

Looking Ahead to the Biden Administration – What the Commercial Real Estate Community Needs to Know

Article
01.20.2021

As the 46th president of the United States, Joe Biden has set some ambitious policy goals that will have far-reaching effects on the commercial real estate market. However, until recently, most experts assumed his platform would be tempered by a Republican-controlled Senate. With the Democratic victories in Georgia resulting in Democratic majorities in both chambers of Congress, the Biden administration may have the ability to rapidly change policies that will have a critical effect on commercial real estate transactions, including the following:

1031 Exchange Program

The Biden administration may eliminate the 1031 Exchange Program for real estate investors with incomes above \$400,000. The 1031 Exchange Program allows investors to defer capital gains taxes due upon the sale of an investment property by reinvesting the proceeds into another property.

Biden's policy proposal, entitled "The Biden Plan for Mobilizing American Talent and Heart to Create a 21st Century Caregiving and Education Workforce," states that it will be paid for by "rolling back unproductive and unequal tax breaks for real estate investors with incomes over \$400,000." Further, campaign officials have stated that they will take aim at "so-called like kind exchanges," leading experts to believe the 1031 Exchange Program is on the chopping block for high-income earners.

The elimination of this program for high-income investors could cause them to hold on to properties for longer than in the past and may have the effect of decreasing supply and demand.

Environmental Regulations

The Biden administration's environmental policy will be a vast contrast from the Trump administration which had rolled back 84 environmental policies over the past four years. The Biden administration has committed to building modern sustainable infrastructure and equitable clean energy.

Related Attorneys

[Joaquin E. Martinez](#)

Related Expertise

[Commercial Leasing](#)

[Real Estate](#)

[Real Estate Development](#)

Further, Biden has pledged to reduce the carbon footprint of U.S. buildings by 50% by 2035. The Department of Commerce will be introducing new national building energy performance standards and strengthening the DOE's rules for building appliances and equipment.

In many cases, investors will be able to offset the costs by taking advantage of programs such as the Property Assessed Clean Energy (PACE) loans, renewable energy purchasing incentives, and other tax credits likely to be rolled out.

Additional Spending

On the heels of the Consolidated Appropriations Act, 2021 (the "Act") which was passed in December and ushered in a second-round of PPP loans, it is likely that Congress will pass another stimulus package in the first few months of the Biden presidency.

With Democratic control in both the House and the Senate, this next package will be significant and could include large stimulus checks, additional PPP loans, additional increased unemployment insurance, and some student loan forgiveness. In the short term, this stimulus will likely stabilize and even increase retail demand which should have a positive effect on the commercial real estate market.

Additionally, the Biden administration has pledged \$5.4 trillion in additional spending over the next ten years. This will include expanded health insurance coverage which could drive demand for additional medical space and spur the conversion of some retail space into medical facilities.

Lastly, Biden has pledged to spend \$1.6 trillion on additional infrastructure and research and development. This additional spending could spur new demand for industrial real estate.

Opportunity Zones Program

The opportunity zones program, which the IRS recently extended COVID-19 relief, allows investors to channel capital gains generated from the sale of assets into qualified funds that make long-term investments into designated underserved communities. While the program is aimed at providing financial incentives for investment into economically disadvantaged areas, the Biden campaign has criticized the program for allowing investors to favor lucrative projects like high-end apartments over more community-minded investments like affordable housing.

In response, Biden has proposed implementing new policies which would require investors to provide detailed information about their opportunity zone investments, including the project's impact on poverty rates, housing affordability, and job creation. Further, Biden has proposed increased standards to ensure that the tax breaks are only awarded to projects that clearly yield economic, social and environmental advantages. This could limit investors abilities to utilize this program.

However, the Biden administration has stated that it will provide additional incentives for investors to work with non-profit or community-oriented organizations to produce a "community benefit plan" for each investment.