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

Updated September 12, 2018

Congressional Research Service
https://crsreports.congress.gov
R41360

CRS REPORT
Prepared for Members and
Committees of Congress

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 has continued 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 (the Trump Administration has withheld funding from UNFPA under this law); 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 nongovernmental 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 reinstituted and expanded by President George W. Bush to include State Department activities. In January 2009, President Barack Obama rescinded the policy. It was reinstated and expanded by President Trump in January 2017, and renamed "Protecting Life in Global Health Assistance" (PLGHA).

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 U.S. global health assistance, including international family planning, see

- CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro, and
- CRS In Focus IF10131, *U.S. Global Health Assistance: FY2017-FY2019 Request*, by Tiaji Salaam-Blyther.

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 nongovernmental 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. 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 and expanded by President Donald Trump on January 23, 2017.

During the 115th Congress, Members have 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. In addition, some introduced legislation aiming to make the Mexico City policy (also referred to as "Protecting Life in Global Health Assistance," or PLGHA), 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 likely to continue into the next congressional session.

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

[1] 410 U.S. 113 (1973).

discusses when and how the policies were introduced and the types of foreign aid to which they apply.

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.[2] 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.[3]

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.[4] In other cases, the 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,

[2] P.L. 87-195; 22 U.S.C. 2151 et seq.

[3] 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.

[4] 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 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).

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 the following:

> (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.[5]

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.[6] It is included in two places in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018, (hereinafter referred to as the "FY2018 State-Foreign Operations Appropriations Act").[7] 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).[8] In Title III, Bilateral Economic Assistance, the language applies to foreign assistance activities in the entire act.[9]

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):

[5] 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.

[6] For instance, it was not included in foreign operations appropriations bills from FY1981 through FY1985. It was included in FY1986 through FY2018 appropriations.

[7] Division K - Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018, of the Consolidated Appropriations Act, 2018 (P.L. 115-141), approved March 23, 2018. The most recent version of the bill is available at https://www.congress.gov/115/bills/hr1625/BILLS-115hr1625enr.pdf.

[8] Ibid, p. 526.

[9] Ibid, p. 498.

> 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.[10]

The provision is also repeated in annual foreign operations appropriations. Most recently, it was included in Section 7018 of the FY2018 State-Foreign Operations Appropriations Act.[11] 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.[12] 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."[13] As in some previous fiscal years, the FY2018 State-Foreign Operations Appropriations Act includes 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.[14]

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.[15]

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 the following:

> 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.[16]

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[10] 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.

[11] P. 526 of the FY2018 State-Foreign Operations Appropriations Act.

[12] 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.

[13] P. 503 of the FY2018 State-Foreign Operations Appropriations Act.

[14] The provision states the following: "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" (p. 503). 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." (§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.

[15] *MS 263 Volunteer Pregnancy*, Peace Corps Office of Medical Services (OMS).

[16] 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

The Biden amendment has also been included in foreign operations appropriations acts. Most recently, it was included in Section 7018 of the FY2018 State-Foreign Operations Appropriations Act.[17] The provision as included in the FAA and the FY2018 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.[18] 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.[19] It applies to all programs and activities appropriated under such acts. Most recently, the FY2018 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."[20]

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.[21] 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.[22] The amendment, introduced by Senator Dennis DeConcini, states the following:

> 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 ... [23]

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.

[17] P. 526 of the FY2018 State-Foreign Operations Appropriations Act.

[18] 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.

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

[20] P. 498 of the FY2018 State-Foreign Operations Appropriations Act.

[21] 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.

[22] John Felton, "Budget Cuts Leave Mark on Foreign Arms Aid," *Congressional Quarterly (CQ) Weekly*, December 21, 1985. Then-USAID Administrator M. Peter McPherson reportedly agreed to provide $40 million over five years to organizations that provide advice such natural methods.

[23] P. 498 of the FY2018 State-Foreign Operations Appropriation Act.

The provision has been included in annual foreign operations appropriations legislation since 1985, and it is most recently included in the FY2018 State-Foreign Operations Appropriations Act.[24] 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.[25] The amendment states the following:

> 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].[26]

The provision has been included in annual foreign operations appropriations. Most recently, it is incorporated into Section 7018 of the FY2018 State-Foreign Operations Appropriations Act.[27] 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.[28] The measure, introduced by Senator Bob Kasten and Representative Jack Kemp, states the following:

> 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.[29]

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.[30] It has been included in annual foreign operations appropriations legislation measures since FY1985. Although it applies to any

[24] Ibid.

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

[26] P. 526 of the FY2018 State-Foreign Operations Appropriation Act.

[27] Ibid.

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

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

[30] 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.

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 FY2018 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.[31]

In 16 of the past 34 years, the United States has not contributed to UNFPA 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.[32] The United States is currently not providing funding to UNFPA under Kemp-Kasten; in March 2017, the Trump Administration issued a determination that UNFPA "supports, or participates in the management of, a program of coercive abortion or involuntary sterilization" through its country program in China.[33]

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 FY2018 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

[31] Pp. 497-498 of the FY2018 State-Foreign Operations Appropriation Act.

[32] 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.

[33] "Determination Regarding the 'Kemp-Kasten Amendment," signed by Thomas A. Shannon, Jr., Under Secretary for Political Affairs, March 30, 2017. The Administration stated in the memo: "While there is no evidence that UNFPA directly engages in coercive abortions or involuntary sterilizations in China, the agency continues to partner with the NHFPC [National Health and Family Planning Commission of the People's Republic of China] on family planning, and thus can be found to support, or participate in the management of China's coercive policies for purposes of the Kemp-Kasten Amendment."

funds shall be deducted from the funds made available to UNFPA for the remainder of the fiscal year in which the report is submitted.[34]

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].[35]

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 FY2018 State-Foreign Operations Appropriations Act.[36] 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).[37] 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 the following:

> [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.[38]

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[34] The FY2018 State-Foreign Operations Appropriation Act provided $32.5 million for UNFPA through the International Organizations and Programs Account, subject to the Kemp-Kasten amendment and Section 7082 restrictions. In some years, UNFPA also received funding through the global humanitarian accounts. (For Section 7082, see p. 618 of the FY2018 State-Foreign Operations Appropriation Act. For UNFPA funding, see p. 33 of the explanatory statement accompanying the FY2018 State-Foreign Operations Appropriations Act.)

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

[36] P. 498 of the FY2018 State-Foreign Operations Appropriations Act.

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

[38] Pp. 498-499 of the FY2018 State-Foreign Operations Appropriations Act.

The amendment has been included in foreign operations appropriations in various forms since it first appeared in enacted legislation. It was included in the FY2018 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.

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.[39] 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.[40]

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

[39] 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.

[40] P. 498 of the FY2018 State-Foreign Operations Appropriations Act. The quotation is formatted for clarity; it appears differently in the act.

unsanitary sterilizations led to sickness or death.[41] The intent of the amendment was to ensure that U.S. foreign assistance did not support such practices.[42]

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.[43] 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.[44]

Most recently, the Tiahrt amendment was included in the FY2018 State-Foreign Operations Appropriations Act. It is applied to family planning assistance funded through all accounts under that act.

Selected 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 (also referred to as "Protecting Life in Global Health Assistance," or PLGHA), and USAID Policy Determination 3 (PD-3) on voluntary sterilization.

The Mexico City Policy ("Protecting Life in Global Health Assistance")

The Mexico City policy has traditionally restricted U.S. family planning assistance to foreign NGOs engaged in voluntary abortion activities, even if such activities are conducted with non-U.S. funds. Unlike the aforementioned laws which are enacted by Congress, the policy has, for the most part, been implemented and reversed through statements and instruments issued by the executive branch.[45] Such actions have generally been split along party lines, with Republicans supporting the policy and Democrats opposing it. Most recently, the Trump Administration reinstated and expanded the policy to include all global health assistance.

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[41] Calvin Sims, "Using Gifts as Bait, Peru Sterilizes Poor Women," *New York Times*, February 15, 1998.

[42] For further information on the intent of the Tiahrt amendment and the debate surrounding its adoption, see "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999," House debate, *Congressional Record*, Vol. 144, No. 124, September 17, 1998, pp. H7946-H8013.

[43] See (1) Guidance for Implementing the Tiahrt Requirements for Voluntary Family Planning Projects, USAID, April 1999, at https://www.usaid.gov/sites/default/files/documents/1864/tiahrtqa.pdf; and (2) Technical Guidance on the "Comprehensible Information" Paragraph of the Tiahrt Clause, USAID, April 1999, at https://www.usaid.gov/sites/default/files/documents/1864/tiajim3b.pdf.

[44] *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 https://oig.usaid.gov/sites/default/files/audit-reports/9-000-08-005-p.pdf.

[45] In 1999, Congress enacted modified Mexico City abortion restrictions that applied only to funds appropriated in FY2000, representing the first and only time a version of the policy was enacted into law (Section 599 (d) of the Consolidated Appropriations Act, 2000 (P.L. 106-113)). The Clinton White House accepted the conditions in exchange for congressional support for the payment of nearly $1 billion in arrears owed by the United States to the United Nations. The enacted Mexico City policy restrictions expired at the end of FY2000.

Background and Context: Previous Administration Actions

The Mexico City policy has remained a controversial issue in U.S. foreign assistance. It was first issued by President Reagan at the International Conference on Population held in Mexico City in 1984. At the time, it represented a shift in U.S. population policy; under the aforementioned Helms amendment and other international abortion and family planning-related restrictions, no U.S. funds could be used 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 own resources and funds received from other sources to engage, where legal, in abortion-related activities—though they were required to maintain separate accounts for U.S. money in order to demonstrate compliance with U.S. abortion restrictions. The policy, as issued under President Reagan, required foreign NGOs receiving USAID family planning assistance (either as a direct recipient or a subrecipient through a U.S. NGO that receives USAID funds) 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.

The Mexico City policy as described above was maintained by President George H. W. Bush and rescinded by President Clinton in 1993.[46] President George W. Bush issued a memorandum reinstating the policy in January 2001 and expanded it in August 2003 to include all assistance for voluntary population planning furnished to foreign NGOs by the State Department.[47] President Bush also instituted exceptions for cases of rape, incest, conditions that threatened the life of the mother, and for postabortion care.[48] Several months later, he announced additional exceptions for funding provided through the President's Emergency Plan for HIV/AIDS Relief (PEPFAR), and intergovernmental organizations, such as the United Nations and its affiliated entities.[49] President Obama revoked President Bush's policy in January 2009, issuing a memorandum stating that "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."[50]

Trump Administration Expansion

In January 2017, President Trump reinstated George W. Bush's January 2001 memorandum that reestablished the Mexico City policy and expanded it to include global health assistance. In the memo, he directed the Secretary of State to "implement a plan to extend the requirements of the reinstated memorandum to global health assistance furnished by all departments or agencies" in

[46] 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. *Memorandum for the Acting Administrator of the Agency for International Development - Subject: AID Family Planning Grants/Mexico City Policy*, President Bill Clinton, January 22, 1993, at http://www.presidency.ucsb.edu/ws/?pid=46311.

[47] *Memorandum for the Administrator of the U.S. Agency for International Development – Subject: Restoration of the Mexico City Policy*, President George W. Bush, January 22, 2001, at https://georgewbush-whitehouse.archives.gov/news/releases/20010123-5.html.

[48] *Memorandum for all Contracting Officers and Negotiators from Francis A. Donovan, Acting Director – Subject: Restoration of the Mexico City Policy, White House Memorandum for the Acting Administrator of USAID*, March 29, 2001, at https://www.usaid.gov/sites/default/files/documents/1868/cib0108r.pdf.

[49] *Memorandum for the Secretary of State – Subject: Assistance for Voluntary Population Planning*, President George W. Bush, August 19, 2003, at https://georgewbush-whitehouse.archives.gov/news/releases/2003/08/20030829-3.html.

[50] *Memorandum for the Secretary of State [and] the Administrator of USAID – Subject: Mexico City Policy and Assistance for Voluntary Population Planning*, President Barack Obama, January 23, 2009, at https://www.gpo.gov/fdsys/pkg/CFR-2010-title3-vol1/pdf/CFR-2010-title3-vol1-other-id197.pdf.

coordination with the Secretary of Health and Human Services, and to "ensure that U.S. taxpayer dollars do not fund organizations or programs that support or participate in the management of a program of coercive abortion or involuntary sterilization."[51]

The expanded policy, which the Trump Administration named "Protecting Life in Global Health Assistance" (PLGHA), was approved by the Secretary of State in May 2017. According to Administration officials, "global health assistance" applies to about $8.8 billion in funding for international health programs appropriated to the Department of State, USAID, and the Department of Defense—including programs addressing HIV/AIDS, maternal and child health, malaria, global health security, and family planning and reproductive health.[52] PLGHA excludes global health assistance to national or local governments, public international organizations, and other similar multilateral entities. It also excludes humanitarian assistance, such as State Department migration and refugee assistance activities, USAID disaster and humanitarian-relief activities, and Defense Department disaster and humanitarian relief.[53] Similar to previous iterations of the policy, it includes exemptions for rape, incest, and conditions that threaten the life of the mother, as well as postabortion care.[54]

In May 2018, the Trump Administration published a six-month review summarizing the implementation of PLGHA based on feedback from U.S. government agencies and other stakeholders, such as health groups and NGOs. Broadly, the report acknowledged that with less than six months of implementation, it was "too early to assess the full range of benefits and challenges of the PLGHA policy for global health assistance."[55] It stated that four prime recipients, and 12 subrecipients (out of 733 awards tracked) refused to agree to the PLGHA terms. It also identified a number of challenges and possible action items—one of the foremost being to improve understanding of the policy's intent, implementation, compliance, and oversight. (For example, many implementing organizations sought clarification of the definition of certain terms related to PLGHA to ensure they understand the full scope of the policy and implications for their participation.) The department plans to conduct a further review of implementation by December 15, 2018.

Congressional Perspectives

Over the years, some Members of Congress have introduced or voted on legislation to permanently establish or reverse different version of the Mexico City policy/PLGHA; however, none of these proposals have been enacted. Supporters of the policy maintains that it prevents U.S. taxpayer dollars from being used to pay for abortion or the promotion of abortion worldwide. They contend that although existing laws ban U.S. funds from being used to perform or promote abortions abroad, money is fungible; organizations receiving U.S. taxpayer funding could use U.S. resources for family planning or global health activities while diverting money raised from other sources to

[51] *Memorandum for the Secretary of State, the Secretary of Health and Human Services, and the Administrator of USAID – Subject: Mexico City Policy*, January 23, 2017, at https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-mexico-city-policy/.

[52] Department of State, "Background Briefing: Senior Administration Officials on Protecting Life in Global Health Assistance," May 15, 2017, at https://www.state.gov/r/pa/prs/ps/2017/05/270879.htm.

[53] Department of State Fact Sheet, "Protecting Life in Global Health Assistance," May 15, 2017, at https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm.

[54] "Abortions performed for fetal abnormalities" was added to the list of abortion restrictions under the policy. These exceptions and other modifications are explained in updated USAID guidance, "Standard Provisions for Non-U.S. Nongovernmental Organizations: A Mandatory Reference for ADS Chapter 303," USAID, partial revision on October 4, 2017, at https://www.usaid.gov/sites/default/files/documents/1868/303mab.pdf.

[55] Department of State, "Protecting Life in Global Health Assistance Six-Month Review," February 6, 2018, at https://www.state.gov/f/releases/other/278012.htm.

perform abortions or lobby to change abortion laws and regulations. The policy, they argue, closes this "loophole."

Opponents contend that the policy deprives women of access to quality health care and information about their health and well-being. They argue that NGOs may cut back or eliminate family planning and other health services because they do not want to risk losing U.S. funding. Some further contend that reduced access to such services may increase the use of abortion as a method of family planning, leading to a rise in maternal deaths as the result of unsafe or illegal abortions. Critics also maintain that the policy imposes a so-called "gag" rule on NGOs that aim to provide women with comprehensive information about their health care options, or change laws and regulations in developing nations to make abortions safe. Such restrictions, critics note, would be unconstitutional if applied to U.S. groups working in the United States. In January 2017, some NGOs stated that they would not receive U.S. funding because of the policy.

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.[56] According to USAID, such protections are necessary given the special nature of VS as a highly personal and permanent surgical procedure.[57] 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.[58]

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."

[56] 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*.

[57] 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.

[58] 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.

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);
- **VS service providers** may receive per-case payment and compensation for related items (such as anesthesia, personal costs, transportation, and pre- and postoperative care); and
- **VS service referral agents** may receive per-case payment for extra expenses incurred in informing or referring VS clients.[59]

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.

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[59] Ibid.