



H.R. 5243: Zika Response Appropriations Act, 2016 (Rep. Rogers, R-KY)

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FLOOR SCHEDULE:

H.R. 5243, the Zika Response Appropriations Act, is expected to be considered on May 18, 2016, under a closed [rule](#). The rule also provides for consideration of H.R. 4974, the Fiscal Year 2017 Military Construction and Veterans Affairs Appropriations bill.

TOPLINE SUMMARY:

[H.R. 5243](#) would provide appropriations to respond to the outbreak of the Zika virus and rescind unused appropriated funds.

COST:

The bill would provide a total of \$622 million in additional appropriations for Zika response and rescind \$622 million in unused funds.

Of this total, \$352 million is designated as emergency funding (which is exempt from the discretionary spending caps) and the bill rescinds \$352 million in unused Ebola funds that were previously designated as emergency. \$270 million is normal discretionary spending (not designated as emergency) and the bill rescinds \$270 million in normal discretionary spending.

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that \$352 million in appropriations are designated as Emergency spending. The point of the discretionary caps is to force Congress to prioritize funding and be judicious with the taxpayers' dollars. Using emergency designations to spend above the caps diminishes the effectiveness of enacted statutory budget controls. However, the bill also rescinds an equal amount of funding that was previously designated as for emergency purposes, resulting in zero net increase in total spending. This inclusion of offsets is a notable improvement to the far more frequent practice of supplemental appropriations packages being non-offset, carrying emergency designations, and increasing total spending

This designation allows new discretionary spending above and beyond the caps set forth in law by the Budget Control Act (BCA) (as increased by the Bipartisan Budget Act of 2015 (BBA15)). The [BCA spells out](#) the requirements for what spending can be designated as an emergency. An emergency situation must meet two tests:

1. The spending must be “for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security”; and
2. Unanticipated, defined as “sudden,” “urgent,” “unforeseen,” and “temporary.”

- **Expand the Size and Scope of the Federal Government?** The bill would expand the federal government’s response to the Zika virus while rescinding an equal amount of previously appropriated funding.
- **Encroach into State or Local Authority?** Some conservatives may believe that mosquito control activities are most appropriately conducted and funded at the state and local level; however, extensive underlying federal regulation may make such local efforts costly.
- **Delegate Any Legislative Authority to the Executive Branch?** The bill would direct the Director of the Office of Management and Budget (OMB) to determine the accounts and amounts to rescind of the unused Ebola funding and then report to the House and Senate Appropriations Committees within 30 days.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Title I: Department of Health and Human Services

Centers for Disease Control and Prevention, CDC-Wide Activities and Program Support

Amount: \$170 million

Timing: to remain available until September 30, 2016

Purpose: “to prevent, prepare for, and respond to Zika virus, domestically and internationally”

Transfer Authority: Permits transfer to other CDC accounts.

Also permits the transfer of up to \$50 million for the Maternal and Child Health Services Block Grant. These funds may be used for “special projects of regional or national significance to states, Puerto Rico, other territories, Indian Tribes, Tribal organizations and Urban Indian Organizations”.

Section 103 of the bill transfers \$500,000 to the Office of Inspector General and \$500,000 to the Government Accountability Office for oversight of the funds appropriated by this bill.

Emergency Designation: No

Domestic/International: Both

Administration Request: The Administration requested \$828 million for this account in emergency supplemental appropriations.

FY 2016 Appropriations: The [FY 2016 Omnibus](#) included \$273.57 million in appropriations for this account, a level that was \$160 million above the president’s budget request and equal to the FY 2015 level.

National Institutes of Health, National Institute of Allergy and Infectious Diseases

Amount: \$230 million

Timing: to remain available until September 30, 2016

Purpose: “preclinical and clinical development of vaccines for the Zika virus”

Transfer Authority: Permits transfer to other accounts in the NIH.

Emergency Designation: Funds are designated as emergency

Domestic/International: Domestic

Administration Request: The Administration requested \$130 million for this account in emergency supplemental appropriations.

FY 2016 Appropriations: The [FY 2016 Omnibus](#) included \$4.63 billion in appropriations for this account, a level that was \$15 million above the president’s budget request and \$271 million above to the FY 2015 level.

Office of the Secretary, Public Health and Social Services Emergency Fund

Amount: \$103 million

Timing: to remain available until September 30, 2016

Purpose: “develop necessary countermeasures and vaccines, including the purchase of vaccines, therapeutics, diagnostics, necessary medical supplies, and administrative activities to respond to Zika virus, domestically and internationally”

Transfer Authority: None Specified

Emergency Designation: Funds are designated as emergency

Domestic/International: Both

Administration Request: The Administration requested \$295 million for this account in emergency supplemental appropriations.

FY 2016 Appropriations: The [FY 2016 Omnibus](#) included \$1.397 billion in appropriations for this account, a level that was \$146 million below the president’s budget request and \$351 million above the FY 2015 level.

Title II: Department of State

Administration of Foreign Affairs, Diplomatic and Consular Programs

Amount: \$9.1 million

Timing: to remain available until September 30, 2016

Purpose: “necessary expenses to support the cost of medical evacuations and other response efforts related to the Zika virus”

Transfer Authority: Section 201 of the bill permits the transfer of \$1.35 million for the medical evacuation costs of any other agency under Chief of Mission authority as well as \$1 million for Emergencies in Diplomatic and Consular Services.

Emergency Designation: Designated as emergency

Domestic/International: International

Administration Request: The Administration requested \$14.6 million for this account in emergency supplemental appropriations.

FY 2016 Appropriations: The [FY 2016 Omnibus](#) included \$5.623 billion in appropriations for this account, a level that was \$1.473 billion below the president’s budget request and \$838 million below the FY 2015 level.

United States Agency for International Development, Funds Appropriated to the President, Operating Expenses

Amount: \$10 million

Timing: to remain available until September 30, 2016

Purpose: “necessary expenses to support response efforts related to Zika virus and health conditions directly associated with the Zika virus”

Transfer Authority: None specified

Emergency Designation: Designated as emergency

Domestic/International: International

Administration Request: The Administration requested \$10 million for this account in emergency supplemental appropriations.

FY 2016 Appropriations: The [FY 2016 Omnibus](#) included \$1.144 billion in appropriations for this account, a level that was \$216 million below the president’s budget request and \$53 million above the FY 2015 level.

Bilateral Economic Assistance, Funds Appropriated to the President, Global Health Programs

Amount: \$100 million

Timing: to remain available until September 30, 2016

Purpose: “vector control activities to prevent prepare for, and respond to the Zika virus internationally.”

Transfer Authority: Section 204 of the bill transfers \$500,000 to the USAID Office of Inspector General as well as \$500,000 to the GAO for oversight of the funds appropriated by this bill.

Emergency Designation: No

Domestic/International: International

Administration Request: The Administration requested \$325 million for this account in emergency supplemental appropriations.

FY 2016 Appropriations: The [FY 2016 Omnibus](#) included \$2.833 billion in appropriations for this account, a level that was \$78 million above the president's budget request and \$50 million above the FY 2015 level.

Offsets

Ebola Funds: Section 301 of the bill Rescinds \$352.1 million of unobligated funds from the [FY 2015 Omnibus](#) that were appropriated to the HHS, Department of State for Ebola Response. These funds were originally designated as emergency funding. The Director of OMB shall determine the amounts and accounts from which to make the rescission and report to the House and Senate Appropriations Committees within 30 days.

According to [CRS](#), "as of January 1, 2016, unobligated Ebola funds totaled \$2.77 billion: \$1.46 billion for HHS, \$1.29 billion for State/USAID, and \$17.3 million for Defense".

HHS Administrative Funding: Section 301 of the bill also rescinds \$270 million of [Nonrecurring Expenses Fund](#) at HHS. This fund is used as an administrative account in HHS that permits HHS to transfer expired discretionary funds to it and use them for capital acquisitions and information technology. However, the Fund has been [used to fund](#) Obamacare implementation.

Oversight Provisions

Sec. 101: Requires the Secretary of HHS to notify the House and Senate Appropriations Committees at least 15 days in advance of obligating funds made available by the bill. This can be waived if it "would pose a substantial risk to human health or welfare".

Sec. 102: Requires the Secretary of HHS to provide reports every 30 days of the proposed use of funds.

Sec. 202: Requires the Secretary of State or the Administrator of USAID to notify the House and Senate Appropriations Committees at least 15 days in advance of obligating funds made available by the bill. This can be waived if it "would pose a substantial risk to human health or welfare".

Sec. 203: Requires the Secretary of State in consultation with the Administrator of USAID to provide reports every 30 days of the proposed use of funds.

Transfers to OIGs and GAO: Sections 103 and 204 of the bill transfer \$500,000 to the HHS Office of Inspector General, \$500,000 to the USAID Office of Inspector General, and \$1 million to the GAO for oversight of the bill.

Sec. 302: Makes the funds made available by the bill subject to the requirements (riders and general restrictions) for funds contained in the [FY 2016 Omnibus](#).

FURTHER BACKGROUND:

Administration Supplemental Request: On February 22, 2016, President Obama transmitted to Congress a [request](#) for a \$1.9 billion emergency supplemental appropriations bill to “respond to the Zika virus both domestically and internationally”.

Reprogramming: The [FY 2015 Omnibus](#) provided \$5.4 billion in emergency appropriations to respond to the spread of Ebola. According to [CRS](#), “as of January 1, 2016, unobligated Ebola funds totaled \$2.77 billion: \$1.46 billion for HHS, \$1.29 billion for State/USAID, and \$17.3 million for Defense”.

While the original intention of these funds was to respond to Ebola, a significant portion of the funding [is able to be reprogrammed](#) by the administration to address other infectious diseases, such as Zika.

On April 6, 2016, the Director of the Office of Management and Budget (OMB) [announced](#) that the administration had “identified \$589 million – including \$510 million of existing Ebola resources within the Department of Health and Human Services and Department of State/USAID – that can quickly be redirected and spent on” the Zika response efforts.

Senate Action: On May 17, 2016, the Senate [approved an amendment](#) offered by Senators Blunt and Murray to H.R.2577, the combined FY 2017 THUD/MilCon-VA Appropriations bill that would provide \$1.1 billion in emergency supplemental appropriations to respond to Zika. The new spending is not offset.

The Senate also defeated two amendments related to Zika funding; one [offered by Senator Nelson](#) that would have provided \$1.9 billion in emergency appropriations with no offset and [one offered by Senator Cornyn](#) that would have provided \$1.1 billion in appropriations with offsets.

OUTSIDE GROUPS:

- **Heritage Action** [letter to Chairman Rogers](#), recommending offsets for a Zika appropriations bill.
- **Heritage Foundation:** [Obama’s Zika Request Can Be Paid for With Ebola Funds](#)

COMMITTEE ACTION:

H.R. 5243 was introduced on May 16, 2016, and referred to the Committee on Appropriations and the Committee on the Budget.

ADMINISTRATION POSITION:

According to the [Statement of Administration Policy](#), “the Administration urges the Congress to provide full emergency supplemental funding at the level requested by the President. If the President were presented with H.R. 5243, his senior advisors would recommend he veto the bill.”

CONSTITUTIONAL AUTHORITY:

“Congress has the power to enact this legislation pursuant to the following: The principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law” In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: “The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States” Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability, and to set forth terms and conditions governing their use.”

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