

The Debt Ceiling Debate: A Major Implication Ignored

Law360, New York (July 27, 2011) -- Congressional leaders have postponed a vote that had been expected Wednesday, July 27, on the latest House Republican proposal to address the debt ceiling crisis and avert a government default on Aug. 2. Despite competing speeches by President Barack Obama and House Speaker John Boehner that aired nationally earlier this week, there has been little movement on a deal.

In fact, even as Senate Republican Leader Mitch McConnell, R-K y., called for renewed negotiations with Obama and indicated his party must be willing to offer some compromise, each round of talks seems to generate a fresh round of hostility from either side — and mounting frustration among the American people.

With all of the argument and commentary being breathlessly expended in the current Washington drama of the debt ceiling crisis, one potentially significant aspect seems to have been lost in the din. That is, our system of laws holds the federal government accountable for its financial defaults in the same way as any other person or company.

You, yourself, are ultimately held responsible if you just flat-out fail to pay your home mortgage, utility bills, or other financial commitments. So is the federal government.

In an often-overlooked brick building on the east side of Lafayette Square across from the White House sits the U.S. Court of Federal Claims. Although perhaps not well known beyond the Beltway and outside of government contractor circles, the Court of Federal Claims is the business and commercial forum where the federal government is forced to honor its financial commitments.

The range of lawsuits heard by that court is as diverse and varied as the type of financial commitments that the federal government makes, and, on occasion, breaks — government contracts, but also obligations to savings and loans from one of the last financial crises in the 1980s, Native American trust obligations, benefits and pay for government workers and veterans, and federal obligations to accept nuclear waste, to name just a few.

The panoply of scenarios being bandied about in connection with a looming failure to raise the debt ceiling all involve the government breaching, in one way or another, financial commitments that it has made to private parties. Those commitments fall comfortably within the sort of enforceable obligations that our system does not allow the government to ignore with impunity.

And, that is true for self-inflicted defaults imposed by actions — or in this case inactions — of Congress. There is a well-settled legal scheme that has been in place for over a century and half to address, and remedy, such breaches. Sooner or later, and in some way, the government's obligations will be enforced.

Payment of judgments from the Court of Federal Claims does not depend upon current congressional appropriations — our predecessors had the foresight to remove that potential for mischief. Inscribed in the marble above the entrance to the court is the following quote from Abraham Lincoln: "It is as much the duty of the government to render prompt justice against itself in favor of citizens, as it is to administer the same between private individuals."

That duty is an integral part of our system of laws and responsibilities. And, enforcement of that duty may well present a dramatic second act to the debt ceiling crisis, depending upon the resolution of the current political stalemate in Washington.

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