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Introduction to Budget "Reconciliation"

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Congress sometimes uses 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 22 budget reconciliation bills since the process was established in 1974; Congress approved five other reconciliation bills 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, changes to the nation's cash assistance program 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] in 2017 to enact large tax cuts, and in 2021 to enact additional COVID-19 relief though the American Rescue Plan. 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.

Because reconciliation bills cannot be filibustered, in recent decades the reconciliation process has been used most frequently when the same party controls the presidency, House, and Senate but lacks the 60-vote majority in the Senate needed to overcome a filibuster. That has not always been the case, however. Twelve of the first 14 enacted reconciliation bills were agreed to even though the presidency, House, and Senate were not controlled by the same party. Each of those 14 bills reduced projected deficits. Since 2000, however, seven of the eight enacted reconciliation bills were agreed to during periods of one-party control and six of them increased projected deficits. Of the nine reconciliation bills

[1] Megan S. Lynch, "Budget Reconciliation Measures Enacted into Law: 1980-2021," Congressional Research Service report No. R40480, updated July 28, 2021, pp 2-3. Congress approved one reconciliation bill prior to 1980, in 1975, which was vetoed. https://www.everycrsreport.com/files/2021-07-28_R40480_ffc78da314ff9d7091b6c9726e29f46c5e28c90e.pdf.

[2] The initial version of the Affordable Care Act (P.L. 111-148) was enacted under regular procedures, 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.

enacted under one-party control, four passed the Senate on a vote of 51-50, with the vice president breaking the tie.

What Kinds of Changes Can a Reconciliation Bill Include?

The Congressional Budget Act permits using reconciliation for legislation that changes spending, revenues, and/or the federal debt limit. On the spending side, reconciliation can be used to address most "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 — though the Budget Act specifically prohibits using reconciliation to change the Social Security program. Mandatory spending is determined by rules set in ongoing authorizing laws, so changing spending usually requires amending those laws.

Reconciliation has not been used to enact or rescind "discretionary" funding, which is controlled through the annual appropriations process. While nothing in the Budget Act or other rules prohibits providing new funding or rescinding existing funding for discretionary programs through reconciliation, the various restrictions on reconciliation (discussed more below) probably make the process impractical as a means of enacting annual appropriations. Some reconciliation bills have included additional funding for programs that are traditionally funded through the annual appropriations process. But that extra funding was treated as mandatory because the committees that received the reconciliation instructions and wrote those funding provisions were authorizing committees, not the House and Senate appropriations committees.

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 budgetary 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 2021, with the reconciliation bill to enact the American Rescue Plan. It had also done this in 2017, with the failed reconciliation bill intended to repeal much of the Affordable Care Act and with the enacted tax-cutting reconciliation bill.

What Special Role Do the Budget Committees Play?

If multiple committees receive reconciliation instructions, 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 Committees.

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.

[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.

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. Congress used the same approach in 2021, passing an overdue budget resolution for fiscal year 2021 with a reconciliation directive that led to enactment of the American Rescue Plan, and later passing a budget resolution for fiscal year 2022 with a reconciliation directive that led to the Build Back Better Act, which the House passed but the Senate has not considered.

Under the Budget Act, Congress can revise a budget resolution after adopting it. The Senate parliamentarian has ruled that a revised budget resolution could be used to trigger another reconciliation bill, but this has never been successfully done.[4]

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.[5] 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" establishing specific procedures for considering a reconciliation bill. That rule will typically 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), and with budget "points of order" (or parliamentary objections) 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. To replace the vetoed bill with a new reconciliation bill, the House and Senate would first need to agree on a new budget resolution or revise the existing resolution.

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[4] The Senate attempted to do this in 1981, when it adopted a revised budget resolution for fiscal year 1981 (S. Con. Res. 9, 97th Congress) containing new reconciliation directives after a reconciliation bill had been enacted using instructions in the original 1981 budget resolution. However, the House never took up the Senate's revised budget resolution.

[5] 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's reconciliation instructions but can cost money to the extent the reported bill saves more or costs less than specified in the 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.[6] 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.

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.[7] 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 to enact deficit-reduction legislation, Congress has used it occasionally to expedite passage of legislation that increases deficits. The most notable examples were the 2001 and 2003 reconciliation bills, which enacted tax cuts based on proposals by President George W. Bush; the reconciliation bill that enacted tax cuts in 2017; and the American Rescue Plan in 2021.[8]

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

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

[7] 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.

[8] See Congressional Budget Office cost estimates for the following: H.R. 1836, Economic Growth and Tax Relief Reconciliation Act of 2001, June 4, 2001, https://www.cbo.gov/publication/13098; H.R. 2, Jobs and Growth Tax Relief Reconciliation Act of 2003, May 23, 2003, https://www.cbo.gov/publication/14462; 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, https://www.cbo.gov/publication/53415; and H.R. 1319, American Rescue Plan Act of 2021, March 10, 2021, https://www.cbo.gov/publication/57056.

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 House 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.

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 limits 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 do 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, relative to the reconciliation instructions to the committee;
- 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 included in the same title of the bill fully offset those "outside-the-window" costs;[9] or
- changes Social Security's retirement, survivors, or disability costs or revenues.

[9] When the Senate is considering its version of the reconciliation bill, this rule against "outside-the-window" costs effectively applies committee by committee, because each committee's provisions constitute a separate title of the bill. But when a reconciliation bill comes back from conference, different arrangements of titles are possible — and often necessary because of differences in jurisdiction between the House and Senate. The final arrangement of titles determines the combinations of provisions to which the rule against "outside-the-window" costs will apply.

Provisions that would create new budget process rules or alter existing congressional or statutory rules — including by exempting provisions of the reconciliation bill from existing constraints — violate the Byrd Rule. Such provisions are within the jurisdiction of the Senate Budget Committee, not of a committee included in a reconciliation directive. In addition, the Congressional Budget Office (CBO) has a long-standing policy of not "scoring" such provisions as directly changing spending or revenues.

Deciding whether a provision violates the Byrd Rule is often a judgment call that is traditionally made by the Senate parliamentarian. Which committee has jurisdiction over a provision, and especially whether non-budgetary provisions are allowable terms or conditions and whether budgetary effects are nonetheless merely incidental, are subject to interpretation.

It is sometimes difficult to determine in advance whether the budgetary effects of a given provision will be considered "merely incidental," but the phrase has *not* been interpreted as synonymous with "very small" budgetary effects. For example, during consideration of the American Rescue Plan, the budgetary effect of an amendment to raise the federal minimum wage to $15 per hour was ruled to be merely incidental and therefore to violate the Byrd Rule even though the CBO estimated that it would increase on-budget deficits by $64 billion over ten years. And in September 2021, the Senate parliamentarian issued a written opinion that an immigration provision in pending House reconciliation legislation would be considered merely incidental and so violate the Byrd Rule even though CBO estimated that it would cost $124 billion over ten years and almost $700 billion over 20 years. The parliamentarian pointed to CBO's estimate that under the bill, 8 million individuals would adjust their immigration status to become lawful permanent residents and argued that this "is a policy change that substantially outweighs the budgetary impact of that change," making it "not appropriate for inclusion in reconciliation."

How Is the Byrd Rule Enforced?

Senators may raise 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.

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.

Also, 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 in the budget resolution 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,[11] 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.

In recent years, when net deficit increases enacted in reconciliation bills would trigger a later pay-as-you-go sequestration, Congress has avoided that result with language included in subsequent legislation.[12] 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.

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

[11] See CBPP, "Policy Basics: The 'Pay-As-You-Go' Budget Rule," updated August 12, 2019, https://www.cbpp.org/research/federal-budget/the-pay-as-you-go-budget-rule.

[12] For example, the very large pay-as-you-go sequestration that would have been triggered by the tax cuts enacted in the fiscal year 2018 reconciliation bill, which cost $1.5 trillion over ten years, was canceled by language included in subsequent appropriations legislation. And the sequestration that would have been triggered by the American Rescue Plan, enacted in the fiscal year 2021 reconciliation bill, was postponed for a year by S. 610, the Protecting Medicare and American Farmers from Sequester Cuts Act, enacted on December 10, 2021. Future legislation will likely further postpone or cancel that sequestration.