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Don't Let the Door Hit You on the Way Out – Trump-Pence Attacks on Family Planning to Cease Once Biden Administration Arrives

Over the past week, Democrats were victorious in the two Georgia Senate seat runoffs, securing a Democratic majority in the Senate, and Congress certified the presidential election results after a seditious mob incited by Trump defiled the U.S. Capitol and threatened constitutional order as well as lives of legislators and their staff. These events bring to mind Winston Churchill's memorable speech after the Allied victory at El Alamein in 1942 and the turning of the tide in its fortunes in the war: "This is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

Much has transpired since the November 3 election that will influence U.S. international family planning and reproductive health (FP/RH) programs at least in the short run, most notably the adoption of the federal spending bill for the current fiscal year (FY), which continues to fund these programs at the same level it has for the last decade. Unfortunately, in its remaining days before heading out the door, the Trump-Pence administration is moving to hamstring FP/RH programs for the incoming White House. But with the inauguration of President Joe Biden and Vice President Kamala Harris comes great promise to "build back better" — not just on sexual and reproductive health and rights (SRHR), but on a wide spectrum of pressing issues facing the nation and the world.

The "end of the beginning" will soon arrive on January 20 when the new president and vice president take office. Since Inauguration Day always coincides with the January 22 anniversary of the 1973 *Roe v. Wade* Supreme Court decision, actions on reproductive rights — both positive and hostile, depending on which party controls the White House — are usually some of the first official acts of a new president. The Biden-Harris administration should follow suit.

Knowing this, more than 90 SRHR advocacy groups created a ["First Priorities" memo](#) as part of the coalition's [comprehensive policy blueprint](#) to advance sexual and reproductive health, rights and justice for people in the United States and around the world.

From this punch list, global SRHR advocacy organizations are particularly focused on three key early actions from the Biden-Harris administration:

- rescinding the expanded version of the Global Gag Rule (GGR) within a broad executive order, including both domestic and international components, that aims to undo the harmful actions of the Trump administration and lays out a clear commitment to advance comprehensive SRHR;
- signaling intent to refund the United Nations Population Fund (UNFPA), although restoring the U.S. contribution to UNFPA will likely require a few months while the incoming administration formally reinterprets [the legislative restriction known as the Kemp-Kasten amendment](#) to allow this agency eligibility to receive U.S. funding once again; and
- prioritizing funding for FP/RH programs, both at home and abroad, by promoting much-needed budget increases.

The “First Priorities” recommendations also urge President-elect Biden to clarify what is permitted under current law to ensure access to comprehensive reproductive health care. This includes the use of foreign assistance for abortion to the maximum extent allowed under the 1973 Helms amendment, which restricts the use of funds for the provision of abortion, but only when performed “as a method of family planning.” A full repeal requires that Congress remove the Helms amendment from the Foreign Assistance Act of 1961, its permanent authorizing statute.

On all three of these key actions, the remnants of the Trump-Pence regime are attempting to erect roadblocks against a smooth transition for FP/RH programs under the incoming administration.

First, Trump political appointees at the Office of Management and Budget (OMB) are rushing to finalize [a rule applying the expanded GGR to contracts](#) — representing close to 40% of the more than \$7 billion in annual U.S. global health assistance — before the inauguration, with the full knowledge that President Biden will almost certainly rescind the GGR as it applies to grants and cooperative agreements as one of his first official acts. Despite announcing its intent to extend the policy’s destructive eligibility conditions when the GGR was initially imposed back in January 2017, OMB has waited until the waning moments of Trump’s term to release this contracts rule. In an attempt to ram the rule through before inauguration, OMB has ignored 7,000 public comments submitted in mid-November, the majority of the substantive ones being critical, and short-circuited the normal rulemaking process, including canceling previously scheduled meetings with organizational stakeholders in the middle of the night during the Georgia runoff elections.

The Biden transition team has declared that it will freeze all last-minute rules being promulgated across a wide swath of the federal government from going into immediate effect. Nevertheless, these are deliberate, malicious acts designed to force the expenditure of time and effort by the incoming administration to reverse them. Fortunately, SRHR advocates and their congressional champions have an important tool at their disposal, the Congressional Review Act (CRA). The CRA allows a simple majority of both the House and Senate to reject new federal regulations issued by departments and agencies under expedited legislative procedures leading to passage of a joint resolution. With President Biden in the White House, there is no need to worry about a presidential veto. A major advantage of repealing a rule using the CRA process is that the CRA also prohibits the reissuing of the rule in substantially the same form or the issuing of a new rule that is substantially the same unless significantly authorized through separate legislation later.

Falling into the same category of the Trump administration’s 11th-hour policy shenanigans as the contracts rule is the new Gender Equality and Women’s Empowerment policy issued by the U.S. Agency for International Development (USAID) on January 6. Missing its intended release date by well over a year, this policy is a wholly unsuitable successor to the previous version issued during the Obama administration. The new policy focuses on integrating gender equality and women’s empowerment into USAID’s efforts predominately as a means to support national security and economic interests (in line with Ivanka Trump’s pet project on women’s economic empowerment) and the agency’s reorientation to the Journey to Self-Reliance, as opposed to seeing the achievement of gender equality and empowerment as worthy goals or outcomes in and of themselves. Concerningly, the policy also enshrines the Trump administration’s problematic and narrow views on human rights, which it refers to as “unalienable rights.” Furthermore, this policy makes zero reference to lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals, who often face discrimination due to their gender identity, sexual orientation and/or perceived lack of adherence to gender norms — a deliberate step backward from the more inclusive 2012 policy that incorporated this language throughout and included a definition of “gender identity.”

With regard to SRHR issues, the [new Gender Equality and Women’s Empowerment policy](#) does not mention the words “reproductive health,” instead focusing strictly on maternal health and family planning, despite overwhelming evidence which demonstrates that access to comprehensive reproductive health care and sexuality education are critical components necessary for achieving women’s equality and empowerment. The policy also fails to acknowledge the extent of unmet need for modern contraception among millions of women in low-income countries and focuses on improving the availability of “fertility awareness” methods, burying a mention of the full range of modern contraceptives in an endnote. The policy presents fertility and family planning decisions within the confines of marriage, overlooking the wants and needs of those seeking contraception outside of marriage, including young people. Of particular concern is that the new policy’s section on maternal mortality and family planning also defines an individual’s lifespan as beginning before birth, echoing the administration’s rhetoric around “protecting the unborn” in its efforts to restrict abortion. One would hope and expect that Biden’s political appointees, in concert with career technical staff, will promptly deposit this Trump policy in the trash and revert to the 2012 version

until its own policy can be designed.

One more instance of Trump political appointees seeking to put their stamp on U.S. foreign assistance policy as they head for the exits is the issuance of a new [USAID Economic Growth Policy](#) on January 9. Not only does the document minimize the important interaction between demographic trends and economic development, it fails to acknowledge any role for family planning programs in positively influencing a country's age structure and labor force growth, which can pose significant challenges to the achievement of economic growth.

Secondly, the Trump-Pence administration has sought to withhold the entire U.S. contribution to UNFPA during its four years in office, blocking the agency from receiving nearly \$100 million in congressionally earmarked funds. Trump minions have successfully managed to block and reprogram UNFPA funding for the administration's first three years. But they are not done yet. A provision in the annual appropriations bill requires that funds withheld from UNFPA as a result of "the operation of any provision of law" be reprogrammed to bilateral family planning, reproductive and maternal health. In order to reprogram appropriated funds for other purposes than those for which they were designated by Congress, USAID and the State Department are required to notify the relevant congressional committees and seek their approval. On New Year's Eve, a congressional notification (CN) was sent to Capitol Hill seeking to reprogram the FY 2020 funds withheld from UNFPA under [Secretary Pompeo's Kemp-Kasten determination on June 16, 2020](#).

The requested funding transfers to bilateral FP/RH and maternal health programs contained in the latest FY 2020 CN are largely identical to an earlier CN reprogramming the FY 2019 UNFPA contribution, which was just approved in September. That CN split the \$32.5 million roughly equally between FP/RH and maternal health and was programmed largely through the New Partnership Initiative, with the same illustrative list of grantees included. There is also a considerable emphasis on promotion of fertility awareness methods and "sexual risk avoidance." As set forth in authorizing and appropriations statutes, congressional committees may place a "hold" within 15 days of receipt of these CNs, delaying the release and obligation of the funds requested to be reprogrammed. "Holds" have been placed on the reprogramming by one or more congressional committees, but it may not matter as congressional sources say that the Trump State Department has developed a habit of blowing off objections from Congress. At the risk of stating the obvious, there is absolutely no reason for Democratic majorities in both chambers to allow the outgoing Trump administration to obligate the funds, especially since the reprogramming of the FY 2019 UNFPA contribution was just approved in September.

If the Trump administration moves forward with trying to reprogram and obligate the FY 2020 UNFPA contribution in its six remaining days, it is probably not the last word, but it will create needless complications for the Biden team and career officials. But isn't such malarkey the point? Given that Secretary Pompeo has already claimed to find that UNFPA is in violation of the Kemp-Kasten amendment with regard to the FY 2020 contribution — despite all evidence to the contrary — it may be legally necessary and politically wise for the Biden administration to issue a new, affirmative determination. If that determination is done right, it might take some time to thoroughly investigate UNFPA's country program in China.

Last but not least, OMB has not cooperated with the transition team on preparing President Biden's first federal budget request, which the president-elect termed "irresponsible." It should not be a surprise given that a conservative ideologue, who cut his teeth at the Heritage Foundation, is the OMB director. Typically, the incoming president initially submits to Congress a "skinny budget" outlining broad spending priorities, usually in February shortly after arriving in office. The Biden administration will then send a much more detailed budget proposal to Congress later in the spring, which advocates will work to ensure exceeds the current appropriated level. Obstructing career OMB program examiners from communicating with the Biden transition team will only delay the process of assembling the FY 2022 budget request.

In the meantime, the Biden-Harris administration will inherit a spending plan for its first year in office, negotiated by the 116th Congress and the outgoing administration. Despite the pointless drama and last-minute chaos caused by his delay in signing it, President Trump eventually affixed his signature to a combined \$1.4 trillion omnibus spending bill for FY 2021 and a \$900 billion coronavirus relief package on December 27, narrowly averting a devastating government shutdown over the holidays amid a global pandemic. Contained within the massive 5,593-page bill ([H.R. 133](#)) is funding for international FP/RH programs, along with the policy provisions governing them as part of the State Department and foreign operations section of the omnibus.

As might have been suspected if recent history was any guide, the FY 2021 appropriations legislation does not deviate from the status quo on international FP/RH, which has frustratingly persisted for the last 11 years in a row — stuck at flat funding levels with no positive changes to policy, such as a permanent legislative repeal of the GGR. An unsurprising ending, but disappointing, nonetheless.

The process to get an agreement on a final FY 2021 appropriations package was long and tortuous. The full House passed 10 of 12 of the subcommittee appropriations bills earlier in the summer, including funding the operations of the State Department and foreign assistance programs way back in July. Congresswoman Nita Lowey (D-NY), the retiring chair of the House Appropriations Committee and its foreign operations subcommittee, [delivered a tremendous parting gift to FP/RH supporters](#) by inserting a large funding increase and a plethora of progressive SRHR policy proposals into her bill.

In contrast, the Republican-controlled Senate Appropriations Committee was unable to produce any draft subcommittee bills after failing to reach an agreement with Democrats on how to proceed — much less get bills to the Senate floor for consideration — and was forced to resort to introducing what amounted to an amalgamation of Republican “Chairman’s marks” without much, if any input, from their Democratic subcommittee counterparts on November 10. As a result, the Senate version was diametrically opposite the House-passed bill in its treatment of international FP/RH programs, featuring a massive 25% proposed funding cut below the current funding level, a legislatively mandated GGR and an explicit prohibition on a U.S. contribution to UNFPA, among other unfavorable provisions.

Coming out of the House-Senate negotiations over the contents of the FY 2021 omnibus spending bill, funding for bilateral and multilateral FP/RH programs remains stagnant at \$607.5 million, with an identical account breakdown as in the prior fiscal years. This includes \$524 million in the Global Health Programs account, \$51 million in Economic Support Funds for FP/RH activities in a small number of strategically important countries and \$32.5 million for an earmarked contribution to UNFPA. The \$607.5 million enacted in the omnibus is nearly two-and-a-half times what the president requested but falls nearly 25% below the amount approved by the House.

(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
Global Health Programs account	(523.95)	237.0	(585.5)	(461.0)	(523.95)
Economic Support Fund (ESF)	(51.05)	14.0	(164.5)	—	(51.05)
TOTAL, bilateral FP/RH	575.0	251.0	750.0	461.0	575.0
U.S. contribution to UNFPA (IO&P)	32.5	0	55.5	0	32.5
TOTAL, bilateral & multilateral FP/RH	607.5	251.0	805.5	461.0	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).

Likewise, on key policy issues, the omnibus does not alter existing legislative provisions and revisions and essentially reflects cutting and pasting from last year’s bill and report language. The omnibus is silent on the GGR, with both the House’s repeal language and Senate’s legislative imposition being dropped during the conference negotiations. Although the omnibus does contain an earmarked UNFPA contribution, the funding is subject to long-standing boilerplate restrictions, some of which date back to the mid-1980s.

Once the massive package had been negotiated over the course of months and passed by both the House and the Senate by overwhelming bipartisan margins, Trump began to express his displeasure with the absence of \$2,000 stimulus checks and spending too much money in other countries and domestically that his administration had itself requested and hinted that he might veto it.

In the end, Trump signed the spending and relief package attaching “a [strong message](#) that makes clear to Congress that wasteful items need to be removed. I will send back to Congress a redlined version, item by item, accompanied by the formal rescission request to Congress insisting that those funds be removed from the bill.” A \$27.4 billion rescission package just arrived on Capitol Hill this evening which disproportionately targets international affairs programs and a significant amount of global health funds — including an absurd proposal of multibillion dollar cuts to U.S. and multilateral institutions engaged in critical work combatting the COVID-19 pandemic and other infectious diseases around the world. Regardless, it will be summarily ignored by the Democratic majorities that now exist in both the House and Senate.

After the inauguration of the Biden-Harris administration on January 20, the new team in the White House will be presented with an unfortunate abundance of opportunities to repair the damage to FP/RH programs wrought by Trump and Pence and to “build back better.” Good riddance to the Trump regime. Inauguration Day cannot come soon enough.