

June 2, 2021

## Steps in the Right Direction – First Biden Budget and International Family Planning

On the eve of Memorial Day weekend, the Biden-Harris administration released its much-delayed [budget request](#) for federal government programs during fiscal year (FY) 2022. Biden's first presidential budget request took several small, but significant, steps toward reversing the funding stagnation under which overseas family planning and reproductive health (FP/RH) programs have languished for nearly a dozen years, and by endorsing two technical policy changes to rectify the discriminatory treatment directed against FP/RH programs for far too long.

Following the administration's release of a discretionary budget outline in early April, the fine print in its detailed budget confirms what had been expected — modestly increased funding for non-global health security programs — but represents positive momentum on funding that congressional appropriations champions will undoubtedly build upon when assembling this year's State Department and foreign operations spending bill.

### Funding Request

The president's FY 2022 [budget request](#) proposes \$583.7 million for bilateral FP/RH assistance, of which \$550 million is [allocated](#) from within the Global Health Programs (GHP) account; and the remaining \$33.7 million, presumably from the Economic Support Fund (ESF) for FP/RH activities in a very small number of strategically important countries. While the total bilateral request represents only an \$8.7 million increase above the current FY 2021 enacted level, the \$26.1 million increase requested within the GHP account, administered by the Office of Population and Reproductive Health (PRH) within the U.S. Agency for International Development (USAID), is a positive development.

Advocates have argued that investments in FP/RH projects through the GHP account are likely to be a more effective channel than ESF allocations to the governments of U.S. friends and allies — as one may question whether such supplementations of national health budgets are dictated more by political considerations than by programmatic need. (A listing of the two or three countries likely to be allotted ESF for FP/RH activities in FY 2022 and how much each will be slated to receive will not be available until detailed budget tables are released in the coming weeks.)

An increase for multilateral FP/RH funding came to fruition as the budget request earmarks \$56 million for a U.S. core [contribution to the United Nations Population Fund](#) (UNFPA) within the International Organization and Programs (IO&P) account managed by the State Department. If enacted, the amount requested for UNFPA would represent a \$23.5 million — or more than 70% — increase above the current enacted level. President Biden delivered in part on the promise he made in his January presidential memorandum “to take the steps necessary to resume funding to [UNFPA].” Now he just needs to order the release of the voluntary contribution of \$32.5 million earmarked by Congress for UNFPA in the FY 2021 omnibus spending bill approved in December, restoring U.S. financial support to the agency for the first time in four long years. Both the upcoming enactment of the proposed FY 2022 request later this year and the release of the FY 2021 contribution sooner could help relieve some of the tremendous pressure that UNFPA's core budget will be

facing as a result of the [massive looming cuts](#) coming from the United Kingdom’s Foreign, Commonwealth and Development Office.

(in millions of dollars)	FY 2020 Enacted (P.L. 116-94)	FY 2021 President’s Budget Request	FY 2021 House-passed bill	FY 2021 Senate Republican draft bill	FY 2021 Enacted	FY 2022 President’s Budget Request
Global Health Programs account	(523.95)	237.0	(585.5)	(461.0)	(523.95)	550.0
Economic Support Fund	(51.05)	14.0	(164.5)	–	(51.05)	–
<b>TOTAL, bilateral FP/RH</b>	<b>575.0</b>	251.0	<b>750.0</b>	<b>461.0</b>	<b>575.0</b>	<b>583.7</b>
U.S. contribution to UNFPA (IO&P)	<b>32.5</b>	0	<b>55.5</b>	0	<b>32.5</b>	56.0
<b>TOTAL, bilateral &amp; multilateral FP/RH</b>	<b>607.5</b>	251.0	<b>805.5</b>	<b>461.0</b>	<b>607.5</b>	<b>639.7</b>



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).

As detailed in the State Department and USAID [congressional budget justification](#) (CBJ), FP/RH is again included in the “preventing maternal and child deaths” thematic area (p. 75), one of the three objectives of the GHP account, along with “controlling the HIV/AIDS epidemic” and “combatting infectious disease threats.” But unlike during the Trump years, the rationale for investments in FP/RH and the types of programmatic activities to be supported have been rewritten and returned to a more evidence-based, nonideological form. For example, problematic language favoring recipient countries’ cultural and religious sensibilities over the human rights of individuals has been excised. Interestingly, the new CBJ programmatic description highlights that “USAID-supported programs will focus on the distinct tools and approaches needed for fragile settings and to population-environment relationships in areas of threatened biodiversity,” reflecting both the Biden-Harris administration’s prioritization of USAID’s work on humanitarian crises and addressing climate change adaptation and mitigation, as well as long-standing population-environment boilerplate language in the annual appropriations bill.

The combined \$639.7 million requested for bilateral and multilateral FP/RH assistance represents just a \$32.2 million — or 5% — increase above current levels and is slightly less than the amount appropriated in FY 2010, right before the downward slide in FP/RH funding to an average annual amount just under \$610 million for the last 11 fiscal years. The requested amount also falls [far short of the marker](#) laid down by sexual and reproductive health and rights (SRHR) advocates recommending expenditure of \$1.736 billion as the U.S. fair share of the total financial investment necessary to address the current unmet need for modern contraception of 218 million women in low- and middle-income countries (LMICs).

Strategic investments in sexual and reproductive health save lives. The Guttmacher Institute’s analysis [Adding It Up](#), upon which the calculation of the U.S. fair share of these investments is based, found that meeting the current unmet need for modern contraception in LMICs would result in a decline of about two-thirds in unintended pregnancies (from the current 111 million to 35 million per year), unplanned births (from 30 million to nine million per year) and unsafe abortions (from 35 million to 10 million per year). Furthermore, for every additional \$1 spent on contraceptive care, \$3 is saved on maternal and newborn care because of declines in the number of unintended pregnancies.

## Policy Recommendations

Accompanying the main volume of the president’s budget request each year is an appendix of more than 1,400 pages which outlines in exacting detail the executive branch’s recommendations for changes to the text of the current appropriations legislation — additions, deletions and revisions. Deletions are bracketed, and changes, whether additions or revisions, are denoted in italics. It is important to read the fine print. The Biden budget request made several landmark recommendations regarding appropriations “riders” on domestic and international SRHR policy, some of which received wide media attention and some of which did not make the news.

- **Deleting the Hyde amendment but retaining the Helms amendment**

The most newsworthy change was the Biden budget request's proposed removal of the infamous Hyde amendment, a provision in the annual Labor, Health and Human Services, Education appropriations bill that has barred states from using federal Medicaid funds to provide abortion, except in cases of life endangerment, rape or incest, since 1976. Domestic SRHR advocates and their congressional allies heralded the proposed deletion that reflects intensive coalition-building and political organizing over multiple years and fulfills a Biden campaign promise. The last time that a president proposed deleting the Hyde amendment was two decades ago in President Clinton's FY 2001 budget request. Less noticed was the Biden budget request's proposed removal of a provision that forbids the District of Columbia government from using local tax dollars to cover abortions for low-income women. Deletion of the D.C. rider was proposed as recently as FY 2017 in President Obama's final budget request.

Despite the important progress in the quest to remove the Hyde amendment from annual appropriations legislation, global SRHR advocates were disappointed that the Biden budget did not move to strike the 1973 Helms amendment that restricts the use of foreign assistance to provide "abortion as a method of family planning." As far as can be determined, the deletion of the Helms amendment has been proposed only once before, way back in 1993, when President Clinton proposed its partial deletion by bracketing the key operative phrase, "None of the funds made available ... may be used to [pay for the performance of abortions as a method of family planning or to] motivate or coerce any person to practice abortions," as part of his first budget request.

Unlike the Hyde amendment, however, the Helms amendment is a part of the permanent authorizing statute for overseas aid programs — the Foreign Assistance Act of 1961 — and not just an appropriations "rider" like Hyde. Deletion of the superfluous reiterations of Helms included in foreign aid appropriations bills since FY 1980 would not end its enforcement, absent it being struck from the Foreign Assistance Act. A bill to accomplish that objective, the Abortion is Health Care Everywhere Act ([H.R. 1670](#)), has attracted an impressive 156 cosponsors in the House.

As an old adage, popular among congressional appropriators, goes, the president proposes and the Congress disposes. While having President Biden proposing to delete the Hyde amendment — or the Helms amendment for that matter, if he had — is a momentous development, it ultimately lays the decision and the political calculus on whether to advance appropriations bills to the House floor without Hyde, Helms or other abortion funding riders squarely in the lap of the Democratic leadership. With fundamental rights and principles and political imperatives at stake and in contention against one another, being in their position is unenviable.

- **Inserting technical fixes to allow for contraceptive procurement using the HIV/AIDS Working Capital Fund and for FP/RH programs to continue in countries where U.S. foreign aid has been cut off**

The Biden budget request also proposes to reword two provisions in the annual State Department and foreign operations appropriations bill to expand their application to all global health sectors generally and to broaden the eligibility of contraceptive commodities and the access of bilateral FP/RH programs to funds more specifically.

First, prior to the recent enactment of the FY 2021 omnibus, in addition to HIV/AIDS prevention and treatment commodities, appropriations legislation only allowed "child survival, malaria and tuberculosis" programs to use the HIV/AIDS Working Capital Fund, created in FY 2005, to procure and distribute pharmaceutical commodities for use in U.S. government-funded health programs. However, the HIV/AIDS Working Capital Fund could not be utilized for procurement or distribution of contraceptives, nor those commodities used to prevent or treat other infectious diseases, such as Zika, Ebola and, now, COVID-19. A language change made in the FY 2021 omnibus enacted in December allows the use of the procurement mechanism for products related to "emerging infectious diseases" — entirely appropriate and important in light of the pandemic. So while congressional appropriators addressed that flaw in the existing language, it continues to exclude contraceptive procurement. Instead of broadening, the restriction became more specific and explicit.

The proposed technical language change included in the Biden budget request accommodates this recent legislative revision. It would also enable USAID's PRH Office to increase the purchasing power of FP/RH funds allocated to the HIV/AIDS Working Capital Fund by allowing the use of this more efficient and cost-effective procurement mechanism — to purchase and distribute contraceptives and other reproductive health commodities. It would allow forecasting to be more efficient by providing technical

staff with the time and flexibility to purchase the right commodities for countries, when they are needed, in the right quantity. This technical language change will not affect in any way the amount allocated to the fund for the procurement of HIV/AIDS, malaria, tuberculosis, child survival or other infectious disease commodities.

Second, a 2012 coup d'état in Mali and the resulting cut-off of U.S. government foreign assistance to the country exposed the fact that only one global health program — FP/RH — is not exempt from a variety of prohibitions on assistance that can and have been enforced against country governments that launch coups, engage in nuclear proliferation, default on loans from the U.S. government, expropriate U.S. assets and commit other serious misdeeds. In contrast, child survival and 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 its efforts to use the leverage of a foreign aid cutoff on a country to encourage changes in national policy or behavior — but not at the same time punish 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 lifesaving global health activities. (Maternal health has always been considered a part of child survival for purposes of this exemption.) This noncontroversial technical change endorsed in the Biden budget request would simply change a few words so that the provision in the annual appropriations bill reads “global health programs” — rather than “child survival activities or disease programs.”

- **Deleting funding conditions applied to UNFPA and altering the bilateral FP/RH earmark**

The Biden budget request also proposes deletion of the entire section of the bill containing all of the long-standing boilerplate restrictions on the U.S. voluntary contribution to UNFPA including: the requirement that UNFPA maintain U.S. funds in a segregated account, none of which may be spent in China; no funding for abortion; dollar-for-dollar reduction in the U.S. contribution by the amount of funds UNFPA furnishes to China; and reprogramming of any funds withheld from UNFPA due to the “operation of any provision of law” to bilateral family planning, maternal and reproductive health programs. The proposed deletion of the entire UNFPA restrictions section is not unusual, as presidents of both parties have done so for many years in the past, but for different reasons — Republicans zeroing out UNFPA funding entirely, and Democrats rejecting limits on their authority and flexibility in foreign assistance decision-making. The Biden budget request does not propose any modification to the language of the 1985 Kemp-Kasten amendment, unjustifiably interpreted by the Trump-Pence administration to cut off U.S. financial contributions to UNFPA for all four of its years in office.

In deleting the entire UNFPA section of the bill, the Biden budget request eliminates the existing statutory earmark of \$32.5 million from the IO&P account that “shall” be provided to UNFPA. The funding level for UNFPA in the FY 2022 Biden budget request only appears in the State Department-USAID [CBJ](#). Unfortunately, the Biden budget appendix also proposes to modify the statutory earmark for bilateral FP/RH programs to read that \$583.7 million “may” be made available rather than “should.” In legislative drafting lexicon, the most legally binding earmark formulation starts at “shall,” descends to “should” and finally to “may” — the most permissive wording which amounts to not much more than a suggestion.

## **Prospect for the Biden Budget Request on Capitol Hill**

With Democratic SRHR supporters in control of both the House and Senate appropriations committees, it is to be fully expected that the bilateral FP/RH funding level included in State Department and foreign operations bills by both chambers should exceed the president's budget request, hopefully by a considerable amount. In the past, Democratic majorities on the appropriations subcommittees have authored sizable increases over the previous year's enacted level. For example, last year, the full House approved an increase of nearly \$200 million above the FY 2020 enacted level for bilateral FP/RH programs and \$55.5 million for UNFPA. Whether or not there will be an appetite and sufficient room in the overall international affairs budget to approve increases of that magnitude for FP/RH assistance remains to be seen.

If USAID Administrator Samantha Power's appearance last Wednesday before the House State Department and Foreign Operations Appropriations Subcommittee is any indication, strong support exists for busting through the stagnation in FP/RH funding levels that has long persisted. New Subcommittee Chairwoman Barbara Lee (D-CA) used her opening [statement](#) to note that now is the moment for “making up for lost time in the area of family

planning, which has not received an increase in funding in over a decade,” observing that “we cannot make long-term gains toward any of our other development goals while leaving out the reproductive health care needs of women, particularly after a global pandemic which we know disproportionately affected them.”

In response to a question from FP/RH champion Lois Frankel (D-FL), Administrator Power demonstrated her understanding of the urgency of addressing the unmet need for modern contraception of 218 million women in LMICs, stating “It’s incredibly important in thinking about economic development, in thinking about security. We can see where voluntary family planning is in place and people can access these resources, we see the positive development effects in so many sectors.”

Not only is there reason for optimism about the prospects for securing a higher appropriated level for bilateral and multilateral FP/RH programs, but also on finally making the two small, but significant and noncontroversial technical fixes to allow contraceptive procurement using the HIV/AIDS Working Capital Fund and FP/RH activities to continue in countries in which U.S. foreign aid has been suspended. With both changes included in the president’s budget request and House and Senate subcommittees having endorsed these revisions in the very recent past when Democrats were in charge, there should be no obstacles to prevent both from being enacted into law this year.

The Biden-Harris administration has taken some important first steps toward restoring U.S. leadership on international FP/RH with its inaugural budget request. Much work remains to be done by the administration in concert with congressional SRHR champions to commit the required financial resources and to put the necessary policy and legal framework in place to permanently cement that leadership.