



Federal Legislative & Regulatory Report

April 2021

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Biden proposes new spending, tax changes

On April 28, President Biden proposed the [American Families Plan](#) – a nearly \$2 trillion proposal to expand various social welfare programs (e.g., child care, paid family leave, education and health care). To pay for the plan, President Biden proposed several tax increases, including:

- Capital gains – Increase the top federal capital gains tax to 39.6% (up from 20%) for taxpayers who make over \$1 million per year.
- Step up in basis – For gains over \$1 million, eliminate the “step up in basis,” which today allows heirs to use the market value of assets at the time of inheritance rather than the actual purchase price as the cost basis for capital gains when the holdings are sold. Like increases to the estate tax, this will draw significant opposition, especially from the farm community.
- Top individual income rate – Increase the top individual tax rate to 39.6% (up from 37%) for those making at least \$400,000.
- Income reporting by financial institutions – Require financial institutions to report information on account flows so that earnings from investments and business activity are subject to reporting more like wages.
- IRS enforcement – Increases resources toward enforcement against those with the highest incomes, rather than Americans with actual income less than \$400,000.

The American Families Plan follows the previously released American Jobs Plan – a \$2 trillion+ proposal to improve traditional infrastructure, affordable housing, schools, and workforce development. The Jobs Plan proposed increasing the corporate tax rate and imposing a minimum tax on book income. Congress is actively working to reduce these proposals to legislative text and will try to advance them in the coming months.

Relatedly, Ways and Means Committee Chair Richard Neal (D-MA) released the [Building an Economy for Families Act](#) – a roughly \$2 trillion proposal to provide universal access to paid leave; increase access to child care; and expand various tax credits, including the child tax credit and earned income tax credit.

IRS issues partial termination guidance

On April 27, the IRS [issued guidance](#) related to the partial plan termination relief provided by H.R. 133, which was passed at the end of 2020. Under the legislation, if a plan meets a certain condition, the plan shall not be treated as having a partial termination during any plan year that includes the period beginning on March 13, 2020, and ending on March 31, 2021.

House committee approves several ESG, diversity proposals

On April 21, the House Financial Services Committee [completed its first markup](#) of the 117th Congress and advanced eight bills, largely focused on environmental, social and governance (ESG) issues and diversity.

The only proposal to garner strong partisan support was [H.R. 1277](#), the Improving Corporate Governance Through Diversity Act, which was approved by voice vote. That bill requires public companies to disclose the racial, ethnic and gender composition of their boards of directors and executive officers, as well as the status of any of those directors and officers as a veteran. It also requires the disclosure of any plan to promote racial, ethnic and gender diversity among these groups. Additionally, the bill requires the Securities and Exchange Commission (SEC) to establish a Diversity Advisory Group to report on strategies to increase racial, ethnic and gender diversity among board members.

Other notable bills that were approved include:

- [H.R. 2123](#), the Diversity and Inclusion Data Accountability and Transparency Act (Beatty)
- [H.R. 1187](#), the ESG Disclosure Simplification Act (Vargas)
- [H.R. 1087](#), the Shareholder Political Transparency Act (Foster)

Lawmaker reintroduces bill to allow CITs in 403(b) plans

On April 21, Rep. Jimmy Panetta (D-CA) reintroduced [H.R. 2741](#), the Public Service Retirement Fairness Act, to permit 403(b) plans to invest in collective investment trusts (CITs). CITs are collectively managed investment vehicles that typically have lower fees and more flexibility than the types of annuity contracts and mutual funds that the 403(b) plans are limited to investing in.

The bill would permit 403(b)(7) custodial accounts to invest in collective trust funds and would amend the securities registration exemptions to treat 403(b) plans like 401(a) plans with respect to their ability to invest in collective investment trusts and insurance company separate accounts.

This is a good marker for Ways and Means' expected forthcoming activity on the Neal/Brady [SECURE 2.0](#) bill. The bill is identical to a provision in Ways and Means Chairman Richard Neal (D-MA) and Ranking Member Kevin Brady's (R-TX) Securing a Strong Retirement Act of 2020 ([H.R. 8696](#)) and a provision in Sen. Rob Portman (R-OH) and Sen. Ben Cardin's (D-MD) Retirement Security and Savings Act of 2019 ([S. 1431](#)).

Senators reintroduce SIMPLE Plan improvement bill and FTT proposal

On April 21, Sens. Susan Collins (R-ME) and Mark Warner (D-VA) reintroduced [S. 1273](#), the SIMPLE Plan Modernization Act, to encourage more small-business employers to offer a retirement savings benefit to their employees and allow small-business employees to save even more each year on a tax-deferred basis.

The bill would raise the contribution limit for SIMPLE plans from \$13,500 to \$16,500, give businesses with 26 to 100 employees the option of the higher contribution limits, and increase their SIMPLE plan mandatory employer contribution requirements by one percentage point if they elect the higher limits, among other provisions.

Also on April 21, Sen. Bernie Sanders (I-VT) reintroduced [S. 1283](#), the Tax on Wall Street Speculation Act, that puts a tax of 0.5% on stock trades, a 0.1% fee on bonds, and a 0.005% fee on derivatives.

Sanders estimates the new financial transaction taxes (FTT) would bring in \$2.4 trillion over a decade and would use those revenues to finance another proposal, the College for All Act, to guarantee tuition-free community college for all students, and allow students from families earning under \$125,000 a year to attend public colleges and universities tuition-free and debt-free.

DOL issues PTE and cybersecurity guidance

On April 13, the Department of Labor [issued](#) additional guidance on fiduciary investment advice related to the department's "Improving Investment Advice for Workers & Retirees" prohibited transaction exemption (PTE). This follows its Feb. 12, 2021, announcement that that exemption would go into effect as scheduled on Feb. 16, 2021.

Importantly, the DOL noted that "[t]he department is continuing to review issues of fact, law and policy related to the exemption, and more generally, its regulation of fiduciary investment advice," and that the department "anticipates taking further regulatory and sub-regulatory actions, as appropriate, including amending the investment advice fiduciary regulation."

In the guidance, the DOL did not extend enforcement relief beyond December 20, 2021, and confirmed its new interpretation of rollover advice is effective immediately and retroactively.

On April 14, the Department of Labor [announced new guidance](#) for plan sponsors, plan fiduciaries, recordkeepers and plan participants on best practices for maintaining cybersecurity, including tips on how to protect the retirement benefits of America's workers. The guidance is directed at plan sponsors and fiduciaries regulated by the Employee Retirement Income Security Act, and plan participants and beneficiaries.

The guidance includes provisions on ensuring that electronic recordkeeping systems have reasonable controls, adequate records management practices are in place, and that electronic disclosure systems include measures calculated to protect personally identifiable information.

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References and source material used in this publication

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White House Fact Sheet: The American Families Plan

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/>

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Ways and Means Committee Overview of the Building an Economy for Families Act

https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/BEF%20One-Pager%20FINAL_0.pdf

IRS Coronavirus-related relief for retirement plans and IRAs questions and answers

<https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers>

House Financial Services Committee first markup of 117th Congress

<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407639>

Text of H.R. 1277, the Improving Corporate Governance Through Diversity Act of 2021

<https://docs.house.gov/meetings/BA/BA00/20210420/112484/BILLS-117HR1277ih.pdf>

Text of H.R. 2123, the Diversity and Inclusion Data Accountability and Transparency Act

<https://docs.house.gov/meetings/BA/BA00/20210420/112484/BILLS-1172123ih.pdf>

Text of H.R. 1187, the ESG Disclosure Simplification Act of 2021

<https://docs.house.gov/meetings/BA/BA00/20210420/112484/BILLS-1171187ih.pdf>

Text of H.R. 1087, the Shareholder Political Transparency Act of 2021

<https://docs.house.gov/meetings/BA/BA00/20210420/112484/BILLS-1171087ih.pdf>

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Text of H.R. 2741, the Public Service Retirement Fairness Act

<https://www.congress.gov/bill/117th-congress/house-bill/2741/text>

Text of H.R. 8696, the Securing a Strong Retirement Act of 2020

<https://www.congress.gov/116/bills/hr8696/BILLS-116hr8696ih.pdf>

Text of S. 1431, the Retirement Security and Savings Act of 2019

<https://www.congress.gov/116/bills/s1431/BILLS-116s1431is.pdf>

Text of S. 1273, the SIMPLE Plan Modernization Act

<https://www.congress.gov/bill/117th-congress/senate-bill/1273/text>

Text of S. 1283, the Tax on Wall Street Speculation Act

<https://www.congress.gov/bill/117th-congress/senate-bill/1283/text>

US Department of Labor Releases Guidance on Investment Advice Exemption

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20210413>

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US Department of Labor Announces New Cybersecurity Guidance For Plan Sponsors, Plan Fiduciaries, Record-Keepers, Plan Participants

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20210414>

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Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants on the Employer page of our plan website, NRSforu.com/plansponsor.

About this report

BOB BEASLEY, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *Governmental 457(b) Guidebook*, edits countless newsletters and plan sponsor communications, and in 2001 authored “What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001.” He often voices Nationwide’s online presentations.

Beasley has served on the Education and Communication Committee for the Plan Sponsor Council of America and as a member of the National Association of Government Defined Contribution Administrators.

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