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CLEARED TO LAND

As thick as planes over LaGuardia, budget issues have been circling Washington, D.C. The first - the final, final continuing resolution for fiscal year 2011 - has been cleared to land. Some time this week, Congress will pass and the President will sign into law funding for the current fiscal year through September, 2011. Queued up behind it are two more issues: the funding for fiscal year 2012 and whether the debt ceiling for federal borrowing should be raised.

On the latter issue, the federal debt is predicted to bump up against the current ceiling of \$14.294 trillion around May 15th. The shutdown showdown for fiscal year 2011 gives us some clues as to whether serious deficit reduction advocates can use the debt ceiling dilemma to extract some major concessions. At first blush, Speaker Boehner's troops appeared to hold their line just nicely during the shutdown showdown, and it should provide him with leverage in the debt ceiling debate. But first, as early as this week, the House will start the process for funding the government for fiscal year, 2012, so I will talk about that, and leave the debt ceiling debate observations for another day.

In addition to cleaning up fiscal year 2011, the House is scheduled to consider a budget resolution (not to be confused with a continuing resolution) for fiscal year 2012, which begins on

October 1st. Consideration of the budget resolution is the first step in a process that in theory leads to the Congress fulfilling its Constitutional duty to fund the government through the passage of appropriations bills. As we all know, Congress is not particularly proficient in completing the process. The current fiscal year, fiscal year 2011, debate resolved on Friday, April 8th, is proof of that.

The fiscal year 2012 budget resolution to be considered by the House was crafted by House Budget Committee Chairman Paul Ryan (R-WI). It has drawn a lot of attention for its aggressive goal of reducing the federal deficit and changing entitlement programs such as Medicare and Medicaid. Unfortunately, whether it can move the needle is another matter. For starters, a budget resolution is an internal congressional document. In theory, Congress is supposed to pass one by April 15th. Congress does not have to adopt a budget resolution and can proceed to the appropriations part of the process without one. In the years it does not do so, the Congress relies on the budget projections from the most recently passed version for its appropriations efforts. In the last thirty years, there have been five instances when Congress did not pass a budget resolution; the most recent failure was for the current fiscal year 2011. With the Democratic majority in the Senate, it would seem fiscal year 2012 is a prime candidate for a non-budget resolution process. (It would be the

first time that Congress failed to adopt a budget resolution in consecutive years but budget resolutions cover multiple years (usually five) so fiscal year 2012 would be covered by the fiscal year 2010 resolution's projections for fiscal year 2012. When there is no budget resolution, something called a "deeming resolution" comes into play, about which I will not go into detail here, but it might have some impact if Congress does indeed fail to adopt a fiscal year 2012 budget resolution, but you heard it here first.)

The President gets to present his proposed budget but Congress is not obligated to consider it and seldom does. Also, since a budget resolution is an internal Congress action, it does not require a presidential signature to be binding on Congress.

A budget resolution is literally just a bunch of numbers for revenues and spending. Those numbers are based on a variety of assumptions made by the budgeters. The resolution usually includes some policy statements about the assumptions, but they are not binding. They basically serve as insights as to how the budgeters got to the aggregate numbers. Others might describe it as the wishful thinking of the budget resolution crafters. In reality, appropriations and tax committees have considerable latitude in constructing legislation that will comply with the budget resolution and its assumptions.

There are a couple of other devices to direct congressional activity. One is to establish reserve funds or deficit neutral reserve funds in the budget resolution. There is no literal “fund.” Think of these as “placeholders.” In theory, the reserve fund allows Congress to deviate from the numbers to accomplish the particular goal of the “reserve fund.” The “deficit neutral” reserve funds are a subset of the reserve fund concept which allows Congress to deviate from the budget resolution number provided the policy changes do not add to the deficit. The reserve funds are a notch above the policy statements and assumptions in that they can change the numbers but by and large they are mostly policy statements. (E.g. the fiscal year 2010 budget resolution included an estate tax relief deficit neutral reserve fund.)

Given the idiosyncrasies of budget scoring, a repeal of Patient Protection and Affordable Care Act might technically increase the deficit, so the pending House budget resolution says: “In the House, the chairman of the Committee on the Budget may revise the allocations, aggregates, and other appropriate levels in this resolution for the budgetary effects of any bill, joint resolution, amendment, or conference report that repeals the Patient Protection and Affordable Care Act or the Health Care and Education Reconciliation Act of 2010.”

In the case of Medicare, the pending House resolution includes a deficit neutral reserve fund: “In the House, the chairman of the Committee on the Budget may revise the allocations, aggregates, and other appropriate levels in this resolution for the budgetary effects of any bill, joint resolution, amendment, or conference report that includes provisions amending or superseding the system for updating payments under section 1848 of the Social Security Act, if such measure does not increase the deficit in the period of fiscal years 2012 through 2021.”

A more controversial device is known as “budget reconciliation instructions.” These are more detailed instructions to a committee to implement a policy that fits within the scope of the budget resolution. The most significant feature of a reconciliation instruction is that any legislation that is permitted by it cannot be filibustered in the Senate. So far, no reconciliation instructions.

However, whether it is an assumption, policy statement, reserve fund, deficit neutral reserve fund or reconciliation direction, without a budget resolution, it is just paper and talking points.

THE WISH LIST

Even if Congress were to adopt a budget resolution, there is a long distance between a Budget Committee Chairman’s vision and reality – but you have to start somewhere. These are some of the highlights of House Budget Chairman Paul Ryan’s (R-WI) vision:

*Pare back spending on non-security government bureaucracies to below 2008 levels and hold this category of spending to a five-year freeze.

*Reduce the federal workforce by 10 percent by 2014. Additionally, freeze federal pay through 2015.

*Privatize the business of government-owned housing giants, Fannie Mae and Freddie Mac

*Consolidate dozens of overlapping job-training programs into more accountable career scholarships.

*Restore competition and exploration in the energy sector and get the government out of the business of picking winners and losers.

*Reduce the fixed payments that go to farmers irrespective of price levels, to reflect that soaring commodity prices are reducing the need for high levels of farm-income support. Reform the open-ended nature of the government’s support for crop insurance, so that

agricultural producers assume the same responsibility for managing risk as other businesses do.

*Secure the Medicaid benefit by converting the federal share of Medicaid spending into a block grant tailored to meet each state’s needs, indexed for inflation and population growth.

*Repeal the Patient Protection and Affordable Care Act.

*Make no changes in Medicare for those in and near retirement. Starting in 2022, new Medicare beneficiaries will be enrolled in the same kind of health care program as members of Congress. Future Medicare recipients will be able to choose from a list of guaranteed coverage options, and they will be given the ability to choose a plan. This is not a voucher program, but rather a premium-support model. A Medicare premium-support payment would be paid, by Medicare, to the plan chosen by the beneficiary, subsidizing its cost. The premium-support model would operate similar to the way the Medicare prescription-drug benefit program works. The Medicare premium-support payment would be adjusted so that wealthier beneficiaries would receive a lower subsidy, the sick would receive a higher payment if their conditions worsened, and lower-income seniors would receive additional assistance to cover out-of-pocket costs.

*Reform the tax code by consolidating the current six brackets and cutting the top individual rate from 35 percent to 25 percent. Broaden the tax base to keep revenue as a share of the economy at levels sufficient (items to be eliminated unspecified).

*Lower the corporate tax rate from 35 percent, which is the highest in the developed world, to a much more competitive 25 percent. Remove distortions from the code by eliminating or modifying deductions, credits and special carve-outs. (items to be eliminated unspecified).

W-2 AND HEALTH CARE BENEFITS

For many years in the employer community, one topic of discussion was whether employees would be more careful in using their health care benefits if they really knew how much it cost the employer to provide the coverage. The Patient Protection and Affordable Care Act, the new health care reform law, included a provision to test the hypothesis. The provision directs employers to disclose the costs of health care coverage on the employee's W-2 form at the end of the year.

There has been a lot of confusion about this new disclosure. While it appears on the W-2 form, it has no taxable consequences. It is purely informational. This has not stopped the Internet from spinning the story out of control.

The Internal Revenue Service (IRS) has published guidance on how employers are to comply with this disclosure requirement. The information will be on the W-2s for 2012 wages (that is, the forms required for the calendar year 2012 that employers generally are required to furnish to employees in January 2013 and then file with the Social Security Administration (SSA)).

The IRS had previously announced that employers that issue fewer than 250 W-2s will have an extra year to comply so the first disclosures will be included on the W-2s for 2013 wages (that is, the forms required for the calendar year 2013 that employers generally are required to furnish to employees in January 2014 and then file with the SSA). Employers may voluntarily disclose them on the W-2s for 2011.

The reporting to employees is for their information only, to inform them of the cost of their health care coverage. It does NOT result in any excludable employer provided health care coverage becoming taxable.

The notice answers many of the questions what costs need to be included on the Form W-2. The notice is Notice 2011-28 and can be found at <http://www.irs.gov/pub/irs-drop/n-11-28.pdf>

If an employer fails to include the information, the employer would be subject to the regular penalties for failing to file a correct W-2. The penalties are:

*\$30 per Form W-2 if you correctly file within 30 days (by March 30 if the due date is February 28); maximum penalty \$250,000 per year (\$75,000 for small businesses, defined below).

*\$60 per Form W-2 if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$500,000 per year (\$200,000 for small businesses).

*\$100 per Form W-2 if you file after August, or you do not file required Forms W-2; maximum penalty \$1,500,000 per year (\$500,000 for small businesses).

For purposes of the lower maximum penalties, you are a small business if your average annual gross receipts for the 3 most recent tax years (or for the period that you were in existence, if shorter) ending before the calendar year in which the Forms W-2 were due are \$5 million or less.