food stamp component of the farm bill that Congress has just passed includes numerous new state options, and if the Administration were to request a change in the student rule, Congress could easily incorporate it into the welfare bill. States could then institute such an option without having first to obtain federal approval.

Indeed, the House-passed bill would direct the Secretary of Health and Human Services and the Secretary of Labor to submit a joint report to Congress within six months of the legislation's enactment describing changes needed to foster greater integration of TANF and the job training programs authorized under the Workforce Investment Act. Based on the recommendations in the joint report (as well as the comments the Labor Department is currently receiving), proposals to better coordinate the two sets of programs could then be considered next year when the Workforce Investment Act is reauthorized. When the Education and the Workford Committee approved the TANF reauthorization bill in April, it declined to place the job training programs in the superwaiver and took this step instead. The House leadership, however, overrode the Committee's decision to leave the job training programs out of the superwaiver.

Finally, Congress could provide significant waiver authority in the TANF program, which that program now lacks. Or Congress could expand state flexibility in areas in which federal law governing TANF is overly prescriptive. The TANF reauthorization proposals in the House-passed bill move in the opposite direction, substantially restricting states' flexibility in operating their TANF programs, particularly their welfare-to-work programs. In addition, the House bill does not allow the 10 states with existing TANF waivers to renew them after the current authorization periods for these waivers expire, despite state interest in doing so.

Building more flexibility for states into the TANF program and other programs through such means as expanded state options is a sounder course than substantially reducing state flexibility in TANF and creating a radical superwaiver authority that erodes Congressional authority and poses risks to poor

families. Providing specific state options within these programs can facilitate greater program coordination without jeopardizing the fundamental nature of the programs or diminishing Congress' role in setting basic program parameters and funding priorities.

It also should be noted that it is unclear just how much new flexibility states would actually secure under the superwaiver. The superwaiver proposal would grant vast power to the Executive Branch, which would have unilateral authority to decide which waivers to grant and under what conditions. This would enable the Executive Branch to dictate that waivers not be granted in certain program areas unless waivers are constructed in ways that satisfy particular policy positions of the administration in power. If the primary goal of the superwaiver proposal is to foster program coordination, building broader state flexibility into the underlying programs through state options and other means can enable states to implement policies that simplify and coordinate programs without having to apply for waivers to do so.

States could be provided increased flexibility by writing specific state options and tailored waiver authority into federal laws, without the radical shift in governance and risks to low-income families that the superwaiver poses.

Funding Issues Raised by the Superwaiver Proposal

The superwaiver proposal raises a number of issues. One major concern is that it would enable federal funds to be used on a substantial scale to replace state funding for low-income programs, freeing up state funds for purposes unrelated to assisting such families and thereby reducing the total funding available to aid these families.

As noted, under the superwaiver, federal funds could not be transferred from one federal budget account to another.[4] However, since states could use superwaiver authority to alter the basic nature of the covered programs themselves, funds could be shifted to other uses without having to be transferred out of a program. (The example cited above regarding the Administration's plans to shift child support enforcement finds to marriage promotion activities illustrates how waivers can be used to shift federal funds to other purposes without formally moving the funds from one federal budget account to another.) The ability to shift funds in this manner would create various opportunities for states to use the superwaiver to replace state funds with federal funds.

For example, a state could seek to shift large sums from food stamp benefits to welfare-to-work programs for welfare recipients, replacing some federal TANF funds or state funds currently used for that purpose. This could be done without moving the funds out of the Food Stamp budget account. (By reducing food stamp benefits and using the resulting savings to expand Food Stamp Employment and Training Programs to serve more TANF cash assistance recipients, states could readily replace TANF or state dollars being used in welfare-to-work programs with food stamp dollars.)

Such a funding shift is likely to prove attractive to states. If the shifted food stamp funds replaced state funds directly — or if the shifted food stamp funds replaced federal TANF funds that a state then used to replace state funds in other social services programs — the state would secure resources it could use to close a budget deficit, cut taxes, or finance popular spending items. State treasuries also would benefit if the shifted food stamp funds helped states meet the increased costs of the House bill's work participation requirements without having to come up with new state funding. Congressional Budget Office estimates indicate that the work requirements in the House bill would result in large unfunded costs for states.

Targeting Requirements Could be Waived

Among the rules that could be waived are basic targeting requirements that Congress has set for various low-income programs to insure that federal funds serve those most in need. Congress wrote targeting requirements into these programs because experience has shown that without such requirements, some states and localities may use significant portions of program funds to serve more influential moderate- or middle-income constituencies rather than poor families.

The superwaiver would allow most of the targeting rules in the affected programs to be waived. Resources could be shifted from poor families to families with higher incomes and lesser need.

To come up with the food stamp benefit dollars to shift to employment programs, however, states would have to reduce food stamp benefits, which could impair the Food Stamp Program's ability to ensure an adequate diet for low-income households. States could take such steps as lowering the food stamp income limit, eliminating or sharply reducing benefits for certain categories of poor households, or reducing benefits across-the-board.

A historical note is of some relevance here. In the fall of 1995, following initial inclusion in that year's Senate welfare bill of a provision giving states the option of converting the food stamp program to a block grant, a number of state agencies reported that their state budget directors had begun working on shifting food stamp funds into welfare employment programs. In response, Congress redesigned the block grant provision in an attempt to preclude such funding shifts, before rejecting the block grant proposal altogether on a bipartisan basis in 1996.

(States might be able to reduce state funding for some low-income programs still further if superwaivers can be used to reduce state matching requirements in these programs. The superwaiver provision disallows waivers of state maintenance-of-effort requirements, which apply in programs such as TANF. The provision can be read, however, to allow waivers of state matching requirements; this is unclear. At least five of the programs covered by the superwaiver have state matching requirements.)

Because the superwaiver would facilitate the use of federal funds to replace state funds being used to support low-income families, the superwaiver authority could lead to a reduction in some states in the overall level of resources to assist low-income families. Superwaiver proponents may contend that waivers of this nature would be denied. Such claims are not reassuring. It is far from clear that such waiver requests would routinely be turned down, especially if a governor seeking such a waiver is from the same political party as the President and the governor seeks White House assistance in securing approval of the waiver request. The fact that the waiver negotiation-and-approval process is a process largely shielded from public view, with no Congressional involvement or public participation — and often without much knowledge on the part of Congress, the public, or affected low-income families of the specifics of the waiver proposal under consideration — heightens these concerns.

An example from another program with waiver authority is instructive here. The Administration has been encouraging states to apply for certain types of Medicaid waivers in which benefits for some groups of Medicaid beneficiaries may be reduced. The Administration initially presented these waivers as a way for states to free up resources to expand coverage to certain uninsured individuals. In recent months, however, the Administration has indicated it may be willing to approve waivers that reduce benefits but do *not* fully invest the savings into efforts to reduce the ranks of the uninsured. Administration officials have repeatedly declined to say, in response to questions in both public and private meetings, that these waivers

may not be used partly to produce savings that states can use elsewhere in their budgets.

Superwaivers Would Not Be Limited to Demonstration Projects and Could Alter the Fundamental Nature of Affected Programs

Another set of strong concerns stems from the fact that the superwaiver could easily lead not to careful, limited-scale demonstration projects to test alternative program approaches but to sweeping changes that alter the fundamental nature of the affected programs on a broad scale across the country and could be instituted with neither Congressional involvement nor independent evaluation of the results.

Carefully evaluated "demonstration projects" have generally been limited in nature; such projects often are conducted in one or several areas of a state (or in areas of a few states), rather than being operated on a statewide basis. By contrast, the superwaiver provision places no limits on the size or the geographic reach of superwaiver projects or on the number of waivers of the same federal statutory requirement that can be approved across the country. Waivers that overturn or radically alter program features that Congress has established could be approved on a statewide basis in an unlimited number of states.

Furthermore, there is no requirement in the House bill that superwaivers have any research objective or even be subject to an independent evaluation. The superwaiver language in the bill merely says that states should evaluate their own waiver projects, an approach that in some areas is more likely to lead to cheerleading than to rigorous independent assessment of results. The superwaiver proposal would open the door to actions overturning Congressional decisions on a very broad scale without the assurance that careful assessment of the impacts would be undertaken.

Indeed, the superwaiver would grant cabinet secretaries the authority to waive nearly all statutory provisions, regulations, or other requirements applicable to a program.[5] In short, the scope of the federal requirements and standards that could be swept away — outside of normal Congressional processes and through closed-door discussions between Executive Branch political appointees and governors' staffs — is unprecedented. The following sections examine the types of changes that could be made in several programs.

The Food Stamp Program

The food stamp program already includes broad waiver authority, which was expanded substantially by the 1996 welfare law and is now broader than many policymakers may realize. The current food stamp waiver authority also includes some important and necessary limitations, however, that the superwaiver would override. For example, current food stamp waiver authority appropriately distinguishes between demonstration projects that operate in several counties and are designed to test new approaches and waivers that simply allow a state to alter on a statewide basis a federal policy it does not favor.

In the first type of waiver, which represents the type of approach followed over the years in a number of carefully evaluated pilot projects in various low-income programs, states are allowed broad discretion to alter the food stamp benefit structure. (States may not make entire categories of low-income households ineligible for food stamps if these households are fully complying with all work and other behavioral requirements, but they can test changes that result in large changes in the benefits levels for which households qualify.) In the latter type of waiver involving statewide policy changes, states can still change many program rules, but there is a limit on the proportion of a state's food stamp caseload whose benefits can be cut by more than 20 percent. These protections were included in the 1996 welfare law to ensure that waivers cannot simply eliminate or sharply reduce food stamps on a statewide basis for

major categories of low-income households so long as the households are faithfully complying with work requirements and all other applicable program rules. Congress included these as appropriate protections 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, these and other protections Congress has established would be lost. Key elements of the Food Stamp Program designed to ensure that low-income households across the country have access to a nutritional safety net that provides a minimum adequate diet could be waived. There would be no limit on the extent to which a waiver could reduce benefits or even eliminate eligibility for entire groups of food stamp households. The national food stamp benefit structure — the sole feature of the U.S. safety net that establishes a federal floor under nearly all categories of low-income families and individuals — would, over time, likely cease to exist.

The superwaiver provision contains only four limitations (in addition to those discussed above that affect all programs) on the food stamp waivers that could be granted. Superwaivers could not be used to reduce sanctions against individuals or households that have committed fraud or failed to comply with work requirements, requirements to cooperate with child support enforcement agencies, or other such rules. Superwaivers could not be used to change federal rules regarding the eligibility or ineligibility of various groups of immigrants. Superwaivers 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.

Superwaivers Could Shift Resources Away From Food Assistance

As noted, a state could terminate or sharply reduce benefits for some categories of poor households to secure substantial sums it could shift from basic nutrition assistance to other uses, such as operating welfare-to-work programs. Since the shifted food stamp resources could be used directly or indirectly to replace state resources on a significant scale, the superwaiver may enable creative state budget directors to partially convert the Food Stamp Program into a form of revenue sharing.

Food stamp superwaivers could benefit state treasuries in other ways as well. In the mid-1980s, after a multi-year effort, Congress overrode state objections and prohibited states from charging sales tax on food purchased with food stamps. Congress reasoned that the federal government provides food stamp funds to promote the food purchases of poor households and 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.

Some superwaiver proponents may argue that the losses of food stamp resources from such funding shifts may be made up by food stamp administrative savings resulting from simplifying changes under a superwaiver. But unless superwaivers are used to alter the food stamp benefit structure radically so that benefit levels cease being larger for poorer families than for those who are less poor — a change that would likely increase hunger among the neediest families — large savings are unlikely. USDA conducted four demonstration projects in the 1980s to test the effects of aligning food stamp and welfare rules and simplifying and standardizing the Food Stamp Program. The administrative savings in these projects only amounted to about one percent or less of total program costs, largely because the principal

Prohibition Against "Cash Out" Does Not Address Other Ways that Food Stamp Benefits Could be Converted to Funding for Other Programs

The superwaiver includes a restriction barring the "cashing out" of food stamp benefits. This prohibition, however, does not address other ways that food stamp benefit funds could be converted to other uses. While waivers that would provide food stamp benefits in the form of cash would not be allowed, waivers that effectively convert food stamp benefit dollars into funding for employment programs or for other such purposes would be permissible. Thus, while food stamp benefits could not be directly converted to cash given to low-income families, benefit dollars dedicated to food assistance could be converted into funding for employment or other services without any requirement that the shifted funds be used for food purchases. States could shift funds in this manner even if the transferred funds merely supplanted current state expenditures in a particular area.

administrative costs — verifying applicants' incomes and other circumstances — still had to be borne. It thus seems unlikely that large administrative savings could be realized by program coordination measures under a superwaiver, especially since virtually all states already use joint application procedures for TANF and food stamps (and often for Medicaid and other programs as well) and state computer systems are already integrated in a number of states to allow for eligibility determinations in more than one program at the same time.

Time Limits Could be Imposed

Another way that states could free up food stamp benefit funds to shift to other uses would be to impose time limits on food stamp receipt. Such a step might hold political appeal in some areas, especially if it helped to ease tough state budget problems.

Such a step, however, would hit hard at working-poor families and be particularly injurious to children. Large numbers of low-income families that are not on welfare work for low wages. Even full-time work at the minimum wage leaves a four-person family thousands of dollars below the poverty line. Over the past decade, a bipartisan consensus has emerged in Washington that if a parent works full time, his or her children should not be poor. Federal policymakers have been able to raise full-time minimum-wage families to the poverty line, however, only through the combination of the minimum wage, the Earned Income Tax Credit, *and food stamps*.[6] If low-wage families were denied food stamps because they reached a food stamp time limit, they would again fall far below the poverty line. The effect of food stamps in supplementing low wages and serving as a work support would be seriously compromised.

Furthermore, in the Congressional debate in 1995 and 1996 over imposing time limits on TANF cash assistance, time-limit supporters assured critics that families would not be left without the ability to feed their children because time limits would *not* be placed on food stamps. Food stamp benefits have proved important for many families — including working families — that have lost cash assistance due to time limits.

It should be noted that because food stamps can be used only to purchase food, a family cannot survive on food stamps alone for a significant length of time. Food stamps consequently cannot substitute for employment.

For these reasons, when Congress broadened the food stamp waiver authority in the 1996 welfare law, it wrote in safeguards preventing waivers from being used to terminate food stamps — through time limits or other means — for categories of households that meet all federal eligibility criteria and are complying

with work requirements and other program rules. The superwaiver would obliterate this safeguard.

Requirement to Help Needy Families on a Prompt Basis Could be Waived

Superwaivers also could result in changes that delay the provision of food stamp benefits to needy households and consequently increase hardship. When a family applies for food stamps, the state must act on the application — and if the family is eligible, food stamps must be made available — within 30 days. 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.

Yet one of the reasons that Congress established these food stamp standards was that it wished to ensure that poor families and children not go without adequate food while waiting for benefits in other programs to be provided. This is another provision that cannot be waived under the current waiver authority but could be swept away by the superwaiver (presumably in the name of program "coordination").

Because the superwaiver would likely lead to the diversion of some food stamp funds to other uses and would enable states to reduce food stamp benefits in a myriad of ways, including outright termination of food stamp eligibility for entire categories of food stamp households that have been complying with program rules, federal support for the food purchases of low-income households could decline under the superwaiver, perhaps substantially. Such a step would have adverse consequences for poor families and individuals, as well as for farmers and food retailers, who could see a decline in the sales of their products.

Child Care and Development Fund

The Child Care and Development Fund (CCDF) provides more than $4 billion a year to states to provide child care assistance to children under age 13 in families with incomes below 85 percent of the state median income. Child care is not an entitlement for individual families under CCDF, and states retain considerable flexibility in designing their child care programs. For example, states have broad flexibility to set income eligibility levels lower than those specified in federal law. States also have broad discretion to set provider reimbursement rates and parental co-payment amounts.

While CCDF provides considerable flexibility for states in structuring their child care programs, it does contain important protections for families that help increase access to quality child care for both TANF recipients and other low-income families. States could seek superwaivers to eliminate these protections. This is problematic since research has found that child care of sufficient quality can have a positive impact on children's school readiness and academic achievement, especially among low-income children.[7] The protections that could be waived include the following.

- *A requirement that states spend at least four percent of their CCDF funds on activities to improve the quality of child care services.* While the House Leadership bill increases the quality set-aside to six percent of CCDF funds, it then allows this provision to be waived through the superwaiver.[8]

- *An "equal access" provision that requires states to set their reimbursement rates for providers at a level sufficient to ensure that families receiving CCDF subsidies have access to child care services comparable to those received by families who are above CCDF's income eligibility guidelines.* To

Superwaiver Could Undermine Various Employment-related Protections for Workers

Although the superwaiver language prohibits waivers of health or safety standards, civil rights laws, or labor protections under the Fair Labor Standards Act, other protections for workers could be waived. For example, a state could seek to waive provisions that prohibit the privatization of government services and that require the use of merit-based civil service personnel in operating programs such as the Employment Service. A state also could seek to waive a requirement in federal housing statutes that if federal housing funds are used for the construction or substantial rehabilitation of public housing, the prevailing wage must be paid.

In addition, a state could seek to waive the "nondisplacement" provisions of the TANF statute, which prohibit the replacement of regular state or municipal employees with workfare or other work program participants. Displacement has been a serious concern in some localities that have operated large-scale workfare programs — most notably, New York City, where several lawsuits have been filed seeking to limit the replacement of city employees with workfare participants. If the Administration succeeds in its efforts to secure the enactment of provisions requiring states to meet stiff TANF work participation rate requirements, many states are likely to conclude they have no alternative but to expand greatly the use of workfare and to institute workfare projects on something like the scale that workfare operated in New York City. If this is done, a number of states may seek to use the superwaiver to override the TANF nondisplacement protections.

meet the equal access requirement, states must describe in their state plan how a choice of a full range of providers is made available, how payment rates are adequate based on a biennial local market rate survey, and how co-payments are affordable.

- *A requirement that states spend a portion of their CCDF funds to provide child care assistance to low-income working families that are not TANF cash assistance recipients.*

Under the superwaiver, a number of states might seek a waiver of one or more of these requirements. These states may feel compelled to seek such waivers if the work participation requirements they must meet in their TANF programs have been increased sharply without sufficient additional child care and TANF resources being provided, as would be the case under the House welfare bill. As noted, under these heightened work participation requirements, states would need to enroll more parents in work programs and to have parents participate for more hours each week. According to Congressional Budget Office estimates, the new requirements would require states to spend $8 billion to $11 billion more on child care and employment services for TANF recipients over five years.[9] The House Leadership bill freezes TANF funding for the next five years, however, and contains only a small increase in child care funding — an increase of $1 billion over five years. (The bill also includes an increase of $3 billion over five years in the authorization ceiling for discretionary child care funding, but these additional funds would not materialize unless they were provided in annual appropriations acts. If tight limits are placed on the overall levels of funding available for non-defense appropriated programs in coming years, Congress could have considerable difficulty finding room for such an increase.)

Faced with escalating costs and insufficient resources, states could seek waivers to redirect funds currently used to ensure and improve the quality of child care services or to eliminate the requirement that they spend a portion of child care funds on low-income working families not receiving TANF. States also might seek to waive the equal access provisions in order to place families in less-expensive and likely lower-quality child care.

Public Housing

The superwaiver proposal would allow states and local public housing authorities to waive various protections in federal law for low-income, elderly, and disabled families living in public housing projects. It also may enable governors to seek more control over public housing resources.

Unlike many of the other programs in the superwaiver, Governors do not have direct control over public housing. Public housing is operated by local public housing authorities, which contract with HUD. Some local housing authorities are independent of local government. Others are more directly controlled by mayors or county boards. The superwaiver provision stipulates that waiver applications that cover a program administered by a state and a program run by a "sub-state entity" must be submitted jointly by the Governor and the head of the sub-state entity. If a waiver application includes changes in public housing, the director of the local housing authority or, in some cities, the mayor would have to sign off on the waiver application.

Even with this provision, the superwaiver proposal may enhance governors' authority over public housing. Some states control other funding streams that go to some of the same local officials that operate public housing, and governors may be able in some cases to place pressure on local officials or housing authorities to sign off on a superwaiver proposal the governor wants. In addition, some housing authorities may seek or readily agree to waivers that may not be in the best interests of poor families.

- *A local housing authority and a governor could seek a waiver to allow the sale of a public housing project located on what has become prime real estate and to use the proceeds from the sale to launch or expand rental or homeownership assistance programs geared toward more influential moderate- or middle-income constituencies.* That this is a risk is suggested by the fact that state housing programs tend to be oriented much more to moderate- and middle-income households, and less to poor households, than federal low-income programs, despite the severe shortages of affordable housing for poor households.

  Federal law permits housing authorities to sell a public housing project if the land has become extremely valuable or under certain other circumstances. To receive federal approval to sell a project, however, the housing authority must demonstrate that the proceeds of the sale will be used to buy, build or rehabilitate other properties that will be operated as low-income housing or that the sale is otherwise in the best interests of the residents. Prior to selling a project, a housing authority also must give the residents an opportunity to buy it and continue to operate it as low-income housing. Inclusion of federal housing programs in the superwaiver could enable a governor and local housing authority to bypass these protections of federal law.

- *Superwaivers could be used to override a provision of federal law enacted in 1998 to prevent the concentration of the poorest (and least employed) tenants in certain public housing projects.* The law prevents housing authorities from placing the most destitute public housing tenants in one project or group of projects, while placing higher-income tenants in other, nicer projects. Congress took this action because some local

housing authorities were operating in this manner and were thereby intensifying concentrations of deep poverty and joblessness. Research indicates such concentrations make it harder to move people to self-sufficiency.

- *Superwaivers might be used to impose time limits on residence in public housing, a step Congress has declined to take because it could result in an increase in homelessness and thereby cause significant harm to poor children.* Recent research shows that large numbers of families that leave welfare for work earn wages too low to enable them to find rental housing that does not consume more than half of their income or is not substandard or overcrowded. Placing a time limit on how long a poor family can live in a public housing unit would impose serious hardship on many of these working-poor families. It might even cause some of these families to leave their jobs if they had to move to another area to find a private apartment they could afford and their place of employment was not accessible from their new area of residence.

- *Superwaivers also could be used to override federal rules that tenants pay 30 percent of income for rent and to raise rents to higher levels.* The increased rent collections could then be used for purposes set forth in a superwaiver request.

- *Similarly, superwaivers could be used to enable some public housing authorities to waive a federal requirement that Congress wrote into law in 1998 to encourage public housing tenants to go to work.* Under this requirement, increases in a tenant's earnings are supposed to be disregarded in computing the tenant's rent during a transition period. Many housing authorities have never implemented this requirement, which costs the housing authorities money since they collect less in rent and which is somewhat more complex to administer. (Public housing authorities are allowed to keep half of all increases in rents they collect.) HUD might be amenable to granting waivers of this requirement; HUD's commitment to this provision of federal law appears weak, as the agency has done little to enforce it.

- *Also apparently waivable would be a requirement that limits to 20 percent the share of federal funds provided to a housing authority to repair public housing that the housing authority may use for its operating costs.*[10] A housing authority could seek a waiver of this rule to add more staff and justify this move on the grounds that the added staff would be assigned to helping tenants attain self-sufficiency. This would create a potential for the superwaiver to be used in some circumstances to divert funds from badly needed capital repairs of deteriorating housing projects to padding a PHA's staff. It would be difficult for federal officials to identify such problems in the short time they would be given to act on a superwaiver application before the application would be deemed to be approved.

A few provisions of current law related to public housing could *not* be waived; statutory procedures for designating certain housing projects as elderly-only or disabled-only could not be overridden. In addition, a description of a public housing authority's request for a waiver would need to be included in the PHA's annual plan, along with the comments covering the waiver from the PHA Resident Advisory Board and the PHA's responses to the comments. It should be noted, however, that HUD typically does not

carefully review annual PHA plans, of which there are more than 3,000 each year.

Programs Serving the Homeless

Programs that the Department of Housing and Urban Development administers which provide funding for emergency shelter, transitional housing, rental assistance for homeless individuals, and permanent housing with services for homeless people with disabilities also could be adversely affected. Funding for these programs, except for the Emergency Shelter Grants (ESG) program, is distributed through a competitive grant process. Typically, a city or state submits a "consolidated" grant application to HUD that includes a number of individual projects operated by private non-profit agencies. If the consolidated application is approved, the city or state then subcontracts with the non-profit organizations to operate the individual projects. The city or state itself also may operate some of the projects.

Under the superwaiver proposal, a local official could, with the governor's support, seek waivers of various statutory or regulatory requirements that apply to the use of homeless assistance funds that the local official administers. There is no requirement that local officials seeking such waivers first consult with the non-profit agencies that ultimately receive the funds and actually provide the services. One type of waiver that may be attractive to some local officials would involve overriding provisions of federal law that target homeless assistance funds to individuals or families who are currently homeless or temporarily living in a shelter. The homeless are a distinctly unpopular group in many localities. The superwaiver would allow governors and local officials to shift funds targeted to the homeless to other low-income groups who are not homeless, with the shift being justified on the grounds that the redirected funds were being used to "prevent homelessness" or to help families who are at some broadly-defined "risk of homelessness."

As an example, most states use TANF funds to operate "emergency assistance" programs that provide short-term aid to meet temporary emergencies, including the threat of eviction, foreclosure, or utility cut-offs. States also can use federal Emergency Shelter Grants funds provided by HUD to provide financial assistance to families that have received eviction notices or notices of utility cut-offs, but no more than 30 percent of ESG funds can be used for this purpose. A governor could seek a waiver of the 30 percent limit to use ESG funds to finance a greater portion of these emergency assistance costs so that fewer TANF funds would be used for this purpose. The freed-up TANF funds could then be used to help finance the cost of increased work program requirements that Congress may impose on states in the current welfare reauthorization bill, or to substitute for state funds in other programs and thus free up state money for whatever purpose a state chooses.

Other provisions designed to provide protections to homeless families or ensure accountability for the use of federal funds also could be waived. For example, the superwaiver could be used to override provisions of federal law that limit the extent to which local grantees that receive federal funds to buy or construct buildings to provide supportive housing can later sell the buildings or otherwise convert them to uses that do not directly benefit low-income persons.[11]

Adult Education Programs

Under the Adult Education and Family Literacy Act, states conduct a comprehensive process to develop a five-year plan to provide adult education and literacy services. The plan must include program strategies for low-income students, individuals with disabilities, single parents and displaced homemakers, and individuals with multiple barriers to educational advancement, including individuals with limited English proficiency. In states where the Governor administers adult education funds, a Governor could seek a waiver to bypass the planning

process and narrow the target populations served with adult education funds. For example, funds could be used solely for TANF recipients. As noted earlier, the House-passed bill would impose new work mandates on state TANF programs without providing sufficient funding to states to cover the cost of the new mandates as estimated by CBO. If the superwaiver is in place, this could drive states to seek waivers to use other federal funding sources, including adult education funds, to help cover the gap.

Conclusion

The superwaiver provision would represent a dramatic transfer of authority to the Executive Branch. It would enable the Executive to override nearly any program rule affecting the programs covered by the superwaiver and to alter the basic nature of these programs, including how program funds are used, the level and nature of the benefits and services provided, and the target populations served.

As this analysis explains, the superwaiver would pose risks for poor families and individuals who benefit from these programs. These risks 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 states to replace state funding for some low-income programs with federal funds (especially from the Food Stamp Program) and to use the freed-up state funds to fill budget holes could prove difficult for many states to resist, particularly during periods when other courses involve politically painful choices. The likely result of such funding shifts would be lower overall levels of resources for programs that serve low-income families.

As of note, low-income families tend to have less access to policymakers than people who are more affluent. As a result, one of the best assurances that low-income families have of equitable treatment on the policy process is for the process to operate in an open and democratic manner. When majority policy decisions affecting low-income families are moved from their elected representatives in Congress deliberating in public view to closed-door discussions between Executive Branch appointees and governors' staffs, democracy — and the opportunity for these families to participate in the policy-making process — is diminished. The consequences for poor families of such a change in decision-making processes are not likely to be beneficial.

In short, the superwaiver proposal has profound implications and poses serious risks. This radical change is not necessary. To the extent that more flexibility for states is needed, Congress can provide that flexibility by establishing more options for states in these programs and making other appropriate changes in the federal statutes that govern the programs. This can be done without Congress' acquiescing in the unprecedented shift in governance that the superwaiver represents.

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1. All funding and programs under the Workforce Investment Act would be subject to the superwaiver, except vocational rehabilitation services under Title IV of that act and the Job Corps. WIA funding for job training and other workforce development activities for adults, dislocated workers, and youth, as well as programs for Native Americans and migrant farmworkers, and the Veterans Workforce Investment program, would be included in the superwaiver.

2. The 90-day period would not run during any period that the secretaries have requested additional information from the state and the

state has yet to provide the information.

3. The plan to use child support funds for marriage-promotion programs has been detailed in press accounts and HHS documents. See Amy Goldstein, "Marriage Promotion Link to Child Support Eyed," *Washington Post*, March 23, 2002 and Testimony of Vicki Turetsky, Senior Attorney, Center on Law and Social Policy, Senate Finance Committee, May 16, 2002.

4. Funds could be transferred among programs that are part of the same budget account. This is the case with at least two of the sets of programs included in the superwaiver: the budget account for HUD-administered homeless assistance programs includes four different programs, and the budget account for training and employment services under Title I of the Workforce Investment Act includes several programs.

5. As noted, the bill places modest restrictions on Executive Branch authority to waive federal law. In addition to specific provisions discussed in this paper, a provision prohibiting the use of federal adult education funds to supplant state adult education funding could not be waived, and certain provisions in the Workforce Investment Act could not be waived, including requirements related to the eligibility of providers or participants, the establishment and function of local workforce investment boards created by the Act, and procedures for review and approval of WIA plans.

6. In the late 1990s, the combination of minimum-wage earnings, the EITC, and food stamps lifted a family of four to the poverty line. Such a family now falls a bit short of the poverty line because of the erosion of the minimum wage to inflation.

7. Deborah Lowe Vandell and Barbara Wolfe, *Child Care Quality: Does It Matter and Does It Need to be Improved?*, U.S. Department of Health and Human Services, Office of the Assistance Secretary of Planning and Evaluation, May 2000.

8. This provision would not be waivable if it were determined by the Executive Branch to be a "funding restriction." The term "funding restriction," however, is likely to be interpreted more narrowly than this by the Administration. The term may be interpreted to apply only to explicit statutory restrictions which specify that none of the funds provided for a given program may be used for a certain type of activity.

9. The actual costs of the legislation may be higher than this. A recent study suggests that the costs of the work requirements in the President's plan, which has work requirements that are similar in nearly all respects to the House bill, could be in the range of $15 billion over five years. Mark Greenberg, Elise Richer, et al., *At What Price? A Cost Analysis of the Administration's Temporary Assistance for Needy Families (TANF) Work Participation Proposal*, Center for Law and Social Policy, April 10, 2002.

10. As explained in footnote 8, the language in the bill prohibiting waivers of "funding restrictions" would likely be interpreted to allow waivers of provisions like this one.

11. Under current law, if an entity receives federal funds under the McKinney-Vento Act to buy or construct buildings to operate a supportive housing project, the project must be used to provide supportive housing for at least 20 years unless the project is no longer needed for supportive housing and is converted to some other use that directly benefits low-income persons. If the project ceases to be used for supportive housing and is not converted to some other use that benefits low-income persons, the entity that received federal funds to buy or construct the building must repay all or a portion of the funds. The amount of funds the entity must repay depends on how long the project was operated as supportive housing.