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Zika Outbreak Meets Criteria for Emergency Funding

By David Reich

By virtue of its health threat and rapid spread, the Zika outbreak meets the criteria for appropriating emergency funds as allowed by the Budget Control Act (BCA). The President and Senate favor the emergency approach — which would not require offsetting cuts — while a smaller House-passed measure includes offsets. Both law and practice support the emergency approach.

As a conference committee reconciles the House- and Senate-passed Zika funding bills, here are some basic points about the BCA’s emergency exception:

- The emergency exception has been an integral part of the BCA from the beginning, as a necessary feature of a system that set binding caps in advance on most appropriations.
- The BCA sets out some criteria for determining when an emergency designation is appropriate, and the Zika outbreak fits those closely, as a sudden, unforeseen situation requiring an urgent federal response.
- Congress has used the emergency designation sparingly since the BCA was enacted in 2011, in part because the BCA set up a separate mechanism for dealing with the cost of most natural disasters that has reduced the need for emergency supplemental appropriations for disaster relief.

House Republicans have opposed the use of emergency funding to deal with Zika, and instead passed a measure fully offset by cuts that many consider problematic. Meanwhile, they are moving to considerably expand the use of a similar exception to the BCA caps for “overseas contingency operations” (OCO). The House recently passed a Defense appropriations bill that facilitates an OCO increase that is *eight times larger* than the emergency amount the President has requested to deal with Zika — and that violates the OCO totals set by last year’s bipartisan budget agreement.

Background on Zika Supplemental Funding Proposals

Almost four months ago, the President requested \$1.9 billion in emergency supplemental appropriations to address the threat posed by Zika in the United States and internationally, including funding to accelerate work on vaccines, assist in detecting outbreaks and controlling mosquitoes that spread the disease, increase research on Zika and its effects, and better educate health care providers and the public. The Senate passed a compromise measure last month, providing about \$1.1 billion on an emergency basis.

The House has also passed a bill, but it provides only \$622 million and fully offsets the cost. The offsets come through the rescission of \$352 million from appropriations for response to the Ebola epidemic, which the Administration says is still needed to deal with that continuing threat; and the rescission of \$270 million from a fund used for information technology and facilities investments at the Department of Health and Human Services.

A House-Senate conference committee is now reconciling the two versions. Both law and practice support the emergency approach the President and the Senate have proposed, thereby eliminating disputes over offsets as a barrier to agreement.

Emergency Appropriations Provision Is Integral to the Budget Control Act, Not an Evasion

The BCA imposed binding caps on appropriations for each year from 2012 through 2021 but exempted certain items from those caps, including appropriations that both Congress and the President designated for emergency purposes.¹ Thus emergency appropriations do not count against the BCA caps and can be provided without offsetting cuts.

This emergency exemption is an essential and responsible safety valve for the BCA's binding caps, just as similar exemptions have been provided in previous budget enforcement mechanisms. It allows policymakers to adequately respond to serious situations that need a rapid federal response, where they could not have foreseen the timing, nature, and extent of the need. In short, emergency appropriations are not a gimmick to evade the BCA caps, but rather have been an integral part of the BCA system since its enactment.

The Zika Threat Fits the BCA Criteria for Emergencies

Congress and the President decide whether to use the emergency exception on a case-by-case basis. The BCA does, however, provide guidance by defining “emergency” — a definition that the Zika situation fits well.

The BCA says that for this purpose, an emergency is a situation that is unanticipated — i.e., sudden, urgent, unforeseen, and temporary — and requires new appropriations “for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security.”²

Zika is certainly a threat to health, due to the possibility of serious birth defects if pregnant women become infected as well as the possibility of serious neurological complications. Federal health officials and other public health experts have stressed the urgent need for funding to do things like developing a vaccine against the virus, detecting and tracking the disease, and better controlling the populations of mosquitos that spread Zika.³ Furthermore, Zika's spread and the recognition of its dangers was recent and unforeseen.

¹ The other exemptions are for Overseas Contingency Operations, and for limited amounts of funding for specific disaster relief and program integrity purposes.

² Section 250(c)(20) of the Balanced Budget and Emergency Deficit Control Act (2 USC 900(c)(20)), as added by section 102(4) of the Budget Control Act of 2011 (Public Law 112-25).

³ See, for example, testimony of the Director of the Centers for Disease Control and Prevention and the Director of the National Institute of Allergy and Infectious Diseases at <http://www.appropriations.senate.gov/hearings/labor-health->

Congress and the President Have Used the Emergency Designation Judiciously in Recent Years

The debate over the emergency exemption sometimes suggests that Congress is using this device extensively and unnecessarily. While that may have occurred at some points in the past, the recent record is different. In fact, new emergency appropriations have been made only four times in the five years since the BCA was enacted in 2011:⁴

- In 2013, \$41.7 billion to help cover response and recovery costs for Hurricane Sandy.
- In 2014, \$225 million in assistance to Israel for the Iron Dome rocket defense system after Israeli territory came under attack.
- In 2015, \$5.4 billion for preparedness and response to the Ebola epidemic.
- In 2016, \$700 million to help cover the costs of fighting wildfires during an unusually severe fire season.

Indeed, the BCA has *reduced* the need for emergency appropriations, by establishing a new mechanism for funding the cost of most disaster relief. It created a category of disaster relief appropriations, separate from the basic caps, for response to events that the President declares as major disasters. The amount available under this category is limited, based on a ten-year rolling average of past disaster relief costs (excluding the highest and lowest years) with amounts unused in a year available for one additional year. This mechanism is used primarily for assistance through the Federal Emergency Management Agency (FEMA) but has also supported assistance from agencies such as the Agriculture and Transportation Departments and the Army Corps of Engineers.

The BCA's disaster relief mechanism has avoided the need for emergency appropriations for all but the largest natural disasters. Further, by creating a budget category available only for this purpose, the BCA has encouraged Congress to use the annual appropriations process to maintain adequate balances in FEMA's disaster relief fund, thus reducing pressure for supplemental appropriations measures when disasters occur.

The four uses of the emergency exemption listed above were for events outside the scope of the disaster relief category, and the same would be true of Zika appropriations. In the case of Hurricane Sandy, a major storm that hit a large and densely populated area, the response and recovery costs were well beyond the dollar limits of the BCA disaster relief category — although policymakers exhausted that category's available funds in addition to using the emergency funding. The other three emergency appropriations were for costs that weren't eligible for the disaster relief category.

[and-human-services-and-education-hearing-on-emerging-health-threats-and-the-zika-supplemental-funding-request](#), and the letter from associations of state and local public health officials at <http://www.astho.org/Public-Policy/Federal-Government-Relations/Documents/Congressional-Zika-Letter-House-Appropriators-2016/>.

⁴ Also, the uses of previously enacted emergency appropriations were modified in at least two cases.

House Republicans' Insistence on Offsets for Zika Funding Inconsistent with Their Support for Additional Defense Funding Through OCO

Despite Zika meeting the criteria for emergency funding, House Republicans have opposed the approach and instead passed a measure that requires offsetting cuts. Meanwhile, they have been promoting far larger use of an analogous BCA exemption to increase defense spending.

As with emergency funding, appropriations that Congress and the President designate for overseas contingency operations are exempt from the BCA caps. OCO appropriations are generally understood to be for defense and international affairs costs related to operations in Iraq, Afghanistan, and similar trouble spots.

In recent years, policymakers have expanded the use of OCO funds to supplement the regular defense and international affairs budgets. Last October's bipartisan budget agreement formalized that practice, by specifying levels of OCO appropriations intended, in part, to provide additional (and equal) relief from both the defense and non-defense caps under the BCA.

House Republicans are now moving to further expand use of OCO to circumvent the BCA cap on defense appropriations. On June 16, the House passed a 2017 defense appropriations bill that uses an additional \$16 billion of OCO funds to supplement the regular defense budget.⁵ While the bill proposes to temporarily cover the cost of that increase by reducing appropriations for actual overseas military operations, the Committee majority has candidly said that the resulting hole will have to be filled through supplemental appropriations early next year.

Thus, when that two-step process is complete, defense funding exempt from the caps will be roughly \$16 billion higher than the amount agreed to last October (and the amount enacted for 2016). This increase is eight times larger than the amount of supplemental appropriations the President requested for Zika response and 14 times larger than the amount the Senate-passed Zika supplemental provides.

In short, both the OCO and emergency exceptions to the BCA allow appropriations above the basic caps. It seems paradoxical that House Republicans are ready to use the OCO exception to cover additional base defense funding, which goes beyond both the purposes of OCO and the OCO totals agreed to last October, but are resistant to use the emergency exception to cover a much smaller amount of funding to deal with an emerging public health threat — a use fully consistent with the exception's purposes.

⁵ For more information, see David Reich, "House Appropriators' Gimmick Would Boost Defense," Center on Budget and Policy Priorities, May 17, 2016, <http://www.cbpp.org/blog/house-appropriators-gimmick-would-boost-defense>.