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Is There a Road Forward for Biden's Infrastructure Plans?

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On March 31, 2021 President Biden unveiled his American Jobs Plan in the form of two massive spending and tax proposals. Policy makers in Washington are actively debating and preparing to legislate based on these proposals.

The first proposal, totaling $2.3 trillion, is focused on traditional infrastructure improvements, broadly defined, and includes highways, bridges, ports, airports, and transit; broadband; clean water; electric-grid upgrades; upgrades to residential, commercial, school, and federal buildings; investments in the care economy to raise wages and expand services; and investments in supply chain and R&D. President Biden has proposed paying for this part of the plan with a hike on the corporate tax rate, raising the current 21% rate to 28%, additional taxes on international commerce, and repealing elements of former President Trump's 2017 Tax Cuts and Jobs Act.

The second component, known as the American Families Plan and introduced on April 28, is a $1.8 trillion proposal and would cover "human infrastructure," i.e., investments in health care, subsidized higher education, direct support to children and families, and unemployment insurance reform. The cost of this plan would be offset by individual tax increases on capital gains and dividends targeting the wealthiest Americans. The plan also proposes eliminating the stepped-up basis, which would increase the tax burden on property left by deceased relatives.

There has been significant pushback from the Republican Party over the expansive reach and costs of the proposals. In response, the GOP has released a $568 billion counteroffer, focused exclusively on "hard" infrastructure improvements, including roads and bridges, airports, transit and rail, drinking water/storage and wastewater, ports and inland waterways, broadband, and highway, pipeline, and HAZMAT safety. Their proposal would be paid for by user fees on electric vehicles and repurposing existing state and local relief funds passed as part of previous coronavirus aid bills, including the CARES Act. Senate Minority Leader Mitch McConnell (R-KY) has indicated that the GOP counteroffer could go as high as $800 billion, but the legislative package must be limited to traditional hard infrastructure.

The prospects for legislation currently stand at an inflection point. While the vast majority of President Biden's plan constitutes spending and taxing, providing a pathway to enactment with only Democratic votes through the arcane budget reconciliation process, President Biden has said that he prefers a bipartisan solution. Additionally, Senator Joe Manchin (D-WV), a moderate member of the Democratic caucus whose vote is necessary for a partisan package, has stated that he would likely not support a Democratic-only bill.

The bill therefore is in a bipartisan negotiation phase, where the White House is actively exploring whether Republicans will agree to a bigger bill, what would be included in such a bill, and how to pay for it. Multiple meetings have taken place at the White House this week with leadership and potential dealmakers from both parties. President Biden and GOP leaders signaled optimism and the potential to reach some consensus on a compromise directly after the meeting. This phase is expected to last no more than a week or two. If the Administration and the GOP remain far apart at Memorial Day, the Administration is expected to explore the Democratic-only reconciliation process, which will depend on centrists like Manchin deciding that meaningful compromise is impossible yet the need for legislation compels going forward on a partisan basis.

Whatever path this bill takes, the Administration and congressional negotiators are discussing a legislative framework that will need to be translated by committees of jurisdiction into legislative text. Many details, including which specific programs will be funded or created, what the criteria for funding will be, and what eligibility restrictions will be placed on funding recipients (i.e., Buy America, non-supplanting of state/local funds, cost sharing, etc.), will need to be worked out. This is true on the revenue side as well.

Even without an agreed-to framework, committees are already well engaged in this process. For example, later this month, the Senate Finance Committee will vote on legislation to reform the tax code to incentivize energy efficiency and decarbonization.

Clients interested in further details on congressional spending priorities, or may be interested in providing input in the process, should contact the authors for more information.

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