Research

Budget Reconciliation: A Primer

GORDON GRAY | JANUARY 24, 2017

Executive Summary

- Budget Reconciliation is a powerful legislative tool that can be invoked to override Senate filibusters that otherwise would require 60-vote assent or unanimity
- Reconciliation also faces key limitations
    - Congress must first pass a budget resolution
    - It can only be invoked a limited number of times under a given budget resolution once passed, for a maximum of three bills, but no more than one bill each for changes in revenues, spending, and the debt limit
    - The "Byrd Rule" further limits the scope of reconciliation measures to strictly budget-related matters, among other strictures
- Reconciliation has been used to pass significant budget-related legislation such as one piece of the Affordable Care Act and the 2001 and 2003 tax cuts. Each instance also reveals the limitations of reconciliation legislation

Budget Reconciliation in 2017

For the first time since 2010, a single political party controls the House, Senate, and the White House. As in 2010, the majority party does not hold a filibuster-proof majority in the Senate. Given the stark policy differences between the two parties, bipartisan reforms of the tax code and health care face significant challenges. However, budget reconciliation is one tool that may be employed to make major changes to the nation's taxing and spending policies under expedited procedures in the Senate.[1] But reconciliation is not a magic wand, it has limitations that circumscribe its legislative sweep. Broadly, reconciliation allows for expedited, or filibuster-proof, consideration of budget related legislation. Most recently, it was employed to secure passage of the Affordable Care Act. Before that, it was employed to pass spending reductions and tax cuts under the Bush administration. These instances both reveal the effectiveness of reconciliation as a parliamentary tool, as well its limitations in policy design. This short primer will explain how reconciliation works, and assess its effectiveness as a legislative tool.

Reconciliation in the House and Senate

A reconciliation bill is legislation that changes laws affecting mandatory spending and/or tax revenue to achieve a specific budget outcome. It is a legislative process that reflects the long-tested notion that fiscal changes, particularly deficit reductions can be politically perilous, and therefore more difficult to pass.

Reconciliation is among the most powerful procedural tools available to policymakers because bills passed through the reconciliation process are considered under expedited rules that limit the time allotted for debate, the scope of amendments and the number of votes needed for passage. In the House, simple majorities can attach similar conditions to most legislative matters, so the unique parliamentary characteristics of reconciliation legislation are largely intended to override otherwise prevailing Senate rules.

In the Senate, a reconciliation measure is privileged, which means it requires only a simple majority to be brought to the Senate floor rather than the usual 60 votes. Thereafter, floor debate is limited to 20 hours, with further limitation on the scope and time that may be devoted to amendments. A simple majority is required for passage without the usual supermajority vote needed to advance to a vote on final passage.

Reconciliation and the Budget Resolution

For reconciliation measures to even be taken up by the House or Senate, a budget resolution must be agreed-to by both chambers, and must include instructions to committees to achieve specific budget outcomes through legislation. These instructions must include four key elements:

1.) the Committee to which the instruction is directed,

2.) the deadline by which the relevant committee or committees must comply,

3.) the specified dollar amount change to either revenues, outlays, the deficit, or the public debt,

4.) and the time period over which those budgetary changes must be achieved.

Further, it is important to note that a reconciliation instruction does not prescribe how the specified budgetary changes must be met. Those changes remain the purview of the instructed committee.

Once a budget resolution is agreed to, committees have until their specified deadlines to produce reconciliation measures. Per the Congressional Research Service, committees tend to respond to their directives in a timely fashion. However there have been instances when committees have responded after their deadlines, but without consequence.[2] Once developed, the committee would then vote and pass (or not pass) the measure and report it directly to their respective chamber.

If the Budget Resolution includes an instruction to more than one committee, the various committees would report their measure to the respective chamber's Budget Committee. The Budget Committee then performs what is essentially an administrative function of reviewing the measures and packaging them into an omnibus reconciliation measure that is then reported to the chamber as a whole. The Budget Committee may make no substantive changes to the measures. Once the measure or omnibus is reported to the chamber of the House or Senate, reconciliation measures are considered under special, expedited procedures. Once considered and if passed, resolution of differences between the chambers for the most part resembles the usual procedures, but again, debate time is limited in the Senate, in this case to 10 hours.

Importantly, Congress may only consider one bill for each of the fiscal changes provided for in the reconciliation instructions. Thus, a budget resolution provides Congress with only one "bite at the apple" each for making changes to revenues, spending and the debt limit through reconciliation, for a maximum of three reconciliation bills. A single bill may make changes to all three, for instance, or a bill may make changes to revenue and outlays (possibly though a "deficit" reconciliation instruction) and a separate bill may make changes to the debt limit, or some other similar combination.[3] The important constraint, is that Congress may *not* consider multiple bills satisfying the same instruction in a budget resolution. Thus, Congress may not consider multiple tax bills under reconciliation procedures, or a bill that includes revenue and outlays (such as an ACA repeal) and then another tax bill under the same budget resolution.

If both chambers ultimately agree to the same measure (through conference or amendment exchange) the measure is sent to the president for signature or veto. Like other legislation, Congress may attempt to override a veto of reconciliation legislation. However, once this process is complete, the reconciliation process is concluded – and the reconciliation instruction that ultimately prompted the law (or vetoed legislation) is effectively exhausted.

The Byrd Rule

A key evolution of the reconciliation process is the enactment of the "Byrd rule," named in honor of the late Senator Robert Byrd, but codified as section 313 of the Congressional Budget Act. The "Byrd Rule" was borne out of initial experiences with budget reconciliation whereby the procedure was used to pass measures that did not clearly relate to the reconciliation instruction, arguably an abuse of the fast-track process.[4] In 1985, to limit such perceived abuse, the Senate temporarily adopted a point of order for striking "extraneous" matter from reconciliation bills, which requires a 60 vote threshold to waive. This virtually guarantees that such extraneous matters will be struck insofar as the underlying reconciliation bill likely only has the support of a simple majority. The rule was permanently adopted in 1990.

The "Byrd Rule" contains 6 definitions of what constitutes "extraneous matter:"[5]

- It does not produce a change in outlays or revenues;
- It produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
- It is outside of the jurisdiction of the committee that submitted the title or provision (jurisdiction determined by the Chair);
- It produces a change in outlays or revenues that is merely incidental to the non-budgetary components of the provision;
- It would increase the deficit for a fiscal year beyond those covered by the reconciliation measure;
- It violates section 310(g), which prohibits recommendations in a reconciliation bill with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.

These strictures need not be invoked to affect legislation, rather reconciliation legislation is largely tailored to comport with the Byrd rule. According to the Congressional Research Service, there have been 65 points of order and 52 waiver motions, for a total of 117 actions, considered and disposed of under the Byrd rule, most recently 2 during consideration of the Affordable Care Act.[6] The most important consideration of the "Byrd rule," is that it places a constraint on the breadth of policy changes that can achieved through the reconciliation process.

Reconciliation in Practice

In the Senate, simple majorities typically do not prevail. Rather, unanimity or super-majorities are usually required to advance legislation. During initial Senate consideration of the Affordable Care Act, Democrats held 60 seats and could completely override Republican opposition. Senate passage of the Affordable Care Act, the contemporaneous increase in the debt ceiling, and several other measures were passed along such lines. In the wake of Scott Brown's election, however, Democrats could no longer advance legislation along pure party lines. The Senate-passed health reform bill (Patient Protection and Affordable Care Act, or PPACA) was unacceptable to House Democrats, and it was stalled and presumed dead. No longer possessing a fillister-proof majority in the Senate, Democrats could not amend the health bill to House Democrats' satisfaction under regular order. Rather, they relied on the reconciliation process to pass the second legislative element of the Affordable Care Act, the HealthCare and Education Reconciliation Act of 2010.

Critically, House Democrats had to agree to first pass the otherwise unacceptable PPACA, because it included major non-budgetary, health policy changes that would have been stricken from a reconciliation bill under the Byrd-rule. The reconciliation bill was limited to changes to the PPACA statute that had budgetary effects, but sufficient to address House Democrats' concerns. The combined legislation, PPACA and the follow-on reconciliation bill, have since been shorthanded to the Affordable Care Act.

This legislative history is important when considering subsequent repeal efforts, including the recently vetoed Restoring Americans' Healthcare Freedom Reconciliation Act of 2015, and likely future legislative activity. The 2015 reconciliation bill repealed major components of the ACA, including the individual and employer mandates, insurance subsidies and the Medicaid expansion.[7] The Act was passed by Congress under reconciliation procedures and was ultimately vetoed by President Obama. For many critics of the ACA however, the reconciliation bill was unsatisfactory, striking only *some* of the ACA rather than a wholesale repeal.[8] Notwithstanding specific problems with this line of thinking, the legislative history alone reveals that reconciliation measures can only affect part of the ACA, and cannot affect the non-budgetary components, which with respect to changes to health insurance markets, among other areas, are considerable. The 2015 reconciliation bill essentially represents the broadest reach of reconciliation to repeal the ACA, and it falls short of full repeal. Reconciliation is thus a limited tool, not a legislative magic wand.

The limitations of reconciliation have been borne out by other recent examples, including the 2001 and 2003 tax cuts. While these tax changes are often recalled as a partisan exercise, it's important to note that the 2001 tax legislation enjoyed bipartisan support and received 62 votes on initial Senate passage.[9] This is instructive in that while reconciliation is often viewed as a strictly partisan exercise, it need not be. Indeed, while a reconciliation bill enjoys privileged status that can limit minority opposition, supermajority support can alter that dynamic. For instance, Byrd rule objections can be waived with 60 votes. Unanimous consent agreements can alter the time-table consideration of a reconciliation measure. Essentially, while reconciliation does provide the majority with more leverage, it need not preclude bipartisan support. For instance, the Tax Increase Prevention and Reconciliation Act of 2005 received 66 votes on initial passage and the Omnibus Budget Reconciliation Act of 1989 received 87 votes on final passage.[10]

While the 2001 tax legislation enjoyed bipartisan support, and likely could have been passed at least close to its original form without the use of reconciliation, the 2003 legislation proved sufficiently divisive as to require a tie-breaking vote in the Senate by the vice president.[11] Regardless, both were passed under reconciliation and they were both subject to Byrd Rule constraints – specifically the fifth prong, which precludes reconciliation legislation from increasing the deficit beyond the budget window. As the major provision of the 2001 and 2003 legislation would have violated this rule, and thus could have been struck, essentially killing the entire tax bills, the legislation included a sunset provision at the end of the 10 year-budget window. The implications of this was a decade of tax code that was scheduled to reset overnight on January 1, 2011. Subsequent legislation, not passed through reconciliation, eventually made most, but not the more divisive, higher-income portions, of these tax cuts permanent. Again, reconciliation can be a powerful legislative tool, particularly for passing controversial legislation, but it has important limitations that narrow its scope, and challenge the durability of policy changes passed using this approach.

Conclusion

Reconciliation is a powerful legislative tool that enables the majority in the Senate to pass legislation over minority objection. But this tool is limited. Congress must agree to a budget resolution with reconciliation instructions which can only produce a maximum of three reconciliation bills – one per each of the major budgetary categories – limiting their use. Reconciliation is also limited in the Senate by the Byrd rule, which strictly limits reconciliation legislation to budgetary matters, in addition to other limitations. These limitations have resulted in significant challenges for past reconciliation bills, and will continue to constrain the scope of reconciliation legislation considered by future Congresses.

[1] See https://www.americanactionforum.org/insight/reconciliation-reminder/

[2] Lynch, Megan Suzanne, "Reconciliation Directives: Components and Enforcement," Congressional Research Service, R41186, April 15, 2010

[3] Note that past budget resolutions have precluded this approach, but the underlying statute still provides for changes to the debt limit through reconciliation.

[4] Gold, Martin. *Senate Procedure and Practice.* Rowman and Littlefield Publishers. 2008

[5] http://www.budget.senate.gov/imo/media/doc/bb05-2005.pdf

[6] Keith, Robert, "The Budget Reconciliation Process: The Senate's 'Byrd Rule,'" Congressional Research Service, RL3086, July 2, 2010

[7] https://www.cbo.gov/publication/51107

[8] http://thehill.com/blogs/congress-blog/economy-budget/258126-reconciliation-in-reality

[9]
http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00165

[10] http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00010 and http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=101&session=1&vote=00243

[11] http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00196