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News

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Biden Unveils American Rescue Plan

On Thursday, Jan. 14, President-elect Joe Biden unveiled the American Rescue Plan (ARP)—a $1.9 trillion COVID-19 relief proposal his administration will pursue shortly after taking office on Wednesday, Jan. 20.

The proposal includes funding intended to provide individuals with economic security for the duration of the pandemic, such as another round of direct Economic Impact Payments at $1,400 per person, enhanced unemployment benefits and expanded refundable tax credits, among others. It also contains money for critical workforce supports, such as reopening schools and shoring up child care. Additionally, the ARP includes funds to help contain and eliminate COVID-19, such as a vaccine distribution plan, a proposal to scale up testing and mobilizing a public health jobs corps.

Not included in the package were any provisions related to the U.S. Small Business Administration's Paycheck Protection (PPP) or financial assistance for larger corporations, including the popular Employee Retention Tax Credit (ERTC). While the plan contains funding for state and local governments, a top priority for congressional Democrats, notably absent from the proposal, are any legal liability protections as advocated by congressional Republicans.

House Speaker Nancy Pelosi (D-CA) and incoming Senate Majority Leader Chuck Schumer (D-NY) both lauded the proposal shortly after its unveiling, saying it was "the right approach" and indicating they will seek to swiftly advance it through their respective legislative chambers.

The Republican response was less enthusiastic, with House Ways and Means Committee Ranking Member Kevin Brady (R-TX) releasing a statement in which he said the proposal "does nothing to save Main Street businesses, get people back to work, or strengthen our economy."

The ARP is the first in Biden's dual legislative strategy to respond to the COVID-19 pandemic. Ideally for the Biden administration, following enactment of the American Rescue Plan, the first pillar, it will turn to the second pillar that will be focused on helping the U.S. economy recover. This second pillar is expected to contain aspects of Biden's campaign agenda, Build Back Better, such as infrastructure funding, green energy tax breaks and additional tax incentives for building a strong domestic manufacturing base and supply chains, among other priorities.

With a split 50-50 Senate, the ARP faces an uphill battle. Unless the Biden administration plans to use procedural tools at its disposal to circumvent the 60-vote threshold necessary to pass legislation in the Senate, the final legislation will likely be considerably different in order to gain enough bipartisan support to pass.

It is unclear when legislation aligned with the ARP will be introduced.

This alert takes a closer look at the proposals within the ARP. Below are our five key takeaways from the plan. We have also summarized the ARP and put it in context of legislation enacted in response to COVID-19 during 2020. This alert provides an analysis and implications for each provision.

1. **The Price Tag Is Big, But Not as Big as the CARES Act.** The price tag on the American Rescue Plan (ARP) comes in at $1.9 trillion. By comparison, the first Coronavirus Aid, Relief, and Economic Security (CARES) Act was $2 trillion, and the Consolidated Appropriations Act (CAA) passed in December was $900 billion. By contrast, the American Recovery and Reinvestment Act of 2009, the Obama administration's economic recovery package cost about $800 billion. While the ARP expands on several financial assistance programs for individuals contained in previous COVID-19 relief bills, it does not include any relief for large businesses, even in hard-hit industries, such as hospitality. If Congress ends up on a reconciliation track, then a number of provisions will drop out, narrowing the scope and potentially the price tag of the bill.

2. **Individual Relief Continues to Dominate.** The ARP is chock full of financial assistance and economic security measures for individuals. In addition to another round of $1,400 Economic Impact Payments (EIP), individuals would receive enhanced refundable tax credits, with the maximum value of the Child and Dependent Care Tax Credit almost quadrupling and the value of the Child Tax Credit increasing by about 50% to 80%, depending on the age of the child. The plan also significantly enhances the childless Earned Income Tax Credit and removes the age cap to help those over the age of 64.

   In addition to direct assistance and tax credits, the proposal would require all employers, regardless of size, to provide paid sick leave of two weeks, plus an additional 12 weeks of paid family and medical leave to eligible employees. The maximum amount of compensation increases significantly to $1,400 per week for 12 weeks, up from $10,000 for a total of 10 weeks. Under the FFCRA, the CARES Act and the CAA, paid family and medical leave was limited to 10 weeks, with an additional two weeks of sick leave.

   Additionally, the proposal provides funding for other support systems that benefit individuals. In addition to funding to reopen schools and shore up child care, the ARP includes an extension of the 15% Supplemental Nutrition Assistance Program (SNAP) benefit, $3 billion for the SNAP Women, Infants, and Children (WIC) program, and a partnership with restaurants to help families get food while helping laid-off restaurant workers to get back on the job.

   The proposal also contains funding for several assistance programs that may also benefit individuals. This includes $25 billion in rental assistance to help renters and small landlords, as well as $5 billion in energy and water assistance programs. This is in addition to the $25 billion provided in the CAA for residential rental assistance. The ARP also includes an additional $5 billion in emergency assistance to help states and localities help secure housing for people experiencing or at risk of homelessness.

   Notably missing from the bill are student debt relief measures, which have been touted by several Democrats. While the CAA extended for five years Internal Revenue Code Sec. 127 to allow employer-provided student debt payments of up to $5,250 to be excluded from income, it did not include debt forgiveness.

3. **Unemployment Is Still a Major Concern.** As the virus surges nationwide, this has triggered a new wave of shutdowns and layoffs, impacting already hard-hit industries. While about half of the 22 million jobs lost last year have been regained, last week the Department of Labor reported that initial claims for state unemployment benefits exceeded 1 million for the first time since last July. This follows a December jobs report showing a loss of 140,000 jobs.

   The ARP includes an increase in supplemental Federal Pandemic Unemployment Compensation (FPUC) payments from $300 in the CAA to $400, though less than the $600 payments included in the CARES Act. The Biden plan also calls on Congress to extend emergency unemployment insurance programs through September 2021 and automatically adjust the length and amount of relief based on health and economic conditions. This will stop reliance on legislation to reinstate benefits if economic and health conditions meet certain threshold requirements. Specific triggers are not discussed in the proposal.

4. **The Plan Is Lacking in Business Relief, Including the Employee Retention Tax Credit.** General business relief or incentives for investment is largely absent from the bill, including the ERTC, designed to help employers stave off layoffs by providing a credit to offset payroll costs for businesses. The ERTC was most recently expanded significantly and included in the CAA through July.

   The ARP also does not include several credits that shared bipartisan support that were introduced as either standalone legislation or included in the Republican HEALS Act proposal. For example, a cleaning and workplace reconfiguration credit designed to help employers offset massive expenditures related to personal protective equipment and physical changes to office spaces to promote worker health and safety was not included. Additionally, proposals designed to incentivize employers to hire workers receiving unemployment assistance by partially defraying the costs were also absent from the bill.

   The bill also does not include changes to the Treasury Department facilities set up by the CARES Act to provide loans for large businesses. Generally, large Main Street businesses receive little assistance in the ARP.

   Small businesses receive some assistance in the bill, though not through the Paycheck Protection Program. Instead, the proposal suggests the creation of an entirely new lending and new loan guarantee authority—providing $15 billion in flexible grants for the hardest hit small businesses and leveraging $35 billion in government funds into $175 billion in additional small-business lending and investment. The ARP is unclear on how they would achieve this, though these new grants seem to build on existing SBA lending and grant programs such as the PPP loans, Economic Injury Disaster Loans (EIDL) and Shuttered Venue Operator Grants.

5. **Businesses Could See Costs Increase under the ARP.** While the ARP does not contain direct assistance or tax benefits for businesses, the proposal includes a raise in the minimum wage to $15 per hour, significantly increasing costs for businesses. A number of states and localities have already raised their own wage floors—nearly one-third of the U.S. hourly workforce already lives in a jurisdiction moving toward a $15 minimum wage. Just under another one-third of the U.S. workforce already lives in a jurisdiction that has a higher minimum wage than the federal requirement, though not $15. Research from the Congressional Budget Office in 2019 suggested that 1.3 million people who would otherwise work would not be able to, in part because employers would reduce payroll due to the wage increase. At a time when unemployment is high, this will attract criticism from opponents.

   In addition to increases to the minimum wage, the bill reinstates the FFCRA's paid sick leave and family and medical leave mandates for all employers, eliminating the exceptions for employers with less than 50 employees and more than 500 employees. The mandate was removed in the CAA. The ARP would also increase the amount of maximum compensation for the paid leave program from $10,000 for 10 weeks, plus two weeks of paid sick leave, to $1,400 per week for 12 weeks, plus two weeks of paid sick leave. Large employers with over 500 employees would have to provide leave, without a corresponding credit. The bill does not provide exceptions, even for the restaurant, hospitality and travel industries that have been hard-hit by the pandemic.

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EXPANSION OF PROVISIONS ENACTED IN 2020 COVID-19 LEGISLATION (THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT; THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT; AND THE CONSOLIDATED APPROPRIATIONS ACT)

AMERICAN RESCUE PLAN	CURRENT LAW	BROWNSTEIN ANALYSIS
	BENEFITS	
Expansion of Paid Sick Leave and Paid Family and Medical Leave • Increases total combined leave to 14 weeks. • Increases wage amounts up to $1,400 per week for the paid FMLA program. • Clarifies that federal workers are covered. • Health care workers and first responders may not be excluded. • Expands leave through Sept. 30, 2021.	• Provides total combined leave of 12 weeks. • Wage amounts are $511/day, $200/day, depending on reason for leave. • Certain groups of employees may be excluded or are not covered. • Paid sick and paid FMLA leaves expire March 31, 2021.	• Provides an additional two total weeks of paid leave. • More generous wage amounts covered—for FMLA it increases the maximum compensation an individual is entitled to receive by about 50%, allowing individuals with up to about $73,000 in Adjusted Gross Income (AGI) to be made whole for up to 14 weeks (12 weeks of FMLA, plus two weeks of paid sick leave). • Covers all employees, no groups exempted or excluded. • Provides an additional six months of paid sick and paid FMLA leaves, in addition to the corresponding credit for small employers.
Reimposition of Employer Mandate for Paid Leave • Requires employers with one or more employees to provide COVID-19-related paid sick and paid FMLA leaves. • Refundable tax credits available for employers with fewer than 500 employees. • Federal government will reimburse state and local governments for the cost of providing COVID-19-related paid sick and paid FMLA leaves.	• FFCRA/CARES Act mandated employer provided paid sick and paid FMLA leaves for employers with fewer than 500 employees. CAA removed that mandate. • Refundable tax credits for paid sick and paid FMLA leaves provided by employers expire March 31, 2021.	• Reimposition of mandate and expansion for all employers with one or more employees. • Previously, employers with 500 or more employees and those with less than 50 employees were not subject to the mandate. The Biden plan would require these employers to provide sick and paid leave, but would not provide a corresponding credit for those with over 500 employees. The plan does not provide any exceptions, even for hard-hit industries. • Extends paid sick and paid FMLA refundable tax credits for employers for six months, until Sept. 30, 2021, including state and local governments.

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AMERICAN RESCUE PLAN	CURRENT LAW	BROWNSTEIN ANALYSIS
INDIVIDUAL RELIEF		
Economic Impact Payments • Provides an additional $1,400 in individual payments. Expands eligibility to adult dependents left out of previous rounds of relief, as well as all mixed-status households.	• The CARES Act provided U.S. residents $1,200 ($2,400 for joint filers) and an additional $500 per child. • The CAA provided $600 ($1,200 for joint filers) and an additional $600 per qualifying child dependent. It also amended the CARES Act to allow mixed-status households to qualify for the payments.	• The Biden plan provides an additional $1,400 to equal the $2,000 payments that the CAA initially sought to provide. • The CAA already expanded eligibility to mixed-status households, so it is unclear how the American Rescue Plan builds upon this.
Federal Pandemic Unemployment Compensation • Calls on Congress to provide a $400 per-week UI supplement to workers through the Federal Pandemic Unemployment Compensation (FPUC) program. • Extends the programs through September 2021. • Commits to working with Congress to automatically adjust the length and amount of review in response to health and economic indicators. However, specific levers that trigger UI benefits are not specified. • Commits to providing these supports for the full duration of the pandemic.	• The CARES Act provided FPUC payments of $600 through July 31. • The CAA provided a FPUC of $300 per week, starting after Dec. 26, 2020, and ending March 14, 2021. • In addition to the CARES Act and CAA payments, President Donald Trump's administration enacted the Lost Wage Assistance (LWA) program that provided about six weeks of federal supplemental UI payments of $300 per week, similar to the FPUC program.	• The plan suggests Biden will work with Congress to enact legislation that provides for ongoing FPUC payments, as well as expanded UI benefits, that are triggered based on certain health and economic indicators for the full duration of the pandemic. • These automatic adjustments have been a priority for Sen. Ron Wyden (D-OR), the incoming Senate Finance Committee chair, since last year. • Should this language be included, it will reduce pressure on Congress to continue adjusting the eligibility requirements.
Pandemic Unemployment Assistance • Extends financial assistance for unemployed workers who typically do not qualify for unemployment compensation benefits, such as self-employed and gig economy workers. • Supports increasing the number of weeks these workers are entitled to receive UI benefits.	• The CAA extended PUA to March 14, 2021, instead of the Dec. 31, 2020, expiration under the CARES Act. The program was retroactive to Dec. 1, 2020. • The CAA allowed individuals receiving benefits as of March 14, 2021, to continue through April 5, 2021, as long as the individual has not reached the maximum number of weeks. • Increased the number of weeks of benefits an individual may claim from 39 to 50.	• Expanding the PUA program will help ensure that individuals who are not typically eligible to receive UI benefits will be compensated for the duration of the pandemic. • The proposal estimates an additional 5 million Americans will continue to receive assistance through the provision.

AMERICAN RESCUE PLAN	CURRENT LAW	BROWNSTEIN ANALYSIS
Short-Time Compensation • Fully funds state short-time compensation programs, which allow businesses to reduce employee hours and have a portion of lost wages for the employee covered by UI benefits. • Under the CARES Act and the CAA, employees under STC programs were also eligible to receive the federal FPUC payments. • Provides "additional weeks" of benefits.	• Sec. 2108 of the CARES Act provided funding to support existing state STC programs. The CAA provision extended the program through March 14, 2021, and continued to provide 100% federal financing programs that are established in state law. • Sec. 2109 of the CARES Act permitted states to enter into an agreement with the Department of Labor to enact an STC plan. It provided funding to support states that began a "short-time compensation" program by providing 50% of the costs a state incurred. The CAA provision extends the program through March 14, 2021.	• This provision helps small businesses by allowing employees to continue working at reduced hours. It is a tool to avoid layoffs and allow employees to receive partial UI benefits that correspond to a reduction in their work hours. • When combined with the FPUC supplemental payments, it could help make workers on the lower end of the income spectrum whole in terms of compensation.
STATE AND LOCAL AID		

State and Local Funding
• Allocates $350 billion for states and localities.
• Provides additional amounts for:
  ○ Emergency housing assistance for those at risk of homelessness- $5 billion
  ○ Funding to help public transportation agencies- $20 billion
  ○ Support for tribal governments- $20 billion
  ○ Shore up the Disaster Relief Fund (DRF) to provide 100% federal reimbursement for critical emergency response resources to states, local governments and tribes- $30 billion
  ○ Funding to reopen schools- $130 billion
  ○ Create a "hardest hit" education fund for governors to use to support educational programs- $5 billion
	• The CARES Act allocated $150 billion for state, local and territorial governments to navigate the coronavirus pandemic. The CAA did not provide assistance for state and local governments, though it did include money for transportation, education and vaccination programs that would ultimately benefit states and localities.	• The proposal provides funding to help states and localities address the impact of the pandemic.
		• In addition to providing money for a state and local fund, the American Rescue Plan funnels additional monies to states and localities through various programs such as transportation, public education and the DRF.

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NEW PROVISIONS (NOT IN PREVIOUSLY ENACTED IN COVID-19 LEGISLATION)

AMERICAN RESCUE PLAN	CURRENT LAW	BROWNSTEIN ANALYSIS
INDIVIDUAL RELIEF		
Child and Dependent Care Tax Credit • Increases maximum qualifying expenses to $8,000 for one child and $16,000 for two or more children. Increases the maximum credit value to 50%, from 35%, and increases the phase-out threshold to $125,000, with a new income cap of $400,000.	• The CDCTC is a nonrefundable tax credit, which is calculated by multiplying the amount of qualifying expenses ($3,000 for one child/$6,000 for two children) by the appropriate credit rate. The credit rate is 35% for those with Adjusted Gross Income of up to $15,000. The credit phases down to 20% for those with AGI over $43,000. The credit is not income limited.	• The proposal includes a significant increase to the CDCTC, increasing the maximum value of the credit from $2,100 to $8,000. The proposal also makes the credit refundable, making the credit significantly more valuable for lower-income individuals.
Child Tax Credit • Increases the CTC from $2,000 to $3,000 per child and $3,600 for a child under age 6. The proposal increases the age limit to those 17 and under as well and makes the credit fully refundable.	• Taxpayers may claim a CTC of up to $2,000 for each child under age 17 who is a citizen. The credit is reduced by 5% of AGI over $200,000 for single parents ($400,000 for married couples). If the credit exceeds taxes owed, taxpayers can receive up to $1,400 of the balance as a refund, known as the additional child tax credit (ACTC) or the refundable portion of the CTC. The ACTC is limited to 15% of earnings above $2,500	• The proposal increases the maximum value of the CTC by $1,000 to $1,600 depending on the age of the child. It also increases the age limit, allowing 17-year-olds to qualify. The value of the refundable portion of the credit is also increased, making it more valuable for lower-income individuals.
Earned Income Tax Credit • Increases the maximum EITC for childless adults from about $530 to about $1,500 and raises the income limit from $16,000 to about $21,000. The proposal would also increase the age range that is eligible for the credit by eliminating the age cap.	• The childless EITC currently provides a maximum credit of about $530, with an income limit of about $16,000. In order to qualify, childless workers must be at least 25 and not older than 64.	• Currently, most of the benefit of the EITC goes to working families since families with children receive a much larger credit than workers without qualifying children. This increases the credit for childless workers and allows older adults to benefit from the credit.
Minimum Wage • Calls on Congress to raise the minimum wage to $15 per hour and end the tipped minimum wage and sub-minimum wage for people with disabilities.	• The federal minimum wage is $7.25 an hour.	• The last minimum wage increase was in 2009, from $6.55 to $7.25 an hour. • Democrats have long proposed an increase to $15 an hour, and nine states and D.C. have already reached or are moving toward a $15 minimum wage. • Democrats' most recent proposal, the Raise the Wage Act, would increase the minimum

		wage to $15 an hour in six increments over six years and index it to national median wage growth thereafter. It is unclear whether this is the blueprint a Biden administration would use to achieve a $15 minimum wage.
AMERICAN RESCUE PLAN	**CURRENT LAW**	**BROWNSTEIN ANALYSIS**
Health Tax • Calls on Congress to subsidize the Consolidated Omnibus Budget Reconciliation Act (COBRA) through the end of September. • Asks Congress to expand and increase the value of the Premium Tax Credit (PTC) for people who earn up to 400% of the federal poverty level in order to lower or eliminate health insurance premiums and ensure enrollees pay no more than 8.5% of their income for coverage.	• COBRA is a health insurance program that allows eligible employees and their dependents to continue group health benefits provided by their group plan for a limited period of 18 or 36 months when an employee loses their job or experiences a reduction of work hours. Qualified individuals may be required to pay the entire premium for coverage up to 102% of the cost to the plan. • The PTC is a refundable credit that helps eligible individuals and families cover the premiums for their health insurance purchased through the Health Insurance Marketplace. The size of one's PTC is based on a sliding scale—those with a lower income get a larger credit. The primary eligibility criteria is having a household income at least 100% but no more than 400% of the federal poverty line for their family size.	• This provision aims to ensure access to health coverage for the millions of people who lost employer-sponsored health insurance since the start of the pandemic. • Expansion of the PTC would benefit both the families who have maintained coverage but struggle to pay premiums and afford care, and those without coverage going into the pandemic. • Together, these policies are estimated to reduce premiums for more than t10 million people and reduce the number of uninsured by millions more.
BUSINESS RELIEF		
Expansion of Small-Business Lending and Grants • Provides $15 billion in flexible grants for the hardest hit small businesses. • Leverages $35 billion in government funds into $175 billion in additional small-business lending and investment.	• The proposal suggests entirely new grant and new loan guarantee authority—building on existing SBA lending and grant programs such as the PPP loans, EIDL grants and Shuttered Venue Operator Grants.	• The ARP does not include more funding for the Paycheck Protection Program (PPP), instead opting for a new program of grants and loan guarantees. • By providing $15 billion in flexible grants for the hardest hit small businesses—including restaurants and hotels—this program could provide a direct cash infusion with more flexibility than the PPP program. The program would likely target communities of color most impacted by COVID-19.

		• The proposal would leverage $35 billion in government funds into $175 billion in additional small-business lending and investment by backing state, local and tribal small-business programs. It is unclear how this would be achieved.

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