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Introduction to Budget "Reconciliation"

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Republican leaders may well use a special legislative process called "reconciliation" to advance their fiscal policy agenda in 2017. 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 20 budget reconciliation bills since 1980, the first year they employed the process; four other measures were approved by Congress but vetoed by the President.[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. Reconciliation was most recently used in 2010 to help pass the Affordable Care Act and modify the federal student loan program, and then in 2016 in a vetoed attempt to repeal key elements of the Affordable Care Act.

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. Reconciliation has not been used to change "discretionary" spending, which is spending controlled through the annual appropriations process.

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[1] Megan Suzanne Lynch, "Budget Reconciliation Measures Enacted Into Law: 1980-2010," Congressional Research Service report no. R40480, September 2, 2010, p. 2. Since the report was issued, H.R. 3762, repealing many provisions of the Affordable Care Act, was approved via the reconciliation process by Congress on January 6, 2016, but vetoed by President Obama.

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 is not permitted to 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 parts of a budget resolution into law.

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
- raises or lowers the public debt limit by a specified amount.

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

Reconciliation legislation 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.

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 consideration by the full House or Senate. 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, without going through 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 debt limit — in a single bill or multiple bills, but it can consider each of these three in only one bill per year (unless Congress passes a second budget resolution). Consequently, in the Senate there can be a maximum of three reconciliation bills in a year, one for each of the basic subjects of reconciliation.

This rule is most significant if the first reconciliation bill that the Senate takes up affects both spending and revenues. Even if that bill is overwhelmingly devoted to only one of those subjects, no subsequent reconciliation bill can affect either revenues or spending because the first bill already addressed them.

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.[2] An exception is that, in the Senate, an amendment to simply strike a provision is permissible even if it costs 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, usually through a House-Senate conference committee. 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, the reconciliation process is over. Replacing that bill through reconciliation 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.[3] 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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[2] 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.

[3] 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.[4] 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 — 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 that enacted tax cuts based on proposals by President George W. Bush.[5]

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.

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

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

[5] See Congressional Budget Office cost estimates for H.R. 1836, Economic Growth and Tax Relief Reconciliation Act of 2001 (June 4, 2001) and H.R. 2, Jobs and Growth Tax Relief Reconciliation Act of 2003 (May 23, 2003).

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 necessary "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 committee recommending the provision fails to achieve its reconciliation target;
- 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; and
- 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 provisions in amendments offered during Senate consideration of reconciliation bills.

If the point of order is sustained, 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 certain other Congressional Budget Act points of order that 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.