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Path forward for Build Back Better remains unclear

Efforts to strike a deal with West Virginia Democratic Sen. Joe Manchin that would allow President Biden’s Build Back Better Act to advance through the Senate remained in the background this week as the White House and Senate Democratic leaders instead put a spotlight on voting rights legislation; moreover, details around any potential movement on Build Back Better have been scarce, and by week’s end it remained unclear just what a deal might look like and when (or whether) one might be reached.

The roughly \$1.75 trillion tax-and-spending package, which was approved in the House on November 19, includes significant tax increases impacting large corporations and high-income individuals to pay for lower- and middle-class tax relief and fund new spending for White House priorities such as expanded access to pre-kindergarten education, child care and elder care, and affordable housing, as well as programs to mitigate climate change. Folded into the package are extensions of—and, in many cases, enhancements to—a number of temporary tax provisions that expired at the end of 2021. (A detailed discussion of the tax provisions in the

House-passed version of the Build Back Better Act is available from Deloitte Tax LLP. An updated list of tax extenders provisions that expired in 2021 or are scheduled to expire by 2031 was released by the Joint Committee on Taxation staff on January 13.)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-provisions-in-the-build-back-better-act.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-provisions-in-the-build-back-better-act.pdf)

[URL: https://www.jct.gov/publications/2022/jcx-1-22/](https://www.jct.gov/publications/2022/jcx-1-22/)

Because the Build Back Better Act is moving under the budget reconciliation process, it is shielded from a filibuster in the Senate, thus making it possible for Democrats to pass it without Republican support. But Democrats control only 50 seats in the chamber and need all of those votes, plus the tie-breaking vote of Vice President Harris, to get it across the finish line, given that all 50 Senate Republicans are expected to remain united in opposition.

Late last month, Manchin upended efforts by Democratic leaders to advance the legislation in the Senate when he declared in an interview with Fox News and in a more detailed statement subsequently posted on his Senate website that he is opposed to the measure in its current form. He argued, among other things, that the legislation would make the nation more vulnerable to threats arising from inflation, the COVID-19 pandemic, and the federal debt. He also reiterated his longstanding concerns that lawmakers' reliance on short-term spending initiatives and tax incentives in the Build Back Better Act serve to "camouflage [its] real cost" since a future Congress likely would try to further extend these temporary provisions or make them permanent. (For more on Manchin's concerns, plus details on other issues impeding the bill's path forward in the Senate, see *Tax News & Views*, Vol. 22, No. 55, Dec. 17, 2021, and *Tax News & Views*, Vol. 22, No. 56, Dec. 20, 2021.)

[URL: https://www.manchin.senate.gov/newsroom/press-releases/manchin-statement-on-build-back-better-act](https://www.manchin.senate.gov/newsroom/press-releases/manchin-statement-on-build-back-better-act)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211217_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211217_1.html)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211220_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211220_1.html)

Still talking?

The extent to which the Biden administration is currently engaging with Manchin is itself unclear. Manchin told reporters on January 4 that he has had "no conversations" on Build Back Better with the White House or Senate Democratic leaders since he released his statement last month. In a press briefing on January 11, White House Press Secretary Jen Psaki pushed back when a reporter asked if talks with Manchin were "stalled," but she did not elaborate on the nature of any discussions with the senator or his staff.

"I wouldn't characterize it that way," Psaki said. "I would just say that we're not going to detail, in any specifics, conversations we have with Sen. Manchin or other members either."

To a limited degree, Manchin and the White House this week signaled their respective positions on certain issues related to the legislation through comments to the press.

Manchin told reporters January 12 that the Labor Department's announcement that the Consumer Price Index for December 2021 was up by 7 percent compared to the same period in 2020 was "very, very troubling,"

although he did not draw a direct line between that news and his previously stated concerns about the inflationary impact of the Build Back Better bill.

[URL: https://www.bls.gov/news.release/cpi.nr0.htm](https://www.bls.gov/news.release/cpi.nr0.htm)

At a White House press briefing later that day, National Economic Council Director Brian Deese reiterated the administration's position that the legislation would reduce inflation rather than exacerbate it.

"[W]e're going to keep focused on those ways that we can address the typical pocketbook issues that the American people face. And this is one of the [reasons] why the core economic logic behind . . . the Build Back Better plan is important in this context, because for working Americans . . . who are benefitting from a strong labor market and more job opportunities but also struggling with costs not only of food but costs of child care or cost of health care, the components of the Build Back Better plan would directly address those issues by . . . providing a tax cut to families directly in their pocketbook, and then reducing other of their most salient costs," Deese said.

In a response to a reporter's question, Deese also took issue with Manchin's position that an extension of the now-expired enhancements to the child tax credit—a key priority for President Biden—must be coupled with a work requirement.

"[I]f you look at the child tax credit itself, 97 percent of the recipients . . . are working," Deese said. "And among the remaining 3 percent, the majority are grandparents or people with disabilities. So, I think that you have a tool that is delivering relief to working families right now."

What would compromise look like?

On Capitol Hill, various Democrats on both sides of the Rotunda this week appeared open to compromising with Manchin on Build Back Better but for the most part did not elaborate on the contours of a possible deal.

Fewer benefits, longer horizons: Given Manchin's criticisms of the way the legislation is currently structured, lawmakers likely would have to rework it so that any spending programs and tax incentives are implemented and funded over the full 10-year budget window (rather than expiring after just a few years), with the overall size of the package capped at the current level of \$1.75 trillion. Meeting those constraints would require Democrats to make difficult political choices to sacrifice some provisions so they can save others.

Senate Finance Committee Chairman Ron Wyden, D-Ore., noting Manchin's support for the climate change provisions in the Build Back Better Act, told reporters this week that those would be "key parts of how to get 50 votes" in the Senate. (Manchin commented on January 4 that the climate provisions represent one area that "we could come to an agreement on much easier than anything else.")

Are House Democrats on board?: But revamping the bill in a manner that satisfies Manchin also would likely require Democratic leaders in the House to convince their members to accept a version of Build Back Better that is substantially narrower in scope than the measure they approved in November. Persuading progressive

House Democrats could be especially challenging since they had been adamant that the legislation should provide as many benefits as possible, even if they are only available over short horizons.

House Ways and Means Committee Chairman Richard Neal, D-Mass., told reporters January 11 that a compromise bill conceivably could clear his chamber, but he added that the onus is on Manchin to affirmatively state which provisions he is willing to accept.

“I think the challenge we’ve had . . . is we know what Joe’s against, we just need now for him to tell us what he’s for,” Neal said. “That’s the issue here. I still think this is entirely workable.”

House taxwriter Dan Kildee, D-Mich., a member of the Congressional Progressive Caucus, commented that some progressives might be able to accept a bill that is less expansive than the one they passed and sent over to the Senate.

“It doesn’t mean we are going to be happy about it,” he told reporters January 11. “But we can’t take our unhappiness out on the people who could benefit from what could get done.”

No timeline yet

Congressional Democratic leaders have not laid out a timeline for completing work on a revised bill; however, they might look to the pending expiration (on February 18) of the short-term continuing resolution funding the federal government or President Biden’s upcoming State of the Union address (scheduled for March 1) as possible backstops that might force decisions and action on the package.

Available floor time in the Senate for consideration of a revised Build Back Better package is expected to be limited in the near term. The chamber will be in session the week of January 17, but voting rights legislation is expected to dominate the agenda. A recess that had been planned for that week has been postponed to the week of January 24.

For her part, Jen Psaki said at her January 11 press briefing that the administration has not set a deadline for Congress to deliver a completed bill to the White House.

“We are, of course, behind the scenes, engaged closely with staff, with members across—across the Democratic Party. And that work will continue But I don’t have any specifics to update on [timing],” she said.

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Tax filing season to begin January 24

The Internal Revenue Service announced this week that it will begin accepting and processing 2021 tax year returns on January 24, 2022.

For most taxpayers, the deadline to file returns or request an extension to file or pay tax owed will be April 18, 2022, the Service said in a news release, noting that the traditional filing deadline (April 15) falls on Emancipation Day this year, which is a holiday in the District of Columbia. The deadline is extended by an extra day (to April 19) for taxpayers in Maine and Massachusetts because of the Patriots' Day holiday in those states.

[URL: https://www.irs.gov/newsroom/2022-tax-filing-season-begins-jan-24-irs-outlines-refund-timing-and-what-to-expect-in-advance-of-april-18-tax-deadline](https://www.irs.gov/newsroom/2022-tax-filing-season-begins-jan-24-irs-outlines-refund-timing-and-what-to-expect-in-advance-of-april-18-tax-deadline)

Taxpayers requesting an extension will have until October 17, 2022, to file their final returns.

Still churning through 2020 returns

The new filing season will begin as the Service continues to process a backlog of returns for the 2020 tax year, which got off to a delayed start so the agency could complete additional programming and systems testing in the wake of just-enacted tax law changes that provided a second round of economic impact payments and other tax benefits. The agency's website puts the number of unprocessed 2020 returns at 6 million as of December 23, 2021.

[URL: https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue](https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue)

Despite that backlog, individuals who are entitled to a refund for 2021 should receive it "within 21 days of when they file electronically if they choose direct deposit and there are no issues with their tax return," according to the IRS.

In this week's release announcing the start of the 2021 filing season, IRS Commissioner Charles Rettig attributed last year's pile-up to pandemic-related shutdowns and staffing shortages plus years of congressionally mandated cuts to the Service's operating budget.

"In many areas, we are unable to deliver the amount of service and enforcement that our taxpayers and tax system deserves and needs. This is frustrating for taxpayers, for IRS employees, and for me," Rettig said. "IRS employees want to do more, and we will continue in 2022 to do everything possible with the resources available to us. And we will continue to look for ways to improve. We want to deliver as much as possible while also protecting the health and safety of our employees and taxpayers. Additional resources are essential to helping our employees do more in 2022—and beyond."

The House last July approved an FY 2022 allocation of \$13.6 billion for the agency—a \$1.7 billion increase over the level enacted for FY 2021. The Senate Appropriations Committee, for its part, approved an identical allocation in October as part of a Financial Services and General Government funding measure that has not yet reached the Senate floor. The two chambers have been unable to agree on a set of 12 spending bills to fund

the government for FY 2022, which began on October 1, 2021. As a result, lawmakers have been keeping the government's doors open through a series of short-term continuing resolutions that fund operations at FY 2021 levels. The current stop-gap measure is set to expire on February 18.

Taxpayer Advocate releases annual report to Congress

In other IRS developments, National Taxpayer Advocate Erin Collins on January 12 released her annual report to Congress in which she detailed some of the difficulties of the 2021 filing season and cautioned that she is “deeply concerned” about the possibility of delayed processing of returns in the upcoming filing season—particularly in the case of taxpayers who file paper returns.

URL: https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_Full-Report.pdf

The Taxpayer Advocate's office also released a Purple Book outlining 68 legislative recommendations for improving tax administration. Among other things, those recommendations cover improvements to the filing process, changes to tax assessment and collection procedures, reforms to penalty and interest provisions, and reforms to strengthen taxpayer rights before the IRS Office of Appeals and in judicial proceedings.

URL: https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook.pdf

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