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How Congress Can Eliminate Marriage Penalties in the Tax Code and Safety-Net Programs

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Section 1: Marriage Penalties in the U.S. Tax Code

The U.S. individual income tax structure and the safety-net assistance system[1] exact financial penalties on married couples, which worsen when children are in the family. The effect of these penalties is the opposite of what public policy should be. Research has established that society benefits immensely from stable and healthy marriages.[2] This policy brief is divided into two sections. This section focuses on the U.S. Tax Code and restoring the income tax to its primary purpose, while eliminating the marriage penalty. The second section presents a way for Congress to eliminate marriage penalties from safety-net programs.

Remove Safety-Net Programs from the U.S. Tax Code

Of the federal and state agencies that run more than 80 federal programs intended to help low-income individuals and families,[3] perhaps the worst administrator is the Internal Revenue Service (IRS) that runs several safety-net programs, including the Earned Income Tax Credit (EITC) that provided $64 billion in cash assistance to 23 million tax filers in 2024.[4]

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[1] The safety-net assistance program system is a disjointed collection of more than 80 federal programs to benefit individuals and families of low-income. It consists of refundable tax credits, cash assistance (such as cash from the Temporary Assistance for Needy Families program), food assistance (such as benefits from the Supplemental Assistance Program), medical assistance (such as Medicaid), child care assistance, housing assistance, and more.

[2] There is extensive research showing the benefits of healthy marriages. See, for example, Bradford Wilcox, Chris Gersten, and Jerry Regier, *Marriage Penalties in Means-Tested Tax and Transfer Programs: Issues and Options*, OFA Report 2019-01, Washington, DC: Office of Family Assistance, Administration for Children and Families, U.S. Department of Health and Human Services, 2019.

[3] United States Government Accountability Office, *Federal Low-Income Programs: Multiple Programs Target Diverse Populations and Needs*, GAO-15-516, July 2015.

[4] Internal Revenue Service, Statistics for tax returns with the Earned Income Tax Credit (EITC), accessed February 20, 2025.

While many policymakers view the income tax system as an efficient way to dispense safety-net benefits, IRS performance leaves much to be desired. A recent *Wall Street Journal* article listed the EITC with the second-highest improper payment rate—*more than five times* the average improper payment rate. The WSJ article did not reveal anything new: the IRS has struggled with its overpayment problem according to a long history of internal governmental audits and reviews.[5] The IRS also runs the program with the highest improper payment rate, the American Opportunity Tax Credit.[6]

When it comes to marriage penalties, the income tax structure is a bad fit for distributing money to needy households. While there are tax filing statuses for married couples, heads of household, and single individuals, there is no option for unmarried couples. Consider an unmarried couple with two children. One partner can claim both children as head of household while the other files as a single person. Or they can split the children as heads of household. Either way, they will be treated differently than if they were married.

Congress could create a new tax filing status to accommodate unmarried couples. However, it may be more trouble than it is worth. Unmarried couples run the gamut in financial and relational commitments, and using tax law to address the various situations is complicated and may be perceived as too intrusive for those who just want to pay their tax liability. Besides, the IRS is set up for annual returns and refunds, not monthly payments. EITC recipients must wait until the following tax year for their benefits. Monthly payments would give assistance when needed, allow families to properly budget, and would be a more effective way to encourage employment, one of the goals of the program.

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[5] For example, see these result reports: Treasury Inspector General for Tax Administration. Assessment of Fiscal Year 2024 Compliance With Improper Payment Requirements. Washington, D.C.: U.S. Department of the Treasury, May 2025. U.S. Government Accountability Office. Improper Payments: Key Concepts and Information on Programs with High Rates or Lacking Estimates. GAO-24-107482. Washington, D.C.: U.S. Government Accountability Office, June 27, 2024.
[6] Paul Overberg, Nate Rattner, and Scott Patterson, "DOGE Is Searching for Wasteful Spending. It Isn't Hard to Find," *The Wall Street Journal*, February 19, 202. Appeared February 21, 2025, print edition as "Government Misspending is Hard to Tame", p. A4.

The EITC had an advance payment feature that was repealed in 2010 due to poor participation and administrative problems.[7] The system relied on employers making the monthly payments to their employees and then being reimbursed by the IRS, but the Government Accountability Office found IRS procedures to be ineffective with noncompliance rates of 80 percent.[8] Although repealing the advance payment feature eliminated this extreme noncompliance rate, the IRS continues to struggle with taxpayer noncompliance with the EITC program.[9]

Make Income Taxes Neutral to Marital Status

Removing safety-net programs from the tax system would allow Congress to focus on making the income tax marital status neutral. In 2017, Congress was successful in eliminating marriage penalties for single individuals who want to marry, provided they have no children and do not qualify for refundable tax credits. [10]

However, marriage penalties remain for the rest of tax filers. For example, suppose a mom earns $20,000, a dad earns $30,000, and they have two children. Table 1 shows the simple tax liability for tax year 2025 before tax credits assuming that, as an unmarried couple, each parent claims one child and the standard deduction. The tax liability before tax credits is $750 if they live together unmarried but $2,000 if they are married, which means a marriage penalty of $1,250.[11] Even if one parent claims both children, there would still be a penalty.[12]

[7] The advance payment system was created by Public Law 95—600, November 6, 1978, and repealed by Public Law 111—225, August 10, 2010; See also Press Briefing by OMB Director Peter Orszag and CEA Chair Christina Romer, The White House, February 26, 2009.

[8] United States General Accountability Office, *Advance Earned Income Tax Credit: Low Use and Small Dollars Paid Impede IRS's Efforts to Reduce High Noncompliance*, GAO-07-1110, August 2007.

[9] Taxpayer compliance with the EITC program is a perrential and unsolved issue for the IRS. For example, see Internal Revenue Service, "Taxpayer Compliance and Sources of Error for the Earned Income Tax Credit: Technical Paper Based on NRP Data for Tax Years 2006–2008," *Statistics of Income Bulletin*, Spring 2015.

[10] PUBLIC LAW 115–97—December 22, 2017.

[11] The computation for the married couple used the factors for "married filing jointly." However, for the instances shown here, there is no difference if they choose to file as "married filing separately."

[12] If the mom claimed both children on her taxes, the combined tax liability before credits would be $1,561.50 if they live together unmarried but $2,000 if they live together as married, leaving a marriage penalty of $438.50.

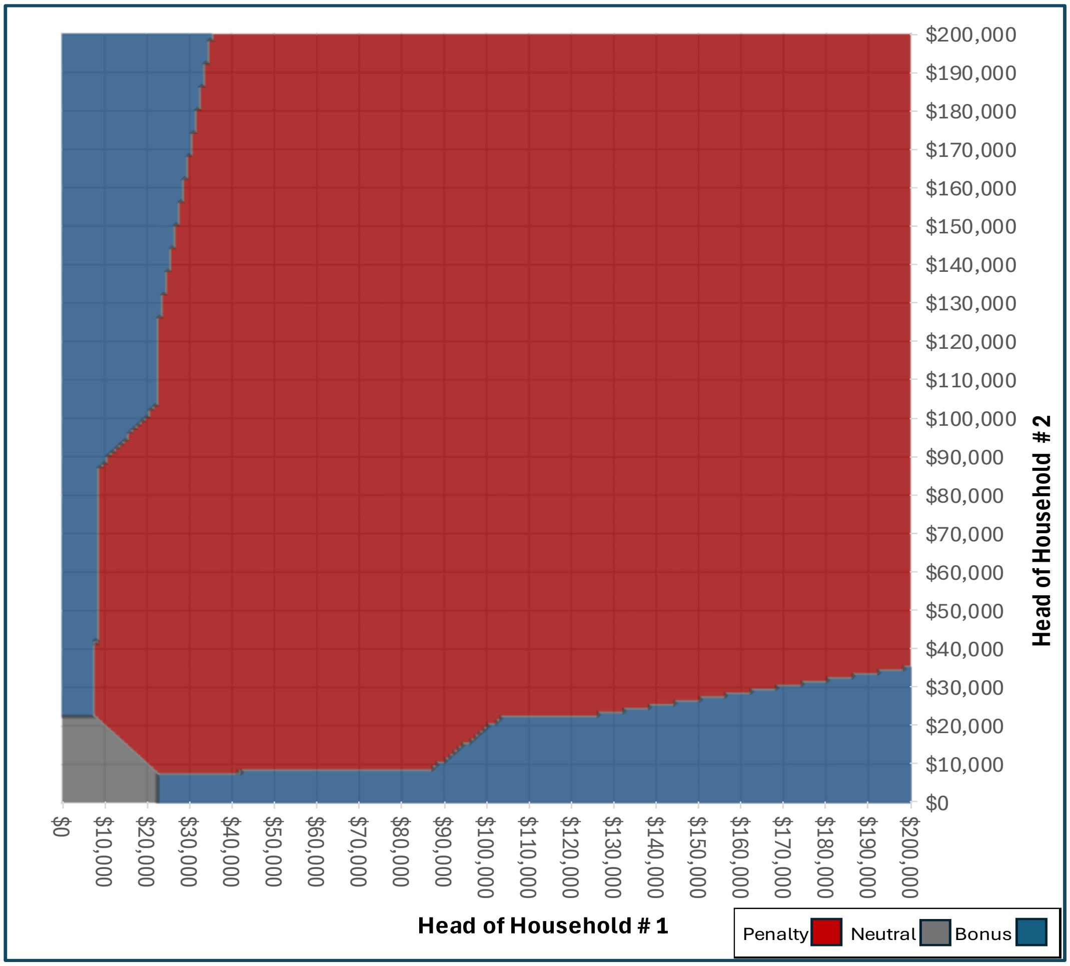
Table 1: Marriage Penalty Example of Couple with Two Children

Tax Status	Head of Household	Head of Household	Unmarried Couple	Married Couple	Bonus (+) Penalty (−)
Gross Income	$30,000.00	$20,000.00	$50,000.00	$50,000.00	
Standard Deduction	$22,500.00	$22,500.00		$30,000.00	
Taxable Income	$7,500.00	$0.00		$20,000.00	
Tax Bracket	Bracket 1	Bracket 1		Bracket 1	
"Over" Threshold	$0.00	$0.00		$0.00	
Taxable Income Over Threshold	$7,500.00	$0.00		$20,000.00	
Tax Rate	10%	10%		10%	
Amount multiplied by Tax Rate	$750.00	$0.00		$2,000.00	
Plus Amount	$0.00	$0.00		$0.00	
Tax Liability	$750.00	$0.00	$750.00	$2,000.00	-$1,250.00

The example in Table 1 is just one wage combination for a couple with two children. The Georgia Center for Opportunity ran 40,401 wage combinations for this couple if each partner claims one child on their taxes and found that 81% had a marriage penalty. Figure 1 shows the distribution of the penalties (in red), neutral outcomes (in gray), and the bonuses (in blue).[13]

[13] This figure shows the marriage penalties (or bonuses) for a couple who has two children, comparing the difference between them being married or living together unmarried. It assumes when unmarried, they each claim one child on their tax forms.

Figure 1: Marriage Penalties for Couple with Two Children for Tax Year 2025



One option Congress might consider to eliminate income tax marriage penalties is the flat tax, which treats all taxpayers the same regardless of marital status. The reason can be easily shown using mathematics because the flat tax follows the distributive law of multiplication. The flat tax can be expressed by $t \times i_1 + t \times i_2 = t \times (i_1 + i_2)$, where the constant tax rate is represented by t, the first person's taxable income by i_1, and the second person's by i_2. A constant tax rate multiplied by a person's taxable income plus the same tax rate multiplied by a second person's taxable income is equal to the same tax rate multiplied by the sum of the two persons' taxable incomes. Therefore, no matter what taxable incomes the two individuals might have, their combined tax liability remains the same no matter their filing statuses.

Section 2: Eliminating Marriage Penalties in Safety-Net Programs

Section 1 of this policy brief makes the case to remove safety-net programs from the U.S. Tax Code and gives Congress an option that makes the individual income tax marital status neutral. This section shows how marriage penalties can be eliminated in safety-net programs run by non-tax agencies. This can be done by standardizing the definition of assistance units and ensuring the standard is enforced.

How Assistance Units Are Determined

Determining the assistance unit is the first step in determining eligibility for non-tax-based safety-net programs. A household is an economic unit that shares in income, responsibility, and expenses, and each safety-net program defines assistance units differently. Table 2 lumps the various approaches of major safety-net programs by how they treat unmarried partners into four groups.

Table 2: How Assistance Programs Currently Treat Unmarried Couples

Approach	Treat unmarried live-in partner:	Assistance programs
Approach 1	the same as a married partner	LIHEAP*, SSI, Housing, WIC
Approach 2	the same as a married partner if the partner is the parent of the child or children	TANF**, Medicaid, CHIP, Head Start, PTC
Approach 3	the same as a married partner if they purchase food & prepare meals together	SNAP, school meal programs
Approach 4	differently from married partners	ACTC, EITC, CCAP**

*Note: * implementation varies by state; ** treatment varies by state.*

Approach 1 Programs

The Supplemental Security Income Program (SSI), the Low-Income Home Energy Assistance Program (LIHEAP) and housing assistance—such as public housing, the Section 8 housing voucher program, and the project-based Section 8 rental assistance program—treat an unmarried live-in partner the same as a married partner as displayed in Approach 1 of Table 2. For example, the regulatory guidelines for public housing and Section 8 housing define the assistance unit as follows: "Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status," which includes "a group of persons residing together."[14]

The federal LIHEAP statute defines its assistance unit as a household consisting of an "individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent." [15]

[14] 24 CFR § 5.403 Family(2)(i)
[15] 42 U.S. Code § 8622(5)

Because LIHEAP is a federal block grant, the implementation of who meets the definition of households is left to the states.

The Social Security Administration (SSA)'s administers SSI, and its regulations state the following:

> *We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—*
>
> *You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.*[16]

In making its determination, SSA relies on claimant statements, interviews, and other factors, such as who is listed on leases, mortgage documents, utility bills, insurance policies, and other financial documents.[17] While SSA treats an unmarried partner the same as a married partner, it applies more narrow criteria than either the housing programs or LIHEAP, requiring more extensive administrative review.

The Special Supplemental Nutrition Program for Women, Infant, and Children (WIC) program defines "family" as meaning "a group of related or nonrelated individuals who are living together as one economic unit."[18]

Approach 2 Programs

The second general approach to an unmarried partner is to treat him or her the same as a married partner *only* if the partner is the father or mother of the child or children in the household. Funded by the U.S. Department of Health and Human Services (HHS), a

[16] 20 CFR § 416.1806
[17] Program Operations Manual System, Social Security Administration, SI 00501.150, Determining Whether a Marital Relationship Exists, Effective Dates 02/13/2025 to present, https://secure.ssa.gov/poms.nsf/lnx/0500501150. Note: Same-sex marriages and couples are recognized for SSI purposes.
[18] 7 CFR § 246.2

RAND Corporation study on how state Temporary Assistance for Needy Families (TANF) programs treat marriage and cohabitation summarized its findings as follows:

> "…most, but not all, TANF eligibility rules for the four family types vary across the states
>
> - *Biological Families*: Two-parent families are universally treated the same under TANF rules regardless of marital status inasmuch as both parents are included in the assistance unit.
> - *Blended Families*: 18 states have more favorable treatment for such families if they are unmarried. In these states, if the couple is unmarried, the male can be excluded from the assistance unit if his income disqualifies the entire family. If excluded, his income is disregarded. If the couple is married, however, the male is either automatically included in the unit or, if excluded, some portion of his income is counted towards the family's eligibility. In the other 33 states, the male is automatically included, or his income is counted regardless of marital status.
> - *Unrelated Cohabitor Families*: Generally, an unrelated cohabitor is treated like any other unrelated individual living in the home and his income is not considered in calculating a family's eligibility.
> - *Stepparent Families*: 21 states include, and 20 states exclude, stepparents from the assistance unit, while 10 make the stepparent's inclusion optional. In most states where a stepparent is not included, some portion of the stepparent's income is considered in calculating a family's eligibility."[19]

Medicaid and the Children's Health Insurance Program (CHIP) rely on the definition of "household" to determine how it treats couples. A married couple living together is automatically treated as a household, regardless of filing a joint tax return. Otherwise, a live-in partner is only included if he or she happens to be the parent of one of the

[19] Robert A. Moffitt, Robert T. Reville, Anne E. Winkler, and Jane McClure Burstain, *Cohabitation and Marriage Rules in State TANF Programs*, HHS-100-02-001, Rand Corporation, (Washington, DC: U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, Revised February 2029), https://aspe.hhs.gov/sites/default/files/private/pdf/75971/index.pdf.

children under age 19. In some states, the age of the children is 21 if they are full-time students. In this case, a parent is defined as biological, adopted, or stepparent.[20] When a health insurance policy is purchased through one of the government-run health insurance exchanges, the Premium Tax Credit of the Affordable Care Act works the same way. The unmarried partner is included only if he or she is also the parent of one of the children or if the partner is a tax dependent.[21]

Head Start essentially works the same way. It defines "family" as "[a]ll persons living in the same household who are supported by the child's parent(s)' or guardian(s)' income; and are related to the child's parent(s) or guardian(s) by blood, marriage, or adoption; or are the child's authorized caregiver or legally responsible party."[22]

Approach 3 Programs

The Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, determines the assistance unit based on whether a group of individuals purchases food and prepares meals together.[23] This method extends to school meal programs, whereby the children are categorically eligible for free meals through school meal programs, such as the National School Lunch Program and the School Breakfast Program, if the family receives SNAP.[24]

Approach 4 Programs

Child Care Assistance Programs (CCAP) funded primarily from the federal Child Care and Development Fund (CCDF) work differently than Head Start. Most states do not include unmarried partners in the definition of a household. According to the CCDF Policies Database Book, 37 states and the District of Columbia never include unmarried partner's incomes when determining eligibility. In contrast, Florida, Kansas,

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[20] 42 CFR § 435.603.
[21] U.S. Department of Health & Human Services, Health Insurance Marketplace website, Count Income & Households Size webpage, "Who to include in your household," accessed March 16, 2025: https://www.healthcare.gov/income-and-household-information/household-size//
[22] 45 CFR § 1305.2
[23] 7 U.S. Code § 2012 (m)
[24] Department of Agriculture, Food and Nutrition Service. Eligibility Manual for School Meals. July 18, 2017, p. 14. https://fns-prod.azureedge.us/sites/default/files/cn/SP36_CACFP15_SFSP11-2017a1.pdfs.

Nevada, and Virginia always count the partner's income for eligibility. The remaining states vary the treatment of unmarried partners, such as Connecticut that counts the partner "if the parent or caretake identifies the partner as a spouse, life partner, or the co-parent of the child." or Mississippi that counts the partner if he or she is financially or legally responsible for the care of the children requiring child care.[25]

Through the income tax system, the Earned Income Tax Credit (EITC) treats an unmarried partner differently from a married partner. The amount of the EITC increases with the number of qualifying children up to three children, where it is capped. The tax law attempts to control which children may be claimed by limiting a qualifying child to those 19 or under 25 and a full-time student for at least 5 months of the tax year and who are also one for the following:

- "Son, daughter, stepchild, adopted child or foster child"
- Brother, sister, half-brother, half-sister, stepsister or stepbrother
- Grandchild, niece or nephew"
- The children can be legally adopted or foster care children[26]

In the EITC formula, the phase-in rates, phase-in thresholds, maximum credits, and phase-out rates change by the number of qualifying children. However, when the phase-outs begin and end are controlled by the filing status, giving different rates for married filing jointly, head of household, and single, causing the program to treat unmarried couples differently from married couples.[27]

The Additional Child Tax Credit (ACTC) is the refundable portion of the Child Tax Credit. It does not change the amount of the credit based on tax filing status. However,

[25] Urban Institute, CCDF Polices Database search, as of October 1, 2022, and Dwyer, Kelly, Danielle Kwon, Margaret Todd, and Sarah Minton. *Key Cross-State Variations in CCDF Policies as of October 1, 2022*: The CCDF Policies Database Book of Tables. OPRE Report 2023-270. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, 2023.
[26] Internal Revenue Service, Qualifying Child Rules webpage, accessed March 15, 2025: https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/qualifying-child-rules.
[27] 26 U.S. Code § 32; Internal Revenue Service, Publication 596, Earned Income Credit, accessed March 16, 2025; and for the latest factors see Internal Revenue Bulletin, 2024-45, Revenue Procedure 2024-40, November 4, 2024.

it also limits the credit to a qualifying child or relative. The credit is limited by the income tax filing status, but the formula makes the benefit less than receiving the full Child Tax Credit if they are married.[28]

Definition Standardization of Assistance Units

Congress can eliminate the marriage penalty among safety-net programs by standardizing how all federally funded safety-net programs count individuals that are part of the assistance unit. The standard definition must be:

- broad enough to include blended families that count unmarried partners even if the partner is not a parent of any of the children or has not legally adopted any of the children.
- carefully written to capture true economic units of non-married households while allowing for reasonable exceptions, such as roommates who otherwise have no economic connections with each other. (*See Section 1 that explains why safety-net programs run by the Internal Revenue Service (IRS) need to be reassigned to another agency, which will allow the standardization to be applied to the programs currently administered by the IRS that otherwise cannot be because of the structure of the tax code*.)

In addition, Congress needs to include enforcement language when it standardizes the definition. Otherwise, the standardization will be meaningless if administrating agencies choose to ignore the rules. Enforcement tools are well established in safety-net programs, including sanctions for administering agencies that fail to reach performance benchmarks. For example, federal grants or funding can be withheld or reduced, forcing the state to increase its share of program costs. Congress might also choose to give state governments—that administer most of the programs—a stake in funding the benefits of all programs, incentivizing them to keep costs down and follow the rules.

[28] 26 U.S. Code §§ 24 and152.

Conclusion

The U.S. Tax Code is ill-suited for running safety-net programs without marriage penalties. Furthermore, the IRS has an awful record of improper payments and noncompliance when it comes to running its safety-net programs. Therefore, an important step to eliminate marriage penalties is to take those programs away from the IRS and give them to an agency that knows how to run safety-net programs. Once these programs are transferred, a flat tax is one option Congress might consider that removes marriage penalties from the federal income tax.

By standardizing the definition of assistance units across all federally-funded safety-net programs in a way that is marriage-neutral, Congress can eliminate all marriage penalties in these programs. Several safety-net programs today have workable definitions that treat unmarried partners the same as married partners. Those definitions could be used as the basis for creating the standard definition. When standardizing the definition, Congress must also include enforcement language to ensure administering agencies adopt and enforce the standard definition.

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