

Biden Proposal Calls for Elimination of 1031 Exchanges

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With the presidential election just three weeks away and with national polls indicating a large lead for Democratic nominee Joseph Biden, the alternative investment and real estate industries are increasingly worried about Biden's proposal to eliminate Section 1031 of the Internal Revenue Code.

Since 1921, investors have been permitted to defer paying capital gains taxes on investment property sales if they reinvest the proceeds into a similar investment property within a specified time frame. After an investment property is sold, investors typically have 45 days to identify the replacement property and 180 days to complete a transaction.

Biden's policy proposal, dubbed The Biden Plan for Mobilizing American Talent and Heart to Create a 21st Century Caregiving and Education Workforce, could eliminate 1031 like-kind exchanges for high earning real estate



investors.

According to the Biden campaign, “[The plan](#) will cost \$775 billion over 10 years and will be paid for by rolling back unproductive and unequal tax breaks for real estate investors with incomes over \$400,000 and taking steps to increase tax compliance for high-income earners.”

Although 1031 exchanges are not mentioned by name in the plan, [Bloomberg reported](#), citing a senior Biden campaign official, that “a Biden administration would take aim at so-called like-kind exchanges, which allow investors to defer paying taxes on the sale of real estate if the capital gains are reinvested in another property. The official also said they would prevent investors from using real-estate losses to lower their income tax bills.”

The Tax and Economic Impacts of Section 1031 Like-Kind Exchanges in Real Estate, a recent study sponsored by a coalition of advocacy groups led by the Real Estate Research Consortium, which includes ADISA and the IPA, both trade groups representing the alternative and direct investment industry, concludes that eliminating 1031 exchanges would disrupt many local property markets, harm both tenants and owners, and small investors.

The study, which was conducted by David Ling Ph.D., a professor at the University of Florida, and Milena Petrova Ph.D., an associate professor at Syracuse University, claims that eliminating 1031 exchanges would likely lead to a decrease in commercial real estate prices in many markets, less reinvestment in commercial and residential real estate, a greater use of leverage to finance acquisitions, and an increase in investment holding periods that would result in a decrease in market liquidity and a slowdown in related industries.

As part of the study, the authors analyzed CoStar data from approximately 816,000 property transactions that took place in 880 core-based statistical areas from January 1, 2010 until June 30, 2020, with a median price of \$1.1 million and a total transaction volume of \$3.4 trillion.

The authors concluded that the share of 1031 exchanges likely ranges from 10 to 20 percent of all commercial real estate transactions over the sample period.

The study also found that the median sale price of a property involved in a 1031 exchange in 2018 and 2019 equaled approximately \$500,000.

Securitized 1031 exchange programs are also structured as securities and sold through the broker-dealer community, with the vast majority structured as Delaware statutory trust offerings.

According to Mountain Dell Consulting, the securitized 1031 market raised \$1.05 billion and \$410 million during the first and second quarters of 2020, respectively.

The DI Wire will be hosting a webinar, *Can 1031 Exchanges Escape the Chopping Block?*, on October 21st with four industry experts to discuss Biden’s proposal, the history of 1031 exchanges, and what their elimination would mean for the broader economy. Speakers include:



Keith Lampi, president, director and chief operating officer of Inland Private Capital Corp.

Louis Rogers founder and chief executive officer of Capital Square

Tony Chereso, president and CEO of the Investment Program Association (IPA)

John Harrison, executive director of the Alternative & Direct Investment Securities Association (ADISA)

Date: October 21, 2020

Time: 1 p.m. PT

[Please click here to register for Can 1031 Exchanges Escape the Chopping Block?](#)

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