UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
APPEAL NO. 23-1867

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.
Plaintiff-Appellant,

v.

JANET LOUISE YELLEN, in her official capacity as Secretary of Treasury;
JOSEPH ROBINETTE BIDEN, JR. in his official capacity as
President of the United States,
Defendants-Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Case No. 1:23-cv-11001-RGS
The Honorable Richard G. Stearns

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), Plaintiff National Association of Government Employees, Inc. states that it does not have a parent corporation, and no publicly held corporation holds 10% of more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

REASONS WHY ORAL ARGUMENT SHOULD BE HEARD

Plaintiff-Appellant respectfully request oral argument, pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and Rule 34(a) of the First Circuit Local Rules. The issues presented in this case are critically important to federal employees who are invested in government-sponsored thrift savings plans, which have been impacted by past "debt issuance suspension periods" and will almost certainly be impacted again in the future. Furthermore, this appeal presents a fact-specific question of law that must be decided on *de novo* review. Plaintiffs believe oral argument will help this Court reach a resolution on these issues.

JURISDICTIONAL STATEMENT

The District Court had general federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this case presented a question of federal law: whether the "Debt Limit Statute," 31 U.S.C. § 3101(b), is unconstitutional in violation of the separation of powers set out in Articles I and II of the United State Constitution. Plaintiffs sought a declaratory judgment and order of injunctive relief pursuant to 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706(2).

This Court has jurisdiction over Plaintiffs' appeal pursuant to 28 U.S.C. § 1291 and Fed. R. App. P. 4(a)(1)(A). The District Court issued an order dismissing this case on standing and mootness grounds on October 18, 2023. See JA044. Plaintiffs filed a timely notice of appeal the following day. See JA009.

STATEMENT OF THE ISSUES

1. Whether the District Court erred in holding that this action is moot and not likely to recur in light of the fact that the Debt Limit Statute will go back into effect on a date certain, at which point the Secretary of the Treasury will be barred from further borrowing and Plaintiff-Appellant's members will suffer or face the same monetary injury they did just before the Debt Limit Statute was suspended on June 3, 2023.

2. Assuming *arguendo* that this action is moot (and it is not), whether the District Court erred in holding that the voluntary cessation doctrine did not apply in the absence of a specific intent on the part of Defendants-Appellees to moot Plaintiff-Appellant's action, when the same conduct challenged by Plaintiff-Appellant and the same injury to its members is certain to recur on January 1, 2025 when the Debt Limit Statute is reinstated.

3. Whether the financial losses of the G Fund participants represented by Plaintiff-Appellant on account of the Secretary's declaration pursuant to 5 U.S.C. § 8438(g) of a "debt issuance suspension period" constitute an injury capable of repetition and evading review, even though those participants were later reimbursed through Congressional action.

4. Whether Plaintiff-Appellant's members have standing to challenge the Debt Limit Statute "here and now" given that they face certain future injury

resulting from actions by Defendants-Appellees that violate the separation of powers under Supreme Court precedent, including Seila Law LLC v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183 (2020).

STATEMENT OF THE CASE

On May 8, 2023, with public attention riveted on the federal government's pending default on the national debt, which Secretary of the Treasury Janet Yellen (the "Secretary") predicted would occur in early June 2023, Plaintiff-Appellant the National Association of Government Employees ("NAGE") filed this action in the United States District Court for the District of Massachusetts seeking to bar the application of the Debt Limit Statute, 31 U.S.C. § 3101(b). The Debt Limit Statute effectively prohibits the Secretary from further borrowing to pay the expenses of the United States once the national debt reaches a threshold of $31.4 trillion, regardless of whether Congress has previously approved the expenses that would bring the debt above that threshold. In fact, the United States reached that limit as early as January 19, 2023, and the Secretary had since adopted emergency measures to avoid further increases to the national debt. Indeed, since January 13, 2023, when the Secretary declared a "debt issuance suspension period" pursuant to 5 U.S.C. § 8348(j), the government had already been in default on the obligations to pay interest on Treasury notes and securities due to NAGE members who were participants in a voluntary defined contribution savings plan, the Thrift Savings

Plan "G" Fund, established pursuant to 5 U.S.C. § 8438. During this period, the Secretary also prepared contingency plans for delaying and withholding the paychecks of all federal employees, including all of NAGE's members.

While NAGE's complaint and request for emergency injunctive relief were pending, Congress enacted the Fiscal Responsibility Act, P.L. 118-5, which temporarily suspended enforcement the debt limit until January 2, 2025, instead of raising it, thus merely delaying the inevitable. NAGE thereafter renewed its challenge to the Debt Limit Statute, arguing in its First Amended Complaint that the statute is unconstitutional because: (1) it effectively places the government of the United States in a state of bankruptcy without prescribing a bankruptcy procedure; (2) there is no constitutional means for the Secretary and President of the United States Joe Biden (the "President") to both comply with the limit on indebtedness set by the statute and to carry out legislatively mandated spending; (3) Congress had not given the President the authority to cancel legislatively mandated spending and, even if it had done so, such a delegation of power would be the equivalent of an unconstitutional line-item veto; and (4) Congress had not given the President the authority to default on the public debt and, even if it had done so, such an authorization would extend beyond the enumerated powers granted to Congress in Article I of the Constitution and violate Section 4 of the Fourteenth Amendment.

Notwithstanding the fact that the debt limit will go back into effect on January 2, 2025, at which point NAGE's members will again face certain injury in the form of losses to their personal savings accounts in the G Fund Thrift Saving Plan and delay in the timely payment of their wages and salaries, the District Court dismissed NAGE's challenge as moot on October 18, 2023, finding that NAGE's members no longer faced an imminent risk of harm in light of the temporary suspension of the Debt Limit Statute. For the reasons that follow below, NAGE's challenge to the Debt Limit Statute is not moot, and even if it is technically moot, at least two exceptions to the mootness doctrine apply.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

NAGE is a national labor organization affiliated with the Service Employees International Union and has its principal place of business in Quincy, Massachusetts. See JA025. It represents over 75,000 bargaining employees in United States government agencies, including, but not limited to, the United States Departments of the Army, Navy, and Air Force, and the Department of Veterans Affairs, as well as many other federal executive departments and defense and civilian agencies. See JA025–26. It has approximately 6,000 members in Massachusetts alone. See JA026. NAGE represents thousands of members who have chosen to invest their own personal savings in the G Fund, one of five thrift savings plans in the nature of an individual 401(k) plan set up by Congress

exclusively for the benefit of federal employees. See JA023–24. The individual accounts are funded entirely with money from the personal savings of employees, with no matching employer contributions. See id. In the case of the G Fund, the personal savings of the participants are invested by the Secretary exclusively in Treasury securities and bonds, and principal and interest are paid to participants. See JA023, JA027. G Fund participants are led to believe that their investments are safe because the Secretary invests exclusively in government debt, with the appreciated principal and interest returned to fund participants. See id.

Pursuant to 5 U.S.C. § 8438(g), when necessary to keep the United States from exceeding the debt limit set by the Debt Limit Statute, 31 U.S.C. § 3101(b), the Secretary is authorized to suspend the issuance of more debt in the form of Treasury securities to G Fund participants, and to suspend payment of the interest due on outstanding securities (which has the effect of increasing the national debt). See JA023-24, JA027. Once the Secretary authorizes such a suspension, it continues until and unless Congress enacts legislation to increase the limit set by the Debt Limit Statute. See JA027-28. If Congress enacts such legislation, appropriates a sufficient amount of funds in excess of the funds designated for other specific purposes that allows for the reimbursement of G Fund participants, and sufficiently raises the debt limit so that reimbursement would not exceed the newly raised debt limit, then and only then is the Secretary constitutionally

authorized to reimburse the G Fund participants for their losses such that they are placed in the same financial position they would have been had no such suspension occurred. See id.

Indeed, under 5 U.S.C. § 8348 the Secretary may resume payment to G Fund participants and reimburse losses only when it can be achieved "without exceeding the public debt limit." 5 U.S.C. § 8348(j)(2). Furthermore, reimbursement is to be made "from amounts in the general fund of the Treasury of the United States" that Congress has "not otherwise appropriated." 5 U.S.C. § 8348(j)(4). Thus, it is clear from the language of the statute that any reimbursement is contingent on Congress enacting legislation to appropriate funds for the G Fund that (1) have not otherwise been appropriated for any other use, and (2) will not require the public debt to be exceeded.

On January 13, 2023, Secretary Yellen sent a letter to Congress warning of a pending default on the national debt and announcing such a "debt issuance suspension period" because the United States had reached the limit on indebtedness set by the Debt Limit Statute, 31 U.S.C. § 3101(b). See JA027. This was the second occasion on which the Secretary had taken such an action. See JA014, JA023. In 2011, when the United States had also reached the limit on total indebtedness, the Secretary similarly issued a debt issuance suspension period. See id. For G Fund participants (i.e., NAGE's members), the practical effect of this

"debt issuance suspension period" was that the United States ceased paying interest to G Fund participants and halted further investment or reinvestment of their personal savings as of January 13, 2023. See JA024, JA027.

By May 8, 2023, when NAGE filed this action, the United States was quickly running out of the remaining cash that the Secretary had preserved to pay for the ordinary day-to-day operations of the federal government. See JA022-23. At the time, the Secretary had predicted that a financial catastrophe would occur if Congress failed to act quickly and raise the debt limit. See id. At various times in April and May 2023, the Secretary gave estimated ranges as to when the United States would run out of cash to continue such operations. By late May, the Secretary estimated that the United States would run out of cash by June 5, 2023. See JA026–28. The Secretary and other agency heads considered withholding or suspending the paychecks of federal employees after that date. See JA026–27. Indeed, on May 31, 2023, the Secretary of Veterans Affairs, a department that employs thousands of NAGE members, warned employees that there would be such delays in payment. See Press Release, United States Department of Veterans Affairs, SecVA Press Conference 5/24/2023 (May 31, 2023), available at https//news.va.gov/press room/sec v.a.-press-conf.

Had the United States run out of cash on June 5, 2023, as the Secretary feared, and a more general default and financial panic occurred, NAGE's members

who participate in the G Fund would have suffered a further and incalculable financial injury, as would NAGE's members who had personal savings invested in four other federal employee Thrift Savings Plans. White House economists who advise the Secretary and President estimated that a default of three months would wipe out half of the stock market's value. See JA026.

NAGE filed its initial complaint in the United States District Court for the District of Massachusetts on May 8, 2023, seeking preliminary and permanent injunctive relief to declare and enjoin the Debt Limit Statute, 31 U.S.C. § 3101(b), unconstitutional and bar the Secretary and the President from cancelling legislatively approved spending to meet the debt ceiling of $31.4 trillion. See JA011. NAGE contended that the Debt Limit Statute was constitutionally flawed, among other reasons, because Congress had effectively placed the United States in a state of bankruptcy without prescribing a bankruptcy procedure or providing any other direction as to how the Secretary and President should proceed. See JA016, JA022. NAGE also contended that there was no constitutional means for Defendants to comply with the limit on indebtedness set by the Debt Limit Statute because the President could not simultaneously (1) comply with the limit of $31.4 trillion set by Congress, (2) carry out legislatively mandated spending that had already been approved by Congress, and (3) avoid defaulting on the debt in violation of the Fourteenth Amendment. See JA016–19, JA032–33.

As to cutting spending, NAGE contended that Congress had not given, and could not give, the President the authority to cancel legislatively mandated spending. See JA016–018, JA030–032. Even if Congress had delegated such a power to the President in the Debt Limit Statute or in another statue – and Congress had not in fact done so – such a delegation of power would be the equivalent of line-item veto, which the Supreme Court declared unconstitutional in Clinton v. New York, 524 U.S. 417 (1998). As to reneging on the debt, Congress had not given, and could not even lawfully give, the President the authority to default on the public debt. See JA016–018, JA030–032. Even if Congress had authorized such a default expressly in the Debt Limit Statute, such an authorization would extend beyond the enumerated powers granted to Congress in Article I of the Constitution and would violate Section 4 of the Fourteenth Amendment, which prohibits even questioning the validity of the public debt.

NAGE filed an emergency motion for a preliminary injunction on May 19, 2023, which the District Court set for hearing on May 31, 2023. Subsequently, after President Biden and the Speaker of the United States House of Representatives announced a tentative agreement to temporarily suspend the Debt Limit Statute until January 1, 2025, the District Court postponed the hearing to determine whether Congress would approve that agreement. On June 3, 2023, Congress enacted the Fiscal Responsibility Act, P.L. 118-5, which, instead of

raising the limit of $31.4 trillion on the existing debt, approved only a temporary suspension of the debt limit. While a "hold harmless" clause temporarily exempted any new additional borrowing, the same limit of $31.4 trillion was set to be reimposed on January 1, 2025, and any further borrowing by the Secretary between June 3, 2023, and January 1, 2025 would not be counted against the ceiling. Section 401(a) of the Fiscal Responsibility Act states: "Section 3101(b) of the United States Code shall not apply for the period beginning on the date of the enactment of this Act and ending on January 1, 2025." Accordingly, pursuant to this provision, the limitation of $31.4 trillion in effect on June 3, 2023, and challenged by NAGE, will be increased by the nominal or face amount of the principal and interest on obligations incurred from June 3, 2023, to January 1, 2025, minus the face value or nominal amounts outstanding as of June 3, 2025. This means that, just as on June 3, 2023, the same law, 31 U.S.C.§ 3101(b), will again deprive the Secretary of any further borrowing authority, and the United States will be just as insolvent as it was immediately prior to June 3, 2023.

As a result, all of NAGE's members, including those who are participants in the G Fund, will be immediately on or soon after January 1, 2025 in the same position they were – if not in an even worse position – just before Congress enacted the Fiscal Responsibility Act. Even before the default on the obligations to the G Fund participants that is certain to occur by January 2, 2025, the Secretary

will likely have to declare a new "debt issuance suspension period" to preserve whatever cash the Secretary may have on-hand at that time. Likewise, all of NAGE's members will face certain delay in their paychecks for some unknown period if the current law as revised on June 3, 2023, remains in effect and prohibits the Secretary from borrowing or issuing further debt after January 1, 2025.

Following the enactment of Fiscal Responsibility Act and thus the revision to the date upon which the United States will default to January 2, 2025, the Secretary reimbursed the G Fund participants for their financial losses. On June 20, 2023, NAGE filed a First Amended Complaint, which alleged that the same legal controversy existed and that NAGE's members continued to face the same injury as before the enactment of the Fiscal Responsibility Act. See JA022, JA029–30. The District Court then directed the Defendants to file a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). In their memorandum in support of their Rule 12(b)(1) motion, Defendants did not challenge that Plaintiff's members had suffered injury in fact at the time the case was filed on May 8, 2023, which is the time at which standing should be determined. Instead, Defendants contended that NAGE's claims were moot because the Secretary had reimbursed the G Fund participants for their financial losses, the Debt Limit Statute had been suspended, and there was no immediate need for any prospective relief. See JA037–38. However, Defendants later argued in their reply brief that the G Fund participants

had not suffered any financial injury or loss at the time NAGE filed this action because there was allegedly never any risk of loss. See JA039. In the oral argument that followed, NAGE addressed Defendants' change in position and otherwise argued that the same controversy continued and was not moot, and that in any case two recognized exceptions to mootness applied. See JA040.

On October 18, 2023, the District Court granted the Defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), found the case was moot, and entered an order of dismissal and final judgment. See JA037, JA044. The District Court also found that none of the exceptions to mootness applied. See JA040–043. The next day, on October 19, 2023, and pursuant to 28 U.S.C. § 1291, Plaintiff timely filed a Notice of Appeal from the order of dismissal and final judgment. See JA009.

SUMMARY OF THE ARGUMENT

On January 1, 2025, by law, the suspension of the Debt Limit Statute, 31 U.S.C. § 3101(b), will end, and NAGE and its members will face the same certain prospective injury from a law that requires acts in violation of the principle of the separation of powers and Section 4 of the Fourteenth Amendment. The challenged conduct has only been temporarily paused and will recur in a matter of months, not as a hypothetical possibility but legal certainty. This case is not moot when this Court can grant meaningful relief to prevent that certain injury when by operation

the Debt Limit Statute comes back into effect. In the alternative, even if this case were moot, it would meet the exception to mootness for voluntary withdrawal of conduct certain to recur. Here the challenged conduct has not even been withdrawn but just temporarily postponed. The District Court's decision that the exception applies only when there is a specific intent to moot the case at hand is mistaken and in conflict with Supreme Court and First Circuit law. Finally, the default on the debt owed to the so-called G Fund participants represented by NAGE is an injury that has proved capable of repetition but evading review.

STANDARD OF REVIEW

The Court reviews the lower court's dismissal of a case for lack of subject matter jurisdiction based on standing, ripeness, and mootness on a *de novo* basis. See Mangual v. Rotget-Sabat, 317 F.3d 45, 56 (1st Cir. 2003) ("Challenges to subject matter jurisdiction based on standing, ripeness, and mootness are often pure matters of law, and thus engender de novo review.") (citing Valentin v. Hosp. Bella Visa, 254 F.3d 358, 363 (1st Cir. 2001); N.H. Right to Life PAC v. Gardner, 99 F.3d 8, 12 (1st Cir. 1996)). For purposes of review, the Court should "accept as true all material allegations in the complaint … and construe them in favor of the plaintiff[.]" Id. (citing Pennell v. San Jose, 485 U.S. 1, 7 (1988); Warth v. Seldin, 422 U.S. 490, 501 (1975)).

ARGUMENT

I. NAGE's Challenge to the Debt Limit Statute Is Not Moot

Before turning to the mootness exceptions, NAGE wishes to make clear that this case is not, in fact, moot. As a factual matter, the District Court erred in finding that the reinstatement of the Debt Limit Statute, and thus the recurrence of this legal controversy, is "entirely conjectural." JA039. The plain language of the Fiscal Responsibility Act, P.L. 118-5, mandates that the Debt Limit Statute will go back into effect on January 2, 2025. That, in turn, ensures that Plaintiff will suffer the same financial injury that gave rise to this lawsuit in the first place. Thousands of NAGE's members currently participate in the G Fund, and will continue to do so through January 2, 2025, when the debt limit under P.L. 118-5 returns the United States to the same catastrophic financial position it was in on June 3, 2023, thus subjecting Plaintiff's members to the same injury. Even if on January 2, 2025, the Secretary has not already declared a second "debt issuance suspension period" like the one on January 13, 2023, the United States will again be at or over the level of permitted indebtedness as it was at that time. Under 5 U.S.C. § 8438(g), because the United States will be at or over that new level, the Secretary will be obligated to declare such a second or new "debt issuance suspension period," to prevent exceeding or further exceeding it.

Furthermore, on that same date, or immediately thereafter, it is certain or near certain that the Secretary will have to announce delaying paychecks at least temporarily for all of Plaintiff's members. That was precisely the contingency plan that the Secretary prepared to take effect after June 3, 2023, had Congress failed to suspend the Debt Limit Statute. This will necessarily have to be the plan again. The Secretary will again have no authority to borrow as of January 2, 2025, and will be back in the same position of being out of cash, or soon being out of cash, to pay for the normal operations of the federal government. If not laid off, NAGE's members will be required to work without pay. The District Court does not, and did not, explain why it believes that Congress will necessarily enact new legislation to avert this certain and impending injury under existing law. Indeed, given that Congress was unable to muster the political will to raise the debt limit the first time around, instead simply passing a stop-gap measure that pushed the infliction of injury on NAGE's members to a future date certain, it is speculative to assume that Congress *will* act to avert catastrophe.

That is the current state of the law; it is not hypothetical. "An allegation of future injury may suffice if the threatened injury is 'certainly impending' or there is a 'substantial risk' that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2017) (quoting Clapper v. Amnesty Int'l, 568 U.S. 398, 409 (2013) (emphasis supplied)); see also TransUnion LLC v. Ramirez, 594 U.S. 413,

435 (2021) ("A person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial.") (citing Clapper, 594 U.S. 414 n.5); Los Angeles v. Lyons, 461 U.S. 95, 102 (1983)). As this Circuit has held, the standard as quoted here is in the disjunctive. See Reddy v. Foster, 845 F.3d 493, 500 (1st Cir. 2017) ("[I]njury is imminent if it is certainly impending or if there is a substantial risk that harm will occur.") (emphasis in original). Pursuant to that standard, and under the currently existing law, the threatened injury is "certainly impending" on a date certain, and even if it is not "certainly impending," there is a very material risk that it will occur. Id. Indeed, it now will occur in a matter of months, and in even fewer months and weeks after the briefing and argument of this appeal.

Under the law of this Circuit, a case is moot only when the challenged conduct has ceased such that there is no relief the courts can give. See Calvary Chapel of Bangor v. Mills, 52 F.4th 40, 45–46 (1st Cir. 2022). Put differently, a case is moot when there is no real or substantial controversy "'admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'" Calvary Chapter of Bangor, 52 F.4th at 46 (quoting Aetna Life Ins. V. Haworth, 300 U.S. 227, 241 (1937)). In the Fiscal Responsibility Act, not one word suggests the

reinstatement of the Debt Limit Statute is hypothetical, or that Congress even promises to take another course of action that would prevent the injury to NAGE's members. Many legislators opposed even postponing default on the debt. Under P.L 118-5, Congress has stopped the financial doomsday clock at one minute to midnight and set it to start ticking again on January 2, 2025. If the judgment below is affirmed, NAGE will be under that same clock with little or no time to seek emergency judicial relief.

"It is emphatically the province and purpose of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803). It is the judicial role to take the law as it *is*, not to read the political tea leaves and conjecture what the law might turn out to be, or what Congress might do next. The District Court erred in finding this case to be moot because it apparently believes the law before it, P.L. 118-5, may change. It has avoided its own responsibility to decide the case in the apparent belief that Congress is not serious about P.L. 118-5, and in the limited time left, will act responsibly even though factions within Congress have argued in favor of letting the government default on its debt.

II. Even if NAGE's Challenge is Moot, It Meets the Voluntary Cessation Exception to The Mootness Doctrine

Even assuming, *arguendo*, that this case is moot (and it is not), a recognized exception to mootness applies here. When the government voluntarily withdraws its challenged conduct, the case challenging such conduct is not moot unless it is

"absolutely clear" that the same conduct could not "reasonably be expected" to recur. West Virginia v. EPA, 597 U.S. 697, 720 (2023). In West Virginia v EPA, the Supreme Court was concerned that the Environmental Protection Agency ("EPA") might re-impose a plan to shift utilities out of coal, which the lower court held was permissible, and that the same dispute was likely to recur at some point in the future. The Court made no finding, however, that the EPA under the Trump Administration had withdrawn the Clean Power Plan to moot the case or any legal challenge. In applying the exception to mootness, the Court found only that the dispute was likely to recur, or at least that the Government had not denied that such dispute would recur:

> [T]he Government [has] "nowhere suggest[ed] that if this litigation is resolved in its favor it will not" reimpose emissions limits predicated on generation shifting; indeed, it "vigorously defends" the legality of such an approach.

Id. (quoting Parents Involved in Community Schools v. Seattle School Dist. No. 1, 551 U.S. 701, 719 (2007)). The exception to mootness here came just from the absence of an assurance that the implementation of the Clean Power Plan could not recur.

In contrast, in this case, it is clear as a matter of law that on January 2, 2025, the Debt Limit Statute will be automatically reimposed. If Defendants wish to challenge this exception to mootness, they may do so by advising this Court that under no circumstances will they comply with the Debt Limit Statute when it goes

back into effect January 2, 2025. Even then it would not be "absolutely clear" that the same dispute could not recur, as such a guarantee that Defendants will ignore or fail to comply with the Debt Limit Statute may not be binding on whoever may hold the offices of President of the United States and Secretary of the Treasury on that date.

In its analysis of whether the voluntary cessation exception to mootness applies in this case, the District Court erred in holding that NAGE must prove that Congress acted with specific intent to moot this case. It is puzzling why the Court would impose such a burden or engage in such an evidentiary inquiry when the challenged conduct for other reasons is certain to recur. In any event, the Court's holding conflicts with controlling law. Both the Supreme Court and the First Circuit have made clear that the relevant test is whether the conduct is likely to recur. The Supreme Court clarified as much in Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020). In that case, the Supreme Court found that, despite Governor Cuomo's withdrawal of a challenged COVID restriction, the challenge was not moot because it was possible that the Governor might reimpose that same restriction at a later date. See Roman Catholic Diocese, 592 U.S. at 20–21. As the Court noted, Governor Cuomo at that point in the pandemic was in the process of changing restrictions in areas without prior notice and it was enough that he might reinstate the order under conditions at that time. Id. Critically, there

was no finding that the Governor had made the change with any intent to moot the case. Nor was there even a mention of such a requirement as a necessary condition to applying the voluntary cessation exception.

The First Circuit has since followed the Roman Catholic Diocese decision in another case involving COVID-19 restrictions. In Bayley's Campground Inc. v. Mills, 985 F.3d 153, 157 (1st Cir. 2021), the First Circuit found that Governor Mills's withdrawal of a COVID quarantine order did not moot a legal challenge even when it was undisputed that Governor did not withdraw the order to moot the case. Here again, it was enough that at this point in the pandemic that the same action might recur. The Court in Bayley's Campground stated:

> To be sure, nothing in the record suggest that the Governor rescinded EO 34 for litigation-related reasons rather than to account for changing conditions owing to the course of the virus itself.

Id. Simply because the Governor had not denied she might reimpose the order, the Court concluded:

> Thus, we cannot say that the Governor has carried "the formidable burden" that she bears "of showing that it is absolutely clear the allegedly wrongful behavior could reasonably be expected to recur."

Id. at 157–58 (quoting American Civil Liberties Union of Massachusetts v. U.S. Conference of Catholic Bishops, 705 F.3d 44, 55 (2013)).

In the 2013 case of U.S. Conference of Catholic Bishops case cited above, this Circuit did not find a "voluntary cessation" but there was never a true

voluntary cessation. The ACLU had challenged a federal grant on constitutional grounds, but the grant expired by its own terms and not for any litigation related reason. Even so, in this pre-Cuomo case, the First Circuit emphasized that the same dispute could not be expected to recur in part *because the government affirmatively told the Court it would not recur*. See U.S. Conference of Catholic Bishops, 705 F.3d at 56 ("Here there is also no reasonable expectation of recurrence."). Since that decision in 2013, the Supreme Court has now made clear both in Cuomo and West Virginia that the relevant inquiry is whether the challenged conduct is likely to recur. Contrary to this Supreme Court precedent, as well as this Circuit's decision in Bayley's Campground, the District Court erred in making proof of intent to moot the case an absolute condition for the exception to apply.

Since Bayley's Campground, the First Circuit has decided two other COVID-related cases in which it arrived at the opposite conclusion, finding no exception to mootness under the doctrine of voluntary cessation. See Calvary Chapel of Bangor v. Mills, 52 F.4th 40 (1st Cir. 2022); Boston Bit Labs Inc. v. Baker, 11 F.4th 3 (1st Cir. 2021). However, in both of those cases, the ground for finding no exception to mootness was the greater certainty that the challenged conduct would not recur. In Boston Bit Labs, the Court discussed whether the Governor had specific intent to moot the case, and found that "circumstances suggest" the Governor had no such intent 11 F.4th at 10. Nevertheless, "putting

this doubt aside" that the exception applied, the First Circuit distinguished Cuomo on the grounds that Governor Baker's order was not in fact likely to recur (unlike Governor Cuomo's), and did not apply the exception for *that* reason. Id. Likewise, in Calvary Chapel, the First Circuit again distinguished Cuomo and did not apply the exception to mootness because the "state of emergency [was] no longer in place and the questioned restrictions [had] gone by the boards …" 52 F.4th at 49 ("[T]he state of emergency's ending is also the key difference[.]").

Here, the "state of emergency" created by the Debt Limit Statute is very much still in effect, as the United States continues to be in debt at or over the limit allowed under the Debt Limit Statute. The "challenged restrictions" have not "gone by the boards" but will automatically resume in a matter of months. Id. While Boston Bit Labs and Calvary Chapel may seem inconsistent in part with Bayley's Campground, the First Circuit in both of those later cases based its decision not on the government's specific intent to moot the challenge to its conduct, but on the fact that that the challenged conduct could not reasonably be expected to recur.

As the First Circuit has noted, a finding of mootness "turns on *the circumstances of the particular case*." Calvary Chapel, 52 F.4th at 49 (quoting Boston Bit Labs, 11 F.4th at 10) (emphasis in original). Under the circumstances here, denying the exception to mootness here makes little sense when NAGE will

have to file the same legal challenge on an emergency basis before the end of this year.

III. NAGE's Challenge Also Meets the Mootness Exception For Injuries Capable of Repetition Yet Evading Review

The G Fund participants represented by NAGE have suffered an injury in fact that has proved capable of repetition but has to date evaded full appellate review. It is the injury based on the financial losses even if now reimbursed that were suffered during the Secretary's "debt issuance suspension period." There have now been two such debt issuance suspension periods – in 2011 and 2023 – and there will likely be a third such period before the end of the year. Neither the 2011 nor 2023 period lasted long enough for full judicial review. Even if subsequent Congressional action reimbursed the participants for losses on both occasions, the participants still suffered an immediate financial injury. They had no guarantee of reimbursement for their losses as they occurred unless and until Congress acted to raise or suspend the debt limit in an amount whereby the reimbursement would not exceed the new debt limit and the appropriated funds were in excess of other specific allocations that allow such reimbursement. As a result, these G Fund participants suffered a true default on the public debt or the portion of it they held while other debt holders were preferred. That a default occurred at all was in violation of Section 4 of the Fourteenth Amendment. Under the Fourteenth Amendment, the Secretary had no constitutional authority to engage

in this lengthy nearly half-year of default on that portion of the debt, even if cured by a later act of Congress before full judicial review was available. For that reason, this challenge to the default on the debt authorized by 5 U.S.C. § 8438(g) meets a second exception to mootness: "actions capable of repetition, yet evading review." Federal Election Comm. v. Wisconsin Right to Life, 551 U.S. 449, 461 (2007).

In the District Court, Defendants argued that there was no injury in fact at all under Article III of the Constitution because under 5 U.S.C. § 8438(g)(3), the Secretary "guarantees" reimbursement of their losses at the end of the debt issuance suspension period after Congress takes action to raise or suspend the debt limit. However, as of January 13, 2023, when the Secretary declared the debt issuance suspension period, which lasted until Congress suspended the Debt Limit Statute on June 2, 2023, there was no guarantee that Congress would enact legislation raising the debt limit or suspending the statute. Moreover, no references to any such guarantee by the Secretary articulated during the debt issuance suspension period disclosed to Plaintiffs or any participant in the G Fund the fact that the Secretary's ability to reimburse G Fund participants was contingent on Congress specifically appropriating funds for reimbursement.

Defendants' reliance on the Supreme Court's decision in Thole v. Bank, N.A., 140 S. Ct. 1615 (2020) to dispute the existence of injury in fact is misplaced. In that case, the Supreme Court found that the participants of a defined benefit

pension plan had fixed defined benefits guaranteed by the plan and therefore could suffer no injury (i.e., no monetary loss) arising from losses to the plan. See Thole, 140 S. Ct. at 1618 ("Of decisive importance to this case, the plaintiffs' retirement plan is a defined-benefit plan, not a defined-contribution plan."). The Court specifically distinguished the situation of those participants from that of the G Fund participants who have individual defined contribution plans, in which participants voluntarily invest their own funds, which in turn fluctuate in value based on market forces. See id. at 1616 (holding that "participants in a defined-benefit plan are not similarly situated to . . . participants in a defined-contribution plan, and they possess no equitable or property interest in the plan") (internal citations omitted). The Court reasoned that individuals with defined contribution plans *do* suffer injury from investment decisions:

> By contrast, in a defined-contribution plan such as a 401(k) plan, the retirees' benefits are typically tied to the value of their accounts, and the benefit can turn on the plan fiduciaries' particular investment decisions.

Id. at 1617.

Here, G Fund participants are in a "defined contribution plan," in which the "fiduciary," the Secretary, both stopped investing or reinvesting the sums in the individual G Fund accounts and defaulted on paying the interest due on the securities held by the participants. During the debt issuance suspension period, the G Fund participants suffered real financial losses in their individual plan accounts,

which fluctuate in value as a result of the way in which they are managed, and were lower in value at the time this action was filed because of the actions taken by the Secretary. Put simply, they suffered losses in their own individual personal savings.

Defendants wave away this fact by arguing that under 5 U.S.C. § 8348(j)(3), the Secretary is obligated to reimburse the participants. However, this reimbursement was not an absolute guarantee, but was instead conditional and contingent on further Congressional legislative action. For reimbursement to occur, Congress must raise the debt ceiling permanently or temporarily in such amount. There can be no reimbursement under 5 U.S.C. § 8348(j)(3) unless it can be done without again exceeding the level of indebtedness, which is prohibited by subsection (j)(1) of the same statute. While the Secretary may regard this promise as well-intended, NAGE's members had no enforceable legal remedy against the Secretary to recover their losses unless Congress enacted legislation to make it possible.

This past financial loss in 2011 and 2023, even if temporary and later cured, has now occurred twice, and the default by the Secretary on the public debt in violation of the Fourteenth Amendment has not lasted long enough for full judicial review. Under the exception to mootness set out in Wisconsin Right to Life, 551

U.S. at 461, NAGE should be able to resolve the inviolability of the individual rights of G Fund participants to payment on their holdings of the public debt.

IV. NAGE Has Standing, Here and Now, To Bring This Challenge to the Debt Limit Statute Because It Will Require Acts In Violation of the Separation of Powers

In Seila Law LLC v. Consumer Financial Protection Bureau, 140 S. Ct. 2183, 2196 (2020), the Supreme Court held that a party aggrieved by a law that involves a violation of the separation of powers may bring a challenge on that ground even before being directly affected by any action itself. NAGE's members have already been aggrieved by the recent debt issuance suspension period described above, and will face further and certain injury on or after January 2, 2025. They will be the first to suffer such injury, even before Defendants take actions like cancellation of spending mandated by Congress, or defaulting on debt without authorization of Congress. Thus, NAGE need not wait for either for these actions to occur again, and need not wait until its members suffer direct harm from actions taken in violation of the separation of powers once the Debt Limit Statute is automatically reimposed pursuant to P.L. 118-5 on January 1, 2025.

In Seila Law, a law firm being investigated by a federal agency was allowed to challenge the removal procedure for the head of that agency as a violation of the separation of powers, even though no violation had yet occurred. The Court stated:

> [W]e have expressly "reject[ed]" the "argument that consideration of the effect of a removal provision is not 'ripe' until that provision is

> actually used," because when such a provision violates the separation of powers it inflicts a "here-and-now" injury on affected third parties that can be remedied by a court.

Id. at 2196 (quoting Bowsher v. Synar, 478 U.S. 714, 727 n.5 (1986)). Here, when the Debt Limit Statute is automatically reinstated on January 2, 2025, keeping the government from defaulting on the public debt will necessarily require acts in violation of the separation of powers. The challenge by Plaintiff is already ripe "here and now" given the debt limit suspension period that heretofore occurred in this case from this same statute.

As set out in the First Amended Complaint, the reinstatement of the Debt Limit Statute on January 2, 2025, requires acts in violation of the principle of the separation of powers under Articles I and II of the Constitution. It effectively places the national government in bankruptcy without a bankruptcy procedure. The astonishing lack of any direction leaves the Defendant President with unfettered discretion to reorder the entire spending of the federal government. There is no Congressional direction regarding funds already Congressionally appropriated and authorized only for specific uses. As scholars have pointed out, the Debt Limit Statute also leaves Defendants with no constitutionally valid options. See, e.g., Michael C. Dorf, "Litigating Debt Ceiling Plan B" (Jan. 19, 2022), available at http//www.dorfonlaw.org /2023/05/litigating-debt ceiling plan- b.html; see also Neil H. Buchanan and Michael C Dorf, "How to Choose the Least

Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff" (October 2012), available at https://scholarship.law.cornell.edu/facpub/591/. The President must either rescind legislatively mandated spending enacted by Congress, which is illegal, or default on the public debt in violation of the Fourteenth Amendment, which is also illegal. The statute confers no authority on the President to do either, and cannot lawfully do so, yet leaves no option to the President but to do one or the other.

It is hard to overstate just how repugnant the Debt Limit Statute is to the entire design of the Constitution. In Clinton v. City of New York, 524 U.S. 417, 417–20 (1998), the Supreme Court struck down a far less egregious provision for a line-item veto, holding that it conflicted with the Presentment Clause of Article I, section 7, and the power of Congress alone to alter budgeted spending signed into law. As the Court made clear, under Article I, Congress has exclusive power over taxation, spending and borrowing. See id. at 442–47. For that very reason, the Court held that Congress could not transfer power to the President to cancel or rescind duly enacted spending that had been signed into law:

> If the Line Item Veto Act were valid, it would authorize the President to create a different law—one whose text was not voted on by either House of Congress or presented to the President for signature.

Id. at 448. Justice Kennedy further noted in his concurring opinion that "one Congress cannot yield up its own powers, much less those of other Congresses to

follow." Id. at 452 (citations omitted). Perhaps summing up the reality faced by the legislative and executive branches, Justice Kennedy, who deplored the public debt, further noted:

> Failure of political will does not justify unconstitutional remedies … The Constitution's structure requires a stability which transcends the convenience of the moment.

Id. at 449 (internal citations omitted). It is clear that the actions required of the President and Secretary under the Debt Limit Statute involve a violation of the separation of powers.

Further, it is not legal to default on the public debt because doing so would constitute a violation of Section 4 of the Fourteenth Amendment, which expressly prohibits even questioning the validity of the public debt. Further, even apart from the Fourteenth Amendment, there is no specific grant of power under Article I for Congress to default on legislatively approved expenditures. The Constitution confers on Congress the power to tax and borrow so that the federal government does not default on its obligations. Under Article I, Congress also has no specific or implied grant of power to cause a bankruptcy, default on a debt for legislatively approved spending, or suspend the enforceability of public contracts. Any such inference of power by Congress to default on the public debt would also be inconsistent with Article I, section 10, cl. 1, which prohibits state legislatures from impairing the obligations of contracts and defaulting on its public debts.

The Debt Limit Statute is a law that shirks Congress's constitutional responsibility to enact responsible budgets and repudiates the just obligations of the United States. NAGE submits that that this Court itself now has a constitutional responsibility, as Justice Marshall wrote, to "say what the law is," Marbury, 5 U.S. at 177, and for the reasons above declare the Debt Limit Statute unconstitutional.

CONCLUSION

Under the plain language of existing law, the conduct challenged by Plaintiff on May 8, 2023, is certain to recur by January 2, 2025. For all of the above reasons, NAGE respectfully requests that this Court reverse the judgment of the District Court dismissing this case for lack of jurisdiction, find the Debt Ceiling Statue unconstitutional, and remand for further proceedings with such guidance as this Court deems appropriate.

Dated: March 25, 2024

Respectfully submitted,

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.

By its attorneys,

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UNITED STATES COURT OF APPEALS
For the First Circuit
Appeal No. 23-1867

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 7,926 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point.

/s/ Shannon Liss-Riordan
Attorney for Plaintiff-Appellant

Dated: March 25, 2024

ADDENDUM

TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 23-11001-RGS

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, INC.

v.

JANET YELLEN, in her official capacity
as Secretary of Treasury, and
JOSEPH BIDEN, in his official capacity
as President of the United States

MEMORANDUM AND ORDER ON
DEFENDANTS' MOTION TO DISMISS

October 18, 2023

STEARNS, D.J.

Plaintiff National Association of Government Employees, Inc. (NAGE) filed this action against defendants Janet Yellen, in her official capacity as Secretary of Treasury, and Joseph Biden, in his official capacity as President of the United States. It seeks a judgment on behalf of its members declaring that the Debt Ceiling Statute, 31 U.S.C. § 3101(b), is "unconstitutional and in violation of the separation of powers set out in Articles I and II of the United States Constitution."[1] Am. Compl. [Dkt # 40] ¶ 1. Defendants move to

[1] Because the Amended Complaint asserts only that the statute violates "the separation of powers set out in Articles I and II of the United States Constitution," Am. Compl. ¶ 1, any other theory of unconstitutionality

dismiss the case on standing and mootness grounds. For the following reasons, the court will allow defendants' motion.

DISCUSSION

One of the "core component[s]" of the Article III case or controversy requirement is that a plaintiff have standing to pursue its claims. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). As an association, NAGE's standing hinges on the standing of its members. *See Parent/Pro. Advoc. League v. City of Springfield*, 934 F.3d 13, 33 (1st Cir. 2019). Three elements are relevant to the inquiry of whether its members have standing:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan, 504 U.S. at 560-561 (internal quotation marks, alterations, and citations omitted).

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referenced by NAGE in its briefing or during the October 5, 2023 hearing (for example, violation of the Fourteenth Amendment) is not properly before the court.

The only plausible basis for standing alleged here is the threat existing at the time of filing that the payment of NAGE members' salaries and wages would be delayed.[2] The problem is this: Even assuming *arguendo* that this injury sufficed to establish standing at the time of filing (the court expresses no opinion on this question), the underlying issue can no longer be considered "real" or "immediate" given passage of the Fiscal Responsibility

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[2] NAGE proposes three other bases for standing: (1) past losses to Thrift Savings Plan G Fund (government securities) accounts; (2) future losses to those accounts; and (3) future delayed salaries and wages. None satisfies the injury-in-fact requirement.

With respect to the first basis, it is not clear that NAGE members suffered any "actual" loss. NAGE concedes in its oppositional briefing that "the Fiscal Responsibility Act has allowed Defendant Yellen to make good on" any losses to G Fund accounts that may have existed at their time of filing. Opp'n to Mot. to Dismiss (Opp'n) [Dkt # 47] at 4. Even assuming members did suffer an actual loss, however, that loss would not be redressable by a favorable decision from this court, as this action seeks only declaratory relief.

With respect to the second and third bases, it is entirely conjectural to say that a constitutional violation will crystallize (and thus that the predicted harm will occur) on January 2, 2025. To find this injury sufficient to confer jurisdiction, the court would have to speculate that another entity not party to this suit – Congress – will, fourteen months from now, both pass a budget for 2025 that causes government debt to exceed the Debt Ceiling Statute and fail to further suspend enforcement of or raise the debt ceiling (despite having always undertaken such action in the past). *See Williams v. Lew*, 819 F.3d 466, 474 (D.C. Cir. 2016); *cf. Steir v. Girl Scouts of the USA*, 383 F.3d 7, 16 (1st Cir. 2004) ("It is not enough for a plaintiff to assert that she 'could be' subjected in the future to the effects of an unlawful policy or illegal conduct by a defendant—the prospect of harm must have an 'immediacy and reality.'"), quoting *Golden v. Zwickler*, 394 U.S. 103, 109 (1969).

Act of 2023, which suspended enforcement of the Debt Ceiling Statute through January 2, 2025. *Town of Portsmouth v. Lewis*, 813 F.3d 54, 58 (1st Cir. 2016), quoting *Am. C.L. Union of Massachusetts v. U.S. Conference of Catholic Bishop*, 705 F.3d 44, 52 (1st Cir. 2013). Any declaratory judgment action premised on this injury accordingly is moot. *See Bos. Bit Labs, Inc. v. Baker*, 11 F.4th 3, 9 (1st Cir. 2021); *see also Harris v. Univ. of Massachusetts Lowell*, 43 F.4th 187, 191 (1st Cir. 2022) ("[A] suit becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.") (internal quotation marks, alterations, and citations omitted).

NAGE does not dispute that the Fiscal Responsibility Act of 2023 removed any imminent risk of harm which may have existed at the time of filing, but it seeks to avoid application of the mootness doctrine by citing two exceptions to it: voluntary cessation and the potential for the harm to recur and yet evade review. Neither exception provides relief here.

I. Voluntary Cessation

NAGE first invokes the voluntary cessation exception, which provides "that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982).

Defendants do not engage with the merits of whether they can fairly be said to have "voluntarily ceased" the challenged conduct, *cf. Lewis*, 813 F.3d at 59 n.1, instead arguing that the doctrine is inapplicable because "the relevant intervening event" – suspension of the Debt Ceiling Statute – "was not brought about" to moot litigation, Reply [Dkt #52] at 3.

On balance, the court agrees with defendants that the doctrine should not govern here. *See Bos. Bit Labs*, 11 F.4th at 10 (the party asserting mootness bears the burden to show that the doctrine does not apply). As the First Circuit has explained, the underlying purpose of the voluntary cessation exception "is to deter a 'manipulative litigant [from] immunizing itself from suit indefinitely, altering its behavior long enough to secure a dismissal and then reinstating it immediately after.'" *Lewis*, 813 F.3d at 59, quoting *Am. C.L. Union*, 705 F.3d at 54-55. The exception serves little purpose where, as here, "the voluntary cessation occurred for reasons unrelated to the litigation." *Lewis*, 813 F.3d at 59.

Recognizing the writing on the wall, NAGE cites to *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587 (2022), which it contends applied the voluntary cessation exception despite the government having not acted to moot the litigation. But the court is not convinced that NAGE correctly interprets *West Virginia*. The relevant conduct in that case was the

agency's statement that it "ha[d] no intention of enforcing the" current rule prior to adoption of a new rule. *Id.* at 2607. Because the agency did not propose any alteration of the overarching legal landscape, that statement had no other purpose than mooting the current litigation.

II. Capable of Repetition Yet Evading Review

NAGE alternatively suggests that the alleged harm falls within the exception for review-evading repetition. It has not, however, met its burden to show that either element of the exception – (1) that the challenged conduct "was in its duration too short to be fully litigated prior to its cessation or expiration" or (2) that "there was a reasonable expectation that the same complaining party would be subjected to the same action again"– is met here. *Am. C.L. Union*, 705 F.3d at 57, quoting *Gulf of Maine Fisherman's All. v. Daley*, 292 F.3d 84, 89 (1st Cir. 2002); *see also Harris*, 43 F.4th at 194 (the party opposing mootness bears the burden to show that the doctrine applies).

First, NAGE fails to explain how the challenged conduct is so "inherently transitory" as to escape judicial review. *Am. C.L. Union*, 705 F.3d at 57. At best, it states that "it will be at most a matter of weeks until Congress pulls back from the brink or the bankruptcy occurs, with no possibility of full appellate review to determine the legality of a practice that would ruin the

credit of the United States and harm Plaintiff's members." Opp'n at 10. But this is pure speculation. NAGE offers no reasonable basis to assume that, if Congress were to take the unprecedented step of allowing an alleged constitutional violation to materialize, it would then resolve the issue within weeks. *See Cruz v. Farquharson*, 252 F.3d 530, 535 (1st Cir. 2001) (exception not met where plaintiffs failed to provide any evidence, apart from their own say-so, that the issues could evade meaningful review).

Second, NAGE fails to make the requisite showing of repetition. While it is true that the *threat* of harm has recurred at times, NAGE offers no reasonable basis to expect that it will be subject to the "*alleged illegality*" in the future. *See Am. C.L. Union*, 705 F.3d at 57 (emphasis in original), quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). Congress has consistently suspended enforcement of or raised the amount of the debt ceiling limit before any separation of powers violation has crystallized when faced with the issue in the past.

ORDER

For the foregoing reasons, the motion to dismiss is ALLOWED.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

National Association of Government Employees, Inc.

Plaintiff

v. Civil Action No. 23-11001-RGS

Janet Yellen, in her official capacity as Secretary of Treasury, and Joseph Biden, in his official capacity as President of the United States

Defendants

ORDER OF DISMISSAL

October 18, 2023

STEARNS, D.J.

In accordance with the court's Memorandum and Order [Dkt # 58] entered on October 18, 2023, granting defendants' motion to dismiss, it is ORDERED that the above-entitled action be, and hereby is, dismissed.

By the court,

/s/ Arnold Pacho
Deputy Clerk

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part III. Employees (Refs & Annos)
Subpart G. Insurance and Annuities (Refs & Annos)
Chapter 83. Retirement (Refs & Annos)
Subchapter III. Civil Service Retirement (Refs & Annos)

5 U.S.C.A. § 8348

§ 8348. Civil Service Retirement and Disability Fund

Effective: March 18, 2020
Currentness

(a) There is a Civil Service Retirement and Disability Fund. The Fund--

(1) is appropriated for the payment of--

(A) benefits as provided by this subchapter or by the provisions of chapter 84 of this title which relate to benefits payable out of the Fund; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 or 8462 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title or subchapters II and IV of chapter 84 of this title, in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law), in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title, in administering fraud prevention under sections 8345, 8345a, 8466, and 8466a of this title, and in withholding taxes pursuant to section 3405 of title 26 or section 8345(k) or 8469 of this title;

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter, chapter 84 of this title, and other retirement and annuity statutes; and

(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this title.

(b) The Secretary of the Treasury may accept and credit to the Fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed for the benefit of civil-service employees generally.

(c) The Secretary shall immediately invest in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(d) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are extended to authorize the issuance at par of public-debt obligations for purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of ⅛ of 1 percent, the rate of interest on the obligations shall be the multiple of ⅛ of 1 percent nearest the average market yield.

(e) The Secretary may purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only if he determines that the purchases are in the public interest.

(f) Any statute which authorizes--

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective.

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit allowed for military service, less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title. Before closing the accounts for each fiscal year, the Secretary shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 10 percent for 1971; 20 percent for 1972; 30 percent for 1973; 40 percent for 1974; 50 percent for 1975; 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter.

(h)(1) In this subsection, the term “Postal surplus or supplemental liability” means the estimated difference, as determined by the Office, between--

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

(B) the sum of--

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

(2)(A) Not later than June 15, 2007, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2006. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2007.

(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2007, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C). Beginning June 15, 2017, if the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.

(i)(1) Notwithstanding any other provision of law, the Panama Canal Commission shall be liable for that portion of any estimated increase in the unfunded liability of the fund which is attributable to any benefits payable from the Fund to or on behalf of employees and their survivors to the extent attributable to the amendments made by sections 1241 and 1242, and the provisions of sections 1231(b) and 1243(a)(1), of the Panama Canal Act of 1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991.

(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office of Personnel Management. The Panama Canal Commission shall pay to the Fund from funds available to it for that purpose the amount so determined in annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if such additional investment could not be made without causing the public debt of the United States to exceed the public debt limit.

(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would then be held by the Fund if the suspension of investment under paragraph (1) of this subsection, and any redemption or disinvestment under subsection (k) of this section for the purpose described in such paragraph, during such period had not occurred.

(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of--

(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if--

(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

(5) For purposes of this subsection and subsections (k) and (l) of this section--

(A) the term "public debt limit" means the limitation imposed by section 3101(b) of title 31; and

(B) the term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(k)(1) Subject to paragraph (2) of this subsection, the Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund before maturity in order to prevent the public debt of the United States from exceeding the public debt limit.

(2) The Secretary may sell or redeem securities, obligations, or other invested assets of the Fund under paragraph (1) of this subsection only during a debt issuance suspension period, and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related provisions of law during such period. A sale or redemption may be made under this subsection even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner.

(l)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 584; Pub.L. 90-83, § 1(85), Sept. 11, 1967, 81 Stat. 218; Pub.L. 91-93, Title I, § 103(a), Oct. 20, 1969, 83 Stat. 137; Pub.L. 93-349, § 1, July 12, 1974, 88 Stat. 354; Pub.L. 94-183, § 2(37), Dec. 31, 1975, 89 Stat. 1058; Pub.L. 95-454, Title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub.L. 96-70, Title I, § 1244, Sept. 27, 1979, 93 Stat. 474; Pub.L. 97-253, Title III, § 306(f), Sept. 8, 1982, 96 Stat. 797; Pub.L. 97-346, § 3(g), Oct. 15, 1982, 96 Stat. 1648; Pub.L. 98-216, § 3(a)(5), Feb. 14, 1984, 98 Stat. 6; Pub.L. 98-615, § 2(7), Nov. 8, 1984, 98 Stat. 3202; Pub.L. 99-335, Title II, § 207(j), June 6, 1986, 100 Stat. 597; Pub.L. 99-509, Title VI, § 6002, Oct. 21, 1986, 100 Stat. 1931; Pub.L. 100-203, Title V, § 5428(d), Dec. 22, 1987, 101 Stat. 1330-274; Pub.L. 101-239, Title IV, § 4002(a), Dec. 19, 1989, 103 Stat. 2133; Pub.L. 101-508, Title VII, §§ 7001(a)(3), 7101(a), Nov. 5, 1990, 104 Stat. 1388-328, 1388-331; Pub.L. 101-510, Div. C, Title XXXV, § 3506(c), Nov. 5, 1990, 104 Stat. 1847; Pub.L. 103-424, § 10, Oct. 29, 1994, 108 Stat. 4366; Pub.L. 104-52, Title IV, § 2, Nov. 19, 1995, 109 Stat. 490; Pub.L. 104-316, Title I, § 103(h), Oct. 19, 1996, 110 Stat. 3829; Pub.L. 105-362, Title XIII, § 1302(c), Nov. 10, 1998, 112 Stat. 3293; Pub.L. 108-18, § 2(c), (d)(1)(A), Apr. 23, 2003, 117 Stat. 625, 626; Pub.L. 109-435, Title VIII, § 802(a)(2), Dec. 20, 2006, 120 Stat. 3249; Pub.L. 116-126, § 3(a), Mar. 18, 2020, 134 Stat. 176.)

Notes of Decisions (1)

5 U.S.C.A. § 8348, 5 USCA § 8348
Current through P.L. 118-41. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part III. Employees (Refs & Annos)
Subpart G. Insurance and Annuities (Refs & Annos)
Chapter 84. Federal Employees' Retirement System (Refs & Annos)
Subchapter III. Thrift Savings Plan (Refs & Annos)

5 U.S.C.A. § 8438

§ 8438. Investment of Thrift Savings Fund

Effective: January 1, 2018
Currentness

(a) For the purposes of this section--

(1) the term “Common Stock Index Investment Fund” means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

(2) the term “equity capital” means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

(3) the term “Fixed Income Investment Fund” means the Fixed Income Investment Fund established under subsection (b)(1)(B);

(4) the term “Government Securities Investment Fund” means the Government Securities Investment Fund established under subsection (b)(1)(A);

(5) the term “International Stock Index Investment Fund” means the International Stock Index Investment Fund established under subsection (b)(1)(E);

(6) the term “net worth” means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

(7) the term “plan” means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

(8) the term “qualified professional asset manager” means--

(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which--

(i) has the power to manage, acquire, or dispose of assets of a plan; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of $1,000,000;

(B) a savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation, which--

(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital or net worth in excess of $1,000,000;

(C) an insurance company which--

(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $1,000,000; and

(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of $50,000,000, and--

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of $750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by--

(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds $750,000;

(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $750,000;

(9) the term "shareholder's or partner's equity", as used in paragraph (8)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (8)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section; and

(10) the term "Small Capitalization Stock Index Investment Fund" means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).

(b)(1) The Board shall establish--

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (e);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in--

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time;

(C) a Common Stock Index Investment Fund as provided in paragraph (2);

(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3);

(E) an International Stock Index Investment Fund as provided in paragraph (4); and

(F) a service that enables participants to invest in mutual funds, if the Board authorizes the mutual fund window under paragraph (5).

(2)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.

(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(4)(A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(5)(A) The Board may authorize the addition of a mutual fund window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

(B) The Board shall ensure that any expenses charged for use of the mutual fund window are borne solely by the participants who use such window.

(C) The Board may establish such other terms and conditions for the mutual fund window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

(D) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before authorizing the addition of a mutual fund window or establishing a service that enables participants to invest in mutual funds.

(c)(1) The Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

(2) If an election has not been made with respect to any sums available for investment in the Thrift Savings Fund, the Executive Director shall invest such sums in an age-appropriate target date asset allocation investment fund, as determined by the Executive Director. Such investment fund shall consist of any of the funds described in subsection (b).

(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds and options referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account are to be invested or reinvested.

(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(f) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

(g)(1) Notwithstanding subsection (e) of this section, the Secretary of the Treasury may suspend the issuance of additional amounts of obligations of the United States, if such issuances could not be made without causing the public debt of the United States to exceed the public debt limit, as determined by the Secretary of the Treasury.

(2) Any issuances of obligations to the Government Securities Investment Fund which, solely by reason of the public debt limit are not issued, shall be issued under subsection (e) by the Secretary of the Treasury as soon as such issuances can be issued without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Government Securities Investment Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (e)(2) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of obligations of the United States by the Government Securities Investment Fund will replicate the obligations that would then

be held by the Government Securities Investment Fund under the procedure set forth in paragraph (5), if the suspension of issuances under paragraph (1) of this subsection had not occurred.

(4) On the first business day after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Government Securities Investment Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount equal to the excess of the net amount of interest that would have been earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period if--

(A) amounts in the Government Securities Investment Fund that were available for investment in obligations of the United States and were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested under the procedure set forth in paragraph (5), over

(B) the net amount of interest actually earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period.

(5) On each business day during the debt limit suspension period, the Executive Director shall notify the Secretary of the Treasury of the amounts, by maturity, that would have been invested or redeemed each day had the debt issuance suspension period not occurred.

(6) For purposes of this subsection and subsection (h) of this section--

(A) the term "public debt limit" means the limitation imposed by section 3101(b) of title 31; and

(B) the term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(h)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Thrift Savings Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (g) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than 30 days after the first business day after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Executive Director.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (e) of this section, the Secretary shall immediately notify Congress and the Executive Director of the determination. The notification shall be made in writing.

CREDIT(S)

(Added Pub.L. 99-335, Title I, § 101(a), June 6, 1986, 100 Stat. 551; amended Pub.L. 100-43, § 2, May 22, 1987, 101 Stat. 315; Pub.L. 100-366, § 2(a), July 13, 1988, 102 Stat. 826; Pub.L. 101-335, § 3(a), July 17, 1990, 104 Stat. 320; Pub.L. 102-378, § 2(68), Oct. 2, 1992, 106 Stat. 1355; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, § 659] [Title I, § 102], Sept. 30, 1996,

110 Stat. 3009-314, 3009-372; Pub.L. 104-316, Title I, § 103(i), Oct. 19, 1996, 110 Stat. 3829; Pub.L. 111-31, Div. B, Title I, § 104, June 22, 2009, 123 Stat. 1854; Pub.L. 113-255, § 2(a), Dec. 18, 2014, 128 Stat. 2920; Pub.L. 114-92, Div. A, Title VI, § 632(d), Nov. 25, 2015, 129 Stat. 847.)

5 U.S.C.A. § 8438, 5 USCA § 8438
Current through P.L. 118-41. Some statute sections may be more current, see credits for details.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 31. Public Debt (Refs & Annos)
Subchapter I. Borrowing Authority

31 U.S.C.A. § 3101

§ 3101. Public debt limit

Effective: August 2, 2011
Currentness

(a) In this section, the current redemption value of an obligation issued on a discount basis and redeemable before maturity at the option of its holder is deemed to be the face amount of the obligation.

(b) The face amount of obligations issued under this chapter and the face amount of obligations whose principal and interest are guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) may not be more than $14,294,000,000,000, outstanding at one time, subject to changes periodically made in that amount as provided by law through the congressional budget process described in Rule XLIX of the Rules of the House of Representatives or as provided by section 3101A or otherwise.

(c) For purposes of this section, the face amount, for any month, of any obligation issued on a discount basis that is not redeemable before maturity at the option of the holder of the obligation is an amount equal to the sum of--

(1) the original issue price of the obligation, plus

(2) the portion of the discount on the obligation attributable to periods before the beginning of such month (as determined under the principles of section 1272(a) of the Internal Revenue Code of 1986 without regard to any exceptions contained in paragraph (2) of such section).

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 938; Pub.L. 98-34, § 1(a), May 26, 1983, 97 Stat. 196; Pub.L. 98-161, Nov. 21, 1983, 97 Stat. 1012; Pub.L. 98-342, § 1(a), July 6, 1984, 98 Stat. 313; Pub.L. 98-475, Oct. 13, 1984, 98 Stat. 2206; Pub.L. 99-177, § 1, Dec. 12, 1985, 99 Stat. 1037; Pub.L. 99-384, Aug. 21, 1986, 100 Stat. 818; Pub.L. 100-119, § 1, Sept. 29, 1987, 101 Stat. 754; Pub.L. 101-72, § 2, Aug. 7, 1989, 103 Stat. 182; Pub.L. 101-140, § 1, Nov. 8, 1989, 103 Stat. 830; Pub.L. 101-508, Title XI, § 11901[(a)], Nov. 5, 1990, 104 Stat. 1388-560; Pub.L. 103-66, Title XIII, § 13411(a), Aug. 10, 1993, 107 Stat. 565; Pub.L. 104-121, Title III, § 301, Mar. 29, 1996, 110 Stat. 875; Pub.L. 105-33, Title V, § 5701, Aug. 5, 1997, 111 Stat. 648; Pub.L. 107-199, § 1, June 28, 2002, 116 Stat. 734; Pub.L. 108-24, May 27, 2003, 117 Stat. 710; Pub.L. 108-415, § 1, Nov. 19, 2004, 118 Stat. 2337; Pub.L. 109-182, Mar. 20, 2006, 120 Stat. 289; Pub.L. 110-91, Sept. 29, 2007, 121 Stat. 988; Pub.L. 110-289,

Div. C, Title III, § 3083, July 30, 2008, 122 Stat. 2908; Pub.L. 110-343, Div. A, Title I, § 122, Oct. 3, 2008, 122 Stat. 3790; Pub.L. 111-5, Div. B, Title I, § 1604, Feb. 17, 2009, 123 Stat. 366; Pub.L. 111-123, § 1, Dec. 28, 2009, 123 Stat. 3483; Pub.L. 111-139, Feb. 12, 2010, 124 Stat. 8; Pub.L. 112-25, Title III, § 301(a)(1), Aug. 2, 2011, 125 Stat. 251.)

Notes of Decisions (8)

31 U.S.C.A. § 3101, 31 USCA § 3101
Current through P.L. 118-41. Some statute sections may be more current, see credits for details.

PL 118-5, June 3, 2023, 137 Stat 10

UNITED STATES PUBLIC LAWS

118th Congress - First Session

Convening January 3, 2023

Additions and Deletions are not identified in this database.
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

PL 118–5 [HR 3746]
June 3, 2023
FISCAL RESPONSIBILITY ACT OF 2023

An Act To provide for a responsible increase to the debt ceiling.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

<< 2 USCA § 900 NOTE >>

This Act may be cited as the "Fiscal Responsibility Act of 2023".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

***11**

Sec. 16. Rescission of unobligated funds.

Sec. 17. Rescission of unobligated funds.

Sec. 18. Rescission of unobligated funds.

Sec. 19. Rescission of unobligated funds.

Sec. 20. Rescission of unobligated funds.

Sec. 21. Rescission of unobligated funds.

Sec. 22. Rescission of unobligated funds.

Sec. 23. Rescission of unobligated funds.

Sec. 24. Rescission of unobligated funds.

Sec. 25. Rescission of unobligated funds.

Sec. 26. Rescission of unobligated funds.

Sec. 27. Rescission of unobligated funds.

Sec. 28. Rescission of unobligated funds.

Sec. 29. Rescission of unobligated funds.

Sec. 30. Rescission of unobligated funds.

Sec. 31. Rescission of unobligated funds.

Sec. 32. Rescission of unobligated funds.

Sec. 33. Rescission of unobligated funds.

Sec. 34. Rescission of unobligated funds.

Sec. 35. Rescission of unobligated funds.

Sec. 36. Rescission of unobligated funds.

Sec. 37. Rescission of unobligated funds.

Sec. 38. Rescission of unobligated funds.

Sec. 39. Rescission of unobligated funds.

Sec. 40. Rescission of unobligated funds.

Sec. 41. Rescission of unobligated funds.

Sec. 42. Rescission of unobligated funds.

Sec. 43. Rescission of unobligated funds.

Sec. 44. Rescission of unobligated funds.

Sec. 45. Rescission of unobligated funds.

Sec. 46. Rescission of unobligated funds.

Sec. 47. Rescission of unobligated funds.

Sec. 48. Rescission of unobligated funds.

Sec. 49. Rescission of unobligated funds.

Sec. 50. Rescission of unobligated funds.

Sec. 51. Rescission of unobligated funds.

Sec. 52. Rescission of unobligated funds.

Sec. 53. Rescission of unobligated funds.

Sec. 54. Rescission of unobligated funds.

Sec. 55. Rescission of unobligated funds.

Sec. 56. Rescission of unobligated funds.

Sec. 57. Rescission of unobligated funds.

Sec. 58. Rescission of unobligated funds.

Sec. 59. Rescission of unobligated funds.

Sec. 60. Rescission of unobligated funds.

Sec. 61. Rescission of unobligated funds.

Sec. 62. Rescission of unobligated funds.

Sec. 63. Rescission of unobligated funds.

Sec. 64. Rescission of unobligated funds.

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

DIVISION A—LIMIT FEDERAL SPENDING

TITLE I—DISCRETIONARY SPENDING LIMITS FOR DISCRETIONARY CATEGORY

SEC. 101. DISCRETIONARY SPENDING LIMITS.

(a) IN GENERAL.—Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)) is amended—

<< 2 USCA § 901 >>

(1) in paragraph (7)(B), by striking "and" at the end; and

(2) by inserting after paragraph (8) the following:

<< 2 USCA § 901 >>

"(9) for fiscal year 2024—

"(A) for the revised security category, $886,349,000,000 in new budget authority; and

"(B) for the revised nonsecurity category; $703,651,000,000 in new budget authority; and

***13**

<< 2 USCA § 901 >>

"(10) for fiscal year 2025—

"(A) for the revised security category, $895,212,000,000 in new budget authority; and

"(B) for the revised nonsecurity category; $710,688,000,000 in new budget authority;".

(b) CONFORMING AMENDMENTS TO ADJUSTMENTS.—

(1) CONTINUING DISABILITY REVIEWS AND REDERMINATIONS.—Section 251(b)(2)(B)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

<< 2 USCA § 901 >>

(A) in subclause (IX), by striking "and" at the end;

<< 2 USCA § 901 >>

(B) in subclause (X), by striking the period and inserting a semicolon; and

(C) by inserting after subclause (X) the following:

<< 2 USCA § 901 >>

"(XI) for fiscal year 2024, $1,578,000,000 in additional new budget authority; and

<< 2 USCA § 901 >>

"(XII) for fiscal year 2025, $1,630,000,000 in additional new budget authority.".

(2) HEALTH CARE FRAUD AND ABUSE CONTROL.—Section 251(b)(2)(C)(i) of such Act is amended—

<< 2 USCA § 901 >>

(A) in subclause (IX), by striking "and" at the end;

<< 2 USCA § 901 >>

(B) in subclause (X), by striking the period and inserting a semicolon; and

(C) by inserting after subclause (X) the following:

<< 2 USCA § 901 >>

"(XI) for fiscal year 2024, $604,000,000 in additional new budget authority; and

<< 2 USCA § 901 >>

"(XII) for fiscal year 2025, $630,000,000 in additional new budget authority.".

(3) DISASTER FUNDING.—Section 251(b)(2)(D)(i) of such Act is amended—

<< 2 USCA § 901 >>

(A) in the matter preceding subclause (I), by striking "for fiscal years 2012 through 2021" and inserting "for fiscal years 2024 and 2025"; and

(B) by amending subclause (II) to read as follows:

<< 2 USCA § 901 >>

"(II) notwithstanding clause (iv), five percent of the total appropriations provided in the previous 10 years, net of any rescissions of budget authority enacted in the same period, with respect to amounts provided for major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and designated by the Congress in statute as an emergency; and".

(4) REEMPLOYMENT SERVICES AND ELIGIBILITY ASSESSMENTS.—Section 251(b)(2)(E)(i) of such Act is amended—

<< 2 USCA § 901 >>

(A) in subclause (III), by striking "and" at the end;

<< 2 USCA § 901 >>

(B) in subclause (IV), by striking the period and inserting a semicolon; and

(C) by inserting after subclause (IV) the following:

<< 2 USCA § 901 >>

"(V) for fiscal year 2024, $265,000,000 in additional new budget authority; and

<< 2 USCA § 901 >>

"(VI) for fiscal year 2025, $271,000,000 in additional new budget authority.".

(c) CONFORMING AMENDMENTS RELATING TO SEQUESTRATION REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904) is amended—

***14**

<< 2 USCA § 904 >>

(1) in subsection (c)(2), by striking "2021" and inserting "2025"; and

<< 2 USCA § 904 >>

(2) in subsection (f)(2)(A), by striking "2021" and inserting "2025".

(d) APPROPRIATION FOR COST OF WAR TOXIC EXPOSURES FUND.—In addition to amounts otherwise available for such purposes, there are appropriated, out of any money in the Treasury not otherwise appropriated, for investment in the delivery of veterans' health care associated with exposure to environmental hazards, the expenses incident to the delivery of veterans' health care and benefits associated with exposure to environmental hazards, and medical and other research relating to exposure to environmental hazards, as authorized by section 324 of title 38, United States Code—

(1) $20,268,000,000, which shall become available on October 1, 2023, and shall remain available until September 30, 2028; and

(2) $24,455,000,000, which shall become available on October 1, 2024, and shall remain available until September 30, 2029.

(e) APPROPRIATION FOR DEPARTMENT OF COMMERCE NONRECURRING EXPENSES FUND.—

(1) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Department of Commerce Nonrecurring Expenses Fund for fiscal year 2023, out of any money in the Treasury not otherwise appropriated, $22,000,000,000, to remain available until expended, of which—

(A) $11,000,000,000 is to carry out programs related to Government efficiencies in fiscal year 2024; and

(B) $11,000,000,000 is to carry out programs related to Government efficiencies in fiscal year 2025.

(2) LIMITATION ON TRANSFER.—Funds provided by paragraph (1) shall not be subject to any transfer authority provided by law.

(3) REPORT REQUIREMENTS.—Reporting requirements in section 111(a) of division B of Public Law 116–93 shall apply to funds provided by paragraph (1).

(4) STATUTORY PAYGO SCORECARDS.—The budgetary effects of this subsection shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay As-You-Go Act of 2010.

(5) SENATE PAYGO SCORECARDS.—The budgetary effects of this subsection and each succeeding division shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(6) CLASSIFICATION OF BUDGETARY EFFECTS.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105–217 and section 250(c)(7) and (c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the budgetary effects of this subsection shall be estimated for purposes of section 251 of such Act and as appropriations for discretionary accounts for purposes of the allocation to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974 and the concurrent resolution on the budget.

***15**

(f) ADDITIONAL SPENDING LIMITS.—For purposes of section 302(a)(5) of the Congressional Budget and Impoundment Control Act of 1974, in the following applicable fiscal years, the following discretionary spending limits shall apply:

(1) Fiscal year 2026, $1,621,959,000,000.

(2) Fiscal year 2027, $1,638,179,000,000.

(3) Fiscal year 2028, $1,654,560,000,000.

(4) Fiscal year 2029, $1,671,106,000,000.

SEC. 102. SPECIAL ADJUSTMENTS FOR FISCAL YEARS 2024 AND 2025.

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

<< 2 USCA § 901 >>

“(d) REVISED DISCRETIONARY SPENDING LIMITS FOR FISCAL YEAR 2024.—

“(1) IN GENERAL.—Subject to paragraph (3), if on or after January 1, 2024, there is in effect an Act making continuing appropriations for part of fiscal year 2024 for any discretionary budget account, the discretionary spending limits specified in subsection (c)(9) for fiscal year 2024 shall be adjusted in the final sequestration report, in accordance with paragraph (2), as follows:

“(A) For the revised security category, the amount that is equal to the total budget authority for such category for base funding, as published in the Congressional Budget Office cost estimate for the applicable appropriations Acts for the preceding fiscal year (table 1–S of H.R. 2617, published on December 21, 2022), reduced by one percent.

“(B) For the revised non-security category, the amount that is equal to the total budget authority for such category for base funding as published in the Congressional Budget Office cost estimate for the applicable appropriations Acts for the preceding fiscal year (table 1–S of H.R. 2617, published on December 21, 2022), reduced by one percent.

“(2) FINAL REPORT; SEQUESTRATION ORDER.—If the conditions specified in paragraph (1) are met during fiscal year 2024, the final sequestration report for such fiscal year pursuant to section 254(f)(1) and any order pursuant to section 254(f)(5) shall be issued on the earlier of—

"(A) 10 days, not including weekends and holidays, for the Congressional Budget Office and 15 days, not including weekends and holidays, for the Office of Management and Budget and the President, after the enactment into law of annual full-year appropriations for all budget accounts that normally receive such annual appropriations (or the enactment of the applicable full-year appropriations Acts without any provision for such accounts); or

"(B) April 30, 2024.

"(3) REVERSAL.—If, after January 1, 2024, there are enacted into law each of the full year discretionary appropriation Acts, then the adjustment to the applicable discretionary spending limits in paragraph (1) shall have no force or effect, and the discretionary spending limits for the revised security category and revised nonsecurity category for the applicable fiscal year shall be such limits as in effect on December 31 of the applicable fiscal year.

<< 2 USCA § 901 >>

"(e) REVISED DISCRETIONARY SPENDING LIMITS FOR FISCAL YEAR 2025.—

***16**

"(1) IN GENERAL.—Subject to paragraph (3), if on or after January 1, 2025, there is in effect an Act making continuing appropriations for part of fiscal year 2025 for any discretionary budget account, the discretionary spending limits specified in subsection (c)(10) for fiscal year 2025 shall be adjusted in the final sequestration report, in accordance with paragraph (2), as follows:

"(A) for the revised security category, the amount calculated for such category in section (d)(1)(A); and

"(B) for the revised non-security category, the amount calculated for each category in section (d)(1)(B).

"(2) FINAL REPORT; SEQUESTRATION ORDER.—If the conditions specified in paragraph (1) are met during fiscal year 2025, the final sequestration report for such fiscal year pursuant to section 254(f)(1) and any order pursuant to section 254(f)(5) shall be issued on the earlier of—

"(A) 10 days, not including weekends and holidays, for the Congressional Budget Office, and 15 days, not including weekends and holidays, for the Office of Management and Budget and the President, after the enactment into law of annual full-year appropriations for all budget accounts that normally receive such annual appropriations (or the enactment of the applicable full-year appropriations Acts without any provision for such accounts); or

"(B) April 30, 2025.

"(3) REVERSAL.—If, after January 1, 2025, there are enacted into law each of the full year discretionary appropriation Acts, then the adjustment to the applicable discretionary spending limits in paragraph (1) shall have no force or effect, and the discretionary spending limits for the revised security category and revised nonsecurity category for the applicable fiscal year shall be such limits as in effect on December 31 of the applicable fiscal year.".

SEC. 103. BUDGETARY TREATMENT OF PREVIOUSLY ENACTED EMERGENCY REQUIREMENTS.

(a) IN GENERAL.—Notwithstanding section 905(c) of division J of Public Law 117–58 and section 23005(c) of division B of Public Law 117–159, Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105–217, and sections 250(c)(7) and (c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the budgetary effects for any fiscal year for the amounts specified in subsection (b) shall not count for purposes of section 251 of such Act.

(b) AMOUNTS.—The amounts specified in this subsection are—

(1) amounts designated by the Congress as being for an emergency requirement pursuant to section 4001(a)(1) and section 4001(b) of S. Con. Res. 14 (117th Congress), the concurrent resolution on the budget for fiscal year 2022, in division B of the Bipartisan Safer Communities Act (Public Law 117–159);

(2) amounts designated by the Congress as an emergency requirement pursuant to section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 in division J of the Infrastructure Investment and Jobs Act (Public Law 117–58); and

***17**

(3) amounts designated by the Congress as being for an emergency requirement pursuant to section 4001(a)(1) and section 4001(b) of S. Con. Res. 14 (117th Congress), the concurrent resolution on the budget for fiscal year 2022, and section 1(e) of H. Res. 1151 (117th Congress) in section 443(b) in division G of the Consolidated Appropriations Act, 2023 (Public Law 117–328).

TITLE II—BUDGET ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES

SEC. 111. AUTHORITY FOR FISCAL YEAR 2024 BUDGET RESOLUTION IN THE HOUSE OF REPRESENTATIVES.

(a) FISCAL YEAR 2024.—For the purpose of enforcing the Congressional Budget Act of 1974 for fiscal year 2024, the allocations, aggregates, and levels provided for in subsection (b) shall apply in the House of Representatives in the same manner as for a concurrent resolution on the budget for fiscal year 2024 with appropriate budgetary levels for fiscal year 2024 and for fiscal years 2025 through 2033.

(b) COMMITTEE ALLOCATIONS, AGGREGATES, AND LEVELS.—In the House of Representatives, the Chair of the Committee on the Budget shall submit a statement for publication in the Congressional Record as soon as practicable containing —

(1) for the Committee on Appropriations, committee allocations for fiscal year 2024 consistent with discretionary spending limits set forth in section 251(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985, as added by this Act, and the outlays flowing therefrom, and committee allocations for fiscal year 2024 for current law mandatory budget authority and outlays, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(2) for all committees of the House of Representatives other than the Committee on Appropriations, committee allocations for fiscal year 2024 and for the period of fiscal years 2025 through 2033 consistent with the most recent baseline of the Congressional Budget Office, as adjusted, to the extent practicable, for the budgetary effects of any provision of law enacted during the period beginning on the date such baseline is issued and ending on the date of submission of such statement, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(3) aggregate spending levels for fiscal year 2024 in accordance with the allocations established under paragraphs (1) and (2), for the purpose of enforcing section 311 of the Congressional Budget Act of 1974; and

(4) aggregate revenue levels for fiscal year 2024 and for the period of fiscal years 2025 through 2033 consistent with the most recent baseline of the Congressional Budget Office, as adjusted, to the extent practicable, for the budgetary effects of any provision of law enacted during the period beginning on the date such baseline is issued and ending on the date of submission of such statement, for the purpose of enforcing section 311 of the Congressional Budget Act of 1974.

***18**

(c) ADJUSTMENTS.—The Chair of the Committee on the Budget of the House of Representatives may adjust the allocations, aggregates, and other budgetary levels included in the statement referred to in subsection (b)—

(1) to reflect changes resulting from the Congressional Budget Office's updates to its baseline for fiscal years 2024 through 2033; or

(2) for any bill, joint resolution, amendment, or conference report by the amounts provided in such measure if such measure would not increase the deficit for either of the following time periods: fiscal year 2024 to fiscal year 2028 or fiscal year 2024 to fiscal year 2033.

(d) EXPIRATION.—Subsections (a) through (c) shall no longer apply if a concurrent resolution on the budget for fiscal year 2024 is agreed to by the Senate and House of Representatives.

SEC. 112. LIMITATION ON ADVANCE APPROPRIATIONS IN THE HOUSE OF REPRESENTATIVES.

(a) IN GENERAL.—In the House of Representatives, except as provided in subsection (b), any general appropriation bill or bill or joint resolution continuing appropriations, or amendment thereto or conference report thereon, may not provide an advance appropriation.

(b) EXCEPTIONS.—An advance appropriation may be provided for programs, activities or accounts identified in lists submitted for printing in the Congressional Record by the Chair of the Committee on the Budget—

(1) for fiscal year 2025, under the heading "**ACCOUNTS IDENTIFIED FOR ADVANCE APPROPRIATIONS**" in an aggregate amount not to exceed $28,852,000,000 in new budget authority;

(2) for fiscal year 2025, under the heading "**VETERANS ACCOUNTS IDENTIFIED FOR ADVANCE APPROPRIATIONS**"; and

(3) for fiscal year 2025, under the heading "**INDIAN HEALTH ACCOUNTS IDENTIFIED FOR ADVANCE APPROPRIATIONS**" in an aggregate amount not to exceed the total budget authority provided for such accounts for fiscal year 2024 in bills or joint resolutions making appropriations for fiscal year 2024.

(c) DEFINITION.—The term "advance appropriation" means any new discretionary budget authority provided in a general appropriation bill or bill or joint resolution continuing appropriations for fiscal year 2024, or any amendment thereto or conference report thereon, that first becomes available following fiscal year 2024.

(d) EXPIRATION.—The preceding subsections of this section shall expire if a concurrent resolution on the budget for fiscal year 2024 is agreed to by the Senate and the House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

SEC. 113. EXERCISE OF RULEMAKING POWERS.

This title is enacted by the House of Representatives—

(1) as an exercise of the rulemaking power of the House, and as such shall be considered as part of the rules of the House, and such rules shall supersede other rules only to the extent that it is inconsistent therewith; and

(2) with full recognition of the constitutional right of the House to change such rules (so far as relating to the House) at any time, in the same manner, and to the same extent as in the case of any other rule of the House.

***19**

TITLE III—BUDGET ENFORCEMENT IN THE SENATE

SEC. 121. AUTHORITY FOR FISCAL YEAR 2024 BUDGET RESOLUTION IN THE SENATE.

(a) FISCAL YEAR 2024.—For the purpose of enforcing the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.) and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels provided for in subsection (b) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2024 with appropriate budgetary levels for fiscal year 2024 and for fiscal years 2025 through 2033.

(b) COMMITTEE ALLOCATIONS, AGGREGATES, AND LEVELS.—The Chairman of the Committee on the Budget of the Senate shall submit a statement for publication in the Congressional Record as soon as practicable after the date of enactment of this Act that includes—

(1) for the Committee on Appropriations of the Senate, committee allocations for fiscal year 2024 consistent with the discretionary spending limits set forth in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by this Act, and the outlays flowing therefrom, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(2) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2024, 2024 through 2028, and 2024 through 2033, consistent with the May 2023 baseline of the Congressional Budget Office, as adjusted for the budgetary effects of any provision of law enacted during the period beginning on the date such baseline was issued and ending on the date of submission of such statement, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974 (2 U.S.C. 633);

(3) aggregate spending levels for fiscal year 2024 in accordance with the allocations established under paragraphs (1) and (2), for the purpose of enforcing section 311 of the Congressional Budget Act of 1974 (2 U.S.C. 642);

(4) aggregate revenue levels for fiscal years 2024, 2024 through 2028, and 2024 through 2033, consistent with the May 2023 baseline of the Congressional Budget Office, as adjusted for the budgetary effects of any provision of law enacted during the period beginning on the date such baseline was issued and ending on the date of submission of such statement, for the purpose of enforcing section 311 of the Congressional Budget Act of 1974 (2 U.S.C. 642);

(5) levels of Social Security revenues and outlays for fiscal years 2024, 2024 through 2028, and 2024 through 2033, consistent with the May 2023 baseline of the Congressional Budget Office, as adjusted for the budgetary effects of any provision of law enacted during the period beginning on the date such baseline was issued and ending on the date of submission of such statement, for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974 (2 U.S.C. 633, 642); and

***20**

(6) a statement under the heading "Accounts Identified for Advance Appropriations" for the purpose of enforcing section 123 of this title.

(c) ADDITIONAL MATTER.—The statement referred to in subsection (b) may also include for fiscal year 2024 the deficit-neutral reserve fund in section 3003 of S. Con. Res. 14 (117th Congress), the concurrent resolution on the budget for fiscal year 2022, updated by 2 fiscal years.

(d) EXPIRATION.—This section shall expire if a concurrent resolution on the budget for fiscal year 2024 is agreed to by the Senate and the House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974 (2 U.S.C. 632).

SEC. 122. AUTHORITY FOR FISCAL YEAR 2025 BUDGET RESOLUTION IN THE SENATE.

(a) FISCAL YEAR 2025.—For the purpose of enforcing the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.), after April 15, 2024, and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels provided for in subsection (b) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2025 with appropriate budgetary levels for fiscal year 2025 and for fiscal years 2026 through 2034.

(b) COMMITTEE ALLOCATIONS, AGGREGATES, AND LEVELS.—After April 15, 2024, but not later than May 15, 2024, the Chairman of the Committee on the Budget of the Senate shall submit a statement for publication in the Congressional Record that includes—

(1) for the Committee on Appropriations of the Senate, committee allocations for fiscal year 2025 consistent with the discretionary spending limits set forth in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by this Act, and the outlays flowing therefrom, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974 (2 U.S.C. 633);

(2) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2025, 2025 through 2029, and 2025 through 2034 consistent with the most recent baseline of the Congressional Budget Office, as adjusted for

the budgetary effects of any provision of law enacted during the period beginning on the date such baseline is issued and ending on the date of submission of such statement, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974 (2 U.S.C. 633);

(3) aggregate spending levels for fiscal year 2025 in accordance with the allocations established under paragraphs (1) and (2), for the purpose of enforcing section 311 of the Congressional Budget Act of 1974 (2 U.S.C. 642);

(4) aggregate revenue levels for fiscal years 2025, 2025 through 2029, and 2025 through 2034 consistent with the most recent baseline of the Congressional Budget Office, as adjusted for the budgetary effects of any provision of law enacted during the period beginning on the date such baseline is issued and ending on the date of submission of such statement, for the purpose of enforcing section 311 of the Congressional Budget Act of 1974 (2 U.S.C. 642);

***21**

(5) levels of Social Security revenues and outlays for fiscal years 2025, 2025 through 2029, and 2025 through 2034 consistent with the most recent baseline of the Congressional Budget Office, as adjusted for the budgetary effects of any provision of law enacted during the period beginning on the date such baseline is issued and ending on the date of submission of such statement, for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974 (2 U.S.C. 633, 642); and

(6) a statement under the heading "Accounts Identified for Advance Appropriations" for the purpose of enforcing section 123 of this title.

(c) ADDITIONAL MATTER.—The statement referred to in subsection (b) may also include for fiscal year 2025 the deficit-neutral reserve fund in section 3003 of S. Con. Res. 14 (117th Congress), the concurrent resolution on the budget for fiscal year 2022, updated by 3 fiscal years.

(d) EXPIRATION.—This section shall expire if a concurrent resolution on the budget for fiscal year 2025 is agreed to by the Senate and the House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974 (2 U.S.C. 632).

SEC. 123. LIMITATION ON ADVANCE APPROPRIATIONS IN THE SENATE.

(a) POINT OF ORDER AGAINST ADVANCE APPROPRIATIONS IN THE SENATE.—

(1) IN GENERAL.—

(A) POINT OF ORDER.—Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, amendment between the Houses, or conference report that would provide an advance appropriation for a discretionary account.

(B) DEFINITION.—In this subsection, the term "advance appropriation" means any new budget authority provided in a bill or joint resolution making appropriations for fiscal year 2024 that first becomes available for any fiscal year after

2024 or any new budget authority provided in a bill or joint resolution making appropriations for fiscal year 2025 that first becomes available for any fiscal year after 2025.

(2) EXCEPTIONS.—Advance appropriations may be provided—

(A) for fiscal years 2025 and 2026, for programs, projects, activities, or accounts identified in a statement submitted to the Congressional Record by the Chairman of the Committee on the Budget of the Senate under the heading "Accounts Identified for Advance Appropriations" in an aggregate amount not to exceed $28,852,000,000 in new budget authority in each fiscal year;

(B) for the Corporation for Public Broadcasting;

(C) for the Department of Veterans Affairs for the Medical Services, Medical Support and Compliance, Veterans Medical Community Care, and Medical Facilities accounts of the Veterans Health Administration; and

(D) for the Department of Health and Human Services for the Indian Health Services and Indian Health Facilities accounts —

***22**

(i) for fiscal year 2025, in an amount that is not more than the amount provided for fiscal year 2024 in a bill or joint resolution making appropriations for fiscal year 2023 or 2024 for programs, projects, and activities that are not prohibited from using amounts provided for fiscal year 2024 in a bill or joint resolution making appropriations for fiscal year 2023; and

(ii) for fiscal year 2026, in an amount that is not more than the amount provided for fiscal year 2025 in a bill or joint resolution making appropriations for fiscal year 2024 or 2025 for programs, projects, and activities that are not prohibited from using amounts provided for fiscal year 2025 in a bill or joint resolution making appropriations for fiscal year 2024.

(3) SUPERMAJORITY WAIVER AND APPEAL.—

(A) WAIVER.—In the Senate, paragraph (1) may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(B) APPEAL.—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(4) FORM OF POINT OF ORDER.—A point of order under paragraph (1) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974 (2 U.S.C. 644(e)).

(5) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill or joint resolution, upon a point of order being made by any Senator pursuant to this subsection, and such point of order being sustained, such material contained in such conference report or amendment between the Houses shall be stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this paragraph), no further amendment shall be in order.

(b) EXPIRATION.—Subsection (a) shall terminate on the date on which a concurrent resolution on the budget for fiscal year 2024 or for fiscal year 2025 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974 (2 U.S.C. 632).

SEC. 124. EXERCISE OF RULEMAKING POWERS.

This title is enacted by the Senate—

(1) as an exercise of the rulemaking power of the Senate, and as such shall be considered as part of the rules of the Senate, and such rules shall supersede other rules only to the extent that it is inconsistent therewith; and

***23**

(2) with full recognition of the constitutional right of the Senate to change such rules (so far as relating to the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

DIVISION B—SAVE TAXPAYER DOLLARS

TITLE I—RESCISSION OF UNOBLIGATED FUNDS

SEC. 1. Each rescission made by this title shall be applied to the unobligated balances for each applicable appropriation as of the date of enactment of this title.

SEC. 2. The unobligated balances from the following appropriations, in the following amounts and subject to the conditions specified below, are hereby permanently rescinded:

(1) All of the unobligated balances of funds made available under the heading "Public Health and Social Services Emergency Fund" in title III of division A of Public Law 116–123, including any funds transferred from such heading that remain unobligated, with the exception of $59,000,000.

(2) All of the unobligated balances of funds made available under the heading "Public Health and Social Services Emergency Fund" in title V of division A of Public Law 116–127, including any funds transferred from such heading that remain unobligated.

(3) All of the unobligated balances of funds made available under the heading "Public Health and Social Services Emergency Fund" in title VIII of division B of Public Law 116–136, including any funds transferred from such heading that remain unobligated, with the exception of $2,127,000,000 and—

(A) any funds that were transferred and merged with the Covered Countermeasure Process Fund authorized by section 319F–4 of the Public Health Service Act; and

(B) any funds that were transferred and merged with funds made available under the heading "Office of the Secretary—Office of Inspector General" pursuant to section 18113 of title VIII of division B of Public Law 116–136.

(4) All of the unobligated balances of funds made available in the first paragraph under the heading "Public Health and Social Services Emergency Fund" in title I of division B of Public Law 116–139, including any funds transferred from such heading that remain unobligated, with the exception of $300,000,000, which shall remain available for necessary expenses for program administration and oversight.

(5) All of the unobligated balances of funds made available in the second paragraph under the heading "Public Health and Social Services Emergency Fund" in title I of division B of Public Law 116–139, including any funds transferred from such heading that remain unobligated, with the exception of $243,000,000 and any funds that were transferred and merged with funds made available under the heading "Office of the Secretary—Office of Inspector General" pursuant to section 103 of title I of division B of Public Law 116–139.

(6) All of the unobligated balances of funds made available under the heading "Public Health and Social Services Emergency Fund" in title III of division M of Public Law 116– ***24** 260, including any funds transferred from such heading that remain unobligated, with the exception of $205,000,000.

(7) All of the unobligated balances of funds made available under the heading "Centers for Disease Control and Prevention—CDC–Wide Activities and Program Support" in title III of division A of Public Law 116–123, including any funds transferred from such heading that remain unobligated, with the exception of $195,000,000 and any funds that were transferred and merged with the Infectious Diseases Rapid Response Reserve Fund established by section 231 of division B of Public Law 115–245.

(8) All of the unobligated balances of funds made available under the heading "Centers for Disease Control and Prevention —CDC–Wide Activities and Program Support" in title VIII of division B of Public Law 116–136, including any funds transferred from such heading that remain unobligated, with the exception of $446,000,000 and any funds that were transferred and merged with the Infectious Diseases Rapid Response Reserve Fund established by section 231 of division B of Public Law 115–245.

(9) All of the unobligated balances of funds made available under the heading "Centers for Disease Control and Prevention—CDC–Wide Activities and Program Support" in title III of division M of Public Law 116–260, including any funds transferred from such heading that remain unobligated, with the exception of $177,000,000.

(10) All of the unobligated balances of funds made available under the heading "National Institutes of Health—National Institute of Allergy and Infectious Diseases" in title III of division A of Public Law 116–123, including any funds transferred from such heading that remain unobligated.

(11) All of the unobligated balances of funds made available to "Centers for Medicare & Medicaid Services—Program Management" in title VIII of division B of Public Law 116–136.

(12) All of the unobligated balances of funds made available by section 2301 of Public Law 117–2, with the exception of $103,000,000.

(13) All of the unobligated balances of funds made available by section 2302 of Public Law 117–2.

(14) All of the unobligated balances of funds made available by section 2303 of Public Law 117–2, with the exception of $69,000,000.

(15) All of the unobligated balances of funds made available by section 2401 of Public Law 117–2, with the exception of $7,323,000,000.

(16) All of the unobligated balances of funds made available by section 2402 of Public Law 117–2, with the exception of $714,000,000.

(17) All of the unobligated balances of funds made available by section 2403 of Public Law 117–2.

(18) All of the unobligated balances of funds made available by section 2501 of Public Law 117–2.

(19) All of the unobligated balances of funds made available by section 2502 of Public Law 117–2.

(20) All of the unobligated balances of funds made available by section 2601 of Public Law 117–2.

***25**

(21) All of the unobligated balances of funds made available by section 2602 of Public Law 117–2.

(22) All of the unobligated balances of funds made available by section 2603 of Public Law 117–2.

(23) All of the unobligated balances of funds made available by section 2604 of Public Law 117–2.

(24) All of the unobligated balances of funds made available by section 2605 of Public Law 117–2.

(25) All of the unobligated balances of funds made available by section 2703 of Public Law 117–2.

(26) All of the unobligated balances of funds made available by section 2704 of Public Law 117–2.

(27) All of the unobligated balances of funds made available by section 2705 of Public Law 117–2.

(28) All of the unobligated balances of funds made available by section 2711 of Public Law 117–2.

(29) All of the unobligated balances of funds made available by section 2712 of Public Law 117–2.

(30) All of the unobligated balances of funds made available by section 2801 of Public Law 117–2.

(31) All of the unobligated balances of funds made available by section 3101 of Public Law 117–2, with the exception of $793,000,000.

(32) All of the unobligated balances of funds made available by section 511A(a) of the Social Security Act, as added by section 9101 of Public Law 117–2.

(33) All of the unobligated balances of funds made available by section 1150C(a) of the Social Security Act, as added by section 9911 of Public Law 117–2.

(34) All of the unobligated balances of funds made available by section 1947(e) of the Social Security Act, as added by section 9813 of Public Law 117–2.

(35) All of the unobligated balances of funds made available by section 1862(g)(2) of the Social Security Act, as added by section 9401 of Public Law 117–2.

SEC. 3. The unobligated balances of amounts made available under the heading "Agricultural Programs—Office of the Secretary" in title I of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 4. The unobligated balances of amounts made available by section 751 in title VII of division N of Public Law 116–260 are hereby permanently rescinded, except for funds made available by section 601 of division HH of Public Law 117–328.

SEC. 5. The unobligated balances of amounts made available by section 753 in title VII of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 6. The unobligated balances of amounts made available by section 754 in title VII of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 7. The unobligated balances of amounts made available by section 762(i) in title VII of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 8. The unobligated balances of amounts made available by section 764(f) in title VII of division N of Public Law 116–260 are hereby permanently rescinded.

***26**

SEC. 9. The unobligated balances of amounts made available by section 1001 of Public Law 117–2 are hereby permanently rescinded.

SEC. 10. Of the unobligated balances of amounts made available by section 4027 of title IV of division A of Public Law 116–136, $200,000,000 are hereby permanently rescinded.

SEC. 11. Of the unobligated balances of amounts made available by section 4120 of title IV of division A of Public Law 116–136, $295,000,000 are hereby permanently rescinded.

SEC. 12. The unobligated balances of amounts made available by section 7301(c) of Public Law 117–2 are hereby permanently rescinded.

SEC. 13. The unobligated balances of amounts made available by section 104A(m) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.), as added by section 522 of title V of division N of Public Law 116–260 are hereby permanently rescinded, with the exception of $284,500,000, which shall remain available for necessary expenses associated with the making of awards announced prior to the enactment of this Act.

SEC. 14. Of the unobligated balances of amounts made available by section 3301(a)(2)(A) of Public Law 117–2, $150,000,000 are hereby permanently rescinded.

SEC. 15. The unobligated balances of amounts made available by section 411 in subtitle A of title IV of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 16. The unobligated balances of amounts made available by subsection (a) of section 2206 of Public Law 117–2 are hereby permanently rescinded, with the exception of amounts allocated under paragraphs (6) and (7) of subsection (b) of such section.

SEC. 17. The unobligated balances of amounts made available by section 2001 of Public Law 117–2 are hereby permanently rescinded.

SEC. 18. The unobligated balances of amounts made available by section 2002 of Public Law 117–2 are hereby permanently rescinded.

SEC. 19. The unobligated balances of amounts made available by section 2003 of Public Law 117–2 are hereby permanently rescinded.

SEC. 20. The unobligated balances of amounts made available under the heading "Federal Highway Administration—Highway Infrastructure Programs" in title IV of division M of Public Law 116–260 are hereby permanently rescinded.

SEC. 21. The unobligated balances of amounts made available by section 7202(a) of Public Law 117–2 are hereby permanently rescinded.

SEC. 22. The unobligated balances of amounts made available by sections 5002(b) and 5006(a)(2) of Public Law 117–2, including any amounts transferred and merged with "Small Business Administration—Disaster Loans Program Account" pursuant to section 90007(b)(2)(A) of Public Law 117–58 that remain unobligated, are hereby permanently rescinded.

SEC. 23. The unobligated balances of amounts made available under the heading "Independent Agencies—Small Business Administration—Disaster Loans Program Account" in title II of division B of Public Law 116–139 are hereby permanently rescinded.

***27**

SEC. 24. Of the unobligated balances of amounts made available by section 2118(a) of title II of division A of Public Law 116–136, as added by section 9032 of Public Law 117–2, $1,000,000,000 are hereby permanently rescinded.

SEC. 25. The unobligated balances of amounts made available under the heading "Department of Housing and Urban Development—Public and Indian Housing—Tenant-Based Rental Assistance" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 26. The unobligated balances of amounts made available under the heading "Department of Housing and Urban Development—Public and Indian Housing—Native American Programs" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 27. The unobligated balances of amounts made available under the heading "Department of Housing and Urban Development—Housing Programs—Housing for Persons with Disabilities" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 28. The unobligated balances of amounts made available under the heading "Department of Housing and Urban Development—Housing Programs—Project-Based Rental Assistance" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 29. The unobligated balances of amounts made available under the heading "Department of Housing and Urban Development—Housing Programs—Housing for the Elderly" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 30. The unobligated balances of amounts made available by section 3208(a) of Public Law 117–2 are hereby permanently rescinded.

SEC. 31. The unobligated balances of amounts made available under the heading "Department of Transportation—Office of the Secretary—Salaries and Expenses" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 32. The unobligated balances of amounts made available under the heading "Department of Transportation—Office of the Secretary—Essential Air Service" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 33. The unobligated balances of amounts made available under the heading "Department of Transportation—Federal Aviation Administration—Grants-In-Aid for Airports" in title XII of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 34. The unobligated balances of amounts made available by section 7101 of Public Law 117–2 are hereby permanently rescinded.

SEC. 35. The unobligated balances of amounts made available by section 7102(a)(1) of Public Law 117–2 are hereby permanently rescinded.

SEC. 36. The unobligated balances of amounts made available by section 501(a)(1) of title V of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 37. The unobligated balances of amounts made available by section 9601(d)(1) of Public Law 117–2 are hereby permanently rescinded.

***28**

SEC. 38. The unobligated balances of amounts made available by section 4009 of Public Law 117–2 are hereby permanently rescinded.

SEC. 39. The unobligated balances of amounts made available under the heading "Department of Justice—General Administration—Justice Information Sharing Technology" in title II of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 40. Of the unobligated balances of amounts made available under the heading "Department of Defense—Procurement—Defense Production Act Purchases" in title III of division B of Public Law 116–136, $61,381,230 are hereby permanently rescinded.

SEC. 41. The unobligated balances of amounts made available under the heading "Department of State—Administration of Foreign Affairs—Diplomatic Programs" in title XI of division B of Public Law 116–136 and subsequently transferred to the Department of State's "Educational and Cultural Exchange Programs" account are hereby permanently rescinded.

SEC. 42. The unobligated balances of amounts made available under the heading "Bilateral Economic Assistance—Department of State—Migration and Refugee Assistance" in title XI of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 43. The unobligated balances of amounts made available under the heading "Bilateral Economic Assistance—Funds Appropriated to the President—International Disaster Assistance" in title XI of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 44. The unobligated balances of amounts made available under the heading "Department of State—Administration of Foreign Affairs—Sudan Claims" in title IX of division K of Public Law 116–260 are hereby permanently rescinded.

SEC. 45. The unobligated balances of amounts made available under the heading "Bilateral Economic Assistance—Funds Appropriated to the President—Economic Support Fund" in title IX of division K of Public Law 116–260 are hereby permanently rescinded.

SEC. 46. The unobligated balances of amounts made available under the heading "Federal Communications Commission—Salaries and Expenses" in title V of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 47. The unobligated balances of amounts made available under the heading "Independent Agencies—Small Business Administration—Emergency EIDL Grants" in title II of division B of Public Law 116–139 are hereby permanently rescinded.

SEC. 48. The unobligated balances of amounts made available by section 323(d)(1)(B) of title III of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 49. The unobligated balances of amounts made available by section 323(d)(1)(E)(i) of title III of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 50. The unobligated balances of amounts made available by section 902(c)(5) of title IX of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 51. The unobligated balances of amounts made available by section 905(b) of title IX of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 52. The unobligated balances of amounts made available by section 5003(b)(2)(A) of Public Law 117–2 are hereby permanently rescinded.

***29**

SEC. 53. The unobligated balances of amounts described in the tenth proviso under the heading "Administration for Children and Families—Payments to States for the Child Care and Development Block Grant" in title III of division M of Public Law 116–260 are hereby permanently rescinded.

SEC. 54. The unobligated balances of amounts made available by section 2201(b) of Public Law 117–2 are hereby permanently rescinded.

SEC. 55. The unobligated balances of amounts made available by section 2204(d)(1) of Public Law 117–2, including any amounts made available by amendments made by such section, are hereby permanently rescinded.

SEC. 56. The unobligated balances of amounts made available by section 2205 of Public Law 117–2 are hereby permanently rescinded.

SEC. 57. The unobligated balances of amounts made available by section 2912(a) of Public Law 117–2 are hereby permanently rescinded.

SEC. 58. The unobligated balances of amounts made available by section 403(c) of the Social Security Act, as added by section 9201 of Public Law 117–2 are hereby permanently rescinded.

SEC. 59. The unobligated balances of amounts made available by section 816(f) of the Native American Programs Act of 1974 (42 U.S.C. 2992d(f)), as added by section 11004 of Public Law 117–2, are hereby permanently rescinded.

SEC. 60. The unobligated balances of amounts made available under the heading "Rural Development Programs—Rural Utilities Service—Distance Learning, Telemedicine, and Broadband Program" in title I of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 61. The unobligated balances of amounts made available by section 752 of title VII of division N of Public Law 116–260 are hereby permanently rescinded.

SEC. 62. The unobligated balances of amounts made available by section 1002(c) of Public Law 117–2, are hereby permanently rescinded.

SEC. 63. The unobligated balances of amounts made available by section 3207(a) of Public Law 117–2 are hereby permanently rescinded.

SEC. 64. The unobligated balances of amounts made available under the heading "Department of Energy—Energy Programs—Science" in title IV of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 65. The unobligated balances of amounts made available by section 6003 of Public Law 117–2 are hereby permanently rescinded.

SEC. 66. The unobligated balances of amounts made available by section 11002(a) of Public Law 117–2 are hereby permanently rescinded.

SEC. 67. The unobligated balances of amounts made available under the heading "Department of Education—Departmental Management—Program Administration" in title III of division M of Public Law 116–260 are hereby permanently rescinded.

SEC. 68. The unobligated balances of amounts made available by section 2007 of Public Law 117–2 are hereby permanently rescinded.

***30**

SEC. 69. The unobligated balances of amounts made available by section 2010 of Public Law 117–2 are hereby permanently rescinded.

SEC. 70. The unobligated balances of amounts made available by section 2011 of Public Law 117–2 are hereby permanently rescinded.

SEC. 71. The unobligated balances of amounts made available by section 11006 of Public Law 117–2 are hereby permanently rescinded.

SEC. 72. Of the unobligated balances of amounts made available by section 6002(a) of Public Law 117–2, all but $22,000,000 are hereby permanently rescinded.

SEC. 73. The unobligated balances of amounts made available by section 2101(a) of Public Law 117–2 are hereby permanently rescinded, with the exception of $1,892,718 for the Office of the Solicitor within the Departmental Management account and amounts allocated for the Office of Inspector General under paragraph (2) of subsection (b) of such section.

SEC. 74. The unobligated balances of amounts made available by section 2110(g) of Public Law 116–136, as amended, are hereby permanently rescinded.

SEC. 75. The unobligated balances of amounts made available under the heading "General Services Administration—General Activities—Federal Citizen Services Fund" in title V of division B of Public Law 116–136 are hereby permanently rescinded.

SEC. 76. The unobligated balances of amounts made available by section 2021 of Public Law 117–2 are hereby permanently rescinded.

SEC. 77. The unobligated balances of amounts made available by section 2022 of Public Law 117–2 are hereby permanently rescinded.

SEC. 78. The unobligated balances of amounts made available by section 2023 of Public Law 117–2 are hereby permanently rescinded.

SEC. 79. The unobligated balances of amounts made available by section 2(c)(2)(D)(v) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(c)(2)(D)(v)), as amended, are hereby permanently rescinded.

SEC. 80. The unobligated balances of amounts made available by section 2904 of Public Law 117–2 are hereby permanently rescinded, with the exception of $500,000 for the Railroad Retirement Board Office of Inspector General.

SEC. 81. The unobligated balances of amounts made available by section 7404(a) of Public Law 117–2 are hereby permanently rescinded.

TITLE II—FAMILY AND SMALL BUSINESS TAXPAYER PROTECTION

SEC. 251. RESCISSION OF CERTAIN BALANCES MADE AVAILABLE TO THE INTERNAL REVENUE SERVICE.

Of the unobligated balances of amounts appropriated or otherwise made available for activities of the Internal Revenue Service by paragraphs (1)(A)(ii), (1)(A)(iii), (1)(B), (2), (3), (4), and (5) of section 10301 of Public Law 117–169 (commonly known as the ***31** "Inflation Reduction Act of 2022") as of the date of the enactment of this Act, $1,389,525,000 are hereby rescinded.

TITLE III—STATUTORY ADMINISTRATIVE PAY-AS-YOU-GO

SEC. 261. SHORT TITLE.

<< 5 USCA § 551 NOTE >>

This title may be cited as the "Administrative Pay-As-You-Go Act of 2023".

<< 5 USCA § 551 NOTE >>

SEC. 262. DEFINITIONS.

In this title—

(1) the term "administrative action" means a "rule" as defined in section 804(3) of title 5, United States Code;

(2) the term "agency" means any authority of the United States that is an "agency" under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of such title;

(3) the term "covered discretionary administrative action" means a discretionary administrative action that would affect direct spending;

(4) the term "direct spending" has the meaning given that term in section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c));

(5) the term "Director" means the Director of the Office of Management and Budget;

(6) the term "discretionary administrative action"—

(A) means any administrative action that is not required by law; and

(B) includes an administrative action required by law for which an agency has discretion in the manner in which to implement the administrative action; and

(7) the term "increase direct spending" means that the amount of direct spending would increase relative to—

(A) the most recently submitted projection of the amount of direct spending presented in baseline estimates as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, under—

(i) the budget of the President submitted under section 1105 of title 31, United States Code; or

(ii) the supplemental summary of the budget submitted under section 1106 of title 31, United States Code;

(B) with respect to a discretionary administrative action that is incorporated into the applicable projection described in subparagraph (A) and for which a proposal has not been submitted under section 263(a)(2)(A), a projection of the amount of direct spending if no administrative action were taken; or

(C) with respect to a discretionary administrative action described in paragraph (6)(B), a projection of the amount of direct spending under the least costly implementation option reasonably identifiable by the agency that meets the requirements under the statute.

***32**

<< 5 USCA § 551 NOTE >>

SEC. 263. REQUIREMENTS FOR ADMINISTRATIVE ACTIONS THAT AFFECT DIRECT SPENDING.

(a) DISCRETIONARY ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Before an agency may finalize any covered discretionary administrative action, the head of the agency shall submit to the Director for review written notice regarding the covered discretionary administrative action, which shall include an estimate of the budgetary effects of the covered discretionary administrative action.

(2) INCREASING DIRECT SPENDING.—

(A) IN GENERAL.—If the covered discretionary administrative action would increase direct spending, the written notice submitted by the head of the agency under paragraph (1) shall include a proposal to undertake 1 or more other administrative actions that would provide a reduction in direct spending greater than or equal to the increase in direct spending attributable to the covered discretionary administrative action.

(B) REVIEW.—

(i) IN GENERAL.—The Director shall determine whether the reduction in direct spending in a proposal in a written notice from an agency under subparagraph (A) is greater than or equal to the increase in direct spending attributable to the covered discretionary administrative action to which the written notice relates.

(ii) NO OFFSET.—If the written notice regarding a proposed covered discretionary administrative action that would increase direct spending does not include a proposal to offset the increased direct spending as determined in clause (i), the Director shall return the written notice to the agency for resubmission in accordance with this title.

(b) NONDISCRETIONARY ACTIONS.—If an agency determines that an administrative action that would increase direct spending is required by law and therefore is not a covered discretionary administrative action, before the agency finalizes that administrative action, the head of the agency shall—

(1) submit to the Director a written opinion by the general counsel of the agency, or the equivalent employee of the agency, explaining that legal conclusion;

(2) submit to the Director a projection of the amount of direct spending under the least costly implementation option reasonably identifiable by the agency that meets the requirements under the statute; and

(3) consult with the Director regarding implementation of the administrative action.

(c) PROJECTIONS.—Any projection for purposes of this title shall be conducted in accordance with Office of Management and Budget Circular A–11, or any successor thereto.

<< 5 USCA § 551 NOTE >>

SEC. 264. ISSUANCE OF ADMINISTRATIVE GUIDANCE.

Not later than 90 days after the date of enactment of this Act, the Director shall issue instructions regarding the implementation of this title, including how covered discretionary administrative actions that increase direct spending and nontax receipts will be evaluated.

***33**

<< 5 USCA § 551 NOTE >>

SEC. 265. WAIVER.

(a) IN GENERAL.—The Director may waive the requirements of section 263 if the Director concludes that the waiver—

(1) is necessary for the delivery of essential services; or

(2) is necessary for effective program delivery.

(b) PUBLICATION.—Any waiver determination under subsection (a) shall be published in the Federal Register.

<< 5 USCA § 551 NOTE >>

SEC. 266. EXEMPTION.

This title shall not apply to administrative actions with direct spending cost of less than—

(1) $1,000,000,000 over the 10-year period beginning with the current year; or

(2) $100,000,000 in any given year during such 10-year period.

<< 5 USCA § 551 NOTE >>

SEC. 267. JUDICIAL REVIEW.

No determination, finding, action, or omission under this title shall be subject to judicial review.

<< 5 USCA § 551 NOTE >>

SEC. 268. SUNSET.

This title shall expire on December 31, 2024.

<< 5 USCA § 551 NOTE >>

SEC. 269. GAO REPORT.

Within 180 days of the date of enactment of this Act, the Comptroller General shall issue a report on the implementation of this title.

<< 5 USCA § 551 NOTE >>

SEC. 270. CONGRESSIONAL REVIEW ACT COMPLIANCE ASSESSMENT.

<< 5 USCA § 801 >>

Section 801(a)(2)(A) of title 5, United States Code, is amended by inserting after "compliance with procedural steps required by paragraph (1)(B)" the following: ", and shall in addition include an assessment of the agency's compliance with such requirements of the Administrative Pay-As-You-Go Act of 2023 as may be applicable".

TITLE IV—TERMINATION OF SUSPENSION OF PAYMENTS ON FEDERAL STUDENT LOANS; RESUMPTION OF ACCRUAL OF INTEREST AND COLLECTIONS

<< 20 USCA § 1001 NOTE >>

SEC. 271. TERMINATION OF SUSPENSION OF PAYMENTS ON FEDERAL STUDENT LOANS; RESUMPTION OF ACCRUAL OF INTEREST AND COLLECTIONS.

(a) IN GENERAL.—Sixty days after June 30, 2023, the waivers and modifications described in subsection (c) shall cease to be effective.

(b) PROHIBITION.—Except as expressly authorized by an Act of Congress enacted after the date of enactment of this Act, the Secretary of Education may not use any authority to implement an extension of any executive action or rule specified in subsection (c).

***34**

(c) WAIVERS AND MODIFICATIONS DESCRIBED.—The waivers and modifications described in this subsection are the waivers and modifications of statutory and regulatory provisions relating to an extension of the suspension of payments on certain loans and waivers of interest on such loans under section 3513 of the CARES Act (20 U.S.C. 1001 note)—

(1) described by the Department of Education in the Federal Register on October 12, 2022 (87 Fed. Reg. 61513 et seq.); and

(2) most recently extended in the announcement by the Department of Education on November 22, 2022.

DIVISION C—GROW THE ECONOMY

TITLE I—TEMPORARY ASSISTANCE TO NEEDY FAMILIES

SEC. 301. RECALIBRATION OF THE CASELOAD REDUCTION CREDIT.

<< 42 USCA § 607 >>

Section 407(b)(3) of the Social Security Act (42 U.S.C. 607(b)(3)) is amended in each of subparagraphs (A)(ii) and (B), by striking "2005" and inserting "2015".

SEC. 302. PILOT PROJECTS FOR PROMOTING ACCOUNTABILITY BY MEASURING WORK OUTCOMES.

Section 411 of the Social Security Act (42 U.S.C. 611) is amended by adding at the end the following:

<< 42 USCA § 611 >>

"(e) PILOT PROJECTS FOR PROMOTING ACCOUNTABILITY BY MEASURING WORK OUTCOMES.—

"(1) IN GENERAL.—The Secretary shall carry out a pilot program under which the Secretary may select up to 5 States to which a grant is made under section 403(a) for a fiscal year to negotiate performance benchmarks for work and family outcomes for recipients of assistance under the State program funded under this part, and programs funded with qualified State expenditures. The Secretary shall issue guidance on how States apply for participation in the pilot. The benchmarks shall include—

"(A) the percentage of work-eligible individuals under the State program funded under this part who are in unsubsidized employment during the 2nd quarter after exiting the program;

"(B) the level of earnings of such individuals in the 2nd and 4th quarters after exit; and

"(C) other indicators of family stability and well-being as established by the Secretary.

"(2) LEVEL OF PERFORMANCE BENCHMARK.—The Secretary and a State selected under paragraph (1) shall agree to the requisite level of performance on these benchmarks after developing baseline data in the State and comparative data in other States.

"(3) FAILURE OF STATE TO MEET BENCHMARK.—If a State fails to meet a measured benchmark standard agreed to under paragraph (2) for 2 successive fiscal years, the State, in order ***35** to continue in the pilot shall enter into a plan with the Secretary to achieve the required level of performance or, if mutually agreed to, adjust the benchmark based on new information about the feasibility of meeting such benchmark.

"(4) DURATION.—The pilot under this subsection shall be in effect for 6 fiscal years, with one year to establish benchmark data and negotiate targets and five years to measure performance against the targets, and shall supersede the requirements under section 407 for such fiscal years, notwithstanding any other provision of law.

"(5) APPLICATION OF PENALTY FOR FAILURE TO REDUCE ASSISTANCE FOR RECIPIENTS REFUSING WITHOUT GOOD CAUSE TO WORK.—For purposes of section 409(a)(14), a State operating a pilot must have a system for reducing the amount of assistance payable to a family if an individual refuses, without good cause (including for reasons described in 407(e)(2)), to engage in any such activities as the State has required of such an individual. A State without such a system shall be considered to have failed to comply with the requirements of section 407(e) for so long as the failure to comply continues.

"(6) COLLECTION OF PERFORMANCE DATA.—Each State selected under paragraph (1), in consultation with the Secretary, shall collect and submit to the Secretary data on the performance of the State operating such a pilot program.

"(7) REPORTS.—

"(A) INITIAL REPORT.—Not later than 12 months after the date of the enactment of this subsection the Secretary shall submit a report to Congress on the status of the program under this section.

"(B) FINAL REPORT.—Not later than 12 months after the date on which the programs under this section have terminated, the Secretary shall submit a comprehensive report to Congress on outcomes achieved under such programs.".

SEC. 303. ELIMINATION OF SMALL CHECKS SCHEME.

Section 407(b) of the Social Security Act (42 U.S.C. 607(b)) is amended by adding at the end the following:

<< 42 USCA § 607 >>

"(6) SPECIAL RULE REGARDING CALCULATION OF THE MINIMUM PARTICIPATION RATE.—The Secretary shall determine participation rates under this section without regard to any individual engaged in work in a family that receives no assistance under this part and less than $35 in assistance funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)).".

SEC. 304. REPORTING OF WORK OUTCOMES.

Section 411 of the Social Security Act (42 U.S.C. 611), as amended by section 302, is amended by adding at the end the following:

<< 42 USCA § 611 >>

"(f) REPORTING PERFORMANCE INDICATORS.—

"(1) IN GENERAL.—Each State, in consultation with the Secretary, shall collect and submit to the Secretary the information necessary for each indicator described in paragraph (2), for fiscal year 2025 and each fiscal year thereafter.

"(2) INDICATORS OF PERFORMANCE.—The indicators described in this paragraph for a fiscal year are the following:

***36**

"(A) The percentage of individuals who were work-eligible individuals as of the time of exit from the program, who are in unsubsidized employment during the second quarter after the exit.

"(B) The percentage of individuals who were work-eligible individuals who were in unsubsidized employment in the second quarter after the exit, who are also in unsubsidized employment during the fourth quarter after the exit.

"(C) The median earnings of individuals who were work-eligible individuals as of the time of exit from the program, who are in unsubsidized employment during the second quarter after the exit.

"(D) The percentage of individuals who have not attained 24 years of age, are attending high school or enrolled in an equivalency program, and are work-eligible individuals or were work-eligible individuals as of the time of exit from the program, who obtain a high school degree or its recognized equivalent while receiving assistance under the State program funded under this part or within 1 year after the exit.

"(3) DEFINITION OF EXIT.—In paragraph (2), the term 'exit' means, with respect to a State program funded under this part, ceases to receive assistance under the program funded by this part.

"(4) REGULATIONS.—In order to ensure nationwide comparability of data, the Secretary, after consultation with the Secretary of Labor and with States, shall issue regulations governing the reporting of performance indicators under this subsection.".

<< 42 USCA § 607 NOTE >>

SEC. 305. EFFECTIVE DATE.

The amendments made by this title shall take effect on October 1, 2024, except for sections 301 and 303 which shall take effect on October 1, 2025.

TITLE II—SNAP EXEMPTIONS

SEC. 311. MODIFICATION OF WORK REQUIREMENT EXEMPTIONS.

(a) IN GENERAL.—Section 6(o)(3) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(6)(o)(3)) is amended to read as follows:

(1) by striking subparagraph (A) and inserting the following:

<< 7 USCA § 2015 >>

"(A)(i) under 18 years of age; or

"(ii) in—

"(I) fiscal year 2023 over 51 years of age;

"(II) fiscal year 2024 over 53 years of age;

"(III) fiscal year 2025 and each fiscal year thereafter over 55 years of age;";

<< 7 USCA § 2015 >>

(2) in subparagraph (D), by striking "or" at the end;

<< 7 USCA § 2015 >>

(3) in subparagraph (E), by striking the period at the end and inserting ";"; and

(4) adding at the end the following:

<< 7 USCA § 2015 >>

"(F) a homeless individual;

<< 7 USCA § 2015 >>

"(G) a veteran; or

***37**

<< 7 USCA § 2015 >>

"(H) an individual who is 24 years of age or younger and who was in foster care under the responsibility of a State on the date of attaining 18 years of age or such higher age as the State has elected under section 475(8)(B)(iii) of the Social Security Act (42 U.S.C. 675(8)(B)(iii))."

<< 7 USCA § 2015 NOTE >>

(b) APPLICATION.—

(1) STATE AGENCY.—A state agency shall apply section 6(o)(3) of the Food and Nutrition Act of 2008, as amended by subsection (a), to any application for initial certification or recertification received starting 90 days after the date of enactment of this Act.

(2) SUNSET.—The amendments made by subsection (a) shall cease to have effect on October 1, 2030.

SEC. 312. MODIFICATION OF GENERAL EXEMPTIONS.

Section 6(o)(6) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(6)) is amended—

(1) in subparagraph (E)—

<< 7 USCA § 2015 >>

(A) in the heading, by striking "SUBSEQUENT FISCAL YEARS" and inserting "FISCAL YEARS 2020 THROUGH 2023";

<< 7 USCA § 2015 >>

(B) by striking "(F) through (H)" and inserting "(G) through (I)"; and

<< 7 USCA § 2015 >>

(C) by striking "year," and inserting "year through fiscal year 2023,";

<< 7 USCA § 2015 >>

(2) in subparagraph (F), by striking "or (E)" and inserting ", (E) or (F)";

<< 7 USCA § 2015 >>

(3) by redesignating subparagraphs (F), (G), and (H) as subparagraphs (G), (H), and (I), respectively;

(4) by inserting after subparagraph (E) the following:

<< 7 USCA § 2015 >>

"(F) SUBSEQUENT FISCAL YEARS.—Subject to subparagraphs (G) through (I), for fiscal years 2024 and each subsequent fiscal year, a State agency may provide a number of exemptions such that the average monthly number of exemptions in effect during the fiscal year does not exceed 8 percent of the number of covered individuals in the State, as estimated by the Secretary under subparagraph (C), adjusted by the Secretary to reflect changes in the State's caseload and the Secretary's estimate of changes in the proportion of members of households that receive supplemental nutrition assistance program benefits covered by waivers granted under paragraph (4)";

<< 7 USCA § 2015 >>

(5) in subparagraph (B), by striking "(H)" and inserting "(I)";

<< 7 USCA § 2015 >>

(6) in subparagraph (C), by striking "(F) and (H)" and inserting "(G) and (I)";

<< 7 USCA § 2015 >>

(7) in subparagraph (D), by striking "(F) through (H)" and inserting "(G) through (I)"; and

(8) by adding at end the following:

<< 7 USCA § 2015 >>

"(J) RULE OF CONSTRUCTION FOR EXEMPTION ADJUSTMENT.—During fiscal year 2024 and each subsequent fiscal year, nothing in this paragraph shall be interpreted to allow a State agency to accumulate unused exemptions to be provided beyond the subsequent fiscal year.".

***38**

SEC. 313. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM UNDER THE FOOD AND NUTRITION ACT OF 2008.

Section 2 of the Food and Nutrition Act of 2008 (7 U.S.C. 2011) is amended by adding at end the following:

<< 7 USCA § 2011 >>

"That program includes as a purpose to assist low-income adults in obtaining employment and increasing their earnings. Such employment and earnings, along with program benefits, will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.".

<< 7 USCA § 2015 NOTE >>

SEC. 314. WAIVER TRANSPARENCY.

Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall make public all available State waiver requests, including all supporting data from the State, and agency approvals of such requests, including relevant documentation on the utilization of waivers authorized under Section 6(o)(4)(A) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(4)(A)).

TITLE III—PERMITTING REFORM

SEC. 321. BUILDER ACT.

(a) PARAGRAPH (2) OF SECTION 102.—Section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) is amended—

<< 42 USCA § 4332 >>

(1) in subparagraph (A), by striking "insure" and inserting "ensure";

<< 42 USCA § 4332 >>

(2) in subparagraph (B), by striking "insure" and inserting "ensure";

(3) in subparagraph (C)—

<< 42 USCA § 4332 >>

(A) by inserting "consistent with the provisions of this Act and except where compliance would be inconsistent with other statutory requirements," before "include in every";

<< 42 USCA § 4332 >>

(B) by striking clauses (i) through (v) and inserting the following:

"(i) reasonably foreseeable environmental effects of the proposed agency action;

"(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

"(iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;

"(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

"(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented."; and

***39**

<< 42 USCA § 4332 >>

(C) by striking "the responsible Federal official" and inserting "the head of the lead agency";

<< 42 USCA § 4332 >>

(4) in subparagraph (D), by striking "Any" and inserting "any";

<< 42 USCA § 4332 >>

(5) by redesignating subparagraphs (D) through (I) as subparagraphs (G) through (L), respectively;

(6) by inserting after subparagraph (C) the following:

<< 42 USCA § 4332 >>

"(D) ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document;

<< 42 USCA § 4332 >>

"(E) make use of reliable data and resources in carrying out this Act;

<< 42 USCA § 4332 >>

"(F) consistent with the provisions of this Act, study, develop, and describe technically and economically feasible alternatives;"; and

<< 42 USCA § 4332 >>

(7) in subparagraph (I), as amended, by inserting "consistent with the provisions of this Act," before "recognize".

(b) NEW SECTIONS.—Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is amended by adding at the end the following:

<< 42 USCA § 4336 >>

"SEC. 106. PROCEDURE FOR DETERMINATION OF LEVEL OF REVIEW.

"(a) THRESHOLD DETERMINATIONS.—An agency is not required to prepare an environmental document with respect to a proposed agency action if—

"(1) the proposed agency action is not a final agency action within the meaning of such term in chapter 5 of title 5, United States Code;

"(2) the proposed agency action is excluded pursuant to one of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 109 of this Act, or another provision of law;

"(3) the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law; or

"(4) the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action.

"(b) LEVELS OF REVIEW.—

"(1) ENVIRONMENTAL IMPACT STATEMENT.—An agency shall issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment.

"(2) ENVIRONMENTAL ASSESSMENT.—An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the agency finds that the proposed agency action is excluded pursuant to one of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 109 of this Act, or another provision of law. Such environmental assessment shall be a concise public document prepared by a Federal agency to set forth the basis of such agency's finding ***40** of no significant impact or determination that an environmental impact statement is necessary.

"(3) SOURCES OF INFORMATION.—In making a determination under this subsection, an agency—

"(A) may make use of any reliable data source; and

"(B) is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable.

<< 42 USCA § 4336a >>

"SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.

"(a) LEAD AGENCY.—

"(1) DESIGNATION.—

"(A) IN GENERAL.—If there are two or more participating Federal agencies, such agencies shall determine, by letter or memorandum, which agency shall be the lead agency based on consideration of the—

"(i) magnitude of agency's involvement;

"(ii) project approval or disapproval authority;

"(iii) expertise concerning the action's environmental effects;

"(iv) duration of agency's involvement; and

"(v) sequence of agency's involvement.

"(B) JOINT LEAD AGENCIES.—In making a determination under subparagraph (A), the participating Federal agencies may appoint such State, Tribal, or local agencies as joint lead agencies as the involved Federal agencies shall determine appropriate. Joint lead agencies shall jointly fulfill the role described in paragraph (2).

"(2) ROLE.—A lead agency shall, with respect to a proposed agency action—

"(A) supervise the preparation of an environmental document if, with respect to such proposed agency action, there is more than one participating Federal agency;

"(B) request the participation of each cooperating agency at the earliest practicable time;

"(C) in preparing an environmental document, give consideration to any analysis or proposal created by a cooperating agency;

"(D) develop a schedule, in consultation with each cooperating agency, the applicant, and such other entities as the lead agency determines appropriate, for completion of any environmental review, permit, or authorization required to carry out the proposed agency action;

"(E) if the lead agency determines that a review, permit, or authorization will not be completed in accordance with the schedule developed under subparagraph (D), notify the agency responsible for issuing such review, permit, or authorization of the discrepancy and request that such agency take such measures as such agency determines appropriate to comply with such schedule; and

"(F) meet with a cooperating agency that requests such a meeting.

"(3) COOPERATING AGENCY.—The lead agency may, with respect to a proposed agency action, designate any Federal, State, Tribal, or local agency that has jurisdiction by law or ***41** special expertise with respect to any environmental impact involved in a proposal to serve as a cooperating agency. A cooperating agency may, not later than a date specified in the schedule established by the lead agency, submit comments to the lead agency.

"(4) REQUEST FOR DESIGNATION.—Any Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency with respect to a proposed agency action under paragraph (1) may submit a written request for such a designation to a participating Federal agency. An agency that receives a request under this paragraph shall transmit such request to each participating Federal agency and to the Council.

"(5) COUNCIL DESIGNATION.—

"(A) REQUEST.—If the participating Federal agencies are unable to agree on the designation of a lead agency within 45 days of the request under paragraph (4), then the Federal, State, Tribal or local agency or person that is substantially affected by the lack or a designation of a lead agency may request that the Council designate a lead agency. Such request shall consist of—

"(i) a precise description of the nature and extent of the proposed agency action; and

"(ii) a detailed statement with respect to each participating Federal agency and each factor listed in paragraph (1) regarding which agency should serve as lead agency.

"(B) TRANSMISSION.—The Council shall transmit a request received under subparagraph (A) to each participating Federal agency.

"(C) RESPONSE.—A participating Federal agency may, not later than 20 days after the date of the submission of a request under subparagraph (A), submit to the Council a response to such request.

"(D) DESIGNATION.—Not later than 40 days after the date of the submission of a request under subparagraph (A), the Council shall designate the lead agency with respect to the relevant proposed agency action.

"(b) ONE DOCUMENT.—To the extent practicable, if a proposed agency action will require action by more than one Federal agency and the lead agency has determined that it requires preparation of an environmental document, the lead and cooperating agencies shall evaluate the proposal in a single environmental document.

"(c) REQUEST FOR PUBLIC COMMENT.—Each notice of intent to prepare an environmental impact statement under section 102 shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.

"(d) STATEMENT OF PURPOSE AND NEED.—Each environmental document shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.

"(e) PAGE LIMITS.—

"(1) ENVIRONMENTAL IMPACT STATEMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an environmental impact statement shall not exceed 150 pages, not including any citations or appendices.

***42**

"(B) EXTRAORDINARY COMPLEXITY.—An environmental impact statement for a proposed agency action of extraordinary complexity shall not exceed 300 pages, not including any citations or appendices.

"(2) ENVIRONMENTAL ASSESSMENTS.—An environmental assessment shall not exceed 75 pages, not including any citations or appendices.

"(f) SPONSOR PREPARATION.—A lead agency shall prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement under the supervision of the agency. Such agency may provide such sponsor with appropriate guidance and assist in the preparation. The lead agency shall independently evaluate the environmental document and shall take responsibility for the contents.

"(g) DEADLINES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), with respect to a proposed agency action, a lead agency shall complete, as applicable—

"(A) the environmental impact statement not later than the date that is 2 years after the sooner of, as applicable—

"(i) the date on which such agency determines that section 102(2)(C) requires the issuance of an environmental impact statement with respect to such action;

"(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

"(iii) the date on which such agency issues a notice of intent to prepare the environmental impact statement for such action; and

"(B) the environmental assessment not later than the date that is 1 year after the sooner of, as applicable—

"(i) the date on which such agency determines that section 106(b)(2) requires the preparation of an environmental assessment with respect to such action;

"(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

"(iii) the date on which such agency issues a notice of intent to prepare the environmental assessment for such action.

"(2) DELAY.—A lead agency that determines it is not able to meet the deadline described in paragraph (1) may extend such deadline, in consultation with the applicant, to establish a new deadline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.

"(3) PETITION TO COURT.—

"(A) RIGHT TO PETITION.—A project sponsor may obtain a review of an alleged failure by an agency to act in accordance with an applicable deadline under this section by filing a written petition with a court of competent jurisdiction seeking an order under subparagraph (B).

"(B) COURT ORDER.—If a court of competent jurisdiction finds that an agency has failed to act in accordance with an applicable deadline, the court shall set a schedule and deadline for the agency to act as soon as practicable, which ***43** shall not exceed 90 days from the date on which the order of the court is issued, unless the court determines a longer time period is necessary to comply with applicable law.

"(h) REPORT.—

"(1) IN GENERAL.—The head of each lead agency shall annually submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that—

"(A) identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in subsection (g); and

"(B) provides an explanation for any failure to meet such deadline.

"(2) INCLUSIONS.—Each report submitted under paragraph (1) shall identify, as applicable—

"(A) the office, bureau, division, unit, or other entity within the Federal agency responsible for each such environmental assessment and environmental impact statement;

"(B) the date on which—

"(i) such lead agency notified the applicant that the application to establish a right-of-way for the major Federal action is complete;

"(ii) such lead agency began the scoping for the major Federal action; or

"(iii) such lead agency issued a notice of intent to prepare the environmental assessment or environmental impact statement for the major Federal action; and

"(C) when such environmental assessment and environmental impact statement is expected to be complete.

<< 42 USCA § 4336b >>

"SEC. 108. PROGRAMMATIC ENVIRONMENTAL DOCUMENT.

"When an agency prepares a programmatic environmental document for which judicial review was available, the agency may rely on the analysis included in the programmatic environmental document in a subsequent environmental document for related actions as follows:

"(1) Within 5 years and without additional review of the analysis in the programmatic environmental document, unless there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.

"(2) After 5 years, so long as the agency reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid.

<< 42 USCA § 4336c >>

"SEC. 109. ADOPTION OF CATEGORICAL EXCLUSIONS.

"An agency may adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established consistent with this paragraph. The agency shall—

"(1) identify the categorical exclusion listed in another agency's NEPA procedures that covers a category of proposed actions or related actions;

***44**

"(2) consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate;

"(3) identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and

"(4) document adoption of the categorical exclusion.

<< 42 USCA § 4336d >>

"SEC. 110. E-NEPA.

"(a) PERMITTING PORTAL STUDY.—The Council on Environmental Quality shall conduct a study and submit a report to Congress within 1 year of the enactment of this Act on the potential for online and digital technologies to address delays in reviews and improve public accessibility and transparency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) including, but not limited to, a unified permitting portal that would—

"(1) allow applicants to—

"(A) submit required documents or materials for their project in one unified portal;

"(B) upload and collaborate with the applicable agencies to edit documents in real-time, as required;

"(C) upload and display visual features such as video, animation, geographic information system displays, and three-dimensional renderings; and

"(D) track the progress of individual applications;

"(2) include a cloud based, digital tool for more complex reviews that would enhance interagency coordination in consultation by—

"(A) centralizing, across all necessary agencies, the data, visuals, and documents, including but not limited to geographic information system displays, other visual renderings, and completed reports and analyses necessary for reviews;

"(B) streamlining communications between all necessary agencies and the applicant;

"(C) allowing for comments and responses by and to all necessary agencies in one unified portal;

"(D) generating analytical reports to aid in organizing and cataloguing public comments; and

"(E) be accessible on mobile devices;

"(3) boost transparency in agency processes and present information suitable for a lay audience, including but not limited to—

"(A) scientific data and analysis; and

"(B) anticipated agency process and timeline; and

"(4) include examples describing how at least five permits would be reviewed and processed through this portal.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $500,000 for the Council on Environmental Quality to carry out the study directed by this section.

<< 42 USCA § 4336e >>

"SEC. 111. DEFINITIONS.

"In this title:

"(1) CATEGORICAL EXCLUSION.—The term 'categorical exclusion' means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C).

***45**

"(2) COOPERATING AGENCY.—The term 'cooperating agency' means any Federal, State, Tribal, or local agency that has been designated as a cooperating agency under section 107(a)(3).

"(3) COUNCIL.—The term 'Council' means the Council on Environmental Quality established in title II.

"(4) ENVIRONMENTAL ASSESSMENT.—The term 'environmental assessment' means an environmental assessment prepared under section 106(b)(2).

"(5) ENVIRONMENTAL DOCUMENT.—The term 'environmental document' means an environmental impact statement, an environmental assessment, or a finding of no significant impact.

"(6) ENVIRONMENTAL IMPACT STATEMENT.—The term 'environmental impact statement' means a detailed written statement that is required by section 102(2)(C).

"(7) FINDING OF NO SIGNIFICANT IMPACT.—The term 'finding of no significant impact' means a determination by a Federal agency that a proposed agency action does not require the issuance of an environmental impact statement.

"(8) PARTICIPATING FEDERAL AGENCY.—The term 'participating Federal agency' means a Federal agency participating in an environmental review or authorization of an action.

"(9) LEAD AGENCY.—The term 'lead agency' means, with respect to a proposed agency action—

"(A) the agency that proposed such action; or

"(B) if there are 2 or more involved Federal agencies with respect to such action, the agency designated under section 107(a)(1).

"(10) MAJOR FEDERAL ACTION.—

"(A) IN GENERAL.—The term 'major Federal action' means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

"(B) EXCLUSION.—The term 'major Federal action' does not include—

"(i) a non-Federal action—

"(I) with no or minimal Federal funding; or

"(II) with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project;

"(ii) funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

"(iii) loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action;

"(iv) business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act (U.S.C. 636(a)), or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);

"(v) bringing judicial or administrative civil or criminal enforcement actions;

***46**

"(vi) extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; or

"(vii) activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority.

"(11) PROGRAMMATIC ENVIRONMENTAL DOCUMENT.—The term 'programmatic environmental document' means an environmental impact statement or environmental assessment analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions.

"(12) PROPOSAL.—The term 'proposal' means a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects.

"(13) SPECIAL EXPERTISE.—The term 'special expertise' means statutory responsibility, agency mission, or related program experience.".

SEC. 322. INTERREGIONAL TRANSFER CAPABILITY DETERMINATION STUDY.

(a) IN GENERAL.—The Electric Reliability Organization (as that term is defined in section 215(a)(2) of the Federal Power Act), in consultation with each regional entity (as that term is defined in section 215(a)(7) of such Act) and each transmitting utility (as that term is defined in section 3(23) of such Act) that has facilities interconnected with a transmitting utility in a neighboring transmission planning region, shall conduct a study of total transfer capability as defined in section 37.6(b)(1)(vi) of title 18, Code of Federal Regulations, between transmission planning regions that contains the following:

(1) Current total transfer capability, between each pair of neighboring transmission planning regions.

(2) A recommendation of prudent additions to total transfer capability between each pair of neighboring transmission planning regions that would demonstrably strengthen reliability within and among such neighboring transmission planning regions.

(3) Recommendations to meet and maintain total transfer capability together with such recommended prudent additions to total transfer capability between each pair of neighboring transmission planning regions.

(b) PUBLICATION.—Not later than 18 months after the date of enactment of this Act, the North American Electric Reliability Corporation shall deliver a study to Federal Energy Regulatory Commission, which shall publish the study required in subsection (a) in the Federal Register and seek public comments.

(c) REPORT.—Not later than 12 months after the end of the public comment period in subsection (b), the Federal Energy Regulatory Commission shall submit a report on its conclusions to Congress and include recommendations, if any, for statutory changes.

SEC. 323. PERMITTING STREAMLINING FOR ENERGY STORAGE.

<< 42 USCA § 4370m >>

Section 41001(6)(A) of the FAST Act (42 U.S.C. 4370m(6)(A)) is amended by inserting "energy storage," before "or any other sector".

***47**

SEC. 324. EXPEDITING COMPLETION OF THE MOUNTAIN VALLEY PIPELINE.

(a) DEFINITION OF MOUNTAIN VALLEY PIPELINE.—In this section, the term "Mountain Valley Pipeline" means the Mountain Valley Pipeline project, as generally described and approved in Federal Energy Regulatory Commission Docket Nos. CP16–10, CP19–477, and CP21–57.

(b) CONGRESSIONAL FINDINGS AND DECLARATION.—The Congress hereby finds and declares that the timely completion of construction and operation of the Mountain Valley Pipeline is required in the national interest. The Mountain Valley Pipeline will serve demonstrated natural gas demand in the Northeast, Mid-Atlantic, and Southeast regions, will increase

the reliability of natural gas supplies and the availability of natural gas at reasonable prices, will allow natural gas producers to access additional markets for their product, and will reduce carbon emissions and facilitate the energy transition.

(c) APPROVAL AND RATIFICATION AND MAINTENANCE OF EXISTING AUTHORIZATIONS.—Notwithstanding any other provision of law—

(1) Congress hereby ratifies and approves all authorizations, permits, verifications, extensions, biological opinions, incidental take statements, and any other approvals or orders issued pursuant to Federal law necessary for the construction and initial operation at full capacity of the Mountain Valley Pipeline; and

(2) Congress hereby directs the Secretary of the Army, the Federal Energy Regulatory Commission, the Secretary of Agriculture, and the Secretary of the Interior, and other agencies as applicable, as the case may be, to continue to maintain such authorizations, permits, verifications, extensions, biological opinions, incidental take statements, and any other approvals or orders issued pursuant to Federal law necessary for the construction and initial operation at full capacity of the Mountain Valley Pipeline.

(d) EXPEDITED APPROVAL.—Notwithstanding any other provision of law, not later than 21 days after the date of enactment of this Act and for the purpose of facilitating the completion of the Mountain Valley Pipeline, the Secretary of the Army shall issue all permits or verifications necessary—

(1) to complete the construction of the Mountain Valley Pipeline across the waters of the United States; and

(2) to allow for the operation and maintenance of the Mountain Valley Pipeline.

(e) JUDICIAL REVIEW.—

(1) Notwithstanding any other provision of law, no court shall have jurisdiction to review any action taken by the Secretary of the Army, the Federal Energy Regulatory Commission, the Secretary of Agriculture, the Secretary of the Interior, or a State administrative agency acting pursuant to Federal law that grants an authorization, permit, verification, biological opinion, incidental take statement, or any other approval necessary for the construction and initial operation at full capacity of the Mountain Valley Pipeline, including the issuance of any authorization, permit, extension, verification, biological opinion, incidental take statement, or other approval described in subsection (c) or (d) of this section for the Mountain Valley Pipeline, ***48** whether issued prior to, on, or subsequent to the date of enactment of this section, and including any lawsuit pending in a court as of the date of enactment of this section.

(2) The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any claim alleging the invalidity of this section or that an action is beyond the scope of authority conferred by this section.

(f) EFFECT.—This section supersedes any other provision of law (including any other section of this Act or other statute, any regulation, any judicial decision, or any agency guidance) that is inconsistent with the issuance of any authorization, permit, verification, biological opinion, incidental take statement, or other approval for the Mountain Valley Pipeline.

DIVISION D—INCREASE IN DEBT LIMIT

<< 31 USCA § 3101 NOTE >>

SEC. 401. TEMPORARY EXTENSION OF PUBLIC DEBT LIMIT.

(a) IN GENERAL.—Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on January 1, 2025.

(b) SPECIAL RULE RELATING TO OBLIGATIONS ISSUED DURING EXTENSION PERIOD.—Effective on January 2, 2025, the limitation in effect under section 3101(b) of title 31, United States Code, shall be increased to the extent that—

(1) the face amount of obligations issued under chapter 31 of such title and the face amount of obligations whose principal and interest are guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) outstanding on January 2, 2025, exceeds

(2) the face amount of such obligations outstanding on the date of the enactment of this Act.

(c) RESTORING CONGRESSIONAL AUTHORITY OVER THE NATIONAL DEBT.—

(1) EXTENSION LIMITED TO NECESSARY OBLIGATIONS.—An obligation shall not be taken into account under subsection (b)(1) unless the issuance of such obligation was necessary to fund a commitment incurred pursuant to law by the Federal Government that required payment before January 2, 2025.

(2) PROHIBITION ON CREATION OF CASH RESERVE DURING EXTENSION PERIOD.—The Secretary of the Treasury shall not issue obligations during the period specified in subsection (a) for the purpose of increasing the cash balance above normal ***49** operating balances in anticipation of the expiration of such period.

Approved June 3, 2023.
LEGISLATIVE HISTORY—H.R. 3746:

CONGRESSIONAL RECORD, Vol. 169 (2023):

May 31, considered and passed House.

June 1, considered and passed Senate.

PL 118-5, 2023 HR 3746

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UNITED STATES COURT OF APPEALS
For the First Circuit
Appeal No. 23-1867

CERTIFICATE OF SERVICE

I, Shannon Liss-Riordan, hereby certify that this brief was filed through the United States Court of Appeals for the First Circuit ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), including the following counsel of record for Defendants–Appellees:

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Dated: April 9, 2024

United States Court of Appeals
For the First Circuit

No. 23-1867

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.,

Plaintiff - Appellant,

v.

JANET LOUISE YELLEN, in her official capacity as Secretary of Treasury; JOSEPH ROBINETTE BIDEN, JR., in his official capacity as President of the United States,

Defendants - Appellees.

APPELLEES' BRIEFING NOTICE

Issued: April 11, 2024

Appellees' brief must be filed by **May 9, 2024**.

The deadline for filing appellant's reply brief will run from service of appellees' brief in accordance with Fed. R. App. P. 31 and 1st Cir. R. 31.0. Parties are advised that extensions of time are not normally allowed without timely motion for good cause shown.

Presently, it appears that this case may be ready for argument or submission at the coming **July/August, 2024** session.

The First Circuit Rulebook, which contains the Federal Rules of Appellate Procedure, First Circuit Local Rules and First Circuit Internal Operating Procedures, is available on the court's website at www.ca1.uscourts.gov. Please note that the court's website also contains tips on filing briefs, including a checklist of what your brief must contain.

Failure to file a timely brief in compliance with the federal and local rules could result in the appellee not being heard at oral argument. See 1st Cir. R. 45.0.

Maria R. Hamilton, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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