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## Biden backs piecemeal approach to Build Back Better legislation

The Build Back Better Act remained stalled in the Senate this week as the chamber focused its attention on voting rights legislation, but President Biden told reporters during a January 19 press conference marking the end of his first year in office that he is “confident” that “big chunks” of his signature \$1.75 trillion tax-and-spending package can be enacted into law ahead of the 2022 midterm elections.

Responding to a reporter’s question, Biden confirmed that he believes the best path forward is to move the legislation in pieces.

“I think we can break the package up, get as much as we can now, and come back and fight for the rest later,” he said.

## Stuck in the Senate

As approved in the House last November 19, the Build Back Better Act 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.

Because it is moving under the budget reconciliation process, the legislation 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.

But efforts by Democratic leaders to advance the legislation in the Senate came to a halt late last month when Sen. Joe Manchin, D-W.Va., 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. Manchin argued, among other things, that the Build Back Better Act could exacerbate recent spikes in inflation and that its array of short-term spending initiatives and tax incentives 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 that have impeded the bill’s progress 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)

Given Manchin’s criticisms of the way the Build Back Better Act is currently structured, gaining his support likely would require lawmakers 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 or below the current level of roughly \$1.75 trillion. Meeting those constraints means Democrats would have to make difficult political choices to sacrifice some provisions so they can save others.

The president’s call for moving the legislation in “chunks” makes those choices even more difficult since Senate Democrats likely will have only one opportunity to move a bill under budget reconciliation as part of the fiscal 2022 budget process. Any provisions that Democrats may hope to include in follow-on legislation would be moving outside of the budget reconciliation rules and would require a three-fifths supermajority in the Senate to avoid the threat of a filibuster. (Assuming all 50 Senate Democrats are united around such a proposal, they would still need to gain support from 10 Republicans for legislation to advance under “regular order.”) Democrats might have an opportunity to pass another reconciliation bill in 2023 if they produce a fiscal year 2023 budget resolution, but that prospect is far from certain.

## What can get the votes?

At his press conference, Biden stopped short of prescribing specific elements to include in a slimmed-down Build Back Better bill, but he did identify several provisions that, based on his discussions with lawmakers, appear to have sufficiently strong support from Manchin and among Senate Democrats generally to ensure 50 votes.

**Climate change and clean energy:** At the top of that list, the president said, is the more than \$500 billion in climate change and clean energy provisions in the House-approved bill. Included among these are extensions of—and, in many cases, enhancements to—temporary tax credits promoting renewable and alternative power sources and energy conservation.

Manchin commented earlier this month that the climate provisions represent one area that “we could come to an agreement on much easier than anything else,” and Finance Committee Chairman Ron Wyden, D-Ore., recently told reporters that those would be “key parts of how to get 50 votes” in the Senate.

**Revenue offsets:** Biden also noted that there is “strong support” for “a number of the ways in which to pay for” the Build Back Better bill.

The House-approved legislation includes corporate and international tax reforms such as a 15 percent minimum tax on the “adjusted financial statement income” of certain large corporations, a 1 percent excise tax on certain publicly traded corporations that buy back stock from their shareholders, additional limitations on the deduction for business interest, and new limitations on the deduction by publicly held corporations for excess employee remuneration. It also would tighten current-law tax rules governing the treatment of global intangible low-taxed income, the deduction for foreign-derived intangible income, and the determination of foreign tax credits, and make changes to the base erosion and anti-abuse tax.

On the individual side of the tax code, the House-approved bill would impose a new surtax on certain upper-income individuals, estates, and trusts; broaden the application of the net investment income tax to include trade or business income of certain upper-income taxpayers; permanently disallow excess business losses for noncorporate taxpayers; and impose restrictions intended to curb the ability of wealthy taxpayers to use IRAs and other qualified retirement plans as tax planning tools.

A detailed discussion of the tax provisions in the House-passed version of the Build Back Better Act is available from Deloitte Tax LLP.

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-provisions-in-the-build-back-better-act.pdf>

**Child tax credit expansions in trouble?:** Biden appeared less optimistic that an extension of temporary enhancements to the child tax credit that were enacted in 2020 as part of the American Rescue Plan has enough support to be included in a compromise Build Back Better package, however. (Those modifications—such as an increase in the credit amount and an option allowing recipients to receive the credit in advance

monthly payments—expired at the end of 2021. The base child tax credit of \$2,000 remains in effect through 2025.)

Manchin has been adamant that any enhancements to the child tax credit must be coupled with a work requirement and has insisted that income phase-outs for an enhanced credit need to be tightened to ensure that the benefits do not flow to wealthier households.

Biden acknowledged that improvements to the child tax credit, along with a Build Back Better Act provision for free community college, are “massive things that I’ve run on [and] care a great deal about,” but said that they might have to be taken up in subsequent legislation. In the wake of the president’s press conference, however, Senate Finance Committee Chairman Ron Wyden, D-Ore., and Senate taxwriter Sherrod Brown, D-Ohio, said they are committed to keeping the provision and House Ways and Means Committee Chairman Richard Neal, D-Mass., indicated that he is “not ready to throw in the towel.”

### **No mention of deadlines**

The president did not lay out a specific timetable for lawmakers to negotiate and pass a revised Build Back Better bill. He did note, though, that he intends to spend more time in the near term engaging with the public to explain the practical benefits of legislation he has signed into law thus far—such as the Infrastructure Improvement and Jobs Act—and to promote the potential benefits of the Build Back Better Act and his other legislative priorities.

“I’m going to be out on the road a lot, making the case around the country, with my colleagues who are up for re-election and others, making the case of what we did do and what we want to do, what we need to do,” he said.

The administration also intends to engage with Sen. Manchin in the coming days to hammer out the contours of a compromise proposal, although White House Chief of Staff Ron Klain told *The Wall Street Journal* this week that those discussions will be conducted behind the scenes.

“One lesson we learned in the first year is, I think, the less we talk about our negotiations with specific senators and congressmen, the better we are, so I’m going to say our talks with Sen. Manchin will proceed directly and privately,” Klain said.

### **Keeping House Democrats on board**

Revamping the Build Back Better Act in a way that can satisfy Manchin and retain the support of the other 49 Democrats in the Senate will likely require Democratic leaders in the House to convince their members to accept a version of the legislation that is considerably narrower in scope than the measure they approved in November. But that could be a tricky proposition.

Calls from lawmakers looking to retain specific provisions have already begun. House Democratic taxwriter Tom Suozzi of New York and Democratic Reps. Josh Gottheimer and Mikie Sherrill of New Jersey released a statement January 20 in which they threatened to withhold support for a compromise package that does not include relief from the cap on the deduction for state and local taxes (SALT) enacted in 2017 as part of the Tax Cuts and Jobs Act. (The House version of the Build Back Better Act would temporarily increase the SALT cap from \$10,000 to \$80,000 for individuals.)

“We support the president’s agenda, and if there are any efforts that include a change in the tax code, then a SALT fix must be part of it. No SALT, no deal,” the statement said.

In the closely divided House, Speaker Nancy Pelosi, D-Calif., can lose no more than four Democrats on any measure that lacks Republican support. It is worth noting, though, that SALT relief is not uniformly popular among congressional Democrats and was not included in the tax title for the Senate’s version of the reconciliation measure that Finance Committee Chairman Ron Wyden released on December 11. (Wyden reportedly was working to broker a compromise on SALT, but had not announced a deal by the time Manchin declared his opposition to the underlying bill.)

[URL: https://www.finance.senate.gov/imo/media/doc/12.11.21%20Finance%20Text.pdf](https://www.finance.senate.gov/imo/media/doc/12.11.21%20Finance%20Text.pdf)

For her part, Speaker Pelosi acknowledged the political reality of a narrower reconciliation bill—plus the obstacles Democrats will face in moving follow-on legislation outside of the budget reconciliation process—during her weekly press conference on January 20 and cautioned that a compromise package must be substantial and address key Democratic priorities.

“[W]hat the president calls ‘chunks,’ . . . would hopefully be a major bill going forward, maybe more limited, but it is still significant. . . . [W]hatever you call it, we want it to be able to make a difference in transforming the workplace by honoring or by respecting the fact that there are families that have to make decisions between home and work and again, protecting the planet.”

Pelosi also told reporters she is “sure that [lawmakers] can agree upon something significant.”

— Michael DeHoff  
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## Murphy to replace Nunes on House taxwriting panel

House Ways and Means Committee ranking member Kevin Brady, R-Texas, announced January 19 that Rep. Greg Murphy, R-N.C., has been selected to fill the GOP slot on the taxwriting panel that became available when Rep. Devin Nunes, R-Calif., resigned from Congress earlier this month. (Nunes left Capitol Hill to head a new media company founded by former President Donald Trump.)

Murphy, a physician who also served four years in the North Carolina House of Representatives, came to Congress in 2019 after winning a special election to replace the late GOP Rep. Walter Jones. He currently serves on the Education and Labor Committee and the Veterans' Affairs Committee.

### **GOP leadership changes on Ways and Means subcommittees**

Also on January 19, ranking member Brady released an updated list of subcommittee assignments for GOP taxwriters in the second session of the 117th Congress—including a reshuffling of ranking members on several panels.

- **Health:** Rep. Vern Buchanan of Florida has taken Devin Nunes' former post as ranking member of the Health Subcommittee. Buchanan had been ranking member of the Trade Subcommittee.
- **Select Revenue Measures:** Rep. Mike Kelly of Pennsylvania is the now ranking member of the Select Revenue Measures Subcommittee, replacing Rep. Adrian Smith of Nebraska. (Kelly previously was Republican leader of the Oversight Subcommittee.)
- **Trade:** Adrian Smith, meanwhile, has relinquished the GOP leadership post on the Select Revenue Measures panel to assume Vern Buchanan's former spot as ranking member of the Trade Subcommittee.
- **Oversight:** Rep. Tom Rice of South Carolina is the new ranking member of the Oversight Subcommittee, replacing Pennsylvania's Mike Kelly as Kelly becomes GOP leader on the Select Revenue Measures panel. Rice has not previously held a subcommittee leadership post.
- **Worker and Family Support:** Rep. Jackie Walorski of Indiana continues as ranking member of the Worker and Family Support Subcommittee.
- **Social Security:** Rep. Tom Reed of New York remains ranking member of the Social Security Subcommittee.

A complete list of subcommittee assignments for GOP taxwriters is available on the Ways and Means Committee's website.

**URL:** <https://gop-waysandmeans.house.gov/brady-announces-117th-congress-ways-and-means-republican-member-subcommittee-assignments/>

### **Taxwriters headed to the exits post-2022**

The make-up of the full Ways and Means Committee is expected to change significantly next year as a number of members on both sides of the aisle have already signaled that they are not seeking re-election in 2022.

The most recent of these is Democratic Rep. Stephanie Murphy of Florida, who announced late last month that this will be her final term in Congress. She joins Rep. Tom Suozzi of New York, who intends to seek the Democratic nomination for governor of his home state, and Democratic Rep. Ron Kind of Wisconsin, who nixed a re-election bid last August.

Planned departures among the panel’s Republicans include ranking member Kevin Brady and Rep. Tom Reed, who announced last year that they will not seek another term in office.

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## A note on our publication schedule

The House and Senate are both scheduled to be in recess the week of January 24. Barring any unexpected developments on the tax policy front, the next issue of *Tax News & Views* will be published the week of January 31.

- Jon Traub  
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