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Points of Order Limiting the Contents of Reconciliation Legislation: In Brief

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The budget resolution as established under the Congressional Budget Act of 1974 (P.L. 93-344) is designed to allow Congress to adopt an agreement establishing fiscal policy and budgetary priorities. Because it is in the form of a concurrent resolution, it is not presented to the President or enacted into law. As a consequence, any statutory changes concerning spending or revenues necessary to implement these policies must be enacted in separate legislation. The Budget Act also provides an optional expedited procedure for considering such legislation in the Senate, called *reconciliation*, which was first used in 1980.¹

Reconciliation operates as an adjunct to the budget resolution process and occurs only if reconciliation instructions are included in the budget resolution.² Reconciliation instructions direct the relevant committees to develop legislation achieving a specific budgetary outcome. Instructed committees are directed to submit legislative recommendations proposing changes to *direct spending* or *revenue* laws, or to the *statutory debt limit*, to the Budget Committee in their respective chambers by a deadline prescribed in the budget resolution. The Budget Committees then incorporate them into an omnibus budget reconciliation bill and are required to report the measure without making any substantive revisions.³

The expedited consideration of a reconciliation bill is prescribed in Section 310 of the Budget Act. Debate in the Senate on any reconciliation measure is limited to 20 hours (and 10 hours on a conference report or exchange of amendments between the chambers). As a practical matter, this debate limit makes it unnecessary for the Senate to invoke cloture in order to reach a final vote on a reconciliation bill, thereby making it possible to consider and pass a reconciliation bill by a simple majority vote.

As detailed below, various provisions in the Budget Act (as well as other provisions adopted by the House and Senate) impose constraints on the policy content or budgetary impact of reconciliation measures or amendments to such measures. The provisions cited in this report have been established pursuant to the constitutional authority of each chamber to determine its rules of proceeding, but further action of the House and Senate, such as in a budget resolution or legislation, may be used to revise these constraints.

These prohibitions are enforced through points of order against measures, provisions, or amendments that are alleged to violate these rules. Points of order are not self-enforcing and must be raised by a Member before the presiding officer can rule on their application. The Senate may, by a vote of three-fifths of all Senators, agree to a motion to waive the application of each point of order below. In the House, any waiver would typically be included in a special rule reported by the Rules Committee providing for the consideration of a measure, and so would require a majority vote.⁴

¹ For more information, see CRS Report R44058, *The Budget Reconciliation Process: Stages of Consideration*, by Megan S. Lynch and James V. Saturno; and CRS Report R40480, *Budget Reconciliation Measures Enacted into Law Since 1980*, by Megan S. Lynch.

² For more information, see CRS Report R41186, *Reconciliation Directives: Components and Enforcement*, by Megan S. Lynch; and CRS Report R41151, *Budget Reconciliation Process: Timing of Committee Responses to Reconciliation Directives*, by Megan S. Lynch.

³ In cases where only a single committee is instructed, that committee is instead instructed to report its recommendations directly.

⁴ For more information, see CRS Report R47413, *Points of Order in the Congressional Budget Process*, by James V. Saturno and Megan S. Lynch.

Congressional Budget Act Provisions Specific to Reconciliation

Section 310(d)—This section prohibits the consideration of amendments to reconciliation legislation in the House and Senate that would cause a net increase in the deficit by increasing outlays and/or reducing revenues. Section 310(d)(1) establishes that, in the House, an amendment to a reconciliation bill is not in order if it would have the net effect of increasing the deficit relative to the level provided in the measure, except that a motion to strike a provision providing new budget authority or entitlement authority may be in order. Section 310(d)(2) establishes that, in the Senate, an amendment is not in order if it would have the net effect of increasing the deficit relative to the levels established in the reconciliation instruction to the relevant committee, except that a motion to strike a provision is always in order.

Section 310(e)—This section prohibits consideration in the Senate of non-germane amendments to reconciliation legislation, thereby limiting the ability of Senators to expand the scope of policy changes recommended by committees through amendments offered on the Senate floor. This provision generally establishes that, except if stated otherwise, the procedures outlined in Section 305 of the Budget Act related to Senate consideration of a budget resolution apply also to reconciliation legislation. Section 305(b)(2) of the Budget Act states, in part, “No amendment that is not germane to the provisions of such concurrent resolution shall be received.”⁵

Section 310(g)—This section prohibits the consideration of reconciliation legislation that recommends changes to the old-age, survivors, and disability insurance program established under Title II of the Social Security Act.

Section 313—This section prohibits consideration in the Senate of extraneous provisions in reconciliation legislation (including any amendment or conference report).⁶ First adopted in 1985 and incorporated into the Congressional Budget Act in 1990, this provision is also known as the “Byrd rule” and is intended to limit the content of a reconciliation bill to those changes in law necessary to implement the budgetary policies agreed to in the budget resolution. This point of order may be raised against any provision or amendment and, if sustained, would cause only that provision to be stricken. The rule establishes that a provision or amendment shall be considered extraneous if it either

- does not produce a change in outlays or revenues or a change in the “terms and conditions” under which outlays are made or revenues are collected;
- produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions,
- is outside of the jurisdiction of the committee that submitted the provision for inclusion in the reconciliation measure,
- produces a change in outlays or revenues that is merely incidental to the non-budgetary components of the provision,

⁵ This language permits points of order against such amendments only when the time on the amendment has expired and does not permit the presiding officer to rule on such amendments on his or her own initiative. Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure: Precedents and Practices*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), p. 619.

⁶ For more information, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate’s “Byrd Rule”*, by Bill Heniff Jr.

- would increase the deficit for a fiscal year beyond the period covered by the budget resolution (on a net basis by bill title), or
- recommends changes to the old-age, survivors, and disability insurance program established under Title II of the Social Security Act.

The application of Sections 310(e), relating to non-germane amendments, and 313, relating to extraneous matter, is guided by Senate precedent and is generally decided on a case-by-case basis. The Senate Parliamentarian is the sole definitive authority on questions relating to the chamber's procedures and should be consulted on specific parliamentary questions. Under Section 312 of the Budget Act, estimates provided by the House and Senate Budget Committees are used for purposes of enforcing points of order related to levels in their respective chamber.

Other Limits Specific to Reconciliation Instructions

House Rule XXI, clause 7—This rule of the House prohibits reconciliation instructions that specify changes in law that would cause an increase in net direct spending for the period covered by the budget resolution. Because this prohibition limits reconciliation *instructions*, it would apply to a budget resolution that contained such instructions but not to a reconciliation bill. It is included here because limiting the type of instructions that would be in order could also ultimately have an impact on the content of any subsequent reconciliation bill.

Other Limits on the Budgetary Impact of Legislation Generally That Would Also Apply to Reconciliation

Congressional Budget Act, Section 311(a)(1)—This section prohibits consideration in the House of legislation that would cause total new budget authority or outlays to exceed or total revenues to fall below the levels set forth in the budget resolution. For budget authority and outlays, this point of order would apply for the first fiscal year in the budget resolution, while for revenues it would apply for the first fiscal year and the total of all fiscal years.

Congressional Budget Act, Section 311(a)(2)—This section prohibits consideration in the Senate of legislation that would cause total new budget authority or outlays to exceed or total revenues to fall below the levels set forth in the budget resolution. For budget authority and outlays, this point of order would apply for the first fiscal year in the budget resolution, while for revenues it would apply for the first fiscal year and the total of all fiscal years.

House Rule XXI, clause 10—This rule of the House prohibits consideration of any legislation that would have the net effect of increasing mandatory spending for the period of the current fiscal year and the five ensuing fiscal years or the period of the current fiscal year and the 10 ensuing fiscal years. This is also known as the “CutGo Rule.”

S.Con.Res. 21 (110th Congress), Section 201(a)—This section prohibits consideration in the Senate of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the period of the current fiscal year and the five ensuing fiscal years or the period of the current fiscal year and the 10 ensuing fiscal years. This is also known as the “PAYGo Rule.”

S.Con.Res. 13 (111th Congress), Section 404(a)—This section prohibits consideration in the Senate of direct spending or revenue legislation that would cause a net increase in the deficit in excess of \$10 billion in any fiscal year provided for in the most recently adopted budget resolution unless it is fully offset over the period of all fiscal years provided for in the most recently adopted budget resolution. This section was originally scheduled to expire on September

30, 2018, but the sunset provision in Section 404(e) was repealed by Section 3201(b)(2) of S.Con.Res. 11 (114th Congress).

S.Con.Res. 11 (114th Congress), Section 3101(b)(1)—This section prohibits consideration in the Senate of any measure that would cause a net increase in deficits in excess of \$5 billion in any of the four consecutive 10-year periods beginning 10 years after the budget year in the most recently agreed-to budget resolution.

S.Con.Res. 11 (114th Congress), Section 3101(b)(2)—This section prohibits consideration in the House of any measure that would cause a net increase in direct spending in excess of \$5 billion in any of the four consecutive 10-year periods beginning 10 years after the budget year in the most recently agreed-to budget resolution.

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