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Sweet Relief: Senate Democratic Appropriators Release Pro-Reproductive Health Funding Bill

On Monday afternoon, Senate Appropriations Committee Chairman Patrick Leahy (D-VT) unveiled the text of the nine subcommittee bills for fiscal year (FY) 2022 that have not been acted upon in committee to date, including the [State Department and foreign operations bill](#). Chairman Leahy and new 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-passed counterpart, includes a permanent legislative repeal of the Global Gag Rule (GGR), a modification to the Kemp-Kasten amendment used by Republican presidents to defund the United Nations Population Fund (UNFPA), 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.

After the committee approved three subcommittee bills out of committee by large bipartisan majorities in early August, Chair Leahy had hoped to mark up the nine remaining bills in full committee by the end of September. That intention was thwarted by Republican members of the committee, led by Ranking Member Richard Shelby (R-AL), who have insisted that more money be provided to the Pentagon and less funding allocated for non-defense domestic discretionary programs, the priority for Democrats. As such, each of these nine bills were essentially a “Chairman’s mark” developed and released by the Democratic majority with varying degrees of input from Republican subcommittee members and will not receive a committee markup at which amendments could be offered.

The nine bills released on Monday, combined with the three previously adopted in committee, would provide a 13% increase for non-defense discretionary programs and a 5% increase for defense, rebalancing the ratio between defense and non-defense in House-passed bills which allocated more funding for domestic spending priorities. The 5% increase for defense is consistent with the amount contained in the annual defense authorization bill recently adopted by the full House and the Senate Armed Services Committee by bipartisan supermajorities. The move to rebalance is intended to kick-start negotiations between the House and Senate leadership on top-line funding allocations in the hope of getting agreement on a FY 2022 omnibus spending package prior to the expiration of the current continuing resolution (CR) keeping the federal government in operation on December 3.

Overall, the [State Department-foreign operations bill includes \\$60.6 billion for international affairs programs](#), a \$5.1 billion — or 9% — increase above the current FY 2021 enacted level but \$1.7 billion — or 3% — below the president’s FY 2022 budget request and the House-passed bill. Global health programs would receive a \$1.2 billion increase above current levels. Much of the increase — \$810 million — would be allocated to meet the Biden-Harris administration’s request for global health security and pandemic preparedness, but more funding is also proposed for other programs, like tuberculosis, malaria, polio, maternal and child health and FP/RH.

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

Funding

The bill proposes \$705 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 \$55 million earmarked for a U.S. voluntary contribution to the core budget of UNFPA within the International Organizations and Programs (IO&P) account managed by the State Department. The total amount allocated would represent nearly a \$100 million increase — \$97.5 million — 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 \$125 million short of the \$830 million approved in the [House-passed bill](#). Nevertheless, getting to a level of \$705 million is an impressive feat given that Senate champions were operating within the constraints of a considerably smaller overall subcommittee funding allocation than their House counterparts.

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 on FP/RH funding is long overdue.

(in millions of dollars)	FY 2021 Enacted (P.L. 116-260)	FY 2022 President’s Budget Request	FY 2022 House-Passed Bill (H.R. 4373)	FY 2022 Senate Committee Bill
Global Health Programs (GHP) account	(523.95)	550.0	(760.0)	(650.0)
Economic Support Fund (ESF)	(51.05)	33.7	--	--
TOTAL, bilateral FP/RH	575.0	583.7	760.0	650.0
U.S. contribution to UNFPA (IO&P)	32.5	56.0	70.0	55.0
TOTAL, bilateral & multi-lateral FP/RH	607.5	639.7	830.0	(705.0)



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).

Global Gag Rule

Like the House-passed bill, the Senate version includes a permanent legislative repeal of the GGR, setting the stage for a breakthrough to end the constant back and forth of this destructive executive branch policy between Republican and Democratic presidents for good.

The bill includes language identical to that contained in the House-passed 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 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.

With permanent GGR repeal included in both the House–passed bill and its Senate companion, the amendment should be “non–conference–able” — not a subject for the negotiation between the two chambers to resolve differences between their respective versions. Nevertheless, the Republican leadership will undoubtedly label the permanent GGR repeal amendment a “poison pill,” threatening Senate passage, and seek to remove it from the final spending package. But with a supportive President Biden in the White House and no veto threat forthcoming — unlike those issued during the Trump–Pence administration — Republican leadership efforts to remove it should prove fruitless. The greatest potential danger that might prevent a permanent GGR repeal from finally being signed into law this year is if the FY 2022 appropriations process completely implodes — a not unfathomable possibility in the extreme partisan polarization that pervades Washington today, which is exacerbated by a 50–50 split between Democrats and Republicans in the Senate.

UNFPA

As reported above, the proposed Senate bill earmarks a U.S. voluntary contribution to UNFPA of \$55 million out of the IO&P account, a \$22.5 million increase above the FY 2021 enacted level but \$15 million less than the amount earmarked by the House and \$1 million below the president’s budget request. As in the House version, 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 requirement that any funding withheld from UNFPA due to the “operation of any provision of law” is to be reprogrammed to USAID for bilateral women’s health activities remains in place. But interestingly, the Senate bill drops the word “maternal” from the current list of types of bilateral USAID programs to be supported with reprogrammed UNFPA funds so the requirement directs that funds be provided only to “family planning and reproductive health activities.” In addition, 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 two proposed changes in the Senate bill will need be resolved in conference negotiations.

Potentially as significant as the contribution increase, the Senate bill includes a modification identical to one contained in the House–passed bill of 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. Both the Senate and the House bills insert 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.

In related news on U.S. funding disbursement to UNFPA, U.S. Ambassador to the United Nations Linda Thomas–Greenfield announced after meeting with UNFPA Executive Director Natalia Kanem in June that the [State Department was about to provide to UNFPA \\$30.8 million in core funding for FY 2021 and additional humanitarian and refugee assistance](#), totaling \$6.6 million for UNFPA’s response to the Rohingya refugee crisis (\$2.6 million) and addressing humanitarian needs in Tigray (\$1.2 million), Afghanistan (\$1.5 million) and Sudan (\$1.3 million). In early October, a [\\$5 million contribution to UNFPA by the USAID’s Bureau for Humanitarian Assistance](#) was also announced to help UNFPA provide emergency obstetric and maternal health care to 14 hospitals in war–ravaged Yemen. In addition, \$17.5 million of the earmarked contribution to UNFPA for FY 2020, withheld by the Trump–Pence administration under the Kemp–Kasten restriction, has been reprogrammed for contraceptive supplies in 10 countries, primarily in Africa, with unfunded procurement plans through 2022. Coordination between USAID and UNFPA on contraceptive procurement is ongoing in the wake of [cuts to UNFPA Supplies by the U.K.’s Foreign, Commonwealth, and Development Office](#).

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, now, 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 2022 budget request](#). With their inclusion in both the Senate and House versions of the bill, these two amendments should be considered “non-conference-able” and should finally be enacted into law this year, absent the appropriations process being completely derailed.

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 allow 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-passed 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-passed bill’s most dramatic departure from prior-year legislation was dropping all references to the 1973 Helms amendment that restricts use of foreign assistance funds to pay for the performance of abortion “as 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 2021 omnibus spending bill.

In contrast, both the House and Senate versions of the Labor, Health and Human Services, Education bill removes 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 is destined to be a major target of the Republican leadership’s ire in House-Senate negotiations over the final FY 2022 spending package.

Peace Corps

The House-passed State Department-foreign operations bill also 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, the Peace Corps has been prohibited from providing coverage for abortion services in their 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 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 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. 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, in order 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

As renowned philosopher and baseball great Yogi Berra once observed, "It's tough to make predictions, especially about the future." The key questions are what happens between now and December 3 when the current CR expires and how the appropriations endgame negotiation proceeds. It is an ambitious timeline to finish in December and additional short-term CRs may be necessary. But in releasing the nine Senate bills that would provide additional funds for defense and reduce non-defense discretionary funding, [Chairman Leahy seeks to bring Republicans to the negotiating table](#) to begin a dialogue among the bicameral leadership of both parties and appropriations "cardinals" to get agreement on a top-line funding allocation for FY 2022. Combined with the reinstatement of earmarks — rebranded as congressionally directed spending — for state and local projects many have requested, it is hoped that support from enough Republican Senators can be attracted to reach the 60-vote threshold necessary to approve bills in the Senate these days. The risk posed by a year-long CR — reflecting a continuation of outdated and distorted Trump-Pence administration funding and program priorities — or passage of severely watered-down bills in February or March of next year cannot be overstated. In fact, it seems like one of the only scenarios under which a permanent legislative repeal of the GGR would not be enacted into law in 2021.

