

CRS Report for Congress

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International Population Assistance and Family Planning Programs: Issues for Congress

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International 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President Clinton resumed UNFPA funding and repealed the Mexico City policy in 1993. President George W. Bush, however, re-applied 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 management of coercive family planning programs. The suspension of U.S. contributions to UNFPA has continued through FY2005.

In his FY2006 Foreign Operations budget request, the President proposed \$425 million for family planning programs, which included \$25 million for UNFPA should the organization be eligible under the Kemp-Kasten provision. The final conference text (H.R. 3057/P.L. 109-102) adopted \$440 million for bilateral family planning programs. Conferees also approved a total of \$34 million for UNFPA, if the organization is found eligible, \$11.5 million of which would be drawn from the \$440 million for bilateral programs. The enacted appropriation dropped Senate modifications to Kemp-Kasten and the Mexico City policy and retained existing restrictions.

For the first time during the Bush Administration, the FY2007 budget includes less for family planning programs than the traditional \$425 million request. The proposal includes about \$357 million for family planning/reproductive health activities, an amount from which any UNFPA transfer would be drawn if the organization is determined eligible under the Kemp-Kasten restrictions.

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 not received a final vote in the Senate. The House version, H.R. 2601, made no similar changes. This report will be updated.

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Most Recent Developments

On February 6, 2006, the Administration submitted to Congress the FY2007 budget request, including funds proposed for family planning/reproductive health programs. The approximate \$357 million request marks the first time during the Bush Administration that the President has sought less than \$425 million for international family planning activities. The White House had said in January 2001 that although President Bush decided to impose abortion-related restrictions on U.S.-funded programs (Mexico City policy), the “President is committed to maintaining the \$425 million funding level.” If the U.N. Population Fund becomes eligible for U.S. support — it has been declared ineligible since FY2001 — presumably an American contribution of around \$25 million would be drawn from the \$357 million FY2007 request. In previous years, with the exception of FY2006, the Bush Administration has proposed \$25 million for UNFPA, an amount that was in addition to the \$425 million for bilateral programs.

On November 14, 2005, the President signed the FY2006 Foreign Operations Appropriations Act (H.R. 3057/P.L. 109-102). The spending measure included \$440 million for bilateral population assistance activities. The enacted measure further earmarked \$34 million as a U.S. contribution to UNFPA, \$11.5 million of which would be drawn from the \$440 million total for bilateral programs and \$22.5 million would come from the International Organizations and Programs account. The Administration had requested \$425 million for total bilateral and UNFPA funding, while the Senate recommended \$450 million for bilateral programs and a \$35 million UNFPA contribution. Conferees further deleted text approved by the Senate that would have modified restrictions (“Kemp-Kasten” conditions) on funding for UNFPA and would have effectively overturned the Mexico City policy related to abortion. The White House indicated the President would veto H.R. 3057 if the final bill included the Senate-proposed policy changes.

On September 17, 2005, the State Department announced that the United States, for the fourth consecutive year, would withhold its voluntary contribution to UNFPA because the organization did not comply with the Kemp-Kasten restrictions. This provision, enacted annually in Foreign Operations appropriation bills since 1985, bans U.S. support for organizations involved in the management of a coercive family planning program. UNFPA maintains activities in China where there is strong evidence of coercive practices. The State Department said that it would consider future funding for UNFPA if the organization altered its programs in China or if China terminated its practice of coercive abortion.

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 (IPPF), 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 developing countries from about a 1.7% per year average, 1980-2002, to a projected annual average of 1.2%, 2002-2015. Fertility rates have fallen in these nations from 4.1 children per woman in 1980 to 3.0 in 2005 (if China is excluded from this calculation, however, the decline in fertility rates is less dramatic at 3.5 in 2005). Nevertheless, while global population growth has slowed, the world's population reached 6 billion in 1999, 6.5 billion in 2005, and is expected to rise to 9.3 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; in 2005 the level had grown to 81%, and these countries now account for 99% of world-wide population growth.¹

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 active 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 active 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 added

¹ Population Reference Bureau, *Frequently Asked Questions About the PRB World Population Data Sheet*, 2005)

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. At the 1974 international population conference, the United States and other donor countries asserted that high fertility rates were an impediment to economic development — a point 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, some participants reversed their positions. Many 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 U.S. provisions announced 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.² 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

² See, for example, “Population Estimates Fall as Poor Women Assert Control,” *New York Times*, March 10, 2002.

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. The report projected that 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.

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

Throughout the debate on family planning — at times the most contentious foreign aid 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.

In addition to differences of opinion over how population growth affects economic development in developing countries, family planning assistance has become a source of substantial controversy among U.S. policymakers on two other issues: 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. family planning policy have erupted over abortion — in particular, the degree to which abortions and coercive 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 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 provisions 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.³ 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." 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.

³ For a more detailed discussion of the original Mexico City policy, its implementation, and impact, see CRS Report RL30830, *International Family Planning: The "Mexico City" Policy*, by Larry Nowels.

Mexico City Policy Removed. President Clinton, in a January 22, 1993 memo to USAID, lifted restrictions imposed by the Reagan and Bush Administrations on grants to family planning NGOs — in effect repealing the Mexico City policy. The memo noted that the policy had extended beyond restrictions in the Foreign Assistance Act and was not mandated by law. In his remarks, President Clinton explained that this step would “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, the President could waive the certification requirement for up to \$15 million in grants to groups that would otherwise be ineligible. President Clinton 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. Nine organizations refused to certify under the terms of P.L. 106-113, including two of the largest recipients of USAID population aid grants — IPPF and the World Health Organization (WHO). These nine non-certifying organizations received about \$8.4 million in FY2000 grants, of which IPPF accounted for \$5 million and WHO roughly \$2.5 million. These conditions, enacted in an appropriation act, expired at the end of FY2000.

Bush Administration Restores the Mexico City Policy. President George W. Bush, revoked the Clinton Administration memorandum and restored in full the terms of the Mexico City restrictions. In making the announcement on January 22, 2001, the White House Press Secretary said that the “President is committed to maintaining the \$425 million funding level provided in the FY2001 appropriation because he knows that one of the best ways to prevent abortion is by providing quality voluntary family planning services.”⁴

As was the case during the 1980s and early 1990s when the Mexico City policy was in place, foreign NGOs and international organizations, as a condition for receipt of U.S. 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 not be used to pay for abortions or to advocate or actively promote abortion. 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

⁴ The White House. Office of the Secretary. *Restoration of the Mexico City Policy*, January 22, 2001.

American-taxpayer funding can 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 are 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 the following:

- Abortions may be performed if the life of the mother would be endangered if the fetus were carried to term or 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 are 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.

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 prevent foreign assistance from supporting organizations performing or promoting abortions has also shaped other 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 1995 Beijing women's conference, "sexual rights" was included in the adopted action plan and supported by United States.

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 only after several issues were clarified. 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.⁵ 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.

Subsequently, Congress legislated a more restrictive UNFPA policy — aimed at coercive Chinese family planning programs and UNFPA's continuing operations

⁵ For more detailed information regarding UNFPA, see CRS Report RL32703, *The U.N. Population Fund: Background and the U.S. Funding Debate*, by Larry Nowels.

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 the U.S. to support them. 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.

The Clinton Administration lifted the ban on UNFPA contributions, making available \$14.5 million in FY1993 but stipulating that funds could not be used in China. Again, congressional critics of Chinese family planning practices attempted unsuccessfully to attach provisions 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 continued in counties where UNFPA concentrated its programs.⁶

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, a State Department investigative team visited China in May 2002 and reported a series of findings and recommendations. Among them, the team found no evidence that UNFPA “has knowingly supported or participated in the management of a program of coercive

⁶ 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.

abortion or involuntary sterilization” in China, and recommended the United States release not more than \$34 million of previously appropriated funds to UNFPA.⁷

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 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.⁸ 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 imposed 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, increasing 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, WHO, and the U.N. Development Program. Since the July 2002 determination, the Administration has transferred \$34 million from each of FY2002, FY2004, and FY2005 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 September 17, 2005, 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 allow a resumption of U.S. funding under the conditions of the Kemp-Kasten provision. Subsequently, on October 18, USAID notified Congress that the reprogrammed UNFPA set-aside would be made available to expand family planning and reproductive health programs in 14 countries. The most significant increases come in programs for Georgia, Madagascar, Romania, Russia, Rwanda, and Ukraine.

⁷ See [<http://www.state.gov/g/prm/rls/rpt/2002/12122.htm>] for report’s full text.

⁸ See [<http://www.state.gov/g/prm/rls/other/12128.htm>] for the full text.

The September 17 announcement followed a June 22, 2005 UNFPA Executive Board meeting to consider UNFPA's new five-year, \$27 million program for China, where Kelly Ryan, Deputy Assistant Secretary of State for the Bureau of Population, Refugees and Migration, argued that UNFPA should end its operations in China because of the coercive nature of China's family planning programs. Two days later, State Department spokesman, Sean McCormick, issued a statement saying the United States was "disappointed" that UNFPA had decided to continue financial and technical support to the Chinese birth limitation program. His statement noted that U.S. opposition was not aimed at UNFPA but was a "matter of principle, based on strong American opposition to "human rights abuses associated with coercive birth limitation regimes." He acknowledged that UNFPA does not approve of coercive policies but that the organization's continued presence in China offered a "seal of approval" for Chinese policies.

Also related to the July 2002 decision regarding UNFPA, on August 6, 2003, the State Department decided that it would fund a \$1 million HIV/AIDS program supporting African and Asian refugees only 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 at the time was 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."⁹ 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 told representatives of international organizations and NGOs that UNICEF, WHO, and other organizations that continued involvement in joint programs with UNFPA might jeopardize their funding support from the United States.¹⁰

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.)

⁹ *Details for Funding the Reproductive Health Consortium (Taken Question)*, Office of the State Department's Spokesman, August 27, 2003.

¹⁰ Christopher Marquis, "U.S. is Accused of Trying to Isolate U.N. Population Unit," *New York Times*, June 21, 2004.

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. Chinese 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 a new \$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 Country Reports on Human Rights Practices 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."¹¹

Recent attention has focused on reports documenting a campaign by local family planning officials around the city of Linyi in Shandong Province to force couples with two children to undergo sterilizations or to demand women pregnant with a third

¹¹ U.S. Department of State, Assessment Team Report, May 29, 2002.

child have an abortion. Local activists are pursuing a class-action lawsuit against the government. The group's leader, Chen Guangcheng, has been under house arrest since filing the case in September 2005. In mid-September, China's National Population and Family Planning Commission acknowledged that illegal coercive practices had occurred, and that responsible officials had been dismissed and that some had been detained.¹²

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 had 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 to allow the Bush Administration to resume UNFPA funding.

As noted above, U.S. officials continued to voice their opposition at a UNFPA executive board meeting on June 22, 2005, where members met to consider a new, five-year (2006-2010), \$27 million UNFPA program in China. A State Department release on June 24 again acknowledged that China had made some progress in its approach to population issues, but argued that Beijing's birth limitation policy continues to contain several coercive elements, including the social maintenance fee for out of plan births and regulations that limit choices by women other than to undergo an abortion. At the June 22 meeting, China's deputy U.N. ambassador Zhang Yishan argued that due to the size of China's population, it had to maintain a strong family planning program, and that without the policies of the last 30 years, China's population would have grown by 300 million additional people. He countered that, by law, family planning workers are not permitted to utilize coercive measures in their work.

The UNFPA Executive Board approved the new five-year program for China on January 30, 2006. Prior to the signing, U.S. Deputy Representative to the United Nations, Ambassador Alejandro Wolff, expressed disappointment that no substantive

¹² Benjamin Kang Lim, "Blind China Activist Under House Arrest Since September," *Reuters*, January 6, 2006; Philip Pan, "Who Controls the Family? Blind Activist Leads Peasants in Legal Challenge to Abuses of China's Population Growth Policy," *Washington Post*, August 27, 2005; and "China Terse About Action on Abuses of One-Child Policy," *Washington Post*, September 20, 2005.

changes had been made to the draft plan that had been reviewed in mid-2005. He argued that UNFPA assistance provided a “de facto United Nations ‘seal of approval’” to Chinese “abhorrent” practices. He further asserted that the new Country Program Document for China was incorrect in its claim that China was committed to implementing the Cairo Population Conference action plan, a program that excluded coercive practices in family planning activities.¹³ A group of ten European nations disagreed, however, issuing a statement saying that China did conform to the program of 1994 International Conference on Population and Development.¹⁴

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. Appropriations peaked in FY1995 at \$577 million.

During the balance of the Clinton Administration, however, Congress cut and placed restrictions on bilateral funding. Amounts for bilateral programs fell to \$356 million in FY1996, but grew steadily to \$425 million by FY2001. When President Bush took office in January 2001, the White House said that it would maintain the \$425 million funding level of the previous Administration. While budgets submitted by President Bush adhered to the \$425 million target through FY2006, in every year Congress increased funding levels, as shown in **Table 1**. Bilateral funds reached their highest totals since the mid-1990s in FY2002 and FY2003 at \$446.5 million, but fell back somewhat more recently. In some years beginning in FY2002, bilateral family planning levels have received additional resources when UNFPA-earmarked funds were reprogrammed for bilateral activities after UNFPA was determined to be ineligible for U.S. support.

For FY2007, the Administration proposes a \$357 million family planning/reproductive health program budget, marking the first time during the Bush Administration that the President has sought less than \$425 million for international family planning activities. As noted above, the White House had said in January 2001 that although President Bush decided to impose abortion-related restrictions on U.S.-funded programs (Mexico City policy), the President was committed to maintaining a \$425 million funding level. Moreover, if UNFPA becomes eligible for U.S. support, presumably an American contribution of around \$25 million would be drawn from \$357 million FY2007 request. This would further reduce amounts available for bilateral family planning activities. In previous years, with the

¹³ U.S. Mission to the United Nations. *Ambassador Wolff: Remarks on Proposed UNFPA Sixth Country Program for China*, January 26, 2006.

¹⁴ *UN Population Fund Endorses 27-million-dollar China Program*. Agence France, January 30, 2006.

exception of FY2006, the Bush Administration has proposed \$25 million for UNFPA, an amount that was in addition to the \$425 million for bilateral programs.

Table 1. U.S. Population Assistance, FY1994-2007
(appropriations of millions of \$)

	1994	1995	1996	1997	1998	1999	2000	2001	2002 ^c	2003 ^c	2004 ^c	2005 ^c	2006	2007
Bilateral Aid	485.1	541.6	356.0	385.0	385.0	385.0	372.5 ^a	425.0	480.5	446.5	432.0	466.0	435.6	357.0
UNFPA	40.0	35.0	22.8	25.0	20.0	0.0	21.5 ^b	21.5 ^b	0.0	0.0	0.0	0.0	33.7	^e
Total	525.1	576.6	378.8	410.0	405.0	385.0	394.0	446.5	480.5	446.5	432.0	466.0	457.9^d	357.0

Source: USAID/Office of Population and CRS calculations.

- a. The bilateral FY2000 aid level reflects a transfer of \$12.5 million from population assistance to child survival activities.
- b. UNFPA amounts for FY2000 and FY2001 reflect a \$3.5 million deduction due to legislative restrictions.
- c. In each of FY2002-FY2005, the Administration determined that UNFPA was ineligible for U.S. funding because of programs in China, and withheld appropriated funds. The withheld funds were reallocated for USAID bilateral family planning, vulnerable children, and counter-trafficking in persons programs. The total for FY2002 includes both the regular \$446.5 million appropriation, plus the \$34 million withheld from UNFPA and transferred to family planning activities. Totals for FY2003 and FY2004 represent the amount earmarked for bilateral family planning programs, but do not include \$25 million and \$34 million, respectively, of redirected UNFPA funds which were transferred to support vulnerable children and trafficking in persons programs. The FY2005 amount includes \$441 million earmarked for bilateral family planning programs, plus \$25 million that was redirected from UNFPA contributions earmarked under the International Organizations and Programs account.
- d. Amounts in FY2006 for bilateral programs and UNFPA do not add because part (\$11.4 million) of the UNFPA contribution will be drawn from bilateral funding if UNFPA is eligible for U.S. support. The \$457.9 million total is the maximum amount of funding available in FY2006 for bilateral programs and UNFPA combined. Figures are further reduced by the 1% rescission required by P.L. 109-148.
- e. Any UNFPA contribution for FY2007 is included in the bilateral family planning request.

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 different 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.¹⁵ Similarly, UNFPA announced in January 2006 that the number of donors to its program had increased from 166 in 2004 to 171 in 2005. The amount promised from donors reached a record at \$350 million in 2005.¹⁶

¹⁵ Population Action International, *Progress and Promises: Trends in International Assistance for Reproductive Health and Population*, 2004.

¹⁶ "Record Number of Countries Contributed to UNFPA in 2005," *US FedNews*, January 5, 2006.

International Family Planning Legislation

Foreign Operations Appropriations, FY2006

The President's FY2006 Foreign Operations request for bilateral family planning assistance totaled \$425 million, a reduction of \$16 million, or 3.6%, from the FY2005 enacted level. But unlike recent years, the budget proposal did 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 had been included in the International Organizations and Programs account of the Foreign Operations spending measure. For FY2006, however, USAID officials said 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 was a reduction of \$50 million than FY2005 enacted levels, or 10.5% less for population aid and related reproductive health assistance.

As passed by the House, the FY2006 Foreign Operations bill (H.R. 3057) provided \$432 million for bilateral family planning aid and \$34 million for UNFPA. Of the UNFPA allocation, \$9 million could be drawn from the \$432 million earmark making \$457 million the maximum amount available in the bill for international family planning. The \$457 million total compared with the Administration's request of \$425 million. The House recommendation, however, continued all existing restrictions on such funds, including the Kemp-Kasten provision that resulted in no funds for UNFPA since FY2001. In the event that UNFPA was found to be ineligible for U.S. support in FY2006, the House measure required that the funds be used by USAID for bilateral family planning programs.

In the Senate, the State, Foreign Operations spending measure (also H.R. 3057; S.Rept. 109-96; passed on July 20), provided somewhat higher funding levels than the House — \$450 million for USAID bilateral programs and a \$35 million UNFPA contribution. Since \$15 million of the UNFPA contribution could be drawn from the \$450 million earmark, the net total for international family planning was \$470 million. UNFPA funds had to be kept in a separate account by the organization, could not be spent in China, and could not be used to fund abortions. If the Administration found UNFPA ineligible for U.S. support, the Senate measure directed that funds drawn from the International Organizations and Programs account (\$20 million) would be transferred to USAID for additional bilateral family planning activities. Under the terms of a floor amendment by Senators Leahy, Clinton, and others, UNFPA funds would be available for six specific activities:

- safe child birth and emergency obstetric care;
- obstetric fistula treatment and care;
- contraceptive supplies for preventing pregnancies and sexually transmitted diseases, including AIDS;

- restoration of maternal health care in locations hit by natural disasters;
- elimination of female genital mutilation; and
- access by unaccompanied women and other vulnerable individuals to vital services.

H.R. 3057, as passed the Senate, further included modified Kemp-Kasten language that appeared to narrow the terms under which UNFPA could be declared ineligible for U.S. funding. The Senate language stated that an organization could not receive funds if it “directly” supported coercive abortion or involuntary sterilization. The term “directly” is not part of the Kemp-Kasten restriction. The Senate measure further stated that an organization could not be found in violation of this condition only because the government of a country in which the organization operates conducted coercive practices. This would have represented a new exception to past applications of the Kemp-Kasten language.

The Senate bill also added a provision similar to what the Senate had passed earlier during debate on S. 600 (see below) that would effectively overturn the President’s Mexico City policy restrictions. The text in H.R. 3057, as passed by the Senate, stated 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 provision further provided that non-U.S. government funds used by foreign NGOs for advocacy and lobbying activities would 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 have lifted current prohibitions that apply to overseas NGOs.

The conference agreement on H.R. 3057, adopted by the House on November 4, and the Senate on November 10, dropped Senate-passed language modifying the Mexico City and Kemp-Kasten restrictions, leaving current policy in place. On funding questions, conferees approved \$440 million for bilateral family planning programs and \$34 million for UNFPA if the organization is eligible under the terms of Kemp-Kasten.¹⁷ If found ineligible, the conference agreement stated that UNFPA funds would become available for bilateral family planning activities. Conferees did not include the Leahy/Clinton amendment setting out specific activities for which UNFPA contributions could be provided.

¹⁷ Of the \$34 million total for UNFPA, \$11.5 million could be drawn from the \$440 million earmark for bilateral programs. Thus, the maximum amount in the conference agreement for international family planning programs was \$462.5 million. A further requirement to apply a 1% across-the-board rescission of Federal spending reduced this total figure to \$457.9 million.

Science, State, Justice, and Commerce Appropriations, FY2006

Although the Science, State, Justice, Commerce (SSJC) appropriation measure does not contain funds for international family planning programs or UNFPA contributions, State Department offices that oversee broad U.S. population policy and manage U.S. voluntary contributions to international organizations, including UNFPA, are funded in the SSJC bill. During House debate on the FY2006 SSJC spending measure (H.R. 2862), Representatives Maloney, Shays, Crowley, and Israel proposed an amendment that would block the State Department from using funds provided in H.R. 2862 to enforce any provision of law that restricts or prohibits funding for UNFPA. The affect of the amendment would be to bar the enforcement of the Kemp-Kasten restriction that is part of the Foreign Operations appropriation measure. The House defeated the Maloney amendment, however, on June 16 by a vote of 192-233.

Emergency Supplemental Appropriations, 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 UNFPA's work in tsunami-affected countries. Other Members noted, however, that the text of the amendment did 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 who do not support U.S. contributions for UNFPA. The enacted measure (P.L. 108-13) reduced tsunami relief aid by \$3 million below the House-passed level and did not direct the Administration to provide any funds to UNFPA.

Foreign Affairs Authorization Act, FY2006/2007

On April 5, 2005, the Senate adopted (52-46) an amendment by Senator Boxer to S. 600 that would appear to effectively reject the Mexico City policy. See above under the Senate-reported version of H.R. 3057 for discussion of the terms of the amendment. The Senate suspended consideration of S. 600 and has not brought the bill back for further debate.

In the House, the companion bill, H.R. 2601, includes a provision creating 12 centers for the treatment and prevention of obstetric fistula in developing nations. Obstetric fistula, which affects an estimated two million women mainly in Africa, occurs primarily from a prolonged labor that results in a hole or rupture in tissues between the vagina and bladder (and at times the rectum). Women with this condition are stigmatized and often shunned by their family and community. It is especially common in girls aged 15-19 whose bodies are not fully developed for child birth and in girls and women suffering from malnutrition.

This provision, as reported by the House International Relations Committee, specified that to the maximum extent possible, each center would perform certain services, including surgical repair and post-surgery support, educational activities to prevent incidents of fistula, and expanded access to contraceptive services for the prevention of pregnancies among women who were at high risk for a prolonged or obstructed child birth. During floor debate, Representative Smith (N.J.) proposed an amendment that deleted the requirement for each center to expand contraceptive services for high-risk women, and added a new activity requiring centers to broaden “abstinence education, postponement of marriage and child-bearing until after teenage years, and activities to expand access to family planning services” for women in a high-risk category. Prevention activities, as revised in the amendment, would be provided at the discretion of the centers.

In support of his amendment, Congressman Smith argued that the changes would allow faith-based hospitals to perform the required activities, something that would not have occurred under the committee-reported language because of opposition of faith-based facilities to providing contraceptive services. He further stated that the amendment’s reference to “family planning services” would include contraception. Opponents of the amendment, however, charged that the revised text “gutted” the prevention aspect of the obstetric fistula centers by making these activities discretionary rather than mandatory as in the original text. They contend that the most effective method to reduce the incidents of obstetric fistula is to ensure that young girls and high-risk women do not get pregnant. The House adopted the Smith amendment on a 223-205 vote.

Other Pending Legislation — 109th Congress

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. Introduced on March 1, 2005, and referred to the House Committee on International Relations.

H.R. 2811 (Maloney). Repairing Young Women’s Lives Around the World Act. Authorizes, “notwithstanding” any provision of law, \$34 million in FY2006 and each subsequent fiscal year as a U.S. contribution to UNFPA only for prevention and repair of obstetric fistula. Introduced on June 8, 2005; referred to the House International Relations Committee.

H.R. 4188 (McCollum). Focus on Family Health Worldwide Act of 2005. Authorizes a series of activities aimed at improving voluntary family planning programs in developing countries, and to increase funding authorizations from \$600 million in FY2007 to \$1 billion by FY2011. Introduced on November 1, 2005, and referred to the House International Relations Committee

H.R. 4465 (Lowey). Global Democracy Promotion Act. Prohibits the application of restrictive eligibility requirements on foreign non-governmental organizations that provide development and humanitarian assistance.