



# International Family Planning Programs: Issues for Congress

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## Summary

Since 1965, the U.S. government has supported international family planning activities based on principles of voluntarism and informed choice that gives participants access to services and information on a broad range of family planning methods. U.S. family planning policy and abortion restrictions have generated contentious debate for over three 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 113<sup>th</sup> Congress.

In 1984, controversy arose over U.S. family planning assistance when the Ronald Reagan Administration introduced restrictions that became known as the “Mexico City policy.” The Mexico City policy required foreign non-governmental organizations (NGOs) to certify that they would not perform or actively promote abortion as a method of family planning—even if the activities were undertaken with non-U.S. funds. Presidents Reagan and George H. W. Bush also suspended contributions to the United Nations Population Fund (UNFPA) due to evidence of coercive family planning practices in China, citing violations of the “Kemp-Kasten” amendment, which bans U.S. assistance to organizations that, as determined by the President, support or participate in the management of coercive family planning programs.

President Bill Clinton resumed UNFPA funding and rescinded the Mexico City policy in 1993. In 2001, however, President George W. Bush reapplied the Mexico City policy restrictions. The Bush Administration also suspended U.S. contributions to UNFPA from FY2002 to FY2008 following a State Department investigation of family planning programs in China. In January 2009, President Barack Obama issued a memorandum rescinding the Mexico City policy. The President also stated that the United States would resume U.S. contributions to UNFPA.

Recent international family planning-related appropriations and Obama Administration requests are outlined below.

- **FY2013**—In February 2012, President Obama requested a total of **\$642.7 million** in international family planning and reproductive health (FP/RH) funding, including **\$39 million** for UNFPA. Under the Continuing Appropriations Resolution, FY2013 (H.J.Res. 117, P.L. 112-175), approved by Congress in September 2012, regular aid accounts—which include international family planning funding—are funded at the same level as in FY2012, plus .612%.
- **FY2012**—In December 2011, President Obama signed the Consolidated Appropriations Act, 2012 (P.L. 112-74), which directed that not less than **\$575 million** should be made available for FP/RH activities. It also stated that **\$35 million** shall be made available for UNFPA.

For further discussion of abortion and family planning-related restrictions in U.S. legislation and policy, see

- CRS Report R41360, *Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy*, by Luisa Blanchfield, and
- CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro.

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## Setting the Context

Population assistance became a global issue in the late 1950s and early 1960s after several private foundations, among them the International Planned Parenthood Federation (IPPF), began providing money to developing countries to address 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 programs. In 1968, Congress specifically funded international family planning assistance 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.<sup>1</sup> 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. Nevertheless, while global population growth has slowed, the world's population reached 6 billion in 1999, 6.5 billion in 2005, and 7 billion in 2011.<sup>2</sup> It is expected to surpass 9 billion by 2050, with most of the growth occurring in developing nations.<sup>3</sup> In 1960, 70% of the world's population lived in developing countries, and in 2005 the level had grown to 81%. These countries account for the vast majority of worldwide population growth.<sup>4</sup>

### Most Recent Developments: FY2013 Funding

**Administration Request:** The Obama Administration requested a total of **\$642.7 million** in international family planning and reproductive health (FP/RH) funding, including **\$39 million** for the U.N. Population Fund (UNFPA).

**Senate Actions:** The Senate Committee on Appropriations reported S. 3241 on May 24, 2012, which appropriated a total of **\$655.5 million** for family planning and reproductive health activities, and **\$44.5 million** for UNFPA.

**House Actions:** On May 25, 2012, the House of Representatives Committee on Appropriations reported H.R. 5857, which appropriated not more than **\$461 million** for family planning and reproductive health activities, and **no funds** for UNFPA. The House bill also included language that codified the Mexico City Policy.

**Continuing Resolution:** On September 28, 2012, Congress approved the Continuing Appropriations Resolution, FY2013 (H.J.Res. 117, P.L. 112-175). Under the resolution, regular aid accounts—which include international family planning funding—are funded at the same level as in FY2012, plus .612%. The resolution expires on March 27, 2013.

For more details, see the “U.S. Funding Levels” section.

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

<sup>2</sup> Overview and highlights of the Population Reference Bureau (PRB) *2011 World Population Data Sheet*.

<sup>3</sup> *2008 Revision of World Population Prospects*, U.N. Statistics Division, March 11, 2009.

<sup>4</sup> PRB, *Frequently Asked Questions About the PRB World Population Data Sheet*, 2005.

## **The Population Statistics Debate**

Population statistics alone are only part of a larger story. For the past 40 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 to 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 rejected by developing countries at the time. In keeping with this view, in 1977 the Carter Administration proposed legislative language, later enacted in Section 104(d) of the Foreign Assistance Act of 1961, as amended, 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.

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 instead the need for developing countries to adopt sound economic policies that stressed open markets and an active private sector.

Nearly a decade later, the Clinton Administration again changed the U.S. position on family planning programs by lifting U.S. policy announced at the Mexico City Conference. At the 1994 International Conference on Population and Development in Cairo, the U.S. government, along with nearly 200 other nations, endorsed the Conference's program of action, which emphasized a broader population and development agenda, including support for family planning and reproductive health services, improving the status of women, and providing access to safe abortion, where legal.

## **Trends in Population Approaches and Research**

Since the 1994 Cairo conference, groups supporting strategies to address reproductive health and rights have supported a broader agenda of initiatives that includes 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.

Recent trends in population research indicate that fertility rates in both developed and developing countries have decreased over time. The number of developing countries with high fertility rates (defined as five or more children per woman) declined from 59 in 1990-1995 to 27 in 2005-2010.<sup>5</sup> Birth rates in developing countries are projected to fall from 2.75 children per woman in 2005-2010 to 2.05 in 2045-2050.<sup>6</sup> At the same time, the numbers of children and young people in developing countries are at an unprecedented high (1.7 billion children and 1.1 billion young people). Consequently, many predict that future world population growth will occur primarily in these countries.<sup>7</sup> Fertility rates in developed countries have been at below-replacement levels for several decades (less than 2.1 children per woman). In recent years, rates have risen slightly; 42 developed nations had below-replacement fertility in 1990-1995, whereas 44 had such levels in 2005-2010. Nevertheless, 25 developed countries—including Japan and the majority of countries in Southern and Eastern Europe—had fertility rates below 1.5 children per woman during the 2005-2010 period.<sup>8</sup>

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 and have better access to family planning, they argue. Others also contend that with improved economic development, health conditions, and lowered infant mortality rates, parents are deciding to have fewer babies because they are more confident that their children will survive.<sup>9</sup>

Despite projections of declining fertility rates, the world population is expected to increase in the next four decades. If fertility rates continue their decline, many expect the world population to reach about 9.1 billion in 2050, which, according to the median variant, would represent an increase of about 33 million people per year during that period.<sup>10</sup> The exact level of population

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<sup>5</sup> *2008 Revision of World Population Prospects, Key Findings*, U.N. Statistics Division, March 11, 2009.

<sup>6</sup> "Linking Population, Poverty, and Development: Rapid Growth in Less Developed Regions," U.N. Population Fund, 2010.

<sup>7</sup> PRB, *2010 World Population Data Sheet*, p. 3.

<sup>8</sup> *2008 Revision of World Population Prospects, Key Findings*, U.N. Statistics Division, March 11, 2009.

<sup>9</sup> World Bank, "Population Growth Rate," at <http://www.worldbank.org/depweb/english/modules/social/pgr/>.

<sup>10</sup> *2008 Revision of World Population Prospects, Key Findings*, U.N. Statistics Division, March 11, 2009.

growth, however, will likely depend on the extent to which individuals—particularly those in developing countries—decide to limit family size and have access to family planning services.<sup>11</sup>

## **Financing Population Assistance Programs**

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, the costs of which were estimated to grow to about \$17 billion in 2000. A July 1999 conference assessing implementation of the 1994 Cairo Program of Action, 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.<sup>12</sup> A more recent analysis suggests a different trend, noting that donor nations contributed \$2.3 billion in 2002, the largest amount ever. In 2008, UNFPA announced that its number of donors had increased from 166 in 2004 to 182 in 2007. In 2009, however, UNFPA reported that the number of its donors decreased to 161; it attributed this decline to the global economic downturn.<sup>13</sup>

## **Overview of 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 funding international family planning programs based on principles of voluntarism and informed choice that give participants access to information and services on a broad range of family planning methods. At present, USAID maintains family planning projects in more than 50 developing countries that include counseling and services, training of health workers, contraceptive commodities and distribution, financial management, policy dialogue, data collection, monitoring and evaluation, 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 in maternal and child health, the enhancement of the status of women, and HIV prevention. It also supports programs that address behavior change communication, post-abortion care, and obstetric fistula.<sup>14</sup>

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, centering on two key issues: (1) the use of federal funds to perform or promote abortions abroad and how to deal with evidence of coercion in some national family planning programs, especially in China, and (2) setting appropriate and effective funding levels for family planning assistance.

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<sup>11</sup> PRB, *2010 World Population Data Sheet*, p. 3.

<sup>12</sup> Population Action International, *Progress and Promises: Trends in International Assistance for Reproductive Health and Population 2004*.

<sup>13</sup> See (1) *UNFPA 2007 Annual Report*, U.N. Population Fund, 2008; (2) U.N. document, DP/FPA/2010/18, dated April 30, 2010; and (3) *UNFPA 2009 Annual Report*, U.N. Population Fund, 2010.

<sup>14</sup> For further information on USAID family planning and reproductive health programs, see [http://www.usaid.gov/our\\_work/global\\_health/pop/index.html](http://www.usaid.gov/our_work/global_health/pop/index.html).

Arguably, the most bitter controversies in U.S. family planning policy have erupted over abortion—in particular, the degree to which legal 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 access to voluntary family planning services in developing nations. These issues stem from the contentious domestic debate over U.S. domestic 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 supported with U.S. foreign assistance funds. 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 legal 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. However, 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 introduced by then-Senator Jesse Helms (§104(f)). The provision, widely referred to as the “Helms amendment,” prohibits the use of foreign development assistance to (1) pay for the performance of abortions or involuntary sterilizations, (2) motivate or coerce any person to practice abortions, or (3) 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.<sup>15</sup>

For the past several decades, 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, as well as 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 the mid-1980s—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 U.S. family planning debate.

## The Mexico City Policy

In 1984, the Reagan Administration announced that it would restrict U.S. population aid by terminating USAID support for any foreign NGOs (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 2<sup>nd</sup> 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

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<sup>15</sup> For more information on the Helms amendment and other abortion and family planning-related restrictions, see CRS Report R41360, *Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy*, by Luisa Blanchfield

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 that the Mexico City policy is a violation of free speech and the rights of women to choose to have an abortion in countries where it is legal. They contend that the policy undermines family planning and 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 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 Rescinded by the Bill Clinton Administration (1993)**

President Clinton, in a January 22, 1993, memo to USAID, lifted restrictions imposed by the Reagan and Bush Administrations on grants to family planning foreign NGOs—in effect ending the Mexico City policy. The memo noted that the policy had extended beyond restrictions in the Foreign Assistance Act and was not mandated by law. In his remarks, President Clinton explained that this step would “reverse a policy that has seriously undermined much needed efforts to promote safe and effective family planning programs abroad, and will allow us to once again provide leadership in helping to stabilize world population.”<sup>16</sup>

### **The George W. Bush Administration Restores the Mexico City Policy (2001)**

On January 22, 2001, President George W. Bush revoked the Clinton Administration memorandum and restored in full the terms of the Mexico City restrictions. As was the case during the 1980s and early 1990s when the Mexico City policy was in place, foreign NGOs, as a condition for receipt of U.S. family planning assistance, 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 abortions, money is fungible; organizations receiving American-taxpayer funding can use USAID resources for family planning 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.”

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<sup>16</sup> President Bill Clinton, “Remarks on Signing Memorandums on Medical Research and Reproductive Health and an Exchange With Reporters,” January 22, 1993.

### **Bush Administration Mexico City Policy Guidelines**

On February 15, 2001, USAID released specific guidelines necessary to implement President Bush's directive. The guidelines stated that U.S. NGOs receiving USAID grants could not furnish assistance to foreign NGOs that (1) performed or actively promoted abortion as a method of family planning in USAID-recipient countries, or (2) furnished assistance to other foreign NGOs that conducted such activities. When USAID provided assistance directly to a foreign NGO, the organization had to certify that it did not now or would not during the term of the grant perform or actively promote abortion as a method of family planning or provide financial support to other foreign NGOs that carry out such activities. The implementing regulations contained several exceptions, including the following:

- Abortions could 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 were 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 was able to continue support to foreign governments, either directly or through a grantee, even in cases where the government included abortion in its family planning program. Money provided to such governments, however, had to be placed in a segregated account and none of the funds could be drawn to finance abortion activities.

President Bush 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 applied to USAID activities. This directive mostly impacted State Department-managed refugee programs, large portions of which were implemented by international organizations and NGOs. The President's memorandum, however, stated that the policy would not apply to multilateral organizations that were associations of governments, presumably referring to the U.N. High Commissioner for Refugees, among others. President Bush 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.

### **Obama Administration Rescinds the Mexico City Policy (2009)**

On January 23, 2009, President Barack Obama issued a presidential memorandum to the Secretary of State and USAID Administrator revoking the Mexico City policy and Bush Administration conditions on voluntary population planning provided by the State Department.<sup>17</sup> 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.<sup>18</sup>

President Obama also directed the Secretary of State and USAID Administrator to waive the conditions set forth in these policies and to notify current grantees as soon as possible. He further

<sup>17</sup> Specifically, President Obama's memorandum revoked President Bush's January 22, 2001, memorandum for the USAID Administrator (Restoration of the Mexico City Policy) and the August 29, 2003, memorandum for the Secretary of State (Assistance for Voluntary Population Planning).

<sup>18</sup> 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, available at [http://www.whitehouse.gov/the\\_press\\_office/MexicoCityPolicy-VoluntaryPopulationPlanning/](http://www.whitehouse.gov/the_press_office/MexicoCityPolicy-VoluntaryPopulationPlanning/).

directed the State Department and USAID to cease imposing such conditions on any future grants.<sup>19</sup>

## **Restrictions on U.N. Population Fund (UNFPA) Funding: The “Kemp-Kasten Amendment”**

At the 1984 Mexico City Conference, the Reagan Administration instituted a new policy relating to UNFPA.<sup>20</sup> The Administration required that the organization 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, according to Administration officials, there was evidence of coercive family planning practices.

Subsequently, Congress legislated a more restrictive UNFPA policy—believed to be 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). The amendment 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 due to concerns regarding UNFPA’s activities in China, 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 on 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.

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. 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.

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<sup>19</sup> Ibid.

<sup>20</sup> 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 more detailed information regarding UNFPA, see CRS Report RL32703, *The U.N. Population Fund: Background and the U.S. Funding Debate*, by Luisa Blanchfield.

## **George W. Bush Administration Determinations Under Kemp-Kasten**

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.<sup>21</sup>

From FY2002 through FY2008, the Bush Administration determined that UNFPA was ineligible for U.S. funding under the Kemp-Kasten amendment.<sup>22</sup> Since the 2002 determination, the Administration 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.

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

Nevertheless, on July 22, 2002, Secretary of State Powell, to whom President Bush 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. 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

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<sup>21</sup> 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.

<sup>22</sup> For the most recent Administration statements, see “White House: No U.N. Funding for China,” *The Associated Press*, September 7, 2007, and 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/t/pa/prs/ps/2008/jun/106348.htm>.

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.<sup>23</sup>

### **Bush Administration 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 policies but that the organization’s continued presence in China offered a “seal of approval” for Chinese policies.

### **Opposition to the Bush Administration Determination**

Critics of the Bush Administration’s decision opposed it for a number of reasons. 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 to other international organizations operating in China and to which the United States contributes—for example, UNICEF, WHO, and the U.N. Development Program.

### **Obama Administration Determinations Under Kemp-Kasten**

The Obama Administration has expressed its support for U.S. funding of UNFPA. In a January 2009 memorandum rescinding the Mexico City policy, President Obama indicated that his Administration would fund UNFPA. In March 2009, a State Department spokesperson confirmed that the U.S. government would contribute \$50 million to UNFPA as provided by the Omnibus Appropriations Act, 2009 (P.L. 111-8). This decision, according to Administration officials, highlights the President’s “strong commitment” to international family planning, women’s health, and global development.<sup>24</sup>

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<sup>23</sup> The most significant increases were made in programs for Georgia, Madagascar, Romania, Russia, Rwanda, and Ukraine.

<sup>24</sup> Department of State press release, “U.S. Government Support for the United Nations Population Fund (UNFPA),” (continued...)

## 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 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.) In 2010, China's estimated population was just over 1.33 billion.<sup>27</sup>

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

### 2011 State Department Human Rights Report on China

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 on China (covering 2011) concluded that:

*"National law prohibits the use of physical coercion to compel persons to submit to abortion or sterilization. However, intense pressure to meet birth limitation targets set by government regulations resulted in instances of local family-planning officials using physical coercion to meet government goals. Such practices included the mandatory use of birth control and the abortion of unauthorized pregnancies. In the case of families that already had two children, one parent was often pressured to undergo sterilization..."*

*The population control policy relied on education, propaganda, and economic incentives, as well as on more coercive measures. Those who violated the child-limit policy by having an unapproved child or helping another do so faced disciplinary measures such as social compensation fees, job loss or demotion, loss of promotion opportunity, expulsion from the Communist Party of China (membership is an unofficial requirement for certain jobs), and other administrative punishments, including in some cases the destruction of private property."<sup>25</sup>*

According to the report, female infanticide, sex-selective abortions, and the abandonment and neglect of baby girls remained a problem due to traditional preferences for sons and the coercive birth limitation policy.<sup>26</sup>

(...continued)

March 24, 2009.

<sup>25</sup> "Country Reports on Human Rights Practices, 2011—China," U.S. Department of State, Bureau of Democracy, Human Rights and Labor, April 8, 2012.

<sup>26</sup> Ibid.

<sup>27</sup> Central Intelligence Agency, The World Factbook, China. For earlier data, see The World Bank, "China—Data," at <http://data.worldbank.org/country/china>.

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.

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 in December 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.<sup>28</sup> Nevertheless, Assistant Secretary Dewey said that the social compensation fee policy set out in China's national law on population and birth planning is a "harsh and effective enforcement tool" that is used to force women to have an abortion, and is therefore regarded as a coercive policy. While negotiations have resulted in some progress, he concluded that China's policies have not been altered enough to allow the Bush Administration to resume UNFPA funding.

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

The UNFPA Executive Board approved a 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 China's "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

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<sup>28</sup> 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.

practices in family planning activities.<sup>29</sup> A group of 10 European nations disagreed, however, issuing a statement saying that China did conform to the program of 1994 International Conference on Population and Development.<sup>30</sup> On August 30, 2010, the UNFPA Executive Board approved a new five-year program for China that spans from 2011 through 2015. The proposed budget for the program is \$22 million.<sup>31</sup>

## U.S. Funding Levels

Since 1965, USAID has obligated over \$13.8 billion in assistance for international family planning. In many years, and especially over the past two decades, the level of funding for population assistance has been controversial, and at times, linked directly with differences concerning Mexico City policy 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. During the balance of the Clinton Administration, however, Congress cut and placed restrictions on bilateral funding (see **Table 1**). In some years, bilateral family planning, reproductive health, and maternal health levels received additional resources when UNFPA-earmarked funds were reprogrammed for bilateral activities after UNFPA was determined to be ineligible for U.S. support under the Kemp-Kasten amendment.

**Table 1. U.S. Family Planning Assistance, FY1995-FY2012**

(Family planning/reproductive health budget; millions of current \$)

|               | 1995  | 1996  | 1997  | 1998  | 1999  | 2000               | 2001              | 2002 <sup>c</sup> | 2003 <sup>c</sup> | 2004 <sup>c</sup> | 2005 <sup>c</sup> | 2006 <sup>c</sup> | 2007 <sup>c</sup> | 2008 <sup>c</sup> | 2009  | 2010               | 2011               | 2012               |
|---------------|-------|-------|-------|-------|-------|--------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------|--------------------|--------------------|--------------------|
| Bilateral Aid | 542.0 | 432.0 | 385.0 | 385.0 | 385.0 | 372.0 <sup>a</sup> | 425.0             | 425.0             | 443.6             | 429.5             | 437.0             | 435.0             | 435.6             | 457.2             | 522.4 | 593.4              | 575.0              | 575.0              |
| UNFPA         | 35.0  | 22.8  | 25.0  | 20.0  | 0.0   | 21.5 <sup>b</sup>  | 21.5 <sup>b</sup> | 0.0               | 0.0               | 0.0               | 0.0               | 0.0               | 0.0               | 0.0               | 50.0  | 55.0               | 40.0               | 35.0               |
| Total         | 577.0 | 454.8 | 410.0 | 405.0 | 385.0 | 393.5              | 446.5             | 425.0             | 443.6             | 429.5             | 437.0             | 435.0             | 435.6             | 457.2             | 572.4 | 648.4 <sup>d</sup> | 615.0 <sup>e</sup> | 610.0 <sup>e</sup> |

**Source:** USAID Bureau of Global Health Strategic Planning and Budgeting Office and annual appropriations legislation.

**Note:** 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. From FY2002 through FY2008, the Bush 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.
- d. This figure is an estimate.
- e. These figures represent the enacted level.

<sup>29</sup> U.S. Mission to the United Nations. *Ambassador Wolff: Remarks on Proposed UNFPA Sixth Country Program for China*, January 26, 2006.

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

<sup>31</sup> U.N. document, DP/FPA/CPD/CHN/7, *United Nations Population Fund Final Country Program Document for China*, dated July 16, 2010.

In FY2009, total U.S. population assistance was approximately \$572.4 million, an increase of about \$115 million over the FY2008 level of \$457.2 million. U.S. population assistance levels peaked in FY2010, with USAID estimating that total assistance, including contributions to UNFPA, reached a high \$648.4 million.<sup>32</sup> This increase in funding can be attributed in part to President Obama's determination that UNFPA is eligible for U.S. funding under the Kemp-Kasten amendment and to the President's Global Health Initiative (GHI).

## **FY2013 Administration Request and Congressional Actions**

Under the Continuing Appropriations Resolution, FY2013 (H.J.Res. 117, P.L. 112-175), approved by Congress on September 28, 2012, regular aid accounts—which include those that support international family planning programs—are funded at the same level as in FY2012, plus .612%. All restrictions and conditions included in FY2012 State-Foreign Operations appropriations legislation (P.L. 112-74) apply under the continuing resolution, which will expire on March 27, 2013.

In February 2012, President Obama requested a total of \$642.7 million for FY2013 international family planning and reproductive health funding.<sup>33</sup> This includes \$530 million from the Global Health Programs account (GHP, formerly Global Health and Child Survival), \$73.7 million from the Economic Support Fund (ESF), and \$39 million for UNFPA from the International Organizations and Programs account (IO&P).

The Senate Committee on Appropriations reported S. 3241, the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2013, on May 24, 2012. The bill appropriated a total of \$655.5 million for family planning and reproductive health activities, and \$44.5 million for UNFPA.<sup>34</sup> On May 25, 2012, the House of Representatives reported H.R. 5857, the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2013. It appropriated not more than \$461 million in reproductive health and voluntary family planning funding, and no funds for UNFPA. The House bill also included language in Section 7056 that codified the Mexico City Policy.<sup>35</sup>

## **FY2012 Appropriations and Administration Request**

On December 23, 2011, President Obama signed the Consolidated Appropriations Act, 2012 (P.L. 112-74), which directs that not less than \$575 million should be made available for family planning and reproductive health activities.<sup>36</sup> The act also states that \$35 million shall be made

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<sup>32</sup> Department of State press release, "U.S. Government Support for the United Nations Population Fund (UNFPA)," March 24, 2009.

<sup>33</sup> Congressional Budget Justification, Volume 2, Foreign Operations, Department of State, February 2012, p. 314.

<sup>34</sup> U.S. Congress, Senate Committee on Appropriations, *Department of State, Foreign Operations, and Related Programs Appropriations Bill, 2013*, report to accompany S. 3241, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 24, 2012, S.Rept. 112-172 (Washington: GPO, 2012), pp. 40-41. Of the \$655.5 million, \$600 million shall be drawn from the GHP account and \$55.5 million from ESF.

<sup>35</sup> U.S. Congress, House Committee on Appropriations, *State, Foreign Operations, and Related Programs Appropriations Bill, 2013*, report to accompany H.R. 5857, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 25, 2012, H.Rept. 112-494 (Washington: GPO, 2012), pp. 35, 70.

<sup>36</sup> The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012, is included in Division I of the Consolidated Appropriations Act, 2012 (P.L. 112-74), December 23, 2011.

available for UNFPA. As during previous appropriations cycles, UNFPA funding is subject to certain restrictions, including:

- 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 may be used by UNFPA for a country program in China;
- U.S. contributions must be kept in an account separate from other UNFPA accounts and should not commingle with other sums; and
- UNFPA must not fund abortions.

In addition, four months after the enactment of P.L. 112-74, the Secretary of State is required to report to the Committees on Appropriations on the funds that UNFPA is budgeting for that year for its country program in China.

For FY2012, the Obama Administration requested a total of \$769.105 million for international family planning and reproductive health assistance. This included \$625.6 million from the Global Health and Child Survival account (GHCS); \$89.073 million from ESF; and \$6.932 million from the Assistance to Europe, Eurasia, and Central Asia account (AEECA). In addition, it requested \$47.5 million for UNFPA through the IO&P account.

## **FY2011 Appropriations and Administration Request**

FY2011 appropriations for international family planning and reproductive health are stated in the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10).<sup>37</sup> The act directs that not less than \$575 million should be made available for international family planning and reproductive health activities.<sup>38</sup> It also states that not less than \$40 million should be directed to UNFPA, to be drawn from the IO&P account, and maintains the same UNFPA restrictions included in FY2010 appropriations (P.L. 111-117, see below).<sup>39</sup>

In March 2010, President Obama requested a total of \$715.74 million for bilateral and multilateral family planning and reproductive health assistance. This included \$590 million from GHCS, \$65.267 million from ESF, and \$10.473 million from AEECA. It also requested \$50 million for UNFPA to be funded through the IO&P account.<sup>40</sup>

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<sup>37</sup> Congress did not enact legislation to fund foreign operations programs for FY2011. Instead, §1101(a)(6) of P.L. 112-10 continues the Consolidated Appropriations Act, 2010 (P.L. 111-117) to fund FY2011.

<sup>38</sup> When addressing FY2011 U.S. assistance for reproductive health and family planning, §2120(e) of P.L. 112-10 refers to and substitutes language from §7060 of Division F of P.L. 111-117, which directed not less than \$648,457,000 for family planning and reproductive health. (Specifically, P.L. 112-10 says that \$575,000,000 shall be substituted for \$648,457,000.)

<sup>39</sup> When addressing FY2011 UNFPA funding, §2120(e) of P.L. 112-10 refers to and substitutes language from §660(a) of Division J of P.L. 110-161, the Consolidated Appropriations Act, 2008, which states that not less than \$7 million shall be derived from funds appropriated under the IO&P heading. (Specifically, P.L. 112-10 substitutes “\$40,000,000 should” for “not less than \$7,000,000 shall.”)

<sup>40</sup> Congressional Budget Justification, Foreign Operations, FY2011, Volume 2, U.S. Department of State, p. 240.

## **FY2010 Appropriations and Administration Request**

On December 16, 2009, President Obama signed the Consolidated Appropriations Act, 2010 (P.L. 111-117). Division F of that bill, the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, directs that not less than \$648.457 million should be made available for international family planning and reproductive health activities. Of this amount, \$525 million shall be made available under the USAID GHCS account, and \$55 million shall be made available for UNFPA under the IO&P account. The remaining amounts will be made available under other accounts, including \$58.849 million from ESF, and \$9.608 million from AEECA.

Section 7078 of P.L. 111-117 outlines funding restrictions for UNFPA. As stated above, it allocates \$55 million for UNFPA to be made available under IO&P. The bill also establishes a number of conditions for U.S. contributions to UNFPA. Specifically, none of the funds made available may be used by UNFPA for a country program in China. In addition:

- U.S. contributions to UNFPA must be kept in an account separate from other accounts at UNFPA and should not commingle with other sums; and
- for UNFPA to receive U.S. funding, it must not fund abortions;

The bill also establishes related reporting requirements for the Secretary of State. Not later than four months after the enactment of P.L. 111-117, the Secretary was 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 indicates 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.<sup>41</sup>

The Obama Administration had requested a total of \$593.457 million for international family planning and reproductive health activities in FY2010. This included \$475 million from the USAID GHCS account, \$58.849 million from ESF, and \$9.608 million from AEECA. The Administration also requested \$50 million for UNFPA funding to be made available under the IO&P account.<sup>42</sup>

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<sup>41</sup> See §7078(e)(1), (2).

<sup>42</sup> Congressional Budget Justification, Foreign Operations, FY2010, U.S. Department of State, pp. 27, 91, 193.