FOIA Number: 2013-0365-F

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[Family Planning & USAID (Agency for International Development)]: [Loose Documents]: [2]

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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.
   - 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 ~~issues~~ exercises waivers, 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

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do not

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

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

- 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 apropriations 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.

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 are 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.

coupled w/ the a

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.)** ~~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 pur~~pose such as post~~-abortion care

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 thatcould 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. 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 granst 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 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.

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

   Explanation:

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   Cons

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   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).

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.

As a result, the impact of the reduction would be magnified in ~~c~~ particular countries like —.

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Explanation:

Pros

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

Cons

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 <u>but</u> 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, <u>i.e.</u>, 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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not more than 1 year, made application for restoration to his former position and has been certified by the Office of Personnel Management as still qualified to perform the duties of his former position and has not been restored thereto.

SEC. 506. No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act").

SEC. 507. (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Secretary of the Treasury shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.

SEC. 508. If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 509. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverage for abortions.

SEC. 510. The provision of section 509 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.

SEC. 511. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 1999 from appropriations made available for salaries and expenses for fiscal year 1999 in this Act, shall remain available through September 30, 2000, for each such account for the purposes authorized: *Provided*, That a request shall be submitted to the Committees on Appropriations for approval prior to the expenditure of such funds: *Provided further*, That these requests shall be made in compliance with reprogramming guidelines.

SEC. 512. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when it is made known to the Federal official having authority to obligate or expend such funds that—

(1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

(2) such request is required due to extraordinary circumstances involving national security.

FY99

SEC. 513. Funds provided in this Act may be used to initiate or continue projects or activities to the extent necessary, consistent with existing agency plans, to achieve Year 2000 (Y2K) computer conversion until such time as supplemental appropriations are made available for that purpose: *Provided*, That the program, project, or activity from which funds are obligated for Y2K conversion activities shall be reimbursed when such supplemental appropriations are made available.

[redacted]

SEC. 516. Notwithstanding Section 515 of Public Law 104–208, fifty percent of the unobligated balances available to the White House Office, Salaries and Expenses appropriations in fiscal year 1997, shall remain available through September 30, 1999, for the purposes of satisfying the conditions of Section 515 of this Act.

SEC. 517. The Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992, as amended (20 U.S.C. 5601 et seq.), is amended as follows:

20 USC 5607b.

(a) in section 11, by—

(1) deleting the heading and inserting "Use of the Institute by a Federal Agency or Other Entity."; and

(2) adding the following new subsection at the end:

"(e) NON-FEDERAL ENTITIES.—

"(1) Non-Federal entities, including state and local governments, Native American tribal governments, nongovernmental organizations and persons, as defined in 1 U.S.C. 1, may use the Foundation and the Institute to provide assessment, mediation, or other related services in connection with a dispute or conflict involving the Federal government related to the environment, public lands, or natural resources.

"(2) PAYMENT INTO THE ENVIRONMENTAL DISPUTE RESOLUTION FUND.—Entities utilizing services pursuant to this subsection shall reimburse the Institute for the costs of services provided. Such amounts shall be deposited into the Environmental Dispute Resolution Fund established under section 10."; and

20 USC 5608.

(b) in section 12, by:

(1) deleting "IN GENERAL—" and inserting "(a) IN GENERAL—"; and

(2) adding the following new subsection:

"(b) THE INSTITUTE.—The authorities set forth above shall, with the exception of paragraph (4), apply to the Institute established pursuant to section 10."; and

20 USC 5607a.

(c) in section 10(b), by adding before the period as follows: ", including not to exceed $1,000 annually for official reception and representation expenses".

SEC. 518. The cost accounting standards promulgated under section 26 of the Office of Federal Procurement Policy Act (Public Law 93–400; 41 U.S.C. 422) shall not apply with respect to a contract under the Federal Employees Health Benefits Program established under chapter 89 of title 5, Uni States Code.