



GEORGETOWN LAW

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To: Interested Parties
From: David A. Super, Georgetown University Law Center
Re: Effect of SNAP Cost-Sharing Provisions in House and Senate Reconciliation Bills
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Both the House and Senate reconciliation bills would, for the first time in SNAP's history, establish a state match for benefit costs. Because all states must balance their budgets each year, some states may determine that they cannot afford to pay the state share specified in the legislation. The question then arises what happens if a state is unwilling or unable to pay its full share of the benefit for each household on its caseload.

In principle, three policies are possible: (1) provide households with full benefits nonetheless (with the federal government paying); (2) provide households with benefits reflecting only the federal portion of the benefit (or the federal amount and only part of the state share); or (3) cease to provide SNAP benefits in the state. Unfortunately, provisions in both the House bill and draft Senate bill preclude option (1) and provisions in the underlying Food and Nutrition Act preclude option (2). Therefore, any state unwilling or unable to pay any of the state share would have to leave SNAP altogether, and any state that only wanted to pay a portion of the state share would be forced to shrink its caseload dramatically.

The Reconciliation Bills Do Not Allow USDA to Pay More than Its Share of Benefits

Section 10006(b) in the House bill's "Rule of Construction" states that "The Secretary of Agriculture **may not pay towards the cost of allotments ... an amount greater than the applicable Federal share**" (emphasis added). Similarly, section 10105 of the draft Senate bill's new section 4(a)(3) of the Food and Nutrition Act establishes a "Maximum Federal Payment" stating that "The Secretary **may not pay towards the cost of an allotment described in paragraph (1) an amount that is greater** than the applicable Federal share under paragraph (2)." (Emphasis added.)

Therefore, under both sets of legislative language, the state could not pay households full benefits without contributing the full state share because that would breach the statutory limit on what the federal government may pay.

Moreover, the new section 4(a)(4) of the Food and Nutrition Act added by the draft Senate bill explicitly specifies that if a state does not pay its share of the benefit that would constitute a debt to the federal government *and* the draft bill amends section 13(a)(1) of the Food and Nutrition Act to prohibit USDA from reducing or compromising that debt. Any federal official allowing a state to issue households full benefits without the state paying the state share would risk violating the Anti-Deficiency Act, which carries criminal penalties for making unauthorized federal expenditures.

Current Law Bars Paying Partial Benefits to Households; the Pending Bills Do Not Change This

The underlying statute and the House and Senate provisions also do not allow the state to provide eligible households with a benefit amount that reflects only the federal share (or an amount in between the

federal share and the full benefit). Section 8(a) of the Food and Nutrition Act (7 U.S.C. § 2017(a)) provides that “The value of the allotment which State agencies shall be authorized to issue to any households certified as eligible to participate in the supplemental nutrition assistance program **shall be equal to the cost to such households of the thrifty food plan reduced by an amount equal to 30 per centum of the household’s income**”. (Emphasis added.)

Neither section 8(a) nor any other provision of the Act — or any provision of the House and Senate versions of the cost-share language — authorizes paying a reduced allotment because a state failed to pay the full state share of benefit costs. Moreover, even if the state reduced the allotments it paid to household by the amount of the state share it was unwilling or unable to contribute, 100% of those benefits would still be paid by the federal government — which would violate the “Rule of Construction” or “Maximum Federal Payment” provisions of the House and Senate bills, which say that the federal government cannot pay a share of the allotment greater than the share set out in the bills.

Therefore, the only legally permissible consequence of a state that does not pay the designated state share for all households on its caseload would be for the state to leave SNAP altogether, which would mean that households in that state would receive no SNAP benefits at all. SNAP is an optional program and so a state can end its program under the law.

In addition, if a state does not pay its state share, USDA could find the state in violation of the Act and terminate the state’s participation on that basis.

Although a lot of confusion has arisen about how USDA would act toward a state that failed to pay its required share, the language in the Senate bill that treats the state share as a debt to the federal government means that a state that is unwilling or unable to pay the state share might well preemptively withdraw from SNAP to avoid incurring such a debt, which the federal government could collect by withholding other funding owed to the state.

A state that is facing a cost-sharing requirement under either the House or Senate bill would have two choices if it did not think it could pay all of the costs that it would otherwise expect to incur.

- If the state could pay *some* of the costs, it could take steps to cut its caseload down to a level where it could afford to pay the state share for all remaining families; or
- It could withdraw from the SNAP program entirely.

Example

Walking through a hypothetical state example can help make the states’ choices clearer. Consider a state that is expected to provide \$1 billion in SNAP benefits to households in 2028. The caseload is 500,000 people per month. Suppose the state faces a 15 percent cost-share requirement based on its error rate. Overall, paying this cost-share would be expected to cost the state \$150 million in 2028.

Now suppose that the state decides it can only afford to pay \$75 million, or *half* of what it expects to owe. Under the Food and Nutrition Act, the state cannot provide a lower benefit to families receiving SNAP than is set forth in the statute.

Thus, the only way for the state to reduce its cost to \$75 million would be to provide full benefits — with the state paying 15 percent of those benefits and the federal government paying 85 percent — to a much smaller number of families.

For the state to owe \$75 million (instead of \$150 million), it could only provide benefits to about 250,000 people. With a caseload of that size, the state’s total benefit costs would be \$500 million,

or *half* the total benefits that households in the state would have received had the state not made changes to its program. The federal share of the \$500 million in benefits provided would be \$425 million (85% of \$500 million) and the state share would be \$75 million (15% of \$500 million).

But as explained above, states have very limited options to reduce their costs. States have no authority under the Food and Nutrition Act to prorate benefits. States cannot restrict eligibility beyond what is allowed under federal rules. Eliminating state options that moderately expand eligibility is unlikely to achieve sufficient savings to close the gaps in many states.

The primary mechanism states would have to reduce the size of their program would be to add red tape and other access barriers so that it becomes much more difficult for people *who are eligible* to access and keep food assistance. This would disproportionately cut off the most vulnerable people, including seniors and people with disabilities. Ironically, working families, who have to be at their jobs when SNAP offices are open, have the most difficulties with red tape. States can make their programs far harder to access by limiting the ability to apply or adjust benefits by phone or online, making people come into offices more often, and reducing the help states provide to people who are applying for benefits. (There is no penalty for a state if their SNAP program reaches very few eligible people in a state. Improperly denying or delaying benefits to eligible households is not counted as an error in SNAP's payment error rate calculation.) If the state takes these kinds of steps and the caseload does not fall as much as the state expected, the state would be on the hook for paying its share of the benefits provided to a higher caseload.

There is a history in the SNAP program of states erecting access barriers that drive down participation. Prior to reforms in the 2002 farm bill, every state with an error rate above the national average faced a fiscal penalty every year, albeit far smaller ones than the cost-shift penalties in the House bill or the Senate proposal. States responded by erecting access barriers to the point that only 54 percent of eligible low-income people received benefits in 2002. Working families were disproportionately affected. For comparison, 88 percent of eligible people participated in SNAP in 2022.

What if the state decides it cannot pay any amount or cannot risk costs being higher than it can pay? If the state decides that it is unable to meet the cost share at all or does not think it can shrink its caseload enough, then the state would have to **drop out of the SNAP program entirely**.

Solutions

Fundamentally, a cost-share requirement puts basic food assistance at risk for households based on the states they live in. It should be dropped from consideration.

If policymakers insist on including a cost sharing requirement, the House and Senate provisions should be changed to ensure that if a state does not fully meet its cost-sharing requirement, households receive allotments equal to the federal share and the amount (if any) that the state contributes. This would result in benefit cuts for all households, but the overall cuts to the program would be smaller and eligible households would retain access to some benefits.

Going back to our hypothetical state, suppose the state can only contribute \$75 million, but the full federal share still goes to families in their allotments. In this case, 500,000 people could retain SNAP and the total benefits going to those households would total \$925 million (the federal government's \$850 million and the state's \$75 million contribution) — or 92.5 percent of the benefits provided under current law. This is a serious cut that will increase poverty and food insecurity, but it would be less harmful by far than taking SNAP benefits away entirely from 250,000 households and reducing total benefits to households in the state by 50 percent.