Default crisis deferred as Democrats accept short-term debt limit hike

The Senate on October 7 voted along party lines to approve legislation that would lift the federal debt limit by $480 billion – an amount expected to be enough to cover government borrowing until December of this year, thereby potentially aligning the next debt limit deadline with just-passed appropriations legislation that will keep the government's doors open through December 3 while also guaranteeing that the issue will remain front of mind as Democrats seek to coalesce around separate infrastructure and budget reconciliation bills in the coming weeks.

The legislation, which was quickly drafted based on an offer presented by Minority Leader Mitch McConnell, R-Ky., to Majority Leader Charles Schumer, D-N.Y., just one day earlier, was approved by a vote of 50-48. (The vote on final passage came after 11 Republicans joined all the chamber's Democrats to support an earlier motion to end debate on the measure. The "cloture" motion, which required a 60-vote supermajority for approval, cleared the chamber by a margin of 61-38.)

Action in the House is still pending. The chamber has been in recess since October 1, with members on call to return to the Capitol for floor votes on 72 hours' notice. House Majority Leader Steny Hoyer, D-Md., announced shortly after the Senate vote that lawmakers will convene on October 12 to take up the measure.

White House Press Secretary Jen Psaki said in a statement released late October 7 that "President Biden looks forward to signing this bill as soon as it passes the House and reaches his desk."

Limited options as potential October 18 default date approached

The need to either increase or further suspend the nation's statutory borrowing cap has taken on added urgency among lawmakers after Treasury Secretary Janet Yellen warned in a September 28 letter to House Speaker Nancy Pelosi, D-Calif., that her department may be unable to stave off default on the government's obligations beyond October 18.
URL: https://home.treasury.gov/news/press-releases/jy0377

"At that point, we expect Treasury would be left with very limited resources that would be depleted quickly," Yellen wrote. "It is uncertain whether we could continue to meet all the nation's commitments after that date."

The most recent suspension of the debt ceiling expired on July 31 and since that time Treasury has been using so-called "extraordinary measures" to keep the nation's debt under the statutory limit.

Prior Democratic efforts fall flat in Senate: The warnings from Secretary Yellen and others, however, did little to move Minority Leader McConnell, who has remained adamant for months that Republicans in his chamber will not lend their support to advancing legislation to increase or further suspend the debt limit. Under the typical legislative process, breaking a filibuster requires a three-fifths supermajority – typically, 60 votes – and

Republicans made clear there were not 10 GOP senators willing to side with all 50 Democrats on such a proposal.

For example, on September 27 the motion to proceed to a House-passed bill (H.R. 5305) that would have suspended the debt limit through December 16, 2022, as part of a broader fiscal year 2022 funding measure was defeated 48-50, with all GOP senators voting in opposition. Later that week, Sen. McConnell himself blocked a unanimous consent request by Majority Leader Schumer that would have allowed for passage of stand-alone debt ceiling legislation by a simple majority vote. This week, Senate Republicans were poised to filibuster yet another House-passed Democratic bill providing for a "clean" suspension of the debt limit until December of next year, although that vote was scuttled after Sen. McConnell made his offer of a short-term debt limit reprieve.

McConnell still pushing Dems to use reconciliation: All along, McConnell has argued that Democrats should handle the issue on their own by addressing the debt limit as part of budget reconciliation legislation – a procedural pathway that could bypass a GOP filibuster but, in this case, would also require Democrats to amend the already adopted fiscal year 2022 budget resolution to include reconciliation instructions calling for such a policy.

This more cumbersome and time-consuming approach could also entail at least one additional marathon "vote-a-rama" session in the Senate in which unlimited amendments may be offered and voted upon with little or no debate. Perhaps just as important from a political perspective, absent more definitive public guidance from the Senate parliamentarian, is the issue of whether reconciliation rules would require Democrats to lift the debt limit by a specific dollar figure – a less ambiguous policy than the debt limit suspensions lawmakers have more typically utilized in recent years.

For these and potentially other reasons, Democratic leaders have been steadfast in their public statements that they oppose moving debt limit legislation under reconciliation.

McConnell's offer

In some ways, McConnell's offer, which he made public in a statement released on October 6, bows to the reality that a federal default would likely be catastrophic to the US economy and that a legislative solution to that dilemma did not appear to be readily at hand; but it also doubles-down on his demand that any longer-term debt limit solution this fall or winter be enacted by Democrats on their own under the budget reconciliation process.
URL: https://www.republicanleader.senate.gov/newsroom/press-releases/mcconnell-statement-on-democrats-self-created-debt-limit-crisis

In essence, McConnell's offer suggested that Senate Republicans would not block legislation – moved under normal legislative procedures – to lift the debt limit by a dollar amount sufficient to stave off default until December.

“To protect the American people from a near-term Democrat-created crisis, we will also allow Democrats to use normal procedures to pass an emergency debt limit extension at a fixed dollar amount to cover current spending levels into December,” McConnell wrote.

At the same time, McConnell’s statement demands that any subsequent debt limit bill be moved under budget reconciliation – unless Democrats drop their current efforts to pass social infrastructure legislation (that is, the Build Back Better plan) under that same filibuster proof process.

The offer will “give the Democratic government more than enough time to pass stand-alone debt limit legislation through reconciliation,” the statement reads. “Alternatively, if Democrats abandon their efforts to ram through another historically reckless taxing and spending spree . . . , a more traditional bipartisan governing conversation could be possible.”

Crisis deferred but not avoided?

Shortly after McConnell’s offer emerged, some Democrats were quick to declare victory, suggesting that it was a concession on the part of the GOP leader and that the deal will grant Democrats political space to redouble their efforts to pass a social infrastructure package this fall under reconciliation.

“[Sen. McConnell] did not get what he wanted,” Senate Finance Committee Chairman Ron Wyden, D-Ore., said October 6. “Now, we’re focused on getting what the American people want, which is making sure that they have lower prescription drug prices, making sure that they [get] middle class tax cuts, . . . and making sure that . . . we’re serious about climate [change].”

Still, there are lingering questions about the path ahead for Democrats’ reconciliation measure – including an ongoing debate among moderate and progressive Democrats about the proper size and scope of any bill. (More on that issue below.)

What is more, Sen. McConnell’s short-term debt limit gambit may force Democrats to take a difficult political vote later this year to again lift the debt limit by a specific dollar amount – this time without any GOP support – alongside any social infrastructure measure to which they can agree. According to *The Wall Street Journal*, a Treasury Department spokesperson has indicated that the projected December deadline for addressing the debt limit in the wake of this week’s agreement assumes that all available extraordinary measures will have been exhausted, an assessment that would appear to leave Democrats with no room to push action on the debt ceiling into early 2022.

Dems continue to say ‘no,’ but do all roads lead to reconciliation for the debt limit?: For their part, Democratic leaders continue to maintain that – contrary to Sen. McConnell’s wishes – they will not use the budget reconciliation process to move longer-term debt limit legislation on their own later this year.

“We’re not doing reconciliation [for the debt limit],” said Sen. Patty Murray, D-Wash., on October 6. Murray is a member of Democratic leadership and former chair of the Senate Budget Committee.

“We’re going to raise the debt ceiling and we’re going to go on and pass infrastructure,” echoed Sen. Tammy Duckworth, D-Ill. “We’re never going to do it through reconciliation.”

But – given promised GOP opposition – Democrats may have few practical options outside of the filibuster-proof process.

One of those potential options – that is, altering Senate rules in a relatively narrow way to eliminate the filibuster on debt limit-related legislation – again came under fire this week from prominent moderate Democratic Sen. Joe Manchin of West Virginia.

“I’ve been very, very clear where I stand on the filibuster,” Manchin said October 6. “Nothing changes.”

Fellow moderate Sen. Kyrsten Sinema, D-Ariz., is also said to oppose tweaking the filibuster – a change to Senate rules that would require the assent of all 50 Democrats.

Another approach – attempting to tie a debt limit suspension to a must-pass appropriations bill, such as one that will be due by December 3 when the current continuing resolution keeping the government’s doors open is set to expire – also appears to have been foreclosed by congressional Republicans since, as already noted, GOP senators on September 27 blocked a House-passed bill that would have done just that.

‘Build Back Better’ and infrastructure developments

As the debate between Senate Democrats and Republicans over how to address the debt ceiling unfolded this week, Democratic leaders in both chambers worked behind the scenes to arrive at a topline number for the Build Back Better Act – the “human” infrastructure bill they aim to move through Congress under budget reconciliation protections – and to determine how they would need to adjust their policy priorities to reflect the likelihood that the final product will be smaller than the $3.5 trillion package they had hoped to approve.

Moderates and progressives regrouping: The latest round of talks follows a recent impasse in the House between moderate and progressive Democrats over how to advance the Build Back Better Act and the Infrastructure Innovation and Jobs Act, a separate “hard” infrastructure bill that cleared the Senate with bipartisan support in August. Moderates, who have expressed reservations about the potential size of the reconciliation bill, recently sought to notch a quick policy win by holding a vote on the infrastructure legislation late last month. Progressives, who have been concerned that getting the infrastructure legislation enacted into law ahead of the Build Back Better Act might make it easier for some moderate Democrats in both chambers to vote against a large package of tax increases and new social spending, have sought to move the two measures in tandem. House Speaker Nancy Pelosi delayed a planned September 30 vote on the Infrastructure Innovation and Jobs Act after progressives made clear that they would follow through on their promise to withhold support for that measure in the absence of substantial progress on the Build Back Better Act. Indeed, roughly half of the 95 House members who belong to the Congressional Progressive Caucus reportedly were prepared to vote against the infrastructure bill if it came to the floor – an amount that likely would have been more than enough to ensure its defeat since Democrats hold an extremely narrow majority in the chamber

and the measure was not expected to draw significant GOP support. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 45, Oct. 1, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211001_1.html

In a closed-door meeting with the House Democratic Caucus at the Capitol on October 1, President Biden stressed the importance of his overarching economic agenda and emphasized the need for moderates and progressives to reach a compromise. According to press reports citing comments from lawmakers after the meeting adjourned, Biden told moderates to accept that there are not enough votes to move the infrastructure bill on its own and that further action will have to wait until there is a bicameral agreement on the Build Back Better plan. Biden also reportedly told progressives that they would have to accept a Build Back Better package that is smaller than $3.5 trillion and that they should focus on the specific policies they would like to see enacted and how those might be adjusted once there is agreement on a price tag.

Level-setting on price: In separate meetings with progressive and moderate Democrats this week, the president suggested the reconciliation bill's size would land somewhere between $1.9 trillion and $2.4 trillion. On October 6, however, West Virginia Sen. Joe Manchin reiterated that he does not support more than $1.5 trillion in spending.

"There's been a lot of speculation about 'what number on reconciliation,'" Manchin said to reporters. "My number's been $1.5 [trillion]. I've been very clear."

With Congressional Progressive Caucus Chair Rep. Pramila Jayapal, D-Wash., insisting $1.5 trillion is "not going to happen" because that number is too low, it remains unclear how the party will reach agreement.

"That's too small to get our priorities in," Jayapal said October 3 on CNN. "It's going to be somewhere between $1.5 and $3.5 [trillion], and I think the White House is working on that right now because, remember, what we want to deliver is child care, paid leave, climate change, [and] housing."

Adjusting policy priorities: Democratic leaders have begun to talk with members about the decision between including fewer spending priorities with longer timelines or more robust funding, and including a greater number of programs that would be pared back through some combination of reduced funding levels and faster sunsets. House leaders are reportedly pushing the former option, but determining which provisions to include in a smaller bill – and which to leave out – will be a tough process. For example, extending the recently expanded child tax credit through 2025 is reportedly one of the caucus's top priorities but is also among the most expensive House proposals, at $556 billion over 10 years according to the Joint Committee on Taxation's (JCT) estimate.

One issue that has posed a challenge for Democrats for months, providing relief from the $10,000 cap on the deduction for state and local taxes (SALT), will get even trickier with a smaller bill. The tax title for the Build Back Better Act that cleared the House Ways and Means Committee last month does not address the deduction cap, but committee Chairman Richard Neal, D-Mass., has committed to working on a resolution in the final package as a bloc of Democrats – led by taxwriter Tom Suozzi of New Jersey – insist they will reject any measure that does not include some form of SALT relief. The Democrats can lose only three votes in the House, so dealing with this issue is essential, but any solution will come at a cost as leaders try to shrink the bill. The JCT estimates the cost of repealing the cap for just one year at almost $89 billion, but other options include raising the $10,000 cap to some higher dollar amount.

Sen. Manchin has also advocated for means testing or lower income thresholds for some programs, such as free community college and the enhanced child tax credit. Others in the party have said they oppose this move for some programs but have not entirely ruled it out for others.

“Universal pre-K[indergarten], I think, should be universal because what we’re trying to do is change the paradigm about when schooling begins,” Sen. Tim Kaine, D-Va., told *The New Republic* September 30; however, he said that he would be willing to consider means testing for child care benefits or for free community college.

The Ways and Means Committee-approved tax title for the reconciliation package includes more revenue-raising tax increases than will likely be needed for a smaller overall bill, so as the spending side shrinks, there is the potential for also rolling back some proposed tax hikes, even as certain tax increases on corporations and wealthy taxpayers remain a policy goal in and of themselves for some progressives.

Manchin has said he supports increasing the corporate rate to 25 percent, rather than 26.5 percent as included in the Ways and Means bill, but it’s not yet clear what other changes might be at the front of the line.

Action by October 31?: One immediate consequence of the decision by House Democratic leaders to not proceed with the planned vote on the Infrastructure Innovation and Jobs Act last month was the expiration on September 30 of spending authority for surface transportation programs. (The infrastructure bill would renew spending authority for five years.) Congress subsequently scrambled to approve (and the president signed) a short-term patch to ensure that spending authority would not lapse, but the temporary extension runs only through October 31. Because of this, Speaker Pelosi and Senate Majority Leader Schumer are now targeting the end of October for an agreement that would allow both the reconciliation package and the infrastructure bill to move forward, but many believe this will be a difficult timeline to meet and that another transportation funding extension will be necessary later this month when the current patch is set to expire.

Other key lawmakers, however, have argued against setting artificial deadlines as negotiations on the Build Back Better package continue.

“Obviously we want to get it done as quickly as possible,” Senate Budget Committee Chairman Bernie Sanders, I-Vt., told reporters October 7. “But obviously, this is an enormously complicated and consequential bill. The American people are not calling my office and saying, ‘You gotta do it by Thursday. Or next Monday.’ What they are saying is ‘Make sure we continue to have the $300 payment for our kids. Make sure you can expand Medicare. Make sure you deal with climate [change.]’ This is not a baseball game. This is an enormously consequential piece of legislation.”

For his part, President Biden offered a similar assessment after his October 1 meeting with House Democrats on Capitol Hill.

"We're going to get this done," Biden told reporters. "It doesn't matter when. It doesn't matter whether it's in six minutes, six days, or six weeks. We're going to get it done."

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