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STATES HAVE SIGNIFICANT FLEXIBILITY IN THE FOOD STAMP PROGRAM

by Dorothy Rosenbaum

The House-passed welfare reform bill, H.R. 4737, contains two proposals that would undermine the Food Stamp Program's national benefit structure by allowing states to overturn virtually all of the current program rules. The first, known as the "superwaiver" proposal, would grant sweeping authority to the Executive Branch to waive, at a governor's request, most provisions of food stamp law, in addition to laws in a range of other low-income programs. The second proposal would allow up to five states to elect a fixed food stamp block grant in lieu of the regular federal food stamp program.

For a detailed analysis of the superwaiver and its implications on all of the affected programs, see:

<http://www.cbpp.org/5-13-02tanf.htm>

For a shorter analysis of the implications of the superwaiver for food stamps see:

<http://www.cbpp.org/5-13-02fs2.htm>

Also, see analysis on the proposal for a five-state food stamp block grant:

<http://www.cbpp.org/5-13-02fs.htm>

Under both proposals, federal support for the food purchases of low-income households would likely decline, perhaps substantially over time. The superwaiver would allow states to shift unlimited amounts of money out of food assistance for low-income families into services under the food stamp employment and training program. (See Box at the end of the paper.) The block grant shares that problem. In addition, food stamp funding for any state participating in the block grant would be frozen at the 2002 level, with the result that the program would no longer be responsive to increases in participation related to economic downturns or improved access among the working poor, the elderly, or other types of households. Such proposals would likely have adverse consequences for poor families and individuals and also could have negative effects on farmers and food retailers, who could see a decline in the sales of their products.

The Food Stamp Program already grants states broad flexibility. In a significant change in direction, the Department of Agriculture and Congress have acted in the last few years to accord states numerous options in how benefits are determined and delivered within the regular food stamp program. These options allow states greater flexibility in program administration and better enable states to align food stamps with other programs such as TANF and Medicaid. In addition, in the area of work and training programs and sanctions for noncompliance, the food stamp program provides states with flexibility to design their own programs and to coordinate with other programs.

The food stamp provisions of the recently enacted Farm Bill represent the latest and one of the most significant developments on this front. A primary goal of Congress and the

Administration in reauthorizing the food stamp program was to respond to calls from the states for increased flexibility and program simplification. As a result, the new law accords states at least 10 new or expanded state options.

In addition to these explicit state options, states may apply for waivers to alter the program in their states. The food stamp waiver authority was substantially broadened by the 1996 welfare law and is now quite extensive, although it does include some limitations and federal standards that Congress designed to meet specific policy goals, such as ensuring fiscal integrity and maintaining food stamps as a nutrition program.

Proponents of the superwaiver and block grant have not made a compelling case that the current food stamp program flexibility is insufficient. Nor have they identified particular changes they would like to make in the program that states are prohibited from making under current state options and the current waiver authority. The fundamental question that the superwaiver and block grant proposals pose is not whether states should receive flexibility under waiver authority to tailor food stamp program rules. States already have such flexibility. The question is whether states should be allowed to transfer funds away from food assistance to needy families — and also have unlimited authority to reduce benefits or eliminate eligibility for categories of needy households eligible for food stamps under federal law — thereby altering the basic nature of the food stamp program. The small number of limitations on the current waiver authority that Congress chose to retain in 1996 are designed to foreclose such possibilities and should not be swept away, as the superwaiver and block grant proposals would do.

This paper provides a brief summary of the current food stamp waiver authority and summarizes the flexibility available to states in the food stamp program in four areas: benefit structure, benefit delivery, employment and training programs, and sanction authority. The examples used in this paper are meant to be illustrative and do not cover all areas where states have flexibility under the program. The Department of Agriculture recently published a list of which states have taken some of the key food stamp program state options.¹

Current Waiver Authority

As is discussed below, the federal food stamp law has many state options built into its basic structure. In addition, in 1996, as part of the welfare law, Congress dramatically expanded the food stamp waiver authority to allow for greater state experimentation within the food stamp program. States can seek waivers to change virtually any aspect of the food stamp benefit structure and delivery system. The few limitations that Congress decided to retain after careful consideration are necessary to preserve the program's fiscal integrity and to maintain food stamps as a nutritional safety net.

¹ See www.fns.usda.gov/fsp/MENU/ADMIN/CERTIFICATION/SUPPORT/StateOptionReport.pdf.

For example, to preserve fiscal integrity, the 1996 welfare law prohibited states from waiving the requirement that states contribute half of food stamp administrative costs. Without this restriction, states could seek waivers that entail cutting food stamp benefits and converting the savings into an enhanced administrative matching rate. Similarly, states cannot waive the prohibition against giving food stamps to residents of most institutions. Without this prohibition, states could use food stamps to fund meals in state prisons or mental hospitals and offset the costs through food stamp benefit cuts.

To maintain the nutritional safety net, a handful of critical program rules cannot be waived. These include:

- The *individual entitlement* to food stamps for eligible persons who are not violating work or other conduct requirements. (Without this prohibition, states could make various categories of households ineligible for benefits or establish waiting lists in order to secure a source of funds for other purposes.)
- The *gross income limit* for households that do not include elderly and disabled members. (Without this prohibition, states could reduce benefits for poor and near-poor households to provide benefits for some groups of households at higher income levels, or could reduce the income limit for everyone to shift resources from food stamp benefits to other uses.)
- *Provision of timely service*, such as the right to apply for food stamps when a household first contacts the food stamp office and to receive food stamps within 30 days if eligible. (Without these provisions, households in severe need could have to wait for long periods before receiving assistance.)

Another important provision in current 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.²

² The current rule is that a project that would reduce benefits by more than 20 percent for more than 5 percent of households may not include more than 15 percent of the state's food stamp households.

This provision was 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 program rules. Congress included it as an appropriate protection for 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.

Finally, because the federal government finances 100 percent of food stamp benefits and because the program is an entitlement, under current waiver authority — as under the proposed superwaiver — waivers must be cost neutral to the federal government. If a state expands food stamp benefits to one group, food stamp benefits must be reduced elsewhere to pay for the expansion. States report that the principal barrier to more widespread use of the current waiver authority is the cost-neutrality rule, not any limitations written into the waiver authority.

Many policymakers appear to be unaware of how broad the current food stamp waiver authority is. Consider the example President Bush used in a speech in Columbus, Ohio on May 10. 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. President Bush cited the case of an Ohio family of three with a 17-year old daughter who is in high school and works part-time. 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. What the President did not mention is that current food stamp law already gives Ohio the 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 new superwaiver authority is needed here.

As another example of state use of current waiver authority, Texas recently received a waiver to simplify the program's medical expense deduction for the elderly and disabled. Instead of the elderly and disabled needing to document the actual amount of their medical expenses, Texas will use a standardized deduction. To pay for the costs associated with the waiver, Texas will trim back another area of the program. In general, this waiver will modestly cut benefits to some families with children and will increase benefits to some elderly and disabled households with medical expenses. The waiver is allowable because it does not cut benefits deeply for any households.

In addition, under current waiver authority, a number of states also have initiated projects to improve the delivery of food stamps to SSI recipients by improving coordination with the Social Security Administration and standardizing the food stamp benefit so that applicants are not also required to contact the food stamp office.

State Options in the Food Stamp Benefit Structure

The food stamp program's national benefit structure was established under President Nixon, after an initial effort to operate the program without such standards resulted in enormous disparities across states, with some states setting income limits as low as 50 percent of the poverty line. The national benefit structure ensures that poor families can obtain adequate nutrition, regardless of where they live. Because under the national benefit structure a family's food stamp benefits depend on its income, food stamp benefits tend to be higher in states that provide low cash-assistance benefits and where wages are lower than average.

In recent years, the Congress has maintained the important features of the national benefit structure but has granted states numerous options to streamline benefits and coordinate food stamp eligibility and benefits with other programs such as TANF and Medicaid. Prior to the recently-enacted Farm Bill, states could, for example:

- Import into food stamps the rule they use to assess the value of vehicles in their TANF assistance program. (39 states have opted to change the food stamp vehicle rule.)
- Waive the application of the three-month time limit on participation for unemployed childless adults for areas with high unemployment or insufficient jobs. (41 states have such waivers.)
- Develop state-funded food stamp replacement programs for legal immigrants who are not eligible for federal food stamp benefits. (17 states have immigrant replacement programs.)

The food stamp reauthorization included in this year's Farm Bill added at least 10 new state options, some of which are quite significant. Because they were enacted in mid-May, states are just now becoming aware of the options and have not yet had an opportunity to implement them. Under the new law, states may, for example:

- Align income and resource definitions in food stamps with the definition they use in TANF or Medicaid so they can use a single definition of income and resources in all three programs. This flexibility should allow states to shorten the joint applications they use for food stamps and other programs and simplify benefit determinations.
- Simplify the treatment of utilities in administering the program's shelter deduction, which should dramatically reduce the complexity associated with this deduction.

- Provide up to five months of transitional food stamps to families that leave cash assistance without additional paperwork requirements for the family or the state agency.

With these and other provisions, Congress has demonstrated a willingness to consider changes to the food stamp benefit rules that states identify as necessary, particularly for conformity with other programs or administrative simplification. If additional changes to federal food stamp law are needed to allow for greater flexibility in the national benefit structure, Congress could consider incorporating such changes in future legislation so that all states could institute such policies without having to obtain federal approval of a waiver.

Flexibility on Benefit Delivery

Although food stamp benefits are 100 percent federally financed, states contribute half of the costs of administering the program, and as a result, have considerable latitude as to how benefits are delivered to eligible households on a day-to-day basis. As with the benefit structure, the recent food stamp regulatory and statutory changes have dramatically increased the options available to states.

Within broad federal guidelines, states may:

- design their food stamp applications and procedures,
- determine what documentation to require households to produce to verify information in their applications,
- determine how often recipients must reapply for food stamps and how often changes in household circumstances must be reported, and
- negotiate their own contracts with companies that can provide electronic benefits and issue benefits.

States also choose how much to coordinate these activities with other programs they administer, such as TANF, Medicaid, child care, and child support enforcement, among others.

Many of the food stamp rules in these areas are set in regulation and are routinely waived under administrative waivers. USDA reports that it has approved more than 1,000 administrative waivers.

Recent USDA regulations and the recently enacted food stamp reauthorization provisions of the Farm Bill expand on this flexibility, granting states important new options to ease administrative burdens by allowing states to require less frequent contact between the state and households that receive food stamps. All but eight states have taken advantage of the new

options, and many states are reviewing their policies in this area as a result of the new options in the Farm Bill.

One of the new options on benefit delivery, known as semi-annual reporting, has the potential to transform the food stamp program for both states and households. Under this option states may provide six months of continuous food stamp eligibility at a fixed benefit level, requiring a household to contact to the food stamp agency only if the household's income rises above the program's gross income limit (130 percent of the poverty line). Prior to this change states and households had to monitor eligibility information on a monthly basis. If a household did not report even a modest change in circumstances within 10 days the state was subject to an issuance error and the household could be assessed a claim for an overpayment. Now, in states that take the option, states can essentially freeze benefits for eligible households for six month intervals as long as the household's income remains below the eligibility limit. This will have enormous administrative advantages for states will make it significantly less burdensome for households — particularly households whose circumstances are volatile, such as working households — to receive food stamps.

USDA first made this option available for households with earnings under a November 2000 final regulation. About 20 states elected the option over the next year and a half. Now that the option is available to a broader range of households even more states are likely to take advantage of it.

This new option, along with several others, will give states new flexibility to more effectively package food stamps with other programs such as Medicaid, TANF, and child care assistance.

Employment and Training

The Food Stamp program provides both unmatched federal funds and open-ended matching funds to states to operate food stamp employment and training (E&T) programs. Under food stamp rules, all adult recipients are required to register for work unless they are elderly, disabled, caring for a child under age six, already complying with a TANF or Unemployment Compensation work requirement, or otherwise not expected to work. States have very broad discretion to require work registrants to look for jobs, to participate in employment and training activities, or to work off their benefits.

In 1997, Congress restructured the food stamp E&T program to serve primarily unemployed childless adults. Under the welfare law, such individuals may receive food stamp benefits for only three months out of any three-year period unless they are participating in a work program. States criticized the provisions directing most federal food stamp E&T money to unemployed childless adults as overly restrictive, and the food stamp reauthorization legislation enacted in May 2002 as part of the Farm Bill returned the food stamp E&T program to its prior, more flexible design. States once again have almost complete flexibility over how they operate their E&T programs. They may determine which populations to serve (for example, parents in families with children or unemployed childless adults) and select what types of employment and training services to provide. They may access open-ended 50 percent federal matching funds for these employment and training services and related work support services, including transportation and child care.

How States Could Shift Food Stamp Benefit Dollars Away from Food Assistance Under the Superwaiver

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. Such an approach could be attractive to states that are seeking added resources for work programs or child care, especially if the welfare reauthorization law raises work requirements on states without adding additional resources to implement these new requirements. Forty-one out of 47 states that responded to a National Governors' Association survey reported that the House-passed bill would require them to fundamentally alter their work and child care programs or redirect resources to meet the increased work participation rates. CBO estimates that the House-passed work participation rates could cost states up to an additional \$11 billion in work and child care costs over the next five years. Most states are already under significant budgetary pressure, even before these possible changes in the welfare law. If the House-passed superwaiver is enacted, the food stamp program could be an attractive source of funds for cash-strapped state budget officials.

As part of a superwaiver a state could cut food stamp benefits and ask to shift the savings to its food stamp employment and training program in order to help finance work programs to TANF recipients. This could be achieved by eliminating food stamps for a group without much political support in a state. Because the food stamp program has an employment and training component, a state could argue that such a funding shift would satisfy the requirement that a superwaiver be consistent with the objectives of the Food Stamp Act. In addition, the shift could be made without transferring money out of the food stamp account (which the House-passed superwaiver would prohibit) and without increasing overall program costs.

Under current food stamp waiver authority, states are not permitted to shift funds from food stamp benefits to work programs for TANF recipients. The superwaiver would override this prohibition.

Sanction Authority

Prior to the 1996 welfare law, some states criticized the Food Stamp Program for undermining the work requirements they imposed in cash assistance programs because when a family's welfare grant was sanctioned for non-compliance with a work requirement, its food stamp benefits would increase to reflect the family's reduced income. The food stamp increase offset about one-third of the amount of any sanction. This problem was fixed in 1996. States are now prohibited from increasing food stamp benefits when a household's income drops because it has been sanctioned for failing to comply with a TANF work or other behavioral requirement.

In addition, the 1996 welfare law granted states new authority to sanction food stamp recipients who fail to comply with TANF work requirements. If a food stamp recipient who is expected to work (i.e., is a non-disabled, non-elderly adult who is not caring for a child under the age of six) violates a state's TANF work requirement, federal law makes him or her ineligible for food stamps. The state has the option to apply additional, rather severe penalties, including complete disqualification of the entire household from the food stamp program for up to six months.

Even if an adult is *not* subject to work requirements under Food Stamp rules — because, for example, the individual is a parent caring for a child under the age of six — the state still has the option to impose additional food stamp penalties on the household if the adult fails to comply with work or other behavioral requirements. When a food stamp recipient violates *any* TANF behavioral requirement, the state has the option to terminate food stamps to that individual, to reduce the household's food stamps by up to 25 percent, or to do both.

In addition to the two types of optional work-related sanctions discussed above, states have the authority to sanction custodial or non-custodial parents who are food stamp recipients for not complying with child support enforcement requirements.

Conclusion

States already have significant flexibility in operating the food stamp program and setting program rules through explicit options and available waiver authority. For the superwaiver proposal and the five-state block grant, the question is not whether states should receive flexibility under waiver authority to tailor food stamp program rules. States already have such flexibility. The question is whether some basic federal standards should be maintained within the waiver authority; the current food stamp waiver authority does so, while the superwaiver and block grant provisions of the House welfare bill would allow virtually all such standards to be jettisoned.

For example, should states be allowed to transfer funds away from food assistance to services or have unlimited authority to reduce or eliminate benefits for eligible households that are fully complying with program rules, thereby altering the basic nature of the program? The limitations on the current waiver authority do not permit such a radical program redesign and should be maintained.