

# What to Expect When You're Expecting (A Budget)

By Kerry Weems

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**T**he Biden Administration's top health priorities are COVID and strengthening the Affordable Care Act. The initial flurry of executive actions will go only so far. The rest, especially spending, will require the Congress to act.

Unlike the larger majorities that President Obama enjoyed in his first two years, President Biden cannot lose any Democrat votes and may need a few Republicans, depending on the issue and the vehicle, to achieve his policy goals. The policy choices and pathways narrow very quickly under these circumstances. So, *what will we know, and when will we know it?*

In my career, I was involved in the development of nearly 30 budgets. The Federal budget process follows a torturous and still evolving set of guidelines, precedents, and rules. Based on my experience (and the attendant scars) here's my play-by-play guide to the fiscal 2021/2022 budget.



## A PRIMER ON A VERY BROKEN PROCESS

*The Budget Control and Impoundment Act of 1974* established the basic framework for the budget process. Despite a number of amendments to the Act, the process remains largely unchanged. At a high-level, this is how it unfolds.

- The President submits his (or her) budget to the Congress on the first Monday of February.
- By April 15, the Congress passes a Budget Resolution, which is the Congressional outline of a budget. Unlike many other measures in the Senate, a budget resolution is exempt from filibustering and requires only a majority to pass. It does not have force of law, nor does the President sign it. It is binding on further Congressional action on the budget. Also, a budget resolution can order a "reconciliation" bill.
- A reconciliation bill "reconciles" current spending with the projected spending outlined in the budget resolution. Spending for Medicare, Medicaid, food stamps and some Veterans benefits is on "automatic pilot." Spending changes in those programs must be made by statute. In the case of slim majorities, reconciliation is the vehicle of choice. The Senate cannot filibuster a reconciliation bill, and the President must sign it for it to become law.
- There are twelve separate appropriations bills encompassing the military and most government operations. Under the Budget Act, the House must consider all appropriations bills by June 30. Thereafter, the Senate must consider all the bills, both houses must pass them, and the President must sign them by September 30.

As a practical matter much of this never happens and, with the exception of the President's Budget, none of it happens according to the set timelines.

The Biden Administration is pushing the following three big health initiatives that are subject to a dysfunctional budget process and narrow majorities: a COVID relief package; strengthening the Affordable Care Act and shoring up a rapidly deteriorating Part A Medicare Trust Fund. There will be tradeoffs between what's possible, what's they want and what they need. Let's consider how these initiatives will flow through the budget process.

**The President's Budget:** In a "normal" budget year, the President's Budget arrives on time and the opposition party immediately declares it "dead on arrival." In a transition year, the administration sends a "framework" budget to the Congress instead. The framework, due around the time of the not yet scheduled State of the Union address or February 23 this year, is a "comic book" version of the budget filled with large aspirations, big numbers, huge unknowns, and little detail. The fully-documented version, with real choices, will come out in April or later, so the administration is still weighing most of the hard choices. The framework will include large, unspecified spending reductions. Washington lobbyists are now working feverishly around the clock to make sure those unspecified reductions don't touch their clients in the fully-documented budget.

Negotiations for "offsets" or "pay fors," reductions in spending to offset or pay for new spending are always difficult. The difficulty this year is compounded by the Secretarial vacancy at HHS. Secretary-designate Becerra may be at the table, but without the formidable HHS staff to call on, he's at a significant disadvantage. Once confirmed, he'll have to defend the budget. I've seen a number of HHS Secretaries get chewed alive by budgets made without the participation of HHS staff.

*What to expect:* A full budget in late March/early April that Republicans will declare dead on arrival, but that the Congress will use as a roadmap for action.

**The Budget Resolution:** The Congress will use the delayed delivery of the fully-documented President's Budget as an excuse to miss the April 15 deadline. However, don't mistake delay for inactivity. A transition year gives the majority party in the Congress and the Administration the ability to negotiate among themselves and harmonize the President's Budget and the budget resolution, rather than working sequentially. Right now, representatives are meeting behind closed doors and hammering out a budget policy pathway acceptable to both the Administration and the Congress.

*What to expect:* A full budget resolution passed by both Houses by the end of May that looks like the President's Budget. Expect the resolution to include budgetary totals that allow significant changes to the Affordable Care Act through

a reconciliation bill. Watch to see if the House version contains a "Medicare-for-All" provision or a government option, neither of which will fly in the Senate.

Also, keep an eye on Bernie Sanders, now Chairman of the Budget Committee. As such, he'll have to manage both the Budget Resolution and Reconciliation on the Senate floor. Until now, Senator Sanders has never managed these bills. Even with experienced staff, this will be a daunting job, especially keeping his caucus from submitting unfriendly amendments and negotiating difficult votes. As more progressive than the rest of his caucus, Senator Sanders may find himself in a hard spot crafting a more moderate package to pass legislation.

**Reconciliation:** While a reconciliation bill is free of the filibuster and requires only a simple majority in the Senate to pass, it does have constraints on what it can contain. A reconciliation bill can only cover matters that directly raise or lower spending or taxes. For instance, raising the income eligibility for an ACA subsidy directly increases spending, so that provision would fit in a reconciliation bill. A provision eliminating short-term health insurance plans doesn't relate directly to spending or taxes, so just one senator's objection kicks it out. (As a technical matter a Senator raises a "point of order" against the provision in question and the presiding officer rules on the matter. The presiding officer's ruling can be overturned on appeal, but with 60 votes, not a simple majority.)

*What to expect:* Expect a reconciliation bill by mid-summer, and expect the following policies to be included:

- Changes to the ACA premium tax credit, moving it above 400 percent of the poverty line, if that isn't addressed before the COVID relief bill.
- Continued Medicaid expansion either by "sweetening the pot" for States that have not expanded or by making expansion mandatory.
- Additional funding and eligibility changes to the ACA beyond those covered by COVID relief.
- Revenue and cost-shifting measures to shore up the Part A Trust Fund.
- Less likely, but possible, phasing down the eligibility age for Medicare to age 60.

Other policy changes that may not have a direct effect on outlays or revenue won't make it into reconciliation. Sponsors will have to wait and work those measures into a broader bill that will require 60 votes in the Senate. Possible policies in this category include:

- A public option for ACA plans.
- Repeal of the non-interference clause (direct government negotiation of drug prices).
- Further changes to surprise billing, including taking on exorbitant non-emergency out-of-network charges.
- Substantial changes to coverage and funding of abortion or contraception services.

Reconciliation will only provide “half a loaf” for the President’s ACA reform program. Broader policy changes will require much stronger consensus on health policy than we see today.

**The Vote-A-Rama:** As mentioned, both budget resolution and reconciliation have time limits and require a simple majority to pass. However, the Senate measures time differently than most human institutions. Actual debate and time in quorum calls count toward the time limit. Time spent voting does not. Once debate time expires, the Senate begins voting individually on any amendments or motions to clean them up before the final vote. These votes take place with no time for debate, although if the Senate votes unanimously, an amendment’s sponsor may get a minute to explain his or her amendment. “Vote-a-ramas” on amendments can take hours, even consume an entire night or day. The largest vote-a-rama ever occurred during the 2008 budget reconciliation, ruling on 44 separate amendments.

According to the Senate Historian, the first vote-arama took place in 1977. That may be so, but the Senators didn’t understand or regularly plan for them until years later. As a young Senate aide in 1981, I distinctly remember open panic on the Senate floor when the vote-a-rama on the *Omnibus Reconciliation Act* started. I heard shouts of “what is it?” “can anyone explain it?” and one southern senator roared over the din: “We don’t know what we are voting for!”

*What to expect:* Expect a vote-a-rama at the conclusion of debates for both the budget resolution and the reconciliation bill. Expect that many of the amendments will be “gotcha” type amendments, planned to force Senators to state their positions for or against a particular policy on the record.

**COVID Relief:** The previous COVID relief packages had sufficient consensus to move without special filibuster protection. But Senators disagreed significantly over both the size and contents of the February 2021 package. The Senate chose to use the expedited procedures of a budget resolution to move the relief package along. Early in the morning of February 5th, after an all-night vote-a-rama, the Senate passed a budget resolution ordering a reconciliation bill for COVID relief. Differences between the Senate version and a House version still require resolution.

*What to expect:* Expect a completed reconciliation bill on COVID relief by mid-March when unemployment provisions expire. There will be some attempts at bipartisanship, but the main outlines of the final bill will closely match the President’s request. As it stands today, the outlines of reconciliation will increase subsidies and eligibility for the ACA as well as providing additional financial support and eligibility for COBRA benefits.

The relief bill includes a substantial package of funding for vaccines, testing and return to schools. This funding looks like traditional appropriations, rather than funding allowable under reconciliation. Appropriation Chair DeLauro could object but expect her to take a pass. Expect that Republican Senators will raise points of order against the vaccine, testing and school funding and possibly some of the COBRA changes.

**Appropriations:** Twelve separate appropriations bills fund different parts of the government. The Congress must enact appropriations bills or a stopgap measure by September 30, the last day of the fiscal year. 1996 was the last time the Congress enacted all twelve bills on time. In the 25 years since, the Congress passes “continuing resolutions” and “omnibus

## On “Shutdowns”

Funding for most government operations is on an annual basis, a fiscal year beginning on October 1st and ending on September 30th. If the Congress fails to act on appropriations, government activity must cease, as there are prohibitions against spending money without appropriations. Some operations, like air traffic control and VA hospitals, continue to work under exceptions created in a memo by President Carter’s Attorney General Benjamin Civiletti.

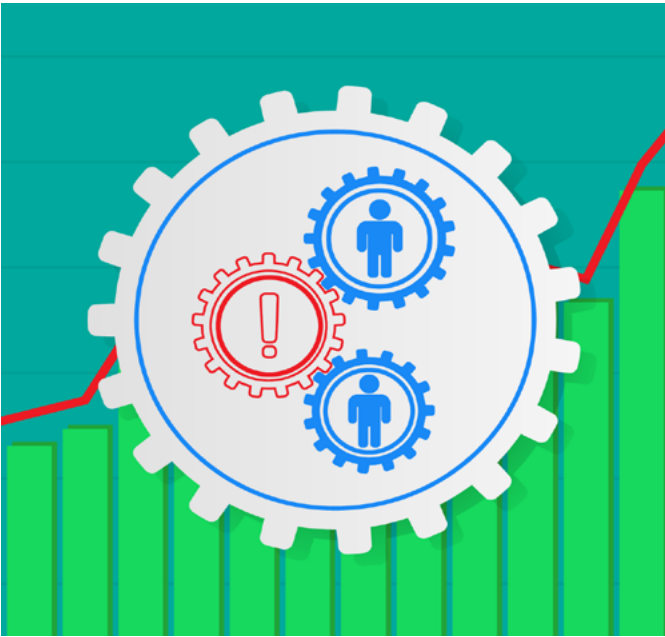
Over the years, the scope of the exceptions has grown extensively, so many areas of the government continue to function without final appropriations. Shutdowns inconvenience tourists trying to visit a closed Smithsonian, and Federal employees sent home for indefinite periods of time without guaranteed pay. In many ways, shutdowns are now symbols of Washington dysfunction with increasing low stakes.

No matter what actually holds up appropriations in a given year, the public tends to blame the party in power. In 2021,

the Democrats control the White House and both houses of the Congress. They want to demonstrate “good government,” and will be anxious to avoid a shutdown in the fall. Making the trains run on time will provide a contrast to the previous administration.

The Republicans will also want to avoid a shutdown. They want to shuck the “party of no” moniker and claim some of the credit for good government. Having said that, there will be some issues (such as Planned Parenthood funding) that may cause delays in the appropriations bills, but stopgap measures will provide funding until the differences are resolved.

For both parties, there are 397 days from the beginning of the fiscal year (10/1) to the midterm election. With razor-thin Congressional margins, neither party can afford to look incapable of governing.



*What to expect:* Watch the Labor/Health and Human Services/ Education bill (L/HHS/E) closely. Expect this bill to carry additional parts of the Biden health plan including: more funding for navigators, outreach and public education to support the ACA, and funding for initiatives to reduce healthcare disparities in the U.S.

Potentially, the L/HHS/E bill, as written by the House, could contain changes to the Hyde Amendment, which restricts federal funding for abortions. Rosa DeLauro (D, CT-3) chairs the L/HHS/E Subcommittee and the full Appropriations committee and favors the removal or modification of the Hyde Amendment. Also, expect a fight over funding for Planned Parenthood. Rep. DeLauro is a canny chairperson who could make the legislative position on these issues uncomfortable for some Republicans.

Expect the House to produce their version of the L/HHS/E bill before the August recess, expect the Senate to let the measure languish. Then the Congress will likely roll L/HHS/E up into an omnibus bill by December. Except a series of short-term, continuing resolutions between October 1st and December. Both parties will look to avoid a shutdown. The Democrats need to show leadership, and the Republicans need to avoid simply being the party of “no.” Look for middle ground, but not until December.

appropriations” that roll several bills into one large package to fund the government. Distressingly, the Congress now uses government shutdowns to settle differences on funding and policy. The large omnibus bills give members cover to vote for a “must-pass” bill in whole rather than go on record voting for/ against specific amendments that cover uncomfortable matters.

## YOU CAN'T ALWAYS GET WHAT YOU WANT

*You can't always get what you want*

*But if you try sometimes*

*You just might find*

*You get what you need*

—The Rolling Stones

You might not expect The Rolling Stones to sing about the US federal budget process. But they sing about getting no satisfaction, what you want and what you need. Of course the budget isn't that simple.

Planning a budget and legislative strategy through the byzantine and dysfunctional budget process is difficult in “normal” times. But the Biden team got an extremely late start with a delayed transition and the composition of the Senate unknown until January 6th. They will have to choose wisely how they position their policies and which fights are worth fighting.

The expedited processes and simple majority votes work in their favor for a broad range of policies. If they avoid overreaching or insisting on initiatives that alienate even a few members of their caucus, Team Biden may be able to navigate the budget labyrinth. Or as the 20th Century English philosophers Mick Jagger and Keith Richards would put it, Team Biden may not “get all they want but they just might find, they get what they need.”

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Prior to his private sector career, Mr. Weems served 28 years with the Federal Government in the U.S. Department of Health and Human Services, rising to Deputy Assistant Secretary for Budget. Nominated by President George W. Bush, he held the position of Acting Administrator of the Centers for Medicare and Medicaid Services from 2007 to 2009. He is a two-time recipient of the Presidential Rank Award, the highest honor in the civilian service. He holds an MBA and bachelor's degree in philosophy and business administration.