
SENATE RECONCILIATION GUIDELINES TO COMMITTEES

June 2015

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RECONCILIATION GUIDELINES

The Concurrent Resolution on the Budget for FY 2016 includes reconciliation instructions to both the Committee on Finance and the Committee on Health, Education, Labor, and Pensions. This document provides general information for submitting reconciliation recommendations and summarizes special rules and procedures that govern the contents and consideration of a reconciliation bill—elements that should be forefront as the two committees draft their submissions.

A PRIMER ON RECONCILIATION

Reconciliation is a Senate-only fast-track process for considering legislation that brings Federal mandatory spending and revenue programs into compliance with the parameters in the associated budget resolution (By contrast, changes discretionary programs are accomplished through the annual appropriations process). A reconciliation bill is a compilation of the changes in laws recommended by the instructed committee(s) that achieve the fiscal goals enumerated in the budget resolution.

The reconciliation process begins with instructions in a budget resolution conference agreement. These instructions designate which committee(s) should report reconciliation legislation, the date by which they should report, the dollar amount of budgetary change to be achieved in the reconciliation legislation, and the time period over which the impact of the budgetary change should be measured.

Although the topline numbers in a budget resolution include the budgetary effects of reconciliation, a committee is not required to report out a reconciliation title with the same policies assumed in the budget resolution (if the resolution includes such specifics). The committee determines the content of their title of the reconciliation bill, but must comply with the fiscal target in their instruction.

Like a budget resolution, a reconciliation bill is a privileged vehicle. The motion to proceed requires only a simple majority to pass, consideration in the Senate is limited, amendments to the reconciliation bill must be germane, the bill cannot be filibustered, and final passage requires a simple majority. Unlike a budget resolution, however, a reconciliation bill must be signed by the President to have force and effect.

All matter in a reconciliation bill must be directly related to the fiscal objectives of the associated budget resolution. Matter that is “extraneous” can be struck on a point of order pursuant to section 313 of the Congressional Budget Act (The Byrd Rule, see Appendix A).

RECONCILIATION INSTRUCTIONS IN THE FY 2016 BUDGET RESOLUTION

Section 2001(a) of the conference report for S. Con. Res. 11, the Concurrent Resolution on the Budget for FY 2016 directs the Committee on Finance and the Committee on Health, Education, Labor, and Pensions (HELP) to recommend changes in laws within their respective jurisdictions to reduce the on-budget deficit by a total of \$1 billion—each—over the ten-year period of fiscal years 2016 through 2025.

Reports are due no later than Friday, July 24, 2015.

**Summary of Reconciliation Instructions in Section 2101 of S. Con. Res. 11,
The Concurrent Resolution on the Budget for FY 2016**

Committee	Fiscal Target	Time Period	Due Date
Finance	Reduce the on-budget deficit by \$1 billion	The 10-year period of fiscal years 2016 through 2025	Friday, July 24, 2015
Health, Education, Labor, and Pensions	Reduce the on-budget deficit by \$1 billion	The 10-year period of fiscal years 2016 through 2025	Friday, July 24, 2015

Additional information:

- Since Finance and HELP have been directed to reduce the on-budget deficit, it is acceptable to include provisions that affect both direct spending and/or revenues.
- Provisions in a reconciliation title must fall within the committee's jurisdiction. A reconciled committee cannot report out provisions in another committee's jurisdiction.
- Provisions must produce changes in mandatory outlays or revenues. If a provision has an impact on budget authority but does not affect outlays, it will not count towards a committee's fiscal target. Changes in authorization levels for programs subject to appropriation do not count.
- Compliance with a committee's instruction is determined on a net basis. Therefore, a committee may include provisions that increase spending or reduce revenues (contrary to the instruction) as long as the net budgetary effect of all the committee's provisions achieves its instructed target.
- A committee may exceed its fiscal target—the target is a floor, not a ceiling. For reconciliation bills that exceed their instruction, the FY 2016 budget resolution includes a provision that protects the extra savings from amendment, ensuring they will be used to further reduce the deficit.
- Extraneous matter in a reconciliation bill is vulnerable to a point of order under section 313 of the Congressional Budget Act (The Byrd Rule, see Appendix A). The point of order, if raised, is a surgical strike—the offending provision is removed, but the rest of the bill remains. Sixty votes are required to waive a Byrd violation.
- Provisions that change the old-age, survivors, and disability insurance programs established under title II of the Social Security Act are subject to a 60-vote point of order under section 310(g) of the Congressional Budget Act. However, provisions that indirectly affect the level of payroll taxes collected (through changes in taxable income) are not.

CONTENTS OF A COMMITTEE'S SUBMISSION

Pursuant to section 310(b)(2) of the Congressional Budget Act of 1974, the Finance and HELP committees are directed to submit their recommendations to the Senate Budget Committee. A committee's submission should include four items: (1) legislative text, (2) report language, (3) a letter of transmittal with an original signature of the Chairman, and (4) a CBO cost estimate of the legislative text.

Any cost estimate produced by CBO must be from actual legislative language; it cannot be based on generic or conceptual proposals.

The Budget Committee does not write or edit report language for individual titles—its role at this point in the reconciliation process is administrative—to roll up and report out a multi-committee reconciliation bill “without any substantive revision.” Consequently, report language should include the information necessary to explain the Committee's recommendations. The letter from the Chairman formally confirms the transmittal of the submission and will appear in immediately prior to the report language for the committee's title.

Reconciliation submissions should be transmitted to:

The Honorable Michael B. Enzi, Chairman
Attn: Adam Kamp, Clerk
Senate Committee on the Budget
624 Dirksen Senate Office Building
Washington, D.C. 20510

DEBT LIMIT PROHIBITION

Although the debt limit suspension period ended March 15th, it is not appropriate to include in the reconciliation bill a provision increasing the statutory debt limit. The Finance Committee was not given an instruction to raise the debt limit and any such provision would thus be Byrdable. In addition, section 2002 of the conference report for S. Con. Res. 11, the Concurrent Resolution on the Budget for FY 2016, includes a point of order prohibiting consideration of a reconciliation bill containing a provision increasing the debt limit. The prohibition is enforced with a point of order which, if raised, can be waived with affirmative vote of two-thirds of Members, duly chosen and sworn (67 votes).

SCORING CONVENTIONS

Scoring conventions have been developed to determine whether a committee's submission complies with its reconciliation instruction. Most of those rules can be found in OMB circular A-11 (included in Appendix B).

For reconciliation, a committee's legislative language must make changes only in programs within that committee's jurisdiction in order to receive credit for the savings. Specifically:

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- If a committee submits recommendations to a program outside its jurisdiction, the budgetary effects of those recommendations are not credited towards fulfillment of the committee's reconciliation instruction.
 - If a committee submits changes to a program within its jurisdiction, but the savings are derived indirectly from programs outside its jurisdiction, of those recommendations are not credited towards fulfillment of the committee's reconciliation instruction.

COMPLIANCE WITH RECONCILIATION DIRECTIVES

Committee compliance with reconciliation instructions is required under section 310 of the Congressional Budget Act. The Budget Committee will determine whether a committee has met its fiscal target.

If a committee fails to meet its instructions, any Senator may move to bring that committee into compliance by offering a motion to recommit and report back forthwith an amendment, but there is no requirement that the amendment be germane. In essence, by failing to report out or meet the reconciliation the reconciled committee could lose control of the content in their own title.

CONSIDERATION IN THE SENATE

Once the two authorizing committees have submitted their recommendations, the Budget Committee compiles the titles into a single bill. The role of the Budget Committee in this process is purely administrative—it cannot make any substantive changes to the legislative text submitted by the authorizing committees.

Debate in the Senate on any reconciliation bill—and any amendments, debatable motions, or appeals—is limited to not more than 20 hours. Votes on amendments and motions after time has expired is possible, but amendments must be germane and are subject to the Byrd Rule. Prior to conference, motions to instruct conferees are in order and debatable for no more than 10 hours. Debate on a reconciliation conference report is limited to 10 hours.

APPENDIX A

THE BYRD RULE

The Byrd Rule—section 313 of the Congressional Budget Act—establishes six character tests used to determine whether the primary purpose of matter in a reconciliation bill is budgetary. Provisions deemed “extraneous” can be struck on a point of order. A Byrd point of order, if sustained, is surgical—the offending provision is struck but the rest of the bill remains standing. A Byrd Rule violation can be waived with the affirmative vote of three-fifths of Members, duly chose and sworn.

In general, a provision is considered “extraneous” if it falls under at least one of the following definitions:

- 1) It does not produce a change in revenues or outlays (no budgetary effect).
 - Some provisions might not produce direct budgetary effects, but still might be allowed in a reconciliation bill because the provision is a “term or condition” under which outlays are made or revenues are collected.
 - A provision for which the net budgetary effect is zero, but which generates offsetting changes in outlays and/or revenues, is not extraneous.
- 2) It produces a change in outlays or revenues, but the instructed committee has not complied with its reconciliation directive (e.g., the reconciled committee didn’t find enough savings);
- 3) It is outside the jurisdiction of the committee that submitted the title or provision for inclusion on the reconciliation measure;
 - A provision is not considered extraneous if it is an integral part of a provision or title which, if introduced as a standalone bill or resolution would be referred to that same committee, and that provision sets forth the procedures necessary to carry out or implement the substantive provisions of that title that are under the jurisdiction of the reporting committee.
 - A provision is not considered extraneous if it states an exception to, or a special application of, the general provision or title of which it is a part, and such general provision or title if introduced as a bill or resolution would be referred to that committee.
- 4) It produces a change in outlays or revenues, but those effects are merely incidental to the non-budgetary components of the provision.
 - Provisions whose primary purpose is to modify behavior—regardless of budgetary effect—most likely will violate this section (e.g. provisions that overturn court decisions)

5) It would increase the deficit in any fiscal year beyond the budget window (in this case, FY 2026 or later).

- Whether or not a provision is extraneous under this rule depends on the balance of the title in which the offending provision is located. “Creative drafting”—combining or rearranging the contents of titles (while being mindful of jurisdiction)—to ensure that no title worsens the deficit in the outyears, is acceptable practice.

6) It would violate section 310(g) of the Budget Act prohibiting inclusion in a reconciliation bill any matter recommending changes to the Old-Age and Survivors and Disability Insurance trust funds (Social Security).

- The Senate Parliamentarian has determined that Medicare and other non-OASDI programs established in title II of the Social Security Act are not covered by this rule.
- Provisions that indirectly affect the level of payroll taxes collected by the OASDI trust funds (through changes in taxable income) do not violate the Byrd Rule.

The Byrd Rule is not self-enforcing, a point of order must be raised at the appropriate time to enforce the rule. Prior to consideration of a reconciliation bill or conference report, the Senate Budget Committee must provide a list of extraneous material to be printed in the Congressional Record. On occasion, extraneous matter has been included in a reconciliation bill, but a point of order was not raised.

The Byrd Rule applies to both the reconciliation bill as reported, and the conference report on the reconciliation bill. A Byrd Rule point of order may be raised by any Member at either stage of consideration.

APPENDIX B

SCOREKEEPING GUIDELINES OMB CIRCULAR A-11

CIRCULAR NO. A-11

PART

APPENDICES



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
JULY 2014**

APPENDIX A—SCOREKEEPING GUIDELINES

These budget scorekeeping guidelines are used by the House and Senate Budget Committees, the Congressional Budget Office, and the Office of Management and Budget (the "scorekeepers") in measuring compliance with the Congressional Budget Act of 1974 (CBA), as amended; the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended; and the Statutory Pay-As-You-Go Act of 2010. The purpose of the guidelines is to ensure that the scorekeepers measure the effects of legislation on the deficit consistent with established scorekeeping conventions and with the specific requirements in those Acts regarding discretionary spending, direct spending, and receipts. These rules are reviewed annually by the scorekeepers and revised as necessary to adhere to the purpose. They cannot be changed unless all of the scorekeepers agree. New accounts or activities are classified only after consultation among the scorekeepers. Accounts and activities cannot be reclassified unless all of the scorekeepers agree. The scorekeeping guidelines have not been revised to reflect the impact of the Statutory Pay-As-You-Go Act of 2010, especially as it relates to rule 3, and BBEDCA, as amended.

1. Classification of appropriations

A list of appropriations that are normally enacted in appropriations acts is included in the conference report of the Balanced Budget Act of 1997, House Report 105–217, pages 1014–1053. The list identifies appropriated entitlements and other mandatory spending in appropriations acts, and it identifies discretionary appropriations by category.

2. Outlays prior

Outlays from prior-year appropriations will be classified consistent with the discretionary/mandatory classification of the account from which the outlays occur.

3. Direct spending programs

Entitlements and other mandatory programs (including offsetting receipts) will be scored at current law levels, as defined in section 257 of GRH, unless congressional action modifies the authorizing legislation. Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations laws will be scored against the Appropriations Committee's section 302(b) allocations in the House and the Senate. For the purpose of CBA scoring, direct spending savings that are included in both an appropriations bill and a reconciliation bill will be scored to the reconciliation bill and not to the appropriations bill. For scoring under sections 251 or 252 of GRH, such provisions will be scored to the first bill enacted.

4. Transfer of budget authority from a mandatory account to a discretionary account

The transfer of budget authority to a discretionary account will be scored as an increase in discretionary budget authority and outlays in the gaining account. The losing account will not show an offsetting reduction if the account is an entitlement or mandatory program.

5. Permissive transfer authority

Permissive transfers will be assumed to occur (in full or in part) unless sufficient evidence exists to the contrary. Outlays from such transfers will be estimated based on the best information available, primarily historical experience and, where applicable, indications of Executive or congressional intent.

This guideline will apply both to specific transfers (transfers where the gaining and losing accounts and the amounts subject to transfer can be ascertained) and general transfer authority.

6. Reappropriations

Reappropriations of expiring balances of budget authority will be scored as new budget authority in the fiscal year in which the balances become newly available.

7. Advance appropriations

Advance appropriations of budget authority will be scored as new budget authority in the fiscal year in which the funds become newly available for obligation, not when the appropriations are enacted.

8. Rescissions and transfers of unobligated balances

Rescissions of unobligated balances will be scored as reductions in current budget authority and outlays in the year the money is rescinded.

Transfers of unobligated balances will be scored as reductions in current budget authority and outlays in the account from which the funds are being transferred, and as increases in budget authority and outlays in the account to which these funds are being transferred.

In certain instances, these transactions will result in a net negative budget authority amount in the source accounts. For purposes of section 257 of GRH, such amounts of budget authority will be projected at zero. Outlay estimates for both the transferring and receiving accounts will be based on the spending patterns appropriate to the respective accounts.

9. Delay of obligations

Appropriations acts specify a date when funds will become available for obligation. It is this date that determines the year for which new budget authority is scored. In the absence of such a date, the act is assumed to be effective upon enactment.

If a new appropriation provides that a portion of the budget authority shall not be available for obligation until a future fiscal year, that portion shall be treated as an advance appropriation of budget authority. If a law defers existing budget authority (or unobligated balances) from a year in which it was available for obligation to a year in which it was not available for obligation, that law shall be scored as a rescission in the current year and a reappropriation in the year in which obligational authority is extended.

10. Contingent legislation

If the authority to obligate is contingent upon the enactment of a subsequent appropriation, new budget authority and outlays will be scored with the subsequent appropriation. If a discretionary appropriation is contingent on the enactment of a subsequent authorization, new budget authority and outlays will be scored with the appropriation. If a discretionary appropriation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority will be scored with the appropriation, and outlays will be estimated based on the best information about when (or if) the contingency will be met. If direct spending legislation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority and outlays will be scored based on the best information about when (or if) the contingency will be met. Non-lawmaking contingencies within the control of the Congress are not scoreable events.

11. Scoring purchases

When a law provides the authority for an agency to enter into a contract for the purchase, lease-purchase, capital lease, or operating lease of an asset, budget authority and outlays will be scored as follows:

For lease-purchases and capital leases, budget authority will be scored against the legislation in the year in which the budget authority is first made available in the amount of the estimated net present value of the Government's total estimated legal obligations over the life of the contract, except for imputed interest costs calculated at Treasury rates for marketable debt instruments of similar maturity to the lease period and identifiable annual operating expenses that would be paid by the Government as owner (such as utilities, maintenance, and insurance). Property taxes will not be considered to be an operating cost. Imputed interest costs will be classified as mandatory and will not be scored against the legislation or for current level but will count for other purposes.

For operating leases, budget authority will be scored against the legislation in the year in which the budget authority is first made available in the amount necessary to cover the Government's legal obligations. The amount scored will include the estimated total payments expected to arise under the full term of a lease contract or, if the contract will include a cancellation clause, an amount sufficient to cover the lease payments for the first fiscal year during which the contract is in effect, plus an amount sufficient to cover the costs associated with cancellation of the contract. For funds that are self-insuring under existing authority, only budget authority to cover the annual lease payment is required to be scored.

Outlays for a lease-purchase in which the Federal government assumes substantial risk (for example, through an explicit Government guarantee of third party financing) will be spread across the period during which the contractor constructs, manufactures, or purchases the asset. Outlays for an operating lease, a capital lease, or a lease-purchase in which the private sector retains substantial risk will be spread across the lease period. In all cases, the total amount of outlays scored over time against legislation will equal the amount of budget authority scored against that legislation.

No special rules apply to scoring purchases of assets (whether the asset is existing or is to be manufactured or constructed). Budget authority is scored in the year in which the authority to purchase is first made available in the amount of the Government's estimated legal obligations. Outlays scored will equal the estimated disbursements by the Government based on the particular purchase arrangement, and over time will equal the amount of budget authority scored against that legislation.

Existing contracts will not be rescored.

To distinguish lease purchases and capital leases from operating leases, the following criteria will be used for defining an operating lease:

- Ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease period.
- The lease does not contain a bargain-price purchase option.
- The lease term does not exceed 75 percent of the estimated economic lifetime of the asset.
- The present value of the minimum lease payments over the life of the lease does not exceed 90 percent of the fair market value of the asset at the inception of the lease.
- The asset is a general purpose asset rather than being for a special purpose of the Government and is not built to unique specification for the Government as lessee.
- There is a private-sector market for the asset.

Risks of ownership of the asset should remain with the lessor.

Risk is defined in terms of how governmental in nature the project is. If a project is less governmental in nature, the private-sector risk is considered to be higher. To evaluate the level of private-sector risk associated with a lease-purchase, legislation and lease-purchase contracts will be considered against the following type of illustrative criteria, which indicate ways in which the project is less governmental:

- There should be no provision of Government financing and no explicit Government guarantee of third party financing.
- Risks of ownership of the asset should remain with the lessor unless the Government was at fault for such losses.
- The asset should be a general purpose asset rather than for a special purpose of the Government and should not be built to unique specification for the Government as lessee.
- There should be a private-sector market for the asset.
- The project should not be constructed on Government land.

Language that attempts to waive the Anti-Deficiency Act, or to limit the amount or timing of obligations recorded, does not change the Government's obligations or obligational authority, and so will not affect the scoring of budget authority or outlays.

Unless language that authorizes a project clearly states that no obligations are allowed unless budget authority is provided specifically for that project in an appropriations bill in advance of the obligation, the legislation will be interpreted as providing obligation authority, in an amount to be estimated by the scorekeepers.

12. Write-offs of uncashed checks, unredeemed food stamps, and similar instruments

Exceptional write-offs of uncashed checks, unredeemed food stamps, and similar instruments (i.e., write-offs of cumulative balances that have built up over several years or have been on the books for several years) shall be scored as an adjustment to the means of financing the deficit rather than as an offset. An estimate of write-offs or similar adjustments that are part of a continuing routine process shall be netted against outlays in the year in which the write-off will occur. Such write-offs shall be recorded in the account in which the outlay was originally recorded.

13. Reclassification after an agreement

Except to the extent assumed in a budget agreement, a law that has the effect of altering the classification or scoring of spending and revenues (e.g., from discretionary to mandatory, special fund to revolving fund, on-budget to off-budget, revenue to offsetting receipt), will not be scored as reclassified for the purpose of enforcing a budget agreement.

14. Scoring of receipt increases or direct spending reductions for additional administrative program management expenses

No increase in receipts or decrease in direct spending will be scored as a result of provisions of a law that provides direct spending for administrative or program management activities.

15. Asset sales

If the net financial cost to the Government of an asset sale is zero or negative (a savings), the amount scored shall be the estimated change in receipts and mandatory outlays in each fiscal year on a cash basis.

If the cost to the Government is positive (a loss), the proceeds from the sale shall not be scored for purposes of the CBA or GRH.

The net financial cost to the Federal government of an asset sale shall be the net present value of the cash flows from:

- (1) Estimated proceeds from the asset sale;
- (2) The net effect on Federal revenues, if any, based on special tax treatments specified in the legislation;
- (3) The loss of future offsetting receipts that would otherwise be collected under continued Government ownership (using baseline levels for the projection period and estimated levels thereafter); and
- (4) Changes in future spending, both discretionary and mandatory, from levels that would otherwise occur under continued Government ownership (using baseline levels for the projection period and at levels estimated to be necessary to operate and maintain the asset thereafter).

The discount rate used to estimate the net present value shall be the average interest rate on marketable Treasury securities of similar maturity to the expected remaining useful life of the asset for which the estimate is being made, plus 2 percentage points to reflect the economic effects of continued ownership by the Government.

16. Indefinite borrowing authority and limits on outstanding debt

If legislation imposes or changes a limit on outstanding debt for an account financed by indefinite budget authority in the form of borrowing authority, the legislation will be scored as changing budget authority only if and to the extent the imposition of a limit or the change in the existing limit alters the estimated amount of obligations that will be incurred.