777 6th Street NW
Suite 610
Washington, DC 20001
tel (202) 618-3900
fax (202) 478-1804
www.pennhillgroup.com

MEMORANDUM

TO: Interested Parties
FROM: Penn Hill Group
DATE: August 9, 2021
SUBJECT: Budget Reconciliation

This memorandum provides an overview of the budget reconciliation process and its use in moving major spending and revenue-related legislation. This memorandum also touches briefly on the Congressional budget resolution process, in order to explain how Congress begins the process of establishing and moving reconciliation measures.

Background

The budget reconciliation process was created by the Congressional Budget and Impoundment Control Act of 1974. The basic premise behind the budget reconciliation process is to permit an expedited means for considering tax, spending and debt limit-related legislation. Spending matters covered by reconciliation bills can only affect "mandatory" or "entitlement" spending.[1] The main advantage of the budget reconciliation process is that reconciliation bills are not subject to a filibuster in the Senate (which ordinarily requires 60 votes to overcome), allowing legislation to advance with a simple majority in both the House and Senate. Twenty-two budget reconciliation bills have been enacted since the adoption of this authority, while four other reconciliation bills have been vetoed by the President. The first use of the reconciliation process was in 1980. The last reconciliation bill was the American Rescue Plan Act enacted earlier this year.

Only certain current programs under the jurisdiction of the House Education and Labor Committee and the Senate Health, Education, Labor, and Pensions (HELP) Committee are funded through mandatory spending and are, therefore, subject to consideration under a budget reconciliation bill. These programs include:

- Federal student loans (and related spending funded through mandatory resources);
- The portion of the Pell Grant program funded through mandatory spending;
- School nutrition programs under the National School Lunch Act and the Child Nutrition Act (except for the Women's Infants and Children's program (WIC), which is funded through annual discretionary spending). Note: this falls under the jurisdiction of the House Committee only;
- Vocational Rehabilitation State Grants;
- Programs at the Pension Benefit Guaranty Corporation; and,
- Workman's Compensation, Unemployment Insurance, and Wage and Hour Enforcement.

With respect to the House Education and Labor and Senate HELP Committees, changes to the Higher Education Act – including those impacting Federal student loans, Pell grants and related authorities – have been the issues most frequently impacted by previous reconciliation bills. In

[1] Changes to Social Security programs generally cannot be made through the budget reconciliation process as they are subject to a point of order under Byrd Rule provisions in the Senate.

addition, it is important to note that previous reconciliation bills have also created new mandatory spending authority not under the Acts/programs listed above. The creation of a new program/authority would be permissible under any reconciliation bill dealing with spending matters, as long as the Committee proposing such new spending met their overall reconciliation instructions.

Budget Resolution

The budget reconciliation process starts with the passage of a budget resolution by Congress that includes instructions to committees in the House and Senate to produce reconciliation measures. Aside from budget reconciliation, a budget resolution has two main purposes: (1) to set the overall level of Federal discretionary spending that the House and Senate Appropriations Committees have to work with in a given fiscal year, and (2) to make any adjustments to individual committees' mandatory spending allocations. In a year in which Congress chooses to use the budget reconciliation process, a budget resolution can also include reconciliation instructions to certain committees to pass legislation that produces mandatory savings or spending, makes changes in tax revenue (in the case of the House Ways and Means Committee and the Senate Finance Committee), or impacts the Federal debt limit. In the case of changes in mandatory spending, the instructions call on a particular Committee (for example the House Education and Labor Committee) to produce legislation that would produce a certain level of savings or spending (i.e., $5 billion over 10 years).

The process of passing a budget resolution typically begins shortly after the start of the calendar year, when the House and Senate Budget Committees pass separate budget resolutions. After passage in committee, a budget resolution heads to the floor of the respective chamber. Consideration of a budget resolution on the House floor is typically governed by a special rule from the House Rules Committee; common practice is for this rule to allow only complete substitutes in order (i.e. entire budget resolution proposals). During Senate consideration of a budget resolution, Senators are permitted to offer individual amendments that address discrete aspects of the budget resolution (i.e. entire substitutes are not required). There is no limit on the number of amendments that may be offered in the Senate, but there is a limit of 20 hours of debate on a budget resolution. Amendments that have not been considered during the 20-hour debate period are then considered as part of a "vote-a-rama" period, when remaining amendments are voted on with little or no intervening debate. It is important to note that a budget resolution cannot be filibustered in the Senate.

If both the House and Senate are successful in passing a budget resolution, the differences between each chamber's version must be reconciled through a Conference Committee. Once reconciled, a budget resolution conference report must be passed by both chambers effectuate any provisions included in such a resolution. Since a budget resolution is an internal Congressional document and does not get enacted into law, it does not go to the President for signature. While the Congressional Budget Act (CBA) calls on Congress to adopt a budget resolution by April 15 of a given calendar year, there is no penalty or consequence for not completing a resolution by this date.

Budget Reconciliation

If a budget resolution conference report is passed that includes reconciliation instructions, the committees named in the budget resolution will have a certain period of time (also dictated in the budget resolution) to produce legislation that complies with the instructions. While a budget resolution may provide illustrative examples of how a certain level of mandatory savings or spending may be achieved or offer preferred revenue changes, the committees receiving reconciliation instructions are free to produce legislation that makes any changes they see fit within the jurisdiction of the committee in order to comply with their instructions.

Committee Activity
If a budget resolution includes reconciliation instructions to multiple committees in the House or Senate, then the committees are required to report the bills passed in response to the instructions to the respective House or Senate Budget Committee. The Budget Committee then packages these proposals together to allow for their consideration as one bill. If only one committee is tasked by the budget resolution with reconciliation instructions, then the committee's approved bill proceeds directly to the House or Senate floor. In the case of multiple bills being reported to the Budget Committee, the Budget Committee's role is only to package these measures together, not to change or alter the provisions approved by each reporting Committee.

House and Senate Floor Consideration
During floor consideration of a budget reconciliation bill in the House or Senate, amendments to the bill can be offered. Generally, amendments cannot be considered if they raise spending or cut taxes without offsetting the resulting cost or reduction in revenue. The exception to that is in the Senate, where it is "in order" to offer an amendment striking a provision from a bill, even if the result of the amendment would be to increase spending or reduce revenue.

In keeping with the expedited nature of the reconciliation process in the Senate, budget reconciliation places a 20-hour limit on debate. Amendments pending after the 20-hour limit is reached are considered under the "vote-a-rama" procedure described above.

As with other legislation, differences between the House and Senate Budget reconciliation bills have to be resolved through a conference committee. Once finalized, the House would consider a conference report under a special rule that would likely bar amendments and limit debate time. The reconciliation process provides for 10 hours of debate on a budget reconciliation conference report. Lastly, as with any other bill, a budget reconciliation measure must be signed into law by the President. If the President vetoes a budget reconciliation bill and the Congress subsequently fails to override the veto, the bill is dead, and the reconciliation process is complete. Congress would have to pass a new budget resolution in order to start a new reconciliation process.

Special Rules with respect to Budget Reconciliation

Number of Reconciliation Bills that can be Considered through a Single Budget Resolution
As discussed above, reconciliation bills can make changes in mandatory spending, tax revenue, and the Federal debt limit. It is permissible under the rules of reconciliation to move up to three separate reconciliation bills, each dealing with one of the above categories. However, if a reconciliation bill touches upon two of the categories (i.e. mandatory spending and tax revenue), even to the smallest extent, a separate reconciliation bill dealing with mandatory spending or tax revenue changes cannot be moved under the reconciliation process absent a new budget resolution.

Multiple Reconciliation Processes in the Same Year
While a single budget resolution permits up to three separate reconciliation bills, it is possible for Congress to pass budget resolutions for multiple fiscal years as a means to move multiple versions of one of the three categories of reconciliation bills in a single fiscal year[2]. For example,

[2] Earlier this year press reports indicated that, in response to a request by Senate Majority Leader Schumer (D-NY), the Senate parliamentarian had given preliminary approval for the use of a 2nd FY 2021 budget reconciliation

the Congress passed a budget resolution which contained reconciliation instructions impacting spending matters for fiscal year (FY) 2021 earlier this year even though this fiscal year started on October 1, 2020. The Congress has now begun the process of passing a budget resolution for FY 2022 also including reconciliation instructions. If the FY 2022 process is successful, Congress likely will have passed two reconciliation bills within one calendar year.

Byrd Rule

The Byrd rule is one of the major procedural tools that can be used to prevent non-germane matters or matters that are “extraneous” to the purpose of implementing budget changes through a reconciliation bill. The rule, which was added to the CBA in 1990, treats a provision as extraneous to a reconciliation bill if it does not change the level of spending or revenues, or if the provision is “merely incidental” to the provision’s non-budgetary effects. While the Byrd rule permits provisions to be included that have no budgetary effect, these provisions have to be necessary terms and conditions of provisions in the bill that do have a budgetary effect.

In addition to these criteria, the Byrd rule considers the following to be extraneous and subject to exclusion from a reconciliation bill:

- Provisions that are not within the jurisdiction of the committee proposing the reconciliation bill;
- Provisions that cause deficits in any year after the period covered by the reconciliation instructions, unless the deficit spending is offset through other changes that are within the jurisdiction of the committee proposing the bill; or,
- Provisions that change any of Social Security’s retirement, survivors or disability programs.

As with other points of order under the CBA, the application of the Byrd rule to a specific provision can be waived by a three-fifths vote by the Senate.

process with certain limitations (i.e. two reconciliation bills coving the same topics of spending and tax revenue through 2 budget resolutions applying to the same fiscal year). Congressional Democrats have not sought to utilize this authority as of the date this memorandum was written.