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"Superwaiver" Bill Threatens Key Low-Income Programs

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Senator Joni Ernst and co-sponsors Senators Marco Rubio, David Perdue, and Deb Fischer have introduced the EMPOWERS Act (the Economic Mobility, Prosperity, and Opportunity with Waivers that Enable Reforms for States Act of 2017), which would let states waive or sharply alter key provisions of federal safety net programs that serve low-income individuals and families. The bill follows the broad themes of past congressional "superwaiver" proposals and of House Speaker Paul Ryan's "Opportunity Grant" and "A Better Way" proposals. While wrapped in language of poverty reduction and program integration, this bill and other similar proposals would facilitate the unraveling of major federal programs that help low-income people meet basic needs.

Under the EMPOWERS bill, the Trump Administration could allow states, with approval only from a board made up mainly of federal Cabinet officials, to make far-reaching changes, via waivers, that could substantially alter and weaken many federal low-income programs. The bill would allow waivers in some 25 federally funded programs that provide over $150 billion annually in benefits and services to help low-income individuals and families. (See Appendix Table 1 for a list of the programs.)

As a result, important federal policies and protections that Congress has set could be undermined for a wide swath of programs, including nutrition programs such as the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), federal housing programs, and child welfare, job training, and child care programs, among others. The waivers that the bill would allow could lead to significant cuts in assistance for poor families and individuals, with the most vulnerable at greatest risk of being harmed.

States could have flexibility under EMPOWERS waivers to redirect federal funds that now provide benefits directly to families to help them meet their basic needs. They could cut benefits such as basic food aid provided by SNAP, and shift the freed-up funds to a wide array of other services such as case management, which may be beneficial to some families but which many don't need — especially those who are temporarily poor such as due to a lay-off — and which won't help families put food on the table or pay the rent. States also could shift resources away from those with the greatest needs to serve less-needy individuals. While providing more aid to those with somewhat higher incomes — or providing additional case management or other services — may be warranted for some low-income households, funding such expansions by impeding poor families' ability to afford the basics would deepen poverty, increase hardship, and make it harder for many struggling families to move toward self-sufficiency.

Equally troubling, in some programs, states could *divert* funding from basic assistance for families in need to other areas of the state budget by using the funds freed up by cutting benefits to *supplant* existing state spending in other areas. As the Government Accountability Office (GAO) and others have documented, the experience under the Temporary Assistance for Needy Families (TANF) block grant provides a vivid example of this scenario; its broad state flexibility has allowed states to take *federal* funds formerly devoted to helping people meet basic needs and use them instead to substitute for other *state* spending — thereby freeing up state funds for other state uses that may be entirely unrelated to addressing poverty or helping low-income families.

The bill consequently could have serious negative consequences. Moreover, the bill wouldn't address one of the very concerns its proponents say it is intended to deal with — that various assistance programs phase out quickly as earnings rise. The extent to which benefits fall rapidly as earnings rise is often overstated. But to the extent it is a problem, the EMPOWERS Act doesn't address it. That's because addressing phase-down rates without making poorer families still poorer requires additional resources, which the bill does not provide.

EMPOWERS Bill Would Let States Cut or Deny Benefits and Undermine Congressional Decisions

The EMPOWERS bill would give governors and the Trump Administration broad authority to upend federal policies, protections, and spending priorities for more than 25 federally funded programs, many of which provide benefits to low-income families to enable them to meet basic needs. Waivers could be used to allow states to cut, delay, or deny benefits, leaving some poor individuals and families with less help to put food on the table or a roof over their heads. The types of changes that governors could seek to make under the EMPOWERS Act include the following areas:

- **Eligibility**. Waivers could let states alter the eligibility rules for many benefit programs to exclude people who now qualify under federal guidelines. States could lower a program's income limit or eliminate entire categories of current recipients. For example, eligibility for SNAP could be reduced below its current level of 130 percent of the federal poverty line.
- **Additional requirements.** States could add constraints to benefit programs beyond those now in place, such as time limits on how long a family may receive SNAP benefits or a rental voucher, or denial of aid to families in which adults are not employed, even if jobs or training are not available.
- **Benefits**. Waivers could let states shrink benefits in various programs to levels below those permitted under current programs' rules. For example, a waiver could reduce SNAP benefit allotments, even though SNAP benefits already average just $1.40 per person per meal and often run short at the end of the month. Or states could seek a waiver to replace WIC's science-based package of foods needed in the diets of low-income pregnant women and young children with less healthy foods that local companies and interest groups are promoting to state officials, or with a skimpier food package. Waivers could also be used to raise the rents that people with rental vouchers must pay, making rental assistance less

effective at reducing homelessness and housing instability; current federal law limits the share of income that housing subsidy recipients must pay toward rent.

- **Procedural protections**. States could request waivers of administrative requirements that provide important protections. For example, they might seek waivers to allow for longer SNAP processing times. Under current law, states must act on regular SNAP applications — and if a family is eligible, make SNAP available — within 30 days. Congress established this requirement in part to ensure that poor families and children do not go without adequate food while waiting for help. States could also eliminate restrictions on the demolition, sale, or conversion to market-rate housing of publicly and privately owned subsidized housing developments, or prevent the renewal of subsidy contracts with landlords when they expire. Such waivers would allow developments to be eliminated as affordable housing, place low-income residents at risk of displacement, and in some cases, permit states to shift funds obtained by selling developments to purposes unrelated to affordable housing.
- **Targeting**. Waivers also could gut important policies that target resources to particular priorities, such as guidelines for directing funds under the Workforce Innovation and Opportunity Act (WIOA), which provides grants to states and communities for job training programs. States could use waivers to undermine the priorities Congress recently set to target WIOA services and resources to out-of-school youth and low-income adults with barriers to work such as low basic skills. Under the EMPOWERS bill, states could seek to waive WIOA requirements for prioritizing these groups and instead shift resources to people who are less needy or do not have significant employment barriers. This is exactly the type of practice that many states and localities followed in the past and that Congress was trying to limit.

  As another example, waivers could eliminate or weaken statutory requirements targeting federal rental assistance on the neediest families. Today, 75 percent of families admitted to the rental voucher program each year, and 40 percent of those admitted to public housing and project-based rental assistance, must have incomes below the higher of the poverty line or 30 percent of the local median income. Federal policymakers have targeted rental assistance on these families because they face the greatest risk of homelessness and housing instability; diluting the requirements would make rental assistance less effective at addressing those problems.

Any of these changes would mean that individuals or families would not get the help that they need, and for which they qualify under federal law and rules.

Waivers Could Let States Take Control of Locally Administered Housing and Community Development Programs

The bill would permit states to make major changes to locally administered programs without local decision-maker approval. For example, while a state that wished to raise rents or target assistance in the housing voucher or public housing programs on households with higher incomes would have to seek input from local housing agencies, it could make the changes regardless of whether the local agencies objected. In addition, states could seek to alter laws or rules governing Community Development Block Grant (CDBG) and HOME Investment Partnership funds administered by local governments, or project-based rental assistance administered by private for-profit or nonprofit owners, without even consulting with those entities.

States could also use waivers to reallocate locally administered resources to state agencies or to different local governments. The bill prohibits waivers of requirements that states pass certain federal funds through to sub-state entities, but that language does not seem to cover waivers that reallocate funds that now pass directly from the federal government to local entities. For example, waivers could give states control of funds that cities or counties are entitled to under the HOME or CDBG formulas or that local housing agencies receive for public housing and housing vouchers.

EMPOWERS Bill Would Let States Divert Funding Freed Up by Cutting Benefits

Waivers under this bill could let states divert funds that currently provide benefits directly to low-income families and individuals to other uses, including uses unrelated to helping low-income people meet basic needs or otherwise improve their circumstances. Since the bill does not provide any additional dollars to cover new services or expanded benefits, states may use waivers allowed under this bill to cut current benefits in order to free up funding they then can divert to other purposes. The EMPOWERS waivers would give states extensive flexibility in how they cut benefits and use the resulting freed-up funds.

SNAP is by far the largest program included in EMPOWERS and could be a prime source of funding that is diverted to other uses. Here's how that could happen. The vast majority of SNAP dollars today go for basic food assistance that puts food on the table for millions of low-income families and individuals. SNAP also provides states with funds for work-related activities and supports. Under the bill, states could cut food assistance as deeply as they wished to free up money to shift to other areas. This could help expand some services such as case management but would come at the expense of the ability of families — many of whom don't need services like case management — to buy food. Services can be important for some low-income people and can help them in a variety of ways, but such services generally build on core supports that help families afford the basics. Services, even where needed, generally won't be successful if the family can't pay rent or buy adequate food.

States could also use the freed-up funds to supplant existing expenditures in other programs, a major concern. For example, a state could shrink SNAP benefits, use the money to finance other services for SNAP recipients that now are funded in part or whole with state dollars, and then use the freed-up state dollars for expenditures or tax cuts unrelated to helping low-income families.

As another example, states could use waivers to reduce benefits or limit eligibility for WIC, divert the funds to other areas related to maternal and child health that currently are funded with state resources, and use the freed-up state funds for unrelated purposes.

In short, the expanded waiver authority would enable creative state budget directors to convert SNAP, WIC, and other programs into something of a slush fund. This practice, known as "supplantation," could prove highly attractive to states facing budget shortfalls or seeking to free up state funds for other spending or tax-cut initiatives. This risk of supplantation is not theoretical. States have used TANF's funding flexibility to withdraw funding from the core welfare reform goals of temporary assistance, work-related activities, and work supports such as child care. (See box.) Instead of using flexible federal TANF funds to foster innovative connections to work opportunities for recipients, states have often used them to substitute for existing state funding and free it up for other purposes. The GAO has documented supplantation that has occurred under the TANF block grant in a number of states.[1]

While the EMPOWERS bill would substantially expand states' ability to engage in supplantation, there are some limits. The bill would not allow the Executive Branch to approve waivers that would shift federal funds from one federal budget appropriation account to another. This limitation, however, is insufficient. For example, in the largest program, SNAP, funds could be shifted from basic food assistance to parts of the program that provide services, with state funds for those services then being reduced or withdrawn. Moreover, states may be able to use the waiver authority to shift federal funds in some programs to different uses — and to different state programs — without formally moving the funds from one federal budget account to another.

TANF Offers Cautionary Tale

TANF's experience of the last 20 years provides a cautionary tale for how unfettered flexibility can make poor individuals and families still poorer. States have used TANF's flexibility to restrict access to basic assistance, leaving many extremely poor families with no cash income and causing the program to provide a temporary support to fewer poor families over time. In 2015, for every 100 families in poverty, just 23 families received TANF cash assistance — down sharply from 68 families receiving cash assistance for every 100 in poverty in 1996, when TANF was created. Largely as a result, the number of families surviving on cash incomes of no more than $2 per person per day in any given month more than doubled, to 1.5 million, in the decade and a half after the 1996 welfare law created TANF. Nearly 3 million children lived in those extremely poor households in 2011. Most of those families at least had help from SNAP; the number of households below the $2-a-day threshold falls by nearly half when SNAP benefits are considered.[2] But the EMPOWERS bill would allow SNAP benefits to be withdrawn or reduced as well.

Programs Already Feature Significant Flexibility, With Important Safeguards

The bill says it aims to allow states to "experiment with new approaches that integrate Federal programs in order to provide more coordinated and holistic solutions to families in need." But Congress has already given states a number of ways to have flexibility in their economic security programs to increase coordination and alignment of programs and service delivery. Rather than identifying specific areas where more flexibility is needed, the EMPOWERS bill provides nearly unfettered flexibility, including flexibility to evade current critical protections and divert funding from core assistance.

A number of federal benefit programs already include state choices or options. For example, Congress has given states nearly 30 different options for SNAP program design.[3] States can choose to align SNAP policies related to the treatment of certain income and resources with the policies the

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[1] U.S. General Accounting Office, *Welfare Reform: Challenges in Maintaining a Federal-State Fiscal Partnership*, GAO-01-828, August 2001.

[2] LaDonna Pavetti, "Doubling of Extreme Poverty Belies Welfare Reform Success Claims," Center on Budget and Policy Priorities, September 22, 2015, http://www.cbpp.org/blog/doubling-of-extreme-poverty-belies-welfare-reform-success-claims.

[3] "State Options Report: Supplemental Nutrition Assistance Program, 13th Edition," U.S. Department of Agriculture, August 13, 2017, https://fns-prod.azureedge.net/sites/default/files/snap/13-State_Options.pdf.

state uses in TANF or Medicaid. States can also choose to provide up to five months of transitional SNAP benefits to families that leave cash assistance for employment; states that choose this option can lessen paperwork burdens and delay the reduction of SNAP benefits when a TANF parent's earnings increase. Similarly, state and local housing agencies have broad flexibility in many aspects of rental assistance administration. In 2016, Congress unanimously enacted legislation that expanded this flexibility in many areas while retaining the core federal standards that make rental assistance effective.

Moreover, Congress has already granted waiver authority to many of the programs listed in the EMPOWERS bill, including SNAP, housing, and child welfare. For example, the Department of Housing and Urban Development can waive regulations that apply to housing vouchers and other rental assistance, and also has broad authority to waive federal laws to allow 139 housing agencies to test alternative policies under the Moving to Work demonstration.

While existing waiver authority is broad, it includes important safeguards that protect families and ensure that funds are used for their intended purposes. For example, some SNAP provisions that are essential to its core function as a nutritional safety net cannot be waived, such as the right to receive an eligibility ruling and (if found eligible) begin receiving benefits within 30 days of making an application. Current SNAP waiver safeguards also preclude establishing waiting lists for people who qualify, and set limits on the extent to which demonstration projects under waivers can result in eligible families having their benefits cut.

Finally, states already have tremendous flexibility to align and coordinate policies in programs that are administered as federal block grants. The EMPOWERS bill includes six block federal grant programs: TANF, the Child Care and Development Block Grant (CCDBG), Social Services Block Grant, the Community Services Block Grant, CDBG, and the HOME Investment Partnerships Program. There is no reason for additional flexibility in these programs.

EMPOWERS Bill Won't Address So-Called Cliff Effects

Senator Ernst has stated that a key goal of the bill is to address "cliff effects," that is, situations where increased earnings from a new job, a raise, or more work hours can lead to a large and abrupt loss of benefits.[4] But the bill's approach of allowing waivers to end basic federal protections and core benefits fails to address *why* benefit cliffs (or high "marginal tax rates" where benefits phase out quickly as earnings rise) are an issue, and what it would take to address them.

Benefit cliffs are a more limited problem than often perceived: people are almost always better off financially by going to work.[5] And, benefit programs based on need generally already have gradual phase-out rates that create a glide path, not a cliff, toward benefits ending. Moreover,

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[4] See June 23, 2017 Press Release, "Ernst, Rubio Rollout Legislation to Combat Poverty, EMPOWER States," https://www.ernst.senate.gov/public/index.cfm/2017/6/ernst-rubio-rollout-legislation-to-combat-poverty-empower-states.

[5] For more on marginal tax rates, see Isaac Shapiro *et al.*, "It Pays to Work: Work Incentives and the Safety Net," Center on Budget and Policy Priorities, March 3, 2016, https://www.cbpp.org/research/federal-tax/it-pays-to-work-work-incentives-and-the-safety-net. For more on how SNAP encourages work, see Elizabeth Wolkomir and Lexin Cai, "The Supplemental Nutrition Assistance Program Includes Earnings Incentives," Center on Budget and Policy Priorities, July 25, 2017, https://www.cbpp.org/research/food-assistance/the-supplemental-nutrition-assistance-program-includes-earnings-incentives.

programs that have different purposes and serve different groups of people typically and appropriately have differing eligibility cutoff levels, which creates a stair-step rather than a cliff as earnings increase.

There are some limited circumstances when a family can experience a cliff rather than a gradual ramp down of benefits. The primary program where cliff effects can be a problem is child care subsidies, though states already have the flexibility to ensure families don't face such a cliff. In some states, a family with earnings just below the eligibility cutoff can be receiving a meaningful partial child care subsidy but lose all of that aid when their earnings rise a small amount and push them over the eligibility limit. These cliffs exist, however, largely because the combination of federal and state child care funding is not sufficient to phase down the child care subsidies more slowly as earnings rise. In Senator Ernst's state of Iowa, for example, a family of three can lose child care subsidies with earnings of $2,429 per month (145 percent of the federal poverty line) despite the fact that the cost of child care for two young children can consume more than half of the earnings of a parent at this earnings level. While most states have chosen *not* to end child care subsidies at as low a level of earnings as Iowa does, even in states with higher income cutoffs, losing a child care subsidy can create a cliff.

States have the flexibility now to address this matter by allowing child care subsidies to phase down more slowly and raising the child-care eligibility cut-offs accordingly. No waivers are needed. States can ensure more adequate child care funding by maximizing the CCDBG dollars they draw down, transferring or directly spending more TANF funds on child care, or using SNAP Employment and Training Funds for child care. And, of course, states can choose to invest more than the federally mandated minimum amount for child care.

But for child care as well as other programs, phasing down benefits more gradually and raising eligibility cut-offs accordingly requires devoting more resources to the program. The EMPOWERS bill provides no additional funding, however, and thus would not address the "cliff" problem, unless it results in states cutting other critical assistance to poor families in order to finance an expansion of child care for families with higher (though still modest) incomes.

Conclusion

There is a large mismatch between the stated goals of the EMPOWERS bill — to allow states to better align programs and address problems like benefit cliffs — and what the bill would let states do and the likely results. Waivers authorized under the bill would risk undermining critical federal policies and safeguards for key programs that serve many low-income families, children, and people who are elderly or have serious disabilities. The bill would allow states to cut benefits and services to very poor families and individuals and to direct the funding to other areas — including, in some cases, plugging state budget holes or funding other state budget and tax policies *not* focused on low-income households. Despite its intention of helping those on the lower rungs of the economic ladder, the bill would put the most vulnerable Americans at serious risk of being harmed.

Appendix

TABLE 1

Nutrition programs
Supplemental Nutrition Assistance Program (SNAP)
Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
Commodity Supplemental Food Program
Senior Farmers' Market Nutrition Program
Emergency Food Assistance Program
Congregate Nutrition Services Program
Home-Delivered Nutrition Services Program
Nutrition Services Incentive Program
Housing programs
Tenant-based Rental Assistance
Project-based Rental Assistance
Assistance to Public Housing
Public Housing Capital Fund
Public Housing Operating Fund
Single Family Rural Housing Loan
Rural Rental Assistance Program
Community Development Block Grant
HOME Investment Partnerships Program
Neighborhood Stabilization Program
Temporary Assistance for Needy Families (TANF)
Child and Family Services programs
Stephanie Tubbs Jones Child Welfare Services Program
Promoting Safe and Stable Families
Foster Care and Adoption Assistance
Chafee Education and Training Vouchers
Adoption and Legal Guardianship Incentive Payments
Payments for Foster Care and Permanency
Social Services Block Grant
Community Services Block Grant
Weatherization Assistance Program
Low Income Home Energy Assistance Program (LIHEAP)
Child Care and Development Block Grant Act
Workforce Innovation and Opportunity Act programs