TO: Adam Brandon, President

FROM: Jason Pye, Vice President of Legislative Affairs

RE: **Options for the Debt Limit**

DATE: August 11, 2017

The debt limit, authorized by the Bipartisan Budget Act of 2015, expired on March 15. Since March 16, the Department of the Treasury has been using "extraordinary measures" in order for the United States government to meet certain obligations to avoid default. These steps included the suspension of sales of State and Local Government securities and the suspension of reinvestment of the Exchange Stabilization Fund,[1] each of which were normal under the circumstances.

Treasury Secretary Steven Mnuchin communicated to Speaker Paul Ryan (R-Wis.) these measures would continue, writing, "I believe that it is critical that Congress act to increase the nation's borrowing authority by September 29."[2] It's clear that Congress will have to act to increase the debt limit before that date, likely by attaching the debt limit increase to to a must-pass bill.

The rumor was that Senate Majority Leader Mitch McConnell (R-Ky.) wanted to address the debt limit before the upper chamber adjourned for the shortened August recess. This, however, didn't happen.[3] The House hasn't yet tackled the issue. But with a September 29 deadline set by Secretary Mnuchin, it will come when Congress reconvenes.

Currently, the Treasury Department is operating on "extraordinary measures," which means that the Treasury Department is delaying payment of some obligations. These measures will continue through September 29. Secretary Steve Mnuchin has urged Congress to act before that date.

FreedomWorks' conversations with congressional Republican leadership indicate that they will follow the administration's lead. Secretary Mnuchin is lobbying Congress for a "clean" debt limit increase, meaning that no strings -- such as spending reduction or policy riders -- are attached.[4] Although Office of Management and Budget (OMB) Director Mick Mulvaney initially wanted spending cuts tied to a debt limit increase,[5] he has recently echoed Secretary Mnuchin.[6]

There is a significant risk for the White House with this approach. A clean debt limit increase

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[1] Department of the Treasury, "Description of the Extraordinary Measures," March 16, 2017 https://www.treasury.gov/initiatives/Documents/Description_of_Extraordinary_Measures_2017_03_16.pdf

[2] Steve Mnuchin, Letter to Paul Ryan, July 28, 2017 https://www.treasury.gov/initiatives/Documents/Mnuchin%20to%20Ryan%20on%20DISP%20-%207-28-17%20(2).pdf

[3] Anna Edgerton, "GOP Leaders Plan for Senate to Vote First on Debt Limit, Sources Say," Bloomberg, July 14, 2014 https://www.bloomberg.com/news/articles/2017-07-14/debt-limit-increase-bill-is-said-to-be-voted-on-first-by-senate

[4] John Bresnahan and Seung Min Kim, "Mnuchin pushes for 'clean' debt ceiling boost," Politico, August 1, 2017 http://www.politico.com/story/2017/08/01/clean-debt-ceiling-boost-steve-mnuchin-241200

[5] Joseph Lawler, "Mulvaney favors attaching spending reforms to increase in debt ceiling," Washington Examiner, May 31, 2017 http://www.washingtonexaminer.com/mulvaney-favors-attaching-spending-reforms-to-increase-in-debt-ceiling/article/2624611

[6] Philip Wegmann, "Mick Mulvaney backs down: White House to support 'clean' debt ceiling," Washington Examiner, August 3, 2017 http://www.washingtonexaminer.com/mick-mulvaney-backs-down-white-house-to-support-clean-debt-ceiling/article/2630553

means that the White House will almost certainly Democrats for passage. This approach would further demoralize conservative grassroots activists after the failure on ObamaCare repeal and the lack of any significant legislative victories from a Republican-controlled Congress.

Similarly, a clean debt limit increase is clearly not what conservatives in Congress want. The House Freedom Caucus took an official position in opposition to a clean debt limit increase and that any debt limit increase "be paired with policy that addresses Washington's unsustainable spending by cutting where necessary, capping where able, and working to balance in the near future."[7] The House Freedom Caucus also wanted the debt limit addressed before the August recess.

The House Freedom Caucus may have shifted their strategy, as time begins to run out on the debt limit. A recent report indicated that the conservative caucus may want the passage of the Debt Ceiling Alternative Act,[8] as part of a debt limit increase.[9]

Introduced by Rep. David Schweikert (R-Ariz.), the Debt Ceiling Alternative Act would require the Department of the Treasury to issue GDP-linked bonds to pay principal and interest and on debt held by the public, the rescission of unobligated funds, and the sale of mortgage-related assets and securities.

Similarly, Republican Study Committee (RSC) Chairman Mark Walker (R-N.C.) recently slammed a clean debt limit increase, noting the votes aren't there for such a request. Moreover, Chairman Walker explained, "[C]ongressional leaders load it up with even more increased spending and must-pass legislation to attract the necessary votes. Historically, this is done by reaching across the aisle to produce a bill that is as unsavory politically as it is fiscally."[10]

Even those who are traditionally in the pocket of House Republican leadership have warned that a clean debt limit increase is a nonstarter in the lower chamber. Rep. Tom Cole (R-Okla.), for example, recently said, "That's a tough sell to Republicans. Democrats seem to be fine with that, but I think most of my colleagues aren't."[11]

Rep. Cole took it a step further, explaining, "I certainly would listen to any argument [for a clean debt limit increase] the president made. But no, I much prefer to do something, and we've done that in the past, by the way, where we actually do something to lower the debt and deficit long-term. It doesn't have to be dollar-for-dollar, but you have to show some progress."[12]

The Trump administration is in a difficult position, but it's clear that a clean debt limit increase lacks enough Republican votes for passage and relying on Democrats could put the administration in a precarious position with conservatives in Congress, as well as grassroots activists. Still, there may be other options that could rally conservatives who are frustrated by

[7] The Office of Rep. Mark Meadows, "House Freedom Caucus Takes Official Position on the Debt Ceiling," May 24, 2017 https://meadows.house.gov/media-center/press-releases/house-freedom-caucus-takes-official-position-on-the-debt-ceiling
[8] H.R. 3167, 115th Congress (2017) https://www.congress.gov/bill/115th-congress/house-bill/3167
[9] Pete Kasperowicz, "House Freedom Caucus narrows down debt ceiling demands," Washington Examiner, August 3, 2017 http://www.washingtonexaminer.com/house-freedom-caucus-narrows-down-debt-ceiling-demands/article/2630490
[10] Mark Walker, "Rep. Mark Walker: A clean debt ceiling is dirty politics," Washington Examiner, August 7, 2017 http://www.washingtonexaminer.com/rep-mark-walker-a-clean-debt-ceiling-is-dirty-politics/article/2630862
[11] Max Greenwood, "GOP lawmaker: House Republicans not likely to back clean debt ceiling hike," The Hill, August 8, 2017 http://thehill.com/homenews/house/345700-gop-lawmaker-house-republicans-not-likely-to-back-clean-debt-ceiling-hike
[12] Andrew Desiderio, "Tom Cole, Top House GOPer, Tells Trump No Clean Debt-Ceiling Hike," The Daily Beast, August 8, 2017 http://www.thedailybeast.com/tom-cole-top-house-goper-tells-trump-no-clean-debt-ceiling-hike

the current trajectory on the debt limit.

Boehner Rule

Realizing that House Republicans wouldn't sign off on a clean debt limit increase, Speaker John Boehner (R-Ohio) negotiated an agreement, the Budget Control Act (BCA),[13] with President Barack Obama and Senate Majority Leader Harry Reid (D-Nev.) to increase the immediately debt limit by $400 billion, followed by automatic increase of $500 billion that would could only be negated if Congress passed a resolution of disapproval.

In exchange for the initial debt limit increase, the White House suggested a bipartisan commission to develop at least $1.2 trillion in deficit reduction over the corresponding ten-year budget window. If the commission failed to produce recommendations, an automatic sequestration of $1.2 trillion, divided equally between defense and nondefense spending, would apply. Another debt limit increase, equal to the amount of the sequester, would apply unless Congress disapproved.

The BCA also established spending caps for discretionary spending between FY 2012 and FY 2021 to promote responsibility.[14]

Aside from the immediate $900 billion debt limit increase upon passage of the BCA, the law was a dollar-for-dollar spending cut to match the $1.2 trillion debt limit increase. This became known as the "Boehner rule." The BCA wasn't ideal, but it was a better option than continuing to let spending grow unchecked.

The Boehner rule does provide the White House and Speaker Ryan with with an option, but it may be met with skepticism from conservatives inside and outside Congress who have seen the spending caps increased or planned cuts delayed on three different occasions.[15] Conservatives may not be persuaded by any promised reductions in discretionary spending that aren't likely to come to fruition.

Furthermore, conservatives understand that cuts to discretionary spending are a half-measure, as discretionary spending is roughly 25 percent of federal spending in FY 2018 through FY 2027, virtually equal between defense and nondefense, according to the Congressional Budget Office.[16] Mandatory spending represents nearly 65 percent of federal outlays over the next ten years and will consume more of the federal budget in the long-term, crowding out discretionary spending.

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[13] The Office of Rep. Marsha Blackburn, "Budget Control Act Summary and Timetable," Retrieved August 11, 2017 Realizing that House Republicans wouldn't sign off on a clean debt limit increase

[14] Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan, *The Budget Control Act of 2011*, Congressional Research Service, August 19, 2011 https://fas.org/sgp/crs/misc/R41965.pdf

[15] Alicia Parlapiano, "How Congress Has Worked to Avoid the 'Sequester' Spending Caps," The New York Times, October 29, 2015 https://www.nytimes.com/interactive/2015/10/29/us/politics/how-congress-has-worked-to-avoid-the-sequester-spending-caps.html

[16] Jason Pye, "CBO Report: More Spending, More Debt Over Next Ten Years," FreedomWorks, January 28, 2017 http://www.freedomworks.org/content/cbo-report-more-spending-more-debt-over-next-ten-years

It's vital that the White House and Congress commit to crucial mandatory spending reforms to get the United States' fiscal house in order. Discretionary spending cuts only will likely get a lukewarm reception from conservatives.

Cut, Cap and Balance

A prominent theme during the 2011 debt limit debate was "cut, cap, and balance." The Cut, Cap and Balance Act,[17] introduced by Rep. Jason Chaffetz (R-Utah), would have cut discretionary spending, capped all federal outlays as a percentage of GDP, and required a substantive balanced budget amendment be submitted to the states for ratification.

Conservatives rallied behind the Cut, Cap and Balance Act. The bill passed the House,[18] but it was tabled in the Senate.[19] Some themes of the Cut, Cap and Balance Act -- spending caps and a vote on a balanced budget amendment, were incorporated into the Budget Control Act (BCA).

Again, spending caps alone may not be enough for conservatives, but the inclusion of a strong balanced budget amendment would be. There are, however, hurdles to a balanced budget amendment. Most congressional Democrats, for example, do not support a balanced budget amendment. The balanced budget amendment vote that was required after the passage of the BCA failed to meet the constitutionally-mandated two-third threshold.[20]

The prospect of capping all federal outlays as a percentage of GDP or potential GDP is a very attractive option, one that this memo will explore in a separate section.

On the whole, Cut, Cap and Balance may still be a viable option for the White House. Conservative would likely be willing to rally behind it once again, but there are questions about whether it's practical because, if past is prologue, spending caps won't be adhered and a strong balanced budget amendment won't get the votes necessary in either the House or Senate to send the states for ratification.

The prospect of capping all federal outlays as a percentage of GDP or potential GDP is a very attractive option, one that this memo will explore in the next section.

Federal Debt Brake

[17] H.R. 2560, 112th Congress (2011) https://www.congress.gov/bill/112th-congress/house-bill/2560
[18] Roll Call Vote 606, 112th Congress http://clerk.house.gov/evs/2011/roll606.xml
[19] Roll Call Vote 116, 112th Congress https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=1&vote=00116
[20] Roll Call Vote 858, 112th Congress (2011) http://clerk.house.gov/evs/2011/roll858.xml

Capping federal outlays as a percentage of GDP is an option that should met positively by conservatives. Two bills that were introduced in the previous Congress would have enacted caps.

Introduced by Sen. Mike Enzi (R-Wyo.)[21] and Rep. Mark Sanford (R-S.C.),[22] the One Percent Spending Reduction Act, known as the "penny plan," would have capped federal spending at $3.645 trillion and required a 1 percent reduction in federal spending for five years, balancing the federal budget. Mandatory spending would have been included in the reductions and interest on publicly-held debt would have been excluded. In FY 2022 and after, federal outlays would have been capped at 18 percent of GDP for each fiscal year after.

Although Sen. Enzi and Rep. Sanford have not reintroduced the One Percent Spending Reduction Act, we know that they intend to do so. In fact, Rep. Sanford's version of the bill has been written is awaiting introduction.

Separately, the Maximizing America's Prosperity Act,[23] introduced by Rep. Kevin Brady (R-Texas) would have capped federal spending as a percentage of potential GDP. The bill is similar in concept to the debt brake adopted by a constitutional referendum in Switzerland.[24]

The idea has been praised by Dan Mitchell of the Cato Institute, who has written that the Swiss debt brake "has been very successful" in controlling spending[25] and noted that Rep. Brady's Maximizing America's Prosperity Act was "akin to the Swiss debt brake."[26]

Potential GDP is what GDP would be at under full employment and no inflation. One of the benefits of tying the cap to potential GDP lies in the fact that the cyclical nature of spending would be eliminated; spending would remain stable and predictable during economic booms and busts.

Another provision of the Maximizing America's Prosperity Act was the proposed "sunset commission," which would eliminate all programs and agencies that Congress doesn't vote to extend after a 12-year period. This sunset commission has the potential to streamline government and require agencies to demonstrate their effectiveness and worth.

Like the the One Percent Spending Reduction Act, the Maximizing America's Prosperity Act has not been reintroduced. We have been in contact with Rep. Brady's office about reintroducing the bill.

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21 S. 3140, 114th Congress (2016) https://www.congress.gov/bill/114th-congress/senate-bill/3140

22 H.R. 5637, 114th Congress (2016) https://www.congress.gov/bill/114th-congress/house-bill/5637

23 H.R. 2471, 114th Congress https://www.congress.gov/bill/114th-congress/house-bill/2471/

24 Library of Congress, S*witzerland: Implementation of Article 126 of the Swiss Constitution – The "Debt Brake*, June 2016 https://www.loc.gov/law/help/debt-brake/switzerland.php

25 Daniel J. Mitchell, "How the Swiss 'Debt Brake' Tamed Government," The Wall Street Journal, April 25, 2012 https://www.wsj.com/articles/SB10001424052702303459004577361622927199902

26 Daniel J. Mitchell, "Switzerland's 'Debt Brake' Is a Role Model for Spending Control and Fiscal Restraint," Forbes, April 26, 2012 https://www.forbes.com/sites/danielmitchell/2012/04/26/switzerlands-debt-brake-is-a-role-model-for-spending-control-and-fiscal-restraint/

While these caps could always be adjusted by Congress and approved by a president, the One Percent Spending Reduction Act and the Maximizing America's Prosperity Act are viable options that promote fiscal restraint.

Regulatory Reform

Outside of spending, there is another option for the debt limit that could attract conservative support: regulatory reform. The House has already passed regulatory reform bills, including the Midnight Rules Relief Act,[27] the Regulations from the Executive in Need of Scrutiny (REINS) Act,[28] and the Regulatory Accountability Act.[29]

The growth of the federal regulatory state has been a bipartisan problem. The executive branch, through federal regulatory agencies, have circumvented Congress to create law, undermining Article I of the Constitution, which delegates lawmaking authority only to Congress. This has allowed federal bureaucrats significant power to promulgate rules, including economically significant rules -- those with an annual economic impact of $100 million or more.

The problem with the regulatory state was more heavily scrutinized under the Obama administration. According to the Congressional Research Service, between 2,500 and 4,500 final rules are published annually in the Federal Register. The Bush administration averaged 3,954 rules each year. Through 2015, the Obama administration averaged 3,602.[30]

The difference between the Bush administration and the Obama administration is the number of major rules. The Bush administration averaged 63. Including the 104 major rules finalized in 2016, the Obama administration averaged roughly 84 major rules, or 674 major rules in eight years.[31]

Americans are still overburdened by the regulatory state, to the tune of $1.9 trillion.[32] Outside the rapid growth of publicly-held debt, the regulatory state's ability promulgate costly regulations without substantive accountability or a meaningful check on its power is one of the most significant economic threats to the United States.

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27 Roll Call Vote 8, 115th Congress (2017) http://clerk.house.gov/evs/2017/roll008.xml

28 Roll Call Vote 23, 115th Congress (2017) http://clerk.house.gov/evs/2017/roll023.xml

29 Roll Call Vote 45, 115th Congress (2017) http://clerk.house.gov/evs/2017/roll023.xml

30 Federal Register, "Federal Register Pages Published, 1936-2015," Retrieved August 11, 2017 https://www.federalregister.gov/uploads/2016/05/stats2015Fedreg.pdf

31 *Ibid.*

32 Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, Competitive Enterprise Institute, May 31, 2017 https://cei.org/10kc2017

While the Congressional Review Act, as it currently exists, served as a crucial tool to roll back the regulatory state in the opening months of the 115th Congress[33] and the administration has taken steps to reduce regulation,[34] it's important that enact regulatory reforms into law.

Of the regulatory reform legislation passed by the House, the REINS Act and Regulatory Accountability Act are the most substantial and substantive.

The REINS Act has a long legislative history, first introduced in the 111th Congress by then-Rep. Geoff Davis (R-Ky.) and Sen. Jim DeMint (R-S.C.). Although the REINS Act has never been considered by the Senate, it has been passed by the House in every Congress since it was originally introduced. The Senate Homeland Security and Governmental Affairs has, however, marked up S. 21,[35] the version of the the REINS Act introduced by Sen. Rand Paul (R-Ky.).[36]

The concept behind the REINS Act is simple. It would amend the Congressional Review Act to subject economically significant rules to congressional approval, rather than disapproval. Both chambers would have to vote on a proposed rule and the President would have to sign it before enforcement can begin. The current version of the bill would give Congress 70 days to pass a resolution to approve a rule. If a resolution is not passed, the rule cannot take effect.

The Regulatory Accountability Act[37] was essentially an omnibus of regulatory reform bills.[38] Of particular interest in the bill was the Separation of Powers Restoration Act.

In 1984, the Supreme Court, in *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, ruled that federal courts could defer to federal regulatory agencies' interpretations of purportedly "silent or ambiguous" statutes or laws written by Congress. The result of Supreme Court's decision has played a part in the alarming erosion of the constitutional separation of powers.

The Separation of Powers Restoration Act would end the *Chevron* deference and require federal courts to conduct a new, or *de novo*, and full review of all interpretations of constitutional and statutory law made by a regulatory agency.

The Senate version of the Regulatory Accountability Act,[39] introduced by Sen. Rob Portman (R-Ohio), doesn't contain the Separation of Powers Restoration Act. The bill has, however, been introduced by Sen. Orrin Hatch (R-Utah).[40]

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[33] Sam Batkins, "The Congressional Review Act In 2017," American Action Forum, May 10, 2017 https://www.americanactionforum.org/insight/15550/

[34] Dave Boyer, "Trump slashing Obama's regulation binge, saves businesses billions: Study," The Washington Times, August 8, 2017 http://www.washingtontimes.com/news/2017/aug/8/trump-slashing-obamas-regulation-binge-study/

[35] S. 21, 115th Congress (2017) https://www.congress.gov/bill/115th-congress/senate-bill/21

[36] Eric Boehm, "Rand Paul's REINS Act Finally Makes It to Senate Floor," Reason, May 17, 2017 http://reason.com/blog/2017/05/17/rand-pauls-reins-act-finally-makes-it-to

[37] H.R. 5, 115th Congress (2017) https://www.congress.gov/bill/115th-congress/house-bill/5

[38] Adam Brandon, "Key Vote YES on the Regulatory Accountability Act, H.R. 5," FreedomWorks, January 10, 2017 http://www.freedomworks.org/content/key-vote-yes-regulatory-accountability-act-hr-5

[39] S. 951, 115th Congress (2017) https://www.congress.gov/bill/115th-congress/senate-bill/951

Again, there are legislative hurdles. Democrats are opposed to any regulatory reform. In fact, Sen. Cory Booker (D-N.J.)[41] and Rep. David Cicilline (D-N.J)[42] have introduced legislation, the Sunset the CRA and Restore American Protection (SCRAP) Act, to repeal the Congressional Review Act. Only Sen. Joe Manchin (D-W.Va.) has ever cosponsored the REINS Act.[43] Other politically vulnerable Democrats may be inclined to support the bill.

Still, a regulatory reform bill such as the REINS Act or an omnibus of regulatory reform bills that includes the REINS Act combined with a debt limit increase would likely attract conservative support.

Conclusion

Regardless of when the White House and administration attempted to address the debt limit, it would have been difficult get conservative support for a clean debt limit increase. It is even more difficult after the failure to address health insurance reform. The White House and Secretary Mnuchin are in a difficult position, one that we respect. Nevertheless, the frustrations that conservatives inside and outside of Congress have are very real and unavoidable.

Additionally, congressional Republican leadership's proclivity for "governing by crisis" -- that is, waiting until the last minute to pressure members to vote to approve certain "must-pass" measure, including a debt limit increase -- brings unnecessary brinksmanship that only dissolves what little trust is left between conservatives and leadership.

Of the options mentioned in this memo, attaching a debt limit increase to a debt brake, such as the Maximizing America's Prosperity Act, and regulatory reform, either the REINS Act or an omnibus-style bill that includes the REINS Act and the Separation of Powers Restoration Act, may provide the most viable paths forward to gain conservative support.

There are drawbacks for each of the options, from being greeted with skepticism from conservatives to not attracting enough Democratic support. Still, a clean debt limit increase or attaching a debt limit increase to a piece of "must-pass" legislation, as House Republican leadership will almost certainly try to do, risks conservative support and will only serve to further frustrate conservative grassroots acts. This puts the White House's agenda in jeopardy at a time when conservative engagement and support are absolutely necessary to pass fundamental tax reform before the end of 2017.

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[40] S. 1577, 115th Congress (2017) https://www.congress.gov/bill/115th-congress/senate-bill/1577

[41] S. 1140, 115th Congress https://www.congress.gov/bill/115th-congress/senate-bill/1140

[42] H.R. 2449, 115th Congress https://www.congress.gov/bill/115th-congress/house-bill/2449

[43] Cosponsors to S. 15, 113th Congress (2013) https://www.congress.gov/bill/113th-congress/senate-bill/15/cosponsors