

RECONCILIATION:



Not What the Doctor Ordered



BUDGET COMMITTEE



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Reconciliation Is the Wrong Vehicle for Sweeping Health Care Reform

❖ Reconciliation is a Fiscal Policy Tool

- ✓ 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 that 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.

❖ The Principal Focus of the Reconciliation Process Has Been Deficit Reduction

- ✓ In some years reconciliation has involved revenue reduction and spending increases in selected areas.

❖ 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, its baseline deficit for 2010-2014 was projected to be \$3.5 trillion.
- ✓ Does a \$2 billion, or 6/100ths of a percent, reduction in the deficit 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 Tilt Playing Field, But Budget Enforcement and Byrd Rule Still Exist

- ✓ Reconciliation will be evaluated against 18 budget points of order.
- ✓ The Majority did include 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) - tight germaneness tests on amendments.
- ✓ As such, 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?
- ✓ President Obama's fiscal responsibility and health care summits advertised a new era of working together – 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.

Frequently Asked Questions About Reconciliation

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

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. Remember reconciliation is a budgetary mechanism. Budget resolutions do not include policy directives, and section 310 of the Congressional Budget Act provides that reconciliation instructions shall include only numerical targets to achieve desired budgetary outcomes by a certain date. How a committee chooses to comply to meet the budgetary amounts for fiscal changes is limited only by the jurisdiction of the committee.

Why has reconciliation, especially 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. This maneuver (or tactic) does not require 60 votes for the Senate to invoke cloture to cut off debate and limit the amendment process. The “strong arm tactic” label reflects how reconciliation procedures significantly change each Senator’s unfettered 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 budget resolution was adopted, its baseline deficit for 2010-2014 was projected to be \$3.5 trillion. Does a \$2 billion, or 6/100ths of a percent, reduction in the deficit really represent a change in the fiscal policies of the nation?

Simply, no. The \$2 billion deficit-reduction instruction is a *net* number; Finance and HELP can respond to the reconciliation instructions by including huge *gross* public policy changes 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. What are the other indicators to illustrate the Majority’s strategy?

This year’s budget resolution explicitly included procedural tools to shield health care policy changes from the myriad of 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 relevant time periods and “reduces excess cost growth in health care spending and is fiscally sustainable over the long term.” Remember these points of order were created to enforce the fiscal policies set out in the budget resolution the Majority passed just five months ago in May.

Is the October 15th date included in this year's instruction a strict deadline?

No. It is at the discretion of the Senate Budget Chairman whether to move forward. The Senate cannot force the Budget Committee to report a non-existent bill before, at, or after the deadline. The parliamentarians do weigh in on when the privilege expires or not, taking into account whether or not the committees instructed would continue to be able to comply with the instruction in the FY 2010 Budget Resolution.

During Senate floor debate on the reconciliation bill, will I be able to offer a substitute alternative to be debated and considered by the body as a whole?

No. Strict germaneness test and various points of order on reconciliation bills make it very hard to amend the reported bill without 60 votes. Therefore, reconciliation bills are written mostly at the committee stage.

Does Health Reform have to expire in 5 years if done through reconciliation?

Maybe. One part of the Byrd rule prohibits legislation resulting from a reconciliation instruction from increasing the deficit in any one year beyond 2014. If the reconciliation bill can meet this test, then legislation resulting from the reconciliation instruction can be permanent (it does not have to expire in 2014). However, this is quite a big hurdle – overall, each committee's submission must reduce the deficit by at least \$1 billion over the period 2009-2014 (in order to comply with the instruction), and each committee's submission cannot increase the deficit in any one year after that (in order to comply with the Byrd rule). There are 3 options to help draft around this budget hurdle: choose spending programs to cut, raise additional taxes to offset spending, or sunset the health care provisions that cause the breach of the deficit test.

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."
- 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 paygo 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 \$3.5 billion.
- increase the deficit by any amount for the years 2010-2014 or 2010-2019.
- increase 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).

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.

What Have They Said on Reconciliation?

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

“Once you’ve unleashed reconciliation, you can’t get it back in the barn, and it could be used for lots of different things that are completely unintended at this moment. People need to think about that very carefully.”

CongressNow, 4/21/09

“I don’t think this was the purpose for which reconciliation was originally devised. There are many problems that it creates in trying to write substantive legislation. So I would much prefer that we not have reconciliation instruction in this resolution.”

RollCall, 4/21/09

“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

“I understand the White House and congressional leadership want to enact their legislative agenda. I support a lot of that agenda, but I hope it will not require using the reconciliation process. Again, I commend the chairman of the Budget Committee for excluding reconciliation instructions, and look forward to working with him to ensure those instructions are not included in conference.”

Senate floor statement on FY 2010 Budget, 4/1/09

Sen. Max Baucus (D-MT)

“Under reconciliation, the Senate is not the Senate; the Senate is a different institution.”

Senate floor statement, April 5, 2001

“I’ve not totally ruled it out...I am doing everything I can to prevent us from going down that road.”

Senate Finance Committee hearing, February 25, 2009

Sen. Russ Feingold (D-WI)

[Reconciliation] is an abuse of the process.”

From 2003, as cited in The Hill on April 23, 2009

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

Senate floor statement, April 2, 2009

“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. Carl Levin (D-MI)

“Today, we are being asked to turn our backs on Senate history by adding language to this budget resolution which will make it difficult for the Senate to fully debate.”

Senate floor statement, April 5, 2001

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, March 16, 2005

Robert Reischauer, President of the Urban Institute; former director of the Congressional Budget Office

“Reconciliation may appear attractive, given the challenge of rounding up the 60 Senate votes needed to pass significant health-care reform or meaningful climate change legislation, but the risks suggest that seeking just 51 votes -- possibly all Democratic -- is not the path to follow. The Byrd rule strips from reconciled legislation provisions that don't substantially affect outlays or revenue. Significant portions of any health reform or climate legislation could be left on the cutting-room floor. While these outtakes would be considered under normal legislative procedures, if they then failed to surmount the 60-vote hurdle, we'd be left with an unworkable reform.”

Washington Post, 3/22/2009

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

Words of Wisdom from the President Pro Tempore **Senator Robert C. Byrd**

Nearly a quarter-century ago in October 1985, the Senate agreed (by a vote of 96-0) to adopt a rule to protect the effectiveness of the reconciliation process and to preserve the deliberative character of the Senate. During that debate Senator Byrd stated:

“If the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate ... to no more than 20 hours.”

“It was never foreseen that the Budget Reform Act would be used in that way. So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate—which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.”

1993 Clinton Health Reform

In 1993, the Democratic majority considered using reconciliation to do the Clinton health plan, but Senator Byrd talked them out of it. When the leadership talked to Senator Byrd about it, he said:

“No. It is a violation of the process. We will regret it. It will be misused later on.”

Recent Statements from Senator Byrd

“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.” ([“The End of Bipartisanship For Obama’s Big Initiatives?”](#) *The Washington Post*, 3/22/09)

“I am one of the authors of the reconciliation process. Its purpose is to adjust revenue and spending levels in order to reduce deficits. ... The ironclad parliamentary rules are stacked against a partisan minority, and also against dissenting views within the majority caucus.” (Floor statement on FY 2010 Budget, April 1, 2009)

“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.” (Floor statement on FY 2010 Budget, April 1, 2009)

See reverse for Senator Byrd’s April 2, 2009 Dear Colleague letter

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CHARLES J. HOUY, STAFF DIRECTOR
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April 2, 2009

Dear Colleague:

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.

As one of the authors of the reconciliation process, I can tell you that the ironclad parliamentary procedures it authorizes were never intended for this purpose. Reconciliation was intended 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. Woodrow Wilson once said that the informing function is the most important function of Congress. How do we inform? We publicly debate and amend legislation. We receive public feedback, which allows us to change and improve proposals. Matters that affect the lives and livelihoods of our people must not be rushed through the Senate using a procedural fast track that the people never get a chance to comment upon or fully understand.

Reconciliation bills are insulated from debate and amendments. Debate is limited to twenty hours, and a majority vote can further limit debate. The 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, to discourage extraneous matter from being attached to these fast-track measures.

The Senate cannot perform its Constitutional role if Senators forego debate and amendments. I urge Senators to jealously guard their individual rights to represent their constituents on such critical matters as the budget process moves forward.

With kind regards, I am

Sincerely yours,


 Robert C. Byrd