

Background:

The Reconciliation process was first established in the 1974 Congressional Budget Act for the purpose of implementing policy changes, generally those affecting mandatory spending and revenue programs, laid out in the Budget Resolution. The process was first used in 1980 and, since then, 19 reconciliation bills have been signed into law and 3 have been voted on. The last reconciliation bill to be signed into law was the Deficit Reduction Act of 2005.

Initially, many of the provisions considered in the reconciliation bills were considered extraneous to the purpose of strictly implementing the policies laid out in the Budget Resolution. This led to the passage and eventual codification of what is known as the Byrd rule (2 U.S.C. 644), which prohibits the consideration of extraneous matters as part of the reconciliation process.

Procedure:

Reconciliation is a two-step process. The first step is language included in the Congressional Budget Act which directs appropriate committees to craft legislation to achieve desired budgetary outcomes. On April 29, 2009, both the House and the Senate agreed to the Fiscal Year 2010 Congressional Budget Act (S.Con.Res. 13). Included in Title II of the Act was reconciliation language specifically for health care reform.

SEC. 201. RECONCILIATION IN THE SENATE.

(a) Committee on Finance- The Senate Committee on Finance shall report changes in laws within its jurisdiction to reduce the deficit by \$1,000,000,000 for the period of fiscal years 2009 through 2014.

(b) Committee on Health, Education, Labor, and Pensions- The Senate Committee on Health, Education, Labor, and Pensions shall report changes in laws within its jurisdiction to reduce the deficit by \$1,000,000,000 for the period of fiscal years 2009 through 2014.

SEC. 202. RECONCILIATION IN THE HOUSE.

(a) Health Care Reform-

(1) The House Committee on Energy and Commerce shall report changes in laws to reduce the deficit by \$1,000,000,000 for the period of fiscal years 2009 through 2014.

(2) The House Committee on Ways and Means shall report changes in laws to reduce the deficit by \$1,000,000,000 for the period of fiscal years 2009 through 2014.

(3) The House Committee on Education and Labor shall report changes in laws to reduce the deficit by \$1,000,000,000 for the period of fiscal years 2009 through 2014.

The second step of the process is the consideration of reconciliation legislation under expedited procedures. The most important aspect of this is the effect of reconciliation in the Senate. Reconciliation limits Senate debate to 20 hours and requires only a simple majority rather than the 60 votes needed to overcome a filibuster. It is important to note, however, that the number of amendments offered can be unlimited. After the 20 hours of debate, the stacked amendments are voted on sequentially, usually at a fast clip. Theoretically, any Member of the Senate can offer thousands or hundreds of thousands of amendments to filibuster the bill by amendment.

Limitation:

As mentioned above, the most important limitation on reconciliation legislation is the Byrd Amendment. Section 313(b)(1) of the Byrd rule provides definitions of what constitutes extraneous matter for purposes of the rule. The criteria apply to provisions that:

- do not produce a change in outlays or revenues;
- produce changes in outlays or revenue which are merely incidental to the non-budgetary components of the provision;
- are outside the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
- increase outlays or decrease revenue if the provision's title, as a whole, fails to achieve the Senate reporting committee's reconciliation instructions;
- increase net outlays or decrease revenue during a fiscal year after the years covered by the reconciliation bill unless the provision's title, as a whole, remains budget neutral;
- contain recommendations regarding the OASDI (Social Security) trust funds.

It is important to note that if the reconciliation package changes the Senate bill and the Senate bill is not yet signed into law, then the savings are not counted or scored as meeting the \$2 billion target. This is a big problem for the Democrats who are trying to reconcile the bills, the policy, the timing and the votes.