

# The Super Committee: What it Means for Government Contractors and Healthcare Providers Mark Busching

September 14, 2011

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experience, creativity, results

Mike Gill

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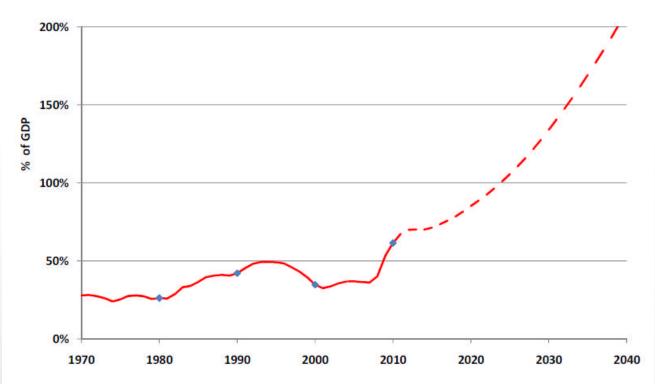
Florence Prioleau



### Federal Debt Has Exploded Since 2001

and if unchecked will crowd out the economy

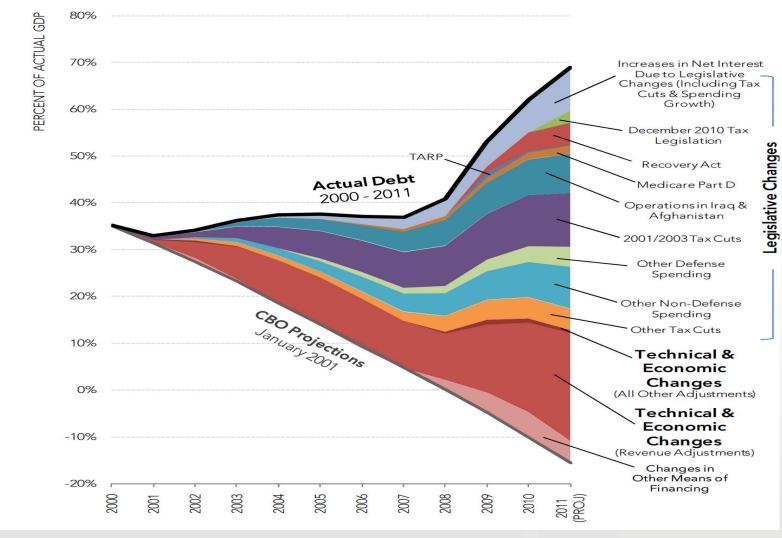
### Debt Held By The Public



Source: CBO's "Alternative Fiscal Scenario" constructed from the August 2010 Budget and Economic Outlook, additionally assuming that troops in Iraq and Afghanistan are reduced to 30,000 by 2013.

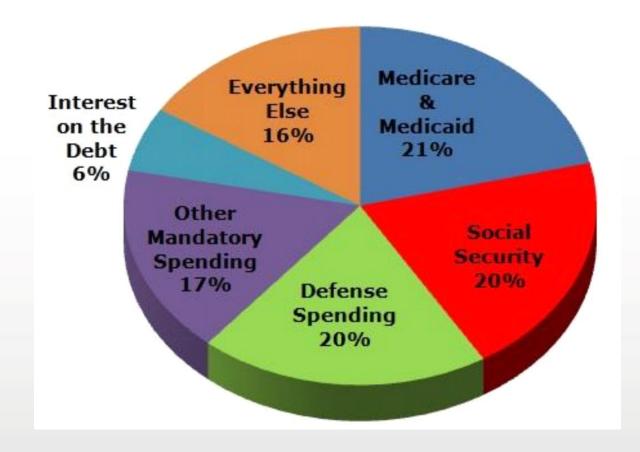


# No single thing can be blamed - policy choices, demographics, and the economy all played a part





### 2010 Budget Shows Few Areas to Cut





### **Prelude to the Debt Fight**

- The 112<sup>th</sup> Congress has been marked by discord
  - President Obama on extending Bush tax cuts
  - Failure to pass a budget
  - Extension of the Continuing Resolution
    - √ Came within minutes of a government shutdown
    - ✓Announced \$80+ billion in savings, in actuality little more than \$5 billion
- Perceived failures of those disputes set stage for bitter negotiations



### The Debt Deal

- Cut \$917 billion over ten years
- Sets up a mechanism for at least \$1.2–1.5 trillion in additional savings
- Forces a symbolic vote on a Balanced Budget Amendment
- Creates a Super Committee and a mechanism to fast track it's proposals
- Sequestration if \$1.2 trillion in cuts not reached, with 50% from Defense budget.



### **Pressure to Reach a Deal**

- S&P Downgrade
  - Other raters put U.S. "on notice for possible downgrade"
  - Rating agencies demanding cuts
  - Lack of confidence in political process
- Americans' confidence in government at all time low
  - President Obama disliked 53% disapproval (ABC News/Washington Post)
  - Congress also really disliked 87% disapproval (AP)
    - ✓ Congressional Democrats 68% disapproval
    - √ Congressional Republicans 75% disapproval



# Typical Legislation Increasing The Debt Limit

#### H. J. Res. 45

### One Hundred Eleventh Congress of the United States of America

AT THE SECOND SESSION

Began and held at the City of Washington on Taesday, the fifth day of January, two thousand and ten

#### Boint Resolution

Increasing the statutory limit on the public debt.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$14,294,000,000,000.

### Budget Control Act of 2011 (BCA) (74 pages)

#### TEXT OF BUDGET CONTROL ACT AMENDMENT

#### 1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- 2 (a) Short Title.—This Act may be cited as the
- 3 "Budget Control Act of 2011".
- 4 (b) Table of Contents.—The table of contents for
- 5 this Act is as follows:

See. 1. Short title, table of contents.

See, 2. Severability.

#### TITLE I-TEN-YEAR DISCRETIONARY CAPS WITH SEQUESTER

Sec. 101. Enforcing discretionary spending limits.

See. 102. Definitions.

Sec. 103. Reports and orders.

Sec. 104. Expiration.

Sec. 105. Amendments to the Congressional Bodget and Impoundment Control Act of 1974.

See. 106. Senute budget enforcement.

#### TITLE II-VOTE ON THE BALANCED BUDGET AMENDMENT

See, 201. Vote on the balanced budget amendment.

Sec. 202, Consideration by the other House.

#### TITLE III-DEBT CEILING DISAPPROVAL PROCESS

See. 301. Debt eeiling disapproval process.

Sec. 302. Enforcement of budget goal.

#### TITLE IV-JOINT SELECT COMMITTEE ON DEFICIT REDUCTION

See. 401. Establishment of Joint Scheet Committee.

Sec. 402. Expedited consideration of joint committee recommendations.

See, 403, Funding.

Sec. 404. Rulemaking.

#### TITLE V—PELL GRANT AND STUDENT LOAN PROGRAM CHANGES

See, 501. Federal Pell grants

Sec. 502, Termination of authority to make interest subsidized loans to graduate and professional students.

Sec. 503. Termination of direct loan repayment incentives.

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### **Overview of the BCA - Debt Limit Increases**

- Highlights—Debt ceiling could be increased as much as \$2.4 trillion in stages and tied to certain deficit reduction actions spelled out in the bill. Expected to resolve the default problem until 2013
- Stage One: President given authority to raise the debt ceiling from \$14.294 trillion by \$900 billion —\$400 billion immediately upon enactment, and additional \$500 billion later
  - Requires President to certify that the country is within \$100 billion of breaching cap
  - But, \$500 billion subject to Congressional enactment of joint resolution of disapproval
  - S.J. Res. 25 introduced 9/6/11 "...disapproves of the President's ... authority to increase the debt..."
  - H.J. Res.77 introduced 9/7/11



### **Overview of the BCA - Debt Limit Increases**

- Stage Two: Debt ceiling would be raised by additional \$1.2 trillion if President certifies to Congress that country is within \$100 billion of breaching the cap unless...
  - Congress passes a bill reducing the deficit by more than \$1.2 trillion, then ceiling raised by larger amount up to \$1.5 trillion, or
  - Congress passes a Constitutional amendment to balance the budget, debt ceiling raised by \$1.5 trillion, or
  - Within 15 days of receipt of certification, Congress passes a resolution of disapproval stopping the increase (subject to a Presidential veto).



## Overview of the BCA - Discretionary Spending Limits

- Sets statutory limits or caps on federal discretionary spending for FY 2012 – FY 2021 to be managed through appropriations process
- FY 2012 and FY 2013, total discretionary spending in all accounts limited to \$1.043 trillion and \$1.047 trillion, respectively, divided into security/nonsecurity categories
- Security spending limits: (DoD, DHS, VA, NNSA, intelligence security management account, all accounts in international affairs)
  - FY 2012 \$684B
  - FY 2013 \$686B



# Overview of the BCA - Discretionary Spending Limits

- Non-Security Spending limits: (includes discretionary spending in all other budget accounts)
  - FY 2012 \$359 billion
  - FY 2013 \$361 billion
- BCA sets single cap for all discretionary spending for each of FY 2014 – FY 2021
- If Congressional appropriations action exceeds spending caps on discretionary spending, BCA enforces through sequestration
- CBO estimates total savings from enforcement of the spending caps at \$917 billion over ten years



## Overview of the BCA - Discretionary Spending Limits

- FY 2012 Appropriations
  - No concurrent budget resolution adopted—House acted, Senate did not
  - BCA includes discretionary spending limits for FY 2012
  - None of the individual FY 2012 bills expected to be enacted before September 30 → CR (possibly through end of year in deference to Super Committee's jurisdiction
  - Enacted FY 2011 Discretionary Spending \$1,049,786 trillion
  - BCA FY 2012 Discretionary Cap \$1,043,000 trillion
  - Projected security spending cut \$4.5 billion
- FY 2013 Appropriations
  - OMB has issued budget guidance to agencies directing submission of alternative FY 2013 budget requests that meet targets 5% and 10% below enacted FY 2011 levels
  - First year for which discretionary sequestration would occur



# "Once More into the Breach" The Super Committee

- Joint Select Committee on Deficit Reduction ("Super Committee")
  - "The goal of the Joint Committee shall be to reduce the deficit by at least \$1,500,000,000,000 over the period of fiscal years 2012 to 2021." (Sec. 401(b)(2))
  - Bi-partisan, bi-cameral
  - Jurisdiction "...anything involving money"
  - Has authority to hire staff and funding to defray expenses
  - Super Committee bill must meet requirements of the BCA
  - Anticipates Super Committee and Congressional inaction or deadlock on legislation, so includes provisions to override standing rules of procedure/practice and to expedite action on legislation, and triggers sequestration in event of inaction
  - Public concern about transparency of the Super Committee's work



# **Super Committee Key Actions and Statutory Deadlines**

Date	Event
August 16, 2011	Members and Co-Chairs of the Super Committee must be appointed. The Super Committee will be made up of a total of 12 members, with 6 coming from each chamber. Party leaders will decide who they will assign. Each party in each chamber will assign 3 members. Two Co-Chairs, one appointed by the Senate Majority Leader and the other by the Speaker of the House. Sec. 401(b)(4).
September 16, 2011	The Super Committee must hold its first meeting on or before this date. The Super Committee may hold hearings. Sec. $401(b)(5)(E)(i)$ .
October 14, 2011	Standing committees of the House and Senate to send recommendations for changes in the law to reduce the deficit to the Super Committee for its consideration. Sec. 401(b)(3)(A)(ii).
November 23, 2011	The Super Committee votes on report of its recommendations and proposed legislative language (the Super Committee bill) to be subject to expedited procedures. Super Committee bill must be approved by a majority of those on the Super Committee. Sec. 401(b)(3)(B).
December 23, 2011	Deadline for the House and Senate to hold a final vote on passage of the Super Committee bill by an up-or-down vote pursuant to an expedited process (i.e., no amendments, etc.). Sec. 402(b)(4).
January 15, 2012	If Super Committee bill is not enacted by that date, sequestration is triggered and discretionary appropriations and direct spending shall be reduced (including defense but exempting Social Security and other specified programs) to meet deficit budget reduction goals. Sec. 302(a).
January 31, 2012	Termination of the Super Committee. Sec. 401(d).



### Members Appointed to the Super Committee



Served on the Deficit Reduction Commission and voted against the Commission report citing, among other things, opposition to tax increases. Considers himself a budget watchdog. Serves on Financial Services Committee.

Jeb Hensarling (R-TX) (Co-chair)



Chair of Ways and Means.
Speculation that his and Baucus' presence signals that taxes could come under consideration though Camp, who has supported tax reform, opposes tax increases. Advocates for Michigan's auto industry and need for job creation. Served on Deficit Reduction Commission and voted against the Commission Report.

Dave Camp (R-MI)



Serves on Senate Appropriations Committee and Budget Committee. Head of the DSCC and is member of the Senate Democratic leadership.

Patty Murray (D-WA) (Co-chair)



Served on the Deficit Reduction Commission, but did not support Commission report. Close to House Democratic leadership; vice chair of the Democratic Caucus. Strong supporter of immigration reform and concerned about jobs. Serves on Ways and Means.

Xavier Becerra (D-CA)



Lobbied hard for his current chairmanship of Energy and Commerce Committee, suggests loyalty to Republican leadership. Supporter of repeal of health care reform. But history of crossing party lines on issues such as CHIP funding. Leader of moderate Republican Tuesday Group in the 90s.

Fred Upton (R-MI)



Current Member of House Democratic leadership. Strong supporter of Social Security and Medicare. Also supports tax revenue to reduce the deficit. Participant in Biden deficit group.

Jim Clyburn (D-SC)



McConnell. Announced his retirement. Participated in previous deficit reduction talks including the Biden deficit group. Outspoken supporter of the military and opponent of tax increases.

Senate Minority Whip who is close to



Serves on the Budget Committee, and close ally of Nancy Pelosi. Expected to support reform of the tax code to close down some tax loopholes and need for more revenue to meet deficit reduction goal. Participated in the Biden budget reduction talks.

Jon Kyl (R-AZ)

Chris Van Hollen (D-MD)

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Freshman Senator was Member of the House from 1993-2005, former Dir. of OMB and U.S. Trade Rep. in last Bush Administration. Member of the Budget Committee. Background suggests a solid understanding of budget and jobs issues. Served on Ways and Means while in the House and was known for working across the aisle to solve problems.



Stature as a senior Senator with liberal leaning and former member of the military makes his participation as deal-maker a possibility.

Rob Portman (R-OH)



Freshman Senator defeated Arlen Specter. Associated with the Tea Party and the Club for Growth. Serves on Banking, Budget and Commerce/Science committees.

John Kerry (D-MA)



Chair of Senate Finance Committee.

Served on the Deficit Reduction

Committee but voted against the final report because of proposed Social

Security and Medicare cuts. Participated in Biden deficit group. Well-versed in tax and health care. Has history of working across the political aisle. Supporter of Bush tax cuts.

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Pat Toomey (R-PA)

Max Baucus (D-MT)

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### **Super Committee - Key Staff**

- Mark Prater Staff Director
  - Senate Finance Committee Staff 20+ years
  - Current position Deputy Staff Director and Minority Chief Tax Counsel
  - Widely liked and acknowledged for tax expertise, as well as expertise in health care
  - Works well with Senators from both parties; praised publicly by Sen. McConnell



### **Super Committee - Key Staff**

- Sarah Kuehl Deputy Staff Director
  - Social Security/Medicare analyst, Senate Budget Committee
  - Sr. LA, former Sen. Bob Kerrey (D-NE)
- Mike Bloomquist General Counsel
  - Deputy General Counsel of Energy and Commerce Committee
  - Lawyer/lobbyist



### **Sequestration - Budget Control Act of 2011**

- New sequestration process automatically cuts spending across-the-board <u>IF</u> Super Committee fails to achieve at least \$1.2 trillion in deficit reduction
- Spending cuts apply to FY 2013 FY 2021
- Both mandatory & discretionary programs

### <u>If triggered – process entails 4 steps</u>

- 1. Discretionary spending limits for FYs 2013-2021 revised into security and non-security
- 2. Reduction amount calculated equally divided between two categories: Defense and Nondefense
- 3. Amounts further divided between discretionary and direct within each category (excluding certain programs)
- 4. Reductions achieved through combination of sequestration and downward adjustment of revised discretionary limits



### **Sequestration - What Gets Cut**

- Spending cut trigger Cannot raise any taxes
- Won't Cut: Social Security, veterans' benefits, civilian and military retirement, and all low-income subsidies including Medicaid and the "welfare" programs (food stamps, SSI, etc.) would be exempt from the trigger. Net Interest payments would also be exempt.
- Revises Statutory Limits on Discretionary Spending
  - (1) to redefine the security and nonsecurity categories; and
  - (2) to set annual limits for each of these categories through FY 2021

Creates firewall to protect 50% Defense 50% NonDefense split

 Will Cut: Defense, all discretionary spending, Medicare, farm subsidies, mandatory housing subsidies, and a few smaller mandatory spending programs



### **Mechanics of Sequestration**

Required Goal: Must cut spending by \$1.2 trillion over nine years.

- 1. Subtract Committee work (if any)
- 2. Subtract interest savings (18% of the total, or \$216 billion) = \$984 billion of spending cuts
- 3. Divide by nine, to allocate the spending reductions equally across the nine FY 2013 – FY 2021 = \$109 billion per year for each of FY 2013 – FY 2021
- 4. Divide by two, to allocate the spending reductions between defense and nondefense functions

### Result: \$54 billion Defense / \$54 billion NonDefense

- 5. Categories are further divided proportionally between discretionary and nonexempt direct spending yielding four amounts of required spending reductions, respectively in:
  - (1) defense discretionary appropriations,
  - (2) defense direct spending,
  - (3) nondefense discretionary appropriations, and
  - (4) nondefense direct spending



### Sequestration - Agency flexibility?

Question: When facing cuts, can affected Departments and Agencies

pick and choose amongst their programs?

Answer: No, the legislative language refers to accounts.

Question: Can Congress?

Answer: Yes, through FY 2014 – FY 2021 Appropriations process

- The required spending reductions are achieved each year (FY 2013 FY 2021) through a combination of a sequestration process and the downward adjustment of the revised discretionary spending limits.
  - Specifically, the reductions required are implemented in three parts
    - ✓ (1) for discretionary spending for FY 2013, a sequestration of budgetary resources in that year;
    - √ (2) for discretionary spending for FY 2014 FY 2021, a downward adjustment of the revised discretionary spending limits; and
    - √ (3) for direct spending, a sequestration of budgetary resources in each year from FY 2013 through FY 2021.



### Sequestration – What does this mean?

- Reductions ranging from 10.0 percent (in 2013) to 8.5 percent (in 2021) in new discretionary appropriations for defense programs
- Reductions ranging from 7.8 percent (in 2013) to 5.5 percent (in 2021) in new discretionary appropriations for nondefense programs
- Reductions ranging from 10.0 percent (in 2013) to 8.5 percent (in 2021) in mandatory budgetary resources for nonexempt defense programs
- Reductions of 2.0 percent each year in most Medicare spending because and reductions ranging from 7.8 percent (in 2013) to 5.5 percent (in 2021) in mandatory budgetary resources for other nonexempt nondefense programs and activities



### **Defense Cuts**

- Will be one of, if not the most, contentious issue
- The White House worked on a deal that cut \$350 billion from the defense budget over a 10 year period.
- Defense Secretary Leon Panetta communicated to the troops that the cuts were in line with what he was anticipating
- Joint Chiefs of Staff Chairman Adm. Mike Mullen has said that "programs that can't meet schedule, that can't meet cost ... requirements are very much in jeopardy and will be very much under scrutiny."



### **Defense – Failure is Not an Option**

- The real issue is not the cuts that they already agreed to but the additional cuts, nearly \$500 billion, that will be needed if a deal isn't reached
- General agreement that if sequestration occurs it would be devastating to military readiness
- Defense Secretary Leon Panetta has described the cuts as the "doomsday mechanism" and said that "[I]t would result in hollowing out the force. It would terribly weaken our ability to respond to the threats in the world"



### **Defense – Failure is Not an Option**

- His message is resonating and is adding significant pressure on the Super Committee to get a deal
- A lot of members of the Super Committee have defense interest in their states
- Senator Kyl has indicated that he would "quit" the Super Committee if the military were subject to further cuts and would "do [his] best to see to it that it never took effect"



### Defense - What is going to be cut?

 Too early in the process to say what specific programs are going to be cut



# Previous Cost Reduction Proposals Defense

Proposals	Deficit Reduction Commission <sup>†</sup>	CBO‡	President's FY 2012 Budget
Troop reduction of 275k	•		
Cancel C-17 Transport Airport Production			•
Cancel EP-X Manned Airborne Intelligence, Surveillance, and Reconnaissance Airport			•
Cancel F-35 Alternate Engine			•
Cancel Non-Line of Sight Launch System (NLOS-LS)			•
Cancel SM-2 Block IIIB Missile			•
Cancel Surface Launched Advanced Medium Range Air-to-Air Missile (SLAMRAAM)			•
Cancel F-35 program and purchase F-16 and F/A-18a		•	
Cancel the Marine Corps version of the F-35 fighter jet	•		
Cancel the Navy & Marine Corps' Joint Strike Fighters and Replace with F/A-18E/Fs		•	
Reduce number of aircraft carriers to 10		•	
Reduce number of Navy Air Wings to 9		•	
Substitute F-16 and F/A-18s for half of the Air Force and Navy's planned buys of F-35 fighter jet	•		
Cancel V-22 Osprey tilt-rotor aircraft	•		
Cancel the Navy's Future Maritime Prepositioning Force	•		

<sup>&</sup>lt;sup>†</sup> Report from National Commission on Fiscal Responsibility and Reform, December 2010

<sup>&</sup>lt;sup>‡</sup> CBO, Reducing the Deficit: Spending and Revenue Options, March 2011



# Previous Cost Reduction Proposals Defense

Proposals	Deficit Reduction Commission <sup>†</sup>	CBO‡	President's FY 2012 Budget
Cancel the new Joint Light Tactical Vehicle (JLTV), the Ground Combat Vehicle, and the Joint Tactical Radio.	•		
Cancel Expeditionary Fighting Vehicle (EFV)	•	•	•
Delay fielding Army Ground Combat Vehicle		•	
Cancel Medium Extended Air Defense System (MEADS; theater missile defense)		•	
Cancel Precision Tracking Space System Program (PTSS)		•	
Cancel Virginia Class submarine	•		
Cancel Medium Extended Air Defense System (MEADS; theater missile defense)	•		
Cancel Army surveillance blimp (JLENS)	•		
Research, Development, Test and Evaluation budget	•		
Reduced planned levels of communications and electronic equipment	•		
Reduce planned levels of tactical vehicles	•		
Reduce planned levels of support equipment (i.e. night vision goggles)	•		
Reform TRICARE	•	•	
Reform military retirement	•		

<sup>&</sup>lt;sup>†</sup> Report from National Commission on Fiscal Responsibility and Reform, December 2010

<sup>&</sup>lt;sup>‡</sup> CBO, Reducing the Deficit: Spending and Revenue Options, March 2011



Proposals	Deficit Reduction Commission <sup>†</sup>	CBO‡	President's FY 2012 Budget
Health Care			
Reform the Medicare Sustainable Growth Rate (SGR) for physician payment and require the fix to be offset	•		
Reform or repeal the Class Act	•		
Add a "Public Plan" to the Health Insurance Exchanges		•	
Repeal the individual health insurance mandate		•	
Medicare			
Increase government authority and funding to reduce Medicare fraud	•		
Reform Medicare cost-share rules	•		
Restrict first-dollar coverage in Medicare supplemental insurance	•		
Extend Medicaid drug rebate to dual eligibles in Part D	•		
Reduce excess payments to hospitals for medical education	•		
Cut Medicare payments for bad debts	•		
Accelerate home health savings in ACA	•		
Direct CMS to design and begin implementation of Medicare payment reform pilots, demonstrations, and programs as rapidly as possible and allow successful programs to be expanded without further congressional action	•		
Give the Independent Payment Advisory Board (IPAB) authority to make recommendations regarding hospitals and other exempted providers, thus eliminating provider carve-outs from IPAB	•		

<sup>&</sup>lt;sup>†</sup> Report from National Commission on Fiscal Responsibility and Reform, December 2010

<sup>&</sup>lt;sup>‡</sup> CBO, Reducing the Deficit: Spending and Revenue Options, March 2011



Proposals	Deficit Reduction Commission <sup>†</sup>	CBO‡	President's FY 2012 Budget
Raise the age of eligibility for Medicare to 67		•	
Impose cost sharing for the first 20 days of a stay in a Skilled Nursing Facility		•	
Require a copayment for home health episodes covered by Medicare		•	
Reduce Medicare costs by changing the cost-sharing structures for Medicare and Medigap insurance		•	
Increase the basic premium for Medicare Part B to 35 percent of the program's costs		•	
Reduce Medicare's payment rates across the board in high-spending areas		•	
Eliminate the critical access hospital, Medicare-dependent hospital, and sole community hospital programs in Medicare		•	
Accelerate and modify the excise tax on high-cost health care coverage		•	
Increase the payroll tax rate for Medicare hospital insurance by 1 percentage point		•	
Require the Secretary to determine the geographic scope of Q10 contracts to maximize efficiency			•
Eliminate the conflict of interest between beneficiary protection and quality improvement activities for Q10s			•
Expand pool of contractors eligible for Q10 work			•
Extend the Q10 contract length from three years up to five years			•

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 $<sup>^{\</sup>dagger}$  Report from National Commission on Fiscal Responsibility and Reform, December 2010

<sup>&</sup>lt;sup>‡</sup> CBO, Reducing the Deficit: Spending and Revenue Options, March 2011



Proposals	Deficit Reduction Commission <sup>†</sup>	CBO‡	President's FY 2012 Budget
Align Q10 contract terminations with Federal Acquisition Regulations			•
Dedicate EHR penalties to improving Medicare program financing			•
Medicaid	•		
Eliminate state gaming of Medicaid tax gimmick.	•		
Place dual eligibles in Medicaid managed care.	•		
Reduce funding for Medicaid administrative costs.	•		
Allow expedited application for Medicaid waivers in wellqualified states.	•		
Convert the federal share of Medicaid's payments for long-term care services into a block grant		•	
Reduce the floor on federal matching rates for Medicaid services		•	
Limit Medicaid reimbursement of durable medical equipment (DME) based on Medicare rates			•
Rebase Medicaid disproportionate share hospital (DSH) allotments in 2021			•
Other			
Medical malpractice reform	•		
Pilot premium support through FEHB Program.	•		
Establish a global budget for total federal health care costs and limit the growth to GDP plus 1 percent.	•		

<sup>&</sup>lt;sup>†</sup> Report from National Commission on Fiscal Responsibility and Reform, December 2010

<sup>&</sup>lt;sup>‡</sup> CBO, Reducing the Deficit: Spending and Revenue Options, March 2011



Proposals	Deficit Reduction Commission <sup>†</sup>	CBO‡	President's FY 2012 Budget
Adopt a voucher plan and slow the growth of federal contributions for the Federal Employees Health Benefits Program		•	
Consolidate and reduce Federal payments for graduate medical education costs at teaching hospitals		•	
Require manufacturers to Pay a minimum rebate on drugs covered under Medicare Part D for low-income beneficiaries		•	
Reduce or constrain funding for the National Institutes of Health		•	
Increase all taxes on alcoholic beverages to \$16 per proof gallon		•	
Modify length of exclusivity to facilitate faster development of generic biologics			•
Prohibit brand and generic drug companies from delaying the availability of new generic drugs			•
Streamline pharmacy benefit contracting in the FEHB program			•

<sup>&</sup>lt;sup>†</sup> Report from National Commission on Fiscal Responsibility and Reform, December 2010

<sup>&</sup>lt;sup>‡</sup> CBO, Reducing the Deficit: Spending and Revenue Options, March 2011



# Taxes and Revenues in the Super Committee

- The "baseline" issue is very important
  - Does the Super Committee use current law?
  - Does it consider "normative" considerations, i.e. extension of Bush tax cuts for middle class?



## **Expiring Tax Breaks**

 Various tax breaks and credits expire at the end of this year (payroll, bonus depreciation, extended unemployment, etc.) if these are extended—or if a new jobs package is enacted—the Super Committee will have to find new savings/revenue



#### The Likelihood of Tax Reform

- The various debt commissions had a basic convergence on tax issues
  - Broaden the base, lower rates, and remove many credits and deductions
- Both Chairmen of the tax writing committees are on the Super Committee
  - All indications are that tax reform will be addressed (some day), but only through the "regular" order, not during the Super Committee's deliberations



## What taxes might be addressed?

- Politically, many Democrats want some revenue to be included
- Items of political value
  - Corporate jets
  - Oil and gas production credits
  - Carried interest



"government money today is in everything. . . .

And of course I exaggerate by using the word

'everything,' but only a little."

Justice Stephen Breyer, Transcript of Oral Argument at 36:6-9, *Allison Engine, Inc. v. United States ex rel. Sanders*, No. 07-214 (Feb 26. 2008).



#### A Difficult Procurement Environment

- There will be at least another \$1.2 trillion in deficit reduction
- There is tremendous procedural uncertainty
  - FY 2012 funding
  - Will the Super Committee process work?
  - If there is sequestration, how will it be managed?
- There is substantive uncertainty
  - How will the cuts be allocated among agencies?
  - What programs will be targeted?
  - When will cuts take effect?
  - What share will the contracting community bear?



# **Current Challenges for the Agencies**

- Agencies already dealing with an environment of cuts
- Agencies / procurement offices face the same uncertainties about the next round
- Sound strategic decision making is difficult with the broad strokes un-defined
- Anti-Deficiency Act limitations



# **Anti-Deficiency Act Prohibitions**

- Making an expenditure from any appropriation or fund in excess of the amount available in the appropriation (31 U.S.C. § 1341(a)(1)(A)).
- Involving the government in any obligation to pay money before funds have been appropriated (31 U.S.C. § 1341(a)(1)(B)).
- Accepting voluntary services for the United States. (31 U.S.C. § 1342).
- Making obligations or expenditures contrary to agency regulations. (31 U.S.C. § 1517(a)).



## **Types of Appropriations**

- Single Year
  - Only available for that fiscal year
  - Appropriations are assumed to be single year unless clearly stated otherwise
- Multiple-Year
  - Defined time that funds are available
- No-Year
  - Funds do not expire and remain available until expended



## **Short-Term Impacts & Risks**

#### Delays

- Awards and new orders
- Definitization of letter contracts
- Negotiation of contract changes / modifications
- Settlement of claims
- Additions to incremental funding
- Contract extensions
- Payments



# **Short-Term Impacts & Risks**

- Work stoppage / program slowdowns
- Fewer orders on ID/IQ contracts
- Terminations and deductive changes
- Challenges in bidding



# **Potential Longer-Term Effects**

- Programs large and small are at risk
- Even greater competition within agencies to prioritize their needs
- Diminished ability to continue programs with performance challenges or cost-overruns
- Increased interest in alternative procurement approaches



#### **Steps to Take Now**

- Understand Your Contracts
  - Types of contracts potential remedies
  - What has been obligated?
- Identify Potential Contract Risks
- Subcontract Risk Evaluation
- Compliance
- Strategic Evaluation of Risks and Opportunities
- Address Open Issues
- Dialog with Customer



#### **Questions?**

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Reminder: The slides and a recording of the event will be made available to you shortly after the webinar.