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“Superwaiver” Proposals in the Welfare Reform Debate

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Summary

Welfare discussions in the current and past two Congresses have included consideration of an Administration-proposed “superwaiver” that would enable states and localities to waive rules of various welfare-related programs. Formally called Program Coordination Demonstration Projects, these waivers were included in the 109th Congress in long-term welfare reauthorization bills approved by a House Ways and Means subcommittee and the House Education and the Workforce Committee (H.R. 240), the Senate Finance Committee (S. 667), and in the House version of budget reconciliation (H.R. 4241). A scaled-down version of welfare reauthorization was included in the final agreement on budget reconciliation — the Deficit Reduction Act of 2005 (P.L. 109-171, S. 1932) — but did not include provisions related to the superwaiver. Moreover, the Administration’s FY2007 budget package contained no further reference to this proposal. This report will be updated to track any further legislative activity. (For a broader discussion of the issue, see CRS Report RL32859, *The “Superwaiver” Proposal and Service Integration: A History of Federal Initiatives*, by (name redacted).)

Bush Administration Proposal

The 109th Congress continued a debate that began in 2002 over reauthorizing the Temporary Assistance for Needy Families (TANF) block grant and related programs. (See CRS Issue Brief IB10140 for the outcome of this debate.) In February 2002, the Bush Administration released an outline of its welfare package, entitled *Working Toward Independence*, which included a proposal to allow states to request waivers from federal requirements in order to integrate activities across a wide spectrum of programs. According to that document, programs to be covered by the new waiver authority would include, *but not be limited to*: TANF, food stamps, the Workforce Investment Act (WIA), the Wagner-Peyser Act (which authorizes the Employment Service), federal housing and homeless assistance programs, and GED and post-secondary education programs.

The Administration justified its proposal by noting the success of TANF in transforming state-level public assistance programs into “innovative and comprehensive workforce assistance programs.” The Administration said other federal programs provide

similar assistance to low-income families but the potential combined effectiveness of these programs is “compromised” by differences in administrative practices and rules. The waiver authority would allow states to build “stronger, more integrated and effective service systems” and “coherent and comprehensive strategies on behalf of low-income individuals and families” and deliver “more seamless services tied to stated program goals and self-sufficiency and employment outcomes.” The document said the proposal would give states flexibility to establish or change eligibility criteria and program rules, as long as they serve the same general populations targeted by the individual programs to be included. Programs operating under waiver authority would be considered demonstrations, subject to evaluation.

States would submit their waiver request to each affected federal agency, explaining how they would achieve individual program goals and how the waiver would improve achievement of these goals. Cabinet Secretaries would approve requests that appeared likely to improve the “quality or effectiveness” of the affected programs. The demonstrations would be cost-neutral — in other words, they could result in no additional federal spending — and would be suspended or terminated if they exceeded specified spending levels. Each Department would report annually on the number and scope of waivers approved and make recommendations for modifications in current programs if warranted by evaluation findings. Finally, an informal document circulated by Administration officials indicated that a Federal Interagency Waiver Board would be established through executive order to “facilitate the processing” of waiver requests.

House Action

Welfare reauthorization provisions — including the superwaiver — were approved by the House Ways and Means Subcommittee on Human Resources and the House Education and the Workforce Committee (H.R. 240¹), and were included in the House version of the 2005 budget reconciliation bill (H.R. 4241²). For the most part, the waiver provisions in these bills were the same as those in the House-passed H.R. 4 of the 108th Congress, which in turn was modeled on the House-passed H.R. 4737 of the 107th Congress. As included in H.R. 4241, the waiver provisions would have covered a more narrow range of programs than the other proposals.

House-Senate conferees on the budget reconciliation bill (which was considered under its Senate number, S. 1932) agreed to maintain a scaled-back version of welfare reauthorization, extending TANF and related programs through FY2010 (see CRS Report RS22369). However, the superwaiver provisions were dropped from the final agreement. The conference agreement was signed into law on February 8 (P.L. 109-171), and it is unclear whether H.R. 240 (or its Senate counterpart, S. 667, discussed below) will see any

¹ In addition to these two committees, H.R. 240 was referred to the House Committees on Agriculture, Energy and Commerce, and Financial Services, which have taken no action.

² Because H.R. 4241 was a reconciliation bill, it was organized according to committee. Thus, superwaiver provisions appeared both in Title II: Education and the Workforce Committee, and in Title VIII: Ways and Means Committee. Most of the provisions were identical; however, the Title II provisions only covered programs under Education and the Workforce jurisdiction, and Title VIII only covered programs under Ways and Means jurisdiction.

further action in this Congress, or whether further action will be taken separately on the superwaiver provisions.

The waiver authority would allow demonstrations that coordinate “multiple public assistance, workforce development, and other programs, for the purpose of supporting working individuals and families, helping families escape welfare dependency, promoting child well-being, or helping build stronger families, using innovative approaches to strengthen service systems and provide more coordinated and effective service delivery.” States or substate entities that administer two or more “covered” programs could propose a demonstration by submitting an application to each appropriate federal agency. The proposal would describe programs to be included in the project and how the purposes of each program would be achieved, plus how the project would improve achievement of these purposes in terms of quality or cost-effectiveness. The proposal would identify the population to be served, designate eligibility criteria to be used, and establish performance objectives. The proposal would specify statutory and regulatory requirements to be waived and justify the need for waivers.

The House superwaiver provisions would require that projects be cost-neutral as determined by the Office of Management and Budget (OMB), meaning that they could not result in any increased federal payments compared to what would have been paid without the demonstration. Cost-neutrality could be determined on an annual basis or over a five-year period. However, unlike the original Administration proposal, the House provisions do not specify a consequence or penalty (e.g., suspension or termination of the demonstration, repayment to the federal government of excess spending) if the project exceeded OMB’s estimate of cost-neutral spending.

The Secretary of each affected federal Department would have to approve the proposal and could approve proposals (and waive any requirements necessary) if a project had a “reasonable likelihood” of achieving the objectives of the programs to be included, could “reasonably be expected” to meet cost-neutrality rules, and coordinated two or more programs. The Secretaries would have 90 days to approve requests; no action by the end of 90 days would be deemed an approval. However, requests for additional information from the applicant would extend the time available for a decision by the Secretary.

Demonstrations could be approved for up to five years (and renewed for an additional five years under the Administration proposal). Applicants would be required to conduct evaluations of their projects. The Secretaries would be required to notify appropriate congressional committees of their decision to approve or disapprove waiver applications and to report annually on approved projects, number of waivers granted and specific provisions waived, the extent to which projects were achieving program goals through improved quality or cost-effectiveness and meeting performance objectives and cost-neutrality requirements, and any recommendations for program changes.

Covered Programs. During the 2002 debate, the list of programs covered by the waiver authority changed.³ Under H.R. 240 and as passed by the House in the previous two Congresses, the waiver would cover the following programs:

³ As *introduced* in the 107th Congress, H.R. 4090/H.R. 4092 included *all* programs administered by the Departments of Education (ED), Health and Human Services (HHS), and Labor. As *reported*, the bills included only specified ED, HHS and Labor programs. Additional programs (housing, homelessness, food stamps) were added in the “clean” bill (H.R. 4737) sent to the floor.

- TANF, Welfare-to-Work, and mandatory child care grants under Title IV-A of the Social Security Act,
- Social Services Block Grants (SSBG) under Title XX of the Social Security Act,
- Section 505 of the Family Support Act of 1988 (the Job Opportunities for Low-Income Individuals demonstration),
- Wagner-Peyser Act,
- Adult Education and Family Literacy Act,
- Child Care and Development Block Grant (CCDBG),
- Title I of the Workforce Investment Act (WIA), *except* Job Corps,
- activities under the U.S. Housing Act of 1937 (assisted and public housing, *except* Section 8 rental assistance and provisions that designate certain public housing units for elderly and disabled individuals),
- activities under Titles I-IV of the McKinney-Vento Homeless Assistance Act (Emergency Food and Shelter Program administered by the Federal Emergency Management Agency, and four programs administered by the Department of Housing and Urban Development: Emergency Shelter Grants, Supportive Housing, Shelter Plus Care, and Section 8 Moderate Rehabilitation for Single Room Occupancy), and
- the Food Stamp program.⁴

The superwaiver provisions included in the House budget reconciliation bill included all the programs listed above (in either the Education and the Workforce Committee title or the Ways and Means Committee title), *except* housing, homelessness, and food stamps.

Limitations on Waivers. H.R. 240 specifies certain provisions that federal agencies could *not* waive. No provision could be waived if it relates to the following:

- civil rights or prohibition of discrimination,
- the purposes or goals of any program,
- maintenance-of-effort requirements (i.e., provisions that require states or other entities to maintain a certain level of spending),
- health or safety,
- labor standards under the Fair Labor Standards Act of 1938, or
- environmental protection.

Additional provisions that could not be waived are as follows:

- Section 241(a) of the Adult Education and Family Literacy Act, which requires that federal funds be used to supplement, and not supplant, existing state or local spending;
- provisions under Section 5A of the United States Housing Act of 1937, which require and govern the development and content of public housing agency plans and require the establishment of resident advisory boards (this is not included in the reconciliation bill, since housing would not be a covered program);
- in the case of any waivers involving WIA, requirements related to wage and labor standards, including nondisplacement protections, worker

⁴H.R. 240 also includes a separate provision to allow up to five states — in lieu of participating in the Food Stamp program — to receive food stamp funds in the form of a block grant.

rights, participation and protection of workers and participants, grievance procedures and judicial review, nondiscrimination, allocation of funds to local areas, eligibility of providers or participants, the establishment and functions of local areas and local boards, and procedures for review and approval of plans⁵;

- in the case of waivers involving the Food Stamp program, provisions that deny benefits to certain classes of individuals (if waiver of such provisions would expand eligibility for the program), the prohibition against “cashing out” food stamp benefits, quality control provisions, and noncitizen eligibility rules⁶ (these are not included in the reconciliation bill since food stamps would not be a covered program); and
- any provision that requires a state to pass through funds received by the state to a substate entity.

Two additional restrictions would effectively narrow the waiver authority’s scope. Specifically, under the 109th Congress proposals and as previously passed by the House, the legislation would prohibit the following:

- waivers of any funding restriction or limitation included either in an appropriations act or any other legislation; or
- transfer of funds from one covered program to another (either appropriated funds or direct spending).

However, the bills specify that funding restrictions or limitations, which could not be waived, do *not* include such program requirements as application procedures, performance standards, reporting requirements, or eligibility standards. In other words, such provisions (e.g., food stamp eligibility rules in the case of H.R. 240) could potentially be waived. Moreover, it is unclear how the Administration would interpret “funding restriction or limitation.”

Finally, H.R. 240 specifies that any project that includes housing must certify that the annual public housing agency (PHA) plan includes information about the project, and that any relevant resident advisory board recommendations are included in the PHA plan. The bill also makes necessary conforming amendments to Section 5A of the Housing Act.

Senate Action

The Senate Finance Committee approved a draft welfare bill on March 9 that was subsequently introduced by Chairman Grassley on March 17 as S. 667. This bill would authorize Program Coordination Demonstration Projects that are identical to the superwaiver provisions in H.R. 240 and the House reconciliation bill, with two critical differences:

- S. 667 would *only* include programs under Title IV-A of the Social Security Act (i.e., TANF, Welfare-to-Work grants, and mandatory child care grants under Section 418), and SSBG; and

⁵ This list of WIA provisions that could not be waived is also the list of provisions that cannot be waived under WIA’s current waiver authority (Section 189(i)(4)(A)(i) of the act).

⁶ Despite these restrictions, provisions that could be waived under the proposal are broader than the list that can be waived under the Food Stamp program’s current waiver authority.

- S. 667 would *limit* the number of states that could participate to 10.

S. 667 further specifies that provisions in Section 418 of the Social Security Act, requiring mandatory child care grants to be used only for child care assistance, could not be waived. S. 667 also would require project evaluations to be conducted by an independent contractor and to use random assignment methodology to the maximum extent feasible; H.R. 240 and the House reconciliation bill would require evaluations but would not mandate an independent contractor or a particular methodology.

Discussion of Waiver Proposal

Congress has previously included authority to waive statutory and regulatory provisions in numerous programs, and in fact, the challenge of integrating and coordinating programs that assist the same general population has been debated for decades. (See CRS Report RL32859.) Typically, waivers are advocated by recipients of grant funds (most often states) as a way to provide flexibility and encourage innovation within federal parameters. Concerns raised about waivers usually focus on accountability and the extent to which Congress can ensure that federal funds are used to meet nationally established goals. Some waivers have been justified as a way to test the impact of new policies, with mandatory evaluations to help inform future decisions. Other waivers have been enacted to address specific concerns within specific states or localities.

Currently, programs with waiver authority include some Social Security Act programs (e.g., TANF, child support enforcement, Medicaid, child welfare), food stamps, the Employment Service (Wagner-Peyser Act), and WIA. At first blush, the proposed superwaiver appears broader than existing waiver authorities; however, in the case of WIA for example, the same limitations on waivers in current law would apply to the proposed new waiver authority. On the other hand, the superwaiver would be broader than current food stamp law allows and also than currently allowed under Wagner-Peyser. And some programs included in H.R. 240 (housing, homeless, and adult education) now allow no statutory waivers at all. Thus, the impact of this proposal could vary by program.

Some programs are already very broad with few mandatory rules to waive, most notably SSBG. Other programs have more targeted purposes and specific rules, such as housing and homeless programs. Further, some covered programs are state-administered, while local governments or entities play a significant (or in some cases primary) role in others, such as WIA, Welfare-to-Work, and housing. Finally, the waiver included in H.R. 240 would cover major programs such as TANF and food stamps, which provide billions of dollars and operate nationwide, but also would include Job Opportunities for Low-Income Individuals (JOLI), a very small demonstration (\$5.5 million annually) in which HHS gives competitive grants to about a dozen nonprofits each year. (The Administration has proposed to terminate the JOLI program in its FY2007 budget.)

Since the superwaiver contains few limitations on what could not be waived (for most of the covered programs), and also because its stated purpose is very general, this new authority would give great discretion to the Executive Branch, in combination with state and/or local applicants. However, restrictions in the bills — prohibiting transfer of funds among programs or waiver of congressional funding limitations within programs — could also limit the scope of potential waiver demonstrations.

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