

# **Zika Response Funding: Request and Congressional Action**

**Susan B. Epstein, Coordinator**  
Specialist in Foreign Policy

**Sarah A. Lister**  
Specialist in Public Health and Epidemiology

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## Summary

The second session of the 114<sup>th</sup> Congress is considering whether and how to provide funds to control the spread of the Zika virus throughout the Americas. Zika infection, primarily spread by *Aedes* mosquitoes, has been linked to severe birth defects and other health concerns. Local transmission of the Zika virus has occurred in American Samoa, Puerto Rico, and the U.S. Virgin Islands, and is expected on the U.S. mainland this summer, in areas where *Aedes* mosquitoes are present.

On February 22, 2016, the Obama Administration submitted a request for more than \$1.89 billion in supplemental funding to respond to the Zika epidemic, all of which is requested as emergency discretionary appropriations and therefore effectively exempt from spending limits per the Budget Control Act of 2011 (BCA, P.L. 112-25). The emergency request includes \$1.509 billion for the Department of Health and Human Services (HHS), \$335 million for the U.S. Agency for International Development (USAID), and \$41 million for the Department of State. The request also seeks authority to transfer some of those supplemental emergency appropriations across other federal agencies such as the Department of Defense, the Environmental Protection Agency, and the U.S. Department of Agriculture, to allow greater flexibility as circumstances change. It also would provide HHS, the Department of State, and USAID with broad authority for direct hiring, not be limited to positions related to Zika response efforts, and would authorize personal services contracting by HHS, State and USAID, for the Zika virus, but not limited to Zika virus efforts.

On April 6, 2016, the White House Office of Management and Budget (OMB) and the Secretary of HHS announced that they had identified \$589 million—\$510 million of it from “existing Ebola resources within the Department of Health and Human Services and Department of State/USAID”—that can quickly be redirected and spent on immediate efforts to control and respond to the spread of the Zika virus in the Americas.

On April 8, 2016, the Administration notified Congress of a transfer of \$295 million out of the \$510 million from FY2015 unobligated Ebola Economic Support Funds (ESF) to be used for the Zika response efforts. Of that amount, USAID is providing \$158 million to CDC including \$78 million for Zika response and \$80 million for Ebola response. The remaining \$137 million also from FY2015 ESF is funding various USAID activities for its Zika response efforts.

As of mid-May 2016, congressional action on supplemental appropriations for Zika-related purposes has occurred in both the House and the Senate. The Senate action occurred with regard to an amendment to the combined FY2017 Military Construction-Veterans Affairs and Transportation-Housing and Urban Development appropriations bills (S.Amdt. 3900); that amendment provides \$1.1 billion, which would be available until September 30, 2017 (some until expended). House action has occurred with regard to a stand-alone supplemental appropriations bill (H.R. 5243); this bill provides \$622.1 million for Zika funding, which would be available until September 30, 2016. Nearly half of the funds are designated as emergency funding. Rescissions are included. CBO scored the total budgetary effects of these rescissions as reducing budget authority by \$622 million, and reducing outlays by \$12 million during FY2016. On net, CBO estimates the budgetary effects of the bill to be \$0 in budget authority and an increase of \$9 million in outlays for FY2016.

This report will identify the various Zika response funding options and track legislation in the 114<sup>th</sup> Congress.

## Introduction

In its second session, the 114<sup>th</sup> Congress is considering whether and how to provide funds to control the spread of the Zika virus throughout the Americas. Zika infection, primarily spread by *Aedes* mosquitoes, has been linked to severe birth defects and other health concerns. Local transmission of the Zika virus has occurred in American Samoa, Puerto Rico, and the U.S. Virgin Islands, and transmission is expected on the U.S. mainland this summer, in areas where *Aedes* mosquitoes are present.<sup>1</sup>

Federal efforts to address the outbreak include research on the infection and its effects, mosquito control measures, and efforts to develop a vaccine. The public health focus, both domestically and elsewhere in the Americas, is to protect pregnant women from infection and prevent birth defects. Administration officials and some in Congress are concerned about the resources needed to prevent widespread Zika infections as the Northern Hemisphere summer approaches.

This report presents the Administration's request for supplemental appropriations for the Zika response, supplemental appropriations measures that have received congressional action, and information about unobligated Ebola supplemental funds as of January 1, 2016 (the most recent publicly available). Updates will be forthcoming as details become available.

## Administration Actions

On February 22, 2016, the Obama Administration submitted a request for more than \$1.89 billion in supplemental funding to respond to the Zika epidemic, all of which is requested as emergency FY2016 discretionary appropriations, and therefore effectively exempt from spending limits in the Budget Control Act of 2011 (BCA, P.L. 112-25).<sup>2</sup> The Administration's request includes \$1.509 billion for the Department of Health and Human Services (HHS), \$335 million for the U.S. Agency for International Development (USAID), and \$41 million for the Department of State. The request also seeks authority to transfer some of those supplemental emergency appropriations across other federal agencies, such as the Department of Defense, the Environmental Protection Agency, and the U.S. Department of Agriculture, to allow greater flexibility as circumstances change. It also would provide HHS, the Department of State, and USAID with two personnel management authorities for, but not limited to, addressing the Zika outbreak; broad authority for direct hiring;<sup>3</sup> and authority for personal services contracting.<sup>4</sup>

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<sup>1</sup> For more information, see CRS Report R44368, *Zika Virus: Basics About the Disease*; CRS In Focus IF10353, *Mosquitoes, Zika Virus, and Transmission Ecology*; CRS Insight IN10433, *Zika Virus: Global Health Considerations*; and CRS Report R44385, *Zika Virus: CRS Experts*.

<sup>2</sup> White House, Office of Management and Budget, Estimate #1 – FY 2016 Emergency Supplemental: Appropriations Request to Respond to the Zika Virus both Domestically and Internationally, February 22, 2016, [https://www.whitehouse.gov/omb/budget\\_amendments](https://www.whitehouse.gov/omb/budget_amendments). For more information on discretionary spending limits and Ebola funds designated for emergency requirements, see OMB Final Sequestration Report to the President and Congress for Fiscal Year 2015, January 20, 2015, at [https://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/sequestration/sequestration\\_final\\_january\\_2015\\_president.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_final_january_2015_president.pdf).

<sup>3</sup> For more detail, see <https://www.opm.gov/blogs/Director/direct-hire-authority/>.

<sup>4</sup> As defined in regulation, “The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.” (48 C.F.R. 37.104(a)) Under this authority, federal agencies can quickly contract with individual scientists, physicians, and other experts to aid in response efforts.

A major theme in congressional debates thus far has been over whether unobligated (uncommitted for expenditure) FY2015 funds that had been provided to respond to the Ebola virus outbreak should be used to fund part of the Zika response, either temporarily or permanently.<sup>5</sup> On April 6, 2016, the White House Office of Management and Budget (OMB) and the Secretary of HHS announced that they had identified \$589 million—\$510 million of it from “existing Ebola resources within the Department of Health and Human Services and Department of State/USAID”—that could quickly be reprogrammed and spent on immediate efforts to control and respond to the spread of the Zika virus in the Americas.<sup>6</sup>

As part of the reprogramming, on April 8, 2016, USAID notified Congress of its intent to redirect \$295 million of the \$510 million from FY2015 unobligated Ebola Economic Support Funds (ESF) to be used for Zika response. Of that amount, USAID transferred \$158 million to CDC, including \$78 million for Zika response and \$80 million for Ebola response. The remaining \$137 million, also from FY2015 ESF, is to be redirected to fund various USAID activities for Zika response efforts.

## Congressional Actions

On May 16, 2016, the Chairman of the House Appropriations Committee introduced the Zika Response Appropriations Act, 2016 (H.R. 5243). The bill would provide \$622.1 million that would be available until September 30, 2016, for domestic and international Zika response efforts. Nearly half of the funds are designated as emergency funds. The bill also includes rescissions of certain Ebola-related appropriations and the HHS nonrecurring expenses fund.<sup>7</sup> Provisions in the bill provide that its appropriations shall be subject to the same requirements for funds that applied to the Consolidated Appropriations Act, 2016 (P.L. 114-113). This would include any restrictions on the use of funds that were contained therein, such as the applicable prohibitions on the use of funds for abortions. The House passed the measure on May 18, 2016, without amendment.

Senate action has occurred in the context of the FY2017 Military Construction-Veterans Affairs and Transportation-Housing and Urban Development appropriations bills. The texts of these bills were combined for the purposes of initial consideration in the Senate, and offered as a substitute amendment to an unrelated measure (S.Amdt. 3896 to H.R. 2577). On May 12, 2016, Senator McConnell (on behalf of Senator Blunt) proposed an amendment to that substitute (S.Amdt. 3900 to S.Amdt. 3896) that would provide \$1.1 billion for Zika response and preparedness, which would be available until September 30, 2017 (with the exception of Global Health Funds, which would be available until expended). On May 19, 2016, the Senate adopted S.Amdt. 3900,<sup>8</sup> followed by the pair of appropriations measures (i.e., H.R. 2577) to which it was amended.

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<sup>5</sup> Ryan McCrimmon and Jennifer Shutt, “Zika Funding Squabble Engulfs Senate, House and White House,” *CQ News*, April 26, 2016.

<sup>6</sup> OMB, Shaun Donovan, “Taking Every Step Necessary, As Quickly As Possible, to Protect the American People from Zika,” OMB blog, April 6, 2016, <https://www.whitehouse.gov/omb/blog>.

<sup>7</sup> CBO scored the total budgetary effects of these rescissions as reducing budget authority by \$622 million, and reducing outlays by \$12 million during FY2016. On net, CBO estimates the budgetary effects of the bill to be \$0 in budget authority and an increase of \$9 million in outlays for FY2016.

<sup>8</sup> Two other proposals for Zika-related supplemental funding were also considered as amendments to these combined appropriations bills (S.Amdt. 3898 and S.Amdt. 3899, both to S.Amdt. 3896). On May 17, the Senate voted not to invoke cloture on these amendments. No further action has occurred as of the date of this report.

See **Table 1** below for a comparison of the Administration's supplemental request, S.Amdt. 3900, and House bill H.R. 5243. For a comparison of non-monetary provisions of these measures, see **Table 2**.

**Table 1. Supplemental Funding Amounts for Zika Response for FY2016:  
Comparison of Administration Request with Senate and House Proposals**

Budget Authority in \$ Millions

Agency	Administration Request	S.Amdt. 3900 as Passed in Senate	H.R. 5243 as Passed in House
CDC Subtotal	828.0	449.0 <sup>a</sup>	170.0 <sup>bc</sup>
HRSA: Community Health Centers for territories (non-add)	0.0	(40.0)	0.0
HRSA: National Health Service Corps for territories (non-add)	0.0 <sup>d</sup>	(6.0)	0.0
HRSA: Maternal and Child Health Block Grant (non-add)	0.0 <sup>d</sup>	(5.0)	0.0 <sup>c</sup>
HRSA Subtotal	0.0	51.0	0.0
PHSSEF: Social Services Block Grant for territories (non-add)	0.0	(75.0)	0.0
PHSSEF: Other (non-add)	(295.0) <sup>d</sup>	(75.0) <sup>e</sup>	(103.0)
PHSSEF Subtotal	295.0	150.0	103.0
NIH/NIAID Subtotal	130.0	200.0	230.0
FDA Subtotal	10.0	0.0	0.0 <sup>f</sup>
CMS Subtotal (Medicaid federal matching rate)	246.0	no provision	no provision
<b>HHS Total</b>	<b>1,509.0</b>	<b>850.0<sup>g</sup></b>	<b>503.0</b>
State: Diplomatic and Consular Programs (D&CP)	14.6	14.6	9.1 <sup>h</sup>
State: Emergencies in the Diplomatic and Consular Service	4.0	4.0	0.0 <sup>i</sup>
State: Repatriation Loans	1.0	1.0	0.0
State: Nonproliferation, Anti-Terrorism, Demining and Related Programs (NADR)	8.0	4.0	0.0
State: International Organizations and Programs (IO&P)	13.5	13.5	0.0
USAID: Operating Expenses (OE)	10.0	10.0	10.0
USAID: Global Health Programs (GHP)	325.0	211.0	100.0 <sup>i</sup>
<b>State / USAID Total</b>	<b>376.1</b>	<b>258.1</b>	<b>119.1</b>
<b>REQUEST OR BILL TOTAL</b>	<b>1,885.1</b>	<b>1,108.1</b>	<b>622.1</b>

**Source:** CRS analysis of text of White House, Office of Management and Budget, "Estimate #1—FY 2016 Emergency Supplemental: Appropriations Request to Respond to the Zika Virus both Domestically and Internationally," February 22, 2016, [https://www.whitehouse.gov/omb/budget\\_amendments](https://www.whitehouse.gov/omb/budget_amendments); S.Amdt. 3900; and H.R. 5243 IH.

**Notes:** Numbers in parentheses are included in subtotals.

- Of the CDC funds provided, \$88 million may be used to reimburse prior Zika response spending.
- Of the CDC funds provided, up to \$500,000 each must be transferred to the HHS Office of Inspector General and the Comptroller General for oversight activities.
- Up to \$50.0 million of the CDC funds provided may be transferred to HRSA MCH for specified activities.

- d. Unspecified amounts from the PHSSEF may be transferred to HRSA for National Health Service Corps activities in the territories, and for the Maternal and Child Health Block Grant.
- e. Other Public Health and Social Services Emergency Fund (PHSSEF) activities principally involve development and purchase of medical countermeasures.
- f. The House-reported Agriculture and Related Agencies appropriation for FY2017 included \$10 million for FDA activities related to the response to Ebola, Zika, and other emerging threats. H.Rept. 114-531, p. 70.
- g. Broad authority is provided for funds to be transferred to or merged with other CDC, PHSSEF, HRSA, and NIH appropriations accounts to fund the purposes specified in the measure. Such transfers can only occur following consultation with OMB with a 10-day notification in advance, among other requirements.
- h. Up to \$1.35 million of funds for Diplomatic and Consular Services may be used for medical evacuation costs for any U.S. agency.
- i. Up to \$1.0 million of funds for Diplomatic and Consular Services may be transferred to Emergencies in the Diplomatic and Consular Service
- j. Of the Global Health Program funds provided, up to \$500,000 each must be transferred to the USAID Office of Inspector General and the Comptroller General for oversight activities.

**Table 2. Selected Supplemental Provisions for Zika Response for FY2016:  
Comparison of Administration Request with Senate and House Proposals**

Provision	Administration Request	Senate (S.Amdt. 3900)	House (H.R. 5243 IH)
<b>Period of Availability of Funds</b>			
HHS Funds	Until expended.	Until Sept. 30, 2017.	Until Sept. 30, 2016.
State / USAID Funds: D&CP: Nonproliferation, Anti-Terrorism, Demining and Related Programs; International Organizations and Programs; Operating Expenses	Until Sept. 30, 2017.	Until Sept. 30, 2017.	Until Sept. 30, 2016.
State / USAID Funds: Emergencies in the Diplomatic and Consular Service; Repatriation Loans; Global Health Programs.	Until expended.	Until expended.	Until Sept. 30, 2016.
<b>Scope of Use of Funds</b>			
CDC Funds	To prevent, prepare for, and respond to Zika virus, other vector-borne diseases, or other infectious diseases and related health outcomes, domestically and internationally.	To prevent, prepare for, and respond to Zika virus, other vector-borne diseases, and related health outcomes, domestically and internationally.	To prevent, prepare for, and respond to Zika virus, domestically and internationally.

<b>Provision</b>	<b>Administration Request</b>	<b>Senate (S.Amdt. 3900)</b>	<b>House (H.R. 5243 IH)</b>
HRSA Funds	(Scope for PHSSEF funds would apply to any funds transferred to HRSA.)	To prevent, prepare for, and respond to Zika virus, other vector-borne diseases, and related health outcomes, domestically and internationally.	(Scope for CDC funds would apply to any funds transferred to HRSA.)
NIH Funds	To prevent, prepare for, and respond to Zika virus, other vector-borne diseases, or other infectious diseases and related health outcomes, domestically and internationally.	To prevent, prepare for, and respond to Zika virus, other vector-borne diseases, and related health outcomes, domestically and internationally.	For development of vaccines for the Zika virus.
PHSSEF Funds	To prevent, prepare for, and respond to Zika virus, other vector-borne diseases, or other infectious diseases and related health outcomes, domestically and internationally.	To prevent, prepare for, and respond to Zika virus, other vector-borne diseases, and related health outcomes, domestically and internationally.	To respond to Zika virus, domestically and internationally.
State Dept. Diplomatic and Consular Programs (D&CP)	To support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	To support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	To support cost of medical evacuations and other response efforts related to the Zika virus and health conditions directly associated with the Zika virus.
State Dept. Emergencies in Diplomatic and Consular Service	To support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases.	To support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases.	No comparable provision.
Repatriation Loans Program	For direct loans to support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	For direct loans to support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	No comparable provision.
USAID Operating Expenses (OE)	To support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	To support response efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	Response efforts related to the Zika virus and health conditions directly associated with the Zika virus.
Global Health Programs (GHP)	For assistance or research to prevent, treat, or otherwise respond to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	For assistance or research to prevent, treat, or otherwise respond to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	For vector control activities to prevent, prepare for, and respond to the Zika virus internationally.



<b>Provision</b>	<b>Administration Request</b>	<b>Senate (S.Amdt. 3900)</b>	<b>House (H.R. 5243 IH)</b>
Dept. of State, Nonproliferation, Anti-terrorism, Demining and Related Programs (NADR)	To support response and research efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	To support response and research efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	No comparable provision.
International Organizations and Programs (IO&P)	To support response and research efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	To support response and research efforts related to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.	No comparable provision.
<b>Transfer Authority</b>			
HHS Funds	CDC funds may be transferred within CDC. NIH funds may be transferred within NIH. PHSSEF funds may be transferred to two stated HRSA accounts, as specified, to an HHS countermeasures injury compensation fund, and to any other HHS accounts.	Any HHS funds in the amendment may be transferred to accounts in CDC, HRSA, NIH, and PHSSEF. \$75 million in PHSSEF funds must be transferred to the HHS Social Services Block Grant.	CDC funds may be transferred within CDC, and to three stated HRSA accounts, as specified. NIH funds may be transferred within NIH. PHSSEF funds may be transferred to an HHS countermeasures injury compensation fund.
International Affairs	Funds may be transferred between foreign affairs accounts within the same headings to carry out the purposes of this Act and are in addition to other transfer authority within this proposal.	Funds within certain foreign affairs accounts may be transferred between foreign affairs accounts within the same headings to carry out the purposes of this Act and are in addition to other transfer authority within this proposal.	Specified funds within D&CP may be transferred for medical evacuation, transferred for Emergencies in Diplomatic and Consular Services, and are in addition to any other transfer authority within this proposal.
<b>Notification, Reporting and Oversight</b>			
HHS Notification Requirement for Obligation	No comparable provision.	No comparable provision.	15 days in advance of obligation.
International Affairs Notification Requirement	No comparable provision.	15 days in advance of obligation.	15 days in advance of obligation.
HHS Reporting Requirement	No comparable provision.	Within 30 days of enactment the HHS Secretary must report to the Appropriations Committees with a spend plan, followed by quarterly reports on obligations until funds have been fully expended.	Within 30 days of enactment the HHS Secretary must report to the Appropriations Committees with a spend plan, which must be updated and resubmitted every 30 days until funds have been fully expended.
International Affairs Reporting Requirement	No comparable provision.	Within 45 days after enactment and prior to obligation of international funds, the USAID	Within 30 days after enactment the Secretary of State and USAID Administrator must submit

Provision	Administration Request	Senate (S.Amdt. 3900)	House (H.R. 5243 IH)
		Administrator must submit spend plans to the Committees on Appropriations, update and resubmit to those committees every 90 days until September 30, 2017, and every 180 days thereafter until all funds are expended.	to Appropriations Committees a consolidated report and update and submitted to those committees every 30 days until all funds are expended.
HHS Oversight	No comparable provision.	No comparable provision.	\$500,000 of CDC funds must be made available to the HHS Office of the Inspector General for oversight; an additional \$500,000 from CDC must be made available for oversight by the Comptroller General of the United States.
International Affairs Oversight	No comparable provision.	\$500,000 made available within the International Affairs Chapter is to be made available for the Comptroller General of the United States for oversight activities and for consultation with the Secretary of State and the USAID Administrator prior to obligating such funds.	\$500,000 from GHP within this Title must be made available to USAID's Office of the Inspector General for oversight; an additional \$500,000 from GHP must be made available for oversight by the Comptroller General of the United States.

**Source:** CRS analysis of text of White House, Office of Management and Budget, "Estimate #1–FY 2016 Emergency Supplemental: Appropriations Request to Respond to the Zika Virus both Domestically and Internationally," February 22, 2016, [https://www.whitehouse.gov/omb/budget\\_amendments](https://www.whitehouse.gov/omb/budget_amendments); S.Amdt. 3900; and H.R. 5243 IH.

## The Emergency Supplemental Appropriations Request for Zika Response Efforts

The following describes the Administration's February 2016 Zika emergency supplemental request components by agency.

It was reported on April 18 that the Administration submitted a revised Zika supplemental request to Congress, which would maintain departmental request totals, while redirecting some of the HHS funds requested for contingency use to vaccine research and development at the National Institutes of Health (NIH).<sup>9</sup> Detailed information about this is not publicly available, and the following narrative does not reflect this revision.

<sup>9</sup> Erik Wasson, "Obama Administration Updates Zika Spending Request," *Bloomberg*, April 18, 2016.

## Health and Human Services

The Administration's emergency supplemental appropriations request to respond to the Zika outbreak seeks for HHS a total of \$1.509 billion. Each HHS agency request includes the statement that funds would be "to prevent, prepare for, and respond to Zika virus, other vector-borne diseases, or other infectious diseases and related health outcomes, domestically and internationally...." Most of the requested funds would support research, surveillance, vaccine and test development, and various domestic preparedness activities. A portion would support international response activities. The request proposes that all supplemental appropriations to HHS be designated as emergency spending, and remain available until expended.

### Centers for Disease Control and Prevention (CDC)

A total of \$828 million of the February 2016 request is for the CDC-Wide Activities and Program Support account. Proposed request language would, among other things, authorize the CDC Director to transfer funds between CDC accounts, and authorize funds to be used for real property acquisition and improvements to non-federal facilities. Funds would be used as follows:

- **Grants and technical assistance to Puerto Rico and U.S. Territories**—\$225 million to, among other purposes, monitor pregnant women and establish a registry of women infected while pregnant; expand mosquito control activities; and enhance laboratory testing capacity.
- **Domestic Response**—\$453 million to provide grants to southern and other U.S. states with *Aedes* mosquitoes for surveillance, improved test methods and testing capacity, public education and outreach, mosquito control measures in areas at risk, and additional federal and state response activities.
- **International Response Activities**—\$150 million to expand the public health workforce, and enhance infectious disease surveillance and emergency response activities, in Zika-affected countries; and to support the laboratory network of the Pan American Health Organization (PAHO), the regional arm of the World Health Organization (WHO) for the Americas.

### Public Health and Social Services Emergency Fund (PHSSEF)

The PHSSEF is a fund used by appropriators to provide the HHS Secretary with ongoing or one-time emergency funding, such as for the response to disease epidemics. The emergency supplemental request seeks \$295 million for the PHSSEF for the following:

- several maternal and child health and home visitation programs for low-income pregnant women at risk of Zika infection, and families that have children born with birth defects related to Zika infection;
- several health care workforce assistance programs for Puerto Rico and other territories; and
- compensation for persons harmed by the use of tests or vaccines used under emergency authority.<sup>10</sup>

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<sup>10</sup> This compensation program is described in "Covered Countermeasure Process Fund" in CRS Report RS22327, *Pandemic Flu and Medical Biodefense Countermeasure Liability Limitation*, and HHS, Health Resources and Services Administration, Countermeasures Injury Compensation Program (CICP), <http://www.hrsa.gov/cicp/index.html>.

The requested PHSSSEF funds could, in consultation with OMB, be transferred to other agencies within HHS or across the federal government. The request stated that this transfer authority is to provide flexibility in response to changing needs. No congressional notification requirement is included.

### **National Institutes of Health (NIH)**

The emergency supplemental request seeks \$130 million for the NIH National Institute of Allergy and Infectious Diseases (NIAID) to expand research efforts to characterize the progression and effects of Zika infection and other vector-borne diseases, and to develop vaccines against them.<sup>11</sup> Proposed request language would authorize the NIH Director to transfer funds between NIH accounts. No congressional notification requirement is included.

### **Food and Drug Administration (FDA)**

The emergency supplemental request seeks \$10 million for FDA's role in reviewing the safety and effectiveness of medical countermeasures (such as test methods, vaccines, and treatments), and post-market monitoring of such countermeasures if and when they become available.

### **Medicaid Funding for Territories<sup>12</sup>**

The emergency supplemental request would temporarily increase the federal matching rate for Medicaid in the territories. The territories operate Medicaid programs under different rules from those that apply to the 50 states and the District of Columbia. Federal Medicaid funding to the states and the District of Columbia is open-ended, but the territories receive capped annual allotments (i.e., the maximum amount of federal funds available in a year). In addition, the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) provides the territories with additional federal Medicaid funding to use by September 30, 2019. The territories have a federal medical assistance percentage (FMAP) rate (i.e., federal matching rate) for Medicaid of 55%.<sup>13</sup>

The supplemental request includes a provision that would increase the FMAP rate for the territories to 65% for one year beginning with the first day of the fiscal quarter following enactment. This increased FMAP rate would be available for all Medicaid expenditures, not limited to those provided to treat Zika infection. The federal funding for the increased FMAP rate would not count against the territories' annual federal spending caps or additional ACA funding. The Administration estimates this FMAP rate increase would cause federal Medicaid expenditures to grow by \$246 million.<sup>14</sup>

There is some question about how this provision would affect Puerto Rico if it were to exhaust its additional ACA funding prior to FY2019.<sup>15</sup> Depending on the timing of enactment, Puerto Rico

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<sup>11</sup> This refers to infectious diseases that are transmitted by a living organism (a "vector," such as a mosquito), from one host to another.

<sup>12</sup> This section contributed by Alison Mitchell, Specialist in Health Care Financing, Domestic Social Policy Division.

<sup>13</sup> For more information about the Medicaid program in the territories, see CRS Report R44275, *Puerto Rico and Health Care Finance: Frequently Asked Questions*, coordinated by Annie L. Mach.

<sup>14</sup> The funding for this provision would be provided through a change in mandatory programs (CHIMP), which is a provision in an appropriations act that affects a mandatory spending program.

<sup>15</sup> According to HHS, Puerto Rico is projected to exhaust its ACA Medicaid funding by the end of FY2017. HHS, *FY2017 Budget in Brief*, February, 2017, p. 97, <http://www.hhs.gov/sites/default/files/fy2017-budget-in-brief.pdf>.

might not have access to its full annual Medicaid allotments or additional ACA funding for a portion of the time the provision would be in effect.<sup>16</sup>

### **Retroactive Reimbursement**

The request proposes language that would allow funds provided in the act to be used to reimburse HHS accounts for Zika response expenses incurred prior to enactment.

### **Transfer Authority**

The request proposes language that would allow funds appropriated to HHS in the act to be transferred to other federal accounts, including the Department of Defense, the Environmental Protection Agency, and the Department of Agriculture “to prevent, prepare for, and respond to Zika virus, other vector-borne diseases, or other infectious diseases and related health outcomes, domestically and internationally....,” following consultation with OMB. No congressional notification requirement is included.

### **Expanded Definition of “Security Countermeasure”**

The request proposes language that would allow the government to support the advanced development and procurement of medical countermeasures against Zika virus through Project BioShield. Currently, Project BioShield supports only countermeasures against specific chemical, biological, radiological, and nuclear terrorist threats.<sup>17</sup> The proposed expansion is not limited to countermeasures against the Zika virus or vector-borne diseases, but rather is stated broadly as a “countermeasure to diagnose, mitigate, prevent, or treat harm from any infectious disease that may pose a threat to the public health.”

### **International Assistance Programs**

The Administration’s February 2016 emergency supplemental appropriations request to respond to the Zika outbreak seeks for the Department of State and USAID a total of \$376.1 million. This includes funds for control of the disease, prevention, surveillance, evacuating U.S. employees and American citizens, vaccine development, and diagnostic research, among other things. Specifically within the International Assistance section of the request is a request for transfer authority (without a requirement for congressional notification) with certain limitations, reimbursement authority, and hiring of personal services contractors, as well as authorization to use unobligated Ebola balances to combat Zika and other infectious diseases. Also worth noting is that, unlike HHS, funds for international assistance programs have varying periods of availability, as specified below.

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<sup>16</sup> If Puerto Rico were to exhaust its ACA Medicaid funding before the end of FY2019, it would have to significantly increase its own Medicaid funding share in order to maintain the current program. This would worsen its current fiscal situation. For more information about this situation, see CRS Report R44095, *Puerto Rico’s Current Fiscal Challenges*, by D. Andrew Austin.

<sup>17</sup> For more information, see HHS, “Project BioShield,” <https://www.medicalcountermeasures.gov/barda/cbrn/project-bioshield-overview/>.

## Department of State

A total of \$41.1 million is requested for the Department of State operations, multilateral assistance within International Organizations and Programs (IO&P), and international security assistance (nuclear research and techniques) as follows:

- **Diplomatic and Consular Programs account (D&CP)**—\$14.6 million to remain available until September 30, 2017. Of this amount
  - \$8.4 million to support the Office of Medical Services for medical support and possible evacuation under the Chief of Mission authority of at-risk U.S. employees in Zika-affected countries; and
  - \$6.2 million to support regional coordination efforts and public diplomacy outreach, among other activities.
- **Emergencies in the Diplomatic and Consular Service**—\$4 million to remain available until expended to support response efforts, including potential evacuation of U.S. citizens.
- **Repatriation Loans Program**—\$1 million to remain available until expended to finance repatriation loans to U.S. citizens who may seek to leave Zika-affected areas or who have been exposed to or have contracted Zika.
- **Nonproliferation, Anti-Terrorism, Demining and Related Programs (NADR)**—\$8 million to remain available until September 30, 2017, for additional voluntary U.S. contributions to the International Atomic Energy Agency (IAEA), an autonomous intergovernmental organization related to the United Nations that promotes the safe, secure and peaceful use of nuclear technologies. Funds would support Zika research to develop and deploy nuclear techniques to help accelerate diagnosis, provide related specialized training, and to implement sterile insect projects to suppress mosquito populations.<sup>18</sup>
- **International Organizations and Programs (IO&P)**—\$13.5 million to remain available until September 30, 2017, to support Zika response actions taken by UNICEF, the Food and Agriculture Organization, the WHO, and PAHO.

## USAID

For the U.S. Agency for International Development, the Administration is requesting \$335 million to cover USAID's health programs and implementation expenses:

- **USAID Operating Expenses (OE)**—\$10 million to remain available until September 30, 2017, to support Zika response efforts.
- **Global Health Programs (GHP)**—\$325 million to remain available until expended to prevent, treat, or respond to the Zika virus and related health concerns, other vector-borne diseases, or other infectious diseases. Multi-year funding commitments are requested to provide incentives for the development of global technologies such as vaccines, diagnostics equipment, and vector control innovations. Anticipated allocations include

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<sup>18</sup> For more information see Aabha Dixit, IAEA Office of Public Information and Communication, "Nuclear Technique Can Help Control Disease-Transmitting Mosquitoes," February 3, 2016, <https://www.iaea.org/newscenter/news/nuclear-technique-can-help-control-disease-transmitting-mosquitoes>.

- \$100 million to implement vector management and control activities in Zika-affected countries;
- \$100 million to stimulate private sector research and development of vaccines, diagnostics, and vector control innovations through public-private partnerships;
- \$50 million for maternal and child health support in affected and at-risk countries, including training of health care workers; ensuring access to family planning information, services, and methods; providing support for children with microcephaly; and helping pregnant women and their partners have access to personal protection, including condoms and repellent to protect against mosquitoes;
- \$25 million for public health communication and behavior change campaigns for affected communities and countries to take actions to protect themselves from Zika and other vector-borne diseases; and
- \$50 million to issue Global Health Security Grand Challenges that would call for groundbreaking innovations in diagnostics, vector control, personal protection, community engagement and surveillance, and other tools to address Zika and other infectious diseases, as well as to develop public-private partnerships to accelerate development of innovative tools and practices.

### **Use of Ebola Balances for Other Infectious Diseases**

Within the Department of State and Other International Programs General Provisions (in addition to the General Provisions for the entire request), the supplemental request would authorize the use of unobligated Ebola Funds (Title IX, Div. J, P.L. 113-235), stating: “[Unobligated Ebola funds] shall also be available to respond to the Zika virus and related health outcomes, other vector-borne diseases, or other infectious diseases.”

As of January 1, 2016, the Department of State/USAID’s unobligated Ebola funds totaled nearly \$1.3 billion. Of that total, about \$600 million is available until September 30, 2016 (just a few months away), and about \$694 million is available until expended.<sup>19</sup> (See the subsequent section, “HHS, State/USAID, and DOD Unobligated Ebola Response Funds.”)

### **Transfer Authority**

The Department of State and Other International Programs General Provisions in the supplemental request would allow transfer of State Department-related funds in the request only among State Department-related accounts within the request and transfer of USAID-related funds in the request only among USAID-related accounts. No congressional notification requirement is included.

### **Notwithstanding Authority**

The supplemental’s request for notwithstanding authority could allow funds from this or prior acts supporting the U.S. Zika virus response to be expended despite any previously enacted

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<sup>19</sup> Based on departmental spend plans and/or quarterly reports for HHS, State/USAID, and Defense, as required by P.L. 113-235, and obtained by CRS; and additional departmental communications.



restrictions and conditions on U.S. foreign aid. For example, if enacted, this authority could allow foreign aid to be provided to states that are otherwise restricted by law: those designated as sponsors of terrorism, those with debt arrearage, human rights violators, or states that practice coercive family planning. The Department of State has indicated in the Global Health Program (GHP) section, however, that funds will provide support for “ensuring access to voluntary family planning information, services, and methods.”

### **Direct Hiring Authority/Personal Services Contractors**

The General Provisions Title in the request, and also the General Provisions Title for the Department of State and Other International Programs, allows for expedited hiring authority to directly hire staff during critical public health threats, such as Zika, and to enter into contracts with individuals who are experts in Zika-related fields. This measure does not limit direct hiring or personal services contractors only for Zika-related purposes. This authority for direct hiring and personal services contractors could be used in a broader set of public health circumstances than the Zika virus.

## **HHS, State/USAID, and DOD Unobligated Ebola Response Funds**

In December 2014, the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), provided \$5.4 billion in emergency supplemental appropriations to HHS, the Departments of State and Defense, and USAID to address the Ebola outbreak that began in West Africa in January 2014.<sup>20</sup> Because these funds were designated as emergency appropriations, they are effectively exempt from spending limits in the Budget Control Act of 2011 (BCA, P.L. 112-25).<sup>21</sup>

On April 6, 2016, the Obama Administration announced its plan to reprogram \$510 million of unobligated FY2015 Ebola funding to respond to the Zika virus.<sup>22</sup> HHS Ebola funds may be reprogrammable without additional congressional action (subject to existing restrictions on reprogramming, including notification). This is because the relevant appropriations measures stated the funds are available for Ebola and other infectious diseases. Some have debated whether congressional action is necessary to provide the Department of State and USAID with the authority to reprogram the unobligated Ebola funds, as much of the funding was appropriated with specific language to be used to “prevent, prepare for, or respond to the Ebola disease outbreak.”

**Table 3** provides, by account, the original appropriated Ebola funds, remaining (unobligated) amounts, the period of funding availability, and purpose of the funds, based on quarterly reports to Congress as required by the law. 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. A portion of the total, \$652.9 million—most of which is USAID funding—expires September 30,

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<sup>20</sup> This section addresses funds provided in P.L. 113-235 only; it does not track the \$88 million appropriated to HHS for Ebola-related activities in the first FY2015 continuing resolution (P.L. 113-164).

<sup>21</sup> For more information on discretionary spending limits and Ebola funds designated for emergency requirements, see *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2015*, January 20, 2015, at [https://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/sequestration/sequestration\\_final\\_january\\_2015\\_president.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_final_january_2015_president.pdf).

<sup>22</sup> OMB, Shaun Donovan, “Taking Every Step Necessary, As Quickly As Possible, to Protect the American People from Zika,” OMB blog, April 6, 2016, <https://www.whitehouse.gov/omb/blog>.



2016. Nearly all of the remaining unobligated funds expire September 30, 2019, or are available until expended. **Table 3** does not incorporate the Administration's announced plans to reprogram \$510 million of unobligated Ebola funds.

**Table 3. FY2015 Emergency Funds Appropriated for Ebola Response and Related Activities, and Unobligated Balances**

Amounts are U.S. dollars in millions. Unobligated amounts are as of January 1, 2016.

Agency and Account or Activity	P.L. 113-235 <sup>a</sup>	Unobligated Funds	Period of Availability	Purpose(s)
<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>				
CDC: International activities	603.0	369.4	Until Sept. 30, 2019	Disease control assistance to affected and neighboring countries.
CDC: Global Health Security	597.0	525.2	Until Sept. 30, 2019	Implementation of Global Health Security Agenda (GHSA) activities. <sup>b</sup>
CDC: Public health emergency preparedness	165.0	11.3	Until Sept. 30, 2019	Domestic preparedness and response activities, including control in health care settings, and procurement for stockpile.
CDC: State and local	255.0	56.0	Until Sept. 30, 2019	Grants to state health departments for surveillance, testing, case management.
CDC: Worker training	0.0	—	—	\$10 million for this activity was transferred to NIH. See below.
CDC: Migration/quarantine	119.3	57.4	Until Sept. 30, 2019	Screening and management of entrants from affected countries/regions.
CDC: Other domestic activities	37.0	11.9	Until Sept. 30, 2019	Vaccine trials and other applied public health research.
<b>CDC Subtotal</b>	<b>1,776.3</b>	<b>1,031.2</b>	—	—
ASPR (PHSSEF): Hospital Preparedness Program	208.5	21.2	Until Sept. 30, 2019	Domestic training, PPE, and establishing regional Ebola Treatment Centers (ETCs).
ASPR (PHSSEF): Other prep. and response	352.2	347.4	Until Sept. 30, 2019	Not specified. Could include domestic treatment costs for affected individuals.
ASPR (PHSSEF): BARDA	157.0	3.7	Until Sept. 30, 2019	Research, development, and procurement of vaccines and treatments.
<b>ASPR/PHSSEF Subtotal</b>	<b>717.7</b>	<b>372.3</b>	—	—
NIH, NIAID	238.0	35.2	Until Sept. 30, 2016	Research and clinical trials on investigational vaccines and treatments.
NIH, NIAID	10.0	9.0	Until Sept. 30, 2019	Ebola responder safety training, funds transferred from CDC.
FDA	25.0	13.7	Until expended	Development, review, and regulation of vaccines and treatments.
<b>HHS Total</b>	<b>2,767.0</b>	<b>1,461.4</b>	—	—

Agency and Account or Activity	P.L. 113-235 <sup>a</sup>	Unobligated Funds	Period of Availability	Purpose(s)
<b>STATE DEPARTMENT/USAID</b>				
USAID, Operating Expenses	19.0	15.2	Until Sept. 30, 2016	Operating costs to address Ebola outbreak in West Africa, including temporary staffing and technical support.
USAID, Inspector General	5.6	3.4	Until expended	Oversight of Ebola response in West Africa.
USAID, International Disaster Assistance (IDA)	1,436.3	542.4	Until expended	Disaster assistance to address humanitarian needs for West Africa, such as rapid response, maintaining surveillance, screening, and contact tracing.
USAID, Global Health Programs	312.0	148.0	Until expended	Expanded USAID global health security activities to control infectious diseases and limit spread of Ebola, including surveillance and building lab capacity.
State/USAID, Economic Support Fund	711.7	583.0	Until Sept. 30, 2016	Training and program assistance to prevent economic and government instability during Ebola crisis, including reimbursement for earlier response. Activities include rehabilitation of the water infrastructure, strengthening health information systems, and developing technology to prevent the spread of Ebola.
State, Diplomatic, Consular Programs (D&CP)	36.4	2.2	Until Sept. 30, 2016	Medical support and evacuation capacity, repatriation assistance, and other needs.
State, Repatriation Loans Program	ns	ns	ns	Repatriation loans to U.S. citizens as necessary related to Ebola outbreak. Funding not specified in P.L. 113-235. Explicit transfer authority is provided for up to \$1 million from D&CP into this account. <sup>c</sup>
State, International Organizations and Programs (IO&P)	ns	ns	ns	Estimated U.S. contributions to UNMEER. Funding not specified in P.L. 113-235. Explicit transfer authority is provided for up to \$35.3 million from IDA for this account. <sup>c</sup>
State, Contributions to International Organizations (CIO)	ns	ns	ns	Funding not specified in P.L. 113-235. Explicit transfer authority is provided for up to \$35.3 million from IDA and \$50 million from Global Health Programs for this account. <sup>c</sup>
State, Nonproliferation, Anti-terrorism, Demining, and Related Programs	5.3	0.0	Until Sept. 30, 2016	Biosafety and hazardous materials training in affected countries, efforts to mitigate illicit acquisition of Ebola virus and to promote biosecurity practices associated with outbreak response efforts.

Agency and Account or Activity	P.L. 113-235 <sup>a</sup>	Unobligated Funds	Period of Availability	Purpose(s)
<b>State/USAID Total</b>	<b>2,526.3</b>	<b>1,294.2</b>	—	—
<b>DEPARTMENT OF DEFENSE</b>				
Defense/DARPA: Defense-wide research, development, testing, and evaluation (RDT&E)	45.0	0.8	Until Sept. 30, 2016	Developing medical countermeasures technologies (e.g., using antibodies from survivors) and shortening vaccine development time.
Defense/CBDP: RDT&E	50.0	16.4	Until Sept. 30, 2017	Research and Development, testing and evaluation.
Defense/CBDP: procurement	17.0	0.1	Until Sept. 30, 2017	Procurement of detection and diagnostic systems, mortuary supplies, and isolation transport units. <sup>d</sup>
<b>Defense Total</b>	<b>112.0</b>	<b>17.3</b>	—	—
<b>TOTAL</b>	<b>5,405.3</b>	<b>2,772.9</b>	—	—

**Sources:** Departmental spend plans and/or quarterly reports for HHS, State/USAID, and Defense, as required by P.L. 113-235, and obtained by CRS; and additional departmental communications.

**Note:** Amounts may not add due to rounding; “ns” means not specified.

**Glossary:** ASPR is HHS Assistant Secretary for Preparedness and Response; BARDA is HHS Biomedical Advanced Research and Development Authority; CBDP is Chemical Biological Defense Program; CDC is HHS Centers for Disease Control and Prevention; DARPA is Defense Advanced Research Projects Agency; FDA is HHS Food and Drug Administration; NIAID is NIH National Institute of Allergy and Infectious Diseases; NIH is HHS National Institutes of Health; PHSSEF is HHS Public Health and Social Services Emergency Fund, administered by the HHS Secretary; PPE is personal protective equipment; UNMEER is United Nations Mission for Ebola Emergency Response, and WHO is World Health Organization.

- HHS amounts reflect transfers between the funded agencies, as permitted by the law. P.L. 113-235, 128 Stat. 2522, §604, December 16, 2014.
- For more information, see CDC, Global Health Security Agenda, <http://www.cdc.gov/globalhealth/security/index.htm>.
- P.L. 113-235, 128 Stat. 2694, §9001.
- Explanatory statement accompanying H.R. 83, *Congressional Record*, vol. 160 (December 11, 2015), p. H9635.

## Author Contact Information

Susan B. Epstein, Coordinator  
Specialist in Foreign Policy  
[sepstein@crs.loc.gov](mailto:sepstein@crs.loc.gov), 7-6678

Sarah A. Lister  
Specialist in Public Health and Epidemiology  
[slister@crs.loc.gov](mailto:slister@crs.loc.gov), 7-7320

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