

July 13, 2020

Parting Gift – Lowey Delivers for Family Planning in Final Foreign Aid Bill

Under the able leadership of Chairwoman Nita Lowey (D-NY), the House Appropriations Committee adopted a fiscal year (FY) 2021 State Department and foreign operations appropriations [bill](#) last Thursday, July 9th. The FY 2021 foreign aid bill would increase international family planning and reproductive health (FP/RH) funding by one-third, permanently repeal the Trump-Pence administration's expanded Global Gag Rule, earmark a U.S. contribution to the United Nations Population Fund (UNFPA) and rectify several legislative restrictions that punitively discriminate against FP/RH programs.

Chairwoman Lowey, who announced her upcoming retirement from Congress late last year, has presented a tremendous parting gift to family planning supporters as the FY 2021 appropriations process gets underway and as she completes three decades of outstanding service on the committee and the State-Foreign Operations Subcommittee — including as the first woman to chair the full committee.

The [bill](#) approved by the committee provides \$65.9 billion to fund State Department operations and U.S. foreign assistance programs to advance development and global health outcomes, including international FP/RH activities. This overall funding level represents a \$21.2 billion increase above the president's wholly inadequate budget request for international affairs programs and includes \$10 billion in emergency funding for overseas coronavirus response and relief.

It was the first of 12 subcommittee bills to be marked up under pandemic meeting protocols that collectively fund the federal government. For those watching the livestream online, the proceedings appeared to be conducted quite efficiently, with four committee members participating remotely and those in the room masked and practicing social distancing. The bill was adopted on a straight party-line vote of 29 to 21. Three members — Reps. Martha Robey (R-AL), Jose Serrano (D-NY) and Chris Stewart (R-UT) — did not vote during the markup.

As was the case last year, Chairwoman Lowey and her Democratic colleagues have constructed a bill and [report](#) with robust funding and sound policies that prioritize FP/RH programs as an essential element of U.S. foreign assistance investments to help advance the health and well-being of women, girls, families and communities around the world.

Funding

The committee-approved bill earmarks bilateral FP/RH funding through the U.S. Agency for International Development (USAID) at “not less than” \$750 million, an increase of \$175 million over the current FY 2020 level and triple the paltry amount in the president's budget request — literally half a billion dollars more than the Trump-Pence administration asked for back in February.

Of the \$750 million earmarked, report language specifies that \$585.5 million is to be derived from the Global Health Programs (GHP) account and \$164.5 million from the Economic Support Fund (ESF) for FP/RH activities in a small number of strategically important countries. The ESF amount in the report for FP/RH activities is considerably larger than what has been allocated in recent years, which is typically a little over \$50 million divided among three countries. The \$61.5 million allocated for FP/RH from the GHP account comprises the bulk of the overall \$65 million increase proposed for USAID global health programs.

Together with the \$55.5 million earmarked contribution for UNFPA within the State Department-administered International Organizations and Programs (IO&P) account, bilateral and multilateral FP/RH funding totals \$805.5 million, the same amount approved by the full House for FY 2020 and one-third higher — nearly \$200 million — than current enacted levels.

(in millions of dollars)	FY 2019 Enacted (P.L. 116-6)	FY 2020 Enacted (P.L. 116-94)	FY 2021 President's Budget Request	FY 2021 House committee-approved bill	Difference House vs. FY 2020 Enacted	Difference House vs. FY 2021 Request
Global Health Programs account	(523.95)	(523.95)	237.0	(585.5)	61.5	348.5
Economic Support Fund (ESF)	(51.05)	(51.05)	14.0	(164.5)	113.5	150.5
TOTAL, bilateral FP/RH	575.0	575.0	251.0	750.0	+ \$175 (+ 30%)	+ \$499 (+ 199%)
U.S. contribution to UNFPA (IO&P)	32.5	32.5	0	55.5	+ \$23 (+ 71%)	+ \$55.5
TOTAL, bilateral & multilateral FP/RH	607.5	607.5	251.0	805.5	+ \$198 (+ 33%)	+ \$554.5 (+ 221%)



NOTE: FP/RH funding levels that were earmarked in the statute are indicated in **bold**, while funding levels that were specified in report language are denoted in (parentheses).

Based on the Guttmacher Institute's latest [Just the Numbers](#) analysis, the estimated impact of increasing U.S. investment in FP/RH programs by \$198 million would result in more than 8.9 million additional women and couples receiving contraceptive services; averting 3.96 million unintended pregnancies, 1.47 million unplanned births and 1.33 million unsafe abortions; and preventing more than 6,300 maternal deaths.

Ideally, Senate appropriations champions will include a FP/RH funding amount higher than the current enacted level of \$607.5 million in their version of the subcommittee bill whenever it gets to markup. However, the Senate will likely be working with a much smaller overall budget allocation for international affairs programs from Republican Chairman Richard Shelby (R-AL). Nevertheless, the significantly higher House number will set up the same interesting dynamic for the House-Senate negotiation on a final spending package. The negotiation is not expected to occur until after the November election, fueling hopes among family planning advocates that the funding increase that disappointingly eluded us in last December's end-game deal can finally be realized.

Global Gag Rule

The House committee bill also includes a two-pronged approach to dismantle the Trump-Pence administration's expanded version of the Global Gag Rule. This outcome is accomplished by including: the operative language of the Global Health, Empowerment and Rights (Global HER) Act ([H.R. 1055](#)) — a permanent legislative repeal of the policy — into the Foreign Assistance Act of 1961, the authorizing statute governing foreign aid programs; and a provision stating that none of the funds appropriated in the bill and prior bills "shall be made available to implement the Presidential Memorandum on Mexico City Policy dated January 23, 2017."

UNFPA

As reported above, the committee-approved bill earmarked a U.S. voluntary contribution to UNFPA of \$55.5 million out of the IO&P account, a \$23 million increase above the FY 2020 enacted level. The bill reiterates all the long-standing boilerplate restrictions requiring UNFPA to maintain U.S. funds in a segregated account — none of which may be spent in China, nor fund abortions. The dollar-for-dollar reduction in the contribution by the amount UNFPA spends in China each year remains in place along with the requirement that any funding withheld from UNFPA due to the “operation of any provision of law” is to be reprogrammed to USAID for bilateral “family planning, maternal and reproductive health activities.”

The legal provision invoked by Republican presidents to bar funding to UNFPA is the 1985 [Kemp-Kasten amendment](#), which prohibits U.S. foreign assistance from being furnished to any organization that “supports or participates in the management of a program of coercive abortion or involuntary sterilization.” As it has for the entirety of its four-year term in office, the Trump-Pence administration [determined](#) without investigation less than a month ago that UNFPA was in violation of the amendment due to the agency’s mere association with a sanctioned Chinese government institution.

Importantly, this year’s House bill inserts the adjective “directly” before the phrase “supports or participates in the management” of programs engaged in coercive practices, significantly tightening the room for willful misinterpretation of the text of the amendment by Republican political appointees hostile to UNFPA. Ironically, the concluding paragraph of this year’s [unclassified Kemp-Kasten determination](#) signed by Secretary Pompeo acknowledges “there is no evidence that UNFPA directly engages in coercive abortion or involuntary sterilizations in China” (emphasis added). This would potentially serve as an embarrassing admission of reality if the House’s modification of the amendment text were to become law.

Other Important Pro-Family Planning Statutory Changes

HIV/AIDS Working Capital Fund: Current law only allows “child survival, malaria and tuberculosis” programs to use the HIV/AIDS Working Capital Fund to procure and distribute pharmaceutical commodities for use in U.S. government-funded programs. A statutory change contained in the House committee-approved bill would broaden the fund’s eligibility to allow USAID to procure contraceptive commodities, as well as clarify and ensure that pharmaceutical products to prevent and treat other infectious diseases like Zika, Ebola and perhaps COVID-19 — not just malaria and tuberculosis — could be procured.

This technical language change would allow USAID to increase the purchasing power of family planning funding. It would also increase the efficiency of the agency’s forecasting by providing technical staff with the time and flexibility to purchase the proper commodities for countries when they are needed and in the right amounts.

The new language will not affect the amount allocated to the fund for the procurement of HIV/AIDS, malaria, tuberculosis or child survival commodities. It will only serve to increase the purchasing power of the FP/RH funds allocated to the fund when it comes to the procurement of contraceptive commodities by allowing the use of this more efficient and cost-effective procurement mechanism utilized by most of the other global health sectors at USAID.

Global Health Sector Equity: FP/RH is the only global health program sector nonexempt from a variety of prohibitions on the provision of U.S. foreign assistance to country governments that commit coups, seek to obtain nuclear weapons, default on loans to the U.S. government, expropriate U.S. assets or engage in other offenses. In contrast, child survival, HIV/AIDS and other disease-specific programs are currently exempted from these country assistance prohibitions, as well as many other provisions of law.

In order for the U.S. government to be consistent in leveraging foreign aid against a country to encourage changes in national policy or behavior — and simultaneously avoid punishing citizens for the actions of their government — it would be entirely appropriate that the exemption currently granted only to child survival, HIV/AIDS and other disease programs be extended to the full spectrum of life-saving global health activities.

When U.S. foreign assistance is otherwise cut off to a country because of various prohibitions in the law, exempting FP/RH programs implemented in cooperation with foreign governments is important both as a matter of principle and consistency, as well as to improve program efficiency. The House committee-approved bill changes a few words so that the provision in the annual appropriations bill reads “global health programs,” rather than “child survival activities or disease programs.”

Unfortunately, both of these slight language revisions to the HIV/AIDS Working Capital Fund and the exemption for global health programs from country aid cut-offs — which ought to be noncontroversial technical changes — have become identified as pro-family planning “riders” and enmeshed in the domestic abortion politics of the end-game negotiation. If the Senate includes these two amendments in its version of the bill as it has in prior years, perhaps both can be considered “non-conference-able” as identical provisions would be attached to both the House and Senate bills and finally become enacted into law.

Another interesting development is that the committee-approved bill consolidates all of the long-standing FP/RH-related policy provisions — both prohibitions and constructive directives — in a revised and expanded global health section in the general provision titles at the end of the bill. These provisions, moved from the bilateral economic assistance title, included the Kemp-Kasten amendment, the Helms amendment restricting the use of funds for the provision of “abortion as a method of family planning,” the Siljander amendment on abortion lobbying, the DeConcini-Tiahrt-Livingston-Obey amendments on voluntarism and informed consent, Leahy amendment on counseling and information about all pregnancy options and a requirement for the dissemination of medically accurate information on condoms.

Rogers Amendment During Markup

State-Foreign Operations Subcommittee Ranking Member Hal Rogers (R-KY) offered a catch-all amendment during Thursday’s full committee markup that sought to undo all of the positive funding and policy language included in “Chairman’s mark,” described above, by proposing the following:

- Striking the \$750 million funding earmark for USAID bilateral FP/RH programs;
- Prohibiting a U.S. contribution to UNFPA;
- Striking prohibition on the use of current and prior-year funds to implement the expanded Global Gag Rule (one-year moratorium);
- Striking the section amending the Foreign Assistance Act of 1961 with the language of the Global HER Act (permanent legislative repeal of the Global Gag Rule);
- Striking the one-word modification to the Kemp-Kasten amendment;
- Striking the revision to the HIV/AIDS Working Capital Fund to allow for contraceptive procurement; and
- Striking the revision to exemption from country aid prohibitions for FP/RH programs.

After an extended and, at times, fiery debate, the Rogers amendment was decisively rejected on a straight party-line vote of 21 to 29, with three members not voting — Reps. Roby (R-AL), Serrano (D-NY) and Stewart (R-UT).

Subcommittee Ranking Member Rogers and three other family planning opponents — full committee Ranking Member Kay Granger (R-TX) and Reps. Robert Aderholt (R-AL) and Andy Harris (R-MD) — spoke in favor of the amendment. Each member largely made process arguments against the pro-sexual and reproductive health and rights provisions in the base bill, asserting that their inclusion would upset the status quo stalemate on FP/RH funding and policy that has existed for the last 10 fiscal years, provoke a presidential veto threat and never become law.

Chairwoman Lowey led the opposition to the Rogers amendment and offered a passionate defense of all the provisions in her bill that Rep. Rogers sought to remove. She was joined by six women on her side of the aisle — Reps. Brenda Lawrence (D-MI), Lois Frankel (D-FL), Barbara Lee (D-CA), Marcy Kaptur (D-OH), Debbie Wasserman Schultz (D-FL) and Bonnie Watson Coleman (D-NJ) — in urging the rejection of the Rogers amendment. These members used their comments to promote the benefits for women and families of expanding access to FP/RH services globally, justify the repeal of the Global Gag Rule by highlighting its harmful impacts, make the case for a U.S. contribution to UNFPA to support its core and humanitarian work and, ultimately, to make clear that reproductive health services are vital health care and a human right.

The House Appropriations Committee intends to approve the remainder of its subcommittee bills this week and is expected to package the bills into several multi-bill minibuss packages that will be considered by the full House during the last two weeks of July. If last year's House floor debate of the State-Foreign Operations appropriations bill is any guide, one or more amendments may be offered by Republican family planning opponents but should be easily disposed with by the Democratic majority. Over in the Senate, the path forward in moving appropriations bills through the committee is currently uncertain, as the process has broken down over Republican resistance to Democratic insistence that additional funding for COVID-19 response and policing reform be attached to relevant subcommittee bills.

The multitude of pro-sexual and reproductive health and rights provisions contained in the House bill lays down a strong marker for Senate family planning allies to match in their version. If the bipartisan FP/RH majority on the Senate Appropriations Committee rises to the challenge and passes a robust set of companion provisions, the stage will be set to potentially break through the status quo and achieve positive movement in the House-Senate conference negotiations to produce a final FY 2021 spending package. There would be no more fitting final tribute to Chairwoman Lowey as she retires after decades of championing the expansion of FP/RH services for women and girls around the world.