

White House continues bipartisan outreach on infrastructure package

President Biden held several meetings this week with prominent congressional Democrats and Republicans who may prove key to the fate of his infrastructure agenda, but it remains unclear whether any package will be moved on a bipartisan basis or with the support of only Democrats.

In recent weeks, the president has proposed two massive packages of spending and tax proposals to overhaul the nation's physical infrastructure and what the administration has dubbed the nation's "human" infrastructure.

Biden's American Jobs Plan calls for investing an estimated \$2.7 trillion (over eight years) in transportation infrastructure, broadband, the electric grid, water systems, schools, manufacturing, renewable energy, and more, and would be paid for largely through increased taxes on corporations and, in particular, US multinationals. (For details, see *Tax News & Views*, Vol. 22, No. 19, Apr. 9, 2021.)

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The president's American Families Plan calls for \$1.8 trillion over 10 years in proposed spending and tax credits in areas such as education, child care, health care, and paid family leave, and would be paid for primarily with tax increases on taxpayers earning more than \$400,000 per year. (For details, see *Tax News & Views*, Vol. 22, No. 23, Apr. 30, 2021.)

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White House meetings

President Biden kicked off the week by inviting Democratic Sens. Joe Manchin of West Virginia and Tom Carper of Delaware to the White House for separate May 10 meetings to discuss infrastructure. Carper chairs the Senate Environment and Public Works (EPW) Committee – a panel likely to play a central role in crafting infrastructure legislation this spring and summer.

Manchin – who has indicated that he is not an automatic "yes" vote on the president's proposals and is regarded as a linchpin for legislative success regardless of whether any bill moves through Congress on a bipartisan basis or on a partisan basis under the budget reconciliation process – did not reveal many details of what he discussed with the president, but spoke about his meeting with Biden in positive terms.

"He just knows there's a lot of need out there, and he wants to make sure we meet that need," Manchin said.

The 'Big Four': A more high-profile meeting came later in the week, however, when President Biden sat down May 12 with the two top Democrats and the two top Republicans in Congress: House Speaker Nancy Pelosi, D-Calif., Senate Majority Leader Charles Schumer, D-N.Y., House Minority Leader Kevin McCarthy, R-Calif., and Senate Minority Leader Mitch McConnell, R-Ky.

The issue of taxes played a central role in that meeting, with both GOP leaders saying afterward they drew a hard line against raising taxes to offset any infrastructure legislation – a position on which they have held firm over the past several weeks.

“We’re not interested in reopening the 2017 tax bill,” McConnell said, referring to 2017’s Tax Cuts and Jobs Act (TCJA, P.L. 115-97). “We both made that clear to the president. That’s our red line.” (Many of the proposed revenue offsets in President Biden’s tax plans would repeal or roll back provisions in the TCJA.)

House Minority Leader McCarthy added: “Raising taxes would be the biggest mistake you could make.”

The Democratic leaders, meanwhile, expressed some measured optimism that they could work with congressional Republicans to craft an infrastructure package.

“It was a positive meeting in terms of agreeing that we want to build the infrastructure of America...,” Pelosi said. “I’m more optimistic now about being able to do so in a bipartisan way. But we’ll see. We’ll see.”

At the same time, however, Senate Majority Leader Schumer noted that there could be a limit to the duration of bipartisan talks, referring back to negotiations around health care reform during the early months of President Barack Obama’s administration.

“We prefer to do things in a bipartisan way, and we’re going to keep pursuing that in a variety of different ways,” Schumer said. “But obviously we don’t want to make the mistake of 2009 and ‘10 where the negotiations went on forever and then the Republicans didn’t join and we didn’t get much else done.”

President Biden himself expressed a similar view during a television interview later on May 12.

“I want to know what we agree on and let’s see if we can get an agreement to kick start this, and then fight over what’s left, and see if I can get it done without Republicans if need be,” Biden told MSNBC’s Lawrence O’Donnell.

In separate remarks to reporters, the president said he was opposed to paying for an infrastructure package through so-called “user fees” – for example, excise taxes on fuel collected from users of infrastructure – as Republicans have proposed, saying that would mean “the burden falls on working-class folks who are having trouble.”

Earlier in the week, Senate Finance Committee Chairman Ron Wyden, D-Ore., struck a similar tone, arguing that it would be a “big mistake” to raise the excise tax on gasoline.

“It just seems to be a big mistake to go there when corporate [tax] revenue is down something like 40 percent in the last few years,” Wyden said. (One of the significant offsets for the American Job’s plan is a proposal to increase the corporate income tax rate to 28 percent from the 21 percent enacted in the TCJA.)

Offsets recently floated by Republicans have focused in a general way on user fees, such as an increase in the gas tax, the imposition of a vehicle-miles-traveled tax, and tolls, as well as public-private partnerships and repurposing unspent funds previously approved in the federal response to the coronavirus pandemic.

There have been some recent signs that lawmakers may be able to agree on raising revenue through provisions aimed at closing the “tax gap” – the difference between the amount of money owed to the government and the amount actually collected – although details about specific proposals and the amount of revenue they might generate remain unclear. (See separate coverage in this issue for additional discussion on the tax gap.)

GOP senators head to White House, too: This week’s bipartisan talks were capped off by a May 13 visit to the Oval Office by a handful of Republican senators – including Senate EPW Committee ranking member Shelly Moore Capito of West Virginia and Senate Finance Committee ranking member Mike Crapo of Idaho, as well as Senate taxwriters John Barrasso of Wyoming and Pat Toomey of Pennsylvania – who serve on panels with jurisdiction over infrastructure legislation and would be influential in crafting any bipartisan proposal.

Capito led a group of Republicans who offered a \$568 billion counterproposal to the American Jobs Plan in late April that is focused more narrowly on what they labeled “traditional infrastructure.” (For prior coverage, see *Tax News & Views*, Vol. 22, No. 21, Apr. 23, 2021.)

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Sen. Roy Blunt, R-Mo., who was also present at the meeting, told reporters afterward that there was still distance between the two parties as to the definition of “infrastructure.”

“We’re still looking for a bill that would be traditional infrastructure – with some flexibility,” Blunt said. “Broadband would be something that wouldn’t have been traditional 10 years ago that I think we’d argue could very well be now. And ways to pay for that.”

For her part, Sen. Capito noted after the meeting that another GOP offer would be forthcoming next week, potentially with additional detail as to how it would be financed.

“More definition, but maybe some different numbers, too,” Capito said.

Majority Leader McConnell has indicated recently that he might be open to accepting an infrastructure package of no more than \$800 billion.

Hearings, mark-ups in the works

The next several weeks are poised to see negotiations – and potentially legislative activity – pick up and may prove determinative as to whether congressional Democrats will seek to compromise with Republicans or instead attempt to go it alone through the filibuster-proof budget reconciliation process. (Biden reportedly has set an informal deadline of Memorial Day for making that decision.)

Senate EPW Chairman Tom Carper reiterated this week that he would like his panel to report a highway reauthorization measure prior to Memorial Day. (Separate from the ongoing large-scale infrastructure talks, the current authorization for federal spending on highway and mass transit programs is set to lapse after September 30, 2021.)

Across the Capitol, House Transportation and Infrastructure Committee Chairman Peter DeFazio, D-Ore., has similarly signaled that his committee will mark up a surface transportation bill during the last two weeks of May.

Speaker Pelosi, meanwhile, reiterated this week that she would like to see any infrastructure package pass through the House prior to July 4.

Taxwriters plan infrastructure funding hearings: The House and Senate taxwriting committees, meanwhile, announced that they will examine issues related to infrastructure financing at separate hearings planned for the coming week.

A Senate Finance Committee hearing scheduled for May 18 will consider “funding and financing options to bolster American infrastructure.” Announced witnesses include Joseph Kile of the Congressional Budget Office, Victoria F. Sheehan of the American Association of State Highway and Transportation Officials, Heather Buch of the National Association of Counties, and Shirley Bloomfield of NTCA – The Rural Broadband Association.

The House Ways and Means Committee will hold a hearing of its own on May 19 to consider issues around “leveraging the tax code for infrastructure investment.” A witness list for that hearing was not available at press time.

Wyden promises energy tax mark-up: In other developments, Finance Committee Chairman Ron Wyden indicated in a statement released May 12 that his panel “will begin consideration of jobs and infrastructure legislation” this month and that a “clean-energy mark-up centered on reforming our broken energy tax code and creating jobs by boosting clean-energy manufacturing is first on the agenda.”

Any Finance Committee mark-up is expected to focus on the Clean Energy for America Act, legislation that Wyden rolled out during April that would consolidate roughly 40 current-law energy-related provisions into just a handful of so-called “technology-neutral” incentives, while repealing a number of fossil fuel tax provisions. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 21, Apr. 23, 2021.)

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210423_2.html

‘Green Book’ coming May 27

Another development of keen interest to tax observers will be the release on May 27 of President Biden’s first official budget proposal – along with the Treasury Department’s so-called “Green Book,” which will provide more granular details on the administration’s tax and revenue policies (such as its proposed changes to the

international tax regime and rules around the taxation of inherited assets) and their projected impact on federal receipts.

The details in the Green Book are likely to influence subsequent legislation that is marked up in the congressional taxwriting committees and moves through Congress.

An Office of Management and Budget spokesperson confirmed the release date for the budget and the Green Book this week.

Timing of potential budget resolution unclear

Finally, it is important to note that any effort by congressional Democrats to utilize the filibuster-proof budget reconciliation process would first require the adoption of a concurrent resolution on the budget that includes reconciliation instructions to relevant committees. Adopting a budget resolution requires a simple majority vote in both the House and Senate – as such, given what is expected to be uniform GOP opposition, all 50 Senate Democrats would have to support the budget plan to tee up the reconciliation process. Even then, it would require the tie-breaking vote of Vice President Kamala Harris.

If they choose to pursue reconciliation, Democratic leaders appear to have at least two more opportunities to do so this year. One path would involve adopting a budget resolution for upcoming fiscal year 2022 (which is set to begin October 1) that includes reconciliation instructions. A second would involve revising the fiscal 2021 budget resolution that Democrats adopted to move the American Rescue Plan in a way that recharges the reconciliation process teed up in that blueprint.

At present, it remains unclear if and when Democrats will attempt to move a budget resolution. That should become clearer after a decision is made as to whether a bipartisan compromise on infrastructure is possible.

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