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INSIGHT

Reconciliation 4.0: How Many Opportunities Does Congress Have to Use Reconciliation?

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Reconciliation legislation is unique in that it is considered under expedited parliamentary procedures that do not require the support of three-fifths of Senators to end debate, allowing the Senate to pass spending, tax, and debt limit reconciliation legislation by a simple majority vote. This makes the reconciliation process particularly attractive to the majority party, which may seek to maximize the number of opportunities available to use the process. While Congress has not triggered more than two reconciliation bills in a year, it appears that it would be procedurally possible to trigger additional reconciliation bills.

Press reports have stated that leaders of the House of Representatives and the executive branch may seek to enact two additional reconciliation bills during the remainder of the 119th Congress, referring to the potential bills as "reconciliation 3.0" and "reconciliation 4.0."

Background

Reconciliation is a two-step process. In the first step, Congress must adopt a budget resolution that includes reconciliation directives, instructing specific committees to develop legislation that would achieve certain budgetary outcomes through changes in mandatory (direct) spending, revenue, and the debt limit. In the second step, the House and Senate develop reconciliation legislation that may then be considered under expedited parliamentary procedures.

The Number of Budget Resolutions That Can Be Adopted Each Year

Section 301(a) of the Congressional Budget Act of 1974 (the Budget Act) states that "[o]n or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year." The Office of the Senate Parliamentarian has stated that it is permissible to adopt a budget resolution after the fiscal year has begun, and even into the next calendar year in which a new Congress has begun, "because the effects would still be felt" for the remaining months of the fiscal year.

This can increase the number of opportunities for Congress to use reconciliation because the fiscal year runs from October 1 of the preceding calendar year through September 30. Congress can, therefore, adopt budget resolutions for two different fiscal years during the same calendar year. This first occurred in calendar year 2017, when a budget resolution for FY2017 was agreed to in January, and a budget resolution for FY2018 was agreed to in October, triggering two separate rounds of reconciliation in a single calendar year. Similarly, in 2021, a budget resolution for FY2021 was agreed to in March, and a budget resolution for FY2022 was agreed to in August, triggering two separate rounds of reconciliation. (The Office of the Senate Parliamentarian has advised, however, that reconciliation instructions cannot "be acted upon beyond the fiscal year (or years) for which they were adopted," creating a September 30 expiration for the relevant expedited procedures in the Senate.)

The Number of Budget Reconciliation Bills Permitted Under a Single Budget Resolution

While there is no provision in the Budget Act or the standing rules of either chamber that explicitly limits the number of reconciliation bills that may be considered per budget resolution, Section 310(a) of the Budget Act permits three types of budgetary changes that committees may be directed to report in a reconciliation bill: mandatory spending, revenue, and the debt limit. The Office of the Senate Parliamentarian has previously interpreted this as a limit on the number of reconciliation measures that can be triggered by a single budget resolution, referring to it as the "three bites at the apple test." One budget resolution may trigger no more than one privileged reconciliation measure concerning each type of budgetary change. For example, a budget resolution might include instructions directing committees to report separate changes in spending, revenue, and the debt limit. These changes could be included in one reconciliation bill, as has been current practice, or they might be divided up into separate bills. (Congress last used the same budget resolution to trigger two reconciliation bills, one dealing with spending and one dealing with revenue, in 2006.)

Once Congress has triggered and considered reconciliation legislation, it may be possible to trigger subsequent rounds of reconciliation based on the same budget resolution. Section 304 of the Budget Act allows Congress to revise or reaffirm the most recently adopted budget resolution. While this provision has not previously been used to trigger additional reconciliation legislation, in 2021 the Office of the Senate Parliamentarian stated that Section 304 could be used to consider a revised budget resolution that includes a new set of reconciliation instructions. In response to questions about how many times Congress might use Section 304 to revise a budget resolution, the Office of the Parliamentarian said that "there is no reason to believe that 304 cannot be used, perhaps serially, as it previously has been, to revise the most recently adopted concurrent resolution." It appears, therefore, that it is possible to use "304 resolutions" to trigger an unlimited number of reconciliation bills.

According to the Office of the Senate Parliamentarian, many of the expedited procedures that apply to the consideration of an initial budget resolution would also apply to a "304 resolution," such as the nondebatable motion to proceed. A "304 resolution," however, would not be eligible for the automatic committee discharge process in the Senate, because a budget resolution is an optional procedure and there is no deadline established under Section 300 or 304 of the Budget Act for it to be reported from committee. Accordingly, any revised budget resolution would have to be reported by the Budget Committee or discharged under regular Budget Committee and Senate rules. One additional difference for the consideration of a "304 resolution" is that Section 305(b)(1) of the Budget Act limits Senate debate to 15 (instead of 50) hours.

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