



BUDGET BULLETIN

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Reconciliation Debate, Byrd Rule, 2016 Budget Process

In This Issue:

A Reconciliation Primer

The Byrd Rule Explained

2016 Budget Resolution and Reconciliation Record

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EDITOR'S NOTE: All years are fiscal years unless otherwise stated.

For the first time in five years, in the coming weeks the Senate could have the opportunity to consider a reconciliation bill. As Senate staff dust off copies of [The Byrd Rule](#), this *Budget Bulletin* will help familiarize readers with some of the unique aspects of a reconciliation bill, including its restricted contents and privileged consideration.

A Reconciliation Primer

Reconciliation is a fast-track procedure designed to facilitate changes in laws governing mandatory spending programs, or entitlements, and/or revenues to achieve certain budgetary goals reflected in a budget resolution.

Like a budget resolution, a reconciliation bill is a privileged vehicle. Therefore, the motion to proceed requires only a simple majority to pass, debate time in the Senate is limited, amendments must be germane, the bill cannot be filibustered, and final passage requires a simple majority. Unlike a budget resolution, however, it is submitted to the president for his signature or veto.

Before the reconciliation process begins, both chambers must pass a concurrent budget resolution conference report that includes reconciliation instructions to committees. These instructions designate which committee(s) should report reconciliation legislation, the date by which they should report, the overall dollar targets to be achieved, and the time period over which to measure the budgetary impact of the proposed statutory changes.

The topline numbers in a budget resolution include the budgetary effects of reconciliation. Committees with reconciliation instructions use their own discretion in determining which policy changes to adopt in a reconciliation title. Their only requirement is to comply with the reconciliation target in the instruction.

For a single-committee instruction, the committee reports its reconciliation bill directly to the legislative calendar. Multiple instructed committees report to their chamber's respective budget committee, which then combines their recommendations into a single bill—without making substantive changes to the reported titles—and reports the legislative package.

Reconciliation instructions specify a reporting date. If a committee in a multi-committee instruction does not meet its filing deadline, the Budget Committee chairman may wait or report the reconciliation bill with the missing title. On the floor, one or more motions to recommit forthwith and report back with an amendment can be employed to write the absent committee's portion of the reconciliation bill.

The Byrd Rule Explained

Because reconciliation restricts the Senate's right to unlimited debate, the contents of a reconciliation bill are tightly controlled. Any senator can move to strike language that is considered "extraneous" by raising a point of order pursuant to the Byrd Rule (section 313 of the [Congressional Budget Act](#)).

The Byrd Rule is a set of six character tests that evaluate whether the primary purpose of a provision is "budgetary." The character tests are mostly objective, or numbers-based. In general, matter violates the Byrd Rule as extraneous if:

- It does not produce a change in outlays or revenue.
- The net budgetary effect of a title reported by the reconciled committee is such that the committee does not achieve its fiscal target.
- The committee reports a title containing matter outside its jurisdiction.
- The budgetary effects of a provision are "merely incidental" to the overall policy objective.
- The reported title causes an increase in the deficit in any year outside the budget window.
- The provision makes changes to the retirement and disability programs in Title II of the Social Security Act.

Examples of extraneous matter include language that overturns court decisions; provisions that modify behavior; reports and studies; and precatory language such as Sense of the Senate statements and "findings." Among the many determining factors in removing provisions from a reconciliation bill are provisions of the 1974 Congressional Budget Act, Senate precedent, the

wording of a provision, the Congressional Budget Office cost estimate, the persuasive ability of senators and their staff, and the judgment of the Senate parliamentarian.

There are exceptions to the Byrd Rule. For example, a provision that does not have any budgetary effects but is considered a “term and condition”—proscribing how outlays are made or revenues are collected—is not considered extraneous. Similarly, a provision is not extraneous if its change in outlays is equally offset by a change in revenues, such that the net effect is zero. Jurisdiction points of order under Senate rules are waived if the material is an integral part of a provision or title that would be referred to the reporting committee if introduced as a standalone bill or resolution.

Before floor consideration of a reconciliation bill, the Budget Committee participates in a “Byrd scrub” to pinpoint extraneous matter. The Budget Committee chairman then must submit an advisory list of Byrdable items for printing in the *Congressional Record*. A member may raise a Byrd point of order to strike one, some, or all Byrdable provisions.

If sustained, a point of order under The Byrd Rule is a surgical strike, meaning the offending matter is removed from the legislative text, but the rest of the bill remains. Sixty votes are required to waive a Byrd Rule point of order and retain the text in question. If a point of order is sustained against a provision in a reconciliation conference report, the offending matter is stricken, but the amended conference report, if passed, returns to the House for approval.

Reconciliation and the 2016 Budget Resolution

Section 2001(a) of the conference report for [S. Con. Res. 11](#), the 2016 concurrent budget resolution adopted by the House and Senate, directs the Senate Committee on Finance and Committee on Health, Education, Labor, and Pensions (HELP) to recommend changes in laws within their respective jurisdictions to reduce the on-budget deficit by a total of \$1 billion each over the 2016-2025 period. Recommendations are due to the Budget Committee by July 24.

In addition, section 2001(b) of the 2016 resolution prohibits Senate consideration of any reconciliation bill reported pursuant to section 2001 that includes a provision increasing the public debt limit. This prohibition is enforced with a 67-vote point of order.

Addressing reconciliation in the House, section 2002 provides instructions for the committees on Education and the Workforce, Energy and Commerce, and Ways and Means to report their recommended changes in laws to reduce the on-budget deficit by at least \$1 billion each over the 2016-2025 period. In addition, the House committees received non-binding instructions to use reconciliation to repeal President Barack Obama’s health care law.

**Summary of Reconciliation Instructions in Title II of S. Con. Res. 11
The 2016 Concurrent Resolution on the Budget**

Committee	Fiscal Target	Time Period	Due Date
SENATE			
Finance	Reduce on-budget deficit by \$1 billion	The 10-year period of 2016 through 2025	Friday, July 24, 2015
HELP	Reduce on-budget deficit by \$1 billion	The 10-year period of 2016 through 2025	Friday, July 24, 2015
HOUSE			
Education and Workforce	Reduce on-budget deficit by \$1 billion	The 10-year period of 2016 through 2025	Friday, July 24, 2015
Energy and Commerce	Reduce on-budget deficit by \$1 billion	The 10-year period of 2016 through 2025	Friday, July 24, 2015
Ways and Means	Reduce on-budget deficit by \$1 billion	The 10-year period of 2016 through 2025	Friday, July 24, 2015

The combined fiscal target in the House is \$3 billion in savings, while the Senate's is \$2 billion, raising the question whether in order to be compliant with the Byrd Rule, the Senate's de facto target is actually \$3 billion. The answer is no—the Byrd Rule is enforced in the Senate only, so it only pertains to the Senate's reconciliation instructions.

Reconciliation Record

The majority of reconciliation bills in the post-Byrd Rule era have become law under divided government. As the record shows, a Republican-led Congress working with a Democratic president has passed pro-growth tax reform (Taxpayer Relief Act of 1997), reformed entitlements (Personal Responsibility and Work Opportunity Reconciliation Act of 1996), and balanced the budget (Balanced Budget Act of 1997).

At the same time, vetoed bills—the Balanced Budget Act of 1995, the Taxpayer Refund and Relief Act of 1999, and the Marriage Tax Relief Act of 2000—demonstrate how reconciliation can highlight political differences.

How the 114th Congress builds on this mixed reconciliation record will play out in the coming weeks. The U.S. Supreme Court ruling in the *King v. Burwell* case regarding certain subsidies under the president's health care law could provide the answers as Congress considers action.