Dear friends,

Further to the February 12 flash analysis of the White House's *Legislative Outline for Rebuilding Infrastructure in America* issued that day, I am pleased to send this flash analysis of the *Senate Democrats' Jobs & Infrastructure Plan for America's Workers* issued yesterday morning, March 7, by a group of eight senior Senate Democrats, led by Senate Majority Leader Charles Schumer (D-NY).

The Senate Democrats' proposal takes a starkly contrasting approach compared to the White House's proposal, with almost no specific references to private infrastructure investment. It is a $1 trillion Federal spending package, funded largely by rolling back several key elements of the 2017 tax reform. Because the Senate Democrats' proposal, like the Administration's proposal, would require the support of at least 60 Senators to enact, it is difficult to assess the significance of this proposal. Notably, the Senate Democrats' proposal does not make reference to the Administration's proposal, ignoring it entirely. This approach would seem to foretell a process whereby the Administration and the Senate Democrats have proposed two completely different approaches to solving the nation's infrastructure program, making compromise difficult.

There is one similarity, and that lies in the Administration's proposed $200 billion spending package, which includes (as described in further detail in my below February 12 email) $100 billion in Federal grants to incentivize state, local and private infrastructure; $50 billion for rural infrastructure including rural broadband; $20 billion for transformative projects; and $20 billion for expansion of TIFIA, WIFIA and RRIF. At a high level, these proposals are similar to the Senate Democrats' much larger proposal in that they entail a significant amount of Federal funding directly to state and local governments for development of infrastructure (except that the Administration's proposed $100 billion was to be made available on an equal basis for private infrastructure projects), but philosophically the approach is very different. The second half of the Administration's Outline, the various proposals regarding permitting reform and privatizations of Federal assets and airports, and other proposals tending to foster private infrastructure, are completely absent from the Senate Democrats' proposal. The Senate Democrats' proposal focuses on Federal direct spending and on Federal funding provided to states and cities for them to spend on infrastructure, with almost no emphasis on the role of the private sector in developing infrastructure.

Moving on to describe the Senate Democrats' proposal specifically:

The Senate Democrats' proposal entails a $1 trillion spending package, proposed to be funded with the proceeds of the reversal of three elements of the 2017 tax reform:

- returning the top marginal rate for individual income taxation to 39.6%;
- restoring the alternative minimum tax to the 2017 levels; and
- restoring the 2017 parameters to the estate tax.

The Senate Democrats estimate that these three reversals would fund $651 billion of the expenditure over a 10-year period. In addition, they propose to tax carried interest (to raise $12 billion over 10 years) and to bring the corporate tax rate to 25% from the 2018 rate of 21% ($359 billion over 10 years), for a total of $1.022 trillion over 10 years.

The Federal expenditures in the proposed plan are in the following 19 categories:

- $140 billion on roads and bridges, consisting of
  - $100 billion of additional funding for Federal-aid highways and Federal and tribal owned lands, and
  - $40 billion for critical bridge repair;
  - these include funding of the Disadvantaged Business Enterprise program and to aid the Territorial and Puerto Rico highways program; it is not clear whether any of this funding could be devoted to projects built or rehabilitated by private operators or by using private-sector funding;
- $10 billion to triple the TIGER grant program to aid states and localities to make multi-modal transportation investments, with set-asides for rural projects and requirements for geographical distribution;
- $115 billion on water and sewer systems, consisting of
  - $46 billion in drinking water programs and an equal amount for wastewater programs, in each case run by the US Environmental Protection Agency, with priority on disadvantaged communities (Flint, Michigan is mentioned as an example) and Indian Tribes, and eliminating the local matching funding required of states and local governments for all such new funding; and
  - $23 billion for water infrastructure through the US Department of Agriculture Rural Development Water and Waste Water Grant Program, focused on small towns and rural communities under 10,000 in population;
- $115 billion on public transportation, consisting of
  - $15 billion on critical asset repair for large-scale projects;
  - $30 billion to replace outdated buses and rail cars;
  - $35 billion on core transit formula programs, meaning the Urbanized Area and State of Good Repair formula grants;
  - $10 billion on rural, tribal, seniors and persons with disabilities formula investments; and
  - $25 billion to expand the "New Starts, Small Starts, Core Capacity projects for subway, light rail, commuter rail, streetcar and bus rapid transit projects
- $50 billion on rail infrastructure, consisting of
  - $20 billion on Amtrak, including the Northeast Corridor and the National Network;
  - $15 billion on the Consolidated Rail Infrastructure and Safety Improvements program;
  - $10 billion on a Federal-state partnership program to reduce the state of good repair backlog on publicly owned and Amtrak infrastructure; and
  - $5 billion on intercity passenger rail

- $40 billion for megaprojects in a new program called Vital Infrastructure Program, targeted for projects with a capital cost of $500 million or more in urban areas and $100 million or more in rural areas, divided between freight and passenger projects
- $30 billion for metropolitan areas, including
    - $3 billion increase for the Transportation Alternative Program for smaller-scale transportation projects;
    - $16 billion for transportation performance incentive funds;
    - $3 billion for charging and refueling infrastructure; and
    - $8 billion for the Economic Development Administration at the US Department of Commerce's Public Works Program
- $62 billion for neighborhood revitalization, lead remediation and affordable housing, with a focus on Federal support of locally driven initiatives and including grants through the HOME Investment Partnerships Program and the Housing Trust Fund, and other funding programs
- $50 billion on schools, including
    - $40 billion on public schools, including Bureau of Indian Education funded schools and
    - $10 billion on community colleges (including tribal colleges)
- $30 billion on ports and waterways, including
    - $5 billion on multi-modal port and freight network projects through grants and loans, including, as in the White House proposal, making it easier for port projects to access RRIF and TIFIA; and
    - $25 billion to the US Corps of Engineers, requiring each Corps district to develop a five-year plan and to double both current project and program limits for the Corps' Continuing Authorities program (raising the cap for each program to $20 million from $10 million)
- $40 billion on airports and airspace, including
    - more funding (in an unspecified amount) for the Airport Improvement Program;
    - a new grant program to fund terminal construction and improvements, landside projects and security screening; and
    - modernization of FAA facilities and to accelerate NextGen deployment
- $25 billion on climate change measures, including three new programs:
    - new grant program called PROTECT, for resilient infrastructure;
    - new revolving loan fund; and
    - new oceans and coastal security fund
- $80 billion on the energy grid, for modernization, resilience and cybersecurity, and including Federal power upgrades (including TVA and Bonneville); and
    - Consolidating all renewable energy tax incentives into three new provisions with simpler incentives:
        - a technology-neutral tax credit for clean electricity (production tax credit of up to 2.3 cents per kwH or investment tax credit of up to 30%);

        - incentives for energy conservation; and
        - incentives for clean transportation fuel, consisting of a technology-neutral tax credit of up to $1 per gallon
- $40 billion for universal high-speed internet
- $15 billion on public lands, including national parks, forests, wildlife refuges and monuments, consisting of
    - $5 billion for highest priority deferred maintenance needs at the National Park Service;
    - $2 billion for deferred maintenance needs at the US Forest Service;
    - $1 billion for deferred maintenance needs at the Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation and other Department of the Interior agencies;
    - $2.5 billion to the US Forest Service for fuels reduction and forest restoration treatments ($1.5 billion on Federal lands and $1 billion through grants to states);
    - $4 billion for the Land and Water Conservation Fund (split evenly between Federal projects and grants to states); and
    - $500 million for historic preservation needs, including grants to restore properties at Historically Black Colleges and Universities
- Over $10 billion for tribal infrastructure, including
    - $7.5 billion to the Health Care Facilities Construction program;
    - $2.5 billion for water infrastructure for Indian Country; and
    - $500 million on deferred maintenance needs of the Bureau of Indian Affairs
- $10 billion for Veterans' Affairs, including
    - $8.5 billion on hospitals and clinics;
    - $1 billion on domestic military infrastructure, including National Guard and Reserve Centers;
    - $500 million on grants to states for extended care facilities
- $20 billion in financing innovations to allow state and local governments to reduce financing costs and to attract additional investment, including
    - an Infrastructure Funding Authority (which appears to function like an infrastructure bank) to finance projects and to incentivize private investment, with an assurance that some funds will be spent in rural areas; although initial funding (in an unspecified amount) would be provided by "the government" (presumably the Federal government), it would be self-sustaining over time (with no explanation of how this would be designed to occur); this would include an Office of Technical & Rural Assistance; the Authority would have a non-partisan board and the Authority would be designed to operate free of political influence;
    - an expansion of RRIF, TIFIA and WIFIA, without an explanation of how they would be expanded or in what magnitude; and
    - an elimination of "arbitrary tax barriers for infrastructure projects that benefit the public" (this may be a proposal, like the White House Legislative Outline, to allow tax-exempt debt to remain outstanding when infrastructure

is developed, maintained or operated by the private sector for public use) and a "new direct-pay bond program" to facilitate pension funds and other large investors to invest in infrastructure (neither of these proposals contains any detail or further explanation)

- $140 billion on the Highway Trust Fund, consisting of
    - funding for the Highway Account and the Mass Transit Account, designed to ensure their solvency until at least 2017; and
    - bipartisan exploration of solutions beyond the next decade (without any discussion of possible solutions)

The above proposals add up to $1.022 trillion, equal to the amount raised by the revenue-raising measures. In addition, the Senate Democrats proposed other provisions, with no expenditure figures given:

- Expanded Buy America requirements by applying them to all Federally supported infrastructure investment, including public-private partnerships that receive any Federal support; in addition:
    - expand the scope of Buy America materials beyond iron, steel and some manufactured products to include non-ferrous metals, plastic and polymer-based products, concretes and other aggregates, glass, lumber and drywall;
    - require public disclosure of all Buy America waivers and support development of US industries in those sectors (apparently through a Small Business Administration loan preference);
    - minimize waivers for iron and steel and establish new standards for other construction materials; and
    - assist states' own Buy America efforts
- Jobs programs, including
    - requiring that at least 14% of workers hired to work on Federally funded infrastructure projects be people with disabilities (consistent with current Federal hiring practices), and other unspecified diversity requirements;
    - disclosure requirements regarding prior labor violations for those companies applying to work on Federally funded infrastructure projects;
    - provisions designed to ensure worker choice between joining a labor union and not joining;
    - prevailing wage programs as in existing Federal policy;
    - encouraging agencies executing Federally funded infrastructure projects to consider the use of project labor agreements;
    - banning pre-dispute arbitration agreements or non-disclosure agreements for employers receiving Federal funding;
    - education and training opportunities for infrastructure-related jobs; and
    - workforce training programs
- Small business provisions, including

    - requiring all agencies spending funds on infrastructure to spend at least 33% of such funds are spent on small businesses and that 33% of all work going to large businesses be subcontracted to small businesses; and
    - authorizing the Small Business Administration to increase the ceiling on small businesses obtaining surety bonds to $10 million and indexing that ceiling to inflation
- Minority-, women- and veteran-owned business provisions (without any detail)
- Smart transportation policies, including
    - incentivizing new safety technologies;
    - strengthening enforcement efforts on unsafe driving;
    - enhancing vehicle safety standards;
    - unspecified steps to ensure safety rules are not loosened;
    - provisions relating to highway and pedestrian safety; and
    - improved monitoring of public transportation and rail safety
- Reducing waste, including
    - funding for the Government Accountability Office and agency Inspectors General

We hope this is helpful. It is difficult at this time to forecast next steps on Capitol Hill, but we look forward to discussing both proposals with you.

Best regards,

Chris

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