
Michigan League for Human Services



Revised April 21, 2004

THE SUPERWAIVER PROPOSAL ALLOWS STATES TO BY-PASS IMPORTANT FEDERAL REGULATIONS IN TANF AND WORKFORCE DEVELOPMENT

The superwaiver is a mechanism by which the President (or the appropriate Secretary from his Administration), at a governor's request, can authorize a state to bypass certain provisions of federal law pertaining to multiple programs that target low-income residents. Presented as a way to increase state flexibility and efficiency in administering federally funded programs, the superwaiver proposal was first introduced, without detail, as part of the Bush Administration's TANF reauthorization proposal made public in February 2002. The superwaiver was passed by the U.S. House as part of its TANF reauthorization bill on February 13, 2003, and a narrower version is included in the TANF reauthorization bill currently being considered by the U.S. Senate.

A state may receive a superwaiver only if there is more than one program involved (most superwaivers are expected to bring a set of standards or procedures from one program in line with those of another). A superwaiver cannot override laws pertaining to civil rights, health and safety standards, labor standards (including minimum wage laws), environmental protection, state maintenance of effort requirements, or laws pertaining to funds a state is required to pass through to a sub-state entity. Superwaivers must be cost-neutral, may not shift funds from one federal program to another (i.e. funds could not be shifted from Michigan's Food Stamp Program allotment to its TANF block grant), and may not override funding restrictions or limitations in appropriations laws or funding restrictions in some authorization laws.

The superwaiver proposal currently being considered by the Senate limits this waiver authority to three programs: TANF, the Child Care and Development Block Grant, and the Social Services Block Grant. The House-passed proposal, however, allows a state to request and receive a superwaiver to waive federal laws governing some or all of the following programs:

- the Food Stamp Program
- the Temporary Assistance for Needy Families (TANF) block grant
- the Child Care and Development Fund Block Grant (CCDBG)
- the Social Services Block Grant (SSBG)- adult education programs under the Adult Education and Family Literacy Act
- public housing programs
- homeless assistance programs
- employment and job training programs under the Workforce Investment Act (WIA), except for Title IV vocational rehabilitation services and Job Corps
- employment services under the Wagner-Peyser Act
- the Welfare-to-Work program administered by the Department of Labor
- the Job Opportunities for Low-Income Individuals program

The superwaiver, with its promises of state flexibility, is attractive to many senior-level state welfare administrators who seek greater flexibility in program administration. The Midwest Welfare Peer Assistance Network (WELPAN), a network of senior welfare officials from seven Midwestern states including Michi-

gan, has expressed its concern that social assistance efforts are structured within narrow funding and regulatory "silos." It has commented that the Food Stamp Program, with its means-tested transfer payment structure, "discourages and stifles intervention... that might improve the functioning of individuals, families and communities." WELPAN takes the position that waiver authority is a viable way to address these issues. While acknowledging that it is natural and legitimate for low income advocates to be concerned about further devolution in safety net structures, the network sees the waiver provisions in the Bush Administration proposal as a means to accomplish the flexibility that it seeks.

There are nonetheless several aspects of the superwaiver that are cause for concern:

Superwaivers could alter the fundamental nature of the affected programs by allowing states to sidestep rules regarding program administration, target populations, minimum benefit levels, and sanctioning procedures. This may have a negative effect on the populations served or reduce the total amount of program resources going to certain low-income populations. For example, if Michigan were to be granted a superwaiver bringing the purposes of the Food Stamp program in line with those of TANF, it would be able to use Food Stamp funds toward a marriage promotion program that serves middle income as well as low-income populations, because such a program would fit under the third and fourth purposes of TANF. However, financing the program from the Food Stamp funding stream would have to come at the cost of perhaps reducing monthly food assistance benefits for those currently eligible, excluding certain groups of eligible persons entirely (by lowering the income level for eligibility, for example), or setting time limits on how long a household may receive Food Stamps. None of these alterations are allowed by states under current law.

Because it is an entitlement program funded completely by federal dollars, the Food Stamp program carries certain protections that would be lost under the superwaiver. Provisions that could be waived, for example, include a requirement that Food Stamps be made available to qualifying families within 30 days after application, or that the Food Stamp Program be targeted to those families most in need. The superwaiver places only four restrictions

on the use of Food Stamp waivers (in addition to those mentioned above that cover all programs):

- sanctions for families cannot be reduced;
- eligibility rules for immigrants cannot be changed;
- quality control procedures under which states can be sanctioned for high error rates cannot be altered; and
- Food Stamps cannot be provided to households in the form of cash.

Any loosening of current Food Stamp protections may open up the possibility of abuse. A worst-case example might be that, with the loosening of targeting requirements, a state could misuse its waiver privileges by terminating eligibility or cutting benefits for categories of households that are eligible under federal law but lack political influence, in order to shift the funds to a program within the Food Stamp funding stream that has more appeal to middle-class voters.

The superwaiver would also allow states to replace some state funding for low-income programs with federal funding, which could result in a reduction of the total amount of funding provided for low-income programs. For example, a state may be granted a waiver to use Food Stamp funding to finance the refundable portion of a tax credit that goes to Food Stamp recipients, thus freeing up state funds to put back into the general fund. Michigan did this with TANF funds when it used some of its TANF allotment for a portion of the Homestead Property Tax Credit in order to free up state general fund dollars, and Wisconsin did something similar with its state Earned Income Tax Credit. As Michigan is currently facing a budget crisis, and has engaged in supplantation in even in good economic times, the possibility of it and other states engaging in such a practice needs to be taken seriously.

While program waivers are presently granted to states mostly for experimental projects in selected counties and require independent evaluations, the superwaiver does not require an evaluation component. Though a distinction is currently made between waivers that allow states to test new ideas and waivers that exempt states from burdensome federal requirements, there is no

mechanism in the current superwaiver proposal with which to make this distinction. Without an evaluation requirement, it would be very difficult to measure the effects of a given program waiver on the population served by the program. If the effect on a state or county budget or on an affected population turns out to be negative, the entire state rather than a few counties would suffer the consequences.

Superwaiver authority for the President would tip the balance of federal powers toward the Executive Branch and thereby weaken the democratic process. Granting the Executive Branch the authority to override federal laws enacted by the Legislative Branch usurps the power of the elected members of Congress and the constituents they represent. There would be no formal means of input from the public, and the deliberations on whether a waiver should or should not be granted would likely take place without formal procedure and behind closed doors. Moreover, outside of the restrictions described earlier, there would be no set guidelines to determine what waiver requests the Executive Branch may approve or deny. Waivers could be granted to state programs that promote a particular ideology while being denied to others, or could even be used as a political tool by which an Administration could reward some governors and sanction others.

In conclusion, it is clear that the superwaiver in its current form would alter the original intent of program waivers. A waiver would no longer be seen merely a means with which to test new ideas, but as an avenue through which states can streamline procedures and coordinate separate federal programs.

At the same time, the superwaiver has the potential to be an instrument with which to balance state budgets, cull political support, promote controversial ideologies and sidestep necessary federal regulations perceived as burdensome or undesirable.

As an alternative to implementing the superwaiver provision with its far-reaching consequences, there are other less radical means by which states can increase their flexibility in administering federally funded social programs. The Center for Budget and Policy Priorities points out that some of the programs included in the superwaiver proposal already have substantial waiver authority and others provide very broad flexibility to states in their basic program structures. For example, the recently signed farm bill allows states to conform the definitions of income and assets, and the allowable number of vehicles a recipient family may own, across their Food Stamp, TANF and Medicaid programs. States have the advantage of doing this without having to request a waiver.

A more limited waiver authority or expanded state options can also be put in place for specific programs or block grant funding streams such as TANF, in contrast to the overly prescriptive and less flexible direction of the House TANF bill. The flexibility provided by these alternatives should be tempered by clear and specific parameters regarding their range and scope, as opposed to the present superwaiver proposal which gives no guidelines and leaves approval at the discretion of the Administration.

SOURCES

Aligning TANF and Food Stamp: A Clash of Cultures. Midwest Welfare Peer Assistance Network. September 1999.

Recreating Social Assistance. Midwest Welfare Peer Assistance Network. May 2002.

'Superwaiver' Would Grant Executive Branch and Governors Sweeping Authority to Override Federal Laws. Robert Greenstein, Shaun Fremstad and Sharon Parrott. Center on Budget and Policy Priorities. May 2002