Order Code IB96026

Issue Brief for Congress
Received through the CRS Web

Population Assistance and Family Planning Programs: Issues for Congress

Updated July 24, 2002

Larry Nowels
Foreign Affairs, Defense, and Trade Division

CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Introduction to U.S. Population Assistance Issues:
- Setting the Context
- Abortion and Coercion
  - The "Mexico City" Policy
  - Funding for UNFPA
  - Family Planning Conditions in China
- Funding Levels

International Family Planning Issues and Legislation
- In the 107th Congress
- Congressional Action
  - Foreign Relations Authorization and Other Authorizing Measures
  - Foreign Operations Appropriations, FY2002
  - Emergency Supplemental Appropriations, FY2002 (H.R. 4775)
  - Foreign Operations Appropriations, FY2003

LEGISLATION

Population Assistance and Family Planning Programs: Issues for Congress

SUMMARY

Since 1965, United States policy has supported international population planning based on principles of voluntarism and informed choice that gives participants access to information on all methods of birth control. This policy, however, has generated contentious debate for over two decades, resulting in frequent clarification and modification of U.S. international family planning programs.

In the mid-1980s, U.S. population aid policy became especially controversial when the Reagan Administration introduced restrictions. Critics viewed this policy as a major and unwise departure from U.S. population efforts of the previous 20 years.

The "Mexico City policy" further denied U.S. funds to foreign non-governmental organizations (NGOs) that perform or promote abortion as a method of family planning, regardless of whether the source of money was the U.S. Presidents Reagan and Bush also banned grants to the U.N. Population Fund (UNFPA) because of its program in China, where coercion has been used. During the Bush Administration, a slight majority in Congress favored funding UNFPA and overturning the Mexico City policy but failed to alter policy because of presidential vetoes or the threat of a veto.

President Clinton repealed Mexico City policy restrictions and resumed UNFPA funding. Since 1995, debates have been contentious regarding efforts to cut funding, codify the Mexico City policy, and block UNFPA funds if it continued work in China.

On Jan. 22, 2001, President Bush revoked the Clinton Administration population policy position and restored in full the terms of the Mexico City restrictions that were in effect on Jan. 19, 1993. Foreign NGOs and international organizations, as a condition for receipt of U.S. funds, now must agree not to perform or actively promote abortions as a method of family planning in other countries.

For FY2002, President Bush sought $425 million for population assistance and a $25 million contribution to the U.N. Population Fund, the same amounts enacted for FY2001.

The House rejected efforts during consideration of the Foreign Operations appropriations bill (H.R. 2506) to alter the Mexico City policy. However, the Senate voted to include text that would make the President's policy virtually inoperable. The Senate further increased funding levels to $450 million for population aid and $40 million for UNFPA. As cleared by Congress on Dec. 20, H.R. 2506 provides $446.5 million for bilateral programs and not more than $34 million for UNFPA. Congress further agreed to delete Senate language that would have overturned the President's abortion restrictions on family planning funds.

In January 2002, the White House placed a hold on the transfer of UNFPA funds pending a review of the organization's programs in China. No decision has been made whether or at what level to fund UNFPA this year. For FY2003, the President proposes no UNFPA funding, although there is a "reserve" of $25 million that could be used if the White House determines UNFPA eligible for U.S. support. The Administration further requests $425 million for bilateral family planning programs in FY2003, less than amounts for this year, but the same as proposed for FY2002.

MOST RECENT DEVELOPMENTS

On July 22, the White House announced that it would withhold a $34 million U.S. contribution to the U.N. Population Fund (UNFPA) due to the Administration's finding that the organization supported coercive family planning programs in China. Congress, in the FY2002 Foreign Operations Appropriations bill (P.L. 107-115), provided "not more than" $34 million for UNFPA. The White House froze the funds in January 2002 after new allegations surfaced regarding coercive family planning activities in Chinese counties where UNFPA maintains programs.

The issue concerns UNFPA activities in China and allegations of coercive abortions and involuntary sterilizations in that country. If the President finds that UNFPA or any other organization receiving U.S. funds is engaged in the management of such practices, the organization will be ineligible for U.S. contributions under the terms of the so-called "Kemp-Kasten" amendment that has been annually included in Foreign Operations spending bills since the mid-1980s. The Senate version of the FY2002 Supplemental Appropriations (H.R. 4775) included language requiring the President to transfer $34 million to the UNFPA by July 10 if the State Department investigation team concluded that UNFPA is not involved in coercive family planning practices in China. The House deleted a similar provision that the House Appropriations Committee had included in H.R. 4775. On July 18, House-Senate conferees agreed to delete the Senate language, leaving the decision whether to disburse the $34 million to UNFPA up to the President.

Meanwhile, on July 18, the Senate Appropriations Committee ordered reported its FY2003 spending measure, including $50 million for UNFPA. In addition, the Senate bill (unnumbered) modifies Kemp-Kasten, providing that the Administration must find that an organization directly participates in coercive practices in order to be denied U.S. funds.

BACKGROUND AND ANALYSIS

Introduction to U.S. Population Assistance Issues: Setting the Context

Population assistance became a global issue in the late 1950s and early 1960s after several private foundations, among them the International Planned Parenthood Federation, began providing money to developing countries to control high population growth rates. In 1966, when global population growth rates were reaching an historic annual high of 2.1%, the United Nations began to include population technical assistance in its international development aid programs. Population assistance grew rapidly over the next half-dozen years, with the United States, other developed countries, and international organizations such as the World Bank, all beginning to contribute funds.

The first International Population Conference was held in 1974, followed by the second in Mexico City in 1984, and the third in Cairo in 1994. The attention and funding given to international family planning programs are credited with helping to bring a decrease in population growth in developing countries from about 2.4% per year in the 1960s to about

a 1.6% annual average during the 1990s. Fertility rates have fallen in the developing world from 6.2 children per woman in 1950 to just below 3 in 1998. Nevertheless, while global population growth has slowed, it reached 6 billion in 1999 and is expected to rise to 8.9 billion by 2050, with most all of the growth occurring in developing nations. In 1960, 70% of the world's population lived in developing countries; today the level is 80%, and these countries now account for 95% of world-wide population growth.

But population statistics alone are only part of a larger story. For the past thirty years and more, countries have heatedly debated what the statistics mean. Proponents of aggressive family planning programs have held that high fertility rates and rapid population growth are serious impediments to a country's development. According to this school of thought, people are consumers: no poor country can increase its standard of living and raise its per capita income while wrestling with the problems of trying to feed and care for a rapidly expanding population. Thus, poor and developing countries should invest in family planning programs as part of their economic development process.

On the opposing side, critics of aggressive population planning programs hold that there is little or no correlation between rapid population growth and a country's economic development. Some argue that increased numbers of people provide increased productive capacity; therefore, they say, high population growth rates actually can contribute to a country's ability to increase its standard of living. At the very least, proponents of this view say, current economies of scale and global trading patterns have too many empirical variables and uncertainties to establish a direct correlation between population growth and economic development.

As this population debate evolved, many countries, including the United States, changed their views. In the 1974 international population conference, the United States and other donor countries asserted that high fertility rates were an impediment to economic development — an assertion that was then rejected by developing countries. In keeping with this view, the Carter Administration in 1977 proposed legislative language, later enacted in Sec. 104(d) of the Foreign Assistance Act of 1961, which sought to link population growth and traditional development assistance programs on the grounds that a high population growth rate could have a serious negative effect on other development objectives.

A decade later, at the second conference in Mexico City in 1984, a reversal of positions occurred. Developing countries had become convinced of the urgent need to control population growth, while U.S. officials asserted that population growth was not necessarily a negative force in economic development, but was instead a "neutral phenomenon." At Mexico City, Reagan Administration officials emphasized the need for developing countries to adopt sound economic policies that stressed open markets and an active private sector.

Again nearly a decade later, the Clinton Administration changed the U.S. position on family planning programs by lifting restrictive provisions adopted at the Mexico City Conference. At the 1994 Cairo Conference, U.S. officials emphasized support for family planning and reproductive health services, improving the status of women, and providing access to safe abortion. Eight years later, President Bush revoked the Clinton Administration position on family planning issues and abortion, reimposing in full the Mexico City restrictions in force during the 1980s and early 1990s. Throughout this debate, which at times has been the most contentious foreign aid policy issue considered by Congress, the cornerstone of U.S. policy has remained to be a commitment to international

family planning programs based on principles of voluntarism and informed choice that give participants access to information on all major methods of birth control.

Since the 1994 Cairo conference, groups supporting strategies to limit rapid population growth have supported a broader agenda of initiatives that include the promotion of gender equality, increasing adolescent education on sexuality and reproductive health, and ensuring the universal right of health care, including reproductive health. Although endorsed at the July 1999 U.N. meeting of 179 nations to assess progress of the Cairo population conference recommendations, the issues of child education and government responsibilities for ensuring access to safe abortions in countries where the practice is legal were particularly controversial. Some governments opposed the broadening of the Cairo mandate and some, including Argentina, Nicaragua, and the Vatican, filed reservations to the recommendations reached by consensus.

Most recently, new research suggests that there has been a significant decline in birthrates in several of the largest developing nations, including India, Brazil, and Egypt. (See, for example, "Population Estimates Fall as Poor Women Assert Control," *New York Times*, March 10, 2002, p. 3.) Some demographers conclude that global population projections for this century may need to be reduced by as much as one billion people. Although there are differences of opinion as to why fertility rates are falling – and whether the trend is universal throughout the developing world – a few demographers argue that the change has less to do with government family planning policies and foreign aid and more to do with expanded women's rights in these countries. Women are choosing to have fewer children, they argue. Others also cite the fact that with improved health conditions and lowered infant mortality rates, parents are deciding to have fewer babies because they are more confident that their children will survive.

In addition to differences of opinion over how population growth affects economic development in developing countries, population planning assistance has become an issue of substantial controversy among U.S. policymakers for two other reasons: the use of federal funds to perform or promote abortions abroad and how to deal with evidence of coercion in some foreign national family planning programs, especially in China; and setting the appropriate, effective, and affordable funding levels for family planning assistance.

Abortion and Coercion

The bitterest controversies in U.S. population planning assistance have erupted over abortion — in particular, the degree to which abortions and coercive population programs occur in other countries' family planning programs, the extent to which U.S. funds should be granted to or withheld from such countries and organizations that administer these programs, and the effect that withholding U.S. funds will have on global population growth and family planning services in developing nations. These issues essentially stem from the contentious domestic debate over U.S. abortion policy that has continued since the Supreme Court's 1973 *Roe v. Wade* decision holding that the Constitution protects a woman's decision whether to terminate her pregnancy. Abortion opponents have introduced in every Congress since 1973 constitutional amendments or legislation that would prohibit abortions, but none have been enacted. As an alternative, abortion critics have successfully persuaded Congress to attach numerous provisions to annual appropriation measures banning the use of federal funds for performing abortions.

Most of this debate has focused on domestic spending bills, especially restrictions on abortions under the Medicaid program in the Labor/Health and Human Services appropriation legislation. Nevertheless, the controversy spilled over into U.S. foreign aid policy almost immediately when Congress approved in late 1973 an amendment to the Foreign Assistance Act of 1961 (Section 104(f)) prohibiting the use of foreign development assistance to pay for the performance of abortions or involuntary sterilizations, to motivate or coerce any person to practice abortions, or to coerce or provide persons with any financial incentive to undergo sterilizations. Since 1981, Congress has enacted nearly identical restrictions in annual Foreign Operations appropriation bills.

For the past 25 years, both congressional actions and administrative directives have restricted U.S. population assistance in various ways, including those set out in the Foreign Assistance Act of 1961, and more recent executive regulations and appropriation riders prohibiting **indirect** support for coercive family planning (specifically in China) and abortion activities related to the work of international and foreign nongovernmental organizations. Two issues in particular which were initiated in 1984 — the "Mexico City" policy involving funding for non-governmental-organizations (NGOs), and restrictions on funding for the U.N. Population Fund (UNFPA) because of its activities in China — have remained controversial and continue as prominent features in the population assistance debate.

The "Mexico City" Policy. (For more detailed discussion of the original "Mexico City" policy, its implementation, and impact, see CRS Report RL30830, *International Family Planning: The "Mexico City" Policy.*) With direct funding of abortions and involuntary sterilizations banned by Congress since the 1970s, the Reagan Administration in 1984 announced that it would further restrict U.S. population aid by terminating U.S. Agency for International Development (USAID) support for any organizations (but not governments) that were involved in voluntary abortion activities, even if such activities were undertaken with non-U.S. funds. U.S. officials presented the revised policy at the 2nd U.N. International Conference on Population in Mexico City in 1984. Thereafter, it become known as the "Mexico City" policy. USAID announced in late 1984 that it would not provide funds for the International Planned Parenthood Federation/London (IPPF) in FY1985 because the IPPF/London, which had operations in 132 countries, refused to renounce abortion-related activities it carried out with non-U.S. funds. On Jan. 13, 1987, Planned Parenthood Federation of America (PPFA) filed a lawsuit against USAID challenging the "Mexico City" policy. In 1990, the U.S. District Court and Court of Appeals ruled against PPFA, and in 1991, the Supreme Court refused to review the lower court's decision. The President's discretionary foreign policy powers to establish different standards for NGOs and foreign governments were thereby upheld.

During the Bush Administration, efforts were made in Congress to overturn the Mexico City policy and rely on existing congressional restrictions in the Foreign Assistance Act of 1961 banning direct U.S. funding of abortions and coerced sterilizations. Provisions adopted by the House and/or Senate that would have reversed the policy, however, were removed from legislation under threat of a presidential veto.

Mexico City Policy Removed. In its first days in office, the Clinton Administration changed U.S. family planning assistance policies, covering not only the Mexico City restrictions but also funding for UNFPA population assistance in general. In a January 22, 1993 memo to USAID, President Clinton lifted restrictions imposed by the Reagan and Bush

Administrations on USAID grants to family planning NGOs — in effect repealing the Mexico City policy. The memo noted that the policy had extended beyond restrictions in the FAAct and was not mandated by law. In his remarks, President Clinton explained that this step "will reverse a policy that has seriously undermined much needed efforts to promote safe and effective family planning programs abroad, and will allow us to once again provide leadership in helping to stabilize world population." On August 26 and 30, 1993, respectively, USAID provided $2.5 million to the World Health Organization's Human Reproduction Program (HRP) and $13.2 million to IPPF.

Efforts to Legislate the Mexico City Policy. Beginning in 1993, abortion opponents in Congress attempted to legislate modified terms of the Mexico City policy. Under the threat of a Presidential veto and resistence from the Senate, Mexico City restrictions had not been enacted into law until passage in November 1999 of the Consolidated Appropriations Act for FY2000 (P.L. 106-113). The White House accepted the family planning conditions in exchange for congressional support of the payment of nearly $1 billion owed by the United States to the United Nations. The restrictions expired at the end of FY2000, although they applied to all FY2000 appropriated funds that could be obligated through September 30, 2001.

Under the terms of Section 599D of P.L. 106-113, private foreign non-governmental and multilateral organizations had to certify that they neither performed abortions nor lobbied to change abortion laws in foreign countries in order to receive USAID population aid grants in FY2000. Section 599D allowed the President to waive the certification requirement for up to $15 million in grants to groups that would otherwise be ineligible, but with the penalty of a $12.5 million transfer out of the $385 million population aid appropriation to child health programs. The restrictions applied only to FY2000 funds that were available for obligation until September 30, 2001.

One day after signing the legislation, the President exercised his waiver authority (November 30, 1999), thereby reducing FY2000 population aid funds to $372.5 million. He further instructed USAID to implement Section 599D in a way that would minimize the impact on U.S. funded family planning programs. In USAID-issued certification forms, organizations had to state that they would not engage in three types of activities with either USAID or non-USAID funds from the date they signed an agreement to receive FY2000 USAID population funds through September 30, 2001:

- perform abortions in a foreign country, except where the life of the mother would be endangered, or in cases of forcible rape or incest;
- violate the laws of a foreign country concerning the circumstances under which abortion is permitted, regulated, or restricted; or
- attempt to alter the laws or governmental policies concerning circumstances under which abortion is permitted, regulated, or restricted.

If an organization declined to certify or did not return the certification form, it was ineligible to receive FY2000 USAID population funds unless it was granted a waiver under the $15 million exemption cap.

A key issue regarding an evaluation of the impact of the FY2000 restrictions was whether the $15 million in total grants allowed under the waiver authority were sufficient to cover all foreign organizations that declined to certify regarding their involvement in abortion-related activities. In total, nine organizations refused to certify, including two of the largest recipients of USAID population aid grants – IPPF and the World Health Organization (WHO). (During the Reagan and Bush Administrations, IPPF was one of the few family planning organizations that declined to sign "Mexico City" policy conditions and received no USAID funding during that period.) These nine non-certifying organizations were awarded about $8.4 million in FY2000 grants, of which IPPF accounted for $5 million and WHO roughly $2.5 million.

Critics of the certification requirement opposed it on several grounds. From an administrative standpoint, they say it increased USAID costs to manage family planning programs because of the additional paperwork and delay implementation of projects. (USAID contracted with John Snow, Inc. to track the certification process.) They further believe that family planning organizations would cut back on services because they would be unsure of the full implications of the restrictions and would not want to risk losing eligibility for USAID funding. Opponents also believe the conditions would undermine relations between the U.S. government and foreign NGOs and multilateral groups, creating a situation in which the United States challenged their sovereignty on how to spend their own money and imposed a so-called "gag" order on their ability to promote changes to abortion laws and regulations in developing nations. The latter, these critics noted, would be unconstitutional if applied to American groups working in the United States.

Supporters of the certification requirement argued that even though permanent law bans USAID funds from being used to perform or promote abortions, money is fungible; that organizations receiving American-taxpayer funding can simply use USAID resources for legal activities while diverting money raised from other sources to perform abortions or lobby to change abortion laws and regulations. The certification process, they contended, stops the fungibility "loophole."

Bush Administration Restores the Mexico City Policy. Like his predecessor, President George W. Bush, as one of his first official actions in office, issued a memorandum revoking the Clinton Administration memorandum and restoring in full the terms of the Mexico City restrictions that were in effect on January 19, 1993. As was the case during the 1980s and early 1990s, in the future foreign NGOs and international organizations, as a condition for receipt of U.S. federal funds, must agree not to perform or actively promote abortions as a method of family planning in other countries. President Bush noted in his order that American taxpayer funds should be not used to pay for abortions or advocate or actively promote abortion. Critics charge, however, that the policy is a violation of free speech and the rights of women to choose; and that the policy will undermine maternal health care services offered in developing nations and may actually contribute to the rise in the number of abortions performed, some that are unsafe and illegal. (See *Congressional Debate in the 107th Congress*, below, for congressional consideration of amendments supporting and opposing the Mexico City policy in 2001 and 2002.)

New Mexico City Policy Guidelines. Following several weeks of inter-agency consultations, USAID released on February 15, 2001, specific contract clauses necessary to implement the President's directive. The guidelines state that U.S. NGOs receiving USAID grants cannot furnish assistance to foreign NGOs which perform or actively promote

abortion as a method of family planning in USAID-recipient countries, or that furnish assistance to other foreign NGOs that conduct such activities. When USAID provides assistance directly to a foreign NGO, the organization must certify that it does not now or will not during the term of the grant perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to other foreign NGOs that carry out such activities. Abortion is defined as a "method of family planning when it is for the purpose of spacing births," including (but not limited to) abortions performed for the physical or mental health of the mother. To perform abortions is defined as the operation of a "facility where abortions are performed as a method of family planning." (USAID memorandum to all contracting officers and negotiators, titled *Voluntary Population Activities – Restoration of the Mexico City Policy*, dated February 15, 2001.)

Promoting abortion is defined as an organization committing resources "in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning." Examples of what constitutes the promotion of abortion include: operating a family planning counseling service that includes information regarding the benefits and availability of abortion; providing advice that abortion is an available option or encouraging women to consider abortion; lobbying a foreign government to legalize or to continue the legality of abortion as a method of family planning; and conducting a public information campaign in a USAID-recipient country regarding the benefits and/or availability of abortion as a method of family planning.

The regulations also contain exceptions:

- abortions may be performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest; health care facilities may treat injuries or illnesses caused by legal or illegal abortions (post-abortion care).

- "passive" responses by family planning counselors to questions about abortion from pregnant women who have already decided to have a legal abortion is not considered an act of promoting abortion; referrals for abortion as a result of rape, incest, or where the mother's life would be endangered, or for post-abortion care are permitted.

USAID will further be able to continue support, either directly or through a grantee, to foreign governments, even in cases where the government includes abortion in its family planning program. Money provided to such governments, however, must be placed in a segregated account and none of the funds may be drawn to finance abortion activities.

Funding for UNFPA. Also at the 1984 Mexico City Conference, the Reagan Administration established the requirement that the United Nations Population Fund (UNFPA) provide "concrete assurances that [it] is not engaged in, or does not provide funding for, abortion or coercive family planning programs." Concern was highest over UNFPA's activities in China's coercive family planning practices. At the time, the Administration reportedly held up $19 million (of $38 million allocated for UNFPA for FY1984) until the organization could provide the necessary assurances.

Subsequently, Congress legislated a more restrictive UNFPA policy — aimed at coercive Chinese family planning programs and UNFPA's continuing operations in the country — by enacting the "Kemp-Kasten amendment" in the FY1985 Supplemental Appropriations Act (P.L. 99-88). This language prohibited the use of appropriated funds for any organization or program, determined by the President, to be supporting or participating "in the management" of a program of coercive abortion or involuntary sterilization. Following enactment of P.L. 99-88, USAID announced that $10 million of $46 million that had been earmarked for UNFPA during FY1985 would be redirected to other programs, and later said that the United States would not contribute to UNFPA at all in 1986. Most of the $25 million that was originally allocated for UNFPA was spent for other international family planning activities. Even though this pattern to redirect UNFPA transfers to other population assistance programs continued, critics of the Kemp-Kasten amendment and the President's determination to suspend contributions asserted that UNFPA was the world's most effective family planning organization and that the quality of services provided in developing nations outside of China suffered due to the unwillingness of U.S. support. At the time of suspension, U.S. payments represented nearly one-third of UNFPA's annual budget. From 1986 through 1993, no U.S. contributions went to UNFPA.

Like the Mexico City policy, the Clinton Administration moved quickly to lift the ban of UNFPA contributions, making available $14.5 million in FY1993 but stipulating that none of the funds could be used in China. Again, congressional critics of Chinese family planning practices attempted unsuccessfully to attach riders to various foreign aid bills banning U.S. contributions unless UNFPA withdrew from China or the President could certify that China no longer maintained a coercive family planning program. Nevertheless, while the United States continued to support UNFPA during the next five years, Congress attached restrictions in appropriation measures that in most cases reduced the U.S. contribution by the amount UNFPA spent in China. UNFPA ended a 5-year program in China in 1997. But when the organization negotiated in early 1998 a new multi-year Chinese program, Congress, over the Administration's objections, prohibited American support for FY1999. Congress resumed UNFPA funding in FY2000 and 2001 but under the condition that the $25 million earmark would be reduced by whatever amount UNFPA's program cost for China.

For FY2002, Congress provided "not more than" $34 million for UNFPA. But in mid-January 2002, the White House placed a hold on U.S. contributions to UNFPA, pending a review of the organization's program in China. According to February 27 testimony by Arthur Dewey, Assistant Secretary of State for Population, Refugees, and Migration before the Senate Foreign Relations Committee, the White House initiated the review because of new evidence that coercive practices continue in counties where UNFPA concentrates its programs. In September 2001, Josephine Guy led an investigative team sponsored by the Population Research Institute, spending four days interviewing women in one of the Chinese counties where UNFPA maintains active programs. The team concluded that a consistent pattern of coercion continues in this "model" UNFPA county, including forced abortions and involuntary sterilizations. (See House International Relations Committee hearing, *Coercive Population Control in China: New Evidence of Forced Abortion and Forced Sterilization*, October 17, 2001. See also testimony of Josephine Guy before the Senate Foreign Relations Committee, February 27, 2002.)

UNFPA commissioned what it characterized as an independent international review team, led by Dr. Nicholaas Biegman, a Dutch diplomat and former head of the Netherlands

International Cooperation Agency. Following a five day visit in October 2001, the team found "absolutely no evidence that the UN Population Fund supports coercive family planning practices in China or violates the human rights of Chinese people in any way." The Biegman group acknowledged that voluntary family planning services are not the "norm" throughout China, but concluded that UNFPA's work served as a model for demonstrating to Chinese officials that voluntary programs are the most effective way to reduce population growth. (See testimony of Nicholaas Biegman before the Senate Committee on Foreign Relations, February 27, 2002.)

While most observers agree that coercive family planning practices continue in China, differences remain over the extent to which, if any, UNFPA is involved in involuntary activities and whether UNFPA should operate at all in a country where such conditions exist. Given the conflicting reports, the State Department sent its own investigation team to China for a two-week review of UNFPA programs on May 13. The team was led by former Ambassador William Brown, and included Bonnie Glick, a former State Department official, and Dr. Theodore Tong, a public health professor at the University of Arizona. A final report on its findings was expected by late June, but the report has yet to be released as of July 17.

The team assessed whether UNFPA "supports or participates in the management of a program of coercive abortion or involuntary sterilization." If Administration officials concluded that this was the case, UNFPA would be in violation of the Kemp-Kasten amendment and be ineligible for U.S. grants. Alternatively, the President could have found that the UNFPA did not violate Kemp-Kasten, but still reduced the U.S. contribution to something less than $34 million to express displeasure over alleged coercive family practices in China and UNFPA's involvement.

Nevertheless, on July 22, the White House announced that UNFPA is in violation of Kemp-Kasten and ineligible for U.S. funding. The White House found that China's one-child policy leads to forced abortions and involuntary sterilizations, and is a policy implicitly supported by UNFPA. The State Department's team investigating the issue in May, however, did not find any direct UNFPA participation in such coercive practices or that the organization knowingly promoted abortions or involuntary sterilizations. Critics of the Administration's decision oppose it not only because of the negative impact it may have on access to voluntary family planning programs by persons in around 140 countries, but also because of the possible application of the determination for other international organizations that operate in China and to which the U.S. contributes. The White House will direct the $34 million be re-allocated to USAID family planning activities.

Although the FY2002 Foreign Operations Appropriation language did not require the U.S. to provide $34 million to UNFPA, some House and Senate Appropriation Committee leaders say that was their intent, and strongly urged the White House to release the full amount appropriated. On May 9, 2002, the House Appropriations Committee approved (32-31) an amendment to the FY2002 Supplemental Appropriation (H.R. 4775) by Representatives Lowey and Kolbe that would have required the President to transfer the full $34 million to UNFPA by July 10 if the State Department commission concludes that UNFPA is not involved in coercive family planning practices in China. Meeting on May 15, however, the Committee added a provision sponsored by Representative Tiahrt that overrode the Lowey/Kolbe amendment, requiring the President to determine by July 31, 2002, whether UNFPA participates in the management of coercive family planning practices,

but leaving open the question on how much to contribute. During floor debate on H.R. 4775, the House adopted a second rule (H.Res. 431) governing debate on the bill that deleted both the Lowey/Kolbe and Tiahrt amendments. As a result, the House-passed measure contained no language concerning UNFPA. Nevertheless, the Senate attached a provision that is nearly identical to the Lowey/Kolbe language to its version of the Supplemental Appropriation, legislation that cleared the Senate on June 6. The White House opposed the Senate language.

Under any of these amendments a finding that UNFPA was in violation of Kemp-Kasten would have resulted in the termination of U.S. support. Without such a conclusion, however, the Senate and Lowey/Kolbe amendments would have required the President to provide the full $34 million contribution. The Tiahrt amendment would have left open the possibility for the President to allocate something less than $34 million for UNFPA. On July 18, House-Senate conferees agreed to drop the Senate language, leaving the decision solely up to the President.

Meanwhile, on July 18, the Senate Appropriations Committee marked up its FY2003 spending measure, including $50 million for the U.N. Population Fund (UNFPA). In addition, the Senate panel recommended a modification of the Kemp-Kasten provision, requiring the President to find an organization in direct participation of coercive practices before declaring it ineligible for U.S. funds.

Family Planning Conditions in China. As noted, much of the UNFPA debate has focused on that organization's programs in China, both because of China's well-known population growth problem and because of widespread publicity given to reports of coercion in its family planning programs. China's population increased from 500 million in 1950 to 1.008 billion according to the 1982 census — an average annual growth rate of 2%, or a doubling of the population every 36 years. (Although the 2% rate is not particularly large by developing country standards, many consider a lower rate crucial to China's economic development prospects given the country's already huge population size.)

Given population growth rates, Beijing authorities came to view control of population growth not simply as an important priority, but as a necessity for the nation's survival. In an attempt to reach a 1% annual population growth rate, Chinese authorities in 1979 instituted a policy of allowing only one child per couple, providing monetary bonuses and other benefits as incentives. Women with one living child who become pregnant a second time were said to be subjected to rigorous pressure to end the pregnancy and undergo sterilization; couples who actually had a second child faced heavy fines, employment demotions, and other penalties. PRC leaders have admitted that coerced abortions and involuntary sterilizations occur, but insist that those involved are acting outside the law and are punished, particularly through the Administrative Procedure Law enacted in October 1990. Chinese authorities have termed female infanticide an "intolerable crime" that must be punished by law.

After 1983, thought to be the peak year of coercion in Chinese family planning in the 1980s, the PRC relaxed its "one-child" policy in rural areas. The original target for the PRC's population in the year 2000 had been 1.2 billion, but that goal was relaxed in 1984 to 1.25 billion, and the Chinese minister of family planning indicated in 1991 that the target population size for 2000 was now 1.294 billion. (UNFPA reports that China's population in 1999 was 1.267 billion, with an annual growth rate of 0.9%.) In addition, the policy has

been loosely applied for Tibetan, Muslim, and other ethnic minorities. China has also reported regional differences in the so-called "one-child" policy. Economic reforms helped weaken policy enforcement in more prosperous areas, with rising incomes absorbing fines.

More recent press reports suggest that the Chinese State Family Planning Commission (SFPC) has softened some of its previous harsh tactics to limit population growth. A number of counties have ended the system of permits for pregnancy and quotas for the number of children that can be born annually. When it launched in January 1998 its latest $20 million, five-year program in China, UNFPA announced that SFPC officials had agreed to drop birth targets in the 32 counties where U.N. activities would be focused. And in May 1999, the city of Beijing ended an eight-year policy that women had to be at least 24 years old to bear a child and lifted the requirement for couples to obtain a certificate before having their child.

Nevertheless, the degree of coercive family planning practices in China, as evidenced in the two conflicting recent investigations noted above, remains a cloudy and controversial matter. The State Department, in its 2001 report on human rights conditions (released March 2002), concluded that the Chinese government "continued to implement comprehensive and sometimes coercive family planning policies." The State Department further notes that the UNFPA program in 32 Chinese countries has led local governments to inform the public of UNFPA efforts to address family planning and reproductive health matters strictly on a voluntary basis. According to the State Department, local government officials have eliminated countywide birth and population targets that often lead to coercive enforcement practices. Nevertheless, the Department cautions that, "economic fines assessed on individual families for over-quota children" continue.

Funding Levels

Since 1965, USAID has obligated over $6.6 billion in assistance for international population planning. In many years, and especially over the past decade, the appropriate level of funding for population assistance has been controversial, and at times linked directly with differences concerning Mexico City restrictions and abortion. During the 1980s and 1990s, Congress and the executive branch frequently clashed over the amount of foreign aid that should be allocated to family planning programs. Until FY1996, Congress generally supported higher funding levels for population aid than proposed by the President, especially during the Reagan and Bush Administrations. Family planning appropriations – including bilateral population aid and UNFPA contributions – averaged about $280 million annually during the late 1980s, but grew rapidly in the 1990s, peaking in FY1995 at $577 million.

With the change in party control of Congress during the FY1996 budget cycle, family planning policy and budget issues became, and have continued to be, the most contentious foreign aid matter considered by Congress. Population appropriation levels fell abruptly to $356 million in FY1996. But because of the four-month delay in enacting the Foreign Operations spending measure (largely because of the family planning dispute), coupled with a new requirement to "meter" population funds – that is, making them available on a monthly schedule in increments of $23 million over a 15-month period – USAID had only $151.5 million available for supporting bilateral family planing programs in FY1996. Most of the FY1996 population aid appropriation was "pushed" into the next year because of the metering mechanism. Population aid appropriations grew slightly to $385 million during each of the next four years, but fell far short of White House requests. Due to restrictions enacted for FY2000 noted above, $12.5 million of those appropriations were transferred

from population assistance to child health programs. President Clinton proposed a $541.6 million budget for bilateral population aid in FY2001, a level that would have returned to the amount provided in FY1995. Congress approved $425 million. President Bush proposed the same level for FY2002, but Congress increased funding to $446.5 million. The Bush Administration proposes $425 million for FY2003. On July 18, the Senate Appropriations Committee marked up its FY2003 legislation providing $450 million for population aid.

Table 1. Population Assistance, FY1993-2002
(appropriations of millions of $s)

	1994	1995	1996[a]	1997	1998	1999	2000[b]	2001[b]	2002	2003[c]
Population Aid	485.1	541.6	356.0	385.0	385.0	385.0	372.5	425.0	446.5	425.0
UNFPA	40.0	35.0	22.8	25.0	20.0	0.0	21.5	21.5	34.0[d]	[d]
Total	**525.1**	**576.6**	**378.8**	**410.0**	**405.0**	**385.0**	**394.0**	**446.5**	**480.5**	**425.0**

Source: AID/Office of Population.

[a] Because of the FY1996 "metering" requirement for population aid that delayed the availability of funds, the actual amount available for obligation in that year was $151.5 million. Since large amounts appropriated in FY1996 and FY1997 were "metered" into the next fiscal year, levels available for obligation in FY1997 and FY19998 were $495 million and $554 million, respectively. In years when "metering" was not required – before FY1996 and since FY1998 – amounts available for obligation were nearly the same as or identical to the appropriated level shown in Table 1.

[b] FY2000 levels reflect a transfer of $12.5 million from population aid. FY2000 and FY2001 reflect a $3.5 million deduction from UNFPA due to legislative restrictions.

[c] Request for FY2003.

[d] On hold, pending a review of UNFPA's program in China.

Financing family planning and basic reproductive health care programs in developing countries became a major issue at the 1994 Cairo population conference. Participating nations agreed that foreign aid donors would provide one-third, or $5.7 billion, of the annual costs of such services that were estimated to grow to about $17 billion in 2000. A July 1999 conference assessing implementation of the 1994 Cairo strategy, however, found that industrialized countries had fallen far short of the financing goal, providing only about $1.9 billion per year.

Supporters of increasing population aid, many of whom believe strongly that population growth must be curtailed before meaningful development can occur, contend that family planning should be among the highest priorities of U.S. development strategy. Population growth, they argue, has long-term consequences, affecting diverse U.S. interests in environmental protection, resource conservation, global economic growth, immigration management, and international stability. They maintain that attention to family planning assistance now could obviate future allocations in other development and health-related accounts. Some proponents of population assistance programs see a particular irony, for instance, in limiting funds for population stabilization programs while increasing the budget claims of child survival and infectious disease programs. Population aid proponents also cite recent studies that suggest that the prevalence of abortion declines in countries that have wider availability and use of effective contraceptives. This relationship, they say, further reduces the risk of unsafe abortions that are the leading cause of maternal deaths in developing nations.

Opponents of increasing population aid argue that even without added funding levels, the United States continues to be the largest bilateral donor in population assistance programs. Some also claim that there is little or no correlation between rapid population growth and a country's economic development. At the very least, some opponents say, current economies of scale and global trading patterns have too many empirical variables and uncertainties to establish a direct correlation between population growth and economic development.

International Family Planning Issues and Legislation In the 107th Congress

For FY2002, the Administration requested $425 million for population assistance, the same level as for FY2001, and a $25 million UNFPA contribution. The primary focus of congressional attention in the 107th Congress, however, has been on the reimposition of the Mexico City Policy and the current hold placed by the Administration on the U.S. contribution to UNFPA. Several bills have been introduced that would effectively overturn the President's Mexico City policy. One – S. 367, the Global Democracy Promotion Act of 2001 – was favorably reported on August 1 by the Senate Foreign Relations Committee. Similar text was added to the Senate version of the Foreign Operations Appropriations bill (H.R. 2506). The House also debated legislation that would overturn the President's Mexico City policy, but no pending House bills currently include such language. Regarding UNFPA, the "Saving Women's Lives Act of 2002" (H.R. 3916), would re-appropriate and make mandatory a $34 million FY2002 UNFPA contribution and authorize $50 million for FY2003. H.R. 3916 would further provide U.S. funding only if UNFPA maintains a separate account for U.S. transfers and does not co-mingle such funds with other sums, and does not fund abortions as a method of family planning. The bill would not, however, deduct U.S. contributions by the amount UNFPA spent in China, a condition added to most enacted legislation in the late 1990s.

Congressional Action

Foreign Relations Authorization and Other Authorizing Measures. In the first legislative vote of the 107th Congress on international family planning issues, the House International Relations Committee on May 2 adopted (26-22) an amendment by Representative Lee that would overturn the Mexico City policy. The Lee amendment was attached to H.R. 1646, an omnibus foreign policy authorization bill. The amendment, which incorporated the text of H.R. 755, would have not subjected foreign groups to different restrictions imposed on U.S. NGOs concerning the use of non-USAID funding for advocacy and lobbying activities. It further directed that foreign NGOs would not be ineligible for U.S. grants solely on the basis of health or medical services provided with non-USAID funding so long as these activities were not in violation of the laws of the country in which the groups operated and would not violate U.S. law if provided here. On May 16, however, the full House voted (218-210) to delete the Lee amendment from H.R. 1646. The Administration had said the President would veto H.R. 1646 if the Committee language on Mexico City policy remained in the bill. The Senate Foreign Relations Committee, meeting on August 1, favorably reported S. 367, legislation nearly identical H.R. 755 and to provisions initially added to H.R. 1646 by the House International Relations Committee.

Foreign Operations Appropriations, FY2002. House critics of the Mexico City policy made a second effort to overturn the restrictions during House Foreign Operations Subcommittee markup of its draft FY2002 spending bill on June 27 (H.R. 2506). An amendment by Representative Lowey, however, failed on a voice vote. The amendment was similar to provisions adopted by the House International Relations and Senate Foreign Relations Committees.

The Senate-passed version of H.R. 2506 included a provision effectively overturning President Bush's decision to place abortion restrictions on U.S. international family planning funds. The Senate text was very similar to language adopted in the previous Congress by the Senate in S. 2522 and supported by the Senate Foreign Relations Committee in 2001 (S. 367). As approved, the FY2002 funding bill would have blocked the White House from barring foreign nongovernmental organizations (NGOs) eligibility for USAID funding solely on the basis of health or medical services they offer with their own, non-U.S. government provided funds so long as they did not violate U.S. laws or the laws of the countries in which they operate. Foreign NGOs would also not face limitations on advocacy or lobbying activities using their own, non-U.S. government funds that were more restrictive than those that apply to U.S. NGOs which receive U.S. foreign aid grants. As noted above, it is generally held that under the Constitution, U.S. NGOs cannot be restricted from using their own funds to advocate policy positions they support. These proposed conditions would essentially extend that protection to foreign NGOs and multilateral organizations.

On funding issues, H.R. 2506, as passed the House, assumed $425 million for FY2002 population aid, as requested, while the Senate increased spending to $450 million. The Senate measure would have further increased the U.S. contribution to the U.N. Population Fund from $25 million to $40 million.

The conference agreement on H.R. 2506 resolved House-Senate disputes over three international family planning aid issues. Conferees agreed to delete Senate language that would have overturned the Administration's Mexico City policy. The enacted bill further provided a U.S. contribution the U.N. Population Fund (UNFPA) of "not more than" $34 million so long as UNFPA does not fund abortions and the U.S. funds are segregated and not co-mingled with other UNFPA money, are not used for UNFPA programs in China. Conferees also dropped a House restriction that would have reduced the contribution by whatever UNFPA spent in China. As noted above, however, these funds are on hold by the White House, pending a review of UNFPA's program in China. Finally, H.R. 2506 appropriated $446.5 million for U.S. bilateral family planning/reproductive health programs in FY2002. The legislation allocated the $20.5 million overall increase from the FY2002 request in such as way that added $10.5 million in family planning amounts from Child Survival account and $10 million from other economic aid accounts.

Emergency Supplemental Appropriations, FY2002 (H.R. 4775). As noted above in the section on the U.N. Population Fund, the House Appropriations Committee on May 9 approved (32-31) an amendment to H.R. 4775 by Representatives Lowey and Kolbe that would have required the President to transfer $34 million to UNFPA by July 10 if a State Department investigation team concludes that UNFPA is not involved in coercive family planning practices in China. The money has been on hold by the White House since January. Meeting on May 15, however, the Committee added a second UNFPA provision, sponsored by Representative Tiahrt, requiring the President to determine by July 31, 2002, whether UNFPA participates in the management of coercive family planning practices.

Before final passage, however, pursuant to H.Res. 431, the second rule for consideration of H.R. 4775, both the Lowey/Kolbe and the Tiahrt amendments were deleted from the bill.

The Senate-passed Supplemental Appropriation included a provision nearly identical to the Lowey/Kolbe text. Under any of these amendments a finding that UNFPA was in violation of Kemp-Kasten would result in the termination of U.S. support. Without such a conclusion, however, the Senate and Lowey/Kolbe amendments would require the full $34 million contribution to go forward. The Tiahrt amendment would leave open the possibility for the President to allocate something less than $34 million for UNFPA. House-Senate conferees agreed to drop the Senate language from the final bill.

Foreign Operations Appropriations, FY2003. On July 18, 2002, the Senate Appropriations Committee ordered reported its FY2003 spending measure (unnumbered), including $450 million for bilateral family planning programs and $50 million for the U.N. Population Fund (UNFPA). The Administration had requested $425 million for family planning activities but no contribution to the UNFPA. The Senate bill further modifies the Kemp-Kasten language so that an organization becomes ineligible for U.S. funds only if it directly participates in coercive practices.

LEGISLATION

P.L. 107-115 (H.R. 2506)

Foreign Operations Appropriations for FY2002. Includes $446.5 million for population assistance, $20.4 million higher than the request, and not more than $34 million for the U.N. Population Fund, $9 million more than proposed. The bill does not include Senate-passed language that would have overturned Bush Administration abortion restrictions. H.R. 2506 marked-up by the House Foreign Operations Subcommittee on June 27; reported by the House Appropriations Committee on July 17 (H.Rept. 107-142). Passed the House on July 24. Reported by the Senate Appropriations Committee on Sept. 4 (S.Rept. 107-58). Passed the Senate on October 24 (96-2). Conference report filed on December 19 (H.Rept. 107-345); passed the House on December 19 (356-66); passed the Senate on December 20.

H.R. 755 (Lowey)

Global Democracy Promotion Act of 2001. Prohibits certain restrictive eligibility requirements to foreign NGOs with respect to family planning programs. Introduced Feb. 27, 2001; referred to the House International Relations Committee. See H.R. 1646 below.

H.R. 1646 (Hyde)

Foreign Relations Authorization Act, FYs 2002 and 2003. Authorizes appropriations for the Department of State. Introduced on April 27, 2001; during markup on May 2, the House International Relations Committee approved (26-22) an amendment by Representative Lee that would overturn the Mexico City policy. The amendment was a modified version of H.R. 755. The Committee reported H.R. 1646 on May 4 (H.Rept. 107-57). The House voted (218-210) to delete the Lee amendment on May 16, and passed H.R. 1646 (352-73). H.R. 1646 passed the Senate, amended, on May 1, 2002, without reference to the Mexico City policy issue.

H.R. 3916 (Maloney)

Saving Women's Lives Act of 2002. States that out of the funds appropriated in P.L. 107-115 (Foreign Operations Appropriations, FY2002), $34 million "shall be made available" to UNFPA. The bill further authorizes a $50 million contribution for FY2003. Introduced on March 7, 2002; referred to the House Committee on International Relations.

H.R. 4775 (Young)

Supplemental Appropriations, FY2002. The Senate version includes language concerning the release of the FY2002 U.S. contribution to UNFPA (see above for details). H.R. 4775 reported on May 20, 2002 (H.Rept. 107-480) with two provisions concerning UNFPA; passed the House on May 23 after the House adopted a second rule (H.Res. 431) that deleted all UNFPA provisions from the bill. S. 2551 reported by the Senate Appropriations Committee on May 29 (S.Rept. 107-156); the Senate inserted the text of S. 2551 into H.R. 4775, and passed H.R. 4775 on June 6 (71-22); conferees agreed to a conference report on July 18, deleting all references to UNFPA.

S. 367 (Boxer)

Global Democracy Promotion Act of 2001. Prohibits certain restrictive eligibility requirements from applying to foreign NGOs. Introduced February 15, 2001; reported by the Senate Foreign Relations Committee on August 1.