

January 10, 2023

## **Triskaidekaphobia: For 13th Year in a Row, Omnibus Spending Bill Rejects Proposed Advances for International Family Planning Funding and Policy**

As feared, the final omnibus spending package for fiscal year (FY) 2023 fails to include any of the advances for sexual and reproductive health and rights (SRHR) adopted by the House Appropriations Committee and proposed by the Senate Democratic majority on the appropriations committee. Among these were dramatically increased funding for international family planning and reproductive health (FP/RH) programs and the United Nations Population Fund (UNFPA) or the codification of President Biden's rescission of the Global Gag Rule (GGR). Instead, due to the refusal of Senate Republican appropriators and leadership to negotiate in good faith on pro-SRHR changes included in both the House and Senate versions of the bill and their single-minded focus on removing those positive provisions, the bill defaults to the previous year's funding levels and policy, retaining the status quo that has persisted on these issues for the last 13 years.

The final spending package ([H.R. 2617](#)) continues to fund bilateral international FP/RH at \$575 million, with an additional \$32.5 million for UNFPA, totaling \$607.5 million overall. This amount has remained flat since FY 2011, despite the need for increased investments to adequately address the unmet need for modern contraception and other reproductive health services, as well as to offset the effects of inflation and account for the growth of the population of reproductive age in low- and middle-income countries over those years.

In addition, the bill fails to include important policy changes to improve the efficacy and efficiency of U.S. investments in international FP/RH programs. Most notably, a codification of the repeal of the GGR was left out again. Without this change, global health organizations around the world remain in a state of uncertainty, knowing that this harmful policy could come back as soon as a future U.S. president who is hostile to SRHR takes office.

This policy change was included for the first time in both the House and Senate bills last year because of the election of supportive Democratic majorities, albeit razor-thin, in both houses at the start of the 117th Congress. Together with President Biden in the White House, the prospects for finally enacting a GGR repeal into law were best as the political stars seemed to be aligning. But the rejection by Senate Republican negotiators of any changes in FP/RH policy, which were labeled "poison pills" in their talking points, doomed the effort. Realistically, enacting the GGR provision in 2022 — an election year — was always going to be an extremely challenging proposition.

The Senate Republican leadership insisted on a disproportionate funding increase for defense programs and complained about more modest funding boosts for nondefense discretionary programs sought by Democratic leaders from both chambers and refused to accept any changes in policy "riders" across a broad range of progressive issues, including domestic and international reproductive health programs. House Republicans largely sat out the negotiations seeking a continuing resolution until early in the new year when they would gain the majority in the 118th Congress after the November midterm election. Senate Republican leaders had no appetite for a continuing resolution as it would undermine their own stated

objective to increase defense spending. They wisely questioned the ability of a new House Republican majority to deliver a spending package early in 2023, a prescient judgment about the GOP caucus' ability to govern itself that seems to have been borne out by the dysfunction witnessed last week in their historic difficulty in electing a Speaker of the House.

With Senate Republicans wielding the 60-vote threshold necessary to approve bills in the Senate these days, at some point, a deal was struck and a concession on policy “riders” in exchange for other Democratic priorities was made. In the past, international family planning funding and policy questions have been among the last issues to be resolved before omnibus spending packages were finalized. When Democrats made the decision to relent on “riders” is probably unknowable outside the room where it happened, but it appears that it probably occurred in early December. On the vote on final passage of the omnibus, 18 Republicans joined all 50 Democrats to advance the bill for the president’s signature. President Biden signed the \$1.7 trillion omnibus spending package on December 29.

Suspecting that the negotiation would evolve as it did last year and in the wake of the Dobbs decision, SRHR advocates adjusted their sights and prioritized the necessity of breaking the stagnation in international and domestic family planning funding levels to finance a critical expansion in access to contraception and increased efforts to prevent unintended pregnancies, both at home and abroad. That the appropriated levels for both international FP/RH programs and the [Title X domestic family planning program](#) remain flat-funded — for 13 and nine years, respectively — is a source of great disappointment.

(in millions of dollars)	FY 2022 Enacted (P.L. 117-103)	FY 2023 President's Budget Request	FY 2023 House Committee-Approved Bill (H.R. 8282)	FY 2023 Senate Democrats "Chairman's Mark"	FY 2023 Enacted (H.R. 2617)
Global Health Programs (GHP) account	(523.95)	572.0	<b>760.0</b>	(650.0)	(523.95)
Economic Support Fund (ESF)	(51.05)	25.0	0.0	--	(51.05)
<b>TOTAL, bilateral FP/RH</b>	<b>575.0</b>	597.0	<b>760.0</b>	<b>650.00</b>	<b>575.0</b>
U.S. contribution to UNFPA (IO&P)	<b>32.5</b>	56.0	<b>70.0</b>	<b>60.0</b>	<b>32.5</b>
<b>TOTAL, bilateral &amp; multilateral FP/RH</b>	<b>607.5</b>	653.0	830.0	(710.0)	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).

Here is a rundown of the key funding and policy issues supported by SRHR advocates and their resolution.

## Funding

On international FP/RH funding, the omnibus bill stipulates that “not less than” \$575 million “should” be provided to bilateral FP/RH programs, the bulk of which — \$524 million — is allocated within the Global Health Programs (GHP) account managed jointly by the U.S. Agency for International Development (USAID) Office of Population and Reproductive Health and USAID country missions in the field. The remainder is allocated from within the Economic Support Fund (ESF), which has been used in the past to finance FP/RH activities in a small number of strategically important countries.

While both the House and Senate versions of the bill proposed for the second year in a row that no portion of the bilateral FP/RH funding amount be derived from ESF and allocate all funding through the GHP, a

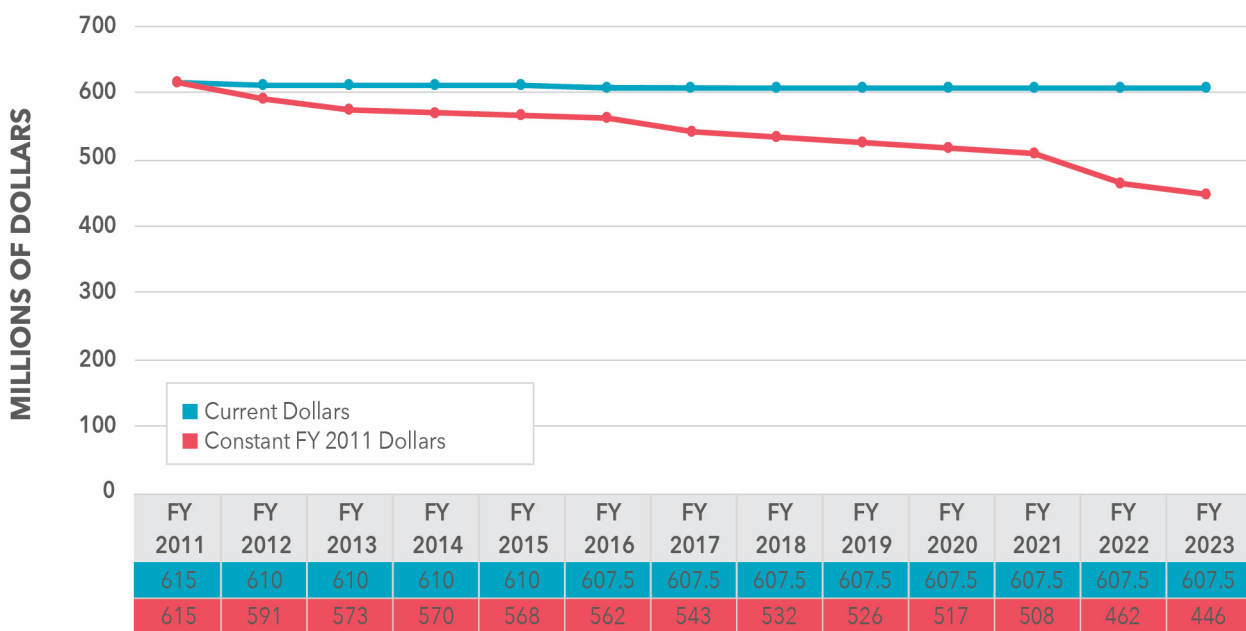
departure from past practice which would have allowed USAID greater flexibility in choosing in which countries these funds could be utilized, the omnibus explanatory statement contains a line-item budget of \$51 million from ESF for FP/RH. It is apparent that congressional appropriators continued to resort to the perennial past practice of using ESF to bolster the FP/RH level in the face of competing pressures for scarce resources available under the overall funding allocation for GHP programs.

The U.S. contribution to UNFPA is earmarked at \$32.5 million from within the International Organizations and Programs (IO&P) account which includes all the voluntary contributions made by the United States to United Nations programs and agencies.

As the graph below illustrates, total bilateral and multilateral funding for U.S. international FP/RH programs has remained more or less stagnant for the last 13 fiscal years at just over \$600 million annually. Over those 13 years, adjusting for inflation, the purchasing power of the appropriated FP/RH funds has decreased by \$161 million in constant FY 2011 dollars. Conversely, the FY 2011 appropriated amount would have the purchasing power of \$837 million today. Looking at it from another direction, the high-water mark for international FP/RH funding (\$595 million), enacted by Congress just prior to the landmark 1994 International Conference on Population and Development in Cairo, would have the equivalent purchasing power today of \$1.189 billion.

## BILATERAL AND MULTILATERAL FP/RH FUNDING

### APPROPRIATED LEVELS ADJUSTED FOR INFLATION (FY 2011 - FY 2023)



NOTE: Inflation-adjusted appropriated levels on the fiscal year date of enactment, derived using the Bureau for Labor Statistics inflation calculator, compared to the Consumer Price Index in October 2010 when the FY 2011 appropriations bill was enacted.

According to the U.S. Global Leadership Coalition, the FY 2023 omnibus bill contains the most significant increase in non-emergency funding for the international affairs budget that supports State Department operations and foreign assistance programs in six years, including \$61.7 billion in base funding — \$3.7 billion or 6% above the comparable FY 2022 enacted level. An additional \$16.6 billion in emergency funding for Ukraine was approved.

Within the international affairs budget line-item of the omnibus, the GHP account, which contains most of the global health assistance provided by the U.S. government, is allocated \$10.6 billion, an increase of \$731

million above the enacted level in FY 2022. Among global health sectors, bilateral FP/RH was the only one not to get an increase from last year's appropriated level. All of the other major sectors received increases of varying sizes, some modest and some massive — as in the case of the Global Fund to Fight AIDS, Tuberculosis and Malaria and global health security.

## Global Health Sector Equity

Although the highest priority for FP/RH advocates in the omnibus negotiations this year was securing a bilateral and multilateral FP/RH funding increase of any size, there was one small technical policy “fix” that Republicans refused to consider that is particularly galling. Only one global health program — FP/RH — is not exempted from a variety of prohibitions on assistance that can and have been enforced against country governments that commit coups, nuclear proliferation, loan default, expropriation of U.S. assets, and other misdeeds. In contrast, child survival, HIV/AIDS and other disease-specific programs are currently exempted from these country assistance prohibitions, as well as many other provisions of law.

Two “coups” in Burkina Faso during 2022, the most recent in October, provide a timely example of why a technical language change to include FP/RH programs under a broad global health exemption from country aid prohibitions remains critically important. On January 28, a USAID regional contracts officer sent a notice to implementing partners requesting them to “pause all expenditures ... that both support family planning and that also benefit the government of Burkina Faso at any level (local, provincial and national).” To date, the State Department has not made a formal designation of a coup d'état in Burkina Faso.

When coup determinations are made, the USAID Office of Population and Reproductive Health, country missions and lawyers can either seek to shift FP/RH activities involving the sanctioned government to the private sector or invoke an exception that is available under the law for “life-saving” activities, a designation which can typically be applied to FP/RH service delivery and contraceptive procurement and distribution, but not for other important programmatic activities.

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 (May 2021) and Guinea (September 2021).

Forcing USAID to scramble to restructure FP/RH assistance to governments and channel it through the private sector — or invoking the “life-saving” exception — is time-consuming, expensive and not a cost-effective use of taxpayer dollars. Since there is no programmatic rationale for objecting to the technical language change — included in both the House and Senate versions of the bill and requested by the president in the FY 2023 budget appendix — one can only conclude that Republican opposition is either rooted in a desire to single out and punish the bilateral FP/RH program or a mindless demand to not deviate even a tiny bit from the legislative status quo. The thousands of people in those countries who would benefit from expanding the notwithstanding authority will continue to bear the consequences.

## Global Gag Rule

Both the [House committee-approved bill](#) and the [Senate version](#) contained the legislative codification of the repeal of the GGR. Based on provisions of the Global Health, Empowerment and Rights (Global HER) Act (H.R. 556 and S. 142), the language included in both the House and Senate bills would have ensured 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 SRHR from unilaterally imposing the GGR through executive action.

With permanent GGR repeal included in both the House committee bill and its Senate companion, this should have been “non-conference-able” — not a subject for the negotiation between the two chambers to resolve differences between their respective versions. But as feared, the Republican leadership labeled the GGR repeal amendment a “poison pill,” threatening Senate passage, and it was removed from the final spending package preserving the status quo.

## UNFPA

The omnibus earmarks a U.S. voluntary contribution to UNFPA of \$32.5 million out of the IO&P account, an amount identical to the contribution level enacted for the last seven fiscal years and just slightly less than the amounts appropriated for the preceding four years, when Republicans, in an arbitrary and punitive move, slashed \$2.5 million from UNFPA's funding. More significantly, the final contribution in the omnibus is \$37.5 million less than the amount earmarked in the House bill and \$27.5 million less than the amount earmarked by the Senate.

The omnibus 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. In addition, the omnibus retains the dollar-for-dollar reduction in the U.S. contribution provided to UNFPA by the amount UNFPA spends in China each year, which usually amounts to a reduction of between \$1 and \$2 million in recent years. The requirement that any funding withheld from UNFPA due to the “operation of any provision of law” is to be reprogrammed to USAID for family planning, maternal and reproductive health programs also remains.

One other significant proposed policy change that was left out of the omnibus was a modification of the Kemp-Kasten amendment, which prohibits furnishing U.S. foreign assistance 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. The House bill inserted 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. That proposed change was also scuttled.

## The Fate of Other Pro-SRHR Provisions

The House committee-passed and Senate draft bills contained a multitude of extremely progressive pro-SRHR provisions in either the bill themselves or accompanying report language, all of which were jettisoned at some point in the discussion over the omnibus and sacrificed on the altar of the status quo, including:

### **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 — adding “other global health” — to the existing statute had been requested in the appendix to the president's FY 2022 budget request and inserted in both the House bill and the Senate version. This would have broadened the fund's eligibility to allow USAID the option of procuring contraceptive commodities using this mechanism if it chose and eliminated another instance in which FP/RH programs are subjected to discriminatory treatment in appropriations legislation without legitimate programmatic justification. The omnibus text reverts to current law.

### **Peace Corps**

The House 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. Since 1979, the Peace Corps has been prohibited 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. Bringing its health coverage in line with that of other employees or groups covered by the federal government was an important and meaningful change for the Peace Corps. The omnibus restores the restriction in current law, including the Hyde amendment exceptions for volunteers.

## Full and accurate information on 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 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 omnibus retains the existing requirement only as it applies to condom information.

## Helms amendment

For the second year in a row, the House committee-passed bill dropped all references to the 1973 Helms amendment that restricts the 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." 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 did not follow suit. Not surprisingly, the omnibus 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 last year's omnibus spending bill and for many preceding years.

In contrast, both the House and Senate versions of the Labor, Health and Human Services, Education bill removed 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. As expected, the removal of the Hyde amendment became a major target of the Republican leadership's ire and was reinserted in the final FY 2023 spending package.

## Report language

Not satisfied with maintaining a rigid consistency in the text of the bill, Republicans insisted on excluding pro-SRHR provisions inserted by House Subcommittee Chair Barbara Lee and Democratic appropriators and staff in the House report. Because of the unique circumstances of this year's negotiations over the final FY 2022 spending bill — House committee-passed bill being conferenced with a draft Senate Democratic subcommittee "chairman's mark" — the [joint explanatory statement](#) incorporated the House report language verbatim (by reference), except where explicitly excluded. Unfortunately, many of the explicit exclusions were related to reproductive health, family planning and contraception.

As specified in the joint explanatory statement accompanying the omnibus, "The agreement maintains prior year funding levels and policy related to family planning/reproductive health. The agreement does not endorse directives under certain House report headings: Research, regarding contraception, and Women's reproductive healthcare in El Salvador." Republican opponents are nothing if not thorough in their pursuit of the removal of any piece of legislative language that might in any way endorse an enhancement of SRHR.

## What's Next

With the completion of the appropriations process for the current fiscal year just a little bit over a week ago, the budget and appropriations cycle will start all over again.

Under the 1974 Budget Act, the president's annual budget submission to Congress is supposed to occur on the first Monday in February. With the final enactment of the omnibus not occurring until the very end of December, it is safe to predict that the White House is not going to meet that deadline. And it will be even more "dead on arrival" than usual in the new GOP-controlled House. Nevertheless, the Biden administration should lay down a strong marker and statement of priority by requesting robust increases for domestic and international family planning programs and pro-SRHR appropriations language revisions.

The disturbing spectacle that unfolded on the House floor last week as the Republican caucus struggled

mightily to elect a Speaker of the House portends two years of chaos and the prospect of government shutdowns and default on the nation's debt. In order to secure the necessary votes for election on his 15th attempt, Kevin McCarthy (R-CA) has agreed to a series of concessions and House rules changes that empower the hard-right radicals of the House Freedom Caucus and are likely to make it difficult to get agreement on must-pass legislation including appropriations bills.

One concession that Speaker McCarthy has reportedly agreed to is a commitment to cap FY 2024 discretionary spending, both defense and nondefense programs, at the FY 2022 level of \$1.47 trillion, resulting in a \$130 billion cut from the levels in the just enacted omnibus spending bill that included a \$75 billion increase for the Pentagon. House and Senate Democrats would not support a cap that would reduce spending on domestic programs and a cut in defense would not sit well with [GOP appropriators](#) and defense hawks. Such a deal seems like a formula for gridlock and two years of continuing resolutions.

Not an auspicious way for the 118th Congress to begin.