Still no debt limit agreement as 'X-date' for default approaches

After several days of on-again, off-again talks, President Joe Biden, House Speaker Kevin McCarthy, R-Calif., and their respective lieutenants appeared ready to close out this week without reaching an agreement on a proposal to increase the federal debt limit, even as the Treasury Department continued to sound the alarm that without congressional action, the federal government is at risk of defaulting on its credit obligations as early as June 1.

Sticking points

The parameters of the continuing debt limit discussions have largely been shaped by the provisions in the Limit, Save, Grow Act of 2023 (H.R. 2811). That sprawling measure, which cleared the House on April 26 solely on the strength of Republican votes, would lift the debt limit into early 2024 but also make a number of other policy, spending, and tax changes—including repealing many of the clean energy tax incentives enacted by Democrats as part of the Inflation Reduction Act of 2022 (P.L. 117-169) and rescinding most of the supplemental 10-year mandatory funding provided to the Internal Revenue Service in that law—that would have the effect of trimming the federal budget by trillions of dollars over the next decade. (For details on the Limit, Save, Grow Act, see *Tax News & Views*, Vol. 24, No. 15, Apr. 28, 2023.)
URL: https://www.congress.gov/118/bills/hr2811/BILLS-118hr2811pcs.pdf
URL: https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230428_1.html

Among the more significant issues that have vexed negotiators in their attempt to clinch a deal are:

- **Spending limits:** McCarthy and House Republicans have called for significant cuts to annual appropriations spending—with a notable exception for defense spending, however—as a precondition for raising the debt limit. The White House, meanwhile, has offered a freeze on appropriations through fiscal year 2024.
- **Taxes:** Biden and congressional Democrats have been united in their opposition to the Limit, Save, Grow Act's proposals to rescind a significant portion of the supplemental IRS enforcement funding and repeal the clean energy tax incentives in the Inflation Reduction Act. Speaker McCarthy and congressional Republicans likewise have rejected President Biden's call for adding other revenue raisers to the package to help reduce the federal deficit. It is unclear exactly what revenue raisers the White House has proposed in the current negotiations, but in a May 21 statement on Twitter, the president touted provisions in his fiscal year 2024 budget blueprint that would, among other things, increase the income tax rate on corporations and the top income tax rate for individuals, impose a global minimum tax on corporations and a minimum tax on "billionaires," and increase the excise tax rate on stock buybacks.
  URL: https://twitter.com/POTUS/status/1660316196909072390?cxt=HHwWjIC-uZmy0IouAAAA
- **Work requirements for federal assistance programs:** The Limit, Save Grow Act proposes stricter work requirements for participants in certain federal benefit programs, including the Supplemental Nutrition

Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Medicaid—provisions that McCarthy has described as a "red line" in negotiations. President Biden ruled out tighter work requirements for Medicaid recipients during comments to reporters shortly before he left for the G7 conference in Japan on May 17, although he noted that he would be willing to consider modest enhancements to work requirements in other federal programs.

Issues on which consensus currently appears more likely include streamlining the permitting process for energy projects and rescinding unspent federal COVID relief funds.

Yellen cites increased threat level for early June default

This week's debt limit discussions unfolded as Treasury Secretary Janet Yellen warned congressional leaders in both parties that the risk of a default by early June is only increasing.

"With an additional week of information now available, I am writing to note that we estimate that it is highly likely that Treasury will no longer be able to satisfy all of the government's obligations if Congress has not acted to raise or suspend the debt limit by early June, and potentially as early as June 1," Yellen wrote in a May 22 letter to the Speaker McCarthy, House Minority Leader Hakeem Jeffries, D-N.Y., Senate Majority Leader Charles Schumer, D-N.Y., and Senate Minority Leader Mitch McConnell, R-Ky. (It's worth noting that her assessment of an early June default as "highly likely" is a few degrees more emphatic than her conclusion in her May 15 update to congressional leaders that the prospect of such an outcome is "likely.")
URL: https://home.treasury.gov/system/files/136/Debt-Limit-Letter-to-Congress-Members-20230522-McCarthy.pdf

Yellen appeared to ratchet up the threat level later in the week when she stated in a virtual appearance at *The Wall Street Journal*'s CEO Council Summit on May 24 that "it seems almost certain that we will not be able to get past early June" if the debt limit is not lifted.

Outside the government, an updated analysis released this week by the Bipartisan Policy Center, a Washington-based think tank, indicates that without congressional action on the debt limit, the government will "most likely have insufficient cash to meet all its financial obligations sometime between early June and early August 2023, with an elevated risk between June 2 and June 13"—an assessment that aligns with a report the organization published earlier this month.
URL: https://bipartisanpolicy.org/debt-limit/

For his part, Mark Zandi of Moody's Analytics stated in a May 22 interview with Yahoo Finance that the likely X-date is June 8. Appearing at a Senate Finance Committee hearing earlier this month, Zandi also warned of a June 8 default date, although he noted that a "worst-case scenario" would accelerate default to June 1 and a "best-case scenario" would push it to August 8.

An agreement in the next few days?

Although an agreement to lift the debt limit is not yet in hand, Speaker McCarthy and the White House both appeared outwardly optimistic that a deal is possible.

"I think we've made some progress . . . and we'll continue to work through to try to get a solution," McCarthy told reporters May 24.

Press Secretary Karine Jean-Pierre told reporters at a May 24 briefing that negotiations remain "productive" and that the two sides can reach "a bipartisan, reasonable agreement."

If, as some observers have speculated, negotiators can reach a deal as soon as this coming weekend, congressional leaders would be on a tight timeline to move legislation through their respective chambers ahead of a possible early June default deadline.

Any agreement would have to be cast into legislative language and the resulting bill brought to the House floor during the week of May 29. The House adjourned for its Memorial Day recess after wrapping up work on May 25 and is not scheduled to be back in session until June 5, although members have been told to be prepared to return to Washington on 24 hours' notice if an agreement is reached and debt limit legislation is ready for a vote in that chamber. Speaker McCarthy has said, however, that once a bill is ready, he will not waive a House rule that gives members 72 hours to review legislation ahead of a floor vote.

The Senate was adjourned for its Memorial Day recess this week and will be back in session on May 30, but it is unclear whether there will be sufficient votes in the chamber to allow the legislation to be given expedited consideration or if it instead will have to move under normal procedural rules—a process that could take several days.

Depending on the exact details of the final agreement, another potential impediment to fast action on a debt limit bill is the possibility that House and Senate leaders in both parties may have to spend time addressing resistance from progressive Democrats who may believe that the spending limits and other policy changes in the legislation go too far and from conservative Republicans who may believe that the spending cuts and other policy changes do not go far enough. With tight margins in both chambers, the loss of even a few "aye" votes on either side of the aisle could mean the difference between success and failure for what could prove to be a politically divisive measure.

If congressional leaders reach a debt limit agreement but find they need additional time to draft a bill, mitigate the concerns of their members, and move it through their respective chambers, they conceivably could advance a stopgap bill to increase or suspend the debt limit for just a few days, which would allow them to stave off default while they work to pass a more durable measure. (As of press time, leaders have generally been dismissive of the idea, although that could certainly change as June 1 gets closer.)

Prospects for fallback options growing dimmer

If a deal remains elusive, two longshot options to bypass the negotiating process and force action on a debt limit increase—a discharge petition for debt limit legislation in the House and White House action to increase or ignore the limit by invoking the 14th Amendment—now appear even less likely to provide a path to addressing the debt limit in time to avert a potential default.

Discharge petition: House taxwriter and Budget Committee ranking Democrat Brendan Boyle of Pennsylvania filed a discharge petition May 17 on a catch-all bill (H.R. 626) introduced in January by Rep. Mark DeSaulnier, D-Calif., that Democrats argue could serve as a legislative vehicle to carry an alternative debt limit proposal.
URL: https://www.congress.gov/bill/118th-congress/house-bill/626

DeSaulnier's proposal has already cleared the first procedural hurdle in the discharge-petition process since it had been introduced and referred to relevant House committees for 30 "legislative days" at the time the petition was filed. But backers of the discharge petition have not yet gathered the mandatory 218 signatures—that is, a majority of the chamber—that they need to advance their effort. The House Clerk's Office reports that all 213 House Democrats—but no Republicans—have signed the petition as of May 24, which means Boyle and his co-signers still must win support from five GOP lawmakers in the chamber to secure a majority.
URL: https://clerk.house.gov/DischargePetition/2023051701?CongressNum=118

But even if Boyle and other House members backing the petition were to gain those five Republican signatures—a tall order in itself—they still would have to wait another seven legislative days before they could make a motion for the full House to consider the underlying bill. And given that legislative days are counted based on days that the House is actually in session, the idea that lawmakers could execute on the petition and move an alternative debt limit proposal through the chamber—much less get it through the Senate—in time to avoid a possible default in early June appears increasingly doubtful.

14th Amendment: Some congressional Democrats from the party's progressive wing, meanwhile, have urged President Biden to bypass Congress and instead invoke the 14th Amendment to the US Constitution, which states that the "public debt of the United States . . . shall not be questioned," as a way to continue paying the government's bills even if the statutory debt limit is not raised.

The president has indicated in recent weeks that although he believes that approach has merit, he is reluctant to embrace it because of the potential legal ramifications and the tight timeline ahead of the deadline for default—a position he reiterated during a May 21 press conference during the G7 summit in Hiroshima, Japan.

"I'm looking at the 14th Amendment, as to whether or not we have the authority," Biden said in response to a reporter's question. "I think we have the authority. The question is: Could it be done and invoked in time [so] that it . . . would not be appealed and, as a consequence, pass the date in question and still default on the debt. That's a question that I think is unresolved."

The president also noted later in the press conference that the White House has "not come up with a unilateral action that could succeed in a matter of two weeks or three weeks." Once the current standoff has been resolved, however, Biden said he intends to "find a rationale to take [the issue] to the courts to see whether or not the 14th Amendment is, in fact, something that would be able to stop it."

Treasury Secretary Yellen also has cautioned that she considers the notion invoking the 14th Amendment to be "legally questionable."

Treasury Deputy Secretary Wally Adeyemo took the 14th Amendment off the table—at least in the context of the current negotiations—when asked about it during a May 25 interview with CNN.

"I think the president and secretary are clear that that will not solve our problems now. So, yes, that is a no," Adeyemo said.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP