

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

The so-called “reconciliation” process on Capitol Hill is soon to play a central role for many of the legislative priorities of the new Congress. Despite its buzzword popularity, however, and the hope among many that it serves as a panacea to congressional gridlock, reconciliation is a limited process that needs to be thoroughly understood by anyone seeking to take advantage of the benefits it offers.

This article provides a brief discussion of reconciliation procedures and answers to frequently asked questions about the process.

Background

Established by Section 310 of the Congressional Budget Act of 1974,¹ reconciliation is a process designed to bring revenues, spending, and the debt limit into conformity with a budget resolution agreed upon by the House and Senate.² There are two major stages to the reconciliation process: (1) the adoption of reconciliation instructions in a budget resolution³ and (2) the enactment of reconciliation legislation implementing changes to revenue and spending law.⁴

Reconciliation functions as a fast-track process by limiting debate time⁵ and allowing the Senate to pass legislation with a simple majority. Since it was first authorized by the Congressional Budget Act of 1974, Congress has enacted into law 21 reconciliation measures.⁶ The process has been used over the years as a procedural tool to focus on key policy initiatives such as tax reform, welfare reform, and student loan program reform.

What Is the Status of Obamacare and Reconciliation?

The strategy for repealing, replacing, or otherwise reforming the Affordable Care Act (the ACA or Obamacare) was initiated in mid-January when the House and Senate passed a budget resolution (S.

Contact Us

Questions and comments about this update are always welcome.

Darryl Nirenberg
+1 202 429 6739
dnirenberg@steptoe.com

Leslie Belcher
+1 202 429 3906
lblcher@steptoe.com

Chelsea Gold
+1 202 327 6915
cgold@steptoe.com

¹ See generally 2 U.S.C. § 641.

² *Id.* § 641(a).

³ The budget reconciliation process begins with the passage of a concurrent budget resolution in both chambers of Congress. To initiate the reconciliation process, the final budget resolution (passed by the House and the Senate) will contain instructions directing specific House and Senate committees to draft legislation that raises revenues or lessens the deficit by a certain amount.

⁴ Assuming that more than one committee has been instructed to craft legislation, the committees designated in the budget resolution must report their legislation to the House and Senate Budget Committees. The budget committees then aggregate the various bills into an “omnibus” reconciliation bill. The House and Senate then separately consider their respective reconciliation bills. Following consideration, the two chambers will conference their bills to iron out any differences that may exist. Once the House and Senate have agreed to a reconciliation measure, the House and Senate will pass conference reports, sending the reconciliation bill to the president for signature.

⁵ Debate is limited to 20 hours, and a majority vote can further limit debate. *Id.* § 641(e)(2); Letter from Senator Robert Byrd to U.S. Senate Colleagues (Apr. 2, 2009); S. Doc. 101-28, *Riddick’s Senate Procedure: Precedents and Practices* 2 (1992) (“By precedent, budget resolutions and reconciliation bills are privileged for consideration. Under the terms of the Budget Act, time for debate on these measures and amendments thereto is limited, and amendments must be germane.”).

⁶ See Appendix A, “Completion Dates of Reconciliation Legislation.”

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

Con. Res. 3) for fiscal year (FY) 2017 containing reconciliation instructions.⁷ These instructions required the four committees that oversee the ACA's implementation—the Senate Committee on Health, Education Labor, and Pensions; the Senate Committee on Finance; the House Committee on Energy and Commerce; and the House Committee on Ways and Means—to draw up specific plans for reducing the federal budget deficit by \$1 billion over the next 10 years.⁸ Despite the broad instructions, which seemed to allow the committees to put forth *any* recommendations that would reduce the deficit, the resulting reconciliation bills put forth by the House Committees on Energy and Commerce and Ways and Means carried the repeal and replacement of key provisions of the ACA.

The resolution also instructed the committees of jurisdiction to report such legislation to the House and Senate Budget Committees by January 27.⁹ In practice, this date is only advisory inasmuch as failing to report legislation by such date does not nullify the instructions.¹⁰ On March 8, the House Committees on Energy and Commerce and Ways and Means convened markups of their respective recommendations. The committees' recommendations will now be sent to the House Budget Committee where they will be marked up and compiled into an "omnibus" bill.

What Are Reconciliation Instructions?

The budget reconciliation process is initiated by the passage of a budget resolution in both chambers that includes reconciliation instructions for specified committees of jurisdiction. Any legislative committee with jurisdiction over spending, revenue, or the debt limit may be directed to report reconciliation legislation.

Specifically, these instructions require the named committees to develop and report legislation that would change laws within their respective jurisdictions relating to the spending, revenue, or the debt limit.¹¹

⁷ S. Con. Res. 3, 115th Cong. §§ 2001-02 (2017). The Senate passed S. Con. Res. 3 by a vote of 51-48 on January 12, 2017. The following day, the House passed the resolution 227-198. No conference was necessary.

⁸ *Id.* §§ 2001(a)-(b), 2002(a)-(b) ("The Committee . . . shall submit changes in laws within its jurisdiction to reduce the deficit by not less than \$1,000,000,000 for the period of fiscal years 2017 through 2026."). Importantly, and as noted above, only the provisions regarding spending and revenues could be repealed, which means that many of the rules concerning health insurance and other non-financial issues could not be repealed through the reconciliation process.

⁹ *Id.* §§ 2001(c), 2002(c).

¹⁰ Although committees have often responded to their instructions early and on time, there is no procedural mechanism to compel committee action prior to the date specified in the budget resolution or even at all. Therefore, current practice provides committees with informal extensions for consideration. Megan S. Lynch & James v. Saturno, *The Budget Reconciliation Process: Stages of Consideration*, Cong. Research Serv. 4, n. 9 (Jan. 4, 2017); Megan S. Lynch, *Budget Reconciliation Process: Timing of Committee Responses to Reconciliation Directives*, Cong. Research Serv., 4-7 (Jan. 19, 2016) ("There is no procedural mechanism, such as a point of order, for enforcing the date specified in the reconciliation instruction as it appears in the budget resolution. Committees have sometimes reported reconciliation legislation in response to their instructions after the date specified in the instruction with no impact on whether the resultant legislation was considered as reconciliation legislation. In other words, the late response of one or more committees did not cause the bill to lose its privileged status as a reconciliation bill.").

¹¹ Technically, Congress may use the reconciliation process to either increase or decrease the deficit over the time period stated in the budget resolution. In 2007, following the Bush-era tax cuts (which were enacted through the reconciliation process), the Senate adopted the Conrad Rule, which prohibited reconciliation measures from increasing deficits. See *generally* S. Con. Res. 21§ 202 (2007). The Conrad Rule was repealed by the 2015 budget resolution. S. Con. Res. 11, § 3204 (2015). It is therefore possible for a budget resolution to include reconciliation instructions for a reduction in revenues or an increase in spending.

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

Such instructions must detail:

- Which committee(s) are charged with reporting reconciliation legislation
- The date by which the committee(s) should report the reconciliation legislation
- The dollar amount of budgetary change to be achieved in the reconciliation measure
- The time frame for which the impact of the budgetary change should be measured¹²

Once the committees of jurisdiction have drafted legislation that complies with the instructions, the legislation is then sent to the budget committee of the relevant chamber. The role of the budget committee in either chamber is to package, into an omnibus bill “without any substantive revisions,” the recommendations of the various authorizing committees charged with reconciliation instructions.¹³

Which Chamber Acts First?

Either the House or the Senate may act first. Although reconciliation is considered a revenue measure, it is not necessary that the House act first. All that is required is that the bill sent to the president carries an “H.R. number.”

The Senate may act on its own reconciliation bill prior to House consideration, in which case after passage, the bill will be read for the third time and held at the desk. Then, once the House passes its reconciliation bill and sends it over to the Senate, the Senate will take up the House bill, presumably strike all language after the enacting clause, and substitute in its own version of reconciliation.

The Senate will then either request a conference or return the bill to the House. Once the Senate and House have considered and passed either identical versions of a reconciliation bill, or a conference

There have been efforts since its repeal to reinstate the Conrad Rule. For example, when Congress was considering the budget resolution this year, Senator Tammy Baldwin (D-Wisconsin) offered an amendment that would restore the Conrad Rule and prohibit reconciliation from increasing the deficit within the 10-year budget window. Press Release, Senator Tammy Baldwin, [U.S. Senator Tammy Baldwin Introduces Amendment to Prohibit ACA Repeal from Increasing the Deficit](#) (Jan. 10, 2017).

Even without the Conrad Rule, reconciliation legislation must continue to comply with the spending and revenue levels established in the budget resolution. Notably, there would also be a 60-vote point of order if the bill increased the deficit over the first five or 10 years, per the Senate’s “Pay As You Go” (PAYGO) rule, unless the resolution repealed or established an exception to the PAYGO rule. Additionally, provisions in reconciliation that increase the deficit beyond the period covered by the budget resolution are subject to a 60-vote point of order under the Byrd rule unless the costs are offset by savings from other provisions of the bill.

¹² Lynch, *supra* note 11, at 2. The CRS report further states that reconciliation instructions “might also include language regarding the type of budgetary change that should be reported (revenue, spending, or debt limit legislation), as well as other procedural provisions, contingencies, and programmatic direction.” *Id.* While the committee must follow the dollar targets set by the resolution, however, it has no obligation to follow such suggestions. Rather, the committee decides how the targets are met, limited only by their jurisdiction.

¹³ 2 U.S.C. § 641(b)(2). The budget committees in the respective chambers will receive legislation from the committees of jurisdiction *only* if multiple committees were instructed to report legislation in the budget resolution. If only one committee is instructed, it reports its reconciliation bill directly to the floor. See *id.* § 641(b)(1).

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

report, the final bill will be sent to the president for his signature.¹⁴

What If a Committee Fails to Meet Its Instructions?

There is no procedural mechanism to ensure that legislation submitted by a committee in response to reconciliation instructions will be in compliance with the instructed budgetary levels. Therefore, if an authorizing committee's recommendations fail to meet its instructions, the budget committee will still include that committee's recommendations in the legislation. In those instances, however, in the House, the Budget Act provides that the House Rules Committee may make in order amendments to a reconciliation bill that would achieve the necessary changes.¹⁵ In the Senate, it will similarly be in order for any senator to offer, on the floor, a motion to recommit the reconciliation bill to the committee with instructions to report back to the Senate forthwith with an amendment—which need not be germane—that achieves the savings the committee failed to achieve.¹⁶

For example, in the budget resolution for FY 2017, the Senate Finance Committee was instructed to reduce the deficit by \$1 billion. If the Senate Finance Committee fails to meet those instructions—either by including non-germane amendments (as discussed below) or by not reaching the \$1 billion threshold—Budget Committee Chairman Mike Enzi (R-WY) would not be authorized to “write” the ACA reform section for inclusion in the reconciliation bill reported by the Senate Budget Committee. However, once the reconciliation bill reached the floor, Chairman Enzi (or any other Senator for that matter) may offer, in the form of a motion to recommit, his own reform section that would satisfy the instructions.

How Is Reconciliation Considered in the House?

Once the House Budget Committee has reported a reconciliation measure, its floor consideration is typically governed by the provisions of a special rule reported from the House Rules Committee. That special rule will specify both the maximum time for debate and what amendments will be permitted. Traditionally, no amendment is in order that would increase spending or decrease revenue levels relative to the base bill without equivalent decreases in spending or increases in revenues (i.e., it must be deficit-neutral), unless the rule specifically modifies or waives this requirement.

In addition to these special rules, House rules also allow for a motion to recommit the bill before the House votes on final passage. Because members from the minority party have preference to make this motion, this allows the minority party one final opportunity to offer amendments to the bill.

How Is Reconciliation Considered in the Senate?

In the Senate, specific limits are placed on the content of amendments that may be offered to

¹⁴ See Appendix A, “Completion Dates of Reconciliation Legislation.”

¹⁵ *Id.* § 641(d)(5).

¹⁶ Senate Precedent PRL19810617-001 (June 17, 1981); Lynch & Saturno, *supra* note 11, at 5 (“[L]egislative language that falls within the non-compliant committee’s jurisdiction can be added to a reconciliation bill during floor consideration that would bring it into compliance with its reconciliation instructions.”). Further, if a House committee has failed to recommend changes in compliance with reconciliation instructions, the House Rules Committee may make in order amendments to a reconciliation bill that would achieve the necessary changes. Lynch & Saturno, *supra* note 11, at 5.

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

reconciliation legislation and the duration of their consideration.¹⁷ The motion to proceed to consideration of a reconciliation bill is not debatable. Debate on the bill itself is limited to 20 hours,¹⁸ with debate on any amendment limited to two hours, equally divided by the majority and minority.¹⁹ Debate on any amendment to an amendment is limited to one hour, similarly equally divided.²⁰ Time consumed by votes, quorum calls preceding roll call votes, or reading of amendments does not count against the 20 hours.

Even after the 20 hours has expired, there is no limit to the number of amendments (or motions) Senators may offer. This unlimited amendment loophole, though rarely employed, may prove particularly advantageous to Senators wishing to stall a reconciliation bill's advance.

Using this loophole, Senators can continue to offer amendments and force votes until they physically are no longer able to do so. With respect to any amendments (or motions) offered after time has expired, there is no time permitted for debate unless unanimous consent is granted. A Senator may, however, ask that the text of any (or all) offered amendments be read in their entirety.²¹

There are rules that aim to limit the content of amendments to reconciliation bills. During Senate consideration of a reconciliation bill, only "germane" amendments are deemed to be in order. Under the precedents of the Senate, "germaneness" is a narrower standard than "relevance" (which requires only subject matter relationship). Per se germane amendments are:

- Germane committee amendments
- Amendments to strike
- Amendments to change numbers or dates
- Non-binding amendments limited to matters within the jurisdiction of the committee reporting the bill²²

An amendment that does not fall into one of these categories may still be deemed germane if it substantively affects or limits some power, authority, duty, class, or other provision of the underlying bill or amendment, without adding any new subject matter.

Finally, an amendment will be subject to a point of order if it reduces savings without a corresponding offset.²³

¹⁷ 2 U.S.C. §§ 636(b)(2), 641(e)(2).

¹⁸ *Id.* § 641(e)(2).

¹⁹ *Id.* § 636(b)(2).

²⁰ *Id.*

²¹ To be adopted, any of those amendments must meet the Budget Act and Byrd Rule restrictions that the underlying bill met. Otherwise they would require 60 votes, not 51, for adoption.

²² The abuse of such non-binding amendments has led to their being made subject to points of order, if the predominance of the amendment is sense of the Senate or sense of Congress language.

²³ 2 U.S.C. § 641(d).

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

Who Determines What Is Germane for the Purposes of Reconciliation?

As in other contexts, the Senate Parliamentarian advises the presiding officer and other senators as to whether amendments offered during the reconciliation process are germane.²⁴ On occasion, the Senate Parliamentarian will be called upon to provide leadership with a list of the submitted amendments which he or she considers germane or non-germane in advance of their being offered.²⁵

Like other Congressional Budget Act points of order, the germaneness requirement can be waived, but a 3/5 majority vote is required to do so.

What Is the Byrd Rule?

The Byrd Rule²⁶ makes “extraneous” provisions subject to parliamentary objections (“points of order”) during Senate consideration of reconciliation legislation—whether those provisions are within the bill or within an amendment offered to the bill. The Byrd Rule treats as extraneous any provision of a reconciliation measure that does not change the level of spending or revenues. Specifically, the Byrd Rule defines a provision as “extraneous” if it:

- Does not produce a change in outlays or revenues
- Produces an outlay increase or revenue decrease when the instructed committee fails to achieve its reconciliation instructions
- Is outside the jurisdiction of the committee that submitted the provision for inclusion in the reconciliation measure
- Produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision
- Would increase the deficit for a fiscal year beyond those covered by the reconciliation measure
- Recommends changes in Social Security²⁷

If a Byrd Rule point of order against a provision is sustained as “extraneous,” the provision is stricken from the bill, or the amendment falls, as the case may be. Appealing the rule of the chair requires 3/5 vote of duly elected and sworn senators (60 votes). If, however, no senator makes an objection, material that violates the Byrd Rule may remain in the reconciliation legislation.

Since its enactment, all definitions of extraneousness—with the exception of a provision recommending changes to Social Security—have been used as bases for points of order under the Byrd Rule. Examples of the use of the Byrd Rule are included below in Appendix B.

²⁴ Christopher M. Davis, *The Amending Process in the Senate*, Cong. Research Serv. 23 (Sept. 16, 2015).

²⁵ William McKay & Charles W. Johnson, *Parliament & Congress* 184 (2010).

²⁶ 2 U.S.C. § 644.

²⁷ Note that it is not in order for the House to consider any reconciliation bill, amendment, or conference report with respect to Social Security.

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

There are certain exceptions to the Byrd Rule, which either require certification by the chairman and ranking member of the authorizing committee and of the Budget Committee, or relate to the issue of items not in the jurisdiction of the reporting committee.²⁸

What Is the Role of the Byrd Rule?

Because of its expedited procedures, consideration of a reconciliation bill favors the majority, in effect, making the Senate more like the House (a distinguishing characteristic of the Senate being unlimited debate). The Byrd Rule was developed as a means to protect the rights of the minority and thereby restore some of that particular tradition of the Senate for consideration of reconciliation legislation.

To help enforce the Byrd Rule, the Senate Budget Committee is required to identify all extraneous provisions in any reconciliation bill it reports and all extraneous provisions in any reconciliation conference report received in the Senate.²⁹ Note that these are items the committee determines to be extraneous. The list is advisory only and does not bind the chair. However, the list does serve to put senators on notice as to which items *may* be extraneous.

Why Is the Byrd Rule so Important With Respect to Conference?

If a reconciliation conference report contains extraneous items under the Byrd Rule, consideration of the report in the Senate becomes considerably more complicated.

Should a point of order be raised and sustained against such a conference report, the conference report is defeated. The Senate will then proceed, without intervening action or motion, to consider whether it will recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment (whichever is applicable). Any such motion in the Senate is subject to two hours of debate. The further amendment, in either case, shall consist solely of that portion of the conference report not stricken on a Byrd Rule point of order.³⁰ If the Senate passes the motion, the conference report goes back to the House, where it is amendable.

Thus, the Byrd Rule can be expected to become a major issue in any reconciliation conference. Assuming that the Senate minority will want to use whatever means available to unravel or take down a reconciliation conference report, the conferees appointed by the Senate majority can be expected to take a hard line against including in the conference report any provision from the House Bill which may be deemed to violate the Byrd Rule—whether it be an amendment of the House or an amendment in disagreement.

Can There Be More than One Reconciliation Bill?

The Senate parliamentarian has ruled that a budget resolution can only provide for one reconciliation bill for revenue, spending, and the debt limit respectively. Therefore, if a reconciliation bill has both spending and revenue provisions, then a subsequent reconciliation bill affecting spending or revenues is prohibited.

²⁸ See Appendix B, Extraneous Matter in Reconciliation Legislation—Exceptions to the Byrd Rule.

²⁹ 2 U.S.C. § 644(c).

³⁰ *Id.*

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

Which Chamber Acts First on the Conference Report?

By tradition, the house agreeing to a conference (normally the house that has initiated the legislation at issue) acts first on a conference report. In the Senate, debate on a conference report is limited to 10 hours.

What If There Is a Veto?

Under the Constitution, a reconciliation bill (like any other bill) must be signed by the president in order to become law. Congress, of course, may override such a veto by a 2/3 vote in each chamber. With Congress and the administration under the control of the same party, the likelihood of a veto is relatively small.

If there is a veto that is not overridden, everything goes back to square one in accordance with section 304 of the Congressional Budget Act.³¹ A concurrent resolution with new or restated reconciliation instructions must be passed by both houses; the individual committees must resubmit their reports to their respective budget committees; the budget committees compile omnibus bills, which are then taken up in their respective chambers; once passed, the bills are then sent to conference, and so forth.

These steps can be skipped or shortened by unanimous consent in the Senate. Quick action on a second reconciliation bill in the event a first reconciliation bill is vetoed, as a practical matter, would likely require some procedural agreement be reached between the White House and Congress. Without unanimous consent, there are some steps congressional Republicans could undertake to expedite consideration of a second reconciliation bill (e.g., give committees instructions to report back recommendations within a short time frame). However, a second reconciliation bill would still take some time given that other steps cannot be shortened (e.g., floor consideration) without unanimous consent.

* * *

The following are two appendices for reference: (1) a history of past reconciliation legislation; and (2) extraneous matters in reconciliation legislation.

³¹ 2 U.S.C. § 63.

Appendix A — Completion Dates of Reconciliation Legislation

Legislation	Dates passed by Congress	Enactment or Vetoed
Reconciliation Act of 1975 H.R. 5559	December 17, 1975	Vetoed December 17, 1975
Omnibus Reconciliation Act of 1980 H.R. 7765	December 3, 1980	December 5, 1980
Omnibus Budget Reconciliation Act of 1981 H.R. 3982	July 31, 1981	August 13, 1981
Omnibus Budget Reconciliation Act of 1982 H.R. 6955	August 18, 1982	September 8, 1982
Omnibus Budget Reconciliation Act of 1983 H.R. 4169	April 5, 1984	April 18, 1984
Consolidated Omnibus Budget Reconciliation Act of 1985 H.R. 3128	March 20, 1986	April 7, 1986
Omnibus Budget Reconciliation Act of 1986 H.R. 5300	October 17, 1986	October 21, 1986
Omnibus Reconciliation Act of 1987 H.R. 3545	December 22, 1987	December 22, 1987
Omnibus Budget Reconciliation Act of 1989 R. 3299	November 22, 1989	December 19, 1989
Omnibus Budget Reconciliation Act of 1990 H.R. 5835	October 27, 1990	November 5, 1990
Omnibus Budget Reconciliation Act of 1993 H.R. 2264	August 6, 1993	August 19, 1993
Balanced Budget Act of 1995 H.R. 2491	November 20, 1995	Vetoed December 6, 1995
Welfare and Medicaid Reform Act of 1996 H.R. 3734	August 1, 1996	August 22, 1996
Revenue Reconciliation Act of 1997 H.R. 2014	July 31, 1997	August 5, 1997

Demystifying Reconciliation: Understanding the Process, Its Benefits, and Its Limitations

Legislation	Dates passed by Congress	Enactment or Vetoed
Reconciliation for FY 2000 H.R. 2488	August 5, 1999	Vetoed September 23, 1999
Reconciliation for FY 2002 H.R. 1836	May 26, 2001	June 7, 2001
Jobs and Growth Tax Relief Reconciliation Act of 2003 H.R. 2	May 23, 2003	May 28, 2003
Deficit Reduction Act of 2005 H. Con Res. 95	February 1, 2006	February 8, 2006
Tax Increase Prevention and Reconciliation Act of 2005 H.R. 4297	May 11, 2006	May 17, 2006
College Cost Reduction And Access Act H.R. 2669	September 7, 2007	September 27, 2007
Health Care and Education Reconciliation Act of 2010 H.R. 4872	March 21, 2010	March 30, 2010
Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 H.R. 3762	January 6, 2016	Vetoed January 8, 2016

Appendix B — Extraneous Matters in Reconciliation Legislation

Exceptions to the Byrd Rule

A provision that produces no changes in outlays or revenues in a reconciliation measure will not be extraneous if the chairman and ranking member of the authorizing committee and the Senate Budget Committee certify that the provision:

- Mitigates the effects of the provision that changes outlays or revenues and that both provisions produce a net reduction in the deficit
- Will produce a substantial reduction in outlays or increase in revenues in the out-years beyond the years covered by the budget resolution
- Will likely reduce outlays or increase revenues based on actions that are not currently projected by the Congressional Budget Office for scorekeeping purposes
- Will likely produce a significant decrease in outlays or increase in revenues, but insufficient data exists to reliably estimate such effects

A provision that is not in the jurisdiction of the committee reporting that provision will not be extraneous if:

- The provision is an integral part of a provision or title which would be referred to the committee and implements the substantive provisions that were reported and are in the jurisdiction of the committee
- The provision is an exception for, or an application of, the general provision or title and such general provision or title would be referred to the committee

Examples

When the Senate was considering the Health Care and Education Reconciliation Act of 2010—the reconciliation bill accompanying the ACA—provisions of the bill proposed amendments to the Higher Education Act of 1965’s treatment of Pell grants. A point of order was raised because the provisions did not provide for a change in outlays or revenues rendering it “extraneous” under the Byrd Rule. As such, the point of order was sustained and the provision was struck.³²

Various other amendments failed because they fell “outside of the jurisdiction of the committee that submitted the provision for inclusion in the reconciliation measure.”³³

³² Bill Heniff, *The Budget Reconciliation Process: The Senate’s “Byrd Rule,”* Cong. Research Serv. 29 (Nov. 22, 2016).

³³ See e.g., *id.* at 29-31. An amendment offered by Senator Tom Coburn (R-OK) would have helped protect Second Amendment rights. The amendment fell, despite a motion to waive the Byrd Rule, as “extraneous” because it was outside of the committee’s jurisdiction. Similar treatment was given to an amendment offered by Senator Lisa Murkowski (R-AK), who offered an amendment to provide an inflation adjustment for the additional hospital insurance tax on high-income tax payers.