U.S. House of Representatives
Committee on the Budget
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Budget Reconciliation:
How it will Work under the 2016 Budget Conference Agreement

Overview

The conference agreement on the fiscal year 2016 budget resolution (S. Con. Res. 11) directs three House and two Senate committees to produce legislation to be considered under fast-track procedures known as reconciliation. The House Committees on Education and the Workforce, Energy and Commerce, and Ways and Means – and the Senate Committees on Finance and on Health, Education, Labor, and Pensions – are instructed to report proposals that achieve a total of at least $1 billion each in savings. Although the committees missed their July 24 reporting deadline, Republican leadership has indicated it still intends to produce reconciliation legislation in the fall, perhaps as early as September. The House and Senate Budget Committees will then each package the proposals from their chamber's committees into reconciliation bills for floor consideration. Like the budget resolution, a reconciliation bill cannot be filibustered in the Senate and therefore needs only a simple majority to move to a final vote. However, there are limitations on what can be included in a reconciliation bill, although a 60-vote majority in the Senate can override any objections. A two-thirds vote of both chambers would be needed to override a Presidential veto, which effectively serves as a final obstacle to including controversial items. The budget resolution states that it intends that the reconciliation bill will repeal the Affordable Care Act. However, the instructed committees could achieve savings in any of the programs under their jurisdiction. This report summarizes the reconciliation procedures in general and outlines the specific instructions in this year's budget.

Reconciliation Procedure

Background

In addition to setting total spending, revenues, the surplus or deficit, and the public debt, Congress's annual budget resolution may also include reconciliation instructions. These instructions may direct one or more committees to make legislative recommendations to change existing law within their jurisdictions affecting spending, revenues, and/or the debt limit[1]. In the Senate, the resulting reconciliation bill incorporating those proposals is

[1] The 2016 budget resolution conference report creates a point of order in the Senate against using the 2016 reconciliation bill to raise the debt ceiling.

considered under expedited procedures that limit debate and amendments, although there are restrictions on what can be included in the bill or offered as an amendment on the floor.

Congress last passed a reconciliation measure five years ago to enact the final parts of the Affordable Care Act (ACA)[2] and changes in student loan programs. (In May 2012, House committees produced legislation pursuant to reconciliation directives in the Republican House-passed budget resolution, but as there was never a budget conference agreement there was therefore no reconciliation process in place.) In total, Congress has used reconciliation 23 times since 1980 – 3 bills were vetoed and 20 enacted – primarily for legislation that reduced the deficit through cuts in mandatory spending or increases in revenues. However, beginning in the early 2000s, Republican Congresses began to routinely use reconciliation to increase the deficit, enacting major tax cuts without offsetting the revenue loss in 2001, 2003, and 2006.[3]

The reconciliation directives in the current budget resolution conference agreement require net deficit reduction of at least $1 billion from each of the five specified committees. The savings target is a floor and not a ceiling on the amount of savings each committee is to recommend.

How Reconciliation Works in the House

Each instructed authorizing committee drafts recommendations for spending and/or revenue changes in a manner subject to its committee rules and the rules of the House. For example, the House rule on germaneness is enforceable in committees. Committees may not adopt rules only allowing consideration of deficit-neutral or deficit-reducing amendments, even pursuant to a unanimous consent request. In meeting their reconciliation instructions, committees may choose to increase costs in some areas as well as reduce costs in others, as long as the net total of their proposal reduces deficits (through direct spending cuts and/or revenue increases, in the case of the tax-writing committees) by at least the instructed amount.

Authorizing committees submit their recommendations for spending and/or revenue changes to the Budget Committee, where the separate measures are packaged and reported to the floor (when only one committee has instructions, that committee reports its measure directly to the floor). The Budget Committee cannot make substantive changes to the recommendations, even if the committees fail to meet the targets specified in the reconciliation directive.

[2] The vast majority of the ACA became law outside the reconciliation process, when the House passed the Senate health reform bill without amendment and the President signed it. The reconciliation bill consisted of limited, targeted changes to the underlying law sought by the House.

[3] See archived Congressional Research Service Report RS22098, "*Deficit Impact of Reconciliation Legislation Enacted in 1990, 1993, 1997, and 2006*."

Amendments to Reconciliation on the House Floor

Any House Member may ask the Rules Committee to allow amendments to the reconciliation package on the House floor. The Rules Committee historically has been receptive to amendments proposed by the Chair of the Budget Committee, which generally reflect leadership views. The Budget Committee markup of the reconciliation recommendations generally includes non-binding motions offered by the minority to instruct the Committee Chair to ask the Rules Committee to make specific amendments in order on the floor. In the past, the Rules Committee has made the Budget Committee Chair's amendment in order, sometimes incorporating it into the measure through a self-executing rule.

Under the Budget Act, amendments that worsen the deficit relative to the underlying bill are not allowed on the House floor unless the rule for the bill waives the point of order.[4] All amendments must also be germane to the underlying bill unless the rule waives the germaneness point of order.

If House Committees Do Not Comply with Reconciliation Instructions

While there are no penalties or points of order for failing to achieve the level of savings in the reconciliation directives, authorizing committees generally do make the required deficit reduction. If they do not, in the House the Rules Committee could make in order an amendment that achieves the required savings in a way that is counter to the wishes of the authorizing committee. Note that the budget resolution's reconciliation targets apply to the initial recommendations from the committees and not to the reconciliation conference agreement, which may contain more or less savings.

Benefits of Reconciliation in the Senate

The reconciliation procedures in Senate committees are similar to those in the House. In the Senate, however, reconciliation bills are subject to expedited procedures during floor consideration, as well as specific limits imposed by the so-called "Byrd rule" (which is described farther below).

The first major benefit is that debate on a reconciliation bill or reconciliation conference report is limited to 20 hours, so it cannot be filibustered on the Senate floor. The practical effect is that the bill can be passed with a simple majority vote, in contrast to most legislation, which requires a 60-vote supermajority to limit debate and invoke cloture. After debate has expired, Senators may continue to offer amendments but they are not debatable. This is colloquially referred to as "vote-a-rama." Second, amendments to a reconciliation bill must be germane, which is normally not the case in the Senate.

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[4] Even if the underlying bill achieves greater savings than the budget resolution instructed, amendments that worsen the deficit are not permitted in the House.

Third, with only a few exceptions, amendments to a reconciliation bill on the Senate floor cannot increase the deficit; they must either lessen the deficit or be deficit-neutral. One exception is that amendments striking an entire provision are always in order, even if the provision being removed saves money. In the Senate, if the reconciliation bill fails to meet a committee's savings target there is a procedure to allow non-germane floor amendments to bring the bill into compliance with the reconciliation instructions.

Limitations of Reconciliation in the Senate – the Byrd Rule

Named for Senator Robert Byrd, the Byrd rule (Section 313 of the Congressional Budget Act) was first adopted in the mid-1980s to limit extraneous provisions from inclusion in reconciliation bills. Because reconciliation bills are considered using expedited procedures in the Senate, the Byrd rule is aimed at preventing using reconciliation to move a legislative agenda unrelated to spending or taxes, and to some extent protects the intended purpose of reconciliation as a tool to reduce the deficit. The Byrd rule prohibits the inclusion of "extraneous" measures in reconciliation, and defines the following items as extraneous:

- measures with no budgetary effect (i.e., no change in outlays or revenues);
- measures that worsen the deficit when a committee has not achieved its reconciliation target;
- measures outside the jurisdiction of the committee that submitted the title or provision;
- measures that produce a budgetary effect that is merely incidental to the non-budgetary policy change;
- measures that increase deficits for any fiscal year outside the reconciliation window (beyond fiscal year 2025 for this budget resolution); and
- measures that recommend changes in Social Security.

Any Senator may raise a point of order against an extraneous provision in the reconciliation bill, amendments, or the conference agreement. The Senate Parliamentarian decides whether there is a Byrd rule violation, and provisions struck through a Byrd rule point of order cannot be offered later as amendments. However, Byrd rule points of order can be waived by a vote of 60 Senators.

In addition to the Byrd rule limitations, just as in the House, amendments that worsen the deficit relative to the reported reconciliation bill are not allowed in the Senate.[5] Reconciliation bills are subject to other Senate points of order, like the Senate PAYGO rule, that apply to all legislation.

[5] Section 3206 of the 2016 budget resolution conference agreement includes a provision applying the House rule to the Senate.

Reconciliation Conference Agreement Procedures

As noted above, a reconciliation conference agreement is not bound by the original reconciliation instructions. Technically, neither the House reconciliation bill nor the Senate bill is bound by the targets, but the threat that the Budget Committees or someone else could propose floor amendments bringing the bills to their targets has historically given authorizing committees the incentive to meet the targets themselves. That threat does not apply to conference agreements, which cannot be amended on the floor.

However, even though a conference agreement cannot be amended, it is still subject to Byrd rule requirements in the Senate. Thus, although the Byrd rule does not apply in the House, it constrains what can be included in the reconciliation conference agreement. A provision violating the Byrd rule can be struck from the conference agreement on the Senate floor unless 60 senators vote to waive the point of order. Stripping a provision due to a Byrd rule violation does not mean the conference agreement is defeated, just that the agreement will be sent to the House without the stripped provision.

Reconciliation Instructions in the 2016 Budget Resolution

The fiscal year 2016 budget resolution conference agreement includes reconciliation instructions to three House committees – far fewer committees than in the House budget – and two Senate committees. Each committee is directed to report recommendations for changes in law that reduce the deficit by at least $1 billion. The committees missed their reporting deadline of July 24, but there is no penalty for missing the deadline and Republican leadership indicates it intends the committees to report legislation this fall.

Committees with Reconciliation Instructions for at least $1 Billion in Deficit Reduction from Fiscal Year 2016 through 2025

House Ways and Means	Senate Finance
House Education and the Workforce	Senate Health, Education, Labor, and Pensions
House Energy and Commerce	

The conference agreement and various public statements by Republicans earlier this year signaled their intent to attempt to use reconciliation to repeal the ACA outright, or to substantially modify or replace the ACA with a different set of policies related to health insurance coverage and regulation. Republicans in Congress have voted 58 times to repeal, defund, or otherwise weaken the ACA over the past five years. Yet despite repeated promises to "replace" the ACA with their own vision of health reform, they have yet to coalesce around a comprehensive alternative to the ACA. One potential source of uncertainty is the Byrd rule, which could preclude certain approaches to repeal – such as a one-sentence bill directing repeal of the ACA – from being used in a reconciliation bill.

Notwithstanding the budget resolution language supporting repeal of the Affordable Care Act through reconciliation, the committees with reconciliation instructions can achieve savings in any of the programs under their jurisdiction. The major programs in each of the committees with reconciliation instructions are listed in the box below.

Major Programs in Jurisdictions of Committees with Reconciliation Instructions

Committee	*Major Programs (other than ACA)*
House	
Education and the Workforce	Student financial aid, child nutrition, pension insurance
Energy and Commerce	Medicare, Medicaid, Children's Health Insurance Program, Universal Service Fund, spectrum policy
Ways and Means*	Tax policy (including refundable credits such as the Earned Income Tax Credit), Medicare, Unemployment Insurance, Supplemental Security Income, Temporary Assistance for Needy Families
Senate	
Finance*	Tax policy and refundable credits, Medicare, Medicaid, Unemployment Insurance, SSI, TANF
Health, Education, Labor and Pensions	Student financial aid, pension insurance

*Committee jurisdiction also includes Social Security, which cannot be affected by a reconciliation bill.