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Putting Their Cards on the Table: Senate Democratic Appropriators Show a Large International Family Planning Funding Increase and Policy Changes

Last Thursday, the Democratic majority on the Senate Appropriations Committee, led by Chairman Patrick Leahy (D-VT), showed its hand by unveiling the text of all 12 subcommittee bills for fiscal year (FY) 2023, including the State Department and foreign operations bill ([S. 4662](#)). Chairman Leahy and State Department-Foreign Operations subcommittee Chair Chris Coons (D-DE) are to be applauded for issuing a foreign aid spending bill that, like its House committee-approved counterpart, includes a legislative codification repealing the Global Gag Rule (GGR) and a very significant funding increase for bilateral and multilateral family planning and reproductive health (FP/RH) programs, albeit not nearly as ambitious as the amount earmarked in the House bill.

Chairman Leahy had earlier intended to mark up the 12 subcommittee bills in full committee before the end of July, returning the functioning of the committee to some semblance of “regular order.” That intention was thwarted by an inability of committee Democrats and Republicans to reach an agreement on the top-line spending breakdown between defense and nondefense discretionary programs with Republicans, led by Ranking Member Richard Shelby (R-AL), insisting that more money be provided to the Pentagon and less funding allocated for nondefense domestic discretionary programs prioritized by Democrats. As such, each of these bills was essentially a “Chairman’s mark” developed and released by the Democratic majority with varying degrees of input from Republican subcommittee members.

In making the Democrats’ opening offer for the inevitable negotiation that will occur later this fall, Chairman Leahy [stated](#):

“It is my hope that by releasing these bills, and making clear what the priorities of Senate Democrats are, we can take a step closer toward reaching a bipartisan compromise after months of stalled negotiations. The stakes of inaction are too high to not complete our work. The burden of inflation would make a long-term continuing resolution untenable with grave consequences for communities and families across the country and for our national security.”

Together, the 12 subcommittee bills released last week would provide a 10.1% increase for nondefense discretionary programs and an 8.7% increase for defense, an amount consistent with that contained in the annual defense authorization bill adopted by the full House on July 14 by a bipartisan supermajority.

Overall, the State Department-foreign operations bill includes [\\$64.56 billion for international affairs programs](#), a \$6.56 billion increase above the current FY 2022 enacted base level. The bill also includes an additional \$5.95 billion in emergency spending (“off-budget”) for global COVID-19 response and

strengthening global health security and pandemic preparedness. Global health programs would receive a \$680 million increase above current levels. Most of the proposed funding increase is concentrated and split between three programs: 1) the President’s Emergency Plan for AIDS Relief (PEPFAR), including the Global Fund to Fight AIDS, Tuberculosis and Malaria contribution (\$450 million); 2) international FP/RH (\$102.5 million); and 3) global health security and pandemic preparedness (\$45 million).

Here is a rundown of what the Senate subcommittee bill and [explanatory statement](#) do and don’t do on international FP/RH funding and policy, specifically.

Funding

The bill proposes \$710 million for total bilateral and multilateral FP/RH funding, including \$650 million from the Global Health Programs (GHP) account for programs administered by the U.S. Agency for International Development (USAID) and \$60 million earmarked for a U.S. voluntary contribution to the core budget of the United Nations Population Fund (UNFPA) within the International Organizations and Programs (IO&P) account managed by the State Department. The total amount allocated represents just over a \$100 million increase above the current level of \$607.5 million. The Senate bill level is also considerably higher than the amount requested by the Biden–Harris administration. But the proposed Senate level falls \$120 million short of the \$830 million [approved by the House Appropriations Committee](#) in late June.

Like the House committee bill, the Senate version earmarks funding only from the GHP account, and no monies are allocated from the Economic Support Fund (ESF) for bilateral FP/RH activities in a small number of strategically important countries. In contrast, the president’s FY 2023 budget request proposed that \$25 million from ESF be allocated for that purpose. With the committees back under Democratic control since last year, neither the House nor the Senate bill has earmarked any funding for FP/RH from within the ESF account.

Enactment of either the House ceiling or the Senate floor — or a level somewhere in-between — would be a crucial first step in breaking the funding stalemate that has persisted for more than a decade and in getting U.S. financial investments on a trajectory to reach \$1.74 billion, the [U.S. “fair share”](#) of the global cost of addressing the unmet need for modern contraception of 218 million women in low- and middle-income countries advocated by sexual and reproductive health and rights supporters by FY 2024. Such a breakthrough in FP/RH funding is long overdue as total bilateral and multilateral FP/RH funding has stagnated at just over \$600 million for the last decade despite the significant decline in the purchasing power of those dollars due to inflation and exponential growth in the number of women of reproductive age during that time period.

(in millions of dollars)	FY 2022 Enacted (P.L. 117-103)	FY 2023 President’s Budget Request	FY 2023 House Committee- Approved Bill (H.R. 8282)	FY 2023 Senate Democrats “Chairman’s Mark”
Global Health Programs (GHP) account	(523.95)	572.0	760.0	(650.0)
Economic Support Fund (ESF)	(51.05)	25.0	0.0	--
TOTAL, bilateral FP/RH	575.0	597.0	760.0	650.00
U.S. contribution to UNFPA (IO&P)	32.5	56.0	70.0	60.0
TOTAL, bilateral & multilateral FP/RH	607.5	653.0	830.0	(710.0)

Global Gag Rule

Like the House committee-passed bill, the Senate version codifies a legislative repeal of the GGR setting up at least the possibility that this might be the year to finally end for good the constant back and forth of this destructive executive branch policy between Republican and Democratic presidents. Unfortunately, that presupposes that policy changes will be on the table in a real negotiation over the FY 2023 spending package based on the contents of each chamber's version of the bill. As they did last year, the Republican leadership will undoubtedly label the GGR repeal amendment a “poison pill,” threatening Senate passage, and seek to keep it out of the final agreement.

In this case, the Senate bill includes language identical to that contained in the House version, based on provisions of the Global Health, Empowerment and Rights (Global HER) Act ([H.R. 556](#) and [S. 142](#)), that would ensure that non-U.S. 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 non-U.S. 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 who is hostile to sexual and reproductive health and rights from unilaterally imposing the GGR through executive action. While President Biden revoked the Trump-Pence administration's dramatically expanded version of the GGR, enactment of this legislative change would provide much needed reassurance that the GGR would not be reinstated by the next Republican president and 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.

UNFPA

As reported above, the proposed Senate bill earmarks a U.S. voluntary contribution to UNFPA of \$60 million out of the IO&P account, a \$27.5 million increase above the FY 2022 enacted level and \$4 million more than the president's budget request, but \$10 million less than the amount earmarked by the House. As in the House version, the bill reiterates long-standing boilerplate restrictions requiring UNFPA to maintain U.S. funds in a segregated account — none of which may be spent in China — and to not fund abortions. 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” also remains in place. But interestingly, the Senate bill eliminates the dollar-for-dollar reduction in the U.S. contribution provided to UNFPA by the amount UNFPA spends in China each year. The discrepancies between the House position reflecting current law and the proposed change in the Senate bill will need be resolved in conference negotiations.

Unlike last year, the Senate bill does not include an important modification proposed in the House bill to the [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.” This is the legal provision invoked by all Republican presidents since 1985 to bar funding to UNFPA. 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. This year, only the FY 2023 House bill inserts the adjective “directly” before the phrase “supports or participates in the management” of programs engaged in coercive practices, tightening the room for willful misinterpretation of the text of the amendment by future Republican presidents and political appointees hostile to UNFPA.

Important Technical “Fixes” Included in Both the Senate and House Bills

The following two slight language revisions — which ought to be noncontroversial technical changes — have become identified as pro-family planning “riders” and enmeshed in the abortion politics of the end-game negotiation for the last several years. However, for the second year in a row, both language changes are endorsed by the Biden-Harris administration and were included in the recommendations for statutory language revisions in the appendix accompanying the FY 2023 budget request. With their inclusion in both

the Senate and House versions of the bill, perhaps these two amendments can finally be enacted into law this year if a substantive negotiation is allowed to occur and negotiators don't default to rejecting any alteration of policy language, including that which unfairly punishes and discriminates against FP/RH programs.

Global health sector equity (“notwithstanding” clause)

FP/RH is currently the only global health sector that is not exempt from a variety of prohibitions on the provision of U.S. foreign assistance to country governments that seize power through a coup, 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 (defined to include maternal health), HIV/AIDS and other disease-specific programs are currently exempt from these country assistance prohibitions, as well as many other provisions of law.

The Senate bill — like the House-passed 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 and allows assistance to continue without interruption.

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 bill and now the Senate version (the addition of the phrase “other global health,” although not in exactly identical fashion) broadens the fund's eligibility to allow USAID the option of procuring contraceptive commodities using this mechanism if it chooses and eliminates another instance in which FP/RH programs are subjected to discriminatory treatment in appropriations legislation without legitimate programmatic justification.

Issues on Which the Senate- and House-Passed Bills Differ

Helms amendment

The House bill again departs from prior-year legislation by dropping all references to the 1973 [Helms amendment](#) that restricts use of foreign assistance funds to pay for the performance of abortion “as a method of family planning or to motivate any person to practice abortions.” In most years, foreign aid appropriations bills, 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 Senate bill does not follow suit. It reinserts the Helms amendment language in both the global health section of the bilateral economic assistance title and the general provisions title of the bill in the same way as it appears in the FY 2022 omnibus spending bill.

Also last week, 21 Senate champions, led by lead sponsor Senator Cory Booker (D-NJ), introduced the [Abortion is Health Care Everywhere Act](#), a bill to repeal the Helms amendment. The bill's House companion has garnered an impressive list of 182 cosponsors.

In contrast, both the House and Senate versions of the Labor, Health and Human Services, Education bill remove the Hyde amendment, an annual appropriations “rider” that has barred states from using federal Medicaid funds to provide abortion, except in cases of life endangerment, rape or incest, since 1976. The removal of the Hyde amendment will be a major target of the Republican leadership's ire in House-Senate negotiations over the final FY 2023 spending package, as it was last year.

Peace Corps

The House bill also deletes 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, the Peace Corps has been prohibited from providing coverage for abortion services in its 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. Unfortunately, the Senate bill does not delete the Peace Corps prohibition and restores the language in current law, including the Hyde life, rape and incest exceptions for volunteers.

Full and accurate information on both condoms and contraceptives

A statutory requirement directing 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 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 House-passed bill adds "modern contraceptives" to the existing requirement to ensure that information on family planning methods and services is also medically accurate, to guarantee that women who benefit from U.S.-funded programs are fully informed about all their options for preventing unintended pregnancies. The Senate bill does not modify the language and retains the existing requirement only as it applies to condom information.

What's Next

A short-term continuing resolution to keep the entirety of the federal government running after the start of the new fiscal year on October 1 seems all but inevitable, it being a congressional election year and with a limited number of legislative days in session. The plan seems to be to come to an agreement on an omnibus spending package during the lame duck session in November and December after the election and before the 117th Congress adjourns at the end of the year. The outcome of the November 8 election and whether Republicans will have a majority in either chamber in the new Congress may affect the calculation of whether it is politically advantageous for Republicans to finalize the FY 2023 appropriations process and start with a clean slate in January.

In addition to the need to get to an agreement among the bicameral leadership of both parties on a top-line funding allocation for FY 2023, the question of the inclusion of policy "riders" is already emerging as an equally thorny issue that will need to be resolved at some point in the negotiation on the final spending package. Among the thorniest are abortion "riders." Both the House and Senate bills written by Democratic appropriators remove the decades-old Hyde and [Weldon](#) amendments prohibiting the use of federal funds for abortion-related activities. Even though it is a funding eligibility condition and does not involve restricting the direct use of federal funds for abortion, the House-Senate GGR repeal codification will be lumped in by Republicans with Hyde, Weldon and Helms in the House bill as an abortion "poison pill" in the negotiation. Historically, international family planning policy changes and funding have been among the very last items to be resolved in the end-game negotiations. This year will be no different.

The first priority identified by Senate appropriators and highlighted in their statement on the package of bills released last week: "Taking action to address the horrific and wrong Supreme Court Dobbs decision by providing resources to help women where abortion is restricted access care in states where abortion remains legal and protected, eliminates the Hyde and Weldon amendments, and provides significant increases for reproductive health care programs."

If concessions on abortion restrictions cannot be part of a winning hand for Democrats, perhaps they can split the pot and get additional funding to protect access to reproductive health services and ensure the exercise of reproductive rights, both at home and abroad.