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“EMPOWERS” Bill Opens Door to Radical SNAP Changes That Would Put Benefits for Low-Income Households at Risk

By Dottie Rosenbaum

Senator Joni Ernst has introduced a bill — the EMPOWERS Act (S. 1427) — to grant sweeping authority to the Executive Branch to waive, at a governor’s request, most provisions of federal law related to a range of low-income and other domestic programs. This extensive new waiver authority would open the door to radical changes in the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps). SNAP would no longer remain a program with a national benefit structure designed to target food assistance to needy households.

This proposal is very similar to a waiver proposal that the House passed in the early 2000s, and to proposals to allow “Opportunity Grants” or other “merged funding streams” that House Speaker Paul Ryan has suggested in recent years. Under the bill, states could submit waiver proposals covering an array of programs including: SNAP; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the Emergency Food Assistance Program (TEFAP); and other nutrition programs, as well as Temporary Assistance for Needy Families (TANF), child care, child welfare, job training, existing block grant programs, and housing programs.¹

SNAP already grants states extensive waiver authority, but with safeguards that policymakers enacted in the 1996 welfare law to meet certain basic program goals and prevent abuse of the waiver authority. The EMPOWERS bill would effectively eliminate these safeguards. Under the bill:

- States could impose unlimited benefit cuts;
- Large numbers of current recipients could lose eligibility;
- States could redirect unlimited SNAP funds to uses other than food assistance; and
- In return for granting a waiver, the federal government could cap a state’s SNAP funding, tantamount to converting the program to a block grant.

¹ For a full list of the affected programs, see Liz Schott and Sharon Parrott, “‘Superwaiver’ Bill Threatens Key Low-Income Programs,” Center on Budget and Policy Priorities, September 28, 2017, <https://www.cbpp.org/research/poverty-and-inequality/superwaiver-bill-threatens-key-low-income-programs>.

Moreover, if large numbers of low-income families lose needed food assistance, the resulting decline in food purchases would affect farmers and food retailers.

Bill Also Carries Serious Risks for WIC

The Special Supplemental Nutrition Program for Women, Infants, and Children, known as WIC, enjoys strong bipartisan support because of its proven impact on healthy birth outcomes and child development. Yet the EMPOWERS bill would allow states to discard virtually every feature that has made WIC a strong, outcome-driven program for the low-income women and young children it serves.

The bill would allow changes to nearly all of WIC's rules — including rules related to eligibility, the WIC food package, nutrition education, and breastfeeding support — and states might seek such changes due to political or budgetary pressures. For example, local food companies or agricultural interest groups might lobby a state to make changes in the WIC food package that would benefit them by favoring their products; WIC is now insulated from such political pressures because its rules about the foods that it provides are largely set at the federal level, based on scientific evidence and the advice of medical experts. Alternatively, a state could face budgetary pressure to substitute federal WIC funds for state funding of certain other low-income programs or services in order to free up state funds for other uses potentially unrelated to helping low-income families, such as tax breaks or other business subsidies.

Examples of possible WIC changes under the EMPOWERS bill waiver include:

- **Eligibility.** A state could limit eligibility to children under age 3 (rather than age 5, as under current law) or stop serving women once they give birth. Alternatively, a state could limit eligibility to families with incomes under the poverty level, rather than serve families with incomes up to 185 percent of poverty and families receiving Medicaid.
- **Food package.** A state could replace the WIC food package with a cash-like benefit. Or a state could face strong pressure from local food and agriculture constituencies to replace foods in the WIC food package — which are chosen through a rigorous science-based process that identifies foods needed, but lacking, in the diets of low-income pregnant women and young children — with locally produced foods. A state also could face pressure to shrink the WIC food package and use the freed-up *federal* WIC funds to substitute for state funding for public health services for pregnant women and infants, with the freed-up state funds then shifted to other, unrelated purposes.
- **WIC services.** A state could scale back or eliminate WIC's nutrition education and counseling, breastfeeding support, and referrals to health care in order to free up some WIC funding and shift it to other maternal and child health programs previously supported with state funds.

Bill Poses Serious Risks to SNAP

Under the bill's waiver authority, states could change virtually all SNAP rules and cut benefits, with no protections for current participants. They also could redirect unlimited amounts of SNAP funds to uses other than food assistance, compromising SNAP's ability to meet low-income families' nutritional needs.

Bill Would Permit Unlimited Benefit Cuts

Current SNAP policy gives states broad discretion to alter eligibility criteria through waivers. For routine matters, the U.S. Department of Agriculture (USDA) can waive its regulations. Beyond that, the Food and Nutrition Act (the authorizing legislation that governs SNAP) gives USDA broad authority to approve demonstration projects overriding statutory SNAP rules in ways that can cause large benefit reductions for a significant share of households, as long as such changes are tested on a limited geographic basis (rather than statewide). Broad statewide waivers of federal SNAP law are

also allowed, with a limit on the percentage of a state's SNAP caseload whose benefits can be cut by more than a fifth.²

Policymakers included these protections in the 1996 welfare law — and have retained them for two decades — to ensure that states can secure waivers as long as the waivers do not eliminate or sharply reduce SNAP on a statewide basis for major categories of households that meet all program eligibility criteria and fully comply with work requirements and other program rules. This is an appropriate protection, given that SNAP is designed to enable poor families and individuals to obtain a minimum adequate diet, with the federal government paying 100 percent of the benefit costs.

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

Current Recipients Could Lose Eligibility

Under the current waiver authority, households and individuals who are eligible for SNAP and comply with all program requirements cannot be removed from the program. The EMPOWERS bill, by contrast, would give states unfettered authority to terminate eligibility for any group of households. They could, for example, lower the SNAP income limit to well below the poverty line or eliminate entire categories of current households. This would undercut SNAP's ability to help needy households secure a nutritionally adequate diet.

States Could Transfer Unlimited SNAP Funds out of Food Assistance

Under the EMPOWERS bill, states could divert resources now dedicated to SNAP food benefits and spend them in other ways. For example, states could reduce or terminate benefits for some categories of poor households and shift the federal funds no longer being used for benefits to the SNAP Employment and Training (E&T) Program. (Since employment and training services and associated child care are allowable SNAP E&T activities, such a funding shift would satisfy the requirement that a SNAP waiver be consistent with SNAP's purposes or goals.)

Yet such a funding shift would be quite problematic; it would enable states to substitute the freed-up federal funds for *state* funds now being used to serve low-income families, and states could then divert the freed-up state funds to other purposes unrelated to aiding those families. For example, states could cut SNAP benefits and shift federal funds to the SNAP E&T program to finance education programs, like community college, for some SNAP recipients. States then could withdraw state education funds currently used for that purpose and divert the freed-up state money to entirely unrelated purposes. This practice, known as *supplantation*, could prove highly attractive to states that face budget shortfalls, need to offset the loss of federal Medicaid funding (if that should occur), or seek to free up state funds for other spending or tax initiatives. In short, the expanded waiver authority could enable creative state budget directors to convert SNAP into something of a slush fund.

² Specifically, if a waiver would cut benefits by more than 20 percent for more than 5 percent of SNAP households in the waiver area, that area must not cover more than 15 percent of a state's SNAP households.

The risk of supplantation is not theoretical. The Government Accountability Office has documented that supplantation occurred under the TANF block grant in many states.³ The EMPOWERS bill would substantially expand opportunities for supplantation.

States Could Tax SNAP Purchases to Raise Revenues

SNAP waivers under the EMPOWERS bill could benefit state treasuries in other ways as well. In the mid-1980s, federal policymakers acted on a bipartisan basis to bar states from charging sales tax on food purchased with SNAP. Policymakers reasoned that because the federal government provides SNAP funds to promote poor households' food purchases, these funds should not be partially diverted to state treasuries through taxes on SNAP purchases. States may not waive this provision under SNAP's current waiver authority. But they could waive it under the EMPOWERS bill.⁴

States Could Delay Providing SNAP to Newly Eligible Families

Similarly, current law requires states to act on regular SNAP applications — and provide benefits to families found eligible — within 30 days. Policymakers established this requirement in part to ensure that poor families and children do not go without adequate food while waiting for help. States may not waive this requirement under SNAP's current waiver authority. But they could waive this rule, as well, under the EMPOWERS bill.

During periods when states encounter budget difficulties and social services agencies face shrinking administrative budgets, states might seek waivers to “align” SNAP processing times with those in other programs that take considerably longer to provide benefits. States also could use waivers to place eligible poor families on waiting lists.

SNAP Funding Could Be Capped, as Under a Block Grant

The EMPOWERS bill requires that any waiver be cost neutral to the federal government each year. This is consistent with longstanding federal policy that waivers of rules in major federal public benefit programs should not raise federal spending. Under both Democratic and Republican administrations, USDA has enforced waiver cost neutrality while preserving SNAP's basic funding structure. But under the EMPOWERS bill, there is a significant risk that the current or a future administration could instead require the placement of a hard cap on SNAP spending in states seeking a waiver, which would operate like a block grant and risk causing substantial cuts in SNAP.

Specifically, an administration could adopt an approach to cost neutrality in SNAP that takes the cost estimate for SNAP costs in coming years in a state seeking a waiver and *locks in* that estimate as a cap on federal SNAP funding in the state. This would fundamentally compromise the program's ability to respond to increases in need that occur as a result of an economic downturn, higher-than-expected food prices, or other factors that affect SNAP costs. By contrast, under the current

³ U.S. General Accounting Office, *Welfare Reform: Challenges in Maintaining a Federal-State Fiscal Partnership*, GAO-01-828, August 2001.

⁴ Thirteen states currently impose a sales tax on food and grocery sales. Eric Figueroa and Samantha Waxman, “Which States Tax the Sale of Food for Home Consumption in 2017?” Center on Budget and Policy Priorities, March 1, 2017, <https://www.cbpp.org/research/state-budget-and-tax/which-states-tax-the-sale-of-food-for-home-consumption-in-2017>.

approach to SNAP waivers, a waiver's cost neutrality is not affected if costs rise for reasons unrelated to the waiver such as an economic downturn or a greater-than-expected increase in food prices.

SNAP is the most responsive means-tested program to changes in poverty and unemployment: if more households in a state qualify for SNAP due to rising poverty (as occurred during the Great Recession) or strong population growth, SNAP automatically responds by serving more people. Conversely, when poverty declines, the program automatically contracts. For federal and state officials responsible for calculating cost neutrality under a waiver, these types of state-level caseload variations are virtually impossible to predict. If SNAP costs rose more quickly than expected, states that had a waiver with capped funding would either have to bear all of the added costs themselves or take cost-cutting steps such as shrinking benefits, terminating households from the program, or placing applicants on waiting lists.

SNAP Already Contains Substantial Flexibility

States have significant flexibility in operating SNAP and setting certain program rules through state options and existing waiver authority. USDA's "State Options Report," now in its 13th edition, lists the choices each state has made across nearly 30 different options of interest to policymakers.

Flexibility in Benefit Delivery

States contribute about half of the costs of administering SNAP and have considerable latitude over how they deliver benefits on a day-to-day basis. Within broad federal guidelines, states may:

- Choose how much to coordinate SNAP activities with other state-administered programs such as TANF, Medicaid, and child care;
- Design their SNAP applications and procedures and the automated systems that support eligibility determinations and case management;
- Determine whether to interview applicants in person or by phone, how often recipients must reapply for SNAP, and how often recipients must report changes in household circumstances; and
- Negotiate contracts with companies to provide electronic benefits and issue benefits.

Many of the SNAP rules in these areas are set in regulations and are routinely waived under administrative waivers. USDA's waiver database lists roughly 700 waivers now in operation.

Flexibility in Benefit Structure

Policymakers established SNAP's national benefit structure during the Nixon Administration after an initial effort to operate the program without such standards resulted in enormous disparities across states, with some states setting income eligibility limits as low as 50 percent of the poverty line. The national benefit structure helps ensure that poor families can obtain adequate nutrition regardless of where they live.

In recent years, policymakers have maintained SNAP's national benefit structure while creating numerous state options to streamline the program and coordinate it with other programs such as TANF and Medicaid. States may, for example:

- Promote a transition from welfare to work by providing up to five months of transitional SNAP benefits to families that leave TANF cash assistance, without requiring additional paperwork by the family or the state agency;
- Raise the SNAP gross income limit using "broad-based categorical eligibility" so that working households do not abruptly lose SNAP when their income exceeds 130 percent of the federal poverty line;
- Import into SNAP the rule they use in their TANF assistance program to assess the value of a household's vehicle; and
- Waive the three-month limit on SNAP benefits for unemployed childless adults for areas with high unemployment or insufficient jobs;

These and other provisions demonstrate policymakers' willingness to consider changes to SNAP benefit rules that states identify as necessary, particularly to improve coordination with other programs or to simplify administration.

Flexibility in Employment and Training

SNAP provides states with \$110 million in federal grants funds annually to operate SNAP E&T (Employment and Training) programs. The federal government also matches additional SNAP E&T expenditures made with state funds.

SNAP rules require that all adult recipients register for work unless they are elderly, disabled, caring for a young child, already complying with another program's work requirement, or otherwise not expected to work. States can require work registrants to look for jobs or participate in employment and training activities.

Indeed, states have almost complete flexibility over how they operate their SNAP E&T programs. They may determine which populations to focus on and which types of E&T services to provide. They may use federal matching funds both for these E&T services and for related work supports, including transportation and child care necessary for an individual to participate in a SNAP employment and training program.

Extensive Waiver Authority

If these state options do not go far enough, a state may apply under current law for a waiver to alter its SNAP program. The 1996 welfare law dramatically expanded SNAP waiver authority to allow for greater state experimentation. The few limitations that policymakers retained, after careful consideration, are necessary to preserve SNAP's fiscal integrity and maintain SNAP as a nutritional safety net. For example:

- **Fiscal integrity.** States cannot waive the requirement that they contribute half of SNAP administrative costs. Without this restriction, states could seek waivers that entailed cutting SNAP benefits and using the savings to replace state administrative funds. Similarly, states

cannot waive the prohibition against providing SNAP to residents of most institutions. Without this prohibition, states could use SNAP to fund meals in prisons or mental hospitals — enabling them to reduce state spending for these purposes — and offset the cost by cutting SNAP benefits.

- **Nutritional safety net.** Waiving certain other critical SNAP rules would undermine the program’s core function as a nutritional safety net. For example, if states could waive the entitlement to SNAP for eligible persons who are complying with work or other conduct requirements, they could make various categories of households ineligible or establish waiting lists, in order to free up funds for other purposes. Also, if states could waive the requirement to provide benefits to eligible applicants within 30 days, households in severe need could have to wait for long periods before receiving assistance.

Since state flexibility is already quite extensive, the central question that the EMPOWERS bill raises is *not* whether states should receive flexibility to tailor their SNAP rules. Rather, the question is *whether states should receive broad authority to transfer funds away from food assistance to needy families*, as well as unlimited authority to reduce SNAP benefits and effectively use federal SNAP funds for purposes unrelated to what federal policymakers intended.

Bill’s Limits on Waivers Would Be Inadequate

The EMPOWERS bill includes several restrictions on the types of waivers that could be granted (in addition to the cost neutrality requirement discussed above), but few of these would likely prove meaningful.⁵

For example, to receive federal approval, state waiver applications would have to show that the proposed changes would further broad goals like promoting employment and saving and reducing dependency. These goals are sufficiently vague, however, that this requirement would likely have little practical effect, since the board evaluating the applications (made up of representatives of the various Executive Branch agencies) would have sole authority to determine what they mean.

The bill’s budgetary restrictions likely would not have much impact, either. Its prohibition on waivers that shift funds from one federal appropriations account to another would likely have little meaning, since states could still use waivers to shift federal funds to different uses — and different state programs — *without* formally moving the funds from one federal account to another. For example, as noted earlier, since SNAP has employment and training components, states could shift federal funds from food assistance to education or training programs that serve SNAP recipients and withdraw state funds now being used for that purpose, without formally transferring the federal funds to another account.

The bill also bars waivers that would override “funding restrictions or limitations” in laws governing the covered programs. This language apparently applies primarily to funding restrictions in *appropriations* bills (such as limitations related to abortion); *authorization* statutes for SNAP and the

⁵ In addition to the restrictions discussed here, the waiver authority could not be used to waive provisions of law related to civil rights, health or safety, labor standards under the Fair Labor Standards Act, environmental protection, or the prohibition of discrimination. There are a few additional program-specific restrictions, including the few SNAP-specific restrictions discussed in this paper.

other programs the bill covers generally contain few explicit funding restrictions. And the bill clearly *permits* waivers that override virtually all statutory provisions related to who is eligible for a program, the benefits or services it provides, and how it operates — provisions that effectively restrict how states may use program funds.⁶

In addition to these general restrictions, the bill contains four limitations specifically for SNAP. States may not use waivers to weaken sanctions against participants that have committed fraud or failed to comply with work requirements, to change federal rules regarding which immigrants are ineligible for benefits, to alter SNAP quality control procedures (which impose fiscal sanctions on states if their payment error rates are too high), or to provide SNAP benefits in the form of cash. This last provision is very narrowly drawn, though: while SNAP benefits could not be provided in cash, waivers that effectively convert SNAP benefit dollars into funding for other programs would be allowed.

Conclusion

A substantial body of research shows that SNAP not only eases hardship in the short term but also has long-term positive impacts. People with access to the program as young children are likelier to graduate from high school and less likely as adults to experience certain health problems, such as heart disease and obesity. They also have improved economic security in adulthood.

The EMPOWERS bill claims its expansion of state waiver authority would give states “the flexibility to pursue pilot projects that better address the barriers to self-sufficiency faced by those living in poverty,”⁷ but SNAP already has sufficient flexibility to allow states to test such pilot projects. Moreover, the bill would allow states to scrap SNAP’s proven approach and to substitute an untested, risky approach with no evidence of promising results. It would undermine SNAP’s national benefit structure by allowing states to overturn virtually all current program rules, including those designed to ensure that poor families can obtain adequate nutrition. And it would allow states to shift unlimited amounts of money out of food assistance for low-income families into other programs. The bill’s waiver authority poses serious risks to the millions of vulnerable people SNAP serves, as well as to farmers and food retailers who could be affected by a decline in food purchases.

⁶ The legislation explicitly allows waivers of “program requirements such as application procedures, performance standards, reporting requirements, or eligibility standards.”

⁷ “Ernst, Rubio Rollout Legislation to Combat Poverty, EMPOWER States,” press release, June 23, 2017, <https://www.ernst.senate.gov/public/index.cfm/press-releases?ID=56F009CB-6DE2-4977-AF42-ECA31C328708>.