

June 1, 2015

The Honorable
Chairman
Committee on
Office address
Washington, DC 20515

Dear Chairman :

Thank you for your significant contribution to the adoption of the Concurrent Resolution on the Budget for Fiscal Year 2016, S. Con. Res. 11, the first Republican conference report on the budget agreed to in almost 10 years. Accordingly, the reconciliation directives set forth in section 2002 of the conference report are now in effect.

Three committees – the Committees on Education and the Workforce, Energy and Commerce, and Ways and Means – are each directed to submit to the Committee on the Budget recommendations that would reduce the deficit by at least \$1 billion over the period of fiscal years 2016 through 2025. In compiling your recommendations and as set forth in section 2002 of S. Con. Res. 11, please review the language contained in Section 2002(b)(2) and Title VI relating to reconciliation and the repeal of the President's health care law. The deadline for submissions is July 24, 2015.

Pursuant to section 310 of the Congressional Budget Act of 1974, the Committee on the Budget will combine these submissions and report them to the House without substantive revision.

The Committee on the Budget stands ready to assist you and your committee throughout the reconciliation process. Attached are reconciliation guidelines addressing issues such as procedures for marking up reconciliation recommendations, the criteria for determining compliance with reconciliation targets, and potential pitfalls to avoid during consideration of the conference report.

If you have any questions, please contact me or my staff at (202) 226-7270.

Sincerely,

Tom Price, M.D.
Chairman
Committee on the Budget

RECONCILIATION GUIDELINES

RECONCILIATION INSTRUCTIONS FOR FISCAL YEAR 2016

- The Concurrent Resolution on the Budget for Fiscal Year 2016, S. Con. Res. 11, as adopted on May 5, 2015, directs the Committees on Education and the Workforce, Energy and Commerce, and Ways and Means to each submit to the Committee on the Budget recommendations that reduce the deficit by at least \$1 billion over the period of fiscal years 2016 through 2025.
- The \$1 billion net deficit reduction must result from reductions in direct mandatory spending, increases in revenue, or a combination of the two. Please be aware, however, the fiscal year 2016 budget resolution assumes that all of these savings will be achieved through reductions in direct spending. The savings cannot be in the form of a reduction in authorization levels for a program subject to discretionary appropriations or a reduction in interest payments.
- In compiling your recommendations and as set forth in section 2002 of S. Con. Res. 11, please review the language contained in Section 2002(b)(2) relating to reconciliation and the repeal of the President's health care law.
- The deadline for submitting recommendations to the Committee on the Budget is close of business on Friday, July 24, 2015. Committees should adhere to the deadline unless otherwise advised by the Committee on the Budget.

MARKUP PROCEDURES

- Markup procedures for a reconciliation bill are similar to other legislation except committees can develop legislative language and need not markup from an introduced bill.
- Committees are advised to consult the House Parliamentarian and the Committee on Rules regarding specific questions on markup procedures.
- To the extent practicable, authorizing committees should comply with regular order as delineated in House rules, House Procedure, related precedents and rulings, and relevant committee rules. Specifically, committees should:
 - Provide the required notice for the markup.
 - Make the legislative recommendations available for review prior to markup.
 - Allow permissible amendments in committee.
 - Provide an opportunity for committee members to submit minority, additional, supplemental or dissenting views.

SUBMISSION REQUIREMENTS

A committee's submission to the Committee on the Budget must include:

- Legislative language.
- Transmittal letter signed by the Chairman of the Committee making the submission.
- Summary of the major policy decisions in the legislation.
- Report requirements.

REPORT REQUIREMENTS

Committees must also submit to the Committee on the Budget report requirements, including those required under clause 3 of rule XIII. These submissions should include the following:

- Section-by-section description.
- Congressional Budget Office cost estimate and related budgetary comparisons.

- Committee oversight findings.
- Constitutional authority statement.
- Committee votes.
- Earmark Statement
- Advisory Committee Statement
- Ramseyer submission.
- Performance goals.
- Supplemental, additional, dissenting, and minority views.
- Provisions of H. Res. 5 --- duplicative programs and directed rule making statements.

Submissions should be transmitted to:

The Honorable Tom Price, M.D.
 Chairman
 Committee on the Budget
 207 Cannon House Office Building
 Washington, DC 20515

COMPLIANCE AND SCORING

- If two committees submit the same changes to a program, the committee with primary jurisdiction over the provision gets credited with the savings.
- Committees' compliance with reconciliation instructions is required under section 310 of the Congressional Budget Act. If a committee fails to meet its reconciliation target, it is deemed to be out of compliance with its reconciliation directive.
- Under section 310(d)(5) of the Congressional Budget Act, if a committee fails to meet its directive, the Committee on Rules can make in order an amendment that brings the committee into compliance and there are precedents for the Committee on the Budget to offer such amendments.

- The privilege of a House-passed reconciliation bill in the Senate may be called into question if one or more parts of the reconciliation bill are not in compliance.
- Committees must meet their specified deficit reduction targets for the 10-year period of fiscal years 2016 through 2025.
- As noted previously, since the fiscal year 2016 budget resolution directs the three committees to achieve specified levels of “deficit reduction,” the committees may meet these targets through any combination of legislative provisions that reduce direct spending or increase revenue. The fiscal year 2016 budget resolution assumes that all of these savings will be achieved through reductions in direct spending.
- Committees may not substitute authorization changes in programs, projects, or activities subject to appropriations for changes in mandatory programs.
- The Committee on the Budget will handle scoring changes resulting from changes in law subsequent to the adoption of the fiscal year 2016 budget resolution on a case by case basis. Section 2002 of S. Con. Res. 11 as well as several provisions of the Congressional Budget Act provides the Chairman of the House Committee on the Budget the discretion to determine whether the baseline used to score reconciliation legislation should reflect various actions taken after the adoption of the fiscal year 2016 budget resolution.

PROCEDURES OF THE COMMITTEE ON THE BUDGET

- Once the authorizing committees have submitted their recommendations, the Committee on the Budget will then combine the legislation into a single measure and report it to the House.
- Pursuant to section 310(b)(2) of the Congressional Budget Act, the Committee on the Budget must report the legislation without substantive revision.
- Upon reporting the legislation to the House, the Chairman of the Committee on the Budget will introduce the legislation and file the report.

FLOOR CONSIDERATION

- Prior to floor consideration of the reconciliation bill, we expect that the Committee on Rules will report a rule providing for consideration of the bill. In the past, the Rules Committee has only made amendments in order in very limited circumstances. The rule will also determine the amount of debate time.
- The Chairman and the Ranking Minority Member of the Committee on the Budget usually controls the time for debate of a measure reported by the Budget Committee. The Chairman of the Committee on the Budget will yield time to the chairs of the three reconciled authorizing committees.
- Pursuant to section 310(d) of the Congressional Budget Act, floor amendments to a reconciliation bill must be deficit-neutral. The Budget Act provides that an amendment may increase direct spending or reduce revenue if it is offset in that same amendment by an increase in revenue or a reduction in direct spending.
- While the Congressional Budget Act requires floor amendments to be deficit-neutral, it provides no basis for ruling amendments out of order because they increase direct spending. However, the House CUTGO rule requires that amendments proposing to increase direct spending be offset by reductions in direct spending --- not changes in revenue. Amendments are also subject to other House rules such as germaneness.
- A motion to recommit a reconciliation bill is in order at the conclusion of the consideration of the bill, but it must also be deficit neutral relative to the underlying reconciliation bill and comply with the rules of the House applicable to amendments.
- These requirements, other than the motion to recommit, may be waived or modified by the rule providing for consideration of the reconciliation bill.

CONFERENCE CONSIDERATIONS: THE BYRD RULE

Section 313 of the Congressional Budget Act, commonly known as the “Byrd Rule”, prohibits the consideration of extraneous provisions as part of a

reconciliation bill. The definition of what constitutes an extraneous provision is set forth in the Congressional Budget Act, but is subject to considerable interpretation by the presiding officer (who relies on the Senate parliamentarian).

The rule applies only in the Senate, but has a profound effect on what provisions can ultimately pass Congress. The Byrd Rule is not self-enforcing: a point of order must be raised at the appropriate time to enforce the rule. If a point of order is raised against a provision as extraneous and if 60 Senators vote to waive the Byrd rule, the provision may remain. Otherwise, it will be removed from the bill or conference report.

If a point of order is raised and sustained with respect to a conference report, then the conference report is sent back to the House with the stricken provision or provisions removed. The House may then pass the amended conference report, amend it and send it back to the Senate, or decline to consider it.

BYRD RULE TEST

Section 313(b)(1) of the Congressional Budget Act sets forth six definitions of what is considered extraneous under the Byrd Rule. A provision may be considered extraneous if it:

- Does not produce a change in outlays or revenue.
- Increases outlays or decreases revenue *and* does not meet its reconciliation instructions.
- Is outside the jurisdiction of the reporting committee.
- Produces budgetary effects which are merely incidental to the non-budgetary components of the bill.
- Increases the deficit during a fiscal year after the 10-year budget window(in this case, after fiscal year 2025).
- Changes Social Security.

EXCEPTIONS TO THE BYRD RULE

Section 313(b)(2) of the Congressional Budget Act allows exceptions from the Byrd Rule for provisions that the Chair and Ranking Member of the Senate Committee on the Budget and the Chair and Ranking Member of the Reporting Committee certify meet one or more of the following criteria:

- The effects of the provision are clearly attributable to a provision changing outlays or revenue, and both provisions together produce a net reduction in outlays.
- The provision will result in a substantial reduction in outlays or a substantial increase in revenue during fiscal years after the fiscal years covered by the reconciliation bill.
- The provision will likely reduce outlays or increase revenue based on actions that are not currently projected by the Congressional Budget Office for scorekeeping purposes.
- The provision will likely produce a significant reduction in outlays or increase in revenue, but due to insufficient data such effects cannot be reliably estimated.

Since the Byrd Rule applies to conference reports, committees should take the Byrd Rule into consideration in compiling their recommendations. At the same time, however, committees should not preemptively make concessions to the Senate.

Determinations under the Byrd Rule have not always been based on the letter of the law. In prior reconciliation bills, the Senate Parliamentarian has used a subjective test as to whether the provision in question is the type of provision that the Senate “intended” would be included in reconciliation at the time it adopted the Byrd Rule. House committees should be vigilant in ensuring that comparable House and Senate provisions are treated equitably under the Byrd Rule. House committees will need to find an equitable balance between not allowing the Senate to preempt their actions and producing legislation that would fall under the Byrd Rule in conference.

House committees should take full advantage of House Legislative Counsel, which has experience drafting legislation to accommodate the Byrd Rule.

During the conference on the reconciliation bill, House and Senate Budget Committee staff will attempt to identify all provisions that would be considered extraneous. In addition, during the review of all legislation during the conference stage of reconciliation, a House Budget Committee Counsel will be present to monitor any changes in legislation that may occur due to the Byrd Rule concerns.

OTHER SENATE RULES

- In addition to the Byrd rule, there are other Senate rules requiring a supermajority waiver that could prove an impediment to reconciliation:
 - *The Congressional Budget Act:*
 - Section 310(g) prohibits the consideration of reconciliation legislation that would change the Social Security program.
 - *S.Con.Res. 21 (110th Congress)(the fiscal year 2008 budget resolution):*
 - Section 201 prohibits legislation that would, when combined with previously enacted legislation (excluding reconciliation), increase the deficit over 5 years or 10 years.
 - *S.Con.Res. 11 (fiscal year 2016 budget resolution).*
 - Section 3101 prohibits legislation that would increase the long-term deficit by more than \$5 billion in any of the four succeeding decades beginning after fiscal year 2026.

STAFF CONTACTS

- Questions concerning reconciliation can be directed to House Budget Committee staff at extension 6-7270 as follows:
 - Overview and General Questions: Rick May, Staff Director.
 - Legislative Language and Procedure: Jim Bates, Paul Restuccia, and Mary Popadiuk, Counsels.
 - Scoring: Jim Herz, Director of Budget Review.
 - Health Policy: Alexandra Pryor Campau, Ashley Palmer, and Amanda Street, Policy Advisors.
 - Report Mechanics: Jonathan Romito, Counsel

ATTACHMENT #1

Summary of the Byrd Rule

- Under the Byrd Rule, the Senate is prohibited from considering extraneous matter as part of reconciliation. The definition of what constitutes an extraneous provision is set forth in Section 313 of the Congressional Budget Act, but is subject to considerable interpretation by the presiding officer (who relies on the Senate Parliamentarian).

Byrd Rule Tests

- Section 313(b)(1) of the Congressional Budget Act sets forth six definitions of what is extraneous under the Byrd Rule. A provision, which can be interpreted narrowly or broadly depending on the interpretation of the Senate parliamentarian, may be considered extraneous if it:
 - Does not produce a change in outlays or revenue.
 - Increases outlays during or decreases revenue in the budget window if the committee fails to meet its instructions.
 - Is outside the reporting committee's jurisdiction; (does not apply to conference reports).
 - Produces changes in outlays or revenues that are merely incidental to the non-budgetary components of the bill.
 - Increases outlays or decreases revenue during a fiscal year beyond those covered by the budget resolution (in this case, fiscal year 2026); or
 - Violates Section 310(g) which prohibits recommendations to a reconciliation bill regarding the Old-Age and Survivors and Disability Insurance Trust Funds (Social Security).

Points of Order

- The Byrd Rule is not self-enforcing: a point of order must be raised at the appropriate time to enforce the rule. Many extraneous provisions are routinely included in reconciliation bills, and no points of order are raised. If an extraneous provision is included in the bill, and a point of order against it is sustained, then the provision is dropped. This does not threaten consideration

of the entire bill.

- If that occurs with respect to a conference report, the conference report is sent back to the House with the stricken provision or provisions removed. The House may then pass the amended conference report, amend it and send it back to the Senate, or decline to consider it.

Waivers

- A point of order raised against a provision under the Byrd Rule may only be waived by 3/5ths of the Senate (60 votes).

Exceptions

- Section 313(b)(2) of the Congressional Budget Act allows the Senate Budget Committee Chairman and Ranking Minority Member to certify certain exceptions to the Byrd Rule. The exceptions apply to provisions if those members certify that:
 - The effects are clearly attributable to a provision changing outlays or revenue, and both provisions together produce a net reduction in outlays.
 - It will result in a substantial reduction in outlays or a substantial increase in revenue during fiscal years after the fiscal years covered by the reconciliation bill.
 - It will likely reduce outlays or increase revenue based on actions that are not currently projected by CBO for scorekeeping purposes.
 - It will likely produce significant reduction in outlays or increase in revenue, but due to insufficient data such a reduction or increase cannot be reliably estimated.

ATTACHMENT #2

Illustrative Motion to Transmit Reconciliation Submissions to the Budget Committee

“I move the committee do now transmit the recommendations of this committee, and all appropriate accompanying material including additional, supplemental or dissenting views, to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 2002(a) of the Concurrent Resolution on the Budget for Fiscal Year 2016, S. Con. Res. 11, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.”

ATTACHMENT #3

Illustrative Transmittal Letter

July __, 2015

The Honorable Tom
Price, M.D. Chairman
Committee on the Budget
U.S. House of Representatives
207 Cannon House
Office Building
Washington, DC 20515

Dear Mr. Chairman:

Pursuant to section 2002(a) of the Concurrent Resolution on the Budget, I hereby transmit these recommendations which have been approved by vote of the Committee on _____, and the appropriate accompanying material including additional, supplemental or dissenting views, to the House Committee on the Budget. This submission is in order to comply with reconciliation directives included in S. Con. Res. 11, the fiscal year 2016 budget resolution and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

Sincerely,

Chairman