

June 30, 2022

## Strong Out of the Gate: House Appropriations Democrats Advance Pro-SRHR Foreign Aid Bill

Yesterday, the House Appropriations Committee approved a State Department and foreign operations appropriations bill for fiscal year (FY) 2023 that includes massive proposed funding increases for bilateral and multilateral family planning and reproductive health (FP/RH) programs and critical revisions to the policies governing the programs, most notably a permanent legislative repeal of the Global Gag Rule (GGR), removal of references to the Helms amendment and modest modifications to the language utilized by past Republican presidents to deny contributions to the United Nations Population Fund (UNFPA).

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

"The House bill ... prioritizes the resources, programs and policies for the protection and advancement of women and girls. This is especially important in light of the attack on women's health and reproductive freedom in our own country. Neglecting the reproductive health care of women will limit any progress we can make in providing economic opportunity or bolstering women's political leadership in the United States and around the world. More needs to be done to recognize the ongoing injustice felt by half the population who disproportionately bears the burden of poverty, poor health, violence and climate change. The funding in this bill moves us in the right direction."

With the committee-adopted [bill](#), Subcommittee Chair Lee and her Democratic colleagues are breaking strong out of the gate as the months-long FY 2023 appropriations process gets underway. But it will be a long way to the finish line with many hurdles to overcome against the backdrop of slim Democratic majorities in both chambers, the midterm election looming in November and the Supreme Court's radical evisceration of the constitutional right to abortion. It will be difficult to gauge whether sexual and reproductive health and rights (SRHR) champions in Congress will be able to finally end the stalemate that has plagued the U.S. government's international FP/RH program for the last dozen years, which has included stagnant funding and no progress in enacting pro-SRHR policy policies. If the recent track record is any guide, it now looks like a long shot, but a dark horse can on occasion make an unexpectedly good showing like this year's Kentucky Derby upset winner. But betting on the final outcome is not a wager for the faint of heart.

The committee bill was approved on straight party-line vote of 32 to 24. Republicans objected to what they characterized as excessive spending and, of course, elimination of the Helms amendment and deletion or modification of restrictions preventing "taxpayer funding of abortion." Two anti-SRHR amendments were

offered by Republican women, both of which failed on party-line votes. A total of [12 amendments](#) were offered by Republicans on topics ranging from the Middle East, climate change, the United Nations, Russia, China and Ukraine. Representatives David Price (D-NC), Robert Aderholt (R-AL) and John Carter (R-TX) were absent during the entire markup, and Rep. Mark Amodei (R-NV) did not vote on the first of the anti-SRHR amendments.

The committee-approved bill is virtually identical to last year’s House-passed bill and contains everything that SRHR advocates asked for in detailed recommendations submitted to the subcommittee earlier this year. Endorsed by nearly 90 organizations, the recommendations called for robust FP/RH funding and the advancement of pro-SRHR policies and changes in statutory and [report](#) language. As has been the case for the last three years since regaining the House majority, committee Democrats delivered.

## Family Planning and Reproductive Health Funding

The committee-passed bill specifies that “not less than [\$760 million] shall be made available for family planning/reproductive health” for bilateral programs administered by the U.S. Agency for International Development (USAID) in nearly 40 low- and middle-income countries in Africa, the Middle East, South Asia and the Western Hemisphere. Most interesting and important is the committee’s decision to derive the funding for the bilateral earmark entirely from the Global Health Programs (GHP) account and not rely on the use of any Economic Support Funds (ESF) for FP/RH activities in a very small number of strategically important countries to bolster the overall funding total. Advocates have long argued that allocating FP/RH funds through the GHP account administered by USAID — rather than channeled to ESF-recipient countries — is a much more cost-effective use of resources and more likely to result in the funds’ use for their intended family planning purposes.

The \$760 million funding earmark adopted represents a \$185 million — or 32% — increase above the FY 2022 enacted level. It would also be \$163 million or 27% higher than that proposed in President Biden’s [modest budget request](#), sent to Capitol Hill in late March.

The legislation also earmarks \$70 million for a U.S. voluntary contribution to UNFPA — the only intergovernmental institution with an explicit mandate to address the reproductive health needs of people worldwide — from the State Department-administered International Organizations and Programs (IO&P) account. This represents a \$37.5 million increase above the current FY 2022 enacted level — or more than a doubling (115%).

(in millions of dollars)	FY 2022 Enacted (P.L. 117-103)	FY 2023 President’s Budget Request	FY 2023 House Committee-Approved bill	Difference House vs. FY 2022 Enacted	Difference House vs. FY 2023 Request
Global Health Programs (GHP) account	(523.95)	572.0	<b>760.0</b>	236.1 (+ 45%)	188.0 (+ 33%)
Economic Support Fund (ESF)	(51.05)	25.0	0.0	--	--
TOTAL, bilateral FP/RH	<b>575.0</b>	597.0	<b>760.0</b>	<b>185.0</b> (+ 32%)	<b>163.0</b> (+ 27%)
U.S. contribution to UNFPA (IO&P)	<b>32.5</b>	56.0	<b>70.0</b>	<b>37.5</b> (+ 115%)	<b>14.0</b> (+ 25%)
TOTAL, bilateral & multilateral FP/RH	607.5	653.0	830.0	222.5 (+ 37%)	177.0 (+ 27%)

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 12 fiscal years.

To put this proposed funding level into perspective, over those dozen years when the total amount hovered at just above \$600 million annually, adjusting for inflation, the purchasing power of the appropriated FP/RH funds has decreased by \$155 million in constant FY 2011 dollars. Conversely, the FY 2011 appropriated amount would have the purchasing power of \$822 million today. And lest one think that there has never been a high priority attached by Congress to robust international FP/RH funding, the high-water mark, enacted by Congress just prior to the landmark 1994 International Conference on Population and Development (ICPD) in Cairo, would have the equivalent purchasing power today of \$1.132 billion.

Based on [calculations](#) by the Guttmacher Institute of the potential incremental impact on reproductive and maternal health outcomes of each \$10 million in additional U.S. FP/RH funding, enacting the \$222.5 million increase in the House committee-approved bill would lead to an estimated 10 million more people, including women and couples, receiving contraceptive services, thereby averting 4.4 million unintended pregnancies, 1.67 million unplanned births and 1.47 million unsafe abortions, as well as preventing an additional 7,120 maternal deaths. The resulting impact of this funding increase would be on top of the beneficial effects of current U.S. investments that provide 27 million people with contraceptive services, thereby preventing 12 million unintended pregnancies, 4.5 million unplanned births and 4 million unsafe abortions, and preventing an additional 19,000 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 any future president who is hostile to SRHR from unilaterally imposing the 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 the Biden-Harris administration 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](#)), both enjoying the endorsement of a multitude of cosponsors. However, in anticipation that Roe might be overturned, SRHR advocates had begun to urge congressional allies of the need to delete or modify the subsection that refers to the provision of health and medical services that would be in violation of "United States Federal law if provided in the United States," as House and Senate Republicans are already [floating the idea](#) of enacting a nationwide abortion ban. Advocates will be pushing for statutory language changes in future appropriations bills and when the Global HER Act will likely need to be reintroduced at the start of the 118th Congress next year.

With permanent GGR repeal included in the House committee-approved bill, the bipartisan FP/RH champions on the Senate Appropriations Committee are on deck to ensure the inclusion of GGR repeal language in its version of the bill. Ideally, Senate champions will incorporate it in the base bill put forward by the subcommittee and, if necessary, by passage of an amendment in full committee markup. Unfortunately, the Appropriations Committee has failed to markup and pass out of committee a State-foreign operations bill for the last three years. The first two years were when the committee was under Republican control and its leaders understood that a bipartisan majority of the committee members supported a GGR repeal amendment, a version of which had been included in the Senate committee-approved bill for the [prior 19 fiscal years](#). As a result, the Republican leadership chose to bypass a full committee markup altogether knowing that it would lose a fair fight.

Just last week, Senate Appropriations Committee Chair Patrick Leahy (D-VT) declared his intention to

markup all 12 subcommittee bills in July. Republican Ranking Member Richard Shelby (R-AL) reacted skeptically to the prospect, suggesting a repeat of last year's dynamic in which most subcommittee bills, including State-foreign operations, were not marked up in full committee may be a better-than-even-money proposition.

## 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 2022-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 continue to 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 ICPD 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. In the aftermath of the Supreme Court overturning the *Roe v. Wade* decision here at home, the intention to broaden the definition of reproductive coercion takes on renewed urgency as the term “forced birth” enters the domestic political discourse and lexicon. As Rep. Katherine Clark (D-MA) stated during the markup “State-mandated abortion and state-mandated pregnancy are two side of the same oppression coin.”

## Helms Amendment

As it did last year, 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 a method of family planning or to motivate any person to practice abortions.” The foreign aid appropriations bill in 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. Like last year's bill, reiterations of the Helms amendment are deleted from both title III (Bilateral Economic Assistance) and title VII (General Provisions), where it has previously appeared.

But unlike last year, the committee-approved bill does not attempt to consolidate all the long-standing FP/RH-related policy provisions — both prohibitions and constructive directives — and move them to a revised and expanded global health section in the general provision title at the end of the bill. These provisions, except for the Helms amendment, remain in Global Health section in the bilateral economic assistance title as they have resided for many years since they were first attached to the appropriations bill, including the Kemp-Kasten amendment (1985), the Siljander amendment on abortion lobbying (1981), the DeConcini-Tiahrt-Livingston-Obey amendments on voluntarism and informed consent (1986), Leahy amendment on counseling and information about all pregnancy options (1994) and a requirement for the dissemination of medically accurate information on condoms (2003).

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 as proposed in FY 2022 and this year's bill, the executive branch would have the legal flexibility necessary to use to appropriated funds to provide safe abortion services overseas.

## **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.

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.

Formal designation that a coup d'état has occurred in a country, triggering a cut-off of U.S. foreign assistance to its government, is usually the country aid prohibition in the law that most frequently impacts USAID FP/RH programs. When coup determinations are made, the USAID Office of Population and Reproductive Health (PRH), country missions and lawyers can either seek to shift FP/RH activities involving the government to the private sector or to invoke a humanitarian exemption that is available under the law. Invocation of the humanitarian exemption requires activities be designated as lifesaving, a classification which can typically be applied to FP/RH service delivery and contraceptive procurement and distribution but not for other important programmatic activities. Providing training to government employees can be problematic to navigate, for example.

Burkina Faso may soon join the list of African countries in which family planning programs have been disrupted by coup determinations recently, specifically in Mali and Guinea in 2021. Assistance to FP/RH activities in Mali through the government has been restructured and transferred to the private sector, while sorting out how to reorient the program in Guinea remains in progress.

Forcing USAID to restructure FP/RH assistance to governments and channeling it through the private sector — or invoking a humanitarian exemption — is a time-consuming, expensive and not cost-effective use of taxpayer dollars. Since there is no programmatic rationale for objecting to the technical language change, one can only conclude that any opposition is rooted in a punitive desire to single out and punish the bilateral FP/RH program — and the thousands of people in those countries who would benefit from expanding the notwithstanding authority.

## **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 contraceptive 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 and put an end to yet another example of petty, discriminatory treatment directed at FP/RH programs.



## Full and Accurate Information on 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. As it has for the last several years, 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 who benefit from U.S.-funded programs are fully informed about all of 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 2023 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. Unfortunately, whether these provisions can be included in the final spending deal is entirely dependent upon there being an actual negotiation on the substance of issues, whose goal is to improve efficiency and cost-effectiveness of the U.S. FP/RH and global health programs. Not betting on that happening this year.

## Peace Corps

The Democratic leadership of the committee has again this year honored its pledge to remove Hyde amendment restrictions from any subcommittee appropriations bills in which the anti-choice language appears. 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 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. 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. Interestingly, neither amendment offered by Republicans during yesterday's markup sought to reinstate the abortion funding prohibition for the Peace Corps.

## Anti-SRHR Republican Amendments During Markup

During yesterday's markup, Republican members offered two hostile amendments to strike or replace many of the pro-SRHR provisions included in the draft subcommittee bill under consideration. The overturning of Roe was the GOP "elephant in the room" that Democrats refused to ignore in the debate on the two anti-FP/RH amendments.

The first amendment was offered by freshman Rep. Ashley Hinson (R-IA) and 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. She offered the same amendment on the same list of topics with a similar result at last year's markup.

Full committee Ranking Member Kay Granger (R-TX) and subcommittee Ranking Member Hal Rogers

(R-KY) joined Rep. Hinson in speaking on behalf of her amendment. Reps. Granger and Rogers went through the motions focusing on the need to “restore long-standing protections for unborn children” and how inclusion of the pro-SRHR provisions endangered the bipartisan support that global health programs have enjoyed and would threaten enactment of the bill. Rep. Andy Harris (R-MD) — Doctor Harris, if you please — railed against UNFPA and U.S. bilateral FP/RH programs as “cultural neocolonialism,” while Rep. Ben Cline (R-VA) expressed concern about programs undermining host country laws. 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 a bevy of committee Democrats in urging the rejection of the Hinson amendment, including Reps. Lois Frankel (D-FL), Bonnie Watson-Coleman (D-NJ), Katherine Clark (D-MA), Susie Lee (D-NV), Adriano Espaillat (D-NY), David Trone (D-MD), Betty McCollum (D-MN), Marcy Kaptur (D-OH) and, last but not least, full committee Chair Rosa DeLauro (D-CT). 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 Helms amendment and the GGR by highlighting their harmful impacts and, ultimately, to make clear that reproductive health services are vital health care and a human right. Chair DeLauro clapped back on Reps. Granger and Rogers’ notion that these restrictions need to be restored because they are long-standing, noting “I would say that Roe v. Wade was long-standing, how about a half century.” The Hinson amendment was rejected 23-32, with all Democrats present voting against and all Republicans present voting in favor. Reps. Price (D-NC), Aderholt (R-AL), Amodei (R-NV) and Carter (R-TX) were absent.

The second anti-SRHR amendment was offered by freshman Rep. Julia Letlow (R-LA). The radical amendment, unsuccessfully offered by Rep. Harris in last year’s markup, 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. While Rep. Letlow claimed that her motivation for offering the amendment was to encourage the provision of “true health care” and out of concern that the amount of funding earmarked for USAID and UNFPA was excessive and would go to organizations that provide abortion, Rep. Harris and Ranking Member Rogers devoted their remarks to condemning the human rights abuses of the Chinese government and falsely accusing UNFPA of complicity. A vigorous defense of UNFPA’s important efforts to promote SRHR and deliver lifesaving services, particularly in humanitarian settings, was mounted by subcommittee Chair Lee, who was joined by Reps. Debbie Wasserman Schultz (D-FL), Watson-Coleman (D-NJ), Frankel (D-FL), Espaillat (D-NY), Brenda Lawrence (D-MI) and Clark (D-MA), along with full committee Chair DeLauro. The Letlow amendment was rejected on a straight party-line vote of 23-32, with the three of the four absentees on the Hinson amendment but Rep. Amodei voting for the second of the anti-SRHR amendments.

## What’s Next

The House Appropriations Committee intends to approve the remainder of its subcommittee bills today before heading home for the Fourth of July recess, and all 12 appropriations bills 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 yesterday’s markup.

Over in the Senate, the path forward in moving appropriations bills through the committee is currently uncertain, as negotiations on top-line spending levels are progressing slowly and there being limited number of legislative days before the end of the fiscal year in September and campaigning for the midterm congressional election in November begins in earnest.

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 State-foreign operations bill is able to be marked up by the full committee, which has not happened for the last three years, and the bipartisan FP/RH majority on the committee rises to the challenge and passes its own robust set of companion provisions, the stage will be set to perhaps finally breaking through the status quo that has persisted for the last dozen years.