

TRP SPECIAL REPORT: A PRIMER ON BUDGET RECONCILIATION AND PROSPECTS FOR THE 117TH CONGRESS

EXECUTIVE SUMMARY

With the Georgia runoff election results confirming a Democratic-controlled Senate, House, and Administration, the budget reconciliation process in Congress presents Democrats with a significant opportunity to pass sweeping legislation with a simple majority. Reconciliation was created in the Congressional Budget and Impoundment Control Act of 1974, originally designed to reduce the deficit. The reconciliation procedure, however, has been used by both parties in recent years to enact a sometimes-costly agenda while avoiding the filibuster.

Notably, in recent history, Republicans employed reconciliation for their 2017 tax overhaul, while Democrats used it to pass a significant portion of the Affordable Care Act (ACA) in 2010. Twenty-five reconciliation measures have been sent to the President since 1980 — 21 of which have been enacted. After being routinely used by Republican Congresses in the early 2000s to increase the federal deficit, House rules were changed by the Democratic majority in 2007 to allow reconciliation to be used only for deficit reduction. Republicans then changed that rule in 2011 to prohibit spending increases but permit revenue losses. That rule change allowed Congress to again use the reconciliation process to increase deficits, which the Republican majority did in 2017 with the Tax Cuts and Jobs Act (TCJA).

This memo lays out the legislative process on reconciliation and potential items that this Democratic-controlled Congress could seek to accomplish through reconciliation.

PROCESS

Reconciliation starts with the congressional budget resolution; there can be one reconciliation bill per budget resolution. Both chambers must adopt the same budget resolution to begin the process, and the resolution cannot be stalled in the Senate by filibuster, and it does not need the President's signature. In the annual budget resolution, the budget that Congress agrees on would include instructions on reconciliation, directing one or more committees to change spending, revenues, or deficits by specific amounts. That is the point at which specific programs might be targeted for spending cuts, or various taxes altered. Instructed House committees comply with their targets by making changes to any of the programs under their jurisdiction. The House Budget Committee then picks up those proposals, bundles them together if they came from multiple committees, and votes. It's worth noting that the Budget Committee cannot make substantive changes to the recommendations, even if the committees fail to meet the targets specified in the reconciliation

directive. The House typically adopts a rule limiting floor debate and specifying which amendments are made in order.

The process is very similar in the Senate, though the resulting reconciliation bill incorporating those proposals is considered under expedited procedures that limit debate and amendments and requires only a simple majority to move to a final vote. Reconciliation bills are not subject to filibuster because they have a 20-hour clock, and only a simple majority is needed to pass it. A conference committee would settle any differences between the two chambers, and one more set of votes would be taken in each chamber. The final product is then sent to the president's desk to be signed or vetoed.

BYRD RULE

While the simple majority makes it attractive for one party with complete power in Washington to pass partisan legislation, certain limitations apply. It can only be used to pass legislation that affects spending and revenues, while some areas like Social Security are off-limits, per the Byrd Rule.

The Byrd Rule, adopted in the mid-1980s, restricts what can be included in reconciliation legislation in the Senate. At its core, the rule prohibits provisions that are viewed as "extraneous" to the budget. Such measures include those: (1) with no budgetary effect (i.e., no change in outlays or revenues); (2) that worsen the deficit when a committee has not achieved its reconciliation target; (3) outside the jurisdiction of the committee that submitted the title or provision; (4) that produce a budgetary effect that is merely incidental to the non-budgetary policy change; (5) that increase deficits for any fiscal year (FY) outside the reconciliation window; and (6) measures that recommend changes in Social Security.

The breadth of the Byrd Rule may come into play now that Democrats have taken the Senate majority, if they choose not to eliminate the legislative filibuster. If Democrats do eliminate the filibuster, there is essentially no need for a reconciliation procedure to pass party-line legislation. The mounting internal Democratic debate over the elimination of the filibuster is likely to be a defining aspect of the 117th Congress, and its outcome will certainly shape the legislative and procedural agenda for years to come. Sen. Joe Manchin (D-WV) and other Senate centrists have stated opposition to eliminating the filibuster but have not commented on their potential to support the use of the reconciliation process to enact sweeping legislation. In absence of eliminating the filibuster, the Senate Majority Leader may have the ability to interpret the Byrd Rule differently in order to expand the possible items of inclusion in the reconciliation process. The presiding officer or a simple majority may be able to create a new precedent around the Byrd Rule to allow additional items, much in the same way that the filibuster could be eliminated without officially changing Senate rules. This could be a point of compromise for the Democratic party to not eliminate the filibuster, but to expand the use of the reconciliation process to pass bolder party-line measures.

CURRENT STATE OF PLAY

Since the initial strong potential for a Democratic trifecta to result from the 2020 elections, there has been growing speculation and discussion around the potential use of reconciliations by Democrats

to pass sweeping party-line measures on the ACA, pandemic relief aid, TCJA overhaul, and an extensive infrastructure package.

While Congress is limited in how often it can use the procedure, there's a chance that Democrats could tap it twice next calendar year — this is because Congress never adopted a fiscal 2021 budget resolution, and it still can pass one for fiscal 2022. A two-year budget deal struck by congressional leaders and the White House last summer carried lawmakers through the final years of the 2011 Budget Control Act, which established caps on how much money Congress can spend for a decade. Now, however, there are no restrictions in place for FY 2022, meaning lawmakers will have to decide how to approach overall totals for defense and non-defense discretionary spending next year.

PROGNOSTICATION AND POTENTIAL INCLUSIONS

Issue Area	Context	Possible Policy Priorities
Health Care	Health care has been a key pillar of the Democratic campaign, with wide ranging proposals that seek to reform the ACA and provide additional coverage for Americans.	<ul style="list-style-type: none"> • Medicare and Medicaid policies. • Lowering drug costs. • Implementing a public health care option. • Additional steps to shore up the ACA.
COVID-19	Democratic leadership has been clear that another round of relief legislation is needed despite clearing additional aid in the recent omnibus spending measure.	<ul style="list-style-type: none"> • Testing, treatment, and vaccines. • Shoring up the Strategic National Stockpile. • State and local aid. • Paid family and emergency leave. • Additional small business relief. • Unemployment insurance and direct payments.
Infrastructure	Democrats will likely look to seize on the opportunity to pass a comprehensive infrastructure package to spur post-pandemic economic recovery. This will likely include several green energy policies that the President-elect has championed during the campaign.	<ul style="list-style-type: none"> • Clean energy tax credits. • New tax on carbon emissions. • Raising the gas tax to pay for new investments.
Tax Reform	President-elect Biden campaigned on a promise to roll back the 2017 TCJA to pay for some of his more ambitious policy proposals, such as a comprehensive infrastructure	<ul style="list-style-type: none"> • Raising the corporate tax rate. • Increasing taxes on individuals making more than \$400k. • New tax credits for child care and working families.

	<p>package. While narrow margins decrease the likelihood of a full repeal, Democrats will likely look to coalesce behind tax reform proposals that enjoy broad support within the caucus.</p>	<ul style="list-style-type: none">• New taxes on capital gains transactions.• Repealing the cap on state and local tax deductions.• Extending and expanding the research & development credit and medical expense deduction.
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