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Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy

Luisa Blanchfield

Specialist in International Relations

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Summary

This report details legislation and policies that restrict or place requirements on U.S. funding of abortion or family planning activities abroad. The level and extent of federal funding for these activities is an ongoing and controversial issue in U.S. foreign assistance and will likely continue to be a point of contention during the 115th Congress.

These issues have been debated for over four decades in the context of a broader domestic abortion controversy that began with the Supreme Court's 1973 ruling in *Roe v. Wade*, which holds that the Constitution protects a woman's decision to terminate her pregnancy. Since *Roe*, Congress has enacted foreign assistance legislation placing restrictions or requirements on the federal funding of abortions and on family planning activities abroad. Many of these provisions, often referred to by the name of the lawmakers that introduced them, have been included in foreign aid authorizations, appropriations, or both, and affect different types of foreign assistance. Examples include

- the “**Helms amendment**,” which prohibits the use of U.S. funds to perform abortions or to coerce individuals to practice abortions;
- the “**Biden amendment**,” which states that U.S. funds may not be used for biomedical research related to abortion or involuntary sterilization;
- the “**Siljander amendment**,” which prohibits U.S. funds from being used to lobby for or against abortion;
- the “**Kemp-Kasten amendment**,” which prohibits funding for any organization or program that, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization; and
- the “**Tiahrt amendment**,” which places requirements on voluntary family planning projects receiving assistance from USAID.

The executive branch has also engaged in the debate over international abortion and family planning. In 1984, President Ronald Reagan issued what has become known as the “Mexico City policy,” which required foreign non-governmental organizations receiving USAID family planning assistance to certify that they would not perform or actively promote abortion as a method of family planning, even if such activities were conducted with non-U.S. funds. The policy was rescinded by President Bill Clinton and reinstated and expanded by President George W. Bush to include State Department activities. In January 2009, President Barack Obama rescinded the policy. It was reinstated by President Trump on January 23, 2017.

This report focuses primarily on legislative restrictions and executive branch policies related to international abortion and family planning. For information on domestic abortion laws and international population assistance, including funding levels and U.S. programs, see

- CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro, and
- CRS Report RL33250, *U.S. International Family Planning Programs: Issues for Congress*, by Luisa Blanchfield.

This report is updated as events warrant.

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Introduction

One of the most controversial issues in U.S. foreign assistance concerns restrictions on U.S. funding for abortion and family planning activities abroad. For many, the debate focuses on three key questions:

- Do countries or organizations that receive U.S. assistance perform abortions or engage in coercive abortion or involuntary sterilization activities with U.S. funds?
- Should U.S. funding be permitted or withheld from countries or organizations that participate in these activities?
- What impact, if any, might the withholding of U.S. funds have on population growth, family planning, and reproductive health services in developing countries?

Members of Congress have engaged in heated debates regarding these issues in connection with a broader domestic controversy regarding U.S. abortion policy. These debates have continued since the Supreme Court's 1973 landmark ruling in *Roe v. Wade*, which holds that the Constitution protects a woman's decision whether to terminate her pregnancy.¹ In nearly every Congress since *Roe*, Members who oppose abortion have introduced legislation that would prohibit the practice in the United States. Many congressional opponents have also sought to attach provisions to annual appropriations measures banning the use of federal funds to perform abortions.

Before the *Roe* decision, the majority of discussions in Congress regarding the federal funding of abortion focused on domestic authorization and appropriations legislation, particularly labor and health and human services appropriations. After *Roe*, however, the controversy spread to U.S. foreign assistance, leading to the enactment of abortion and voluntary family planning restrictions in foreign assistance authorizations and appropriations.

Debate over international abortion restrictions has also reached the executive branch. In 1984, President Reagan issued what has become known as the "Mexico City policy," which required foreign non-governmental organizations (NGOs) receiving U.S. Agency for International Development (USAID) family planning assistance to certify that they would not perform or actively promote abortion as a method of family planning, even if such activities were undertaken with non-U.S. funds.² In the intervening years, the Mexico City policy has been rescinded and reissued by various Administrations. Most recently, it was rescinded by President Barack Obama in January 2009 and reinstated by President Donald Trump on January 23, 2017.

During the 113th and 114th Congresses, Members continued to debate prohibitions and restrictions on abortion and family planning activities abroad. As in prior appropriations cycles, some Members sought to renew, add, modify, or remove language addressing these issues in State-Foreign Operations legislation. Some also introduced legislation aiming to make the Mexico City policy, or its reversal, permanent law. Federal funding for abortion and family planning activities remains a controversial issue in foreign assistance, and congressional interest in the subject is expected during the 115th Congress.

¹ 410 U.S. 113 (1973).

² The Mexico City policy, which was named after the city where it was introduced, was first announced by President Ronald Reagan at the International Conference on Population held in Mexico in 1984. For more information, see the "Executive Branch Policies and Restrictions" section.

This report examines key legislative and executive branch policies that restrict or place requirements on U.S. funding of abortion or voluntary family planning activities abroad. It discusses when and how the policies were introduced and the types of foreign aid to which they apply. Further information on U.S. family planning assistance, including U.S. funding levels and USAID activities, is included in CRS Report RL33250, *U.S. International Family Planning Programs: Issues for Congress*, by Luisa Blanchfield.³

Setting the Context: Legislative Vehicles

Many of the restrictions attached to U.S. funding of abortion and requirements relating to voluntary family planning programs abroad are included in foreign aid authorizations, appropriations, or both, and affect different types of foreign assistance. Some provisions have come to be known by the name of the lawmakers who introduced them (for example, the “Helms amendment”), while others are identified by the subjects they address (for example, “involuntary sterilization”).

Legislation that authorizes foreign aid establishes, continues, or modifies an agency or program for a fixed or indefinite period of time. The Foreign Assistance Act of 1961 (FAA), as amended, is the cornerstone of permanent foreign aid authorization law.⁴ The FAA is divided into several “parts” that authorize different types of foreign assistance, including development assistance (part I); military and security assistance (part II); general, administrative, and miscellaneous provisions (part III); the Enterprise for the Americas Initiative (part IV); and debt reduction for developing countries with tropical forests (part V). Congress has routinely amended the FAA since 1961 and has authorized new programs in stand-alone acts, but it has not comprehensively reauthorized most programs in the FAA since 1985. Subsequent authorization bills have often stalled in the face of debates and disagreements on controversial issues (including abortion and family planning), a tight legislative calendar, or foreign policy disputes between Congress and the executive branch.

In the absence of the regular enactment of foreign aid authorizations, Congress has annually considered appropriations measures that set spending levels for nearly every foreign assistance account. In recent years, these measures have become increasingly significant for Congress in influencing how U.S. foreign aid is disbursed. Many of them have included family planning or abortion-related restrictions or requirements.⁵

The links among the various requirements and restrictions, as well as their inclusion in different legislation, are complex and in some cases not immediately apparent. For example, some amendments that were already enacted in the FAA, such as the Helms and Biden provisions, appear to be added to other foreign assistance-related legislation for emphasis.⁶ In other cases, the

³ For more information on U.S. policy regarding abortion and family planning domestically and in military medical facilities, see CRS Report 95-724, *Abortion Law Development: A Brief Overview*, by Jon O. Shimabukuro; CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro; and CRS Report 95-387, *Abortion Services and Military Medical Facilities*, by David F. Burrelli.

⁴ P.L. 87-195; 22 U.S.C. 2151 et seq.

⁵ International family planning and abortion-related provisions can also be enacted as part of supplemental appropriations. For more information on foreign aid, see CRS Report R40213, *Foreign Aid: An Introduction to U.S. Programs and Policy*, by Curt Tarnoff and Marian L. Lawson, and CRS Report R40089, *Foreign Assistance Act of 1961: Authorizations and Corresponding Appropriations*, by Dianne E. Rennack and Susan G. Chesser.

⁶ The Senate’s FY2012 State-Foreign Operations Appropriations Committee Report alludes to this possibility: “The Committee does not continue to carry a general provision specifically regarding funding for abortions and involuntary sterilization (Section 7018 of P.L. 111-117), as all but the last sentence of that provision was restatement of permanent (continued...)”

provisions may have been added so that they apply to additional categories of foreign aid not covered under the FAA. Moreover, some restrictions and requirements stand on their own, while others seek to clarify and amend other existing restrictions. The Leahy amendment, for instance, defines the term “motivate” as written in the Helms amendment, while the Livingston amendment seeks to clarify prohibitions in the DeConcini amendment.

Current Restrictions or Requirements in Legislation

This section details enacted legislative restrictions relating to U.S. funding of abortion and requirements related to voluntary family planning programs abroad. They are listed in chronological order by the year they were enacted.

Helms Amendment (1973)

The Helms amendment prohibits the use of U.S. foreign assistance funds to perform abortions or to motivate or coerce individuals to practice abortions. Introduced by Senator Jesse Helms in 1973, it was adopted as an amendment to the FAA because of concerns that federal funds could be used to perform abortions overseas. Under the FAA heading “Prohibition on Use of Funds for Abortions and Involuntary Sterilizations,” the Helms amendment states:

- (1) None of the funds made available to carry this part may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.⁷

The amendment as written in the FAA applies to all foreign assistance activities authorized by part I of that act (development assistance).

Since FY1980, the Helms amendment has also periodically been enacted in foreign operations appropriations measures.⁸ It is included in two places in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016, as continued into FY2017 by P.L. 114-223 (hereinafter referred to as the “FY2016 State-Foreign Operations Appropriations Act”).⁹ In Section 7018 of Title VII, General Provisions, the language applies to all foreign assistance activities in the act that are authorized under part I of the FAA (development assistance).¹⁰ In Title III, Bilateral Economic Assistance, the language applies to foreign assistance activities in the entire act.¹¹

(...continued)

law (Section 104(f) of the FAA).” U.S. Congress, Senate Committee on Appropriations, *Department of State, Foreign Operations, and Related Programs Appropriations Bill, 2012*, report to accompany S. 1601, 112th Cong., 1st sess., September 22, 2011, S.Rept. 112-85 (Washington: GPO, 2011), p. 32. Similar language was included in the Senate’s FY2011 Foreign Operations Appropriations Committee Report (S.Rept. 111-237, p. 36).

⁷ Section 104(f)(1) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2151b(f)(1)), as amended by the Foreign Assistance Act of 1973 (P.L. 93-189), approved December 17, 1973. “This part” refers to part I of the FAA. For clarification of the term “motivate” in the Helms amendment, see the “Leahy Amendment (1994)” section.

⁸ For instance, it was not included in foreign operations appropriations bills from FY1981 through FY1985. It was included in FY1986 through FY2016 appropriations.

⁹ Division K of the Consolidated Appropriations Act, 2016 (P.L. 113-114), approved December 18, 2015, as continued into FY2017 by P.L. 114-223.

¹⁰ 129 Stat. 2744.

¹¹ 129 Stat. 2717.

Involuntary Sterilization (1978)

In 1978, Congress passed an amendment to the FAA specifying that U.S. foreign assistance may not fund (1) the performance of involuntary sterilizations, or (2) the coercion of involuntary sterilizations (or provide financial incentives to undergo sterilization):

None of the funds made available to carry out this part may be used to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations.¹²

The provision is also repeated in annual foreign operations appropriations. Most recently, it was included in Section 7018 of the FY2016 State-Foreign Operations Appropriations Act.¹³ In both the FAA and State-Foreign Operations appropriations acts, it applies to all foreign assistance activities authorized by part I of the FAA (development assistance).

Peace Corps (1978)

Since FY1979, annual foreign operations appropriations have included an abortion restriction on Peace Corps funding due to concerns that money appropriated to the organization was being used to finance abortions for volunteers.¹⁴ The restriction, included under the heading “Peace Corps,” states that “none of the funds appropriated under this heading shall be used to pay for abortions.”¹⁵ In the FY2016 State-Foreign Operations Appropriations Act, Congress enacted an additional provision that allows exceptions to the prohibition on funding abortions in the case of rape, incest, or endangerment to the life of the mother.¹⁶

No restrictions exist on funding for the medical evacuation of Peace Corps volunteers who decide to have an abortion. Under existing policy, the Peace Corps covers the cost of evacuation to a location where “medically adequate facilities” for obtaining an abortion are available and where abortions are legally permissible.¹⁷

¹² Section 104(f)(2) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2151b(f)(2)), as amended by Section 104 of the International Development and Food Assistance Act of 1978 (P.L. 95-424; 92 Stat. 946), approved October 6, 1978. “This part” refers to part I of the FAA.

¹³ 129 Stat. 2744. The provision is also included under Title III, Bilateral Economic Assistance (129 Stat. 2717).

¹⁴ The provision first appeared under Title III of the Foreign Assistance and Related Programs Appropriations Act, 1979 (P.L. 95-481; 92 Stat. 1597), approved October 18, 1978. For information the circumstances of the amendment’s introduction, see, for example, Senate debate, *Congressional Record*, September 22, 1978, Vol. 124, Part 23, pp. S15802-S15804.

¹⁵ 129 Stat. 2722.

¹⁶ The provision, which was also included in the FY2015 State-Foreign Operations Appropriations Act, states: “Provided further, That notwithstanding the previous proviso, section 614 of division E of Public Law 113–76 shall apply to funds appropriated under this heading” (129 Stat. 2722). Section 614 of P.L. 113-76 states, “The provision of section 613 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.” (Sec. 613 of P.L. 113-76 says, “No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.”) For a more detailed discussion of Peace Corps volunteers and abortion, see CRS Report RS21168, *The Peace Corps: Current Issues*, by Curt Tarnoff.

¹⁷ *MS 263 Volunteer Pregnancy*, Peace Corps Office of Medical Services (OMS), at http://www.peacecorps.gov/multimedia/pdf/manual/200_Volunteers/260-269_Trainee_and_Volunteer_Medical_Support/MS_263/Volunteer_Pregnancy.pdf.

Biden Amendment (1981)

In 1981, Congress passed an amendment to the FAA specifying that the United States may not provide foreign assistance for biomedical research related to abortion or involuntary sterilization. This provision, named after Senator Joseph Biden, states:

None of the funds made available to carry out this part may be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.¹⁸

The Biden amendment has also been included in foreign operations appropriations acts. Most recently, it was included in Section 7018 of the FY2016 State-Foreign Operations Appropriations Act.¹⁹ The provision as included in the FAA and the FY2016 State-Foreign Operations Appropriations Act applies to all foreign assistance activities authorized by part I of the FAA (development assistance).

Siljander Amendment (1981)

In 1981, Representative Mark Siljander introduced an amendment to the FY1982 Foreign Assistance and Related Programs Appropriations Act specifying that no U.S. funds may be used to lobby for abortion.²⁰ Since the Siljander amendment was first introduced, Congress has modified the amendment to state that no funds may be used to “lobby for *or against* abortion” (emphasis added).

The Siljander amendment has been included in annual foreign operations appropriations acts.²¹ It applies to all programs and activities appropriated under such acts. Most recently, the FY2016 State-Foreign Operations Appropriations Act states that “none of the funds made available under this Act may be used to lobby for or against abortion.”²²

DeConcini Amendment (1985)

In 1985, Congress enacted a provision to the FY1986 Foreign Assistance and Related Programs Appropriations Act specifying that the United States would only fund family planning projects that offer a range of family planning methods and services, either directly or through referral.²³ The measure was enacted to counter a Reagan Administration policy that would provide U.S. funding to overseas groups that advocate only “natural” family planning methods and services, such as abstinence.²⁴ The amendment, introduced by Senator Dennis DeConcini, states:

¹⁸ Section 104(f)(3) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2151b(f)(3)), as amended by Section 302(b) of the International Security and Development Act of 1981 (P.L. 97-113; 95 Stat. 1532), approved December 29, 1981. “This part” refers to part I of the FAA.

¹⁹ 129 Stat. 2744.

²⁰ Section 525 of the Foreign Assistance and Related Programs Appropriations Act, 1982 (P.L. 97-121; 95 Stat. 1657), approved December 29, 1981. Representative Siljander’s proposed amendment, H.Amdt. 470 to H.R. 4559 [97th], the Foreign Assistance and Related Programs Appropriations Act, 1982, also stated that no U.S. funds would be used to “recommend abortion or to train any individual to perform abortion.” This additional language was eliminated in the final bill.

²¹ The amendment did not appear in foreign operations appropriations acts for fiscal years 1994 and 1995.

²² 129 Stat. 2717.

²³ Section 541 of the Foreign Assistance and Related Programs Appropriations Act, 1986 (Section 101(i) of H.J.Res. 465; P.L. 99-190; 99 Stat. 1295), approved December 19, 1985.

²⁴ John Felton, “Budget Cuts Leave Mark on Foreign Arms Aid,” *Congressional Quarterly (CQ) Weekly*, December 21, (continued...)

That in order to reduce reliance on abortion in developing nations, funds shall be available only to family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services ...²⁵

The provision has been included in annual foreign operations appropriations legislation since 1985, and it is most recently included in the FY2016 State-Foreign Operations Appropriations Act.²⁶ It is applied to family planning assistance funded through all accounts under that act.

Additional Provision on Involuntary Sterilization and Abortion (1985)

In 1985, Congress included a provision in the FY1986 Foreign Assistance and Related Programs Appropriations Act requiring that no funds made available under part I of the FAA may be obligated for any given country or organization if the President certifies that the use of such funds violates the aforementioned Helms, Biden, or involuntary sterilization amendments.²⁷ The amendment states:

None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions or involuntary sterilizations [the Helms, Biden, and involuntary sterilization amendments].²⁸

The provision has been included in annual foreign operations appropriations. Most recently, it is incorporated into Section 7018 of the FY2016 State-Foreign Operations Appropriations Act.²⁹ It applies to all foreign assistance activities in the act that are authorized under part I of the FAA (development assistance).

Kemp-Kasten Amendment (1985)

In 1985, Congress agreed to the Kemp-Kasten amendment as part of the FY1985 Supplemental Appropriations Act.³⁰ The measure, introduced by Senator Bob Kasten and Representative Jack Kemp, states:

None of the funds made available under this Act nor any unobligated balances from prior appropriations Acts may be made available to any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization.³¹

(...continued)

1985. Then-USAID Administrator M. Peter McPherson reportedly agreed to provide \$40 million over five years to organizations that provide advice such natural methods.

²⁵ FY2016 State-Foreign Operations Appropriation Act (129 Stat. 2717).

²⁶ Ibid.

²⁷ Section 541 of Section 101(i) of H.J.Res. 465, P.L. 99-190 (99 Stat. 1291), approved December 19, 1985.

²⁸ FY2016 State-Foreign Operations Appropriation Act (129 Stat. 2744).

²⁹ Ibid.

³⁰ Chapter V of P.L. 99-88 (99 Stat. 323), approved August 15, 1985. Parts of this section are drawn from CRS Report RL33250, *U.S. International Family Planning Programs: Issues for Congress*, by Luisa Blanchfield.

³¹ S.Amdt. 388 to H.R. 2577 [99th], agreed to on June 20, 1985.

The provision was adopted due to the concerns of President Reagan and some Members of Congress that the U.N. Population Fund's (UNFPA's) program in China engaged in or provided funding for abortion or coercive family planning programs.³² It has been included in annual foreign operations appropriations legislation measures since FY1985. Although it applies to any organization or program that supports or participates in coercive abortion or involuntary sterilization, a determination has only been made regarding UNFPA.

Most recently, the provision is included in the FY2016 State-Foreign Operations Appropriations Act, which also states,

any determination made under the previous proviso must be made not later than 6 months after the date of the enacted of this Act, and must be accompanied by the evidence and criteria utilized to make the determination.³³

In 15 of the past 32 years, the United States has not contributed to UNFPA in as a result of executive branch determinations that UNFPA's program in China violated the Kemp-Kasten amendment. For seven years, the George W. Bush Administration transferred funds appropriated for UNFPA to other foreign aid activities. The Obama Administration supported U.S. funding for the organization, noting that its decision highlighted the President's "strong commitment" to international family planning, women's health, and global development.³⁴ The Trump Administration has not formally stated its position on U.S. funding to UNFPA for FY2017.

In recent years, in response to concerns regarding UNFPA's program in China and in addition to Kemp-Kasten restrictions, Congress has enacted certain conditions for U.S. funding of UNFPA. Most recently, Section 7082 of the FY2016 State-Foreign Operations Appropriations Act requires that

- funds not made available for UNFPA because of any provision of law shall be transferred to the Global Health Programs account and made available for family planning, maternal, and reproductive health activities;
- none of the funds made available to UNFPA may be used by UNFPA for a country program in China;
- U.S. contributions to UNFPA be kept in an account segregated from other UNFPA accounts and not be commingled with other sums; and
- for UNFPA to receive U.S. funding, it cannot fund abortions.

The act also required the Secretary of State to submit a report to the committees on appropriations on dollar-for-dollar withholding of funds. Specifically, not later than four months after the enactment of the act, the Secretary is required to submit a report to the committees on appropriations indicating the funds UNFPA is budgeting for a country program in China. If the Secretary's report states that funds will be spent on such a program, then the amount of such funds shall be deducted from the funds made available to UNFPA for the remainder of the fiscal year in which the report is submitted.³⁵

³² UNFPA, established in 1969, is the world's largest source of population and reproductive health programs and the principal unit within the United Nations for global population issues. For more information, see archived CRS Report RL32703, *The U.N. Population Fund: Background and the U.S. Funding Debate*, by Luisa Blanchfield.

³³ 129 Stat. 2717.

³⁴ In March 2009, a State Department spokesperson confirmed that the U.S. government would contribute \$50 million to UNFPA as provided by the FY2009 Department of State, Foreign Operations, and Related Programs Appropriations Act. In FY2016, the United States contributed an estimated \$32.5 million to UNFPA.

³⁵ 129 Stat. 2823.

Livingston Amendment (1986)

In 1986, Representative Bob Livingston introduced an amendment as part of FY1987 continuing appropriations that prohibited the United States from discriminating against organizations based on their religious or conscientious commitment to offer only “natural” family planning when awarding related grants:

[I]n awarding grants for natural family planning under section 104 of the Foreign Assistance Act no applicants shall be discriminated against because of such applicant’s religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso [DeConcini amendment].³⁶

The Livingston amendment is related to the DeConcini amendment, which states that the United States shall only fund family planning projects that offer a range of family planning methods and services, either directly or through referral. The measure ensures that the United States cannot discriminate against organizations that support natural family planning methods when awarding family planning grants and agreements, providing such organizations comply with the DeConcini amendment.

The provision has been included in foreign operations appropriations, and it is most recently incorporated into the FY2016 State-Foreign Operations Appropriations Act.³⁷ It is applied to family planning assistance from any account appropriated under that act.

Leahy Amendment (1994)

The Leahy amendment, introduced by Senator Patrick Leahy in 1994 as an amendment to the FY1995 Foreign Operations, Export Financing, and Related Programs Appropriations Act, seeks to clarify language in the Helms amendment, which states, “None of the funds made available ... may be used to pay for the performance of abortions as a method of family planning or to *motivate* or coerce any person to practice abortions” (emphasis added).³⁸ The Leahy provision aims to address some policymakers’ concerns that providing information or counseling about all legal pregnancy options could potentially be viewed as violating the Helms amendment. The most recent version states:

[F]or purposes of this or any other Act authorizing or appropriating funds for the Department of State, foreign operations, and related programs, the term “motivate,” as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.³⁹

The amendment has been included in foreign operations appropriations in various forms since it first appeared in enacted legislation. It was included in the FY2016 State-Foreign Operations Appropriations Act, and applies to all enacted authorization and appropriations legislation related to the Department of State, foreign operations, and related programs.

³⁶ Title II of Section 101(f) of H.J.Res. 738, P.L. 99-500 (100 Stat. 1783-217), approved October 18, 1986.

³⁷ 129 Stat. 2718.

³⁸ P.L. 103-306 (108 Stat. 1612), approved on August 23, 1994.

³⁹ FY2016 State-Foreign Operations Appropriations Act (129 Stat. 2718).

Tiahrt Amendment (1998)

In October 1998, Congress enacted an amendment introduced by Representative Todd Tiahrt as part of the FY1999 Foreign Operations, Export Financing, and Related Programs Appropriations Act that directs voluntary family planning projects supported by the United States to comply with five specific requirements.⁴⁰ The provision, which became known as the Tiahrt amendment, has been included in foreign operations appropriations in each subsequent fiscal year. It states that “funds shall be made available” only to voluntary family planning projects that meet the following requirements:

- (1) service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes);
- (2) the project shall not include payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning;
- (3) the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual’s decision not to accept family planning services;
- (4) the project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method; and
- (5) the project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits; and, not less than 60 days after the date on which the Administrator of the United States Agency for International Development determines that there has been a violation of the requirements contained in paragraph (1), (2), (3), or (5) of this proviso, or a pattern or practice of violations of the requirements contained in paragraph (4) of this proviso, the Administrator shall submit to the Committees on Appropriations a report containing a description of such violation and the corrective action taken by the Agency.⁴¹

Representative Tiahrt introduced the amendment amid media and NGO reports that some governments were offering financial incentives to meet sterilization quotas. At that time, many poor women living in rural Peru were reportedly forcibly sterilized and provided with little or no information about alternative contraception methods. In some cases, complications from unsanitary sterilizations led to sickness or death.⁴² The intent of the amendment was to ensure that U.S. foreign assistance did not support such practices.⁴³

⁴⁰ Section 101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277, 112 Stat. 2681-154), approved on October 21, 1998.

⁴¹ FY2016 State-Foreign Operations Appropriations Act (129 Stat. 2717-2718). The quotation is formatted for clarity; it appears differently in the act.

⁴² Calvin Sims, “Using Gifts as Bait, Peru Sterilizes Poor Women,” *New York Times*, February 15, 1998.

⁴³ For further information on the intent of the Tiahrt amendment and the debate surrounding its adoption, see “Foreign (continued...)”

In April 1999, USAID issued guidance on implementing the Tiahrt requirements for voluntary family planning projects. It also provided technical guidance on the “Comprehensible Information” paragraph of the amendment.⁴⁴ Since the Tiahrt amendment was enacted, USAID reports there have been violations in Peru, Guatemala, and the Philippines. In 2007, the USAID Inspector General conducted an audit of USAID’s compliance with the amendment. Several USAID operating units were audited, including the Global Health Bureau, USAID/Bolivia, USAID/Ethiopia, and USAID/Mali. The audit report, published in February 2008, found no further violations of the amendment.⁴⁵

Most recently, the Tiahrt amendment was included in the FY2016 State-Foreign Operations Appropriations Act. It is applied to family planning assistance funded through all accounts under that act.

Executive Branch Policies and Restrictions

This section provides an overview of two executive branch policies addressing abortion or voluntary family planning: the Mexico City policy and USAID Policy Determination 3 (PD-3) on voluntary sterilization.

Mexico City Policy

The Mexico City policy restricts U.S. family planning assistance to foreign NGOs engaged in voluntary abortion activities, even if such activities are conducted with non-U.S. funds. The policy, which was rescinded by President Obama in January 2009 and reinstated by President Trump in January 2017, has remained a controversial issue in U.S. foreign assistance. Unlike the policies listed in the previous section, which were enacted through legislation, the Mexico City policy has been established and rescinded through executive statements and instruments by past and current Presidents.

Reagan Through George W. Bush Administrations

At the 1984 International Conference on Population held in Mexico City, the Reagan Administration announced that it would restrict U.S. population assistance by terminating USAID support for any foreign organization—but not national government—that was involved in voluntary abortion activities, even if such activities were undertaken with non-U.S. funds.

The Mexico City policy represented a shift in U.S. population policy. Under the Helms amendment and other abortion and family planning-related restrictions, no U.S. funds could be used directly to pay for the performance of an abortion as a method of family planning or for involuntary sterilizations. However, U.S. and foreign recipients of USAID grants could use their

(...continued)

Operations, Export Financing, and Related Programs Appropriations Act, 1999,” House debate, *Congressional Record*, Vol. 144, No. 124, September 17, 1998, pp. H7946-H8013.

⁴⁴ See (1) Guidance for Implementing the Tiahrt Requirements for Voluntary Family Planning Projects, USAID, April 1999, at http://www.usaid.gov/our_work/global_health/pop/tiahtqa.pdf; and (2) Technical Guidance on the “Comprehensible Information” Paragraph of the Tiahrt Clause, USAID, April 1999, at http://www.usaid.gov/our_work/global_health/pop/tiajim3b.pdf.

⁴⁵ *Office of the Inspector General: Audit of USAID’s Effectiveness in Complying with Tiahrt Voluntary Family Planning Requirements*, Audit Report No. 9-000-08-005-P, February 8, 2008, at <http://www.usaid.gov/oig/public/fy08rpts/9-000-08-005-p.pdf>.

own funds and funds received from other sources to engage, where legal, in abortion-related activities—though they were required to maintain segregated accounts for U.S. money in order to demonstrate compliance with the abortion restrictions. Under the Mexico City policy, foreign NGOs were required to certify in writing that they did not, and would not during the time of the funding agreement, perform or actively promote abortion as a method of family planning as a condition for receiving USAID family planning assistance.

During the George H. W. Bush Administration, several Members of Congress attempted unsuccessfully to overturn the Mexico City policy, arguing that existing congressional restrictions, such as the Helms and Biden amendments, were sufficient. President Clinton, in a January 22, 1993, memo to USAID, lifted restrictions imposed by the Reagan and George H. W. Bush Administrations on grants to family planning NGOs—in effect ending the Mexico City policy. On January 22, 2001, however, President George W. Bush revoked the Clinton Administration memorandum and restored the Mexico City restrictions for the next eight years. He also directed that the restrictions be expanded to State Department programs in the same way they applied to USAID activities. The Administration instituted exceptions for cases of rape, incest, and life of the mother, and post-abortion care. In August 2003, President Bush further announced that that the President’s Emergency Plan for HIV/AIDS Relief (PEPFAR) (P.L. 108-25) and “multilateral organizations that are associations of governments” were exempt from the policy.⁴⁶

Obama Administration Rescinds Mexico City Policy

On January 23, 2009, President Obama issued a presidential memorandum to the USAID Administrator and Secretary of State rescinding the Mexico City policy and Bush Administration conditions placed on USAID and the State Department for voluntary population planning activities. The memorandum stated:

These excessively broad conditions on grants and assistance awards are unwarranted. Moreover, they have undermined efforts to promote safe and effective voluntary family planning programs in foreign nations.⁴⁷

President Obama also directed the Secretary of State and USAID Administrator to waive the conditions set forth by previous Administrations in these policies and to notify current grantees as soon as possible. He further directed the State Department and USAID to cease imposing such conditions on any future grants.

Though the Mexico City policy was rescinded by the Obama Administration, it remains a controversial issue among many Members of Congress. It will likely be an area of continued interest for the 115th Congress and beyond.

Trump Administration Restores Mexico City Policy

On January 23, 2017, the President issued a memorandum reinstating the Mexico City Policy.⁴⁸ The memorandum also directed the Secretary of State, to the extent allowable by law, to

⁴⁶ White House, “Memorandum for the Administrator of the United States Agency for International Development, Subject: Restoration of the Mexico City Policy,” January 22, 2001; White House, “Memorandum for the Secretary of State, Subject: Assistance for Voluntary Population Planning,” August 29, 2003.

⁴⁷ Memorandum from President Obama to the Secretary of State and Administrator for USAID, “Mexico City Policy and Assistance for Voluntary Population Planning,” January 23, 2009.

⁴⁸ The Trump Administration memorandum revoked President Obama’s 2009 memorandum and reinstated George W. Bush’s January 2001 memo.

“implement a plan to extend the requirements of the reinstated [Bush 2001] Memorandum to global health assistance furnished by all departments or agencies.”⁴⁹

USAID Policy Determination 3 on Voluntary Sterilization

Policy Determination 3 (PD-3) on voluntary sterilization (VS) was issued by USAID in September 1982 with the purpose of ensuring that voluntary sterilization services funded by the U.S. government protect the needs and rights of individuals.⁵⁰ According to USAID, such protections are necessary given the special nature of VS as a highly personal and permanent surgical procedure.⁵¹ PD-3 outlines a number of requirements for USAID voluntary sterilization services, including the following:

- **Informed consent**—USAID assistance to VS service programs is contingent on satisfactory determination that such services, performed in whole or in part with USAID funds, are performed only after the acceptor of the procedure has voluntarily presented himself or herself at the treatment facility and given his or her informed consent.
- **Ready access to other methods**—Where VS services are available, other means of family planning should also be readily available at a common location, thus allowing the acceptor to have a choice of family planning methods.
- **No incentive payments**—USAID funds cannot be used to pay potential acceptors of sterilization to induce their acceptance of VS. In addition, the fee or cost structure applied to VS and other contraceptives shall be established in such a way that no financial incentive is created for sterilization over another method.⁵²

PD-3 also provides guidance on payments to VS service acceptors, providers, and referral agents. Certain types of payment are not considered incentives provided they are “reasonable.” Determination of a reasonable payment must be based on a country and program specific basis using knowledge of social and economic circumstances. Specifically:

- **VS acceptors** may generally receive recompense for legitimate extra expenses related to VS (such as transportation, food, medicines, and lost wages during a recovery period);

⁴⁹ The Mexico City Policy, Memorandum from President Donald Trump to the Secretary of State, Secretary of Health and Human Services, and the Administrator of the U.S. Agency for International Development, January 23, 2017.

⁵⁰ Section V, “Annex” of *Population Assistance—USAID Policy Paper*, USAID Bureau for Program and Policy Coordination, September 1982. Also see *Policy Determination 3 and Addendum: USAID Policy Guidelines on Voluntary Sterilization*.

⁵¹ USAID states that voluntary sterilization services include activities that are primarily intended to provide voluntary male and female sterilizations to persons requesting this type of contraceptive procedure. In the context of PD-3, they may also include voluntary sterilization training programs.

⁵² Drawn from *Policy Determination 3 and Addendum: USAID Policy Guidelines on Voluntary Sterilization*. Other requirements are (1) *quality of VS services*: medical personnel who operate on sterilization patients must be well-trained and qualified in accordance with local medical standards, and equipment will be the best available; (2) *sterilization and health services*: VS programs shall be conducted as an integral part of the total health care services of the recipient country and shall be performed with respect to the overall health and well-being of the prospective acceptors; and (3) *country policies*: USAID should take appropriate precautions through consultations with host country officials to minimize the prospect of misunderstandings concerning potential VS activities.

- **VS service providers** may receive per-case payment and compensation for related items (such as anesthesia, personal costs, transportation, and pre- and post-operative care); and
- **VS service referral agents** may receive per-case payment for extra-expenses incurred in informing or referring VS clients.⁵³

PD-3 applies to family planning assistance from any account where USAID funds are used for whole or partial direct support of the performance of voluntary sterilization activities. It applies to U.S. NGOs, foreign NGOs, public international organizations, and governments.

Author Contact Information

Luisa Blanchfield
Specialist in International Relations
lblanchfield@crs.loc.gov, 7-0856

⁵³ Ibid.