



TO: FEROX CLIENTS
FROM: FEROX STRATEGIES
DATE: OCTOBER 30, 2020
RE: PRIMER ON BUDGET RESOLUTION RECONCILIATION

Should Democrats win the White House, the House, and the Senate in the 2020 election, a new Democratic majority could enact major priorities on tax, health, economic stimulus, infrastructure, and more through budget reconciliation, or simply “reconciliation.” Reconciliation proposals can amend federal spending (subject to the “Byrd rule,” explained below), revenue (taxation), or the debt ceiling. The phrase “reconciliation” refers to Congress *reconciling* previously passed budget limits with updated priorities.

Notable quirks of the reconciliation process: It allows the majority to bypass the 60-vote filibuster in the Senate, advancing major changes through the Senate on a simple majority vote on a shortened schedule. However, the Senate may apply the “Byrd rule” to limit the scope of a budget reconciliation proposal. Further, Congress may only attempt reconciliation once a year on each of the three priorities (spending, revenue, debt ceiling); they may not endlessly attempt the maneuver. Finally, the reconciliation process does not override a presidential veto.

Budget reconciliation was first enacted in the Congressional Budget Act of 1979 and has been updated over time. Examples of reconciliation bills enacting major reforms from recent history: passage of welfare reform in 1996, the “Bush tax cuts” in 2001, perfection of the “Obamacare” health reform law in 2010, and passage of the Tax Cuts and Jobs Act in 2017.

Special note on corporate taxes and reconciliation: Vice President Biden has spoken of his desire to raise the corporate tax rate on “day one” of his presidency. However, Biden’s business liaisons, such as senior economic advisor Ben Harris, have also suggested that a Biden Administration may wait to attempt tax increases until the economy further recovers. This [aligns with recent reporting from the Washington Post](#): “Biden is not likely to pursue tax hikes as part of short-term stimulus programs designed to help the nation’s economic recovery, according to two people familiar with the campaign’s thinking. However, the former vice president would likely aim to include his tax increases if Congress approves his proposed permanent spending plans, such as expansions in child care, health care or education, these people said.” Further, under the budget reconciliation process outlined below, it appears very unlikely that Congress would have an implementing measure like reconciliation lined up so early in a Biden presidency. Finally, there is no guarantee that all Democratic members of Congress, especially those facing midterm headwinds in 2022, would go along with that plan.

Basics and timing of the budget reconciliation process

As of this writing, the **timing of a potential budget reconciliation attempt is hazy and subject to change depending on Democrats’ goals**. The 1979 law that created reconciliation technically requires Congress to pass any reconciliation attempt on or before June 15; however, *this deadline has no enforcement*



mechanism and has been ignored in the past.¹

President’s FY 2022 budget request: The House and Senate Budget Committees begin budget resolutions when the White House delivers to Congress a budget request for the coming fiscal year (FY 2022, which begins October 1, 2021), typically around mid-February. (In the first year of a new Biden Administration, the budget request may come later in the year in March-May.) In a Biden Administration, the draft White House budget could include details of proposed budget reconciliation objectives such as tax reform, improvements to the Affordable Care Act, and other priorities.

Writing budget resolution and reconciliation instructions: In a typical year, the House and Senate Budget Committees would produce competing draft budget resolutions setting spending limits for the coming fiscal year, eventually passing a compromise non-binding budget resolution to guide annual appropriations. However, in a year where Congress intends to produce a budget reconciliation proposal, the House and Senate Budget Committees would closely collaborate to produce identical draft budget resolutions with reconciliation instructions, with the goal of enacting this proposal into law.

Reconciliation instructions to authorizing committees: Depending on the majority’s goals, identical budgets with reconciliation instructions passed in the House and Senate Budget Committees then go to authorizing committees with jurisdiction over the issues concerned. For example, a reconciliation proposal for tax reform would go to the House Ways and Means and Senate Finance Committees to collaborate to draft and report. The reconciliation instructions will include a deadline for authorizing committees to draft and report out according legislation, but that deadline will be based on the Budget Committees’ discretion and goals. Once the committees produce and report their accompanying legislation, they return that to the Budget Committees, who fold the proposals unchanged into a single omnibus reconciliation proposal for floor consideration.

The “Byrd rule”: Congress created the Byrd rule, named for the late Sen. Robert C. Byrd (D-WV), in 1985 to prevent abusive and “extraneous” provisions from creeping into budget reconciliation measures. The Byrd rule is only deployed in the Senate, birthing the term “Byrd bath.” The Byrd rule allows Senators to 1) raise a point of order against extraneous provisions, or 2) offer an amendment or motion to recommit to strike extraneous provisions. The Byrd rule is complex and subject to interpretation, but the rule overall bans measures that:

- Would change Social Security
- Does not change spending or revenues
- Is outside of the jurisdiction of the committee that submitted the provision
- Would increase the deficit beyond the ten-year “budget window” covered in reconciliation proposals.

The Byrd rule has tripped up many reconciliation attempts. For example, the Byrd rule in the 2017 Tax Cuts and Jobs Act process required Congress to set the bill’s tax cuts to expire in 2027 (after the ten-year

¹ For example, the 2017 Tax Cuts and Jobs Act was introduced in November and passed into law in December.



window). The [Byrd rule also required the Senate to remove House-passed provisions](#) dealing with tax incentives for home schooling and college endowment taxes in the TCJA.

Floor consideration and passage: A reconciliation proposal must be quickly considered on the House and Senate floor. In the Senate, debate time on a reconciliation measure is limited to 20 hours, and any suggested amendments must be germane. In the House, there is no such debate time limit, but all amendments must be germane, and the House Budget Chairman has strong influence over which amendments are ruled in order for a floor vote.

Floor consideration presents another opportunity for reconciliation attempts to go off the rails. In 2017, the Republican-controlled Senate could not pass a reconciliation proposal to repeal the Obamacare law when three Republican senators unexpectedly voted against the idea – the one-attempt-per-year rule then prevented the GOP from trying again. Senate Democratic leaders, who will likely have a slim majority, must ensure that all members are happy to prevent a similar outcome. This could empower Senators from purple states running in 2022 against potential midterm backlash, such as Sen. Catherine Cortez Masto (D-NV) and Sen. Maggie Hassan (D-NH) to demand moderate concessions to help keep their seats and protect the majority.

As mentioned above, a budget reconciliation proposal only needs a simple majority in both chambers to pass. If the President signs the bill into law, provisions of the reconciliation bill take effect.

Further reading:

- House Budget Committee Democrats, "[Budget Reconciliation: The Basics](#)" October 28, 2020.
- Congressional Research Service Report R40480, "[Budget Reconciliation Measures Enacted into Law: 1980-2017](#)." February 22, 2018.