



December 8, 2021

## Hurry Up and Wait – Passage of Stopgap Spending Bill Delays Final Resolution on Permanent Global Gag Rule Repeal Until Mid-February

Last week, Congress yet again narrowly avoided a government shutdown by passing another continuing resolution (CR) to replace the one that had been keeping the federal government operating for the two months after the start of the new fiscal year, just before it was set to expire at midnight on Friday, December 3. The new CR extends last year's funding levels and policy provisions through February 18 in the hope of providing sufficient additional time for Congress to agree on a fiscal year (FY) 2022 omnibus spending package better reflecting the current political alignment in Washington and addressing new domestic and international policy imperatives that have emerged. As a result, the question of whether congressional family planning and reproductive health (FP/RH) champions will be able to deliver a permanent legislative repeal of the Global Gag Rule (GGR) remains unresolved for now.

About the only scenario under which the permanent GGR repeal and more bilateral and multilateral FP/RH funding should not be enacted into law this year is if the FY 2022 appropriations process completely implodes, negotiations between Democratic and Republican leaders reach an intractable stalemate and Congress resorts to passing a year-long CR, perpetuating outdated and distorted funding and program priorities carried over from the Trump-Pence regime. Sexual and reproductive health and rights (SRHR) advocates want to avoid this scenario at all costs as it would mean all the positive SRHR policy provisions contained in the House and Senate bills, including permanent GGR repeal, and any FP/RH funding increases would be lost. In that event, international FP/RH funding and policy would continue to stagnate at the status quo that has persisted for the last dozen years — level funding at just over \$600 million and no forward movement in support of pro-SRHR policies.

If permanent legislative repeal of the GGR is to finally be enacted into law through amending the foreign assistance authorizing statute, FY 2022 is the fiscal year to do it — even if it must wait until the new calendar year. Next year's FY 2023 appropriations process will take place during an election year, reducing the amount of time members will be in Washington to work on a spending bill. Furthermore, Republicans, anticipating gains in both chambers in the midterms, will have every incentive not to cooperate and to stall for a CR until after the election when Republicans might seize the majority.

The bicameral, bipartisan leadership of the appropriations committees met in early November — shortly after Senate Appropriations Committee Chairman Patrick Leahy (D-VT) released [nine subcommittee bills](#) in response to Republican refusal to engage in the committee markup process — to begin discussions on how to proceed on negotiating a final FY 2022 spending package before the early December expiration of the first CR. At that time, Senate Republicans, led by Ranking Member Richard Shelby (R-AL), announced their intent to push through a year-long CR. Whether this was just the GOP's opening gambit in the negotiation — or the final outcome it truly seeks to achieve — remains to be seen.

In the aftermath of the failed effort to jump-start the negotiation, House Appropriations Committee Chair Rosa DeLauro (D-CT) decried a full-year CR as “an empty threat that undercuts both parties’ priorities by depriving families, businesses and communities of the certainty they need and making our country less safe.” Chairman Leahy took to the Senate floor and presented a [very persuasive argument](#) for how reckless and irresponsible passage of a year-long CR would be and how it would even undermine Republican professed priority of securing increased spending on defense.

Republicans have refused to even come to the negotiating table in the 37 days and counting since the initial meeting between the “four corners” — the chairs and ranking members of the House and Senate appropriations committees — on November 2. The House Democratic committee majority has [launched a calendar](#) on Twitter tracking GOP obstruction and the number of days it has been that Republicans have refused to put forth a counteroffer to the Democratic funding proposals as contained in the House-passed bills and the Senate’s “Chairman’s marks.” Republicans have demanded that Democrats must first be willing to negotiate the fate of policy “riders,” to which they object, before they will be willing to discuss top-line allocations for defense and nondefense discretionary spending, much less funding for the multitude of specific programs across the 12 appropriations bills that finance the entirety of the federal government.

The Republican insistence on resolving the question of policy “riders” as a precondition to negotiations over an FY 2022 omnibus is an unprecedented demand. Funding levels and policy “riders” have always been discussed together and at the same time and each are pitted against the other and resolved through “horse trading” — more funding for policy concessions and vice versa, for example. Historically, in fact, final international FP/RH funding and policy provisions are frequently among the last items to be resolved in the State Department and foreign operations title of the omnibus package and sometimes of the end-game negotiation itself.

Once again this year, several of the policy “riders” that Republicans would most like to kill concern domestic and international reproductive rights, including the permanent GGR repeal. But special GOP ire is directed at the removal from both the House and Senate versions of the Labor, Health and Human Services, and Education subcommittee bill of the Hyde amendment, an annual appropriations restriction that has barred states from using federal Medicaid funds to provide abortion, except in cases of life endangerment, rape or incest since 1976. Ensuring that the Hyde amendment is not dropped from the final spending package will undoubtedly be Republicans’ number one priority. Permanent GRR repeal should fare better as the repeal enjoys bipartisan support in the Senate, albeit narrow, decidedly not the case for the Hyde amendment.

To a large extent, resorting to a CR and delaying completion of the appropriations process months into the fiscal year is nothing new and symptomatic of an ongoing breakdown of “regular order” in the appropriations process. An [analysis](#) of how and when foreign assistance funds, including those for international FP/RH programs, have been appropriated since FY 2000 shows that a free-standing State Department and foreign operations appropriations bill has been enacted only three times during the last 22 years, most recently in FY 2006. In most years since FY 2000, foreign aid funds have been appropriated as part of an omnibus spending bill, which combines two or more subcommittee bills into one legislative package. On three occasions, Congress relied on a full-year CR to fund the foreign assistance program, a prospect that Democratic appropriators are working hard to prevent this year. On average, adoption of between three and four CRs have been required before a final spending bill is enacted into law, and the mean final enactment date is in mid-January. But it has not been uncommon for final enactment to occur as much as six to seven months into the fiscal year. Even a few months’ delay in enactment wreaks havoc on the annual process for assembling the president’s budget request for the next fiscal year and disrupts efficient and effective planning, obligating and expending foreign assistance to development and health programs in low- and middle-income countries.

Last week’s [Republican brinkmanship](#) around passage of the CR through February does not bode well for bipartisan cooperation on negotiating an FY 2022 omnibus, when firebrands forced a vote on an amendment to block enforcement of coronavirus vaccine mandates and every single Senate Republican voted for the amendment. However, one much more positive sign is that, in the end, 19 Republicans, 11 of whom are members of the Appropriations Committee, voted against shutting down the government and for final

passage of the CR. But further complications are posed by a packed legislative agenda in December, including consideration of the expansive Build Back Better social infrastructure reconciliation package, passage of the annual defense authorization act and the necessity of suspending or increasing the federal debt limit.

As Senator Leahy noted in the aftermath of the passage of the second CR:

“Since May, I have called for bipartisan, bicameral negotiations with the White House to establish topline. On October 18, Senate Democrats released a comprehensive opening offer, in an effort to jump-start these negotiations and let our Republican colleagues and the American people know our values. Since then, we have been met with nothing but deafening silence. Further refusal to meet at the negotiating table will only undermine national security, our ability to invest in American families and our capability to respond to the coronavirus and its emerging variants.”

An old adage observes that there are three parties in Congress — Republicans, Democrats and appropriators. Two questions remain: Will the pragmatic instincts of Republican appropriators reassert themselves? And will the search for funding for projects in their states — bolstered by the reinstatement of earmarking — be enough to attract the 10 Republicans required to reach the 60-vote threshold to pass an omnibus spending package and avoid a year-long CR that would doom a legislative repeal of the GGR and other pro-SRHR provisions? Stay tuned for ramped up efforts by Democratic appropriators to shame Senate Republicans into fulfilling their responsibilities as legislators to fund the federal government, invest taxpayer dollars wisely and do the people’s business.