



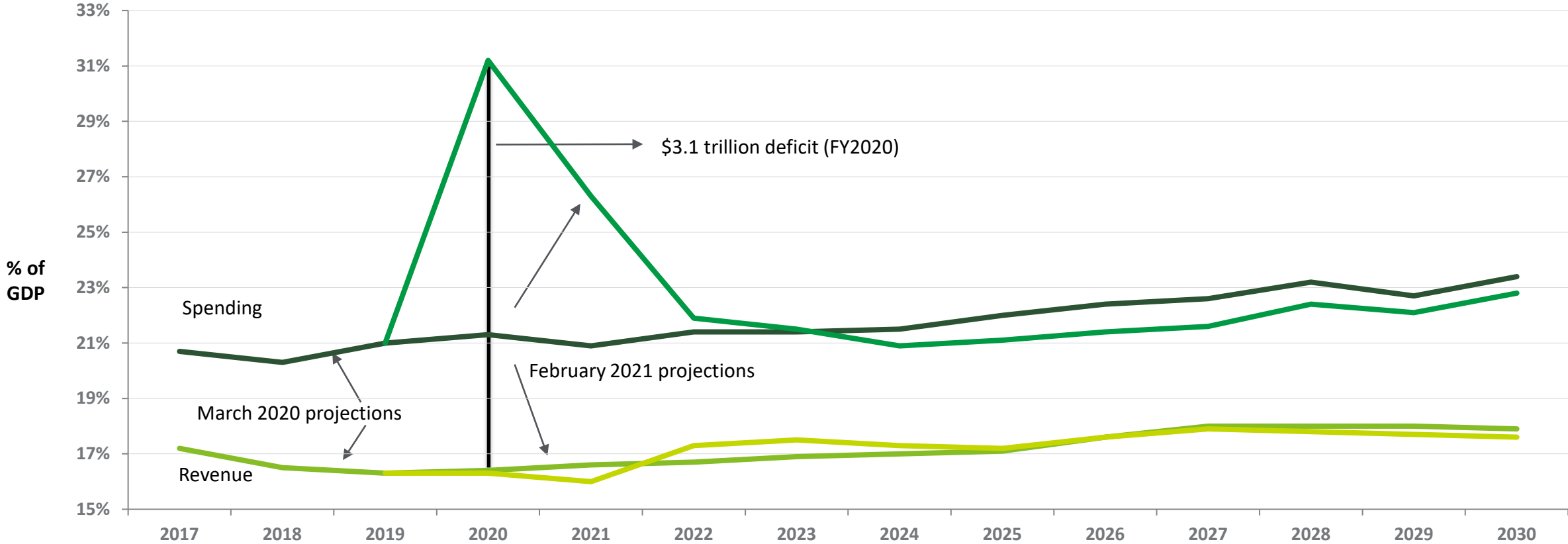
Tax Policy Update  
NCREIF

JULY 23 2021

**The fiscal picture is not a pretty one**

# Recent fiscal projections accounting for impact of COVID-19 show spike in near-term deficits

Congressional Budget Office estimates from March 2020 (pre-pandemic) and February 2021



**Note:** All figures reflect “current law” at the time of estimation (e.g., temporary TCJA policy lapses as scheduled, tax extenders remain expired after they lapse, etc.)

**Sources:** Congressional Budget Office, *Baseline Budget Projections As of March 6, 2020* (March 2020); *The Budget and Economic Outlook: 2021 to 2031* (Feb. 2021)

# Tax Policy 2021 – Mid-Year Review

# The American Rescue Plan Enacted – Three Considerations

Can Democrats stay unified when they need to come up with trillions of dollars in revenue raisers?

1

What small tax increases may fly under the radar? Are tax gap items the next “hot ticket”?

2

Internal Democratic cracks showed on a few issues (stimulus checks for non-citizens; minimum wage) What impact could this have?

3

# Revenue raisers included in President Biden's Made in America Tax Plan

## Consistent with 2020 Campaign Proposals

- Raise corporate rate to 28%
- Raise rate on GILTI to 21%, calculate on country-by-country basis, and eliminate QBAI
- Strengthen anti-inversion rules
- Repeal provisions the President says are subsidies for the fossil fuel industry; expand incentives for renewable energy
- Deny deductions associated with moving jobs offshore

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## Not Included

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- Risk fee on largest financial institutions
- Impose certain taxes on pharmaceutical industry

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## Revised in the Made in America Tax Plan

- 15% minimum tax on "book income" for "very large" corporations, taking into account certain general business and foreign tax credits



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## New in the Made in America Tax Plan

- Repeal FDII (replaced with incentives for R&D spending, potentially with expanded R&D tax credit)
- Repeal and replace BEAT
- New focus on international cooperation / OECD
- Enhanced audit focus on corporations and wealthy individuals

# Revenue raisers included in President Biden's American Families Plan

## **Consistent with 2020 Campaign Proposals**

- Raise individual income tax rate to 39.6%
- Tax capital gains at same rates as ordinary income
- Tax carried interests as ordinary income
- Repeal step in basis at death (other than \$1 million per spouse plus up to \$500,000 on the value of a principal residence)

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## Not Included in the American Families Plan

- Other changes to the estate and gift tax regime
- Repeal of Section 199A for higher income business owners
- Caps on the value of itemized deductions or restoration of the Pease limits on itemized deductions
- Imposition of FICA on wages over \$400,000

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## New in the American Families Plan

- Enhanced audit focus on corporations and wealthy individuals with resources for the IRS and a plan to collect a net of \$700 billion in unpaid taxes
- Permanently extend the excess business loss limitation, which was recently extended through 2026
- Ensure that the 3.8 percent Medicare tax on net investment income enacted as part of the Patient Protection and Affordable Care Act is applied "consistently to those making over \$400,000."

# The Green Book

## Green Book Reaction

The Green Book's proposals are generally consistent with ideas already put forward in the American Families Plan and the American Jobs Plan, including:

Five initial observations:

- 1. Tax ideas raised during the campaign but that were not in either the AFP or AJP generally did not resurface here.**
- 2. Proposals generally have prospective effective dates, with one major exception.**
- 3. None of this is binding on Congress – they will want to put their imprint on this.**
- 4. Presidential budgets are usually “Dead On Arrival” on Capitol Hill, but this one seems less dead than usual.**
- 5. Bipartisan “deal” on infrastructure – how will that shape the outlook?**

# State of Play / Process Update



# “Budget reconciliation”: A Senate filibuster side-step

How does it work?

- **Limited debate** – both the budget resolution as well as legislation moved under reconciliation cannot be filibustered in the Senate (may pass with 51 votes, or 50 votes with tie-breaking vote of Vice President)
- **First, House and Senate must agree on a budget resolution that includes the reconciliation instructions**
- **The “Byrd Rule” can set up 60-vote hurdles in the Senate, including with respect to:**
  - Provisions that have no budgetary effect or whose budget effect is “merely incidental” to the underlying policy
  - Provisions that would increase the deficit in any year beyond the period covered by the budget resolution, unless offset by other changes in the same title (*recall the expiring 2001/2003 tax cuts, and the sunset of most TCJA individual provisions after 2025*)
  - Cannot make changes to Social Security
- **Maximum of 3 reconciliation bills can be moved in one year – one each for revenues, spending, and the debt limit**
  - If a single bill implicates both revenues and spending -- e.g., a tax bill that raises rates but also adjusts refundable credit programs such as the Earned Income Tax Credit – then only two reconciliation bills could be moved that year.
    - Unless Congress adopted another budget resolution, authorizing another round of reconciliation
    - Or, unless the Congress is allowed to amend a prior budget resolution



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