

## Friends or Reconciled Foes?

### Understanding how Congress can pass the infrastructure bill.

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Once a spending bill is passed in the U.S. House of Representatives—which holds the “power of the purse”—with a simple majority rule, it enters a complicated voting process in the Senate. A regular bill requires a friendly attitude toward the proposed law, as 60 favorable votes—or a three-fifths majority—need to be gathered in the Senate to overcome the filibuster. The filibuster rule requires 60 members of the Senate (again, 3/5) to end the debate period on a bill and move it to the floor for a vote; without those 60 votes, the bill can remain in debate and never move to a vote. However, the Senate is currently split 50-50 among Democrats and Republicans, with Vice President Kamala Harris owning a tie-breaking vote for the Democrats; such an even split makes it nearly impossible for Democrats to pass much of the legislation President Joe Biden is proposing through this process, even with that tie breaker. The alternative relies on a reconciliation process, which needs only a simple majority (51 votes).

#### So, what is budget reconciliation?

- A budget reconciliation bill starts with a budget resolution. This is the plan for spending and tax bills that Congress is supposed to pass each year.
- Congress can pass one budget resolution for every fiscal year. Therefore, there is generally only one budget reconciliation bill per fiscal year, although it can technically be split into three bills: one on spending, one on the debt limit, and one on taxes.
- For the reconciliation process to start, the House and Senate must first agree on a budget resolution that includes “reconciliation instructions.” These are targets for committees to lower or raise revenues or spending. For example, a rule could be that the measures included within the bill cannot increase the deficit by more than \$2 trillion over the next three fiscal years. Once these rules are set, various committees work on recommendations for different aspects of the bill. Then these come together to create one omnibus bill—another name for the reconciliation bill—which can then pass with a simple majority in both the House and Senate. Once Congress approves it, the bill then heads to the president, who will either sign or veto it.

#### If there’s only supposed to be one per year, how can there be two this year?

- In reality, Congress does not pass a budget resolution every year. Under the Trump administration, they did not pass a 2021 budget resolution (FY2021 ends September 30, 2021). This is how Congress passed the \$1.9 trillion American Rescue Plan. One option to pass the infrastructure bill is to use the FY 2022 budget resolution (FY2022 ends September 30, 2022).

**However, there is a rule that budget reconciliation must follow: the Byrd Rule. Named for the late Sen. Robert Byrd (D-West Virginia), the Byrd Rule stipulates three things.**

- Reconciliation bills must affect federal spending or revenue, and policies within the reconciliation bill may not just be “merely incidental” (this is why a \$15 minimum wage could be excluded from the American Rescue Plan);

- They can't be projected to increase the federal deficit after 10 years (this is why the 2017 tax overhaul reconciliation bill set some tax breaks to expire before the 10th year—even though most people thought they would be extended when the time eventually came); and
- They can't change Social Security.

**There are two “referees” when it comes to what can and cannot be included in a reconciliation bill.**

- The first is the Congressional Budget Office (CBO), which projects the total cost of a bill. If the rules set at the beginning of the process stipulate, for example, that measures cannot increase the deficit by more than \$2 trillion and the CBO projects it will increase the deficit by \$3 trillion, then \$1 trillion will need to be cut from the bill.
- The second is the Senate parliamentarian (currently Elizabeth McDonough)—this person (an appointed position) makes the final decision on whether a policy's budgetary impact is “incidental” or not (under the Byrd Rule). It is worth noting that there is some grey area here on whether the parliamentarian's ruling is actually final—but a parliamentarian hasn't been overruled since 1975.

**Why does this matter?**

- While a bipartisan deal is currently being negotiated, if it fails, a reconciliation bill would be the Democrats only likely option to pass infrastructure spending.
- Moreover, since Democrats don't need the support of any Republicans, Democrats could pass more spending (and spending on areas not supported by Republicans through the reconciliation process) than through a bipartisan deal.
- In conclusion, this means that if spending is passed through reconciliation, the likelihood of more money being injected to the U.S. economy is greater.

**If Democrats can get what they want through reconciliation, why not just forget about a bipartisan deal?**

- As always, this is a product of politics. The midterm elections are around the corner, in November 2022, and history shows that the majority party in this position typically loses seats—and therefore power. A bipartisan deal is likely a more politically friendly path for many—particularly for those lawmakers in swing districts, or more centrist Democrats.
- It's also not necessarily as easy as it seems. Given the 50-50 split in the Senate, the Democrats can't afford to lose any Democratic support, particularly from their more centrist members. (In fact we saw a reconciliation bill fall victim to this when Republicans attempted to repeal the Affordable Care Act but ultimately did not get enough votes.)

This complex process has both economic and political implications. President Biden only has one chance to pass a big stimulus plan by reconciliation this fiscal year. While reconciliation could ultimately let the Democrats pass an infrastructure bill they want, it will still be difficult to get all Senate Democrats to sign on, which could mean a tough re-election battle for some.

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