

CRS Report for Congress

International Population Assistance and Family Planning Programs: Issues for Congress

Updated January 19, 2007

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Prepared for Members and
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Summary

Since 1965, U.S. 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. Given the divisive nature of this debate, U.S. funding of these programs will likely remain a point of contention during the 110th Congress.

In 1984, controversy arose over U.S. population aid policy when the Reagan Administration introduced restrictions, which became known as the “Mexico City policy.” 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) due to evidence of coercive family planning practices in China.

President Clinton resumed UNFPA funding and repealed the Mexico City policy in 1993.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 in 2002, citing violations of the “Kemp-Kasten” amendment. This amendment 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 FY2006.

In his FY2006 Foreign Operations budget request, the President proposed \$425 million for family planning programs, which included \$25 million for UNFPA. 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 Bush Administration request for the FY2007 budget includes less funding for family planning programs than the traditional \$425 million request. The proposal includes about \$357 million for family planning health activities, an amount from which any UNFPA transfer would be drawn if the organization is determined eligible under Kemp-Kasten restrictions. The House Foreign Operations Appropriations Subcommittee reported H.R. 5522, the FY2007 Foreign Operations Appropriations bill, on May 15, 2006. The Committee recommended a total of \$432 million for reproductive family planning activities, including \$34 million for UNFPA should it be eligible under Kemp-Kasten provisions. Foreign Operations programs are currently operating under the terms of a continuing resolution, which will expire on February 15, 2007. This report, originally drafted by Larry Nowels, will be updated as event warrant.

Contents

U.S. Population Assistance Issues:	1
Setting the Context	1
Overview	1
The Population Statistics Debate	2
Evolution of U.S. Policy (1974-1994)	2
Trends in Population Research	3
Policy and Funding Issues in the U.S. Family Planning Debate	4
Abortion and Coercion	4
The Mexico City Policy	5
Restrictions on United Nations Population Fund (UNFPA) Funding ..	8
Family Planning Conditions in China	11
Funding Levels	14
International Family Planning Legislation	15
Foreign Operations Appropriations, FY2006 and FY2007	15
FY2007	15
FY2006	16
Foreign Affairs Authorization Act, FY2006/2007	17
Science, State, Justice, and Commerce Appropriations, FY2006	17
Emergency Supplemental Appropriations, FY2005	18
Other International Family Planning Legislation — 109 th Congress	18
H.R. 1011	18
H.R. 2811	18
H.R. 4188	18
H.R. 4465	18

List of Tables

Table 1. U.S. Population Assistance, FY1994-2007	14
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International Population Assistance and Family Planning Programs: Issues for Congress

U.S. Population Assistance Issues: Setting the Context

Overview

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 the 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 a series of 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 1994.¹ The attention and funding given to international family planning programs are credited with helping to decrease population growth in developing countries from about a 1.7% per year average between 1980 and 2002, to a projected annual average of 1.2% between 2002 and 2015. Fertility rates have fallen in developing 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 children 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 of the growth occurring in developing nations. In 1960, 70% of the world's

¹ The conferences were coordinated by the United Nations. More information is available at [<http://www.un.org/esa/dev/agenda/population.html>].

population lived in developing countries, and in 2005 the level had grown to 81%. These countries now account for 99% of world-wide population growth.²

The Population Statistics Debate

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, and 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 productive capacity; therefore, they say, high population growth rates actually can contribute to a country's ability to increase its standard of living. Proponents of this view argue that at the very least 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.

Evolution of U.S. Policy (1974-1994)

As the 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, in 1977 the Carter Administration 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 negative effect on other development objectives.

A decade later, at the second International Conference on Population 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.

² Population Reference Bureau, *Frequently Asked Questions About the PRB World Population Data Sheet*, (2005)

Nearly another 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 International Conference on Population and Development in Cairo, U.S. officials emphasized support for family planning and reproductive health services, improving the status of women, and providing safe access to abortion.

Trends in Population Research

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.³ Some demographers conclude that global population projections for this century may need to be reduced by as much as one billion people. A U.N. report dated December 9, 2003 — “World Population 2300” — projects as a “medium scenario” that world population will peak in 2075 at 9.2 billion and then, as fertility in all countries reach below replacement levels, decline over the next 100 years to 8.3 billion. The report projects 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.

³ See, for example, “Population Estimates Fall as Poor Women Assert Control,” *New York Times*, March 10, 2002.

Policy and Funding Issues in the U.S. Family Planning Debate

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: 1) 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 2) setting appropriate and effective 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. In every Congress since 1973, abortion opponents have introduced 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.

Much 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.⁴ In 1984, the Reagan Administration 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.

Critics charge, however, that the Mexico City 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, including some that are unsafe and illegal. They further emphasize that family planning organizations may 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 that the conditions of the Mexico City policy 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.

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

⁴ 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. 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 the November 1999 passage 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. On January 22, 2001, President George W. Bush revoked the Clinton Administration memorandum and restored in full the terms of the Mexico City restrictions. In making the announcement, the White House Press Secretary stated 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.”⁵

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 American-taxpayer funding can use USAID resources for legal activities while diverting money raised from other sources to perform abortions or lobby to change

⁵ The White House. Office of the Secretary. *Restoration of the Mexico City Policy*, January 22, 2001.

abortion laws and regulations. The certification process, they contend, stops the fungibility “loophole.”

Bush Administration Mexico City Policy Guidelines. On February 15, 2001, USAID released 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 that 1) perform or actively promote abortion as a method of family planning in USAID-recipient countries; or 2) 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 are applied to USAID activities. This directive mostly impacts 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 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.

Restrictions on United Nations Population Fund (UNFPA) Funding.⁶

At the 1984 Mexico City Conference, the Reagan Administration instituted a new policy relating to the United Nations Population Fund (UNFPA).⁷ The Administration required that UNFPA must provide “concrete assurances that [it] is not engaged in, or does not provide funding for, abortion or coercive family planning programs.” The Administration was particularly concerned with UNFPA’s activities in China, where there is evidence of coercive family planning practices.

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 directed 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.

⁶ For more detailed information regarding UNFPA, see CRS Report RL32703, *The U.N. Population Fund: Background and the U.S. Funding Debate*, by Luisa Blanchfield, Connie Veillette, and Larry Nowels.

⁷ UNFPA is a U.N. specialized agency that “supports countries in using population data for policies and programs” to improve reproductive health, prevent HIV/AIDS, promote gender equality, and make motherhood safer. UNFPA was the lead U.N. agency for the 1994 International Conference on Population and Development in Cairo. For further information on UNFPA’s mandate and activities, visit [<http://www.unfpa.org/>].

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 proportionate share of UNFPA funds spent on China.

Bush Administration and UNFPA. For FY2002, Congress provided “not more than” \$34 million for UNFPA. But in mid-January 2002, the Bush Administration 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.⁸

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. Approximately \$22.5 million in unused UNFPA funds from FY2006 will be transferred to the International Organizations and Program account.

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 abortion or involuntary sterilization” in China, and recommended the United States release not more than \$34 million of previously appropriated funds to UNFPA.⁹

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.¹⁰ Instead, a finding that the recipient of U.S. funds — in this case UNFPA — simply supports or participates in such a program, whether

⁸ 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, *U.S. Funding for the U.N. Population Fund: The Effect on Women’s Lives*, February 27, 2002.

⁹ See [<http://www.state.gov/g/prm/rls/rpt/2002/12122.htm>] for report’s full text.

¹⁰ See [<http://www.state.gov/g/prm/rls/other/12128.htm>] for the full text.

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.”

On September 17, 2005, the State Department stated 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.¹¹

U.S. Response to the New UNFPA China Program. 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. At the meeting, 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.

Opposition to the State Department Determination. 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.

¹¹ The most significant increases come in programs for Georgia, Madagascar, Romania, Russia, Rwanda, and Ukraine.

Other Related State Department Determinations. There have been several other State Department determinations related to the July 2002 decision regarding UNFPA. On August 6, 2003, for example, 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.” 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.¹²

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

Beijing authorities came to view control of population growth not simply as an important priority, but as a necessity for the nation’s survival. In an attempt to reach a 1% annual population growth rate, Chinese authorities in 1979 instituted a policy of allowing only one child per couple, providing monetary bonuses and other benefits as incentives. Women with one living child who became pregnant a second time were said to be subjected to rigorous pressure to end the pregnancy and undergo sterilization; couples who actually had a second child faced heavy fines, employment demotions, and other penalties. 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.

¹² Christopher Marquis, “U.S. is Accused of Trying to Isolate U.N. Population Unit,” *New York Times*, June 21, 2004.

Other 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."¹³

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 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.¹⁴

¹³ U.S. Department of State, Assessment Team Report, May 29, 2002.

¹⁴ 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.

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 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.¹⁵ 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 previously, 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 press 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 unplanned 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 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.¹⁶ 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.¹⁷

¹⁵ Dewey 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.

¹⁶ U.S. Mission to the United Nations. *Ambassador Wolff: Remarks on Proposed UNFPA Sixth Country Program for China*, January 26, 2006.

¹⁷ *UN Population Fund Endorses 27-million-dollar China Program*. Agence France Presse, (continued...)

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.

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 ^c	2007
Bilateral Aid	485.1	541.6	356.0	385.0	385.0	385.0	372.5 ^a	425.0	465.5	443.5	429.5	448.1	440.0 ^d	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	0.0	^f
Total	525.1	576.6	378.8	410.0	405.0	385.0	394.0	446.5	465.5	443.5	429.5	448.1	440.0^d	^f

Source: USAID/Office of Population and CRS calculations. Amounts are adjusted for rescissions in selected years.

- 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-FY2006, 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.
- d. \$440 million is the amount appropriated for bilateral aid per P.L. 109-102. Figure does not include 1% rescission required by P.L. 109-148.
- f. Any UNFPA contribution for FY2007 is included in the Administration's bilateral family planning request of \$357 million. Foreign Operations programs are currently operating under a continuing resolution, and the final bilateral aid for FY2007 has not yet been determined.

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.¹⁸ Similarly, the UNFPA announced in January 2007 that the number of donors to its program had increased from 166 in 2004 to 180 in 2006. The amount promised from donors reached a record of \$360 million in 2006.¹⁹

International Family Planning Legislation

Foreign Operations Appropriations, FY2006 and FY2007

FY2007. The President's FY2007 request of \$357 million marks the first time during the Bush Administration that the President has sought less than \$425 million for international family planning activities. If the U.N. Population Fund becomes eligible for U.S. support, presumably a U.S. contribution of \$25 million would be drawn from the \$357 million request. This would be the second year that the Administration has proposed that \$25 million for UNFPA be drawn from its total request rather than in addition to amounts requested for bilateral programs.

The House Foreign Operations Appropriations Subcommittee reported H.R. 5522, the FY2007 Foreign Operations Appropriations bill, on May 15, 2006. The Committee recommended a total of \$432 million for reproductive health and family planning activities, an increase of some \$75 million over the Administration request. Of the total, \$350 million would come from the Child Survival and Health appropriation account. If the UNFPA becomes eligible for U.S. support, \$34 million would be available, of which \$22.3 million would be drawn from the International Organizations and Programs (IOP) account, and \$11.7 million from Child Survival and Health. If UNFPA is deemed ineligible for U.S. funding under the Kemp-Kasten amendment, then the unused IOP funds may be transferred to other family planning programs.

Currently, Foreign Operations programs are being funded under the terms of a continuing resolution (H.R. 5631/P.L. 109-289, as amended) which provides funding at the FY2006 level or the House-passed FY2007 level, whichever is less. The continuing appropriations resolution expires on February 15, 2007.

¹⁸ Population Action International, *Progress and Promises: Trends in International Assistance for Reproductive Health and Population*, 2004.

¹⁹ "Record Number of Countries Contributed Record Amount to UNFPA in 2006," UNFPA Press Release, January 15, 2007.

FY2006. The President signed the FY2006 Foreign Operations Appropriations Act (H.R. 3057/P.L. 109-102) on November 14, 2005. The spending measure included \$440 million for bilateral population assistance activities. The enacted measure further designated \$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,²⁰ while the Senate recommended \$450 million for bilateral programs and a \$35 million UNFPA contribution.²¹ Conferees deleted text approved by the Senate that would have modified the Kemp-Kasten provision and would have effectively overturned the Mexico City policy related to abortion.²² The White House indicated the President would veto H.R. 3057 if the final bill included the Senate-proposed policy changes, which were dropped in the conference agreement passed by the House and Senate.

In September 2006, the State Department announced that UNFPA was ineligible for U.S. funding for FY2006 under the provisions of the Kemp-Kasten amendment. In a letter to Congress, the Administration stated that UNFPA's financial and technical support for China's sixth program cycle is evidence of the organization's "support of the Chinese government's program of coercive abortion and involuntary sterilization."²³ The Administration stressed that it would remain "engaged" with the Chinese government on this issue in the future, and noted that since 2002 it has participated in numerous discussions with the Chinese government regarding its coercive family planning practices. As a result of UNFPA ineligibility under Kemp-Kasten, \$22.5 million in UNFPA funding that would have been drawn

²⁰ 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.

²¹ The Senate bill also added a provision similar to what the Senate had passed during debate on S. 600, the FY2006/2007 Foreign Affairs Authorization Act, that would effectively overturn the 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 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.

²² H.R. 3057, as passed the Senate, 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.

²³ A copy of the State Department letter is available at [<http://maloney.house.gov/documents/women/unfpa/20060913UNFPAdetermination.pdf>].

from the International Organizations and Programs account will be transferred to the Child Survival and Health Programs Fund (per section 560 of P.L. 109-102).

Foreign Affairs Authorization Act, FY2006/2007

On April 5, 2005, the Senate adopted an amendment by Senator Boxer to S. 600, the FY2006 and FY2007 Foreign Affairs Authorization Act, that appeared to effectively reject the Mexico City policy. (See footnote 19 under the Senate-reported version of H.R. 3057 for a discussion on the terms of the amendment). The Senate suspended consideration of S. 600 and it was not enacted during the 109th Congress. The House companion bill, H.R. 2601, included a provision creating 12 centers for the treatment and prevention of obstetric fistula in developing nations.²⁴ The provision specified that 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 fistula prevention. During floor debate, Representative Christopher Smith (NJ) 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 and activities to expand access to family planning services. As revised in the amendment, prevention activities would be provided at the discretion of the centers.²⁵ The House adopted the Smith amendment, but H.R. 2601 was not enacted during the 109th Congress.

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

²⁴ Obstetric fistula 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. For more information, see CRS Report RS21773, *Reproductive Health Problems in the World: Obstetric Fistula: Background Information and Responses*, by Tiaji Salaam-Blyther.

²⁵ 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.

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.

Other International Family Planning Legislation — 109th Congress

H.R. 1011. 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. 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. H.R. 4188 (McColum). 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. 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.