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# An Aid Program that Routinely Discriminates in Favor of Ineligible Aliens

By David North

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Some critics object when illegal aliens draw welfare or tax benefits on equal terms with legal aliens and citizens; they say, for instance, that illegal aliens should not receive Additional Child Tax Benefits from the IRS, as citizens do. That's a serious question, but not today's topic.

What would those same critics say to a system that, under some precise and frequent circumstances, provides benefits to families with an illegal alien (or other ineligible alien) wage earner in it, while denying benefits to an identical family in which there were nothing but citizens?

In this case we are not talking about equal treatment for the aliens — these are cases where having an ineligible alien in the family *creates* benefits for one set of families, while denying the same benefits to identical all-citizen families (identical in terms of income and family size).

The program that allows this to happen in most of the nation is the U.S. Department of Agriculture's Supplemental Nutritional Assistance Program (SNAP), which distributes what used to be called food stamps.<sup>1</sup>

There are two groups of alien workers whose families get this preferential treatment: illegal aliens and most aliens whose green cards are less than five years old. These two groups are treated the same in all but two states (California and Oregon, where the second group is favored) and we will call all of them ineligible aliens.

How this happens leads us into the fiendishly complex subject: the eligibility for food stamps. The subject gets even more intricate when we consider mixed families, in which some of the members are eligible for benefits, but others are not. The eligible residents are the only ones that count toward the size of the allotment, the others do not. (In practice, of course, food that is obtained is shared by all.)

So, all else being equal, a mixed family with two ineligible aliens and one eligible resident gets a smaller allotment than a mixed family of the same income with two eligible residents and one ineligible. So far, so good.

Food stamps is a program for people of limited income, so there are income limits that go with family sizes. No family of three, for instance, with a gross income of more than \$2,177 a month is routinely eligible for benefits. But what if one of the family members is an ineligible alien who cannot (nominally) receive food stamps, *and* does have some income. How do you mesh the income from that alien into the formula?

This is where the trouble starts, because in most states — under some circumstances — families including an employed ineligible alien can secure food stamps when an all-citizen family of the same size and with the same income would be denied the benefits.

Let's say that the all-citizen family consisted of three people, employed father, stay-at-home mother, and a small child. Dad makes \$2,400 a month. The family's income is too high for food stamps since the maximum monthly income is \$2,177 for a family of three.

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*David North is a fellow at the Center for Immigration Studies. He is grateful to Elise Barber, a CIS intern, for her research assistance.*

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Then next door there is a mixed family, also three people, with the father being the only worker, also earning \$2,400 a month. The difference is that the father is an ineligible alien and so, under many states' regulations, one-third of the family's income is ignored (prorated is the word in SNAP circles), leaving the family with a nominal income of \$1,600 a month that allows the family to get a food stamps allotment, but only for the two citizens, not for all three in the family.

There is thus a band of households of three with earnings in the range of \$2,177/mo. at the bottom to \$2,589/mo. at the top that would be eligible for food stamps but *only if* the wage earner is a non-eligible alien in the eyes of USDA; all-citizen households in this band would not be eligible for food stamps. (Here's the math:  $\$2,589 = 150$  percent of  $\$1,726$ , the maximum income allowable for a family of two when there is a 33.3 percent discount on the illegal's wages).

Let's play this out for families of four. The special band of eligibility for a mixed family of four, in most states, ranges from a low of \$2,628/mo. to \$3,504/mo. in income for families with a single ineligible alien as the wage earner. Food stamps eligibility workers we talked to usually expressed the formula this way: For a mixed family of four, with a single ineligible alien, multiply the income by three (the number of eligibles in the family) and then divide it by four (the number of people). This formula, with different numbers, is applied to mixed families of all sizes where proration is used.

In a 2011 USDA publication there is a reference to an option available to states to impose the concept of gross income levels in SNAP cases, thus eliminating the benefit break we have been describing — but there are no references to such an option in more recent SNAP publications.

The proration formula is inherently unfair to the citizen family (or a family of eligible green card holders) as the system gives tax dollars to one family and not the other *because* the benefitting family has an ineligible alien as the breadwinner. It is biased against those here legally, and biased in favor of those whose presence is against the law (or who have secured their green cards quite recently.)

Incidentally, this strange arrangement *only* benefits the better-off families including ineligibles; in the case of a family of three it would allow mixed families with incomes of more than \$30,000 a year to receive benefits. Proration does not create opportunities to receive benefits for really low income mixed families, as they are eligible already. A further irony is that politicians have accepted this bias in favor of a population that not only includes no voters, it includes very few people who will vote in the next five to 10 years.

Why did this injustice happen, how widespread is this policy, how many people are directly affected by it, and what can be done about it?

## Why Does This Occur?

Though the program is run nationally by the Department of Agriculture, it is essentially a welfare program staffed from top to bottom with people who — at the margins — are more worried about the poor than about immigration law. Further, there is a states' rights element here and there is a certain amount of flexibility about many of SNAP's policies and procedures. Finally, the whole eligibility process is complex as the system tries to apply justice to a large range of interlocking issues. It is within this framework that the question of how to count the income of ineligible aliens is lodged.

So there is often a soft approach to the whole question of illegal immigration, and there is a multiplicity of different rules and regulations, apparently at the federal, state, and, perhaps, county levels. (In some states food stamps is run directly by the state and in others it is supervised by the state, but operated at the county level, yet another complexity.)

Over and above the factors noted above, I suspect that there is one largely un-discussed reason for the proration of ineligibles' wages: Quite simply, a state choosing to use the system, by definition, brings more federal money into its borders than it would get otherwise. Proration costs state governments nothing; the feds pay for it.

## How Widespread Is the Proration Policy?

It is within this environment that USDA has decided that the states should have the option of including all of the ineligibles' income in the eligibility equation, or only some of it, with the latter option being the one that causes the injustice mentioned above.

Of the states and territories, 47 have opted for proration and six have not. According to the most recent of SNAPs *State Options Reports* the six dissenters are Arizona, Guam, Massachusetts, New Mexico, North Carolina, and Utah.<sup>2</sup> (Each of these jurisdictions, incidentally, has a Republican governor.)

When we started this research, we at CIS figured that the proration-or-not policy would be worked out at the state level, and that all counties within a state would have the same policy. There appear to be some cases in which a county is *not* following state policy, either out of an administrative lapse or because the county's leadership wanted to do something other than follow the state policy.

We made a number of telephone calls to county food stamps offices in nine different states, and I paid a visit to the food stamps office in my home county, Arlington, which follows the Virginia policy of prorating the income of ineligible incomes. I got an excellent briefing on the program at the time.

On the other hand, there is the example of Orange County, N.C. This is the county that includes Chapel Hill, the site of the University of North Carolina, and one of those urban areas in the South, like Charlottesville, Va., where there is a very liberal environment. Our working-level contact there told us, in very clear terms, that Orange County's food stamps program uses the proration method. The North Carolina state policy does *not* use it. Was this because of an administrative error or because of a county-level policy position? We are going to cover that question in a subsequent report.

In sum, most of America is covered by the proration in food stamps policy.

## How Many Households Benefit from Proration?

It is safe to assume that the majority of food stamps families across the 50 states are not mixed, as defined above; and that this is particularly true in rural areas. So proration favorably impacts only a small portion of the caseload — but what are the rough dimensions of it?

We did not find SNAP data on proration, but we did find a clue that may shed a little light on the subject. A three-year-old USDA document, at a time when there were 18 million households receiving food stamps, reported that in 7 percent of the cases there was a “SNAP-ineligible noncitizen present.”<sup>3</sup> Let's make a further assumption that the presence of a “SNAP-ineligible noncitizen” suggests that these noncitizens were all wage earners; as I learned in my Arlington interview it is only when the wage-earner is an ineligible alien that proration comes into play.

Let's further assume that the 7 percent ratio stayed constant and can be applied against the 22 million households who are now receiving assistance. If you apply 7 percent to 22 million households, you get about 1,540,000 households.

That's a nationwide figure, and we know that in five states (and Guam) proration is not the policy. Let's further assume that, despite some scattered evidence, the state policy pertains to all caseloads. Those six jurisdictions have about 9 percent of the nation's SNAP recipients so, correcting for that variable, there would be about 1.4 million households in which there would be a noneligible alien present.<sup>4</sup>

But in what portion of these 1.4 million households is proration a factor? Levels of income play a role. For example, my Arlington contact told me that he deals with the question of proration frequently, perhaps in as much as half of his caseload; in rural Buckingham County, Va., on the other hand, my informant said: “But proration doesn't matter in most of the cases.”

When I asked her to elaborate, she said “the income level is too low for it to make a difference.”

So maybe a third to a half of the mixed food stamps families in the states that use proration might benefit from this strange formula. That would be a range of 460,000 to 700,000 households, and since there are about two persons in each SNAP household that would suggest a ballpark estimate that some 920,000-1,400,000 people would nominally benefit from it, as well as half again as many ineligible aliens, who would, in fact, share the benefits.

Since food stamps benefits run about \$255 per household per month, this would suggest, at 460,000 households, \$117,300,000 a month, or \$1,407,600,000 a year. How much of this figure would go to the aliens anyway, without proration, we do not know, but this looks very much like a billion-a-year problem — and all totally unnecessary.

No other governmental program prorates income in this way, nor, to my knowledge, does any other program actively discriminate in favor of ineligible aliens (including large numbers of those who are illegally present in the United States.)

## What Can Be Done About This?

One of the problems with seeking to change this situation is that its existence is virtually unknown outside food stamps professional circles (and readers of these CIS reports). I am certain that the all-citizen family victims of the proration formula are 99.99 percent unaware of the situation.

There is an exception, however, according to my Arlington contact. He said that mixed families that had previously benefitted from proration noticed when they had moved beyond the five-year mark for green card holders and thus lost their benefits — and they protested.

The other problem with seeking reform is the complex nature of the situation; it is, frankly, difficult to explain to one's allies or potential allies.

On the other hand, the political environment for reform is much more favorable than in the field of national migration policies, for example, in which the president has decreed a policy of prosecutorial discretion regarding the enforcement of the immigration laws. That would require a change in the mind of the president, or a change in the president.

But in the proration debate (or potential debate) there is much more room for maneuver; it comes in two flavors: one set of tactics is available in the set of five states and Guam, and another in all the other states and territories.

If one lives within the five states (Arizona, Massachusetts, New Mexico, North Carolina, and Utah), all of which have an anti-proration posture, the only thing to do is to make sure that your county follows your state's rules on this point. A visit to the local SNAP office, or a phone call to a senior food stamps eligibility worker will be needed to make sure that the anti-proration policy is in effect locally. If it isn't, complain to the state government.

If one lives in the rest of the United States, i.e., in states that follow the pro-proration policies, one can lobby the state's governor, or the state's legislature to cause the state to move away from the proration posture. Routinely such decisions are made in the executive branch, but if the governor and his people remain adamant that ineligible aliens should receive more benefits than citizens, then an act of the legislature could solve the problem.

In some cases, particularly where there is a Republican governor, a question posed to him at a press conference might solve the problem; it could be worded as follows:

*Governor: As you may or may not know, the state administration, in the food stamps program, has taken a bizarre position that it is easier for families with illegal aliens as the wage earners to get food stamps than for all-citizen families. In these cases the wages of illegal aliens are not fully counted when food stamps eligibility is calculated, while the citizen's wages are always counted. Do you support this overt bias against citizen families? Your office can change the policy.*

Chances are the governor does not have a clue about the subject, but he or she may call the appropriate cabinet member and change may ensue.

Thus, state legislators, the governors, and the state house press might be contacted in an effort to eliminate this strange, anti-citizen governmental program.

A final thought: The subject would make an excellent graduate school thesis topic.

## End Notes

<sup>1</sup> CIS explored this matter briefly four years ago; see David North, [“The Food Stamps Program Rewards Households with Illegal Aliens”](#), Center for Immigration Studies blog, February 3 ,2012.

<sup>2</sup> [“State Options Report: Supplemental Nutrition Assistance Program”](#), U.S. Department of Agriculture, Food and Nutrition Service, April 15, 2016.

<sup>3</sup> Dorothy Rosenbaum, Shelby Gonzales, and Danilo Trisi, [“A Technical Assessment of SNAP and Medicaid Financial Eligibility Under the Affordable Care Act \(ACA\)”](#), Center on Budget and Policy Priorities, June 6, 2013, Appendix 1.

<sup>4</sup> [“Supplemental Nutrition Assistance Program: Number of Households Participating”](#), U.S. Department of Agriculture, Food and Nutrition Service, June, 2016.