



MORTGAGE BANKERS ASSOCIATION

**MBA Selected Highlights**  
**Biden Administration's Fiscal Year (FY) 2022 Revenue Proposals**  
*May 28, 2021*

**KEY TAX/REVENUE PROPOSALS (and revenue projections)**

Detailed descriptions of the administration's legislative tax proposals have historically been provided in a "[Greenbook](#)" that includes revenue estimates generated by economists in Treasury's Office of Tax Policy. With the December 2017 enactment of sweeping changes to the federal tax law in legislation commonly known as the "Tax Cuts and Jobs Act" (the "TCJA"), the prior administration did not publish a separate document laying out new tax legislative proposals. Thus, for the first time since the Obama administration's FY 2017 Budget (released in February 2016), the President Biden's FY 2022 Budget includes a Greenbook with detailed proposals for changes to the federal tax law, including provisions that would modify, expand, or add to existing tax expenditures and revenue-raising measures.

Although the Greenbook and the administration's discretionary budget proposal signals the beginning of what will likely be the opening chapter in the months-long FY 2022 Budget and appropriations process, the current unified Democratic control of both the White House and of Congress, albeit with narrow margins in each chamber of Congress, suggests that at least some of its proposals have a significant, although by no means certain, likelihood of moving forward as part of the appropriations process or in separate pieces of legislation, like an infrastructure bill. Most notably, the narrow Democratic majority in the House and the potential use of "reconciliation" procedures in an evenly divided Senate allow Democratic Senators, if they all agree, to pass legislation in Congress without help from Senate Republicans.

The Greenbook provided needed detail around the Biden administration's tax proposals, but there are many open questions regarding these proposals that will fall on Congress to address through legislative text.

The following summaries focus on tax expenditure and revenue-raising proposals in the Greenbook that affect business taxpayers and their owners.

- **AFFORDABLE HOUSING TAX CREDITS**
  - **Expand low-income housing tax credits (LIHTC) (-\$32 B)**

The proposal would create an additional type of housing credit dollar amounts (HCDA), called an "Opportunity HCDA" (OHCDAs). State or local housing credit agencies (HCAs) would have a separate ceiling for OHCDAs from their existing allocation ceilings of HCDAs. HCAs would continue to receive annual infusions of regular HCDAs, without change to the allocation and ceilings for those HCDAs under current law. HCAs would be required to allocate the majority of their OHCDAs to projects in Census Tracts of Opportunity (CTOs). The proposal would define a CTO as a tract that is entirely in one or more Difficult Development Areas (DDAs) or which has

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low poverty or other advantages, as determined by the Secretary of the Treasury in consultation with HUD.

- **Neighborhood Home Investment Tax Credit (-\$13 B)**

The proposal would create a new tax credit—the Neighborhood Homes Investment Credit (NHIC). The credit would support new construction for sale, substantial rehabilitation for sale, and substantial rehabilitation for existing homeowners. The constructed or rehabilitated residence must be a single-family home (including homes with up to four dwelling units), a condominium, or a residence in a housing cooperative.

#### Why It Matters:

There is a critical shortage of affordable housing in this country and a record low inventory of homes on the market. These tax credit programs can help support an increase in affordable housing supply, which would benefit individual buyers and the housing market. These proposals would benefit low- and middle-income individuals and help enhance existing affordable housing programs and initiatives. MBA supports creation of these new credits, as well as an expansion and refinement of LIHTC as a vehicle to provide households with additional resources to meet their housing needs.

- **CAPITAL GAINS**

- **Alter Taxation of Capital Income (\$322 B)**

- **Increase in Capital Gains Base Rates**

Long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than \$1 million would be taxed at ordinary income tax rates. Coupled with other changes, the rate would climb from 20 percent to 39.6 percent for the highest bracket (43.4 percent including the net investment income tax), but only to the extent that the taxpayer's income exceeds \$1 million (\$500,000 for married filing separately), indexed for inflation after 2022.

#### Why It Matters:

The proposal would be effective for gains recognized after the date of the announcement (understood to be April 28, 2021, the date when President Biden announced the proposal as part of the *American Families Plan*). As with other aspects of the Greenbook proposals, the effective date could change during the Budget reconciliation process. MBA continues to advocate for separate and distinct tax treatment for capital gains, which is a key stimulant to investment in a variety of capital-intensive industries, especially real estate.

- **Elimination of Stepped-up Basis**

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Under the proposal, the donor or deceased owner of an appreciated asset would realize a capital gain at the time of the transfer. For a donor, the amount of the gain realized would be the excess of the asset's fair market value on the date of the gift over the donor's basis in that asset. For a decedent, the amount of gain would be the excess of the asset's fair market value on the decedent's date of death over the decedent's basis in that asset. That gain would be taxable income to the decedent on the Federal gift or estate tax return or on a separate capital gains return.

#### Why It Matters:

The proposal would provide a number of exclusions, including a \$1 million per-person exclusion, \$250,000 per-person exclusion for all residences (not only principal residences), transfers to a spouse (until the spouse disposes of the property or dies), and transfers of certain small business stock and family businesses.

- **Restrictions on 1031 Like-kind Exchange (\$20 B)**

The proposal would allow the deferral of gain up to an aggregate amount of \$500,000 for each taxpayer (\$1 million in the case of married individuals filing a joint return) each year for real property exchanges that are like kind.

Any gains from like-kind exchanges in excess of \$500,000 (or \$1 million in the case of married individuals filing a joint return) during a taxable year would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange.

The proposal would be effective for exchanges completed in taxable years beginning after December 31, 2021.

#### Why It Matters:

This proposal represents a significant change for the real estate, oil and gas, mineral industries, and agriculture, which together engage in billions of dollars of like-kind exchanges per year. In particular, the proposal could significantly affect the business of REITs, which must distribute at least 90 percent of their taxable income per year. MBA believes Section 1031 like-kind exchange treatment for real estate is a central part of the dynamic U.S. multifamily and commercial real estate market, motivating buyers and sellers and promoting investment in rental units, apartments, and other properties. MBA continues to work with coalition partners to preserve existing law and this important tax deferral.

- **Elimination of Carried Interest (\$1.5 B)**

The proposal would generally tax as ordinary income a partner's share of income on an "investment services partnership interest" (ISPI) in an investment partnership, regardless of the character of the income at the partnership level, if the partner's taxable income (from all sources) exceeds \$400,000. The proposal is not intended to adversely affect qualification of a real estate investment trust owning a profits interest in a real estate partnership.

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#### Why It Matters:

If enacted, this proposal could meaningfully affect the taxation of individuals in real estate and other service providers receiving a profits interest as a form of compensation. The separate proposal to tax long-term capital gains as ordinary income for taxpayers with income over \$1 million may eliminate the need for this provision.

- **CORPORATE INCOME**

- **Increase Corporate Tax Rate (\$858 B)**

The proposal would increase the income tax rate for C corporations from 21 percent to 28 percent. The proposal would be effective for taxable years beginning after December 31, 2021 (with a phase-in rule for taxpayers that have a non-calendar taxable year).

#### Why It Matters:

Recent comments by President Biden caused many to expect a proposed increase to 25 percent, rather than 28 percent, and it remains possible that the Biden Administration may agree to a smaller corporate rate increase. An increased corporate income tax rate may incentivize corporations to accelerate income into the 2021 calendar year and to defer deductions until a later calendar year.

- **Impose 15% Minimum Tax on Book Earnings of Large Corporations (\$148 B)**

The proposal would impose a 15 percent minimum tax on worldwide book income for corporations with such income in excess of \$2 billion of net income. In particular, taxpayers would calculate book tentative minimum tax (BTMT) equal to 15 percent of worldwide pre-tax book income (calculated after subtracting book net operating loss deductions from book income), less General Business Credits (including R&D, clean energy, and housing tax credits) and foreign tax credits.

The book income tax equals the excess, if any, of tentative minimum tax over regular tax. Additionally, taxpayers would be allowed to claim a book tax credit (generated by a positive book tax liability) against regular tax in future years but this credit could not reduce tax liability below book tentative minimum tax in that year. The proposal would be effective for taxable years beginning after December 31, 2021.

#### Why It Matters:

This proposal, taken together with the proposal for disallowing interest deductions, would further integrate income tax treatment with financial statement accounting treatment. This could have far reaching implications for the tax treatment of mortgage servicing rights (MSRs). Without an exemption for MSR under the Biden proposal, a company with \$2 billion in annual income that owns MSR would have to pay 15 percent tax on day one on their MSR book asset, which at that time has a zero-cost basis. While it creates a book and tax match, it will create a mismatch

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between the timing of the taxes paid and the actual income received by the taxpayer on the MSR. The requirement to pay tax on unearned and unreceived income would cause these major holders of MSR to entirely avoid this asset class. Many mortgage originators would be forced to sell the servicing component rather than hold on to the MSR and pay tax without having received any income. This would result in a larger supply of MSR than the market demands, which would then have an adverse impact on entire the real estate finance system because the value of MSR as an asset class will decline.

- **PERSONAL INCOME**

- **Increased rates for high earners (\$132 B)**

The proposal would increase the top marginal individual income tax rate to 39.6 percent. This rate would be applied to taxable income in excess of the 2017 top bracket threshold, adjusted for inflation.

- **Adjusting Net Investment Income (NII) and Self-employment Contributions Act (SECA) Taxes (\$237 B)**

The proposal would (i) ensure that all pass-through business income of high-income taxpayers is subject to either the NIIT or SECA tax, (ii) redirect NIIT funds to the Hospital Insurance Trust Fund, (iii) make the application of SECA to partnership and LLC income more consistent for high-income taxpayers, and (iv) apply SECA to the ordinary business income of high-income nonpassive S corporation owners.

- **199A for Pass-through Entities** (No changes in proposal, but will sunset in 2025)

Why It Matters: In proposing an increase in the corporate rate, the Greenbook makes no reference to repealing or modifying the deduction for qualifying business income of certain passthrough entities, such as partnerships and S corporations) under Section 199A. That provision was included in the TCJA late in the legislative drafting process in order to create parity between corporations and business operated in passthrough form. Setting the corporate rate at 28 percent (along with the proposed elimination of lower rates on qualified dividends above stated thresholds) may tend to shift the incentive in the opposite direction, although Section 199A is scheduled to expire in 2025. As a result,, repealing or curbing the break would raise money only for a few years.

- **TCJA SUNSET**

- **Many personal tax changes that were part of the 2017 Tax Cuts and Jobs Act (TCJA) will expire after 2025** (no changes in the proposal)

- Included in the Budget's reference tables is the inference that many provisions of the TCJA will be allowed to sunset after 2025, per that law. In particular, this includes most of the TCJA provisions related to taxation of individual income. Key elements include:

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- Reversion to lower standardized deduction levels, and subsequent increased reliance on itemized deductions such as the mortgage interest deduction.
- Reversion to previous allowances for the deduction of state and local taxes..
- Sunsetting of Section 199A exclusion of certain qualified business income from pass-through entities.
- **ENFORCEMENT**
  - **Implement a Program Integrity Allocation Adjustment and Provide Additional Funding for Tax Administration (\$316 B, part of \$778 B of total net revenue from improving compliance)**

The administration proposes a multi-year adjustment to the discretionary spending allocation for the IRS Enforcement and Operations Support accounts. The proposal would direct additional resources toward enforcement against those with the highest incomes, rather than Americans with actual income of less than \$400,000.