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Foreign Relations Reauthorization: Background and Issues

Introduction

The Constitution gives Congress the power to provide funding, authorize programs, and conduct oversight with respect to the implementation of foreign policy. In exercising these powers, Congress has enacted several laws requiring foreign affairs appropriations to be authorized prior to expenditure. These include Section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. §3094(a)(1)); Section 15 of the State Department Basic Authorities Act of 1956 (22 U.S.C. §2680); Section 10 of An Act to amend the Foreign Military Sales Act, and for other purposes (22 U.S.C. §2412); and Section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (22 U.S.C. §6212). One motivation for such requirements is to assert the role of the foreign affairs authorizing committees in budgetary decisionmaking. Congress also utilizes these laws as vehicles to address a range of foreign affairs policies, make changes to agencies or functions, and establish reporting requirements.

Authorization-Appropriations Process

An avenue for exercising Congress's power of the purse is the authorization and appropriation of federal spending to carry out government activities. The formal process generally consists of: (1) enactment of an authorization measure that may create or continue an agency, program, or activity as well as authorize the subsequent enactment of appropriations; and (2) enactment of appropriations to provide funds for the authorized agency, program, or activity. For additional detail, see CRS Report RS20371, *Overview of the Authorization-Appropriations Process*, by Bill Heniff Jr.

Historically, Congress adhered to these statutory requirements by enacting two types of foreign affairs authorizing legislation on a regular basis. One, covering the day-to-day operations of the State Department (DOS), diplomacy, and international broadcasting, is referred to as foreign relations authorization or State Department authorization. The second, which is not the focus of this product, is referred to as foreign assistance authorization and authorizes spending on matters such as economic development programs, selected security assistance, disaster assistance, and multilateral aid. The House Foreign Affairs Committee (HFAC) and Senate Foreign Relations Committee (SFRC) have jurisdiction over both authorization measures. In addition to establishing, terminating, and otherwise shaping foreign affairs programs and activities, these bills authorize funding levels to guide congressional appropriators.

Congress has not passed a comprehensive foreign relations reauthorization law since 2002 (the Foreign Relations Authorization Act, Fiscal Year 2003; P.L. 107-228). Since

2016, however, Congress has passed four authorizing laws that include new DOS authorities, congressional oversight provisions, and certain authorizations of appropriations. Factors inhibiting the passage of comprehensive reauthorization laws may include disagreements among Members over controversial foreign affairs issues and reticence among some Members to vote multiple times for overseas spending that may be unpopular with constituents.

In the absence of comprehensive reauthorization laws, Congress typically waives the aforementioned statutory reauthorization requirements in Department of State, Foreign Operations, and Related Programs (SFOPS) appropriations measures (see **Table 1**).

Table 1. Reauthorization Actions Since 2003

FY	Action	P.L.	Div.	Title	Sec.
2003	Enacted	P.L. 107-228	—	—	—
2004	Waived	P.L. 108-199	B	IV	407
2005	Waived	P.L. 108-447	B	IV	410
2006	Waived	P.L. 109-108	—	IV	407
2007	Waived	P.L. 110-5	B	I	108
2008	Waived	P.L. 110-161	J	I	110
2009	Waived	P.L. 111-8	H	VII	7023
2010	Waived	P.L. 111-117	F	VII	7023
2011	Waived	P.L. 112-10	B	I	1108
2012	Waived	P.L. 112-74	I	VII	7022
2013	Waived	P.L. 113-6	F	I	1108
2014	Waived	P.L. 113-76	K	VII	7022
2015	Waived	P.L. 113-235	J	VII	7022
2016	Waived	P.L. 114-113	K	VII	7022
2017	<i>Enacted</i>	P.L. 114-323	—	—	—
2018	Waived	P.L. 115-141	K	VII	7022
2019	Waived	P.L. 116-6	F	VII	7022
2020	Waived	P.L. 116-94	G	VII	7022
2021	<i>Enacted</i>	P.L. 117-81	E	—	—
2022	<i>Enacted</i>	P.L. 117-263	I	—	—
2023	<i>Enacted</i>	P.L. 118-31	F	—	—

Notes: FYs where “Enacted” is italicized indicate a partial authorization was enacted that necessitated a waiver. Italicized FYs indicate authorization measures that referred to the calendar year, rather than the fiscal year.

Appropriators, who pass legislation annually to ensure continued government operations, include foreign affairs policy directives and reporting requirements in appropriations laws that some may argue are better suited for an authorization measure. Some observers assert that these developments have resulted in appropriators taking a primary role in aspects of congressional foreign policymaking that would otherwise fall under the remit of SFRC and HFAC.

Relevance of Foreign Relations Reauthorization

In recent years, some Members of Congress and other observers have expressed concerns that the executive branch conducts foreign policy without sufficient recognition of congressional prerogatives. Among the areas where Congress can assert its authority in this regard is the regular passage of comprehensive foreign relations reauthorization laws. Proponents argue that such action would have several potential implications, including

- fulfilling a key responsibility of HFAC and SFRC;
- serving as a means for HFAC and SFRC to provide funding guidance to the appropriators for DOS operations and activities;
- creating a consistent legislative vehicle for Congress to participate in establishing foreign policy priorities and/or reforming, reorganizing, creating, or eliminating agencies, offices, or functions; and
- providing Congress more opportunity to consult with DOS to coordinate foreign policy.

Recent Congressional Action

In December 2016, Congress enacted the Department of State Authorities Act, Fiscal Year 2017 (P.L. 114-323). While this law did not provide any authorizations of appropriations, it included new authorities and oversight measures pertaining to DOS operations, including diplomatic security, embassy construction, and personnel management. Although DOS authorization measures introduced in the 115th and 116th Congresses (e.g., see H.R. 5592, 115th Congress; and H.R. 3352, 116th Congress) enjoyed bipartisan support, they did not become law. **Table 1** illustrates that in the 117th Congress, Congress began what has become a recurring practice of attaching DOS authorization measures to the annual National Defense Authorization Act (NDAA). Among other provisions, these laws

- authorized appropriations for the Embassy Security, Construction, and Maintenance SFOPS appropriations account and, separately, purposes including promoting global internet freedom and building the cybersecurity capacity of partner countries;
- authorized senior DOS positions and operating units and specified their responsibilities, including the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs and the Bureau of Cyberspace and Digital Policy;

- established a Commission on Reform and Modernization of the Department of State, whose work remains ongoing, to offer recommendations to the legislative and executive branches as to how DOS can modernize to advance U.S. interests;
- addressed diplomatic security and embassy construction with the intention of enabling DOS to more appropriately weigh security risks with the priority of allowing U.S. diplomats abroad to engage with foreign government officials and other stakeholders;
- sought to bolster DOS's diversity, equity, inclusion, and accessibility programming through measures intended to strengthen recruitment of persons belonging to underrepresented groups and provide for performance and advancement requirements that reward efforts to foster an inclusive environment; and
- worked to enhance DOS's delivery of passport services by authorizing the Secretary of State to appoint additional passport personnel and providing customer service improvements for passport applicants.

Issues for Congress

As Congress weighs a possible DOS authorization measure in the second session of the 118th Congress, Members may consider the following issues:

Scope of Authorizing Legislation. While Congress has enacted DOS authorization laws on a more regular basis in recent years, it has refrained from passing legislation that authorizes expenditures across a broad range of appropriations accounts since 2002. In the 118th Congress, Members might seek to build upon recently enacted laws and work to pass a broader measure that establishes congressional priorities for and oversight of DOS expenditures. To do so, however, might require Congress to resolve disputes that have stymied past efforts to enact comprehensive reauthorization legislation.

Appropriate Legislative Vehicle. In the past three years, Congress succeeded in passing DOS authorization laws in part by attaching them to the annual NDAA. However, some stakeholders have expressed concern that use of this legislative vehicle may afford other congressional committees that generally do not exercise jurisdiction over DOS undue influence in determining the scope and content of DOS authorizing measures. Congress could seek to address this concern by passing stand-alone DOS authorizing laws. Given the absence of stand-alone laws in recent decades, it is unclear whether the leadership of HFAC and SFRC, along with other Members supportive of passing regular DOS authorizing laws, could garner requisite support. Further, some Members of Congress who may have supported DOS authorization laws largely in the interest of ensuring continued annual passage of an NDAA may be more disposed to vote against a stand-alone measure they find objectionable or unnecessary.

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