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EDITORIAL/OPINION

Extortion and the Debt Ceiling

By STEVE CHARNOVITZ

Congress and the administration are at loggerheads over legislation needed to lift the $4.9 trillion debt ceiling. To stave off immediate default, Treasury Secretary Robert Rubin is *disinvesting* federal trust funds. A short-term extension was passed a few days ago, but was vetoed by President Clinton because it imposed constraints on trust fund account juggling and restrictions on environmental regulators. While Mr. Rubin's highly irregular actions provide a temporary reprieve, the debt ceiling must still be passed within several weeks.

In ascertaining responsibility for the current predicament, the first question to ask is whether a statutory debt ceiling is really needed. The ceiling originated in 1917 when Congress wisely decided to preauthorize federal borrowing rather than approving each issuance of debt. In those days, the Congress lacked a budget process to determine overall spending levels. Following the establishment of the congressional budget process in the mid-1970s, the separate limit on federal debt became superfluous.

Since the federal budget is usually in deficit, the debt ceiling must be raised periodically. In 1979, the U.S. House of Representatives — where debt legislation originates — passed Rule 49 to provide for the automatic enactment of a clean debt ceiling increase whenever a newly approved budget resolution would necessitate that change. This procedure was designed to depoliticize the debt ceiling and to avoid demagoguery.

Unfortunately, House Republicans waived Rule-49 earlier this year. The only possible reasons for doing so were to repoliticize the issue and to create opportunities for linking the debt ceiling to the congressional agenda. The technique of fomenting a crisis in the hope of gaining tactical advantage may have appealed to a historian like Speaker Gingrich.

Without a doubt, the Congress had plenty of time to correct the debt limit before it began to disrupt financial markets. Had the Congress finished the 13 appropriations and the reconciliation bill on time before Oct. 1, there would have been no pretext for hijacking the debt ceiling bill for ulterior purposes. That the House and Senate are tardy in their budget work is not surprising in view of the poor overall performance of the 104th Congress. After 10 months in office, our Congress has achieved only 43 public laws. This is by far the lowest output of any Congress in the 20th century.

Just as President Reagan sometimes criticized the federal government with seeming disregard that he was running it, the Republican leadership in Congress has a tendency to forget that they are now setting U.S. budget policy. For example, Speaker Gingrich has characterized the administration's urgent request for a higher debt ceiling as "the president's focus on getting another credit card to run up debt." Yet only 140 days ago, the Congress approved a budget resolution calling for a deficit of $170 billion in fiscal year 1996. How will this deficit be financed, if not by credit card?

Since Congress sets the debt ceiling by law, only Congress can update it. While congressional leaders recognize their power to raise the debt ceiling, they seem oblivious to their constitutional responsibility to do so when necessary to avoid a default.

The Constitution gives Congress the power "to borrow money on the credit of the United States." Since it is the credit of the entire country which is being pledged, the U.S. Supreme Court — in Perry v. United States (1935) — has stated that it could give no sanction to the notion that Congress may withdraw or ignore that pledge. To quote the court: "Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obligations."

Since Congress cannot legally repudiate debt, it cannot maintain an artificial ceiling on debt that would prevent the Treasury from paying interest on a timely basis or from redeeming bonds. Another way of saying this is that U.S. bonds are an unbreakable contract with America. It is ironic that House Republicans, who regularly boast about honoring their self-styled "Contract," would so casually dishonor a real contract with millions of lenders.

In passing a short-term extension of the debt with so many strings attached, the Congress knew that President Clinton would veto it. Such partisanship is without precedent in a debt ceiling bill. Congressional Democrats never used the debt ceiling to force accommodations by Presidents Reagan or Bush. Indeed, the closest Congress ever came to such linkage was in June 1980, when a ban on oil import fees was attached to a debt bill. President Carter vetoed the bill, but was quickly overridden by both Democrats and Republicans.

President Clinton's veto of the temporary debt ceiling increase was the right response to the Republican tactic of loading it with extraneous measures. President Nixon issued a similar veto threat in 1972, warning Congress against "seemingly attractive, politically popular, but fiscally irresponsible, riders to the debt ceiling bill." Strong presidents do not allow Congress to back them into a corner.

In summary, when the national debt bumps up against its statutory ceiling, the Congress has only two legitimate options. It can mandate a balanced budget immediately by raising taxes or cutting spending. Or it can raise the debt ceiling to permit additional borrowing. There is no justification for using a potential default to extort concessions from the president. The Congress should pass a clean, long-term extension now.

Steve Charnovitz writes often on government, business and the environment.

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