

July 1, 2021

## Ask and Ye Shall Receive: House Committee Bill Exceeds Requests on Sexual and Reproductive Health and Rights

Earlier today before heading out for the Fourth of July recess, the House Appropriations Committee approved a State Department and Foreign Operations Appropriations (SFOPS) bill for fiscal year (FY) 2022 that includes significant funding increases for bilateral and multilateral family planning and reproductive health (FP/RH), including a doubling of the U.S. contribution to United Nations Population Fund (UNFPA), and a permanent legislative repeal of the Global Gag Rule. Additionally, the bill deletes all references to the 1973 Helms amendment which restricts the use of foreign assistance funds for abortion services and removes the Hyde amendment restrictions on abortion access for Peace Corps volunteers. Other long-sought programmatic and technical improvements were made to existing statutory language that has punitively discriminated against FP/RH activities as well.

As Subcommittee Chair Barbara Lee (D-CA) highlighted in her [opening statement](#) in today's full committee markup:

"The House bill ... prioritizes the resources, programs and policies for the protection and advancement of women, including for family planning, which has not received an increase in funding in over a decade. It also addresses outdated policy inequities that prevent women from getting the care they need. We cannot make long-term gains toward the sustainable development goals or any of our other development goals while leaving out the reproductive health care needs of women. This is especially true now, after a global pandemic, which we know disproportionately affected women."

Taken together, new Subcommittee Chair Lee and the Democratic majority exceeded the expectations and requests made by sexual and reproductive health and rights (SRHR) advocates. The [committee-approved bill](#) is the first step taken by congressional FP/RH champions in what will be a months-long appropriations process, which advocates can realistically hope will culminate in an end to the decade-long funding stagnation and the enactment of a number of the progressive SRHR policy reforms needed to return the United States to its historic leadership role.

The committee-approved State Department and Foreign Operations bill would appropriate a total of \$62.2 billion for international affairs programs — a \$6.7 billion or 12% increase above the FY 2021 nonemergency enacted level and just slightly more than the FY 2022 presidential budget request. Funding for global health programs would be significantly higher than current levels, primarily accounted for by the inclusion of the \$810 million increase for global health security programs to combat COVID-19 and prevent future pandemics requested by the Biden administration. The bill was adopted on a straight party-line vote of 32 to 25 with

Republicans objecting to what they characterized as excessive spending and, of course, elimination of the Helms amendment and restrictions on “taxpayer funding of abortion.” Rep. Debbie Wasserman Schultz (D-FL) was absent during the markup, and Rep. Mark Amodei (R-NV) did not vote on final passage.

As was the case for the last two years in the House, Subcommittee Chair Lee and her Democratic colleagues have assembled a bill and report with robust funding and sound policies that prioritize FP/RH as a critical component of U.S. foreign assistance investments to help advance the health and well-being of individuals, families and communities around the world. What is different from the last two years, however, is that Democrats control both the White House and the Senate, albeit narrowly, and a realistic path to enacting most of these positive changes is coming into view.

## Funding

On international FP/RH funding, the bill earmarks “not less than” \$760 million for bilateral FP/RH programs, all of which is allocated within the Global Health Programs (GHP) account managed jointly by the U.S. Agency for International Development (USAID) Office of Population and Reproductive Health (PRH) and USAID country missions in the field. Approval of this amount would represent a \$185 million or 32% increase above the current enacted level of \$575 million. It would also be 30% higher than the amount requested by the administration at the end of May.

In a major change from prior year legislation, the bill proposes that no portion of the bilateral funding amount be derived from the Economic Support Fund (ESF) which has been used in the past to finance FP/RH activities in a small number of strategically important countries, typically amounting to a little over \$50 million annually. Congressional appropriators have perennially utilized ESF to beef up the bilateral FP/RH level when competing funding priorities have put pressure on the top-line number for the GHP account.

The proposed increase in the U.S. contribution to UNFPA is even more dramatic. The bill earmarks \$70 million for UNFPA within the International Organizations and Programs (IO&P) account, more than double the amount on the check for the FY 2021 contribution of \$30.8 million, that U.S. Ambassador to the United Nations Linda Thomas-Greenfield recently [announced](#) would soon be on its way to UNFPA.

Together, combined bilateral and multilateral FP/RH funding totals \$830 million — a \$222.5 million or 37% increase above the current enacted level of \$607.5 million, the same amount of funding that the FP/RH program has been stuck at for the last 11 fiscal years. The \$830 million is also about \$25 million higher than the generous increase approved by the full House in its version of last year’s bill.

| (in millions of dollars)                         | FY 2020 Enacted (P.L. 116-94) | FY 2021 Enacted (P.L. 116-260) | FY 2022 President’s Budget Request | FY 2022 House committee-approved bill | Difference House vs. FY 2021 Enacted | Difference House vs. FY 2022 Request |
|--|-------------------------------|--------------------------------|------------------------------------|---------------------------------------|--------------------------------------|--------------------------------------|
| Global Health Programs account                   | (523.95)                      | (523.95)                       | 550.0                              | (760.0)                               | 236.1                                | 210.0                                |
| Economic Support Fund (ESF)                      | (51.05)                       | (51.05)                        | TBA                                | --                                    | - 51.1                               | TBA                                  |
| <b>TOTAL, bilateral FP/RH</b>                    | <b>575.0</b>                  | <b>575.0</b>                   | <b>583.7</b>                       | <b>760.0</b>                          | <b>185.0</b><br>(+ 32%)              | <b>176.3</b><br>(+ 30%)              |
| U.S. contribution to UNFPA (IO&P)                | <b>32.5</b>                   | <b>32.5</b>                    | 56.0                               | <b>70.0</b>                           | <b>37.5</b><br>(+ 115%)              | <b>14.0</b><br>(+ 25%)               |
| <b>TOTAL, bilateral &amp; multilateral FP/RH</b> | 607.5                         | 607.5                          | 639.7                              | 830.0                                 | 222.5<br>(+ 37%)                     | 190.3<br>(+ 30%)                     |

Based on the Guttmacher Institute's just-released [Just the Numbers](#) analysis, the estimated impact of increasing U.S. investment in FP/RH programs by \$222.5 million would result in more than 9.97 million additional women and couples receiving contraceptive services; averting 4.4 million unintended pregnancies, 1.67 million unplanned births and 1.47 million unsafe abortions; and preventing more than 7,120 maternal deaths.

## Global Gag Rule

The committee-approved bill includes language to ensure that foreign nongovernmental organizations (NGOs) are not prohibited from receiving U.S. assistance based on their provision of abortion services, counseling or referrals with non-U.S. funds if permitted in the country in which they operate and in the United States. Furthermore, the language would ensure that foreign NGOs are treated fairly and afforded the ability to engage in permissible advocacy and lobbying activities on abortion with non-U.S. funding. This language would amend the Foreign Assistance Act of 1961, the permanent foreign assistance authorizing statute, and would prevent a future president, hostile to SRHR, from unilaterally imposing the Global Gag Rule (GGR) through executive action and ending the use of the policy as a political football tossed back and forth between the parties every four or eight years. While President Biden revoked the Trump-Pence administration's dramatically expanded version of the GGR, enactment of this legislative change would ensure that the United States can provide funding for and build sustainable partnerships with locally led NGOs and make long-term progress on a range of critical health issues.

The permanent repeal language included in the committee-approved bill reflects the operative text of the Global Health, Empowerment and Rights (Global HER) Act ([H.R. 556](#) and [S. 142](#)), introduced in the House by Subcommittee Chair Lee and Reps. Ami Bera (D-CA) and Jan Schakowsky (D-IL), who were joined by 174 of their colleagues. (The companion bipartisan Senate bill is led by Senators Jean Shaheen (D-NH), Susan Collins (R-ME) and Lisa Murkowski (R-AK), along with 44 additional cosponsors.) A diverse group of [136 organizations](#), drawn from the health, development and human rights sectors, have also endorsed the Global HER Act.

With permanent GGR repeal included in the House committee-approved bill, eyes turn toward bipartisan FP/RH champions on the Senate Appropriations Committee to ensure the inclusion of identical language in its version of the bill. Ideally Senate champions would incorporate it in the base bill put forward by the subcommittee and, if necessary, by passage of an amendment in full committee markup. Up until the last two years when the committee was under Republican control — and even though a bipartisan majority of the committee members were on record in support — a version of a GGR repeal amendment had been included in the Senate committee-approved bill for the [prior 19 fiscal years](#) since FY 2001. The simple explanation for their refusal to allow an amendment to be offered in 2019: The Republican leadership knew it would [lose a fair fight](#) and went so far as to bypass a full committee markup altogether. With a Democratic majority now in charge of the committee, there is absolutely no reason for the Senate version of the bill not to include a permanent GGR repeal this year and for it to emerge from the House-Senate conference negotiation in the final bill and land on President Biden's desk for him to finally sign the repeal into law.

## UNFPA

As reported above, the committee-approved bill earmarked a U.S. voluntary contribution to UNFPA of \$70 million out of the IO&P account, a \$37.5 million increase above the FY 2021 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.” During the entirety of its four-year term in office, the Trump-Pence administration declared without evidence that UNFPA was in violation of the amendment due to the agency's mere association with a sanctioned Chinese government institution and withheld the entirety of the congressionally earmarked contribution. Importantly, the 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 future Republican presidents and political appointees hostile to UNFPA.

SRHR advocates hope to revisit in the future proposed changes to the text of the Kemp–Kasten amendment that would more broadly prohibit the use of U.S. foreign assistance funds to support coercive activities with regard to matters of reproduction, consistent with the 1994 International Conference on Population and Development Programme of Action, including but not limited to coercive abortion, involuntary sterilization or forced pregnancy, and would more precisely define what constitutes involvement in these types of human rights abuses.

## Helms Amendment

In the most dramatic departure from prior-year legislation, the committee-approved bill drops all references to the 1973 Helms amendment that restricts use of foreign assistance funds to pay for the performance of abortion “as method of family planning or to motivate any person to practice abortions.” Foreign aid appropriations bills most years beginning in FY 1980 reiterated and reinforced the Helms amendment, a section of the Foreign Assistance Act of 1961, the permanent authorizing statute governing U.S. overseas aid programs.

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 — except for the Helms amendment. These provisions, moved from the bilateral economic assistance title, include the modified Kemp–Kasten amendment, 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 (modified to add modern contraceptives to the requirement). As a result, the Helms amendment appears nowhere in the bill.

If the deletion of the Helms amendment and the important changes described below expanding the exemption for global health programs from many statutory provisions governing foreign assistance to include FP/RH programs (such as those contained in the Foreign Assistance Act) were to be enacted into law, the executive branch would have the legal flexibility necessary to use to appropriated funds to provide safe abortion services overseas.

## Peace Corps

The Democratic leadership of the committee has also honored its pledge to remove Hyde amendment restrictions from any subcommittee appropriations bills in which the anti-choice language appear. The committee-approved bill has deleted the prohibition on the use of Peace Corps funds to pay for abortion services for its volunteers, except in the cases of life endangerment, rape or incest. Beginning in 1979, Congress had prohibited the Peace Corps from providing coverage for abortion services in their health care program with no exception. Peace Corps volunteers only began receiving coverage for abortion services in cases of the three exceptions in FY 2015 when language referencing the Federal Employees Health Benefit Program was added to that year’s appropriations bill after a campaign for equal treatment was mounted. This was an important and meaningful change, to bring their health coverage in line with that of other employees or groups covered by the federal government. However, coverage for abortion services should not be limited to only these narrow exceptions, for volunteers or anyone else who relies on the U.S. government for health care coverage. The subcommittee’s removal of the abortion funding restriction for Peace Corps volunteers was somewhat of a welcome surprise to SRHR advocates. Interestingly, none of the three amendments offered by Republicans during today’s markup sought to reinstate the abortion funding prohibition.

## HIV/AIDS Working Capital Fund

Current law only allows “child survival, malaria, tuberculosis and emerging infectious disease” programs to use the HIV/AIDS Working Capital Fund to procure and distribute pharmaceutical commodities for use in U.S. government-funded programs “to the same extent as HIV/AIDS pharmaceuticals and other products.” A simple wording change to the existing statute inserted in the House committee-approved bill (the addition of the phrase “other global health”) broadens the fund’s eligibility to allow USAID to procure contraceptive commodities using this mechanism.

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

## Global Health Sector Equity (“Notwithstanding” Clause)

FP/RH is the only global health program sector that is not exempt 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 exempt 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 is entirely appropriate that the exemption be extended to the full spectrum of lifesaving 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 substitutes a few words so that the provision in the annual appropriations bill reads “global health programs,” rather than “child survival activities or disease programs,” a wording change that would encompass FP/RH activities under the broad exemption.

## Full and Accurate Information on Both Condoms and Contraceptives

A statutory requirement that complete and medically accurate information on the use of condoms be provided in U.S.-funded programs was first included in appropriations legislation in FY 2004, the year after the President’s Emergency Plan for AIDS Relief (PEPFAR) was first authorized, in response to reports that some PEPFAR grantees were disseminating misinformation on the effectiveness of condoms in the prevention of HIV transmission. The committee-approved bill adds “modern contraceptives” to the existing requirement to ensure that information on family planning methods and services is also medically accurate, in order to guarantee that women that benefit from U.S.-funded programs are fully informed about all their options for preventing unintended pregnancies. (It is important to note that it is the technical position of USAID’s Office of PRH that fertility awareness methods are modern contraceptives.)

Unfortunately, all three of these slight language revisions to the HIV/AIDS Working Capital Fund, the exemption for global health programs from country aid cut-offs, and condom and contraceptive non-disparagement protections — 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 for the last several years. The first two language changes of the three on the list are endorsed by the Biden-Harris administration and were included in the recommendations for statutory language revisions in the appendix accompanying the [FY 2022 budget request](#). If the Senate includes these first two amendments in its version of the bill as it has in prior years and adds the pro-contraceptive information change, all three should be considered “non-conference-able,” as identical provisions would be attached to both the House and Senate bills, and can finally be enacted into law.

## Anti-SRHR Republican Amendments During Markup

During today’s markup, Republican members offered three hostile amendments to strike or replace many of pro-SRHR provisions included in the draft subcommittee bill under consideration.

Appropriations Committee Ranking Member Kay Granger (R-TX) offered the first amendment seeking to reinsert the Helms amendment restricting the use of foreign assistance funds to provide abortions as a “method of family planning” in two sections in the general provisions title of the draft bill. Ranking Member Granger described deletion of the Helms amendment in her opening statement as one of the “alarming changes to protections for the unborn” and potentially jeopardizing bipartisan support for global health programs. Subcommittee Ranking Member Hal Rogers (R-KY) and Reps. Jeff Fortenberry (R-NE), John Rutherford (R-FL) and Robert Aderholt (R-AL) spoke in favor of Rep. Granger’s amendment. The passionate opposition to the amendment was led by Subcommittee Chair Lee, who co-leads the standalone legislation to repeal the Helms amendment from the Foreign Assistance Act, the Abortion is Health Care Everywhere Act (H.R. 1670). She was joined Reps. Lois Frankel (D-FL), Laureen Underwood (D-IL), Brenda Lawrence (D-MI) and full Appropriations Committee Chair Rosa DeLauro (D-CT). The Granger amendment was rejected on a vote of 27-31 with all Democrats, except Rep. Henry Cuellar (D-TX), opposed — and all Republicans voting in favor.

The second amendment which was offered by freshman Rep. Ashley Hinson (R-IA) sought to reinsert the Helms amendment in two sections of the bill, reverse the proposed modification to the Kemp-Kasten amendment to tighten the definition of what actions by an organization constitute a violation and trigger a funding cut-off, delete the inclusion of the requirement to provide complete and accurate medical information on modern contraceptives as well as condoms and finally eliminate the permanent legislative repeal of the GGR using the operative language of the Global HER Act. Rep. Andy Harris (R-MD) and Ranking Member Rogers joined Rep. Hinson in speaking on behalf of her amendment. Supporters of the amendment repeated false claims that the amendment “put back-in” the Kemp-Kasten language. It is important to note that while the Democratic bill included a small modification, Kemp-Kasten, as well as references to other coercive activities like involuntary sterilization, were maintained by the Democratic majority. Chairwoman Lee offered a strong defense of all the provisions in her bill that Rep. Hinson sought to remove or modify. She was joined by Reps. Frankel and Susie Lee (D-NV) in urging the rejection of the Hinson 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 and, ultimately, to make clear that reproductive health services are vital health care and a human right. The Hinson amendment was rejected 27-31, identical to the tally on the Granger amendment with Rep. Cuellar again defecting, probably revealing his reluctance to support a repeal of the Helms amendment.

The final SRHR amendment was offered by Rep. Harris. The radical amendment combined a flat-out prohibition on any funding for UNFPA in the bill with an elimination of the entire \$760 million funding earmark for USAID bilateral FP/RH programs. The bulk of the debate from members on both sides of the aisle focused on the UNFPA funding prohibition. Rep. Harris devoted most of his time to condemning the human rights abuses of the Chinese government and falsely accusing UNFPA of complicity. He threw in the fungibility of funds for good measure. Ranking Member Rogers and Rep. Aderholt voiced their support. A vigorous defense of UNFPA’s important efforts to promote SRHR and deliver lifesaving services was mounted by Subcommittee Chair Lee, who was joined by Reps. Mark Pocan (D-WI), David Price (D-NC) and Rep. Frankel. Reps. Lee (D-CA), Bonnie Watson-Coleman (D-NJ) and Rep. Frankel also passionately called out Republican’s extreme attempts to eliminate all bilateral family planning funding. The Harris amendment was rejected on a straight party-line vote of 26 to 32, with Rep. Cuellar joining the rest of his Democratic colleagues in voting down the amendment.

The House Appropriations Committee intends to approve the remainder of its subcommittee bills within the next few weeks and are expected to be considered by the full House before the end of July. If House floor debates of the State-Foreign Operations appropriations bill in recent years are any guide, Republican family planning opponents are likely to seek the opportunity to offer one or more amendments. There are some obvious potential targets, previewed during today’s markup. Over in the Senate, the path forward in moving appropriations bills through the committee is currently a bit uncertain, although subcommittee staff are proceeding to assemble draft bills and reports.

The multitude of pro-SRHR 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 its own robust set of companion provisions, the stage should finally be set to breaking through the status quo and sending a bill to President Biden for his signature that dramatically moves U.S. government leadership on SRHR forward.