

CRS Report for Congress

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“Superwaiver” Proposals in Current Welfare Reform Debate

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Summary

Welfare discussions in the 109th Congress include 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 are included in a long-term welfare reauthorization bill (H.R. 240) approved by a House Ways and Means subcommittee on March 15. This version of the superwaiver is somewhat more restrictive than originally proposed by the Administration but includes a broad array of programs, including Temporary Assistance for Needy Families (TANF), child care, Social Services Block Grants (SSBG), employment training, housing and homelessness programs, and food stamps. A more narrow version, approved by the Senate Finance Committee (S. 667), would include only TANF, SSBG, and mandatory child care, and participating states would be limited to 10. This report will be updated to track further legislative activity. (For a broader discussion of this issue, see CRS Report RL32859, *The “Superwaiver” Proposal and Service Integration: A History of Federal Initiatives.*)

Bush Administration Proposal

The 109th Congress is continuing a debate that began in 2002 over reauthorizing the TANF block grant and related programs. (See CRS Issue Brief IB10140 for current status of welfare reauthorization deliberations.) In February 2002, the Bush Administration released an outline of its welfare reauthorization 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 federal 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

Legislation is pending in the House (H.R. 240, approved on March 15 by the House Ways and Means Subcommittee on Human Resources)¹ that would reauthorize welfare programs through FY2010 and that includes the superwaiver provision. This bill is essentially the same as 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. In fact, the legislative history of the superwaiver began in the 107th Congress, with approval by the House Ways and Means and Education and the Workforce Committees of welfare reform bills (H.R. 4090 and H.R. 4092, respectively) that each contained similar waiver authority based generally on the Administration’s proposal. Representative Pryce (and co-sponsors representing the Ways and Means, Education and the Workforce, Energy and Commerce, Agriculture, and Financial Services Committees) subsequently introduced several versions of a “clean” bill, incorporating provisions approved by the various committees and an expanded superwaiver. The bill that ultimately went to the floor during the 107th Congress was H.R. 4737, which included certain restrictions on provisions that could be waived (see **Limitations on Waivers**, below). Floor action was delayed for most of a day while these additional restrictions were negotiated, and the House eventually passed H.R. 4737 in May 2002. The House passed an almost identical bill (H.R. 4) in February 2003.

¹ The Subcommittee approved provisions of H.R. 240 under the jurisdiction of the Ways and Means Committee; however, certain provisions of this bill, including aspects of the superwaiver, also fall under the jurisdiction of other committees. In addition to Ways and Means, H.R. 240 has been referred to the House Committees on Agriculture, Education and the Workforce, Energy and Commerce, and Financial Services.

Superwaiver provisions in the current H.R. 240 are virtually identical to these previously passed House bills. 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.

Like the original Administration proposal, H.R. 240 would require that projects be cost-neutral as determined by the Office of Management and Budget (OMB), meaning that demonstrations 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 Administration proposal, H.R. 240 does 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 exceeds 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. Each Secretary also would have to reach an agreement with the applicant regarding payment of funds and other federal responsibilities. 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 (the Administration document also envisioned five-year renewals, but renewals would not be authorized in H.R. 240). Applicants would be required to conduct evaluations of their projects, and to report to the Secretaries as requested. 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.² Under H.R. 240 and as passed by the House in the previous two Congresses, the waiver would cover the following programs:

² As *introduced* in the 107th Congress, H.R. 4090 and H.R. 4092 would have included all programs administered by the Departments of Education (ED), Health and Human Services (HHS), and Labor. As *reported*, the bills included ED, HHS and Labor programs specified. Additional programs (housing, food stamps) were added in the “clean” bill 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.³

Limitations on Waivers. H.R. 240 provides that federal agencies could *not* grant waivers of certain provisions. No provision could be waived if it relates to:

- 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:

- 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,
- in the case of any waivers involving WIA, requirements related to wage and labor standards, including nondisplacement protections, worker 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

³ H.R. 240 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.

functions of local areas and local boards, and procedures for review and approval of plans,⁴

- in the case of any 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 rules,⁵ and
- any provision that requires a state to pass through funds received by the state to a substate entity.

Two additional restrictions are included in H.R. 240 that would effectively narrow the waiver authority’s scope. Early versions of the waiver would have allowed demonstration projects (subject to Executive Branch approval) to move funds from one covered program to another, or to waive funding restrictions within programs. However, under H.R. 240 and as previously passed by the House, the legislation would prohibit:

- 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 bill specifies 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) could potentially be waived under H.R. 240. 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. 667.⁶ This bill would authorize Program Coordination Demonstration Projects that are identical to the superwaiver provisions in H.R. 240, with two critical differences. S. 667 would:

⁴ 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).

⁵ 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.

⁶ Two related welfare bills also are pending in the Senate: S. 105, which has superwaiver provisions that are identical to H.R. 240; and S. 6, which was based on the Finance Committee’s welfare bill of the 108th Congress and contains the same superwaiver provision as in S. 667.

- *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 (these programs are under the Committee's jurisdiction, unlike other programs included in H.R. 240); and
- *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 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 superwaiver in H.R. 240 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, 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, a very small demonstration (\$5.5 million annually) in which HHS gives competitive grants to about a dozen nonprofits each year.

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 — may also limit the scope of potential waiver demonstrations.