



U.S. GLOBAL HEALTH POLICY

STATUTORY REQUIREMENTS & POLICIES
GOVERNING U.S. GLOBAL FAMILY PLANNING
AND REPRODUCTIVE HEALTH EFFORTS

May 2012



U.S. GLOBAL HEALTH POLICY

STATUTORY REQUIREMENTS & POLICIES
GOVERNING U.S. GLOBAL FAMILY PLANNING
AND REPRODUCTIVE HEALTH EFFORTS

May 2012

OVERVIEW

The U.S. government has provided support for international family planning efforts since the 1960s. Such efforts are currently implemented in more than fifty countries around the world, including 24 priority countries.¹ The U.S. role has changed and shifted over time, reflecting political and policy changes in Congress and the executive branch, as well as in the international community. Historically, these debates have concerned both the amount of U.S. funding provided to efforts to improve global family planning/reproductive health (FP/RH) as well as its use, with several statutory requirements and policies in place that govern the use of U.S. funds. The issue of abortion, in particular, has often been at the center of these debates, with a legal ban in place since 1973 on the direct use of U.S. funding overseas for abortion as a method of family planning, passed by Congress shortly after the U.S. Supreme Court's *Roe v. Wade* decision upholding a woman's right to decide whether to have an abortion.²

Today, in addition to the legal ban on abortion funding, there are more than twenty statutory requirements and policies that govern the funding and conduct of U.S. global FP/RH activities, most of which set limits on what is permissible. They cover a range of issues, including providing additional restrictions on abortion, outlining policy guidelines towards "voluntarism and informed choice" (two principles that guide U.S. government programming on family planning), prohibiting and preventing involuntary sterilization, and requiring implementing organizations to offer information about access to a broad range of family planning methods. Additionally, several direct how U.S. government support for the United Nations Population Fund, or UNFPA (the United Nations entity focused on population and reproductive health issues), may be used by the agency and if the U.S. contribution to UNFPA may be provided in a given year.

This body of requirements and policies has grown over time and includes statutory requirements enacted as part of permanent U.S. law, statutory requirements enacted through annual appropriations bills, and executive branch policies. Most of these laws and policies have remained in force since they were first enacted, although there are some notable exceptions that are not currently in place, such as the "Buy America" condoms provision, a legislative measure that has at times required the procurement of American-made condoms only for use in foreign assistance programs to "the maximum extent feasible", and the Mexico City Policy (also known as the "Global Gag Rule"), an executive branch policy requiring foreign non-governmental organizations (NGOs) to certify that they would not perform or promote abortion as a method of family planning using funds from any source.

This issue brief reviews and summarizes the major statutory requirements and policies pertaining to U.S. global FP/RH efforts over time. These laws and policies collectively serve to direct how U.S. funds are spent, to where and which organizations funds are provided, and generally shape the implementation and define the scope of U.S. global FP/RH activities around the world. Included in this review are permanent U.S. laws as well as annual requirements enacted by Congress through appropriations bills, and executive branch policies and guidance specific to FP/RH. Other broader laws and policies that affect but are not specific to FP/RH³ were not included in this review, although it is important to note that these too have bearing on U.S. government global FP/RH efforts.

FINDINGS^{2,4}

To identify key statutory requirements and policies, we conducted a review of U.S. law, U.S. government documents and policies, Congressional Research Service reports, and other documents. We included provisions that specifically addressed FP/RH.

Findings are presented in Table 1, which lists key provisions in chronological order. We first describe each provision and identify the main FP/RH issue(s) it addresses. We then categorize the provision as either a statutory requirement or policy. For statutory requirements, we indicate whether the requirement is a permanent law or one enacted through an annual appropriations bill. We also indicate to which funding stream(s) or account(s) the provision applies. Finally, we specify whether the provisions listed are currently in effect as of FY 2012. Overall:

- We identified 23 key statutory requirements or policies related to global FP/RH efforts that are either currently in place and/or have been in place in recent years.
- While the first such requirement was instituted in 1973, and others have been instituted over the almost 40 year period since then, most originated in the 1980s.
- The requirements and policies address a range of issues, including abortion, voluntarism, informed choice, involuntary sterilization, incentives and disincentives, and post-abortion care. For example, ten requirements address abortion/post-abortion care, nine address voluntarism/informed choice (and consent), and five address voluntary/involuntary sterilization.
- In general, the requirements and policies apply to all U.S. and foreign NGOs, public international organizations, and foreign governments with a notable exception being the Mexico City Policy, which applies to only foreign NGOs.
- The requirements and policies have been applied to various streams of U.S. government funding over time, sometimes applied to single funding streams only and in other cases applied more broadly. For example, as of FY 2012:
 - Three apply only to *foreign assistance funding specifically for family planning* under State-Foreign Operations appropriations.
 - Three apply to *foreign assistance funding* more broadly, governing the use of all foreign assistance funds appropriated as part of State-Foreign Operations appropriations.
 - Still broader, six apply to *all funds* appropriated under State-Foreign Operations appropriations, which includes foreign assistance funding as well as funding for the Department of State and related agencies. One of these also applies to all authorizing legislation related to the Department of State, foreign operations, and related programs.
- Seventeen of the requirements are statutory; six are executive branch policies.
- Of the statutory requirements, three are permanent U.S. laws, enacted as amendments to the Foreign Assistance Act of 1961. Additionally, they are often included in annual appropriations bills. The remaining 14 are laws enacted annually as part of the appropriations process. In contrast to permanent law, these statutory requirements are only applicable to specified funding streams during a

specified period of time (usually the relevant fiscal year) and need to be reaffirmed on an annual basis to remain in effect, as most have.

- Nearly all of the statutory requirements and policies are currently in effect, as of FY 2012. There are three exceptions: two statutory requirements — the Buy America condoms provision and the timing of release of the UNFPA contribution funds provisions — are not currently specified in law; one policy — the Mexico City Policy, which has been in effect on and off since 1984 — was most recently rescinded by President Obama shortly after he took office in 2009.

TABLE 1: STATUTORY REQUIREMENTS AND POLICIES FOR U.S. GLOBAL FP/RH EFFORTS (as of FY 2012)^{2,4,5}

Year	Provision	Issue(s)		Type		Applies to	Status
		Statutory	Policy	Statutory	Policy		
1973	Helms Amendment Prohibits the use of foreign assistance to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortion. Note: meaning of “motivate” clarified by Leahy Amendment (1994, see below).	Abortion		X		All foreign assistance authorized under the Foreign Assistance Act (FAA) of 1961; in FY 2012 expanded to include all funds under State-Foreign Operations Appropriations Act	Yes, in effect. Permanent law, amendment to the FAA of 1961. Also included in annual State-Foreign Operations Appropriations Act with varying language.
1978	Involuntary Sterilization Amendment Prohibits the use of funds to pay for involuntary sterilizations as a method of family planning or to coerce or provide a financial incentive to anyone to undergo sterilization.	Voluntarism/Informed Choice & Consent; Incentives; Involuntary Sterilization		X		All foreign assistance authorized by the FAA of 1961; in FY 2012 applied to all foreign assistance funds under State-Foreign Operations Appropriations Act	Yes, in effect. Permanent law, amendment to the FAA of 1961. Also included in annual State-Foreign Operations Appropriations Act.
1978	Peace Corps Provision Prohibits Peace Corps funding from paying for an abortion for a Peace Corps member or personnel.	Abortion		X		All Peace Corps funding	Yes, in effect. Included under the “Peace Corps” heading of the State-Foreign Operations Appropriations Act.
1981	Biden Amendment States that funds may not be used for biomedical research related to methods of or the performance of abortion or involuntary sterilization as a means of family planning.	Abortion; involuntary Sterilization		X		All foreign assistance authorized by the FAA of 1961; in FY 2012 applied to all foreign assistance funds under State-Foreign Operations Appropriations Act	Yes, in effect. Permanent law, amendment to the FAA of 1961. Also included in annual State-Foreign Operations Appropriations Act.
1981	Siljander Amendment Prohibits the use of funds to lobby for or against abortion. When initially introduced, the amendment prohibited only lobbying for abortion, but in subsequent years Congress modified the language to include lobbying against abortion as well.	Abortion		X		All funds under State-Foreign Operations Appropriations Act	Yes, in effect. Included in annual State-Foreign Operations Appropriations Act.
1982	USAID Policy Paper on Population Assistance Outlines the longstanding USAID guidelines surrounding its fundamental programmatic principles of voluntarism and informed choice and consent. ⁶	Voluntarism/Informed Choice & Consent			X	All FP/RH assistance provided by USAID	Yes, in effect.

TABLE 1: STATUTORY REQUIREMENTS AND POLICIES FOR U.S. GLOBAL FP/RH EFFORTS (as of FY 2012)^{2,4,5}

Year	Provision	Issue(s)		Type		Applies to	Status
		Statutory	Policy	Statutory	Policy		
1982	Policy Determination 3 (PD-3) and Addendum: USAID Policy Guidelines on Voluntary Sterilization Describes guidelines for informed consent and voluntarism specifically for voluntary sterilization services, including provisions to ensure ready access to other contraceptive methods and prohibiting incentive payments that might induce a person to select voluntary sterilization over another method.	Voluntarism/Informed Choice & Consent; Voluntary Sterilization	X			All FP/RH assistance provided by USAID	Yes, in effect.
1984	Mexico City Policy ("Global Gag Rule") As a condition for receiving U.S. assistance (usually family planning assistance but has been extended more broadly—see "Applies to"), requires foreign NGOs to certify that they would not perform or promote abortion as a method of family planning using funds from any source. This policy was first instituted via presidential memorandum in 1984 by President Reagan. In 1993, it was rescinded by President Clinton, although it was briefly applied legislatively in 1999 (see "Status" column). In 2001, it was reinstated by President Bush, who expanded its applicability in 2003 to include family planning funds at the State Department (see "Applies to" column) with some exemptions. In 2009, it was rescinded by President Obama.	Abortion		X		Between 1984 and 2003, when in effect, was applied to family planning assistance at USAID only. In 2003, was expanded to include all family planning assistance at USAID and the State Department, exempting multilateral organizations and global HIV/AIDS funding under PEPFAR. ⁷ The Policy was rescinded again in 2009.	No, not in effect. Not currently in force through Executive action or legislation. Note that, with one exception, has been applied via Executive action. The exception was in FY 2000, when President Clinton agreed to a one-year legislative codification with a partial waiver of restrictions as part of a broader arrangement to pay the U.S. debt to the United Nations. ⁸
1985	DeConcini Amendment Requires that U.S. funds be provided to organizations that offer, either directly or through referral to, information about access to a broad range of family planning methods and services.	Voluntarism/Informed Choice		X		All family planning funds under State-Foreign Operations Appropriations Act	Yes, in effect. Included in annual State-Foreign Operations Appropriations Act.
1985	Kemp-Kasten Amendment Prohibits funding any organization or program, as determined by the President, that supports or participates in the management of a program of coercive abortion or involuntary sterilization.	UNFPA Funding; Abortion; Voluntarism/Informed Choice & Consent; Involuntary Sterilization		X		All funds under State-Foreign Operations Appropriations Act as well as unobligated balances from prior appropriations acts	Yes, in effect, but most recently, President Obama determined UNFPA was not in violation of Kemp-Kasten. Included in annual State-Foreign Operations Appropriations Act. In some years, includes a rider that requires the Kemp-Kasten determination to be accompanied by evidence and criteria used to make the determination.

TABLE 1: STATUTORY REQUIREMENTS AND POLICIES FOR U.S. GLOBAL FP/RH EFFORTS (as of FY 2012)^{2,4,5}

Year	Provision	Issue(s)		Type		Applies to	Status
		Statutory	Policy	Statutory	Policy		
1985	Involuntary Sterilization and Abortion Provision Specifies that U.S. foreign assistance funding could be withheld from a country or organization if the president certifies that the use of such funds would violate key provisions of the FAA of 1961 related to abortion or involuntary sterilization (namely the Helms, Biden, and Involuntary Sterilization Amendments).	Voluntarism/Informed Choice & Consent; Incentives; Abortion; Involuntary Sterilization	X		All foreign assistance funds under State-Foreign Operations Appropriations Act	Yes, in effect. Included in annual State-Foreign Operations Appropriations Act.	
1986	Livingston-Obey Amendment Prohibits discrimination by the U.S. government against organizations that offer only “natural” family planning for religious or conscientious reasons when the U.S. government is awarding related grants. All such applicants must comply with the requirements of the DeConcini Amendment (1985)	Voluntarism/Informed Choice	X		All family planning funds under State-Foreign Operations Appropriations Act	Yes, in effect. Included in annual State-Foreign Operations Appropriations Act.	
1994	Leahy Amendment Clarifies Helms Amendment (1973) language that uses the term “motivate” by stating that “motivate” shall not be construed to prohibit, where legal, the provision of information or counseling about all pregnancy options.	Abortion; Voluntarism/Informed Choice	X		All authorizing and appropriating legislation related to the Department of State, foreign operations, and related programs	Yes, in effect. Included in annual State-Foreign Operations Appropriations Act.	
1994	Conditions on Availability of UNFPA Funds (UNFPA Segregated U.S. Contribution Account; UNFPA Does Not Fund Abortions; Prohibition on the Use of U.S. Funds in China by UNFPA) States that funds may not be made available to UNFPA unless: <ul style="list-style-type: none"> UNFPA keeps the U.S. contribution to the agency in a separate account, not to be commingled with other funds, and UNFPA does not fund abortions (note: language used beginning in FY 2000).⁵ It also prohibits UNFPA from using any funds from the U.S. contribution in their programming in China.	UNFPA Funding; Abortion	X		Funds made available to UNFPA	Yes, in effect. Included in annual State-Foreign Operations Appropriations Act.	
1994	Timing of Release of UNFPA Contribution Funds Not more than half of funding designated for the U.S. contribution to UNFPA is to be released before a particular date (varies by fiscal year).	UNFPA Funding	X		Funds made available to UNFPA	No, not in effect. Sometimes included in annual State-Foreign Operations Appropriations Act.	

TABLE 1: STATUTORY REQUIREMENTS AND POLICIES FOR U.S. GLOBAL FP/RH EFFORTS (as of FY 2012) ^{2,4,5}						
Year	Provision	Issue(s)		Type		Status
		Statutory	Policy	Statutory	Policy	
1994	UNFPA Dollar-for-Dollar Withholding of Amount UNFPA Plans to Spend in China During Fiscal Year Reduces the U.S. contribution to UNFPA by one dollar for every dollar that UNFPA spends on its programming in China.	UNFPA Funding		X		Yes, in effect. Typically included in annual State-Foreign Operations Appropriations Act.
1998	Tiaht Amendment Prohibits the use of targets/quotas and financial incentives in family planning projects and requires projects to provide comprehensible information on family planning methods. Protects people who choose not to use family planning from being denied rights or benefits and requires experimental family planning methods be provided only in the context of a scientific study. Intended to “promote voluntarism and prevent coercion in family planning programs,” it specifically prohibits three types of targets: total number of births, number of family planning acceptors, and acceptors of a particular method of family planning. ⁹ USAID defines a target/quota as “a predetermined figure that a service provider or referral agent is assigned or required to affect or achieve” for the purposes of the Tiaht Amendment. It states that “the key to interpreting ‘incentives’ is to see whether they are provided in exchange for accepting a method (in the case of a client) or linked to achievement of a predetermined target or quota (in the case of program personnel).” ¹⁰	Voluntarism/Informed Choice & Consent; Incentives and Disincentives		X		Yes, in effect. Included in annual State-Foreign Operations Appropriations Act.
2001	USAID Post-Abortion Care Policy Clarifies that post-abortion care – the treatment of injuries or illnesses caused by legal or illegal abortion – is permitted under the Helms Amendment and that any restrictions under the Mexico City Policy, when in force, do not limit organizations from treating injuries or illnesses caused by legal or illegal abortions (i.e., from providing post-abortion care). It also notes that USAID does not finance the purchase or distribution of manual vacuum aspiration equipment for any purpose.	Post-Abortion Care			X	Yes, in effect. All FP/RH assistance provided by USAID

TABLE 1: STATUTORY REQUIREMENTS AND POLICIES FOR U.S. GLOBAL FP/RH EFFORTS (as of FY 2012)^{2,4,5}

Year	Provision	Issue(s)		Type		Status
		Statutory	Policy	Statutory	Policy	
2004	Reallocation of Funds Not Made Available to UNFPA Provides for funds not made available to UNFPA to be reallocated to USAID's family planning, reproductive health, and maternal health activities/services (and, in some years, assistance to vulnerable children and victims of trafficking in persons).	UNFPA Funding		X		Yes, in effect. Typically included in annual State-Foreign Operations Appropriations Act. Although such reallocation began in practice in FY 2002, it was first authorized by Congress in legislation beginning in FY 2004 with reference to FY 2002 and FY 2003 funds.
2005	Medically Accurate information on Condoms Ensures that information provided by U.S.-supported programs about the use of condoms is medically accurate information and includes the public health benefits and failure rates of such use.	Condoms		X		Yes, in effect. Typically included in annual State-Foreign Operations Appropriations Act.
2005	Buy America Condoms Requires U.S. foreign aid programs to procure American-made condoms for use in their activities to the "maximum extent feasible, taking into consideration cost, timely availability, and best health practices."	Condoms		X		No, not in effect. Sometimes included in annual State-Foreign Operations Appropriations Act.
2009	Guidance on the Definition and Use of the Global Health and Child Survival Account: Section on Allowable Uses of Funds for Family Planning/Reproductive Health¹¹ Outlines allowable uses of funds for FP/RH by providing a description of activities allowed and examples of activities not allowed, addressing not only FP/RH activities but also FP/RH system strengthening activities and family planning activities' integration with other global health and multisectoral activities.	FP/RH Activities; FP/RH System Strengthening Activities; Integrated Family Planning Activities			X	Yes, in effect. Updated periodically.
2011	PEPFAR FY 2012 Country Operational Plan Guidance: Section 6.1 Family Planning Provides guidance to the field about how PEPFAR programs may be linked with U.S. government FP/RH programs to facilitate "wrap-around" programming that increases access to HIV and FP/RH services. States that in wraparounds between HIV/AIDS and family planning activities, PEPFAR funds should be targeted to the HIV/AIDS portion of the wraparound.	HIV/AIDS Program Linkages with FP/RH Activities			X	Yes, in effect. Updated annually.

Notes: Current status for provisions typically included in appropriations acts but not permanent law is based on FY 2012 appropriations. FAA= Foreign Assistance Act; FP/RH=family planning/reproductive health; PEPFAR= U.S. President's Emergency Plan for AIDS Relief; UNFPA= United Nations Population Fund; USAID= U.S. Agency for International Development.

ENDNOTES

¹ USAID, “Fast Facts -- Family Planning,” fact sheet, October 2011; KFF, “The U.S. Government and International Family Planning & Reproductive Health,” fact sheet, January 2012, <http://www.kff.org/globalhealth/8073.cfm>.

² Congressional Research Service (CRS), *International Population Assistance and Family Planning Programs: Issues for Congress*, January 2010.

³ For example, U.S. law requires organizations receiving U.S. support for global HIV/AIDS programming to pledge they do not support prostitution and oppose sex trafficking (the “prostitution policy requirement” or the “prostitution pledge”).

⁴ CRS, *Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Legislation and Policy*, August 6, 2010; USAID Global Health eLearning Center, “FP Legislative & Policy Requirements (Updated),” online course, February 2009, authored by Debbie Gueye, Management Systems International (MSI).

⁵ CRS, *The U.N. Population Fund: Background and the U.S. Funding Debate*, February 1, 2010.

⁶ *Informed Choice*: Effective access to information on family planning choices and to the counseling, services, and supplies needed to help individuals choose to obtain or decline services; to seek, obtain, and follow up on a referral; or simply to consider the matter further. *Voluntarism*: Decision to use a specific method of family planning or to use any method of family planning is based upon the exercise of free choice and is not obtained by any special inducements or any element of force, fraud, deceit, duress or other forms of coercion or misrepresentation. USAID Global Health eLearning Center, “FP Legislative & Policy Requirements (Updated),” online course, February 2009, authored by Debbie Gueye, MSI.

⁷ George W. Bush Administration, “Subject: Assistance for Voluntary Population Planning,” Memorandum for the Secretary of State, August 29, 2003, Bush Administration White House Archives, accessed at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/08/20030829-3.html>, and PAI, Global Gag Rule Timeline, July 12, 2011.

⁸ See P.L. 106-113, Sec. 599D, and PAI, Global Gag Rule Timeline, July 12, 2011.

⁹ USAID Global Health eLearning Center, “FP Legislative & Policy Requirements (Updated),” online course, February 2009, authored by Debbie Gueye, MSI.

¹⁰ Target/Quota: A predetermined figure that a service provider or referral agent is assigned or required to affect or achieve (for the purposes of the Tiahrt Amendment). USAID Global Health eLearning Center, “FP Legislative & Policy Requirements (Updated),” online course, February 2009, authored by Debbie Gueye, MSI.

¹¹ USAID, *Guidance on the Definition and Use of the Global Health and Child Survival Account: Update*, January 2009.



THE HENRY J. KAISER FAMILY FOUNDATION

Headquarters
2400 Sand Hill Road
Menlo Park, CA 94025
Phone 650-854-9400 Fax 650-854-4800

Washington Offices and
Barbara Jordan Conference Center
1330 G Street, NW
Washington, DC 20005
Phone 202-347-5270 Fax 202-347-5274

www.kff.org

This report (#8306) is available on the Kaiser Family Foundation's website at www.kff.org.

The Kaiser Family Foundation, a leader in health policy analysis, health journalism and communication, is dedicated to filling the need for trusted, independent information on the major health issues facing our nation and its people. The Foundation is a non-profit private operating foundation, based in Menlo Park, California.