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Government 101: Budget Reconciliation Protocols

Now that both the Senate and House have passed the Budget Resolution, here's an overview of the budget reconciliation protocols.

In 1974, Congress created the special process of "budget reconciliation" (often just referred to as "reconciliation") to enable the House and Senate to approve major changes to federal tax and spending policies on an expedited basis. Under reconciliation, the House and Senate must first pass a budget resolution that provides broad direction and sets parameters regarding changes in spending and taxation that will be fleshed out in detail in a subsequent reconciliation bill.

A reconciliation bill only needs a simple majority vote in the House and Senate to be approved. It therefore is a particularly attractive option in the Senate, where filibuster rules effectively require 60 votes to pass most other legislation. Time and again, the majority party has used reconciliation to pass major bills that otherwise could not attract the 60 votes needed for passage. Most recently, Republicans used it in 2017 to pass the tax cut bill championed by President Trump. Democrats also used it in 2010 to pass major parts of the Affordable Care Act ("Obamacare").

The budget reconciliation process is governed by complicated rules that limit how it can be used. Most importantly, provisions in a reconciliation bill must have a clear impact on government revenues or spending. Policy proposals that don't have such a clear budgetary impact generally are not allowed to be included.

The process - step by step

As noted, the House and Senate must first pass the same budget resolution (this can be for the upcoming fiscal year or for the current fiscal year if the prior Congress hasn't passed a budget resolution). The budget resolution only needs a majority of votes to pass and does not require the signature of the President.

- *The Senate passed its fiscal year 2022 budget resolution on August 11. The House passed the same measure on August 24.*

To allow the reconciliation process to commence, the budget resolution must provide instructions and directives on fiscal policy to guide the development of the subsequent reconciliation bill (most approved budgets in Congress have not carried reconciliation instructions and are just non-binding fiscal plans). The reconciliation instructions direct relevant congressional committees to develop specific policies that fit within their jurisdiction.

- *The Senate/House-passed budget resolution specifies that 12 Senate/House committees should complete their work on issues relevant to their jurisdiction by September 15. These committees in the Senate/House will be working to write legislation consistent with the reconciliation instructions of the recently-passed budget resolution throughout the rest of August and early September. Given the enormity and complexity of these efforts the committees may miss the target dates.*

The measures approved by specific committees are then folded into a comprehensive reconciliation bill to be voted on by the House and Senate. In both the House and Senate, "privileged" rules ensure that the debate on the bill will be limited and not subject to lengthy delays. While lawmakers can offer amendments to the reconciliation bill, those amendments (as well as the underlying provisions in the bill) are subject to "points of order" regarding whether they have a primary budget purpose and are therefore eligible to be included in the bill.

Following passage by both chambers, the bill will need the signature of President Biden to become law. If the two chambers had passed different reconciliation bills, they would need to resolve their differences over the two bills and vote again on a final (and identical) bill.

What can and cannot be included in budget reconciliation? The budget reconciliation rules set strict limits on what types of provisions can be included and what cannot.

Generally speaking, the following provisions that can be included in a reconciliation bill:

- Government spending measures
- Government tax policies
- An extension of the debt ceiling

On the other hand, these types of provisions cannot be included:

- Policy changes unrelated to tax and spending measures
- Changes to Social Security
- Provisions that add to the budget deficit beyond the timetable laid out in the bill unless they are offset by other measures
- Provisions that do not relate to the content of the previously-approved budget resolution

During the Senate's consideration of the reconciliation bill in the Fall, there will be particular focus on the Senate Parliamentarian, an official who will decide what provisions can and cannot be included in a budget reconciliation bill. While the Parliamentarian is a technical expert on Senate rules, the position is appointed by the Senate Majority Leader. Throughout the process of considering a reconciliation bill, Senators will raise procedural challenges that question the eligibility of certain provisions. It will be up to the Parliamentarian to make determinations regarding those challenges. Some of these decisions could eliminate some key provisions of the bill.

If the Parliamentarian rules against the eligibility of a provision or amendment, the Senate could vote to waive reconciliation rules to include that provision, but this would require the support of three-fifths of Senators. A more drastic step would be for the majority to overturn the Parliamentarian's decision through a majority vote. While this is unlikely to happen, this controversial and precedent-setting step can't be totally ruled out. *While the Senate is an institution of tradition and precedent, Senate rules can be revised or eliminated at any time.*

Budget reconciliation and impact on the federal budget deficit-- The provisions of the reconciliation bill do not have to be deficit-neutral.

The reconciliation package that passed earlier this year contained $1.9 trillion of spending on COVID relief with no offsets. The budget resolution that recently passed the Senate is designed to accommodate a $3.5 trillion spending plan. While the stated intent is to fully offset this spending with tax increases, the budget resolution has limited detail in this regard. It will be difficult to get agreement from all 50 Senate Democrats on the needed tax increases to pay for a bill on the scale of $3.5 trillion. These tough choices regarding pay-fors likely will force Democrats to decrease the size of the spending and to finance a large portion of it through increased borrowing.

Additionally, there are limitations in the process with respect to budget impact. First, the bill's provisions cannot increase the budget deficit beyond the time window set in the budget resolution. The budget resolution often sets out a ten-year plan for the new tax and spending provisions. Tax cuts or spending that go beyond that ten-year period would have to be paid for, phased out or maintained by a vote of Congress to continue in some form. Amendments offered to a reconciliation bill also generally must be deficit neutral.

Budget reconciliation and the debt ceiling-- A reconciliation bill can be used to pass an extension of the debt ceiling If the preceding budget resolution authorizes it.

Senate Democrats did not include reconciliation instructions regarding the debt limit in the budget resolution. Democrats currently plan on increasing the debt limit as part of a separate, must-pass government funding bill in the Fall. As with most legislation in the Senate, that bill must clear a 60 vote procedural hurdle and therefore will need Republican support. However, Senate Minority Leader Mitch McConnell (R-KY) has argued that Democrats should raise the debt limit through the reconciliation process and has vowed Republican opposition to a debt ceiling increase. Congressional debates over the extension of the debt ceiling during the last few decades have been very political and the current brinkmanship between Democrats and Republicans on the increase in the debt limit will lead to a major showdown in the Fall.