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# "SUPERWAIVER" WOULD ALLOW FUNDAMENTAL CHANGES TO PUBLIC HOUSING AND HOMELESSNESS PROGRAMS

## 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 the request of a governor and, in some cases, a local government, 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 applies to a number of other programs, including public housing, some of the largest federal homelessness programs, food stamps, child care, job training, and adult education programs.

Earlier CBPP papers have examined the superwaiver proposal's overall implications (see http://www.centeronbudget.org/5-13-02tanf.pdf) and its potential impact on the food stamp program (see http://www.centeronbudget.org/5-13-02fs2.htm). This analysis examines the proposal's implications for homelessness programs and public housing. It finds:

- *Congressional decisions regarding public housing time limits, rent rules, and other controversial issues could be overturned.* Many of the current rules that govern housing and homelessness programs are the result of decisions made by Congress after extensive debate and compromise among competing interests. Superwaiver authority would replace 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 executive officials at the federal, state, and sometimes local levels to create new federal laws that had never been voted on by Congress. Moreover, in many cases the state legislature or city council would have no role or only a limited role in superwaiver decisions that affect their jurisdictions. Low-income families and individuals who would be affected would thus have less opportunity to participate in the decision-making process through their elected representatives.

- *Superwaivers could be used to replace some state funding currently being used for low-income programs with federal funds from housing and homelessness programs.* 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. 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 statutory provisions that limit demolition, sale, or conversion of housing projects or homeless facilities could be waived.* As a result, buildings could be sold and the proceeds spent on purposes other than providing housing assistance to low income families, allowing the substantial federal investment in these facilities to be diverted away from the uses for which it was intended. Requirements that public housing residents who lose their homes receive relocation assistance could also be waived.

- *Programs that are administered by local bodies and grants that are distributed through competitive processes could still be subject to superwaivers.* Waiver applications for programs run by "sub-state entities" must be submitted jointly by the governor and the head of the administering entity. However, these waivers could be just as broad as waivers for other programs, and in some cases states may be able to pressure housing agencies and other local entities to accept waivers that they would not have sought on their own.

- *The Executive Branch could waive basic targeting requirements that Congress has set for housing and homelessness programs to ensure that federal funds serve those most in need*. Requirements that at least 40 percent of applicants admitted to public housing each year be "extremely low-income" (defined as households with incomes below 30 percent of the area median income, which is roughly equivalent to the poverty line) could be waived. Similarly, the definition of "homeless" that targets federal assistance toward families and individuals that are in shelters, on the streets, or constantly moving from place to place could be expanded to include a much broader group of households considered to be at risk of homelessness. Consequently, resources could be shifted from the most destitute families to families that have somewhat higher incomes and less acute need.

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

- Public housing,
- 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,
- the Food Stamp Program,
- the Child Care and Development Fund,
- the Employment Service under the Wagner-Peyser Act,
- most employment and job training programs under the Workforce Investment Act,
- 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, 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 Ayear-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.

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.[1] 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, or environmental protection. Although labor standards under the Fair Labor Standards Act would be exempted from waivers, other labor standards could be waived, including Davis-Bacon Act requirements that the prevailing wage be paid when federal funds are used for the construction or substantial rehabilitation of public housing.

- The Secretaries 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.

- There are a few provisions of law affecting some of the covered programs that could not be waived. For example, statutory procedures for designating certain housing projects as elderly-only or disabled-only could not be overridden. Similarly, some requirements concerning public housing agency plans and resident advisory boards would be exempt from waivers. Other provisions requiring resident participation in decision making, however, could be waived, including requirements to consult with resident groups before altering lease provisions or demolishing a particular project.

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 Afunding restrictions or limitations@ in *appropriations* bills. Third, the new language bars waivers of Afunding restrictions@ in *authorization* laws that govern the programs included in the superwaiver, although the language specifies that this does *not* bar waivers of Aprogram requirements,@ such as who is eligible for a program and the benefits or services that a program provides.

This language limits the scope of superwaivers considerably less than a cursory reading might suggest. The proposal does not specify which statutory provisions are Afunding restrictions@ and which are Aprogram requirements,@ so the Administration could define “program requirements” broadly to allow for the waiver of nearly all provisions in the authorizing laws. The language on budget accounts would generally prohibit the shifting of funds directly from one federal program to another,[2] but would *not* 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.

The superwaiver provision of the House bill also includes two other apparent requirements, but these are vague and their practical impact is unclear. State waiver requests would need to Acoordinate@ two or more of the covered programs. The statutory language does not define Acoordination;@ 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 Ahas 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.[3]

A recent report by the General Accounting Office provides an example of how the statutory purposes of programs can be interpreted broadly even under existing waiver policies. GAO found that the Administration has granted waivers in low-income health programs that are inconsistent with the basic goals of these programs. For example, one waiver allowed funds from the State Children's Health Insurance Program to be used to cover childless adults, despite the program's clear statutory objective of expanding health coverage for low-income children. The superwaiver provision could allow similarly broad waivers to be granted for a wider range of low-income programs and with fewer safeguards.

In the areas of public housing and homelessness, the statutory objectives of the major programs covered by the superwaiver are likely to leave states with considerable room to make fundamental changes. The U.S. Housing Act includes an extensive declaration of policy that could potentially allow the objectives of the public housing program to be interpreted much more broadly than its current focus on housing for low-income families. The overall purposes of the McKinney-Vento Homeless Assistance Act are for the most part limited to assisting or meeting the needs of "the homeless," but provisions in the existing statute allow some funds to be used for homelessness prevention. These provisions could be used to support an argument that expanding services to individuals who are not currently homeless would fall under the law's objectives.

## Administration of Programs by Local Bodies and Distribution of Funds through Competitive Grants Do Not Eliminate Risks Posed by Superwaivers

To a greater extent than many of the programs covered by the superwaiver, public housing and homelessness programs are administered through local governments and other sub-state entities. The PHAs that run public housing programs are funded directly by the federal government. Some local housing agencies are independent of local government, while others are more directly controlled by mayors or county boards. Of the HUD-administered homelessness programs under the McKinney Act, the Emergency Shelter Grants (ESG) program distributes funds to local governments and states according to a formula, while others, including Supportive Housing and Shelter Plus Care, use competitive application processes. Regardless of whether a local entity receives funds by formula or based on a competition, this distribution of funds may lead to requirements that local agencies participate in superwaiver requests, but it would not necessarily protect programs from fundamental changes.

Because the superwaiver proposal does not allow waivers of requirements that funds be passed through sub-state entities, waivers could not be used to alter allocations of funds among localities under public housing or ESG. The proposal also stipulates that waiver applications covering 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 to public housing or ESG, the director of the local housing agency or, in some cases, the mayor would have to sign off on the waiver application. In addition, in the case of public housing, a description of a 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.

Even with the requirement that a sub-state entity join in a waiver request, the superwaiver proposal may enhance governors= authority over public housing and local ESG programs, allowing governors to gain greater control over funds without actually taking them away. Some states control other funding streams that go to some of the same local officials that operate housing and homelessness programs, 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 and local governments may seek or readily agree to waivers that may not be in the best interests of poor families. Examples of such waivers are discussed later in this paper.

For homelessness programs that are funded through competitive application processes, a city or state typically 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. Provisions of these programs could potentially be waived either at the time applications are reviewed or after grants have been made. In some cases, homelessness grants can last for five years or longer.

For these programs, the approval of a local official, together with the governor, would be required for waivers of statutory requirements that apply to the use of homeless assistance funds that the local official administers. However, HUD could potentially direct grants toward applicants that indicated an interest in a waiver, and local governments receiving competitive grants could be subject to pressure for the same reasons that formula grant recipients would be. 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.

## Is the Superwaiver the Right Mechanism for Providing Additional State Flexibility or Encouraging Innovation?

Two of the stated purposes of the superwaiver are to allow states to better coordinate programs and to encourage innovation. Both public housing and homelessness programs could potentially benefit from improved cross-program coordination and policy innovation. However, the superwaiver proposal does not appear to further these objectives in the ways that are most likely to effect real program improvements.

In the case of public housing, for example, there is a substantial need for improved coordination between PHAs and agencies that administer TANF, job training, and other programs. These agencies serve overlapping populations but often do not work together closely. There are opportunities for coordination among these agencies under existing law, however, and the federal statutes that could be waived under the superwaiver do not appear to be the primary barrier to cross-program coordination.

Efforts to improve coordination are more likely to be effective if they involve communication and consultation across agencies. For example, agencies could be required to enter into cooperation agreements with each other to improve services to shared clients. The U.S. Housing Act currently requires public housing agencies to seek such agreements with welfare agencies but does not place a reciprocal obligation on welfare agencies to enter into agreements. Cooperation agreements could potentially enable housing and welfare agencies to work together more closely in a number of areas, including implementation of housing program earnings disregards and use of TANF funds to help families with vouchers locate housing.

To the extent that federal statutes do create barriers to coordination, giving states and local administering agencies flexibility through statutory options is likely to be a more effective solution than broadly empowering the federal Executive Branch to grant waivers as it chooses. In addition, statutory options provide flexibility without jeopardizing the fundamental nature of the programs or diminishing Congress= role in setting basic program parameters and funding priorities.

For example, the food stamp title of the farm bill just approved by Congress 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. States and PHAs could be given the same types of options to align definitions between public housing and other programs. Such options are more beneficial to states and PHAs than waiver authority. Because they do not require federal approval, states and PHAs could implement these options without having to request and secure federal permission.

Another example of a provision that would enhance flexibility and ease cross-program coordination without relying on waivers is being considered as part of the TANF reauthorization process. The Senate-passed reauthorization bill specifies that TANF-funded supplemental housing benefits for working families do not fall under TANF's definition of "assistance." As a result, states would not be required to subject recipients of these benefits to TANF's time limits, work hours, or data reporting rules, although states could still choose to impose any of those requirements on their own. This increased flexibility would make it much easier for welfare agencies and PHAs to work together in implementing TANF-funded housing benefits.

It also should be noted that it is unclear just how much new flexibility states and public housing agencies 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.

Another stated purpose of the superwaiver proposal is to promote innovative approaches in order to strengthen service systems. In this case as well, the superwaiver is probably not the most effective approach to producing real policy improvements. Traditionally, innovation has often been promoted through demonstration projects that are limited in nature and frequently 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. These limited demonstrations usually have been accompanied by careful evaluations that help policy makers determine whether an innovation has been effective and whether it should be replicated.

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.

Several targeted demonstrations of housing policy innovations are currently underway. The Jobs-Plus demonstration, which will end in the fall of 2004, is testing a concentrated package of access to jobs and job training, financial incentives, and community supports for work. An evaluation of the program will compare outcomes in experimental public housing developments in five cities with matched developments to measure the program's effects. The Moving-to-Opportunity demonstration is examining the effects of enabling families in public housing and other assisted developments in high-poverty census tracts to relocate to low-poverty neighborhoods in five metropolitan areas. Interim results from the demonstration are available now, and a final evaluation of the program is expected to be completed in 2006. The Moving-to-Work demonstration authorized HUD to designate up to 30 PHAs to experiment with a wide range of program variations, including combining Section 8 and public housing funds. Evaluations are required for at least 15 of those PHAs. These types of focused demonstrations are likely to generate lessons that can guide improvements to housing policy without the risks entailed in the superwaiver proposal.

## Superwaivers Could Be Used to Override Congressional Decisions Regarding Rent Rules, Time Limits, and Other Issues

Many of the rules that govern the public housing program are the result of legislative compromises that balanced the interests of different constituencies. Superwaivers would enable groups dissatisfied with these compromises to go outside of the legislative process to obtain outcomes more acceptable to them.

For example, superwaivers could 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 home. Time limits could be imposed on residents of McKinney Act-funded supportive housing as well, with similar negative consequences.

Some PHAs and states also could request superwaivers overturning Congressional decisions regarding public housing rents. Current law limits rents to 30 percent of household income, caps minimum rents at $50 per month, and provides hardship exemptions from minimum rents. Because housing authorities keep half of increased rent revenues, rent increases could be used to generate new resources to help meet the costs of operating the housing, to provide services to residents, or to fund new housing programs for middle-income families.

In addition, superwaivers could be used to allow public housing agencies to avoid implementing provisions that Congress has put in place to encourage transitions to work among public housing residents. For example, housing authorities could request waivers of 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 because they collect less in rent and which is somewhat more complex to administer. 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.

Superwaivers also 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.

## Conversion, Sale, and Demolition of Housing Projects, Homeless Shelters, and Supportive Housing Facilities

Unlike most of the programs covered under the superwaiver provisions, the public housing and homelessness programs oversee an extensive physical infrastructure. The statutes that govern these programs place limitations on the use of housing projects, homeless shelters, and supportive housing facilities that were constructed using billions of dollars of federal capital over a period of more than 60 years. The laws also regulate the actions that state and local governments can take to sell, convert, or demolish these buildings. These limitations would be subject to the superwaiver, potentially allowing this substantial federal investment to be diverted away from the purposes for which it was intended.

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. As a result, 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. Because the proceeds from the sale of housing projects would not be a federal appropriation subject to funding restrictions, waivers could allow states to use these funds for purposes other than providing housing assistance to low-income families. PHAs and states also could seek waivers of important protections for residents of housing projects that are under consideration for sale and demolition, including a relocation requirement that is intended to protect residents from being displaced and requirements that PHAs consult with the residents.

In addition, states could use superwaivers to weaken the restrictions on buildings constructed or purchased under federal homeless assistance programs. Buildings funded to provide supportive housing could be converted to uses that do not benefit low-income persons after the federal grant ends. 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. (Supportive housing grants generally are for no more than five years unless renewed.) 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. All of these provisions could be waived under the superwaiver proposal.

## The Superwaiver Proposal Could Allow States and Housing Agencies to Divert Housing and Homelessness Funds Away From Their Intended Uses

One major concern with the superwaiver proposal 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 low-income families and thereby reducing the total funding available to aid these families. As noted above, under the superwaiver, federal funds could not be transferred from one federal budget account to another. 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 structure of housing and homelessness programs would provide opportunities to shift funds in these ways.

One example of a shift that may be permissible under the superwaiver provision would involve using ESG funds to replace TANF funds expended on “emergency assistance” programs. Most states use TANF funds to operate such programs, which provide short-term aid to meet temporary emergencies, including the threat of eviction, foreclosure, or utility cut-offs. States also can use federal ESG funds 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 in this way. A governor could seek a waiver of the 30 percent limit and use ESG funds to finance a portion of these emergency assistance costs so that fewer TANF funds would be used for this purpose.

The statute authorizing the ESG program includes a clause that prohibits use of ESG funds to supplant other homelessness prevention spending, but the superwaiver proposal may allow this clause to be waived. The superwaiver proposal prohibits waivers of "maintenance-of-effort" provisions, but does not explicitly prohibit waivers of the ESG non-supplantation provision or of non-supplantation provisions generally. An Administration could take the position that waivers of non-supplantation provisions which are not specifically designated as "maintenance of effort" requirements — such as the ESG non-supplantation provision — would be allowable. As support for this position, an administration could point to the superwaiver's prohibition of waivers of a specific non-supplantation requirement in the Adult Education and Family Literacy Act. The Administration could reason that the inclusion of this prohibition implies that the prohibition on waiving MOE requirements should be interpreted narrowly to not extend to all non-supplantation provisions.[4]

TANF funds freed up by a shift of ESG funds could 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. (TANF funds can be used for a wide range of purposes. While states must meet a broad maintenance-of-effort requirement, there is no explicit prohibition in TANF on using federal TANF funds to supplant existing state spending.) ESG funds could also be used to replace directly state or TANF funds used to provide welfare-to-work services to the homeless population or to families that have received eviction or utility cut-off notices. Survey research indicates that more than four in ten welfare recipients experience difficulty paying rent or utilities.[5]

Such funding shifts may prove attractive to states. If the shifted funds replaced state funds directly — or if the shifted 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 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.

The experience of the food stamp program offers an example of the potential for this kind of shifting of funds**.** 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.

Public housing programs also may offer potential for fund shifting. A requirement of federal law limits to 20 percent the share of federal funds provided to a housing authority for public housing repair that the housing authority may use for its operating costs instead. This limitation would apparently be waivable under the superwaiver. That would allow the superwaiver to be used in some circumstances to divert funds from badly needed capital repairs of deteriorating housing to supplant other sources of funding by providing job training, security, or other services to public housing residents that are allowable as operating costs. Again, this could have the effect of reducing the overall resources available to assist low-income families.

Because the superwaiver would facilitate the use of federal funds to replace state funds that 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 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.

## Targeting Requirements Could Be Waived

In addition to allowing funds to be shifted to new uses, the superwaiver could be used to waive requirements that programs be targeted to particular groups. Under public housing, at least 40 percent of applicants admitted each year generally must be extremely low-income, with incomes at or below 30 percent of the area median income. Waiving this requirement would enable states to shift benefits away from the neediest families and toward higher-income populations. 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 housing programs, despite the severe shortages of affordable housing for poor households.

Targeting of homelessness assistance programs also could be altered using superwaivers. In addition to changing the percentage of funds that may be used for homelessness prevention under the ESG program, as was described above, this could be done by waiving the statutory definition of "homeless." The McKinney-Vento Act requires persons served by the Supportive Housing, Shelter Plus Care and Section 8 SRO (Single Room Occupancy) programs to meet this definition, which encompasses only people who are in shelters, living on the streets, or constantly moving from place to place. Under the superwaiver, a governor (with the explicit or tacit consent of local officials and private grantees) could request a waiver of the statutory restriction to include families that are at-risk of homelessness.

Funding for these programs could then be directed to other individuals and families deemed at risk of homelessness, without violating the broad purposes of the McKinney-Vento Act. Literally millions of households could be considered "at risk of homelessness" due to paying too much of their income for rent or living in substandard or overcrowded housing. Because many of these "at-risk" families would also be participants in TANF, waiving the definition of homelessness could also allow funding shifts of the type described earlier. This would further dilute the funds available for HUD's homeless programs, which are already inadequate to meet the needs of homeless persons, and do not suffice even to serve the estimated 200,000 individuals who are chronically homeless and in need of housing in combination with services.[6]

## 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. This authority would allow the Executive to alter fundamentally the use of public housing and homelessness funds.

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 the federal than at the state level, 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 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.

Also 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 in the policy process is for the process to operate in an open and democratic manner. When major 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. 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.

2. 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.

3. 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.

4. An administration could also take the position that the prohibition of maintenance-of-effort waivers does not forbid waivers of requirements that states, localities, or non-profits provide matching funds as a condition of receiving federal funds. Several homelessness programs, including ESG, Supportive Housing Grants, and Shelter Plus Care currently have matching requirements, as does the HOPE VI public housing revitalization program.

5. The Urban Institute's National Survey of American Families, as cited by Sheila Rafferty Zedlewski, *The Importance of Housing Benefits to Welfare Success*, The Urban Institute, April 2002.

6. Interagency Council on Homelessness, "White House Interagency Council Announces New Strategy to Combat Chronic Homelessness," July 18, 2002, http://www.ich.gov/library/pr02-078.html.