



Expanding Definitions of Family in Federal Laws

By Frank J. Bewkes May 2020

Center for American Progress



Expanding Definitions of Family in Federal Laws

By Frank J. Bewkes May 2020

Contents

- 1 Introduction and summary**
- 5 Results of the U.S. Code analysis**
- 8 Title analysis**
- 16 Recommendations**
- 18 Conclusion**
- 18 About the author**
- 18 Acknowledgements**
- 19 Methodology**
- 21 Endnotes**

Introduction and summary

The average American family looks much different than it did several decades ago. Yet federal law has not evolved to keep up with this changing reality.¹ Less than one-fifth of families fit the “nuclear family” model of two married parents and their minor children.² In fact, the marriage rate is decreasing by the year.³ Meanwhile, the rate of children living in single-parent households is increasing,⁴ as is the number of families living in multigenerational households.⁵ A study from the University of Michigan found that “35 percent of children in the United States have lived with a relative other than their parent or sibling at some point by age 18.”⁶

The very definition of family is changing. One study of LGBTQ people in Minnesota found that 66 percent of respondents considered friends—including roommates, co-workers, and children of friends—as part of their family.⁷ These kinds of family members, often referred to as “chosen family,” are otherwise unrelated loved ones with whom one “develop[s] a deep and significant personal bond akin to the bond that often exists between family members related by blood or legal ties, such as marriage or adoption.”⁸ The same Minnesota study found that respondents relied more on “functional” characteristics than “structural” characteristics when asked to define family.⁹

Federal law should embrace this reality because failing to fully recognize that chosen families exist causes real harm—harm ranging from the insult of not being recognized to not being included in or covered by certain benefits or programs. In fact, a nationally representative survey fielded by the Center for American Progress in 2017 found that nearly a third of all respondents reported taking time off work to care for a friend or chosen family member.

The LGBTQ community can be particularly affected by narrow and/or noninclusive legal definitions of family. In the same CAP survey, LGBTQ individuals, as well as individuals with disabilities, were more likely to report caring for chosen family than were their nondisabled or non-LGBTQ counterparts—42 percent compared with 30 percent and 31 percent, respectively.¹⁰ There are myriad reasons

why the LGBTQ community is more likely to seek chosen family. One is that they may lack ties to biological or legal family members. Many LGBTQ people face rejection from their families, which can often lead to housing insecurity.¹¹ LGBTQ youth are 120 percent more likely than their non-LGBTQ counterparts to experience homelessness.¹² LGBTQ youth are also overrepresented in the child welfare system, accounting for roughly a fifth of youth in foster care.¹³ Approximately 7 percent—or nearly 20,000—of those who exit foster care each year do so because they have aged out of the system without finding a permanent family.¹⁴ LGBTQ adults over 50 also generally experience social isolation at higher rates than their non-LGBTQ counterparts.¹⁵ In short, as one historian puts it, “the family of choice [makes] it possible to survive.”¹⁶

The LGBTQ community also disproportionately relies on chosen family due to current and historical legal barriers. Marriage equality, for example, was not legal nationwide until 2015, and the legacy of that previous inequality remains.¹⁷ For instance, while there are now more married same-sex couples living together than there are nonmarried same-sex couples living together, same-sex couples living together are still more likely to be unmarried than their different-sex counterparts.¹⁸ Another reason that chosen family is particularly important to the LGBTQ community is parentage. Same-sex couples, in general, require a donor and/or a surrogate to have a child that is biologically related to one of them, which can give rise to disputes with those third parties.¹⁹ The law has also been slow to embrace parenthood by intent and recognize nonbiological parents.²⁰ This is especially true in situations where a gestational surrogate carries the child, which disproportionately affect same-sex couples and others using assisted reproductive technology.²¹ This, combined with the lower prevalence of marriage, leads to many parent-child relationships in the LGBTQ community that are not based on blood or legal ties.

Many people, LGBTQ or otherwise, take on the responsibilities of a parent and are said to be acting “in loco parentis” and are often referred to as “de facto” parents.²² The recognition of such relationships varies widely across the country.²³ Unfortunately, due to the above issues, it is still currently advisable that a parent lacking biological or legal ties to the child initiate a “second parent adoption” to secure their rights without disrupting the rights of the other parent.²⁴ In some states, this process is available regardless of the marital status of the couple, but as with de facto parents, the laws vary.²⁵

The broadness or narrowness of family inclusion is also an issue of socioeconomic status and race, often affecting those living at the intersections of marginalized identities. For example, immigrants and people of color are statistically more likely than white people to be living in households with extended family members.²⁶ Parental educational attainment is also linked to the likelihood of a child living in an extended family household,²⁷ and poverty rates among extended family households are higher.²⁸ Those in the LGBTQ community—a third of whom identify as people of color—also experience disproportionate rates of poverty.²⁹ Ultimately, those who most need inclusion by a statutory program are also the most likely to live with extended families.

When federal law fails to keep up with the changing makeup of American families, those families that do not fit the so-called “traditional” understanding of what a family should be often get left behind.³⁰ In light of this fact, the Center for American Progress examined the United States Code, a compilation and codification of the country’s federal statutes, in search of inclusions and definitions of the word “family,” as of summer and early fall 2019. Since the inquiry specifically focused on how elected legislators have understood the scope of “family,” only laws were searched—despite the fact that regulations can and often do clarify definitions.

So that comparisons could be drawn, the statutes identified were then analyzed and scored on a scale of 1 to 12, from least to most broad, based on the types of relationships they included as family. Statutes received one point each for including spouses, children, parents, siblings, grandparents, grandchildren, in-laws, “niblings” (nieces and nephews),³¹ aunts and uncles, step-relations, adoptive relations, and first cousins. These scores are only intended to represent how wide or narrow the definitions are and are not necessarily comments on whether the definition in question is properly inclusive for what that statute is trying to do. However, generally, a more inclusive understanding of family in federal law is warranted.³² The Methodology section at the end of this report provides more information on how these searches and analyses were conducted, as well as which statutes were ultimately included in the analysis. Of the set of 58 statutes ultimately scored, some did receive a score of 12—most broad—but even among those statutes receiving the highest score, none were broad enough to cover all chosen family members. Moreover, there was a lack of inclusion for more extended family members; and while not included in the broadness scale, domestic partners were never included and de facto parents were rarely included in definitions of family.

This report found that the scope of what constitutes a family in federal statutes has not evolved to reflect the diversity of today’s families, leaving out many common relationships. The results of the statute analysis are first discussed with reference to these relationships. Then, the results are broken down by where the statutes were located within the U.S. Code. Examples of the analyzed statutes are then presented with who they include as family and who could potentially be added to that definition. These statutes were chosen to both show the diversity of topics covered by the dataset as well as the general buckets into which statutes defining family tend to fall: benefits, exceptions, and conflicts of interest. The highlighted statutes represent suggestions—places to potentially begin broadening how federal statutes define family. More generally applicable recommendations for how to craft wider definitions also follow. Ultimately, the further statutory definitions of family are from lived reality, the more likely real families are being rendered invisible and excluded from benefits or services they should have access to by law.

Results of the U.S. Code analysis

The author conducted searches of the United States Code Annotated to attempt to identify all statutory sections containing a definition of family. The author searched only the statutory text for the following terms and phrases: “family” preceding “defined” within the same sentence, “family” preceding “means” within the same sentence, and “definition” and “family” within in the same section. Only those statutory definitions of family that stood by themselves and thus did not refer elsewhere in the Code to complete their definition were included in the dataset for analysis and given a broadness score. Those statutes that delegated the authority to define family to an agency or official were excluded.

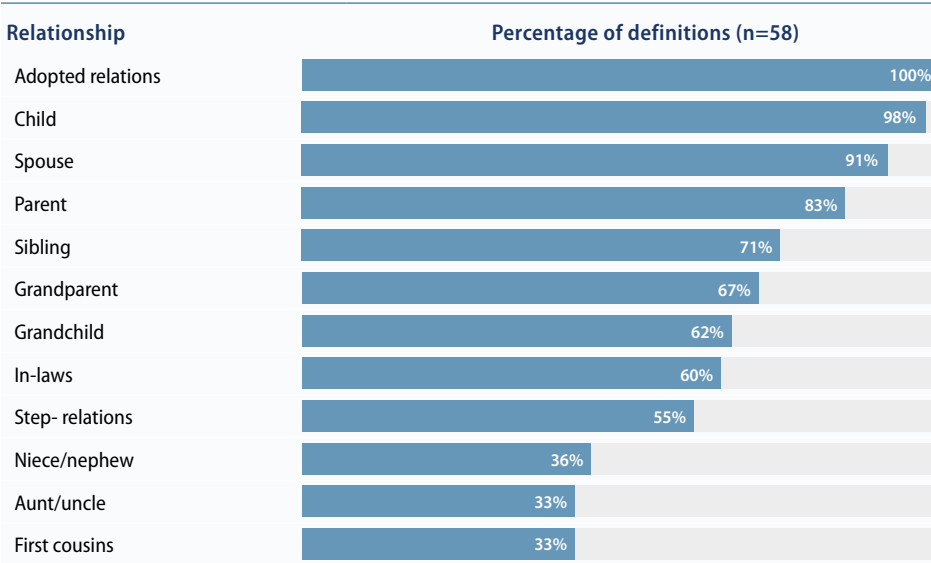
The average broadness score for all 58 federal statutes was ultimately 7.9, with a minimum score of 3, a maximum score of 12, a median of 7, and mode of 12. Fourteen statutes received a maximum broadness score of 12, meaning that their definitions of family are broad, including members of household, “another family member,” “another person designated by the court,” “any dependent,” anyone who “stands in loco parentis” and the combination of “all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.”³³

In the statutes analyzed, members of one’s “household” seemed to allow for the broadest definition of family, as it could potentially include both related and unrelated individuals.³⁴ While the U.S. Census Bureau does not collect data on chosen families, it does indicate that more than 13 million households contain individuals who do not share biological or legal ties, many of whom are likely chosen families.³⁵ Several common benefit programs, such as the Supplemental Nutrition Assistance Program (SNAP), use “household” rather than “family” as their eligible relationship.³⁶ This benefits the LGBTQ community’s diverse families, as a 2017 survey conducted by CAP found that LGBTQ people were 2.3 times more likely than non-LGBTQ people to report that they or their families participated in SNAP.³⁷ Yet none of the statutes analyzed below fully include all possible permutations of chosen family, as none of them cover chosen family members who neither cohabitate nor share legal or blood ties.

TABLE 1

Statutory definitions of family are not inclusive enough of today's diverse families

The percentage of family definitions that include different relationship types



Source: Data are from searches of the United States Code Annotated in Thomson Reuters' Westlaw database, available with a subscription at www.westlaw.com. The author conducted the searches during summer and fall 2019.

Children were the family members most frequently included in the statutes that were analyzed, appearing in 98 percent of them. While adoptive relations appear, at a glance, to be included more frequently—in 100 percent of statutes—that is only because all inclusions of children were assumed, for scoring purposes, to include all children, including those legally adopted. The frequencies, then, should be the same. The discrepancy arises from one additional statute that includes adoptive relationships between grandparents and granduncles/aunts and their grandchildren and grandnephews/nieces but excludes the intervening generation.³⁸ Furthermore, enumeration is important for clarity and ease of use and application; only 29 percent of the statutes mention adoptive relationships explicitly. Similarly, only five statutes mention foster relationships explicitly, and only six statutes mention *in loco parentis* relationships. The lack of inclusion of these relationships is especially concerning to the LGBTQ community: Among couples raising children, same-sex couples are seven times more likely than their different-sex counterparts to be fostering or raising an adopted child.³⁹ Stepchildren were also only included explicitly in a single statute; though for scoring purposes, step-relations were also counted among the descendants and relatives of a spouse or in any definition that could include chosen family.⁴⁰

Spouses were included in 91 percent of statutes. This is unsurprising, given the U.S. government’s long history of marriage promotion—and prohibition—as a method of social control.⁴¹ Illustrating this, in 2004, the U.S. Government Accounting Office found more than 1,000 provisions in federal law that based eligibility for benefits, rights, and privileges on marital status or otherwise considered marital status.⁴² Unfortunately, domestic partners, reciprocal beneficiaries, and those in civil unions were noticeably left out of definitions in which “spouse” was included—and therefore are not recognized as family in federal law, despite the legal status granted by certain states.⁴³ Even with the granting of marriage equality by *Obergefell v. Hodges* in 2015, domestic partnerships remain in use as a form of relationship recognition by both LGBTQ and non-LGBTQ couples.⁴⁴ Federal law should acknowledge that reality.

In addition, the frequencies of inclusion for grandparents and grandchildren—67 percent and 62 percent, respectively—despite representing majorities, do not adequately reflect American society. One in 5 Americans lives in a multigenerational household, and the number of grandparent-led households is increasing.⁴⁵

The relations that appeared least frequently in the family definitions were nieces and nephews (36 percent), aunts and uncles (33 percent), and first cousins (33 percent). This is despite a University of Michigan study that found that “of the extended family households, about 24 percent lived with a grandparent, 18 percent with an aunt or uncle, and 24 percent with another relative.”⁴⁶ Approximately 17 percent of children under age 18—or 12 million overall—are currently living with an extended family member.⁴⁷

Title analysis

The U.S. Code is divided into 54 titles based on the subject matter of the federal laws contained within it. Eighteen of the U.S. Code's 54 titles were ultimately represented by at least one of the statutes included in the dataset. These titles ranged from "Public Health and Welfare" to "Agriculture" to "Education." Nine of them were only represented by a single statute in the dataset. Of those titles represented by more than one statute, "Veterans' Benefits" had the highest average broadness score, followed by "Foreign Relations," while "Public Health and Welfare" and the "Internal Revenue Code" had the lowest average broadness scores. When a title had more than one definition included in the dataset, those definitions were frequently inconsistent, unless the same or similar programs or issues were being addressed; the average range for scores among those titles was 4.8.

The family definition statutes included in this analysis fell into roughly three categories: laws conveying privileges and benefits to family, laws providing exceptions for family, and laws avoiding conflicts of interest due to family. Laws providing some kind of benefit or privilege had an average broadness score of 8.2, followed by laws providing exceptions, with an average score of 7.7, and laws avoiding conflicts of interest, with an average score of 6.7. This is the order one would hope for and expect, with benefits being given more broadly and conflicts of interest being defined more narrowly so as not to become excessively onerous or limiting.

Virtually all statutory family definitions could, in theory, be made broader. Therefore, the below selection of statutes was chosen from each title represented in the dataset in order to demonstrate the sheer variety of topics for which a definition of family is relevant. The examples were also chosen to represent all three categories into which the family definition statutes tended to fall. The statutes highlighted here are examples of where the definition of family could be broadened. Relationships absent from the definition are noted as possible additions.

Highlighted statute examples by title and type

Benefits and privileges

Example from Title 2 – Congress

2 U.S.C. § 1881: This statute defines who is family for the purposes of requesting a Capitol-flown flag from a representative or senator for a family member who is “a firefighter, law enforcement officer, member of a rescue squad or ambulance crew, or public safety officer who died in the line of duty.”⁴⁸

- Score: 12
- Includes: spouses, parents, siblings, children of the deceased or people to whom the deceased stood in loco parentis, and any other people related to the individual by blood or marriage.
- Absent: domestic partners

Example from Title 5 – Government Organization and Employees

5 U.S.C. § 8901: This statute defines who is a family member of a federal government employee or annuitant for the purposes of determining who may be enrolled in their health benefits plan.

- Score: 4
- Includes: spouses and unmarried dependent children under 22—including those who are adopted, stepchildren, or foster children, as long as they live with the employee.
- Absent: anyone else who might be dependent on the government employee, including domestic partners. In fact, the Federal Employee Health Benefits Handbook even goes so far as to explicitly exclude from eligibility grandchildren, parents, and other relatives not listed, regardless of whether “they live with and are dependent” on the employee.⁴⁹

Example from Title 7 – Agriculture

7 U.S.C. § 1308: This statute defines family for the purposes of explaining when family members are considered actively engaged in farming and can receive price loss coverage payments and agriculture risk payments under sections 1116 and 1117 of the Agricultural Act of 2014.⁵⁰ A family member must also be an adult; a majority of those participating in the farming operation must be family members; and a family member must make a “significant contribution ... of active personal management or personal labor,” among some other requirements.⁵¹ Family

members do not need to make a contribution of land, equipment, or capital to be considered actively engaged in farming.

- Score: 11
- Included: spouses, lineal ancestors, lineal descendants, siblings, first cousins, nieces and nephews, and anyone else related by marriage.
- Absent: domestic partners and aunts and uncles. Chosen family members could also benefit from legal treatment as a family should they come together in a farming endeavor.

Example from Title 20 – Education

20 U.S.C. § 2142: This statute instructs the director of the American Folklife Center at the Library of Congress to create an oral history program that collects recordings of veterans in their own words and collects stories from immediate family members of veterans who went missing in action or died due to their war-time service.

- Score: 5
- Included: spouses, parents, siblings, and children.
- Absent: domestic partners, grandparents, grandchildren, aunts and uncles, nieces and nephews, first cousins, and step-relations or in-laws connected to those already included or suggested. Alternatively, former or current members of the veteran’s household would likely have stories to share, whether or not they are related to the veteran by blood or legal ties.

Example from Title 34 – Crime Control and Law Enforcement

34 U.S.C. § 20141: Certain designated “responsible officials” in each federal department or agency “engaged in the detection, investigation, or prosecution of crime” have a duty to provide certain information and assistance to victims of crime, extending to their family members when they are “under 18 years of age, incompetent, incapacitated, or deceased.”⁵²

- Score: 12
- Included: spouses, legal guardians, parents, children, siblings, other family members, and those designated by the court.
- Absent: domestic partners and other adult household members.

Example from Title 37 – Pay and Allowances of the Uniformed Service

37 U.S.C. § 481h: This statute defines the family members who may make the decision to terminate artificial life support of a service member, as well as other health and welfare decisions.

- Score: 6
- Included: spouses; children, including stepchildren, adopted children, and children born out of wedlock; parents; adoptive parents; siblings; and people who stood in loco parentis to the service member.
- Absent: domestic partners, grandparents, grandchildren, aunts and uncles, nieces and nephews, and first cousins. While giving such decision-making authority to a first cousin probably does not reflect the wishes of most families, at the very least, domestic partners and those to whom the service member stood in loco parentis should be considered for inclusion in the statute.

Example from Title 38 – Veterans' Benefits

38 U.S.C. § 1712A: This statute defines which family members may request counseling services from the U.S. Department of Veterans Affairs for help dealing with their active-duty family member's deployment or for helping their veteran family member adjust to civilian life.

- Score: 12
- Included: spouses, parents, children, step-relations, "extended family member[s]," and those who live with the veteran but are "not a member of the family."⁵³
- Absent: Nonrelative household members are confusingly both excluded and included as family, and this should be clarified in the favor of inclusion. Extended family seems to cover all possible marriage or blood relatives that are not enumerated, but those relationships included in the broadness scale should be listed explicitly as well.

Example from Title 42 – Public Health and Welfare

42 U.S.C. § 290ff-4: This statute defines who is family for the purposes of a federal grant program that provides funding to states and tribes in order to provide comprehensive community mental health services to children with serious emotional disturbances as well as to their families.

- Score: 3
- Included: legal guardians of the children and, "as appropriate regarding mental health services for the child," parents—including adoptive parents and foster parents—when they are not also legal guardians.⁵⁴

- Absent: People who stand in loco parentis to the child should be considered for inclusion, as they are performing parental duties, which is what the statute seems to capture. However, an even broader definition that includes all household members should also be considered, as it could capture more relationships on the broadness scale and could include anyone living with the family member who is familiar with their unique mental health needs.

Exceptions

Example from Title 12 – Banks and Banking

12 U.S.C. § 1707: This statute authorizes the secretary of housing and urban development to allow amounts borrowed by a mortgagor from family members, as defined, to count toward the minimum down payments required by the Fair Housing Administration’s single family mortgage insurance program, as long as any liens the family members may have on the property are subordinate to the mortgage and the total value of all obligations does not exceed the appraised value of the property.

- Score: 7
- Included: children, including adoptive and foster children; parents; grandparents; stepchildren; parents-in-law; and grandparents-in-law.
- Absent: grandchildren, aunts and uncles, siblings, nieces and nephews, and cousins. Allowing a wider range of familial loans to fund down payments under the program would enable more people to enter the housing market.

Example from Title 16 – Conservation

16 U.S.C. § 159g: This statute defines who is an immediate family member of an owner of land or other interests within Saratoga National Historical Park. Such owners must notify the secretary of the interior if they are selling land or other interests within the park to someone who is not immediate family, because the secretary has right of first refusal.

- Score: 6
- Included: spouses, siblings, parents, or children—including adoptive children and stepchildren.
- Absent: domestic partners, grandparents, grandchildren, aunts and uncles, nieces and nephews, and first cousins. A broader definition would increase such an owner’s rights to dispose of their property while still limiting uninterrupted property transfers to family.

Example from Title 25 – Indians

25 U.S.C. § 2205: This statute says that an interest in trust or restricted land that is bequeathed to a “non-Indian” by an owner or decedent can be acquired by the tribe with jurisdiction unless it is a family farm and the devisee is a family member.

- Score: 11
- Included: spouses, lineal descendants and their spouses, and lineal descendants of a grandparent and their spouses.
- Absent: Stepchildren and domestic partners should be included among those non-Indian family members allowed to receive land without tribal interference. Those living on the property and/or with the owner or decedent should also be considered for the exception.

Example from Title 52 – Voting and Elections

52 U.S.C. § 30114: Generally, candidates for federal office may not use campaign funds to cover a flight on an aircraft unless it is commercial, but this requirement does not apply if the aircraft used is owned or leased by the candidate or a member of their immediate family.

- Score: 6
- Included: parents, children, siblings, spouses, or parents-in-law.
- Absent: domestic partners, grandparents, grandchildren, nieces and nephews, aunts and uncles, first cousins, other in-laws, and step-relations.

Conflicts

Example from Title 15 – Commerce and Trade

15 U.S.C. § 80a-2: This statute defines who counts as family for the purposes of determining whether an individual is an “interested person” and therefore has a conflict of interest under the laws governing investment companies. For example, “a majority of a business development company’s directors or general partners” cannot be interested persons of that company, unless certain conditions are met.⁵⁵

- Score: 7
- Included: spouses; parents; stepparents; children, including stepchildren and adopted children; children-in-law; and siblings.
- Absent: domestic partners, grandparents, grandchildren, aunts and uncles, nephews and nieces, and first cousins. With the concern here pertaining to self-interested dealings and financial entanglements, it seems that at the very least, grandparents and grandchildren should be included, as well as aunts, uncles, nieces, and nephews.

Example from Title 19 – Customs Duties

19 U.S.C. § 1401a: This statute defines who is family for the purposes of determining whether the value of imported merchandise in a transaction between “related” individuals, including family members, is “acceptable” because the circumstances show “that the relationship between such buyer and seller did not influence the price actually paid or payable”—in other words, the price closely matches the same or similar transactions between unrelated people.⁵⁶

- Score: 7
- Included: spouses; siblings, including half siblings; ancestors; and lineal descendants.
- Absent: domestic partners, aunts and uncles, nieces and nephews, first cousins, and step-relations or in-laws connected to those already included or suggested. While a broader definition would bring increased scrutiny to more transactions, it would also hinder potentially unfair dealings that may be occurring between family members not currently covered.

Example from Title 22 – Foreign Relations and Intercourse

22 U.S.C. § 3944: This statute requires those nominated to “to be a chief of mission, ambassador at large, or minister” in the foreign service, as well as their immediate families, to report their election contributions for the previous four years to the speaker of the House of Representatives and the Senate Committee on Foreign Relations.⁵⁷

- Score: 7
- Included: spouses, any children, parents, grandparents, siblings, and the spouses of any of these relatives.
- Absent: domestic partners, grandchildren, aunts and uncles, nieces and nephews, first cousins, step-relations, and in-laws, though a nominee should only be accountable for their contributions if there is a close relationship. In avoiding the improper influence of election contributions, perhaps the best approach to a broader definition would be to add any household members of the nominee.

Example from Title 26 – Internal Revenue Code

26 U.S.C. § 544: This statute states that for the purposes of determining whether a corporation is a personal holding company, a person is viewed as “owning the stock owned, directly or indirectly, by or for” their family.⁵⁸

- Score: 7
- Included: spouses; siblings, including half siblings; ancestors; and lineal descendants.
- Absent: aunts and uncles, nieces and nephews, first cousins, step-relations, and in-laws.

Other

Example from Title 10 – Armed Forces

10 U.S.C. § 930: This statute defines the crime of stalking under the Uniform Code of Military Justice. This crime includes any act that places an individual, their intimate partner, or immediate family in fear of death or bodily harm.

- Score: 12
- Included: spouses; siblings; parents; children, including those to whom the victim stands in loco parentis; and any other household members who are related to the victim by blood or marriage.⁵⁹
- Absent: Chosen family should be considered for inclusion. The spirit of the law is punishment for the mental torment inflicted on the victim, and many victims would surely fear for their chosen family members.

Example from Title 18 – Crimes and Criminal Procedures

18 U.S.C. § 115: This statute defines the crime of threatening to or actually assaulting, kidnapping, or murdering a current or former federal official, judge, or law enforcement officer, as well as their immediate family, with an intent to influence, impede, or retaliate against the federal employee for their official duties.

- Score: 12
- Includes: spouses; parents; siblings; children, including those to whom the employee stands in loco parentis; and any household members who are related to the employee by blood or marriage.
- Absent: Similar to the aforementioned statute that defines stalking, this statute could consider chosen family for inclusion. Since assault, kidnapping, and murder are crimes by themselves, the spirit of the law here is punishment for and deterrence of the mental torment inflicted on the victim, and many victims would surely fear for their chosen family members.

Recommendations

By not adjusting to the changing realities of today’s families, federal law renders many family members invisible and unable to take advantage of programs and policies to which they should have access. Federal legislators should take a cue from federal regulators, as regulations have already outpaced statutes in keeping up with changing family structures. If this country’s laws can embrace broader understandings of what it means to be family, it will benefit many families—especially LGBTQ families. Moreover, including broader definitions in legislation, rather than only in clarifying regulations, would make the definitions more difficult to rescind, as the legislative process is usually much slower than the regulatory process.

Include a nonexhaustive list of extended family relationships whenever possible, even when the statutory language includes the relationships by implication

Enumeration of as many extended family members as possible—such as grandparents, grandchildren, in-laws, nieces and nephews, aunts and uncles, step-relations, adoptive relations, and first cousins—would ensure that they are automatically included. This would reduce any burden of proof and explanation for inclusion in a broad category applicable to a statute, such as “anyone related by blood or marriage.” It also would increase the statute’s clarity. However, when drafting statutes, legislators must take care to ensure that a nonexhaustive list cannot be mistakenly interpreted as an exhaustive list, thus narrowing a definition rather than broadening it.

A significant number of people have loved ones with whom they have no legal or blood ties, and federal statutes should recognize them when possible and appropriate

Several broad definitions were found in this analysis, but, as mentioned, they were not broad enough—despite their scores. For example, “household” limits the inclusion of potential chosen family members to only those with whom one cohab-

its. The now-pending Family Medical Leave Modernization Act defines chosen family as “any other individual related by blood or affinity whose close association is the equivalent of a family relationship.”⁶⁰ This is the current federal regulatory standard for including chosen family,⁶¹ and it has been employed as such in various contexts since 1969.⁶² It is time for that definition to be enshrined in statute.

Moreover, those acting in loco parentis to a minor child should be included where possible, so that their relationships are not ignored.

Domestic partners and civil unions should be included where spouses are whenever possible

Domestic partnerships and civil unions are important legal relationships that are available in several states, and the federal government should find ways to include them in definitions of family where it is possible to do so. Legally recognized common-law marriages should also be included.⁶³ Those unmarried couples—both same-sex and different-sex—without any legal recognition should be included where possible as well.

The Healthy Families Act provides a good example of how to include both registered and unregistered partners. It defines a domestic partner as “another individual with whom the individual is in a committed relationship,” meaning they “share responsibility for a significant measure of each other’s common welfare.”⁶⁴

While definitions should generally be made broader when possible, context matters

Sometimes, certain limits make sense, as when a family definition statute is addressing a guardian or parental role.⁶⁵ But definitions should still be as broad as possible within the context of the statute. The spirit of what the law is trying to accomplish should be considered alongside equal concerns for inclusion and equality. Means-tested programs, such as SNAP, where benefits are based on family income should similarly limit whose income is included in those calculations.

Conclusion

Family, including chosen family, is a core part of the human experience. But it transcends blood, legal, and housing ties. In the simplest terms, family includes a person's loved ones, and translating that concept appropriately into laws is a nuanced process. This report offered some suggestions for how this work could take shape. In general, though, leaning toward the broadest and most inclusive definitions of family as possible, in a given context, will help keep Congress and the U.S. Code more in line with the current reality of American families.

About the author

Frank J. Bewkes is a former policy analyst for the LGBTQ Research and Communications Project at the Center for American Progress, where he led state-level engagement and most regulatory commenting for the team, focusing on LGBTQ family law and policy. Prior to joining American Progress, he worked for such organizations as the American Civil Liberties Union, Family Equality, the Congressional Coalition on Adoption Institute, and the Brennan Center for Justice. Bewkes holds a Master of Laws from New York University School of Law and a J.D. from George Washington University Law School, where he was awarded the Thurgood Marshall Civil Liberties Award. He earned his Bachelor of Arts in political science at Yale University. Bewkes is currently an adjunct professor at Georgetown University's McCourt School of Public Policy.

Acknowledgements

The author would like to thank the following individuals for their contributions to and feedback on various aspects of this report: Sarah Kellman, Michelle Atwood, Laura E. Durso, Sharita Gruberg, Meghan Maury, Jared Make, Wendy Chun-Hoon, Rejane Frederick, Diana Boesch, Cassandra Gomez, and Alexandra Thornton.

Methodology

Using Westlaw, the author conducted searches of the United States Code Annotated in summer and fall 2019. To attempt to identify all statutory sections containing a definition of family, the author used Westlaw’s advanced search feature to find the following terms in statutory text: “family” preceding “defined” within the same sentence, “family” preceding “means” within the same sentence, and “definition” and “family” within the same section. To accomplish this, the author used the following Boolean search strings: “TE(family +s defined),” “TE(family +s means),” and “TE(definition & family).” These searches returned a total of nearly 900 results, including duplicates. The results were then aggregated, and duplicate statute results were removed.

Each result was reviewed using the online U.S. Code hosted by the House of Representatives.⁶⁶ This review was to check whether the statutes did indeed contain a definition of “family”—or “immediate family” or “family member.”⁶⁷ Results that did not actually contain an explicit definition of family were removed from the dataset, including those that delegated definition formulation to an individual or agency. Where results contained a definition referencing another statute section, the author checked if that section already appeared on its own in the dataset. If it did not and included a family definition, it was added. Results that only referenced another statute section, without providing an explicit definition of their own, were removed once the statute in question was added or checked.

For results with definitions, those definitions were recorded and then checked for the following terms and/or potential types of family members: spouses, children, parents, siblings, grandparents, grandchildren, in-laws, niblings (nieces and nephews), aunts and uncles, step-relations, adoptive relations, and first cousins. The inclusion of each term was assigned a value of one. When the language included the relationship by implication or could potentially allow for the inclusion of members of that group, the statute was scored as including those family members. This meant statutes that could potentially include some chosen family members were scored as including all 12 relationships. The total number was calculated for each definition to represent its “broadness score.” This score attempts only to represent how wide or narrow the definition is and is not necessarily a comment on whether the definition in question is properly inclusive for what that statute is trying to do.

Definitions were analyzed to determine who was included in “family” most often and whether definitions were consistent within a title. The author also looked at whether generalizations could be made about the type of statutes that include definitions of family. Finally, the author picked definitions to highlight where adopting a broader definition of family could be beneficial. One example was chosen from each title represented in the dataset to demonstrate the sheer variety of topics for which a definition of family is relevant. The examples were also chosen to represent all three categories into which the family definition statutes tended to fall.

Statutes included in analysis

2 U.S.C. § 1881	19 U.S.C. § 1401a	26 U.S.C. § 544
5 U.S.C. § 5569	19 U.S.C. § 1677	26 U.S.C. § 6039C
5 U.S.C. § 5570	19 U.S.C. § 3332	26 U.S.C. § 613A
5 U.S.C. § 8701	20 U.S.C. § 2142	26 U.S.C. § 9004
5 U.S.C. § 8901	22 U.S.C. § 254a	26 U.S.C. § 9035
7 U.S.C. § 1308	22 U.S.C. § 2708	34 U.S.C. § 20141
7 U.S.C. § 1446	22 U.S.C. § 3944	37 U.S.C. § 481h
7 U.S.C. § 1508	22 U.S.C. § 8511	38 U.S.C. § 1712A
7 U.S.C. § 2031	25 U.S.C. § 2205	38 U.S.C. § 1720G
10 U.S.C. § 930	26 U.S.C. § 1361	42 U.S.C. § 12745
12 U.S.C. § 1707	26 U.S.C. § 170	42 U.S.C. § 1320a-7
15 U.S.C. § 80a-2	26 U.S.C. § 2032A	42 U.S.C. § 1395ss
16 U.S.C. § 1379	26 U.S.C. § 263A	42 U.S.C. § 1396r-5
16 U.S.C. § 159g	26 U.S.C. § 267	42 U.S.C. § 1436a
16 U.S.C. § 3113	26 U.S.C. § 2701	42 U.S.C. § 2304
16 U.S.C. § 3198	26 U.S.C. § 2704	42 U.S.C. § 290ff-4
16 U.S.C. § 460aaa-3	26 U.S.C. § 318	42 U.S.C. § 711
16 U.S.C. § 460x-9	26 U.S.C. § 409	52 U.S.C. § 3011
18 U.S.C. § 115	26 U.S.C. § 4946	
18 U.S.C. § 879	26 U.S.C. § 4975	

Endnotes

- 1 U.S. Census Bureau, “The Majority of Children Live With Two Parents, Census Bureau Reports,” Press release, November 17, 2016, available at <https://www.census.gov/newsroom/press-releases/2016/cb16-192.html>.
- 2 Katherine Gallagher Robbins and others, “People Need Paid Leave Policies That Cover Chosen Family” (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/poverty/reports/2017/10/30/441392/people-need-paid-leave-policies-that-cover-chosen-family/>.
- 3 Gaby Galvin, “U.S. Marriage Rate Hits Historic Low,” *U.S. News & World Report*, April 29, 2020, available at <https://www.usnews.com/news/healthiest-communities/articles/2020-04-29/us-marriage-rate-drops-to-record-low>.
- 4 Stephanie Kramer, “U.S. has world’s highest rate of children living in single-parent households,” Pew Research Center, December 12, 2019, available at <https://www.pewresearch.org/fact-tank/2019/12/12/u-s-children-more-likely-than-children-in-other-countries-to-live-with-just-one-parent/>.
- 5 Robbins and others, “People Need Paid Leave Policies That Cover Chosen Family.”
- 6 University of Michigan, “More than one-third of American kids have lived in extended family households,” Press release, January 14, 2019, available at <https://news.umich.edu/more-than-one-third-of-american-kids-have-lived-in-extended-family-households/>.
- 7 Kathleen E. Hull and Timothy A. Ortyl, “Conventional and Cutting-Edge: Definitions of Family in LGBT Communities,” *Sexuality Research and Social Policy* 16 (2019): 31–43, available at <https://doi.org/10.1007/s13178-018-0324-2>.
- 8 Robbins and others, “People Need Paid Leave Policies That Cover Chosen Family.”
- 9 Hull and Ortyl, “Conventional and Cutting-Edge.”
- 10 Robbins and others, “People Need Paid Leave Policies That Cover Chosen Family.”
- 11 Jaimie Seaton, “Homeless rates for LGBT teens are alarming, but parents can make a difference,” *The Washington Post*, March 29, 2017, available at <https://www.washingtonpost.com/news/parenting/wp/2017/03/29/homeless-rates-for-lgbt-teens-are-alarming-heres-how-parents-can-change-that/>.
- 12 Christa Price and others, eds., “At the Intersections: A Collaborative Resource on LGBTQ Youth Homelessness, 2019” (New York: True Colors United and National LGBTQ Task Force, 2019), available at <https://truecolorsunited.org/wp-content/uploads/2019/04/2019-At-the-Intersections-True-Colors-United.pdf>.
- 13 Frank J. Bewkes and others, “Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children” (Washington: Center for American Progress, 2018), available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2018/11/20/461199/welcoming-all-families/>.
- 14 U.S. Children’s Bureau, “The AFCARS Report: Preliminary FY 2018 Estimates as of August 22, 2019 - No. 26” (Washington: U.S. Department of Health and Human Services, 2019), available at <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>.
- 15 Human Rights Campaign Foundation and Advocacy & Services for LGBT Elders, “COVID-19 & LGBTQ Older People,” available at <https://www.sageusa.org/wp-content/uploads/2020/04/covid19-elder-issuebrief-032720b-1-1.pdf> (last accessed May 2020).
- 16 Jason Vermes, “A place for you: Why chosen family can be a lifesaver for LGBTQ people over the holidays,” CBC Radio, December 23, 2018, available at <https://www.cbc.ca/radio/checkup/a-place-for-you-why-chosen-family-can-be-a-lifesaver-for-lgbtq-people-over-the-holidays-1.4954350>.
- 17 *Obergefell v. Hodges*, 576 U.S. 644 (June 26, 2015), available at https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf.
- 18 U.S. Census Bureau, “U.S. Census Bureau Releases CPS Estimates of Same-Sex Households,” Press release, November 19, 2019, available at <https://www.census.gov/newsroom/press-releases/2019/same-sex-households.html>.
- 19 Frank J. Bewkes, “Surrogate or ‘Mother’? The Problem of Traditional Surrogacy,” *Tennessee Journal of Race, Gender, and Social Justice* 3 (2) (2014): 143–172, available at <https://trace.tennessee.edu/rgsj/vol3/iss2/3/>.
- 20 *Ibid.*
- 21 Frank J. Bewkes, “Unequal Application of the Marital Presumption of Parentage for Same-Sex Parents,” Center for American Progress, November 25, 2019, available at <https://www.americanprogress.org/issues/lgbtq-rights/news/2019/11/25/477923/unequal-application-marital-presumption-parentage-sex-parents/>.
- 22 Family Equality, “Parental Recognition,” available at <https://www.familyequality.org/issues/parental-recognition/> (last accessed May 2020).
- 23 Movement Advancement Project, “De Facto Parenting Statutes,” available at https://www.lgbtmap.org/equality-maps/de_facto_parenting_statutes (last accessed May 2020).
- 24 Kathy Brodsky, “What’s a Second Parent adoption?,” Family Equality, May 2, 2019, available at <https://www.familyequality.org/2019/05/02/whats-a-second-parent-adoption/>.
- 25 Movement Advancement Project, “Foster and Adoption Laws,” available at https://www.lgbtmap.org/equality-maps/foster_and_adoption_laws/adoption (last accessed May 2020).
- 26 David Brooks, “The Nuclear Family Was a Mistake,” *The Atlantic*, March 2020, available at <https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/>. See also, D’Vera Cohn and Jeffrey S. Passel, “A record 64 million Americans live in multigenerational households,” Pew Research Center, April 5, 2018, available at <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.
- 27 University of Michigan, “More than one-third of American kids have lived in extended family households.”
- 28 Michela Zonta, “Housing the Extended Family” (Washington: Center for American Progress, 2016), available at <https://cdn.americanprogress.org/wp-content/uploads/2016/10/18155730/ExtendedFamilies-report.pdf>.
- 29 M. V. Lee Badgett, Soon Kyu Choi, and Bianca D.M. Wilson, “LGBT Poverty in the United States: A study of differences between sexual orientation and gender identity groups” (Los Angeles: The Williams Institute, 2019), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>; Movement Advancement Project, “LGBTQ Workers of Color Are Among the Most Disadvantaged in the U.S. Workforce,” Press release, available at <https://www.lgbtmap.org/broken-bargain-lgbt-workers-of-color-release> (last accessed May 2020).

- 30 Moira Bowman and others, "Making Paid Leave Work for Every Family" (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2016/12/01/292886/making-paid-leave-work-for-every-family/>.
- 31 Merriam-Webster, "Words We're Watching: 'Nibbling,'" available at <https://www.merriam-webster.com/words-at-play/words-were-watching-nibbling> (last accessed May 2020).
- 32 For recommendations for inclusive language in paid leave statutes, see A Better Balance and Family Values @ Work, "Family Matters: Guide to Defining Family Inclusively in Workplace Leave Laws and Policies," February 24, 2020, available at <https://www.abetterbalance.org/resources/family-matters-guide-to-defining-family-inclusively-in-workplace-leave-laws-and-policies/>.
- 33 Legal Information Institute, "34 U.S. Code § 20141. Services to victims," available at <https://www.law.cornell.edu/uscode/text/34/20141> (last accessed May 2020); Legal Information Institute, "5 U.S. Code § 5569. Benefits for captives," available at <https://www.law.cornell.edu/uscode/text/5/5569> (last accessed May 2020); Legal Information Institute, "18 U.S. Code § 879. Threats against former Presidents and certain other persons," available at <https://www.law.cornell.edu/uscode/text/18/879> (last accessed May 2020); Legal Information Institute, "16 U.S. Code § 1379. Transfer of management authority," available at <https://www.law.cornell.edu/uscode/text/16/1379> (last accessed May 2020).
- 34 Legal Information Institute, "16 U.S.C.A. § 3198. Local hire," available at <https://www.law.cornell.edu/uscode/text/16/3198> (last accessed May 2019).
- 35 See U.S. Census Bureau, "2018: ACS 1-Year Estimates Detailed Tables, Households by Presence of Nonrelatives," available at <https://data.census.gov/cedsci/table?q=nonrelatives&tid=ACSDT1Y2018.B11015&vintage=2018> (last accessed May 2020).
- 36 See Legal Information Institute, "7 U.S. Code § 2012. Definitions," available at <https://www.law.cornell.edu/uscode/text/7/2012> (last accessed May 2020).
- 37 Caitlin Rooney, Charlie Whittington, and Laura E. Durso, "Protecting Basic Living Standards for LGBTQ People" (Washington: Center for American Progress, 2018), available at <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>.
- 38 See Legal Information Institute, "42 U.S. Code § 12745. Qualification as affordable housing," available at <https://www.law.cornell.edu/uscode/text/42/12745> (last accessed May 2020).
- 39 Shoshana K. Goldberg and Kerith K. Conron, "How Many Same-Sex Couples in the U.S. are Raising Children?" (Los Angeles: Williams Institute, 2018), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>.
- 40 Legal Information Institute, "16 U.S. Code § 460x-9. Right of retention of residential use in improved lands," available at <https://www.law.cornell.edu/uscode/text/16/460x-9> (last accessed May 2020).
- 41 Shawn Fremstad and others, "The Case Against Marriage Fundamentalism: Embracing Family Justice for All" (New York: Family Story, 2019), available at https://familystoryproject.org/wp-content/uploads/2019/04/Case-Against-Marriage-Fundamentalism_Family-Story-Report_040419.pdf.
- 42 Dayna K. Shah, "Defense of Marriage Act: Update to Prior Report," U.S. General Accounting Office, January 23, 2004, available at <https://www.gao.gov/new.items/d04353r.pdf>.
- 43 See National Conference of State Legislatures, "Civil Unions and Domestic Partnership Statutes," March 10, 2020, available at <https://www.ncsl.org/research/human-services/civil-unions-and-domestic-partnership-statutes.aspx>.
- 44 *Obergefell v. Hodges*; Jeffrey M. Jones, "In U.S., 10.2% of LGBT Adults Now Married to Same-Sex Spouse," Gallup, June 22, 2017, available at <https://news.gallup.com/poll/212702/lgbt-adults-married-sex-spouse.aspx>; Lyanne Melendez, "Heterosexuals can choose between marriage or domestic partnership under new California law," ABC 7 News, January 2, 2020, available at <https://abc7news.com/domestic-partnership-california-domestica-in-ca-what-is/5805848/>.
- 45 Cohn and Passel, "A record 64 million Americans live in multigenerational households"; Karen Glaser and others, "Trends in the prevalence of grandparents living with grandchild(ren) in selected European countries and the United States," *European Journal of Ageing* 15 (3) (2018): 237–250, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6156723/>.
- 46 University of Michigan, "More than one-third of American kids have lived in extended family households."
- 47 *Ibid.*
- 48 Legal Information Institute, "2 U.S. Code § 1881a. Providing Capitol-flown flags for families of fallen heroes," available at <https://www.law.cornell.edu/uscode/text/2/1881a> (last accessed May 2020).
- 49 U.S. Office of Personnel Management, "Healthcare Reference Materials: Family Members Eligible for Coverage," available at <https://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/family-members/#geneligcov> (last accessed May 2020).
- 50 Legal Information Institute, "7 U.S. Code § 9016. Price loss coverage," available at <https://www.law.cornell.edu/uscode/text/7/9016> (last accessed May 2020); Legal Information Institute, "7 U.S.C.A. § 9017. Agriculture risk coverage," available at <https://www.law.cornell.edu/uscode/text/7/9017> (last accessed May 2020).
- 51 Legal Information Institute, "7 U.S. Code § 1308-1. Notification of interests; payments limited to active farmers," available at <https://www.law.cornell.edu/uscode/text/7/1308-1> (last accessed May 2020).
- 52 Legal Information Institute, "34 U.S. Code § 20141."
- 53 Legal Information Institute, "38 U.S. Code § 1712A. Eligibility for readjustment counseling and related mental health services," available at <https://www.law.cornell.edu/uscode/text/38/1712A> (last accessed May 2020).
- 54 Legal Information Institute, "42 U.S. Code § 290ff-4. General provisions," available at <https://www.law.cornell.edu/uscode/text/42/290ff-4> (last accessed May 2020).
- 55 Legal Information Institute, "15 U.S. Code § 80a-55. Qualifications of directors," available at <https://www.law.cornell.edu/uscode/text/15/80a-55> (last accessed May 2020); Legal Information Institute, "15 U.S. Code § 80a-10. Affiliations or interest of directors, officers, and employees," available at <https://www.law.cornell.edu/uscode/text/15/80a-10> (last accessed May 2020).
- 56 Legal Information Institute, "19 U.S. Code § 1401a. Value," available at <https://www.law.cornell.edu/uscode/text/19/1401a> (last accessed May 2020).
- 57 Legal Information Institute, "22 U.S. Code § 3944. Chiefs of mission," available at <https://www.law.cornell.edu/uscode/text/22/3944> (last accessed May 2020).
- 58 Legal Information Institute, "26 U.S. Code § 544. Rules for determining stock ownership," available at <https://www.law.cornell.edu/uscode/text/26/544> (last accessed May 2020).

- 59 Legal Information Institute, “10 U.S. Code § 930. Art. 130. Stalking,” available at <https://www.law.cornell.edu/uscode/text/10/930> (last accessed May 2020).
- 60 Family Medical Leave Modernization Act, H.R. 5456, 116th Cong., 1st sess. (December 17, 2019), available at <https://www.congress.gov/bill/116th-congress/house-bill/5456/text?r=82&s=1>.
- 61 Legal Information Institute, “5 CFR § 630.201 - Definitions,” available at <https://www.law.cornell.edu/cfr/text/5/630.201> (last accessed May 2020).
- 62 Robbins and others, “People Need Paid Leave Policies That Cover Chosen Family.”
- 63 National Conference of State Legislatures, “Common Law Marriage by State,” March 11, 2020, available at <https://www.ncsl.org/research/human-services/common-law-marriage.aspx>.
- 64 Healthy Families Act, H.R. 1784, 116th Cong., 1st sess. (March 14, 2019), available at <https://www.congress.gov/bill/116th-congress/house-bill/1784/text>.
- 65 Legal Information Institute, “42 U.S. Code § 290ff-4.”
- 66 U.S. House of Representatives Office of Law Revision Counsel, “United States Code,” available at <https://uscode.house.gov/> (last accessed May 2020).
- 67 This analysis treated definitions of “immediate family” and “family” the same, as such constructs can and are changing in meaning—especially given the importance of chosen family in many people’s lives.

Our Mission

The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country.

Our Values

As progressives, we believe America should be a land of boundless opportunity, where people can climb the ladder of economic mobility. We believe we owe it to future generations to protect the planet and promote peace and shared global prosperity.

And we believe an effective government can earn the trust of the American people, champion the common good over narrow self-interest, and harness the strength of our diversity.

Our Approach

We develop new policy ideas, challenge the media to cover the issues that truly matter, and shape the national debate. With policy teams in major issue areas, American Progress can think creatively at the cross-section of traditional boundaries to develop ideas for policymakers that lead to real change. By employing an extensive communications and outreach effort that we adapt to a rapidly changing media landscape, we move our ideas aggressively in the national policy debate.

