



The Budget Reconciliation Process: The Senate's "Byrd Rule"

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Summary

Reconciliation is a procedure under the Congressional Budget Act of 1974 by which Congress implements budget resolution policies affecting mainly permanent spending and revenue programs. The principal focus in the reconciliation process has been deficit reduction, but in some years reconciliation has involved revenue reduction generally and spending increases in selected areas. Although reconciliation is an optional procedure, it has been used most years since its first use in 1980 (19 reconciliation bills have been enacted into law and three have been vetoed).

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of implementing budget resolution policies. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues when the reconciliation instructions called for reduced spending or increased revenues, or that violated another committee's jurisdiction.

In 1985 and 1986, the Senate adopted the Byrd rule (named after its principal sponsor, Senator Robert C. Byrd) on a temporary basis as a means of curbing these practices. The Byrd rule has been extended and modified several times over the years. In 1990, the Byrd rule was incorporated into the Congressional Budget Act of 1974 as Section 313 and made permanent (2 U.S.C. 644).

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation, or, under the Byrd rule, a Senator may raise a point of order against such matter. In general, a point of order authorized under the Byrd rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the Byrd rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).

The Byrd rule provides six definitions of what constitutes extraneous matter for purposes of the rule (and several exceptions thereto), but the term is generally described as covering provisions unrelated to achieving the goals of the reconciliation instructions.

The Byrd rule has applied to 17 reconciliation measures considered by the Senate from 1985 through the present. There have been 53 points of order and 42 waiver motions considered and disposed of under the Byrd rule, largely in a manner that favored those who opposed the inclusion of extraneous matter in reconciliation legislation (43 points of order were sustained, in whole or in part, and 33 waiver motions were rejected).

This report will be updated as developments warrant.

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Introduction

Reconciliation is a process established under Section 310 of the Congressional Budget Act of 1974 (P.L. 93-344, as amended).¹ The purpose of reconciliation is to change substantive law so that revenue and mandatory spending levels are brought into line with budget resolution policies. Reconciliation generally has been used to reduce the deficit through spending reductions or revenue increases, or a combination of the two. In recent years, however, the reconciliation process also has encompassed revenue reduction generally and spending increases in selected program areas.

Reconciliation is a two-step process. Under the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by the amounts specified in the budget resolution. If more than one committee in each House is given instructions, each instructed committee submits reconciliation legislation to its respective Budget Committee, which incorporates all submissions, without any substantive revision, into a single, omnibus budget reconciliation measure. Reconciliation procedures during a session usually have applied to multiple committees and involved omnibus legislation.

Under the second step, the omnibus budget reconciliation measure is considered in the House and Senate under expedited procedures (for example, debate time in the Senate on a reconciliation measure is limited to 20 hours and amendments must be germane). The process culminates with enactment of the measure, thus putting the policies of the budget resolution into effect.

Reconciliation, which was first used by the House and Senate in 1980, is an optional procedure, but it has been used in most years. Over the period covering from 1980 to the present, 19 reconciliation bills have been enacted into law and three have been vetoed.²

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of reducing the deficit. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues, or that violated another committee's jurisdiction.

In 1985 and 1986, the Senate adopted the Byrd rule (named after its principal sponsor, Senator Robert C. Byrd) as a means of curbing these practices. Initially, the rule consisted of two components, involving a provision in a reconciliation act and a Senate resolution. The Byrd rule has been modified several times over the years.

The purpose of this report is to briefly recount the legislative history of the Byrd rule, summarize its current features, and describe its implementation from its inception through the present.

¹ For a detailed discussion of the reconciliation process, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

² For additional information on reconciliation measures that became law, see CRS Report R40480, *Budget Reconciliation Measures Enacted Into Law: 1980-2008*, by Robert Keith.

Legislative History of the Byrd Rule

During the first five years that the Byrd rule was in effect, from late 1985 until late 1990, it consisted of two separate components—(1) a provision in statute applying to initial Senate consideration of reconciliation measures, and (2) a Senate resolution extending application of portions of the statutory provision to conference reports and amendments between the two houses. Several modifications were made to the Byrd rule in 1986 and 1987, including extending its expiration date from January 2, 1987, to January 2, 1988, and then to September 30, 1992, but the two separate components of the rule were preserved. In 1990, these components were merged together and made permanent when they were incorporated into the Congressional Budget Act (CBA) of 1974 as Section 313. There have been no further changes in the Byrd rule since 1990.

The Byrd rule originated on October 24, 1985, when Senator Robert C. Byrd, on behalf of himself and others, offered Amendment No. 878 (as modified) to S. 1730, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.³ The Senate adopted the amendment by a vote of 96-0.⁴ In this form, the Byrd rule applied to initial Senate consideration of reconciliation measures.

Senator Byrd explained that the basic purposes of the amendment were to protect the effectiveness of the reconciliation process (by excluding extraneous matter that often provoked controversy without aiding deficit reduction efforts) and to preserve the deliberative character of the Senate (by excluding from consideration under expedited procedures legislative matters not central to deficit reduction that should be debated under regular procedures). He opened his remarks by stating:

... we are in the process now of seeing ... the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.

It was never foreseen that the Budget Reform Act would be used in that way. So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate—which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.⁵

The Byrd amendment was included in modified form in COBRA of 1985 (P.L. 99-272), which was not enacted into law until April 7, 1986, as Section 20001 (100 Stat. 390-391). The Byrd rule, in this form, thus became effective on April 7. As originally framed, the Byrd rule was set to expire on January 2, 1987.

³ For a detailed legislative history of the Byrd rule, see the following print of the Senate Budget Committee: *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, 103rd Cong., 1st sess., S. Prt. 103-49, October 1993, notes on pp. 229-246.

⁴ See the Senate's consideration of and vote on the amendment in the *Congressional Record*, daily edition (October 24, 1985), pp. S14032-S14038.

⁵ See the remarks of Senator Robert C. Byrd in the *Congressional Record*, daily edition (October 24, 1985), p. S14032.

**Table 1. Figures and Resolutions
Establishing the Byrd Rule**

P.L. 99-272, Consolidated Omnibus Budget Reconciliation Act of 1985, Section 2001 (100 Stat. 390-391), April 7, 1986.

S.Res. 286 (99th Congress, 1st Session), December 19, 1985.

S.Res. 509 (99th Congress, 2nd Session), October 16, 1986.

P.L. 99-509, Omnibus Budget Reconciliation Act of 1986, Section 7006 (100 Stat. 1949-1950), October 21, 1986.

P.L. 100-119, Increasing the Statutory Limit on the Public Debt, Section 205 (101 Stat. 784-785), September 29, 1987.

P.L. 101-508, Omnibus Budget Reconciliation Act of 1990, Section 13214 (104 Stat. 1388-621 through 1388-623), November 5, 1990.

P.L. 105-33, Balanced Budget Act of 1997, Section 10113(b)(1) (111 Stat. 688), August 5, 1997.

Over the years, the Senate has expanded and revised the Byrd rule through the adoption of two resolutions and the inclusion of provisions in four laws. **Table 1** lists the laws and resolutions that have established and revised the Byrd rule.

On December 19, 1985, the Senate adopted by voice vote a resolution (S.Res. 286), sponsored by Senator Alan Simpson and others, that extended the application of portions of the statutory provision to conference reports and amendments between the two houses. Because the enactment of COBRA of 1985 was delayed until early 1986, the portion of the Byrd rule dealing with conference reports became effective first. The provisions of S.Res. 286 were set to expire on the same date as the provision in COBRA of 1985 (January 2, 1987).

In the following year, the Senate was involved in two actions affecting the Byrd rule. First, the Senate adopted S.Res. 509 by voice vote on October 16, 1986. The measure, offered by Senator Alan Simpson and others, modified S.Res. 286 in a technical fashion. Second, the Omnibus Budget Reconciliation Act of 1986 was enacted into law, as P.L. 99-509, on October 21, 1986. Section 7006 of the law made several minor changes in the Byrd rule and extended its expiration date by one year—until January 2, 1988.

Further changes in the Byrd rule were made in 1987. These changes were included in a measure increasing the statutory limit on the public debt, modifying procedures under the Balanced Budget and Emergency Deficit Control Act of 1985, and making other budget process changes (P.L. 100-119, signed into law on September 29; see Title II (Budget Process Reform)). Section 205 of the law added an item to the list of definitions of extraneous matter in the Byrd rule and extended its expiration until September 30, 1992.

In 1990, Congress and the President agreed to further modifications of the budget process by enacting the Budget Enforcement Act (BEA) of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990). Section 13214 of the law made significant revisions to the Byrd rule and incorporated it (as permanent law) into the CBA of 1974 as Section 313 (2 U.S.C. 644).

Finally, the Budget Enforcement Act of 1997 (Title X of the Balanced Budget Act of 1997) made minor technical changes in Section 313 of the CBA of 1974 to correct drafting problems with the BEA of 1990.

Current Features of the Byrd Rule

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation has two principal options for dealing with the problem. First, a Senator may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation. Second, under the Byrd rule, a Senator may raise a point of order against extraneous matter.

The Byrd rule is a relatively complex rule⁶ that applies to two types of reconciliation measures considered pursuant to Section 310 of the CBA of 1974—reconciliation bills and reconciliation resolutions.⁷ (A reconciliation resolution could be used to make changes in legislation that had passed the House and Senate but had not yet been enrolled and sent to the President. The practice of the House and Senate has been to consider only reconciliation bills.)

In general, a point of order authorized under the Byrd rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A point of order may be raised against a single provision or two or more provisions (as designated by title or section number, or by page and line number), and may be raised against a single amendment or two or more amendments. The chair may sustain a point of order as to all of the provisions (or amendments) or only some of them.

Once material has been struck from reconciliation legislation under the Byrd rule, it may not be offered again as an amendment.

A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the Byrd rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).⁸ A single waiver motion can: (1) apply to the Byrd rule as well as other provisions of the Congressional Budget Act; (2) involve multiple as well as single provisions or amendments; (3) extend (for specified language) through consideration of the conference report as well as initial consideration of the measure or amendment; and (4) be made prior to the raising of a point of order, thus making the point of order moot.

⁶ Some of the complexities of the Byrd rule are examined in: (1) *Riddick's Senate Procedure* (S.Doc. 101-28, 101st Cong., 2nd sess., 1992), by Floyd M. Riddick and Alan S. Frumin, pp. 624-626; and (2) *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, op. cit., beginning on p. 198.

⁷ Part of the Byrd rule, Section 313(a), also applies to reconciliation measures considered pursuant to Section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985. This section, which has never been invoked, provides for the consideration of reconciliation legislation in the fall in order to achieve deficit reductions that would obviate the need for an expected sequester under the pay-as-you-go (PAYGO) requirement (or, previously, the deficit targets). The PAYGO requirement effectively expired at the end of the 107th Congress (see CRS Report RS21378, *Termination of the "Pay-As-You-Go" (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith.) All of the reconciliation measures considered by the Senate thus far have originated pursuant to Section 310 of the CBA of 1974.

⁸ In the Senate, many points of order under the CBA of 1974 require a three-fifths vote of the membership to waive (or to sustain an appeal of the ruling of the chair). Most of these three-fifths waiver requirements are temporary, but in the case of the Byrd rule it is permanent. Section 503 of the FY2004 budget resolution (H.Con.Res. 95, 108th Cong.), adopted on April 11, 2003, extended the expiration date for the temporary requirements to September 30, 2008.

When a reconciliation measure, or a conference report thereon, is considered, the Senate Budget Committee must submit for the record a list of potentially extraneous matter included therein.⁹ This list is advisory, however, and does not bind the chair in ruling on points of order.

Determinations of budgetary levels for purposes of enforcing the Byrd rule are made by the Senate Budget Committee.

Definitions of Extraneous Matter

Subsection (b)(1) of the Byrd rule provides definitions of what constitutes extraneous matter for purposes of the rule. The Senate Budget Committee, in its report on the budget resolution for FY1994, noted:

'Extraneous' is a term of art. Broadly speaking, the rule prohibits inclusion in reconciliation of matter unrelated to the deficit reduction goals of the reconciliation process.¹⁰

A provision is considered to be extraneous if it falls under one or more of the following six definitions:

- it does not produce a change in outlays or revenues;
- it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
- it is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
- it produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;
- it would increase the deficit for a fiscal year beyond the "budget window" covered by the reconciliation measure;¹¹ and
- it recommends changes in Social Security.

The last definition complements a ban in Section 310(g) of the CBA of 1974 against considering any reconciliation legislation that contains recommendations pertaining to the Social Security. For purposes of these provisions, Social Security is considered to include the Old-Age, Survivors, and Disability Insurance (OASDI) program established under Title II of the Social Security Act; it does not include Medicare or other programs established as part of that act.

⁹ For an example of such a list, see the remarks of Senator Pete Domenici regarding the conference report on the Balanced Budget Act of 1997 in the *Congressional Record*, daily edition (July 31, 1997), pp. S8406-S8408.

¹⁰ See the report of the Senate Budget Committee to accompany S.Con.Res. 18, Concurrent Resolution on the Budget, FY1994 (S.Rept. 103-19, March 12, 1993), p. 49.

¹¹ The "budget window" refers to the period covered by the budget resolution, and to any reconciliation directives included therein and the resultant reconciliation legislation. Beginning in the late 1980s, the budget resolution is required to cover at a minimum the "budget year" (the fiscal year beginning on October 1 in the session that the budget resolution is adopted) and the four following fiscal years (the "outyears"). In addition, budget resolutions sometimes cover the "current year" (the fiscal year preceding the budget year) and up to five additional outyears. Accordingly, the longest budget window that has applied to a budget resolution and associated reconciliation legislation covered 11 years, including the current year.

Exceptions to the Definition of Extraneous Matter

Subsection (b)(2) of the Byrd rule provides that a Senate-originated provision that does not produce a change in outlays or revenues shall not be considered extraneous if the chairman and ranking minority members of the Budget Committee and the committee reporting the provision certify that—

- the provision mitigates direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; or
- the provision will (or is likely to) reduce outlays or increase revenues: (1) in one or more fiscal years beyond those covered by the reconciliation measure; (2) on the basis of new regulations, court rulings on pending legislation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision; or (3) but reliable estimates cannot be made due to insufficient data.

Additionally, under subsection (b)(1)(A), a provision that does not change outlays or revenues in the net, but which includes outlay decreases or revenue increases that exactly offset outlay increases or revenue decreases, is not considered to be extraneous.

The full text of the Byrd rule in its current form is provided in the **Appendix**.

Implementation of the Byrd Rule

Congress and the President considered 22 omnibus reconciliation measures (as shown in **Table 2**) between calendar year 1980, when the reconciliation process was first used, and the present.¹² As stated previously, 19 of these measures were enacted into law and three were vetoed (by President Clinton). The Byrd rule has been in effect during the consideration of the last 17 of these 22 measures, covering calendar years 1985 through 2007. The Byrd rule had not been established when the first five reconciliation bills were considered.

¹² The Senate also considered two measures linked to the reconciliation process. On December 15, 1975, the Senate considered, amended, and passed H.R. 5559, the Revenue Adjustment Act of 1975, which reduced revenues by about \$6.4 billion pursuant to a budget resolution instruction. The measure was not regarded as a reconciliation bill when it was considered by the House, but it was considered under reconciliation procedures in the Senate. The President vetoed the measure later in the year and the House sustained his veto. See the remarks of Senator Russell Long and the presiding officer on p. 40540 and the remarks of Senator Edmund Muskie and others on pp. 40544-40550 in the *Congressional Record* of December 15, 1975, regarding the status of H.R. 5559 as a reconciliation bill.

The Deficit Reduction Act of 1984 (P.L. 98-369) was regarded as a reconciliation bill when it was considered in the House, but was stripped of that classification when it was considered in the Senate (in April and May of 1984). The House also has considered reconciliation measures that were not considered in the Senate.

For more information on the consideration of reconciliation measures, see CRS Report RL30458, *The Budget Reconciliation Process: Timing of Legislative Action*, by Robert Keith.

Table 2. Reconciliation Measures Enacted Into Law or Vetoed: 1980-2008

Reconciliation Act	Public Law Number	Statutes-at-Large Citation	Date Enacted (or Vetoed)
Byrd Rule Not in Effect			
1 Omnibus Reconciliation Act of 1980	P.L. 96-499	94 Stat. 2599-2695	12-05-80
2 Omnibus Budget Reconciliation Act of 1981	P.L. 97-35	95 Stat. 357-933	08-13-81
3 Tax Equity and Fiscal Responsibility Act of 1982	P.L. 97-248	96 Stat. 324-707	09-03-82
4 Omnibus Budget Reconciliation Act of 1982	P.L. 97-253	96 Stat. 763-807	09-08-82
5 Omnibus Budget Reconciliation Act of 1983	P.L. 98-270	98 Stat. 157-162	04-18-84
Byrd Rule in Effect (Partially for COBRA of 1985)			
6 Consolidated Omnibus Budget Reconciliation Act of 1985	P.L. 99-272	100 Stat. 82-391	04-07-86
7 Omnibus Budget Reconciliation Act of 1986	P.L. 99-509	100 Stat. 1874-2078	10-21-86
8 Omnibus Budget Reconciliation Act of 1987	P.L. 100-203	101 Stat. 1330, 1-472	12-22-87
9 Omnibus Budget Reconciliation Act of 1989	P.L. 101-239	103 Stat. 2106-2491	12-19-89
10 Omnibus Budget Reconciliation Act of 1990	P.L. 101-508	104 Stat. 1388, 1-630	11-05-90
11 Omnibus Budget Reconciliation Act of 1993	P.L. 103-66	107 Stat. 312-685	08-10-93
12 Balanced Budget Act of 1995	—	(H.R. 2491, vetoed)	12-06-95
13 Personal Responsibility and Budget Reconciliation Act of 1996	P.L. 104-193	110 Stat. 2105-2355	08-22-96
14 Balanced Budget Act of 1997	P.L. 105-33	111 Stat. 251-787	08-05-97
15 Taxpayer Relief Act of 1997	P.L. 105-34	111 Stat. 788-1103	08-05-97
16 Taxpayer Refund and Relief Act of 1999	—	(H.R. 2488, vetoed)	09-23-99
17 Marriage Tax Relief Reconciliation Act of 2000	—	(H.R. 4810, vetoed)	08-05-00
18 Economic Growth and Tax Relief Reconciliation Act of 2001	P.L. 107-16	115 Stat. 38-150	06-07-01
19 Jobs and Growth Tax Relief Reconciliation Act of 2003	P.L. 108-27	117 Stat. 752-768	05-28-03
20 Deficit Reduction Act of 2005	P.L. 109-171	120 Stat. 4-184	02-08-06
21 Tax Increase Prevention and Reconciliation Act of 2005	P.L. 109-222	120 Stat. 345-373	05-17-06
22 College Cost Reduction and Access Act of 2007	P.L. 110-84	121 Stat. 784-822	09-27-07

Source: Prepared by the Congressional Research Service.

The Byrd rule was fully in effect during the consideration of all but the first of the 17 reconciliation bills. During consideration of that bill, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, the Byrd rule applied to the consideration of the conference report, but not to initial consideration of the bill.

The 17 reconciliation bills considered and passed by the House and Senate during this period stemmed from reconciliation directives in 15 different budget resolutions. Two budget resolutions, in 1997 (for FY1998) and 2005 (for FY2006), led to the enactment of two reconciliation measures in each year.

As **Table 3** shows, there have been 53 points of order and 42 waiver motions, for a total of 95 actions, considered and disposed of under the Byrd rule.¹³ (There is not a one-to-one correspondence between points of order and waiver motions. A point of order can be raised under the Byrd rule without a waiver motion being offered; conversely, a waiver motion can be offered without a point of order having been raised.)

¹³ The Byrd rule is only one of many point-of-order provisions in Titles III and IV of the CBA of 1974, as amended (2 U.S.C. 644). In some instances, points of order or waiver motions are made under the act by general reference only (such as a Senator raising a point of order "under Title III of the Act") rather than by specific reference to the provision(s) involved. When only general references are made, it usually is impossible to determine (by reference to debate in the *Congressional Record* alone) which provision of the act is involved. Consequently, this report reflects only those instances when specific reference was made to Section 313 of the act or to the Byrd rule and may undercount somewhat the actual number of actions involving the rule.

Table 3. Reconciliation Acts: Summary of Points of Order and Waiver Motions Under the Byrd Rule

Public Law (or Vetoed Bill) Number	Calendar Year(s) of Senate Action	Points of Order							Waiver Motions			Total Points of Order and Waiver Motions
		To Strike Provision(s) From Bill or Conference Report			To Bar Consideration of Amendment			Total	Approved	Rejected	Total	
		Sustained	Fell	Total	Sustained	Fell	Total					
P.L. 99-272	1985	—	—	—	—	—	—	—	—	—	—	—
P.L. 99-509	1986	1	1	2	—	—	—	2	1	1	2	4
P.L. 100-203	1987	—	—	—	—	—	—	—	1	—	1	1
P.L. 101-239	1989	—	—	—	—	—	—	—	—	—	—	—
P.L. 101-508	1990	3	1	4	2	—	2	6	1	2	3	9
P.L. 103-66	1993	2	2	4	3	—	3	7	—	4	4	11
H.R. 2491	1995	4	—	4	4	—	4	8	—	7	7	15
P.L. 104-193	1996	4	1	5	1	—	1	6	1	3	4	10
P.L. 105-33	1997	2	2	4	3	—	3	7	2	3	5	12
P.L. 105-34	1997	1	2	3	6	—	6	9	2	6	8	17
H.R. 2488	1999	1	—	1	2	—	2	3	1	3	4	7
H.R. 4810	2000	—	1	1	2	—	2	3	—	2	2	5
P.L. 107-16	2001	—	—	—	—	—	—	—	—	—	—	—
P.L. 108-27	2003	—	—	—	1	—	1	1	—	1	1	2
P.L. 109-171	2005	1	—	1	—	—	—	1	—	1	1	2
P.L. 109-222	2005-2006	—	—	—	—	—	—	—	—	—	—	—
P.L. 110-84	2007	—	—	—	—	—	—	—	—	—	—	—
Total		19	10	29	24	—	24	53	9	33	42	95

Source: Prepared by the Congressional Research Service from data provided in the Legislative Information System.

On the whole, the points of order and waiver motions were disposed of in a manner that favored by a large margin those who opposed the inclusion of extraneous matter in reconciliation legislation, as discussed in more detail below.¹⁴

Five of the six definitions of extraneousness (the exception being recommending changes in Social Security) have been cited as bases for points of order under the Byrd rule. The most common basis, that the provision or amendment did not change outlays or revenues, was cited as the sole basis in 32 instances and as one of two bases in three other instances. None of the other bases were cited in more than six instances. (In some instances, the basis for the point of order was not cited.)

The Byrd rule has been used primarily during initial consideration of a reconciliation measure. It was invoked only five times—twice in 1993, once in 1995, once in 1997, and once in 2005—during consideration of a conference report. In 1993, two points of order against matter characterized as extraneous in a conference report were rejected by the chair. In both instances, the chair's ruling was upheld upon appeal. The two motions to appeal the chair's rulings were defeated by identical votes, 43-57. In 1995, two sections were struck from a conference report and the two chambers had to resolve the final differences with a further amendment between them. In 1997, a section in the conference report was retained following a successful vote (78-22) to waive a point of order. Finally, in 2005, three provisions were struck from a conference report (another provision was retained), necessitating action on a further amendment between the two chambers.

As shown in **Table 3**, points of order and waiver motions under the Byrd rule have occurred more frequently in the 1990s (81) compared to the 1980s (5) or the 2000s (9 so far). The middle years of the decade of the 1990s, covering calendar years 1993 through 1997, was especially active in this regard, accounting for 65 of the total 81 points of order and waiver motions during that decade.

Points of Order

In total, 53 points of order were raised and disposed of under the Byrd rule. Points of order generally were raised successfully; 43 were sustained (in whole or in part), enabling Senators to strike extraneous matter from the legislation in 19 cases and to bar the consideration of extraneous amendments in 24 cases.

Ten of the points of order fell, either upon the adoption of a waiver motion or upon the ruling of the chair.

One point of order was withdrawn and is not counted in **Table 3**.

In two instances, a point of order was not raised because a waiver motion previously had been offered and approved, thus making the point of order moot.

¹⁴ It is difficult, if not impossible, to accurately determine the deterrent effect of the Byrd rule, so this aspect is not addressed in this report.

In many instances, a point of order was raised against multiple provisions, sections, or titles of the bill, sometimes covering a variety of different topics. In a few cases, the Chair ruled that most, but not all, of the provisions violated the Byrd rule.

Waiver Motions

A total of 42 motions to waive the Byrd rule, to permit the inclusion of extraneous matter, were offered and disposed of by the Senate. Waiver motions generally were not offered successfully; 9 were approved and 33 were rejected.

Two other waiver motions were withdrawn and a third waiver motion was changed to a unanimous consent request; they are not counted in **Table 3**

Eight of the nine successful motions were used to protect committee-reported language in the bill or language in the conference report; only one motion to protect a floor amendment was successful.

Eight of the successful waiver motions exceeded the required 60-vote threshold by between two votes and 21 votes; on average, they exceeded the threshold by 12 votes. The remaining successful waiver motion was approved by voice vote.

With regard to the 33 unsuccessful waiver motions, 32 of them fell short of the threshold by between one vote and 43 votes; on average, they fell short of the threshold by 12 votes. The remaining unsuccessful waiver motion was rejected by voice vote. Fifteen of the unsuccessful waiver motions garnered at least 51 votes.

Table 4, at the end of this section, provides more detailed information on points of order and waiver motions made under the Byrd rule from 1985 through 2007.

Years in Which the Byrd Rule Was Not Invoked

In five instances (in 1985, 1989, 2001, 2003, and 2006), the Senate considered reconciliation legislation without taking any actions under the Byrd rule. No points of order were raised, or waiver motions offered, under the Byrd rule during consideration of the conference report on the Consolidated Omnibus Budget Reconciliation Act of 1985, which began on December 19, 1985; as previously mentioned, this was the first instance in which the Byrd rule applied.

In 1989, no actions involving the Byrd rule occurred, in large part because the Senate leadership chose to use an amendment rather than the Byrd rule to deal with extraneous matter in the bill. On October 13, 1989, during consideration of the Omnibus Budget Reconciliation of 1989, the Senate adopted Mitchell Amendment No. 1004 by voice vote. The amendment struck extraneous matter from the bill; its stated purpose was "to strike all matter from the bill that does not reduce the deficit."¹⁵

¹⁵ See the *Congressional Record* (daily ed.) of October 13, 1989, p. S13349. The Senate leadership used an amendment for similar purposes during consideration of the Omnibus Budget Reconciliation Act of 1981.

In 2001 and 2003, no actions under the Byrd rule were taken during consideration of two significant revenue-reduction measures, the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003. The potential application of the Byrd rule to the measures was averted by the inclusion of “sunset” provisions that limited the duration of the tax cuts, thereby preventing deficit increases beyond the applicable budget windows.

Finally, the Senate considered two reconciliation bills in 2005. During consideration of the conference report on the spending reconciliation bill, the Deficit Reduction Act of 2005, in late 2005, a point of order under the Byrd rule was raised successfully. The revenue reconciliation bill, the Tax Increase Prevention and Reconciliation Act of 2005, was initially considered in late 2005, but action on the conference report carried over into 2006. The potential application of the Byrd rule in 2006 to the conference report was avoided because the tax cuts extending beyond the budget window were offset so that no deficit increases occurred in that period.¹⁶

Byrd Rule Controversies

Although the Byrd rule has advocates in the House and Senate, its use sometimes has engendered much controversy, especially between the two houses.

Impact on House-Senate Relations in 1993 and 1994

In 1993 and 1994, during the 103rd Congress, the stringent application of the Byrd rule by the Senate significantly influenced the final shape of the reconciliation act and later affected the deliberations of the Joint Committee on the Organization of Congress.

The House considered its version of the Omnibus Budget Reconciliation Act of 1993, H.R. 2264, on May 27. The Senate considered its version, S. 1134, on June 23 and June 24 (after completing consideration of S. 1134, the Senate amended and passed H.R. 2264 for purposes of conference with the House). Senator Pete Domenici, ranking minority member of the Senate Budget Committee, inserted a list of potentially extraneous matters included in S. 1134 in the *Congressional Record* of June 24 (at p. S7984).¹⁷ The list identified more than a dozen sections in five titles of the bill as possibly being in violation of the Byrd rule, specifically Section 313(b)(1)(A) (i.e., producing no change in outlays or revenues).

At the House-Senate conference stage, the Senate leadership directed the parliamentarian and Senate Budget Committee staff to thoroughly review the legislation to identify any provisions originating in the House or Senate that might violate the Byrd rule.¹⁸ As a result of this review, many provisions were deleted from the legislation in conference.

¹⁶ Senate action on the Tax Increase Prevention and Reconciliation Act of 2005 is discussed in CRS Report RL33132, *Budget Reconciliation Legislation in 2005-2006 Under the FY2006 Budget Resolution*, by Robert Keith.

¹⁷ This requirement was added by Section 13214 of the Omnibus Budget Reconciliation Act of 1990. Consequently, its first application was to consideration of the Omnibus Budget Reconciliation Act of 1993.

¹⁸ See the discussion of “Preemptive Editing of the Conference Report” in *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, op. cit., pp. 245-246. Also, see (1) Richard E. Cohen, “Running Up Against the ‘Byrd Rule’,” *National Journal*, September 4, 1993, p. 2151; (2) George Hager, “The Byrd Rule: Not an Easy Call,” *Congressional Quarterly Weekly Report*, July 31, 1993, p. 2027; and (3) Mary Jacoby, “Senate Parliamentarian Purges (continued...)”

During Senate consideration of the conference report, Senator James Sasser, Chairman of the Senate Budget Committee, discussed this process:

... with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try to clarify and remove items that might be subject to the Byrd rule.

As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule ...

I might say some of our House colleagues could not understand, and I do not blame them because there were a number of things that were pulled out of this budget reconciliation that had been voted on and passed by large majorities in both houses. But simply because they violated the Byrd rule, we had to go to the chairmen of the appropriate House committees and tell them they had to come out. They simply did not understand it. I think it made them perhaps have a little less high esteem for some of us here in the Senate ... In the final analysis, their leadership had to demand that some of these provisions subject to the Byrd rule come out.¹⁹

During House consideration of the conference report, several Democratic Members criticized the Byrd rule and discussed its impact on the legislation. For example, Representative Dan Rostenkowski, chairman of the House Ways and Means Committee, stated:

... I also have to express my grave concerns regarding the other body's so-called Byrd rule. As a result of this procedural rule, policies that would have significantly improved the Medicare Program could not even be considered. Over 80 pages of statutory language were stripped out of the Medicare title. Staff wasted countless hours, scrutinizing every line to ensure that there is nothing that would upset our friends at the other end of the Capitol. Even more absurd is the fact that most of the items stripped were minor and technical provisions that received bipartisan support when they passed both the House and the Senate last year.

I hope that Members on both sides of the aisle share my grave concerns about how this rule has been used, and its impact on reconciliation. I sincerely hope that this rule will be reconsidered before we ever return to the reconciliation process again.²⁰

Controversy over the Byrd rule persisted during late 1993 and into 1994. The Joint Committee on the Organization of Congress, co-chaired by Representative Lee Hamilton and Senator David Boren, was slated to make recommendations on congressional reform, including changes in the budget process, in December of 1993. Representative Martin Olav Sabo, chairman of the House Budget Committee, wrote to Co-Chair Hamilton in October, telling him that "widespread use [of the Byrd rule] this year was extremely destructive and bodes ill for the reconciliation process in the future." Further, he stated that "the use of mechanisms like the Byrd rule greatly distorts the

(...continued)

Budget Bill of Measures That Could Violate Byrd Rule," *Roll Call*, August 5, 1993, p. 9.

¹⁹ See the remarks of Senator Sasser in the *Congressional Record*, daily edition (August 6, 1993), p. S10662.

²⁰ See the remarks of Representative Rostenkowski in the *Congressional Record*, daily edition, (August 5, 1993), p. H 6126. He discusses specific programs dropped from the conference report because of the Byrd rule p. H6124. Also, see the remarks that same day of Representatives de la Garza (p. H6143), Vento (p. H6235), and Stenholm (p. H6257).

balance of power between the two bodies” and that strict enforcement of the Byrd rule “requires that too much power be delegated to unelected employees of the Congress.”²¹

Chairman Sabo attached two Budget Committee staff documents to his letter: (1) a 29-page listing of reconciliation provisions “dropped or modified” in conference in order to comply with the Byrd rule, and (2) a three-page statement identifying specific problems caused by the rule (including a bar against including authorizations savings in reconciliation, the forcing of piecemeal legislation, incentives to use counterproductive drafting techniques to mitigate effects, and a bar against provisions achieving savings or promoting efficiency when the Congressional Budget Office was unable to assign particular savings to them).

The Senate Members of the Joint Committee on the Organization of Congress recommended in their final report that a provision clarifying “that the ‘Byrd rule’ is permanent, applies to conference reports, requires sixty votes to waive, and applies to extraneous matters” be included in a broad reform bill.²² Legislation embodying the Senate recommendations (S. 1824) was introduced on February 3, 1994 (the recommendation pertaining to the Byrd rule was set forth in Section 312 of the bill). The House Members of the Joint Committee did not include any recommendations regarding the Byrd rule in their report or legislation (H.R. 3801, also introduced on February 3, 1994).

The day after the two reform bills were introduced, the chairmen of 15 House committees wrote to Speaker Tom Foley. They urged him to meet with Senate Majority Leader George Mitchell in order to get Section 312 of S. 1824, dealing with the Byrd rule, removed from the reform package.²³

On July 19, 1994, Chairman Sabo introduced H.R. 4780. The bill would have amended the CBA of 1974 to make the Byrd rule “applicable to the Senate only,” chiefly by removing references to conference reports in Section 313 of the act.²⁴

None of the three bills cited above were acted upon before the 103rd Congress adjourned.

Effects on Tax-Cut Legislation

During the 106th Congress, the budget resolutions for FY2000 and FY2001 included reconciliation instructions directing the House Ways and Means and Senate Finance Committees to develop legislation implementing substantial reductions in revenue.²⁵ The reconciliation instructions in the two budget resolutions called for total revenue reduction over five years of

²¹ Letter from Representative Martin Olav Sabo to Representative Lee H. Hamilton, October 26, 1993, 2 pp.

²² See Organization of the Congress, *Final Report of the Senate Members of the Joint Committee on the Organization of Congress*, S.Rept. 103-215, vol. I, December 1993, pp. 14 and 15.

²³ The letter is discussed in: Karen Foerstel, “Byrd Rule War Erupts Once Again,” *Roll Call*, February 24, 1994, pp. 1 and 13.

²⁴ See the following article for a discussion of the Sabo bill: Mary Jacoby, “Sabo Bill Would Kill Byrd Rule For Good,” *Roll Call*, July 25, 1994, p. 12.

²⁵ See Sections 104 and 105 of H.Con.Res. 68, the FY2000 budget resolution (the conference report was H.Rept. 106-91, April 14, 1999), and Sections 103 and 104 of H.Con.Res. 290, the FY2001 budget resolution (the conference report was H.Rept. 106-577, April 12, 2000). The FY2001 budget resolution also included reconciliation instructions directing the House Ways and Means Committee to develop legislation reducing the debt held by the public.

\$142 billion and \$150 billion, respectively.²⁶ Neither budget resolution included any instructions regarding spending. This marked the first time that the House and Senate had recommended substantial reductions in revenue through the reconciliation process without offsetting savings to be achieved in spending programs. Any resultant reconciliation legislation was expected under these budget resolutions to reduce large surpluses, not to incur or worsen deficits.

In each of these two years, there was controversy in the Senate regarding the appropriateness of using reconciliation procedures under circumstances that worsened the federal government's fiscal posture. Some Senators argued that the use of reconciliation, with its procedural restrictions that sharply curtail debate time and limit the offering of amendments in comparison to the usual Senate procedures, could be justified only when it was necessary to reduce or eliminate a deficit (or to preserve or increase a surplus). Other Senators maintained that reconciliation is neutral in its orientation—the language in Section 310 of the CBA of 1974 refers to “changes” in spending and revenue amounts, not increases or decreases—and is intended to expedite the consideration of important and potentially complex budgetary legislation.

Against the backdrop of the larger issue of the appropriate use of reconciliation under these circumstances, Senators also debated in particular the impact of the Byrd rule on the scope of the resultant tax-cut legislation. One of the determinants of extraneousness under the Byrd rule is whether the legislation reduces revenues or increases spending in the net beyond the budget window (i.e., the period to which the reconciliation instructions apply). Changes in tax law, however, often are made on a permanent basis. As a consequence, reconciliation legislation recommending permanent tax cuts may run afoul of the Byrd rule.

During consideration of the Taxpayer Refund and Relief Act of 1999 and the Marriage Tax Relief Reconciliation Act of 2000, the Byrd rule was used successfully to ensure the inclusion of sunset provisions in the bills, limiting the effectiveness of the tax cuts to the period covered by the reconciliation instructions.²⁷

During the first session of the 107th Congress, the Senate again addressed these issues as it considered H.R. 1836, largely embodying President Bush's proposal for a \$1.6 trillion tax cut.²⁸ In addition to debating the appropriateness of using the reconciliation process to expedite tax-cut legislation, Senators argued for and against the inclusion of the 10-year “sunset” provision necessary to achieve compliance with the Byrd rule. Some Senators maintained that permanent changes in tax law should be allowed under reconciliation procedures, just as they often are customarily made in freestanding tax legislation. Other Senators praised the value of being able to reexamine such significant modifications in budgetary policy in future years when economic circumstances may have changed materially.

²⁶ The instructions in the FY2000 budget resolution covered 10 fiscal years, while the instructions in the FY2001 budget resolution covered five fiscal years. The reconciliation instructions in the FY2000 budget resolution also provided for total revenue reductions of \$778 billion over 10 years.

²⁷ Proceedings under this aspect of the Byrd rule, in the case of the Taxpayer Refund and Relief Act of 1999, occurred on July 28, 1999; see the remarks of Senators Roth, Moynihan, Conrad, Gramm, and others in the *Congressional Record*, daily edition (July 28, 1999), pp. S9478-S9484. With regard to the Marriage Tax Relief Reconciliation Act of 2000, see the remarks of Senator Roth in the *Congressional Record* (July 14, 2000), pp. S6782-S6784.

²⁸ See, for example, the remarks of Senator Robert C. Byrd, “Reconciliation Process Reform,” in the *Congressional Record*, daily edition (February 15, 2001), pp. S1532-S1536, and opening remarks of Senator Byrd and others during Senate consideration of H.R. 1836 in the *Congressional Record*, daily edition (May 17, 2001), p. S5028.

The sunset provision was retained in the final version of the legislation, as Section 901 (115 Stat. 150) of P.L. 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001.

In 2003, during the first session of the 108th Congress, the Byrd rule influenced the form of revenue reconciliation directives in the FY2004 budget resolution (H.Con.Res. 95).²⁹ Initially, House and Senate leaders indicated that they would settle on a conference agreement instructing the House Ways and Means Committee to reduce revenues through reconciliation by \$550 billion or more for the period covering FY2003-FY2013 and the Senate Finance Committee to reduce revenues by \$350 billion for the same period. A majority of Senators had indicated their opposition to revenue reductions greater than \$350 billion.

The use of dual reconciliation instructions in the budget resolution would enable the leadership to secure passage of the budget resolution while leaving open the possibility that a subsequent conference on the differing versions of the revenue reconciliation measure passed by the two houses might reach an acceptable compromise between these two amounts.

However, it soon became apparent that, if the Senate initially passed a revenue reconciliation measure consistent with the directive in the budget resolution (i.e., reducing revenues by \$350 billion), the later consideration of a conference agreement reflecting a compromise level of revenue reductions greater than \$350 billion could violate the Byrd rule. In particular, Section 313(b)(1)(B) defines as extraneous any provision reported by a committee that reduces revenues (or increases outlays) if the net effect of all of the committee's provisions is that it fails to achieve its reconciliation instructions. Proposing revenue reductions greater than the level of reductions set in the reconciliation instructions would be considered a failure to achieve the instructions.

In order to resolve the problem, the conference agreement on the FY2004 budget resolution instructed both the House Ways and Means Committee and the Senate Finance Committee to reduce revenues by \$550 billion over FY2003-FY2013, but a point of order barred the initial consideration in the Senate of a reconciliation measure (as distinct from a conference report) containing revenue reductions in excess of \$350 billion for this period.³⁰ The FY2004 budget resolution further provided that the Senate point of order could be waived only by the affirmative vote of three-fifths of the Members duly chosen and sworn (i.e., 60 Senators, if no seats are vacant). This procedural formulation strengthened the position of those who favored initial Senate passage of a reconciliation measure limited to \$350 billion in revenue reductions, but removed the potential Byrd rule hurdle should a majority of Senators later choose to support a conference agreement providing as much as \$550 billion in revenue reductions.³¹

²⁹ See H.Rept. 108-71 (April 10, 2003).

³⁰ The reconciliation directives are set forth in Section 201 of H.Con.Res. 95; the Senate point of order is set forth in Section 202. A portion of the reconciled amounts is set forth as outlay increases in order to accommodate changes in tax programs (e.g., refundable tax credits) that are scored as outlays. Consequently, the aggregate instruction of \$550 billion is actually \$535 billion in revenue reductions and \$15 billion in outlay increases in the House, and \$522.524 billion in revenue reductions and \$27.476 billion in outlay increases in the Senate.

³¹ For further discussion of this matter, see CRS Report RL31902, *Revenue Reconciliation Directives in the FY2004 Budget Resolution*, by Robert Keith. Also, see (1) "Concessions to Moderates Imperil Early GOP Tax Cutting Accord," by Andrew Taylor, *CQ Weekly*, April 12, 2003; and (2) "Grassley Promises GOP Moderates Final Tax Cut Will Not Top \$350 Billion," by Bud Newman, *BNA's Daily Report for Executives*, Monday, April 14, 2003, p. G-7.

Senator Max Baucus, the ranking minority member of the Senate Finance Committee, questioned whether the directive to the committee should be regarded as \$350 billion or \$550 billion.³² Ultimately, Senator Charles Grassley, chairman of the Senate Finance Committee, indicated that he had reached agreement with other Senators to adhere to the \$350 billion level in the conference on the reconciliation measure, notwithstanding the fact that the limitation in Section 202 of the budget resolution only applied to initial consideration of the measure.³³ The resultant reconciliation measure (H.R. 2), according to final estimates of the Congressional Budget Office and Joint Tax Committee, contained \$349.7 billion in revenue reductions and related outlay changes.³⁴ The bill, which became P.L. 108-27, the Jobs and Growth Tax Relief Reconciliation Act of 2003, on May 28, 2003, included sunset provisions in Section 107 (117 Stat. 755-756) and Section 303 (117 Stat. 764).

During the 109th Congress, the House and Senate considered separate revenue and spending reconciliation bills pursuant to the FY2006 budget resolution. The budget resolution provided for a revenue reconciliation bill that reduced revenues by up to \$70 billion over the five-year budget window (FY2006-FY2010) used in the budget resolution. The conference agreement on the revenue reconciliation bill, H.R. 4297, recommended significant revenue reduction beyond the budget window, principally with respect to extensions of current capital gains and dividends provisions through December 31, 2010.³⁵ Instead of incorporating sunset provisions in order to comply with the Byrd rule, as had been done in the past, the conferees included offsets of the revenue losses. The JCT estimated the total revenue loss over ten years (FY2006-FY2015) at \$69.084 billion, an amount nearly \$900 million smaller than the five-year revenue loss. The measure became P.L. 109-222, the Tax Increase Prevention and Reconciliation Act of 2005, on May 17, 2006.

Rules Changes in the 110th and 111th Congresses Barring Deficit Increases

In the 110th and 111th Congresses, the House and Senate adopted or renewed several rules changes barring the consideration of legislation that would lead to deficit increases.

House Rule on Reconciliation

In January 2007, at the beginning of the 110th Congress, the House adopted a change to its standing rules barring the use of reconciliation in a manner that would increase the deficit (or reduce the surplus). As part of the changes in the budget process included in the rules package for that Congress, H.Res. 6, the House included a ban against the consideration of a budget resolution containing reconciliation directives that would increase the deficit (or reduce the surplus) over the

³² See the remarks of Senator Max Baucus in the *Congressional Record*, daily edition (April 11, 2003), pp. S5296-S5298, in which he inserts a letter from Senate Parliamentarian Alan Frumin to Senate Democratic Leader Thomas Daschle regarding the potential application of the Byrd rule to the consideration of reconciliation legislation.

³³ See the remarks of Senator Grassley in the *Congressional Record*, daily edition (April 11, 2003), pp. S5295-S5296.

³⁴ See the CBO cost estimate on H.R. 2 (108th Cong.) of May 23, 2003, available at <http://www.cbo.gov>.

³⁵ Although the capital gains and dividends provisions would sunset on December 31, 2010, they would incur revenue losses in succeeding years (e.g., in FY2012, a \$12.698 billion revenue loss for the capital gains provision and a \$6.326 billion revenue loss for the dividends provision).

six-year or 11-year periods beginning with the current fiscal year. Section 402 of H.Res. 6 added the ban as Clause 7 of House Rule XXI:

7. It shall not be in order to consider a concurrent resolution on the budget, or an amendment thereto, or a conference report thereon that contains reconciliation directives under section 310 of the Congressional Budget Act of 1974 that specify changes in law reducing the surplus or increasing the deficit for either the period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year or the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year. In determining whether reconciliation directives specify changes in law reducing the surplus or increasing the deficit, the sum of the directives for each reconciliation bill (under section 310 of the Congressional Budget Act of 1974) envisioned by that measure shall be evaluated.

In January 2009, the House adopted its rules package for the 111th Congress, H.Res. 5, which renewed Clause 7 of House Rule XXI without change.

Senate Rule on Reconciliation

The Senate, in May 2007, also adopted a rule barring the use of reconciliation in a manner that would increase the deficit (or reduce the surplus). The rule was included in the FY2008 budget resolution (S.Con.Res. 21, 110th Congress) as Section 202:

Sec. 202. Senate Point of Order Against Reconciliation Legislation That Would Increase the Deficit or Reduce a Surplus.

(a) In General.—It shall not be in order in the Senate to consider any reconciliation bill, resolution, amendment, amendment between Houses, motion, or conference report pursuant to section 310 of the Congressional Budget Act of 1974 that would cause or increase a deficit or reduce a surplus in either of the following periods:

(1) The current fiscal year, the budget year, and the ensuing 4 fiscal years following the budget year.

(2) The current fiscal year, the budget year, and the ensuing 9 fiscal years following the budget year.

(b) Supermajority Waiver and Appeal in the Senate.—

(1) Waiver.—This section may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) Appeal.—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(c) Determination of Budget Levels.—For purposes of this section, the levels of net deficit increases shall be determined on the basis of estimates provided by the Senate Committee on the Budget.

The Senate rule on reconciliation covers the same two time periods set forth in the House rule. Unlike the House rule, the Senate rule applies to reconciliation legislation rather than to a budget

resolution containing reconciliation directives. Further, the Senate rule does not carry a sunset date and is not otherwise time-limited.

Other Rules Changes

The House also adopted a "pay-as-you-go" (PAYGO) rule at the beginning of the 110th Congress as part of action on H.Res. 6. The House's PAYGO rule requires that changes in legislation affecting direct spending or revenues be deficit neutral; it is Clause 10 of House Rule XXI.

Several months later, as part of action on the FY2008 budget resolution, the Senate revised its long-standing PAYGO in a manner that conforms closely to the new House rule. The Senate's PAYGO rule is Section 201 of the budget resolution (S.Con.Res. 21, 110th Congress) and carries a sunset date of September 30, 2017. Both rules enforce the PAYGO requirement over the six-year and 11-year periods used in the new reconciliation rules described above.³⁶

Finally, the Senate established and revised points of order dealing with additional deficit controls in the budget resolutions for FY2008 and FY2009, in the 110th Congress, and in the budget resolution for FY2010, in the 111th Congress.³⁷

The recent rules changes pertaining to deficit control presumably make it less likely that the Senate would consider reconciliation legislation potentially in violation of the Byrd rule's prohibition against deficit increases beyond the budget window.

³⁶ The House PAYGO rule is discussed in CRS Report RL33850, *The House's "Pay-As-You-Go" (PAYGO) Rule in the 110th Congress: A Brief Overview*, by Robert Keith. The Senate PAYGO rule is discussed in CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.. Both rules are discussed in CRS Report RL34300, *Pay-As-You-Go Procedures for Budget Enforcement*, by Robert Keith.

³⁷ These points of order, as well as others, established by the budget resolutions are discussed in CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.