

# CRS Issue Brief for Congress

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## **Population Assistance and Family Planning Programs: Issues for Congress**

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## Population Assistance and Family Planning Programs: Issues for Congress

### SUMMARY

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

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

The “Mexico City policy” further denied U.S. funds to foreign non-governmental organizations (NGOs) that perform or promote abortion as a method of family planning, regardless of whether the 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 coercion has been used.

President Clinton repealed Mexico City policy restrictions and resumed UNFPA funding.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

After delaying the transfer of \$34 million appropriated by Congress in FY2002 for

UNFPA and reviewing the organization’s program in China, Secretary of State Powell announced on July 22, 2002, that UNFPA was in violation 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.

For FY2003, the President proposed no UNFPA funding, although there was a “reserve” of \$25 million that could be used if the White House determines that UNFPA is eligible for U.S. support. The Administration further requested \$425 million for bilateral family planning programs, a reduction from the \$446.5 million provided in FY2002.

H.J.Res. 2, the Consolidated Appropriation for FY2003, passed Congress in February 2003, providing \$446.5 million for bilateral population aid and \$34 million to UNFPA. UNFPA funds are subject to several conditions, including a requirement that the President certify that the organization is no longer involved in the management of a coercive family planning program.

For FY2004 the Administration seeks \$425 million in bilateral family planning funds and sets aside \$25 million in a reserve account for UNFPA if the organization becomes eligible for U.S. support.

The House deleted a committee amendment to H.R. 1950 on July 15 that would have authorized \$50 million for UNFPA in FY2004 and FY2005, and revised current law in a way that may have made it more difficult to deny U.S. contributions to UNFPA.

## **MOST RECENT DEVELOPMENTS**

On July 15, 2003, the House voted 216-211 to delete a UNFPA provision added by the International Relations Committee to the FY2004/2005 State Department Authorization bill (H.R. 1950). During committee markup, the House panel had added an amendment by Congressman Crowley (23-22) authorizing a \$50 million U.S. contribution for each of the two years to UNFPA. UNFPA was denied American support in FY2002 when the Secretary of State determined that the organization's activities in China violated the Kemp-Kasten amendment barring U.S. aid to groups that support or participate in the management of a program of coercive abortion or involuntary sterilization. The executive branch has not made a decision on FY2003 UNFPA funding; in order to transfer resources this year, President Bush would need to determine that UNFPA no longer provides China with such support. The Crowley amendment, which would have required the President to find that UNFPA "directly" supports or participates in coercive or involuntary activities, would appear to have made it more difficult to deny funding to UNFPA than under existing law. Not only did the Crowley amendment add the word "directly," but it also defined the circumstances under which UNFPA would be found ineligible as "knowingly and intentionally working with a purpose to continue, advance or expand the practice of coercive abortion or involuntary sterilization, or playing a primary and essential role in a coercive or involuntary aspect of a country's family planning program."

Subsequently, House and Senate Foreign Operations Appropriations bills (H.R. 2800 and S. 1426) have taken different positions on international family planning issues for FY2004. The House measure, approved on July 23, provides \$425 million, as requested, for bilateral population programs, and \$25 million for UNFPA, subject to conditions similar to those that currently apply. The Senate bill appropriates \$445 million for bilateral programs, and includes language that would effectively reverse the President's "Mexico City" abortion-related restrictions. S. 1426 further provides \$35 million for UNFPA, subject to current restrictions. Although the FY2004 proposal does not include specific funding for UNFPA, there is \$25 million held in "reserve," money that presumably would be available if the President makes a determination to restore UNFPA's eligibility. If such a determination were made prior to September 30, 2003, UNFPA would receive up to \$34 million from funds already appropriated for FY2003.

## **BACKGROUND AND ANALYSIS**

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

Population assistance became a global issue in the late 1950s and early 1960s after several private foundations, among them the International Planned Parenthood Federation, began providing money to developing countries to control high population growth rates. In 1966, when global population growth rates were reaching an historic annual high of 2.1%, the United Nations began to include population technical assistance in its international

development aid programs. Population assistance grew rapidly over the next half-dozen years, with the United States, other developed countries, and international organizations such as the World Bank, all beginning to contribute funds.

The first International Population Conference was held in 1974, followed by the second in Mexico City in 1984, and the third in Cairo in 1994. The attention and funding given to international family planning programs are credited with helping to bring a decrease in population growth in developing countries from about 2.4% per year in the 1960s to about a 1.6% annual average during the 1990s. Fertility rates have fallen in the developing world from 6.2 children per woman in 1950 to just below 3 in 1998. Nevertheless, while global population growth has slowed, it reached 6 billion in 1999 and is expected to rise to 8.9 billion by 2050, with most all of the growth occurring in developing nations. In 1960, 70% of the world's population lived in developing countries; today the level is 80%, and these countries now account for 95% of world-wide population growth.

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

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

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

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

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

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

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

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

## **Abortion and Coercion**

The bitterest controversies in U.S. population planning assistance have erupted over abortion — in particular, the degree to which abortions and coercive population programs occur in other countries' family planning programs, the extent to which U.S. funds should

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

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

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

**The “Mexico City” Policy.** (For more detailed discussion of the original “Mexico City” policy, its implementation, and impact, see CRS Report RL30830, *International Family Planning: The “Mexico City” Policy*.) With direct funding of abortions and involuntary sterilizations banned by Congress since the 1970s, the Reagan Administration in 1984 announced that it would further restrict U.S. population aid by terminating U.S. Agency for International Development (USAID) support for any organizations (but not governments) that were involved in voluntary abortion activities, even if such activities were undertaken with non-U.S. funds. U.S. officials presented the revised policy at the 2nd U.N. International Conference on Population in Mexico City in 1984. Thereafter, it 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. On January 13, 1987, Planned Parenthood Federation of America (PPFA) filed a lawsuit against USAID challenging the “Mexico City” policy. In 1990, the U.S. District Court and Court of Appeals ruled against PPFA, and in 1991, the Supreme Court refused to review the lower court's decision. The

President's discretionary foreign policy powers to establish different standards for NGOs and foreign governments were thereby upheld.

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

***Mexico City Policy Removed.*** In its first days in office, the Clinton Administration changed U.S. family planning assistance policies, covering not only the Mexico City restrictions but also funding for UNFPA population assistance in general. In a January 22, 1993 memo to USAID, President Clinton lifted restrictions imposed by the Reagan and Bush Administrations on USAID grants to family planning NGOs — in effect repealing the Mexico City policy. The memo noted that the policy had extended beyond restrictions in the FFAAct and was not mandated by law. In his remarks, President Clinton explained that this step “will reverse a policy that has seriously undermined much needed efforts to promote safe and effective family planning programs abroad, and will allow us to once again provide leadership in helping to stabilize world population.” On August 26 and 30, 1993, respectively, USAID provided \$2.5 million to the World Health Organization's Human Reproduction Program (HRP) and \$13.2 million to IPPF.

***Efforts to Legislate the Mexico City Policy.*** Beginning in 1993, abortion opponents in Congress attempted to legislate modified terms of the Mexico City policy. Under the threat of a Presidential veto and 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.

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



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

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

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

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

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

***Bush Administration Restores the Mexico City Policy.*** President George W. Bush, as one of his first official actions in office, issued a memorandum revoking the Clinton Administration memorandum and restoring in full the terms of the Mexico City restrictions that were in effect on January 19, 1993. As was the case during the 1980s and early 1990s,

in the future foreign NGOs and international organizations, as a condition for receipt of U.S. federal funds, must agree not to perform or actively promote abortions as a method of family planning in other countries. President Bush noted in his order that American taxpayer funds should be not used to pay for abortions or advocate or actively promote abortion. Critics charge, however, that the policy is a violation of free speech and the rights of women to choose; and that the policy will undermine maternal health care services offered in developing nations and may actually contribute to the rise in the number of abortions performed, some that are unsafe and illegal.

**New 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. Abortion is defined as a "method of family planning when it is for the purpose of spacing births," including (but not limited to) abortions performed for the physical or mental health of the mother. To perform abortions is defined as the operation of a "facility where abortions are performed as a method of family planning." (USAID memorandum to all contracting officers and negotiators, titled *Voluntary Population Activities — Restoration of the Mexico City Policy*, dated February 15, 2001.)

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

The regulations also contain exceptions:

- abortions may be performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest; health care facilities may treat injuries or illnesses caused by legal or illegal abortions (post-abortion care).
- "passive" responses by family planning counselors to questions about abortion from pregnant women who have already decided to have a legal abortion is not considered an act of promoting abortion; referrals for abortion as a result of rape, incest, or where the mother's life would be endangered, or for post-abortion care are permitted.

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

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

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

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

**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. According to February 27 testimony by Arthur Dewey, Assistant Secretary of State for Population, Refugees, and Migration before the Senate Foreign Relations Committee, the White House initiated the review because of new evidence that coercive practices continue in counties where UNFPA concentrates its programs. In September 2001, Josephine Guy led an investigative team sponsored by the Population Research Institute, spending four days interviewing women in one of the Chinese counties where UNFPA maintains active programs. The team concluded that a consistent pattern of coercion continues in this “model” UNFPA county, including forced abortions and involuntary sterilizations. (See House International Relations Committee hearing, *Coercive Population Control in China: New Evidence of Forced Abortion and Forced Sterilization*, October 17, 2001. See also testimony of Josephine Guy before the Senate Foreign Relations Committee, February 27, 2002.)

UNFPA commissioned what it characterized as an independent international review team, led by Dr. Nicolaas Biegman, a Dutch diplomat and former head of the Netherlands International Cooperation Agency. Following a five day visit in October 2001, the team found “absolutely no evidence that the UN Population Fund supports coercive family planning practices in China or violates the human rights of Chinese people in any way.” The Biegman group acknowledged that voluntary family planning services are not the “norm” throughout China, but concluded that UNFPA’s work served as a model for demonstrating to Chinese officials that voluntary programs are the most effective way to reduce population growth. (See testimony of Nicolaas Biegman before the Senate Committee on Foreign Relations, 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 its own investigation team to China for a two-week review of UNFPA programs on May 13. The team was led by former Ambassador William Brown, and included Bonnie Glick, a former State Department official, and Dr. Theodore Tong, a public health professor at the University of Arizona.

The State Department’s assessment team filed its report with Secretary Powell on May 29 (but not made public until late July), making a series of findings and recommendations. See [<http://www.state.gov/g/prm/rls/rpt/2002/12122.htm>] for report’s full text.) The group found that:

- There is no evidence that UNFPA “has knowingly supported or participated in the management of a program of coercive abortion or involuntary sterilization” in China;
- Despite some relaxation of government restrictions in counties where UNFPA operates, China maintains coercive elements in its population programs in law and practice;
- Chinese leaders view “population control as a high priority” and remain concerned over implications for socioeconomic change.

On the basis of these three findings, Ambassador Brown and his colleagues recommended that:

- The United States should release not more than \$34 million of previously appropriated funds to UNFPA;
- Until China ends all forms of coercion in law and practice, no U.S. government funds should be allocated to population programs in China;
- Appropriate resources, possibly from the United States, should be allocated to monitor and evaluate Chinese population control programs.

Nevertheless, on July 22, Secretary of State Powell, to whom the President has 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 has funded computers and data-processing equipment that helps strengthen the management of the Chinese State Family Planning Commission. Beyond the legitimate uses of these and other items financed by UNFPA, such equipment facilitates China's ability to impose the social compensation fees and perform abortions on those women coerced, because of the financial penalties, 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 oppose it for a number of reasons, including the loss of about \$34 million, an amount that represented about 9% of UNFPA income in 2001. They argue that access to voluntary family planning programs by persons in around 140 countries will be reduced, undermining the health of women and children, preventing unwanted pregnancies, and increasing the likelihood of higher numbers of abortions. The European Commission announced on July 24, 2002, a \$32 million family planning program, launched in partnership with UNFPA, that would in some degree cover the gap by the loss of U.S. resources. The EU initiative, however, benefitted just 22 countries participating in its African, Caribbean and Pacific program. Still other critics are 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.

(See below under the section on Legislation for a discussion of congressional debate on this and other family planning aid issues in 2002 and 2003.)

**Family Planning Conditions in China.** As noted, much of the UNFPA debate has focused on that organization's programs in China, both because of China's well-known population growth problem and because of widespread publicity given to reports of coercion

in its family planning programs. China's population increased from 500 million in 1950 to 1.008 billion according to the 1982 census — an average annual growth rate of 2%, or a doubling of the population every 36 years. (Although the 2% rate is not particularly large by developing country standards, many consider a lower rate crucial to China's economic development prospects given the country's already huge population size.)

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

After 1983, thought to be the peak year of coercion in Chinese family planning in the 1980s, the PRC relaxed its "one-child" policy in rural areas. The original target for the PRC's population in the year 2000 had been 1.2 billion, but that goal was relaxed in 1984 to 1.25 billion, and the Chinese minister of family planning indicated in 1991 that the target population size for 2000 was now 1.294 billion. (UNFPA reports that China's population in 1999 was 1.267 billion, with an annual growth rate of 0.9%.) In addition, the policy has been loosely applied for Tibetan, Muslim, and other ethnic minorities. China has also reported regional differences in the so-called "one-child" policy. Economic reforms helped weaken policy enforcement in more prosperous areas, with rising incomes absorbing fines.

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

Nevertheless, the degree of coercive family planning practices in China, as evidenced in the 2001/2002 investigations noted above, remains a cloudy and controversial matter. The State Department, in its 2002 report on human rights conditions (released March 2003), concluded that although the Chinese government "formally prohibits the use of physical coercion to compel persons to submit to abortion or sterilization,...intense pressure to meet birth limitation targets set by government regulations has resulted in instances in which local birth planning officials reportedly have used physical coercion to meet government goals." The report notes that the SFPC issues nationwide notices prohibiting officials from forcing women to undergo abortions or sterilization against their will, but that the government does regard social compensation fees and other administrative punishments to be coercive.

Chinese officials, while acknowledging past occurrences of forced abortion and involuntary sterilizations, 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.)

## Funding Levels

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

With the change in party control of Congress during the FY1996 budget cycle, family planning policy and budget issues became, and have continued to be, the most contentious foreign aid matter considered by Congress. Population appropriation levels fell abruptly to \$356 million in FY1996. But because of the four-month delay in enacting the Foreign Operations spending measure (largely because of the family planning dispute), coupled with a new requirement to “meter” population funds — that is, making them available on a monthly schedule in increments of \$23 million over a 15-month period — USAID had only \$151.5 million available for supporting bilateral family planning programs in FY1996. Most of the FY1996 population aid appropriation was “pushed” into the next year because of the metering mechanism. Population aid appropriations grew slightly to \$385 million during each of the next four years, but fell far short of White House requests. Due to restrictions enacted for FY2000 noted above, \$12.5 million of those appropriations were transferred from population assistance to child health programs. President Clinton proposed a \$541.6 million budget for bilateral population aid in FY2001, a level that would have returned to the amount provided in FY1995. Congress approved \$425 million. President Bush proposed \$425 million for each of fiscal years FY2002 and FY2003, but Congress increased funding to \$446.5 million. The Administration is again requesting \$425 million for FY2004.

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

Supporters of increasing population aid, many of whom believe strongly that population growth must be curtailed before meaningful development can occur, contend that family planning should be among the highest priorities of U.S. development strategy. Population growth, they argue, has long-term consequences, affecting diverse U.S. interests in

environmental protection, resource conservation, global economic growth, immigration management, and international stability. They maintain that attention to family planning assistance now could obviate future allocations in other development and health-related accounts. Some proponents of population assistance programs see a particular irony, for instance, in limiting funds for population stabilization programs while increasing the budget claims of child survival and infectious disease programs. Population aid proponents also cite recent studies that suggest that the prevalence of abortion declines in countries that have wider availability and use of effective contraceptives. This relationship, they say, further reduces the risk of unsafe abortions that are the leading cause of maternal deaths in developing nations.

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

**Table 1. Population Assistance, FY1994-2004**  
(appropriations of millions of \$s)

	1994	1995	1996 <sup>a</sup>	1997	1998	1999	2000 <sup>b</sup>	2001 <sup>b</sup>	2002	2003	2004 <sup>d</sup>
Population Aid	485.1	541.6	356.0	385.0	385.0	385.0	372.5	425.0	446.5	446.5	425.0
UNFPA	40.0	35.0	22.8	25.0	20.0	0.0	21.5	21.5	0.0 <sup>c</sup>	34.0 <sup>c</sup>	<sup>d</sup>
<b>Total</b>	<b>525.1</b>	<b>576.6</b>	<b>378.8</b>	<b>410.0</b>	<b>405.0</b>	<b>385.0</b>	<b>394.0</b>	<b>446.5</b>	<b>480.5<sup>c</sup></b>	<b>480.5</b>	<b>450.0<sup>d</sup></b>

**Source:** AID/Office of Population.

- a. Because of the FY1996 "metering" requirement for population aid that delayed the availability of funds, the actual amount available for obligation in that year was \$151.5 million. Since large amounts appropriated in FY1996 and FY1997 were "metered" into the next fiscal year, levels available for obligation in FY1997 and FY1998 were \$495 million and \$554 million, respectively. In years when "metering" was not required — before FY1996 and since FY1998 — amounts available for obligation were nearly the same as or identical to the appropriated level shown in Table 1.
- b. FY2000 levels reflect a transfer of \$12.5 million from population aid. FY2000 and FY2001 reflect a \$3.5 million deduction from UNFPA due to legislative restrictions.
- c. Congress appropriated "not more than" \$34 million for UNFPA in FY2002 and directed for FY2003 the same amount as in FY2002. The State Department, however, determined that UNFPA supported in FY2002 coercive family planning programs in China, thereby making the organization ineligible for U.S. contributions. The \$34 million was re-directed to other population aid programs, keeping the total for FY2002 at \$480.5 million. For FY2003, the Administration has not yet issued a determination regarding UNFPA's eligibility status.
- d. Request for FY2004. Although there is no specific request for UNFPA in the budget submission, \$25 million is placed in a reserve account that would presumably be available for UNFPA if it is eligible for U.S. support. Otherwise, the \$25 million would most likely be transferred to fund bilateral family planning programs, bringing the total for the FY2004 request to \$450 million.



## **International Family Planning Issues and Legislation, 2002-2003**

Although Congress continued to debate during the last year the three major population aid issues — Mexico City policy, UNFPA eligibility, and total funding amount — most attention has focused on UNFPA activities in China and whether the organization should receive U.S. support.

### **Congressional Consideration of FY2003 and FY2004 Legislation**

**Foreign Operations Appropriations, FY2003.** On July 24, 2002, the Senate Appropriations Committee reported its FY2003 spending measure (S. 2779), including two earmarks of \$450 million for bilateral family planning programs and \$50 million for the U.N. Population Fund (UNFPA). The Administration had requested \$425 million for family planning activities but no contribution to the UNFPA. In addition, the legislation modified the Kemp-Kasten language so that in the future the Secretary of State would have to find that an organization “directly participates in the practice of coercive abortion or involuntary sterilizations” before declaring the group ineligible for U.S. support. Instead of the current, more implicit standard under which Kemp-Kasten has been interpreted, this new language would appear to have set a more rigorous and specific test for determining whether UNFPA or any other organization fell under the Kemp-Kasten conditions. The Senate bill further included a general provision (section 581) that would appear to have partially reversed the Mexico City policy. The language required the President to apply the same conditions to foreign private organizations in the use of non-U.S. funds for advocacy and lobbying activities that are applied to American private organizations. It is presumed that such restrictions on how U.S. private groups apply their own funds would be unconstitutional. The requirement banning foreign organizations that perform abortions with non-U.S. funds would have remained unchanged.

The House-reported measure (H.R. 5410) provided \$425 million for bilateral family planning aid and a “hard” earmark of \$25 million for UNFPA. The House bill further conditioned the UNFPA contribution, including a restriction that UNFPA provides no funding for the State Planned-Birth Commission or its regional affiliates in China, and required the U.S. to reduce its grant to UNFPA by whatever amount the organization spends in China. The legislation did not address the Mexico City policy.

Both House and Senate Foreign Operations bills, as reported, expired with the end of the 107<sup>th</sup> Congress. The Senate adopted a revised FY2003 Foreign Operations measure as part of H.J.Res. 2, making several significant changes to what the Senate Appropriations Committee had recommended in 2002 regarding international family planning funding and policy issues. H.J.Res. 2 provided \$435 million for population assistance, \$15 million less than what was proposed by the Senate panel in July 2002. The legislation also did not include language in S. 2779 that would have effectively reversed the Mexico City policy. During Senate debate, lawmakers adopted an amendment by Senator Leahy earmarking \$35 million for the UNFPA. Funds could be provided to UNFPA, however, only if the President determined that the organization no longer supported or participated in the management of a program of coercive abortion or involuntary sterilization. The Leahy amendment altered

the determination requirement shifting the responsibility from the Secretary of State to the President. The Senate legislation did not include the change to Kemp-Kasten language proposed by the Committee in July 2002 that would have narrowed the circumstances under which the restriction could be imposed.

On February 12, House and Senate conferees agreed to an FY2003 Foreign Operations measure as part of H.J.Res. 2, an omnibus appropriation bill. The measure provides \$446.5 million for family planning activities, compared with \$425 million recommended by the House in H.R. 5410 and \$435 million passed by the Senate. Conferees agreed to allocate \$34 million to UNFPA, the same as in FY2002, but made the contribution subject to several conditions, including a requirement that the President certifies that the organization is no longer involved in the management of a coercive family planning program. The Administration has not yet issued a determination regarding UNFPA's eligibility status for FY2003.

**Foreign Relations Authorization, FY2004-2005.** During debate on an omnibus bill authorizing State Department and public diplomacy programs, the House International Relations voted 23-22 to authorize \$50 million for UNFPA in FY2004 and FY2005, and to amend existing eligibility requirements that would appear to have made it more difficult for the President to deny funding to UNFPA. The vote came on an amendment offered by Congressman Crowley to H.R. 1950, legislation reported by the Committee on May 8, 2003.

The Crowley amendment would have made the money available only if the President determined that UNFPA "directly" supports or participates in coercive or involuntary activities. This was similar to language recommended in July 2002 by the Senate Appropriations Committee in the FY2003 Foreign Operations bill, but later dropped. By adding the word "directly," many presume that the determination issued last year by the Secretary of State that denied FY2002 transfers to UNFPA would not be sufficient to cut off contributions authorized in H.R. 1950. In addition, the Crowley amendment went beyond the Senate Committee language from last year by defining the circumstances under which UNFPA would be found ineligible. The provision in H.R. 1950 stated that the President would need to find that UNFPA is "knowingly and intentionally working with a purpose to continue, advance or expand the practice of coercive abortion or involuntary sterilization, or playing a primary and essential role in a coercive or involuntary aspect of a country's family planning program." Many believe that the justification for terminating UNFPA funds for FY2002 would not meet this more specific test. During House debate on H.R. 1950, however, lawmakers voted 216-211 on July 15 to delete the Crowley amendment.

**Foreign Operations Appropriations, FY2004.** On July 23, the House approved \$425 million for bilateral family planning programs, as requested. For UNFPA contributions, the House bill provides \$25 million, available only under certain conditions:

- none of the funds can be used in China;
- funds must be maintained by UNFPA in a separate account and may not comingle amounts;
- UNFPA does not perform abortions;
- UNFPA does not provide any resources for the Chinese State Planned-Birth Commission or its regional affiliates; and

- U.S. contributions will be reduced by whatever amount, if any, UNFPA spends in China.

In addition, the provisions of the Kemp-Kasten amendment continue to apply, the terms of which resulted in a cut-off of U.S. contributions in FY2002.

On July 17, the Senate Appropriations Committee approved its FY2004 Foreign Operations (S. 1426), including several significant changes regarding international family planning funding and policy. The Administration is likely to oppose, as it has in the past, provisions in the Senate measure. For bilateral family planning activities, the Senate bill provides \$445 million, \$20 million above the President's request. In Section 691, the bill effectively reverses the Administration's Mexico City policy. Specifically, the provision states that foreign NGOs shall not be declared 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 do not violate the law of the country in which they are performed and that they would not violate U.S. laws if provided in the United States. Section 691 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.

Although the White House has not yet issued its "Statement of Administration Policy" for S. 1426, in its assessment of the House companion measure, H.R. 2800, the executive said that it would "oppose any legislation that would infringe upon the President's ability to enforce current Administration policy regarding international family planning." Addition of such a provision to the House bill, the Statement said, would result in a Presidential veto.

For UNFPA, S. 1426 provides \$35 million in FY2004, but makes these funds, together with those appropriated for FY2002 and FY2003, subject to Kemp-Kasten limitations and current restrictions that apply in FY2003.

## **LEGISLATION**

### **H.R. 2800 (Kolbe)**

Foreign Operations Appropriations, FY2004. Reported by the House Appropriations Committee July 21 (H.Rept. 108-222); passed the House on July 23 (370-50). Provides \$425 million in bilateral family planning programs and \$25 million for UNFPA, subject to certain conditions.

### **S. 1426 (McConnell)**

Foreign Operations Appropriations, FY2004. Reported by the Senate Appropriations Committee July 17 (S.Rept. 108-106). Provides \$445 million in bilateral family planning programs, and includes language that effectively reverses the President's "Mexico City" policy. Also provides \$35 million for UNFPA, subject to current restrictions.