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SUMMARY

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August 21, 2025

Tori Gorman
Analyst on Congress and the Legislative Process

The Senate's Byrd Rule: Frequently Asked Questions

When the Senate is considering a reconciliation bill, Section 313 of the Congressional Budget and Impoundment Control Act (the Budget Act) prohibits the inclusion of matter that is "extraneous" to a committee's reconciliation instructions. This provision is known as the "Byrd rule," after its chief author and proponent, Senator Robert Byrd of West Virginia. Specifically, pursuant to Section 313(b)(1), matter is *considered extraneous* if it satisfies one or more of the following definitions:

> (A) It would not produce a change in outlays or revenues and is not a change in the terms and conditions under which outlays are made or revenues are collected.
>
> (B) It would increase outlays or reduce revenues, and the net effect of the committee's title that contains the provision is such that the committee is not in compliance with its reconciliation directives.
>
> (C) It is not in the jurisdiction of the committee with jurisdiction over said title or provision.
>
> (D) It would produce changes in outlays or revenues that are merely incidental to the non-budgetary components of the provision.
>
> (E) It would increase net outlays or decrease revenues in a fiscal year beyond those covered by the reconciliation bill, and such increases or decreases are not offset by other provisions in such title in such year.
>
> (F) It contains recommendations with respect to the Social Security Old Age, Survivors, or Disability Insurance programs.

As with other Senate rules, the Byrd rule is not self-enforcing—a Senator must be recognized and state the point of order. Points of order under the Byrd rule are applied surgically: A point of order is raised against specific text in a reconciliation bill, and if sustained the matter in question is stricken but the rest of the measure remains before the Senate for consideration.

Points of order may be raised against one or more provisions with a single motion (designated by title, section number, or page and line number). The presiding officer will then consider each one and decide to sustain all, some, or none of the violations. Motions to waive points of order, or appeals with respect to application of the rule, require the affirmative vote of three-fifths of all Senators, duly chosen and sworn (60 votes in a Senate with no more than one vacant seat).

The Senate Parliamentarian advises the presiding officer on the application and enforcement of the Byrd rule and advises Senate staff on the preemptive scrutiny of reconciliation legislation with respect to the rule prior to its consideration on the Senate floor (a process known colloquially as a "Byrd bath").

The Byrd rule does not apply in the House—it is a Senate-only construct. However, if a House-passed reconciliation measure is received in the Senate and it contains matter that might be considered extraneous, the Senate may still enforce its rule. If the Senate regards the extraneous matter to be significant enough that the measure should not be considered a reconciliation measure, the bill may lose privilege under Section 310 of the Budget Act (although it may still be considered under the regular rules of the Senate). In other cases, the Senate may choose to enforce the Byrd rule through points of order as it would for a Senate-originated reconciliation measure.

The Byrd rule applies during all stages of consideration of a reconciliation bill: on the floor, during an exchange of amendments between houses, and during consideration of a conference report. If a point of order is raised and sustained against a conference report, the matter in question is struck and the Senate proceeds to consider a substitute amendment that excludes the extraneous matter. If the amendment is adopted, the measure is sent back to the House for consideration.

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(1) What is the Byrd rule?

Reconciliation, as provided for in Section 310 of the Congressional Budget and Impoundment Control Act (the Budget Act), is an expedited method by which Congress may adopt changes in spending and revenue laws to achieve the budgetary goals reflected in a congressional budget resolution.[1] When the Senate is considering reconciliation legislation pursuant to the Budget Act, certain restrictions apply. Among them is the "Byrd rule" (Section 313 of the Budget Act)—so named after its chief author and proponent, Senator Robert Byrd of West Virginia.

Specifically, the Byrd rule prohibits the inclusion of matter in reconciliation legislation that is *extraneous* to a committee's reconciliation directives in the associated budget resolution. (An example of reconciliation directives is provided in **Figure 1**.) The rule comprises six definitions of what constitutes extraneous matter for purposes of the rule—organized around the foundational principle that matter in reconciliation legislation should be "budgetary"—and is enforceable by points of order. The text of the Byrd rule is reprinted in the **Appendix**.

Despite its brevity, the interpretation and application of the Byrd rule can be complex and, at times, controversial. Key phrases of the rule are open to interpretation, and the determination of what constitutes extraneous matter often requires exercises in judgment that are dependent on the unique provisions and circumstances of a legislative proposal.

Figure 1. Example of Reconciliation Directives to a Committee in a Budget Resolution

SEC. 2002. Reconciliation in the Senate.

(a) In general.—

(1) SUBMISSIONS.—In the Senate, not later than May 9, 2025, the committees named in paragraph (2) shall submit their recommendations to the Committee on the Budget of the Senate. Upon receiving all such recommendations, the Committee on the Budget of the Senate shall report to the Senate a reconciliation bill carrying out all such recommendations without any substantive revision.

(2) INSTRUCTIONS.—

(A) COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY.—The Committee on Agriculture, Nutrition, and Forestry of the Senate shall report changes in laws within its jurisdiction that reduce the deficit by not less than $1,000,000,000 for the period of fiscal years 2025 through 2034.

(B) COMMITTEE ON ARMED SERVICES.—The Committee on Armed Services of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than $150,000,000,000 for the period of fiscal years 2025 through 2034

*****

Source: H.Con.Res. 14, the FY2025 budget resolution (119th Congress).

Notes: For more information on reconciliation directives in a budget resolution, see CRS Report R41186, *Reconciliation Directives: Components and Enforcement*, by Megan S. Lynch.

(2) Why did the Senate adopt the Byrd rule?

First adopted in 1986, the Byrd rule was a response to the proliferation of committee recommendations in reconciliation bills that were unrelated to a committee's directives in the associated congressional budget resolution. Prior to that time, Senate leadership would typically offer a negotiated, bipartisan amendment during consideration of a reconciliation bill to strike provisions submitted from instructed committees that were regarded as extraneous. In order to

[1] In the Senate, reconciliation legislation is privileged and debate time is limited, which means cloture is not necessary to end debate on the measure. For more information on the reconciliation process, see CRS Report R48444, *The Reconciliation Process: Frequently Asked Questions*, by Tori Gorman.

take a more systematic approach, the new rule was offered. *Riddick's Senate Procedure* describes its evolution:

> Beginning in the early 1980's the reconciliation process began to play an increasingly important role in the legislative schedule of the Congress. Since reconciliation bills are not subject to unlimited debate, they became attractive vehicles for the inclusion by certain committees of provisions of particular interest to the majority of that committee, despite the fact that those provisions were unrelated to the instructions to those committees. Before 1986, there was no point of order against language contained in a bill (as opposed to language offered as an amendment). Therefore this matter unrelated to the reconciliation instructions was not subject to any point of order. Growing concern over the inclusion by committees of this extraneous matter prompted the Senate during the 99th Congress to adopt a rule … to curb this abusive practice. The rule, referred to as the "Byrd Rule," was enacted as Title XX of the Consolidated Omnibus Budget Reconciliation Act of 1985 … and codified as section 313 of the Budget Act by the Budget Enforcement Act of 1990 (title XI11 of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508).[2]

Speaking on behalf of the original rule (offered as an amendment to the Consolidated Omnibus Budget Reconciliation Act of 1985), Senator Byrd explained that its basic purpose was twofold: (1) to protect the effectiveness of the reconciliation process (by excluding extraneous matter that often provoked controversy without aiding deficit reduction efforts) and (2) to preserve the deliberative character of the Senate (by excluding from consideration under expedited procedures legislative matter not central to deficit reduction—matter that should instead be debated under the regular procedures of the Senate):

> [W]e 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 [Congressional Budget Act of 1974] 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.[3]

(3) How does the Byrd rule define *extraneous matter*?

The fundamental objective of reconciliation legislation is to produce budgetary change. The Byrd rule is designed to keep the contents of a reconciliation bill focused on that task by providing a mechanism to strike matter that is "extraneous" to this goal. The following sections—corresponding to subsections of Section 313(b)(1) of the Budget Act—define *extraneous matter* for purposes of the rule.

[2] U.S. Congress, Senate, *Riddick's Senate Procedure: Precedents and Practices*, 101st Cong., S.Doc. 101-28 (GPO, 1992), pp. 504-505.

[3] See the remarks of Sen. Byrd in the *Congressional Record*, vol. 131, part 21 (October 24, 1985), p. 28965, and discussed in CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*, by Bill Heniff Jr.

(A) It does not produce a change in outlays or revenue, including changes in outlays or revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected.

The reconciliation process is designed to produce a fiscal outcome—to affect the federal budget in some way. For a provision to have budgetary effects in this context, it must produce a change in outlays or revenue. Thus, a provision that affects only budget authority would be extraneous. Moreover, only the on-budget effects of legislation are considered for purposes of the Byrd rule—because the associated budget resolution that carries the reconciliation directives to committees is an on-budget agreement.[4]

A score from the Congressional Budget Office (CBO) or the Joint Committee on Taxation (JCT) is typically provided to demonstrate the budgetary effects of a provision. However, according to a 1993 precedent, matter that CBO cannot quantify does not necessarily violate this test.[5] For example, if CBO is unable to provide a numerical point estimate for a provision but can affirm that the provision would change outlays or revenues, it can be argued that the provision is budgetary and, hence, not extraneous under this particular definition (a determination made on a case-by-case basis). In addition, the text of Section 313(b)(1)(A) states that a provision with equal but offsetting budgetary effects (such that the net budgetary effects are zero) is not extraneous.

Alternatively, under the rule, a provision may qualify for inclusion in reconciliation legislation if it is a change in "terms and conditions." The Byrd rule does not define this phraseology, but advisory opinions from the Senate Parliamentarian have described qualifying matter as *necessary* or *essential* to the determination of how outlays are distributed or revenues are collected.[6] For example, a necessary "term and condition"—if struck from the text of the broader provision with budgetary effects—would have an impact on that provision's estimate by changing the level of projected outlays or revenue. If removing the "term and condition" has no impact, however, it is arguably extraneous under this definition.

Provisions that affect spending must produce a change in outlays. A change in budget authority alone is not sufficient.

Budget authority

An authorization—expressed as a dollar amount—provided in federal law that permits an agency to enter into activities that establish a financial liability (called an *obligation*) such as employing personnel, signing contracts, and submitting purchase orders.

Outlays

The issuance of checks, disbursement of cash, or electronic transfer of funds by the Treasury to liquidate a federal obligation.

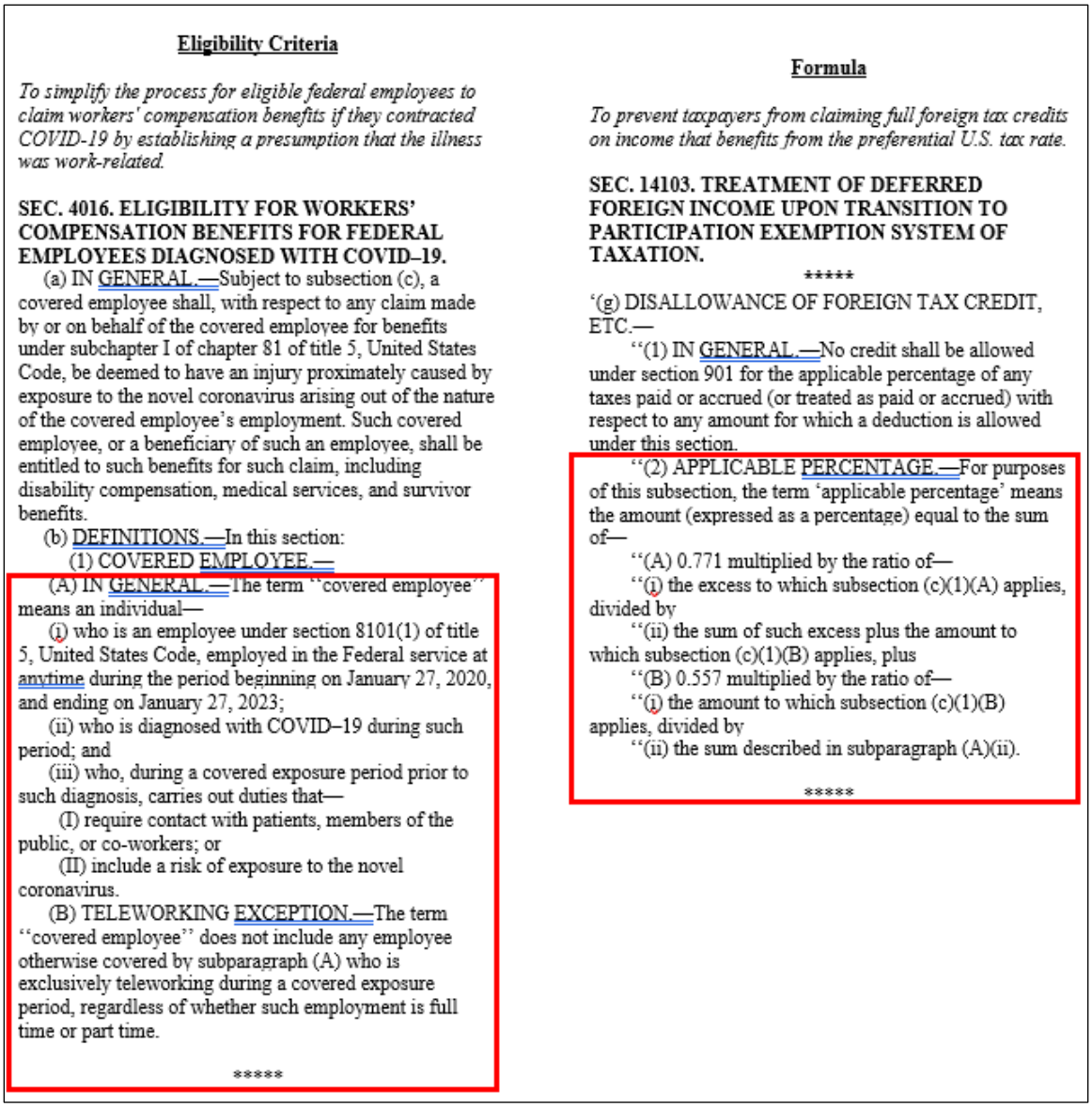
Eligibility criteria and benefit formulas (such as for income support programs or tax credits) typically meet the standard of a necessary "term and condition" (see **Figure 2**).

[4] Pursuant to budget law, the revenues and outlays of the Social Security trust funds (the Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund) and the transactions of the U.S. Postal Service are not counted for purposes of the congressional budget resolution—these amounts are designated "off-budget." Therefore, by extension: (1) the reconciliation directives in a congressional budget resolution reflect on-budget fiscal targets, and (2) compliance with the Byrd rule—which is directly connected to the reconciliation instructions in the associated budget resolution—is determined by the on-budget effects of reconciliation legislation.

[5] See Sen. Danforth, appealing the ruling of the chair, conference report to H.R. 2264, the Omnibus Budget Reconciliation Act of 1993, *Congressional Record*, vol. 139, part 14 (August 6, 1993), pp. 19763-19767.

[6] U.S. Congress, Senate Budget Committee, *The Congressional Budget Process*, committee print, 117th Cong., December 2022, S.Prt. 117-23, pp. 488, 657, 663, 710, https://www.congress.gov/117/cprt/SPRT49524/CPRT-117SPRT49524.pdf.

Figure 2. Eligibility Criteria and Formulas as Examples of "Terms and Conditions"



Eligibility Criteria

To simplify the process for eligible federal employees to claim workers' compensation benefits if they contracted COVID-19 by establishing a presumption that the illness was work-related.

SEC. 4016. ELIGIBILITY FOR WORKERS' COMPENSATION BENEFITS FOR FEDERAL EMPLOYEES DIAGNOSED WITH COVID–19.

(a) IN GENERAL.—Subject to subsection (c), a covered employee shall, with respect to any claim made by or on behalf of the covered employee for benefits under subchapter I of chapter 81 of title 5, United States Code, be deemed to have an injury proximately caused by exposure to the novel coronavirus arising out of the nature of the covered employee's employment. Such covered employee, or a beneficiary of such an employee, shall be entitled to such benefits for such claim, including disability compensation, medical services, and survivor benefits.

(b) DEFINITIONS.—In this section:

(1) COVERED EMPLOYEE.—

(A) IN GENERAL.—The term ''covered employee'' means an individual—

(i) who is an employee under section 8101(1) of title 5, United States Code, employed in the Federal service at anytime during the period beginning on January 27, 2020, and ending on January 27, 2023;

(ii) who is diagnosed with COVID–19 during such period; and

(iii) who, during a covered exposure period prior to such diagnosis, carries out duties that—

(I) require contact with patients, members of the public, or co-workers; or

(II) include a risk of exposure to the novel coronavirus.

(B) TELEWORKING EXCEPTION.—The term ''covered employee'' does not include any employee otherwise covered by subparagraph (A) who is exclusively teleworking during a covered exposure period, regardless of whether such employment is full time or part time.

*****

Formula

To prevent taxpayers from claiming full foreign tax credits on income that benefits from the preferential U.S. tax rate.

SEC. 14103. TREATMENT OF DEFERRED FOREIGN INCOME UPON TRANSITION TO PARTICIPATION EXEMPTION SYSTEM OF TAXATION.

*****

'(g) DISALLOWANCE OF FOREIGN TAX CREDIT, ETC.—

''(1) IN GENERAL.—No credit shall be allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section.

''(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the amount (expressed as a percentage) equal to the sum of—

''(A) 0.771 multiplied by the ratio of—

''(i) the excess to which subsection (c)(1)(A) applies, divided by

''(ii) the sum of such excess plus the amount to which subsection (c)(1)(B) applies, plus

''(B) 0.557 multiplied by the ratio of—

''(i) the amount to which subsection (c)(1)(B) applies, divided by

''(ii) the sum described in subparagraph (A)(ii).

*****

Source: Section 4016 of the American Rescue Plan Act of 2021 (P.L. 117-2) and Section 14103 of the Tax Cut and Jobs Act of 2017 (P.L. 115-97).

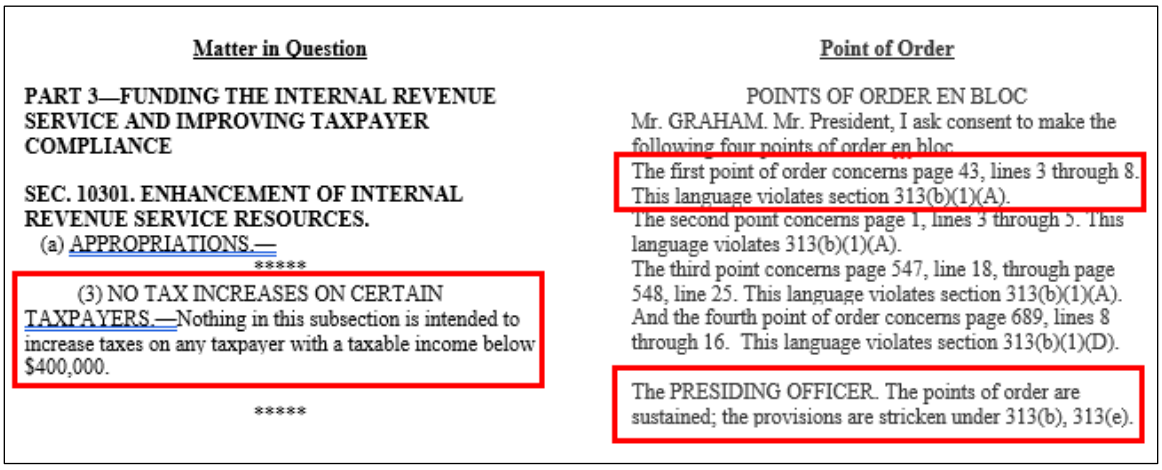
In prior reconciliation legislation, matter deemed extraneous under this definition has included Sense of the Senate or Sense of the Congress language, tables of contents, short titles, congressional findings, rules of construction (see **Figure 3**), policy statements, and budget devices such as the revenue trigger proposed during consideration of the Tax Cuts and Jobs Act of 2017[7] and the extension of statutory discretionary spending caps debated during consideration of the Omnibus Budget Reconciliation Act of 1993.[8]

[7] Paul M. Krawzak and Ryan McCrimmon, "Senate GOP Scrambles to Resolve Tax Bill Snag," *CQ*, November 30, 2017, https://plus.cq.com/doc/news-5224699.

[8] offered by Sen. Domenici to S. 1 S.Amdt. 544 134, the Omnibus Budget Reconciliation Act of 1993; *Congressional Record*, vol. 139, part 10 (June 24, 1993), pp. 14083, 14104.

Figure 3. No Change in Outlays or Revenues

Section 313(b)(1)(A) of the Budget Act



Matter in Question	Point of Order
PART 3—FUNDING THE INTERNAL REVENUE SERVICE AND IMPROVING TAXPAYER COMPLIANCE SEC. 10301. ENHANCEMENT OF INTERNAL REVENUE SERVICE RESOURCES. (a) APPROPRIATIONS.— ***** (3) NO TAX INCREASES ON CERTAIN TAXPAYERS.—Nothing in this subsection is intended to increase taxes on any taxpayer with a taxable income below $400,000. *****	POINTS OF ORDER EN BLOC Mr. GRAHAM. Mr. President, I ask consent to make the following four points of order en bloc. The first point of order concerns page 43, lines 3 through 8. This language violates section 313(b)(1)(A). The second point concerns page 1, lines 3 through 5. This language violates 313(b)(1)(A). The third point concerns page 547, line 18, through page 548, line 25. This language violates section 313(b)(1)(A). And the fourth point of order concerns page 689, lines 8 through 16. This language violates section 313(b)(1)(D). The PRESIDING OFFICER. The points of order are sustained; the provisions are stricken under 313(b), 313(e).

Source: S.Amdt 5194 (as modified) to H.R. 5376, the Inflation Reduction Act of 2022. *Congressional Record*, daily edition, vol. 168, part 133 (August 6, 2022), p. S4197.

Notes: When the presiding officer states that "the provisions are stricken under … 313(e)," this is in reference to the section of the Byrd rule that (1) allows a Senator to raise a point of order against multiple violations of the Byrd rule with a single point of order; (2) directs the presiding officer to make a determination with respect to each violation; and (3) if one or more points of order is sustained, directs that the offending matter be struck from the measure.

(B) It would increase outlays or reduce revenues, and the net effect of the committee's title that contains the provision is such that the committee is not in compliance with its reconciliation directives.

If a Senate committee submits reconciliation legislation that does not comply with its directives, any provision within that title that would reduce revenue or increase outlays is considered extraneous—an incentive for a committee to follow its instructions.[9]

A point of order pursuant to this definition has been invoked twice since adoption of the Byrd rule, most recently during Senate consideration of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (S. 1956, 104th Cong.).[10] In this case, the conference report to the associated budget resolution directed the Senate Finance Committee to report changes in laws within its jurisdiction to reduce outlays by $260,000,000 in FY1997, $98,321,000,000 for the period of FY1997-FY2002, and $36,578,000,000 in FY2002.[11] Although the CBO score included in the Senate Budget Committee print to accompany S. 1956 (S.Prt 104-59) showed that the Finance Committee title (as reported) partly complied with its instructions, it

[9] Although the Budget Act does not provide a point of order against reconciliation legislation that does not comply with its reconciliation directives, the House and Senate have procedures that can bring a title or a bill into compliance via amendment. For more on this topic, see Question 4 of CRS Report R48444, *The Reconciliation Process: Frequently Asked Questions*, by Tori Gorman.

[10] This point of order was also invoked during consideration of the Omnibus Budget Reconciliation Act of 1986 (S. 2076, 99th Cong.). See Sen. Gramm, Byrd rule point of order against Section 403 (conservation programs), *Congressional Record*, vol. 132, part 17 (September 19, 1986), pp. 24907-24908.

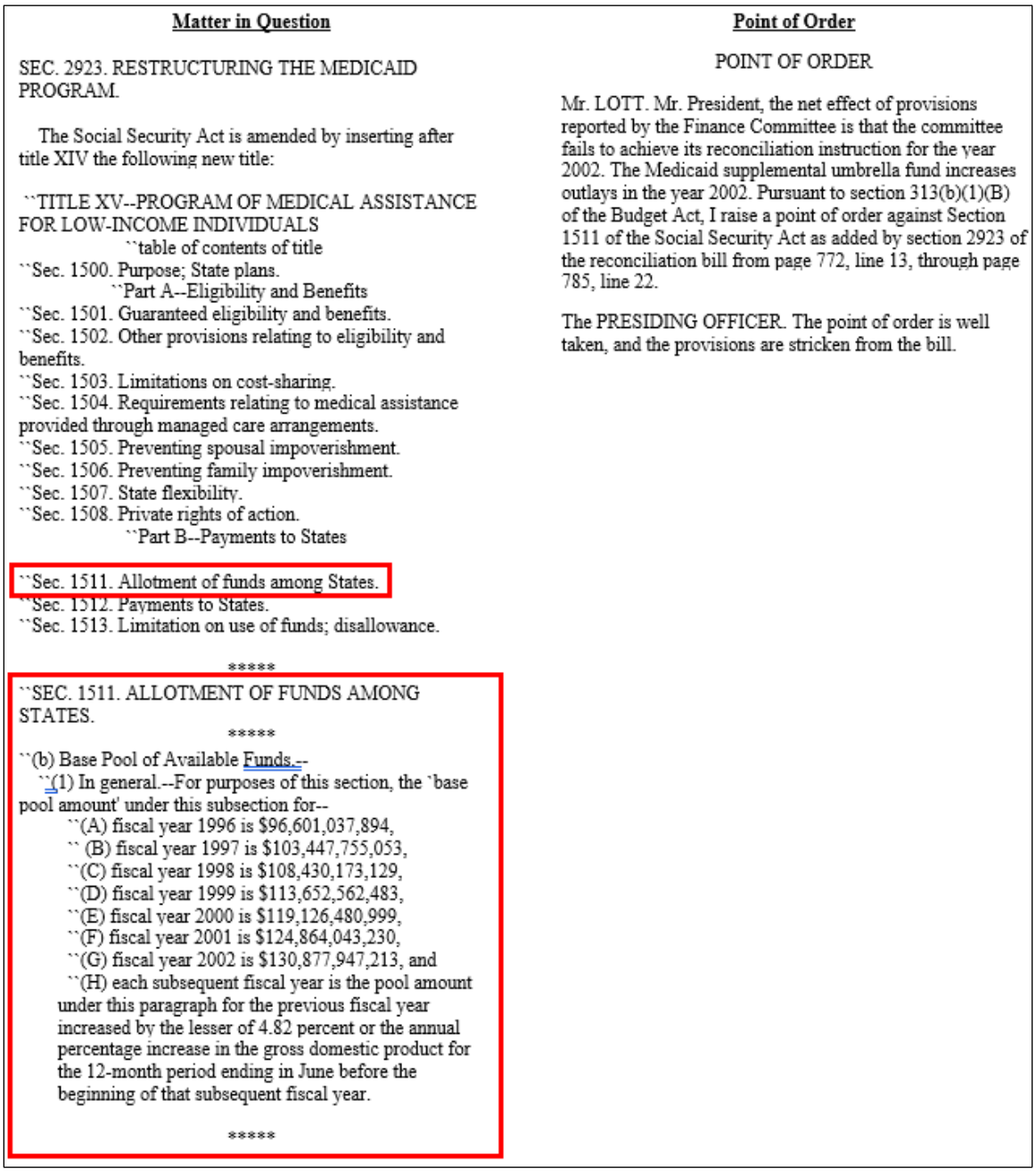
[11] See Section 202(a)(1)(A) of H.Rept. 104-612, the conference report to H.Con.Res. 178 (104th Cong.), the budget resolution for FY1997.

did not meet the required outlays savings for FY2002.[12] Thus, pursuant to this definition in the Byrd rule, any provision in the Finance Committee title that would have increased outlays or reduced revenues was extraneous. Senator Lott used the Byrd rule to strike Medicaid spending added by Section 2923 (see **Figure 4**).

[12] Senate Budget Committee print (S.Prt. 104-59) to S. 1956, the Personal Responsibility, Work Opportunity, and Medicaid Restructuring Act of 1996 (104th Cong.), p. 311. In the table provided by CBO, it estimated the Finance Committee title, as reported, would reduce mandatory (direct) outlays by $35,697,000,000 in FY2002, approximately $881 million below the committee's directive of $36,578,000,000 in outlay savings.

Figure 4. Committee Is Not in Compliance with Its Directives

Section 313(b)(1)(B) of the Budget Act



Matter in Question

SEC. 2923. RESTRUCTURING THE MEDICAID PROGRAM.

The Social Security Act is amended by inserting after title XIV the following new title:

``TITLE XV--PROGRAM OF MEDICAL ASSISTANCE FOR LOW-INCOME INDIVIDUALS

``table of contents of title

``Sec. 1500. Purpose; State plans.

``Part A--Eligibility and Benefits

``Sec. 1501. Guaranteed eligibility and benefits.

``Sec. 1502. Other provisions relating to eligibility and benefits.

``Sec. 1503. Limitations on cost-sharing.

``Sec. 1504. Requirements relating to medical assistance provided through managed care arrangements.

``Sec. 1505. Preventing spousal impoverishment.

``Sec. 1506. Preventing family impoverishment.

``Sec. 1507. State flexibility.

``Sec. 1508. Private rights of action.

``Part B--Payments to States

``Sec. 1511. Allotment of funds among States.

``Sec. 1512. Payments to States.

``Sec. 1513. Limitation on use of funds; disallowance.

*****

``SEC. 1511. ALLOTMENT OF FUNDS AMONG STATES.

*****

``(b) Base Pool of Available Funds.--

``(1) In general.--For purposes of this section, the `base pool amount' under this subsection for--

``(A) fiscal year 1996 is $96,601,037,894,

`` (B) fiscal year 1997 is $103,447,755,053,

``(C) fiscal year 1998 is $108,430,173,129,

``(D) fiscal year 1999 is $113,652,562,483,

``(E) fiscal year 2000 is $119,126,480,999,

``(F) fiscal year 2001 is $124,864,043,230,

``(G) fiscal year 2002 is $130,877,947,213, and

``(H) each subsequent fiscal year is the pool amount under this paragraph for the previous fiscal year increased by the lesser of 4.82 percent or the annual percentage increase in the gross domestic product for the 12-month period ending in June before the beginning of that subsequent fiscal year.

*****

Point of Order

POINT OF ORDER

Mr. LOTT. Mr. President, the net effect of provisions reported by the Finance Committee is that the committee fails to achieve its reconciliation instruction for the year 2002. The Medicaid supplemental umbrella fund increases outlays in the year 2002. Pursuant to section 313(b)(1)(B) of the Budget Act, I raise a point of order against Section 1511 of the Social Security Act as added by section 2923 of the reconciliation bill from page 772, line 13, through page 785, line 22.

The PRESIDING OFFICER. The point of order is well taken, and the provisions are stricken from the bill.

Source: Senate consideration of S. 1956, the Senate companion to H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). *Congressional Record*, daily edition, vol. 142, part 106 (July 18, 1996), p. S8081.

(C) It is not in the jurisdiction of the committee with jurisdiction over said title or provision.

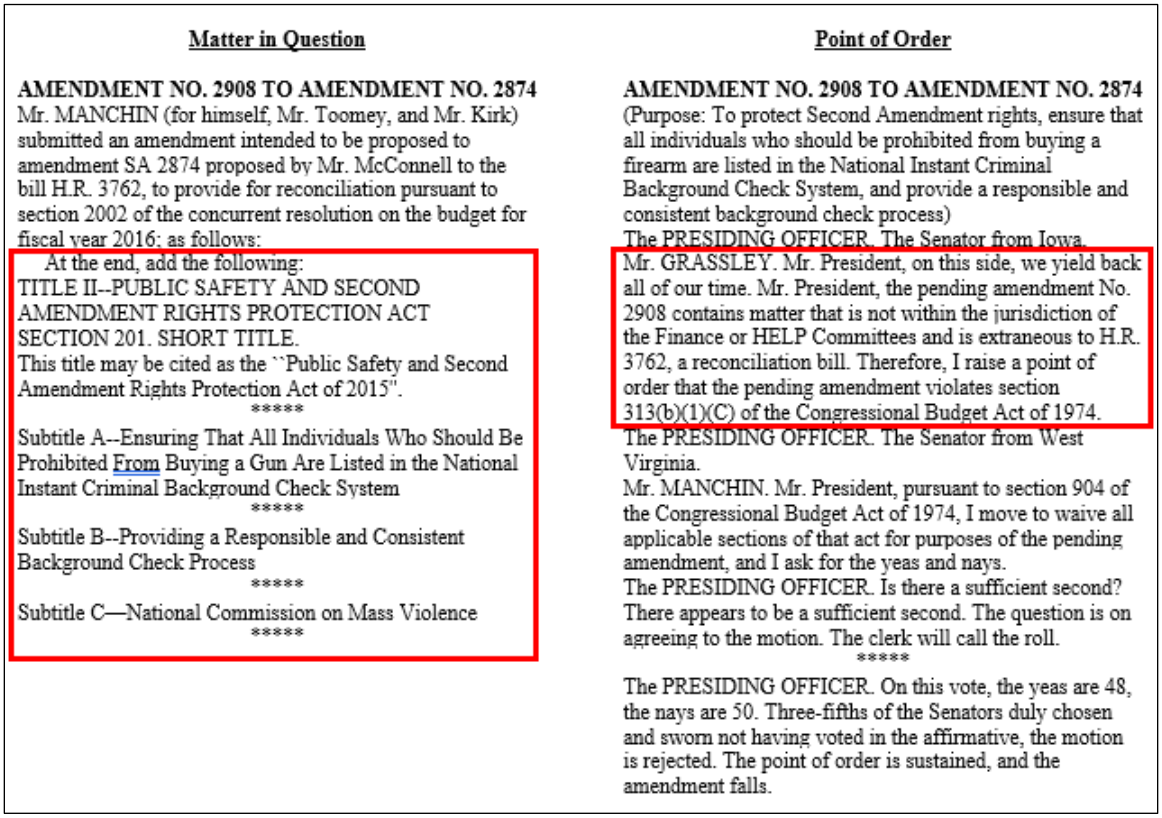
This definition of *extraneous matter* enforces the reconciliation directive to a committee in the corresponding budget resolution to report "changes in laws *within their jurisdiction*" (emphasis

added). In the Senate, the Parliamentarian determines the jurisdictional boundaries of committees under the provisions of Senate Standing Rule XXV.

For example, during consideration of the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (H.R. 3762, 114th Cong.), a Byrd rule point of order pursuant to this definition was raised against an amendment introduced by Senator Manchin relating to gun control and civil liberties. The budget resolution associated with the reconciliation bill (S.Con.Res. 11, 114th Cong.) provided reconciliation directives for the Finance and Health, Education, Labor, and Pensions Committees of the Senate only, and Senate Standing Rule XXV assigns subject matter in the Manchin amendment to the Judiciary Committee. A point of order was raised and the motion to waive was rejected. The amendment fell (see **Figure 5**).

Figure 5. Matter Outside a Committee's Jurisdiction

Section 313(b)(1)(C) of the Budget Act



Matter in Question

AMENDMENT NO. 2908 TO AMENDMENT NO. 2874
Mr. MANCHIN (for himself, Mr. Toomey, and Mr. Kirk) submitted an amendment intended to be proposed to amendment SA 2874 proposed by Mr. McConnell to the bill H.R. 3762, to provide for reconciliation pursuant to section 2002 of the concurrent resolution on the budget for fiscal year 2016; as follows:

At the end, add the following:

TITLE II--PUBLIC SAFETY AND SECOND AMENDMENT RIGHTS PROTECTION ACT

SECTION 201. SHORT TITLE.

This title may be cited as the ``Public Safety and Second Amendment Rights Protection Act of 2015".

*****

Subtitle A--Ensuring That All Individuals Who Should Be Prohibited From Buying a Gun Are Listed in the National Instant Criminal Background Check System

*****

Subtitle B--Providing a Responsible and Consistent Background Check Process

*****

Subtitle C—National Commission on Mass Violence

*****

Point of Order

AMENDMENT NO. 2908 TO AMENDMENT NO. 2874
(Purpose: To protect Second Amendment rights, ensure that all individuals who should be prohibited from buying a firearm are listed in the National Instant Criminal Background Check System, and provide a responsible and consistent background check process)

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, on this side, we yield back all of our time. Mr. President, the pending amendment No. 2908 contains matter that is not within the jurisdiction of the Finance or HELP Committees and is extraneous to H.R. 3762, a reconciliation bill. Therefore, I raise a point of order that the pending amendment violates section 313(b)(1)(C) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. MANCHIN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive all applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

*****

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 50. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

Source: S.Amdt. 2908 to S.Amdt. 2874 to H.R. 3762, the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (114th Cong.). *Congressional Record*, daily edition, vol. 161, part 175 (December 3, 2015), pp. S8348 (point of order), S8395-S8400 (amendment text).

Notes: Section 2001 of S.Con.Res. 11, the FY2016 budget resolution, provided reconciliation directives for the Finance and Health, Education, Labor, and Pensions Committees of the Senate only. Senate Standing Rule XXV assigns matter addressed by the Manchin amendment to the Judiciary Committee.

Assertions of committee jurisdiction may be supported by citations to prior bill referrals, but the strength of this argument is conditioned on the degree to which the referred bill is limited to the provision in question.[13] Also, when matter is incorporated by reference (e.g., "P.L. 999-1 is

[13] As discussed in the Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, p. 676.

repealed"), the Senate Parliamentarian will look through to the referred matter as if it were before the Senate and assess the jurisdictional compliance of the underlying text.[14]

(D) Its budgetary effects are "merely incidental" to its non-budgetary components.

To comply with the Byrd rule, a provision must demonstrate that its budgetary effects are not "merely incidental" to its policy effects. This is a test of relativity—it requires a comparison of a provision's budgetary components with its non-budgetary components. For this reason, matter with significant fiscal effects but even larger policy effects could be deemed extraneous. Conversely, a provision with small budgetary effects and negligible policy effects could be permissible.

Determinations pursuant to this definition lie at the core of many Byrd rule controversies. What is or is not "merely incidental" requires an exercise in judgment. Although the budgetary effects of a provision may be readily discernible from a CBO or JCT score, the non-budgetary components are not. Moreover, because this is a test that requires a comparison, every determination is necessarily case-specific, complicating efforts to inform a bright line between what is or is not extraneous under this particular definition.

The contextual nature of this definition is demonstrated by efforts to repeal the individual mandate established by the Patient Protection and Affordable Care Act of 2010. This provision required most U.S. citizens and legal residents to have qualifying health insurance or face a tax penalty. The Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (H.R. 3762, 114th Cong.) as passed by the House would have repealed the individual mandate (see **Figure 6**).

Figure 6. Budgetary Effects Are "Merely Incidental"

Section 313(b)(1)(D) of the Budget Act

House Version Extraneous	Senate Version Not Extraneous
SEC. 201. REPEAL OF INDIVIDUAL MANDATE. (a) In general.—Section 5000A of the Internal Revenue Code of 1986 is amended by adding at the end the following: "(h) Termination.—This section shall not apply with respect to any month beginning after December 31, 2014.". (b) Conforming amendments.— (1) Section 5000A(c) of such Code is amended— (A) in paragraph (2)(B) by striking clauses (ii) and (iii), (B) in paragraph (3)(B) by striking "2014" and all that follows and inserting "2014.", and (C) in paragraph (3) by striking subparagraph (D). (2) Section 5000A(e)(1) of such Code is amended by striking subparagraph (D). (c) Effective date.—The amendments made by this section shall apply to months beginning after December 31, 2014.	SEC. 204. INDIVIDUAL MANDATE. (a) In general.—Section 5000A(c) of the Internal Revenue Code of 1986 is amended— (1) in paragraph (2)(B) by striking clauses (ii) and (iii) and inserting the following: "(ii) Zero percent for taxable years beginning after 2014.", and (2) in paragraph (3)— (A) by striking "$695" in subparagraph (A) and inserting "$0", (B) by striking "and $325 for 2015" in subparagraph (B), and (C) by striking subparagraph (D). (b) Effective date.—The amendments made by this section shall apply to months beginning after December 31, 2014.

Source: The Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (H.R. 3762, 114th Cong.) as passed by the House, October 23, 2015, and as passed by the Senate, as amended, December 3, 2015.

Notes: The individual mandate established by the Patient Protection and Affordable Care Act of 2010 required most U.S. citizens and legal residents to have qualifying health insurance or face a tax penalty. The 2015 House

[14] Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, p. 503.

language would have repealed the individual mandate and penalties, whereas the Senate language would have reduced the tax penalty to zero.

Prior to its consideration in the Senate, the Senate Parliamentarian advised that this provision was extraneous under the "merely incidental" definition:

> Section 5000A(a) of the [Internal Revenue Code] is the individual mandate which requires every American citizen to have insurance coverage (currently about 270,000,000 people and a number that will only grow). This provision of law constitutes a massive, national policy change the primary purpose of which is not budgetary. This provision, as was successfully argued in 2009, was designed to change behavior by requiring Americans to join an insurance pool (presumably to lower premiums) and to effectuate universal health care coverage. The condition of the federal budget was not the target of this legislation. And while the dollars associated with repeal are large (a net savings of approximately 147 billion dollars over 10 years if combined with the employer mandate repeal), they are dwarfed by the scope and impact of this mandate on the 270 million Americans who are covered by it. In addition, it was argued in 2009 that this provision could not be appropriately written in a reconciliation measure. We agreed with that argument in 2009 and a necessary corollary of that conclusion is that the individual mandate cannot be repealed in a reconciliation measure. Thus we believe that section 301 is subject to the Byrd Rule's 313(b)(1)(D) point of order as its budgetary impact is merely incidental to the policy which underpins it. That does not mean, however, that the remainder of 5000A is immune from amendment. Very generally speaking, formulas and definitions can be adjusted in reconciliation if they have budgetary effect and that may well be the case here. Indeed, the formulas in 5000A were amended in [the Health Care and Education Reconciliation Act of 2010]. Thus we do not believe the entirety of the section is subject to points of order under the Byrd Rule though it contains a flaw that causes a point of order to lie against the provision.[15]

In response, the Senate's version of the reconciliation legislation instead reduced the tax penalty to zero—a provision that some argued was policy-equivalent to repeal of the mandate—but the Parliamentarian advised that this matter was not extraneous:

> Reconciliation is used to adjust the levers on the budgetary aspects of broad policy structures. It has been used to—among other things—repeal scores of tax credits, address the so-called "marriage penalty" and provide a waiver of a tax penalty for small businesses failing to pay taxes through electronic transfer (sec. 931 of [the Taxpayer Relief Act of 1997,] P.L. 105-34). Each of these things has policy implications, some broader than others. And each is budgetary.
>
> After considering the arguments presented, we have concluded that the penalties associated with the Individual and Employer Mandates can be adjusted, as they previously were in [the Health Care and Education Reconciliation Act of 2010], and that such an adjustment may be to zero. The penalties are inherently budgetary (98.6 billion dollars in revenue in the budget window). Their adjustment to zero results in deficit reduction of 130.2 billion dollars in the budget window when combined with outlay reductions for the same. The zeroing out of the penalty does have a policy impact—that is undeniable—but the mandates remain, the incentives for purchasing and maintaining health insurance remain, the insurance reforms remain.[16]

[15] Email from the Senate Parliamentarian to selected Senate staff in reference to H.R. 3762, 114th Cong., November 10, 2015, as discussed in Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, pp. 703-704.

[16] Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, p. 705.

In the past, this test has been used to strike provisions that either implicitly or explicitly enacted or curtailed major social policies—for example, an increase the federal minimum wage,[17] preferential tax treatment for homeschooling expenses,[18] and the repeal of market stabilization (risk corridor) payments for private health insurers under the Affordable Care Act.[19]

[17] S.Amdt. 972 to H.R. 1319, the American Rescue Plan Act of 2021. *Congressional Record*, daily edition, vol. 167, part 42 (March 5, 2021), pp. S1219-1222 (text of the amendment), S1230 (point of order). For context, a CBO analysis of nearly identical legislation—the Raise the Wage Act of 2021 (S. 53, 117th Cong.)—which would have raised the federal minimum wage to $15 per hour in annual increments over four years—estimated that the measure would have (a) increased cumulative on-budget federal budget deficits by $76.9 billion over 10 years, (b) directly affected 17 million workers whose wages would otherwise be below $15 per hour, (c) indirectly affected 10 million additional workers with wages slightly above that amount, and (d) reduced employment in increasing amounts over the transition period, reaching 1.4 million additional unemployed persons in the last year of the transition.

[18] Section 529(c)(7)(B) of the Internal Revenue Code as added by Section 11032 of the conference report to accompany H.R. 1, the Tax Cuts and Jobs Act of 2017 (H.Rept. 114-466). *Congressional Record*, daily edition, vol. 163, part 207 (December 19, 2017), pp. S8139-S8141 (text of the measure). According to the Senate Budget Committee print, *The Congressional Budget Process* (S.Prt. 117-23, pp. 719-720), in a December 19, 2017, memo to select Senate staff, the Senate Parliamentarian advised that

> the language here with respect to homeschools constitutes a significant policy change. It would have the federal benefit follow the state law where it exists to define "private school" as including a "homeschool"—a definition that is only applicable in a small number of states (14). In 36 states there is no definition whatsoever and it is unclear how the new law would be interpreted in those 36 states…. More importantly, this bill would also include "homeschool" in the federal law, a term which is undefined and which has no contours or program integrity provisions…. This strikes us a large policy change that is a small part of this section and for which the score is likely to be quite small given the modest score that accompanies the entirety of the provision and which also includes elementary or secondary public, private or religious schools. For these reasons, we find that the language of subsection (B) … is Byrdable under 313(b)(1)(D).

[19] Sec. 105(b) of S.Amdt. 2916 to S.Amdt. 2874 to H.R. 3762 (114th Cong.), the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015. *Congressional Record*, daily edition, vol. 161, part 175 (December 3, 2015), p. S8354 (point of order). In its analysis of the majority's substitute amendment, CBO noted that it could not evaluate the budgetary effects of the risk corridor provision in Section 105 separately from the other coverage-related provisions in the amendment (https://www.cbo.gov/publication/51053). From footnote b

> Estimate is for the combined total of each section where "included in coverage estimate" is noted. CBO and JCT estimate that each section noted as such has a budgetary effect but the agencies are not able to produce unique estimates for each because the provisions interact with each other and their effects are estimated simultaneously.

Overall, CBO estimated that the coverage provisions (in total) in the substitute amendment would have reduced on-budget mandatory (direct) spending by nearly $1.5 trillion over 10 years but provided the following policy context:

> The projected savings from the coverage provisions of this amendment are smaller than those that would stem from repealing all of the coverage provisions of the Affordable Care Act (ACA). The amendment would leave in place certain rules established by the ACA that govern health insurance markets, including guaranteed issue and renewability of coverage, the requirement that health insurance cover certain health benefits, and rating rules that limit the extent to which premiums can vary based on individual characteristics. In addition, the amendment retains provisions related to coverage for young adults. *CBO and JCT project that repealing the subsidies and mandates established by the ACA while leaving in place the insurance market reforms would result in a less healthy population in the nongroup market and correspondingly higher average premiums. In addition, the market for nongroup insurance, particularly in smaller states, could become unstable, leading to very low to no participation by insurers and consumers.* Relative to an estimate of fully repealing all provisions of the ACA related to insurance coverage, leaving the market reforms in place would lead to a reduction in the number of people covered in the nongroup market and an increase in the number of uninsured and people with employment-based insurance. In addition, allowing young adults to remain on their parents' plan would also reduce the number of people in the nongroup market and increase the number of people with employment-based insurance while decreasing the number of people without insurance. [Emphasis added by CRS.]

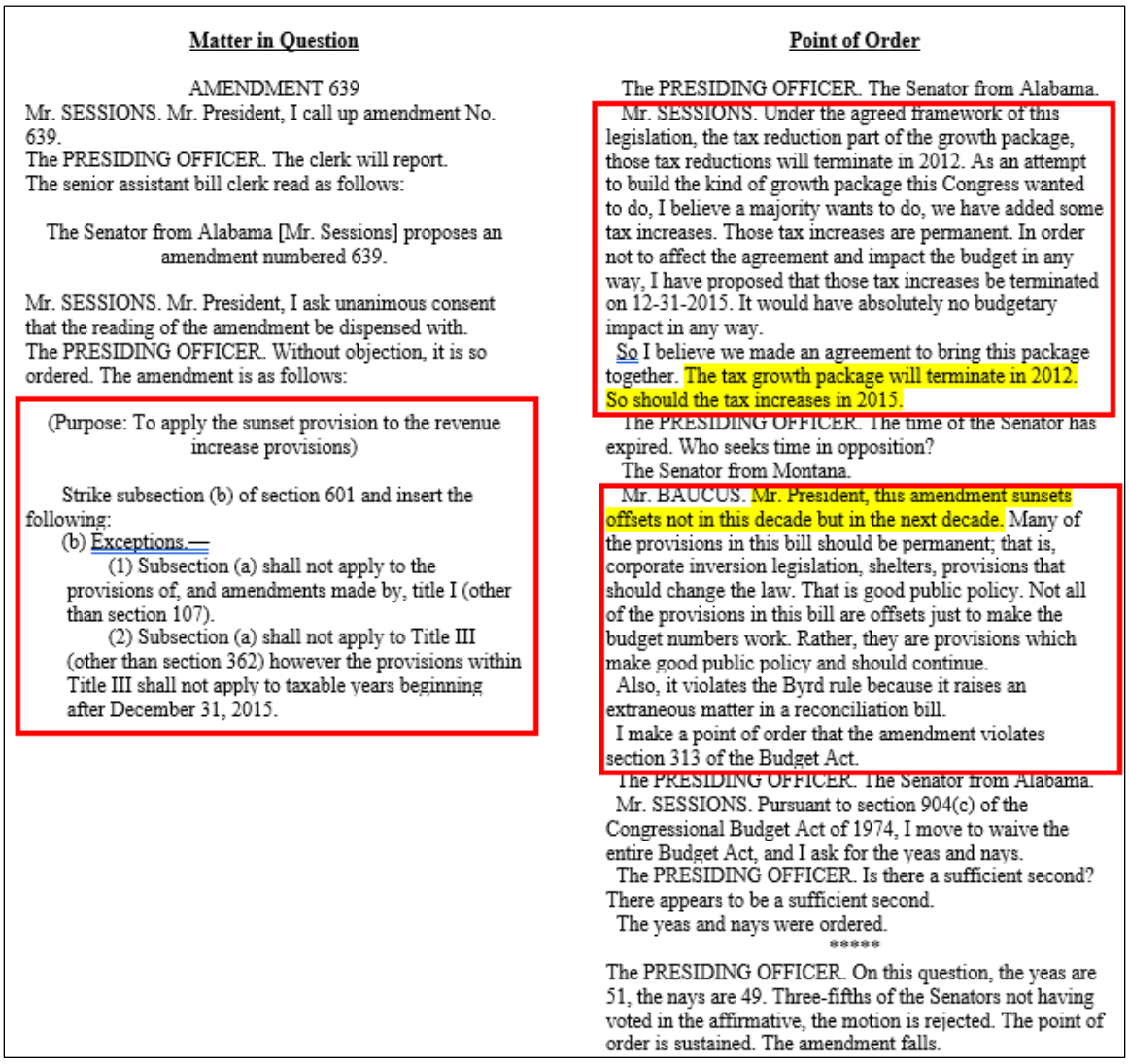
(E) It would increase net outlays or decrease revenues in a fiscal year beyond those covered by the reconciliation bill, and such increases or decreases are not offset by other provisions in such title in such year.

As with the compliance definition in Section 313(b)(1)(B), this definition examines the budgetary effects of a committee's reconciliation title *in toto*: If the overall on-budget fiscal effects of a committee's reconciliation submission would cause the budget deficit to increase in any year beyond the years covered by the associated budget resolution (a single year suffices), any provision within that title that would increase outlays or reduce revenues in an outyear would be extraneous. This point of order can also be raised against an amendment that would exacerbate outyear deficits of the title it seeks to amend.

For example, during consideration of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27), Senator Sessions offered an amendment (S.Amdt. 639) that would have sunset permanent revenue increases that offset the cost of the measure's temporary tax cuts. The budget window in the associated budget resolution (H.Con.Res. 95, 108th Cong.) covered FY2003-FY2013. Senator Sessions's amendment would have sunset the revenue offsets in FY2015, which, if agreed to, would have caused the underlying reconciliation measure to increase budget deficits in one or more years beyond those covered by the associated budget resolution—matter deemed extraneous by this definition of the Byrd rule. The amendment fell on a point of order (see **Figure 7**).

Figure 7. Matter Increases the Budget Deficit in an Outyear

Section 313(b)(1)(E) of the Budget Act



Matter in Question

AMENDMENT 639

Mr. SESSIONS. Mr. President, I call up amendment No. 639.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Alabama [Mr. Sessions] proposes an amendment numbered 639.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

(Purpose: To apply the sunset provision to the revenue increase provisions)

Strike subsection (b) of section 601 and insert the following:

(b) Exceptions.—

(1) Subsection (a) shall not apply to the provisions of, and amendments made by, title I (other than section 107).

(2) Subsection (a) shall not apply to Title III (other than section 362) however the provisions within Title III shall not apply to taxable years beginning after December 31, 2015.

Point of Order

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Under the agreed framework of this legislation, the tax reduction part of the growth package, those tax reductions will terminate in 2012. As an attempt to build the kind of growth package this Congress wanted to do, I believe a majority wants to do, we have added some tax increases. Those tax increases are permanent. In order not to affect the agreement and impact the budget in any way, I have proposed that those tax increases be terminated on 12-31-2015. It would have absolutely no budgetary impact in any way.

So I believe we made an agreement to bring this package together. The tax growth package will terminate in 2012. So should the tax increases in 2015.

The PRESIDING OFFICER. The time of the Senator has expired. Who seeks time in opposition?

The Senator from Montana.

Mr. BAUCUS. Mr. President, this amendment sunsets offsets not in this decade but in the next decade. Many of the provisions in this bill should be permanent; that is, corporate inversion legislation, shelters, provisions that should change the law. That is good public policy. Not all of the provisions in this bill are offsets just to make the budget numbers work. Rather, they are provisions which make good public policy and should continue.

Also, it violates the Byrd rule because it raises an extraneous matter in a reconciliation bill.

I make a point of order that the amendment violates section 313 of the Budget Act.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Pursuant to section 904(c) of the Congressional Budget Act of 1974, I move to waive the entire Budget Act, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

*****

The PRESIDING OFFICER. On this question, the yeas are 51, the nays are 49. Three-fifths of the Senators not having voted in the affirmative, the motion is rejected. The point of order is sustained. The amendment falls.

Source: S.Amdt. 639 to S. 1054, the Senate companion legislation to H.R. 2, the Jobs and Growth Tax Relief Reconciliation Act of 2003 (108th Cong.). *Congressional Record*, daily edition, vol. 149, part 73 (May 15, 2003), pp. S6431-S6432 (amendment text and point of order).

Notes: The budget window in the associated budget resolution (H.Con.Res. 95, 108th Cong.) covered FY2003-FY2013. Senator Sessions's amendment would have sunset the revenue offsets in FY2015.

Although the congressional scoring agencies typically do not provide point estimates for legislation beyond the years covered by the budget window, CBO may include a statement in its cost estimate indicating whether a committee's title would increase the budget deficit in the outyears.[20]

To avoid this point of order, major tax or spending reform legislation—when enacted via reconciliation—may include an expiration date or sunset clause if the net impact of these

[20] For example, see CBO letter to Rep. Thompson, chairman of the House Committee on Agriculture, on the budgetary effects of the committee's reconciliation recommendations, May 14, 2025, https://www.cbo.gov/system/files/2025-05/Thompson_Letter_5-14-25.pdf.

provisions on the deficit is not offset beyond the budget window. For example, mandatory spending provided for Pell grants in the College Cost Reduction and Access Act of 2007 (P.L. 110-84) was available only for FY2008-FY2017. In the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), a decision to pair the reduction in the corporate income tax rate with base-broadening and international tax reforms that offset the cost made it possible to extend the rate cut permanently. Reductions to the marginal tax rates of the individual income tax, however, were not paired with sufficient offsets and thus were made temporary to avoid violating the Byrd rule.

(F) It contains recommendations with respect to the Social Security Old Age, Survivors, or Disability Insurance programs.

The Byrd rule states that "a provision shall be considered extraneous if it violates section 310(g)." This refers to Section 310(g) of the Budget Act, which states

> (g) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.—
>
> Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a joint resolution pursuant to section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains *recommendations* with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act. [Emphasis added by CRS.]

Note that Section 310 does not define the term *recommendations* and, by association, neither does Section 313(b)(F) of the Byrd rule. By precedent, extraneous matter under this test is not confined to provisions that affect financial operations of the Social Security trust funds. For example, in 2015, this point of order was used to preemptively strike language that would amend provisions in Title II relating to the use and collection of Social Security numbers[21] and to eliminate certain reports required under Title II.

The language of this section prohibits the consideration of legislation. Thus, when faced with matter in a reconciliation bill (or amendment in the nature of a substitute or a conference report to reconciliation legislation) that violates this prohibition, lawmakers opposed to its inclusion are presented with a choice: (1) raise a point of order pursuant to the Byrd rule that, if sustained, would strike the offending matter from the reconciliation legislation but leave the rest of the measure before the Senate for consideration or (2) raise a point of order pursuant to Section 310(g) that, if sustained, would be fatal to the overall measure. (That is, the bill would be immediately removed from the floor.)

This point of order does not apply to other titles of the Social Security Act—for example, Unemployment Insurance (Title III), Medicare (Title XVIII), Medicaid (Title XIX), and the State Children's Health Insurance Program (Title XXI). These programs can—and have been—amended by reconciliation legislation in the past without violating this definition of the Byrd rule.

The Senate Parliamentarian has advised that provisions with indirect effects on the Social Security trust funds are not extraneous (e.g., a change in Social Security revenues attributable to a change in the definition of *adjusted gross income*).[22] Whether the effects of a provision are considered indirect or direct, however, is decided on a case-by-case basis.

[21] As discussed in the Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, p. 741.

[22] As discussed in the Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, p. 560.

Lastly, the Senate Parliamentarian has advised that a violation of Section 310(g) in a House-passed reconciliation bill would be fatal to the privileged consideration of that measure in the Senate.

(4) Are there exceptions to the Byrd rule?

Subsection 313(b)(2) of the Byrd rule provides an exception to the first definition of *extraneous matter* (no change in outlays or revenues) for a Senate-originated measure if the chairman and ranking minority members of the Budget Committee and the committee reporting the provision all certify that

> (1) the provision mitigates direct effects that are clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; or
>
> (2) 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) if reliable estimates cannot be made due to insufficient data.

Further, subsection 313(b)(3) provides an exception to the jurisdiction test for a provision reported by a committee if

> (1) the provision is an "integral part" of a provision or title that—if introduced as a standalone measure—would be referred to the committee, and the provision sets forth procedures to implement the "substantive" elements reported by the committee that are within its jurisdiction; or
>
> (2) the provision states an exception to, or special application of, the general provision or title in which it is included and that general provision or title, if introduced as a standalone measure, would be referred to the committee reporting it.

(5) How is the Byrd rule enforceable?

Points of order

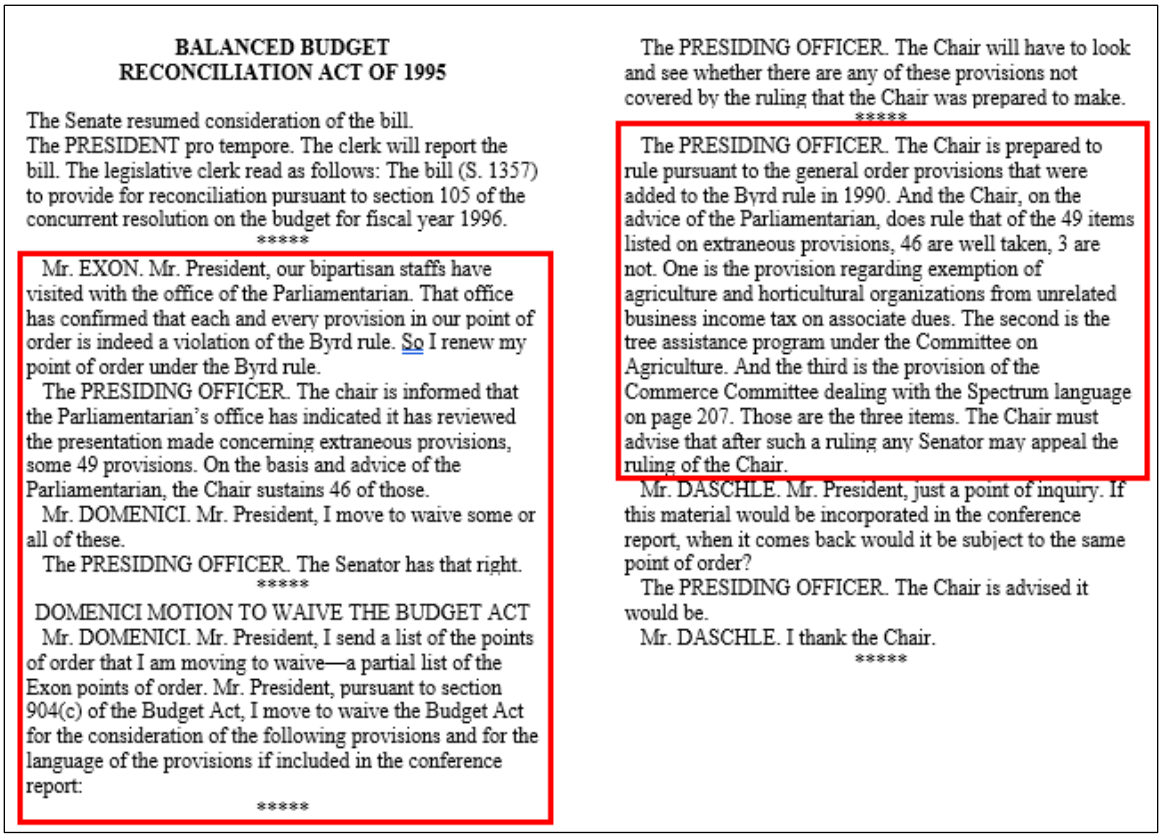
Senators may enforce the Byrd rule by raising points of order during the consideration of reconciliation legislation on the floor. A Senator opposed to the inclusion of extraneous matter (in a bill, amendment, or conference report) must be recognized and state the violation.[23]

The rule is applied surgically. That is, Section 313(e) provides that a point of order may be raised against one or multiple provisions in a reconciliation bill or amendment in the nature of a substitute (as designated by title or section number, or by page and line number), and may be raised against an amendment when it is pending. The presiding officer, with guidance from the Senate Parliamentarian, will then consider each violation and determine whether to sustain all, some, or none of the violations (see **Figure 8**).

Further, Section 313(e) uses operative terms such as *matter*, *part*, *provision*, and *material*—none of which is defined by the rule or elsewhere in budget law. This allows points of order to establish the scope of a challenge—even something as small as a single word may be determinative.

[23] Points of order are not self-enforcing.

Figure 8. A Single Point of Order May Strike Multiple Violations



BALANCED BUDGET
RECONCILIATION ACT OF 1995

The Senate resumed consideration of the bill.
The PRESIDENT pro tempore. The clerk will report the bill. The legislative clerk read as follows: The bill (S. 1357) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.
*****
Mr. EXON. Mr. President, our bipartisan staffs have visited with the office of the Parliamentarian. That office has confirmed that each and every provision in our point of order is indeed a violation of the Byrd rule. So I renew my point of order under the Byrd rule.
The PRESIDING OFFICER. The chair is informed that the Parliamentarian's office has indicated it has reviewed the presentation made concerning extraneous provisions, some 49 provisions. On the basis and advice of the Parliamentarian, the Chair sustains 46 of those.
Mr. DOMENICI. Mr. President, I move to waive some or all of these.
The PRESIDING OFFICER. The Senator has that right.
*****
DOMENICI MOTION TO WAIVE THE BUDGET ACT
Mr. DOMENICI. Mr. President, I send a list of the points of order that I am moving to waive—a partial list of the Exon points of order. Mr. President, pursuant to section 904(c) of the Budget Act, I move to waive the Budget Act for the consideration of the following provisions and for the language of the provisions if included in the conference report:
*****
The PRESIDING OFFICER. The Chair will have to look and see whether there are any of these provisions not covered by the ruling that the Chair was prepared to make.
*****
The PRESIDING OFFICER. The Chair is prepared to rule pursuant to the general order provisions that were added to the Byrd rule in 1990. And the Chair, on the advice of the Parliamentarian, does rule that of the 49 items listed on extraneous provisions, 46 are well taken, 3 are not. One is the provision regarding exemption of agriculture and horticultural organizations from unrelated business income tax on associate dues. The second is the tree assistance program under the Committee on Agriculture. And the third is the provision of the Commerce Committee dealing with the Spectrum language on page 207. Those are the three items. The Chair must advise that after such a ruling any Senator may appeal the ruling of the Chair.
Mr. DASCHLE. Mr. President, just a point of inquiry. If this material would be incorporated in the conference report, when it comes back would it be subject to the same point of order?
The PRESIDING OFFICER. The Chair is advised it would be.
Mr. DASCHLE. I thank the Chair.
*****

Source: Senate consideration of S. 1357, the Senate companion to H.R. 2491, the Balanced Budget Reconciliation Act of 1995 (104th Cong.). *Congressional Record*, daily edition, vol. 141, part 168 (October 27, 1995), pp. S16049-S16050.

Motions to waive and appeals

If a point of order is raised, a motion to waive may be in order to offer and requires the affirmative vote of three-fifths of all Senators, duly chosen and sworn (60 votes in a Senate with no more than one vacant seat). Points of order pursuant to the Byrd rule are not debatable, however, so the motion to waive must be made immediately. A motion to waive may be made preemptively.

Like the point of order, the motion to waive is not automatic—a Senator must be recognized and make the motion. The motion to waive must be made while the point of order is pending before the presiding officer makes a ruling. If a point of order has been raised against multiple provisions, Section 313(e) allows a motion to waive to apply to one, some, or all of the provisions.[24]

A Senator may also appeal the ruling of the chair on the application of the Byrd rule, which also requires the affirmative vote of three-fifths of all Senators. Although the effect of a successful motion to waive and a successful appeal are the same (i.e., the matter is allowed), the consequences are different. The former recognizes that the matter in question violates the Byrd

[24] Section 313(e) of the Budget Act reads, "Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised."

rule, but nevertheless the Senate has chosen to allow it. The latter establishes new precedent—it changes the interpretation of what the Senate considers to be extraneous under the Byrd rule.

(6) When is the Byrd rule enforceable?

The Byrd rule may be enforced during any stage of consideration while a reconciliation bill is pending on the Senate floor—initial consideration, the exchange of amendments between houses, and conference reports.

Committee markup

The text of the Byrd rule begins, "When *the Senate is considering* a reconciliation bill" (emphasis added). As a consequence, points of order pursuant to the rule are not in order to offer during the committee-level drafting phase of a reconciliation measure. During markup, however, a committee chair may urge Members to oppose an amendment because it contains matter that would violate the rule when considered on the Senate floor.

Conference reports and amendments between houses

Section 313(d) of the Budget Act provides for the application of the Byrd rule during consideration of a conference report or an amendment between the House and Senate for a reconciliation bill or reconciliation resolution. If a point of order is made and sustained, the matter in question is removed from the conference report, and the Senate immediately proceeds to consideration of an amendment in the nature of a substitute containing the text of the conference agreement minus stricken provisions. If the Senate agrees to the amendment, it is sent to the House for further consideration.[25]

Subpart (d)(1) of the rule provides a point of order for five of the six definitions of *extraneous matter* in a conference report—a point of order pursuant to the definition relating to committee jurisdiction in Section 313(b)(1)(C) is omitted. The Senate Parliamentarian has advised, however, that any provision in a reconciliation bill not within the jurisdiction of any of the Senate committees that received reconciliation directives in the associated budget resolution could nevertheless be fatal to its privileged consideration in the Senate.[26]

(7) What is the role of the Senate Parliamentarian with respect to the Byrd rule?

As the Senate's expert on the chamber's rules, precedents, and practices, the Senate Parliamentarian advises the presiding officer on the application and enforcement of the Byrd rule and other relevant matters (e.g., the germaneness of amendments) when the Senate is considering reconciliation legislation.[27]

[25] During consideration of the conference report to the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), three violations of the Byrd rule were sustained. The Senate then agreed to concur with an amendment in the nature of the substitute, which the House later adopted. See *Congressional Record*, daily edition, vol. 163 (December 19, 2017), pp. S8101 (points of order raised by Senator Sanders), S8141 (votes on the motion to waive the points of order and the motion to concur with an amendment).

[26] As discussed in the Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, pp. 750-751.

[27] For more information on the role of the Senate Parliamentarian, see CRS Report RS20544, *The Office of the Parliamentarian in the House and Senate*, by Valerie Heitshusen.

The Senate Parliamentarian also provides guidance during the drafting stage of the reconciliation process, advising Senate staff in the preemptive scrutiny of reconciliation bills and amendments for matter that would violate the Byrd rule (a process known colloquially as a "Byrd bath").[28]

The Senate Parliamentarian also reviews a House-passed reconciliation bill—before it is transmitted to the Senate—to advise whether it might contain provisions that would imperil its privileged status in the Senate. This practice allows the House an opportunity to revise its text if a privilege issue is identified.

(8) What is the role of the Senate Budget Committee with respect to the Byrd rule?

Upon reporting or discharge of a reconciliation bill—and again upon submission of a conference report thereon—Section 313(c) of the Byrd rule directs the Senate Budget Committee to submit for printing in the *Congressional Record* a list of material considered to be extraneous under the definitions in Sections 313(b)(1)(A), 313(b)(1)(B), and 313(b)(1)(E) of the rule (definitions pertaining to a provision's lack of budgetary effects, a committee's failure to comply with its reconciliation directives, and committee titles that would increase outyear deficits, respectively).[29]

This list is advisory—the rule specifically provides that it does not bind the presiding officer in ruling on points of order. In practice, such a list has been inserted into the *Congressional Record* in some years but not in others. Further, in some years, the chairman and the ranking minority member of the committee have each submitted their own lists.[30] In some cases the list has stated that no extraneous matter was included in the measure.

In addition, the presiding officer relies on the chairman of the Senate Budget Committee to determine the budgetary effects of reconciliation legislation for the purpose of enforcing points of order under Titles III and IV of the Budget Act—to include certain definitions of *extraneous matter* under the Byrd rule.[31]

Lastly, Senate Budget Committee staff typically participate in the "Byrd bath."

[28] The Senate's Byrd bath is an unofficial process that evolves with every reconciliation bill. While there are no official steps in the process, it is described generally in the Senate Budget Committee print, *The Congressional Budget Process*, S.Prt. 117-23, pp. 500-513—including a timeline of communications with the Senate Parliamentarian in relation to the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (pp. 511-512), the Tax Cuts and Jobs Act of 2017 (pp. 512-513), and the Inflation Reduction Act of 2022 (pp. 1271-1275).

[29] For an example of such a list, see the remarks of Sen. Pete Domenici regarding the conference report on the Balanced Budget Act of 1997 in the *Congressional Record*, daily edition (July 31, 1997), pp. S8407-S8408.

[30] For example, see the lists provided by (1) Chairman Pete Domenici and Ranking Minority Member James Exon regarding the Balanced Budget Act of 1995, as inserted into the *Congressional Record*, daily edition (October 26, 1995), pp. S15832-S15834 (Sen. Domenici) and pp. S15834-S15840 (Sen. Exon); and (2) Chairman Judd Gregg regarding the Deficit Reduction Act of 2005, as inserted into the *Congressional Record*, daily edition (November 8, 2005), pp. S12522-S12523, and Ranking Member Kent Conrad, as inserted into the *Congressional Record*, daily edition (November 2, 2005), pp. S12213-S12214. In some cases, the lists produced by the chair and ranking member have been similar, but in other instances they have differed significantly.

[31] See points of order made by Senate Majority Leader John Thune (and associated debates) pursuant to Section 313(b)(1)(E)—outyear deficits, and Section 313(b)(1)(B)—committee compliance with its directives, during consideration of S.Amdt. 2360, an amendment in the nature of a substitute to H.R. 1, the One Big Beautiful Bill Act of 2025 (*Congressional Record*, daily edition, vol. 171, part 112 [June 28, 2025], p. S3613, and *Congressional Record*, daily edition, vol. 171, part 113 [June 30, 2025], pp. S4040-S4041, respectively).

(9) Is there a repository of Byrd rule precedents?

Precedents reflect formal decisions made by the Senate while conducting business on the floor in the form of rulings and appeals. The *Congressional Record* is the official record of proceedings of Congress, and points of order made pursuant to the Byrd rule (including debate, motions to waive, and appeals) can be found there. In addition, a list of actions in the Senate pursuant to the Byrd rule can be found in Table 4 of CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*.

When Senators respond to guidance from the Senate Parliamentarian by choosing to remove or redraft questionable matter in a reconciliation measure prior to its consideration on the Senate floor, then no formal precedent is created, and information that may guide future interpretations of the rule is not published. A 2022 print from the Senate Budget Committee (*The Congressional Budget Process*, S.Prt. 117-23) discusses some of these preemptive actions and may provide additional information on the application of the Byrd rule.

Only the Senate Parliamentarian can provide authoritative guidance on the Byrd rule or other matters pertaining to interpretation of Senate rules—and congressional offices are encouraged to consult with that office.

(10) Is a House-passed reconciliation bill subject to the Byrd rule?

The Byrd rule is a Senate construct—the House is not bound by it. However, if a House-passed reconciliation measure is received in the Senate and it contains matter that might be considered extraneous, the Senate may still enforce its rule. If the Senate regards the extraneous matter in the House measure to be significant enough that it should not be considered a reconciliation measure, the bill may lose privilege under Section 310 of the Budget Act (although it may still be considered under the regular rules of the Senate). In other cases, the Senate may choose to enforce the Byrd rule through points of order as it would for a Senate-originated reconciliation measure.

According to *Riddick's Senate Procedure*, "So long as a *preponderance of its subject matter* has a budgetary impact, a reconciliation bill could contain non-budgetary amendments to substantive law, and still be protected under the Budget Act" (emphasis added).[32] The Senate Parliamentarian has advised, however, that there is no specific test for preponderance—every question is considered on a case-by-case basis within the context of the Byrd rule.[33]

As a consequence, sometimes the House may make changes to a reconciliation bill after it has passed but before it is transmitted to the Senate. For example, during consideration of H.R. 1, the One Big Beautiful Bill Act of 2025, the House passed the bill but held it at the desk pending review by the Senate Parliamentarian. In response to that review, the House adopted H.Res. 492, a resolution that amended the engrossed text of H.R. 1—before it was transmitted to the Senate—to strike matter that the Senate Parliamentarian advised could be fatal to its privileged consideration in that chamber.

[32] *Riddick's Senate Procedure*, 1992, p. 623, and discussed in the Senate Budget Committee print, *The Congressional Budget Act*, S.Prt. 117-23, p. 495.

[33] As discussed in the Senate Budget Committee print, *The Congressional Budget Act*, S.Prt. 117-23, p. 488.

If a House-passed reconciliation measure contains extraneous matter when it is received in the Senate, but less than a preponderance, the Senate may choose to enforce the Byrd rule against the extraneous matter in the House-passed measure through points of order as it would for a Senate-originated reconciliation measure.

Appendix. Text of the Byrd Rule

EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION

SEC. 313. [2 U.S.C. 644] (a) IN GENERAL.—When the Senate is considering a reconciliation bill or a reconciliation resolution pursuant to section 310 (whether that bill or resolution originated in the Senate or the House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b) shall be deemed stricken from the bill and may not be offered as an amendment from the floor.

(b) EXTRANEOUS PROVISIONS.—(1)(A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to section 310 shall be considered extraneous if such provision does not produce a change in outlays or revenue, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph); (B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions; (C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous; (D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision; (E) a provision shall be considered to be extraneous if it increases, or would increase, net outlays, or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution, and such increases or decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year; and (F) a provision shall be considered extraneous if it violates section 310(g).

(2) A Senate-originated provision shall not be considered extraneous under paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that: (A) the provision mitigates direct effects clearly attributable to a provision changing outlays or revenue and both provisions together produce a net reduction in the deficit; (B) the provision will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution; (C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or (D) such provision will be likely to produce a significant reduction in outlays or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliably estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the

jurisdiction of such committee; or (B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

(c) EXTRANEOUS MATERIALS.—Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

(d) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution pursuant to section 310, upon—

> (1) a point of order being made by any Senator against extraneous material meeting the definition of subsections (b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F), and
>
> (2) such point of order being sustained, such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for two hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(e) GENERAL POINT OF ORDER.—Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

Author Information

Tori Gorman
Analyst on Congress and the Legislative Process

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