

CRS Report for Congress

International Population Assistance and Family Planning Programs: Issues for Congress

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Summary

Since 1965, the U.S. government 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 denies U.S. funds to foreign non-governmental organizations (NGOs) that perform or promote abortion as a method of family planning — even if the activities are undertaken with non-U.S. funds. Presidents Reagan and George H.W. 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 reversed 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, which 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 FY2008.

On December 26, 2007, the President signed into law H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161), which directs that \$395 million be made available for bilateral family planning activities. The Act also designates \$40 million for UNFPA if it is determined eligible under the Kemp-Kasten amendment. On June 26, 2008, the Administration announced that UNFPA was ineligible for FY2008 funding under Kemp-Kasten.

The Administration’s FY2009 request for bilateral family planning and reproductive health activities totals \$327.53 million. The Administration also requested \$25 million for UNFPA funding if the organization is deemed eligible under the Kemp-Kasten amendment. The UNFPA funds would be appropriated under the Child Survival and Health Programs account.

This report will be updated as events warrant.

Contents

U.S. Population Assistance Issues: 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
FY2009 Administration Request	15
FY2008 Foreign Operations Appropriations	16
FY2007 Foreign Operations Appropriations	17
Other Legislation (110 th Congress)	18

List of Tables

Table 1. U.S. Population Assistance, FY1994-2008	15
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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 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/devagenda/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, that 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 (PRB), *Frequently Asked Questions About the PRB World Population Data Sheet*, (2005). Also see PRB, *2007 World Population Data Sheet*, available at [<http://www.prb.org/Publications/Datasheets/2007/2007WorldPopulationDataSheet.aspx>].

Nearly a decade later, the Clinton Administration changed the U.S. position on family planning programs by lifting restrictive U.S. provisions announced at the Mexico City Conference. At the 1994 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 rates 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 contend 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.

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

Arguably, the most bitter 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 might 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. As an alternative, abortion critics have also 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 an amendment to the Foreign Assistance Act of 1961 in late 1973 (Section 104(f)). The act prohibits the use of foreign development assistance to 1) pay for the performance of abortions or involuntary sterilizations, 2) to motivate or coerce any person to practice abortions, or 3) 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 administration 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 NGOs. Two issues in particular which were initiated in 1984 — the Mexico City policy involving funding for foreign non-governmental organizations, 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 ending the Mexico

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.

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.”⁵

Past 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 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 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, however, 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.”⁶

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, in announcing the policy change, noted 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; organizations receiving American-taxpayer funding can use USAID resources for

⁵ President Bill Clinton, “Remarks on Signing Memorandums on Medical Research and Reproductive Health and an Exchange With Reporters,” January 22, 1993.

⁶ The White House. Office of the Secretary. *Restoration of the Mexico City Policy*, January 22, 2001.

legal activities while diverting money raised from other sources to perform abortions or lobby to change abortion laws and regulations. The certification process, they contend, stops the fungibility “loophole.”

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) 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 foreign governments, either directly or through a grantee, 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 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.⁷

At the 1984 Mexico City Conference, the Reagan Administration instituted a new policy relating to UNFPA.⁸ The Administration required that UNFPA provide “concrete assurances that [it] is not engaged in, or does not provide funding for, abortion or coercive family planning programs.” It 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, as determined by the President, found 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 United States 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.

⁷ 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.

⁸ 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, see [<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 China's 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.⁹

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 was transferred to the International Organizations and Program (IOP) account. On September 6, 2007, the Administration sent a letter to Members of Congress stating that UNFPA is ineligible for FY2007 funds because of its support of coercive family planning practices in China.¹⁰ On June 26, 2008, a State Department official announced that UNFPA is ineligible for FY2008 funding under the Kemp-Kasten amendment.¹¹

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, if any, to which UNFPA is involved in involuntary activities and whether UNFPA should operate at all in a country where such conditions exist. Given conflicting reports, a State Department investigative team visited China in May 2002 and reported a series of findings and recommendations. The team found no evidence that UNFPA "has knowingly supported or participated in the management of a program of coercive abortion or

⁹ 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.

¹⁰ "White House: No U.N. Funding for China," *The Associated Press*, September 7, 2007.

¹¹ Press statement by Tom Casey, Deputy Spokesman, "Fiscal Year 2008 Funding for the United Nations Population Fund (UNFPA)," U.S. Department of State, June 27, 2008, available at [<http://www.state.gov/r/pa/prs/ps/2008/jun/106348.htm>].

involuntary sterilization” in China, and recommended the United States release not more than \$34 million of previously appropriated funds to UNFPA.¹²

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.¹³ Instead, a finding that the recipient of U.S. funds — in this case UNFPA — simply supports or participates in such a program, whether knowingly or unknowingly, would trigger the restriction. The assessment team found that the Chinese government imposed fines and penalties on families (“social compensation fees”) that have children exceeding the number approved by the government. The Department further noted that UNFPA had funded computers and data-processing equipment that had helped strengthen the management of the Chinese State Family Planning Commission. Beyond the legitimate uses of these and other items financed by UNFPA, such equipment facilitated, in the view of the State Department, China’s ability to impose social compensation fees or perform coercive abortions. 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 of that year, USAID notified Congress that the reprogrammed UNFPA set-aside would be made available to expand family planning and reproductive health programs in 14 other countries.¹⁴

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 spokesperson, 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. He 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

¹² See [<http://www.state.gov/g/prm/rls/rpt/2002/12122.htm>] for report’s full text.

¹³ See [<http://www.state.gov/g/prm/rls/other/12128.htm>] for a full text of the determination.

¹⁴ The most significant increases were made in programs for Georgia, Madagascar, Romania, Russia, Rwanda, and Ukraine.

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 operating in China and to which the U.S. contributes — for example, UNICEF, WHO, and the U.N. Development Program.

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 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.¹⁵

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.)

¹⁵ Christopher Marquis, "U.S. Is Accused of Trying to Isolate U.N. Population Unit," *New York Times*, June 21, 2004.

Chinese 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 to comply. 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.

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 a 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 2006 (dated March 2007), however, found that enforcement of the law varied by location.

The broad question concerning the degree of coercive family planning practices in China remains a controversial matter. The State Department's most recent human rights report (covering 2006) concluded that

China's birth planning policies retained harshly coercive elements in law and practice. The laws restrict the rights of families to choose the number of children they have and the period of time between births. The penalties for violating the laws are strict, leaving some women little choice but to abort pregnancies ... Those who violated the child limit policy by having an unapproved child or helping another do so faced disciplinary measures such as job loss or demotion ... and other administrative punishments, including in some cases the destruction of property. In the case of families that already had two children, one parent was often pressured to undergo sterilization.¹⁶

¹⁶ "Country Reports on Human Rights Practices, 2006 — China," U.S. Department of State, Bureau of Democracy, Human Rights and Labor, March 6, 2007, available at [<http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>].

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.”¹⁷

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, was placed under house arrest and subsequently sentenced to four years and three months in prison.¹⁸ In mid-September 2005, 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.¹⁹

Following the May 2002 State Department investigation of Chinese policies, senior Department officials began a series of discussions with China regarding its birth planning law. Arthur Dewey, Assistant Secretary of State for Population, Refugees, and Migration, told the House International Relations Committee on December 14, 2004, that in six rounds of talks with Chinese officials, there had been “encouraging movement” in China’s approach to population policy and the reduction of coercive practices.²⁰ 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

¹⁷ U.S. Department of State, Assessment Team Report, May 29, 2002.

¹⁸ For more information, see “Country Reports on Human Rights Practices, 2006 — China,” U.S. Department of State, Bureau of Democracy, Human Rights and Labor, March 6, 2007, available at [<http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>].

¹⁹ 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.

²⁰ 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. He viewed this as a positive step towards ending discrimination in China against girls and women.

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.²¹ 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.²²

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 FY2003 at \$443.6 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.

²¹ U.S. Mission to the United Nations. *Ambassador Wolff: Remarks on Proposed UNFPA Sixth Country Program for China*, January 26, 2006.

²² "UN Population Fund Endorses 27-million-dollar China Program," *Agence France Presse*, January 30, 2006.

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. It also noted that donor allocations still fall far below the targets set at Cairo.²³ A more recent analysis suggests a different trend, noting that donor nations contributed \$2.3 billion in 2002, the largest amount ever. 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 2006.²⁴

Table 1. U.S. Population Assistance, FY1994-2008
(millions of \$)

	1994	1995	1996	1997	1998	1999	2000	2001	2002 ^c	2003 ^c	2004 ^c	2005 ^c	2006 ^c	2007 ^c	2008
Bilateral Aid	486.9	542.0	432.0	385.0	385.0	385.0	372.0 ^a	425.0	425.0	443.6	429.5	437.0	435.0	435.6	457.2 ^f
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	0.0	TBD
Total	526.9	577.0	454.8	410.0	405.0	385.0	393.5	446.5	425.0	443.6	429.5	437.0	435.0^d	435.6	TBD

Source: USAID Bureau of Global Health Strategic Planning and Budgeting Division. Amounts are adjusted for rescissions in appropriate 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-FY2007, the Administration determined that UNFPA was ineligible for U.S. funding because of its programs in China, and withheld appropriated funds. Some of the withheld funds were reallocated for USAID bilateral family planning, vulnerable children, and counter-trafficking in persons programs.
- e. This includes the .81% across-the-board rescission required by P.L. 110-161, the Consolidated Appropriations Act, 2008, Division J, Section 699P, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, December 26, 2007.
- f. This figure is an estimate and includes a 1% rescission required by P.L. 109-289, Department of Defense Appropriations Act, 2007, Division B, September 29, 2006.
- g. The Administration has not yet determined if UNFPA is eligible for FY2008 funding.

International Family Planning Legislation

FY2009 Administration Request

The Administration's FY2009 request for bilateral international family planning and reproductive health activities totals \$327.53 million. This includes \$301.7 million from the Child Survival and Health Program account, \$17.166 million from Economic Support Funds (ESF), \$7.901 million from FREEDOM Support Act

²³ Population Action International, *Progress and Promises: Trends in International Assistance for Reproductive Health and Population*, 2004.

²⁴ "Record Number of Countries Contributed Record Amount to UNFPA in 2006," UNFPA Press Release, January 15, 2007.

(FSA), and \$763,000 for Eastern Europe and Baltic States Assistance (SEED).²⁵ The Administration also requested \$25 million for UNFPA funding if the organization is deemed eligible under the Kemp-Kasten amendment. The UNFPA funds would be appropriated under the Child Survival and Health Programs account.²⁶

FY2008 Foreign Operations Appropriations

On December 26, 2007, the President signed into law H.R. 2764, the Consolidated Appropriations Act, 2008, (P.L. 110-161),²⁷ which designates \$395 million for bilateral family planning activities. The Act also directs that \$40 million be made available to UNFPA if it becomes eligible under the terms of the Kemp-Kasten amendment. UNFPA funds would be drawn from the Global Health and Child Survival account, with no less than \$7 million derived from the International Organizations and Programs (IOP) account. On June 26, 2008, however, a State Department official announced that UNFPA is ineligible for FY2008 funding under the Kemp-Kasten amendment due to evidence that it supports or participates in coercive abortion and involuntary sterilization practices in China. The official stated, “We are prepared to consider funding UNFPA in the future if its program in China is ended or restructured in a way consistent with U.S. law, or if China ends its program of coercive abortion and involuntary sterilization.”²⁸ This marks the seventh consecutive year that the Administration has not funded UNFPA under the Kemp-Kasten provision.

P.L. 110-161 includes reporting requirement for UNFPA funding. The Act requires the Secretary of State to submit a report on UNFPA funding to the appropriate congressional committees no later than four months after enactment. The report shall indicate the amount of funds that UNFPA is budgeting for the year in which the report is submitted for a country program in the People’s Republic of China.²⁹ If the Secretary of State’s report indicates that UNFPA funds will be used for a program in China, then the funds “shall be deducted from the funds made available to the UNFPA after March 1 for obligation for the remainder of the fiscal year in which the report is submitted.” The provision also states, “Nothing in this section shall be construed to limit the authority of the President to deny funds to any organization by reason of the application of another provision of this Act or any other provision of law.”

P.L. 110-161 also establishes a reporting requirement for Administration decisions made under the Kemp-Kasten amendment. The Act directs that any

²⁵ *Congressional Budget Justification, Foreign Operations, Fiscal Year 2009*, p. 754-755, available at [<http://www.state.gov/documents/organization/101368.pdf>].

²⁶ *Appendix, Congressional Budget Justification, Foreign Operations, Fiscal Year 2009*, p. 815, available at [<http://www.whitehouse.gov/omb/budget/fy2009/pdf/appendix/sta.pdf>].

²⁷ Consolidated Appropriations Act, 2008, December 26, 2007, P.L. 110-161 [121 Stat. 1844]. See Division J, the Department of State, Foreign Operations, and Relations Programs Appropriations Act, 2008, Title III and Section 660.

²⁸ *Ibid.*

²⁹ *Ibid.*, Section 660.

determination “must be made no later than six months after the date of enactment of this Act, and must be accompanied by a comprehensive analysis as well as the complete evidence and criteria utilized to make the determination.”³⁰ In past years, for example, the Administration has announced UNFPA eligibility for U.S. funding in September or October of the appropriate fiscal year. In some cases, it did not provide justification for its decision. The new provision requires the Administration to announce its decision by June and to provide comprehensive analysis and evidence to support its position.

The Administration’s FY2008 request for bilateral international family planning and reproductive health activities totaled \$324.8 million.³¹ This represented a \$32.2 million decrease from the FY2007 Administration request of \$357 million, and a \$115.2 million decrease from the enacted 2006 funding level of \$440 million. The Administration cited “significant successes that have been achieved after 40 years of worldwide family planning efforts” as justification for decreased funding. The Administration also requested \$25 million for UNFPA funding if the organization is deemed eligible under the Kemp-Kasten amendment. The funds would be appropriated under the Child Survival and Health Programs account.³²

FY2007 Foreign Operations Appropriations

The President’s FY2007 request of \$357 million marked the first time that the Bush Administration sought less than \$425 million for international family planning activities. If UNFPA becomes eligible for U.S. support, a U.S. contribution of \$25 million could be drawn from the \$357 million request. This is the second year that the Administration proposed that \$25 million for UNFPA be drawn from its total family planning request rather than in addition to amounts requested for bilateral programs. It is also the second year that the Administration did not set aside a \$25 million reserve in the IOP account.³³

FY2007 foreign operations programs were funded under the terms of a continuing resolution (H.R. 5631/P.L. 109-289, as amended), which provided funding similar to the FY2006 level with some adjustments. Thus, the FY2007 funding level for bilateral family planning activities should be around \$440 million — the enacted level for bilateral population assistance activities in FY2006 (see H.R. 3057/P.L. 109-102).

³⁰ Ibid., Title III.

³¹ The Administration requests \$301.7 million for family planning and reproductive health activities. It also requests \$14.3 million in Economic Support Funds (ESF), \$7.1 million for the FREEDOM Support Act (FSA), and \$1.7 million for Eastern Europe and Baltic States Assistance (SEED) for family planning and reproductive health programs.

³² *Appendix, Congressional Budget Justification, Foreign Operations, Fiscal Year 2008*, p. 752, available at [<http://www.whitehouse.gov/omb/budget/fy2008/pdf/appendix/sta.pdf>].

³³ For the first four years of the Bush Administration, the budget request included a \$25 million reserve for UNFPA funding in the International Organizations and Programs (IOP) account. However, the Administration’s FY2006, FY2007, and FY2008 budget proposals did not set aside a reserve for UNFPA in the IOP account.

Other Legislation (110th Congress)

S. 1744, the Global Democracy Promotion Act, prohibits the application of certain restrictive eligibility requirements to foreign NGOs. It would require that (1) they shall not be ineligible for assistance solely on the basis of health, medical, or counseling services provided by organizations with non-U.S. government funds if the services do not violate the laws of the country where they are being provided, and (2) they shall not be subject to requirements relating to the use of non-U.S. government funds for advocacy and lobbying activities other than those that apply to U.S. NGOs. Senator Barbara Boxer introduced the bill on June 28, 2007, and it was referred to the Committee on Foreign Relations.

S. 2682, the United Nations Population Fund Restoration Act of 2008, provides that U.S. contributions made available for UNFPA shall be used for the following: (1) providing equipment, medicine, and supplies to ensure safe childbirth and emergency obstetric care; (2) providing contraceptives to prevent unintended pregnancies and the spread of sexually transmitted diseases; (3) treating and preventing obstetric fistula; (4) reestablishing maternal health services in areas where they have been destroyed; and (5) promoting the abandonment of harmful traditional practices. Senator Hillary Clinton introduced the bill on February 29, 2008, and it was referred to the Committee on Foreign Relations.

H.R. 619, the Global Democracy Promotion Act, prohibits the application of certain restrictive eligibility requirements on foreign NGOs that provide development and humanitarian assistance. The bill stipulates that foreign NGOs (1) shall not be ineligible for assistance solely on the basis of health, medical, or counseling services provided by organizations with non-U.S. government funds if the services do not violate the laws of the country where they are being provided, and (2) shall not be subject to requirements relating to the use of non-U.S. government funds for advocacy and lobbying activities other than those that apply to U.S. NGOs. Representative Nita Lowey introduced the bill on January 22, 2007, and it was referred to the Committee on Foreign Affairs.

H.R. 1095, the Taxpayers' Freedom of Conscience Act of 2007, states that no federal official may expend any federal funds for any population control or population planning program or any family planning activities (including any abortion procedure), regardless of whether the program or activity is foreign or domestic. Representative Ron Paul introduced the bill on February 15, 2007, and it was referred to the Committees on Foreign Affairs and Energy and Commerce. It was referred to the Subcommittee on Health on February 16, 2007.

H.R. 1225, the Focus on Family Health Worldwide Act of 2007, seeks to amend the Foreign Assistance Act of 1961 to improve voluntary family planning programs in developing countries. Activities supported by the bill include improving public awareness of voluntary family planning programs and expanding training for health care providers. Representative Betty McCollum introduced the bill on February 28, 2007, and it was referred to the Committee on Foreign Affairs.

H.R. 2114, the Repairing Young Women's Lives Around the World Act, provides "a United States voluntary contribution to the United Nations Population Fund only for the prevention, treatment, and repair of obstetric fistula." Representative Carolyn Maloney introduced the bill on May 2, 2007, and it was referred to the Committee on Foreign Affairs.

H.R. 2367, the Ensuring Access to Contraceptives Act of 2007, amends the Foreign Assistance Act of 1961 to "authorize assistance to provide contraceptives in developing countries in order to prevent unintended pregnancies, abortions, and the transmission of sexually transmitted infections, including HIV/AIDS." Representative Russ Carnahan introduced the bill on May 17, 2007, and it was referred to the Committee on Foreign Affairs.

H.R. 2604, the United Nations Population Fund Women's Health and Dignity Act, provides financial and other support to UNFPA to "carry out activities to save women's lives, limit the incidence of abortion and maternal mortality associated with unsafe abortion ...[and] promote access to safe and reliable family planning." Representative Joseph Crowley introduced the bill on June 7, 2007, and it was referred to the Committee on Foreign Affairs.

H.Con.Res. 220 strongly condemns the continued violations of human rights by the government of China, including limitations on the number of children a woman may bear and violent enforcement of birth limitations. The resolution urges China to cease these policies and urges the U.N. Population Fund to end all of its activities in China. Representative Christopher Smith introduced the resolution on September 27, 2007, and it was referred to the Committee on Foreign Affairs.