

Rebuilding Bridges: Yohannes Carter, The White House

TO: Yohannes Carter, Special Assistant to the President and Director of the White House Office
of Legislative Affairs (WHLA)

FROM: Alice Chen and Gabe Reid, Senate Liaisons

RE: Final Negotiation on The *BUILD Act*

As you know, the *BUILD Act* presents a critical opportunity for you to deliver a significant reform to America's transportation infrastructure and a big win for POTUS.

The benefits of getting this bill signed into law are obvious. He spent the entirety of the race for the White House campaigning on his promise to overhaul America's failing infrastructure. While he chose to pursue other legislative priorities early in his term, we have always believed that infrastructure is a strong, bipartisan winner.

The tragic River Cities bridge collapse provided the momentum we needed to pivot away from more partisan fights and toward infrastructure. Since the collapse, POTUS has stated publicly again and again that he will work with Congress to make sure a bill "gets done." Given his strong public commitments, it is essential that you are able to deliver a bill to the President for signature. Beyond this, the Administration has yet to achieve a signature legislative accomplishment. This may be the last chance before Congress adjourns for a long recess in advance of the upcoming midterm elections.

We have spent the past two months helping to get the *BUILD Act* through the Senate Finance Committee and Senate Environment and Public Works Committee. These were not easy mark-ups. There was some last-minute haggling to add in a number of provisions to secure the support of specific Senators. We are optimistic that the bill will sail through Senate floor consideration if the Manager's Amendment is not scaled back too much compared to the legislation that was reported out of the two committees.

Scoring. In order to help with your negotiating strategy, we have constructed a 100 point scoring scheme to illustrate which negotiable issues are of greatest and least importance to you. We have weighted these based on political considerations and the President's priorities. Under this scheme, you can score up to 100 points during the negotiation, depending on how each of the five issues is resolved. Your most preferred version of the bill is scored at 100 points.

This Confidential Instruction was written by Brian Mandell, Senior Lecturer in Negotiation and Public Policy, Monica Giannone, Director of the Harvard Kennedy School Negotiation Project, and Emily Schlichting at the John F. Kennedy School of Government, Harvard University (HKS) as part of the Harvard Kennedy School's "Teaching Legislative Negotiation Project." Funding for this simulation was provided by The William and Flora Hewlett Foundation. HKS simulations are developed solely as the basis for class discussion. They are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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Dealing with these issues in terms of “points” may seem artificial and abstract but for the purposes of this negotiation, it will enable you to combine your interests – securing sufficient funding, raising the gas tax, preventing regulation of AVs, an implementation timeline that provides enough time to roll this out correctly, and securing a floor vote on the funding formula amendment – into a single index. You will be able to compare the gains and losses of different options under each issue more easily.

In addition, the point system allows you to compare the value of the negotiated agreements to your alternatives. We believe you should only pledge POTUS’ support for the bill if you can secure an agreement worth **at least 70 points**. Any agreement worth fewer than 70 points would not be worth pursuing because POTUS would veto it.

Your task is to build enough support for the *BUILD Act* to get the deal through the Senate, while minimizing political compromises required to do so. Try to earn as many points as possible in this negotiation.

Note: We believe you can negotiate an agreement that scores much better than 70 points. An agreement worth 90 points would set you up nicely. We know that certain senior advisers in the West Wing like to micromanage our work with Congress. A better bill only strengthens your political position within the White House and will reduce this type of interference.

As you know, this legislation will not become law if POTUS is not satisfied with it, giving you effective veto power over any potential agreement that does not meet your threshold.

Issue #1: Funding and Offsets

Given that experts estimate that a comprehensive investment to repair all infrastructure will cost \$4.6 trillion we feel strongly that a \$3 trillion package is the least we can consider. The strongest of these options is a fully offset bill, as we know these funds are already paid off and are less likely to disappear in future deal-making.

As we mentioned above, the *BUILD Act* contains provisions to secure the votes of specific Senators to get it out of committee. If the level of funding is reduced at all, some of those policies will have to be cut from the bill – angering those Senators and making it harder to reach final passage. We have conferred with Sen. Howell’s staff and know that he is also going to push for higher funding levels for this reason.

If the funding is cut to under \$1 trillion, you know the *BUILD Act* will not effectively repair America’s infrastructure. It would be a political disaster for POTUS to receive instruction from Congress to overhaul our infrastructure but have no money with which to do it—he will be left holding the bag.

- a) Under \$1 trillion, fully offset = 5 points
- b) \$3 trillion mixed spending, fully offset = 15 points
- c) \$1.5 trillion in mixed spending, partially offset = 10 points
- d) \$2 trillion in budgetary spending, not offset = 5 points
- e) \$3 trillion in mixed spending, partially offset = 0 points

Issue #2: Regulation of Automated Vehicles

For years, technology and automotive companies have been working on developing driverless cars. You know these AVs have the potential to remake the economy. We suspect the recent AV collision that killed a pedestrian in Des Moines has put Sen. Howell in a very difficult position, though his staff has not been forthcoming about the Leader's position on this issue. We were a bit surprised that Sen. Howell's initial package includes the strictest level of regulation for AVs.

You'll recall that initial backlash called on us to regulate AVs from the National Highway Traffic Safety Administration (NHTSA). However, the Office of General Counsel at DOT does not believe the current statutory authorities give them the clear ability to do so. However, we are also under strict orders from one of POTUS' senior advisers to work to keep any provisions regulating this industry out of the *BUILD Act*. They believe that aligning ourselves against the Automated Vehicles Innovation Association (AVIA) is a poor political choice and that these issues are better left regulated at the state level. AVIA has made clear that it expects full White House support at the table.

There has been a coalition of Senate Democrats that has vocally criticized AVIA for its attempts to push back on any federal regulation. While it is unclear where Minority Leader Robinson lies on this issue, we believe that it is likely she supports stronger regulation.

- a) Pre-market regulatory approval = 0 points
- b) Hybrid certification and pre-market approval = 10 points
- c) Certification only = 15 points
- d) No language on AVs = 20 points

Issue #3: Gas Tax

Raising taxes is never popular, but we know that raising the gas tax is the only way to ensure that DOT has the funds it will need to carry out this legislation. Furthermore, the U.S. Chamber of Commerce strongly supports this policy, providing the necessary political cover for POTUS to back a bill that raises this specific tax.

We recommend supporting an increase in the gas tax as far as the negotiation will allow, but do not waste political capital on this issue. There are other items that are more important to us in the overall agreement. As you know, the two parties are quite split on the gas tax. We expect that Sens. Howell and Brooks will oppose your position and we anticipate that you will be more aligned with the Democrats on this issue.

- a) No changes = 0 points
- b) Index to inflation = 5 points
- c) Raise to \$0.45/gal = 10 points
- d) Raise to \$0.45/gal and index to inflation = 15 points

Issue #4: Implementation Timelines

Sen. Robinson has been pushing for phased in implementation of the *BUILD Act*. Meanwhile, our agencies cannot easily be held to statutory deadlines shorter than two years from date of enactment of the *BUILD Act*. We know the staff power required to grant, contract, and distribute to states will require additional hires, which will take time. A two year statutory deadline will still keep pressure on the agencies to get the funding out the door while giving them enough time to issue regulations and grant announcements – and increase the amount of time you have to weigh in on the details of the *BUILD Act* implementation.

- a) 180 days = 0 points
- b) 1 year = 20 points
- c) Phase in = 10 points
- d) 2 years = 30 points

Issue #5: Amendments and Time Agreement

We normally would recommend a Unanimous Consent (UC) Agreement that includes no amendments, to reduce the likelihood that political floor fights on amendments will harm the bill's chance of passage. However, we believe that it will be essential to hold a vote on the funding formula for states that have toll roads.

Sen. Brooks' staff reached out to us about this particular amendment. The provision was not included in the reported out bills or the Manager's Amendment as a result of a deal struck in Finance Committee consideration of the bill. Sen. Brooks and several other members from states that have highways in significantly worse states of disrepair feel strongly that they should be prioritized for these new road repair funds. States that have been using their own dollars to care for their highways disagree, claiming they are being punished for picking up the federal government's tab.

You do not want the bill to be embroiled in a debate on this topic – ensuring a floor vote on this amendment will allow Sen. Brooks and others to feel heard but will likely not pass and therefore not hurt the overall bill. We would suggest that you seek to restrict any UC agreement to just this amendment.

- a) No amendments = 15 points
- b) 1 amendment per side = 20 points
- c) 3 amendments per side = 5 points

A one-page scoring sheet has been attached which summarizes the points we have assigned to each one of the five issues. This information is CONFIDENTIAL! You should not show your scoring sheet to anyone! You may convey some or all of the scoring information verbally to a mediator, or to any other party, but you should not let anyone see your scoring sheet.

Good luck.

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POINT SUMMARY AND WORKSHEET

Issue Option	Points	First Vote	Second Vote
<u>Funding</u>			
1) Under \$1 trillion, fully offset	5		
2) \$3 trillion mixed spending, fully offset	15		
3) \$1.5 trillion in mixed spending, partially offset	10		
4) \$2 trillion in budgetary spending, not offset	5		
5) \$3 trillion in mixed spending, partially offset	0		
<u>AV regulation</u>			
1. Pre-market regulatory approval	0		
2. Hybrid certification and pre-market approval	10		
3. Certification only	15		
4. No language on AVs	20		
<u>Gas Tax</u>			
1. No changes	0		
2. Index to inflation	5		
3. Raise to \$0.45/gal	10		
4. Raise to \$0.45/gal and index to inflation	15		
<u>Implementation</u>			
1. 180 days	0		
2. 1 year	20		
3. Phase in	10		
4. 2 years	30		
<u>Time and Amendments</u>			
1. No amendments	15		
2. 1 amendment per side	20		
3. 3 amendments per side	5		

Minimum needed for an agreement = 70 points.

This is your score if the negotiations fail and no agreement is reached.