AKIN GUMP
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Policy Alert

An Overview of the Budget Control Act of 2011

August 8, 2011

On August 2, 2011, the Budget Control Act of 2011 was enacted into law. The statute authorizes the President to increase the debt ceiling by at least $2.1 trillion (and perhaps by as much as $2.4 trillion) in two steps, subject to a congressional disapproval process. In addition, the new law provides for significant deficit reduction of at least $2.1 trillion (and perhaps as much as $2.4 trillion) over the next 10 years. This reduction is accomplished through the establishment of the enacted discretionary spending caps and the anticipated work of a newly created Joint Select Committee on Deficit Reduction (the "Super Committee"). The ultimate total amount of deficit reduction will depend on the success of the Super Committee. In addition, "sequestration" will be imposed as an enforcement mechanism in the event that additional deficit reduction of at least $1.2 trillion is not realized through the Super Committee process. The new statute also ensures a vote by both the House and Senate on a balanced budget amendment to the Constitution by December 31, 2011.

Structured Debt Ceiling Increases

The new statute permits the statutory debt ceiling to be increased by as much as $2.4 trillion in several steps.

Step one: The statute provided an immediate increase of $400 billion effective August 2 (the date of enactment of the statute). As part of this initial installment, the President has requested that the debt ceiling be increased by an additional $500 billion subject to the congressional disapproval process. The disapproval resolution is subject to regular rule, order and procedure, i.e., passage would require a majority vote of both the House and Senate and, if vetoed by the President, an override of the veto by a two-thirds vote of both the House and Senate. (Thus, a one-third plus one coalition in either chamber would be sufficient to sustain the President's veto.) In the absence of enactment of the disapproval resolution, the debt ceiling would be increased by the additional $500 billion for a total of $900 billion in the initial installment.

Step two: In 2012, the President can request a further increase in the debt ceiling by an additional $1.2 trillion-$1.5 trillion, the precise amount dependent on certain future events—specifically, on whether—

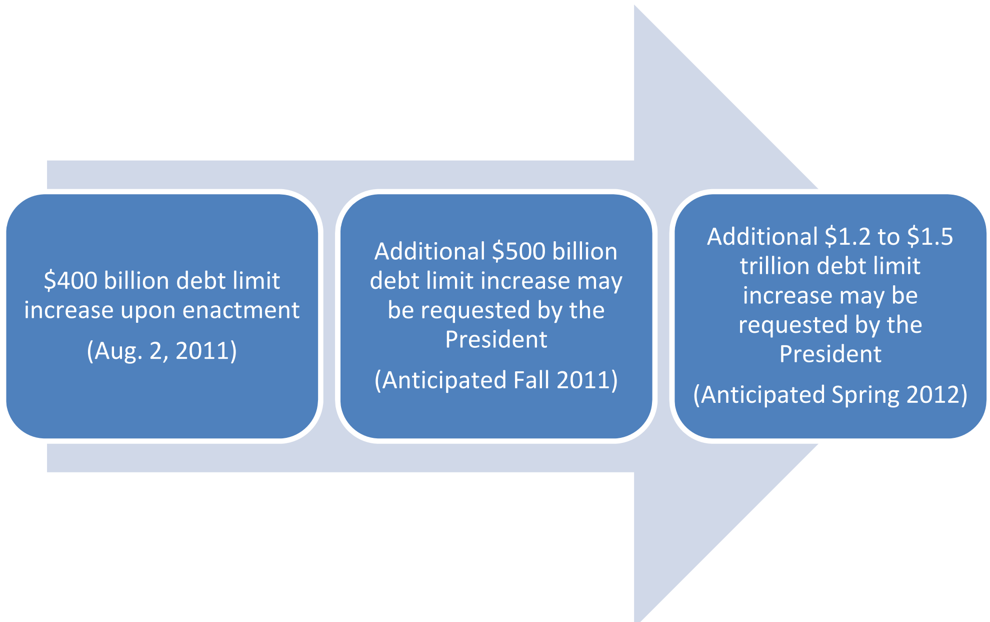
- Congress has passed a balanced budget constitutional amendment and has submitted such amendment to the states for ratification, or

- Congress has passed (and the President signed) legislation reducing the deficit by a minimum of $1.2 trillion (over 10 years) reflecting the policy recommendations of the newly created Super Committee.

The debt ceiling can be increased by the full $1.5 trillion if a $1.5 trillion deficit reduction package has been successfully enacted or if the balanced budget amendment has passed Congress. If the deficit reduction package reduces the deficit by between $1.2 and $1.5 trillion, the debt ceiling will be increased by a comparable amount. Finally, the debt ceiling will be increased by $1.2 trillion in any event (if all else fails), i.e. if the balanced budget does not pass the Congress and if no deficit reduction legislation is able to pass the Congress.

Thus, under the new statute, the statutory debt ceiling will be increased by a minimum of $2.1 trillion and could be increased by as much as $2.4 trillion. These amounts are expected to be sufficient to accommodate the federal government's borrowing needs through 2012, postponing any further legislative activity on the debt ceiling until 2013.

Figure 1: Raising the Debt Ceiling

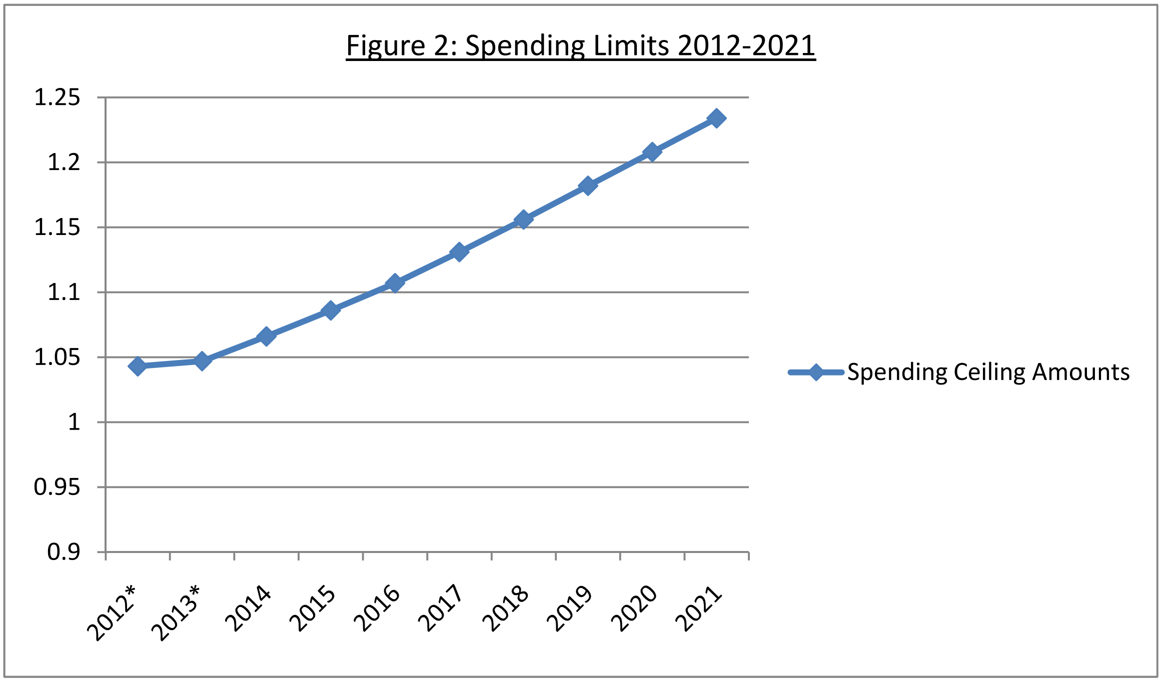


Establishing Discretionary Spending Limits

The law achieves $917 billion in cumulative spending reductions in discretionary programs over a 10-year period. To assure this amount of savings, the total amount of discretionary appropriations is statutorily capped for each year, starting with fiscal year (FY) 2012. Reductions for the first two fiscal years (FY 2012 and FY 2013) have separate caps for discretionary spending levels for security programs (defense, homeland security, Veterans Affairs, Intelligence, Nuclear Security Administration) from non-security programs (education, health, environment, housing, transportation, etc.). This firewall expires at the end of FY 2013. If Congress adjourns at the end of any session having passed legislation that exceeds the discretionary caps, an automatic budget sequestration will be triggered, reducing spending by the amount over the cap. The sequestration will be applied 50-50 between the security and non-security spending.

Additionally, the law creates points of order in both the House and the Senate if legislation is moved in either body that increases spending beyond the statutory caps. The law does allow emergency designation for spending over and above the statutory levels for specific disaster and defense funding.

The spending ceiling is set at $1.043 trillion in 2012 and rises to $1.234 trillion in 2021. The spending ceiling amounts for each year are set forth in the chart below.



**Note that for FY 2012 and FY 2013 the spending limits are divided into security and non-security categories. For FY 2012, for the security category, the spending limit is $684 billion and non-security category is $359 billion. For FY 2013, the spending limit for the security category is $686 billion and non-security category is $361 billion.*

The Super Committee and Additional Deficit Reduction Process

Membership: The new statute creates a bicameral, bipartisan Joint Select Committee on Deficit Reduction to develop additional deficit reduction initiatives. By statute, this Super Committee will consist of 12 members, three each appointed by the elected leadership of the Congress (the Speaker and Democratic leader of the House, the Democratic and Republican leaders of the Senate). In addition, the Speaker and Senate majority leader will each appoint from the group of 12 one co-chair of the Super Committee. (The co-chairs, in turn, will appoint a staff director.) All appointments are to be made by August 16. By statute, the first meeting of the Super Committee must take place by September 16.

Governance: The statute requires the report and recommendations of the Super Committee to be supported by a majority of the committee (i.e., by at least seven of the 12 members).

Deficit reduction goal: The statute sets as a goal for the Super Committee the development of additional deficit reduction initiatives of $1.5 trillion (over the next 10 years, through 2021). The Committee, of course, could do less, but, under the statute, would have to agree on a deficit reduction package of at least $1.2 trillion in order to avoid the "sequester" (discussed below) designed by the statute to enforce its deficit reduction goals.

Powers and mandate: The statute grants the Super Committee sweeping powers and procedural protections in pursuit of its deficit reduction mandate. First, the potential scope of its legislative work product is unrestricted by statute. Thus, all federal spending and revenue policies are within its power to consider and act upon.

In addition to its broad policy scope, the Super Committee is free to select the budget "baseline" against which its work will be measured and its policy recommendations scored. In the absence of an affirmative decision to the contrary, the "normative" budget scorekeeping rules and "current law" baseline would appear to apply. (Such rules and baseline assume the operation of "current law"—such as the expiration of the so-called Bush tax cuts at the end of 2012).

However, it is within the scope of the Super Committee to decide upon a different baseline and scorekeeping convention through a process called "directed scorekeeping" that has some limited, historical precedent.

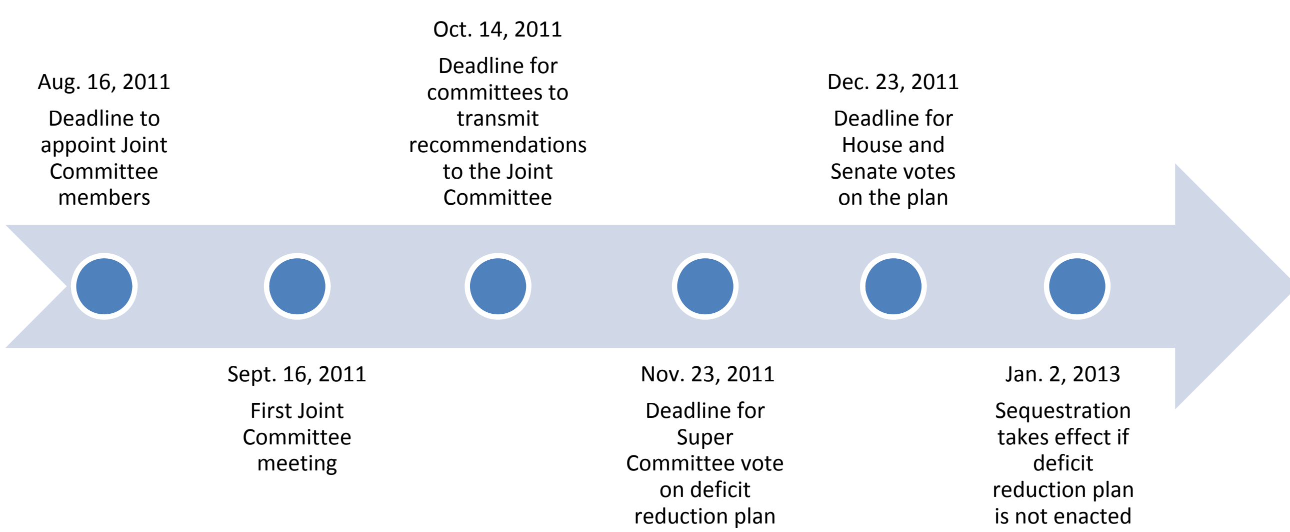
Finally, the work of the Super Committee is outside the congressional budget process. Thus, the procedural rules of the budget process applicable to "budget reconciliation" bills do not technically apply to the work of the Super Committee. In this regard, the Senate's Byrd Rule applicable against the inclusion of "extraneous" matters in a budget reconciliation bill would not appear to apply to the work product of the Super Committee.

Procedural protections of the Super Committee's work product: If a majority supports the final deficit reduction package of the Super Committee, that package is given (i) procedural protection against amendment and filibuster and (ii) expedited procedural advancement in both the House and Senate ensuring a final vote on passage in both chambers by December 23, 2011.

Role of congressional committees of jurisdiction: The statute contemplates a role for congressional committees of jurisdiction in which, if they choose, the committees can develop and submit policy recommendations to the Super Committee for its consideration. The statute requires that any such recommendation must be submitted to the Super Committee by October 14 (or the committees of jurisdiction are effectively discharged). Importantly—and contrary to the case in the congressional budget process—any recommendation from a committee of jurisdiction is not binding on the Super Committee. The Super Committee is free to accept, amend or ignore the recommendations of the jurisdictional committees as they choose. In effect—and contrary to the case in the budget reconciliation process where the action by the committees of jurisdiction is binding on the budget committees—the recommendations of the committees of jurisdiction can be viewed and treated as advisory in nature by the Super Committee.

Timeline: The statute establishes an accelerated timeline for the Super Committee's work, culminating in a vote by the Super Committee on its package by November 23—and, assuming committee approval, final votes in the House and Senate by December 23.

Figure 3: Timeline for Super Committee Action



Enforcement by Sequestration

The statute provides for "sequestration" (across-the-board spending reductions in specified programs) if legislation reducing the deficit by $1.2 trillion is not enacted by January 15, 2012. The structure of the sequestration mechanism is similar to the mechanism enacted in the Gramm-Rudman-Hollings statute in the mid-1980s. If sequestration is ordered, it would take effect on January 2, 2013. The sequestration could be a "full" sequester of $1.2 trillion (if no deficit reduction legislation has been enacted through the Super Committee process) or a "mini-sequester" reflecting the difference between $1.2 trillion and any enacted deficit reduction legislation. (For instance, if Congress enacts a bill reducing the deficit by $700 billion, the mini-sequester would be $500 billion representing the deficiency from the $1.2 trillion target.) If sequestration is ordered under the statute, it would apply 50-50 to defense and non-defense spending programs. It is important to note that unlike the sequestration triggered by exceeding discretionary caps, the sequestration for failure to produce deficit reduction in spending will be applied to defense by affecting the Department of Defense spending alone, not including other security funding. In addition, it does not apply to important exemptions (similar to those contained in Gramm-Rudman-Hollings) for Social Security, Medicaid, antipoverty programs, unemployment insurance, military pay, civilian and military retirement programs and veterans' benefits. In addition, if sequestration is triggered, reductions in the Medicare program would be limited to providers (doctors, hospitals, medical device manufacturers, etc.) and would be capped at two percent of annual program spending.

Balanced Budget Amendment

The statute provides that a constitutional amendment requiring a balanced budget amendment be voted on under expedited parliamentary procedures in both the House and Senate during the period October 1-December 31, 2011. However, the statute does not specify the text of the balanced budget amendment. The regular order for passage of constitutional amendments, requiring support from a two-thirds majority in each chamber, would apply. The statute does not condition any debt ceiling increase on passage of the amendment.

CONTACT INFORMATION

If you have any questions about this alert, please contact—

Robert J. Leonard
rleonard@akingump.com
202.887.4040
Washington, D.C.