

The Room Where It Happens—Congressional Champions Save International Family Planning in Spending Bill Negotiations

To avoid a government shutdown at midnight tonight, the House and Senate passed within a span of 12 hours yesterday a \$1.3 trillion, 2232-page [omnibus spending bill](#) for FY 2018 to fund the federal government for the remainder of the fiscal year. Tucked inside this massive piece of legislation, congressional champions secured a tremendous victory for international family planning and reproductive health (FP/RH) programs by preserving funding at the current level of \$607.5 million—including \$575 million for the bilateral FP/RH programs of the U.S. Agency for International Development (USAID) and a \$32.5 million contribution to the United Nations Population Fund (UNFPA)—while avoiding the imposition of any new anti-choice policy restrictions. After some drama earlier today, President Trump signed the legislation late this afternoon.

How family planning supporters on the Senate and House Appropriations Committees, in particular Senator Patrick Leahy (D-VT) and Congresswoman Nita Lowey (D-NY) and their staffs, have managed to achieve this same positive outcome in final spending bill negotiations for the last eight fiscal years with hostile Republicans controlling the majority in the House is a marvelous mystery. One might be reminded of the lyrics of the “[The Room Where It Happens](#)” from the hit Broadway musical *Hamilton*, perhaps the only popular song to capture the intricacies of the art of behind-the-scenes legislative deal-making.

No one really knows how the game is played
The art of the trade
How the sausage gets made
We just assume that it happens
But no one else is in
The room where it happens . . .

No one really knows how the
Parties get to yes
The pieces that are sacrificed in
Ev'ry game of chess
We just assume that it happens

In most years, the international FP/RH funding level and policy provisions, such as writing the Global Gag Rule into law or prohibiting a U.S. contribution to UNFPA, are among the last items to be resolved in the State Department and foreign operations section of an appropriations bill. Frequently, the final decision is made at the leadership level of the Senate Majority and Minority Leaders and the Speaker of the House and Minority Leader—in consultation with the Chairmen and Ranking Members of the Appropriations Committee—as the final deal is cut on the spending package, deciding the fate of numerous outstanding funding proposals and policy “riders,” and “poison pills” spread across all 12 appropriations subcommittee bills. It is currently not known outside the “room where it happens” if FP/RH issues remained among the last to be decided in this year’s round of negotiations and what might have been traded or bargained with to reach this agreement.

Part of the formula of how a favorable outcome for FP/RH funding and policy has happened for the last eight fiscal years is the passage of diametrically-opposed House and Senate versions of the State-foreign operations appropriations bills. With the adoption of an [amendment](#) sponsored by Senator Jeanne Shaheen (D-NH), the Senate committee-approved bill ([S. 1780](#)) contained \$622.5 million for FP/RH programs, including an earmarked bilateral funding level of \$585 million, a permanent legislative repeal of the Global Gag Rule, and a \$37.5 million earmarked UNFPA contribution under most, but not all, of the current law restrictions. Conversely, the House-approved bill ([H.R. 3362](#)) caps bilateral funding at \$461 million, prohibits any U.S. contribution to UNFPA, and legislatively imposes Trump’s Global Gag Rule expanded to apply to all U.S. global health assistance. This set up the same negotiating scenario that has existed in the preceding seven rounds, resulting in the same status quo conclusion—appropriation of level FP/RH funding, deletion of all policy “riders” attached to either the Senate or House bill, whether positive or negative, and continuation of boilerplate statutory restrictions and prohibitions. This auspicious result in the current political environment was no doubt achieved due in large part to tough, unwavering negotiation by congressional appropriations champions.

The omnibus spending package’s treatment of international FP/RH is a verbatim recitation of the FP/RH funding levels and policy provisions contained in last year’s FY 2017 omnibus statutory and report language.

Funding

The omnibus earmarks no less than \$575 million for bilateral FP/RH funding. Two charts in the joint explanatory statement (the report language accompanying the omnibus) specify FP/RH program funding of \$523.95 million from the Global Health Programs account and \$51.05

million from the Economic Support Fund for FP/RH activities in a small number of strategically important countries. While preservation of the current level of funding is a significant political accomplishment today, such investments fall far short of the \$1.5 billion required for the United States to meet its fair share of global expenditures necessary to address the unmet need for modern contraception of the 214 million women in developing countries that want to prevent pregnancy but are not using a contraceptive method.

(In millions of dollars)	FY 2017 Enacted (P.L. 115-31)	FY 2018 President's Budget Request*	FY 2018 House-Approved Bill (H.R. 3362)	FY 2018 Senate Committee-Approved Bill (S. 1780)	FY 2018 Omnibus
Global Health Programs account	(523.95)	0	—	(544.0)	(523.95)
Economic Support Fund (ESF)	(51.05)	0	—	(41.0)	(51.05)
TOTAL, bilateral FP/RH	575.0	0	461.0	585.0	575.0
U.S. contribution to UNFPA (IO&P)	32.5	0	0	37.5	32.5
TOTAL, bilateral & multilateral FP/RH	607.5	0	461.0	622.5	607.5

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.

* An interesting side note—when the President’s FY 2019 budget request was released in February, the Office of Management & Budget (OMB) proposed to Congress a collection of “add backs” to the administration’s original FY 2018 budget request for a wide variety of federal programs, including \$302 million for bilateral FP/RH programs. It is unlikely that this retroactive revision in the President’s FY 2018 request mattered much in the end-game negotiations since House and Senate FP/RH funding levels had already been established in their respective bills, but interesting nonetheless and presumably at least marginally helpful to be part of the administration’s “wish list.”

Global Gag Rule

No legislative language endorsing or repudiating Trump’s expanded Global Gag Rule is included.

UNFPA

The omnibus includes an earmarked contribution of \$32.5 million for UNFPA to be provided from the International Organizations and Programs account under identical restrictions in place during FY 2017. These include a requirement that the U.S. contribution be maintained by UNFPA in a segregated account, none of which may be spent in China; a dollar-for-dollar withholding of the amount UNFPA plans to spend in China during the fiscal year; and a condition on the availability of U.S. funds that UNFPA does not fund abortions.

The 1985 Kemp-Kasten amendment prohibiting U.S. assistance to any organization or program that “supports or participates in a program of coercive abortion or involuntary sterilization” is

included in the omnibus. Shoddy State Department determinations made pursuant to the amendment have judged UNFPA as being in violation because of their country program in China and ineligible to receive a U.S. contribution in FY 2017 and in FY 2018. [The most recent Kemp-Kasten determination](#) on UNFPA's eligibility in FY 2018 was just announced on March 8, International Women's Day. The omnibus also includes a provision directing that any funds withheld from UNFPA due to the "operation of any provision of law" be reprogrammed to the GHP account for bilateral "family planning, maternal, and reproductive health" programs.

Other Policy Provisions

Statutory language contained in the FY 2017 omnibus—some of it new and some of it decades-old—is also reiterated, including: abortion-related funding restrictions such as the 1973 Helms amendment; informed consent and referral protections; and allowance for the payment for abortion in the case of life, rape, and incest for Peace Corps volunteers.

A multitude of Representatives and Senators from both parties expressed strong frustration and displeasure with how the massive FY 2018 omnibus spending package was assembled, both with the funding levels for their favored programs (or those that they seek to abolish) and with any one of hundreds of legal and policy provisions that are stuffed in the pages of the yard-high bill that no one was able to read before having to vote.

Citing inadequate funding for a border wall (and absurdly criticizing Democrats for not protecting the "Dreamers"), a Trump tweet just before nine o'clock this morning threatening to veto the omnibus sent Washington into a panic as most members of Congress have already left town for a week-long recess and with the possibility of a government shutdown at midnight looming. In the end, the President announced he would sign the package after all, in order to obtain the \$61 billion increase in defense spending contained in the omnibus.

Trump, like the critical members of Congress, complained of not knowing what is in the bill. Ultimately, the complaints of the President and the congressional rank-in-file stem from the fact that they are not at the negotiating table and don't know how such big, bipartisan legislative deals get done.

Hold your nose and close your eyes
We want our leaders to save the day
But we don't get a say in what they trade away
We dream of a brand new start
But we dream in the dark for the most part
Dark as a tomb where it happens