

EXPLAINER

BUDGET RECONCILIATION AND THE FILIBUSTER



WHAT IS BUDGET RECONCILIATION?

Budget reconciliation is a special parliamentary procedure that allows legislation about how the federal government spends money to pass more quickly.

WHY IS CONGRESS USING BUDGET RECONCILIATION?

Budget reconciliation bypasses the **filibuster**! The filibuster is another procedural rule specific to the Senate that requires 60 votes in order to end debate and call for a vote. It effectively creates a 60-vote threshold for legislation to pass. The current U.S. Senate is split 50-50 with Vice President Kamala Harris serving as a tie-breaker vote. Democrats know that they cannot get 10 Republican Senators to support immigration (or any number of other priorities), and so are using budget reconciliation to avoid the filibuster.

Congress created budget reconciliation in the 1970s to avoid the filibuster preventing Congress from passing important spending bills. Congress can only do 3 per year and usually does fewer. Congress can address spending, revenue, and the debt limit either in separate bills or in combination in one or two bills; it is also possible that Congress could address multiple fiscal years in a single calendar year, as it is doing now. A lot of major legislation has been passed through budget reconciliation, including the Trump tax cuts.

WHAT IS THE PROCESS OF BUDGET RECONCILIATION?

Budget reconciliation happens in two stages: first, Congress must pass a **budget resolution**, which provides a roadmap for the spending bill they will ultimately pass; the budget resolution contains instructions to House and Senate committees, telling them to draft legislation to spend a certain amount of money in order to accomplish the policy priorities laid out in the budget resolution. Committees receive instructions based on their jurisdiction, or what issues they are responsible for. Committees cannot spend more money than the instructions specify, though they can spend less or set up programs that earn more. The budget resolution is not a law, and so it does not have to be signed by the president.

After the committees in both the Senate and the House draft their sections, each chamber as a whole combines those sections and votes on its version of the bill. Additionally, the **Senate parliamentarian** must decide whether any provisions in the bills violate the “Byrd rule,” which states that every provision must primarily affect spending or revenue – i.e., the budget. The Senate parliamentarian is a non-elected employee of the Senate, a position currently held by Elizabeth MacDonough. As such, the Senate could disregard her advice, although the Senate has rarely done so in the past. Then a separate committee resolves the differences between the Senate and House versions and the final bill goes to the president for his signature.

WHAT IS THIS THING CALLED VOTE-A-RAMA?



At both the resolution and the actual bill stages, the Senate engages in a process known as “Vote-a-rama” before voting. Normally, the Senate has ways of limiting the number of amendments that members offer and consider, but during the budget reconciliation process, the Senate **must consider all proposed amendments**. However, the reconciliation process also limits the Senate’s debate time, and once it has elapsed, amendments must be voted on without debate. Usually, each amendment only gets 10-15 minutes for consideration and a vote. The Senate does them all in a row, sometimes all night, until they strike a deal or tire out. Amendments must be “germane” which means that they have to do with the subject of the bill. These amendments also only require 51 votes to pass.

This rushed process is dangerous because Senators can add harmful provisions very quickly. During the resolution phase, such amendments are just policy statements, as the resolution is not a law. However, during the legislation stage, passed amendments could change the actual bill.

HANG ON, ALL THIS TO AVOID THE FILIBUSTER? WHY DO WE HAVE THE FILIBUSTER?

Yep! The filibuster started with Aaron Burr making a mistake. Shortly after killing Alexander Hamilton, as he was leaving the Senate, Burr said that one of the Senate’s rules – the one that let them cut off debate – was redundant. He was wrong, and when the Senate got rid of it, they literally had no way to make Senators stop debating and vote. However, filibustering back then also meant the Senate could not do anything else and Senate norms prevented frequent filibusters. When Senators did, it was often to protest Civil Rights or anti-lynching legislation. Eventually the Senate created a “cloture” rule, which at first required even more votes than today’s 60, but which eventually took its present form.



Modern developments have resulted in the current filibuster situation. First, now a filibuster will not halt all other Senate business, and so it is less disruptive and easier to use. Second, Senators no longer need to hold the floor to filibuster – they state their intention to filibuster via email. Third, the received wisdom is that the majority party will receive the credit for any legislation passed and will lose power if the public views them as ineffective. Therefore, the minority party has a greater incentive to prevent the majority party from accomplishing its agenda than it does to collaborate on legislation.

Critics of the filibuster have described it as an anti-majoritarian roadblock in an already anti-majoritarian body. States are assigned their numbers of representatives in the House of Representatives based on population. However, because each state receives two Senators, less populous states have equal power to more populous states, and the residents of the least populated states therefore have more power within the Senate. For example, within the Senate, the least populated state, Wyoming (population about 580,000) has equal power to the most populated state, California (population about 40 million), which is nearly 70 times the size of Wyoming. You would have to combine the populations of the bottom 16 states before you exceeded the population of the *third* most populous state, Florida. Because a minority of Senators can use the filibuster to block legislation, the filibuster amplifies the anti-majoritarian nature of the Senate as a whole.

WHY CAN'T THE SENATE JUST GET RID OF THE FILIBUSTER?

They can! The filibuster is a Senate procedural rule, not a law, and can be fixed with either a vote by two-thirds of the Senate or the so-called “nuclear option,” which would require 51 votes. Harry Reid already used the nuclear option on lower federal court appointments after Republicans filibustered every one of President Obama’s nominees. Then Mitch McConnell also used it to approve Supreme Court nominees with a simple majority. However, partly because the filibuster gives the minority party a lot of power, and partly because it gives individual Senators a lot of power, and because both parties have been in the minority, there is resistance to getting rid of it.

WHAT HAPPENS NEXT ON THIS ROUND OF BUDGET RECONCILIATION?

The drafting and amendment process within the House, also known as *markup* has stalled as Democrats try to reach consensus about the size and scope of the reconciliation bill. As of publication, the Senate parliamentarian has opined that two versions of the immigration proposal (which would have included versions of the Dream Act, Promise Act, and Essential Workers Acts; or alternatively updated the registry date in the reconciliation legislation) do not comport with the Byrd rule. Democrats now plan to try to include a provision that would grant many people work permits but not permanent status, which they will again present to the Senate parliamentarian. The Democrats also need to decide whether or not they will follow the parliamentarian’s advice regarding the other versions of the immigration proposal. Assuming the Democrats reach an agreement, the Senate will produce and vote on its version and will do another vote-a-rama before passing the bill as a whole. Finally, if the bill passes, then a committee will conform the two versions into a single bill before sending it to the President to sign.