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No Quid Pro Quo—Global Gag Rule Repeal Dropped with No Family Planning Funding Increase in Final FY 2020 Spending Deal

Early Tuesday afternoon, the House approved fiscal year 2020 State Department and Foreign Operations appropriations legislation that drops House-passed language repealing the expanded Trump-Pence Global Gag Rule (GGR), both permanently and for one year. At the same time, the legislation contains no additional funding for bilateral family planning and reproductive health (FP/RH) programs, nor virtually any other positive pro-sexual and reproductive health and rights policy changes in the bill or accompanying report. The outcome is shocking and extremely disappointing and can only be judged to be a near total capitulation on international FP/RH issues in the negotiations between House Democrats, Senate Republicans and the White House.

The State Department-Foreign Operations bill is one of eight subcommittee bills contained in a nearly 1800-page domestic and international affairs “minibus” ([H.R. 1865](#)) adopted overwhelmingly on a bipartisan vote of 297-120. The minibuss—along with its companion defense-focused four-bill minibuss—was approved today by the Senate, by the wide margin of 71-23, and will be transmitted to the president for his signature before the Friday midnight expiration date of the “continuing resolution” currently keeping the federal government up and running.

In the past, during previous Republican administrations when the GGR was in force—in particular during the tenures of the two President Bushes—family planning (FP) champions from both parties serving on the Appropriations Committee provided a type of consolation prize—a quid pro quo, if you will—to FP/RH supporters inside and outside Congress by upping the funding for overseas FP/RH programs. That historical precedent has now been obliterated.

Apparently, international FP/RH funding was literally the last issue to be resolved in the negotiations over the final deal and was linked to resolution of White House demands on [border wall issues](#). The hardball tactics of the Senate Republican leadership should put an end to any pretense that there is much—if any—bipartisan support left in Congress for U.S. investments in providing lifesaving contraceptive services to women and couples in developing countries and may finally dispel the notion that there is closet support among Republican Senators for FP/RH funding increases if only efforts to repeal the GGR legislatively would go away.

As House Appropriations Committee Chair Nita Lowey (D-NY) urged support for the minibuss package in its entirety on the floor, she lamented, “Amid all of these successes, I must note how disappointing it is that in these negotiations President Trump and congressional Republicans refused to relent on their counterproductive assault on women’s rights and health programs that provide basic health care to women and families here and around the world.”

Overseas programs were not the only target of anti-FP Republican legislators. In the domestic arena, the Republican leadership and the White House insisted on the deletion of an amendment in the House-passed Labor-Health and Human Services bill that would have blocked the implementation of the domestic version of the gag rule imposed by the Trump-Pence administration on the Title X FP program.

There is a certain sad irony that House action on Tuesday occurred on the 46th anniversary of the passage of the [Helms Amendment](#) that has restricted the use of U.S. foreign assistance to perform or promote “abortion as a method of family planning” since 1973 and is cited as the statutory authority for Republican presidents’ imposition of the GGR in all of its iterations from its initial promulgation in 1984.

Entering the House-Senate negotiations, FP advocates believed that champions on the appropriations committee were well-positioned to escape the legislative stagnation that has set in for nearly a decade. With Democrats seizing control of the House majority after the 2018 elections, both the House and the Senate versions of the bill firmly supported continued U.S. leadership on international FP/RH programs. House Democratic appropriators have [flipped the script](#) in the House’s handling of the three big perennial FP/RH issues after nine years of Republican hostility, specifically:

- **Funding:** The House earmarked a total bilateral and multilateral funding level of \$805.5 million, a \$198 million increase above the current FY 2019 enacted level (\$607.5 million) and the Senate set funding at \$665 million, a \$57.5 million increase;
- **Global Gag Rule:** The House adopted both a permanent legislative repeal of the policy by inserting the operative sections of the Global HER Act and a one-year moratorium on GGR implementation, while the Senate bill was unfortunately silent on GGR repeal; and
- **United Nations Population Fund (UNFPA):** Both the House and Senate earmarked a U.S. contribution at \$55.5 and \$32.5 million, respectively under current law restrictions, rejecting the Trump budget proposal to zero out a UNFPA contribution.

The inability of House and Senate FP champions to secure any concession from Senate Republicans on bilateral and multilateral FP/RH funding during the endgame negotiation is the greatest disappointment. As illustrated in the chart below and doing the math, merely splitting the difference between the proposed House and Senate levels would reset U.S. FP/RH investments in excess of \$700 million. This level of increase would have set the all-time record in current dollars, if not inflation-adjusted constant dollars. The worst-case scenario should have been the Senate committee-approved level of \$665 million. Instead, the final level in the minibus remains stuck at \$607.5 million, meaning the same amount will have been appropriated for the last five fiscal years since FY 2016.

In a new twist, Senate FP opponents claimed that the modest funding increase proposed in the Senate bill was “designed to do an end-run around” the GGR by providing a \$57 million increase in funding for “pro-abortion domestic groups that are exempt [from the GGR]”. A false and wholly shortsighted argument further underscoring Republican disdain for the leadership role that the U.S. government has historically played in ensuring access to life-saving contraceptives for women and girls around the world. Increased FP/RH funding would actually result in greater access to and use of the modern contraceptive methods that prevent unintended pregnancies and reduce the incidence of abortion among the 214 million women of reproductive age in developing countries that have an unmet need for FP.

(in millions of dollars)	FY 2019 Enacted (P.L. 116-6)	FY 2020 President’s Budget Request	FY 2020 House-passed Bill (H.R. 2839)	FY 2020 Senate Committee-approved Bill	FY 2020 Enacted
Global Health Programs account	(523.95)	237.0	750.0	(581.5)	(523.95)
Economic Support Fund (ESF)	(51.05)	22.0	—	(51.05)	(51.05)
TOTAL, bilateral FP/RH	575.0	259.0	750.0	632.55	575.0
U.S. contribution to UNFPA (IO&P)	32.5	0	55.5	32.5	32.5
TOTAL, bilateral & multilateral	607.5	259.0	805.5	(665.55)	607.5

Where the final minibus deal ended up on UNFPA was largely predictable because both the House and Senate bills earmarked contributions and contained identical policy restrictions with the only difference being the amount of the contribution.

On GGR, as you may recall, Senate Appropriations Committee Chair Richard Shelby (R-AL) did everything he possibly could this fall to ensure that a GGR repeal amendment was not in the Senate version of the State-Foreign Operations bill, going so far as to try to [bypass a committee markup](#) and take the bill directly to the Senate floor. After that gambit failed, the committee proceeded to markup a draft bill that was silent on GGR while denying Senator Jeanne Shaheen (D-NH) the opportunity to offer her customary amendment to repeal the Trump-Pence administration's ruinous expansion of the GGR to all U.S. global health assistance. As a result, a GGR repeal amendment was not included in the State-Foreign Operations appropriations bill for the [first time in 19 years](#).

All that Sen. Shaheen and FP supporters on the committee, including the only pro-FP Republicans left in the Senate, Sens. Susan Collins (R-ME) and Lisa Murkowski (R-AK), got in return for being forced to stand down on offering her bipartisan repeal amendment was a modest bilateral FP/RH funding increase, a flat-lined UNFPA contribution and inclusion of some statutory FP/RH program funding accountability language in the "manager's amendment," a bipartisan package of statutory and report language agreed to by Subcommittee Chairman Lindsey Graham (R-SC) and Ranking Member Patrick Leahy (D-VT).

The first of the FP/RH program funding accountability provisions included in the "manager's amendment" required the U.S. Agency for International Development (USAID) administrator to report to the committee any instances in which beneficiaries of foreign assistance supplies and services were being discriminated against. Longstanding requirements—contained in both federal law and USAID standard provisions for nongovernmental organizations (NGOs)—are in place to protect beneficiaries of foreign assistance supplies and services against discrimination on the basis of "race, color, religion, sex (including gender identity, sexual orientation and pregnancy), national origin, disability, age, genetic information, marital status, parental status, political affiliation or veteran's status" in any grant or contract solicitation and award for FP/RH and HIV/AIDS programs, projects and activities. The provision required the administrator to set up procedures to implement the nondiscrimination requirement, including establishing a mechanism for reporting any problems uncovered to USAID. The push for this new requirement was apparently prompted as a response to reports from the field that unmarried, pregnant adolescent girls were being discriminated against in the provision of health care services by unnamed USAID grantees. One can only guess what type of NGO might do such a thing.

The second accountability provision made funding available for a Government Accountability Office (GAO) evaluation of USAID's award processes for FP/RH assistance including the "criteria used to select implementers and beneficiaries; the financial and programmatic oversight mechanisms; the benchmarks for measuring results; and any material changes to such processes, mechanisms and benchmarks" observed during the Trump-Pence administration; and the effects of combining FP/RH funds with other funds used for programs, projects and activities "outside the scope" of FP/RH.

The administration and opposition, seemingly afraid of what these accountability and transparency provisions could reveal, came out in [full force against them](#). A diverse cast of characters emerged to block these commonsense efforts, including the White House Office of Management and Budget in its [letter](#) to appropriators on the Senate committee-approved bill, as well as anti-choice groups like the Susan B. Anthony List and the National Right to Life Committee in a letter to the Republican leadership and Senator Mike Lee (R-UT). He [vowed](#) to strike all of the Shaheen provisions in the "manager's amendment" and to write the GGR into law. Lee also announced his intention to drastically extend the GGR's application to domestic NGOs in the unlikely event that the bill ever reached the Senate floor. Ultimately, all of these nemeses argued that the two FP/RH funding accountability provisions would somehow undermine the administration's implementation of their GGR expansion, would be used as "a vehicle to harass pro-life recipients," favor established implementing partner organizations and interfere with USAID's efforts to collaborate with community- and faith-based organizations as part of its New Partnership Initiative.

Pro-choice, pro-FP/RH advocates never viewed either of these as a substitute for the standard GGR legislative repeal amendment typically attached to the Senate bill by Sen. Shaheen. The first provision is unrelated to the GGR and discrimination in the provision of foreign assistance ought to be considered by all responsible parties to be an obviously bad thing. On the other hand, one might view the GAO evaluation as

a way to produce the type of GGR impact analysis and information that ought to be contained in the long-overdue second review of the implementation of the expanded GGR, promised by the Secretary of State by the end of 2018 but yet to be delivered. Furthermore, the awarding of and use of taxpayer dollars to further our global development goals should be done in a fair and transparent way. [Recent meddling](#) on the part of this administration has called into question just how impartial and free from improper political influence the procurement process truly is.

In the final deal, both of the House-passed bill's GGR repeal amendments were dropped, as were the FP/RH program funding accountability provisions in Senate committee-passed bill.

The negotiators' retreat to the status quo on international FP/RH issues for the tenth fiscal year in a row—level funding and no new policy “riders” on GGR—took other casualties among the legislative hostages. Among the positive statutory provisions sacrificed was a proposed technical language change in the House bill to allow USAID to use the HIV/AIDS Working Capital Fund to procure contraceptive commodities. This would have increased the purchasing power of FP funding through the use of this more efficient and cost-effective procurement mechanism utilized by most other global health sectors at USAID—except for contraceptives. Also jettisoned was a similar technical fix to extend the exemption granted to all other global health sectors—except FP/RH—allowing programs to continue when foreign assistance to a country government is cut-off in response to various offences such as coups, loan defaults or expropriation of U.S. assets.

Even modest provisions included in report language were not spared in the [joint explanatory statement](#) accompanying the minibus. Dropped with extreme prejudice were the following directives: a requirement that the Secretary of State provide information and evidence to the committee [justifying a Kemp-Kasten determination](#) to cut-off funding to UNFPA and a mandate that the Department of State include “violations of women’s reproductive rights and descriptions of official government discrimination of LGBTI persons” in its annual country reports on human rights practices.

In addition, Senate report language seeking to align global health programs, including maternal and child health programs and FP/RH, with new initiatives to promote women’s economic empowerment, including the Women’s Global Development and Prosperity Initiative (WGDPI—First Daughter Ivanka Trump’s *faux* feminist vanity project), through implementation of pilot projects in three countries was explicitly deleted. Fortunately, a last-minute push by the White House to include a permanent statutory authorization for WGDPI was also rebuffed by appropriators.

Positive report language that appears to have been miraculously spared includes: a directive in the House report restricting the reprogramming of funds withheld from multilateral organizations to programs to diagnose and treat cervical cancer, noting that the administration has not included funds for that purpose in its budget request; and a recommendation to USAID to include efforts to find new “effective, affordable contraceptives in their research agenda.”

With the final deal having been struck, all that FP advocates and their champions in Congress are left to do is to redouble our efforts and try to understand how it happened and if there are any lessons to be learned so as to avoid a repeat of this debacle next year.