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Diplomatic Security, Embassy Construction, and the Role of Congress

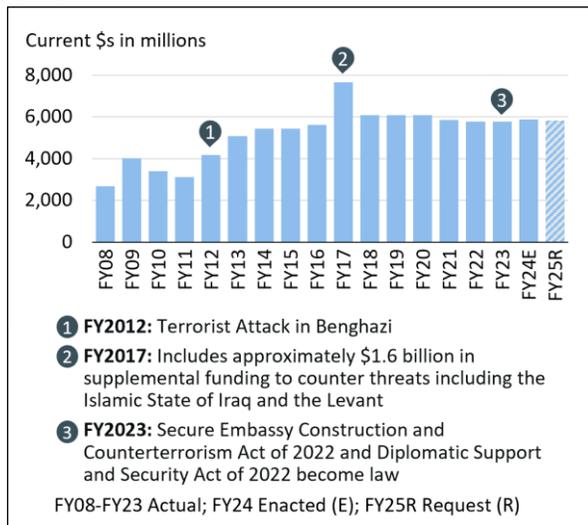
As the executive branch’s lead foreign affairs agency, the U.S. Department of State (DOS) plans, constructs, and manages U.S. embassies, consulates, and other overseas posts and provides for the security of such posts and U.S. personnel who occupy them. DOS’s Bureau of Diplomatic Security (DS) and Overseas Buildings Operations (OBO) share responsibility for these functions. Congress has viewed constructing and securing U.S. posts as interrelated and appropriates funding for such purposes through the Worldwide Security Protection item of the Diplomatic Programs appropriations account and, separately, the Embassy Security, Construction, and Maintenance account. Congress represents the sum of such funding as “embassy security” or “diplomatic security” funding (for detail on annual funding levels, see **Figure 1**).

[U.S.] adversaries.” Since at least 2021, congressional action has focused on both addressing concerns over the costs of constructing overseas posts and what some have perceived as a DOS security posture that emphasizes risk avoidance at the expense of risk management.

Diplomatic Security and Risk Management

DOS’s overseas diplomatic presence comprises 279 overseas posts, including several in countries with high levels of instability where the U.S. government has found that engagement is warranted to protect American interests. DOS has policies and procedures in place to determine whether to open or continue operations at high-risk posts, along with the degree of appropriate U.S. diplomatic engagement on the ground where major security risks are evident.

Figure 1. Embassy Construction/Diplomatic Security Appropriations, FY2008-FY2025



Source: U.S. Department of State congressional budget justifications.

Over the past five decades, Congress has passed laws intended to orient DOS’s diplomatic security and embassy construction priorities and practices. Such laws include the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99-399), which Congress passed following terrorist attacks against U.S. facilities and personnel in Beirut, Lebanon in 1983 and 1984; this law authorized the modern-day Bureau of Diplomatic Security and the Diplomatic Security Service. The Secure Embassy Construction and Counterterrorism Act of 2022 (SECCA 2022; Division I, Title XCIII, Section 9301 of P.L. 117-263) later sought to enable DOS to construct more cost-effective overseas posts that facilitate U.S. diplomatic efforts to advance American interests and “outperform

Congressional action has influenced how DOS develops and implements its security procedures. A 2021 report published by the American Academy of Diplomacy (AAD) observed that the previously noted Omnibus Diplomatic Security and Antiterrorism Act of 1986 was written when “Congress had little confidence that [DOS] was taking security threats and the need for security countermeasures seriously.” Among other provisions, this law required DOS to convene Accountability Review Boards (ARBs) following a major security incident at a U.S. mission abroad. The AAD report found that DOS interpreted the statutory ARB investigative and evaluation processes as reflecting a presumption that errors in judgement were typically the primary cause of security incidents, and possessing “an overriding requirement to find someone at fault” when incidents occur. The AAD report further found that these conditions contributed to a culture of excess risk aversion at DOS, rendering it more difficult for the United States to advance its national security interests in high-threat environments.

The AAD report called on Congress to amend this statute to ensure that when DOS investigated major security incidents, it focused on whether “reasonable actions were taken based on known risks at the time.” In late 2022, Congress enacted the Diplomatic Support and Security Act of 2022 (DSSA 2022; Division I, Title XCIII, Section 9302 of P.L. 117-263). This law replaced ARBs with Security Review Committees (SRCs) and prescribed a new investigative process intended to support “a culture of risk management, instead of risk avoidance” reflecting that “it is neither desirable nor possible for [DOS] to avoid all risks.” For example, the law instructed SRCs, when reviewing security incidents, to determine whether “a valid process was followed in ... weighing the risk of [an] operation”

outside of the diplomatic compound and refrain from assigning accountability unless “an official breached his or her duty.” Among other provisions, this law adjusted the statutory criteria for promotion in the Foreign Service to include consideration of one’s “ability to effectively manage and assess risk associated with the conduct of diplomatic operations.”

Embassy Construction

OBO is the real property manager for the planning, construction, and maintenance of U.S. overseas posts. As with diplomatic security matters, Congress has exercised its prerogatives to conduct oversight and shape OBO’s priorities. After the 1998 bombings of the U.S. embassies in Kenya and Tanzania, Congress enacted the Secure Embassy Construction and Counterterrorism Act of 1999 (SECCA 1999; Appendix G, Division A, Title VI of P.L. 106-113). This law included construction and planning security requirements for overseas posts. Two principal requirements were (1) directing the Secretary of State to ensure, when selecting a site for any new U.S. diplomatic facility abroad, that all U.S. government personnel at the post and under the ambassador’s authority were located at such site (the “co-location requirement”), and (2) that each newly acquired U.S. diplomatic facility be sited not less than 100 feet from the perimeter of the property on which it was situated (the “setback requirement”). The law authorized the Secretary to waive both requirements when security considerations and U.S. national interests justified such action. It also required the Secretary to notify Congress in writing prior to exercising these waivers with respect to embassies and consulates and explain DOS’s reasoning for doing so.

SECCA 2022 amended SECCA 1999. SECCA 2022 sought to alleviate alleged “skyrocketing costs” of new overseas posts caused by SECCA 1999’s setback and co-location requirements. Similar to DSSA 2022, it also intended to empower diplomats to closely engage with local populations while accounting for their security. The law called on DOS to “fully utilize” SECCA 1999 waiver authorities and expanded criteria for issuing waivers to include “considerations the Secretary ... considers relevant.” SECCA 2022 also adjusted the setback requirement to grant DOS flexibility to use other means to provide security.

Congress has also enacted other measures seeking to control costs related to overseas post construction. Many were included in the Department of State Authorization Act of 2021 (Division E of P.L. 117-81). Among other requirements, such measures obligate DOS to utilize standardized, cost-effective design templates and project delivery methods for overseas construction projects unless it justifies to Congress that such means are not suitable for specific projects. Congress also includes embassy construction-related oversight requirements in annual appropriations laws. Section 7004(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024 (SFOPS 2024; Division F of P.L. 118-47) stated that use of appropriated funds for “the acquisition of property or award of [overseas diplomatic facility] construction contracts” shall be subject to prior consultation with and notification to Congress. The law’s

explanatory statement lists information DOS shall provide Congress, including the location, size, and appraised value of the property to be acquired; justification for the site acquisition; and a detailed explanation of the project costs (including those related to site acquisition, project development, and construction).

Issues for Congress

Members of Congress continue to conduct oversight of and provide funding for DOS’s diplomatic security and embassy construction activities. As they do so, Members may consider the following issues, among others.

Embassy Construction Priorities. Since at least 2000, DOS used what it called its “80 List” of overseas posts prioritized for replacement or renovation. It is now transitioning to a new approach known as the Capital Planning Process (CPP). DOS states that CPP gives greater consideration to nonsecurity factors, including vulnerability to natural hazards and the mission’s capacity to effectively facilitate U.S. diplomatic engagement when determining when a post should be prioritized for replacement or renovation. As DOS implements this transition, Members may consider whether CPP’s post rankings methodology and the construction priorities it yields are consistent with congressional priorities for effective risk management and cost-effective post construction and rehabilitation projects.

Funding. DOS’s FY2025 budget justification calls for \$5.84 billion in embassy security funding, or 0.6% less than the \$5.87 billion in funding Congress provided for this purpose in FY2024. Some observers have expressed concern that embassy security makes up a disproportionate share of DOS’s resources for the administration of foreign affairs (embassy security and construction funds comprised about 44.5% of all such funding Congress appropriated in FY2024). Yet DOS has noted several factors, including cost increases associated with DS contracts (such as those for local guard forces) and reduced OBO purchasing power due to construction inflation, that are affecting these resources. As it weighs funding levels for FY2025, Congress may consider whether the risk management and construction cost control policies it seeks to advance through laws such as DSSA 2022 and SECCA 2022 necessitate that it appropriate more, less, or equal funding for diplomatic security relative to recent years.

SECCA 2022 Implementation. Section 7004(e) of SFOPS 2024 required DOS to submit a report to Congress that detailed the guidance and requirements it was utilizing to implement SECCA 2022. DOS transmitted this report to Congress on July 1, 2024. As Congress continues to conduct oversight in this area, Members may examine this report to determine whether further action is required to align DOS’s efforts to implement SECCA 2022 with congressional intent.

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