

## Continuing SNAP in a Government Shutdown

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### SUMMARY

The U.S. Department of Agriculture has appropriately interpreted the most recent Continuing Resolution as providing funds for the Supplemental Nutrition Assistance Program (SNAP) to maintain regular operations through the end of February. Contrary to the implication of USDA's release, however, SNAP benefits (although not some other SNAP functions) should continue even if the partial shutdown extends into March. This is the result of the Food and Nutrition Act's unique funding provisions, which impose a legal obligation on USDA to continue providing SNAP benefits unless Congress enacts reductions.

- Originally, food stamps were a discretionary program entirely subject to available appropriations. The Food Stamp Act of 1977 provided for reducing allotments to households when USDA projected an appropriations shortfall.
- After these provisions almost triggered benefit reductions during the 1981-82 recession, Congress passed a series of amendments that gradually moved the program toward entitlement status and narrowed the circumstances under which benefits might be reduced or interrupted.
- The current funding provisions of the Food and Nutrition Act of 2008, which governs SNAP, are unlike those of any other federal program:
  - In most situations, section 5(a) of the Act gives eligible households a legal right to continued benefits: "Assistance under this program shall be furnished to all eligible households who make application for such participation."
  - The only exception is that section 18 allows Congress to trigger across-the-board benefit reductions by passing an appropriation that is insufficient to fund full benefits.
  - In the current situation, where Congress has passed *no* appropriation for SNAP, section 18 does not apply and section 5(a)'s entitlement continues to govern and provide authority to continue to provide food assistance to low-income households.
- Confusing and inconsistent directives issued by USDA in anticipation of a government shutdown in 2015 – first directing states to begin shutting the program down then telling them to continue with business as usual – have contributed to confusion about the effects of a lapse in annual appropriations on SNAP.
- States would have a good legal case for reimbursement of the administrative costs necessary to continue issuing SNAP benefits.
- Other functions of SNAP, including its nutrition education and employment and training programs, likely will cease to function if the shutdown continues beyond March 1.

## ANALYSIS

The on-going partial government shutdown could soon threaten benefits in the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps). This year's Continuing Resolution, like those in recent years, funds SNAP and other similar programs through any month beginning within 30 days of the onset of a shutdown.<sup>1</sup> This obviously covered benefits for January. USDA, however, noted that states' preparations to issue February benefits actually begin in late January when states submit lists of households to receive benefits to the companies that operate their electronic benefit transfer (EBT) systems that issue SNAP benefits. Accordingly, USDA is charging benefits covered by lists submit on or before January 20 to the Continuing Resolution. These benefits constitute the great majority of those that would be issued in February. To cover February benefits for households that are approved after January 20, and to pay for state administrative costs, USDA apparently will tap the \$3 billion contingency fund remaining from the Fiscal Year 2018 appropriation. The combination of these two approaches should cover SNAP's normal operations through the month of February.

If the shutdown appears likely to extend into March, however, the U.S. Department of Agriculture will begin preparations for important changes in the program. Experience during the last major partial shutdown in 2015 suggests that considerable confusion is likely and that the Department may over-react. Understanding what would happen to benefits and other program expenditures in the event that the partial shutdown continues is therefore crucial for program administration. As this memo shows, SNAP benefits should continue under most likely contingencies. Strong arguments also support continuation of federal reimbursement of core state administrative functions, particularly those relating to certifying households and issuing benefits. The fate of federal reimbursement for other administrative costs, such as nutrition education, employment and training, and the development of automated systems, is less clear in the event of a protracted shutdown.

This memo examines the various statutory provisions governing SNAP funding. It begins by examining authority for continuing SNAP benefits and then turns to the distinct issues relating to SNAP administrative expenditures. It considers what would be required of the Department in the absence of an agricultural appropriations bill.

### Background

SNAP took on its modern form in the Food Stamp Act of 1977. Section 18 of that Act capped spending on the program and required across-the-board allotment reductions if the program's needs exceeded that cap. The Act became effective in 1979, just as the country was slipping into a deep recession. The resulting large increases in participation, coupled with the further increases that the Act's liberalizations in program rules engendered, quickly made clear that spending would far exceed the cap. Congress acted to raise the cap and provide the funding necessary to avert allotment reductions, both in 1979 and in subsequent years. Even though President Reagan pushed deep food stamp cuts through Congress, he proved just as determined as President Carter had been to prevent allotment reductions due to insufficient funding. No allotment reductions have ever occurred.

Over time, it became widely accepted that food stamps were a de facto individual entitlement, and Congress repeatedly amended the Food Stamp Act (now the Food and Nutrition Act) to reduce the risk of allotment reductions. Although a small vestige of the 1977 language remains in section 18, it is confined

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<sup>1</sup>Public Law No. 115-245, div. C, § 110(b), provides that "obligations for mandatory payments due on or about the first day of any month that begins after October 2018 but not later than 30 days after the date specified in section 105(3) may continue to be made, and funds shall be available for such payments". Public Law 115-298 amended section 105(3) of the first Continuing Resolution to make its final date December 21, 2018.

to extremely narrow circumstances that would not be present even if no agricultural appropriations bill has become law by March 1.

## **Continuation of SNAP Benefits beyond March 1**

### **Entitlement Language in the Food and Nutrition Act**

The basic starting point in analyzing whether SNAP benefits continue in the event of a government shutdown is the inclusion in the Food and Nutrition Act of 2008 of strong language creating an individual entitlement that closely parallels entitlement language courts have construed in other major benefit programs. In particular, section 5(a) states that “Assistance under this program shall be furnished to all eligible households who make application for such participation.”<sup>2</sup> Similarly, section 2 states that “To alleviate such hunger and malnutrition, a supplemental nutrition assistance program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for *all eligible households who apply for participation.*”<sup>3</sup>

In *King v. Smith*,<sup>4</sup> the U.S. Supreme Court’s first welfare case, Chief Justice Warren’s opinion for the unanimous Court found an individual entitlement in section 402(a)(9) of the Social Security Act, which required that “aid to families with dependent children . . . shall be furnished with reasonable promptness to all eligible individuals. . . .”<sup>5</sup> Similar language in section 1902(a)(8) of the Social Security Act<sup>6</sup> has been held to create an individual entitlement to Medicaid.

Congress’s usage in the Food Stamp Act of 1977 of language substantially identical to that which had been held to create an individual entitlement for almost a decade – and its subsequent retention of that language through numerous amendments and reauthorizations of the program – creates a strong presumption of an individual entitlement. Where possible, courts will endeavor to read all parts of a statute in harmony: only the clearest statutory language to the contrary should be held to deny the effect of Congress’s choice to use language the Supreme Court had interpreted as creating an entitlement. Congress’s omission of the standard phrase “subject to appropriations provided in advance. . . .” at a minimum prevents this language from having the clarity necessary to meet that high standard. Terminating SNAP benefits in a government shutdown would effectively construe some other part of the Act as overriding sections 2 and 5(a), an interpretation that courts would only accept as a last resort.<sup>7</sup>

Section 5(a)’s entitlement language is noteworthy for its absence of language making it conditional on appropriations. When Congress has wanted to limit a nutrition program, it has made that clear with language such as “subject to the availability of appropriations provided in advance in an appropriations Act specifically for the purpose of carrying out this section. . . .”<sup>8</sup> This language has been standard since the enactment of the Congressional Budget Act of 1974 (CBA), marking programs that were genuinely subject to appropriations as such and exempting them from various constraints on backdoor budget authority

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<sup>2</sup>7 U.S.C. § 2014(a).

<sup>3</sup>7 U.S.C. § 2011 (emphasis supplied).

<sup>4</sup>392 U.S. 309 (1968).

<sup>5</sup>42 U.S.C. § 602(a)(9) (subsequently recodified and then repealed in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193).

<sup>6</sup>42 U.S.C. § 1396a(a)(8) (requiring “that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals”).

<sup>7</sup>See, e.g., *Branch v. Smith*, 538 U.S. 254 (2003); *Morton v. Mancari*, 417 U.S. 535 (1974).

<sup>8</sup>42 U.S.C. § 1793(b) (funding for school breakfast expansion); see also *id.* § 1786(m)(1) (“Subject to the availability of appropriations provided in advance in an appropriations Act specifically for the purpose of carrying out this section” states should provide fruits and vegetables to WIC participants).

or entitlement authority contained in the CBA and from House and Senate rules established under the CBA. Congress's failure to qualify section 5(a)'s entitlement in this manner in successive farm bills clearly indicates an intent not to make SNAP benefits contingent on passage of an appropriations bill.

### **The Evolution of Section 18's Instructions for Adjusting to Inadequate Appropriations Bills**

The original language of section 18 of the Food Stamp Act of 1977 was relatively strict about allotment reductions. Were it still in effect, perhaps it might be read as providing sufficiently strong evidence of congressional intent (although, as discussed below, that is not at all clear). But Congress has repeatedly weakened that funding limitation language. In the process, it converted a program that had been essentially discretionary – and often at risk of allotment reductions due to insufficient appropriations (or breaching its then-existing authorization cap) – into an individual entitlement subject to allotment reductions only in rare circumstances quite different from those of a government shutdown.

The first step was the Food Security Act of 1985, which converted food stamps into a capped individual entitlement. It eliminated allotment reductions in cases where the program's needs exceed the Act's appropriations, allowing reductions only where the program's needs exceed authorization caps in the Act.<sup>9</sup> The House Agriculture Committee, which proposed the change, declared that it would no longer accept "the unfortunate situation of the past few years where ... the continuation of full food stamp benefits has been uncertain [and r]ecipients nationwide have been threatened with delays and reductions pending Congressional approval of supplemental appropriations legislation late in the fiscal year. This has led to confusion and unnecessary fear at the local level, as well as additional administrative cost and burden."<sup>10</sup> The Committee declared that benefit reductions should result only from "an explicit decision to do so," not the mere failure to pass legislation.<sup>11</sup> Thus, when Congress saw a miniature version of a government shutdown – a temporary impasse over a supplemental appropriations bill – it resolved that this should not be a basis for interruptions in food stamp benefits.

Five years later, Congress eliminated the cap on the entitlement. Specifically, it replaced the authorization caps that had existed since 1977 with an authorization for appropriation of "such sums" as are necessary to support the program.<sup>12</sup> Had Congress done only this, food stamps would have become a full uncapped individual entitlement, legally indistinguishable from AFDC or Medicaid. Because this was more than some conferees were ready to proclaim, they found an essentially cosmetic means of retaining a theoretical limit on program funding with virtually no chance of actually affecting program operations. They revised section 18's allotment reduction language to apply in the unusual case that Congress enacts an appropriation for food stamps but the Secretary estimates that that appropriation will be inadequate.<sup>13</sup> Because Congress typically relies on the Secretary's estimates in setting its appropriations levels, that would in effect require the Secretary to condemn his or her own work (unless Congress has gone rogue and set a lower appropriations level). Consistent with these changes, Congress terminated the requirement that the Secretary of Agriculture monthly notify Congress if allotment reductions were likely; instead, the Secretary was merely to request any necessary supplemental appropriation without any suggestion that its passage would be necessary to avert allotment reductions.<sup>14</sup>

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<sup>9</sup>Pub. L. No. 99-198, § 1541 (1985); see H. Conf. Rep. No. 99-447, at 552 (Dec. 17, 1985), *reprinted at* 1985 U.S. Code Cong. & Admin. News 2478.

<sup>10</sup>H. Rep. No. 99-271 (pt. 1) at 166, *reprinted in* 1985 U.S. Code Cong. & Admin. News 1270.

<sup>11</sup>*Id.*

<sup>12</sup>Pub. L. No. 101-624, § 1760, 104 Stat. 3359, 3803-04 (1990); see H. Rep. No. 101-569 (pt. I) (1990); H. Conf. Rep. No. 101-916, *reprinted at* 1990 U.S. Code Cong. & Admin. News 5630.

<sup>13</sup>With authorization caps eliminated from the Act, Congress had to reattach the allotment reduction language to appropriations. It did so, however, in the unusual manner of making it hinge on the Secretary's prediction that a year's enacted appropriation will prove insufficient. *Id.*

<sup>14</sup>*Id.*

This reflected a decision Congress had made earlier that month. Abandoning its long-time practice of scoring food stamp legislation as an authorization rather than an entitlement,<sup>15</sup> the Budget Enforcement Act of 1990 (BEA) switched to follow the practice for true individual entitlements of regarding funding as mandatory. The BEA amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA or Gramm-Rudman-Hollings) to define “direct spending” as including budget authority provided by laws other than appropriations acts, entitlement authority, and “the food stamp program”.<sup>16</sup> The BEA change would not have been necessary had that year’s farm bill’s amendments to section 18 of the Food Stamp Act been enacted by that time. The subsequent changes in the Farm Bill should be read in light of the decision Congress already made in BEA. The BEA overruled a specific House precedent of treating food stamps as a discretionary program for budget scoring purposes, a precedent that relied on the allotment reduction provision in the original 1977 Act. If Congress, which wrote the Food Stamp Act’s amendments, believed that food stamps were now an individual entitlement, that assessment is entitled to great weight.

Thus, after the 1990 farm bill and BEA, Congress had directed that food stamps be treated as a mandatory program to reflect the fact that the original allotment reduction language had been rendered inoperative except in rare circumstances, leaving food stamps largely an uncapped individual entitlement. Because no administration, Democratic or Republican, had ever been willing to tolerate allotment reductions, Congress could be confident that the Secretary would strive mightily to avoid estimating a deficiency in the appropriations for a year; it also took the one case in which the Secretary could not avoid an allotment reduction with estimating discretion – the complete absence of an appropriation – outside the scope of the allotment reduction provision.

By 1998, food stamps’ transformation from a capped program to an open-ended entitlement was so widely accepted that Congress eliminated as obsolete the requirement that the Secretary of Agriculture report monthly to Congress on whether benefit reductions would be ordered (after having previously modified the purpose of that letter to have the Secretary inform Congress if a supplemental appropriation would be needed).<sup>17</sup> Even the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted partly in response to concerns about rising food stamp spending after the recession of the early 1990s, made no attempt to reinstate allotment reductions.<sup>18</sup>

### **Implementing Section 18 in the Current Circumstances**

A careful reading of section 18 confirms that continuation of the government shutdown should not affect SNAP benefits. Unlike the original 1977 Act, the current law’s section 18(a) has no authorization ceiling. The current section 18(b) provides that “[i]n any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of *the* appropriation for such fiscal year.”<sup>19</sup> This subsection goes on to direct allotment reductions “if in any fiscal year the Secretary finds that the require-

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<sup>15</sup>See, e.g., H. Rep. No. 99-271 (pt. 1) at 522, *reprinted in* 1985 U.S. Code Cong. & Admin. News 1626 (showing food stamp amendments in the category of “authorizations of appropriations” rather than the category for “direct spending authority”); S. Rep. No. 145 at 530-31, *reprinted in* 1985 U.S. Code Cong. & Admin. News 2196-97 (same). The House followed the “authorization of appropriations” approach more consistently than the Senate prior to the elimination of authorization caps in 1990.

<sup>16</sup>Pub. L. No. 101-508, § 13101(a), 104 Stat. 1388-576 (1990), *codified at* 2 U.S.C. § 900(c)(8)(C); see H. Conf. Rep. 101-964, at 1172, 1179, *reprinted at* 1990 U.S. Code Cong. & Admin. News 2877, 2884 (listing the food stamp program’s account as one that is “considered mandatory for purposes of scoring appropriations bills”).

<sup>17</sup>Federal Reports Elimination Act of 1998, Pub. L. No 105-362, §101(b), 112 Stat. 3280, 3281 (1998).

<sup>18</sup>See Pub. L. No. 104-193, § 853, 110 Stat. 2105, 2339 (1996) (reauthorizing the Food Stamp Program without reinserting any caps or allotment reduction devices into section 18).

<sup>19</sup>7 U.S.C. § 2027(b) (emphasis added).

ments of participating States will exceed *the* appropriation”. The process, then, is for the Secretary to compare an appropriation, on the one hand, with the program’s needs, on the other. But in the case of a government shutdown, *no appropriation will exist*. The program’s requirements cannot exceed something that does not exist.

Moreover, the requirement on the Secretary is to predict whether a shortfall will exist, not to act retrospectively. Under many programs, once funding runs out, no further spending can occur. But that is not how Congress drafted section 18(b) of the Food and Nutrition Act. The Secretary must exercise expert discretion in predicting whether, by the end of the fiscal year, the program’s needs will exceed appropriated sums. Where Congress has made an appropriation, this required only projecting the program’s needs. Where, however, Congress has yet to make an appropriation, the Secretary must predict *both* what the program’s needs will be *and* whether Congress is likely to appropriate sufficient funds. Certainly the Secretary would be wrong to predict that Congress would make *no* appropriation for SNAP: government shutdowns historically have ended relatively quickly, with all major pre-existing programs duly receiving appropriations. So the Secretary should order allotment reductions only if he predicts that Congress will enact an appropriation but that that appropriation would be inadequate. That, too, is highly improbable: Congress has never allowed the Food Stamp Program or SNAP to run out of money, in good times and bad, in eras friendly to the program and those when it was subject to sharp criticism. Even in 1979 and 1980 – when authorization caps and appropriations proved inadequate to meet the surge in participation resulting from a severe recession and the elimination of the requirement that recipients purchase their food stamps – Congress went through the then-more arduous steps required to provide the additional funding to meet the program’s needs. The House Agriculture Committee in 1985 explicitly approved this sort of prediction that Congress will eventually pass whatever legislation is necessary: “[e]specially with the regular occurrence of substantial food stamp appropriations in the recent past, it is important that no Secretary of USDA feel obligated to lower benefits based on the initial level of food stamp appropriations provided in any fiscal year.”<sup>20</sup> Unless and until Congress actually enacts an appropriation that manifestly falls short of the program’s needs and that appropriation has been consumed, no prediction of a shortfall in the program’s appropriation is justified. And absent such a prediction, the Secretary has no basis to order allotment reductions.

Finally, nothing suggests that Congress intended section 18 to terminate SNAP benefits in a government shutdown. The 95th Congress, which wrote the Food Stamp Act of 1977, had no experience with government shutdowns and was unlikely to believe that such irresponsible behavior would arise in the future. Government shutdowns did occur in the mid-1990s, but they did not affect food stamps because the Agriculture and Rural Development Appropriations Act for the fiscal year in question already had been enacted. USDA staff repeatedly and publicly directed state officials to continue program operations then without regard to the state of appropriations. Subsequent Congresses, then, had no reason to believe that section 18 would affect SNAP benefits in a government shutdown. A government shutdown – the result of a political impasse over broader budgetary issues – is fundamentally different from the kind of situation that led Congress to enact and update section 18: potentially excess spending specifically in SNAP. Although some voices have criticized SNAP spending, none have asserted that its *entire* budget is misspent. Applying section 18’s mechanism to a political impasse rather than programmatic excesses would turn congressional intent on its head.

Throughout the program’s history, Congress has seen section 18 as imposing allotment reductions where an appropriation proves inadequate to meet need, not as shutting the program down when Congress passes no appropriation at all. For example, the House Agriculture Committee in 1985 worried about “estimating error and possible changes in economic conditions” and thus sought “to leave leeway for

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<sup>20</sup>H. Rep. No. 99-271 (pt. 1) at 166, *reprinted in* 1985 U.S. Code Cong. & Admin. News 1270.

inaccurate economic forecasts so that Congress need not adjust the spending ceilings every year.”<sup>21</sup> Where Congress has yet to enact an appropriation for a given year, no misestimation or changed conditions requiring congressional oversight have occurred.

### **Experience from the 2015 Government Shutdown**

The last partial shutdown of the federal government that raised concerns about SNAP occurred in 2015. USDA sent conflicting signals to states and recipients. Initially the Department told states to refrain from submitting their monthly lists of certified households to electronic benefit transfer (EBT) vendors. It then told states to submit those lists but threatened to de-authorize every SNAP retailer in the country to prevent those benefits from being used. Neither of these approaches finds any support in the Food and Nutrition Act. The Act and the Department’s regulations mandate that state agencies ensure a continuous flow of benefits to eligible, certified households and to act promptly on new applications for benefits. And although section 9(a) of the Act<sup>22</sup> gives the Department broad discretion about whether to approve retailers’ applications for initial or renewed participation in SNAP, nothing in the Act or regulations empowers the Department to interrupt a retailer’s authorization period absent evidence of wrongdoing. At no point in 2015, however, did the Department assert that section 18 applied to the absence of an appropriations bill or attempt to implement its procedures for reducing allotments when an enacted appropriations act is insufficient to meet needs.<sup>23</sup>

A SNAP recipient sued for an injunction against any interruption in benefits, making arguments similar to those outlined above. Before the district court could act, Congress had ended the shutdown. The court therefore dismissed the case as moot.<sup>24</sup> Had the Department believed that one of the approaches it discussed in 2015 was appropriate for future government shutdowns, or if the Department wished to weaken the Food and Nutrition Act’s entitlement language or expand section 18’s scope, one might have expected to see such a proposal in its recommendations for last year’s farm bill. None were forthcoming.

### **Consequences for State Administrative Reimbursements**

The U.S. Department of Agriculture does not determine any household’s eligibility for SNAP or issue SNAP benefits directly. Instead, SNAP is a federal-state partnership similar to Medicaid. Although no state is required to participate, every state has chosen to do so since the early 1970s. The federal government sets overall program policy, pays for program benefits, and reimburses states for a share of their administrative costs. With a few exceptions, these reimbursements are for fifty percent of states’ costs of administering SNAP. USDA reimburses states both for the immediate steps required to operate the program – certifying households’ eligibility and issuing benefits – as well as activities with longer-range purposes, such as operating employment and training programs for SNAP recipients, collecting SNAP overissuances, investigating possible fraud, conducting outreach, and developing automated data processing systems to improve program administration in the future.

Superficially, state administrative funding would seem more vulnerable to a government shutdown than benefit expenditures. This view is largely incorrect, for several reasons. First, and most obviously, nothing in section 16(a) of the Food and Nutrition Act,<sup>25</sup> which gives states the right to reimbursement for their administrative costs, makes any provision for reducing state administrative funding in the event of

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<sup>21</sup>H. Rep. No. 99-271 (pt. 1) at 165, *reprinted in* 1985 U.S. Code Cong. & Admin. News 1269.

<sup>22</sup> 7 U.S.C. § 2018; *see also* 7 C.F.R. § 278.1.

<sup>23</sup> 7 C.F.R. § 271.7.

<sup>24</sup>*Smith v. U.S. Department of Agriculture*, 2016 WL 4179786 (N.D. Cal. Aug. 8, 2016).

<sup>25</sup> 7 U.S.C. § 2025(a).

insufficient appropriations. Similarly, although section 18(b)<sup>26</sup> provides for reducing households' benefits in limited circumstances, it provides no authority to cut states' administrative reimbursements. Where Congress sought to limit states' administrative funding, it knew how to do so: section 16(a) is conditional on section 6(k), which seeks to prevent duplication in administrative funding between SNAP and the Temporary Assistance to Needy Families (TANF) block grant. The failure to impose a similar limitation on state administrative funding when appropriations difficulties occur, coupled with clear language entitling states to those reimbursements, is decisive.

Even if the Food and Nutrition Act did provide for reducing or interrupting reimbursements to states for administering the program during a government shutdown, such a limitation likely would be unconstitutional. To hold otherwise would be, in effect, to read the law as compelling states suddenly to administer SNAP for free unless they chose to withdraw completely from the program (and cause their most vulnerable residents to lose hundreds of millions or billions of dollars in much-needed benefits). That extreme sanction against any state that does not agree to pick up all costs of program administration would be "so coercive as to pass the point at which 'pressure turns into compulsion,'" as the Supreme Court noted in *National Federation of Independent Business v. Sebelius*, which prohibited HHS from cutting off Medicaid funds to states that decline to implement the Affordable Care Act's Medicaid expansion.<sup>27</sup> "Congress may not simply conscript state agencies into the national bureaucratic army"<sup>28</sup> by compelling them to administer SNAP without reimbursement. This would be "economic dragooning that leaves the States with no real option but to acquiesce."<sup>29</sup> Forcing states to terminate SNAP if they do not wish to shoulder, without warning, the full burden of program administration "serves no purpose other than to force unwilling States to" comply as Congress has made clear it desires benefits to continue, which they would not in the event of a state's opt-out.<sup>30</sup>

At most, USDA could cut off funding for activities such as outreach, claims collection, and automated systems development that states are free to suspend during the duration of any government shutdown. As noted, however, even that limited administrative funding cut-off finds no direct support in the Food and Nutrition Act.

January 9, 2019

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<sup>26</sup>7 U.S.C. § 2027(b).

<sup>27</sup>567 U.S. 519, 580 (2012) (opinion of Roberts, C.J.) (citations omitted).

<sup>28</sup>*Id.* at 585 (internal quotation and citations omitted).

<sup>29</sup>*Id.* at 582. The Court made clear that the increased administrative costs of ACA's Medicaid expansion played a significant role in leading to its holding. *Id.* at 582 n. 12.

<sup>30</sup>*Id.* at 580.