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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 (P.L. 80-253), Section 15 of the State Department Basic Authorities Act of 1956 (P.L. 84-885), Section 10 of an act to amend the Foreign Military Sales Act, and for other purposes (P.L. 91-672), and Section 313 of the Foreign Relations Authorization Act, FY1994 and FY1995 (P.L. 103-236). One motivation behind these 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 mandate 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, diplomacy, and international broadcasting, is referred to as foreign relations authorization or State Department authorization. The second, which is not the focus of this analysis, 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, often for two years at a time.

Congress has not passed a comprehensive foreign relations reauthorization law since 2002 (see P.L. 107-228). Since 2016, however, Congress has passed progressively more

expansive authorization laws that include new State Department authorities, congressional oversight provisions, and limited authorizations of appropriations. Factors that may inhibit the passage of comprehensive reauthorization laws include disagreements among Members over controversial issues related to foreign affairs and reticence among some Members to vote multiple times to support 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 (e.g., see P.L. 117-328; Division K, §7022) in order to fund foreign affairs activities. As a result, appropriators, who pass legislation annually to ensure continued government operations, often include foreign affairs policy directives and reporting requirements in appropriations laws. Some observers argue that these developments have resulted in appropriators taking a primary role in some aspects of congressional foreign policymaking that would otherwise be 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 is conducting foreign policy without sufficient recognition of congressional prerogatives. Among the areas where Congress can assert its authority 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 State Department operations and activities;
- establishing a consistent legislative vehicle for Congress to participate in establishing foreign policy priorities and/or reforming, reorganizing, creating, or eliminating agencies, offices, or functions, as needs arise; and
- providing Congress more opportunity to consult with the State Department to coordinate foreign policy.

Recent Congressional Action

In December 2016, Congress passed 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 State Department operations, including diplomatic security, embassy construction, and

personnel management. Although State Department authorization measures introduced in the 115th and 116th Congresses (see H.R. 5592 and H.R. 3352, respectively) enjoyed bipartisan support, they did not become law. Near the end of the 116th Congress, Members weighed attaching a State Department authorization measure to the FY2021 National Defense Authorization Act (NDAA) yet reportedly refrained from doing so due to disputes over whether to authorize certain foreign assistance programs in law.

Although Congress did not include a State Department authorization as part of the FY2021 NDAA, it attached State Department authorization laws to both the FY2022 (Division E of P.L. 117-81) and FY2023 (Division I of P.L. 117-263) NDAAs. 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, recruiting personnel with backgrounds in fields such as cybersecurity and emerging technologies, and facilitating U.S. participation in international fairs and expositions;
- authorized senior State Department positions and operating units and, in some cases, specified their responsibilities, including the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, the Bureau of Consular Affairs, and the Bureau of Cyberspace and Digital Policy;
- established a Commission on Reform and Modernization of the Department of State tasked with examining “the changing nature of diplomacy” and offering recommendations to the legislative and executive branches regarding how the State Department can modernize to advance U.S. interests;
- addressed diplomatic security and embassy construction with the intention of enabling the State Department to more appropriately weigh security risks with the priority of allowing U.S. diplomats to engage with foreign government officials and other stakeholders to advance U.S. national security interests;
- sought to enhance the State Department’s diversity, equity, inclusion, and accessibility programming through measures intended to strengthen recruitment of persons belonging to underrepresented groups, require the Secretary of State to employ transparent processes for appointing employees to key positions, and provide for performance and advancement requirements that reward efforts to foster an inclusive environment; and
- required the State Department to provide additional information to Congress on matters including the effectiveness of management and leadership at U.S. embassies and other overseas posts and cases involving the wrongful detention of U.S. nationals abroad.

Issues for Congress

As Congress weighs a possible State Department authorization measure in the 118th Congress, Members may consider the following issues:

Scope of Authorizing Legislation. While Congress has passed increasingly expansive State Department authorizing laws beginning in 2016, it has refrained from passing legislation that authorizes expenditures across a broad range of appropriations accounts since 2002. In the 118th Congress, Members may seek to build upon recently passed authorizing laws and work to pass a broader measure that establishes congressional priorities for and oversight of State Department expenditures. To do so, however, may require Congress to resolve disputes that have stymied past efforts to enact comprehensive reauthorization legislation.

Appropriate Legislative Vehicle. In the past two years, Congress succeeded in passing State Department 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 the State Department undue influence in determining the scope and content of State Department authorizing measures. Congress could seek to address this concern by passing stand-alone State Department authorizing laws. Yet 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 State Department authorizing laws, could garner the support needed for both chambers to consider stand-alone bills. Further, some Members of Congress who may have supported State Department 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.

Process and Timing. Should Congress seek to shift toward once again passing stand-alone, comprehensive State Department authorization measures on a routine basis, SFRC, HFAC, and other congressional stakeholders may need to consider process and timing concerns that were previously apparent when Congress did so. In the past, the chairs of HFAC and/or SFRC introduced an authorization bill with the intention of seeing it enacted before the fiscal year it was to take effect. For instance, the most recent comprehensive authorization law enacted (P.L. 107-228) was introduced in the House on April 27, 2001, and passed by the full House on May 16, 2001. A year later, it was taken up and passed by SFRC and passed in the full Senate by unanimous consent on May 1, 2002. The conference report was agreed to on September 25-26, 2002, by the House and Senate, respectively, and the bill was signed into law on September 30, 2002, for implementation October 1, 2002. Returning to a similar reauthorization schedule may provide a degree of predictability, as well as broader congressional participation in foreign policymaking, but may require significant planning on the part of legislative leaders.

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