July 15, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Speaker Pelosi and Leader Schumer:

The undersigned organizations support a robust infrastructure package that addresses the backlog of critical infrastructure needs, ensures equitable access to public infrastructure, especially by those communities most impacted by the Covid-19 pandemic, creates millions of solid middle-class jobs, and gets us closer to meeting the Administration's important climate goals. We applaud the Administration's commitment to redressing historic inequities in America's infrastructure and to building resilient and sustainable 21st century infrastructure. However, we write to express our concerns about the current Bipartisan framework. This framework includes provisions that rely on, incentivize, or encourage privatization of infrastructure, which works against the very goals that this package seeks to achieve.

The Bipartisan framework lists several concerning items as "Proposed Financing Sources for New Investment," including an infrastructure financing authority to leverage private investment, public-private partnerships, private activity bonds, and asset recycling. We explain below why each of these should not be a feature of any infrastructure package. We urge congressional Democratic leadership to reject privatization and private financing as a central feature of any infrastructure package and make real public investments in our infrastructure and in our communities through direct investment and through financing mechanisms that will not rely on private entities.

<u>Public-Private Partnerships</u>
While the term "public-private partnership" may sound benign, it is another name for privatization of public infrastructure. Public-private partnerships involve a governmental entity entering into a long-term contract with private corporations, financial institutions, private equity firms, and other Wall Street entities to design, build, finance, operate, and/or maintain a new or existing public asset for the life of the contracts, which often last decades, anywhere from 30 to 99 years.

Public-private partnerships (also called P3s) would not provide new funding for infrastructure. Public-private partnerships are a financing mechanism, utilizing expensive private capital. It is important to note that private financing is not a solution to the challenges states and localities face with regard to building infrastructure. The municipal bond market

has $4 trillion in outstanding issuances and municipal bonds are a relatively low-cost source of capital. Currently, interest rates available to almost all government borrowers are at or near historic lows and far below the return on investment most private investors demand. All financing, regardless of whether that financing is through traditional tax-exempt municipal bonds or private financing, has to be repaid by people in our communities. Because private investors require a higher rate of return on their investment than what government borrowers pay in the municipal market, Public-private partnerships actually drive up the cost of infrastructure, while burdening policymakers and residents with long-term contracts designed to protect private profits.

Public-private partnerships create unanticipated risks - often encumbering governing agencies for decades with extra costs and constraints. Any infrastructure package should not rely on and/or encourage expensive private financing as a way to build infrastructure. The experience of cities and states with these types of privatization schemes has been concerning, and problems typically fall into the following categories:

- **Loss of public control:** Many P3 contracts limit the government's ability to make important policy and planning decisions for decades, while protecting corporate profits by insulating the company(ies) from many revenue risks. Contracts may include provisions, such as "non-compete" or "compensation" clauses that limit or eliminate the government's ability to make critical decisions necessary to improve our communities, address inequities, and deal with the climate crisis.

  For example, in 2007, Virginia entered into a P3 contract with a private consortium to construct high occupancy toll (HOT) lanes on a 14-mile stretch of the Capital Beltway. These lanes charge a toll for vehicles unless there are at least three passengers in a vehicle. However, the P3 contract requires Virginia to reimburse the private companies whenever Capital Beltway carpoolers using the HOT lanes exceed 24% of the traffic, or until the private entity makes $100 million in profits.[1] This puts Virginia taxpayers on the hook if too many carpoolers use the high occupancy lanes because it could adversely affect contractor revenues -- even though carpooling accomplishes important public goals of cutting commute time and reducing pollution and congestion.[2]

- **Limited access and affordability:** P3 contracts can drive up user fee rates associated with a public asset and impact residents' ability to afford and access the infrastructure. In studying this, researchers surveyed the 500 largest water systems in the United States and found that, on average, private, for-profit utilities charged typical households 59% more than local governments charged for drinking water service.[3]

---

[1] Ellen Dannin, "The Toll Road to Serfdom," American Constitution Society blog, May 14, 2011. https://truthout.org/articles/the-toll-road-to-serfdom/
[2] Ryan Holeywell, "Public-Private Partnerships Are Popular, But Are They Practical?," Governing Magazine, November 2013. http://www.governing.com/topics/transportation-infrastructure/gov-public-private-popular.html
[3] Food and Water Watch, "The State of Public Water in the United States," February 2016. http://www.foodandwaterwatch.org/sites/default/files/report_state_of_public_water.pdf

For example, in 2012, Bayonne, New Jersey, entered into a concession lease agreement of its municipal water system to the multinational water corporation Suez and the private equity firm Kohlberg Kravis Roberts (KKR). Water rates in Bayonne have risen nearly 50% since the contract was signed.[4] The private entities originally indicated that water rates would remain the same for the first several years, however, this was not the case. Four years into the contract, water rates had risen nearly 28%.[5] By late 2019, water rates in Bayonne had risen nearly 50% since the contract was signed.[6] Even during the COVID-19 pandemic, with many people struggling to make ends meet, bills increased by 4.1%.[7] The 40-year contract guarantees Suez and KKR more than half a billion dollars in revenues, so water rates have had to increase to make up the difference between the estimated and actual water usage.[8] The contract guarantees an 11% rate of return for investors for 40 years.[9] The financial arrangements in the contract undermine the achievement of important water and energy conservation goals.

- **Cutting corners:** In an effort to contain costs and maximize profits, private entities may skimp on quality, number of workers, workers' wages, and other important inputs. Academic researchers documented that most of the lower costs of construction with P3s come from circumventing Davis-Bacon provisions that require payment of prevailing wages to construction workers.[10] As the Economic Policy Institute aptly notes, these savings come at the expense of workers, suggesting that funds are simply redistributed from workers to capital with taxpayers seeing no benefit.[11]

  Permanent operations and maintenance jobs can also be degraded in a P3 deal. In 2005, a consortium formed by Cintra Infraestructuras, a Spanish company, and Australia's Macquarie Group paid Chicago $1.83 billion for the right to operate and collect tolls on the Chicago Skyway for 99 years. During the first four years of the contract, operating costs of the road decreased by 11% compared to the previous four years under city management. A large part of this decrease was due to lower labor

---

[4] Peggy Gallos, "Who's Profiting from Repairs to Aging Water and Sewer Systems?," NJ Spotlight, September 12, 2019. https://www.njspotlight.com/2019/09/19-09-11-op-ed-whos-profiting-from-repairs-to-aging-water-and-sewer-systems/
[5] Danielle Ivory, Ben Protess and Griff Palmer, "In American Towns, Private Profits From Public Works," New York Times, December 24, 2016. https://www.nytimes.com/2016/12/24/business/dealbook/private-equity-water.html
[6] Peggy Gallos, "Who's Profiting from Repairs to Aging Water and Sewer Systems?," NJ Spotlight, September 12, 2019. https://www.njspotlight.com/2019/09/19-09-11-op-ed-whos-profiting-from-repairs-to-aging-water-and-sewer-systems/
[7] Daniel Israel, "Come hell or high water," Hudson Reporter, May 19, 2021. https://hudsonreporter.com/2021/05/19/come-hell-or-high-water/
[8] Peggy Gallos, "Who's Profiting from Repairs to Aging Water and Sewer Systems?," NJ Spotlight, September 12, 2019. https://www.njspotlight.com/2019/09/19-09-11-op-ed-whos-profiting-from-repairs-to-aging-water-and-sewer-systems/
[9] Ibid.
[10] Engel, Eduardo, Ronald Fischer, and Alexander Galetovic. 2014. The Economics of Public-Private Partnerships: A Basic Guide. New York: Cambridge University Press.
[11] Hunter Blair, "No free bridge: Why public–private partnerships or other 'innovative' financing of infrastructure will not save taxpayers money" Economic Policy Institute, March 21, 2017. https://www.epi.org/publication/no-free-bridge-why-public-private-partnerships-or-other-innovative-financing-of-infrastructure-will-not-save-taxpayers-money/

costs. The private entity replaced city workers that had been paid at least $20 per hour with those paid $12 to $15 per hour.[12]

- **Loss of transparency and public input:** Many P3 projects are marked by scant transparency and proceed with little or no opportunities for public input, including input by the communities most impacted by the infrastructure.

- **Shifting profits but not risk:** Many P3 projects shift potential profits to the private sector but do not shift risk. For example, P3 private highway projects often guarantee investors "availability payments" in addition to tolls. The payments result in the government retaining all traffic risk while the private party retains almost all "upside" profit. Availability payments undermine one "private market" argument in favor of P3s as it is a form of public subsidy to guarantee private profits.

Infrastructure Financing Authority to Leverage Private Investment

As discussed above, states and localities do not generally lack access to financing. The constraint is a lack of revenue to pay for infrastructure and any related financing arrangement. An infrastructure financing authority that utilizes high-cost private investment does not address the fundamental obstacle that state and localities have in building or repairing infrastructure. Public entities need real infrastructure funding in the form of direct public investment, not another expensive financing mechanism. To the extent a financing authority is guaranteeing the repayment of private financing, it is another example of the government retaining risk while enabling private profit. However, a financing mechanism utilizing the federal government's own financing capacity, with a strong public interest and race equity mandate, could support the necessary development and infrastructure projects needed at the state and local level.

Among the most troubling aspects of the Infrastructure Financing Authority is the lack of accountability by decision makers. Where project selection is made by an unelected board using factors that are typically focused solely on financial and risk assessments, there is a strong likelihood of bias against projects in economically disadvantaged areas. Thus, the creation and use of an IFA is wholly inconsistent with President Biden's Executive Order on "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." Any financing mechanism from the government should come with robust governance and transparency standards along with community-level boards that can speak to the most pressing needs for the community.

Private Activity Bonds

Private Activity Bonds (PABs) allow a private sector project developer to access tax-exempt financing as part of their financing package. Currently there are limitations on which types of projects can access PABs, alongside volume caps for PABs both nationwide and for a given infrastructure sector. Increasing or removing these caps would allow private entities financing public-private partnerships access to some level of tax-exempt bonding, possibly

[12] Eduardo Engel, Ronald Fischer, and Alexander Galetovic,"Public-Private Partnerships to Revamp U.S. Infrastructure," The Hamilton Project, February 2011.
http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/Final_ENGELDiscussPap_Feb2011.pdf

incentivizing and increasing the use of privatization schemes for building new infrastructure. PAB financed infrastructure projects typically do not provide for labor standards, such as Davis-Bacon and are not suitable for the financing of public infrastructure but may be suitable for the financing the development of low and moderately priced housing, student debt and other similar uses that are private in nature but have a public good component.

Asset Recycling

Asset recycling may sound like a new concept, but it's simply privatization rebranded with a new name—privatizing existing public infrastructure to pay for new infrastructure. In most cases, privatization of existing infrastructure is structured as a long-term lease concession agreement, where the governmental entity gets an upfront payment in exchange for handing over the asset to a private company(ies) for decades. Private investors collect user fees associated with the asset. These types of deals have the same risks and problems discussed above with public-private partnerships, but asset recycling also raises a few additional concerns.

- **Selling too cheap:** An asset recycling program can incentivize a government to sell a public asset quickly and too cheaply, which can be financially harmful to the public's balance sheet. For example, Chicago received $1.15 billion in a privatization deal for its parking meters, but drivers will pay the private companies at least $11.6 billion to park over the life of the 75-year contract,[13] revenues which the city will lose out on. Shortly after the deal was signed, Chicago's Inspector General analyzed the deal and concluded the city significantly undersold the asset.[14]
- **Driving inequities:** An asset recycling program would drive inequities with asset-rich jurisdictions able to sell off more infrastructure than poorer jurisdictions or rural areas that may not have public assets that are attractive to investors.
- **Politicizing project selection:** This type of program could also rush decisions in order to "make a deal happen." Not only is there a risk of selling existing public infrastructure off too cheaply, but decisions about where those proceeds would be invested next could be rushed as well, possibly squeezing the time frame for robust cost, environmental, and socio-economic impact analyses. Additionally, decisions about project selection could be politicized and community needs and concerns could easily be sidelined.
- **Effectively limiting access to previously public infrastructure:** The privatization inherent in asset recycling transforms an asset that may not have charged user fees to a one that does. For example, a highway that was available to the public without tolls, will be tolled, often at a rate that is out of reach for working families. The result is less traffic in the "Lexus Lanes" for those who can afford the tolls while increased congestion in the remaining non-tolled lanes.

Asset recycling as a formal program originated in Australia, but notably Australia ended the program in 2016, just two years after starting. The asset recycling program ran into many of

[13] Darrell Preston, "Morgan Stanley Group's $11 Billion Makes Chicago Taxpayers Cry," Bloomberg, August 9, 2010. http://www.bloomberg.com/news/2010-08-09/morgan-stanley-group-s-11-billion-from-chicago-meters-makes-taxpayers-cry.html

[14] City of Chicago Office of the Inspector General, An Analysis of the Lease of the Chicago Parking Meters, June 2, 2009. https://www.chicagoreader.com/old-blog-media/pdf/IGO-CMPS-20090602.pdf

the issues discussed above. An Australian Senate committee said it was “concerned about the possibility that incentives under the Asset Recycling Initiative may encourage privatization without effective public consultation and communication strategies, and without appropriate consideration or analysis of future costs.”[15] The risks and costs that are inherent in any privatization deal are exacerbated by the incentives in an asset recycling program.

We reiterate our support for significant federal investments to rehabilitate and upgrade our infrastructure, address the climate crisis, create millions of family-supporting jobs, and help communities thrive. To the extent private financing is part of any infrastructure program, it should be focused on activities that are typically privately performed such as an upgrade to the electric grid so we can more effectively access the solar power and other renewable power that is being generated; projects that reduce greenhouse gases including EV charging; telecommunications; water ports and broadband. Private equity is specifically incompatible with water, sewer, highway and bridge projects. We should also limit the projects to those that cannot be funded by traditional investment grade municipal bonds. Financing mechanisms that do not rely on private equity can potentially also be a solution to investing in infrastructure projects needed most by underserved communities. A government-led effort to finance infrastructure projects with strong mandates in place to prioritize underserved communities, create green and good jobs, with a break-even and not a profit-maximizing mandate, could go far in getting us the infrastructure plan we need. It is critical that any legislative agreement to meet that need is not financed through means that undermine the goal of strong, accessible, and equitable public infrastructure and the creation of good jobs. We urge congressional Democratic leadership to reject privatization and private financing as a central feature of any infrastructure package and make real public investments in our infrastructure and in our communities.

Sincerely,

Indivisible
In the Public Interest
Center for Economic and Policy Research
Take On Wall Street
AFSCME
Center for Popular Democracy
Social Security Works
Groundwork Action
Tax March
Progressive Democrats of America
Economic Policy Institute
Sunrise Movement
NYS Public Employees Federation, AFL-CIO
Working Families Party

---

[15] Australian Senate Economics References Committee, “Privatisation of state and territory assets and new infrastructure,” March 19, 2015.
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Eco-nomics/Privatisation_2014/Report/c02

Action Center on Race & the Economy
Asian Pacific American Labor Alliance, AFL-CIO
People's Action
Public Citizen
Our Revolution
California Work & Family Coalition
Food & Water Watch
Economic Opportunity Institute
Family Values@Work
Partnership for Working Families
United for Respect
The Democracy Collaborative