

# FOIA MARKER

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**Subseries:**

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**OA/ID Number:** 21947

**FolderID:**

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**Folder Title:**

[Family Planning & USAID (United States Agency for International Development)]: [Loose Documents] [1]

**Stack:**

**S**

**Row:**

**115**

**Section:**

**4**

**Shelf:**

**9**

**Position:**

**2**

- Wouldn't target those organizations that engage in lobbying or perform abortions

# Discussion: The effect of this option would be to reduce the amount of assistance that could be provided to each organization that received family planning funding in FY 1998, if the President exercised one or both waivers. This would be an across-the-board percentage reduction from every organization regardless of whether a particular organization performed abortions or lobbied. Organizations that received no funding in FY 1998 would be unaffected, but that is likely to be a fairly low number. The funds not used for these organizations would either be used for a more benign purpose, e.g., post-abortion care, or transferred to another account, e.g., child survival.

Application of sanctions on individual foreign nongovernmental organizations. In any compromise that entails punishing individual organizations that cannot certify with regard to either the performance of abortions or lobbying (however defined), it is essential to change the language in the Smith amendment, or not apply that language to any penalties that might be imposed on an organization that cannot certify. That language (under the caption "Application to Foreign Organizations") has the effect of applying the certification requirements and prohibitions directly to a primary grantee and indirectly to that primary grantee if its sub-grantees cannot make a certification. If our objective is to limit the application of any penalty to only the "offending" organization, then a prime grantee which does not use its own funds for abortion or lobbying should not be penalized if its grantee uses its own funds for abortion or lobbying.

4. **Smith language with waiver for both lobbying and performing, with reductions to any grantee or subgrantee that is above a certain threshold and cannot certify that it does not spend any money (or more than a de minimus amount) on engaging in such activity.**

Explanation: Under this option, the cuts would come directly from the subgrantees who engage in the regulated activity. <sup>proscribed conduct, notwithstanding exercise of the waiver.</sup> The grantee who engages in no such activity would be able to <sup>Withheld Funds</sup> redirect the funds to another subgrantee, thus keeping the money in family planning. The threshold level of the grant must be high enough to avoid the administrative burden of going after the smallest subs. If the threshold drops, we could perhaps accomplish the same goal by redefining lobbying more narrowly than the Smith language.

Pros

Cons

Discussion: Given the large number of grant recipients and the layers of subgrantees, this option would be extremely difficult to implement and would concentrate an inordinate amount of time on de minimis amount grants. Under this option, funding withheld from the grant recipient would be redirected to other certifying grantees. <sup>500,000</sup>

If we added a minimum threshold so that grants for less than \$300,000 <sup>[Diff to refine]</sup> would not be covered by the Smith language. This approach would capture the large foreign

# White House News Report

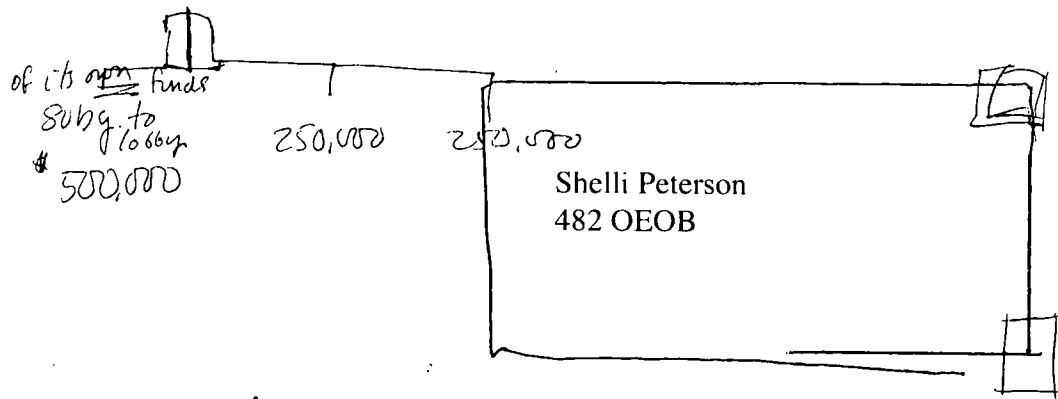
As drafted, can't  
certify because  
their subgrantees

any out

in  
exception,  
allow  
deductions  
or

Attribution  
Issue

IPPF \$ 1 mill



They can certify

**Monday, November 15, 1999**  
Produced by the White House Press Office  
Room OEOB 161 (Ext. 6-5749)

Polkissinger  
6477

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PRINTED ON RECYCLED PAPER

Bradley sought Sunday to tie an athletic past to a political future, calling on fellow sports stars to help him topple Vice President Al Gore.

"It's great to have these teammates with me in this, my biggest game," Bradley said from his former place of employment, the basketball floor at Madison Square Garden.

While the former New York Knick tries to become the first professional athlete to be elected president, a Gore aide denounced the Bradley campaign's self-described "hoopla" as simple political positioning.

Gore spokesman Chris Lehane also noted that Bradley shunned basketball talk while he was a Democratic senator from New Jersey, but now embraces it as a presidential candidate. "I guess this is the continued packaging of Senator Bradley," he said.

Bradley told an estimated crowd of 7,500 that basketball taught him values that he can use to serve all of society.

"Things like courage, discipline, respect, responsibility, resilience and imagination perspective and selflessness," said the 6-foot-5 small forward Bradley.

Bradley's basketball career gives him things that analysts called invaluable in a celebrity-soaked political culture: Name recognition and popularity, particularly with males.

"He's been in the public domain and has had a public association for 35 years, much of that in a way that American men admire," said author David Halberstam, who has written about sports and politics over a similar period of time.

Pollsters and voters say that Bradley's future performance will determine whether he reaches his new goal.

"People like to vote for someone they can relate to or feel they know," said Madaline Evans, a church financial controller who waited in line at the Garden to buy tickets for an upcoming tennis match. "But in the end it all comes down to what he says."

After an All-American college career at Princeton, a 1964 Olympic team Gold Medal, and a sojourn to Oxford University on a Rhodes Scholarship, Bradley played basketball in the world's media capital. His Knicks team won National Basketball Association championships in 1970 and 1973.

At least two dozen retired athletes joined the candidate for Bill Bradley: Back At The Garden. The campaign deployed many of the athletes to the Sunday morning political talk shows. Aides said the goal was to raise at least \$1.5 million with the fundraiser.

During a two-hour pep rally, basketball players and athletes from other sports said their profession is a good training ground for any politician, including the ability to perform under pressure.

"It's not unlike playing basketball when it gets into the tight part of the game," said Hall-of-Famer Oscar "The Big O" Robertson.

The event also featured all-time leading scorer Kareem Abdul-Jabbar, tennis ace John McEnroe, and original dunk specialist Julius "Dr. J" Erving. Former women's basketball star Nancy Lieberman-Cline praised Bradley's support of Title 9, the civil rights program that guarantees funding for women's sports.

Gore also has reached out to the sports community, securing endorsements from Los Angeles Lakers Shaquille O'Neal.

The Garden was set-up for a basketball game with about a quarter of the court curtained off. Bradley gave high-fives to celebrities and athletes lined up in the middle of the floor, including actors Ethan Hawke and Harvey Keitel and director Spike Lee.

The afternoon featured basketball skill contests for kids, performance by the Brooklyn Youth Chorus and a film biography of Bradley.

Supporters held signs that said "24 in 2K," a reference to Bradley's playing number and the 2000 election. College students attended for \$50, while others paid as much as \$5,000.

In a bow to the New York crowd, the Bradley campaign recreated one of the most storied events in Big Apple athletic history: The walk to the floor by injured Knicks center Willis Reed before the deciding game of the 1970 playoffs.

After a shot of cortisone, Reed limped to the floor just minutes before tip-off. He made his first two jump shots, his only points of the evening. Duly inspired, his Knick teammates routed the Los Angeles Lakers 113-99. Bradley contributed 17 points.

Many basketball fans recall that win because the Lakers featured three of the greatest basketball players ever in Jerry West, Elgin Baylor and Wilt Chamberlain. The Knicks, while talented, argued that their superior teamwork overcame the Lakers star-

power.

While no one mentioned Gore specifically, some Bradley supporters suggested similar teamwork could overcome the power of a sitting vice president.

In a videotape of that 1970 contest available at the Museum of Television and Radio a younger and thinner Bradley makes a statement to sportscaster Howard Cosell that would not have been out of place on Sunday.

"Conflicts on this team were minimized to a level so that they were kept in perspective and we all when it came down to it wanted to win," said Bradley, then age 26.

Voters once looked to veterans of battlefields or courtrooms for their political leaders. Now fields of play are becoming increasingly popular. The Republicans nominated ex-quarterback Jack Kemp for vice president in 1996 and Hall of Fame receiver Steve Largent is a rising Republican House member from Oklahoma.

David Maraniss, who has written biographies of President Bill Clinton and football coach Vince Lombardi, said there is a natural affinity between athletes and politicians. They both use numbers, have similar metaphors, love winners and share fears of public failure.

"Sports is one of the few things in American life where there are clear winners and losers," Maraniss said.

Bradley is a member of the Basketball Hall of Fame, but probably more for his college exploits at Princeton. His fund raiser came the same week that Sports Illustrated named him one of the five best college players of the century.

In an era when freshmen were ineligible, Bradley played three years and averaged 30.1 points per game. In 1965, his senior year, he led Princeton to college basketball's Final Four, a remarkable feat for an Ivy League team. Bradley scored a then-tournament record 58 points in one game.

Many sports analysts believed Bradley's basketball career suffered by his decision to study two years at Oxford before entering the NBA. But it underscored his interest in another kind of arena. In 1967, Bradley participated in a televised forum featuring college students from across the globe with two noted American politicians, Robert F. Kennedy and Ronald Reagan.

Bradley first played for the Knicks during the 1967-68 season. "Dollar Bill" had a solid 10-year career, averaging 12.4 points and 3.4 assists per game.

Despite an Ivy League and Oxford pedigree aside, Bradley was also known as a rather aggressive player.

"To this day, I carry his hand-print on my backside," former Boston Celtic John Havlicek told the crowd at the Garden.

As the primaries near, Bradley may need to be aggressive, if Sunday was an indication. One heckler triggered a fistfight involving several people. Security also ran down someone dressed in a chicken suit as he raced to the court.

After winning a New Jersey Senate seat in 1978, a year after retiring from the Knicks, Bradley avoided talking basketball in an effort to prove he was more than an ex-jock, according to aides.

Bradley, who retired after the 1996 elections, was not above using his previous skills. In pushing a tax reform package in the mid-1980s, Bradley lobbied some members of Congress by offering them basketball lessons.

"The game has meant a great deal to my life," Bradley told the Garden crowd. "It is a part of my life."

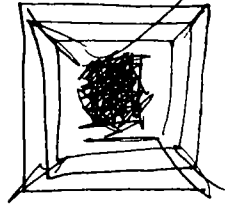
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could do  
w/ro  
C(2)(B) #

post abortion care

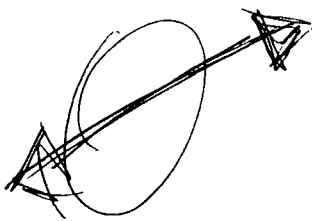
safe preg  
maternal nutrition  
cervical cancer

#



Other issue

# 10 miles in birth spacing.



CSF

Memo

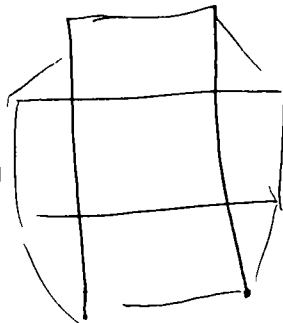
8/7/86

AID to

all contracting

Officers

Mexico City representation



Bill Kissinger  
647-5036

★ IRC 4911.

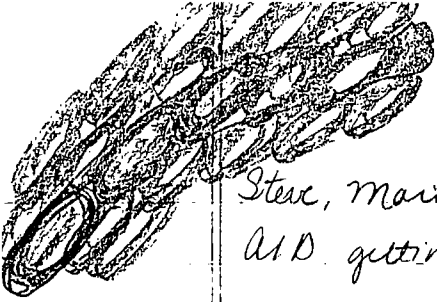
IRC 162(e)

includes contact over non-legisl. subjects

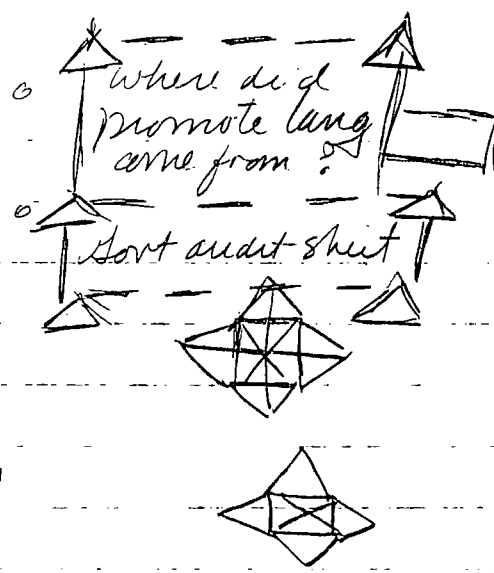
LOA

- no \$ to any org that  
uses subst portion of own \$  
to lobby — (tried to 4911)  
w/ waiver

20%

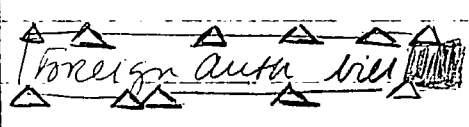


Steve, Martha  
 AID getting stuff together

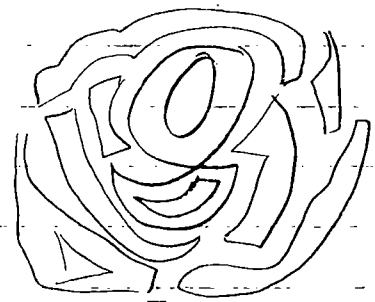


Martha  
 RM 180

enforcement + penalty options

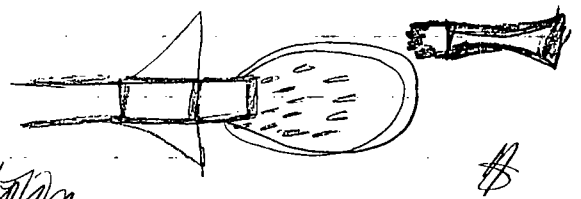


What sanctions, penalties could be applied



Atwood memo Framework

Monkeys  
 A96  
 ombudsman



me m [scribble]

Repting Rqsts discussion

Idea

withhold \$ from obug till GAO studies to determine how much \$ used for parking - [scribble] - transferred or [scribble] acctg firm



PROBLEM

2:00 pm

Dina Bear - Daniela

option

limit lobbying to "buttonholing" & grassroots  
around spec. legislation  
(like 501(c)(3))

- Double waiver
- Define Lobbying

www.gao.gov

Steve Arkin -

if affects itself not lobbying  
"substantial"

full & fair exposition

IRS limit. on lobbying applies  
to

- lobby rest. applies only to  
limits on legisl., not regul.

Lobbying discl. act

attempts to effect regul.

501(c)(3) prohib.  
attempts to influence  
foreign govt as well  
GAO Report

Tax Code

GAO study  
4/15/99

Federal Lobbying Differences

in Lobby Defs & their  
impact

GAO/IGD-99-38

TO Thompson, Hyde



## POSSIBLE LEGISLATIVE OPTIONS FOR A WORST CASE SCENARIO

### 1. **Withhold support for IPPF/London and use the money given to them for other family planning organizations.**

Explanation: Under this option, we would simply agree to legislatively prohibit AID from granting any money to IPPF. The cap would stand at \$385, so the \$5 million or so that goes to IPPF would be used for other grantees.

#### Pros

- Easy to administer, with no impact on other groups or program as a whole.
- Addresses main group the right wing complains about.
- Of the options being considered, dropping funding to IPPF would have the least programmatic impact

#### Cons

- Singles out one group that has lots of support from the pro-choice wing and which does a lot of good.
- May be politically hard to swallow.

Discussion: The International Planned Parenthood Federation (IPPF) is unlikely to agree to any of the conditions being discussed. They were one of the two organizations that refused to sign Mexico City. IPPF has not been an effective organization for some years. USAID has dropped its funding from around \$17 million to \$5.8 million in FY 99. They also received \$2 million in contraceptives in FY 99. They are scheduled to get \$5 million in FY00. IPPF is an important symbol for both sides of the abortion/family planning issue. Not funding them would be seen as a significant victory for the anti-pop groups and a stinging defeat for the pro-pop groups. If played, we should get a lot for this card.

### 2. **Smith language with Presidential waiver for both lobbying and performing coupled with a cut in the overall level for family planning assistance if the President exercises a waiver, but no reduction from individual grantees.**

Explanation: If the lump sum off the top were limited to \$5 million, although the programs would suffer, the loss could be absorbed. However, if the amount exceeded that amount, the countries most in need of the funds would be hurt most and there would be a growing disparity in the way we fund assistance in the most needy nations and the way we fund Eastern European countries and the countries of the former Soviet Union.

#### Pros

- All organizations would share the burden, not just those who engage in lobbying or perform abortions

#### Cons

- Would disproportionately affect those countries most in need of family planning assistance.
- Wouldn't target those organizations that engage in lobbying or perform abortions.

Discussion: Family planning assistance is currently capped in the FY 2000 appropriations bill at \$385 million. The effect of this option would be to reduce this ceiling by some amount, leaving it to the administration to determine the allocation of the reduced total. The bill language would specify that the amount of the reduction would be used for a less controversial purpose (e.g., an additional amount over FY 98 levels for post-abortion care) or transferred to another account, e.g., child survival. To the extent that the penalty amount exceeds \$10 million, the damage to the program becomes severe. At the \$\_\_\_ million level it becomes unacceptable. For accepting this limitation, metering should be eliminated.

In FY96, Congress cut the population account to \$356 million. However, using prior year funds, the Administration increased this amount to \$432 million. Since then, the population level has remained at \$385 million. The \$385 million cap is attained with a combination of DA and non-DA funds. Since FY97, non-DA funds constitute a larger percent of the cap. In FY99, \$339 of the \$385 million was DA. The FY00 budget puts the DA amount at \$340. Non-DA funds primarily go to former Soviet Union, Eastern Europe, Egypt, Jordan, and the West Bank. Haiti is also a large recipient. In general, though, these funds do not go to the neediest or most demographically important countries. Also, the non-DA countries are relatively well funded in population relative to the DA countries. For example, ESF countries have a \$0.33 per capita versus \$0.14 per capita of population funds. It is likely that any reduction in the population account would come from the DA and not non-DA accounts. As a result, the impact of the reduction would be magnified in particular countries like \_\_\_\_\_.

A reduction from the \$385 level would have more than programmatic consequences. The \$385 level is now considered a symbolic line-in-the-sand. A reduction of the population cap would alter the negotiation starting point for future years and perhaps lead to a downward budgetary spiral.

**3. Smith language with waiver for both lobbying and performing coupled with a percentage reduction off all grantees if the President issues a waiver. Transfer the resulting savings to the CSF for post abortion care (or as second alternative, to the CSF for prevention cervical cancer).**

Explanation:

Pros

- All organizations would share the burden, not just those who engage in lobbying or perform abortions

Cons

- Wouldn't target those organizations that engage in lobbying or perform abortions

Discussion: The effect of this option would be to reduce the amount of assistance that could be provided to each organization that received family planning funding in FY 1998, if the President exercised one or both waivers. This would be an across-the-board percentage reduction from every organization regardless of whether a particular organization performed abortions or lobbied. Organizations that received no funding in FY 1998 would be unaffected, but that is likely to be a fairly low number. The funds not used for these organizations would either be used for a more benign purpose, e.g., post-abortion care, or transferred to another account, e.g., child survival.

Application of sanctions on individual foreign nongovernmental organizations. In any compromise that entails punishing individual organizations that cannot certify with regard to either the performance of abortions or lobbying (however defined), it is essential to change the language in the Smith amendment, or not apply that language to any penalties that might be imposed on an organization that cannot certify. That language (under the caption "Application to Foreign Organizations") has the effect of applying the certification requirements and prohibitions directly to a primary grantee and indirectly to that primary grantee if its sub-grantees cannot make a certification. If our objective is to limit the application of any penalty to only the "offending" organization, then a prime grantee which does not use its own funds for abortion or lobbying should not be penalized if its grantee uses its own funds for abortion or lobbying.

4. **Smith language with waiver for both lobbying and performing, with reductions to any grantee or subgrantee that is above a certain threshold and do not certify that it does not spend any money (or more than a de minimus amount) on engaging in such activity.**

Explanation: Under this option, the cuts would come directly from the subgrantees who engage in the regulated activity. The grantee who engages in no such activity would be able to redirect the funds to another subgrantee, thus keeping the money in family planning. The threshold level of the grant must be high enough to avoid the administrative burden of going after the smallest subs. If the threshold drops, we could perhaps accomplish the same goal by redefining lobbying more narrowly than the Smith language.

Pros

Cons

Discussion: Given the large number of grant recipients and the layers of subgrantees, this option would be extremely difficult to implement and would concentrate an inordinate amount of time on de minimis amount grants. Under this option, funding withheld from the grant recipient would be redirected to other certifying grantees.

If we added a minimum threshold so that grants for less than \$300,000 [*Duff to refine*] would not be covered by the Smith language. This approach would capture the large foreign organizations that perform or lobby for abortion but would avoid the administrative difficulty in

monitoring de minimis size grants. OMB Circular A-133 identifies this amount as de minimis in the domestic context; if used overseas, would eliminate \_\_\_% of the grants.

A slight variance would be to apply the certification requirement to all grants regardless of size, but apply the penalty provision only to grants above the minimum threshold. This option would not exempt foreign organizations falling below the threshold from Smith – although they would still be able to avoid the certification requirement if the President exercised the waiver. The result would be the same: only organizations whose grants exceeded the threshold suffered a penalty for failing to provide the certifications.

A further variance would be to apply the penalty only to organizations that fail to provide the lobbying as opposed to both certifications. This option would focus on organizations that receive grants in excess of the threshold who fail to provide the lobbying certification, rather than both certifications. This would limit the penalty to those organizations that in Smith's view are the bad ones.

5. **Smith language with no waiver for performing, but waiver for lobbying.**

Explanation: this option reverses the presumption in the vetoed State Dept conference report. It would allow the President to waive the ban for lobbying but absolutely ban the grantees from performing abortions with their own funds. It would drop the funding reduction penalty included in the vetoed bill for exercising the waiver.

Pros:

- Would expose many, many fewer organizations to the risk of being dropped from the program if they could not certify that they did not engage in the proscribed activity (in this case performing abortions) with their own funds. From a pro-life perspective, a ban on funding groups that perform abortions with their own funds might also be attractive.

Cons:

- The administration would be agreeing to a ban on performing abortions and defending a waiver that it would presumably exercise to allow lobbying to continue.

6. **Substitute a narrow definition of lobbying.**

Explanation: We could agree to either reduce funding for anyone who lobbies or prohibit lobbying altogether, but have a narrow definition (NOT the Smith language) that is limited to actual direct lobbying (i.e., button-holing legislative members or their staff about specific legislation).

Pros



U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT  
Washington, D.C. 20523

# FACSIMILE TRANSMITTAL COVER SHEET

DATE: 11/15/99

TO: Mike Cassella

ATTENTION: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

FAX PHONE: (202) 456-7024

OFFICE PHONE: \_\_\_\_\_

FROM: \_\_\_\_\_

ORIGINATOR: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

FAX PHONE: \_\_\_\_\_

OFFICE PHONE: \_\_\_\_\_

SUBJECT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NUMBER OF PAGES (including this cover sheet:) \_\_\_\_\_

COMMENTS:

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- Would likely affect few organizations
- Would be easier to administer, since we would simply prohibit the activity rather than have to reduce funding.

#### Cons

- A outright ban might result in some organizations getting no funding (as opposed to reduced funding.)
  - Will probably result in subsequent disputes when some organization does something that may be viewed by Congress as lobbying.
7. Require an independent study by a CPA firm of foreign NGOs expenditure of their own funds for lobbying and/or abortion; the information from that study would be transmitted to Congress by the President, with any recommendations he might have. This could be coupled with some sort of process for expedited consideration of legislation from the appropriate committees of jurisdiction – in response to the results of the study – with fast track procedures on the House and Senate floors.

#### Pros

Neither side has any real idea how much is spent on lobbying or performing; this would allow the facts to be developed.

#### Cons

There may be some chilling effect of a CPA asking about groups' use of their own funds and some foreign policy issues are presented in that the groups receive funds from other nations, which would in effect be under review by the federal government.

minimum, although many organizations have very short pipelines. Last year, there were 168 metering tranches to prime cooperating agencies, host country governments, U.S. governments and multilaterals. If any of these tranches are missed, it sets off a domino effect down the funding tree. Having a certification requirement would greatly complicate the pipeline analyses that are the underpinning of the metering schedule. Also, USAID and contract and grant program staff are just about at the breaking point with the additional burden of Tiahrt.

*No build*  
**4. Off the Top Cut:** ~~The~~ other side has proposed a \$20 million cut in the population "account" ~~or cap?~~ This should be rejected. A \$5 million cut would be tolerable.

In FY96, Congress cut the population account to \$356 million. However, the Administration increased this amount to \$432 million. Since then, the population level has remained at \$385 million.

*unnecessary*  
*debt*

The \$385 million cap is attained with a combination of DA and non-DA funds. ~~Since FY97, non-DA funds constitute a larger percent of the cap.~~ In FY99, \$339 of the \$385 million was DA. The FY00 budget puts the DA amount at \$340.

Non-DA funds primarily go to former Soviet Union, Eastern Europe, Egypt, Jordan, and the West Bank. Haiti is also a large recipient. In general, though, these funds do not go to the neediest or most demographically important countries. Also, the non-DA countries are relatively well-funded in population relative to the DA countries. For example, ESF countries have a \$0.33 per capita versus \$0.14 per capita of population funds. It is likely that any reduction in the population account would come from the DA and not non-DA accounts.

A reduction from the \$385 level would have more than programmatic consequences. The \$385 level is now considered a symbolic line-in-the-sand. A reduction of the population cap would alter the negotiation starting point for future years and perhaps lead to a downward budgetary spiral.

*in the event the waiver is exercised.*

*not only*

*for*  
**5. Attribution Problem:** The Smith language requires foreign organizations to provide certifications for their own activities but also those of grantees and sub-grantees. If there is a penalty levied against organizations that fail to provide the Smith certifications, and grantees' certifications are the bridge over

to the activities of their subgrantees, those activities would "toxicify" ~~the~~ all the grantors up the chain. The Smith language must be scaled back to require certifications only for the organization's activities, not ~~that~~ its grantees or subgrantees.



## GENERIC ISSUES

*withheld from*  
**1. Use of Population Funds "Saved":** Every attempt should be made to keep funds "disallowed" to organizations *for engaging in Smith-prohibited activities* or for the regular population program activities as part of the population cap. One way to do this is to "earmark" such funds for Post-abortion care.

*performance in*  
Treating the consequences of unsafe abortion is supported by all parts of the political spectrum. Such an earmark keeps the funds in reproductive/maternal health but walls them off from ~~population~~ advocacy area. Unsafe abortions are a major cause of death among women in the developing world. USAID can document that funds redirected to post-abortion care would be additive.

*unrelated to*  
The other side will want to redirect these funds to Child Survival. This would upset the population community since it would, in effect, constitute a reduction in the population budget base for future negotiations. Additionally, the Child Survival account is highly directed by House Appropriations staff who would most likely dictate that funds go to areas far outside reproductive health.

## 2. De Minimis Discussion

*is*  
It is estimated that between 2,500 and 3,000 organizations receive population funds and/or contraceptives. *The vast majority receive small amounts in the range of* This number makes the implementation of any monitoring or auditing activity difficult and expensive. Many of these organizations are very small, have limited budgets, and no influence on policy issues. Previous research has shown that few NGOs actually provide abortion services.

*Given the large number of recipients,*  
Setting a funding level threshold would result in a more manageable organization universe. *over #1* A threshold of \$500,000 would reduce the number of organizations by 90 to 95 percent. This threshold would not eliminate the major NGOs. *limiting obligating more than 1/2 of the annual appropriation in any given month, i.e.* A \$500,000 threshold should be the opening figure since it will be very difficult to assess what these organizations are doing with non-USAID funds, especially in a developing world context. *If necessary, we could move to the OMB specified de minimis level of* The second option would be a \$300,000 threshold. This is the threshold level is in OMB A133 cutoff for audits, giving a solid rationale for using this figure. This would exclude from 70 to 75 percent of the organizations.

## 3. Metering

Metering should be dropped if funding is tied to certification. Currently, all USAID population funds are obligated based on an agency wide metering schedule that obligates 8.35 percent of the funds each month. Thus far, cash flow problems have been kept to a

Domestic

over #1

OMB uses a \$300,000 threshold for auditing grants. See OMB Circular A-133. Given the additional difficulties associated with auditing foreign organizations overseas, we have chosen 500,000 as an appropriate threshold.  
[As a practical matter,

organizations that perform or lobby for abortion but would avoid the administrative difficulty in monitoring de minimis size grants. OMB Circular A-133 identifies this amount as de minimis in the domestic context; if used overseas, would eliminate \_\_\_% of the grants.

A slight variance would be to apply the certification requirement to all grants, regardless of size, but apply the penalty provision only to grants above the minimum threshold. This option would not exempt foreign organizations falling below the threshold from Smith – although they would still be able to avoid the certification requirement if the President exercised the waiver. The result would be the same: only organizations whose grants exceeded the threshold suffered a penalty for failing to provide the certifications. *This formulation would allow Smith to say that his certification requirement applied to all grantees but for the President's exercise of a waiver.*

A further variance would be to apply the penalty only to organizations that fail to provide the lobbying as opposed to both certifications. This option would focus on organizations that receive grants in excess of the threshold who fail to provide the lobbying certification, rather than both certifications. This would limit the penalty to those organizations that in Smith's view are the bad ones.

5. **Smith language with waiver for both lobbying and performing, with reductions to any grantee that cannot certify that it does not spend any money (or more than a de minimus amount) on engaging in such activity.**

Explanation: Under this option, we would limit the level of grantee that would be subject to the prohibition.

Pros

Cons

*Under this option organizations that perform abortion would be ineligible for UGC funding (with the exception for org. that perform in the case of rape or incest).*

6. **Smith language with no waiver for performing, but waiver for lobbying.**

Explanation:

Pros

Cons

*Organization could still lobby using their own funds given the waiver.*

7. **Smith language with waiver for both lobbying and performing, with reductions to any grantee or subgrantee that cannot certify that it does not spend any money (or more than a de minimus amount) on lobbying narrowly defined as button-holing (or possibly include grassroots activity tied to specific legislative action and urging action on that specific legislative proposal).**

Explanation:

*this figure were instead used*

*roughly 1% of the grantees would potentially be subject to the penalty. \$300,000*

*certification*

*(over)*

Pros:

- Given <sup>small</sup> ~~the~~ number of grant recipients that perform abortion with own funds, will have diminished impact.
- Would be enticing option to Republicans.

Cons:

- Will be harshly criticized by pro-choice groups.
- Will likely remain in permanent law.

Pros

Cons

8. **Prohibit lobbying all together, but substitute narrow definition of lobbying.**

Explanation: We could agree to prohibit lobbying, but have a narrow definition (NOT the Smith language) that is limited to actual direct lobbying (i.e., button-holing legislative members or their staff about specific legislation).

Pros

- Would likely affect few organizations
- Would be easier to administer, since we would simply prohibit the activity rather than have to reduce funding.

Cons

- May result in some organizations getting no funding (as opposed to reduced funding.)
- Will probably result in subsequent disputes when some organization does something that may be viewed by Congress as lobbying.

Under all options, we should eliminate the sunset provision and remove the metering requirement.

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H.L.C.

**SUBSTITUTE OFFERED BY MR. GREENWOOD OF  
PENNSYLVANIA  
TO THE AMENDMENT OFFERED BY MR. SMITH OF  
NEW JERSEY  
(FOREIGN OPERATIONS APPROPRIATIONS, 2000)**

Page 116, after line 5, insert the following:

- 1 RESTRICTION ON POPULATION PLANNING ACTIVITIES OR  
2 OTHER POPULATION ASSISTANCE
- 3 SEC. \_\_\_\_ (a) None of the funds appropriated or  
4 otherwise made available for population planning activities  
5 or other population assistance under title II of this Act  
6 may be made available to a foreign nongovernmental orga-  
7 nization unless the organization certifies that—
- 8 (1) it will not use such funds to promote abor-  
9 tion as a method of family planning or to lobby for  
10 or against abortion;
- 11 (2) it will use such funds that are made avail-  
12 able for family planning services to reduce the inci-  
13 dence of abortion as a method of family planning;
- 14 (3) it will not violate the laws or policies of the  
15 foreign government relating to the circumstances  
16 under which abortion is permitted, regulated, or pro-  
17 hibited; and

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H.L.C.

2

1           (4) it will not engage in any activity or effort  
2           in violation of applicable laws or policies of the for-  
3           eign government to alter the laws or policies of such  
4           foreign government relating to the circumstances  
5           under which abortion is permitted, regulated, or pro-  
6           hibited, except with respect to activities in opposition  
7           to coercive abortion or involuntary sterilization.

8           (b) The limitation on availability of funds to a foreign  
9           nongovernmental organization under subsection (a) shall  
10          apply—

11           (1) to funds made available to an organization  
12           either directly or indirectly as a subcontractor or  
13           subgrantee; and

14           (2) to activities in which the organization en-  
15           gages either directly or indirectly through a subcon-  
16           tractor or subgrantee.

Mexico City language tied to UN areas compromise

Skiesmantho w/ bill yesterday - expect comp w/in next 2 days

① Smith proposal w/ double waiver (exercise waiver, lower finding -  
\$385 million ↳ performing or lobbying <sup>if</sup> <sub>get of how much</sub> transfer \$ to child survival programs  
Make it permanent law

② do more on enforcement of current law -  
higher penalty if use US \$ to lobby  
(more disclosure / auditing)

③ way to bolster public groups - 2 yr funding instead of 1

National for 1 - believe its both subsidizing + some leakage  
(AID once said max of \$10 mill of own \$ to lobby  
performing also de minimus)

govt what happens now if violate - perm disqual or lose  
funds for period of time? Is it same for  
ngo grantees or special rules for pop control  
grantees



#2  
Option: Waiver of abortion and lobbying restrictions coupled with a cut in the overall level for family planning assistance. If one or both of the restrictions is waived, funds would be transferred to some benign purpose such as post-abortion care.

Family planning assistance is currently capped in the FY 2000 appropriations bill at \$385 million. The effect of this option would be to reduce this ceiling by some amount, leaving it to the administration to determine the allocation of the reduced total. The bill language would specify that the amount of the reduction would be used for some benign purpose (e.g., an additional amount over FY 98 levels for post-abortion care) or transferred to another account, e.g., child survival. To the extent that the penalty amount exceeds \$10 million, the damage to the program becomes severe. At the \$\_\_\_ million level it becomes unacceptable. For accepting this limitation, metering should be eliminated.

#3  
Option: Waiver of the abortion and lobbying restrictions coupled with a percentage cut taken from every organization that received assistance in FY 1998. If one or both of the restrictions is waived, funds would be transferred to some benign purpose such as post-abortion care.

The effect of this option would be to reduce the amount of assistance that could be provided to each organization that received family planning funding in FY 1998, if the President exercised one or both waivers. This would be an across-the-board percentage reduction from every organization regardless of whether a particular organization performed abortions or lobbied. Organizations that received no funding in FY 1998 would be unaffected, but that is likely to be a fairly low number. The funds not used for these organizations would either be used for a more benign purpose, e.g., post-abortion care, or transferred to another account, e.g., child survival.

Application of sanctions on individual foreign nongovernmental organizations. In any compromise that entails punishing individual organizations that cannot

certify with regard to either the performance of abortions or lobbying (however defined), it is essential to change the language in the Smith amendment, or not apply that language to any penalties that might be imposed on an organization that cannot certify. That language (under the caption "Application to Foreign Organizations") has the effect of applying the certification requirements and prohibitions directly to a primary grantee and indirectly to that primary grantee if its sub-grantees cannot make a certification. If our objective is to limit the application of any penalty to only the "offending" organization, then a prime grantee which does not use its own funds for abortion or lobbying should not be penalized if its grantee uses its own funds for abortion or lobbying.

## POSSIBLE LEGISLATIVE OPTIONS FOR A WORST CASE SCENARIO

1. **Sacrifice IPPF and use the money given to them for other family planning organizations.**

Explanation: Under this option, we would simply agree to legislatively prohibit AID from granting any money to IPPF. The cap would stand at \$385, so the \$5 million or so that goes to IPPF would be used for other grantees.

### Pros

- Easy to administer, with no impact on other groups or program as a whole.
- Addresses main group the right wing complains about.

### Cons

- Singles out one group that has lots of support from the pro-choice wing and which does a lot of good.
- May be politically hard to swallow.

2. **Smith language with Presidential waiver for both lobbying and performing and a lump sum reduction off the top of the total budget (\$385 million) if the President issues waivers, but no reduction from individual grantees.**

Explanation: If the lump sum off the top were limited to 10 to 20 million, although the programs would suffer, the loss could be absorbed. However, if the amount exceeded that amount, the countries most in need of the funds would be hurt most and there would be a growing disparity in the way we fund assistance in the most needy nations and the way we fund Eastern European countries and the countries of the former Soviet Union.

### Pros

- All organizations would share the burden, not just those who engage in lobbying or perform abortions

### Cons

- Would disproportionately affect those countries most in need of family planning assistance.
- Wouldn't target those organizations that engage in lobbying or perform abortions.

3. **Smith language with waiver for both lobbying and performing and a percentage reduction off all grantees if the President issues a waiver. Transfer the resulting savings to the CSF for post abortion care (or as second alternative, to the CSF for prevention cervical cancer.)**

Explanation:

likely that any reduction in the population account would come from the DA and not non-DA accounts.

A reduction from the \$385 level would have more than programmatic consequences. The \$385 level is now considered a symbolic line-in-the-sand. A reduction of the population cap would alter the negotiation starting point for future years and perhaps lead to a downward budgetary spiral.

Discussion: Currently, all USAID population funds are obligated based on an agency wide metering schedule that obligates 8.35 percent of the funds each month. Thus far, cash flow problems have been kept to a minimum, although many organizations have very short pipelines. Last year, there were 168 metering tranches to prime cooperating agencies, host country governments, U.S. governments and multilaterals. If any of these tranches are missed, it sets off a domino effect down the funding tree. Having a certification requirement would greatly complicate the pipeline analyses that are the underpinning of the metering schedule. Also, USAID and CA program staff are just about at the breaking point with the additional burden of Tiahrt.

Issue: Should support to IPPF be stopped?

Recommendation: Of the options being considered, dropping funding to IPPF would have the least programmatic impact. It should be a card we are willing to play.

Discussion: The International Planned Parenthood Federation (IPPF) is unlikely to agree to any of the conditions being discussed. They were one of the two organizations that refused to sign Mexico City.

IPPF has not been an effective organization for some years. USAID has dropped its funding from around \$17 million to \$5.8 million in FY 99. They also received \$2 million in contraceptives in FY 99. They are scheduled to get \$5 million in FY00.

IPPF is an important symbol for both sides of the abortion/family planning issue. Not funding them would be seen as a significant victory for the anti-pop groups and a stinging defeat for the pro-pop groups. If played, we should get a lot for this card.

Issue: What are the consequences of a \$20 million cut in the population "account" or cap? What is the minimum cut from USAID's perspective?

Recommendation: A \$20 million cut should be rejected. A \$5 million cut would be tolerable.

Discussion: In FY96, Congress cut the population account to \$356 million. However, using prior year funds, the Administration increased this amount to \$432 million. Since then, the population level has remained at \$385 million.

The \$385 million cap is attained with a combination of DA and non-DA funds. Since FY97, non-DA funds constitute a larger percent of the cap. In FY99, \$339 of the \$385 million was DA. The FY00 budget puts the DA amount at \$340.

Non-DA funds primarily go to former Soviet Union, Eastern Europe, Egypt, Jordan, and the West Bank. Haiti is also a large recipient. In general, though, these funds do not go to the neediest or the most demographically important countries. Also, the non-DA countries are relatively well funded in population relative to the DA countries. For example, ESF countries have a \$0.33 per capita versus \$0.14 per capita of population funds.. It is

7. **Smith language with waiver for both lobbying and performing, with reductions to any grantee or subgrantee that cannot certify that it does not spend any money (or more than a de minimus amount) on lobbying narrowly defined as button-holing (or possibly include grassroots activity tied to specific legislative action and urging action on that specific legislative proposal).**

Explanation:

Pros

Cons

8. **Prohibit lobbying all together, but substitute narrow definition of lobbying.**

Explanation: We could agree to prohibit lobbying, but have a narrow definition (NOT the Smith language) that is limited to actual direct lobbying (i.e., button-holing legislative members or their staff about specific legislation).

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- Would likely affect few organizations
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- May result in some organizations getting no funding (as opposed to reduced funding.)
- Will probably result in subsequent disputes when some organization does something that may be viewed by Congress as lobbying.

Under all options, we should eliminate the sunset provision and remove the metering requirement.

January 15, 1998

To: Bill Marshall

Fr: Janis Crum

Re: Various Definitions of Lobbying

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The following definitions of lobbying are the result of a search of the United States Code, Code of Federal Regulations, and 1997-98 House and Senate Appropriations Bills. I have also attached some language which includes exceptions to direct and grassroots lobbying under the Internal Revenue Code.

I. Lobbying Disclosure Act, 2 U.S.C. 1601, et. seq.

"Lobbying Activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

"Lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official that is made on behalf of a client with regard to

a) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

b) the formulation, modification, or adoption of a Federal rule, regulation, executive order, or any other program, policy, or position of the United State government;

c) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license);

d) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

II. Standard Lobbying Prohibition Language From Various 1997 Appropriations Bills:

"None of the funds authorized by the amendments made by the act shall be available for any activity whose purpose is to influence legislation pending before the Congress, except that this subsection shall not prevent officers or employees of the United States or of its Departments or Agencies from communicating to members of Congress on the request of any member or to Congress, through the proper channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of business." (See, e.g., HR 1271, May 1, 1997.)

Similar prohibitory language in S.10, the Violent and Repeat Juvenile Offender Act of 1997:

"No amount made available under this title to any public or

private agency, organization, or institution or to any individual shall be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a member of congress or any other federal, state or local elected official to favor or oppose any act, bill, resolution or other legislation, or any referendum, initiative, constitutional amendment, or any other procedure of congress, any state legislature, any local council or any similar governing body."

Lobbying with Appropriated Monies (18 U.S.C. 1913 (1997)):  
"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation . . ."

III. Internal Revenue Code definitions: (See also attached definitions and exceptions)

Grassroots lobbying: "Any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof." IRC sec. 4911(d)(1)(b). However, a communication does not constitute grassroots lobbying unless it includes a "call to action," i.e., by encouraging individuals to contact their legislators.

Legislation is defined as an "action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure." IRC sec. 4911 (e)(2).

Exceptions to lobbying under this section:

1. Making available the results of nonpartisan analysis, study, or research;
2. Providing technical assistance to a governmental body (or committee thereof) in response to a written request from that body;
3. Appearances before, or communications to, a legislative body with respect to legislation affecting the existence of a charity, its powers and duties, tax exempt status, or the deduction of contributions to it;
4. Certain communications with a charity's members concerning legislation of interest to them, and
5. Communications with executive branch officials and employees, unless the primary purpose is to influence legislation.

Non-deductible lobbying activities under the Internal Revenue Code (individuals and for-profit corporations):

Influencing legislation is defined as: "Any attempt to



influence the general public, or segments thereof, with respect to elections, legislative matters or referendums; or any direct communication with a covered executive branch official in an attempt to influence his or her official actions or positions."

Covered executive branch officials are defined narrowly to include only the president, vice president, key White House officers, cabinet-level officials, and certain other high-level individuals.

## Options That Include a Penalty for Engaging in Smith Proscribed Activities

1. Smith language, with double waiver, that includes y% reduction in population funds for those organizations that rely on the President's waiver and do not provide the Smith certifications.

This option contemplates enactment of the Smith language, with a presidential waiver provision that makes the certification unnecessary as a matter of law. However, organizations that do not provide the certifications would see the amount of their grant reduced by y% of some base year – perhaps the amount obligated during the FY 98 or FY 99, whichever amount is greater. Organizations that did provide the certifications would receive the full amount requested. Given the large number of grant recipients and the layers of subgrantees, this option would be extremely difficult to implement and would concentrate an inordinate amount of time on de minimis amount grants. Under this option, funding withheld from the grant recipient would be redirected to other certifying grantees.

2. Same as number 1 above but with a threshold grant amount, below which no certification would be required, no waiver would be necessary, and no penalty assessed for noncertification.

This option is identical to the first option but would contain a minimum grant amount threshold so that grants for less than \$300,000 [*Duff to refine*] would not be covered by the Smith language. This approach would capture the large foreign organizations that perform or lobby for abortion but would avoid the administrative difficulty in monitoring de minimis size grants. OMB Circular A-133 identifies this amount as de minimis in the domestic context; if used overseas, would eliminate \_\_\_% of the grants.

3. Same as number 2 above except that the certification requirement would apply to all grants regardless of size but the penalty provision would only apply to grants above the minimum threshold.

This option is only a slight variation on option number 2 in that it would not exempt foreign organizations falling below the threshold from Smith – although they would still be able to avoid the certification requirement if the President exercised the waiver. The result would be the same: only organizations whose grants exceeded the threshold suffered a penalty for failing to provide the certifications.

4. Same as number 2, i.e., certification, waiver, minimum grant amount threshold, with penalty, except the penalty would only apply to organizations that fail to provide the lobbying as opposed to both certifications.

This option would focus on organizations that receive grants in excess of the threshold who fail to provide the lobbying certification, rather than both certifications. This would limit the penalty to those organizations that in Smith's view are the bad ones.

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4. **Smith language with waiver for both lobbying and performing, with reductions to any grantee or subgrantee that is above a certain threshold and cannot certify that it**

**does not spend any money (or more than a de minimus amount) on engaging in such activity.**

Explanation: Under this option, the cuts would come directly from the subgrantees who engage in the regulated activity. The grantee who engages in no such activity would be able to redirect the funds to another subgrantee, thus keeping the money in family planning. The threshold level of the grant must be high enough to avoid the administrative burden of going after the smallest subs. If the threshold drops, we could perhaps accomplish the same goal by redefining lobbying more narrowly than the Smith language.

Pros

Cons

5. **Smith language with waiver for both lobbying and performing, with reductions to any grantee that cannot certify that it does not spend any money (or more than a de minimus amount) on engaging in such activity.**

Explanation: Under this option, we would limit the level of grantee that would be subject to the prohibition.

Pros

Cons

6. **Smith language with no waiver for performing, but waiver for lobbying.**

Explanation:

Pros

Cons

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Cons

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Explanation: We could agree to prohibit lobbying, but have a narrow definition (NOT the Smith language) that is limited to actual direct lobbying (i.e., button-holing legislative members or their staff about specific legislation).

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Under all options, we should eliminate the sunset provision and remove the metering requirement.