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President Biden Unveils American Families Plan in First Address to Congress

On April 28, President Joe Biden delivered his first address to Congress, touting the passage of the $1.9 trillion American Rescue Act Plan, highlighting progress on vaccinations and outlining a path forward on rebuilding the economy. Central to the president's efforts to revitalize the economy are two expansive and expensive proposals—the American Jobs Plan and the American Families Plan. The American Jobs Plan is a $2 trillion proposal that focuses on traditional infrastructure priorities such as roads, bridges and tunnels, as well as investments in green energy and affordable housing. It is partially paid for by tax increases on corporations and a complete overhaul of the international tax system. The American Families Plan, released just ahead of the president's speech, proposes $1 trillion in spending proposals and $800 billion in tax cuts for low- and middle-income families. It focuses on expanding educational opportunities and child care for families and a national paid leave program, paid for in part by tax increases on wealthy Americans.

This alert summarizes the American Families Plan and includes key takeaways on the plan and the president's speech.

Three Key Takeaways

1. **Still All About Jobs.** "Jobs" was potentially the most-used word in the president's speech. While the American Jobs Plan focuses on creating millions of jobs, the American Families Plan focuses on creating a workforce infrastructure support system that maintains labor force participation and productivity.

   Nearly every segment of the American Jobs Plan translated into good-paying union jobs. While the president boasted that the economy has gained some 1.3 million new jobs in the first few months of his administration, according to the last jobs report from the U.S. Labor Department, 9.97 million Americans are unemployed, and 17.4 million Americans continue to receive weekly unemployment benefits. The Biden administration hopes that a summer infrastructure bill will create a job boom, the effects of which would be felt before the November 2022 midterm elections. In addition to construction jobs, each segment of the infrastructure package from energy to the home-based care economy, is intended to boost job creation—both from government jobs through a new Civilian Climate Corps, to private sector jobs in the elder care space.

   Similarly, the American Families Plan focuses on shoring up essential support systems that help maintain the workforce. A lack of child care is now the third most reported reason for not working, after pandemic-related layoffs and furloughs due to reduced business. During the pandemic, 25% of women reported taking a step back in their career or leaving the workforce due to child care issues. Similarly, businesses report billions in lost revenue because of lost productivity due to a lack of high-quality and affordable child care. The president's proposal makes $625 billion in investments in child care and paid leave to support the workforce and hundreds of billions in tax breaks to help families pay for these benefits as well.

2. **A Robinhood Approach—Revenue Raisers Point to Reconciliation.** During the president's speech, he continued to push for corporations and high-net-worth individuals to "pay their fair share" in order to create programs that help low- and middle-income Americans. He criticized the Tax Cuts and Jobs Act (TCJA, P.L.115-97), promising to correct inequities he believes that law created.

   Both the American Jobs Plan and the American Families Plan include tax proposals that overturn portions of the TCJA. Specifically, the American Jobs Plan includes the Made in America Tax Plan, which would increase the corporate tax rate from 21% to 28%, double the tax on Global Intangible Low-Taxed Income (GILTI) from 10.5% to 21%, impose a 15% minimum tax on corporate book income, repeal the Foreign-Derived Intangible Income (FDII) deduction, eliminate tax benefits for the fossil fuel industry, increase corporate tax enforcement, and more. The international tax provisions partially dismantle the tax system put in place by the TCJA, drawing criticism from its Republican authors. Republicans have also noted that the spending proposals in the plan are spread out over eight years, while the revenue raisers provide a cost estimate over 15 years. While some spending priorities, particularly around traditional infrastructure projects, share bipartisan support, for the American Jobs Plan to have any chance at bipartisanship, it would have to drastically change the proposed pay-fors. Otherwise, reconciliation with a straight party vote will be the only path forward for this infrastructure proposal.

   The American Families Plan would increase Internal Revenue Service (IRS) funding for enforcement actions against high-income individuals, including increased reporting from financial institutions to ensure wealthy Americans pay what they owe. It also includes an increase in the top tax rate to 39.6% up from 37%, increasing the capital gains tax rate for households making more than $1 million from 20% to 39.6%, ending the step-up in basis after death for gains above $1 million, eliminating the preferential rate for carried interest, preserving excess loss limitations and limitations on like-kind exchange benefits. While Republicans are already unlikely to support the massive spending priorities in the American Families Plan, the tax proposals have drawn even more criticism from Republicans who believe these measures will decrease investments and result in increased costs of doing business being passed on to low- and middle-income workers.

   Republican lawmakers are not the only ones who have criticized proposed tax increases. After the release of the American Jobs Plan, several moderate Democratic senators, including Sen. Joe Manchin (D-WV), and members of the House, including Rep. Scott Peters (D-CA), pushed for a lower rate of 25%–26%. After the release of the American Families Plan, both Sens. Manchin and Bob Menendez (D-NJ) expressed concern with certain proposals, such as the taxation of capital gains at the top proposed ordinary income tax rate. Democrats have a tough road ahead to convince moderates to pass trillions of dollars in spending increases and achieve consensus on palatable pay-fors.

3. **$6 Trillion in Spending.** In a pre-pandemic world, $6 trillion in proposed spending would be unfathomable. Yet, Democrats are pushing forward on:

   - The American Rescue Plan Act (ARPA, enacted March 11 as P.L. 117-2), $1.9 trillion
   - The American Jobs Plan (proposed March 31), $2.3 trillion
   - The American Families Plan (proposed April 28), $1.8 trillion

While the administration has started to make overtures to Republicans, no significant progress has been made on bipartisan negotiations. Late last week, two counterproposals to the American Jobs Plan were released—one from Senate Republicans and another from the bipartisan House Problem Solvers Caucus (PSC). The American Jobs Plan and both counter-infrastructure proposals take very different approaches. The PSC does not propose topline funding numbers, instead focusing on policy priorities, while the Senate GOP's proposal includes no details on policy, instead proposing only topline funding numbers. The Senate GOP proposal totals $568 billion over five years for traditional infrastructure priorities, as compared to $621 billion in the American Jobs Plan for traditional infrastructure priorities. It is unclear if Democrats and Republicans can reach an agreement on a narrow bill and proposed pay-fors. If an agreement comes together, as the president signaled in his speech, there is a limited window for bipartisan action.

Absent bipartisan consensus, Democrats will move forward and advance their priorities through reconciliation. The administration is aiming to release its budget at the end of May, along with the Green Book. To accompany the administration's budget, the Treasury Department releases the "General Explanations of the Administration's Revenue Proposals," which provides an explanation of the administration's revenue proposals (i.e., the Green Book). House committees will likely mark up legislation in July, with the goal of passing something in the House before the August work period. Democrats hope to pass a final bill in the fall.

Below is a summary of the American Families Plan:

Revenue Raisers

Below is an overview of the reviewing-raising proposals included in the American Families Plan. The plan proposes multiple raisers that can be broken into three categories: (1) bolstering IRS enforcement and oversight, (2) increasing rates on wealthy taxpayers and (3) ending certain tax breaks for wealthy investors.

IRS Enforcement and Oversight

1. **Boost IRS Enforcement.** The plan would increase investment in IRS enforcement capabilities for taxpayers earning over $400,000. The plan does not specify how much additional funding would be dedicated to the IRS for these purposes, although the Treasury Department has reported the administration will be seeking $80 billion. Recent congressional proposals, including Rep. Peter DeFazio's (D-OR) IRS Enhancement and Tax Gap Reduction Act of 2021 and Rep. Ro Khanna's (D-CA) Stop CHEATERS Act, have suggested providing the IRS with multiyear funding to shore up the agency's personnel and IT. IRS Commissioner Rettig recently testified that tax avoidance costs nearly $1 trillion on an annual basis. In a **fact sheet** released in conjunction with the American Families Plan, the Treasury Department said the tax gap could amount to $7 trillion over the next decade. The American Families Plan estimates that increased enforcement could raise $700 billion over 10 years.

   Note: There has been little pushback to the notion of counting compliance revenue toward a revenue-neutral bill. President Biden proposes a compliance budget for corporate/international (where there is a smaller tax gap) and for individuals, where President Biden's American Family Plan suggests the compliance initiative can raise $700 billion in new revenue. This would be a significant change in the way the Joint Committee on Taxation scores compliance initiatives—unless the tax-writing committees also change the underlying tax law.

2. **Require Information Reporting.** The American Families Plan's proposal to increase enforcement would also require financial institutions to report information on account flows that include earnings from investments and business activity similar to existing reporting requirements for wages. According to a **fact sheet** released by the

Treasury Department, up to 55% of taxes owed on "less visible income streams is unpaid, with disproportionate levels of non-compliance for those at the top of the income distribution."

Increasing Individual Rates

1. **Raise Marginal Income Tax Rate.** The plan would increase the top income tax rate from 37% to 39.6%. The plan did not specify brackets but indicated that the new rate would apply only to the top 1% of taxpayers. According to 2019 Economic Policy Institute data, a family in the U.S. needs an annual income of at least $421,926 to be in the top 1% of earners. Prior to the TCJA, the top marginal tax rate was 39.6%. The Congressional Budget Office **found** in 2019 that increasing the top rate back to 39.6% would increase federal revenues by $190.7 billion over a 10-year period.

Ending Tax Breaks

1. **Increase the Capital Gains Tax Rate.** The plan would eliminate preferential capital gains tax rates for taxpayers earning over $1 million, increasing the rate to 39.6%. This has been a top priority for progressive Democrats, who argue the disparate treatment of ordinary income versus income from capital gains perpetuates economic inequality. Critics of the proposal argue that increasing tax rates on capital income will disincentivize investment and ultimately hurt low- and middle-income workers. The top capital gains rate is currently 20%. In 2018, CBO **found** that increasing the long-term capital gains and dividends rate by 2% would generate $69.9 billion over a 10-year period. The American Families Plan proposes an increase of 19.6%.

2. **End Stepped-Up Basis.** The plan would end "step-up" in basis for gains above $1 million ($2.5 million per couple when combined with existing real estate exemptions). The plan also includes protections for property donated to charity, and family-owned businesses and farms if heirs continue to operate the business. It is unclear how the basis will be calculated under the American Families Plan. For example, will the cost of improvements be added back when calculating basis? According to a 2020 **Joint Committee on Taxation** (JCT) report, the exclusion of capital gains at death would cost the federal government $217.8 billion over a five-year period.

3. **Change to Taxation of Carried Interest.** The plan would permanently eliminate preferential rates for carried interest, requiring hedge fund partners to pay ordinary income rates on income. House Ways and Means Committee Democrats have already proposed legislation this year to end the carried interest break. The Carried Interest Fairness Act (H.R.1068), authored by Oversight Subcommittee Chair Bill Pascrell (D-NJ), is co-sponsored by five Ways and Means Committee members. A 2018 CBO report **found** that previous versions of this legislation would raise $14 billion in revenue over a 10-year budget window.

4. **End Real Estate Tax Break.** The plan would eliminate the ability to defer taxation on property investment gains greater than $500,000. Known as a "like-kind exchange," I.R.C. Sec. 1031 allows investors to roll proceeds from a real estate sale into a future purchase without paying capital gains taxes on profits. This tax benefit is expected to save investors $41.4 billion between 2020 and 2024, **according** to the JCT. This year, JCT estimates corporations will benefit $2.3 billion from like-kind exchanges, whereas individuals will gain $5.7 billion.

5. **Extend Loss Limitation.** The plan would extend the current limitation that restricts large, excess business losses. In an April 2020 **letter** to Sen. Sheldon Whitehouse (D-RI) and Rep. Lloyd Doggett (D-TX), the JCT provided distributional tables, which showed that eliminating the current loss limitation rules would largely benefit taxpayers earning above $1 million a year.

6. **Medicare Taxes.** The plan would add unspecified provisions intended to ensure that the 3.8% Medicare tax on earnings above $400,000 applies in all fact patterns. According to the Biden administration, the application of the tax has been "inconsistent across taxpayers due to holes in the law." The plan would likely ensure that the surtax applies to all types of income above $400,000 by eliminating any gaps in the current rules.

SPENDING PROPOSALS	
EDUCATION AND PREPARATION FOR TEACHERS – $4.1 BILLION	
$2.8 billion	**Residency Programs.** Funds "Grow Your Own" programs and yearlong, paid teacher residency programs to improve student outcomes, teacher retention and diversity among teachers.
$400 million	**Boosting Teacher Diversity.** Funds teacher preparation at Historically Black Colleges and Universities, Minority Serving Institutions and Tribal Colleges and Universities.
$900 million	**Special Education.** Invests in the development of special education teachers.
$1.6 billion	**Professional Certification.** Calls on Congress to fund grant opportunities, awarded through states, to allow educators to obtain additional certifications in high-demand areas like special education, bilingual education and certifications that improve teacher performance. Prioritizes funding for public school teachers with at least two years of experience at schools with a significant portion of low-income students or significant teacher shortages.
$2 billion	**Educator Leadership.** Calls on Congress to invest in programs that leverage teachers as leaders, such as high-quality mentorship programs for new teachers and teachers of color, in order to improve both student outcomes and teacher retention. Compensates veteran teachers for leveraging their expertise to pursue other key priorities within their schools.
Policy Proposal	**Scholarship Programs.** Calls on Congress to increase the scholarship amount for individuals earning teaching degrees from $4,000 annually to $8,000 annually, and to expand eligibility for the scholarship program to early childhood educators.
PAID LEAVE AND HEALTH CARE – $225 BILLION	
$225 billion	**A National Comprehensive Paid Family and Medical Leave Program.** Provides 12 weeks of paid parental, family and personal illness/safe leave and gives workers three days of bereavement leave per year. Provides workers up to $4,000 a month, with a minimum of two-thirds of average weekly wages replaced, rising to 80% for the lowest wage workers. The Ways and Means Committee's Building an Economy for Families Act contains a similar proposal for a paid family and medical leave program.
Policy Proposals	**Healthy Families Act.** Asks Congress to pass the Healthy Families Act, which would require employers to allow workers to accrue seven days paid sick leave per year to seek preventive care for them or their family, such as getting a flu shot, recovering from short-term illness, or caring for a sick child or family member or a family member with disability-related needs. **Premium Tax Credits Extension.** Permanently extends the premium reductions provided in the American Rescue Plan Act, which included two years of lower health insurance premiums for those who can buy coverage on their own.
TAX BENEFITS FOR FAMILIES	
Policy Proposals	**Child Tax Credit.** Calls on Congress to extend the Child Tax Credit (CTC) changes made under the ARPA through 2025. Those changes would permanently increase the CTC from $2,000 to $3,000 for children ages 6 to 17 and to $3,600 for children under 6. In addition, the CTC would be made fully refundable permanently.

	On April 28, the House Ways and Means Committee Chair Richard Neal (D-MA) released the Building an Economy for Families Act, which calls for the permanent extension of the CTC.
	Earned Income Tax Credit. Calls on Congress to make permanent the Earned Income Tax Credit (EITC) extensions enacted under ARPA. These changes would triple the EITC for childless workers. On April 28, the House Ways and Means Committee Chair Richard Neal (D-MA) released the Building an Economy for Families Act, which calls for the permanent extension of the EITC.
	Child and Dependent Care Tax Credit. Calls on Congress to make permanent the Child and Dependent Care Tax Credit (CDCTC) changes enacted under ARPA. Those changes would allow families to offset up to half their spending on child care expenses for children under 13, up to $4,000 for one child and $8,000 for two or more children. A 50% reimbursement would be available to families earning below $125,000. Those earning between $125,000 and $400,000 would receive only a partial credit but they would not lose benefits they currently possess. On April 28, the House Ways and Means Committee Chair Richard Neal (D-MA) released the Building an Economy for Families Act, which calls for the permanent extension of the CDCTC.
TAX ADMINISTRATION	
Policy Proposals	**Regulates Paid Tax Preparers.** The administration claims tax returns prepared by paid preparers often have high error rates. To ensure taxpayers are able to claim newly enacted tax credits, the plan calls on Congress to give the Internal Revenue Service (IRS) authority to regulate paid tax preparers. Senate Finance Committee Chair Ron Wyden (D-OR) and committee member Sen. Ben Cardin (D-MD) have previously proposed bipartisan and bicameral legislation, the Taxpayer Protection and Preparer Proficiency Act, that would provide the IRS regulatory authority over return preparers, including the ability to sanction them for incompetence and disreputable behavior.

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