

# **FICA Tax on Pay More Than \$400K: Legislative Projections and Tax Planning Dos and Don'ts**

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# Agenda

- **Overview**
- **Legislative Proposals**
- **Reasons to Make Changes Now**
- **FICA Timing for Compensation Subject to Section 3121(v)(2) – SERPs, Traditional Deferral Plans, and Bonuses**
- **409A Issues**
- **Consideration of Corporate Deductions, and Possible Legislation Increasing the Corporate Tax Rate**

# Overview

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# Potential Increases in FICA Tax on High Earners

- Part of Biden's presidential platform promoted legislation to add a 12.4% Old Age, Survivors, and Disability Insurance (OASDI) tax (split between employee and employer shares) on all employees earning more than \$400K per year (thus increasing the total FICA tax rate on this FICA-taxable income to 16.2% (of which 7.65% would be borne by the employer)).
- The SECA rate for independent contractors would also be increased.
- Many observers think that THIS Congress would never have the votes to enact such a dramatic tax increase (and might, instead, only raise the top individual rate back to 39.6%).
- However, as the Social Security system continues to approach potential bankruptcy, there are "back-up measures" pending as part of Capitol Hill legislation designed to prevent such a disaster that also increase FICA rates dramatically, as discussed below.



# Potential Increases in FICA Tax on High Earners

- It is NOT likely that any such legislation would provide a “grandfather” exemption for all nonqualified deferred compensation (NQDC) in the U.S.
- Accordingly, many employees (and employers) are monitoring NQDC plans to:
  - Ensure that “non-account balance plans” are taxed well before the final possible “resolution date” (which historically has allowed FICA taxation of these plans to be delayed until retirement);
  - Consider FICA-taxing employees on restricted stock units (RSUs) in the “retirement eligibility” year (not at ultimate payout); or
  - Consider structuring separate bonus plans for executives that would allow FICA taxes to be imposed in the “vesting year” – before payout.
- Realize that “retroactive” changes to apply FICA taxes before the legislation is enacted and effective will not work, because the Additional Medicare Tax cannot be collected retroactively from employees’ wages, per Treas. Reg. § 31.6205-1(b)(4) (and thus cannot be credited to employees as a “FICA tax payment” if the employer pays the tax on its own).

# Legislative Proposals

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# The Politics of Social Security

## **Famous Quote:**

“Social Security is the third rail of American politics. Anyone who tries to touch it gets electrocuted.”

– Kirk O’Donnell, Aide to Speaker Tip O’Neill (1981)

## **Not-So-Famous Quote:**

“If a Republican foot and a Democrat foot touch the third rail simultaneously, nothing happens.”

– Kirk O’Donnell, Aide to Speaker Tip O’Neill (1983)










# Proposals to Improve Solvency of the Social Security Trust

- President Biden campaigned on reinstating the 12.4% Social Security tax rate on all FICA-taxable (and SECA-taxable) income in excess of \$400K, with no grandfather protection for existing compensation plans.
- The White House Fact Sheet on the American Families Plan stated, “Finally, high-income workers and investors generally pay a 3.8 percent Medicare tax on their earnings, but the application is inconsistent across taxpayers due to holes in the law. The President’s tax reform would apply the taxes consistently to those making over \$400,000, ensuring that all high-income Americans pay the same Medicare taxes.”
- Biden had “borrowed” the idea from legislation pending on Capitol Hill in the last Congress, “the Social Security 2100 Act” – which had the 3.8% number in the last Congress of H.R. 860 (introduced in the House in January 2019, with 209 co-sponsors) – and also the companion Senate Bill S. 269.

# Proposals to Improve Solvency of the Social Security Trust

- Such a Social Security tax increase on wages more than \$400K has been proposed by the Social Security Administration (SSA) as one of several options:

E2.13	<p>Apply OASDI 12.4 percent payroll tax rate on earnings above \$400,000 starting in 2022, and tax all earnings once the current-law taxable maximum exceeds \$400,000. Provide benefit credit for earnings above the current-law taxable maximum that are subject to the payroll tax, using a secondary PIA formula. This secondary PIA formula involves: (1) an "AIME+" derived from annual earnings from each year after 2021 that were in excess of that year's current-law taxable maximum; and (2) a formula factor of 2 percent on this newly computed "AIME+".</p> <p><a href="#">Summary measures and graphs (PDF version)</a> </p> <p><a href="#">Detailed single year tables (PDF version)</a> </p> <p>Memoranda containing this or a similar provision:</p> <ul style="list-style-type: none"><li>• <a href="#">Larson, Blumenthal, Van Hollen September 2019</a> </li><li>• <a href="#">Larson, Blumenthal, Van Hollen January 2019</a> </li><li>• <a href="#">Larson 2017</a> </li><li>• <a href="#">Larson 2015</a> </li><li>• <a href="#">Larson 2014</a> </li></ul>
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- See [Long Range Solvency Provisions \(ssa.gov\)](https://ssa.gov)

# Current Law

- Under current law, Social Security taxes are imposed on income from up to the annually adjusted wage base (which in 2021 is \$142,800). For employees, these taxes are imposed at a rate of 12.4%, split between the employer and employee portions. Self-employed workers (including partners and directors as well as other independent contractors) pay the full 12.4% but can deduct half of these taxes.
- This legislation would reimpose Social Security taxes on all FICA-taxable (and SECA-taxable) compensation in excess of \$400K earned by any worker.
- Since FICA taxes are owed on nonqualified deferred compensation even BEFORE the compensation is paid, the rules of Internal Revenue Code (Code) section 3121(v)(2) offer many opportunities for tax planning before enactment of this possible legislation.

# Trigger Point for Enactment

- This legislation's enactment would be triggered by any announcement by the SSA that it is slipping close to insolvency.
- When the bill was introduced in 2019, the SSA was projecting that it would reach insolvency in 2035 (16 years after the bill was introduced). That was the most recent "official" projection, but no updates had been issued during the Trump administration (although this projection has been shortened by the COVID-19–relief legislation, including the delay for two years of any required payments of the employer half of Social Security taxes owed in 2020, the related optional delay of the employee share of Social Security taxes, and all the ERC and FFCRA credits claimed in 2020 and 2021 against EE-share Social Security taxes).
- More recent (unofficial) projections are that bankruptcy could happen maybe as late as 2031, but perhaps as early as 2023.

# Congressional Realities of Social Security

## SENATE

- **Democrats:** 50
- **Republicans:** 50

Vice President Kamala Harris breaks the tie resulting in Democratic control

## HOUSE

- **Democrats:** 219
- **Republicans:** 211
- Five current vacancies that likely will result in three more Democrats and two more Republicans

218 represents the majority vote if all 435 members are voting

# Key Congressional Players

## HOUSE OF REPRESENTATIVES

- Rep. Nancy Pelosi (CA), Speaker of the House
- Rep. Steny Hoyer (MD), Democratic Majority Leader
- Rep. Richard Neal (MA), Chairman, Ways and Means Committee
- Rep. John Larson (CT), Chairman, Social Security Subcommittee
- Rep. Kevin McCarthy (CA), Republican Minority Leader
- Rep. Kevin Brady (TX), Ranking Republican, Ways and Means Committee
- Rep. Tom Reed (NY), Ranking Republican, Social Security Subcommittee

## SENATE

- Sen. Charles Schumer (NY), Majority Leader
- Sen. Ron Wyden (OR), Chairman, Finance Committee
- Sen. Sherrod Brown (OH), Chairman of Social Security Subcommittee
- Sen. Mitch McConnell (KY), Minority Leader
- Sen. Michael Crapo (ID), Ranking Republican, Finance Committee
- Sen. Todd Young (IN), Ranking Republican, Social Security Subcommittee

# Biden Administration

- Part of Biden's "Build Back Better" platform promotes legislation to add a 12.4% OASDI tax (split between employee and employer shares) on all employees earning more than \$400K (thus increasing the total FICA tax rate on this FICA-taxable income to 16.2% (of which 7.65% would be borne by the employer).
- Although not specifically mentioned, the Biden plan presumably would also increase the SECA rate for independent contractors.
- According to the Committee for a Responsible Budget, the Biden administration's plans for Social Security could cost \$1.15 trillion over 10 years.



# Tax Increases – What's on the Table



**Increase top individual rate to 39.6%**



**Increase corporate rate from 21% to 28%**



**Wealth tax – limited to fortunes of more than \$50 million**



**Corporate alternative minimum tax assessed against corporations reporting profits of more than \$100 million**



**Increased tax enforcement**

# Social Security 2100 Act

- This bill increases various OASDI benefits and related taxes.
- The bill increases the primary insurance amount (e.g., the amount a Social Security beneficiary receives if the beneficiary begins receiving benefits at normal retirement age) by increasing the percentage of the beneficiary's average indexed monthly earnings used to calculate the amount.
- The Bureau of Labor Statistics shall publish a Consumer Price Index for Elderly Consumers, which the SSA shall use to calculate cost-of-living adjustments to benefits. Currently, the SSA uses a price index for wage earners to make such adjustments.
- The bill increases the minimum benefit amount for individuals who worked for more than 10 years by creating an alternative minimum benefit. A qualifying beneficiary shall receive that alternative minimum if it is higher than the standard calculated benefit amount.

# Social Security 2100 Act

- The bill increases the income threshold that a beneficiary must reach before Social Security benefits are taxable.
- Increased benefits from this bill will not count as income when determining an individual's eligibility or benefit amounts for (1) Medicaid, (2) the Children's Health Insurance Program, or (3) the Supplemental Security Income program.
- The bill increases rates for the payroll and self-employment taxes that fund OASDI (gradually increasing the current 12.4% to 14.8% by adding 0.1 percentage points to the rate every year for 24 years.
- The most dramatic change is that all compensation above \$400K (as measured by the FICA wage base) will be subjected to Social Security taxes.
- An identical rule applies to SECA taxes on partners, directors and self-employed persons on compensation higher than \$400K.
- The tax piece of the bill itself is section 201 on page 11 at <https://www.congress.gov/116/bills/hr860/BILLS-116hr860ih.pdf>. There was a hearing held in July 2019.

# Revenue Estimates

- There has been no particular revenue estimate for this proposed dramatic increase in OASDI taxes.
- As a practical matter, it would be extremely difficult for the congressional revenue estimators to make any realistic projection of revenues, particularly with respect to backlogs of nonqualified deferred compensation and equity compensation, because the IRS has never collected any information about:
  - Amounts of unpaid deferred compensation subject to 3121(v)(2) (except amounts attributable to pre-1984 completely grandfathered compensation and pre-1994 effectively grandfathered compensation) that have not yet been subjected to FICA tax;
  - Amounts of outstanding but unpaid equity compensation (substantial portions of which are exempt from Code section 409A);
  - Amounts of nonqualified deferred compensation subject to Code section 409A (i.e., amounts that vested after 2004 and remain unpaid). Reporting of these amounts was required under the 409A statute enacted in 2004, but the IRS never issued regulations requiring such reporting and thus has no idea about the amounts of deferred compensation subject to Section 409A, much less about compensation exempted from Section 409A.
  - Amounts earned by individual workers who in any year earn more than \$400K of Social Security taxable compensation.

# Reasons to Make Changes Now

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# Likely Inability to Make Retroactive Changes: Background

- Overview of Code section 3121(v)(2) special-timing rules (generally imposing FICA taxes BEFORE deferred compensation is paid) – but often FICA is delayed as late as possible.
  - Employers are permitted, under “nonaccount balance plans,” to pick the year of FICA taxation between the year of “vesting” and the “resolution-date” year.
  - Employers are permitted, even under “account balance plans,” to use either the vesting year or the following year (under the “lag method”)
  - Employers with “short-term deferral plans” (including RSUs and bonus plans) elect to pay tax at payout, not at vesting;
  - Some employers think, under Davidson v. Henkel, that they can ALWAYS elect to delay FICA until the compensation is paid
- **To avoid FICA increases on pay in excess of \$400K, the FICA taxes would have to be accelerated to preenactment years, and the IRS does NOT allow accelerations retroactively, where the employer has consciously decided NOT to pay FICA earlier, because the payment delay was not a “mistake.”**

# Likely Inability to Make Retroactive Changes: Blocker on Retroactive Corrections of Ad Med Tax

- Treas. Reg. § 1.6205-1 permits corrections of previous-year errors for FICA taxes where the employer has made a “mistake” – but, again, the IRS does not believe that an intentional delay of the timing of imposition of FICA taxes on NQDC was a “mistake.”
- In order to ensure that employers will NOT be allowed to make retroactive corrections of FICA on NQDC, the Additional Medicare Tax was treated as an “income tax” – and employers are prohibited from making retroactive corrections to Additional Medicare Taxes (Ad Med Tax) and reflecting such tax changes on employees’ Forms W-2.
- Thus, while an employer might TRY to “correct” the FICA for a prior year for any employee earning more than \$400K, it cannot make that correction and reflect it on the employee’s Form W-2. Thus, no employee’s Form W-2 could reflect that FICA taxes were “withheld and paid” in any prior year, because retroactive withholding of Ad Med Tax is prohibited.
- Stated more simply, it is procedurally impossible to “fix” an underpayment of FICA in a prior year in a way that can be reflected on the Form W-2 as a “full payment of FICA on NQDC” in a prior year.
- For this reason, it is critical to make planning decisions, and withhold FICA, on various kinds of NQDC, in calendar years BEFORE any legislation is enacted, increasing FICA on pay in excess of \$400K.



# Planning Opportunities

1

Many employers have been taking steps since as early as 2020 to impose FICA taxes (which, for most employees, typically involve the imposition of only Medicare and Additional Medicare Taxes) on employees' deferred compensation (including bonus and equity compensation plans).

2

Once the compensation payable under these plans has been subjected to FICA taxes, that previously FICA-taxed compensation would not be subjected to FICA taxes again.

3

### Deferred compensation most directly impacted:

- Defined contribution NQDC plans (salary/bonus deferrals)
- Defined benefit plans (SERPs and "excess plans")
- RSUs
- Performance-based Stock Units (PSUs)
- Annual Bonus plans (without deferrals)
- Multiyear bonus plans
- Noncash fringe benefits (where delay of tax is allowed under Ann. 85-113)

# Planning Opportunities for Employers and Employees

- Identify all deferred compensation “grandfathered” from the application of Code section 3121(v)(2) (including compensation earned before 1984, and also compensation earned before 1994 if the employee’s other income at least equaled the wage base (\$51.3K in 1990, \$125K in 1991, \$130,200 in 1992, and \$135K in 1993) (which is exempt from FICA at payout)
- Arrange to impose FICA taxes on all deferred compensation that has not previously been subjected to FICA taxes in the year BEFORE this legislation is enacted (including standard NQDC plans, plus bonuses, RSUs, and PSUs) (as discussed in examples below)
- Set up additional “nonaccount balance plans” with immediate vesting
- Pay bonuses early, with clawbacks if certain conditions are not met
- Check plan agreement language to provide employer discretion to accelerate FICA (and even payments) without violating Section 409A
- Arrange for payments to be made over many years, at a rate so that total FICA-taxable compensation is less than \$400K per year (while also complying with the payment delay rules of Code section 409A), though this option will not work for large deferred compensation accounts
- Ensure that any postdeath compensation will be paid no sooner than the calendar year after death (when an exemption from FICA taxes applies) – a change from the common current payment date of “shortly after death”

# Planning Opportunities for Independent Contractors

- For the self-employed, whose compensation is not subject to rules such as the special-timing rules of Code section 3121(v)(2), there's no way to pay SECA early other than to pull in the income early.
- However, directors' fees earned between 1988 and 1990 that were deferred were technically subject to SECA taxes during those years, although the FICA/SECA wage base in those years was capped at \$45K, \$48K, and \$51.3K respectively (see Code section 1402(a)(14), added by P.L. 100-647, § 3043(c)(1), and repealed by P.L. 101-508, § 5123(a)(3)).
- It may be possible for at least some self-employed workers to receive the compensation after stopping services (e.g., for partners who have withdrawn all capital contributions, and otherwise meet the rules of Code section 1402(a)(10), or have died, per section 1402(f)).

# **FICA Timing for Compensation Subject to Section 3121(v)(2) – SERPs, Traditional Deferral Plans, and Bonuses**

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# Difference Between “Account Balance Plans” and “Nonaccount Balance Plans”

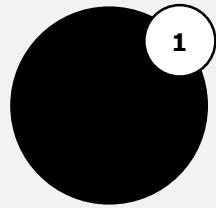
- Treas. Reg. § 31.3121(v)(2)-1(c)(ii) defines an “account balance plan” as one in which “a principal amount ... is credited to an individual account, and the benefits payable to the employee are based solely on the balance credited to the individual account.”
- Treas. Reg. § 31.3121(v)(2)-1(c)(2)(i) defines a “nonaccount balance plan” as being a plan “that is not an account balance plan.”
- Thus, technically, even a salary or bonus-deferral plan might be converted to a “nonaccount balance plan,” so long as the future amount payable is not “based solely on the balance credited to the individual account.”
- That change in characterization would permit the plan to qualify for payment of FICA at a point after the original vesting date.

# Planning Opportunities for “Nonaccount Balance Plans”

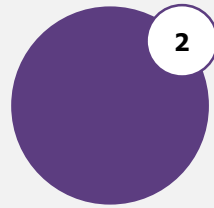
- Since 1994, the regulations under Code section 3121(v)(2) have provided for many alternative points of taxation of “nonaccount balance plans”:
  - Vesting date
  - Any time after the vesting date, in the same calendar year (per the “rule of administrative convenience” in Treas. Reg. § 31.3121(v)(2)-1(e)(5))
  - Q1 of calendar year after vesting (per the “lag method” of Treas. Reg. § 31.3121(v)(2)-1(f)(3) and (4))
  - “Resolution Date” Year (as defined in Treas. Reg. § 31.3121(v)(2)-1(e)(4)(i) and (ii))
  - Q1 of calendar year after Resolution Date Year (per the “lag method”)
  - Any year between any of the dates above – subject to “true-up” at resolution date)
  - Year of payment, per Davidson v. Henkel (discussed below)

# Planning Opportunities for “Account Balance Plans”

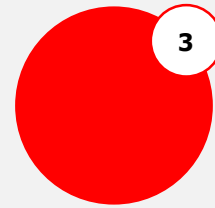
**For an account balance plan, FICA taxation is imposed:**



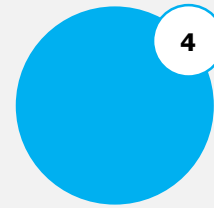
Year of vesting (lapse of substantial risk of forfeiture)



Q1 of calendar year after vesting (per the “lag method”)



Payment Year – per Davidson v. Henkel



POSSIBLY a year after vesting, but before payment, if the plan is “converted” to a “nonaccount balance plan.”



# Davidson v. Henkel, 2015 B.L. 1385 (E.D. Mich. 2015)

- In explaining the “non-duplication rule” incorporated in the 3121(v)(2) statute (ensuring that FICA taxes would not be paid again after being imposed at the point of “vesting”), Treas. Reg. § 31.3121(v)(2)-1(d)(1)(ii) states that, “for example, ... if the employer fails [to apply section 3121(v)(2)], then the amount deferred and the income attributable to that amount deferred must be included as wages when actually or constructively paid.” That sentence implies that it IS ELECTIVE by the employer to apply or not to apply section 3121(v)(2) – though there’s nothing in the preambles of the twice-proposed and once-finalized regulations that specifically so state.
- The IRS has taken the position that section 3121(v)(2) is not “elective” by the employer – but, instead, that the IRS can impose the taxes retroactively if it chooses to do so.

# Davidson v. Henkel, 2015 B.L. 1385 (E.D. Mich. 2015)

- In most instances, the IRS would NOT choose to impose FICA retroactively, either because (a) the year has closed under the statute of limitations, (b) the account value has increased substantially, or (c) the employee is subject to “full FICA” on the payments, as opposed to only Medicare taxes, in the vesting year.
- Importantly, too, in 2015, in Davidson v. Henkel – a case involving a CONTRACT DISPUTE between employees and their employer – a Michigan district court concluded that the Treasury Regulations (cited above) indicate that the imposition of FICA taxes under section 3121(v)(2) is “elective by the employer” – i.e., that the employer could wait until the time of payment of NQDC if it chooses.
- This case thus ensures that the IRS cannot impose tax penalties under Code section 6662 on employers that choose to ignore these FICA-tax timing rules – because it provides “substantial authority” protection against penalties. This minimizes the IRS incentive to make retroactive changes.
- This case may also provide protection against penalties for not collecting employer-share FICA taxes under Code section 6656. (And note that there are no section 6656 penalties applicable for failure to collect employee-share FICA taxes, per Rev. Rul. 75-191.)

# Planning Opportunities for Annual Bonuses

- The “short-term deferral exception” generally permits employers to FICA-tax all “short-term deferrals” (paid before March 15 of the year after vesting) at the point of payment – so long as all employees in the plan are treated the same.
- But, for any highly-paid employees in bonus plans, employers have a major planning incentive to accelerate the FICA for the highly paid employees.
- The consistency rule could still be met if all the other employees in the plan (earning less than \$400K) have FICA taxes imposed under the “lag method” – which means that for those employees, bonuses could be taxed when bonuses are paid under the lag method, which is not subject to a consistency rule. For high-paid employees, bonuses would be taxed on vesting.

# 409A Issues

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# Code 409A Considerations

- Accelerating payment of nonqualified deferred compensation generally triggers tax, 20% penalty tax, and additional penalties under Code Section 409A.
- Acceleration is permitted in some cases:
  - Short-term deferrals – i.e., payable not later than March 15 after the vesting year – are exempt from section 409A and may be accelerated
    - **Example:** A 2020 bonus payable by March 15, 2021 can be accelerated to December 2020
  - Even if compensation is not a short-term deferral, payment can be accelerated 30 days, provided that the employee cannot choose the taxable year of payment
    - **Example:** An amount payable “in 2021” can be paid in December 2020. Mandatory acceleration is needed to prevent prohibited employee elections and constructive receipt.
- Grandfathered Plans: Acceleration might be permitted – but check that acceleration doesn’t jeopardize 409A-grandfathered protection!

# Accelerating Vesting Without Accelerating Payment: 409A Issues

Accelerating vesting of NQDC—but not payment—allows accelerated FICA tax payment without triggering 409A penalties

But accelerated payments to pay withholding taxes cannot be elective: Employer must require them for all plan participants, or none

Employees can be asked to write checks to cover FICA (in lieu of mandatory acceleration) but participation is less likely, leading to potentially higher FICA tax for employer as well as the employees

Section 409A allows accelerated payments necessary to pay FICA tax withholding and related income tax withholding

Early payment of withholding taxes may disqualify payments from the “Federal Blocker” statute that prevents the state where the compensation was earned from taxing certain annuity payments

Davidson v. Henkel: Special-timing rule is elective; the employer may cause FICA tax payments when compensation either vests or is paid (subject to uniformity rule)

# Constructive Receipt of Income Trap

- Income is constructively received when made available for payment without substantial limitation or restriction
- Giving employees election to accelerate income may trigger constructive receipt, even when section 409A is not an obstacle
- For example, consider a bonus earned and vested in 2020 and payable by March 15, 2021 that is exempt from section 409A as a short-term deferral
- If employees can elect payment in December 2020, the bonus is constructively received in 2020 by all vested employees. Under the statute, income tax and additional Medicare tax withheld from any 2021 bonus payments **cannot** be credited to employees' 2020 income tax and Additional Medicare Tax liabilities



# **Consideration of Corporate Deductions, and Possible Legislation Increasing the Corporate Tax Rate**

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# Other Timing Issues: Speeding Up Wage Recognition While Slowing Down for Corporate Income Tax Deduction Purposes

- **Code section 461(h) Economic Performance & the All-Events Test**
- For an expense to be deductible under Code section 461(h), all events have to have occurred that establish:
  1. the fact of the liability,
  2. that the amount of the liability can be determined with reasonable accuracy, and
  3. that economic performance has occurred with respect to the liability.
- If these three elements are satisfied, a taxpayer can deduct the expense in the year of performance as long as payment for the expense is made within 2½ months of the end the taxpayer's tax year.

## **Other Timing Issues: Speeding Up Wage Recognition While Slowing Down for Corporate Income Tax Deduction Purposes**

- **Legislative update with regard to Biden proposal to increase corporate income tax rate from 21% to 28%**

# Congressional “Shoots and Ladders”: What Makes Passage Easier/Harder

- **Budget Reconciliation**

- Simple majority vote (negates the filibuster “requirement” of 60 votes)
- Byrd Rule complications

- **Regular Order**

- Filibuster in play
- No Byrd Rule restrictions

- **Eliminate/Reform Filibuster**

# Coronavirus COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

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To help keep you on top of developments as they unfold, we also have launched a resource page on our website at [www.morganlewis.com/topics/coronavirus-covid-19](http://www.morganlewis.com/topics/coronavirus-covid-19)

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to [subscribe](#) using the purple "Stay Up to Date" button.



# Biography



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**Rosina** counsels clients on the Employee Retirement Income Security Act (ERISA), tax, and securities law aspects of their employee benefits and executive compensation plans. Her practice ranges from sophisticated defined benefit pension plan matters to complex executive compensation issues. Rosina is a nationally known author on Internal Revenue Code Section 409A compliance, and numerous companies engage her specifically to provide counsel in this area. She has drafted and amended multiple equity, deferred compensation, and incentive pay plans for compliance with Code Sections 409A, 83, 162(m), 457A, and 280G, and she advises clients on the many tax, fiduciary, and governance issues arising from these plans.

# Biography



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**Handy** helps US and multinational enterprises minimize corporate payroll taxes and maximize benefits-related tax deductions. She focuses her practice on the tax and information reporting treatment of employee and independent contractor benefits outside qualified retirement plans, including stock options and other stock-based compensation; executive income deferrals; golden parachutes; and fringe benefits that range from health and life insurance, to employee loans, cars, planes, and prizes.

# Biography



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With experience gained as a trial lawyer in the Tax Division of the US Department of Justice (DOJ), **Steve** advises clients on tax controversies and litigation matters involving complex tax issues. Before joining Morgan Lewis and working for the DOJ, Steven served as a law clerk to Judge Tucker L. Melancon of the US District Court for the Western District of Louisiana. He holds a Masters in Tax Law (LL.M.) from Georgetown Law School.



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**Tim** directs all activities, including the strategic and operational functions, of the Washington Strategic Government Relations and Counseling Practice. He monitors legislative and political trends and developments, as well as managing lobbying registration and reporting, visits to government officials, and relationships with trade associations. In addition, Morgan Lewis's clients seek his advice on government relations and public policy issues.

# Biography



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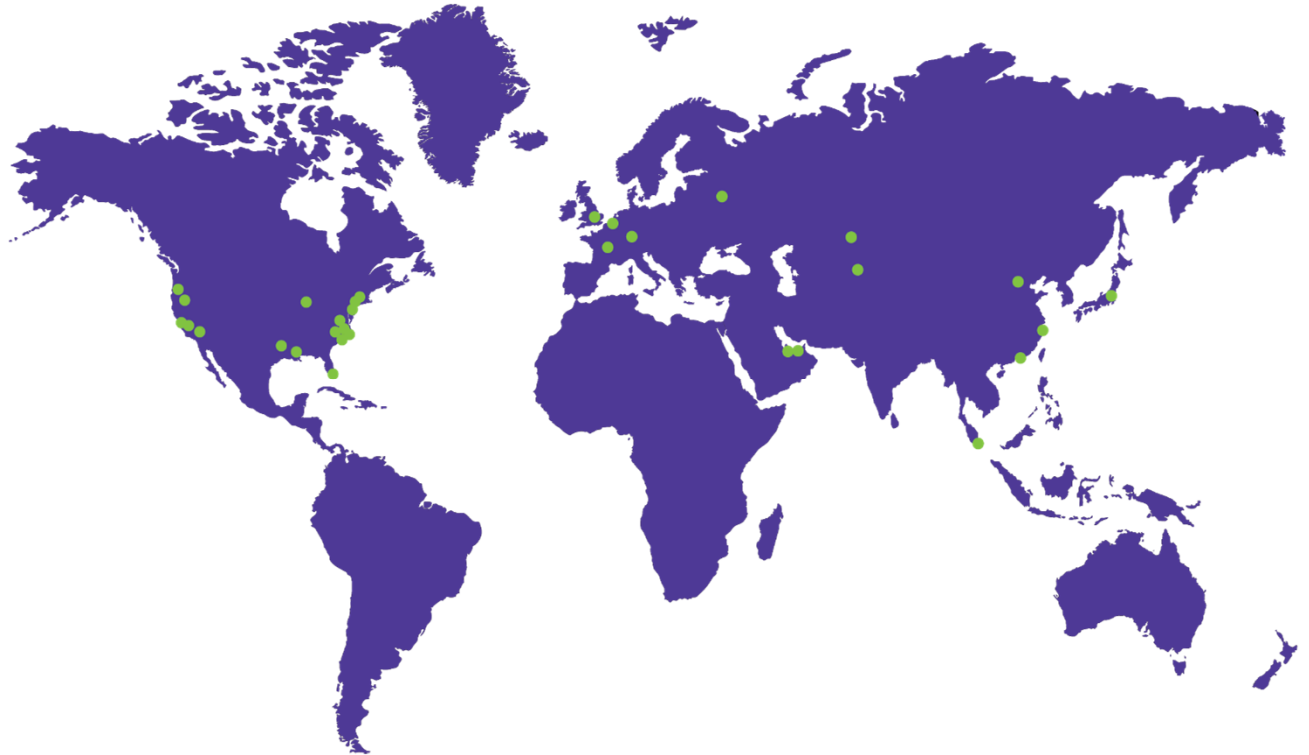
**Mims** advises on complex executive compensation and employee benefit plan matters, including the design, negotiation, and implementation of executive compensation, equity compensation, and tax-qualified retirement plans and shareholder approval of equity plans. She counsels large publicly and privately owned businesses, including Fortune 500 enterprises, technology companies, and universities on a range of legal issues related to executive compensation governance, and employee benefit plans. Mims also represents executives in the negotiation of employment agreements and equity compensation, including in connection with transactions. She advises on benefits and executive compensation issues that arise during major corporate transactions, including mergers and acquisitions, sales, IPOs, and spinoffs.

## Our Global Reach

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