

# Congress Pushes Forward with Budget Resolution; Budget Reconciliation and Byrd Rule: Primer

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## The Basics of the Reconciliation Process and the Byrd Rule

The reconciliation process, created by the ***Congressional Budget Act of 1974*** (Pub. L. 93–344, 88 Stat. 297, 2 U.S.C. §§ 601–688), establishes the mechanism by which Congress can move controversial legislation without it being subject to a filibuster in the Senate. But to use the authority, Congress must take certain prescribed steps and avoid potential pitfalls.

The process begins with Congress approving a budget resolution. Even though the fiscal year is now well underway, the Senate and the House are in the process of considering a budget resolution for FY 2017 solely for the purpose of being able to use reconciliation to repeal the ***Affordable Care Act (ACA/Obamacare)***.

Reconciliation can be used to make changes to federal spending levels, revenues, or the public debt limit, and can be utilized to alter mandatory spending for programs such as Medicare and Medicaid. To implement the reconciliation process, both chambers of Congress must pass a budget resolution with “reconciliation instructions” for the relevant congressional committees of jurisdiction. Reconciliation instructions direct certain committees—in the case of ACA repeal, the House Committees on Ways and Means, and Energy and Commerce, and the Senate Committees on Finance, and Health, Education, Labor, and Pensions—to craft legislative language increasing or decreasing federal revenues, spending levels, or the debt ceiling. Reconciliation instructions do not dictate how a committee must achieve the required changes, leaving it to the discretion of each committee to implement policy changes that achieve the budgetary targets set by reconciliation directives.

After the committees receive reconciliation instructions and craft policy recommendations to achieve reconciliation requirements, the recommendations are sent to the House and Senate Budget Committees, which usually assemble the legislation in an omnibus for expedited consideration in the full House or Senate. In the House, the Rules Committee often considers the omnibus legislation

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under a special rule which sets specific limits on the amendment process and length of debate. In the Senate, reconciliation legislation is passed by a simple majority. Most importantly, it cannot be filibustered. But given the special nature of the process, Senator Robert Byrd (D-WV) in 1990 sought to ensure that it could not be used to pass “extraneous” matters, especially in his view matters that had nothing or little to do with decreasing the deficit. After a final package is passed by both chambers of Congress, the bill is sent to the President for approval or rejection. If signed by the President, the changes to federal spending, revenues, or the debt ceiling are implemented as law.

As Congress advances reconciliation legislation to repeal portions of the ACA, Senate Republicans will face limitations on what measures they will be able to include in the bill under the Byrd Rule, which was incorporated into the Congressional Budget Act in 1990. The Byrd Rule allows any Senator to raise a point of order against the bill or any amendment to it on the grounds that it is “extraneous” to the bill’s purpose of making budgetary changes. Specifically, section 313(b)(1) of the Congressional Budget Act defines “extraneous” matters as those that:

- do not produce a change in outlays or revenues;
- produce changes in outlays or revenue which are merely incidental to the non-budgetary components of the provision;
- are outside the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
- increase outlays or decrease revenue if the provision’s title, as a whole, fails to achieve the Senate reporting committee’s reconciliation instructions;
- increase net outlays or decrease revenue during a fiscal year after the years covered by the reconciliation bill unless the provision’s title, as a whole, remains budget neutral; or
- contain recommendations regarding the OASDI (social security) trust funds.

Of particular significance for the debate over repealing ACA, a measure can’t increase the deficit outside of 10 years. Thus, any proposal that would permanently repeal an ACA tax or fee will be vulnerable to a challenge under this rule as it would reduce revenues in the out years. Ultimately, the term “extraneous” remains subject to interpretation by the presiding officer, who will be guided by the Parliamentarian. In order to overcome a ruling that a matter is “extraneous,” proponents of the provision must secure a 3/5 (60) majority vote for it to survive a Byrd Rule challenge.

## **Legislative Activity**

### **Senate Expected to Pass FY 17 Budget Resolution Commencing the Repeal of Obamacare**

This week, the Senate is anticipated to vote on a FY 2017 budget resolution (S Con Res 3) that includes reconciliation instructions to set into motion a repeal of the Patient Protection and Affordable Care Act (ACA/Obamacare) (P.L. 111-148; P.L. 111-152).

Congressional Republicans are leveraging their control over both chambers and, in short order, the White House, to use the budget reconciliation process which is typically used as a vehicle for passing controversial budget-related legislation, as it requires only a majority vote in the Senate and is thus

exempted from a filibuster. The process has previously been used to pass the Bush-era tax cuts in 2001 and 2003, as well as Obamacare in 2010.

The Senate will commence a “vote-a-rama” beginning on Monday, during which numerous amendments will receive votes. If passed, the reconciliation instructions included in the resolution direct jurisdictional committees (Senate Finance, Senate Health, Education, Labor, and Pensions, House Ways and Means, and House Energy and Commerce) to draft relevant Obamacare repeal measures by January 27.

The measure already faces challenges from Senator Rand Paul (R-KY) who is threatening to oppose the resolution unless it contains a path towards a balanced budget (with only 52 Republicans in the Senate, the opposition of only two fellow party members would lead to the measure’s failure).

The House is expected to take up the measure shortly following Senate approval. Last week, House Speaker Paul Ryan (R-WI) noted the House’s intentions to include language in their subsequent resolution that would strip federal funding from Planned Parenthood; a move that may garner opposition from moderate Republicans in both chambers.

## **Regulatory Activity**

### **Awaiting Confirmation Hearing Date for OMB Director Nominee**

The Senate has yet to schedule a confirmation hearing for President-Elect Donald Trump’s nominee for Director of the Office of Management and Budget (OMB), Representative Mick Mulvaney (R-SC).

In Congress, Rep. Mulvaney, a founder of the conservative House Freedom Caucus, co-authored the *Cut, Cap, and Balance Act*, which curbed and capped federal spending, and provided for a Balanced Budget Amendment to the Constitution. Rep. Mulvaney, a self-proclaimed fiscal conservative, has supported sequestration-level discretionary spending caps on both defense and non-defense spending. In addition, Rep. Mulvaney has voted against increasing the debt ceiling every time it has been brought up for debate during his tenure in the House and instead has actively championed legislation requiring offsets for new spending measures.

Rep. Mulvaney currently serves on the House Financial Services Committee, as well as the House Oversight and Government Reform Committee. He has previously served on the Committee on Small Business and the Budget Committee.

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