

What Is Budget Reconciliation?

Under normal circumstances, for any piece of legislation to pass the United States Senate, it must get more than a simple majority vote. Unlike in the House of Representatives, the rules and procedures of the Senate generally place no limits on debate; they should be able to talk forever. Instead, debate on legislative items can be ended only by invoking cloture, which, at present¹, requires a supermajority (three-fifths of those present) of Senators to end debate. Without sufficient support for ending debate, legislative items are unable to receive final votes on the Senate floor. In practice, this means that legislation opposed by 41 Senators will not be brought to the Senate floor for final consideration, effectively stalling or killing legislation by way of the filibuster.

Despite this, in recent years both parties have been able to enact legislation on strict party lines with fewer than 60 senators in support. Examples include passage of the Affordable Care Act in 2009, the Tax Cuts and Jobs Act of 2017, and most recently, the American Rescue Plan of 2021.

But how?

Enter budget reconciliation. Created by the Budget Control and Impoundment Act of 1974, budget reconciliation was intended to bring spending and revenue in line with levels sets by the previously passed budget resolution. But it does this in a relatively complicated way.

First, the House and Senate both must pass a Congressional Budget Resolution that contains reconciliation instructions. These instructions direct various committees to consider legislative changes to existing laws which have a direct impact on spending, revenue, deficits, or the debt limit. Authorizing legislation including these changes is then packaged and considered by the House and Senate where it can be passed with the support of a simple majority.

In the Senate, debate on reconciliation bills or conference reports is limited to 20 hours, thus avoiding any need for a cloture vote, and allowing legislation to be passed with a simple majority. Budget reconciliation places no restrictions on the number of amendments that can be offered on the Senate floor, often leading to what is known as

¹ Senate rules adopted in the 1970s lowered the cloture threshold to three-fifths of Senators duly chosen and sworn. From 1917 – 1975, cloture required the support of two-thirds of Senators. Before 1917, there was no mechanism in Senate rules to end debate and force a vote on legislation.

a “vote-a-rama” on potential changes to the bill; however, no debate is allowed on floor amendments during this time.

So, if budget reconciliation can be used to circumvent the filibuster in the Senate, why isn't it used more often?

There are limits to what policies can be passed through budget reconciliation. Budget reconciliation is bound by the Byrd Rule, which prohibits “extraneous matter in reconciliation legislation.” Adopted in the 1980s and named for former Senate Majority Leader Robert Byrd (D-WV), the Byrd Rule prohibits, among other things, the inclusion of provisions without a direct impact on revenues or outlays, including provisions the budgetary impact of which is merely incidental to the primary purpose of the legislation. The Senate Parliamentarian, a nonpartisan position tasked with advising the Senate on its’ rules and procedures, is tasked with playing the role of referee when provisions are challenged during the reconciliation process. For example, earlier this year, a provision of the American Rescue Plan which would have mandated a nationwide \$15 minimum wage was deemed extraneous under the Byrd Rule by the Senate Parliamentarian and stripped from the bill before the Senate voted.

At the time of this writing, Senate Democrats are preparing for consideration of a \$3.5 trillion budget resolution focused on passing through reconciliation what they characterize as infrastructure items. Though details remain opaque, the package is rumored to contain a litany of new government spending on programs like free community college, an extension of the child tax credit, a provision allowing Medicare to negotiate drug prices, and provisions of the Democrat’s PRO Act, a bill intended to override state “right to work” laws. Many provisions of the ultimate reconciliation package will be challenged by Republicans under the Byrd Rule, with all eyes fixed on the Senate Parliamentarian for her ruling on each.

Ultimately, budget reconciliation remains a powerful tool for political parties with unified control of the Presidency, the House and the Senate. But the restrictions imposed by the Byrd Rule, and other statutory limits² ensure that the process is an imperfect vehicle for imposing comprehensive policy change by a simple majority in the Congress.

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² Other statutory limits include Pay-As-You-Go restrictions, changes to which in a reconciliation bill would be subject to a Byrd Rule challenge, as well as a prohibition on using reconciliation to make legislative changes to the Social Security program. The Byrd Rule also prohibits reconciliation from being used to increase the federal deficit after the 10-year budget window.