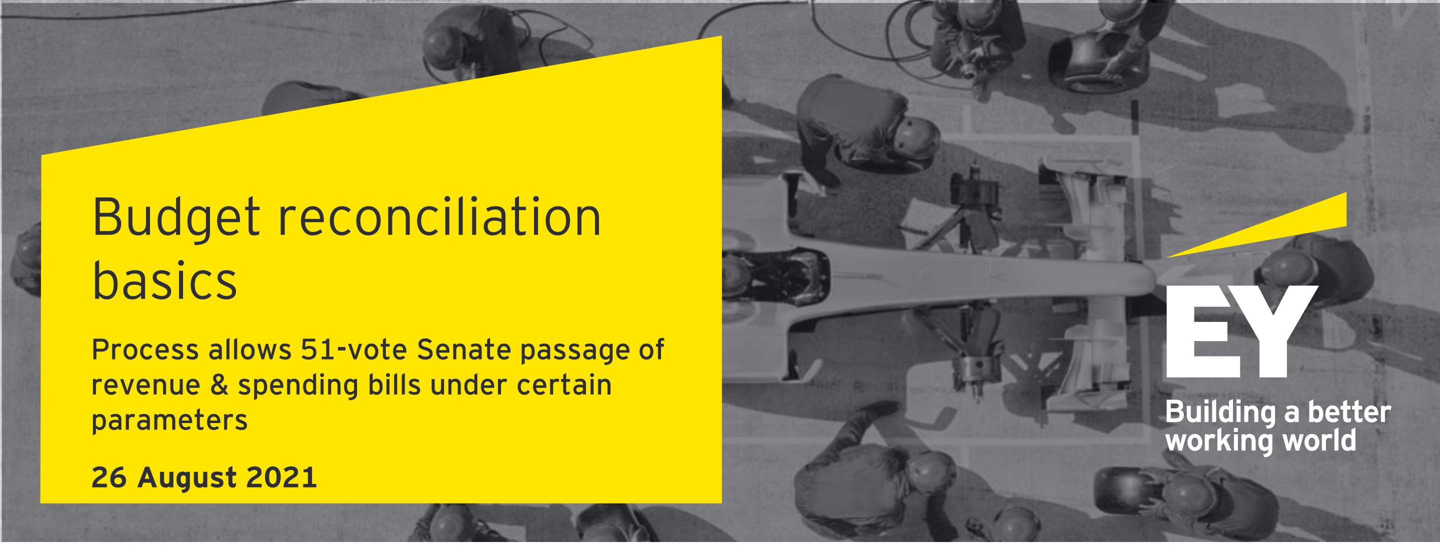

Budget reconciliation basics

Process allows 51-vote Senate passage of revenue & spending bills under certain parameters

26 August 2021

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Budget reconciliation is a process that permits legislation impacting revenues and spending to pass the Senate with 51 votes rather than the 60-vote filibuster threshold for most other legislation, thus avoiding numerous procedural hurdles that can slow or derail controversial legislation in the Senate. The budget reconciliation mechanism was created as part of the Congressional Budget and Impoundment Control Act of 1974, which created a congressional budget process and provided the special reconciliation rules mainly with the intent of facilitating Senate consideration of politically difficult deficit reduction legislation. However, since 2001, when Congressional Republicans sought to move the Bush tax cuts through Congress using the reconciliation mechanism, the process has been looked to for policy changes other than deficit reduction initiatives when the White House, House and Senate are all in the control of one party.

The process begins with the drafting and approval of a budget resolution setting parameters for revenues and/or spending for the fiscal year, and that includes "instructions" to committees of jurisdiction to change spending or revenue numbers (or both) accordingly and to report back the changes by a deadline. (The President doesn't sign a budget resolution but must sign reconciliation legislation for it to be enacted.) Spending, revenue, or the debt limit (though rare) may be addressed under reconciliation together or separately, but only once per budget resolution, and only one budget resolution can be approved for each fiscal year.

While reconciliation provides for an expedited procedure – the measures are privileged in the Senate and time limits imposed on debate – it is not always expedient given that Congress must pass a budget resolution prior to developing the actual budget reconciliation legislation.

Fitting a budget reconciliation bill within the target can take time, requiring revenue offsets if the gross amount exceeds the target, all while satisfying reconciliation rules that include not changing revenues during a fiscal year after the years covered by the reconciliation bill unless the provision's title, as a whole, remains budget-neutral. These requirements can force inclusion of "sunsets" of the type that set up the 2010 (then 2012) "fiscal cliff" of Bush tax cuts and that cause the individual provisions of the TCJA to expire after 2025.

FY2022. The FY 2022 budget resolution includes reconciliation instructions for a potential $3.5 trillion "human infrastructure" bill, with a September 15 deadline for committees to submit their portions (there is no penalty for missing it). A Democratic memo on reconciliation circulated in conjunction with the resolution said offsets envisioned to be developed by the Senate Finance Committee should address corporate and international tax reform; tax fairness for high-income individuals; IRS tax enforcement; health care savings; and a Carbon Polluter Import Fee. The reconciliation instructions envision from the Finance Committee $1.8 trillion in investments, and a nominal $1 billion in deficit reduction. The instructions to committees are in the following table.

Senate	House
Finance - reduce deficit by not less than $1b	Ways & Means - reduce deficit by not less than $1b
Agriculture - spend $135b	Agriculture - spend $89.1b
Banking - spend $332b	Ed. & Labor - spend $779.5b
Commerce - spend $83b	Energy & Commerce - spend $486.5b
Energy & Nat. Res. - spend $198b	Financial Services - spend $339b
EPW - spend $67.26b	Homeland Security - spend $500m
HELP - spend $726.38b	Judiciary - spend $107.5b
Homeland Security - $37b	Natural Resources - spend $25.6b
Indian Affairs - $20.5b	Oversight - spend $7.5b
Judiciary - spend $107.5b	Science - spend $45.51b
Small business - spend $25b	Small business - spend $17.5b
Veterans Affairs - spend $18b	Transportation - spend $60b
	Veterans Affairs - spend $18b

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While only a simple majority is required for passage of a reconciliation bill in the Senate, 60 votes are required to waive a point of order when a senator believes that the legislation includes a provision or provisions that violate the strict rules as to what and what cannot be included in such a bill.

The restrictions are referred as the "Byrd rule," named for the late Senator Robert C. Byrd (D-WV). There are six tests for matters to be considered extraneous under the rule – and therefore prohibited from inclusion absent overcoming a point of order – discussed further below.

Byrd rule deems extraneous proposals that:

- Do not produce a change in outlays or revenues
- Produce changes in outlays or revenue that are merely incidental to the non-budgetary components of the provision
- Are outside the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure
- Increase outlays or decrease revenue if the provision's title, as a whole, fails to achieve the reporting committee's reconciliation instructions
- Increase net outlays or decrease revenue during a fiscal year after the years covered by the reconciliation bill unless the provision's title, as a whole, remains budget neutral
- Contain provisions regarding Social Security

- It is the Byrd Rule prohibition against provisions that have no revenue effect that could trip up stimulus legislation or Democratic priorities like climate change.
- During the ACA repeal debate, non-revenue aspects like eliminating essential health benefits and permitting insurers to sell policies across state lines were found to violate the rule.
- During the TCJA, the budget impact of a policy to expand 529 savings accounts to home-school expenses was challenged by Democrats and found to be incidental to the non-budgetary policy around education.

- Revenue-raising provisions taking effect in the later years of the budget window are understood to have enabled permanency of the TCJA corporate rate cut by clearing the prohibition on decreasing revenue in years beyond the budget window.

- Biden's proposal for Social Security payroll taxes on income >$400,000 per year, plus the first $137,000, with no additional tax on income in the "doughnut hole" in between can't be done under reconciliation.

Outyear budget estimates aren't always publicly available but committee staff gets that information from CBO and JCT to determine if they are in compliance or not. The Byrd rule is not automatic; it must be raised by a member and can be waived with 60 votes. Members and staff typically take care to scrub any potential Byrd rule violations before going to the Senate floor to avoid the problems a violation could cause.

If a Byrd Rule point of order is sustained (i.e., the 60-vote threshold is not met), the offending extraneous provision is removed but consideration of the remainder of the legislation may continue. Many of the conditions applicable to the use of budget reconciliation, including determining which items included in legislation violate the Byrd rule, require consultation with the Senate parliamentarian, making the forecasting of reconciliation legislation an inexact science and involving interpreting the chamber's rules.

Tax Cuts & Jobs Act

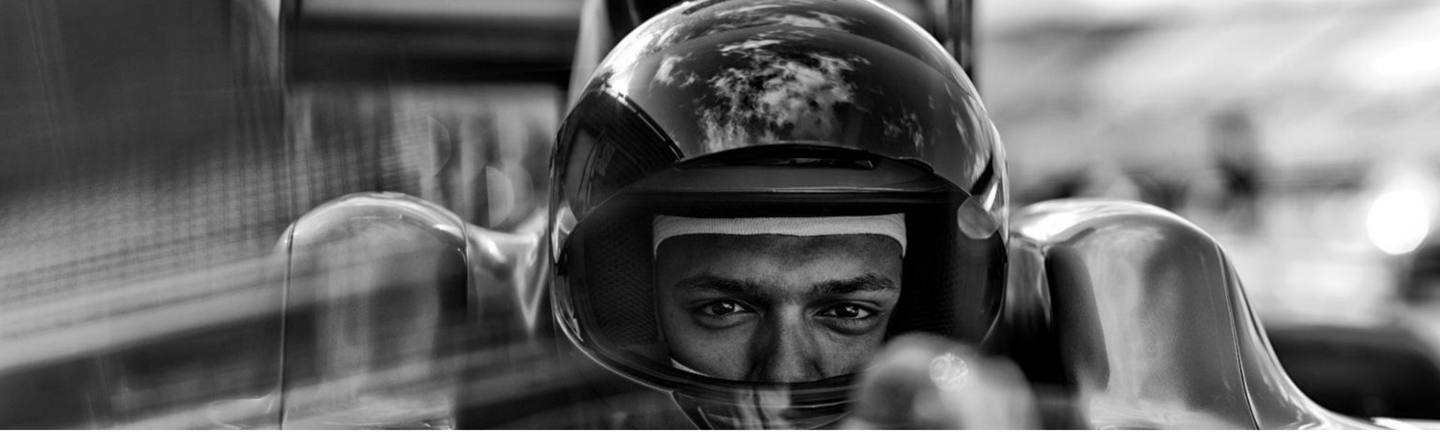
Reconciliation instruction

- Net tax cut of not more than $1.5 trillion over 10 years + ANWR drilling

Notable actions to keep net cost <$1.5t

- individual provisions sunset at end of 2025
- 21% corporate rate in final bill v. 20% in House, Senate bills
- pass-through deduction reduced from 23% in Senate bill to 20% to accommodate drop in the top individual tax rate
- R&D expense amortized over a 5-year period beginning in 2022
- business interest deduction based on EBIT v. EBITDA starting in 2022

- 7/18/2017 - Release of House FY18 budget resolution
- 9/29/2017 - Release of Senate FY18 budget resolution
- 10/19/2017 - FY18 budget resolution passes Senate
- 10/26/2017 - FY18 budget resolution passes House
- 11/2/2017 - Reconciliation bill introduced in House
- 11/9/2017 - Reconciliation bill introduced in Senate
- 11/16/2017 - Reconciliation bill approved in House
- 12/2/2017 - Reconciliation bill approved in Senate
- 12/15/2017 - Conference agreement released
- 12/20/2017 - Conference agreement approved in House & Senate
- 12/22/2017 - TCJA signed into law



Affordable Care Act (ACA)

Technically the Health Care and Education Reconciliation Act of 2010 modifying the Patient Protection and Affordable Care Act (PPACA)

Reconciliation instruction

- Each committee with health care jurisdiction in House & Senate to identify $1b in deficit reduction over 5 years

Notable revenue provisions

- Net investment income tax
- High-cost plan excise tax (now repealed)
- Excise tax on medical device manufacturers (now repealed)
- Codification of economic substance doctrine and penalties

3/27/2009 - Introduction of FY10 budget resolutions in House & Senate

4/2/2009 - FY10 Budget resolutions pass House & Senate

4/29/2009 - Budget conference agreement passes House & Senate

Separate health reform bills were approved 11/7/2009 in the House and 12/24/2009 in the Senate, but the two sides could not agree on a unified approach before a special Senate election in MA (Brown to replace late Sen. Kennedy) ended Democrats' 60-vote majority. Reconciliation was used to amend the Senate bill to gain requisite support.

3/17/2010 - Reconciliation bill (HCERA) introduced

3/23/2010 - PPACA signed into law

3/25/2010 - Reconciliation bill passes House & Senate

3/30/2010 - Reconciliation bill signed into law

Time limits

In the Senate, debate is limited to 20 hours on a budget reconciliation bill and all amendments must be relevant to the underlying provisions of the bill. The 20-hour time limit for debate and the germaneness requirements, along with the prohibition on filibustering the bill, are key reasons why the Biden administration and congressional Democratic leaders are keen on using the process to move a "human infrastructure" bill, which will likely be at least partially paid for with tax increases.

As with other legislation, differences between House and Senate reconciliation bills are typically resolved through a conference committee, and the resulting conference report must then be approved by the House and Senate. Again, on the Senate floor, debate is limited and only 51 votes are needed to pass the final bill and send it to the President.

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