

## Short-term debt ceiling patch becomes law

The House this week approved and President Biden signed a Senate-passed measure (S. 1301) that lifts the federal debt ceiling by \$480 billion—an amount expected to be enough to cover payments on government borrowing until at least early December of this year.

**URL:** <https://www.congress.gov/bill/117th-congress/senate-bill/1301/text>

House lawmakers did not vote on the debt ceiling legislation directly: rather, S. 1301 was deemed approved when the House on October 12 passed a rule laying out the parameters for debate on three smaller, unrelated bills. That rule cleared the chamber on a party-line vote of 219-206. (Senate passage of S. 1301 on October 7 likewise was along party lines.)

**URL:** <https://www.congress.gov/bill/117th-congress/house-resolution/716/text>

President Biden signed the measure into law on October 14.

Enactment of the debt ceiling hike averts—for a few weeks, at least—the possibility of default on the government’s fiscal obligations, something Treasury Secretary Janet Yellen recently warned could take place as early as October 18 without congressional intervention. A previous long-term suspension of the debt ceiling expired on July 31 and since then Treasury had been using so-called “extraordinary measures” to keep the nation’s debt under the statutory limit. According to Yellen, Treasury was approaching the point at which it would no longer be able to rely on those measures to stave off default.

**URL:** <https://home.treasury.gov/news/press-releases/jy0377>

### Another cliff ahead

But this week’s developments mean that Congress will face another fiscal cliff—and a likely partisan standoff—when the debt ceiling patch expires in several weeks, along with a continuing resolution enacted last month that keeps the government’s doors open through December 3.

In the run-up to the latest House and Senate votes, Senate Minority Leader Mitch McConnell, R-Ky., was adamant that Republicans in his chamber would not lend their support to advancing legislation to increase or further suspend the debt ceiling. (Under the regular 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.) Late last month, Senate Republicans blocked a motion to proceed to a House-passed bill (H.R. 5305) that would have suspended the debt ceiling through December 16, 2022, as part of a broader fiscal year 2022 funding measure. Days later, McConnell himself objected to a unanimous consent request by Majority Leader Charles Schumer, D-N.Y., that would have allowed for passage of stand-alone debt ceiling legislation by a simple majority vote. Republicans instead insisted that Democrats, who control the House, Senate, and White House, include a long-term fix for the debt ceiling in the Build Back Better Act, the massive tax-and-spending package they intend to move through Congress under filibuster-proof budget reconciliation protections.

In an offer extended to Majority Leader Schumer on October 6, however, McConnell agreed that Republicans would not block “an emergency debt limit extension” to avoid what he called “a near-term Democrat-created crisis.” The minority leader subsequently cautioned in an October 8 letter to President Biden, though, that Democrats would be solely responsible for any further action to raise or suspend the debt ceiling.

[URL: https://www.republicanleader.senate.gov/newsroom/press-releases/mcconnell-statement-on-democrats-self-created-debt-limit-crisis](https://www.republicanleader.senate.gov/newsroom/press-releases/mcconnell-statement-on-democrats-self-created-debt-limit-crisis)

[URL: https://www.republicanleader.senate.gov/newsroom/press-releases/mcconnell-letter-to-president-biden-on-debt-limit-](https://www.republicanleader.senate.gov/newsroom/press-releases/mcconnell-letter-to-president-biden-on-debt-limit-)

“I will not be a party to any future effort to mitigate the consequences of Democratic mismanagement,” McConnell told the president. “Your lieutenants on Capitol Hill now have the time they claimed they lacked to address the debt ceiling through stand-alone reconciliation, and all the tools to do it. They cannot invent another crisis and ask for my help.”

### **Reconciliation or . . . ?**

Congressional Democratic leaders generally have resisted the idea of addressing the debt ceiling through budget reconciliation, arguing that it should be a bipartisan effort since both parties bear responsibility for running up the nation’s credit card.

A separate concern for Democrats is that using budget reconciliation to suspend the debt ceiling or increase the dollar amount of available borrowing authority would require them to amend the already-adopted fiscal year 2022 budget resolution to include reconciliation instructions calling for such a policy, a process that likely would entail at least one additional marathon “vote-a-rama” session in the Senate in which unlimited nonbinding amendments may be offered and voted upon with little or no debate.

But a plausible path to a long-term solution for Democrats outside of budget reconciliation has not yet emerged. As already noted, Senate Republicans have rejected procedural workarounds that essentially would allow them to step aside and let Democrats pass a debt ceiling hike with a simple majority vote. A second option—altering Senate rules in a relatively narrow way to eliminate the filibuster (and its supermajority threshold) for legislation related to the debt ceiling—also appears to be foreclosed since Democratic Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona both have said they are opposed to tampering with the filibuster. (Such a change could be approved with a simple majority vote, but that would require support from all 50 Senate Democrats plus the tie-breaking vote of Vice President Harris, since all 50 Senate Republicans likely would be aligned in opposition.)

House Majority Steny Hoyer, D-Md., meanwhile, told reporters October 12 that he would favor addressing the debt ceiling through the budget reconciliation package because he does “not believe . . . [that] allowing default is an alternative.”

Democratic Rep. Stephanie Murphy of Florida, who sits on the House Ways and Means Committee, also expressed support for that approach in a statement after the October 12 floor vote approving S. 1301.

“If we do not have the support of the Republicans—which is terribly disappointing because we have raised the debt ceiling in previous occasions on a bipartisan basis—but if that is the political reality, then we need to use the debt-only reconciliation path,” Murphy said.

House Speaker Nancy Pelosi, D-Calif., told reporters at an October 12 press conference that she hoped lawmakers could tackle the debt ceiling “in a bipartisan way.” She also commented that a proposal (H.R. 5415) recently introduced by Ways and Means Committee member Brendan Boyle, D-Pa., and Budget Committee Chairman John Yarmuth, D-Ky., that would transfer authority for raising the debt ceiling to the Treasury Department “has merit.” (Congress would be able to rescind a debt ceiling increase by adopting a resolution of disapproval, which would require a 60-vote supermajority to clear the Senate.)

**URL:** <https://www.congress.gov/bill/117th-congress/house-bill/5415/text>

Pelosi noted that the proposal “seems to have some appeal to both sides of the aisle because of the consequences to people of not lifting [the debt ceiling],” but it is unclear whether such a measure would have sufficiently broad support to clear the House or survive a Senate filibuster.

### **Build Back Better developments**

Also this week, Speaker Pelosi weighed in on some of the choices facing congressional Democrats as they consider how to adjust their policy priorities to reflect the likelihood that the Build Back Better Act will be smaller than the \$3.5 trillion package many of them had envisioned.

The lower price tag is the result of ongoing negotiations among President Biden; progressive House Democrats, who want an expansive package that would move in tandem with the Infrastructure Innovation and Jobs Act (a bipartisan Senate-approved bill addressing physical infrastructure, such as roads, bridges, transit, and broadband); and moderate Democrats, who are concerned about the potential cost of the Build Back Better Act and have pushed for a near-term vote on the physical infrastructure legislation while leaders work out the parameters of the reconciliation bill. (For additional background, see *Tax News & Views*, Vol. 22, No. 46, Oct. 8, 2021.)

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211008\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211008_1.html)

The topline spending number is still being negotiated. President Biden has suggested a ceiling of between \$1.9 trillion and \$2.4 trillion; however, West Virginia Democratic Sen. Joe Manchin maintains he will not support more than \$1.5 trillion in spending. Congressional Progressive Caucus Chair Rep. Pramila Jayapal, D-Wash., meanwhile, has called for a package of between \$1.5 trillion and \$3.5 trillion.

How congressional Democratic leaders will bridge that gap remains unclear as they await specific details from Sens. Manchin and Sinema regarding which spending provisions they will or will not support.

“We are prepared to negotiate, we are prepared to compromise,” Senate Budget Committee Chairman Bernie Sanders, I-Vt., told reporters this week, “but we are not going to negotiate with ourselves.”

Since Democrats control only 50 seats in the Senate, they cannot afford to lose a single vote in that chamber if the reconciliation bill is to succeed. (The need for unity is almost as dire in the House, where Democrats hold a single-digit majority and can afford only three defections, and no Republicans in either chamber are expected to break ranks to support the legislation.)

**Slash or trim?:** As originally conceived, the Build Back Better Act aims to address a wide range of the Biden administration's social spending priorities, such as increasing access to pre-kindergarten education, affordable housing, child care, and paid family and medical leave, as well as expanding Medicare benefits and mitigating climate change, which would be paid for largely through increased taxes on corporations, multinational enterprises, and upper-income individuals. The prospect of a pared back bill has prompted debate on the best way to cut costs. Options for downsizing the package reportedly include funding fewer spending priorities at higher levels or over longer horizons, funding a greater number of programs but at lower levels and with faster sunsets, or some combination of the two approaches.

Speaker Pelosi alluded to one such option in an October 11 letter to her Democratic colleagues in which she noted that “the guidance I am receiving from members is to do fewer things well so that we can still have a transformative impact on families in the workplace and responsibly address the climate crisis. . . .” (House Democratic taxwriter Suzan DelBene of Washington recently argued the merits of this approach, commenting that “[w]e should focus on doing fewer things better that have a tangible, immediate impact for the American people. I have little confidence that a future Republican-controlled House or Senate would extend the child tax credit or other Democratic priorities without significant erosion.”)

**URL:** <https://www.speaker.gov/newsroom/101121-0>

But Pelosi remarked in her October 12 press conference that “some members have written back to me and said, ‘I want to do everything.’” (Rep. Jayapal advocated for this approach this week, telling reporters that progressives were “not going to pit child care against climate change” or “pit seniors against young people.” In an October 13 letter to Pelosi on behalf of the Congressional Progressive Caucus, Jayapal commented that “[if] given a choice between legislating narrowly or broadly, we strongly encourage you to choose the latter, and make robust investments over a shorter window.”)

**URL:** [https://progressives.house.gov/\\_cache/files/9/1/9113ed5e-1fa6-4add-82f1-50defd35dcb4/FD56D8FBD35ADBE278F9E5810773B101.final-10-13-21-cpc-eb-bba-letter-.pdf](https://progressives.house.gov/_cache/files/9/1/9113ed5e-1fa6-4add-82f1-50defd35dcb4/FD56D8FBD35ADBE278F9E5810773B101.final-10-13-21-cpc-eb-bba-letter-.pdf)

At her press conference, the speaker appeared open to haircuts for some provisions, suggesting that “the timing would be reduced in many cases to make the cost lower”; but she noted it would have to be done “in such a way that does not undermine the transformative nature of [the legislation], because some of it has to have enough money in order to be . . . sustainab[le].”

**Financial account reporting:** On the revenue side, Pelosi also told reporters that she believes the final reconciliation package will include a provision from President Biden's fiscal year 2022 budget blueprint that would require financial institutions to report gross inflows and outflows from customer accounts with a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner, except for those accounts with a gross flow below a specified threshold.

The proposal, which was not part of the Build Back Better tax title that the House Ways and Means Committee approved last month, is intended to address the “tax gap”—the difference between the amount of money owed to the government in taxes and the amount actually paid on a timely basis.

Responding to a reporter’s question, Pelosi commented that “if people are breaking the law and not paying their taxes, one way to track them is through the banking measure.” She added, though, that the threshold for triggering the reporting requirement—\$600 under the administration’s proposal—would be subject to negotiation.

**Timing:** Pelosi and Senate Majority Leader Schumer have targeted the end of October—when a short-term patch for surface transportation spending authority is set to expire—for reaching an agreement that would allow both the Build Back Better Act and the Infrastructure Innovation and Jobs Act to move forward. (The most recent multi-year reauthorization of spending authority for surface transportation programs lapsed on September 30, which prompted Congress to adopt the short-term patch. The infrastructure legislation would renew spending authority for five years.)

At her press conference, Pelosi did not comment directly on this self-imposed deadline but said she was “optimistic that we will get to where we need to be in a timely fashion.”

Schumer emphasized the deadline—and the need for compromise on the reconciliation package—in an October 14 letter to Senate Democrats.

**URL:** <https://www.democrats.senate.gov/imo/media/doc/Dear%20Colleague%2010.14.21.pdf>

“I have said from the beginning that the execution of the two-track legislative strategy for the bipartisan infrastructure bill and the Build Back Better Act would be difficult,” Schumer wrote. “To pass meaningful legislation, we must put aside our differences and find the common ground within our party. As with any bill of such historic proportions, not every member will get everything he or she wants. . . . At the end of the day, we will pass legislation that will dramatically improve the lives of the American people. And we must aim to do that in the month of October.”

Other lawmakers, however, have argued against setting artificial deadlines as negotiations on the Build Back Better package continue. Rep. Jayapal of the Congressional Progressive Caucus told reporters this week that “the short-term surface transportation extension can always be extended if we have to.”

The administration, for its part, indicated this week that President Biden expects to see signs of progress from congressional negotiators.

“[T]ime is not unlimited,” White House Press Secretary Jen Psaki said at an October 13 press briefing, “and certainly the president and our entire senior team is continuing to press all members about the need to move forward and to find a way to unify around a package that can deliver results to the American people.”

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