

# What is Reconciliation?

## OVERVIEW

The reconciliation process is meant to fast-track legislation that meets the fiscal goals Congress sets out in budget resolutions. The term “reconciliation” refers to reconciling Congressional spending with projected revenues, outlays, and debt, and originated in the Congressional Budget Act of 1974. Budget reconciliation as a whole is not a Senate-only process, but in recent decades — most notably for the 2001 and 2003 tax cuts<sup>1</sup> and key amendments to the Affordable Care Act<sup>2</sup> — reconciliation has become a means to an end to bypass the Senate’s filibuster and 60-vote cloture threshold. Using reconciliation as a filibuster bypass makes designing the underlying legislation difficult, as it must conform to stricter Senate-only rules.

## TRIGGERING RECONCILIATION

Bills can be passed using reconciliation if the annual budget resolution contains reconciliation instructions. These instructions direct committees to draw up legislation that meets budgetary goals. For example, the budget resolution may instruct the House Committee on Ways and Means to draft legislation that raises \$100 billion in additional revenue by 2030. Importantly, these instructions do not need to be specific, giving committees leeway to draft legislation on any topic within their jurisdiction provided it meets the budgetary goals. There are only four (somewhat) binding directives in the reconciliation instructions, namely, “[W]hich committee(s) should report reconciliation legislation, the date by which the committee(s) should report, the dollar amount of budgetary change that should be in the resulting reconciliation legislation, and the time period over which the impact of this budgetary change should be measured.”<sup>3</sup>

The last directive, the time period for measuring the budgetary change, is a key provision that Congress has managed to work around, thereby allowing reconciliation bills to be used for legislation that would otherwise increase the deficit, which is against Senate rules (more

on this later). The 2001 and 2003 tax cuts, for example, increased the deficit in the short run but contained an automatic sunset at the end of the budget window. This structure allowed the tax cuts to satisfy reconciliation rules on net. Similarly, not every spending, revenue, or debt item in a reconciliation bill needs to satisfy the instructions to increase revenue or decrease spending. The effects of the bill are considered on net, or if multiple committee bills are combined, each title is considered on net.

The Congressional Research Service also found that Congress has chosen to largely ignore the committee reporting deadlines in reconciliation instructions. Reconciliation bills have kept their privileged status even if committees reported late.

## LIMITED NUMBER OF RECONCILIATION BILLS

Per Senate interpretation of the Budget Act, the maximum number of reconciliation bills the Senate can consider per year is three: one concerning spending, one concerning revenues, and one concerning debt. A reconciliation bill can include all three issues at once, but this consideration counts toward the limit for all three. Congress can, however, pass additional budget resolutions for future fiscal years as a way to issue new reconciliation instructions. For instance, the current 117th Congress will be able to pass budget resolutions for Fiscal Years 2021 (which ends September 30, 2021), 2022, and 2023. Congress may also be able to amend a current fiscal year’s budget resolution and enact new instructions, but this power is untested.<sup>4</sup>

## BRINGING LEGISLATION INTO COMPLIANCE

Despite the stipulations above, there are workarounds in both the House and Senate that allow legislation otherwise not eligible for reconciliation to be amended to comply with reconciliation rules before it reaches the floor. These workarounds are another avenue through which Congress

has opened up the reconciliation process to major legislation. The Budget Act makes this process relatively easy in the House, where section 310(d)(5) expressly grants the House Rules Committee the power to amend legislation reported from other committees that fails to meet the budget resolution's reconciliation instructions. This has allowed House committees to report shell bills to the Rules Committee that the Rules Committee then turns into reconciliation-compliant legislation. The Health Care and Education Reconciliation Act of 2010 used a previous House version of the ACA (one with a public option) and an existing student aid bill as shell bills that the Rules Committee then turned into reconciliation legislation.

In the Senate, the process is more indirect. The Senate can pass a motion to recommit a bill to committee with instructions to bring the bill into compliance. Critically, the motion to recommit does not have a germaneness requirement.

### CONSIDERATION ON THE FLOOR

Floor consideration is where the Senate's rules can make or break the reconciliation process. In cases where only one Senate committee received reconciliation instructions, that committee can report the measure directly to the floor, but in most cases the Senate Budget Committee combines multiple committees' measures. At this point, the Budget Committee must publish a list of potential violations of the Byrd rule. These violations are subject to points of order from any senator during floor consideration. The House process is relatively similar to its regular procedure, with reconciliation debate tightly controlled by special rules from the Rules Committee.

### THE BYRD RULE

The Byrd rule places strict limits on germaneness. If a provision of a reconciliation bill is found to be extraneous, and therefore violate the Byrd rule, that provision is stricken from the bill. When the Senate considers potential

violations of the Byrd rule, the procedure is referred to as giving the bill a "Byrd bath."

A provision is extraneous if at least one of the following criteria applies:

- The provision does not change spending or revenues.
- The provision produces only incidental changes in spending or revenues.
- The provision changes spending or revenues, but in a way that is out of compliance with the reconciliation instructions.
- The provision is outside the jurisdiction of the committee that submitted it.
- The provision would increase the deficit in years beyond the time period specified in the instructions.
- The provision would alter Social Security.

For large reconciliation bills, provisions often are stricken because they are ruled extraneous. Since these criteria can be a matter of opinion, the Byrd bath process is often carried out in close consultation with the Senate parliamentarian. The parliamentarian will work with majority and minority leadership and with the Budget Committee in making a determination, which is technically nonbinding but as a matter of precedent enforced by the presiding officer.

An offending provision is officially stricken when a senator makes a point of order against it and the presiding officer sustains the point of order. The point of order can be overturned only with a three-fifths vote of all senators (i.e. 60 votes, not just three-fifths of those present). Similarly, any amendment offered that fails to meet the criteria above must receive a three-fifths vote.

Exceptions can be made to the Byrd rule under certain circumstances, but only if the chair and ranking member of the Budget Committee and of the committee of jurisdiction for the provision agree.



## LIMITS ON DEBATE

In addition to only needing a simple majority, reconciliation bills are also subject to limited debate in the Senate, foreclosing the possibility of a filibuster. Motions to proceed to reconciliation bills are not debatable, and once debate on the underlying bill begins such debate is limited to 20 hours equally divided. Debate on any given amendment is limited to two hours, with debates on second-degree amendments, motions, and appeals limited to one hour. Votes on amendments, however, may continue beyond the 20-hour debate limit, which can lead to a long series of successive amendment votes called “vote-a-rama.” Technically there is no limit on the length of the “vote-a-rama.”

## CONFERENCE REPORTS

Conference reports on reconciliation bills, like other conference reports, are privileged and not amendable. Under Senate rules, however, the Byrd rule also applies to conference reports, so any House amendments accepted in conference may be subject to a “Byrd bath.” Debate on the conference report is limited to 10 hours in the Senate.

## CONCLUSION

Reconciliation legislation is difficult to draft in a way that survives close Senate scrutiny. But in an equally divided Senate, as we will have in 2021, it may be the only means the 50-50 Democratic Senate majority has to pass any sort of sweeping legislation.

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<sup>1</sup> The Economic Growth and Tax Relief Reconciliation Act (2001) and Jobs and Growth Tax Relief Reconciliation Act (2003).

<sup>2</sup> The Health Care and Education Reconciliation Act of 2010

<sup>3</sup> “[The Budget Reconciliation Process: Stages of Consideration](#),” *Congressional Research Service*, 2.

<sup>4</sup> Section 304 of the Budget Act reads, “At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.” It is unclear if such revisions count against the Senate’s three-bill limit discussed above. The senate parliamentarian has never ruled on the matter.

