

Reconciliation 101

Understanding the reconciliation process in the lead up to 2025

Richard Kogan and David Reich

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Learning Targets!

At the end of Reconciliation 101, I will:

- Understand why Reconciliation will be a key part of Republican legislative strategy in 2025
- Identify the role of a budget resolution
- Know what people mean when they say something is 'Byrd-able'
- Understand what is and isn't likely possible through Reconciliation

Reconciliation Process

Steps to passing a reconciliation bill

Why Do All of This?

Procedural advantages of reconciliation

- Cannot be filibustered (debate is limited to 20 hours), therefore only requires a simple majority to pass
 - *Which in recent years has allowed for party line votes.*
 - *This has been the strategy for most major legislation in the last few years: Bush and Trump tax cuts, APRA, IRA*

How Does Congress Start the Reconciliation Process

The House and Senate must agree on a budget resolution that:

- Gives reconciliation directives for specified committees to prepare and report legislation that:
 - By specified amounts over a specified time:
 - Increases or decreases spending (outlays)
 - Increases or decreases revenues
 - Or modifies the debt limit

The budget resolution is **the plan** for the **process** of budget reconciliation.

Examples from 2017: Tax Cut and Jobs Act and the Affordable Care Act repeal

- (ACA Repeal) The FY 2017 budget resolution instructed relevant House and Senate committees to:
 - Reduce the deficit
 - By not less than \$1 billion
 - Over 10 years
 - Failed, was the only reconciliation bill ever defeated on the floor
- (TCJA) The FY 2018 budget resolution instructed the House and Senate tax writing committees to:
 - Increase the deficit
 - By not more than \$1.5 trillion
 - Over 10 years

The Democrats passed two reconciliation bills: The American Rescue Plan and the Inflation Reduction Act

Reconciliation Process: After the Budget Resolution

- Each committee named in the budget resolution will then write legislation responding to the instructions in the budget resolution
- Then the budget committee will combine into one bill, without making any substantive changes to the committees' submission
- After each part is combined the bill moves to the full chamber
- Each chamber can work on reconciliation bills at the same time, or one can go first, and the second can consider the completed bill

How Many Reconciliation Bills Can Congress Do Each Year

- The Senate Parliamentarian's view is that a single budget resolution can initiate up to three reconciliations bills, each addressing one of the following subjects:
 - Spending
 - Revenues
 - The debt limit
- Or multiple subjects can be combined into a single reconciliation bill.
- Since most taxation bills also involve spending (such as refundable tax credits), in practice a budget resolution may be able to initiate only initiate two bills, one for taxes and spending and one for the debt limit.
- Further bills that year would require another budget resolution.

The Byrd Rule

What can and can't be done through reconciliation

What is the Byrd Rule?

- The Byrd Rule is an amendment to the Congressional Budget Act sponsored by Senator Robert Byrd (D-WV) in 1985
- He wanted to block Senators from using the reconciliation process to pass provisions that are ‘extraneous’ to the goal of reconciliation
 - Which is to implement *budget* changes
- The Byrd Rule applies to all provisions and amendments
- Provision is not formally defined and can be as narrow as a single word

Six Provisions barred by the Byrd Rule

From least complicated to most complicated:

- Violates Committee jurisdiction
- Amends Social Security OASDI benefits and taxes
- Reduces the deficit too little or increases the deficit too much
- Has net costs beyond the reconciliation window
- Has no scorable budgetary effect
- Has budgetary effects that are “merely incidental”

The Terms and Conditions Exception

Allows for non-budgetary provisions that don't change the level of spending if they are "terms and conditions" of budgetary provisions in the bill:

Examples:

- Creating a new mandatory program and directing which agency will administer the program
- Requiring an agency to conduct studies using discretionary funding
- Directing what states can do with money from a new block grant
- Making non-budgetary changes to an existing block grant.

Further Explanation of Budgetary Provisions that are “Merely Incidental”

The Byrd Rule bars provisions that have budget effects that are merely incidental

Examples:

- Minimum wage
- Immigration status
- Individual mandate
- Provisions that only affect one entity (one college or Planned Parenthood)
- Bonus bids from Alaska oil drilling

The Byrd Rule in Practice

- Senators must raise Byrd Rule points of order; it is not self enforcing
- The parliamentarian makes a judgement call on whether a provision violates the Byrd Rule
- A 3/5 majority vote will waive a point of order that has been sustained by the presiding officer

Example: Trying to Waive the Byrd Rule

During the passage of the Inflation Reduction Act 2021:

- Senate parliamentarian determined that capping insulin prices could only be applied to Medicare
- Capping prices for people not on Medicare was ‘Byrdable’
 - Because its budgetary effects were ruled ‘merely incidental’
- The provision was removed
 - If 60 senators had voted to waive the Byrd rule the provision would have remained
 - 43 Republican senators voted against waiving the point of order, so the provision was removed