



Budget Reconciliation and Biden's Legislative Agenda

Since Democrats will have an effective majority in the Senate, President-elect Joe Biden can now finalize his legislative agenda for his first 100 days in office. ACG is closely monitoring budget reconciliation, which provides an opportunity for the Majority to push big-ticket legislation through the Senate with a simple majority vote. This memorandum provides a high-level overview of the budget reconciliation process, as well as some legislative priorities that Democrats could consider using reconciliation to pass.

Budget Reconciliation

Bills typically need a filibuster-proof majority (60 votes) to clear the Senate. However, a reconciliation bill gets fast-track consideration in the upper chamber, meaning it is not subject to a filibuster and only requires a simple majority approval to pass. There are restrictions on what can be included in such a measure. Most notably, the bill cannot include changes to Social Security, and it can only include matters with budgetary impact, so it can be hard to create new programs with complex reporting and oversight requirements. Furthermore, a reconciliation bill can only be generated after the House and Senate pass a budget resolution conference agreement that includes reconciliation instructions to one or more committees to report legislation that impacts the deficit – for better or worse – by a designated amount. Passing a budget resolution conference agreement is never an easy task because of disagreements about the right level of debt, spending, and taxes. The extremely slim Democratic majority in both the House and Senate will make that an even harder task now.

The House [rules package](#) for the 117th Congress includes several provisions that could impact the budget reconciliation process. First, it dropped a provision that prevented reconciliation directives to authorizing committees from causing “an increase in net direct spending” over the period covered by the budget – i.e., past House reconciliation bills could not worsen the deficit by increased spending, but they could worsen the deficit by cutting taxes. The new rules package also includes pay-as-you-go exemptions for climate and coronavirus-related measures, which could potentially apply to reconciliation bills.

There was no Fiscal Year (FY) 2021 budget resolution conference agreement, so Congress could move to pass a “shell” conference agreement with spending and taxes at baseline levels that contained reconciliation instructions intended for a COVID-relief package, infrastructure, or other priority legislation. Before that could happen, Congress would need to be fairly clear about the cost of the policies it planned to include in the reconciliation bill because the reconciliation instructions tell the relevant committees to increase their spending or their revenue by a specific amount. Any additional spending or tax cuts above the instructions would not be in order. After both chambers adopt a conference agreement, the bills put forward by the instructed committees would be packaged together and considered on the House and Senate floor, with expedited procedures in the Senate.

Later Congress could then put forward a FY 2022 budget resolution on its regular spring timetable that could include another round of reconciliation instructions for a separate package later this year.

Potential Policy

President-elect Joe Biden and Congressional Leadership will ultimately decide whether and which policy priorities to push through the 117th Congress using budget reconciliation. We outlined some high-ticket priorities that could be up for consideration below.

- **COVID-19 Relief:** Democrats might choose to use budget reconciliation to push through the COVID-19 relief priorities that did not make the final cut in the latest relief package. Some of these outstanding priorities include aid for state and local governments, \$2,000 stimulus checks, and hazard pay for essential workers. In a [joint statement](#) on the COVID-19 relief deal that passed during the eleventh hour of the 116th Congress, Senate Minority Leader Schumer (D-NY) and Speaker of the House Nancy Pelosi (D-CA) noted that state and local governments will need additional funding “to prevent senseless layoffs of heroic essential workers and critical service cuts.” It seems likely that Democrats would also seek to plus-up funding for certain existing programs, such as emergency rental relief and vaccine distribution. Finally, House Democrats outlined their priorities last Congress in the updated [HEROES Act](#), although some of the funding included that the House [passed](#) in October 2020 may no longer reflect current needs.
- **Infrastructure:** House Transportation & Infrastructure Chairman Peter DeFazio (D-OR) told reporters in September 2020 that then-Presidential Candidate Joe Biden was looking to move an infrastructure package as soon as February. DeFazio indicated that Biden’s team had expressed interest in the \$494 billion surface transportation proposal he authored, the [INVEST in America Act](#). The [Moving Forward Act](#), which passed the House last year by a 233-188 vote, might also serve as a good barometer of Democratic priorities for a comprehensive infrastructure package that includes untraditional infrastructure funding. In addition to surface transportation, the \$1.5 trillion package includes funding for education, housing, clean water, and broadband. Finally, President-elect Joe Biden repeatedly linked infrastructure with climate and clean energy on the campaign trail, and his [\\$1.3 trillion infrastructure proposal](#) aims to reduce carbon emissions, create jobs and shore up the ailing Highway Trust Fund with “new revenues.”
- **Climate Change/Energy:** Combatting climate change and investing in clean-energy technologies was another major theme in President-elect Joe Biden’s campaign platform. Biden has stated his ambition to put the United States on a path to achieve net-zero emissions by no later than 2050. His [“Plan for a Clean Energy Revolution and Environmental Justice”](#) demands that Congress enact legislation in the first year of his presidency that (1) establishes an enforcement mechanism that includes milestone targets no later than the end of his first term in 2025; (2) makes a historic investment in clean energy and climate research and innovation; and (3) incentivizes the rapid deployment of clean energy innovations across the economy, especially in communities most impacted by climate change. As noted above, some of President-elect Joe Biden’s climate ambitions overlap with his infrastructure goals. For instance, his [clean energy plan](#) pledges to provide American cities with zero-emissions public transportation options and invest in technologies such as electric vehicle charging stations.
- **Tax:** Democrats would likely pair an infrastructure/clean energy proposal with tax reforms to mitigate the package’s final price tag. On the campaign trail, President-elect Joe Biden proposed undoing major pieces of the 2017 Tax Cut and Jobs Act (TCJA) and raising taxes beyond what President Obama sought, generating \$4 trillion over a decade. According to the Tax Policy Center, about 74% of his tax increases

would fall on the top 1% of households. However, those tax policies were outlined before the pandemic hit the economy, and unemployment rates soared. Meanwhile, Senator Ron Wyden (D-OR), who leads Democrats on the Senate Finance Committee, also has a proposal to reform capital income tax called "[Treat Wealth Like Wages](#)." The proposed policy equalizes the treatment of ordinary and capital income by eliminating the rate preference for long-term capital gains and applying new anti-deferral accounting rules for certain income. Senator Wyden's proposal would apply only to individuals with annual income above \$1 million in income or more than \$10 million in assets for three consecutive years. Senator Wyden claims that the additional tax revenue from these changes could raise between \$1.5 trillion and \$2 trillion over 10 years.

- *Social Justice Reform:* In the wake of nationwide protests against police brutality last year, criminal justice and policing reform were major issues during President-elect Joe Biden's campaign. His campaign platform proposed a \$20 billion grant to incentivize states to reduce prison population numbers, as well as provide funding for mental health and substance abuse services. President-elect Biden and Vice President-elect Kamala Harris also outlined a [plan](#) to "reinvigorate community-oriented policing" by investing \$300 million for localities to hire more police officers to interact with the community. Furthermore, President-elect Biden, Vice President-elect Harris and the Democratic Party are advocating for implementing a national use of force standard that bans the use of chokeholds and carotid holds. They also want to establish no-knock warrants standards and require nonviolent tactical and implicit bias training for officers. Last year, House and Senate Democrats, led by the Congressional Black Caucus, Senator Cory Booker (D-NJ), and then-Senator Kamala Harris (D-CA) introduced the [Justice in Policing Act](#) outlining Democratic priorities for police reform.