



August 9, 2021

Senate Democrats Release FY 2022 Budget Resolution

On Monday, Aug. 9, Senate Democrats released the text and supporting materials for the fiscal year (FY) 2022 Budget resolution, which contains topline budgetary instructions for House and Senate committees as they develop policies to meet the \$3.5 trillion Budget reconciliation package through which congressional Democrats will seek to pass progressive policies, likely without Republican support.

Today, Senate Democrats released the following materials:

- [Budget resolution legislative text](#)
- [Topline summary document](#)
- [Senate Democrat memorandum](#)

In addition, Senate Majority Leader Chuck Schumer (D-NY) sent a Dear Colleague letter to Senate Democrats in which he said the Senate will “immediately” move to the Budget resolution once the chamber finishes the Infrastructure Investment and Jobs Act. Final Senate passage of that bill is expected by early Tuesday morning.

Schumer has pushed committees to rapidly craft the Budget reconciliation policies, instructing chairs to hold regular meetings during the August work period to complete the required work. Alongside Schumer’s request, the Budget resolution requests committees submit their legislative materials to the Budget Committees by Sept. 15.

This alert provides an overview of the Budget resolution, with a particular focus on the select tax and health care components expected to be developed during committee consideration.

Committee Instructions

Below is a topline overview of the instructions for the various House and Senate committees. The Budget resolution focuses on aggregate spending amount rather than allocating specific funding levels for various spending priorities, leaving the committees with discretion to determine specific funding.

Committee	Senate	House
Senate and House Agriculture	\$135 B	\$89 B
Senate Banking/House Financial Services	\$332 B	\$339 B
Senate Commerce/House Energy and Commerce*	\$83 B	\$487 B
Senate Energy/House Natural Resources	\$198 B	\$26 B
Senate Environment and Public Works/House Transportation and Infrastructure	\$67 B	\$60 B
Senate Finance/House Ways and Means**	\$1.8 T*	\$1.8T*
Senate Health, Education, Labor and Pensions/House Education and Labor	\$726 B	\$780 B
Senate Homeland Security and Governmental Affairs/House Homeland Security	\$37 B	\$500 B
House Oversight and Reform		\$8 B
Senate Indian Affairs	\$21 B	
Senate and House Judiciary	\$108 B	\$108 B
Senate and House Small Business	\$25 B	\$18 B
Senate and House Veterans Affairs	\$18 B	\$18 B

* On the House side, the Energy and Commerce Committee has jurisdiction over many of the same issues as the Senate HELP Committee.

**The Budget resolution provides the Finance Committee with an instruction that allows for \$1.8 trillion in spending on various priorities within the committee’s jurisdiction. In order to give the committee the flexibility it needs to accomplish these goals, the Budget resolution instructs the committee to reduce the deficit by at least \$1 billion. The committee is expected to raise a much larger amount in revenue, although it is not required to do so by the Budget resolution.

Spending Priorities

Topline funding for each committee (see above) must be allocated across priorities in the committee’s jurisdiction. An overview of spending priorities for each committee of jurisdiction is outlined below:

Senate Committee	Instruction
Agriculture, Nutrition and Forestry	\$135 B
<ul style="list-style-type: none"> Agriculture conservation, drought and forestry programs to help reduce carbon emissions and prevent wildfires Rural development and rural co-op clean energy investments 	<ul style="list-style-type: none"> Agricultural climate research and research infrastructure Civilian Climate Corps funding Child nutrition Debt relief
Banking, Housing and Urban Affairs	\$332 B
<ul style="list-style-type: none"> Creation and preservation of affordable housing by making historic investments in programs like the Housing Trust Fund, HOME, the Capital Magnet Fund and rural housing 	<ul style="list-style-type: none"> Community investment, development and revitalization through initiatives like Community Land Trusts, investments in CDBG, zoning, land use and transit

<ul style="list-style-type: none"> Improve housing affordability and equity by providing down payment assistance, rental assistance and other homeownership initiatives 	<ul style="list-style-type: none"> improvements and creating healthy and sustainable housing Public Housing Capital Investments and Sustainability
Commerce, Science and Technology	\$83 B
<ul style="list-style-type: none"> Investments in technology, transportation and more Research, manufacturing, and economic development 	<ul style="list-style-type: none"> Coastal resiliency, healthy oceans investments, including the National Oceans and Coastal Security Fund National Science Foundation research and technology directorate
Energy and Natural Resources	\$198 B
<ul style="list-style-type: none"> Clean Electricity Payment Program Consumer rebates to weatherize and electrify homes Financing for domestic manufacturing of clean energy and auto supply chain technologies Hard Rock mining 	<ul style="list-style-type: none"> Federal procurement of energy efficient materials Climate research Research infrastructure for DOE National Labs Department of Interior programs
Environment and Public Works	\$67 B
<ul style="list-style-type: none"> Clean Energy Technology Accelerator that would fund low-income solar and other climate-friendly technologies Environmental justice investments in clean water affordability and access, healthy ports and climate equity EPA climate and research programs Investments in clean vehicles 	<ul style="list-style-type: none"> Federal investments in energy efficient buildings and green materials Appalachian Regional Commission and Economic Development Administration economic development and transition programs Methane polluter fee to reduce carbon emissions
Finance	\$1 B
<ul style="list-style-type: none"> Paid Family and Medical Leave ACA expansion extension and filling the Medicaid Coverage Gap Expanding Medicare to include dental, vision, hearing benefits and lowering the eligibility age Addressing health care provider shortages (Graduate Medical Education) Child Tax Credit/EITC/CDCTC extension Long-term care for seniors and persons with disabilities (HCBS) 	<ul style="list-style-type: none"> Clean energy, manufacturing and transportation tax incentives Pro-worker incentives and worker support Health equity (maternal, behavioral and racial justice health investments) Housing incentives SALT cap relief Other investments within the jurisdiction of the Finance Committee
Education, Labor and Pensions	\$726 B
<ul style="list-style-type: none"> Universal Pre-K for 3- and 4-year-olds Child care for working families Tuition-free community college 	<ul style="list-style-type: none"> Health equity (maternal, behavioral and racial equity health investments) Pandemic preparedness Workforce development and job training

<ul style="list-style-type: none"> • Investments in HBCUs, MSIs, HSIs, TCUs and ANNHIs • Increase the maximum Pell grant award • Investments in primary care, including Community Health Centers, the National Health Service Corps, the Nurse Corps and Teaching Health Center Graduate Medical Education 	<ul style="list-style-type: none"> • Labor enforcement and penalties • Civilian Climate Corps funding • Research infrastructure, including for HBCUs, MSIs, HSIs, TCUs and ANNHIs • School infrastructure, student success grants and educator investments
Homeland Security and Governmental Affairs	\$37 B
<ul style="list-style-type: none"> • Electrifying the federal vehicle fleet (USPS and Non-USPS) • Electrifying and rehabilitating federal buildings • Improving our cybersecurity infrastructure 	<ul style="list-style-type: none"> • Border management investments • Federal investments in green materials procurement • Resilience
Judiciary	\$107 B
<ul style="list-style-type: none"> • Lawful permanent status for qualified immigrants • Community Violence Intervention Initiative 	<ul style="list-style-type: none"> • Investments in smart and effective border security measures
Indian Affairs	\$20.5 B
<ul style="list-style-type: none"> • Native health programs and facilities • Native education programs and facilities • Native American housing programs • Native energy programs 	<ul style="list-style-type: none"> • Native resilience and climate programs • BIA programs and facilities • Native language programs • Native Civilian Climate Corps
Small Business and Entrepreneurship	\$25 B
<ul style="list-style-type: none"> • Small business access to credit, investment and markets 	
Veterans Affairs	
<ul style="list-style-type: none"> • Upgrades to VA facilities 	

Senate Finance Committee and Pay-fors

In addition to receiving an instruction that the Senate Finance Committee may spend up to \$1.8 trillion, the Budget resolution also requires the committee to produce at least a \$1 billion in deficit reduction. This gives the committee jurisdiction over substantial portions of spending contemplated by the Budget resolution and contemplates that it will provide *all* of the offsets. Ultimately, the \$3.5 trillion Budget resolution represents the maximum amount of spending that is expected in a reconciliation bill, but it does not represent the bill's expected net budgetary effect since the offsets are yet to be outlined and scored. Senate Finance Committee Chair Ron Wyden (D-OR) said the committee's revenue proposals would focus on the following four categories: multinational corporations, wealthy individuals, Internal Revenue Service (IRS) enforcement and savings from other programs. While not an exhaustive list, Wyden specifically mentioned the following potential pay-fors:

- **International Tax Overhaul.** Wyden touted the overhaul of international taxation framework he and Sens. Sherrod Brown (D-OH) and Mark Warner (D-VA) released in April. The framework would overhaul Global

Intangible Low-Taxed Income (GILTI), Foreign Derived Intangible Income (FDII) and the Base Erosion and Anti-abuse Tax (BEAT). Several Democratic lawmakers have expressed concerns with regard to current international tax reform proposals, with some highlighting the potential negative effects of significantly raising the GILTI rate. Click [here](#) to read Brownstein's summary and analysis of the international framework.

- **Pass-Through Deduction.** Wyden proposes to expand the current 20% pass-through deduction and limit it to small businesses, while repealing its availability for higher-income earners. He is likely to pursue legislation similar to the [Small Business Tax Fairness Act](#) (S.2387) he introduced in July. That bill would expand eligibility for middle-income business owners by removing industry-specific qualifications, simplify the deduction calculation for small businesses and phase out the deduction for individuals earning above \$400,000.
- **Carried Interest.** Wyden intends to eliminate the preferential tax treatment of carried interest for private equity, real estate and other financial management businesses. He introduced the [Ending the Carried Interest Loophole Act](#) (S.2617) on Aug. 5 with Sen. Sheldon Whitehouse (D-RI). The legislation would tax individuals who acquire a carried interest upon receipt of the interest and require private equity, hedge fund and real estate managers to recognize a deemed compensation amount annually, taxed at ordinary rates and subject to self-employment taxes.
- **Derivatives.** Wyden proposes to require wealthy investors to pay tax annually on investments in derivatives contracts. Wyden introduced the [Modernization of Derivatives Tax Act](#) (S.2621) on Aug. 5. The bill would, among other things, require mark-to-market and ordinary tax treatment for all derivatives, targeting taxpayers who use derivatives to avoid taxes, and modernize the tax rules for derivatives.

In addition to the proposals above, the Treasury Department released the General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals ("Greenbook") in May, which outlines several additional potential offsets. Other proposals that are likely to be included are:

- Increase in the corporate tax rate, which the Joint Committee on Taxation recently scored. An increase to 24% would raise \$299 billion and an increase to 28% would raise \$701 billion.
- Increase in the top individual tax rate to 39.6% and taxing long-term capital gains at ordinary income rates for taxpayers with over \$1 million in Adjusted Gross Income.
- Repeal of various tax preferences for the fossil fuel industry.
- Expansion of information reporting rules.

Several health care offsets are also on the table, including:

- A repeal of the rebate rule
- Medicare Drug Price Negotiation
- Medicare Parts B and D Prescription Drug Inflation Cap
- Medicare Part D Modernization
- Inclusion of value of coupons in determination of average sales price for drugs and biologicals under Medicare Part B
- Establishment of maximum add-on payment for drugs and biologicals
- Treatment of drug administration services furnished by certain excepted off-campus outpatient departments of a provider
- Require pharmacy-negotiated price concessions, payment and fees to be included in negotiated prices at the point-of-sale under Part D of the Medicare program

In addition to Senate Finance Committee-specific instructions, the Budget resolution provides Budget Committee chairs with the following authorities with respect to adjusting committee submissions:

- **No New Taxes on Middle Class.** The Budget resolution provides that the Budget Committee chairs may revise the allocations submitted by a committee, provided the revision does not increase taxes on those making less than \$400,000 a year.
- **Program Integrity Initiatives and Other Adjustments in the Senate.** The Budget resolution also permits the chairs of the House and Senate Budget committees to adjust committee allocations, budgetary aggregates and allocations in the case of appropriations legislation specifically funding tax enforcement activities, including tax compliance to address the federal tax gap. Such adjustments to the budget would be permitted up to \$417 million.

Next Steps

Following Senate passage of the Infrastructure Investment and Jobs Act, the Senate will immediately begin consideration of the Budget resolution. This process is expected to include a lengthy vote-a-rama session, during which lawmakers will have an unlimited opportunity to offer amendments to the Budget resolution. Brownstein will be covering the vote-a-rama and the remainder of the Budget reconciliation process.

This document is intended to provide you with general information regarding the Budget resolution. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.