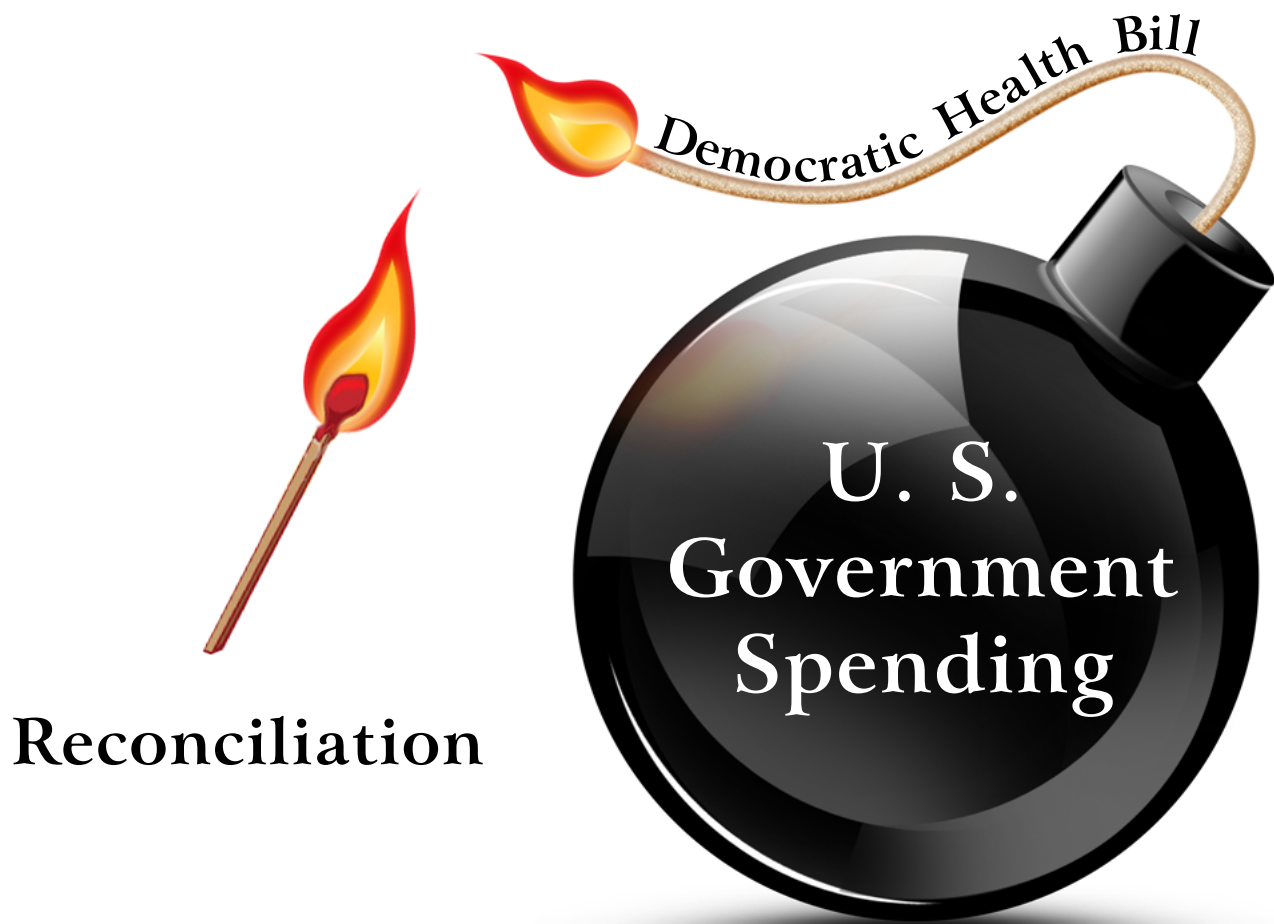


RECONCILIATION: Igniting an Explosion in Government Spending



Reconciliation

U. S.
Government
Spending

Democratic Health Bill



BUDGET COMMITTEE



Judd Gregg, Ranking Member
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Passing Health Care Reform by Reconciliation Lets Democrats Do An End Run Around Americans' Opposition March 3, 2010

- ❖ **Polls Show that a Majority of Americans Oppose Democrats' Health Care Bill**
 - ✓ "Twenty-five percent of people questioned in the poll say Congress should pass legislation similar to the bills passed by both chambers..." (Paul Steinhauser, "CNN Poll: Health care provisions popular but overall bills unpopular," CNN, 02/24/10).
 - ✓ "American voters still disapprove 54 - 35 percent of Obama's health care reform plan..." ("U.S. Voters Split On Obama, Down On Everyone Else, Quinnipiac University National Poll Finds," Quinnipiac, 2/11/10).
 - ✓ "Forty-One percent (41%) of voters favor the proposed health care plan, while 56% oppose it." ("51% Fear Government More Than Private Health Insurers," Rasmussen, 2/24/10).

- ❖ **Abuse of the Reconciliation Tool Allows Democrats to Do An End Run Around Americans' Opposition**
 - ✓ "Americans by 52%-39% oppose Senate Democrats using the procedure [reconciliation], which allows a bill to pass with a 51-vote majority..." (Susan Page, "Poll: Expectations low on health summit," USA Today, 02/25/10).

- ❖ **Even the Author of Reconciliation is Opposed to Using it for Health Care Reform**
 - ✓ Senate President Pro Tempore Robert Byrd (D-WV), one of the authors of the reconciliation process, said in an April 2009 letter to his Senate colleagues: "**I oppose using the budget reconciliation process to pass health care reform and climate change legislation. Such a proposal would violate the intent and spirit of the budget process, and do serious injury to the Constitutional role of the Senate.**"

- ❖ **Reconciliation is a Fiscal Policy Tool**
 - ✓ Reconciliation is a tool to enhance Congress's ability to change current law to bring spending and revenues in line with levels assumed in budget resolution.
 - ✓ Reconciliation instructions are numerical targets and are not program-specific.
 - ✓ Reconciliation allows Congress as a whole to push committees with jurisdiction over direct spending and taxes to legislate changes to programs (which would otherwise be on automatic pilot) to meet the numerical targets included in instructions.
 - ✓ Reconciliation legislation is considered in the Senate under expedited procedures: debate is limited to 20 hours, non-germane amendments are not in order, a vote is guaranteed and requires only a simple majority to pass.

❖ Health Care Reform is Not Fiscal Policy

- ✓ The 2010 budget resolution included instructions to reduce the deficit by \$2 billion over the next five years.
- ✓ When the budget resolution was adopted, baseline on-budget outlays and revenues were estimated to be a total of \$26 trillion over 2010-2014.
- ✓ Does a \$2 billion (8/1000ths of a percent) change in these amounts represent a change in the fiscal course for the nation? No.

❖ Health Care Reform Should Not Be Rushed

- ✓ Health care reform IS necessary. Despite the fact that health care spending comprises one-sixth of the U.S. economy, health outcomes are often deficient, and the federal government's involvement in health care is slowly beginning to crumble under its own weight.
- ✓ However, health care reform should be done in a bipartisan manner, with input from both parties, as the outcome will have a tremendous impact on ALL Americans.
- ✓ Rushing health care reform through the Congress using reconciliation does a disservice to all.

❖ Majority is Trying to Jam Through a Bad Bill, But Budget Enforcement and Byrd Rule Still Exist

- ✓ Reconciliation will be evaluated against 19 budget points of order.
- ✓ The Majority tried to avoid some of them by including a reserve fund in the 2010 budget resolution to adjust away 5 of the budgetary hurdles a health care reconciliation bill would have to overcome.
- ✓ However, the Byrd Rule exists, which will prohibit extraneous provisions from being included in expedited reconciliation legislation.

❖ Reconciliation Should NOT Be Used as a Political Tool

- ✓ Reconciliation is a fast track legislative procedure – debate in the Senate limited to 20 hours (legislation cannot be filibustered), with a tight germaneness test for amendments.
- ✓ Reconciliation can be used to abrogate minority rights.
- ✓ If reconciliation is used for large policy changes like health reform...
 - Clear signal that Administration and Democratic majority do not want to work in a bipartisan manner.
 - Leaves legitimate stakeholders out of the process – even within their own party.
 - Only members of committees receiving reconciliation instructions will have a hand in the final product – all other members are left out.
 - **Limits debate on huge policy changes that would affect the lives of every American to only 20 hours** – less than 3 working days.

❖ If the Senate Can't Hold A Full Debate, Who Can?

- ✓ Senate as an institution – known for being the world's greatest deliberative body – unlimited debate and right to amend.
- ✓ In the U.S. Senate, a minority of one has the unique right to be heard.
- ✓ Reconciliation skirts the normal rules and deprives members of their rights.
- ✓ Last election stressed bipartisan cooperation and changing the way Washington works – is killing minority rights the way to go?
- ✓ Did President Obama's fiscal responsibility and health care summits signal a new era of transparency and working together – or were they just a ruse?
- ✓ Using reconciliation to curtail Senate debate and limit amendments would throw future bipartisan cooperation overboard.
- ✓ Important policy changes such as health reform deserve an open and vigorous debate.



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Frequently Asked Questions About Reconciliation March 3, 2010

History and 2010 Budget Resolution

Why does the Congressional Budget and Impoundment Control Act provide a special budgetary mechanism called reconciliation?

The Congressional Budget Act (CBA) created the option of the reconciliation process to give Congress a tool to make it more likely that Congress will enact laws that will bring revenue, spending, and debt-limit levels into conformity with the *fiscal policy* of the nation set out in the budget resolution.

Do reconciliation instructions include specific policy directives?

No. Budget resolutions do not include policy directives. The CBA only provides that a budget resolution may include reconciliation directives of specific numerical targets for specific committees to achieve changes in spending, revenues, or the debt limit. How a committee chooses to comply to meet the budgetary amounts for fiscal changes is limited only by the jurisdiction of the committee.

The 2010 budget resolution includes reconciliation instructions to three House committees under the headings -- "Health Care Reform" and "Investing in Education" (the instructions to the Senate committees have no headers, labels, or titles). Do these labels limit how the instructed committees may choose to comply with their reconciliation instructions?

No. The titles might as well be invisible – they are not meaningful or enforceable on how the committees may choose to comply within their jurisdiction to meet the numerical targets.

Has the Senate ever considered a reconciliation bill in absence of any complying action by any of the instructed Senate committees?

No. There is no precedent of the Senate considering a reconciliation bill that was not reported out by a Senate committee. In 2001 and 2002, the Senate Finance Committee did report, but the measure was not taken up by the Senate. The Senate waited for the House-passed reconciliation bill to be sent to the Senate, and then the Chairman of the Finance Committee immediately offered an amendment in the nature of a full text substitute (the full text substitute being the bill reported by the Finance Committee).

Expiration of Reconciliation Instructions

The 2010 budget resolution directed the affected committees to submit their reconciliation recommendations to the Budget Committees by October 15, 2009. Two of three affected House committees have marked up and reported reconciliation recommendations to the House Budget Committee. As of March 1, 2010, neither of the two Senate committees (Finance and HELP) have held reconciliation markups and submitted anything to the Senate Budget Committee. Is the October 15th date a strict deadline?

No. There is no strict deadline, except that the Senate parliamentarians, who have a role in determining whether the reconciliation privilege expires or not, have advised they take into account whether or not the instructed committees can still achieve their instruction in the 2010 Budget Resolution.

Can the Budget Committee force the reconciliation process forward if instructed committees have not acted?

No. The chairman of the Budget Committee has no power to alter the reconciliation submissions of the affected committees or to originate reconciliation legislation not submitted by other committees. The Budget Committee simply performs the ministerial function of packaging the reconciliation submissions (if more than one committee is involved); it cannot mark up and report a reconciliation bill unless at least one of the multiple instructed committees submits reconciliation recommendations. If at least one committee submits recommendations to the Budget Committee, then it is at the discretion of the Budget Committee Chairman whether and when to move forward. The Senate cannot force the Budget Committee to report a bill before, on, or after the date the budget resolution sets for committees to submit their recommendations.

Do the reconciliation instructions in the FY 2010 budget resolution expire upon the adoption of subsequent budget resolution?

The Chairman and the Ranking Member of the Senate Budget Committee have advised that the reconciliation instructions in the 2010 budget resolution expire when both the House and Senate have passed the conference report on the 2011 budget resolution.

Misuse of the Budget Enforcement Tool Known as Reconciliation

Why has reconciliation in the context of health care reform been labeled “a parliamentary maneuver” and “controversial strong-arm tactic?”

The expedited procedures of reconciliation (non-debatable motion to proceed, only 20 hours of debate, the strict germaneness test for amendments, plus the Byrd rule and other points of order) all lead up to a guaranteed up or down vote to help members pass fiscal policy changes **via simple majority**. Reconciliation does not require 60 votes for the Senate to invoke cloture to cut off debate and limit the amendment process. The label of “strong-arm tactic” reflects how reconciliation procedures significantly change each Senator’s right to debate complex issues at length and to offer alternatives to be debated and considered by the Senate as a whole—the very reasons why the United States Senate is considered to be the world’s greatest deliberative body.

When the 2010 budget resolution was adopted, baseline on-budget outlays and revenues were estimated to be \$26 trillion over 2010-2014. The reconciliation instructions in the budget resolution are to reduce these outlays or increase these revenues by a net total of \$2 billion, or 8/1000ths of a percent. Does this change in these totals really represent a change in the fiscal policies of the nation?

Simply—no. Further, the \$2 billion deficit-reduction instruction is a *net* number, which means committees can respond to the reconciliation instructions by including huge fiscal policy changes – such as gross increases in spending offset by gross increases in taxes (that exceed the spending increases by only \$2 billion) – that the Senate will not be able to fully debate.

The net instruction of only \$2 billion in savings is only one piece of evidence that reconciliation is being used for political, not fiscal, reasons. Are the other indicators to illustrate the insincerity of the Majority’s strategy?

This year’s budget resolution explicitly included procedural tools to shield legislation that includes health care policy changes from multiple budget enforcement mechanisms. If the Budget Committee Chairman employs the health reform reserve fund for a health reform reconciliation bill, the legislation can bypass five budget enforcement mechanisms (committee spending allocation, total federal spending aggregate, total federal revenue aggregate, PAYGO, and short-term deficit points of order), provided the legislation is deficit neutral over 10 years only (bypassing PAYGO’s five year test; other conditions of that reserve fund – such as reducing excess cost growth in health care spending and being fiscally sustainable over the long term – are throwaway since they are in the eye of the beholder).

Other Mysteries

Do the policies in the health “sidecar” bill have to expire in five years if done through reconciliation?

No. One part of the Byrd rule prohibits each title (usually corresponding to each committee of jurisdiction) of reconciliation legislation from producing a net increase in outlays or a net reduction in revenues in any one year beyond 2014. If the reconciliation bill can meet this test, then no one can raise this point of order against provisions in that title.

How would the Congressional Budget Office score a reconciliation bill that “fixes” the Senate-passed health bill that has yet to be passed by the House?

CBO has not figured out how to do that, and the Chairman of the Senate Budget Committee, who is the scorekeeper in the Senate, has advised that it is impossible to estimate the budgetary effect of a reconciliation bill that amends the Senate-passed health bill until the Senate-passed health bill has passed the House and has been cleared for the President’s signature. Until that stage in the legislative process, a reconciliation bill that “fixes” the Senate-passed health bill will instead be scored against current law, which does not reflect the Senate-passed health bill.



BUDGET COMMITTEE

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Policy Changes in Reconciliation Acts Enacted into Law: 1980-2007¹

Source: Congressional Research Service, April 1, 2009

March 3, 2010

- ❖ 19 reconciliation bills have been enacted into law.
- ❖ Of these, 17 (89%) have cleared the Senate on a bipartisan basis (at least one member of the minority party voting 'Aye').
- ❖ The other 2 (11%) cleared on a straight party line vote (Vice President breaking 50-50 tie both times).
- ❖ In addition, the Senate considered reconciliation conference reports 3 other times, but those 3 were vetoed by the President. Of those, the Senate passed 2 on a pure party line vote, and the other one was bipartisan.

Omnibus Reconciliation Act of 1980

- First reconciliation bill to pass the House and Senate. Reduced FY1981 spending by \$4.632 billion and increased FY1981 revenues by \$3.645 billion.
- Spending changes: child nutrition subsidies; interest rates for student loans; "look back" COLA benefit provisions for retiring federal employees; highway obligational authority; railroad rehabilitation, airport development, planning, and noise control grants; veterans' burial allowances; disaster loans; Medicare and Medicaid; unemployment compensation; and Social Security."
- Revenue changes: mortgage subsidy bonds; payment of estimated corporate taxes; capital gains on foreign real estate investments; payroll taxes paid by employers; telephone excise taxes; and the alcohol import duty.
- Conference report passed Senate: 83-4

Omnibus Budget Reconciliation Act of 1981

- Reduced spending by \$130.6 billion over three years, covering FY1982-FY1984.
- Spending changes: health program block grants; Medicaid; television and radio licenses; Food Stamps; dairy price supports; energy assistance; Conrail; education program block grants; Impact Aid and the Title I compensatory education program for disadvantaged children; student loans; and the Social Security minimum benefit.
- **No major revenue changes.**
- Conference report passed Senate: 80-14

¹ This list does not include three reconciliation measures passed by the Congress, but vetoed by the president. These were the Balanced Budget Act of 1995 (passed Senate 52-47), the Taxpayer Refund and Relief Act of 1999 (passed Senate 50-49), and the Marriage Tax Relief Reconciliation Act of 2000 (passed Senate 60-34).

Tax Equity and Fiscal Responsibility Act of 1982

- Increased revenues by \$98.3 billion and reduced spending by \$17.5 billion over three years, covering FY1983-FY1985.
- Spending changes: Medicare, Medicaid, aid to families with dependent children (AFDC), child support enforcement (CSE), supplemental security income (SSI), unemployment compensation, and interest payments on U.S. savings bonds.
- Revenue changes: alternative minimum tax, medical and casualty deductions, pension contribution deductions, federal employee payment of the FICA tax for Medicare coverage, accelerated depreciation and investment tax credits, corporate tax payments, foreign oil and gas income, corporate tax preferences, construction deductions, insurance tax breaks, “safe-harbor leasing,” corporate mergers, withholding on interest and dividends, aviation excise taxes, unemployment insurance, telephone and cigarette excise taxes, and industrial development bonds.
- Conference report passed Senate: 52-47

Omnibus Budget Reconciliation Act of 1982

- Reduced spending by \$13.3 billion over three years, covering FY1983-FY1985.
- Spending changes: payments to farmers, dairy price supports, Food Stamps, inflation adjustments for federal retirees, lump-sum premiums for FHA housing insurance, user fees on Veterans Administration-backed home loans, veterans' compensation and benefits, and reduction in the membership of the Federal Communications Commission and the Interstate Commerce Commission.
- **No major revenue changes.**
- Conference report passed Senate: 67-32

Omnibus Budget Reconciliation Act of 1983

- Reduced spending by \$8.2 billion over four years, covering FY1984-FY1987.
- Spending changes: limitation and delay of federal civilian employee pay raises, delay of federal civilian and military retirement and disability COLAs, delay of veterans' compensation COLAs, and disaster loans for farmers.
- **No major revenue changes.**
- Passed Senate: 67-26

Consolidated Omnibus Budget Reconciliation Act of 1985

- Reduced the deficit by \$18.2 billion over three years, covering FY1986-FY1988.
- This reconciliation bill created the law that allows the jobless to purchase their employer sponsored health insurance policy after they are separated from their job. The law is known as “COBRA,” after the reconciliation act that created it.
- Other Spending changes: student loans, highway spending, veterans' medical care, Medicare, Medicaid, and trade adjustment assistance.
- Revenue changes: the cigarette tax, excise taxes supporting the Black Lung Trust Fund, unemployment tax exemptions, taxation of railroad retirement benefits, airline employee income subject to taxation, and the deduction of research expenses of multinational firms.
- Senate insisted on its amendment by voice vote.

Omnibus Budget Reconciliation Act of 1986

- Reduced the deficit by \$11.7 billion over three years, covering FY1987-1989.
- Spending changes: Medicare, Medicaid, agricultural income support payments, loan asset sales, federal employee retirement programs, federal subsidy for reduced-rate postage, federal financing for fishing vessels or facilities, retirement age limits, and elimination of the trigger for Social Security COLAs.
- Revenue changes: the tax treatment of the sale of the federal share of Conrail, commercial merchandise import fee, increased penalty for untimely payment of withheld taxes, denial of certain foreign tax credits, and the oil-spill liability trust fund.
- Conference report passed Senate: 61-25.

Omnibus Budget Reconciliation Act of 1987

- Together with an omnibus appropriations act (P.L. 100-202), the reconciliation act implemented \$76 billion in deficit reduction over FY1988 and FY1989.
- Spending changes: Medicare, Medicaid, agricultural target prices, farm income support payments, deferral of lump-sum retirement payments to federal employees, Postal Service payments into retirement and health benefit funds, the Guaranteed Student Loan program, Nuclear Regulatory Committee license fees, and National Park user fees.
- Revenue changes: home mortgage interest deduction, deduction of mutual fund expenses, 'completed contract' method of accounting, repeal of installment-sales accounting, 'master-limited' partnerships, and accelerated payments of corporate estimated taxes.
- Conference report passed Senate: 61-28.

Omnibus Budget Reconciliation Act of 1989

- Reduced the deficit by \$14.7 billion.
- Spending changes: Medicare, Medicaid, veterans' housing loans, agricultural deficiency payments and dairy price supports, the Supplemental Loans for Students (SLS) program, Federal Communications Commission and Nuclear Regulatory Commission fees, vaccine injury compensation amendments, and the Maternal and Child Health Block Grant program.
- Revenue changes: the exclusion for employer-provided education assistance, targeted-jobs tax credit, mortgage revenue bonds, self-employed health insurance, low-income housing credit, treatment of junk bonds, and research and experimentation credits.
- Final passage by voice vote. Senate passage: [87-7](#).

Omnibus Budget Reconciliation Act of 1990

- Reduced spending by \$281 billion and increased revenues by \$255 billion over FY1991-FY1995.
- This act included the Budget Enforcement Act of 1990, which included discretionary spending caps and PAYGO controls on direct spending and revenue.
- Spending changes: Medicare, Medicaid, agricultural loans, acreage reduction, deposit insurance premiums, mortgage insurance premiums, collection of delinquent student loans, OSHA penalties, aid to families with dependent children (AFDC), child support enforcement (CSE), supplemental security income (SSI), unemployment compensation, child welfare and foster care, Social Security, abandoned mines, Environmental Protection Agency, federal employee retirement and health benefits, veterans' compensation and disability payments, airport ticket fees, customs user fees, and tonnage duties.
- Revenue changes: individual income tax rates, the alternative minimum tax, limitation on itemized deductions, excise taxes on alcoholic beverages and tobacco products, motor fuel excise taxes, and Superfund tax extension.
- Conference report passed: [54-45](#).

Omnibus Budget Reconciliation Act of 1993

- Reduced spending by \$145 billion and increased revenues by \$241 billion over FY1994-FY1998.
- This bill included the Clinton-era top rates on income taxes of 39.6 percent and 36 percent.
- Spending changes: Medicare, Medicaid, Food Stamps, auction of the radio spectrum, student loan programs, veterans' benefits, agricultural price supports, crop insurance, liabilities of the Postal Service, and Nuclear Regulatory Commission fees.
- Revenue changes: a fuels tax increase, maximum individual income tax rates, maximum corporate income tax rate, small business tax incentives, empowerment zones, and unemployment insurance surtax.
- Conference report passed: [50-50, VP voted yea](#)

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

- Reduced spending by \$54.6 billion over FY1997-FY2002.
- This was the vehicle for the bipartisan welfare reform that created the TANF program as a replacement for prior welfare programs.
- Spending changes: temporary assistance for needy families (TANF), work requirements, supplemental security income (SSI), child support enforcement (CSE), restrictions on benefits for illegal aliens, Child Care and Development Block Grant, child nutrition, Food Stamps, teenage pregnancies, and abstinence education.”
- **No major revenue changes.**
- Conference report passed: [78-21](#).

Balanced Budget Act of 1997

- Reduced spending by \$127 billion of FY1998-FY2002.
- This act created the predecessor to Medicare Advantage plans – the Medicare+Choice program. This act also created the State Children's Health Insurance Program (CHIP) that provides health care coverage to low-income, uninsured children in families otherwise ineligible for Medicaid. The Balanced Budget Act of 1997 also contained the Budget Enforcement Act of 1997, which extended the discretionary spending limits and pay-as-you-go requirement for legislation enacted through FY2002. Lastly this act created the Sustainable Growth Rate (SGR) to constrain the growth Medicare physician expenditures. This is routinely circumvented (the “doc fix”) to avoid the accumulated reductions in payments to physicians that would comport with the SGR’s formula.
- Spending changes: Medicare, Medicaid, children's health initiative, electromagnetic spectrum auction, Food Stamps, temporary assistance to needy families (TANF), supplemental security income (SSI), increased contributions to the Civil Service Retirement System, subsidized housing, and veterans' housing.
- **No major revenue changes.**
- Conference report passed: [85-15](#)

Taxpayer Relief Act of 1997

- Reduced revenues by \$100 billion over FY1998-FY2002.
- This act created the child tax credit.
- **No major spending changes.**
- Revenue changes: child tax credit, education tax incentives (including the HOPE tax credit, the lifetime learning credit, and education savings accounts), home office deductions, capital gains tax cut, the ‘Roth IRA,’ gift and estate tax exemptions, corporate alternative minimum tax repeal, renewal of the work opportunity tax credit, and the airline ticket tax.
- Conference report passed: [92-8](#)

Economic Growth and Tax Relief Reconciliation Act of 2001

- Reduced the projected surplus by \$1.349 trillion over FY2001–FY2011.
- This was the first of President Bush’s major tax cut proposals that created a new tax rate structure with rates of 10 percent, 15 percent, 25 percent, 28 percent, 33 percent, and 35 percent.
- **No major spending changes.**
- Revenue changes: individual income tax rates, the ‘marriage penalty,’ child tax credit, estate and gift taxes, individual retirement accounts and pensions, charitable contributions, education incentives, health insurance tax credit, flexible spending accounts, research and experimentation tax credit, and adoption tax credit and employer adoption assistance programs.
- Conference report passed: [58-33](#).

Jobs and Growth Tax Relief Reconciliation Act of 2003

- Reduced revenues by \$349.667 billion over FY2003-2013.
- This was the second of President Bush’s major tax cut proposals that accelerated the phasing in of certain policies enacted in EGTRRA and lowered tax rates on capital gains and dividends.
- **No major spending changes.**
- Revenue changes: the acceleration of certain previously-enacted tax reductions (including expansion of the child tax credit and the 10% bracket), increased bonus depreciation and section 179 expensing, taxes on dividends and capital gains, the Temporary State Fiscal Relief Fund, and special estimated tax rules for certain corporate estimated tax payments.
- Conference report passed: [50-50, VP voted yea](#)

Deficit Reduction Act of 2005

- Reduced spending by \$38.810 billion over FY2006-FY2010
- Spending changes: Medicare, Medicaid, State Children's Health Insurance Program (SCHIP), student loan interest rates and lenders' yields, electromagnetic spectrum auction, digital television conversion, grants for interoperable radios for first responders, low-income home energy assistance program (LIHEAP), Federal Deposit Insurance Corporation premium collections, agricultural conservation programs, Katrina health care relief, and Pension Benefit Guarantee Corporation (PBGC) premiums.
- **No major revenue changes.**
- Senate concurred with House amendment with an amendment: [50-50, VP voted yea](#)

Tax Increase Prevention and Reconciliation Act of 2005

- Reduced revenues by \$69.960 billion FY2006-FY2010.
- **No major spending changes.**
- Revenue changes: tax rates on dividends and capital gains, the alternative minimum tax for individuals, delay in payment date for corporate estimated taxes, controlled foreign corporations, FSC/ETI binding contract relief, elimination of the income limitations on Roth IRA conversions, and withholding on government payments for property and services.
- Conference report passed: [54-44](#).

College Cost Reduction and Access Act of 2007

- Reduced spending by \$752 million over FY2007-FY2012.
- Spending changes: affected provisions relating to lenders and borrowers involved with the Federal Family Education Loan program and the William D. Ford Direct Loan program.
- **No major revenue changes.**
- Conference report passed: [79-12](#)

Major Policy Changes Enacted Outside of Reconciliation

Emergency Economic Stabilization Act of 2008 (10/3/2008)

Created the TARP program, among other provisions.

[Public Law 110-343](#)

Post-9/11 Veterans Educational Assistance Act of 2008 (06/30/2008)

The Post 9/11 GI Bill provides financial support for education and housing to honorably discharged veterans having served on or after September 11, 2001 or veterans discharged with a service-connected disability. The Post 9/11 GI Bill pays for tuition based upon the highest in-state tuition charged by an educational institution in the state where the educational institution is located. Passed as part of the Supplemental Appropriations Act of 2008.

[Public Law 110-252](#)

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (12/8/2003)

The Medicare Modernization Act (MMA) led to the establishment of Medicare part D, the prescription drug benefit, which was the single largest expansion of Medicare in the program's history. In addition, the bill also established Medicare Advantage plans, means-tested Medicare Part B premiums and created health savings accounts (or HSAs).

[Public Law 108-173](#)

Homeland Security Act of 2002 (11/25/2002)

Created the Department of Homeland Security (DHS) into which TSA was incorporated.

[Public Law: 107-296](#)

Sarbanes–Oxley Act of 2002 (7/30/2002)

Created new financial regulations and auditing requirements for corporations in the aftermath of several corporate scandals.

[Public Law 107-204](#)

No Child Left Behind (1/8/2002)

Expanded funding and established significant federal regulations for K-12 education.

[Public Law 107-110](#)

Clean Air Amendment Act of 1990 (11/15/1990)

Among many other changes to the Clean Air Act, the 1990 law established an acid rain control program and required a state run control program for the operation of major sources of air pollution.

[Public Law 101-549](#)

Americans with Disabilities Act of 1990 (7/26/1990)

Among other provisions, expanded stringent anti-discrimination protections to persons with disabilities and imposed accessibility requirements on new construction projects.

[Public Law 101-336](#)

Tax Reform Act of 1986 (10/22/1986)

A sweeping tax reform characterized by rate reductions paired with simplification and base broadening.

[Public Law 99-514](#)

Economic Recovery Tax Act of 1981 (8/13/1981)

Significant tax rate cut, including the reduction of the top rate from 70% to 50%.

[Public Law 97-34](#)

Department of Energy Organization Act (8/4/1977)

Created the Department of Energy, which assumed the responsibilities of several existing agencies.

[Public Law 95-91](#)



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Reconciliation Bill Points of Order March 3, 2010

Points of Order That Apply Both to a Reconciliation Bill and Any Amendments

Legislation cannot:

- fall short of reconciliation instructions for each committee.
- make any changes to the Social Security program.
- exceed the committee's spending allocation set by the budget resolution for 2010 or 2010-2014.
- cause total spending to exceed the level set in the budget resolution for 2010.
- reduce revenues below the floor set in the budget resolution for 2010 or 2010-2014.
- contain an unfunded governmental mandate of more than \$69 million in 2010, 2011, 2012, 2013 or 2014.
- contain matter within the jurisdiction of the Budget Committee.
- contain any provision designated as an "emergency" to avoid budget points of order.
- contain any provision designated as an "emergency" to avoid the statutory Pay-Go law.
- increase the deficit by more than \$10 billion in any one year from 2010 through 2014, unless such deficit increase is fully offset over the 2010-2014 period.
- violate the Senate's Pay-Go point of order, which means it cannot add a penny to the deficit for 2010-2014 or increase the deficit over the 2010-2019 timeframe by more than \$4.081 billion (as of 3/3/2010).
- increase the deficit by any amount for the years 2010-2014 or 2010-2019.
- increase the deficit by more than \$5 billion in any of the four consecutive 10-year periods after 2019 (2020-2029, 2030-2039, 2040-2049, or 2050-2059).

Points of Order That Apply Only to Amendments to a Reconciliation Bill

Amendments that are not germane are not in order (though changes in numbers and dates are per se germane).

Amendments that would reduce the amount of deficit reduction below the instructed level are not in order, except that amendments to strike are always in order (except when they're not; Parliamentarians' call).

Byrd Rule Points of Order

The Byrd rule operates differently than most other budget points of order. When most other budget points of order are raised and sustained, the measure being debated falls in its entirety. If a Byrd rule point of order is raised and sustained, only the offending provision is stricken from the legislation, and debate on the remaining legislation continues. The Byrd rule applies to the reconciliation bill on the floor as well as to amendments to the bill.

A provision is extraneous (and therefore subject to a point of order) under the Byrd rule if:

- it has no budgetary impact.
- it increases outlays or reduces revenues and the instructed committee fails to meet its overall instruction.
- it is not in the jurisdiction of the committee reporting the title of the reconciliation bill.
- it has a budgetary impact which is merely incidental to the policy components of the provision.
- it increases outlays or decreases revenues in any one year after 2014 and that offense is not netted at least to zero by other outlay reductions or revenue increases in that title of the bill in that year.
- it includes changes in Social Security.



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What Have They Said on Reconciliation? March 3, 2010

Senate Budget Committee Chairman Kent Conrad (D-ND):

“Reconciliation was never intended for this purpose [health care reform], and it doesn’t work well...It was never intended for this purpose, and I think there would be a lot of unintended consequences.”
RollCall, 4/21/09

“Reconciliation was designed for deficit reduction. The place where I would agree with the Senator is, I don't believe reconciliation was ever intended to write major substantive legislation.”
Senate floor statement on FY 2010 Budget, 3/31/09

“Our distinguished Parliamentarian has said, if you try to write major legislation in reconciliation, you will be left with Swiss cheese. So I hope people are thinking about that. I know there are attractive features of reconciliationI don't think we should do it for substantive legislation that is really not deficit reduction legislation.”
Senate floor statement on FY 2010 Budget, 3/30/09

Senate President Pro Tempore Robert Byrd (D-WV):

“I oppose using the budget reconciliation process to pass health care reform and climate change legislation. Such a proposal would violate the intent and spirit of the budget process and do serious injury to the Constitutional role of the Senate.”
Dear Colleague letter, 4/2/09

“As one of the authors of the reconciliation process, I can tell you that...reconciliation was intended to adjust revenue and spending levels in order to reduce deficits...it was not designed to create a new climate and energy regime, and certainly not to restructure the entire health care system.”
Dear Colleague letter, 4/2/09

“I am one of the authors of the reconciliation process. Its purpose is to adjust revenue and spending levels in order to reduce deficits. It was not designed to cut taxes. It was not designed to create a new climate and energy regime, and certainly not to restructure the entire health care system. The ironclad parliamentary rules are stacked against a partisan minority, and also against dissenting views within the majority caucus. It is such a dangerous process that in the 1980s, the then-Republican majority and then-Democratic minority adopted language, now codified as the Byrd Rule, intended to prohibit extraneous matter from being attached to these fast-track measures. The budget reconciliation process will not air dissenting views about health and climate legislation. It will not allow for feedback from the people or amendments that might improve the original proposals.”
Senate floor statement on FY 2010 Budget, 4/1/09

“Americans have an inalienable right to a careful examination of proposals that dramatically affect their lives. I was one of the authors of the legislation that created the budget "reconciliation" process in 1974, and I am certain that putting health-care reform and climate change legislation on a freight train through Congress is an outrage that must be resisted.”

Washington Post, 3/22/09

“Reconciliation, with its tight time limits, excludes debate and shuts down amendments. Essentially it says “take it or leave it” to the citizens who sent us here to solve problems, and it prevents members from representing their constituents' interests. Everyone likes to win, and the Obama administration, of course, wants victories. But tactics that ignore the means in pursuit of the ends are wrong when the outcome affects Americans' health and economic security. Let us inform the people, get their feedback, allow amendments to be considered and hear opposing views. That's the American way and the right way.”

Washington Post, 3/22/09

“I can say with confidence that the process the Senate utilizes today hardly resembles the process envisioned in 1974. Today the reconciliation process serves as a reminder of how well-intentioned changes to the Senate rules can threaten the institution in unforeseen ways. Reconciliation can be used by a determined majority to circumvent the regular rules of the Senate in order to advance partisan legislation.”

Senate Budget Hearing “Senate Procedures for Consideration of the Budget Resolution/Reconciliation,” 2/12/09

Sen. Arlen Specter (D-PA):

“The unique feature of the Senate, which has frequently been called the world's greatest deliberative body, is that any Senator can offer virtually any amendment on virtually any bill at virtually any time. That plus extended debate gives this Chamber the opportunity to acquaint people with serious problems and to build up public demand one way or another. That is an expression of speech and persuasion in a setting where there is opportunity to advance the public good. If we start to shortcut that procedure and undertake major legislative change on items such as health care or global warming or education, we will destroy a most precious aspect of Senate procedure.”

Senate floor statement, 3/30/09

Sen. Harry Reid (D-NV):

“No one has said -- I read what the President has online -- no one has talked about reconciliation but that's what you folks have talked about ever since that came out, as if it's something that has never been done before. Now, we as leaders here, the Speaker and I, have not talked about doing reconciliation as the only way out of all this. Of course it's not the only way out.”

The White House Health Care Summit, 2/25/10

Sen. Blanche Lincoln (D-AR):

“I will not accept any last-minute efforts to force changes to health insurance reform issues through budget reconciliation, and neither will Arkansans.”

Politico, 1/27/10

Sen. Evan Bayh (D-IN):

“My concern is that if reconciliation is used, that will really destroy any prospect for bipartisan cooperation on anything else for the remainder of this year...That would be a regrettable state of affairs and something that I think the American public would not react well to.”

Politico, 1/27/10

Sen. Mark Pryor (D-AR):

“I’m not real wild about using that procedure [reconciliation] that way.”

Politico, 1/27/10

Sen. Claire McCaskill (D- MO):

“I don’t think it’s [reconciliation] a good idea.”

Politico, 1/27/10

Sen. Russ Feingold (D-WI):

“[Reconciliation] is an abuse of the process.”

From 2003, as cited in The Hill, 4/ 23/09

“I have strongly opposed past efforts to use reconciliation...it wasn’t appropriate then. It isn’t appropriate now.”

Senate floor statement, 4/2/09

“There are some features of this resolution with which I take exception, most notably the use of reconciliation as a tool to expedite health care reform. The arguments over the use of reconciliation are familiar to this body. Sadly, a tool intended to streamline the painful process of deficit reduction has been used to clear a path for major policy changes that have, at best, only a passing relationship to reducing the budget deficit.”

Senate floor statement, 4/29/2009

“Health care reform is long overdue, and I look forward to the Senate finally acting on an issue that is so important to my constituents. But let's not kid ourselves. It is no more appropriate to use reconciliation as a hammer to push through health care reform under regular procedures than it is to use it directly to enact those reforms. Both are abuses. Both undermine its original intent. Both invite even greater abuses in the future.”

Senate floor statement, 4/29/2009

Sen. Debbie Stabenow (D-MI):

“Reconciliation was designed to help Congress pass a large package of measures to reduce the deficit, not to be used to resolve one major policy issue.”

Senate floor statement, 3/16/05

Wendell Primus, House Speaker Pelosi’s top healthcare adviser:

“The trick in all of this is that the president would have to sign the Senate bill first, then the reconciliation bill second, and the reconciliation bill would trump the Senate bill...There’s a certain skill, there’s a trick, but I think we’ll get it done.”

Congress Daily 2/9/10

Larry J. Sabato, Director of the University of Virginia's Center for Politics; author of *A More Perfect Constitution*:

“Using budget reconciliation, President Obama could get just about everything that matters to him in year one. But short-term gain would yield long-term pain. Grabbing 51 easier Senate votes now could make reaching the critical 60-vote threshold on most everything else much tougher for the rest of his presidency. Rushing passage of controversial health-care and energy plans will alienate not just Republicans but also a sizable corps of moderate Democrats, especially in the Senate.”
Washington Post, 3/22/2009

Why the Limited Reconciliation Process is the Wrong Vehicle for Sweeping Health Care Reform

March 3, 2010

By Judd Gregg

What used to be an inside-the-beltway Washington word – “reconciliation” – has popped up more frequently in the glossary of government terms used in the media across the country. Reconciliation, especially in the context of health care reform, has been labeled “a parliamentary maneuver,” “advanced legislative acrobatics,” “byzantine procedural loophole,” and “controversial strong-arm tactic.” Creative synonyms to be sure, but to really understand reconciliation and its utter inappropriateness when it comes to health care reform, one must understand its simple origin as part of the Congressional budget process.

Budget Resolution and Reconciliation Combine to Set and Carry Out Fiscal Policy

In the late 1960s and early 1970s, the case-by-case nature of congressional actions to deal with spending control and other budgetary issues highlighted the inadequacy of House and Senate procedures for making budget policy. In 1972, Congress created the Joint Study Committee on Budget Control, which was tasked with reporting on, among other things, a “full study and review of ...the procedures which should be adopted by the Congress for the purpose of improving congressional control of budgetary outlay and receipt totals...”

A year and a half later, in response to the Joint Study Committee’s recommendations and Congress’ battle with President Nixon over power of the purse, Congress enacted the Congressional Budget and Impoundment Control Act of 1974 (CBA), creating the House and Senate Budget Committees and the Congressional Budget Office. The primary duty and function of the Budget Committees set forth in the CBA is the development, execution, and enforcement of an annual congressional budget resolution, which is the annual framework for subsequent congressional action on spending, revenue and debt limit legislation. Since it is not a law, the congressional budget that sets out the nation’s fiscal policy goals must have tools and mechanisms available to it to achieve a new fiscal course for the nation.

Sometimes Congress determines that the course of fiscal policy needs to change. When that occurs, the budget resolution, *and only the budget resolution*, can initiate an adjunct procedure to the budget resolution’s plan for fiscal policy – the expedited legislative mechanism known as reconciliation. The CBA created the option of the reconciliation process to give Congress a tool to make it more likely that Congress will enact laws that will bring revenue, spending, and debt-limit levels into conformity with the fiscal course set out in the budget resolution.

A Tool When Quick Action on Fiscal Policy is Necessary

How does reconciliation work? It changes the way Congress (and especially the Senate) conducts its business, working in two stages. First, while Congressional budgets always assume some changes in policy relative to current law, House and Senate committees are not always eager to pass legislation to implement those policy changes, especially if the proposed changes would reduce spending or increase taxes. While the CBA gives the budget resolution privileged status so that it can be debated in a limited time period and adopted by simple majority vote in the House and the Senate, what good would it be to be able to set out changes in our fiscal path in a budget resolution if the subsequent legislation that would bring those changes about would never come to a vote in either chamber (because committees don't act or a Senate filibuster cannot be shut off)? To improve the odds that committees will legislate in accord with the budget plan, the budget resolution can include reconciliation instructions. These instructions direct one or several authorizing committees to develop legislation that achieves desired budgetary outcomes (in dollar terms) and to report that legislation by a certain date. The timeframe for achieving reconciliation targets can be no longer than the timeframe covered by the budget resolution containing the instructions. Since the instructions are numerical targets and not policy directives, how a committee chooses to comply with a reconciliation instruction is limited only by its jurisdiction.

Second, reconciliation legislation is considered in the Senate under expedited procedures. Usually when any other legislation is considered in the Senate, there is unlimited debate time on a motion to proceed to consideration of the subject matter as well as on the subject matter itself, and Senators may offer amendments that are not related to the topic under consideration. Sixty votes are required to end a filibuster and guarantee a vote under the Senate's cloture procedures. But under the expedited procedures of reconciliation, the motion to proceed is not debatable, and debate on the subject matter is limited to 20 hours; amendments that are not germane or that include extraneous matter are not in order; and a vote on the reconciliation legislation is guaranteed and requires only a simple majority to pass. These procedures significantly change every Senator's unfettered right to debate complex issues at length and to offer amendments to be debated and considered by the Senate as a whole—the very reasons why the United States Senate is considered to be the world's most deliberative legislative body.

Health Care Reform is Not Fiscal Policy

The 2010 budget resolution included reconciliation instructions to reduce the deficit by a total of \$2 billion over the next five years. In the Senate, the Finance Committee and the Health, Education, Labor and Pensions (HELP) Committee each received an instruction to report legislation by October 15, 2009 that reduces the deficit by \$1 billion, in anticipation that health care reform would be done through reconciliation. Given such an instruction, it is appropriate to ask, "When the budget resolution was adopted, baseline on-budget outlays and revenues were estimated to be \$26 trillion over 2010-2014. Does a \$2 billion, or 8/1000ths of a percent, reduction in these totals really represent a change in the fiscal course for the nation?" In my judgment, no – in fact, even members who voted for the budget resolution would say no. It is clear that reconciliation instructions were included in the 2010 budget resolution not for fiscal policy purposes, but for some other strategic purpose.

Health Care Reform Should Not Be Rushed

We all agree that the health care sector of our economy must be reformed. Nationwide, the health sector involves trillions of dollars in spending and revenue, comprising one-sixth of the American economy – yet for many, health outcomes are deficient. The federal government’s involvement in health care is threatening to crumble under its own weight. To reform health care, we must proceed carefully, deliberately, and cooperatively. We must listen to all sides, so that we hear about the good ideas out there to find out what works and enact them to replace current practices that we know result in waste and inefficiency.

Yet the Democratic majority is threatening to use reconciliation. Remember that the deficit-reduction instruction is a *net* number; the instructed authorizing committees can respond to the reconciliation instructions by including huge *gross* public policy changes in reconciliation legislation that the Senate will not be able to amend or fully debate. House Democrats want to write the bill themselves, without input from Republicans and with only limited any input from Senate Democrats, since a reconciliation bill is likely to be considered in the Senate without any Senate committee having acted.

It’s not as if Senate Finance and HELP Committee members don’t want to participate. Twenty-one members of the HELP Committee filed 838 amendments prior to the bill being marked up by that committee, a markup which lasted a full 12 days. Twenty-two members of the Finance Committee filed 564 amendments prior to that markup, which ended up lasting eight days.

Yet if reconciliation is used for health reform, the measure will speed through the Senate in a few days, and most amendments (unless they simply change a date or a number) will likely be ruled out of order. Amendments to a reconciliation bill receive a high level of scrutiny; their content is restricted in several ways, including a strict germaneness test, budgetary tests, and Byrd rule tests.

But At Least We Have the Budget Rules To Help Protect Members’ Rights Under Such Strong-Arm Tactics...

As in past years when reconciliation was used for actual fiscal policy purposes, this year’s reconciliation legislation will also receive the highest level of green-eyeshade scrutiny. Reconciliation legislation will be evaluated against no fewer than 19 budget points of order, enforcement tools designed to keep Congress on the fiscal path agreed to in the budget resolution.

First, the legislation must comply with the reconciliation directives but cannot make any changes to the Social Security program. If the reported legislation affects spending, each committee’s new level of spending must fit within the committee’s spending allocation set by the budget resolution for 2010 and 2010-2014. Further, the legislation must not cause total spending to exceed the levels set in the budget resolution for 2010. If the reconciliation legislation affects revenues, net revenues must not fall below the floor set in the budget resolution for 2010 or 2010-2014.

Reconciliation legislation will be subject to a budget point of order if it contains an unfunded governmental mandate of more than \$69 million in 2010, 2011, 2012, 2013 or 2014. The legislation will be subject to a point of order if it contains matter within the jurisdiction of the Budget Committee, if it contains any provision designated as an “emergency” (to avoid statutory paygo enforcement or to avoid

budget points of order) or if it increases the deficit by more than \$10 billion in any one year from 2010 through 2014, unless such deficit increase is fully offset over the 2010-2014 period.

And even though the reconciliation instructions cover only the years through 2014, other budget enforcement tools that apply to the reconciliation bill have a much longer time horizon. The legislation must comply with the Senate's paygo point of order, which, as of March 3, 2010, means it cannot add a penny to the deficit for 2010-2014 or increase the deficit over the 2010-2019 timeframe by more than \$4.081billion.

But wait, there's more. The "reconciliation for deficit reduction only" point of order will be tripped if the legislation increases the deficit by any amount for the years 2010-2014 or 2010-2019. Shall we look even farther out? The "long-term deficit" point of order will be violated if the reconciliation bill would cause an increase in the deficit of more than \$5 billion in any of the four consecutive 10-year periods after 2019 (2020-2029, 2030-2039, 2040-2049, or 2050-2059).

...Though the Majority Decided to Make Some Rules Go Away

The Democratic majority was thinking ahead - over Republican objections during the Budget Resolution debate, a special reserve fund was included in the resolution to adjust away five of the budgetary hurdles a health reform reconciliation bill would have to overcome.

Reserve funds in the 2010 budget resolution allow the Chairman of the Budget Committee to adjust away three of the points of order described above (committee spending allocation, total spending aggregate, and total revenue aggregate), for any legislation qualifying for a reserve fund adjustment, provided the legislation is deficit neutral over the periods 2010-2014 and 2010-2019. If the Chairman employs the health reform reserve fund for a health reform reconciliation bill, he can also adjust away two more enforcement mechanisms: the paygo and short-term deficit points of order, provided the legislation is deficit neutral over the 2010-2019 period and "reduces excess cost growth in health care spending and is fiscally sustainable over the long term."

Senator Byrd Created Rules to Prevent Gaming the System

The majority may be able to adjust away several important budget rules, but we do have the Byrd rule. The first few times Congress exercised the reconciliation process, the legislation contained many provisions that were irrelevant to the purpose of implementing the fiscal policy assumed in the budget resolution (as committees sought to sneak through the expedited, privileged process of reconciliation many policy changes and other riders that did not affect the budget but which could not have been enacted as easily through regular order). For example, those early reconciliation submissions of committees included provisions that had no budgetary effect but did have major public policy effects, increased spending or reduced revenues when the reconciliation instructions called for reduced spending or increased revenues, or dealt with matters in another committee's jurisdiction, all of which otherwise would have been subject to the 60 votes required for cloture under normal Senate procedures. So in 1985, most Senators agreed with the rule's author, Senator Robert C. Byrd, that there should be a way to preclude such irrelevant, or extraneous, provisions from being attached to expedited reconciliation legislation.

In fact, it was Senator Byrd who stood firm in 1993 and convinced the Democratic majority at the time not to use reconciliation for President Clinton's health reform plan.

The Byrd rule operates differently than most other budget points of order. When most other budget points of order are raised and sustained, the measure being debated falls in its entirety. If a Byrd rule point of order is raised and sustained, only the offending language is stricken from the legislation, and debate on the remaining legislation continues. Each provision in reconciliation legislation must be carefully dissected and examined for Byrd rule violations. A provision will violate the Byrd rule if it has no budgetary impact. If an instructed committee reports reconciliation legislation but fails to meet its overall instruction, all provisions reported by that committee that increase outlays or reduce revenue violate the Byrd rule. A provision will be ruled extraneous if it is not in the jurisdiction of the committee reporting the title. A provision will violate the Byrd rule if it has a budgetary impact which is merely incidental to the policy components of the provision. If a provision increases outlays or decreases revenues in any one year after 2014 and that offense is not netted at least to zero by other outlay reductions or revenue increases in that title of the bill in that year, the provision violates the Byrd rule. Finally, if a provision includes changes in Social Security, it is extraneous under the Byrd rule.

Reconciliation is Not What the Doctor Ordered

The reconciliation process is a complicated budgetary exercise designed to allow Congress to carry out its plan to alter the fiscal path of the federal government on the margin. Health care reform is a massive, sweeping exercise to dramatically change the structure, incentives, and delivery of health care consumption, which accounts for about one-sixth of all economic activity in the U.S. While some view reconciliation as a magic bullet for ramming through partisan legislation, the origins, requirements, and limitations of reconciliation make it ill-matched for sweeping policy measures such as comprehensive health care reform.

It is important that Americans remember a few things about reconciliation: the decision to enable the reconciliation process this year was political and strategic, not based on budget considerations; the process benefits only the members who support the policy changes in the legislation; the use of reconciliation to achieve fiscal or policy goals requires an adept hand when drafting legislation at navigating through the myriad rules and requirements that accompany the process; and finally, your voice may not be heard, since your elected representative will have few options to offer alternatives when the measure is debated in Congress.

U.S. Senator Judd Gregg (N.H.) is the ranking Republican on the Senate Budget Committee and a senior member of the Senate Health, Education, Labor and Pensions Committee.

Reconciliation is not representative

By: [Sen. Judd Gregg](#)

February 4, 2010 04:39 AM EST

In a last-ditch effort to drag their bloated and unpopular \$2.3 trillion health care reform package across the finish line, congressional Democrats, reeling from the loss of their 60th Senate seat, are reviewing their options to achieve this goal.

With the election of Republican Scott Brown to the U.S. Senate, more than 40 out of 100 senators now oppose the Democrats' plan. An even greater percentage of Americans have expressed disapproval. Voters in Massachusetts and across the country are understandably dismayed about the secret negotiations that led to the existing health reform proposals. Legislation was drafted covertly and included backroom deals with certain states and special interests. Despite President Barack Obama's promises of a full and transparent debate on the health bill, such closed-door deal making is still going on.

The majority party is scrambling to salvage the crown jewel of its government expansion agenda. How will the Democrats move yet another version of health reform toward completion? Democratic leaders are publicly considering the use of reconciliation — a budget process tool that was designed to implement fiscal policy — to jam through a massive new health care entitlement that will add trillions to the debt.

Despite public outrage about the lack of transparency, Democrats may attempt to use reconciliation to short-circuit every senator's right and responsibility to fully debate a measure that will affect one-sixth of our economy. Using reconciliation to try to pass a new health care bill will limit debate to 20 hours, prohibit filibusters and most amendments and require only a simple majority in the Senate for final passage.

Like most Americans, I agree that health care must be reformed. Nationwide, the health care sector involves trillions of dollars in spending, yet for many, our system is unaffordable, inaccessible and ineffective. To reform health care, we must proceed carefully, deliberately and cooperatively; we must listen to all sides so that we can replace practices that result in waste and inefficiency with more affordable and effective solutions.

Reconciliation is not the right path to achieve this goal. The process first emerged to give Congress a tool to help bring spending and revenues in line with the fiscal policy assumed in the budget resolution. In short, the intended purpose of reconciliation is to make sure there is a way to enact, via a simple majority vote, changes to fiscal policy levers that will implement the budget totals, not to force through, using an expedited process, drastic and expensive new policies that will affect every American household.

The hue and cry over the stalled health care bill and the rumored use of reconciliation as a fallback strategy prompt the question: How exactly would this work? To start, any legislative language considered under reconciliation would be subject to the narrow confines of the process.

There are 18 hurdles, in the form of budget points of order, that any reconciliation legislation would have to clear. Further, the Byrd rule, which prohibits extraneous provisions from being included,

poses several additional points of order that could be raised against the bill. If passing legislation can be compared with making sausage, then passing health care through reconciliation would be like making Swiss cheese — the result would be huge gaps in policy, missing legislative text and misaligned, minimized goals.

A reconciliation package would be hurried through in less than three working days. In the U.S. Senate, a minority of one usually has the unique right to be heard. But through the procedural confines of reconciliation, only a select few get to speak. Major policy changes that have long-term effects deserve thoughtful consideration and lots of sunshine — using reconciliation would wave that away. Think about how long your child will deliberate before choosing a university, how long it takes to assess investment or retirement plans for your family's future or even how long it takes to find your next home. Doesn't health reform deserve the same careful consideration?

It is important that Americans realize what is at stake: their voice in the process, their ability to choose and, ultimately, their health. Reconciliation is a complicated budgetary exercise that is not suited to the challenges of improving health care for every individual and family. If reconciliation is used, it will be a clear signal to Americans that the administration and the Democratic majority are willing to trample the spirit of the Senate in order to pass a highly partisan policy, regardless of the damage it does to the concept of representative government.

Sen. Judd Gregg (R-N.H.) is the ranking member of the Senate Budget Committee and a senior member of the Health, Education, Labor and Pensions Committee.

<http://www.politico.com/news/stories/0210/32470.html>



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For Immediate Release

March 4, 2010

**Senator Gregg's Senate Floor Remarks on the Democrats'
Health Care Bill and Reconciliation
March 4, 2010
(unofficial transcript)**

For the sake of the order and also for those people who may be listening to this dialogue, I want to go over where we stand on the health care debate, as I think it's important for people to understand what's happened.

There's been a lot of talk about a lot of different things, with the term "reconciliation" taking a front row seat. What's happening is that the House of Representatives is going to have to make a decision whether or not they want to pass the bill that passed here in the Senate.

Now, remember the bill that passed here in the Senate was a bill that was produced and delivered to the Senate on a Saturday afternoon for all intents and purposes – it was the core of the bill, the managers' amendment. No amendments were allowed after that Saturday afternoon. And a final vote was taken three days later on Christmas Eve.

It was a bill that expanded the size of government by \$2.3 trillion when fully implemented. It was a bill that reduced Medicare by \$500 billion in the first 10-year window and a trillion dollars when fully implemented. It took those savings from Medicare recipients and used them to fund a brand-new entitlement which had nothing to do with Medicare, and to dramatically expand an already existing entitlement called Medicaid.

It was a bill that basically said to small employers, "we're going to make it so darn expensive for you to keep the insurance that you presently give to your employees that a lot of you are going to decide to throw up your hands and stop insuring your employees and send your employees down to something called an exchange." It was a bill that basically set up a structure that would micromanage the delivery of health care in this country from a top-down situation, so, essentially, it put a bureaucrat between you and your doctor, and between you and your hospital.

It was a bill which was going to create so much new spending and grow the government so much that we would now have, after this bill is fully implemented, the largest

government as a percentage of our gross domestic product (GDP) than we have ever had at any time where we've not been engaged in a world war. Think about that.

That bill takes the size of our government and grows it from its historic level, which is about 20% of GDP, up to 26%, 27% of GDP when it's fully implemented. And most of that they allegedly paid for, except those pay-for's would never come to fruition, we know that this Congress doesn't have the courage to stand up and raise taxes or cut spending. Therefore, this would fall on the deficit and become debt that our children would have to pay off.

In addition, it did nothing, absolutely nothing, about reducing the cost of health care in this country. In fact, according to the Congressional Budget Office (CBO), 23 million people would still have no insurance, even after we spend \$2.3 trillion.

This bill, in my opinion, was -- and remains -- a disaster, from a fiscal standpoint because it will so massively expand the size of government and throw those costs onto our children's backs in the form of debt, and from a health care standpoint, because it will undermine, in my opinion, the delivery of health care, but more importantly, it doesn't do anything substantively to bend the out-year health care costs.

This bill, this giant bill, on health care -- this asteroid headed towards Earth -- is sitting in the House of Representatives. And they don't have the votes to pass it. Why? Because the American people have spoken. They spoke when they elected Scott Brown in Massachusetts, and they've spoken in polls across this country, and they've spoken in town meetings, and they've spoken in letters to Senators and e-mails to Senators, and House members. They're upset. They know this is bad policy, and they know we can't afford it and they know we shouldn't do it so there are a lot of House members that are a little queasy about voting for this.

So what have the House leadership and the Senate comes up with? They've come up with a huge sidecar. It's called reconciliation; it's a smaller bill. The purpose is to go around to the different liberal constituencies in the House and ask them what they need to get their vote for the big bill and then put it in this little bill. It's a purchasing process. It's a going out and buying votes process, done behind closed doors, as this bill was. This big bill was designed in a back room. They're negotiating with all those folks, "what do I need to do to get you to vote for this big bill, which nobody wants?" And somebody says, "well, you have to spend more money." So people get something that spends more money. Or, "you've got change the benefit structure here." So they change the benefit structure. They put all of these little changes -- which are fairly significant, but are nothing compared to the bigger bill -- in this smaller bill called reconciliation.

Why did they choose that bill called reconciliation to do this? Or why will they? Because under the Senate rules, anything that comes across the floor of the Senate requires 60 votes to pass. It's called the filibuster. That's the way the Senate was structured. The Senate was structured to be the place where bills which rushed through the House because they have a lot of rules that limit debate and allow people to pass bills quickly,

but they don't have any rule in the House called the filibuster which allows people to slow things down.

The Founding Fathers realized when they structured this they wanted checks and balances. They didn't want things rushed through. They saw the parliamentary system. They knew it didn't work. So they set up the place, as George Washington described it, where you take the hot coffee out of the cup and you pour it into the saucer and you let it cool a little bit and you let people look at it and make sure it's done correctly. That's why we have the 60-vote situation over here in the Senate to require that things get full consideration.

When the big health bill passed in December, it was done under normal Senate procedures because the majority knew they had the votes to eventually invoke cloture, shut off a filibuster, and bring the bill to a vote. But now they know they can't go that route again for the smaller bill because there are no longer 60 votes on the other side of the aisle. Senator Brown was elected in large part because of people's outrage over what happened when they basically jammed the Senate procedure and did not allow amendments after Senator Reid brought his substitute to the floor, and did not allow debate on the biggest piece of social policy and fiscal legislation in my history of the Congress. When they jammed that thing through here on Christmas Eve, people were outraged and Senator Scott Brown made that point. So now there are no longer 60 votes on the other side of the aisle. So they can't use that ramrod approach. So they've decided to go back to an arcane Senate procedure called reconciliation.

The budget and reconciliation are the only bills around here that have the right to pass with 51 votes and a time limit on debate and basically a time limit on debatable amendments, although not on amendments generally. And what really is reconciliation? Well, reconciliation was structured so that when a budget passed the Senate, there would be a way for the Budget Committee to say to the committees that were supposed to adjust spending or adjust taxes in a way to meet the budget that they had to do it.

So if your budget was coming out, \$10 billion, \$20 billion, \$30 billion over what it was supposed to be, reconciliation would say, change the law to bring it back to where it's supposed to be. And it's been used around here on numerous occasions, I think 19 times reconciliation has been used to enact laws since the Budget Act created the congressional budget process including reconciliation in 1974. But it has always been used for the purposes of adjusting issues which either (a) were bipartisan or (b) were pretty much purely issues of adjusting numbers, numbers on the tax side, numbers on the spending side.

And so of the 19 times that reconciliation has been used to enact laws, every time except two times, reconciliation has been a bipartisan bill. Twice it was not bipartisan. Twice it was run through here on a partisan vote, once on the tax increases that President Clinton passed in 1993, and once on a reconciliation bill dealing with adjusting spending -- I believe it was in 2005. Otherwise it's always been a bipartisan vote. So 89% of the time it's been bipartisan. And it has always been, when it has been partisan, used for making

these numbers adjustments, not for the purposes of creating massive new policy that affects every American in very personal ways, in the way they deal with their doctors and their hospitals and their health care treatment.

It was never conceived as a concept where the real legislation involving substantive issues of policy would be done. Tax rate adjustments have occurred under it. Absolutely. But when you move tax rates from 39% to 35% as the Bush tax cut did, or tax capital gains from 25% to 15%, that's not a complex issue. That's just, you know, taxes are either going to go down or they're going to go up and it takes about 100 pages of actual legislative language. Everybody knows the issue. It's an up-or-down vote, pretty clear. And in fact in those instances there were opposing positions presented and on those issues, people of both parties voted for them.

That's not like passing an entire rewrite of the health care system of America. The health care system is 17% of our economy and is one of the most complex issues we have to deal with. You pull a string over here and a string 10,000 miles away is affected. It's just a matrix of exceptionally complicated, interrelated issues with all sorts of policy language that's necessary. And so reconciliation was never conceived of and its purpose was never to take on big policy like that. Big policy is supposed to be taken on the floor of the Senate, in an open procedure, where there's debate and there's amendments. And the amendments are debatable.

So reconciliation is certainly not the appropriate vehicle to use here, but I think the point I'm trying to make is that reconciliation isn't the real game here. I mean, after the House of Representatives -- after they've gone around with this reconciliation bill and they've bought up the votes they need and said to these people, well, we'll just fix that in reconciliation if you'll just vote for the big bill -- after that's happened and the big bill is passed -- this \$2.3 trillion monstrosity in spending and government dominance of the health care sector -- after that's passed, the game is over. I mean, that's the law.

I don't think there'll be much incentive at all for the White House or my colleagues on the other side of the aisle to take up reconciliation. There certainly won't be any energy or need to pass it because the big bill which America basically rejects -- every poll in America says it's got a maximum approval of about 25% and somewhere around 60% to 70% disapproval -- that bill will become law.

And basically what will have occurred is we will have created a government that's so large and so burdensome that it is very unlikely that this country will be able to pay for it. And as we move into the out years, our children are going to get these bills. And in order to pay those bills, they're either going to have to have a massive event of inflation to pay for them or massive tax increase, and either one of those events undermine the quality of life or the standard of living of the next generation. You're going to get a health care system which has become basically a ward of the government, for all intents of purposes, with a bureaucracy that is very dominant and makes it very difficult for citizens to have the choices they need in order to develop a health care delivery system that is tailored to their needs. And a lot of small businesses will just give up on the idea of supplying health

care. And we also know, of course, that the health care prices will not come down, but will continue to go up.

So this is a really dangerous time, I think. It's a time when the House of Representatives has to take a hard look at what actions it's going to take, obviously, and I am a sure they will. But they have to recognize that voting for that big bill and hoping that the Senate will bail them out with the little bill, well, I'd take a second look at that, because, first, it will be hard to run a reconciliation bill across this floor and have it end up the way it started out because of all the points of order that will be available against it, but secondly, I'm not sure there will be all that much energy to do it.

I think it's important to understand that as much as reconciliation is an interesting and entertaining topic for discussion around here as to whether it is appropriate -- which I don't think it is under this type of scenario -- and whether the reconciliation bill will actually survive the challenges here on this floor from points of order -- that's an interesting issue, too -- that's not the question. The question is, is reconciliation even relevant once the big bill passes, and I think it's probably not. And so if I were a House member depending on reconciliation, looking to that bill as the way that I'm going to justify voting for this bigger bill which is such a disaster, I'd think twice.

Madam President, I yield the floor.