THIRD WAY

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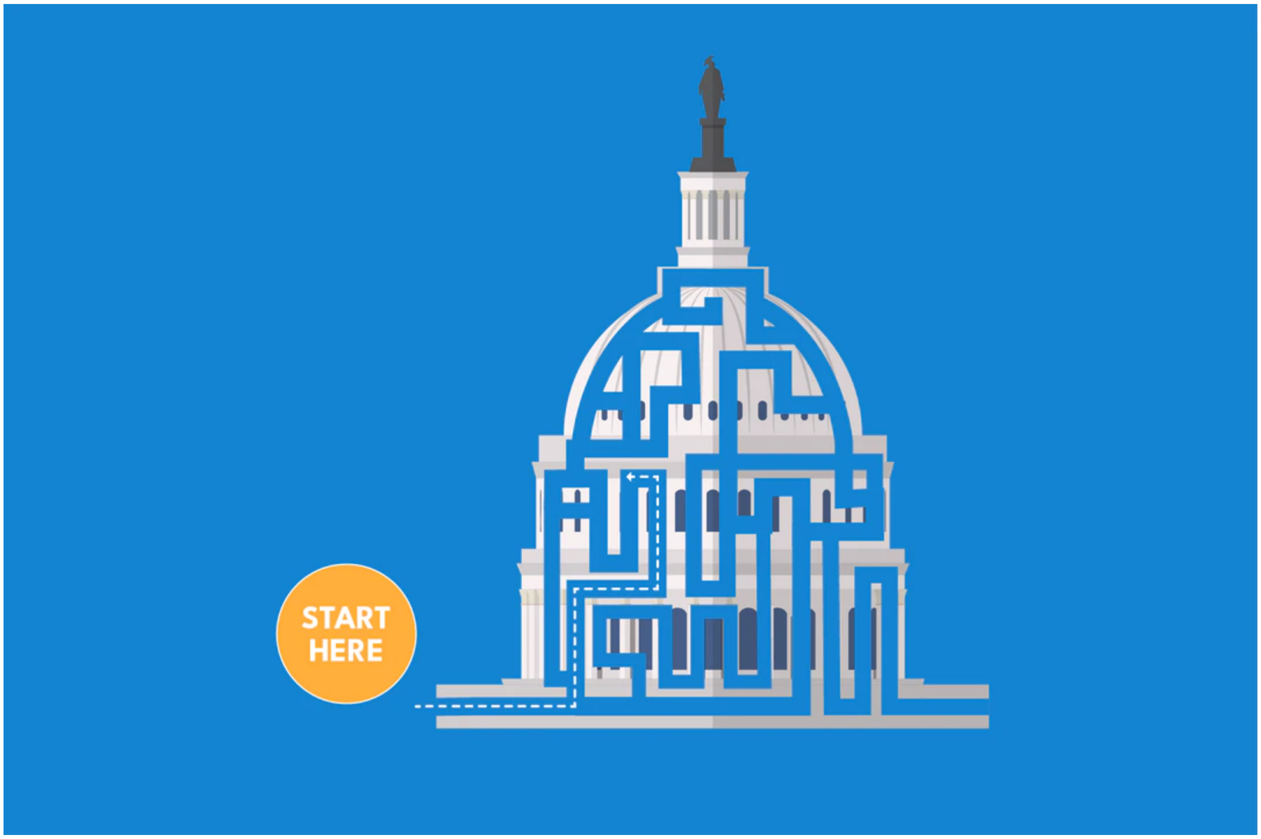
Reconciliation: How It Works and How to Use It to Help American Workers Recover



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Budget reconciliation may sound like a sleepy and boring part of the legislative process. But it could actually be the most important tool Democrats have this year to usher in sweeping relief to American workers and help the long-term American recovery. In this memo, we lay out a series of tips for how policymakers should approach and plan for the reconciliation process. We also describe 10 wide-ranging ways to use the reconciliation process to help workers and America recover. These include how to raise wages, provide child care, address health care costs, support small business owners, and more.

At his inauguration, President Joe Biden said, “we have much to do in this winter of peril and significant possibilities, much to repair, much to restore, much to heal, much to build, and much to gain.” [1] Meeting this moment is no small task, and it’s still unclear if Republicans will embrace progress or continue to obstruct our nation’s recovery. Either way, Democrats have a tool that they can use to help workers recover and tackle the emergencies facing this country: budget reconciliation. This process, which only requires a simple majority in the Senate, offers Democrats a path forward to rescue and repair this country. But it's not a panacea—reconciliation has a series of rules that need to be followed, and policies to help workers recover will often need to be tailored to fit the process. But the promise is enormous—offering policymakers a real path forward to raise wages, provide child care, address health care costs, support small business owners, and more.

What you need to know about reconciliation

Budget reconciliation is a confusing process. [2] To help navigate it, here are four things to keep in mind:

#1: Plan early.

Budget reconciliation is not a rapid process and requires a series of time-consuming steps: developing a budget resolution, using significant floor time, writing the reconciliation legislation in committee, passing the reconciliation bill, and conferencing the House and Senate's bills. Make sure to pay close attention to the first of these steps, the budget resolution, as this is where Congress locks in the ***instructions*** for the effort. These instructions will include 1. what committees will be allowed to be part of the effort, 2. the allowable change in spending, revenue, or deficit over a given time frame, and 3. a date to report the legislation. The first two parts of the instructions are binding further down the process, so it's important to plan early. [3]

#2: Know the rules.

A variety of rules govern the reconciliation process, but some of the trickiest to navigate are referred to as the ***Byrd rules,*** after the late Senator Robert C. Byrd (D-WV). The Byrd rules are codified in law as part of the Congressional Budget Act of 1974. These rules prevent policymakers from including six things in reconciliation bills (referred to as "extraneous matter"):

1. Things that do not produce a change in outlays or revenues.
2. Things that produce an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions.
3. Things that are outside of the jurisdiction of the committee that submitted the title or provision.
4. Things that produce a change in outlays or revenues which are merely incidental to the nonbudgetary components of the provision.
5. Things that would increase the deficit for a fiscal year beyond the "budget window" covered by the reconciliation measure.
6. Things that change Social Security's core programs.

If the parliamentarian rules that a provision violates the Byrd rule **and** a Senator raises a point of order against the offending provision, it will require a super majority to waive it. Otherwise, the offending provision is struck from the legislation.

#3: Embrace what's clearly allowed.

Once you know the rules, it's clear that there are significant amounts of policy changes that *are* allowed under reconciliation. These fall into a couple of categories:

- ***Many modifications of existing mandatory and tax programs***. Commonly referred to as "rates and dates," mandatory spending programs and taxes can have their levels or expirations adjusted. This could include things like extending expiring Unemployment Insurance or adjusting up or down tax rates and deductions. Policymakers can also expand or trim existing mandatory spending programs.

- ***New tax policy***. New tax policy, if it's not overly specific, should easily be allowed under reconciliation. [4] This could include things like new credits or deductions as well increased taxes on an assortment of things.

- ***Create new mandatory programs***. Policymakers can also establish new mandatory (also referred to as "direct") spending programs under budget reconciliation. For example, the children's health insurance program (CHIP) was created by budget reconciliation in 1997. Importantly, there is some latitude to establish rules and regulations as the "terms and conditions" of a new program — even if these parts may not have a Congressional Budget Office (CBO) score on their own. This latitude is not unlimited, however, and may be subject to parliamentary ruling. [5]

#4: Know what to avoid.

There are also a series of policies that have regularly been ruled out of bounds for reconciliation and should be avoided.

- ***Social Security***. Changing the old age, disability, or survivors programs of Social Security are explicitly prohibited under reconciliation. In fact, it is prohibited both by the Byrd rule and another part of the Budget Act.

- ***Lack of scorable budget changes***. Provisions that the CBO says do not produce scoreable changes are blocked by the Byrd rule, unless overruled by vote or deemed a "term and condition" of a program, because budget reconciliation is traditionally about revenue and spending. [6] Examples of things that don't score include new points of order or changes to the civil and criminal code.

- ***Wrong Committees***. Policy changes coming from the wrong committees of jurisdiction are also routinely tossed out. This committee standard is stricter than how bills are referred to committees by predominance of jurisdiction, and it needs to be taken into account early when the reconciliation instructions are being developed.
- ***Increasing the deficit beyond reconciliation window***. Policies often have to expire or have offsets because you cannot increase the deficit in any year beyond the window of the reconciliation instruction. The tax cuts of 2001, 2003, and 2017 all had major expirations set in law to get around this issue. Importantly, the rules relating to not increasing the deficit in "out" years are enforced on a bill title basis. That means, for example, that the Finance Committee cannot pay for another committee's policies.

The Senate Parliamentarian

The Congressional Budget Act of 1974, as amended, establishes the process for budget reconciliation in the House and Senate. Since one of the key uses of budget reconciliation is to get around the 60-vote threshold in the Senate, what can and can't be done in the Senate tends to drive and shape reconciliation bills. And the Senate Parliamentarian has the power to interpret its guidelines and precedents, giving this person incredible influence during the process.

The Senate Parliamentarian rules on what is allowed under reconciliation and what violates the Budget Act and its Byrd rule based on established precedent and argument. As a result of this outsized role, committees of jurisdiction drafting reconciliation bills must be careful with the details of any policy matter. Policies will have to be constructed carefully to avoid or limit parliamentary issues. Many rules related to the reconciliation process, including most of the Byrd Rule, are rather objective. But even policies or provisions that were included in past reconciliation bills could be in violation of the strict rules in place if challenged today. Take for example, the fact that every reconciliation bill typically has a short title. However, the short title in the December 2017 reconciliation bill, The Tax Cuts and Jobs Act, was stripped from the bill because it had no budgetary impact.

Some areas are also highly subjective, such as section 313(b)(1)(D), the part of the Byrd rule prohibiting provisions that have a "merely incidental" budgetary impact. The Senate Parliamentarian has significant influence over this test, and if a policy is challenged, it will require changing the underlying legislation or successfully arguing in front of the parliamentarian. Whether the budgetary impact is merely incidental can be the most complicated, challenging, and obtuse part about figuring out what can be done under reconciliation.

It is conceivable to overrule the parliamentarian by appealing the ruling of the chair, a process colloquially referred to as “going nuclear.” However, that would require a majority vote.

10 ways to help workers and America recover

Below, we outline a series of ways that reconciliation can be used to help workers and America recover and thrive. However, as noted above, reconciliation is complex and open to interpretation. Policy details matter, as does the Parliamentarian’s role. Hopefully, the recommendations below put policymakers on the right track to succeed in reconciliation, but it will be important to work with the Parliamentarian’s rulings in the creation of the suggestion below. Finally, there are other uses and priorities the Democratic caucus may have for reconciliation which are outside the scope of this memo.

How to Help Workers Fight COVID

The most immediate goal for the Biden administration and Democratic majorities is fighting the COVID pandemic. Prior rescue packages have included appropriations, rules, and regulations related to testing and vaccine development and distribution. Unfortunately, those same approaches could be limited under budget reconciliation since this process has not been used to increase traditional appropriations. Further, regulations—from creating national vaccine distribution policy to dividing the costs of treatment—could be ruled out due to lack of a budget score.

Democrats do have options however. It is possible to establish a mandatory spending program for government acquisition of vaccines, their prerequisites, therapeutics, and/or PPE. This program could let some supplies be sold directly to the government for a period of time. These supplies could likely be purchased by Medicare or be purchased for a national stockpile. One challenge of this approach is uncertainty regarding the post-purchase distribution of these supplies. Legislative instructions regarding distribution of this program’s supplies may be considered as “terms and conditions” by the parliamentarian and thus be allowed. But because they likely would not have a budget score on their own, they could also be determined to violate the Byrd Rule. This might leave the administration (or other designated entities such as governors or states depending on legislative design) in charge of prioritization and distribution, instead of clearly defined congressional intent.

How to Help the Unemployed and Economically Vulnerable

Almost a year into the pandemic, over 10.7 million Americans are unemployed with another 8.6 million out of the labor force. [7] One out of every three unemployed workers have been out of work for 27 weeks or more, and Black people and Hispanic people are still far more likely to be unemployed than others. [8] The December 2020 COVID relief legislation included key actions to help unemployed workers, ranging from providing an additional $300 per week to extending Pandemic Unemployment Assistance to the self-employed and gig workers to extending Pandemic Emergency Unemployment Compensation, which provides additional weeks of federally-funded unemployment benefits.

These provisions expire on March 14, 2021, but reconciliation can be used to extend these essential supports. [9] Specifically, reconciliation should be able to extend both Pandemic Unemployment Assistance for gig workers as well as Pandemic Emergency Unemployment Compensation to provide additional weeks of support. Direct checks can be included to ensure vulnerable families have financial support to keep the lights on and food on their tables. And the enhancements to the SNAP program sought by Democrats could be extended and expanded.

How to Help Entrepreneurs and Small Business Owners

As the pandemic rages, small businesses are finding it harder to stay afloat. By the Fall of 2020, 60% of business closures were permanent, and a long winter will only make it harder for the remaining small businesses to stay open. [10] Efforts over the past year to support small businesses have focused primarily on the Paycheck Protection Program. While the loan forgiveness portion of the program has a budgetary score and thus is allowed under reconciliation, adding authorization for more initial loans and changes/ oversight to the existing program may have process challenges. But there are other ways to support our nation's small businesses as well.

One way would be to give small businesses direct checks based on revenue like the legislative proposal by Representative Madeleine Dean. [11] Another would be establish a direct assistance fund to issue grants to qualifying microbusinesses in a way similar to then-Senator Kamala Harris and Representative Ayanna Pressley proposed. [12] Finally, states could receive direct grants to develop and implement programs to spread equity capital to more diverse entrepreneurs in more places, which would be similar to legislation by Senator Amy Klobuchar and Representative Dean Phillips. [13]

How to Raise Wages

Despite the tight economy and upward pressure on wages before the global pandemic, pay for many is still too low. Across the country, millions of people work a full-time job and yet remain in poverty. Democrats have the opportunity to change that, making sure work can pay again.

One complication, however, is that a simple way to do that—raising the minimum wage—may not fit in a reconciliation package. [14] In 2019, the Raise the Wage Act did not have a significant federal budget score under CBO's scoring rules. Further, despite the very minimal direct score the bill had, the budgetary effects of raising the minimum wage, based on that score, probably would be judged as "merely incidental" to the underlying labor market regulation, making it ineligible for reconciliation. [15] There is active debate over this, including how CBO may choose to score future minimum wage increases. [16] The procedural questions are thorny, so it's unclear at this point if it could survive the reconciliation process. [17]

Fortunately, tax policy could be clearly used to give working-wage Americans a boost to income in budget reconciliation. The Earned Income Tax Credit rewards work, and its expansion could drive real tangible income boosts to millions of Americans. The Working Families Tax Relief Act of 2019, sponsored by Senators Sherrod Brown, Michael Bennet, Ron Wyden, and Dick Durbin, is a good example of tax policy which could clearly fit under reconciliation. It would drastically expand the maximum EITC benefit for all workers, increasing it by $1,500 for a two-child family for example, and allow more individuals to qualify for the benefit. [18]

How to provide economic relief to state and local workers

State and local governments employ 12% of job holders—from elementary school teachers to paramedics. [19] But state and local budgets are drowning due to the increased costs of dealing with the pandemic as well as declining revenues from the economic recession. Without assistance, millions of jobs are at risk.

Reconciliation can be used to save millions of jobs and prevent pay cuts to these workers. While appropriating a one-time infusion of federal dollars (like Democrats have proposed in past COVID relief packages) could run afoul of reconciliation rules, there is another way. Instead of a single tranche of funding, Congress could fully fund states' Medicaid programs which would reduce pressure in states' budgets. Also, Congress could likely establish a mandatory block grant for states based on a formula tied to revenue loss or population, for example.

How to Help Families With Children

The United States has a child care crisis. It is too expensive and hard to access for millions of families, and these problems have only gotten worse in the pandemic.

While reconciliation cannot create new regulations that improve access and equity in the existing child care industry, there are a series of things the process can do. First, policymakers can provide tax benefits or subsidy payments to child care providers to ensure they can stay afloat and pay their employees through the pandemic. Second, the child tax credit and childcare tax credit can both be expanded and made refundable. The American Family Act, sponsored by Senators Michael Bennet and Sherrod Brown and Representatives Rosa DeLauro and Suzan DelBene, is a good example of how to increase federal benefits to parents under reconciliation. Finally, it might be possible to establish a cost cap on child care payments based on income in a similar fashion to Senator Patty Murray and Rep. Bobby Scott's Child Care for Working Families Act, however the block grant funding would need to be done as direct spending instead of traditional appropriations.

How to Strengthen Workers' Retirement Security

Workers' finances have taken a beating throughout the past year's pandemic and recession. According to NBC, 14% of Americans have wiped out their emergency savings, and one-in-three Americans has decreased or stopped retirement savings altogether. [20] Even though retirement security has less of an urgency compared with crises like vaccine distribution and job creation, now is the time to put policies in place to help workers shore up their private retirement savings for the long term.

Reconciliation cannot be used to change Social Security benefits or anything regarding the trust fund financing. But it can be used to help bolster private retirement savings completely separate from Social Security. Under current law, there are substantial tax provisions that help incentivize retirement savings. Many of these could be made more generous, or new credits related to retirement savings could be established to further encourage and help workers save. Tax benefits could also be created for small businesses that contribute to retirement savings accounts on behalf of their employees.

How to Limit Health Care Costs

Skyrocketing health care costs plague workers' paychecks and finances—and the pandemic has only made that worse. Fifty percent of all Americans are afraid of bankruptcy from health care costs, up from 45% in the previous year. [21] And while Democrats have rightfully tackled surprise billing and focused on prescription drug prices, those two areas only account for 12% of the nation's health care spending. [22] More will need to be done to truly address this issue for the majority of workers.

Reconciliation offers a path forward on controlling costs for workers. As President Biden has proposed, Congress can extend the Affordable Care Act's cost cap for people who get coverage through the exchanges so that no one pays more than 8.5% of their income for health insurance premiums. Currently, the cost cap limits premiums on a sliding scale from to 2.1% for people with incomes at the federal poverty level up to 9.8% of incomes at four times the poverty level. This should clearly fit under reconciliation.

A cost cap can also be extended in two important ways. First, it is important that employers and unions be able to offer the same cost cap to employees with coverage at work. This is probably feasible under reconciliation by allowing employer and union-sponsored plans to buy into exchange coverage and receive the tax credit subsidies offered through the exchanges. Second, the cost cap could be extended to people with pre-existing conditions who have high costs year after year. That would fix a hole in the ACA's cost cap which currently limits a patient's total costs on an annual basis, but not over multiple years.

The fiscal impact of extending cost cap protections under reconciliation can be at least partially offset with savings from driving health care delivery toward high-value care instead of high-volume and with limits on out-of-control prices.

How to Revive Infrastructure Jobs

As the country looks to create more jobs to replace those lost to the pandemic and recession, infrastructure investment presents a huge opportunity. The Council of Economic Advisers (CEA) estimates that every $1 billion in federal dollars spent on transportation infrastructure improvements supports 13,000 jobs a year. [23] While Congress may try and come together to pass a large infrastructure package that appropriates money, reconciliation can be used as an alternative way forward.

To be clear, infrastructure investment through reconciliation is more difficult. Infrastructure is currently supported in two primary ways: traditional appropriations and the highway trust fund, and both present limitations under reconciliation. But, even with that challenge, it's still possible to dedicate funding to infrastructure. A mandatory spending stream for infrastructure programs is likely possible, especially if done as a state grant program. It might also be possible to establish a mandatory spending version of the Better Utilizing Investments to Leverage Development (BUILD) discretionary grant program—previously known as TIGER grants—that can focus on projects that will maximize job creation and reduce transportation's climate impacts. [24]

How to Bolster Worker Skills

As the recession subsides, some will be able to return to work, but the path for others will be far more difficult. Some sectors of the economy have completely changed and may never return to pre-pandemic hiring levels. Other industries have increased their level of automation, making it likely that the jobs they do bring back look very different. There needs to be a massive effort to ensure that every American has opportunity to reskill and obtain high-quality postsecondary credentials to get back to work and thrive in a post-COVID era. Comprehensive Higher Education Act reauthorization and a massive expansion of apprenticeships are critical to this effort but are likely to fall outside of reconciliation. There is a way to use reconciliation however to make a large down payment on reskilling America.

Training vouchers for reskilling could be done in different ways to fit under reconciliation. One route would be to establish a new entitlement for some fixed amount of funding for tuition and other costs for qualified programs—from apprenticeships and credentialing programs to high-quality 2- and 4-year degrees. A proposal like "Pay Down, Upskill" which provides $5,000 for these programs or student debt relief is an example. [25] These types of qualifications on a program could be considered parts of the terms and conditions allowed under reconciliation. Alternatively, a proposal such as the Skills Renewal Act by Senators Amy Klobuchar and Cory Booker, which is structured as a fully refundable tax credit, would fit under reconciliation. The bill allows this $4,000 credit to help offset costs of training programs, apprenticeships, or degrees for people who lost their job during the pandemic. [26]

Conclusion

There are many other ways to use reconciliation to help workers and Americans recover that other legislators have proposed in addition to the recommendations above. Further, reconciliation is often used to raise and lower taxes. Repealing the Trump tax breaks for the wealthy and making the tax code better reward work and support American workers fits neatly under this process. Reconciliation is a bulky, rules-based route to enact policy. But there is a lot that can be done to bring positive change to the country.

TOPICS

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ENDNOTES

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