What’s In and Out of Budget Reconciliation
• Frankly, it’s all about the Senate

• Instructions from the budget resolution to the committee must be followed.
  • Committee Jurisdictions
  • Meet a savings target / don’t go over the “cost” target

• Amendments to the bill must be germane, may not increase the deficit (unless to strike), and are still subject to the rules (including the Byrd Rule)
A surgical point of order against “extraneous matter”

1) it does not produce a change in outlays or revenues;
2) it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
3) it is outside of the jurisdiction of the committee that submitted the title or provision;
4) it produces a change in outlays or revenues which is merely incidental to the nonbudgetary components of the provision;
5) it would increase the deficit for a fiscal year beyond the “budget window” covered by the reconciliation measure;
6) it recommends changes in Social Security.
- “Rates and Dates”
- Tax policy (but don’t be too specific)
- Expand or trim existing mandatory spending (except Social Security)
- New direct spending programs (with some limits)
Clearly Not Allowed

- Changing Social Security
- Things that do not “score” – regulations
  - Points of Order
  - Civil and Criminal Code
- Provisions/policy from the wrong committee
- Long-term deficit increases without an on-committee offset
• The “merely incidental” test is subjective.
  • The Senate Parliamentarian makes the advisement/ruling based on established precedent.
  • It is argued by staff or Senators behind closed doors.
• The key is: can you successfully argue what you are doing is about the spending or revenue changes proposed?
• Edge Case Examples:
  • Single Target - Newman’s Own and Planned Parenthood
  • Waivers - Shield rural areas from IPAB
  • Changing a regulation on industry - Essential health benefits
Lessons from The American Rescue Plan Act of 2021

- Direct spending from authorizing committees is more permitted than previously thought
- Filling up a pot of money that has restrictions is easier than new money with restrictions
- Reinforced the single-target limitations which is relevant for infrastructure
- Keep your provisions’ jurisdiction boundaries clean