

CRS Issue Brief for Congress

Received through the CRS Web

Population Assistance and Family Planning Programs: Issues for Congress

Updated May 26, 2005

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
Current Scope of USAID Family Planning Programs

Policy and Funding Issues in U.S. Family Planning Debates
Abortion and Coercion
 The “Mexico City” Policy
 Funding for UNFPA
 Family Planning Conditions in China
Funding Levels

Current International Family Planning Issues and Legislation
Foreign Operations Appropriations, FY2006
Emergency Supplemental Appropriations for FY2005
Foreign Affairs Authorization Act, FY2006/2007

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 volunteerism 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 1984, controversy arose over U.S. population aid policy when the Reagan Administration introduced restrictions, which became known as the “Mexico City policy.” (Opponents of the policy also refer to it as the “Global Gag Rule.”) The “Mexico City policy” 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 money came from the U.S. government. Presidents Reagan and Bush also banned grants to the U.N. Population Fund (UNFPA) because of its program in China, where coercive practices have been used.

President Clinton resumed UNFPA funding and repealed the Mexico City policy. President George W. Bush, however, re-applied in January 2001 the Mexico City restrictions. Following a State Department investigation of family planning programs in China, the Administration suspended U.S. contributions to UNFPA on July 22, 2002, citing violations of the “Kemp-Kasten” amendment. This provision bans U.S. assistance to organizations that support or participate in the man-

agement of coercive family planning programs. The decision, and similar positions in each of the two subsequent years, resulted in the loss of \$93 million in for UNFPA, FY2002-FY2004.

For FY2005, Congress earmarked in Division D of P.L. 108-447 (Consolidated Appropriations Act) \$441 million for bilateral family planning programs and \$34 million for UNFPA. Conferees dropped two Senate-passed provisions that would have modified the Kemp-Kasten language in a way that would narrow somewhat the grounds on which the Administration can find UNFPA in violation and text that would effectively reverse the President’s Mexico City policy. The Administration is expected to issue a determination regarding UNFPA eligibility for the FY2005 funding prior to September 30, 2005.

In his FY2006 Foreign Operations budget request, the President proposes \$425 million for family planning programs, including \$25 million for UNFPA should the organization be eligible under the Kemp-Kasten amendment. This compares with a total FY2005 appropriation for bilateral family planning and UNFPA of \$475 million.

In related legislation, on S. 600, an omnibus State Department/Foreign Aid authorization measure, the Senate adopted an amendment by Senator Boxer that would effectively overturn the Mexico City policy. The bill has received a final vote in the Senate.

MOST RECENT DEVELOPMENTS

On April 5, the Senate adopted (52-46) an amendment by Senator Boxer to S. 600, the Foreign Affairs Authorization Act, that would effectively overturn the Bush Administration's "Mexico City" policy. This policy, which had been in place during the Reagan and George H.W. Bush Administrations, but lifted by President Clinton, U.S. overseas family planning grants to foreign non-governmental organizations unless they agree not to perform abortions or promote abortion as a method of family planning, even if such actions are done using non-U.S. government funds. In the past, the President has threatened to veto legislation containing such provisions.

Previously, on March 16, 2005, the House approved by voice vote an amendment by Representative Maloney to the FY2005 emergency supplemental appropriation (H.R. 1268) adding \$3 million to the Tsunami Relief and Reconstruction Fund. Although the text of the amendment makes no reference to UNFPA or the purpose for which the \$3 million will be used, supporters of the Maloney amendment say that their intent is for the United States to contribute to UNFPA's appeal for additional resources that will help cover the organization's costs of unanticipated needs in tsunami-affected countries. Conferees finalized H.R. 1268 on May 3, reducing the House-passed aid level for tsunami relief by \$3 million and making no reference to a UNFPA contribution.

On February 7, 2005, the Bush Administration submitted its FY2006 budget to Congress, including a request for \$425 million in international family planning programs, a total that would include \$25 million for the U.N. Population Fund (UNFPA) if the organization is determined to be eligible for U.S. support. This compares with an FY2005 appropriation of \$441 million for bilateral family planning assistance, plus an additional \$34 million earmark for UNFPA. The UNFPA funds, however, will be reviewed by the Administration later this year to determine if the organization satisfies the terms of the Kemp-Kasten amendment regarding an organizations's involvement in coercive family planning programs.

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. With passage of the Foreign Assistance Act of 1961, Congress first authorized research on international family planning and population issues, and in 1965, the U.S. Agency for International Development (USAID) launched population and reproductive health programs. In 1968, Congress specifically funded family planning aid activities and USAID began to purchase contraceptives for distribution through its programs in the developing world.

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 among low and middle income countries from about a 1.7% per year average, 1980-2000, to a projected annual average of 1.2%, 2000-2015. Fertility rates have fallen in these nations from 4.1 children per woman in 1980 to 2.8 in 2000. 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 manage 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.

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.

More 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. A U.N. report dated December 9, 2003 — “World Population 2300” — projects as a “medium scenario” that world population will peak in 2075 at 9.2 billion and then, as fertility in all countries reach below replacement levels, decline over the next 100 years to 8.3 billion. If fertility rates return to replacement levels, world population would begin to rise, reaching 9 billion by 2300; otherwise, the number of people would remain at around 8.3 billion.

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.

Current Scope of USAID Family Planning Programs

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 a commitment to international family planning programs based on principles of volunteerism and informed

choice that give participants access to information on all major methods of birth control. At present, USAID maintains family planning projects in more than 60 countries that include counseling and services, training of health workers, contraceptive supplies and distribution, financial management, public education and marketing, and biomedical and contraceptive research and development. USAID applies a broad reproductive health approach to its family planning programs, increasingly integrating it with other interventions regarding maternal and child health, the enhancement of the status of women, and HIV prevention and transmission.

Policy and Funding Issues in U.S. Family Planning Debates

In addition to differences of opinion over how population growth affects economic development in developing countries, family 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 non-governmental organizations. Two issues in particular which were initiated in 1984 — the “Mexico City” policy involving funding for foreign 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 USAID support for any foreign organizations (but not national 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 became 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. Legal challenges over the next six years were unsuccessful, thereby upholding the President’s discretionary foreign policy powers to establish different standards for foreign NGOs and institutions.

During the George H.W. 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. 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 FAA 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.”

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 resistance 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.

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. President Clinton immediately exercised the waiver and further instructed USAID to implement Section 599D in a way that would minimize the impact on U.S. funded family planning programs. 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.

Bush Administration Restores the Mexico City Policy. 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, foreign NGOs and international organizations, as a condition for receipt of U.S. federal funds, would need to certify that they would not 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. Other supporters of the certification requirement argue 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 contend, stops the fungibility “loophole.”

Critics charge, however, that the policy is a violation of free speech and the rights of women to choose. They contend that the policy undermines 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. They further believe that family planning organizations cut back on services because they will be unsure of the full implications of the restrictions and do not want to risk losing eligibility for USAID funding. Opponents also believe the conditions undermine relations between the U.S. government and foreign NGOs and multilateral groups, creating a situation in which the United States challenges their right to determine how to spend their own money and imposes a so-called “gag” order on their ability to promote changes to abortion laws and regulations in developing nations. The latter, these critics note, would be unconstitutional if applied to American groups working in the United States.

Bush Administration Mexico City Policy Guidelines. 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.

The implementing regulations contain several exceptions, including:

- 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 is 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.

More recently, the President issued a memorandum on August 29, 2003, for the Secretary of State, directing that the Mexico City policy conditions be applied to State Department programs in the same way they apply to USAID activities. This directive affects most directly State Department-managed refugee programs, large portions of which are implemented by international organizations and NGOs. The President's memorandum, however, stated that the policy would not apply to multilateral organizations that are associations of governments, presumably referring to the U.N. High Commissioner for Refugees, among others. The President further stated that the Mexico City policy would also not apply to foreign aid funds authorized under P.L. 108-25, the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003.

Related Mexico City Policy Issues. The Bush Administration policy to shield foreign assistance from supporting organizations performing or promoting abortions has also shaped recent U.S. policy positions at multilateral fora. In October 2004, international family planning activists sought to commemorate the 10 year anniversary of the Cairo International Conference on Population and Development (ICPD) with a statement endorsing the 1994 recommendations. Although more than 250 global leaders, including 85 current and 22 former heads of state and government from Europe, Asia, and Africa, signed the document, President Bush chose not to add his signature. According to State Department officials, while the United States supports the goals and objectives of the Cairo conference, the U.S.

could not join others in signing the “world leaders” statement because it included the concept of “sexual rights.” This term, these officials said, does not have a consensus definition and was not part of the ICPD platform. Critics, however, note that a year later at the Beijing women’s conference, “sexual rights” was included in the adopted action plan and supported by United States.

More recently, the matter of abortion arose at a March 2005 conference to reaffirm the platform approved at the 1995 Fourth World Conference on Women in Beijing. U.S. senior representative to the conference, Ellen Sauerbrey, said the U.S. delegation supported the conference’s final declaration after clarifying several issues, including the point that other countries did not understand the Beijing Action Plan to constitute support, endorsement, or promotion of abortion. Earlier in the conference, U.S. representatives had expressed concern that a phrase in the Beijing goals supporting a women’s access to reproductive health might be interpreted to mean access to abortion. At one point, the U.S. proposed amending the conference’s document by stating that the declaration did not guarantee the right to abortion.

Funding for UNFPA. (For more detailed information regarding UNFPA, see CRS Report RL32703, *The U.N. Population Fund: Background and the U.S. Funding Debate*.) 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. While the United States continued to support UNFPA during the next eight years (except for FY1999), Congress attached restrictions in appropriation measures that in most cases reduced the U.S. contribution by the amount UNFPA spent in China.

Bush Administration freezes FY2002 UNFPA funding. 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. The White House said it initiated the review because of new evidence that coercive practices continue in counties where UNFPA concentrates its programs. (See House International Relations Committee hearing, *Coercive Population Control in China: New Evidence of Forced Abortion and Forced Sterilization*, October 17, 2001, and a Senate Foreign Relations Committee hearing of February 27, 2002.)

State Department Team Assesses UNFPA Program in China. 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 an investigation team to China for a two-week review of UNFPA programs on May 13, 2002. 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.

The State Department’s assessment team filed its report with Secretary Powell on May 29, making a series of findings and recommendations. Among other findings and conclusions, the team found no evidence that UNFPA “has knowingly supported or participated in the management of a program of coercive abortion or involuntary sterilization” in China, and recommended the United States release not more than \$34 million of previously appropriated funds to UNFPA. (See [<http://www.state.gov/g/prm/rls/rpt/2002/12122.htm>] for report’s full text.)

Nevertheless, on July 22, 2002, Secretary of State Powell, to whom the President had delegated the decision, announced that UNFPA was in violation of Kemp-Kasten and ineligible for U.S. funding. The State Department’s analysis of the Secretary’s determination (see [<http://www.state.gov/g/prm/rls/other/12128.htm>] for the full text) found that even though UNFPA did not “knowingly” support or participate in a coercive practice, that alone would not preclude the application of Kemp-Kasten. Instead, a finding that the recipient of U.S. funds — in this case UNFPA — simply supports or participates in such a program, whether knowingly or unknowingly, would trigger the restriction. The assessment team found that the Chinese government imposes fines and penalties on families (“social compensation fees”) that have children exceeding the number approved by the government. The Department further noted that UNFPA had funded computers and data-processing equipment that had helped strengthen the management of the Chinese State Family Planning Commission. Beyond the legitimate uses of these and other items financed by UNFPA, such equipment facilitated, in the view of the State Department, China’s ability to impose social compensation fees or perform abortions on those women coerced to have abortions they would not otherwise undergo. The State Department analysis concluded that UNFPA’s

involvement in China's family planning program "allows the Chinese government to implement more effectively its program of coercive abortion."

Critics of the Administration's decision opposed it for a number of reasons, including the loss of \$34 million, an amount that represented about 9% of UNFPA income in 2001. They argued that access to voluntary family planning programs by persons in around 140 countries would be reduced, undermining the health of women and children, preventing unwanted pregnancies, and increasing the likelihood of higher numbers of abortions. Still other critics were concerned about the possible application of the Administration's interpretation of Kemp-Kasten for other international organizations that operate in China and to which the U.S. contributes — for example, UNICEF, the World Health Organization, and the U.N. Development Program.

Since the July 2002 determination, the Administration has transferred \$34 million from each of FY2002 and FY2004 appropriations and \$25 million from FY2003 funds that would have otherwise been provided to UNFPA to support bilateral family planning programs and activities combating human trafficking and prostitution. In its most recent determination of July 16, 2004, the State Department said that the United States had been urging UNFPA and China to modify the organization's program in a manner that would permit U.S. support to resume, but that no key changes had occurred that would permit a resumption of U.S. funding under the conditions of the Kemp-Kasten provision.

Also related to the July 2002 decision regarding UNFPA, on August 6, 2003, the State Department decided that it would only fund a \$1 million HIV/AIDS program supporting African and Asian refugees if the implementing NGO group — Reproductive Health for Refugees Consortium — did not include Marie Stopes International among its members. Marie Stopes International is a British-based reproductive health organization that is also a major implementing partner of UNFPA in China. The State Department, while not making a legal determination under the Kemp-Kasten amendment, felt that an action not to fund Marie Stopes International would be an "approach most consistent with U.S. policy." (*Details for Funding the Reproductive Health Consortium (Taken Question)*, Office of the State Department's Spokesman, August 27, 2003.) On August 11, however, the Consortium declined to accept the \$1 million grant due to the exclusion of Marie Stopes International.

In another related decision, the Administration notified the Global Health Council in April 2004 that the U.S. government would not provide funding for the Council's 31st annual meeting in June 2004 because UNFPA would be a participant. Reportedly, U.S. officials have told representatives of international organizations and NGOs that UNICEF, WHO, and other organizations that continue involvement in joint programs with UNFPA might jeopardize their funding support from the United States. (Christopher Marquis. U.S. is Accused of Trying to Isolate U.N. Population Unit. *New York Times*, June 21, 2004.)

Family Planning Conditions in China. As noted, much of this debate has focused on UNFPA'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.)

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 became 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.

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.

On September 1, 2002, China adopted the Population and Family Planning Law, the country's first formal law on this subject. The law, which requires couples who have an unapproved child to pay a "social compensation fee" and extends preferential treatment to couples who abide by the birth limits, is intended to standardize the implementation of the Government's birth limitation policies. The State Department's Human Rights Report for 2004 (dated February 2005), however, found that enforcement of the law varied by location. While the law says that officials should not violate citizens' rights, it does not define those rights or the penalties for violating them.

The broad question concerning the degree of coercive family planning practices in China remains a controversial matter. The State Department's human rights report concluded that "Central Government policy formally prohibits the use of physical coercion to compel persons to submit to abortion or sterilization. Because it is illegal, the use of physical coercion was difficult to document. A few cases were reported during the year [2004]... However, the Government does not consider social compensation fees and other administrative punishments to be coercive." Chinese officials acknowledge past instances of forced abortion and involuntary sterilizations, but say this is no longer the case and characterize the social compensation fees as not coercive, but a "disincentive" or "necessary form of economic restraint." (State Department Assessment Team Report, May 29, 2002.)

Following the May 2002 State Department investigation of Chinese policies, senior Department officials began a series of discussions with China regarding its birth planning law. Arthur Dewey, Assistant Secretary of State for Population, Refugees, and Migration, told the House International Relations Committee on December 14, 2004, that in six rounds

of talks with Chinese officials, there has been “encouraging movement” in China’s approach to population policy and the reduction of coercive practices. He cited, for example, the elimination of a requirement for married couples to obtain government permission prior to pregnancy in 25 of China’s 31 provinces, municipalities, and autonomous regions. He also noted the government’s launch of a public information project highlighting the status of the girl child. This he regarded as a positive step towards ending discrimination in China against girls and women. Nevertheless, Assistant Secretary Dewey said that the social compensation fee policy set out in China’s national law on Population and Birth Planning is a “harsh and effective enforcement tool” that is used to force women to have an abortion, and is therefore regarded as a coercive policy. While negotiations have resulted in some progress, he concluded that China’s policies have not been altered enough that would allow the Bush Administration to resume UNFPA funding.

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. 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 for the FY1996 budget cycle, family planning policy and budget issues became, and have continued to be, one of the most contentious foreign aid matter considered by Congress. During the balance of the Clinton Administration, Congress cut and placed restrictions on bilateral funding. Amounts fell to \$356 million in FY1996, but have grown steadily since to reach \$441 million in FY2005.

Table 1. Population Assistance, FY1994-2006
(appropriations of millions of \$s)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Bilateral Aid	485.1	541.6	356.0	385.0	385.0	385.0	372.5 ^a	425.0	480.5 ^b	446.5	432.0	441.0	425.0
UNFPA	40.0	35.0	22.8	25.0	20.0	0.0	21.5 ^a	21.5 ^a	0.0 ^b	0.0 ^c	0.0 ^d	34.0 ^e	^f
Total	525.1	576.6	378.8	410.0	405.0	385.0	394.0	446.5	480.5	446.5	432.0	475.0	425.0

Source: USAID/Office of Population.

- a. The bilateral FY2000 aid level reflects a transfer of \$12.5 million from population assistance to child survival activities. UNFPA amounts for FY2000 and FY2001 reflect a \$3.5 million deduction due to legislative restrictions.
- b. Congress appropriated “not more than” \$34 million for UNFPA in FY2002, but the State Department determined that UNFPA supported coercive family planning programs in China, thereby making the organization ineligible for U.S. contributions. The enacted FY2004 Foreign Operations measure provides that the FY2002 UNFPA funds are available for bilateral family planning programs in selected countries. The bilateral population aid total includes both the regular \$446.5 million appropriation, plus the \$34 million withheld from UNFPA.

- c. For FY2003, the Administration again determined that UNFPA was ineligible for U.S. funding because of programs in China, and withheld \$25 million. The enacted FY2004 Foreign Operations measure provided that these funds be transferred to support vulnerable children and trafficking in persons programs.
- d. A July 16, 2004 State Department determination said that UNFPA was not eligible for the FY2004 \$34 million appropriation due to "Kemp-Kasten" restrictions. Congress directed that the funds be used for programs combating human trafficking and for bilateral family planning and maternal and reproductive health activities.
- e. FY2005 are subject to a "Kemp-Kasten" determination, likely to be made mid-2005.
- f. According to Administration officials, if UNFPA is eligible to receive U.S. funds in FY2006, the money would be drawn from the \$425 million available for bilateral family planning programs.

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. A more recent analysis suggests a more promising trend, noting that donor nations contributed \$2.3 billion in 2002, the largest amount ever. It cautioned, however, that donor allocations still fall far below the targets set at Cairo. (Population Action International, *Progress and Promises: Trends in International Assistance for Reproductive Health and Population*, 2004.)

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. 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.

Current International Family Planning Issues and Legislation

Foreign Operations Appropriations, FY2006

The President's FY2006 Foreign Operations request for bilateral family planning assistance totals \$425 million, a reduction of \$16 million, or 3.6%, from the FY2005 enacted level. But unlike recent years, the budget proposal does not set aside a "reserve" for UNFPA if the organization is determined to be eligible for U.S. support under the terms of the Kemp-Kasten conditions. During the first four years of the Bush Administration, funding for UNFPA has been included in the International Organizations and Programs account of the Foreign Operations spending measure. For FY2006, however, USAID officials say that should UNFPA comply with the Kemp-Kasten restrictions, a \$25 million contribution would be drawn from the \$425 million family planning request proposed under the Child Survival and Health account. Since unused UNFPA funds in the past have been transferred to the Child Survival and Health account for family planning and related women's programs, the net effect of the \$425 million FY2006 request and the account reconfiguration is a reduction of \$50 million, or 10.5% less for population aid and related reproductive health assistance.

Emergency Supplemental Appropriations for FY2005

During debate on H.R. 1268, an \$81.9 billion request for supplemental spending mainly for military operations in Iraq and Afghanistan, the House adopted by voice vote an amendment offered by Representative Maloney that increased funding for humanitarian assistance to tsunami victims by \$3 million. Although not directly stated in the text of the amendment, supporters of the amendment said it was their intent to provide \$3 million for a U.S. contribution to the U.N. Population Fund (UNFPA) related to organization's work in tsunami-affected countries. In order to provide maternal and child health care in Indonesia, the Maldives, and Sri Lanka, UNFPA issued a \$28 million "flash appeal." Other Members note, however, that the text of the amendment does not direct the Administration to use the \$3 million as a UNFPA contribution, but only to supplement the Tsunami Recovery and Reconstruction Fund. For this reason, the amendment was not opposed by some lawmakers that do not support U.S. contributions for UNFPA.

In the Senate, Senator Clinton introduced an amendment to H.R. 1268 (H.Amdt. 504) earmarking \$3 million for UNFPA in order to assist tsunami victims in Sri Lanka, Indonesia, and the Maldives. Senator Clinton did not offer her amendment, and the enacted measure (P.L. 108-13) reduces tsunami relief aid by \$3 million below the House-passed level. With no directive included in the final bill or issued in the conference report, the Administration is under no obligation to provide any funds to UNFPA approved in H.R. 1268.

Foreign Affairs Authorization Act, FY2006/2007

On April 5, the Senate adopted (52-46) an amendment by Senator Boxer to S. 600 that would effectively reject the President's Mexico City policy. The Boxer amendment states that foreign NGOs shall not be ineligible for U.S. funds solely on the basis of health or medical services they provide (including counseling and referral services) with non-U.S.

government funds. This exemption would apply so long as the services did not violate the laws of the country in which they are performed and that they would not violate U.S. laws if provided in the United States. The amendment further provides that non-U.S. government funds used by foreign NGOs for advocacy and lobbying activities shall be subject to conditions that also apply to U.S. NGOs. Since it is largely held that American NGOs would not be subject to these restrictions under the Constitutional protection of free speech, it is possible that this latter exemption would lift current prohibitions that apply to overseas NGOs. The Boxer amendment is virtually identical to language approved by the Senate during the 108th Congress (amendment to S. 925) that the White House said would prompt a veto by the President if included in the final bill. S. 925 was not enacted.

LEGISLATION

H.R. 1011 (Maloney)

Women, Children, and Infant Tsunami Victim Relief Act of 2005. Authorizes \$3 million be made available to UNFPA to assist tsunami victims in Indonesia, the Maldives, and Sri Lanka. Introduced on March 1, 2005, and referred to the House Committee on International Relations.

S. 600 (Lugar)

Foreign Affairs Authorization Act, FY2006/2007. Authorizes State Department and foreign aid programs for FY2006/2007. Reported by the Senate Foreign Relations Committee March 10, 2005 (S.Rept. 109-35). On April 5, the Senate approved (52-46) an amendment by Senator Boxer that effectively overturns the President's Mexico City policy relating to abortion and international family planning.