THE NEED TO REFORM THE DEBT LIMIT

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I. INTRODUCTION

The statutory debt limit is one of the most misunderstood and misused pieces of legislation in modern history. Proponents of the debt limit have argued it is an effective means of fiscal control because it forces Congress to

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periodically pause and evaluate the national balance sheet. But as it stands, the debt limit accomplishes neither of these aims and instead poses a major threat to the country.

This Article argues for the complete overhaul of the debt limit for three reasons. First, history shows that the debt limit was created to make it easier for the Treasury to finance government obligations; attempts to use it to limit future spending is a misuse of the original intention rather than a deliberate policy choice by Congress. Second, standoffs about raising the debt limit have not led to meaningful fiscal reforms or substantially changed the fiscal trajectory of the nation because they have lacked revenue increases or entitlement reform and are easy for lawmakers to undo once the immediate debt limit crisis has passed. Third, the consequences of breaching the debt limit would be severe for both American and global economies and create extreme hardship for workers and families. The current form of the debt limit, which allows for political brinkmanship, imposes unjustifiable risks, which are only growing under an increasingly polarized Congress.

This Article advocates for the adoption of the Debt Ceiling Reform Act of 2023, which would neutralize the threat of default and return the statutory debt limit to its original intention. Under the Debt Ceiling Reform Act, Congress would have to make the active choice not to pay the United States's debts rather than allowing congressional inaction to create catastrophic consequences. The Act would give the Treasury Secretary the authority to raise the debt limit absent congressional override. It is well past time to adopt debt ceiling reform that preserves congressional oversight and power of the purse while preventing a global economic catastrophe.

II. A History of the Debt Limit

The history of the debt limit demonstrates it was not created as a tool to control spending but instead evolved to empower the Department of the Treasury to practically manage debt and to alleviate Congress's involvement in the minute details of debt issuance. As the federal government has expanded, it has become more efficient for Congress to allow a blanket borrowing cap rather than authorizing individual pieces of spending.[1] The modern debt limit maintains congressional oversight of debt issuance while limiting the burden on Congress or Treasury to finance obligations every time debt needs to be issued.

[1] Many of these debt limit increases also occurred before the creation of the Congressional Budget Office in 1974, meaning that even had Congress wanted to use debt limit increases to control spending there was no formal scoring on how much new pieces of legislation would actually cost. *See* Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §§ 201–202, 88 Stat. 297, 302–05 (1974) (creating Office and tasking with annual report on outlays and expenditures).

A. *Founding–1917: Individual Authorization for Specific Projects*

From the nation's founding to the early versions of the debt limit in 1917, Congress authorized each issuance of debt, a tedious practice that was only feasible when government spending was relatively modest.[2] When large financing needs arose, Congress passed bills that indicated both the size of the debt issuance and the terms of the financial instruments.

From 1776 to 1920, Congress specified the terms of over 200 Treasury-authorized securities.[3] Many of the major financing demands of this period were for war spending.[4] For example, the Loan of July 1861 authorized the Treasury Secretary to borrow up to $250 million to fund the Civil War.[5] The Loan of July 1861 restricted how Treasury could finance the war effort by indicating the types of debt instruments Treasury could use and the terms of those instruments.[6] In particular, the Loan gave Treasury the authority to issue bonds but stipulated that those bonds must be twenty-year issuances and could not have interest rates greater than seven percent.[7]

During the Spanish-American War, Congress again limited how Treasury could issue the debt needed to finance the war effort. Enacted in June 1898, the War Revenue Act financed the war through a series of tax increases and debt issuances.[8] The bill allowed Treasury to borrow up to $400 million dollars for the war and indicated that the debt should be issued in the form of twenty-year bonds at a three percent annual interest rate.[9] Again, Congress was directly involved in how much money could be borrowed for the war and the exact terms of the debt. Congress gave Treasury authority to execute this order but not to determine the most efficient route for debt issuance.

Congress also issued specific borrowing limits and terms for large infrastructure projects. For example, Congress authorized debt issuance for the construction of the Panama Canal in 1902.[10] Like the earlier debt issuances, this legislation limited the instruments Treasury could use and mandated ten-year Treasury bonds issued at a two-percent interest rate.[11] Because debt financing needs were relatively infrequent, Congress could maintain individualized oversight and control over the Treasury financing process.

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[2] *See* Anita S. Krishnakumar, *In Defense of the Debt Limit Statute*, 42 HARV. J. ON LEGIS. 135, 143 (2005) (explaining that until 1917, Congress "borrowed only when faced with the exigent circumstances of war or economic recession").

[3] *See* George J. Hall & Thomas J. Sargent, *Brief History of US Debt Limits Before 1939*, 115 PROCEEDINGS NAT'L ACAD. SCIS. 2942, 2942 (2018).

[4] *See* Krishnakumar, *supra* note 2, at 141–43 (describing use in wars).

[5] Loan of July 1861, Pub. L. No. 37-5, 12 Stat. 259 (1861).

[6] *Id.*

[7] *Id.*

[8] War Revenue Act of 1898, Pub. L. No. 55-448, 30 Stat. 448 (1898).

[9] *See* War Revenue Act of 1898 § 33.

[10] Spooner Act of 1902, Pub. L. No. 57-183, § 8, 32 Stat. 481, 484 (1902).

[11] *Id.*

B. 1917–1930: World War I and Complex Monetary Systems

The Second Liberty Bond Act of 1917, enacted to finance the United States's entry into World War I, signaled a shift in the Executive Branch's power to issue debt.[12] Like previous debt bills, the Second Liberty Bond Act limited the amount of debt Treasury could issue when it raised the limit to more than $7 billion.[13] But unlike earlier bills, it did not tie that debt issuance to one particular project or policy, and it did not contain restrictions on the type or conditions of that debt.[14] This significant departure increased Treasury's flexibility to issue debt in the most efficient and affordable manner. But the Second Liberty Bond Act still did not create the modern aggregate debt limit because it did not override limits on previous debt issuance.[15]

The Second Liberty Bond Act of 1917 was also passed during several broad reforms to the U.S. financial system—in particular, the 1913 creation of the Federal Reserve system. As the financial system became more complex and demand for government assets grew, it became increasingly cumbersome for Congress to be involved in the terms and types of debt issuance. The Federal Reserve Act of 1913 established the Federal Reserve as the country's central bank and authority over monetary policy.[16] The Federal Reserve provided the means for systematized and sophisticated government intervention in financial markets. Whereas previously Treasury had been the center of federal financial policy, the Federal Reserve became an institution with economic and financial market experts. Before the creation of the Federal Reserve, some worried that allowing Treasury to control the terms of debt issuance would affect credit conditions and thus drive monetary policy.[17] By putting the power of monetary policy into the hands of the Federal Reserve, Congress separated monetary policy choices from fiscal policy financing and removed the concern that Treasury's freedom to determine the terms of debt issuance would negatively affect monetary policy.

C. 1930–Present: The Birth of the Modern Debt Limit

Congress created an early form of the aggregate debt limit in 1941 by amending the Second Liberty Bond Act.[18] This amendment set the total

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[12] *See* Krishnakumar, *supra* note 2, at 143–44 (describing World War I as a turning point).

[13] Second Liberty Bond Act of 1917, Pub. L. No. 65-43, § 1, 40 Stat. 288, 288 (1917) ("Treasury . . . is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate $7,538,945,460 and to issue therefore bonds of the United States.").

[14] *Id.*

[15] *See* D. ANDREW AUSTIN, CONG. RSCH. SERVS., RL31967, THE DEBT LIMIT: HISTORY AND RECENT INCREASES 6 (2015).

[16] Federal Reserve Act of 1913, Pub. L. No. 63-43, 38 Stat. 251 (1913).

[17] *See* D. ANDREW AUSTIN, CONG. RSCH. SERVS., *supra* note 15, at 5.

[18] *See* Krishnakumar, *supra* note 2, at 147 ("[I]n early 1941, Congress made an important procedural change to the debt limit statute: . . . one aggregate limit for all types of debt issued by the Treasury.").

debt limit at $65 billion.[19] And by removing constraints on the distribution of the debt between short-term and long-term issuance, the amendment gave Treasury freedom to decide which securities to offer when issuing debt.[20] This set a precedent for how Treasury manages debt: Treasury could choose the maturity length and type of the debt as long as it stayed under the aggregate cap and financed obligations as they were due. Importantly, amending the Second Liberty Bond Act was not intended to stop government spending or force a conversation around the fiscal future. Rather, the amendments gave Treasury the flexibility to manage debt issuance while still maintaining congressional oversight.[21] In the following years, Congress regularly modified the Second Liberty Bond Act to increase the debt limit.[22]

The debt limit in its current form was codified in 1982 at 31 U.S.C. § 3101.[23] Congress consolidated the debt limit, removed distinctions between permanent and temporary increases, and set an aggregate cap for debt subject to the statutory limit, which included debt held by the public and debt held by government accounts.[24] Since 1982, most debt limit increases have been modest, increasing by one to fifteen percent over existing limits.[25] In many years, increases were less than five percent.[26]

Since the 1930s, government programs have expanded to reduce poverty, expand healthcare access, help Americans retire with dignity, and stabilize the economy in times of crisis.[27] The share of government spending on defense and war financing has also increased significantly.[28] And attempts to shrink the government's footprint through regressive tax cuts have further increased the deficit.[29]

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[19] Public Debt Act of 1941, Pub. L. No. 77-7, § 2, 55 Stat. 7, 7 (1941).

[20] *Id.*

[21] *See* H.J. Cooke & M. Katzen, *The Public Debt Limit*, 9 J. Fin. 298, 298 (1954).

[22] *See* Krishnakumar, *supra* note 2, at 148.

[23] 31 U.S.C. § 3101.

[24] *See id.*; Cong. Budget Off., *Federal Debt and the Statutory Limit, February 2023* (2023), https://www.cbo.gov/publication/58945#footnote-005 [https://perma.cc/2BCW-2UKV].

[25] *See* Office of Management and Budget, *Table 7.3: Statutory Limits on Federal Debt: 1940-Current*, White House (2023), https://www.whitehouse.gov/omb/budget/historical-tables/ [https://perma.cc/N9GU-6KQW].

[26] *Id.* Though not all increases were without controversy, generally increasing the debt limit has been part of routine business for Congress as federal spending has increased. But even without increases in federal spending, the *nominal* value of the debt will grow, meaning that the need to increase the debt limit will remain.

[27] *See* Paul C. Light, *Government's Greatest Achievements of the Past Half Century*, Brookings Inst. (Dec. 1, 2000), https://www.brookings.edu/articles/governments-greatest-achievements-of-the-past-half-century/ [https://perma.cc/Q8QR-H5WM].

[28] *Historical Budget Data – Feb 2023*, Cong. Budget Off. (2023), https://www.cbo.gov/data/budget-economic-data. Table 4. Discretionary Outlays

[29] *See* Bobby Kogan, *Tax Cuts Are Primarily Responsible for the Increasing Debt Ratio*, Ctr. for Am. Progress (Mar. 27, 2023), https://www.americanprogress.org/article/tax-cuts-are-primarily-responsible-for-the-increasing-debt-ratio/ [https://perma.cc/ZTE2-BZDB].

The merits or morality of these policy choices are separate discussions from how the Treasury should be allowed to finance decisions Congress has already made. This is especially true when the Treasury is financing debt that has accrued due to decisions Congress made in the past. Indeed, as the debt has grown, so too has the debt limit—since the creation of the modern debt limit, it has been lifted or suspended over 100 times.[30]

III. The Debt Limit Has Failed to Drive Fiscal Reform

Although proponents of the debt limit justify its existence as a means to exercise fiscal control and reduce the deficit, the debt limit has never been a major driver of fiscal reform. The amount of federal debt has increased considerably over the last several decades.[31] Sometimes this has been in response to crises like the 2008 financial crisis or the 2020 COVID-19 pandemic.[32] In other cases, it has been due to policy choices to reduce revenues through reforms to the tax system.[33] The debt limit has often been used as a vehicle for riders: bills added to unrelated legislation to increase their likelihood of passing. But many of these riders include increased costs as well as spending reductions, leading to little or no deficit reduction.[34] The major standoffs around the debt limit, therefore, have not ultimately led to notable deficit reduction.

A. *Initial Standoffs (1953)*

In the summer of 1953, the country was fast approaching the debt limit.[35] Congress refused to raise the debt limit and forced Treasury to delay default via extreme actions like delaying payments to federal contractors and monetizing

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[30] *See* Office of Management and Budget*, supra* note 25.

[31] *See id.*

[32] *See* M. Ayhan Kose, Peter Nagle, Franziska Ohnsorge & Naotaka Sugawara, *Does Government Debt Increase After Global Recessions?*, Brookings Inst. (Dec. 17, 2021), https://www.brookings.edu/articles/does-government-debt-increase-after-global-recessions/ [https://perma.cc/9BZC-U479].

[33] *See* Kogan, *supra* note 29.

[34] For example, the House-passed Limit Save Grow Act of 2023 would have raised the debt limit while repealing energy tax credits, stopping student debt cancellation, expanding work requirements, rescinding some funds, permitting reform, and repealing IRS enforcement funding. Some of these additions would have reduced the deficit (e.g., repealing tax credits, ending student debt cancellation), and others would have increased the deficit (i.e., repealing IRS enforcement funding). *See* Phillip L. Swagel, Cong. Budget Off., *Re: CBO's Estimate of the Budgetary Effects of H.R. 2811, the Limit, Save, Grow Act of 2023* (Apr. 25, 2023), https://www.cbo.gov/system/files/2023-04/59102-Arrington-Letter_LSG%20Act_4-25-2023.pdf [https://perma.cc/G9NK-MEWD].

[35] *See* Treasury Bulletin, Off. of Sec'y, Dep't of Treasury 21 (1953), https://fraser.stlouisfed.org/files/docs/publications/tbulletin/1953_07_treasurybulletin.pdf?utm_source=direct_download [https://perma.cc/D3B5-HLJW].

gold from the general fund.[36] In August 1954, Congress lifted the debt limit by $6 billion without any fiscal reforms.[37] All this episode created was a set of increasingly nonsensical gimmicks, including requesting that federal agencies finance themselves, to allow Treasury to buy time to avoid default.[38]

B. Sequestration (1980s)

In the 1980s, a debt limit impasse led to the introduction of sequestration, a tool intended to reduce future spending that has not meaningfully changed the fiscal trajectory. The national debt grew at a remarkable pace under the Reagan Administration, more than doubling from $925 billion to $2.19 trillion.[39] The debt limit was lifted or suspended twenty times during his presidency.[40] In 1985, the Gramm-Rudman-Hollings Act introduced sequestration: a mechanism that imposes automatic, across-the-board spending cuts if appropriations spending levels exceeded set levels.[41] The Act, attached to a debt limit increase, required the elimination of budget deficits within six years.[42]

Sequestration proposals since have created contention without meaningful fiscal control.[43] In part, this is because mandatory entitlement programs like Social Security and Medicare, which are major drivers of the national debt, are either not included in or face very modest cuts from sequestration. These exclusions help ensure that Americans get the benefits they have earned. But they also make it difficult—if not impossible—for across-the-board cuts to change the debt trajectory. Sequestration also fails to consider meaningful ways to increase revenues, which are an important part of reducing the national debt. And because legislators can, and usually do, lift spending caps, their original intention of reducing spending is circumvented. Indeed, after the 1985 introduction of sequestration, the national debt still increased by billions every year.[44]

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[36] *See* Kenneth D. Garbade, *The First Debt Ceiling Crisis*, FED. RSRV. BANK N.Y. (2016), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr783.pdf?la=en [https://perma.cc/HHZ9-EV86].

[37] *See id.*; Office of Management and Budget, *supra* note 25.

[38] Walter W. Heller, *Why a Federal Debt Limit?*, 51 NAT'L TAX ASS'N. 246, 247 (1958).

[39] *See Historical Budget Data – Feb 2023*, CONG. BUDGET OFF. (2023), https://www.cbo.gov/data/budget-economic-data [https://perma.cc/6LTU-KK6C] (measuring change in debt held by the public from 1982 to 1989).

[40] *See* Office of Management and Budget, *supra* note 25.

[41] Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings Act), Pub. L. No. 99-177, §§ 251–257, 99 Stat. 1037, 1063–93 (1985).

[42] *See* MEGAN SUZANNE LYNCH, CONG. RSCH. SERVS., R41901, STATUTORY BUDGET CONTROLS IN EFFECT BETWEEN 1985 AND 2002 2 (2011).

[43] *See The Debt Ceiling: Congressional History and Consequences: Hearing on "Why Congress Needs to Abolish the Debt Ceiling" before the H. Budget Comm.*, 117th Cong. (2022) (statement of Laura Blessing, Senior Fellow, The Gov't Affs. Inst. at Georgetown Univ.).

[44] *See* CONG. BUDGET OFF., *supra* note 24.

C. Government Shutdowns (1990s)

During the Clinton Administration, Congress used the debt limit as an unsuccessful threat to force fiscal control and controversial policy changes. In 1995, the 104th Congress marked the first time Republicans controlled both chambers of Congress since 1955.[45] Led by House Speaker Newt Gingrich, House Republicans refused to increase the debt limit unless the increase was tied to a package that included spending cuts, welfare reform, restraints on Medicare and Medicaid, and a balanced budget within seven years.[46] House Republicans hoped that because the timely increase of the debt limit was critical to a functioning government and the fundamental plumbing of the U.S. financial system, the Clinton Administration would accept the demanded cuts to avoid delays.

In November 1995, House Republicans introduced H.R. 2586, which would have made these cuts and increased the debt limit only through December 1995.[47] President Bill Clinton vetoed the bill, and the government shut down.[48] In January 1996, Congress and the White House reached an agreement to extend the debt limit and keep the government open through March.[49] By that time, Moody's credit rating agency indicated that it was considering a downgrade of the U.S. credit rating because of the fears that brinkmanship had created.[50] Finally, in late March 1996, Congress raised the debt limit to $5.5 trillion.[51] In 1997, Congress again raised the debt limit, this time to nearly $6 trillion.[52] The conclusion of this saga was that the debt limit was lifted with some minor policy riders,[53] but without meaningful fiscal reform, and certainly without the cuts demanded by Speaker Gingrich and his associates.

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[45] *See* Charles Apple, *In Control*, SPOKESMAN-REV., https://www.spokesman.com/stories/2020/jun/25/control-house-and-senate-1900/ [https://perma.cc/79GW-MEAC].

[46] *See* Kara Brandeisky, *How Clinton Handled His Debt Ceiling Crisis Better Than Obama*, NEW REPUBLIC (Aug. 2, 2011), https://newrepublic.com/article/93043/obama-clinton-debt-ceiling-crisis [https://perma.cc/9E4M-KYBF].

[47] *See* H.R. 2586, 104th Cong. (1995).

[48] *See* Robert B. Reich, *Republicans Want to Destroy the Economy Over the Debt Ceiling. Let Them*, NEWSWEEK (Jan. 25, 2023), https://www.newsweek.com/republicans-want-destroy-economy-over-debt-ceiling-let-them-opinion-1776478 [https://perma.cc/VN9S-A2JE].

[49] *See* Balanced Budget Downpayment Act of 1996, Pub. L. No. 104-99, § 106, 110 Stat. 26, 27 (1996); *see also* HOLLOWAY ET AL., U.S. GOV'T ACCOUNTABILITY OFF., GAO/AIMD-96-130, DEBT CEILING: ANALYSIS OF ACTIONS DURING THE 1995-1996 CRISIS (1996) (describing Treasury actions).

[50] David E. Sanger, *Moody's Says It Is Considering Lowering U.S. Credit Rating*, N.Y. TIMES (Jan. 25, 1996), https://www.nytimes.com/1996/01/25/us/moody-s-says-it-is-considering-lowering-us-credit-rating.html [https://perma.cc/GYG4-R9AR].

[51] *See* Contract with America Advancement Act of 1996, Pub. L. No. 104-121, § 301, 110 Stat. 847, 875 (1996).

[52] *See* Balanced Budget Act of 1997, Pub. L. No. 105-33, § 5701, 111 Stat. 251, 648 (1997) (raising to $5.95 trillion).

[53] These riders included changes to the Medicare and Medicaid programs, auctions of licenses for electromagnetic spectrum, and increased excise taxes on cigarettes. *See* CONG. BUDGET OFF., CBO MEMORANDUM: BUDGETARY IMPLICATIONS OF THE BALANCED BUDGET ACT OF 1997 (Dec. 1997), https://www.cbo.gov/sites/default/files/105th-congress-1997-1998/

D. The Budget Control Act (2010s)

In 2011, another harrowing debt limit debate increased government and taxpayer costs without meaningful fiscal reform. In February 2011, Speaker John Boehner and others made clear that the Republican-controlled House would not support any deal to raise the debt limit that did not include spending cuts.[54] On April 4, Treasury Secretary Timothy Geithner announced that Treasury would reach the debt limit and need to begin extraordinary measures to prolong default by May 16.[55] On May 16, Treasury announced its projected X-date, when the United States's borrowing authority would be exhausted, was August 2.[56] On July 31, President Obama and congressional leaders announced they had reached a deal to cut federal spending and increase the debt limit.[57] The Budget Control Act ("BCA") became law on August 2, the X-date.[58]

The BCA imposed spending caps on discretionary programs from 2012 through 2021.[59] It also created the Joint Select Committee on Deficit Reduction, whose goal was to reduce the deficit by at least $1.5 trillion by 2021.[60] The BCA stipulated that should the Committee fail to reduce the deficit by more than $1.2 trillion, sequestration would impose $1.2 trillion in spending cuts.[61] Sequestration was intended to discourage Congress from enacting legislation that would breach the spending caps.[62] On August 1, 2011, the Congressional Budget Office projected the legislation would reduce budget deficits by at least $2.3 trillion.[63]

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reports/bba-97.pdf [https://perma.cc/UFD5-Q69K]. Some of these changes were undone in later legislation.

[54] *See* Anna Palmer, *Boehner: House Won't Extend Current Spending Beyond March 4*, ROLL CALL (Feb. 17, 2011), https://rollcall.com/2011/02/17/boehner-house-wont-extend-current-spending-beyond-march-4/ [https://perma.cc/DE22-S6BX].

[55] *See* Timothy F. Geithner, *Secretary Geithner Send Debt Limit Letter to Congress*, U.S. DEP'T OF TREASURY (Apr. 4, 2011), https://home.treasury.gov/secretary-geithner-sends-debt-limit-letter-to-congress-1 [https://perma.cc/68WR-N4L6].

[56] *See* Timothy F. Geithner, *Letter to Congress*, U.S. DEP'T OF TREASURY (May 16, 2011), https://web.archive.org/web/20181226103435/https://www.treasury.gov/connect/blog/Documents/20110516Letter%20to%20Congress.pdf [https://perma.cc/BPX7-GYMA].

[57] *See* Carl Hulse & Helene Cooper, *Obama and Leaders Reach Debt Deal*, N.Y. TIMES (July 31, 2011), https://www.nytimes.com/2011/08/01/us/politics/01FISCAL.html [https://perma.cc/2D7B-TE5D].

[58] Budget Control Act of 2011, Pub. L. No. 112-25, 125 Stat. 240 (2011).

[59] *Id.* § 251.

[60] *Id.* § 401.

[61] *Id.* § 251A.

[62] *See* MEGAN S. LYNCH, CONG. RSCH. SERVS., IN12093, WERE THE DISCRETIONARY SPENDING CAPS EFFECTIVE? 1 (2023).

[63] *See* Douglas W. Elmendorf, CONG. BUDGET OFF., Letter to Congress 7 (Aug. 1, 2011), https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/costestimate/budgetcontrolactaug1.pdf [https://perma.cc/RP5W-6TMU].

The bill also instituted the so-called "McConnell Rule," which allowed for discrete increases in the debt limit.[64] The McConnell Rule authorized Treasury to borrow an additional $900 billion once the President certified that the debt was within $100 billion of the legal limit.[65] However, if Congress issued a joint resolution of disapproval within fifty calendar days of the President's certification, the debt limit would only increase by $400 billion, rather than $900 billion.[66] An additional debt limit increase would occur if, after the debt limit had increased $900 billion, the President again certified that the debt limit was within $100 billion of the existing limit.[67] But this third increase was tied to the conditions of the Joint Select Committee's actions.[68] If the Committee's recommendations to reduce the deficit by at least $1.2 trillion were enacted, the debt limit would be increased commensurate with the size of the cuts, up to a $1.5 trillion increase.[69] If not, the debt limit would be increased by $1.2 trillion.[70]

The first increase occurred nearly immediately after passage of the law, and because there was no resolution of disapproval, the second increase became effective in September of 2011.[71] And although the Committee met throughout the fall of 2011, they were unable to reach an agreement by the Committee's deadline.[72] The debt limit was therefore increased by $1.2 trillion in January 2012.[73]

Sequestration—across-the-board cuts of $1.2 trillion—was therefore scheduled to go into effect beginning January 2, 2013.[74] These cuts would have included an annual $55 billion cut in defense spending and $55 billion cut in non-defense spending, and an approximately $200 billion reduction in debt service costs from the reduced spending.[75]

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[64] *See* William G. Gale, *The Illogic of the McConnell Debt Limit Rule*, Tax Pol'y Ctr. (Oct. 23, 2023), https://www.taxpolicycenter.org/taxvox/illogic-mcconnell-debt-limit-rule [https://perma.cc/M7N8-F8ED].

[65] *See* Budget Control Act of 2011 § 3101A(a)(1)(A).

[66] *See id.* §§ 3101A(a)(1)(B), (b)(1).

[67] *Id.* § 3101A(a)(2).

[68] *Id.*

[69] *Id.* § 3101A(a)(2)(iii).

[70] *Id.* § 3101A(a)(2)(i). The debt limit would also increase by $1.5 trillion if the "Archivist of the United States ha[d] submitted to the States for their ratification" a constitutional amendment for a balanced budget. *See id.* § 3101A(a)(2)(ii).

[71] *See* Cong. Budget Off., *supra* note 24 (increasing debt limit to $14.694 trillion on August 2, 2011, and then $15.194 trillion, effective September 21, 2011).

[72] *See* Press Release, Jeb Hensarling & Patty Murray, Statement from Co-Chairs of the Joint Select Committee on Deficit Reduction (Nov. 21, 2011), https://cybercemetery.unt.edu/archive/deficit/20120113174936/http:/www.deficitreduction.gov/public/index.cfm/2011/11/statement-from-co-chairs-of-the-joint-select-committee-on-deficit-reduction [https://perma.cc/282U-GTHH].

[73] *See* Cong. Budget Off., *supra* note 24 (increasing debt limit to $16.394 trillion effective January 27, 2012).

[74] *See* Budget Control Act of 2011 § 251A.

[75] *See* Mindy R. Levit, Cong. Rsch. Servs., R42675, The Budget Control Act of 2011: Budgetary Effects of Proposals to Replace the FY2013 Sequester Congressional1 (2012).

But in the ensuing years, legislators routinely raised the spending caps and amended the sequester.[76] In 2012, the House passed the Sequester Replacement Reconciliation Act, which would have changed the Fiscal Year 2013 sequestration cuts by canceling the $98 billion in scheduled cuts to discretionary defense, discretionary non-defense, and mandatory defense spending.[77] Instead, in September 2012, Congress handled government spending agreements through continuing resolution to fund the government at existing levels through March 2013.[78] In January 2013, Congress also passed the American Taxpayer Relief Act of 2012, which made many of the Bush tax cuts permanent and delayed some of the scheduled sequestration in the BCA, leading to reductions in revenues and an increase in the deficit.[79] This pattern of passing legislation that increased the BCA caps continued over the decade the BCA was in effect.[80]

The 2011 BCA had modest effects on the fiscal trajectory of the United States.[81] At the end of Fiscal Year 2011, the total debt subject to the limit stood at $14.8 trillion.[82] By the end of Fiscal Year 2022 this number would balloon to approximately $31 trillion.[83] But the brinkmanship leading up to the BCA had serious consequences for the economy and taxpayers,[84] and those consequences would have been more extreme had lawmakers failed to raise the debt ceiling.[85] And the spending caps, which did remain in the early years of the BCA, damaged the economy, which was still recovering from the 2008 financial crisis.[86] Indeed, compared to a scenario in which outlays remained at

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[76] *See* MEGAN S. LYNCH & GRANT A. DRIESSEN, CONG. RSCH. SERVS., R46752, EXPIRATION OF THE DISCRETIONARY SPENDING LIMITS: FREQUENTLY ASKED QUESTIONS 7 (2022).

[77] *See* LEVIT, *supra* note 77, at 7 (explaining bill would lower existing cap on discretionary budget authority and cut other mandatory non-defense programs instead); *see also* John Parkinson, *House Passes Bill Stemming Defense Cuts*, ABC NEWS (May 10, 2012), https://abcnews.go.com/blogs/politics/2012/05/house-passes-bill-stemming-defense-cuts [https://perma.cc/SFF6-TB5M].

[78] *See* Continuing Appropriations Resolution, Pub. L. 112-175, 126 Stat. 1313 (2013).

[79] *See* American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2013).

[80] *See* LYNCH & DRIESSEN, *supra* note 76, at 2–3.

[81] *See* Office of Management and Budget, *supra* note 25 (showing continued increase in debt limit after 2011).

[82] *See Historical Debt Outstanding*, U.S. DEP'T OF TREASURY (Oct. 4, 2022), https://fiscaldata.treasury.gov/datasets/historical-debt-outstanding/historical-debt-outstanding [https://perma.cc/26QU-AHRH].

[83] *Id.*

[84] *See* U.S. DEP'T OF TREASURY, THE POTENTIAL MACROECONOMIC EFFECT OF DEBT CEILING BRINKMANSHIP 1 (2013), https://home.treasury.gov/system/files/276/POTENTIAL-MACROECONOMIC-IMPACT-OF-DEBT-CEILING-BRINKMANSHIP.pdf [https://perma.cc/6N2S-6FKU] [hereinafter THE POTENTIAL MACROECONOMIC EFFECT OF DEBT CEILING BRINKMANSHIP].

[85] *See* Eric Engen, Glenn Follette & Jean-Philippe Laforte, *Possible Macroeconomic Effects of a Temporary Federal Debt Default*, FED. RSRV. (Oct. 4, 2013), https://www.federalreserve.gov/monetarypolicy/files/FOMC20131004memo02.pdf [https://perma.cc/PK32-QCPE].

[86] *See The Cost of Crisis-Driven Fiscal Policy*, MACROECONOMIC ADVISERS, LLC (Oct. 2013), https://www.pgpf.org/sites/default/files/10112013_crisis_driven_report_fullreport.pdf [https://perma.cc/W52V-C8CS].

the 2010 share of GDP, the spending cuts under BCA cut GDP growth by 0.7 percentage points in the following two years and increased the unemployment rate by 0.8 percentage points, meaning 1.2 million fewer jobs.[87] In exchange for a limited change in the fiscal trajectory, taxpayers got higher unemployment and a weaker economy.

E. The Fiscal Responsibility Act (2023)

In Spring 2023, members of Congress again used the debt limit as a bargaining chip to push for both policies that would supposedly reduce government deficits and a grab-bag of other unrelated policy items. The Biden Administration called for a clean increase of the debt ceiling, leaving the negotiations for fiscal policy to the budget and appropriations process.[88] But the House Republican majority, led by Speaker Kevin McCarthy, demanded a package of spending cuts and other riders attached to a debt limit increase.[89]

On April 26, 2023, the House of Representatives passed the Limit, Save, Grow Act.[90] This bill would have cut Fiscal Year 2024 discretionary spending by $142 billion, established a one percent growth cap for the following decade, rescinded unobligated funding from previous rescue packages, and substantially changed work requirements in welfare programs.[91] It also would have repealed other Biden Administration policies, including student loan forgiveness and certain climate provisions of the Inflation Reduction Act.[92] But even the threat of default could not ensure the passage of the demands in the Limit, Save, Grow Act. The Senate never even considered it.[93]

As written, the Fiscal Responsibility Act is projected to reduce the deficit by $1.5 trillion.[94] But as history has shown, Congress routinely overrides limits imposed by caps. And even if these restrictions hold, the deficit reduction in the Fiscal Responsibility Act is modest.

The Fiscal Responsibility Act, as well as the Budget Control Act, did not change revenues or the fiscal trajectory of entitlement programs like Social Security and Medicare, which make up the largest share of the national

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[87] *See id.*; *see also The Employment Situation – January 2013*, Bureau of Lab. Stats. (Feb. 1, 2013), https://www.bls.gov/news.release/archives/empsit_02012013.pdf [https://perma.cc/R2EW-444Y] (explaining unemployment rate in January 2013 was 7.9%, well below pre-recession levels).

[88] *See* Adam Cancryn, Jennifer Haberkorn & Jonathan Lemire, *Biden Won't Move on Debt Ceiling Terms Even As He Seeks to Restart Talks*, Politico (May 1, 2023), https://www.politico.com/news/2023/05/01/biden-ready-to-restart-debt-talks-but-wont-budge-on-conditions-00094780 [https://perma.cc/WSX4-W45R].

[89] *Id.*

[90] Limit, Save, Grow Act of 2023, H.R. 2811, 118th Cong. (2023).

[91] *Id.*

[92] *Id.*

[93] Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023).

[94] *See* Phillip L. Swagel, *Letter to the House of Representatives*, Cong. Budget Off. (May 20, 2023), https://www.cbo.gov/system/files/2023-05/hr3746_Letter_McCarthy.pdf [https://perma.cc/RXN4-95RV].

debt.[95] Ultimately, entitlement reforms and revenue increases must be part of any fiscal reform package if it is to meaningfully affect the national debt, but no debt limit crisis so far has produced such legislation. Perhaps one reason for this is that fiscal riders attached to debt limit legislation are usually passed under extremely tight timeframes and do not lend themselves to the space to create effective policy to address the future of the trust funds. Indeed, debt limit deliberations rarely lead to rational or thoughtful policy when it comes to deficit reduction.[96]

Debt limit negotiations have not historically forced entitlement reform as the trust funds maintain a decade of solvency,[97] so lawmakers are not feeling the pressure to address what will be a challenging policy problem—and indeed, one that will only become more difficult to solve the closer Congress comes to the trust fund exhaustion date. As in the early 1980s, Social Security is rarely "saved" until the very last minute, and the existence of the debt limit is unlikely to change this basic fact of how the modern Congress functions.[98]

IV. The Debt Limit Poses a Major Threat to the U.S. and Global Economy

While the statutory debt limit has failed to drive meaningful fiscal reform, it risks creating lasting and significant damage to the American and global economies. Crises around the debt limit have shown that a breach of the full faith and credit of the United States Government would be disastrous, and any delay in paying government debts could have widespread consequences.

A. The Risks of Brinkmanship

The U.S. government has never defaulted on its debt, but there have been several instances of brinkmanship around raising the debt limit in which the government comes within days of the X-date. These experiences have included a credible threat of default, even if it were to occur only by accident. Unfortunately, even brinkmanship alone incurs a real cost.

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[95] Office of Management and Budget, *Table 8.4: Outlays by Budget Enforcement Act Category as Percentages of GDP: 1962-2028*, White House (2023), https://www.whitehouse.gov/omb/budget/historical-tables/ [https://perma.cc/B446-AV3L].

[96] *See generally* Helller, *supra* note 38.

[97] Xinzhe Cheng, *CBO's 2023 Long-Term Projections for Social Security*, Cong. Budget Off. (June 29, 2023), https://www.cbo.gov/publication/59184 [https://perma.cc/8363-89NF].

[98] *See* Barry F. Huston & Dawn Nuschler, Cong. Rsch. Servs., R47040, Social Security: Trust Fund Status in the Early 1980s and Today and the 1980s Greenspan Commission 1 (2022).

1. Financial Markets

The effects of the 2011 debt limit brinkmanship were primarily and initially felt in the stock market, which had spillover effects to other markets, along with household spending and credit. This tornado of uncertainty led to equity prices falling by approximately seventeen percent, which had consequential effects on individuals' stock market and retirement accounts.[99] This ultimately led to a $2.4 trillion reduction in household wealth and a $800 billion decline in retirement assets.[100] The S&P index lost four percent of its value in the week leading up to the X-date.[101] The impasse also created substantial stock market volatility and increases in corporate risk spreads,[102] heightening costs for borrowers and corporations.

Beyond equities, the 2011 brinkmanship also generated uncertainty in Treasury markets by creating higher premiums on Treasuries.[103] Treasuries constitute the backbone of the financial system; any disruption to this market has ripple effects across both the United States and global financial systems.[104] In 2011, investors' concerns led to money flowing out of Treasury repurchase agreements and Treasury bills and into deposits at financial institutions as part of a movement towards hoarding liquidity in the face of potential Treasury market dysfunction.[105] This created unnecessary distortions and higher costs in the market.[106] Additionally, approaching the debt limit makes the Treasury Department's job of cash management more difficult.[107] The government's proximity to the debt limit reduces the cash balance that the Treasury can hold and leads to reductions in bill issuance to stay under the debt limit.[108] Though the Treasury must take these necessary actions to prolong government

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[99] *See* THE POTENTIAL MACROECONOMIC EFFECT OF DEBT CEILING BRINKMANSHIP, *supra* note 84, at 3.

[100] *Id.*

[101] Federal Reserve, Conference Call of the Federal Open Market Committee (Aug. 1, 2011) (on file with author), https://www.federalreserve.gov/monetarypolicy/files/fomc20110801confcall.pdf [https://perma.cc/F8EQ-H2FF].

[102] *See* THE POTENTIAL MACROECONOMIC EFFECT OF DEBT CEILING BRINKMANSHIP, *supra* note 84, at 3.

[103] *See* David Cashin, Erin Syron Ferris, Beth Klee & Cailey Stevens, *Take it to the Limit: The Debt Ceiling and Treasury Yields* (Federal Reserve Board of Governors, Working Paper, 2017), https://www.federalreserve.gov/econres/feds/files/2017052pap.pdf [https://perma.cc/5QZX-8RTZ].

[104] *See* Matthew Wells, *Averting a Treasury Market Crisis*, ECON FOCUS (2023), https://www.richmondfed.org/-/media/RichmondFedOrg/publications/research/econ_focus/2023/q1/feature2.pdf [https://perma.cc/S4PT-S5LM].

[105] Federal Reserve, *supra* note 101.

[106] *Id.*

[107] *See* Assistant Secretary for Financial Markets Joshua Frost, Remarks by Assistant Secretary for Financial Markers Joshua Frost on the Historical and Current Perspectives on the Debt Limit at the Federal Reserve Bank of New York's Annual Primary Dealers Meeting (Dec. 1, 2022) (on file with U.S. Dep't of Treasury), https://home.treasury.gov/news/press-releases/jy1136 [https://perma.cc/STX8-S3SQ].

[108] *Id.*

resources and avoid default, they ultimately create volatility in the financial system—volatility that can persist for weeks after the debt limit has been raised.[109] This pattern has persisted across impasses; in 2023, the Treasury Borrowing Advisory Committee wrote Secretary Janet Yellen weeks ahead of the projected X-date to say that investors were already demanding an increased premium for the risk of buying Treasury Bills.[110] All of this leads to higher rates on government debt.[111] In 2011, the result of these higher rates on government debt amounted to an additional $1.3 billion in borrowing costs for 2011 alone, with the potential for increased costs as they compounded across years.[112]

Taken together, financial market actors see debt limit impasses as creating system uncertainty and instability in government securities. For example, a month ahead of the X-date in 2011, the S&P credit ratings agency publicly stated that they were considering a credit downgrade of U.S. debt.[113] Nearly a week after the crisis was resolved, S&P downgraded the U.S.'s credit rating from AAA to AA+, a decision that still has not been reversed.[114] This has resulted in a decade of higher borrowing costs.[115] After the 2023 debt limit impasse, Fitch Ratings also downgraded the U.S.'s credit rating from AAA to AA+, citing the standoff as the major driving factor.[116] The great irony is that the debt limit creates impasses that increase borrowing costs for the government, irresponsibly exacerbating the fiscal problems that lawmakers claim it solves.

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[109] *Id.*

[110] Letter from Treasury Borrowing Advisory Committee Chairs and Vice Chairs, 1998-present to The Honorable Janet Yellen, Secretary, Dep't of the Treasury (May 9, 2023) (on file with Dep't of the Treasury), https://home.treasury.gov/system/files/276/TBAC-Letter-to-Secretary-2023-05-09.pdf [https://perma.cc/CNM7-5CJF].

[111] Wendy Edelberg & Noadia Steinmetz-Silber, *Debt Ceiling Brinksmanship Has Clear Negative Effects On Taxpayers*, Brookings (May 23, 2023), https://www.brookings.edu/articles/debt-ceiling-brinksmanship-has-clear-negative-effects-on-taxpayers/ [https://perma.cc/QZE4-A655].

[112] Gov't Accountability Off., Debt Limit: Analysis of 2011-2012 Actions Take and Effect of Delayed Increase on Borrowing Costs (2012), https://www.gao.gov/assets/files.gao.gov/assets/gao-12-701.pdf [https://perma.cc/TPB7-SF3R].

[113] Damian Paletta, *Making the Call on U.S. Credit Rating*, Wall St. J. (July 22, 2011), https://www.wsj.com/articles/SB10001424053111903554904576460393248353976 [https://perma.cc/5NSX-PXJX].

[114] Damian Peletta & Matt Phillips, *S&P Strips U.S. of Top Credit Rating*, Wall St. J. (Aug. 6, 2011), https://www.wsj.com/articles/SB100014240531119033665045764908412355 75386 [https://perma.cc/V99F-JJJD].

[115] Nikola G. Swann, *United States of America Long-Term Rating Lowered To 'AA+' On Political Risks And Rising Debt Burden; Outlook Negative*, Standard & Poor's (Aug. 5, 2011), http://www.washingtonpost.com/wp-srv/politics/documents/spratingreport_080611.pdf. [https://perma.cc/SWP9-PAQJ].

[116] Fitch Ratings, *Fitch Downgrades the United States' Long-Term Ratings to 'AA+' from 'AAA'; Outlook Stable*, Fitch Ratings, (Aug. 1, 2023), https://www.fitchratings.com/research/sovereigns/fitch-downgrades-united-states-long-term-ratings-to-aa-from-aaa-outlook-stable-01-08-2023 [https://perma.cc/G4UR-6NFV].

2. *Households and Workers*

The increased costs from partisan brinkmanship alone also have consequences for workers and households. In the 2011 crisis, household and business confidence both fell sharply up until the debt limit standoff—and then it still took months to recover.[117] Decreases in consumer confidence mean less willingness to spend as consumers fear an impending economic downturn.[118] This sentiment can become a self-fulfilling prophecy. As consumer spending makes up nearly seventy percent of the economy, even modest reductions in consumer spending can lead to broader economic contractions.[119]

Brinkmanship also affects the housing market, which is notable given that a home is the largest financial asset for most households.[120] In 2011 mortgage spreads increased seventy basis points during the height of the crisis and lasted throughout the year, leading to higher mortgage rates and monthly payments for families.[121] Because these rates are locked in over decades-long contracts, the costs compound for families, adding potentially tens of thousands of dollars in additional borrowing costs over the lifetime of a loan.[122] For example, had a family purchased a home in summer 2011 during the debt limit impasse, at an average price of $235,000, the seventy basis point increase in mortgage rates would have meant payments that were about $100 higher a month.[123] Overall, even approaching the debt limit and creating uncertainty around the negotiations has costs for both the macroeconomy and individual households.

B. *The Costs of Default*

Whatever the costs of brinkmanship around the debt limit, there is no doubt that a default would have substantially worse and farther-reaching

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[117] *See* THE POTENTIAL MACROECONOMIC EFFECT OF DEBT CEILING BRINKMANSHIP, *supra* note 84, at 1–2.

[118] Jeremy M Piger, *Consumer Confidence Surveys: Do the Boost Forecasters' Confidence?*, FED. RSRV. BANK OF ST. LOUIS (Apr. 1, 2003), https://www.stlouisfed.org/publications/regional-economist/april-2003/consumer-confidence-surveys-do-they-boost-forecasters-confidence#:~:text=Consumer%20confidence%20serves%20as%20a,indicator%20of%20the%20economy's%20strength [https://perma.cc/2XLY-63CY].

[119] Press Release, Bureau of Economic Analysis, Gross Domestic Product (Third Estimate), Corporate Profits (Revised Estimate), and GDP by Industry, First Quarter 2023 (June 29, 2023) (on file with author), https://www.bea.gov/sites/default/files/2023-06/gdp1q23_3rd.pdf, [https://perma.cc/AMP9-QUZY].

[120] Neil Bhutta, Jesse Bricker, Andrew C. Chang, Lisa J. Dettling, Sarena Goodman, Joanne W. Hsu, Kevin B. Moore, Sarah Reber, Alice Henriques Volz & Richard A. Windle, *Changes in U.S. Family Finances from 106 to 2019: Evidence from the Survey of Consumer Finances*, FED. RSRV. BULL. (Sept. 2020), https://www.federalreserve.gov/publications/files/scf20.pdf [https://perma.cc/QR62-6QB9].

[121] *See* THE POTENTIAL MACROECONOMIC EFFECT OF DEBT CEILING BRINKMANSHIP, *supra* note 84, at 5.

[122] *Id.*

[123] *Id.*

consequences. While it is impossible to predict exactly how the economic fallout would occur, best estimates suggest that it would be swift and painful for both Americans and economies around the world who rely on the U.S. as the bedrock of the global financial system.[124] Hundreds of economists across the ideological spectrum agree that a default would be catastrophic and would create higher borrowing costs for the U.S. government and for all Americans.[125] A default of any length has the potential to stymie U.S. economic growth for decades to come (to say nothing of the world), hurt households and workers, undermine the dollar's standing as the global reserve currency, and create opportunities for our adversaries.

1. Federal Programs

One immediate consequence of default would be the inability of the federal government to pay its various obligations. In the event of a default, Treasury would have insufficient cash flow to pay daily outflows, including checks to Social Security recipients, veterans, the Medicare and Medicaid programs, and government contracts. Regardless of the steps Treasury takes, some delay in payments would be inevitable.[126] And these delays would create ripple effects throughout the economy. The hardest hit groups would include those for whom government benefits comprise large portions of their income: for example, most of the 67 million people who receive Social Security payments each month.[127] Sixty-five million people receive healthcare coverage through Medicare, and 88.5 million are on Medicaid or the Children's Health

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[124] Brad W. Setser, *The U.S. Has Every Reason It Needs to Drop the Debt Ceiling – Both at Home and Abroad*, Council on Foreign Rels. (June 8, 2023), https://www.cfr.org/blog/us-has-every-reason-it-needs-drop-debt-ceiling-both-home-and-abroad [https://perma.cc/6HD5-RHF6].

[125] *More Than 200 Economists Tell Congress: Raise the Debt Ceiling to Avoid a 'Dangerous and Unnecessary' Economic Crisis*, Wash. Ctr. for Equitable Growth (2023), https://equitablegrowth.org/press/more-than-200-economists-tell-congress-raise-the-debt-ceiling-to-avoid-a-dangerous-and-unnecessary-economic-crisis/ [https://perma.cc/M3VP-3QVR].

[126] In 2013, the Treasury Inspector General wrote a report detailing Treasury's planning during the 2011 crisis. *See* Letter from Eric M. Thorson, Inspector Gen., Dep't of the Treasury, to Senator Orrin G. Hatch, Ranking Member, U.S. Senate Comm. on Fin. (Aug. 24, 2012), https://oig.treasury.gov/sites/oig/files/Audit_Reports_and_Testimonies/OIG-CA-12-006.pdf [https://perma.cc/59BB-N95W]. The Department determined that the least bad in a series of bad options would be to batch payments in the case of a default. *Id.* at 6. In other words, they would wait until they had sufficient revenues to pay a full day's worth of payments. As a stylistic example to how this would work, imagine a default on a Monday. On Tuesday, there are $100B in bills due but only $50B in revenues. Treasury would hold the cash and make no payments on Tuesday. If another $75B in revenue was received on Wednesday but another $100B in payments were due on Wednesday, Treasury would make the $100B of *Tuesday* payments and hold Wednesday payments. And so on. Under this scenario it is likely that payments to programs like Social Security and Medicare would be delayed. No formal plan was ever presented to the President, and it is unclear what would occur in a future default, but delay of some payments seems inevitable.

[127] Soc. Sec. Admin., Fact Sheet: Social Security (2023), https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf [https://perma.cc/RP7R-MRRJ].

Insurance Program.[128] Disruptions to these programs would affect healthcare coverage for millions of people.

Millions of veterans who rely on the government for monthly payments, healthcare, and other support would also face delays.[129] And programs like the Supplemental Nutrition Assistance Program, school lunches, and housing support would experience interruptions to their funding.[130] Children would be disproportionately vulnerable to cuts driven by a debt limit default, as the majority of funding they receive comes from discretionary programs.[131] These programs would likely be first on the chopping block if there is a need to quickly reduce federal expenditures.[132] Combined, most Americans would experience at least some delay, if not a complete cut in government benefits due to default.

Outside of crises where government spending expands, government spending makes up about twenty percent of the United States's GDP.[133] Because this is a sizable portion of the United States economy, delays in payments would have wide reaching effects. These delays would not only hurt consumer sentiment but also make it difficult for families to pay their bills and afford basic necessities. This would create immediate economic hardship for those families, and it would create a sharp contraction in consumer spending, likely plunging the country into recession.[134]

2. *Macroeconomy*

Estimates suggest that had even a short breach occurred during the 2023 crisis, when the economy was relatively healthy, GDP would have declined by 0.7 percentage points and 1.5 million jobs would have been lost.[135] If a debt limit breach took weeks to resolve, the consequences would be significantly

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[128] CTR. FOR MEDICARE & MEDICAID SERVS., CMS FAST FACTS (2023), https://data.cms.gov/sites/default/files/2023-03/CMSFastFactsMar2023.pdf [https://perma.cc/ZL3R-HEB3].

[129] Katherine G. Giefer & Tracy A. Loveless, *Benefits Received by Veterans and Their Survivors: 2017*, U.S. CENSUS BUREAU (Nov. 10, 2021), https://www.census.gov/library/publications/2021/demo/p70br-175.html [https://perma.cc/ZL3R-HEB3].

[130] Caitlin Emma, *Here's Who Misses Checks if The U.S. Hits The Debt Brink in June*, POLITICO, (May 9, 2023), https://www.politico.com/news/2023/05/09/debt-limit-white-house-00095867 [https://perma.cc/49HQ-VPG8].

[131] Elaine Maag, *Breaching The Debt Limit Risks Hurting Children*, TAX POL'Y CTR. (Feb. 22, 2023), https://www.taxpolicycenter.org/taxvox/breaching-debt-limit-risks-hurting-children [https://perma.cc/F838-YHMR].

[132] *Id.*

[133] Press Release, Joint Statement of Janet L. Yellen, Secretary of the Treasury, and Shalanda D. Young, Director of the Office of Management and Budget, on Budget Results for Fiscal Year 2023 (Oct. 20, 2023), https://www.whitehouse.gov/omb/briefing-room/2023/10/20/joint-statement-of-janet-l-yellen-secretary-of-the-treasury-and-shalanda-d-young-director-of-the-office-of-management-and-budget-on-budget-results-for-fiscal-year-2023/.

[134] *See* MARK ZANDI, ADAM KAMINS & BERNARD YAROS, MOODY'S ANALYTICS, DEBT LIMIT SCENARIO UPDATE 6 (2023), https://www.moodysanalytics.com/-/media/article/2023/debt-limit-scenario-update.pdf [https://perma.cc/6DHF-6DC3].

[135] *Id.*

more severe. The Federal Reserve estimated that a one-month-long breach in 2013 would have led to a spike in Treasury yields, a thirty percent decline in stock prices, and a ten percent drop in the value of the dollar, leading to a mild recession and an increase in the unemployment rate.[136] Had a one-month-long breach occurred during the 2023 impasse, more than 7.8 million jobs would have been lost—nearly ninety percent of the jobs lost during the 2008 Financial Crisis[137]—and $10 trillion in household wealth would have been eliminated.[138] And the effects would have been long-lasting. Had a long breach occurred, GDP would have been one percentage point lower a decade later and 1.2 million jobs would never be recovered.[139]

It is important to consider that, in a future default, the fallout would be felt unequally. Parts of the country with a larger federal workforce would feel the effect of delayed payments more strongly, and areas with concentrations of Medicare, Medicaid, and Social Security recipients would be more likely to be quickly, and negatively, affected.[140] As is often the case in financial crises, it is the most vulnerable who will suffer disproportionately from these disruptions. A debt limit default will likely only exacerbate existing patterns of inequality.

3. Government Borrowing

Given the credit downgrade the United States experienced in 2011 from brinkmanship alone, in a full default situation a more extreme downgrading would make the cost of United States borrowing increase as investors would demand higher premiums for less-safe debt. Fitch's ratings agency in 2023 indicated that, were the United States to default on its debt, they would downgrade some securities to a 'D' rating (the lowest possible), and Treasury bills would receive ratings between 'CCC' and 'C.'[141] Credit downgrades suggest that a security is no longer safe and that there is risk in the potential for timely and full repayment.[142] Even though there is no obvious safe asset substitute

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[136] *See* Engen et al., *supra* note 85.

[137] *See* ZANDI ET AL., *supra* note 134 (estimating 7.8 million jobs would have been lost); BRENDAN F. BOYLE, HOUSE COMM. ON BUDGET, DOMESTIC INVESTMENTS FUEL AMERICAN PROSPERITY – WHY ARE THEY UNDER ATTACK? 3 (Mar. 17, 2023), https://democrats-budget.house.gov/sites/democrats.budget.house.gov/files/HBC%20REPORT%20-%20Domestic%20Investments%20Fuel%20American%20Prosperity%20-%20Why%20Are%20They%20Under%20Attack.pdf [https://perma.cc/QQG7-PS7B] (explaining nearly nine million jobs lost in Great Recession).

[138] *See* ZANDI ET AL., *supra* note 134.

[139] *Id.*

[140] *Id.*

[141] *See Fitch Places United States' 'AAA' on Rating Watch Negative*, FITCH RATINGS (May 24, 2023), https://www.fitchratings.com/research/sovereigns/fitch-places-united-states-aaa-on-rating-watch-negative-24-05-2023 [https://perma.cc/2RCW-99J9].

[142] *See* Davide Barbuscia, *Fitch Cuts US Credit Rating to AA+; Treasury Calls It 'Arbitrary'*, REUTERS (Aug. 2, 2023), https://www.reuters.com/markets/us/fitch-cuts-us-governments-aaa-credit-rating-by-one-notch-2023-08-01/ [https://perma.cc/7VEF-NZJ7].

for Treasury debt, a downgrade likely would lead to higher interest rates as investors demand compensation for increased risk, and these higher rates would ripple through the economy.[143]

Even a short default, in which Treasury missed some payments but the debt limit was lifted after a few days, could have disastrous economic consequences. In 1979, Treasury briefly defaulted on the debt in a so-called "technical" default after a debt limit impasse resolved at the very last minute.[144] This turned into a perfect storm. At the same time as investors demanded an unusually large amount of Treasury bills, Treasury's technical system faced a series of glitches.[145] Markets saw the short impasse as a sign that Treasury bills were perhaps not the riskless asset they were previously thought to be. This resulted in a permanent sixty basis point increase in Treasury bill rates, which created a $12 billion annual increase in costs for the government.[146] In the case of a more substantial default, the risk premium on Treasuries would certainly be higher, leading to even greater government borrowing costs.

It is likely that if a default were to occur, investors would move assets out of government and into more liquid assets and that repurchase agreement markets would face significant deleveraging.[147] Foreign investors may also lose their appetite for holding the United States's debt.[148] Even a small decline in foreign holdings would greatly increase Treasury's costs for borrowing, and the government credit rating would surely be downgraded again.[149] Interest rates across the economy would spike, and the stock market would experience substantial losses.[150]

4. The Dollar

The U.S. dollar is considered the global reserve currency. Nations and individuals around the world hold U.S. dollars as a safe store of value. More

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[143] *See* Grace Segers, *Why It Matters If the U.S. Credit Rating is Downgraded – Again*, THE NEW REPUBLIC (May 26, 2023), https://newrepublic.com/article/173039/debt-ceiling-fitch-ratings-downgrade [https://perma.cc/NPJ4-QBDB].

[144] *See* Terry L. Zivney & Richard D. Marcus, *The Day the United States Defaulted on Treasury Bills*, 24 FIN. REV. 475, 475 (1989).

[145] *Id.*

[146] *Id.* at 488.

[147] *See* TERRY BELTON, MEERA CHANDAN, KIMBERLY L. HARANO, SRINI RAMASWAMY, ALEX ROEVER, J.P. MORGAN, THE DOMINO EFFECT OF A US TREASURY TECHNICAL DEFAULT 2–4 (2011), https://valkayec.files.wordpress.com/2011/04/morgan.pdf [https://perma.cc/5WFS-UFNF] [hereinafter J.P. MORGAN REPORT].

[148] *See* Brad W. Setser, *The U.S. Has Every Reason It Needs to Drop the Debt Ceiling – Both at Home and Abroad*, COUNCIL ON FOREIGN RELS. (June 8, 2023), https://www.cfr.org/blog/us-has-every-reason-it-needs-drop-debt-ceiling-both-home-and-abroad [https://perma.cc/6M3M-U3LG].

[149] *See* J.P. MORGAN REPORT, *supra* note 147, at 5.

[150] *See* ZANDI ET AL., *supra* note 134.

than half of global currency reserves are held in U.S. dollars.[151] A debt limit breach would surely cause the value of the dollar to drop and call into question the full faith and credit of the United States.[152] Though some believe that the demand for U.S. dollars would not evaporate because there is no other currency that can replace it, default has the potential to create a lack of safe assets anywhere around the world.[153]

5. *National Security*

Under default, the federal government's ability to provide for the common defense would be put into question. According to Secretary of Defense Lloyd Austin, a default would create delays in payments to military members, veterans, and contractors.[154] These delays will hurt military readiness, placing the country's ability to meet future crises at risk, an issue that only compounds with the default's duration. Because a default would have global ripple effects, it would have the potential to put pressure on strategic alliances and to create a path for the escalation of conflicts with our adversaries.[155] Indeed, such an event would likely embolden China and increase a perception of the U.S. as a declining global superpower.[156] Default would also limit the ability of the U.S. government to issue sanctions on our adversaries, as it would threaten the global demand for dollars.[157] There is precedent for these kinds of national security–related consequences. In 1957, a prolonged impasse in raising the debt limit forced the Eisenhower Administration to conduct a series of defense cuts, including prolonging production schedules, limiting overtime for workers, and delaying purchases; this is believed to have contributed to

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[151] *See* INT'L MONETARY FUND, CURRENCY COMPOSITION OF OFFICIAL FOREIGN EXCHANGE RESERVES (COFER) (2023), https://data.imf.org/?sk=e6a5f467-c14b-4aa8-9f6d-5a09ec4e62a4 [https://perma.cc/C7LT-3A54].

[152] *See* Mary E. Lovely & Katheryn Russ, *Opinion: Republicans are playing with fire*, CNN (Mar. 9, 2023), https://www.cnn.com/2023/03/09/opinions/debt-limit-national-security-lovely-russ/index.html [https://perma.cc/5QT2-B67M].

[153] *See* Brad W. Setser, *The U.S. Has Every Reason It Needs to Drop the Debt Ceiling – Both at Home and Abroad*, COUNCIL ON FOREIGN RELS. (June 8, 2023), https://www.cfr.org/blog/us-has-every-reason-it-needs-drop-debt-ceiling-both-home-and-abroad [https://perma.cc/MJP6-DYZC].

[154] *See* Press Release, Dep't of Defense, Statement by Secretary of Defense Lloyd J. Austin III on the Economic Consequences of Default on National Security and Military Families (Oct. 6, 2021) (on file with author).

[155] *See* Carlo J.V. Caro, *The Implications of a US Debt Default on National Security*, FOREIGN POL'Y RSCH. INST. (May 30, 2023), https://www.fpri.org/article/2023/05/the-implications-of-a-us-debt-default-on-national-security/ [https://perma.cc/R6ML-3AZK].

[156] *See* Connor O'Brien, *Pentagon Chiefs: Debt Default is Bad for Troops, Good for China*, POLITICO (May 11, 2023), https://www.politico.com/news/2023/05/11/pentagon-chiefs-debt-default-is-bad-for-troops-good-for-china-00096429 [https://perma.cc/DGE8-MGR7].

[157] *See* Mary E. Lovely & Katheryn Russ, *Opinion: Republicans Are Playing With Fire*, CNN (Mar. 9, 2023), https://www.cnn.com/2023/03/09/opinions/debt-limit-national-security-lovely-russ/index.html [https://perma.cc/7A2V-NRMB].

the 1957–58 recession and reduced the nation's Cold War preparedness.[158] If brinkmanship alone had such consequences for military preparedness and the economy, default today would be even more disastrous.

Taken together, the combined effects of default would be catastrophic and have the potential to remake the role of U.S. financial markets in the global economy while putting American households through needless suffering. The debt limit has created no major fiscal reform, but the consequences of brinkmanship and default could fundamentally damage America and the world.

V. The Debt Limit Must Be Reformed

The statutory debt limit has led to a dysfunctional congressional process and unintended economic and legislative outcomes. The original intention of the debt limit was to make it easier for Treasury to pay the nation's debts while following congressional spending policy. Some actors, however, have seen the status of the debt limit as "must-pass" legislation as a hostage and have tried to use threats of not lifting the debt limit as leverage in budget and spending agreements. None of those attempts has led to meaningful reform or a shift in the nation's fiscal trajectory. However, the risk of default should Congress fail to raise the debt ceiling would be catastrophic for the U.S. and global economies. Even approaching the debt limit in increasingly intense and partisan episodes of brinkmanship has costs to federal borrowing, financial markets, and taxpayers.[159] Indeed, the modern debt limit has become a policy that forces the Executive Branch to scramble and make inefficient financing decisions because of a problematic congressional process.

It is clearly time to reform the debt limit. For decades, commentators have called for the removal of or reform to the debt limit; as early as 1958, economists such as Lester Chandler and Kenneth Galbraith called for such change.[160] In 1979, the Comptroller General of the United States said that the debt limit should be reformed to be increased as part of congressional budget resolutions.[161] Six of the last nine Treasury Secretaries, from both Republican and Democrat administrations, have called for abolishing the debt limit.[162] Ad-

[158] *See* Heller, *supra* note 38.

[159] *See* The Potential Macroeconomic Effect of Debt Ceiling Brinkmanship, *supra* note 84, at 1.

[160] Joint Econ. Comm., January 1958 Economic Report of the President 489 (Jan. 27, 1958).

[161] *See* Comptroller Gen. of the U.S., A New Approach to the Public Debt Legislation Should Be Considered (1979), http://archive.gao.gov/f0302/110373.pdf [https://perma.cc/5659-NGAJ].

[162] This list includes Robert Rubin (Clinton), Larry Summers (Clinton), Paul O'Neill (W. Bush), Tim Geithner (Obama), Jack Lew (Obama), and Janet Yellen (Biden). *See* Alan Rappeport, *Janet Yellen Says She Supports Eliminating the Debt Limit*, N.Y. Times (Sept. 30, 2021), https://www.nytimes.com/2021/09/30/business/yellen-powell.html [https://perma.cc/87S4-TFY7];

ditionally, in 2013, more than eighty percent of surveyed economists agreed that the debt limit creates unnecessary uncertainty.[163] Prominent policymakers, including Alan Greenspan, have called for its abolishment or reform.[164] Some have called for a complete abolishment of the debt limit, for example by striking the statute from law. However, some argue that it is still critical for Congress to maintain the power of the purse and have oversight over Treasury borrowing, and that completely removing the debt limit would remove Congress's ability to provide a check on the Treasury.

Previous Congresses have recognized the risks and made some attempts to soften the threat of the debt limit. For example, the introduction of a formalized budget process in the 1970s eliminated additional need for the debt limit to become the galvanizing point around which spending decisions were made; instead, the new process allowed for a setting in which members of Congress could negotiate about budgetary levels and appropriations. The 1974 Congressional Budget and Impoundment Control Act made substantial reforms to the budget process, including codifying the procedure for the adoption of a budget resolution.[165] It also established the Congressional Budget Office to help with the scoring of legislation and created other rules around budget points of order and the budget reconciliation process.[166] The Gephardt Rule of 1979 further declawed the debt limit by mandating that any House vote for a budget resolution would automatically increase the debt ceiling by the same amount and without a separate vote.[167] The downside of the Gephardt Rule was that it existed as a rule, meaning that it must be passed as part of a House Rules package in every Congress and is not codified into law. As a result, the Gephardt

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Annie Lowrey, *The Guys Who Sign the Checks*, SLATE (July 18, 2011), https://slate.com/business/2011/07/is-the-debt-ceiling-necessary-we-asked-all-nine-living-former-treasury-secretaries.html [https://perma.cc/7EPH-LVFU]; Clark Merrefield, *What's the Debt Ceiling and Why Should You Care? Former Treasury Secretary Jack Lew Explains.*, THE JOURNALIST'S RES. (Oct. 5, 2021), https://journalistsresource.org/economics/debt-ceiling-jack-lew/ [https://perma.cc/29AL-5JSC]; Ezra Klein, *Robert Rubin: The Risk is Greater Today Than It Was in 1995*, WASH. POST (May 17, 2011), https://www.washingtonpost.com/blogs/wonkblog/post/robert-rubin-the-risk-is-greater-today-than-it-was-in-1995/2011/05/09/AFlJqp5G_blog.html?itid=lk_inline_manual_20 [https://perma.cc/J3AD-KBGT]; Joseph J. Schatz, *Geithner: End Debt Ceiling for Good?*, POLITICO (Nov. 29, 2012), https://www.politico.com/story/2012/11/timothy-geithner-end-debt-ceiling-for-good-084428 [https://perma.cc/R7WN-7BM6].

[163] Zachary A. Goldfarb, *Economists: Don't Mess Around with the Debt Ceiling!*, WASH. POST (Jan. 15, 2013), https://www.washingtonpost.com/news/wonk/wp/2013/01/15/economists-dont-mess-around-with-the-debt-ceiling/ [https://perma.cc/X339-FSBE].

[164] *See Oversight on the Monetary Policy Report to Congress Pursuant to the Full Employment and Balanced Growth Act of 1978: Hearing Before the Committee on Banking, Housing, and Urban Affairs*, 108th Cong. (2003) (statement of Chairman Alan Greenspan), https://www.govinfo.gov/content/pkg/CHRG-108shrg90930/pdf/CHRG-108shrg90930.pdf [https://perma.cc/PF3U-4J8X].

[165] *See* Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974).

[166] *See id.*

[167] *See* Public Debt Act of 1979. Pub. L. No. 96-78, 93 Stat. 589 (1979).

Rule has been sporadically included in some Rules packages.[168] Still, it was an important mechanism to deescalate the role of the debt limit as a bargaining chip in budget negotiations.[169]

There are other reforms to the debt limit, however, that would maintain congressional oversight while removing the threat of catastrophic default. One such approach is to build off the so-called "McConnell Rule,"[170] named after the senator who proposed it when it was included as part of the 2011 Budget Control Act.[171] Though the McConnell Rule was limited to only three debt limit increases as part of the BCA, such a mechanism offers a useful framework for broader debt limit reform. In my proposed legislation, the Debt Ceiling Reform Act, this process would become the norm for all debt limit increases. Every time that the debt subject to the limit is within a $100 billion increment of the next whole $1 trillion, the Treasury Secretary would certify to Congress the need to increase the debt limit by an additional $1 trillion. Upon receiving the certification, Congress would have thirty days to pass a joint resolution of disapproval should it want to override this decision. This resolution would need to pass both the House and the Senate, and then would be sent to the president for approval or would need to contain a veto-proof majority. Should the resolution pass and be signed into law, no debt limit increase would be permitted. However, if Congress failed to pass a resolution of disapproval, Treasury would be authorized to borrow up to an additional $1 trillion to finance the government's needs.

Under current law, if Congress fails to raise the debt limit, the outcome is default and global economic catastrophe. My proposal would flip that process so that choosing not to pay our debts and suffer the resulting economic disaster would have to come from intentional congressional action, rather than inaction. Lawmakers would retain the power to override increased borrowing authority, but debt limit increases will occur in a smooth and timely manner otherwise. This maintains congressional oversight over the executive while ensuring that periods of dysfunctionality and partisanship in Congress would not lead to brinkmanship around the debt ceiling. As under current law, in my proposal, Treasury will finance only that debt necessary to cover the nation's obligations. Congress retains the power over spending and taxation decisions, and decisions about those policies and long-term deficit reduction can occur during the normal order of the budget process.

The Debt Ceiling Reform Act returns the debt limit to its original intention by making it a tool that extends to the Treasury Department the flexibility

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[168] *See* Bill Heniff Jr., *Debt Limit Legislation: The House "Gephardt Rule"*, Cong. Rsch. Servs. (Feb. 13, 2019), https://sgp.fas.org/crs/misc/RL31913.pdf [https://perma.cc/3Z4T-5ND5].

[169] There is no Senate companion to the House Gephardt Rule.

[170] *See* The Editorial Board, Opinion, *How to Disarm the Debt-Ceiling Threat for Good*, N.Y. Times (Oct. 21, 2013), https://www.nytimes.com/2013/10/22/opinion/how-to-disarm-the-debt-ceiling-threat-for-good.html?_r=0 [https://perma.cc/L5XF-PD9P].

[171] *See* Budget Control Act of 2011 § 3101A(a)(1)(A).

to make financing decisions, rather than a tempting hostage for Congress to use to force controversial policies. It also separates debt limit increases from the processes of spending and revenue decisions. My bill will deescalate the process of debt limit increases. It will abolish the threat of brinksmanship or default, saving money for both the federal government and the taxpayers who have incurred costs in previous impasses.

VI. Conclusion

Budget agreements should occur on the merits of the policy and the extent to which they reflect the will of the American people, not because the failure to accept unproductive and unpopular policy is better than the alternative of global economic calamity. Unfortunately, years of brinkmanship around the debt limit have led to many budget agreements brokered under duress that do not adequately address our long-term fiscal challenges. The debt limit must be reformed so that Congress can better serve the American people. By removing the threat of a self-inflicted economic catastrophe, my proposal to reform the debt limit will allow for a more prosperous future for all.