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Introduction to Budget "Reconciliation"

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With majorities in the House and Senate, Democratic leaders may well use a special legislative process called "reconciliation" to quickly advance high-priority fiscal legislation. Created by the Congressional Budget Act of 1974, reconciliation allows for expedited consideration of certain tax, spending, and debt limit legislation. In the Senate, reconciliation bills aren't subject to filibuster and the scope of amendments is limited, giving this process real advantages for enacting controversial budget and tax measures. This paper addresses some frequently asked questions about reconciliation.

How Often Have Policymakers Used Reconciliation?

Policymakers have enacted 21 budget reconciliation bills since 1980, the first year they employed the process; Congress approved four other measures but the President vetoed them.[1] Policymakers used reconciliation to enact major spending cuts during President Reagan's first year in office, several deficit-reduction packages during the 1980s and 1990s, welfare reform in 1996, and the large Bush tax cuts in 2001 and 2003. More recently, reconciliation was used in 2010 to amend the Affordable Care Act and modify the federal student loan program,[2] and in 2017 to enact large tax cuts. Republican majorities also twice attempted to use the reconciliation process to repeal key elements of the Affordable Care Act; President Obama vetoed the first attempt, in 2016, and the second attempt, in 2017, failed to pass in the Senate.

What Kinds of Changes Can a Reconciliation Bill Include?

The Congressional Budget Act permits using reconciliation for legislation that changes spending, revenues, and the federal debt limit. On the spending side, reconciliation can be used to address "mandatory" or entitlement spending — that is, programs such as Medicare, Medicaid, federal civilian and military retirement, SNAP (formerly known as food stamps), and farm programs — but not Social Security. Mandatory spending is determined by rules set in ongoing authorizing laws, so changing spending usually requires amending those laws.

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[1] Megan Suzanne Lynch, "Budget Reconciliation Measures Enacted Into Law: 1980-2017," Congressional Research Service report no. R40480, updated February 22, 2018, p. 2.

[2] The initial version of the Affordable Care Act (P.L. 111-148) was enacted under regular order, but that measure was then significantly amended through a reconciliation bill (P.L. 111-152) when the Democrats lost their 60-vote majority in the Senate. The reconciliation bill also made changes to the student loan program.

Reconciliation has not been used to enact or rescind "discretionary" spending, which is spending controlled through the annual appropriations process. There's nothing in the Budget Act or other rules that prohibits providing new funding, or rescinding existing funding, for discretionary programs through reconciliation. But the various restrictions on reconciliation probably make the process impractical as a means of enacting annual appropriations.

Since the mid-1980s, Senate rules have prohibited including provisions in reconciliation legislation that do not change the level of spending or revenues or the debt limit. (See the "Byrd Rule" questions below for more.)

How Does Congress Start the Reconciliation Process?

To start the reconciliation process, the House and Senate must agree on a budget resolution that includes "reconciliation directives" for specified committees. Under the Congressional Budget Act, the House and Senate are supposed to adopt a budget resolution each year to establish an overall budget plan and set guidelines for action on spending and revenue. The Senate may not filibuster consideration of budget resolutions. Budget resolutions don't go to the President for signature and don't become law; reconciliation is a procedure for enacting some legislation envisioned in a budget resolution.

In developing a budget resolution, Congress must decide whether to include reconciliation directives and, if so, whether to use them to implement all or just some of the proposed changes.

What Role Do Committees Play?

Reconciliation directives instruct specified House and Senate committees to prepare and report legislation by a certain date that does one or more of the following:

- increases or decreases spending (outlays) by specified amounts over a specified time;
- increases or decreases revenues by specified amounts over a specified time; or
- modifies the public debt limit.

Sometimes the instructions are expressed as floors or ceilings rather than specific amounts, and spending and revenue targets have often been combined into an instruction to achieve a reduction (or increase) in the deficit. In 2017, for example, to enact large tax cuts the fiscal year 2018 budget resolution included instructions to the House and Senate tax-writing committees directing them to report legislation increasing the deficit by not more than $1.5 trillion over ten years. In contrast, the fiscal year 2017 budget resolution included reconciliation instructions (aimed at dismantling the Affordable Care Act) directing relevant House and Senate committees to report legislation reducing the deficit by "not less than" $1 billion over ten years — a general target that allowed the committees to report legislation that would receive reconciliation protection without really specifying an intended budget effect.

Reconciliation directives do *not* detail what specific legislative changes a committee should adopt to meet its numerical targets.

Reconciliation legislation generally goes through the normal committee process, with each committee that receives an instruction considering and voting on legislation to implement its part of the package. Committees usually meet their reconciliation targets, but if a committee falls short of its target or fails to act at all, there are procedures for offering amendments to fill the gap when the bill goes to the full House or Senate.

The Senate has sometimes skipped a formal committee process, however, instead waiting for the House to act and then taking the House-passed reconciliation bill directly to the Senate floor. It did this most recently in 2017, with the reconciliation bill to repeal much of the Affordable Care Act and with the tax-cutting reconciliation bill.

What Special Role Do the Budget Committees Play?

If multiple committees receive a reconciliation instruction, they send their recommendations to the House or Senate Budget committees, which assemble them into an omnibus bill for full House or Senate consideration.[3] The Budget Committees can't make any substantive changes in the bills. Whether the committee recommendations are assembled into one or multiple bills depends on the instructions in the budget resolution (see next question).

If only one committee in each chamber receives a reconciliation instruction, its recommendation goes directly to the full House or Senate, bypassing the Budget Committee.

How Many Reconciliation Bills May Congress Consider Each Year?

Under Senate interpretations of the Congressional Budget Act, the Senate can consider the three basic subjects of reconciliation — spending, revenues, and the debt limit — in a single bill or multiple bills, but a budget resolution can generate no more than one bill addressing each of those subjects. In practice, however, a tax bill is likely to affect not only revenues but also outlays to some extent (for example, via refundable tax credits). Thus as a practical matter a single budget resolution can probably generate only two reconciliation bills: a tax-and-spending bill or a spending-only bill and, if desired, a separate debt limit bill.

In 2017, however, Congress was able to take up an additional reconciliation bill by passing two budget resolutions: one for fiscal year 2017 (the fiscal year already underway, for which a budget resolution had not yet been adopted) and then another for fiscal year 2018 (the fiscal year that would begin on October 1, 2017). Congress used the overdue fiscal year 2017 budget resolution to trigger a reconciliation bill intended to repeal the Affordable Care Act, and then used the fiscal year 2018 resolution to trigger a tax-cutting reconciliation bill.

There will be an opportunity to repeat this process in 2021, since no fiscal year 2021 budget resolution was adopted in calendar year 2020. That would allow Congress to first take up the overdue budget resolution for fiscal year 2021, use that to generate an initial reconciliation bill, and then take up a budget resolution for fiscal year 2022 (which begins on October 1, 2021) to generate a second reconciliation bill.

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[3] As noted, the Senate sometimes bypasses the committee stage — including both the legislative committees and the Budget Committee — by taking a House-passed reconciliation bill directly to the Senate floor.

Under the Budget Act, Congress can revise a budget resolution after adopting it, although it hasn't done so in decades. In theory it could use such a revision to trigger another reconciliation bill, but this has never been done.

Can the Full House or Senate Amend a Reconciliation Bill?

When the full House or Senate considers a reconciliation bill, amendments may be offered. But the Congressional Budget Act generally prohibits consideration of any amendment that would cost money — that is, raise spending or cut taxes *without* fully offsetting the cost.[4] An exception is that, in the Senate, an amendment to simply strike a provision is permissible even if doing so would cost money.

As with other major legislation, the House typically adopts a special "rule" setting forth specific procedures for considering a reconciliation bill. Usually, that rule will allow only certain specified amendments to be offered. In the Senate, amendments must also comply with other rules that guide consideration of reconciliation (see Byrd Rule questions below), as well as with budget points of order established under either the Congressional Budget Act or a budget resolution.

What Happens After Each Chamber Adopts a Reconciliation Bill?

If the House and Senate adopt different versions of a reconciliation bill, they must then work out the differences between the two. This is usually accomplished through a House-Senate conference committee, but could also be done through an exchange of amendments between the two Houses. It's also possible that the Senate could pass a version that it pre-negotiated with the House. Both bodies then take an up-or-down vote on the final, compromise version. If they approve it, the bill goes to the President for signature.

If the President vetoes the reconciliation measure and Congress can't override the veto, that round of the reconciliation process is over. Replacing the vetoed bill with a new reconciliation bill would require a new budget resolution.

What Procedural Advantages Does Reconciliation Have in the Senate?

The Senate can consider and pass reconciliation bills relatively quickly and with only a simple majority, rather than the three-fifths majority often needed for controversial legislation.[5] That's because reconciliation legislation isn't subject to filibuster. Under general Senate rules, legislation can be stalled by virtually unlimited debate and the offering of numerous amendments, with a three-fifths majority vote required to invoke "cloture," thereby limiting debate and blocking non-germane amendments. For a reconciliation bill, however, the Congressional Budget Act limits Senate debate on the bill to 20 hours and limits debate on the subsequent compromise between the two houses to ten hours.

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[4] In the House, amendments cannot cost money relative to the bill under consideration. In the Senate, amendments cannot cost money relative to the budget resolution reconciliation instructions but can cost money to the extent the reported bill saves more than it was instructed to.

[5] Of course, the normal Congressional Budget Act points of order, most of which require a three-fifths majority vote to waive, still apply to reconciliation bills.

While the special procedures limit the time for debate, they do not limit the number of amendments that can be offered during the Senate's initial consideration of the bill. As a result, once the 20-hour limit has expired, remaining amendments are considered with little or no debate — a process known as a "vote-a-rama."

In the Senate, any amendments offered to a reconciliation bill must be germane to the bill — which is not usually a requirement for amendments in the Senate.[6] This prevents the process from getting bogged down by disputes over tangentially related or unrelated amendments, as often happens to other legislation under regular Senate procedures.

What Procedural Advantages Does Reconciliation Have in the House?

Discussion of reconciliation's procedural advantages tends to focus on the Senate because the House has mechanisms for limiting debate and amendments available for *any* legislation. For major bills, including reconciliation, the usual mechanism is a special "rule" for floor consideration — a resolution reported by the Rules Committee and adopted by the House by majority vote — that specifies both the maximum time for debate and what amendments will be allowed.

Can Reconciliation Be Used to Increase Deficits?

While reconciliation has traditionally been thought of as mostly a means of enacting deficit-reduction legislation, Congress has used it on occasion to expedite passage of tax cuts that *increase* deficits. The most notable examples were reconciliation bills in 2001 and 2003, which enacted tax cuts based on proposals by President George W. Bush, and the reconciliation bill that enacted tax cuts in 2017.[7]

In 2007, when Democrats took control of the House and Senate, both chambers adopted rules designed to prohibit use of reconciliation for measures that increase deficits. When Republicans took the House in 2011, they replaced the House rule with one that placed no restrictions on revenue provisions that increase deficits but prohibited reconciliation instructions that would produce a net increase in mandatory spending, regardless of the reconciliation bill's overall impact on deficits. That rule was repealed at the beginning of the new Congress in 2021.

The Senate rule against deficit-increasing reconciliation bills was repealed in 2015, as part of the budget resolution for fiscal year 2016.

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[6] Like other Congressional Budget Act points of order, the germaneness requirement can be waived, but a three-fifths majority vote is required to do so.

[7] See Congressional Budget Office cost estimates for H.R. 1836, Economic Growth and Tax Relief Reconciliation Act of 2001 (June 4, 2001); H.R. 2, Jobs and Growth Tax Relief Reconciliation Act of 2003 (May 23, 2003); and H.R. 1, An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 (December 15, 2017), sometimes referred to as the Tax Cuts and Jobs Act.

What Is the Byrd Rule?

The Byrd Rule, named after its chief sponsor, the late Senator Robert Byrd of West Virginia, allows senators to block provisions of reconciliation bills that are "extraneous" to reconciliation's basic purpose of implementing budget changes. Without such a rule, committees receiving reconciliation directives would be free to add a wide range of unrelated provisions to their legislative recommendations, including provisions that might have difficulty passing under normal procedures.

The Byrd Rule was adopted and then modified several times during the 1980s and finally included in the Congressional Budget Act in 1990, with only minor changes since then. Some have criticized it for excluding too much from reconciliation, such as provisions that might help reduce costs but for which specific savings estimates cannot be provided, or provisions that would help make cost-saving changes work better.

The Byrd Rule applies only to action by the Senate, but because senators may invoke it during consideration of a conference report as well as initial Senate consideration of a reconciliation bill, it effectively constrains the House by limiting what the House can ultimately insist upon when compromising with the Senate.

What Provisions Are "Extraneous" Under the Byrd Rule?

The Byrd Rule generally treats as extraneous any provision of a reconciliation measure that doesn't change the level of spending or revenues, or where the change in spending or revenues is "merely incidental" to the provision's non-budgetary effects. (The Byrd Rule allows for inclusion of provisions that have no budgetary effect as long as they are determined to be "terms and conditions" of other provisions within the bill that have a budgetary effect.) The rule also declares extraneous any provision that:

- increases spending or decreases revenues if the provision in question results in the committee's portion of the bill costing too much or saving too little;[8]
- isn't within the jurisdiction of the committee recommending the provision;
- raises deficits in any year after the period covered by the reconciliation instructions unless other provisions recommended by the same committee fully offset those "out-year" costs;[9] or
- changes Social Security's retirement, survivors, or disability programs.

How Is the Byrd Rule Enforced?

Senators may raise parliamentary objections — termed "points of order" — against any provision of a bill or conference agreement that they believe to be extraneous under the Byrd Rule. They may also raise Byrd Rule points of order against amendments offered during Senate consideration of reconciliation bills.

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[8] While this test is applied committee by committee during initial Senate consideration, when the bill comes back from conference, the test is applied to the bill as a whole.

[9] As above, the test when a reconciliation bill comes back from conference is based on the out-year cost of the bill as a whole, not the out-year cost of the portion containing the provision in question.

If the point of order is sustained by the presiding officer the extraneous material is deleted and consideration of the legislation continues with the offending material excised. In the case of a conference agreement, the Senate sends the legislation (minus the extraneous provisions) back to the House for further action. This "surgical" effect of the Byrd Rule stands in contrast to most other Congressional Budget Act points of order, which completely stop consideration of bills where violations are found.

Like most other House and Senate rules, the Byrd Rule is enforced only through points of order raised by members. Material that violates the Byrd Rule may remain in reconciliation legislation if no senator makes an objection. For example, that's how Congress has enacted budget process changes (such as appropriations caps or pay-as-you-go rules) through reconciliation, even though they are considered extraneous under the Byrd Rule because they don't directly change spending or revenue levels.

The Congressional Budget Act allows the Senate to waive, with a three-fifths vote, application of the Byrd Rule to any particular provision of (or amendment to) a reconciliation bill.

Are Reconciliation Bills Subject to Other Budget Rules?

Yes. In addition to the specific rules for reconciliation, general budget rules also apply, many of which require a three-fifths majority vote in the Senate to waive. Further complications arise because the Byrd Rule classifies as extraneous, and thus subject to a super-majority point of order, provisions in reconciliation bills that establish, modify, or suspend budget rules. This includes emergency designations, which would otherwise exempt the designated items from congressional or statutory budget controls.[10]

Various mechanisms are available, however, to modify or limit the application of some budget rules to reconciliation measures. For instance, a budget resolution will typically accommodate the reconciliation measures it triggers, either by setting its levels to match the intended legislation or, if the reconciliation instructions are open-ended, by allowing the Budget Committee chair to adjust the levels to accommodate a reconciliation bill that is otherwise in compliance.

But budget limits set in law are more difficult to waive or suspend. These include the Statutory Pay-As-You-Go Act, which essentially requires that all legislation enacted during a session of Congress or the prior nine years, taken together, not produce a net increase in the budget deficit. If that rule is violated, the law requires automatic spending cuts ("sequestration") in non-exempt mandatory programs after the session is over, to eliminate the net deficit increase. Language included in a reconciliation bill to exempt spending or tax cut provisions from the Pay-As-You-Go Act (through emergency designations or other devices) would face a super-majority point of order under the Byrd Rule.

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[10] This issue is not unique to reconciliation, since other Senate rules create a 60-vote point of order against essentially all emergency designations.

In recent years, when net deficit increases would trigger a pay-as-you-go sequestration, Congress has avoided that result with language included in subsequent legislation. There has generally been bipartisan support for, or least acquiescence to, doing so, since regardless of views on the legislation leading to the violation, there was little support for the automatic cuts in programs such as Medicare payments and farm price supports that the Pay-As-You-Go Act would trigger.[11]

[11] For example, the large pay-as-you-go sequestration that would have been triggered by the tax cuts costing $1.5 trillion over ten years, enacted in the fiscal year 2018 reconciliation bill, was canceled by language included in a subsequent appropriations continuing resolution.