



The American Families Plan Taxes Billionaires and Protects Family Farms and Businesses

By Nick Buffie and Bob Lord August 30, 2021

In recent months, reporting by ProPublica confirmed that some of the wealthiest billionaires in the United States are paying virtually no income tax on the incredible gains in their fortunes.¹ Worse, a massive loophole in the tax code allows these billionaires and other wealthy Americans to escape income tax on their gains for their entire lifetimes—even as regular Americans pay income tax on every paycheck.

To pay for the transformative investments in his Build Back Better agenda, President Joe Biden has proposed tax reforms to close a capital gains loophole favoring the wealthiest Americans. This change is the most important way that Biden's plan combats the tax code's preferential treatment of income from wealth over income from work.

Under the American Families Plan (AFP), only a small fraction of Americans—those with very large untaxed gains—would be affected, mainly because the plan exempts the first \$1 million of untaxed gains per person.² And while critics of the president's plan have argued that it would harm family farms and businesses, these claims are unfounded. As this issue brief explains, many of these claims are based on flawed studies, including some that do not even analyze the actual Biden proposal.

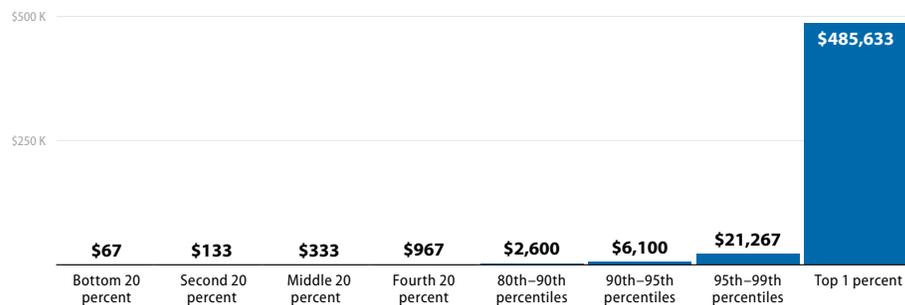
The fact is that under the AFP, the vast majority of Americans—including family farmers and small-business owners—would be exempt from new taxes, since the proposal is targeted at those with large untaxed gains. Moreover, the proposal includes special protections for owners of family farms and businesses who plan to keep their enterprises in the family. Because of these protections, critics' harshest claim—that the Biden plan would force families to sell their farms and businesses, thereby preventing transfers from one generation to the next—is simply not true.

The AFP closes a loophole that allows huge fortunes to permanently escape income tax

To support vital public investments, President Biden’s plan would raise \$3.6 trillion in revenue from high-income Americans and corporations over the next decade, including nearly \$350 billion from reforming the taxation of capital gains.³ Capital gains are the growth in the value of assets between when they are bought and when they are sold. Because of the extreme concentration of wealth in the United States, capital gains accrue overwhelmingly to the very rich. According to data from the Congressional Budget Office, households in the top 1 percent of the income distribution collect nearly \$486,000 per year on average in realized capital gains; those in the bottom 20 percent make just \$67.⁴ Central to President Biden’s tax reform is his proposal to repeal the stepped-up basis loophole—which shields these types of gains from income tax—while protecting the savings of ordinary Americans.

FIGURE 1
Capital gains go overwhelmingly to the top

Annual capital gains per household, ranked by income, 2016–2018



Note: Households are ranked according to their income before taxes and transfers, which includes market income, Medicare coverage, and payments from Social Security, unemployment insurance, and workers’ compensation; it excludes taxes and means-tested transfers. Values are expressed in constant 2018 dollars and are unweighted across years. The Congressional Budget Office rounds all annual income values to the nearest hundred dollars.

Source: Congressional Budget Office, “The Distribution of Household Income, 2018” (Washington: 2021), available at <https://www.cbo.gov/publication/57061>.

Stepped-up basis is one of multiple ways that capital gains receive favorable tax treatment. Under the existing tax code, gains on assets are generally not taxed until they are sold. If a wealthy person buys stock for \$1 million and it rises in value to \$11 million, they do not owe any tax as long as they hold the asset—even though they have become \$10 million wealthier.⁵ If the person sells the asset, they would realize a \$10 million gain and include that amount in their taxable income. Assuming the person has held the asset for more than one year, the gain would be taxed at the rates for long-term capital gains, which are significantly lower than those for other forms of income.⁶ Though the asset value grew over years, the tax is deferred until sale and is subject to much lower rates when it is taxed. By contrast, income derived from labor—such as wages—is generally taxed as it is earned and is subject to ordinary rates.

Moreover, stepped-up basis allows gains on assets to permanently escape income tax if the owner never sells the asset during their lifetime. If an individual holds an asset until their death, the gain is simply erased at that time. No one—neither the decedent nor their heirs—pays any income tax on the gain accrued during the decedent’s life.

As the ProPublica reporting illustrates, the wealthiest billionaires in the country pay hardly any income tax from year to year because they often sell little to none of their stock holdings.⁷ This means that some of the largest fortunes in human history will permanently escape income tax if Congress fails to change the revenue code before these billionaires pass their fortunes to their heirs.⁸

Biden’s tax reforms only affect a tiny share of Americans

The AFP does not repeal the stepped-up basis loophole entirely. Under the plan, up to \$1 million in untaxed gains per person—\$2 million per couple—would still be exempt from taxation. This would come on top of other capital gains carve-outs, including the exemption of \$250,000 of gain on home sales—\$500,000 for couples—and the exclusion of sales of qualified small-business stock.⁹

Unsurprisingly, very few people would be affected by these tax hikes. Robert McClelland of the Tax Policy Center estimates that a miniscule 3 percent of households have unrealized capital gains greater than \$1 million per person.¹⁰

Above the exemption levels, President Biden’s plan would repeal stepped-up basis by counting gifts and bequests of appreciated assets as realization events, requiring the original owner to include the appreciation of the asset in their taxable income. In the case of a bequest, this would fall on a decedent’s final income tax return.¹¹ Taxes on liquid assets such as stocks would be due that year, but taxes on nonliquid assets such as farms and businesses could be paid over 15 years.¹²

Moreover, the AFP allows heirs of family-owned farms and businesses to defer taxes indefinitely so long as the farms or businesses continue to be owned and operated by members of the family. Taxes are only owed on the original owner’s gain when the enterprise is sold or is no longer operated by the family.¹³ For this reason, no one inheriting and operating a family farm or business would be forced to sell it for the purpose of paying new taxes under the Biden plan.¹⁴

Critics of the AFP ignore its specific protections for family farms and businesses

President Biden’s proposals to tax the rich are overwhelmingly popular.¹⁵ Consequently, the president’s critics have been hesitant to attack his plan directly. For example, a recent CNBC profile of the business lobbying group America’s Job Creators for a Strong Recovery (ACJSR) noted the following:

*The coalition [ACJSR] aims to turn the narrative away from a debate about taxing the rich and the biggest corporations to pay for roads and bridges. The organizers themselves acknowledge that that rhetorical battleground leans strongly in Democrats’ favor in public opinion polls.*¹⁶

ACJSR has instead mischaracterized President Biden’s plan as a tax hike on families. Eric Hoplin, one of the group’s leaders, claimed that the Biden proposal would “enact record high taxes on America’s individually and family-owned businesses,” a phrase ACJSR has reiterated in multiple outlets.¹⁷

Other groups have similarly accused the AFP of harming family farmers.¹⁸ An article in the Northern Ag Network paraphrased Sen. Steve Daines (R-MT) as saying that the president’s plan would “destroy the generational handoff of farms and ranches.”¹⁹ Daines also said that “[t]he only way Montana farmers and ranchers could get through this, would be to sell off part or even all of the family farm or ranch.”²⁰ Daines’ quote implies that income tax would be due on family-owned farms or ranches when they are handed down to another generation. But that is not true, for two reasons. First, most family farm and ranch owners would fall well under the exemption thresholds in the AFP. And second, even those with more than \$2 million of gain will be able to defer their income taxes indefinitely so long as their farm or business continues to be owned and operated by members of their family.²¹

Critics of the AFP cite misleading and flawed studies

To make these tenuous assertions appear valid, President Biden’s critics have cited two studies: one from the Agricultural and Food Policy Center (AFPC) at Texas A&M University and another from the accounting firm EY, formerly known as Ernst & Young.²² Both studies dramatically overstate the impact on family farmers and business owners from repealing stepped-up basis, and neither directly examines the Biden plan. Nonetheless, the studies have gained attention because of the novelty of their conclusions, which greatly exceeds the strength of their evidence.

The AFPC study

On July 21, 2021, Sen. John Boozman (R-AR) claimed on the Senate floor that President Biden’s plan would “crush rural America.”²³ He highlighted a study that Republicans on the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture had requested from the AFPC.²⁴ Boozman asserted that if President Biden’s plan were implemented, 92 of the 94 “representative farms” selected by the AFPC “would be impacted with an average additional tax liability of more than \$720,000 per farm.”²⁵ In a similar vein, House Agriculture Committee Republicans cited the study to claim that if combined with a wholly separate bill, changes that “mirror” President Biden’s plan would cost those 92 farms an average of \$1.4 million each.²⁶ Finally, Sen. John Thune (R-SD) cited the AFPC study in a Fox News op-ed, writing:

But the Biden administration is targeting this longstanding part of the tax code [stepped-up basis] as it scrambles to pay for its far-left crusade to permanently grow the federal government and fund the massive tax breaks they’re proposing for wealthy Americans in blue states.

The Texas A&M Agricultural and Food Policy Center studied how this new tax would affect family operations, and it found that 98 percent of the representative farms in its 30-state database would pay a big price. How much? On average, the proposal would increase the tax liability by \$726,104 per farm.

Nobody likes paying taxes, but this heavy additional burden – again, often on unrealized gains – has the potential to force families to sell off part of the farm or lose the farm entirely just to pay a tax bill.²⁷

For starters, policymakers should recognize that the AFPC study does not consider President Biden’s plan. Rather, the study focuses on an estate and gift tax bill—the For the 99.5 Percent Act—introduced in Congress and another proposal—the Sensible Taxation and Equity Promotion (STEP) Act of 2021—put forward as a discussion draft.²⁸

The For the 99.5 Percent Act, sponsored by Sen. Bernie Sanders (I-VT) and Rep. Jimmy Gomez (D-CA), would change the taxation of estates, gifts, and trusts in a number of ways, most notably by decreasing the exemption amount and introducing higher marginal rates for the estate tax.²⁹ President Biden’s budget, however, currently includes no estate tax changes.³⁰

Like the AFP, the STEP Act—sponsored by Sen. Chris Van Hollen (D-MD)—seeks to eliminate the stepped-up basis loophole. It also includes a \$1 million exemption threshold—\$2 million for couples—and allows new tax liabilities to be paid over 15 years.³¹ But unlike the president’s proposal, the draft of the STEP Act did not include specific protections for family farms and businesses. The reason

that no protections are spelled out in the bill is precisely because it is a discussion draft, and its authors have invited outside input before introducing an actual bill.³² As noted above, President Biden’s plan guarantees that no taxes will be owed on family-operated farms and businesses until those farms or businesses are ultimately sold; this deferral of tax liability was not included in the STEP Act discussion draft studied by the AFPC.

More importantly, the AFPC study contains multiple methodological flaws. First, the AFPC’s selected farms are hardly “representative” of family farms nationwide. Although the word “representative” makes dozens of appearances in the AFPC report, there is little clarification as to who or what is being represented.³³ At one point, the authors briefly note that “AFPC’s representative farms and ranches are all assumed to be full-time, commercial-scale family operations.”³⁴

This means that the AFPC’s 94 farms are unrepresentative of family farms generally. According to 2019 data from the U.S. Department of Agriculture (USDA), just 8.2 percent of all family farmers own commercial farms. Moreover, these commercial farmers are far wealthier than the 91.8 percent of noncommercial farmers.³⁵ This skews the AFPC study toward the very wealthiest family farmers.

Second, even after limiting itself to commercial farms, the study gives disproportionate weight to large commercial farms. The most recent AFPC study does not discuss the selection criteria for the farms, but in a March 2021 AFPC study of the same 94 farms, the researchers noted:

*AFPC has developed and maintains data to simulate 94 representative crop farms, dairies, and livestock operations chosen from major production areas across the United States. ... Often, two farms are developed in each region using separate panels of producers: one is representative of moderate size full-time farm operations, and the second panel usually represents farms two to three times larger.*³⁶

For AFPC farm households, median net worth was roughly five times the national median, and average net worth was nearly four times the national average.³⁷ (see Table 1) This discrepancy cannot be explained away by confounding factors. For example, even if one were worried about the USDA’s inclusion of small residential farms in its sample, this would not explain the large differences in net worth between AFPC commercial family farms and the commercial family farms surveyed by the USDA.

TABLE 1

Net worth of family farms

	Family farms (2019), USDA				Family farms, AFPC	
	All family farms (100%)	Residence farms (53.3%)	Intermediate farms (38.5%)	Commercial farms (8.2%)	Calendar year 2019	Calendar year 2021
Median net worth	\$1.0 M	\$966 K	\$946 K	\$2.7 M	\$5.1 M	\$5.5 M
Average net worth (mean)	\$1.7 M	\$1.4 M	\$1.6 M	\$4.5 M	\$6.4 M	\$7.2 M

Note: In 2019, the U.S. Department of Agriculture classified approximately 97.6 percent of all farms as family farms.

Source: Economic Research Service, "Farm Household Income and Characteristics," available at <https://www.ers.usda.gov/data-products/farm-household-income-and-characteristics/> (last accessed June 2021); Joe Outlaw and others, "Representative Farms Economic Outlook for the January 2021 FAPRI/AFPC Baseline" (College Station, TX: Agricultural and Food Policy Center, 2021), available at <https://www.afpc.tamu.edu/research/publications/files/707/WP-21-01.pdf>.

The AFPC study exaggerates the burden of taxes in other ways as well. For example, consider the center's assessment of the For the 99.5 Percent Act. The AFPC study highlights the act's "average" tax increase for "impacted" family farmers, and those modifiers create two distortions.³⁸ First, by limiting its analysis to "impacted" farmers, the AFPC excludes all farmers who would pay zero estate taxes under the For the 99.5 Percent Act. Second, the use of an average greatly exaggerates the effect on most farmers. If 99 individuals each owed \$1 in taxes and one person owed \$99,901, it would be misleading to declare that the "average" person owed \$1,000 in taxes. This problem arises in the AFPC study, where a large share of the estate tax burden is borne by a minority of extremely wealthy farmers.

The AFPC researchers determine that with the For the 99.5 Percent Act's provisions in place, 41 of the 94 farms would pay the estate tax, with an "Average Additional Tax Liability Incurred for Farms Impacted" of just less than \$2.2 million.³⁹ Using data from their March 2021 paper, the AFPC's results have been replicated for this issue brief.⁴⁰ The authors follow the AFPC methodology of ignoring the increased deduction for Section 2032A special use valuation—an estate tax break for farms.⁴¹ According to this replication, an estimated 39 farms would pay estate taxes under the For the 99.5 Percent Act, and the average liability per affected farm would be \$2.5 million.

The authors' results show just how distortionary the words "average" and "impacted" are. The average estate tax for the 39 affected farms is \$2.5 million, yet the average for all 94 farms is \$1 million—just 41 percent as much. Moreover, the vast majority of the average tax would be paid by a small group of farmers. Fifty-five farmers would owe no estate taxes; 27 farmers would owe below-average amounts; and just 12 would pay more than the average per affected farm.⁴² These 12 estates—12.8 percent of farms in the survey—would be responsible for 65.8 percent of the total tax bill. And again, as noted above, these farms come from a sample that cherry-picks extremely large commercial farms.

Although the AFPC researchers published the net worth of all 94 farms in their March 2021 report, they have not made similar statistics available for each farm's unrealized capital gains. If their data for unrealized capital gains are as dominated by a few rich farms as their data for estate values, then most of the STEP Act's average burden will be borne by a small subset of AFPC farmers.

Finally, the AFPC study overstates the STEP Act's impact on farmers by assuming that none of them are married, even though nationwide, roughly 4 in 5 farmers have a spouse.⁴³ That is important because the exemption for unrealized capital gains is \$2 million per couple but only \$1 million for single individuals. In assessing the impacts of the STEP Act, the AFPC researchers assume that the farms in their study would be allowed to use the stepped-up basis provision for just \$1 million, effectively underestimating the true step-up threshold by 50 percent.⁴⁴

The EY study

Opponents of the AFP have also cited a study by the accounting firm EY. As with the AFPC study, the EY study has been used to attack the Biden plan even though it never comments on the president's proposal.⁴⁵

The EY study has two component parts. In the first part, the researchers give examples of how five hypothetical family businesses would be harmed by taxation at the time of the owner's death. With business resale values averaging \$74 million and ranging from \$20 million to \$200 million, EY's hypothetical businesses do not remotely resemble typical family businesses in the real world.⁴⁶

In the second part of their study, the researchers translate their hypothetical stories to real-world data. In that section, EY concludes that the economic cost of taxing capital gains at death would be just 0.04 percent of gross domestic product (GDP). Moreover, just one-third of the cost would be borne by labor.⁴⁷

As insignificant as that would be, it overstates the cost of the Biden plan for two reasons. First, the EY study—like the AFPC study—is not an assessment of the Biden plan. Rather, it looks at the effects of immediate taxation upon the death of a business owner. As such, the EY researchers do not account for how tax deferral would protect family businesses, nor do they account for the Biden plan's exemption of \$2 million per couple. When the EY researchers analyze a second proposal more akin to true tax deferral, they find that the total economic cost would be just 0.02 percent of GDP—exactly half of an already small number.⁴⁸ Critics who cite the EY study should be more forthright in noting both this point and that the \$2 million exemption preserves stepped-up basis for the great majority of family farmers and business owners.⁴⁹

Second, EY's analysis fails to account for the economic benefits of eliminating the lock-in effect associated with stepped-up basis.⁵⁰ With stepped-up basis, investors and business owners have an incentive to hold assets until their deaths even if they otherwise would have sold the assets. This harms economic efficiency and growth.⁵¹ Repealing stepped-up basis would make capital more liquid since there would be less incentive to hold assets indefinitely.

Extrapolating from the conclusions reached in the EY study, the macroeconomic cost of the Biden plan would be somewhere between trivial and nonexistent. Meanwhile, the \$350 billion in revenue from reforming capital gains taxes would be invested in ways that enhance growth and support working families. The EY study also fails to analyze President Biden's proposals on the spending side. Instead, it merely includes assumptions about generic government spending.⁵²

The AFP taxes the rich, not working-class families

While there would be no additional taxes under the Biden plan for farms and businesses that remain family-owned and -operated, taxes would go up substantially for wealthy individuals who are only passive business owners.

Consider family farms. The word "operated" ensures that tax deferral will only extend to actual farmers—not to wealthy individuals who happen to own farmland. According to 2014 data from the USDA, 31.1 percent of the country's farmland is owned by nonoperating landlords—people who rent out the land but do not farm it themselves.⁵³ For example, before their recent divorce, Bill and Melinda Gates owned more farmland than any other couple in the country.⁵⁴ Because the Gateses do not operate their own farmland, they would not qualify for tax deferral under the Biden plan.

Moreover, the Gateses and their heirs are not an exception to the rule. Of the 283 million acres of farmland currently owned by nonoperating landlords, 53.8 percent were either inherited or gifted.⁵⁵ Had the Biden plan been in place when these nonfarmers inherited their land, they would have paid taxes on unrealized capital gains above the \$2 million threshold.

The AFP protects genuine family farmers even as it taxes wealthy landlords. According to the USDA, 98 percent of family-owned and -operated farm estates would not incur any additional taxes when parents' assets are passed to their heirs.⁵⁶ Under the Biden plan, such families would have their tax payments deferred so long as the farm remained in the family. The remaining 2 percent would pay higher taxes only on their nonfarm assets. For example, even if Bill Gates were to begin farming his own land and could thus take advantage of the Biden exemption for family-operated farms, he would still have to pay taxes on the gains from his Microsoft stock and any other nonfarm assets he owned.⁵⁷

Conclusion

Under the AFP, working-class parents could pass their farms and businesses to their children without having to pay any capital gains taxes at the point of transfer. Yet proponents of the tax code status quo are hiding behind family farmers and business owners to protect a far different group: the extremely rich.

Middle-class Americans generally do not have significant capital gains. Households in the middle fifth of the income distribution realize just \$333 in capital gains each year.⁵⁸ If they accrue similar amounts of unrealized gains, it would take more than 6,000 years to surpass the American Families Plan's \$2 million exemption threshold. Although life expectancy is projected to rise in the future, it is unlikely that the Biden plan will raise taxes for ordinary working people.

Families who work their own land or operate their own businesses will receive similar treatment. Typical family farms are not worth \$7.2 million, and normal family businesses are not worth \$74 million. The studies reporting enormous tax hikes for family farms and businesses cherry-pick their examples from a few exceptionally wealthy estates—because that is who will pay taxes under the Biden plan.

Those affected by the Biden proposal will not be family farmers or family business owners, but rather the heirs of stockholders, bondholders, and landlords. The working class will be protected, even as the passive rich will not.

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Endnotes

- 1 To read the articles in ProPublica's series, see ProPublica, "The Secret IRS Files: Inside the Tax Records of the .001%," available at <https://www.propublica.org/series/the-secret-irs-files> (last accessed August 2021).
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- 10 Unrealized capital gains are gains on assets that have yet to be sold. For example, let's say that Sarah bought a painting for \$500 but can now sell it for \$800. At this point, Sarah has an unrealized capital gain of \$300. The amount of taxable capital gains is only assessed when the painting is sold, which is considered a realization event. Robert McClelland, "Avoiding Biden's Proposed Capital Gains Tax Hikes Won't Be So Easy. Or Will It?," Urban Institute and Brookings Institution Tax Policy Center, April 30, 2021, available at <https://www.taxpolicycenter.org/taxvox/avoiding-bidens-proposed-capital-gains-tax-hikes-wont-be-so-easy-or-will-it>. Over email, McClelland clarified that he used a \$2 million exclusion threshold for couples. McClelland also accounted for the exclusion of the first \$250,000 of capital gains on primary residences (\$500,000 for couples). Robert McClelland, senior fellow, Tax Policy Center, personal communication with Galen Hendricks, research associate for Economic Policy, Center for American Progress, via email, June 21, 2021, on file with authors.
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- 14 However, heirs who choose to sell the family enterprise for nontax reasons would have to pay taxes on the sale.
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- 33 Outlaw and others, "Economic Impacts of the Sensible Taxation and Equity Promotion Act and the For the 99.5 Percent Act on AFPC's Representative Farms and Ranches."
- 34 *Ibid.*, p. 8.
- 35 U.S. Economic Research Service, "Farm Household Income and Characteristics," available at <https://www.ers.usda.gov/data-products/farm-household-income-and-characteristics/> (last accessed June 2021). The USDA corrected an error with its data on August 4, 2021, but the error did not affect any of the statistics used in this issue brief.
- 36 Joe L. Outlaw and others, "Representative Farms Economic Outlook for the January 2021 FAPRI/AFPC Baseline" (College Station, TX: Agricultural and Food Policy Center, 2021), available at <https://www.afpc.tamu.edu/research/publications/files/707/WP-21-01.pdf>.
- 37 The USDA estimates of net worth include all farm and non-farm assets and debts. The authors assume that the AFPC figures also include nonfarm wealth. The AFPC's March 2021 paper, referenced in the previous endnote, defines net worth as "total assets including land minus total debt from all sources." The AFPC study was for 2021, but 2019 is the most recent year for which data are available from the USDA. The authors have included 2019 data from the AFPC study to facilitate an apples-to-apples comparison with the USDA data. The nominal net worth of the AFPC's 94 commercial farmers was disclosed in tables 4–14 of its March 2021 report. Tables 5–14 display these values for various types of farms for the years 2019–2025, while Table 4 includes the years 2020–2026. Given the incongruence between Table 4 and the subsequent tables, the authors assume that a typographical error was made in Table 4 and that the years displayed are actually 2019–2025. Removing this assumption has little to no impact on the results. When not accounting for the potential error, the 2021 median net worth of AFPC farms remains the same, and the average net worth falls from \$7.23 million to \$7.17 million—less than 0.8 percent. See *Ibid.*
- 38 Outlaw and others, "Economic Impacts of the Sensible Taxation and Equity Promotion Act and the For the 99.5 Percent Act on AFPC's Representative Farms and Ranches," p. 16. Note that when Table 5 says "Average Additional Tax Liability Incurred for Farms Impacted," the "additional" amount is in comparison to a scenario in which no taxes are owed for 2021.
- 39 *Ibid.* Note that when Table 5 says "Average Additional Tax Liability Incurred for Farms Impacted," the "additional" amount is in comparison to a scenario in which no taxes are owed for 2021.
- 40 Outlaw and others, "Representative Farms Economic Outlook for the January 2021 FAPRI/AFPC Baseline."
- 41 The AFPC researchers fail to account for the For the 99.5 Percent Act's increase in the Section 2032A special use valuation deduction. This deduction allows family farms and ranches to be assessed at their use value rather than at their fair market value. Under current law, Section 2032A may reduce a farm's assessed value by up to \$1.19 million when estate taxes come due. To avoid burdening family farms, the For the 99.5 Percent Act increases the maximum 2032A deduction from \$1.19 million to \$3 million. The maximum deduction would rise in line with inflation in subsequent years, as already happens under current law. As a result, many moderately rich farmers won't be affected by the For the 99.5 Percent Act, and even for the very richest farmers, the act's net effect will be somewhat blunted. The AFPC researchers neither account for this provision nor flag their omission for readers. For more information on the Section 2032A special use valuation deduction, see IRS, "Frequently Asked Questions on Estate Taxes," available at <https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-estate-taxes> (last accessed August 2021); Kevin O'Shaunessy O'Brien, "Estate Planning for Farmers and Ranchers under Section 2032A," *Denver Law Journal* 55 (2) (1978): 347–364, available at <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=3142&context=dlr>; Megan Nelson, "Time to Update Section 2032A Special Use Valuation," American Farm Bureau Federation, November 20, 2019, available at <https://www.fb.org/market-intel/time-to-update-section-2032a-special-use-valuation>; Roger A. McEowen, "Special Use Valuation: Key Concepts" (West Portsmouth, OH: Washburn University School of Law, 2021), pp. 131–138, available at https://www.washburnlaw.edu/employers/cle/_downloadmaterials/WashburnLawFarmAndRanchIncomeTax-20210608Materials.pdf.
- 42 Using the cutoff given in the June 2021 AFPC study instead (\$2,166,415), 21 estates would owe below-average amounts and 18 estates would owe above-average amounts. Those 18 farms—19.1 percent of the 94 farms—would shoulder 79.9 percent of the estate tax burden under the For the 99.5 Percent Act.
- 43 U.S. Economic Research Service, "Farm Household Income and Characteristics." Approximately 78.9 percent of farm operators had a spouse in the USDA's 2015 survey, and 82.9 percent had a spouse in their 2011 survey. Note that these figures do not include previously married farmers whose spouses have passed away. Farm operators with deceased spouses would still be eligible for a \$2 million exemption under the STEP Act.
- 44 Oddly, the AFPC takes the opposite tack in analyzing the For the 99.5 Percent Act. When assessing the impact of the act's estate tax increases, the AFPC researchers assume that all 94 farm estates are owned by couples. Outlaw and others, "Economic Impacts of the Sensible Taxation and Equity Promotion Act and the For the 99.5 Percent Act on AFPC's Representative Farms and Ranches," pp. 6, 14, 16, and 24.
- 45 National Federation of Independent Business, "Over 120 Associations Join Coalition to Support Continuation of Stepped-Up Basis," Press release, May 25, 2021, available at <https://www.nfib.com/content/press-release/homepage/over-120-associations-join-coalition-to-support-continuation-of-stepped-up-basis/>.
- 46 EY, "Repealing step-up of basis on inherited assets: Macroeconomic impacts and effects on illustrative family businesses."
- 47 *Ibid.*, pp. 4–7.
- 48 *Ibid.*, pp. 6, 27. Under a system of taxation at death, taxes are owed on capital gains income when the decedent passes away. Under a system of carryover basis—analyzed in Appendix B of the EY study—income taxes are owed on capital gains income when the heir sells the given asset; however, the capital gain does not receive stepped-up basis. The Biden plan calls for taxation at death, but it also allows heirs of family farms and businesses to defer their tax payments so long as they own and operate the farm or business. In practice, these heirs would experience something closer to carryover basis than to taxation at death.

- 49 According to data from the USDA, in 2019, the median family farmer had total assets of \$1.2 million. See U.S. Economic Research Service, “Farm Household Income and Characteristics,” available at <https://www.ers.usda.gov/data-products/farm-household-income-and-characteristics/> (last accessed June 2021). The USDA corrected an error with its data on August 4, 2021, but the error did not affect any of the statistics used in this issue brief. This means that even if the median family farm was acquired for \$0, the gross capital gain of \$1.2 million would fall 41 percent below the \$2 million exemption. Families owning commercial farms—the largest and most profitable types of farms—had median assets of \$3.5 million. These estimates include the value of all farm and nonfarm assets. It is unclear how much of these net worth estimates represent the initial base price versus price gains since the date of purchase. Finally, the IRS records capital gains on all farmland sales in a statistical compendium. See IRS, “Sales of Capital Assets Reported on Individual Tax Returns,” available at <https://www.irs.gov/statistics/soi-tax-stats-sales-of-capital-assets-reported-on-individual-tax-returns> (last accessed July 2021). From 2010 to 2012, the IRS documented nearly 185,000 profitable farmland sales, with the average capital gain being \$73,649 (expressed in constant 2020 dollars). To rise above the Biden administration’s \$2 million exemption, unrealized capital gains on farmland will need to be 2,616 percent greater than the average realized capital gain.
- 50 For information on the economic impact of the lock-in effect stemming from stepped-up basis, see Robert McClelland, “Capital Gains: Tax Debate 2017” (Washington: Urban Institute and Brookings Institution Tax Policy Center, 2017), available at <https://www.taxpolicycenter.org/publications/capital-gains/full>; Congressional Research Service, “Tax Expenditures: Compendium of Background Material on Individual Provisions” (Washington: 2006), pp. 325–328 available at <https://books.google.com/books?id=6VXPS-p6KK0C&printsec=frontcover#v=onepage&q&f=false>.
- 51 McClelland, “Capital Gains.”
- 52 EY, “Repealing step-up of basis on inherited assets: Macroeconomic impacts and effects on illustrative family businesses,” p. 25.
- 53 U.S. National Agricultural Statistics Service, “Quick Stats,” available at <https://quickstats.nass.usda.gov/#FC00183A-ABC0-384F-B1B5-9B196587A84A> (last accessed July 2021). However, approximately 38 percent of nonoperating landlords are retired farmers. See U.S. Economic Research Service, “Farmland Ownership and Tenure,” available at <https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-ownership-and-tenure/> (last accessed August 2021). If these former farmers lease their land to other members of their family, and if those family members later inherit the land, presumably they will receive tax deferral since both the ownership and the operation of the farm will remain within the family. But if these retired farmers rent the farmland to someone not in their family and then let their family members inherit the property rights, the heirs will likely face taxation at death under the Biden plan; in this instance, the farm would continue to be family-owned but not family-operated.
- 54 Eric O’Keefe, “Bill Gates: America’s Top Farmland Owner,” *The Land Report*, January 11, 2021, available at <https://landreport.com/2021/01/bill-gates-americas-top-farmland-owner/>.
- 55 For land owned by nonoperating landlords, the USDA maintains five classifications for how the land was acquired: inheritance and gift (53.8 percent), purchased from relative (11.0 percent), purchased from nonrelative (30.5 percent), purchased in auction (2.5 percent), and excl purchase & inheritance & gift (2.3 percent). For people working their own land, the USDA includes the first four categories but not the fifth. If we exclude the fifth category for nonoperating landlords, the share of land either inherited or gifted rises to 55 percent. The next three categories would rise to 11.2 percent, 31.2 percent, and 2.6 percent, respectively. See U.S. National Agricultural Statistics Service, “Quick Stats,” available at <https://quickstats.nass.usda.gov/#FC00183A-ABC0-384F-B1B5-9B196587A84A> (last accessed July 2021). It is also useful to consider the inverse of this statistic. Approximately 35.8 percent of the country’s farmland has been acquired via inheritance or gift, and of that share, 47.1 percent is owned by nonoperating landlords. (These calculations exclude the farmland from the fifth category above). By contrast, among households farming their own land, just 26.2 percent was acquired via inheritance or gift. This calculation does not include operating landlords who rent land to others while also farming their own land. As of 2014, operating landlords owned 66.6 million acres of farmland, and of this total, approximately 24.3 million acres—36.6 percent—were either inherited or gifted. If operating landlords and farmers of self-owned land are combined into a single category to give the broadest possible definition of farm operators, then 27.3 percent of this group’s farmland was acquired via inheritance or gift. See U.S. National Agricultural Statistics Service, “Quick Stats,” available at <https://quickstats.nass.usda.gov/#FC00183A-ABC0-384F-B1B5-9B196587A84A> (last accessed July 2021).
- 56 U.S. Department of Agriculture, “The American Families Plan Honors America’s Family Farms,” Press release, April 28, 2021, available at <https://www.usda.gov/media/press-releases/2021/04/28/american-families-plan-honors-americas-family-farms>.
- 57 Ibid.
- 58 Congressional Budget Office, “The Distribution of Household Income, 2018” (Washington: 2021), available at <https://www.cbo.gov/publication/57061>.