

GLOBAL Insight



Wealth
Management

Special report

January 2025



Processing the U.S. legislative process

Every administration enters office with aggressive policy goals. But a lot of give-and-take may be needed to turn goals into policy.

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Produced: Jan. 23, 2025, 13:04 ET; Disseminated: Jan. 24, 2025, 11:30 ET

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Special report



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Processing the U.S. legislative process

Both as a candidate and while awaiting his second inauguration, President Donald Trump laid out some aggressive policy objectives, ranging from tariffs to territorial acquisition. Given the breadth of his goals, we think it's worth taking a moment to consider the U.S. legislative process and where the incoming administration will have relatively more or less freedom to act.

Key points

- **Four groups are part of the law-making process: the president, House of Representatives, Senate, and courts.**
- **Despite both chambers of Congress being controlled by Republicans, there is no guarantee the Trump administration will have a clear path to legislative success.**
- **The use of reconciliation and executive orders will be important, but the use of the traditional legislative process should not be forgotten.**

As a reminder, there are four main players in the U.S. law-making landscape: the House of Representatives, Senate, president, and the courts. Even though the Republican Party controls the first three—and has had significant success in the judicial process—each of these institutions has peculiarities that complicate lawmaking even for a majority party.

The House of Representatives is composed of 435 members elected for two-year terms. Institutionally, the House is dominated by its speaker and the Rules Committee. These two exert significant control on what legislation will be considered and can heavily influence its odds of passage. There are ways around the speaker, but they're slow and complicated. Politically, House districts tend to lean strongly in favor of one political party, leaving many members more vulnerable to attacks from within their own party than from the other end of the political spectrum. The result is a tendency toward more extreme views by House members.

The 100 U.S. Senators are elected for six-year terms, with one-third of the body chosen every two years. Senators are elected on a statewide basis, which tends to reward candidates with more moderate, broader appeal. Institutionally, the Senate is defined by the filibuster, a procedural hurdle that effectively requires a 60-vote supermajority to pass most bills.

Given the current composition of the Senate, the filibuster means legislation requires bipartisan support to get through the Senate. Without it, however, Republican votes would be sufficient. The filibuster survives on sufferance; there is an established parliamentary procedure, referred to as the "nuclear option," that can remove the restriction by a simple majority vote. To date, the filibuster on most legislation has survived, although it has been eliminated for judicial confirmations and some budget measures.

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Comparing the two chambers of the United States Congress

	House of Representatives	Senate
Membership	435, representing individual districts within each state.	100, elected on a statewide basis (two from each state).
Term of office	Two years. All members subject to biennial election.	Six years. One-third of chamber turns over every two years.
Critical procedural limit on passing legislation	Speaker and Rules Committee control agenda and rules for debate.	Filibuster effectively requires 60 votes to pass most bills.
Electoral risks	Largely intra-party. Membership tends to be more partisan.	Typically more centrist. Members tend to reflect the central tendencies of state electorates.
White House influence	High for most issues. Taxes, spending, and deficits are typically contentious.	Moderate. Question largely turns on potential elimination of filibuster.
What to watch	Debt ceiling increase. Tax cuts not matched by spending cuts. Size of any deficit expansion.	Filibuster. Overturning of Byrd Rule on reconciliation.

Source - RBC Wealth Management

The president's role in legislation is relatively simple—approve or veto. If approved, the bill becomes law. A presidential veto can only be overturned by a two-thirds majority of Senators and House members. Presidential vetoes have become increasingly rare through the post-war period. President Harry Truman, for instance, rejected 250 bills in the 1940s and 50s and Congress overturned a dozen of those; for Ronald Reagan in the 1980s, those numbers were 78 and 9, respectively, while Barack Obama vetoed 12 bills, only one of which was overturned.

The decline in the use of the veto is largely due to greater coordination between the House, Senate, and president. Lawmakers increasingly tend to pre-package bills, only advancing legislation that they know—or have strong reason to believe—will receive congressional and presidential approval. In essence, the president's veto power is used early in the process to shape the type of bill that Congress considers, obviating the need to formally reject bills later in the process.

Finally, a law or specific provisions can still be overturned by the courts if found to be unconstitutional. The exact level of review the court applies varies by subject matter, and the modern Court tends to give deference to economic laws.

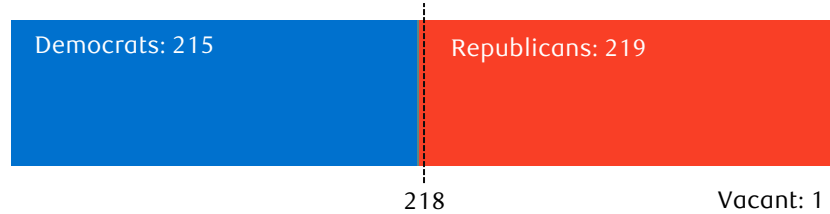
Politicians change but politics is eternal

With both chambers of Congress controlled by Republicans, the Trump administration, in theory, should have a relatively clear path to legislative success. In practice, the picture is more complicated.

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The Republican majority in the House is thin, but we believe is likely reliable on many issues. Modern politics is about votes and money, and the combination of Elon Musk’s Political Action Committee (PAC), and President Trump’s popularity with his party represent substantial pressure on Republican House members to toe the line.

Republicans maintain a slim but powerful House majority



Source - U.S. House of Representatives

Their combined influence is particularly acute for representatives in heavily Republican districts. Congressional elections in the U.S. are typically a two-step process—a primary election where each party holds a vote to select its official candidate, followed by a general election between all candidates qualified for the ballot. In districts that lean heavily toward one party, the primary election is effectively the final election since the dominant party’s candidate will almost certainly occupy the office.

For most issues, the threat of being “primaried,” or facing a primary challenger endorsed by Trump and financed by Musk, is likely sufficient to keep the Republicans’ thin House majority intact. Where we see the legislative path becoming more complicated is on budget matters.

There are two contrary strands to budget vote gathering. First, large budget deficits are anathema to large swathes of Congress and voters. Second, keeping government funds flowing to constituents is a key Congressional function—for most members, the difference between wasteful government spending and vital national outlays is whether jobs are created in someone else’s district or their own.

Those twin realities are going to make it very difficult, in our view, to get major budget changes through the House—trying to find a mix of tax cuts, spending cuts, and deficit levels that are acceptable to Republicans is likely to be a very heavy lift, particularly since the thin minority allows for only a handful of no votes on a bill. Primary threats are less successful on budgetary matters, since a House candidate who votes against a job-creating federal program in their district is unlikely to win their election, making it a lose if you do, lose if you don’t situation.

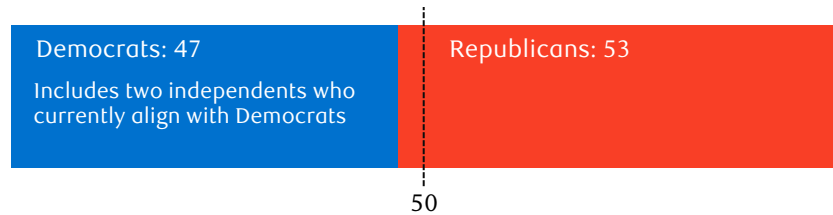
In the Senate, the complications are different but equally real.

The primary issue is that senators face a very different election calculus. Two-thirds of the chamber is secure in their seats for at least four years and senators from most states are less threatened by attacks from more extreme members of their own party. This leaves senators better able to resist White House pressure.

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The key political question for the Senate is eliminating the filibuster; as long as a bill requires 60 votes, Democrats will have leverage. Cutting the filibuster—which has been part of the Senate since inception—is a risky move, given that Republicans have a thin majority and that midterm elections tend to favor the minority party. For senators who are looking for a longer career in the institution, alienating colleagues and shifting the balance of power so heavily in favor of the majority party is a double-edged sword.

Republicans flip the Senate but remain subject to filibuster constraint



Source - U.S. Senate

The long and winding road

There are three basic paths forward to implementing the Trump administration's economic agenda.

The first is following the complete legislative process laid out above. Short of a constitutional amendment, this is the most robust form of authorization achievable under U.S. law and would likely be immune from most challenges.

For the administration, there are two main drawbacks. First, a bill would likely involve significant compromises with Democrats to get past the filibuster. Second, the process is slow. Negotiations take time and so do the mechanics of committee reviews and parliamentary procedures. For these reasons, we think this is unlikely to be the administration's first approach to implementation, although we believe that it will need to follow traditional law making for at least some of its agenda.

The second approach is an expedited legislative process called reconciliation.

Reconciliation is a complicated procedure that eliminates the filibuster on certain types of financial bills, allowing them to pass the Senate on a simple majority. The goal is to make sure that critical financial aspects of running the government and Treasury are not held hostage by a minority party. The Congressional Budget Act lays out key parameters for reconciliation bills, including the need for bills to deal with the debt limit, spending, or revenue and the limit to one bill per topic every fiscal year. Under the Act, high-level budgetary goals are laid out in a resolution and individual legislative committees are then tasked with amending laws under their jurisdiction to "reconcile" the budgetary goals with legal reality.

In addition to the above requirements, reconciliation bills are also subject to the so-called Byrd Rule. This is a multipronged test to make sure the process is not abused. There are several components to the rule, but

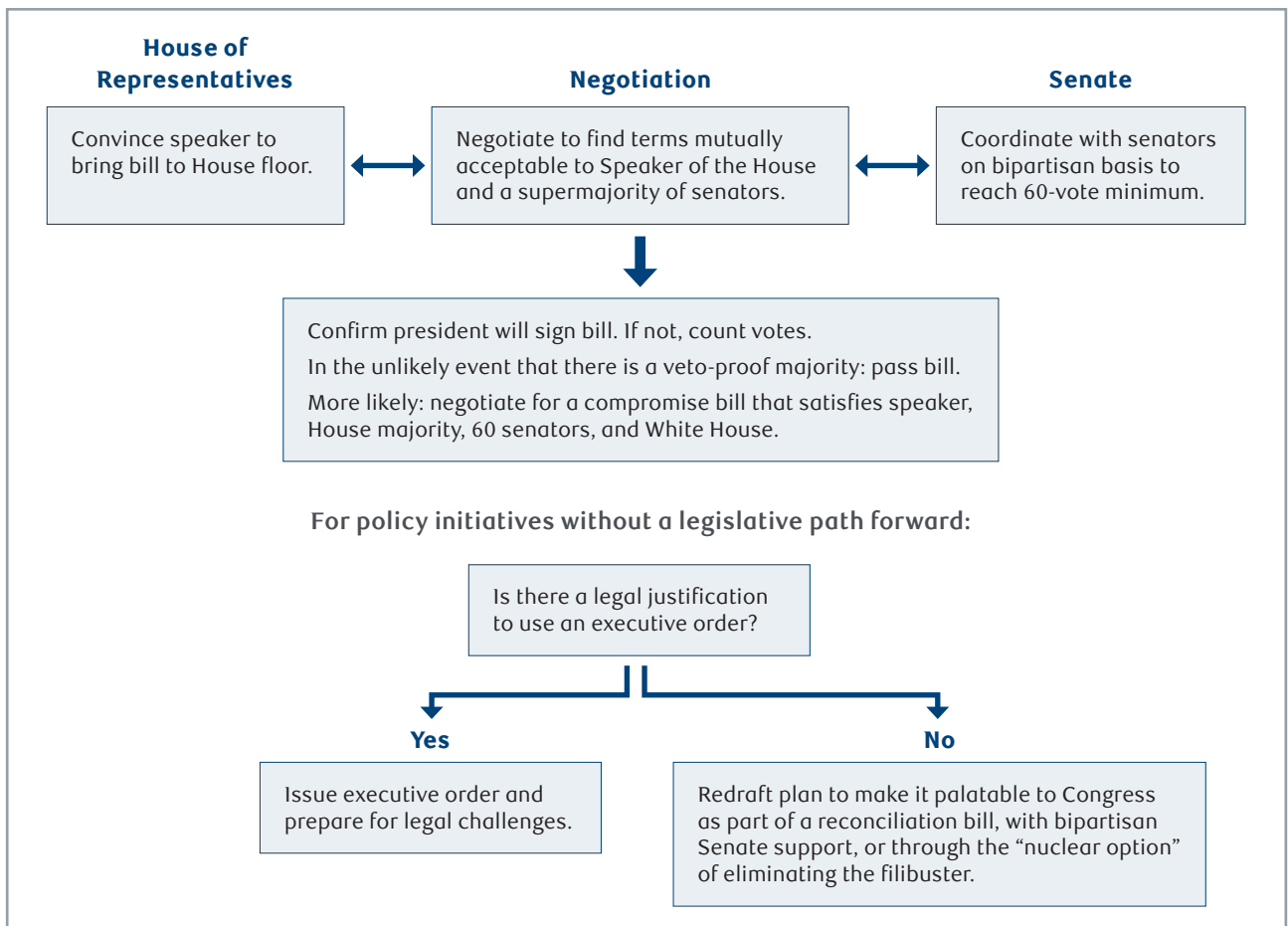
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the limitations that most often de-rail the reconciliation process are: when committees add amendments outside their legislative mandate; when there is no change to taxes, spending, or deficits; or when financial changes are only incidental to the legislative proposal. Measuring the financial impact of proposed legislation is done by the Congressional Budget Office under a process called “scoring.”

In the first instance, the determination of whether or not these Byrd Rule requirements are met falls to the Senate Parliamentarian, a non-elected advisor to Senate leadership on rules of order. The Parliamentarian’s decision can be overturned by the vice president in their capacity as leader of the Senate, but that is extremely rare. It has not been done since 1975. If the vice president were to overturn the Parliamentarian, that action could be countered by a majority of senators who can reinstate the Parliamentarian’s ruling.

As a result, if the vice president and Senate Republican majority voted as a bloc, it would be possible to ignore the Parliamentarian and use the reconciliation process to cram through almost any provision whether or not it is financial. In essence, it would amount to overturning the filibuster, and we see the same institutional arguments of tradition and individual political interest making it unlikely—but not impossible—for reconciliation to be expanded in this manner.

Key steps for passing federal legislation



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More likely, we think, is that traditional reconciliation will be a component of the administration's plan—the benefit of the Congressional imprimatur is too valuable to ignore—but we don't think that they will be able to get all their desired economic proposals into a single bill that is acceptable to both House Republicans and fits the reconciliation process.

That leaves the third and final approach: executive orders. This is a broad term for any instructions from the president to a federal agency to undertake a particular action. Executive orders have been used throughout U.S. history and have had great impact, e.g., racial segregation in the U.S. Armed Forces was ended by executive order, for instance.

Republican and Democrat Presidents have used orders extensively: Ronald Reagan relied on them 381 times and Bill Clinton 364 over their respective eight years in office. The first Trump administration issued 220 orders in his first four years, while Joe Biden's total was just over 160.

It's not surprising that presidents like executive orders, since they offer the greatest freedom of action and speed—it's just writing a letter. The drawbacks are twofold. First, there must be a statutory or Constitutional justification for the measure, and two, courts give less deference to Presidential orders that lack specific Congressional backing.

We don't think either of these will present major obstacles for the second Trump administration and expect a heavy use of executive orders to implement policy. Congress has granted the president significant "emergency" powers and given the president the discretion to decide if there's an emergency. We think the administration will use that discretion, particularly on high-profile policy areas such as immigration and tariffs. Orders cannot spend money or change taxes—those are Congressional prerogatives—but for non-budgetary matters, we expect widespread use of executive orders.

The orders can also fill a stop-gap role. With tariffs, for instance, we think there's a reasonable chance the initial implementation will be an executive order based on the International Economic Emergency Powers Act (IEEPA) with subsequent explicit Congressional authorization under reconciliation. That combination would let tariffs be implemented quickly and robustly.

What's ahead?

The U.S. President has significant but not unchecked power to put in to practice his vision for the country and the economy. Even with Republican majorities in Congress, however, we think the Trump administration will ultimately need to negotiate on key portions of its agenda. The use of reconciliation and executive orders will allow for relatively fast implementation of high-profile immigration and tariff proposals, but the broad nature of Trump policy goals will likely require the use of the traditional legislative process.

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