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Emergency Relief Program for Disaster-Damaged Highways and Bridges

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Emergency Relief Program for Disaster-Damaged Highways and Bridges

The March 26, 2024, collapse of Baltimore’s Francis Scott Key Bridge called attention to federal transportation programs that provide emergency relief (ER) in the wake of disasters. The MV *Dali*, a container ship departing the Port of Baltimore, struck one of the bridge’s support towers, causing the bridge to collapse into the Patapsco River. The bridge is a segment of Interstate 695, part of the National Highway System, and therefore eligible for federal aid from the Federal Highway Administration (FHWA) through the ER Program.

Federal aid to disaster-damaged highways and bridges has been available since the 1930s. The U.S. Department of Transportation provides federal assistance for disaster-damaged federal-aid highways through the ER Program administered by the FHWA. The program is funded by a permanent annual authorization of \$100 million from the Highway Trust Fund (HTF) along with general fund appropriations provided by Congress on a “such sums as necessary” basis. Since January 29, 2013, the highway ER Program has received nearly \$9.9 billion in emergency supplemental appropriations. Public roads on federal lands are eligible for assistance under FHWA’s Emergency Relief for Federally Owned Roads Program.

Following natural disasters (such as hurricanes, earthquakes, wildfires, and flooding) or catastrophic failures (such as the I-95 bridge collapse in Philadelphia caused by a gasoline tanker truck crash), ER funds are available for both emergency repairs and permanent repairs (i.e., the restoration of facilities to pre-disaster conditions). Eligibility is dependent on a presidential or gubernatorial disaster declaration. For example, Maryland Governor Wes Moore declared a state of emergency on March 26, 2024, making repairs to the Francis Scott Key Bridge eligible.

Although ER for highways is a federal program, the decision to seek ER funding is made by a state government or by a federal land management agency. Local governments are not eligible to apply directly. FHWA pays 100% of the cost of emergency repairs done to minimize the extent of damage, protect remaining facilities, and restore essential traffic during or immediately after a disaster. Emergency repairs must be completed within 270 days of the disaster event. Permanent repairs go beyond the restoration of essential traffic and are intended to restore damaged bridges and roads to conditions and capabilities comparable to those before the event. The federal share for permanent repairs is generally 80% for non-interstate roads and 90% for Interstate Highways. Congress has on occasion authorized FHWA to pay 100% of ER Program expenses for repair and reconstruction projects related to particular disasters. In response to the collapse of Baltimore’s Francis Scott Key Bridge, President Biden announced his intention that the federal government would cover the entire cost of reconstruction. Certain “quick release” funds are allocated to help with initial emergency repair costs and may be released prior to completion of detailed damage inspections and cost estimates. Other allocations to the states follow a more deliberate process of completing detailed damage reports, developing cost estimates, and processing competitive bids.

The most recent surface transportation reauthorization act, the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58), made a number of changes to the ER Program. Most of the changes were to allow the addition of resilience measures to ER-funded repairs if the specified protective features would mitigate the risk of recurring damage or the cost of future repairs from extreme weather, flooding, or other natural disasters. The act also expanded the definition of *comparable facility* to include economically justifiable improvements that will mitigate the risk of recurring damage.

In the near term, Congress may view the implementation of the resilience-related changes as an oversight issue, along with FHWA’s management of ER Program funds and the ER Program’s unmet needs. In the longer term, as the expiration of the IIJA in September 2026 approaches, Congress may wish to consider future modifications to the program and the way it is funded, perhaps reexamining a possible increase in the \$100 million annual permanent HTF authorization to reduce the program’s reliance on periodic supplemental appropriations. Congressional oversight options could include examining the timeline of permanent ER repair projects and the typical reasons for delays in completion when they occur.

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Introduction

At about 1:30 a.m. on March 26, 2024, the MV *Dali*, a container ship departing the Port of Baltimore, struck a support tower of the Francis Scott Key Bridge in Baltimore, MD, causing the bridge to collapse into the Patapsco River. The bridge is a segment of Interstate 695, part of the National Highway System, and a federal-aid highway. The bridge collapse has called attention to federal transportation programs that provide emergency relief (ER) to communities in the wake of disasters. This report provides an overview of the ER Program administered by the Federal Highway Administration (FHWA). For more information about the collapse of the Francis Scott Key Bridge, see CRS In Focus IF12619, *Baltimore Bridge Collapse: Frequently Asked Questions (FAQ)*, by John Frittelli, Ben Goldman, and Ali E. Lohman.

Disaster-damaged roads that are federal-aid highways are eligible for federal assistance under the ER Program. Federal-aid highways make up about 25% of all public roads in the United States but exclude roads classified as local roads or rural minor collectors. Disaster-damaged public roads that are not federal-aid highways may be eligible for disaster aid from the Federal Emergency Management Agency (FEMA) Public Assistance Program and are not discussed in this report.¹

The Federal Transit Administration has a separate funding program for disaster-damaged public transportation systems. See CRS Report R47661, *Emergency Relief for Disaster-Damaged Public Transportation Systems: In Brief*, by William J. Mallett.

This report begins by discussing FHWA assistance for the repair and reconstruction of highways and bridges damaged by disasters (such as hurricanes, flooding, and wildfires) or catastrophic failures (such as the I-95 bridge collapse of June 11, 2023, in Philadelphia). The report includes information on the use of ER funds on disaster-damaged federally owned public use roadways, such as National Park Service roads and U.S. Forest Service roads, under the affiliated Emergency Relief for Federally Owned Roads (ERFO) program.

For over 80 years, federal highway funding has been available for the emergency repair and restoration of disaster-damaged roads. The first legislation authorizing such use of federal funds was the Hayden-Cartwright Act of 1934 (48 Stat. 993). This act provided no separate funds, and states subject to disasters had to divert their regularly apportioned (formula) federal highway funds from other uses to repair disaster-damaged roads.

The Federal-Aid Highway Act of 1956 (70 Stat. 374 and 70 Stat. 387) was the first act that authorized separate funds for the ER Program.² From 1956 through 1978, funding for the program was drawn 40% from the Treasury's general fund and 60% from the Highway Trust Fund (HTF). The HTF is supported primarily by taxes paid by highway users, mainly on gasoline and diesel fuel. Starting in 1979, the ER Program was funded solely from the HTF with \$100 million authorized annually. In 1998, Congress made the annual \$100 million HTF authorization permanent. Beginning in 2005, while Congress continued the \$100 million permanent authorization from the HTF, it authorized supplemental appropriations from the general fund.³

¹ CRS In Focus IF11529, *A Brief Overview of FEMA's Public Assistance Program*, by Erica A. Lee.

² The program is codified at 23 U.S.C. §125. See also 23 C.F.R. Part 668.

³ Beginning with the December 30, 2005, enactment of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (P.L. 109-148), emergency relief (ER) supplemental appropriations have been drawn from the general fund.

The most recent surface transportation reauthorization, the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58), authorized federal highway programs for FY2022-FY2026. The IIJA made no change to the permanent \$100 billion annual HTF authorization for the ER Program, adhering to a policy of relying predominantly on existing and future supplemental appropriations to fund the program's needs. Whether to raise the permanent annual authorization to account for its loss of value since 1972 could again be an issue during IIJA reauthorization. The IIJA made modest changes to the program's operation.⁴

As is true with most other FHWA programs, the ER Program is administered through state departments of transportation (state DOTs) in close coordination with FHWA's field offices in each state (also known as division offices).⁵ The decision to seek financial assistance under the program is made by state DOTs, not by the federal government. Local officials who wish to seek ER funding must do so through their state DOTs; they do not deal directly with FHWA. As state DOTs normally deal with FHWA field office staff in each state on many matters, they typically have working relationships that facilitate a quickly coordinated response to disasters.

Public Use Roads on Federal Lands

For roads and bridges on federally owned lands, emergency relief (ER) assistance is managed via a related program called Emergency Relief for Federally Owned Roads (ERFO). This program addresses disaster damage to facilities such as National Park Service roads, U.S. Forest Service roads, and tribal transportation facilities.⁶ The Federal Highway Administration (FHWA) dispenses these funds through the various federal land management agencies, not the states.⁷ Aid is restricted to facilities that are open to the general public for use with a standard passenger vehicle. FHWA pays 100% of the cost of approved repairs, but the program is designed to pay for unusually heavy expenses and to supplement the agencies' repair programs, not to cover all repair costs. Tribal, state, and other government entities that have the authority to repair or reconstruct eligible facilities must apply through a federal land management agency.⁸ The program is managed by FHWA's Office of Federal Lands Highway.

Emergency Relief Funding

The ER Program has a permanent annual authorization of \$100 million in contract authority to be derived from the HTF. These funds are not subject to the annual obligation limitation placed on most highway funding by appropriators, which generally means most of the \$100 million is available each year, although the funding is subject to sequester.⁹ Because the costs of road repair

⁴ Federal Highway Administration (FHWA), "Bipartisan Infrastructure Law Fact Sheets: Emergency Relief Program (ER)," July 28, 2022, at https://www.fhwa.dot.gov/bipartisan-infrastructure-law/er_fact_sheet.cfm.

⁵ CRS Report R47022, *Federal Highway Programs: In Brief*, by Robert S. Kirk.

⁶ FHWA, "Emergency Relief for Federally Owned Roads (ERFO)," at <https://flh.fhwa.dot.gov/programs/erfo/>.

⁷ The main land management agencies are the Department of the Interior's Bureau of Land Management, National Park Service, and Fish and Wildlife Service and the Department of Agriculture's Forest Service. Some ER-eligible roads also serve military installations as well as U.S. Army Corp of Engineers and Department of Energy facilities. See FHWA, *Transportation Serving Federal and Tribal Lands: Chapter 12*, at <https://www.fhwa.dot.gov/policy/2015cpr/pdfs/chap12.pdf>.

⁸ FHWA, *Emergency Relief for Federally Owned Roads: Disaster Assistance Manual*, FHWA-FLH-15-001, October 2014, pp. 1-109, at <https://flh.fhwa.dot.gov/programs/erfo/documents/erfo-2015.pdf>.

⁹ ER funds were subject to the FY2013 sequester under the Balanced Budget and Emergency Deficit Control Act, as amended. The sequester amount for the \$100 million of contract authority was \$5.1 million, and the sequester amount for the \$2.022 billion of supplementary funds provided in the Disaster Relief Appropriations Act of 2013 (P.L. 113-2) was \$101.1 million. See FHWA, *Sequestration of Highway Funds for Fiscal Year (FY) 2013*, Notice 4510.762, March 22, 2013, at <https://www.fhwa.dot.gov/legisregs/directives/notices/n4510762.cfm>. Sequester amounts for the annually authorized \$100 million in contract authority since FY2013 are as follows: FY2014, \$7.2 million; FY2015, \$7.3 million; FY2016, \$6.8 million; FY2017, \$6.9 million; FY2018, \$6.6 million; FY2019, \$6.2 million; FY2020, \$5.9 million; FY2021, \$5.7 million; FY2022, \$5.7 million; and FY2023, \$5.7 million.

and reconstruction following disasters typically exceed the \$100 million annual authorization, surface transportation authorization laws—currently the IIJA—have authorized the appropriation of additional funds on a “such sums as may be necessary” basis, generally accomplished in either annual or emergency supplemental appropriations legislation.¹⁰ For a listing of ER appropriations since 1998, see **Table A-1**. These funds are available until expended.

As is true with other FHWA programs, ER is a reimbursable program. A state receives payment after making repairs and submitting vouchers to FHWA for reimbursement of the federal share. Once the state’s eligibility for ER funds has been confirmed by FHWA, it can incur obligations knowing that FHWA will reimburse the state.

The ER funding structure of having a modest annual authorization supplemented by appropriations addressed the fact that small disaster events occur every year, but large disasters do not. However, the \$100 million annual authorization has not changed since 1972. To equal the current purchasing power of \$100 million in FY1972 would require an authorization of around \$600 million to \$900 million.¹¹ Because the value of the \$100 million permanent authorization has diminished over time, the program has become increasingly dependent on supplemental appropriations. Over the last 10 fiscal years, \$9.9 billion in supplemental appropriations have been provided in seven appropriations acts. Roughly 8.7% of the total amount made available was provided by the permanent annual authorization; the other 91.3% was provided in appropriations acts. Consequently, a future surface transportation reauthorization issue for consideration is whether to raise the permanent annual authorization to account for its loss of value since 1972 or to continue to rely heavily on supplemental appropriations to fund emergency repairs to highways.

The Federal Share

Emergency repairs to restore essential travel, minimize the extent of damage, or protect remaining facilities, if accomplished within 270 days after a disaster, may be reimbursed with a 100% federal share.¹² Permanent repair projects, such as rebuilding a bridge or a segment of damaged road, are reimbursed at the same federal share that would normally apply to the federal-aid highway facility. For Interstate System highways, the federal share would be 90%; for most other highways, including Federal Lands Access Program facilities,¹³ the share would be 80%. For example, the Francis Scott Key Bridge in Baltimore, MD, is a segment of the road commonly called Interstate 695. However, the portion of Interstate 695 that includes the bridge is not part of

¹⁰ The extensive damage caused by Hurricane Katrina in 2005 raised doubts about whether emergency supplemental ER expenditures could be drawn from the highway account of the Highway Trust Fund (HTF) without constraining the ability of the HTF to fully fund other authorized surface transportation programs. For that reason, supplemental ER appropriations have come from the Treasury’s general fund since December 2005.

¹¹ The amount varies depending on the deflator used: \$567 million using the gross domestic product (GDP) price index; \$774 million using the Consumer Price Index; and \$935 million using the U.S. Bureau of Economic Analysis’s Highways and Streets price index (1972-2021 calendar years only).

¹² FHWA, *Defining and Managing Emergency Relief Repair Activities Eligible for 100 Percent Federal Funding*, March 7, 2022, pp. 1-7, at <https://www.fhwa.dot.gov/specialfunding/er/220307.cfm>. FHWA may extend the 270-day period if there are delays in state access to the damaged facilities to assess the damage and cost of repair. Emergency events that have an event start date that preceded the October 1, 2021, effective date of the Infrastructure Investment and Jobs Act (IIJA) are subject to the previous language in 23 U.S.C. §120(e)(1), and these emergency repairs must be accomplished within 180 days to be eligible for 100% federal funding.

¹³ The Federal Lands Access Program is for roads that are located on or adjacent to or provide access to federal lands. The funds are allocated to the states using a formula based on mileage, number of bridges, land area, and visitation. See FHWA, “Federal Lands Access Program: Fact Sheet,” February 8, 2017, at <https://www.fhwa.dot.gov/fastact/factsheets/fedlandsaccessfs.cfm>.

the Interstate Highway System and is instead a state highway.¹⁴ Therefore, the federal share for ER Program-funded repairs to the bridge would be 80%, unless the project meets the conditions for an exception.

If the total expenses a state incurs to deal with disaster-damaged roads in a given fiscal year exceed the state's total federal-aid highway formula funds for the fiscal year in which the disasters or failures occurred, the share for eligible repairs becomes "up to 90%" for repairs on any federal-aid highway.¹⁵ For example, Maryland's federal-aid highway formula funds for FY2024 total \$828,287,771.¹⁶ If the costs of repairing the bridge and other eligible activities, such as emergency traffic services or operation of additional transit services, exceed \$828,287,771 in FY2024, the federal share payable could be up to 90%.

Congress has on occasion authorized FHWA to pay 100% of ER Program expenses for repair and reconstruction projects related to particular disasters. Legislation for that purpose was enacted following the 2005 Gulf Coast hurricanes and the collapse of the I-35W Bridge in Minneapolis in 2007. A provision in the Bipartisan Budget Act of 2018 (P.L. 115-123) provided for a 100% federal share for damage caused by Hurricanes Irma and Maria in Puerto Rico in 2017. The Consolidated Appropriations Act of 2023 (P.L. 117-328) provided for a 100% share for damage caused by Hurricane Fiona. In response to the collapse of Baltimore's Francis Scott Key Bridge on March 26, 2024, President Biden announced his intention that the federal government would cover the entire cost of reconstruction.¹⁷

Eligibility and Project Requirements¹⁸

ER funds may be used for the repair and reconstruction of federal-aid highways and roads on federally owned lands that have suffered serious damage as a result of either (1) a natural disaster over a wide area, such as a flood, hurricane, tidal wave, earthquake, tornado, severe storm, landslide, or wildfire; or (2) a catastrophic failure from any external cause (e.g., the collapse of a bridge that is struck by a barge). Historically, the vast majority of ER funds have gone for repair and reconstruction following natural disasters.

Disaster Designation

Federal funding eligibility is typically dependent on a disaster declaration. A governor may issue a formal proclamation of a disaster occurrence, as Maryland Governor Wes Moore did on March 26, 2024, when he declared a state of emergency in response to the collapse of the Francis Scott Key Bridge.¹⁹ A presidential declaration or the governor's request for this declaration can serve

¹⁴ FHWA, *National Highway System: Baltimore, MD*, October 1, 2020, https://www.fhwa.dot.gov/planning/national_highway_system/nhs_maps/maryland/baltimore_md.pdf.

¹⁵ 23 U.S.C. §120(e)(4).

¹⁶ Shailen P. Bhatt, *Notice: Apportionment of Federal-Aid Highway Program Funds for Fiscal Year 2024*, FHWA, Office of Budget and Finance, N 4510.880, October 2, 2023, <https://www.fhwa.dot.gov/legsregs/directives/notices/n4510880.cfm>.

¹⁷ White House, "Remarks by President Biden on the Collapse of the Francis Scott Key Bridge," press release, March 26, 2024, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/03/26/remarks-by-president-biden-on-the-collapse-of-the-francis-scott-key-bridge/>.

¹⁸ FHWA, *Emergency Relief Manual (Federal-Aid Highways)*, May 31, 2013, pp. 1-67, at <https://www.fhwa.dot.gov/reports/erm/er.pdf> (hereinafter FHWA, *ER Manual*).

¹⁹ Office of Maryland Governor Wes Moore, "Governor Moore Statement on the Collapse of the Francis Scott Key Bridge," press release, March 26, 2024, <https://governor.maryland.gov/news/press/pages/governor-moore-statement-on-the-collapse-of-the-francis-scott-key-bridge.aspx>.

the same purpose. The state files a letter of intent to apply for ER funding with the FHWA division office within the state. The FHWA division administrator may then concur that a disaster occurred with substantial damage to federal-aid highway system roads or that the criteria for a catastrophic failure were met and the damage is eligible under 23 U.S.C. §125. When the President issues a major disaster declaration, the division administrator's concurrence is not necessary.²⁰

FHWA (via the director of each Federal Lands Highway Division) determines whether a disaster has occurred in regard to ERFO, although this is not necessary when there is a presidential declaration of a major disaster.

Restoration

The intent of ER assistance is to restore highway facilities to conditions comparable to those before the disaster, not to increase capacity or fix non-disaster-related deficiencies. Current law broadly defines *comparable facility* as one that “meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.”²¹ Thus, for example, ER funds could be used to rebuild an older disaster-damaged road or bridge that had narrow lanes with wider lanes that meet current FHWA guidelines. In addition, the IJA broadened the definition of comparable facility to include a facility that incorporates “economically justifiable improvements that will mitigate the risk of recurring damage from extreme weather, flooding, and other natural disasters.”²²

Concerning bridges, ER funds are not to be used if the bridge had been permanently closed to all vehicular traffic prior to the disaster because of imminent danger of collapse due to a structural deficiency or physical deterioration.²³

Pier Protections for New Bridges

Emergency Relief (ER) Program funding covers reconstruction of damaged highways and bridges. The replacement facility must meet current geometric and construction standards, which may have changed in the time since the original facility was constructed.

For example, when the Francis Scott Key Bridge was constructed in the 1970s, highway bridge standards did not address protection for bridge piers. On May 9, 1980, a bulk carrier, the *Summit Venture*, rammed a support pier of the Sunshine Skyway Bridge in Tampa Bay, FL, causing the bridge to collapse and resulting in 35 deaths. The National Transportation Safety Board (NTSB) investigated the bridge collapse and found that “if the crashwall at pier 2S had been larger, or if a pier protection system had been installed at that location, the damage to the Sunshine Skyway Bridge from the ramming by the *Summit Venture* might have been reduced.” NTSB recommended that Federal Highway Administration “develop standards for the design, performance, and location of structural bridge pier protection systems.”²⁴ Subsequent guidance from the American Association of State Highway and Transportation Officials, which sets standards for road and bridge construction, addressed pier protection, directing that “where the possibility of collision exists from highway or river traffic, an appropriate risk analysis

²⁰ FHWA, *ER Manual*, pp. 30-31.

²¹ 23 U.S.C. §125(d)(2)(A)(i).

²² 23 U.S.C. §125(d)(2)(A)(ii).

²³ 23 U.S.C. §125(b).

²⁴ National Transportation Safety Board, Bureau of Investigation, *Ramming of the Sunshine Skyway Bridge by the Liberian Bulk Carrier Summit Venture, Tampa Bay, Florida, May 9, 1980*, NTSB-MAR-81-3, April 10, 1981, pp. 42-43, <https://www.nts.gov/investigations/AccidentReports/Reports/MAR8103.pdf>.

should be made to determine the degree of impact resistance to be provided and/or the appropriate protection system.”²⁵ These standards were incorporated by reference into federal regulations.²⁶

If Maryland transportation officials repair or reconstruct the Francis Scott Key Bridge using ER Program funds, pier protection systems such as fenders would likely be covered. However, while a pier protection system may have mitigated the damage, there is no guarantee that it would have prevented the bridge collapse.

IIJA Resilience-Enhancing Protective Features

Despite the limitations placed on ER funding of “betterments,” the consideration of long-term resilience features has been allowed under the ER Program since at least 2013.²⁷ The IIJA, enacted November 15, 2021, included provisions to add clarity to the inclusion and tracking of resilience improvements in ER projects. Section 11519(b) of the act, Improving the Emergency Relief Program, directed the Secretary of Transportation to update FHWA’s *Emergency Relief Manual (Federal-Aid Highways)* (ER Manual) within 90 days of IIJA enactment to reflect the definition of *resilience* in 23 U.S.C. §101 and to include other specific ER Program improvements. With respect to projects, resilience is defined to mean

a project with the ability to anticipate, prepare for, or adapt to conditions or withstand, respond to, or recover rapidly from disruptions, including the ability—to resist hazards or withstand impacts from weather events and natural disasters; or to reduce the magnitude or duration of impacts of a disruptive weather event or natural disaster on a project; and to have the absorptive capacity, adaptive capacity and recoverability to decrease project vulnerability to weather events or other disasters.

Section 11519(b) requires FHWA to identify features to incorporate resilience into ER projects; develop best practices for including resilience in ER projects; and develop and implement a system to track the consideration of resilience in the ER Program.

More generally, Section 11519(b) requires that the revision of the ER Manual encourage the use of “Complete Streets” design principles and consideration of access for moderate- and low-income families impacted by a declared disaster. It also requires FHWA to develop and implement a process to track the costs of ER projects.

In addition, the IIJA made eligible a number of specific protective features if the protective feature is an improvement that will mitigate the risk of recurring damage or the cost of future repair from extreme weather, flooding, and other natural disasters.²⁸ The eligible protective features are

- raising roadway grades;
- relocating roadways in a floodplain to higher ground above projected flood elevation levels or away from slide prone areas;
- stabilizing slide areas;
- stabilizing slopes;
- lengthening or raising bridges to increase waterway openings;

²⁵ *Standard Specifications for Highway Bridges*, 17th ed. (Washington, DC: American Association of State Highway and Transportation Officials, 2002), p. 184.

²⁶ 23 C.F.R. §625.4(b).

²⁷ FHWA, *ER Manual*, pp. 2, 24-29. Betterments “are added protective features or changes that modify the function or character of a facility from what existed prior to the disaster or catastrophic failure.”

²⁸ 23 U.S.C. §125(d)(3).

- increasing the size or number of drainage structures;
- replacing culverts with bridges or upsizing culverts;
- installing seismic retrofits on bridges;
- adding scour protection at bridges, installing riprap, or adding other scour, stream stability, coastal, or other hydraulic countermeasures, including spur dikes; and
- using natural infrastructure to mitigate the risk of recurring damage or the cost of future repair from extreme weather, flooding, and other natural disasters.

ER funds are not available to pay for resilience features to highway facilities that are susceptible to disaster damage but have not yet been damaged by a declared disaster event. Other highway program funds may be used for such resilience improvements. For example, both the National Highway Performance Program and the Surface Transportation Block Grant Program allow for resilience considerations in their projects. In addition, the IIJA created a stand-alone resilience program, the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) program, which provides both formula funding to the states and competitive discretionary grants to communities for resilience planning and improvements (including for evacuation routes).²⁹ PROTECT grants may be used for federal-aid highway resilience improvements and to improve the resilience of public transportation, intercity passenger rail, and ports.³⁰

Repair Work

The ER Program divides all repair work into two categories: emergency repairs and permanent repairs.

Emergency Repairs

State and local transportation agencies can begin emergency repairs during or immediately following a disaster to meet the program goals to “restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities.”³¹ Prior approval from FHWA is not required. Once the FHWA division administrator finds that the disaster work is eligible, properly documented costs can be reimbursed retrospectively. To be eligible for a 100% federal share, emergency repair work must be accomplished within 270 days of the disaster, although FHWA may extend this period if there is a delay in access to the damaged areas (e.g., due to flooding). Examples of emergency repairs are regrading of roads, removal of landslides, construction of temporary road detours, erection of temporary detour bridges, and use of ferries as an interim substitute for highway or bridge service. According to FHWA, “such work is typically temporary in nature to satisfy an immediate need with respect to the facility, but it could remain in place as part of the permanent fix.... There is no requirement that emergency repairs be removed and replaced if they also serve the need for the permanent solution.”³²

²⁹ 23 U.S.C. §176.

³⁰ U.S. Department of Transportation (DOT), “Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation Program (PROTECT),” August 21, 2023, at <https://www.transportation.gov/rural/grant-toolkit/promoting-resilient-operations-transformative-efficient-and-cost-saving>.

³¹ FHWA, *ER Manual*.

³² FHWA, *Defining and Managing Emergency Relief Repair Activities Eligible for 100 Percent Federal Funding*, Guidance Information, March 22, 2022, p. 3, at <https://www.fhwa.dot.gov/specialfunding/er/220307.cfm>.

Debris removal costs are generally FEMA's responsibility.³³ However, debris removal from tribal transportation facilities, federal land transportation facilities, and other federally owned roads open to public travel is eligible for funding under the ERFO program. The emergency repair provisions in the ER Program are designed to permit work to start immediately, ahead of a finding of eligibility and programming of a project. In some instances, state DOTs have been able to let initial ER-funded contracts within a day of a disaster event.³⁴ Emergency repairs do not have to adhere to normal competitive bidding requirements and are generally treated as categorical exclusions under the National Environmental Protection Act of 1969 (NEPA).³⁵

Permanent Repairs

ER funds may be used to make permanent repairs or reconstruct federal-aid highways and may be used for temporary or permanent repair of a repairable bridge or tunnel. If a bridge is destroyed or repair is not feasible, then ER funds may participate in building a new, comparable bridge to current design standards and to accommodate traffic volume projected over its design life. In some cases, betterments (added protective features or changes that modify the function or character of a road or bridge beyond its pre-disaster character) may be eligible, but they must be shown to be economically justified improvements and to mitigate the risk of recurring damage from extreme weather, flooding, and other natural disasters. Permanent repair and reconstruction contracts not classified as emergency repairs must meet competitive bidding requirements. Numerous techniques are available to accelerate projects, including design-build contracting, abbreviated plans, shortened advertisement periods for bids, and cost-plus-time (A+B) bidding that includes monetary incentive/disincentive clauses designed to encourage contractors to complete projects ahead of time.³⁶ For example, the contract for the replacement of the I-35W Bridge in Minneapolis, MN, which collapsed in August 2007, used incentives for early completion. The new bridge was built in 11 months, which was 3 months ahead of schedule.³⁷ Another example of the use of accelerated methods to complete ER-funded repairs is the replacement of the I-5 Skadnet River bridge in Washington State, which had permanent replacement bridges in place within five months.³⁸ These accelerated techniques may also be used on other federal-aid highway projects, although not all contractors are interested in using these techniques because they often require the contractor to assume more risk. Also, time-related incentives can increase project costs for states, making them less attractive for routine projects.

³³ The 2012 authorization act, Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141), restricted debris removal under ER to events not declared a major disaster by the President or declared a major disaster but where debris removal is not eligible under the Stafford Act.

³⁴ This occurred following the 1994 Northridge earthquake in California. See U.S. DOT, John A. Volpe National Transportation Systems Center, *Effects of Catastrophic Events on Transportation System Management and Operation: Comparative Analysis*, May 2004, pp. 37-45. Most within-24-hour actions involve debris removal such as that which occurred after the June 11, 2023, I-95 bridge collapse in Philadelphia. The "letting" of a contract generally refers to the receipt and opening of bids and the determination of the low bidder. Emergency repairs may be done using a "short-list" bidding technique that limits the number of firms permitted to submit proposals. The emergency character of the work may also warrant a solicited contract for which the state may contact a reasonable minimum number of contractors by telephone to solicit quotes for a specific scope of work.

³⁵ 23 C.F.R. §771.117(c)(9)(i).

³⁶ Cost-plus-time bidding (A+B method) includes two components. The A component is the traditional bid for all work to be performed. The B component is a bid of the total number of calendar days required to complete the project. The contract includes a disincentive for overrunning the time bid and an incentive for earlier completion.

³⁷ Minnesota DOT, "Interstate 35W Bridge in Minneapolis," at <http://www.dot.state.mn.us/i35wbridge/index.html>.

³⁸ Jeffrey L. Horton, "Surviving an Interstate Bridge Collapse," *Public Roads*, vol. 78, no. 3, November/December 2014, at <https://highways.dot.gov/public-roads/novemberdecember-2014/surviving-interstate-bridge-collapse>.

Other Federal Requirements

States must apply for funding and provide a comprehensive list of all eligible project sites and repair costs within two years of the disaster or catastrophic event.³⁹

Contracts supported by ER funding must meet all conditions required by 23 C.F.R. Part 633A, which regulates highway contracts involving federal funding. All contractors receiving ER funds must pay prevailing wages as required under the Davis-Bacon Act.⁴⁰ ER-funded contracts must abide by Disadvantaged Business Enterprises requirements, Americans with Disabilities Act requirements, “Buy America” law and regulations, and prohibitions against the use of convict labor (23 U.S.C. §114).⁴¹ Reconstruction of extensively damaged roads and bridges are to meet current applicable design standards.⁴²

National Environmental Policy Act

Repair projects funded under the ER Program are subject to NEPA requirements. However, according to FHWA,⁴³

If emergency situations involve immediate threats to public health or safety, or immediate threats to property, including natural resources, emergency repairs can start as soon as possible with the environmental reviews occurring afterward. All other repairs (i.e., permanent restoration) require the completion of environmental reviews prior to the start of permanent repair work.

The environmental impact of ER projects is generally limited because they generally occur within the federal-aid highway right-of-way. Thus, emergency repairs are often classified as categorical exclusions under 23 C.F.R. §771.117(c)(9), as are most projects to permanently restore an existing facility “in kind” to its pre-disaster condition. Betterments (e.g., added protective features, added lanes, and added access control) may, in some cases, require further NEPA review. Some resilience improvements, such as moving a road to a higher elevation, may also require further NEPA review.

Project Completion Time for Emergency and Permanent Repairs

On June 11, 2013, a tanker truck carrying gasoline crashed and burned under I-95 in Philadelphia, PA, causing the northbound lanes to collapse and weakening the southbound lanes to the point that they were structurally unsound. Despite initial concerns that the restoration of traffic would take several months, coordinated efforts at the federal, state, and local levels restored essential traffic within 12 days. The repairs were funded as emergency repairs under the Emergency Relief (ER) Program, which provided 100% federal funding. The remarkable speed of the repair work was noted in the press, including commentary asking how the Philadelphia bridge could be completed in 12 days when many highway projects take years to complete.

³⁹ 23 U.S.C. §125(d)(1)(B).

⁴⁰ The Davis-Bacon requirements can be suspended by executive order (40 U.S.C. §276a-5). President George W. Bush did this in response to Hurricane Katrina. He reimposed the requirements on November 8, 2005.

⁴¹ A state may request a waiver of the Buy America requirements from FHWA based on a public interest rationale under 23 C.F.R. §635.4109(c)(1)(i).

⁴² 23 C.F.R. §625.

⁴³ FHWA, *Environmental Compliance During Emergencies*, at https://www.environment.fhwa.dot.gov/Pubs_resources_tools/publications/newsletters/apr18nl.aspx.

The early press reports left out an important fact. The current I-95 fix is a temporary one, done as an ER Program emergency repair to restore essential traffic flow. Although progress on the permanent repairs has been rapid, completion of those repairs is not expected until later in 2024.⁴⁴

The emergency repair provisions in the ER Program are designed to permit work to start immediately, ahead of a finding of eligibility and programming of a project. Emergency repairs do not have to adhere to the normal federally required competitive bidding requirement, and emergency situations that involve immediate threats to public health or safety or immediate threats to property can start as soon as possible with the environmental reviews occurring afterward. The restoration of the six travel lanes was done with the participants knowing that the ER Program would pay 100% of the costs for the construction of the temporary lanes. Also, the fact that the I-95 bridge was on a critical regional artery in a major metropolitan area made it a high-priority project. The repairs faced no local opposition, and the project design was straightforward. The engineering and construction contractors worked around the clock every day for the 12 days.

The temporary repairs did not restore the route to its previous condition or capacity. The lanes are 11 feet wide (the normal Interstate standard is 12 feet), there are no shoulders, and there is a speed limit of 45 miles per hour in the repaired area. Oversized loads must still use the detours. However, the lanes meet the ER Program goal of restoring essential traffic. Also, doing things quickly can increase costs as contractors bring more equipment to bear on the project, and working around the clock increases labor costs, such as overtime.

It is not unusual for the permanent repair or replacement of disaster-damaged roads to take a substantial amount of time to complete. The various reasons for this include many of the same reasons that slow the completion of routine federal-aid highway projects, including the time for planning, design, public comment, opposition resolution, environmental review, lawsuits, matching share availability, design changes, and construction delays.⁴⁵ There is little publicly available analysis on the timeliness of completion of ER projects. ER project completion times could be an oversight issue for Congress.

ER Funding Distribution and Management

Because the ER Program is funded primarily through supplemental appropriations, the amounts available for distribution can vary greatly from year to year. FHWA manages the distribution of funds through a process of allocations and withdrawals as well as procedures to manage funding shortfalls.

There are two processes used to apply for ER funds following a disaster: quick release and the standard method. Allocations for quick release funding often occur individually, whereas standard allocations are periodically distributed to all eligible states nationwide at one time.

“Quick Release” ER Allocations

The ER Manual describes the “quick release” method for developing and processing a state request for ER funding as a method that

provides limited, initial ER funds for large disasters quickly. [Quick release applications are processed based on preliminary assessment of damage and a damage survey typically does not accompany the application.] Quick release funds are intended as a “down payment” to immediately provide funds for emergency operations until the Standard application may be submitted and approved.⁴⁶

⁴⁴ Pennsylvania DOT, “I-95 Update,” at <https://www.penndot.pa.gov/RegionalOffices/district-6/Pages/AlertDetails.aspx>.

⁴⁵ U.S. Government Accountability Office (GAO), *Highway Infrastructure: Preliminary Information on the Timely Completion of Highway Construction Projects*, GAO-02-1067, September 19, 2002, at <https://www.gao.gov/assets/gao-02-1067t.pdf>.

⁴⁶ FHWA, *ER Manual*, pp. 30, 33-34.

Examples of quick release funding include \$3 million released on August 21, 2023, for traffic management and road repairs in response to wildfires in Lahaina, HI; \$11 million released on August 11, 2023, for statewide flood damage in Vermont; \$3 million released on June 15, 2023, for repairs to the section of I-95 in Philadelphia that collapsed as a result of a gasoline tanker truck fire; and \$4.6 million released on March 29, 2023, for repairs to statewide storm damage in California. According to FHWA, \$432 million in quick release funds were provided to 29 states, Puerto Rico, and the Virgin Islands during FY2018-FY2023.⁴⁷

FHWA holds some funding in reserve to ensure that there will always be funds available for quick release needs. The amount reserved is at the discretion of the FHWA Administrator with the concurrence of the Secretary of Transportation.

Nationwide ER Allocations

The standard application method is more deliberate than the quick release method, requiring that site inspections and a damage survey summary report be submitted to the FHWA division office. FHWA and state DOTs use this process mostly for permanent repairs. The standard allocations address both recent and backlogged projects from past disasters.⁴⁸ Depending on funding availability and needs, money is allocated once or twice each fiscal year; see **Table 1**.

Table 1. Nationwide ER and ERFO Allocations

April 6, 2017-January 23, 2024 (in nominal \$)

| Allocation Date | ER | ERFO | Total |
|-----------------|----------------------|----------------------|----------------------|
| Apr. 6, 2017 | 670,328,990 | 97,911,698 | 768,240,688 |
| Nov. 22, 2017 | 466,642,367 | 52,470,598 | 519,112,965 |
| Apr. 13, 2018 | 882,862,025 | 173,913,140 | 1,056,775,165 |
| Feb. 6, 2019 | 664,689,545 | 61,053,260 | 725,742,805 |
| Sept. 5, 2019 | 649,780,528 | 221,418,582 | 871,199,110 |
| Feb. 27, 2020 | 553,873,092 | 99,352,878 | 653,225,970 |
| Sept. 29, 2020 | 508,250,687 | 65,779,261 | 574,029,948 |
| Dec. 21, 2021 | 1,273,344,213 | 126,476,570 | 1,399,820,783 |
| Aug. 31, 2022 | 460,976,276 | 52,196,739 | 513,173,015 |
| May 18, 2023 | 603,730,065 | 145,342,110 | 749,072,175 |
| Jan. 23, 2024 | 559,732,972 | 169,648,495 | 729,381,467 |
| Total | 7,294,210,760 | 1,265,563,331 | 8,559,774,091 |

Source: Federal Highway Administration (FHWA), Emergency Relief Program, ER Recent Allocations, at <https://www.fhwa.dot.gov/programadmin/erelief.cfm>.

Notes: ER = emergency relief; ERFO = Emergency Relief for Federally Owned Roads. Amounts are those announced at the time of release. The amounts do not reflect technical adjustments, withdrawals or reallocation of funds. Nominal dollars are amounts not adjusted for inflation.

These allocations funded a wide range of repairs to disaster-damaged roads and bridges in all regions of the United States, including damage from Hurricanes Ian and Fiona, western wildfires,

⁴⁷ Based on technical assistance from FHWA provided to CRS, September 11, 2023.

⁴⁸ FHWA, “Emergency Relief Program, Policy and Guidance,” at <https://www.fhwa.dot.gov/programadmin/erelief.cfm>.

and flooding events throughout the country. For state-by-state allocations for FY2018-FY2023 to date, see **Appendix B**.

Hurricanes and tropical storms are an example of the use of ER funds over time. **Table 2** sets forth such ER Program spending since the 2017 hurricane season.

Table 2. ER Allocations for Hurricanes and Tropical Storms
FY2018-FY2023 (nominal \$)

| State or Territory | Quick Release | Semiannual Allocations | Total |
|--------------------|--------------------|------------------------|----------------------|
| Alabama | | 23,597,188 | 23,597,188 |
| American Samoa | | 1,500,000 | 1,500,000 |
| Arizona | | 28,860,438 | 28,860,438 |
| Arkansas | | 10,976,099 | 10,976,099 |
| California | | 23,513,760 | 23,513,760 |
| Connecticut | | 6,030,000 | 6,030,000 |
| Florida | 75,000,000 | 252,750,142 | 327,750,142 |
| Georgia | | 10,479,773 | 10,479,773 |
| Louisiana | 10,000,000 | 25,091,754 | 35,091,754 |
| Mississippi | | 23,296,397 | 23,296,397 |
| N. Mariana Islands | | 4,556,151 | 4,556,151 |
| New Jersey | | 12,098,940 | 12,098,940 |
| New York | | 43,406,210 | 43,406,210 |
| North Carolina | 20,750,000 | 156,499,040 | 177,249,040 |
| Pennsylvania | 450,000 | 21,902,695 | 22,352,695 |
| Puerto Rico | 90,695,000 | 597,796,017 | 688,491,017 |
| South Carolina | 9,000,000 | 41,923,745 | 50,923,745 |
| Tennessee | | 2,703,282 | 2,703,282 |
| Texas | 25,000,000 | 89,694,299 | 114,694,299 |
| Vermont | | 12,788,558 | 12,788,558 |
| Virgin Islands | 21,500,000 | 59,036,756 | 80,536,756 |
| Virginia | | 24,672,542 | 24,672,542 |
| Grand Total | 252,395,000 | 1,473,173,786 | 1,725,568,786 |

Source: FHWA, technical assistance to CRS, September 11, 2023.

Notes: Does not reflect withdrawals or reallocation of funds. Nominal dollars are amounts not adjusted for inflation.

Funds Management and the ER Unmet Needs Backlog

Once funding is allocated for a disaster event, FHWA can enter into project agreements and incur obligations (which legally commit the federal government to pay the federal share for a project). If funds are unavailable, the request from a state is added to a list of unfunded requests.⁴⁹

Typically, requests for allocations exceed available ER funding. For example, as of August 10, 2023, FHWA had an available ER fund balance of \$1,355 million to pay for \$1,838 million in state and federal land management agency claims against the fund. This, at the time, left an ER Program “backlog” of \$483 million.⁵⁰ Because FHWA may not commit to funding beyond its authorized and appropriated amounts, FHWA adjusts the distribution of funds to stay within the program’s means.

When the unallocated balance is insufficient to cover the reserved quick release funds and the upcoming biannual nationwide distribution, the distributions are provided on a proportional basis. Each state’s allocation would be computed based on a ratio of total available funding to total needs. FHWA cannot make the allocations whole unless Congress makes additional ER funding available. FHWA also has the option of skipping or delaying a standard nationwide distribution, allowing time for its funds to be replenished via the annual \$100 million authorization or further supplemental appropriations.

During a funding shortfall, ER projects can be funded using a state’s regular formula funds under the Federal-Aid Highway Program. That funding would then be reimbursed when and if ER funds become available. This, however, could lead to delays in the funding of other planned projects as the state awaits reimbursement from ER funds.

FHWA reviews states’ unobligated and unexpended balances of allocated funds on a monthly basis and deallocates unobligated funds that exceed states’ ER Program needs.⁵¹ Such withdrawn funds are then available for reallocation nationwide. The agency also tracks recovery of insurance proceeds by the state or subdivision of a state, every six months.⁵² The FHWA’s share of the resulting proceeds is withdrawn from the state’s allocated funds and made available for other nationwide needs.⁵³

Project needs subject to the withdrawal of funds may be again considered for funding in future nationwide allocations. Sometimes states object to the withdrawal of unused funds. However, failure to withdraw unused allocations means the funds are not available to support other ER projects nationwide that can use the funds in a timelier fashion.

⁴⁹ The unfunded request list includes state and federal land management agency estimates for both recent disaster events and older disasters, as well as for projects that were funded using state funds and are awaiting reimbursement.

⁵⁰ FHWA, “Emergency Relief (ER) Program Unmet Needs: Data as of August 10, 2023”; attachment in email from FHWA to CRS, September 11, 2023.

⁵¹ The existing ER Manual requires that FHWA withdraw unobligated balances at the end of the fiscal year; however, FHWA Order 5182.1 requires monthly review of unneeded funds. FHWA follows Order 5182.1 as superseding the ER Manual until the updated manual is released.

⁵² A “subdivision of a state” generally refers to government entities below the state level, such as cities, counties, towns, or townships.

⁵³ FHWA, *Emergency Relief Program Responsibilities*, FHWA Order 5182.1, February 22, 2016, p. 9, at <https://www.fhwa.dot.gov/legregs/directives/orders/51821.cfm>.

Congressional Issues

Because the IJA has authorized federal highway programs through FY2026, program oversight and IJA implementation will likely be the near-term ER Program issues for Congress. By early 2025, the IJA reauthorization debate could be under way, and ER Program and funding issues could again be part of the surface transportation reauthorization discussion.

Funding

The ER Program is funded with a permanent \$100 million annual authorization from the HTF. Funding above this amount is provided on a “such sums as necessary” basis, usually in supplemental appropriations acts. The \$100 million authorization has not been raised since it was established in 1972. As disaster relief needs have grown over the years, the annual authorization has diminished in value by up to 86%.⁵⁴ Over the last 10 fiscal years, the annual appropriation has provided 8.7% of the program’s funding. This reflects an increasing dependence on supplemental appropriations to support the program. One option for Congress to address this situation would be to increase the permanent annual authorization to account for inflation. This could reduce the need for periodic funding requests from the appropriators.

Another issue for Congress has been whether to place a time limit on the availability of ER funds for obligation to encourage states to prioritize the obligation of funds to ER projects.⁵⁵ Currently, the funds are available until expended. Federal-aid highway formula funds are generally available for obligation for four years. This difference in length of availability creates an incentive for states to commit their limited state matching funds to non-ER projects first, in effect lowering the spending priority of some ER projects.

Some unmet needs of the ER Program have remained on the backlog for years. Other projects for which states have received allocations have undergone delays and have not moved to completion. This can complicate the decision on how much ER funding is needed in the periodic supplemental appropriations. Congress could request further studies of the allocation, withdrawal, and reallocation of ER funds. It might also ask FHWA for statistics on completion timelines for ER projects and the reasons for project delays.

Program Oversight Issues

Funds Management

FHWA makes ER funds available to the states and federal land management agencies via a quick release mechanism (for specific disasters and catastrophic failures) and nationwide allocations mostly for permanent repairs. The agency has a process of withdrawals of allocations that are not obligated by the states in a timely fashion.

Three categories of issues have had critical reviews by the Government Accountability Office (GAO) and the U.S. Department of Transportation Office of Inspector General (DOT IG). The

⁵⁴ See discussion of inflation effects under “Emergency Relief Funding.”

⁵⁵ Limiting the availability of ER funds to a specific number of years is not a new concept. See U.S. Congress, House Committee on Public Works, *Emergency Highway Relief*, report to accompany H.R. 6790, 89th Cong., 1st sess., July 7, 1965, H.Rept. 89-596 (Washington, DC: GPO, 1965), p. 7. The report recommended an availability of three years. The provision was not included in the legislation as passed (P.L. 80-41).

critiques center on the sustainability of the program due to “mission creep”;⁵⁶ the inability or resistance of some FHWA division offices to recapture unused funds that have been allocated to the states; and related concerns that some FHWA field office officials have shown a lack of independence from their state partners, which has led them to put state interests above federal interests.⁵⁷

FHWA last updated the ER Manual in 2013 to clarify eligibility and procedural issues.⁵⁸ The agency is in the process of revising the manual. In the interim, FHWA on February 22, 2016, released Order 5182.1, *Emergency Relief Program Responsibilities*, to

strengthen the administration and oversight of the ER program to ensure the effective use of limited ER funding for eligible projects to restore Federal-aid roads and bridges after a qualified event.

The order was released in response to internal DOT reviews of the program’s administration and external reviews (such as those by GAO). The order sets forth the responsibilities of the FHWA division offices, including their role in funds management. The order also sets forth the role of the FHWA Office of Program Administration.

In October 2019, GAO released a report finding FHWA did not document its decisionmaking when classifying a project as an emergency repair and therefore eligible for 100% federal share as well as for expedited contracting and environmental procedures.⁵⁹ GAO identified projects that had been inappropriately classified and recommended that FHWA document its emergency repair decisions and “to more clearly define the circumstances under which projects are classified as emergency repairs, including what constitutes restoration of essential traffic.” It also urged FHWA to clarify its policy on when expedited contracting and environmental procedures are allowed and the acceptable time frames for accomplishing emergency repair projects undertaken under expedited contracting and environmental requirements. FHWA concurred with GAO’s recommendation. In the 2019 report, GAO again found that its examination of FHWA’s decisionmaking regarding emergency repairs invites

questions we have raised before about the partnership relationship between FHWA and the states. In high stress politically sensitive situations like natural disasters in particular, the relationship could lead FHWA to put states’ interests before federal ones or give the appearance of having done so.

On February 15, 2022, DOT IG released *Outdated Policies Hinder FHWA’s Ability to Oversee Unobligated Emergency Relief Funds*.⁶⁰ The report assessed FHWA’s controls over the use of its

⁵⁶ GAO, *Highway Emergency Relief: Reexamination Needed to Address Fiscal Imbalance and Long-Term Sustainability*, GAO-07-245, February 23, 2007, at <http://www.gao.gov/products/GAO-07-245>; and GAO, *Highway Emergency Relief: Strengthened Oversight of Project Eligibility Decisions Needed*, GAO-12-45, November 2011, pp. 1-56, at <http://www.gao.gov/products/GAO-12-45>. As GAO noted, some of the “mission creep” that GAO expressed concerns about was required by legislation.

⁵⁷ GAO, *Highway Infrastructure: Federal-State Partnership Produces Benefits and Poses Oversight Risks*, GAO-12-474, April 2012, pp. 21-22, 27-28, at <http://www.gao.gov/products/GAO-12-474>.

⁵⁸ FHWA, “Emergency Relief Program Responsibilities,” FHWA Order 5182.1, February 22, 2016, at <https://www.fhwa.dot.gov/legregs/directives/orders/51821.cfm>. See also FHWA, “Guidance-Information: Defining and Managing Emergency Relief Repair Activities Eligible for 100 Percent Federal Funding,” March 7, 2022, at <https://www.fhwa.dot.gov/specialfunding/er/220307.cfm>.

⁵⁹ GAO, *Highway Emergency Relief: Federal Highway Administration Should Enhance Accountability over Project Decisions*, GAO 20-32, October 17, 2019, at <https://www.gao.gov/products/GAO-20-32>.

⁶⁰ DOT, Office of Inspector General, *Outdated Policies Hinder FHWA’s Ability to Oversee Unobligated Emergency Relief Funds*, Report no. FS2022022, February 15, 2022, at https://www.oig.dot.gov/sites/default/files/FHWA%20Management%20of%20Emergency%20Relief%20Final%20Report_02-15-21.pdf.

ER funds. The IG found that FHWA's division offices were not always enforcing its process for preventing state DOTs from retaining unobligated allocations. The review also found that FHWA was not following its process for identifying quick release funds for withdrawal. It found that the ER Manual is outdated and the updating notice and other guidance do not always align with the manual, and this inconsistent guidance increases the risk of improper fund management. Despite the funds management issues, the report found a low incidence of improper payments in the ER Program and no improper payments in ERFO. FHWA concurred with most of the recommendations but agreed to follow the ER Manual regarding the deallocation of unobligated funds after the manual's ongoing update is completed. The agency also did not agree with the recommendation that the agency "identify any balance of allocated quick release funds older than 6 months and will not be obligated through the end of the year." FHWA indicated it would not treat quick release funds differently from other ER funds and would identify ER funds "no longer needed and [that] can be deallocated."⁶¹

FHWA has made systems and operational changes in response to the GAO and DOT IG reviews.⁶² Some of the procedural changes will likely be included in the updated ER Manual. The effectiveness of these changes could be of congressional oversight interest in preparation for the IJA reauthorization debate.

The IJA provisions that broadened ER Program eligibility for betterments and resilience features could mitigate some of the kinds of eligibility issues that have raised GAO and DOT IG concerns. Also, the IJA raised the allowed completion time for emergency repairs from 180 to 270 days. This should help the states manage emergency repairs without risking loss of their 100% federal share eligibility.

Resilience Features

The IJA expanded and clarified the incorporation of resilience features in ER Program projects. The integration of resilience features into the ER Program (via the IJA-required update of the ER Manual) in a way that reflects congressional intent could be of oversight interest. Also, the effectiveness of these changes and their impact on the dollar amounts needed for the ER Program over time (and the size of the ER funding backlog) could be of interest to Congress.

The IJA did not expand resilience eligibility beyond repairs to or replacement of declared disaster-damaged facilities. For resilience features of new highways and bridges or for the retrofitting of existing ones, the IJA relies on both existing eligibilities under current highway formula programs and the new stand-alone PROTECT program. This means there is programmatic separation of funding for declared disaster repairs under the ER Program from funding for yet undamaged but high disaster risk infrastructure under the PROTECT program. Whether this is an effective strategy or whether the two programs should be merged could be an issue in the IJA reauthorization debate.

⁶¹ Ibid., pp. 25-28.

⁶² Ibid., pp. 25-26.

Appendix A.

Table A-1. Appropriated Funds for the Federal Highway Administration Emergency Relief Program: 1998-2023

Excludes annual \$100 million permanent authorization

| Public Law | Date Enacted | Title of Appropriations Act | Highway Trust Fund | General Fund |
|--------------|----------------|---|--------------------|-----------------|
| P.L. 105-174 | May 1, 1998 | 1998 Supplemental Appropriations and Rescissions Act | \$259,000,000 | |
| P.L. 106-346 | Oct. 23, 2000 | Dept. of Transportation and Related Agencies Appropriations, 2001 | \$720,000,000 | |
| P.L. 107-117 | Jan. 10, 2002 | Dept. of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 | \$175,000,000 | |
| P.L. 107-206 | Aug. 2, 2002 | 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States | \$265,000,000 | |
| P.L. 108-324 | Oct. 13, 2004 | Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 | \$1,202,000,000 | |
| P.L. 108-447 | Dec. 8, 2004 | Consolidated Appropriations Act, 2005 | \$741,000,000 | |
| P.L. 109-148 | Dec. 30, 2005 | Dept. of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 | | \$2,750,000,000 |
| P.L. 109-234 | June 15, 2006 | Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 | | \$702,362,500 |
| P.L. 110-28 | May 25, 2007 | U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 | | \$871,022,000 |
| P.L. 110-161 | Dec. 26, 2007 | Consolidated Appropriations Act, 2008 | | \$195,000,000 |
| P.L. 110-329 | Sept. 30, 2008 | Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 | | \$850,000,000 |
| P.L. 112-55 | Nov. 18, 2011 | Consolidated and Further Continuing Appropriations Act, 2012 | | \$1,622,000,000 |
| P.L. 113-2 | Jan. 29, 2013 | Disaster Relief Appropriations Act of 2013 | | \$1,920,900,000 |
| P.L. 114-254 | Dec. 10, 2016 | Further Continuing and Security Assistance Appropriations Act, 2017 | | \$1,004,017,000 |
| P.L. 115-31 | May 5, 2017 | Consolidated Appropriations Act, 2017 | | \$528,000,000 |
| P.L. 115-123 | Feb. 9, 2018 | Bipartisan Budget Act of 2018 | | \$1,374,000,000 |
| P.L. 116-20 | June 6, 2019 | Additional Supplemental Appropriations for Disaster Relief Act, 2019 | | \$1,650,000,000 |
| P.L. 117-43 | Sept. 30, 2021 | Extending Government Funding and Delivering Emergency Assistance Act | | \$2,600,000,000 |

| Public Law | Date Enacted | Title of Appropriations Act | Highway Trust Fund | General Fund |
|-------------------|---------------------|---------------------------------------|---------------------------|---------------------|
| P.L. 117-328 | Dec. 29, 2022 | Consolidated Appropriations Act, 2023 | | \$803,000,000 |

Source: FHWA, Office of Program Administration.

Notes: P.L. 113-2 provided \$2.022 billion. Amount shown reflects 5% rescission due to sequestration.

Appendix B.

Table B-1. Emergency Relief Allocations: State and Territorial Totals
 FY2018-FY2024 as of September 11, 2023 (nominal \$)

| State or Territory | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|----------------------|-------------|-------------|-------------|------------|-------------|-------------|-------------|---------------|
| Alabama | 12,344,590 | 12,014,388 | 36,575,906 | | 33,732,800 | 500,000 | 15,591,207 | 110,758,891 |
| Alaska | 2,117,777 | 26,688,400 | 55,501,922 | 1,689,000 | 32,328,090 | 74,000,000 | 1,316,032 | 193,641,221 |
| American Samoa | | 4,280,947 | | | | | | 4,280,947 |
| Arizona | 7,056,243 | 4,700,000 | 29,884,684 | | 30,103,902 | 17,230,000 | 36,819,241 | 125,794,070 |
| Arkansas | 48,921,716 | 8,847,529 | 19,983,449 | | 31,794,742 | 6,521,393 | 5,377,931 | 121,446,760 |
| California | 274,521,117 | 260,733,894 | 295,855,883 | | 732,271,748 | 284,065,052 | 124,279,244 | 1,971,726,937 |
| Colorado | | 24,248,370 | 1,880,708 | 11,600,000 | 16,995,135 | 770,000 | 2,641,160 | 58,135,373 |
| Connecticut | | 661,000 | | | 7,030,000 | | | 7,691,000 |
| District of Columbia | | | 750,000 | 1,000,000 | 1,637,505 | 13,801,821 | 133,944 | 17,323,271 |
| Florida | 113,752,826 | 26,755,194 | 23,623,891 | | 79,574,520 | 61,518,788 | 223,249,358 | 528,474,577 |
| Georgia | 3,519,246 | 6,309,328 | 4,097,513 | | 14,607,805 | 6,042,180 | | 34,576,072 |
| Hawaii | 8,000,000 | 94,141,097 | | | 1,050,000 | 66,725,968 | 24,448,082 | 194,365,147 |
| Idaho | 6,645,523 | 19,470,633 | 9,856,791 | | 17,030,466 | 7,707,305 | 1,949,169 | 62,659,887 |
| Illinois | 5,004,113 | 5,099,431 | 4,338,966 | | 1,827,430 | 2,274,385 | | 18,544,325 |
| Indiana | 128,219 | 6,522,964 | | | | | | 6,651,183 |
| Iowa | 3,455,094 | 9,000,000 | 44,841,897 | | 27,647,891 | 1,422,385 | | 86,367,267 |
| Kansas | 916,868 | 1,840,802 | 8,166,548 | | 6,791,056 | | | 17,715,274 |
| Kentucky | 11,624,562 | 15,799,299 | 42,415,241 | 12,000,000 | 84,032,600 | 13,581,056 | 12,273,399 | 191,726,157 |
| Louisiana | 27,797,721 | 2,610,000 | 7,884,906 | 5,000,000 | 23,959,199 | 1,132,555 | 7,382,870 | 75,767,251 |

| State or Territory | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|---------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Maryland | | 5,203,805 | 1,186,181 | | 6,637,482 | 850,172 | | 13,877,640 |
| Michigan | 19,313,799 | 31,986,258 | 37,795,440 | | 50,269,619 | 1,856,000 | 2,200,000 | 143,421,116 |
| Minnesota | | 2,563,090 | 6,947,939 | | 6,801,719 | 3,437,499 | 3,908,053 | 23,658,300 |
| Mississippi | 8,337,755 | 18,633,703 | 39,372,515 | | 35,162,207 | 9,110,005 | | 110,616,185 |
| Missouri | 22,738,087 | 20,318,094 | 19,875,423 | | 25,236,075 | 4,087,112 | 10,612 | 92,265,402 |
| Montana | 2,071,853 | 18,717,061 | 667,009 | | 29,970,276 | 51,319,120 | 28,256,349 | 131,001,668 |
| N. Mariana Islands | 287,087 | 4,269,064 | | | | | | 4,556,151 |
| Nebraska | | 94,954,667 | 46,274,465 | | 40,019,253 | | | 181,248,385 |
| Nevada | 9,132,440 | 8,137,748 | | | 7,030,982 | 12,611 | 7,300,000 | 31,613,781 |
| New Hampshire | 8,491,049 | 1,643,583 | 2,588,203 | | | 4,500,000 | | 17,222,835 |
| New Jersey | 3,376,266 | | 1,042,826 | | 8,070,174 | 1,477,606 | 13,103,555 | 27,070,427 |
| New Mexico | | | 14,280 | | | 2,679,011 | | 2,693,291 |
| New York | 23,481,811 | 18,728,438 | 71,911,673 | | 31,252,850 | 51,147 | | 145,425,918 |
| North Carolina | 40,647,300 | 54,027,253 | 50,863,666 | 1,000,000 | 38,345,896 | 14,840,720 | 12,251,601 | 211,976,436 |
| North Dakota | 216,339 | 4,300,000 | 46,236,477 | | 24,329,962 | 13,436,367 | 5,677,883 | 94,197,028 |
| Ohio | 4,849,981 | 95,196,217 | 16,884,040 | | 28,001,122 | 13,611,000 | 2,613,000 | 161,155,360 |
| Oklahoma | 24,000,000 | 6,972,087 | 33,765,666 | | 20,297,366 | 4,918,783 | 65,131 | 90,019,033 |
| Oregon | 41,863,791 | 48,962,689 | 47,699,220 | | 75,201,685 | 8,364,460 | 22,845,341 | 244,937,186 |
| Pennsylvania | | 41,718,185 | 450,000 | | 39,244,711 | 7,825,995 | 23,190,000 | 112,428,891 |
| Puerto Rico | 119,081,749 | 358,574,268 | 58,872,617 | | 246,026,722 | 46,425,141 | 32,908,803 | 861,889,300 |
| South Carolina | 12,876,544 | 15,000,000 | 5,315,928 | | 2,786,596 | | 12,000,000 | 47,979,067 |
| South Dakota | | 11,445,000 | 27,626,815 | | 10,213,913 | 890,403 | 1,578,955 | 51,755,086 |
| Tennessee | 880,160 | 121,897,784 | 24,642,501 | | 31,274,045 | 2,612,955 | 13,192,856 | 194,500,301 |

| State or Territory | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|--------------------|----------------------|----------------------|----------------------|-------------------|----------------------|--------------------|--------------------|----------------------|
| Texas | 77,385,857 | 25,092,393 | 13,077,915 | | 26,000,000 | | 3,876,185 | 145,432,350 |
| Utah | | | 7,031,196 | | 8,176,038 | 2,972,911 | 7,982,032 | 26,162,177 |
| Vermont | 6,666,591 | 4,322,000 | 19,293,423 | | 11,012,985 | 10,486,949 | 37,770,000 | 89,551,948 |
| Virgin Islands | 34,500,000 | 21,774,435 | 19,768,475 | | 12,493,846 | | 217,033 | 88,753,789 |
| Virginia | 2,754,875 | 5,675,234 | 24,646,109 | | 11,373,005 | 6,779,198 | 11,501,097 | 62,729,518 |
| Washington | 100,849,078 | 6,443,893 | 28,157,038 | | 49,287,378 | 27,218,719 | 23,033,729 | 234,989,835 |
| West Virginia | 28,244,069 | 23,013,966 | 5,430,743 | | 400,000 | 7,186,999 | 6,894,616 | 71,170,393 |
| Wisconsin | 20,373,309 | 33,380,312 | 7,936,383 | | 1,518,000 | 3,803,404 | 243,000 | 67,254,408 |
| Wyoming | 7,049,760 | 14,907,412 | 2,483,449 | | 50,000,000 | | 1,300,000 | 75,740,621 |
| Total | 1,145,275,165 | 1,647,581,915 | 1,253,515,918 | 32,289,000 | 2,068,848,797 | 808,047,175 | 729,381,468 | 7,684,939,438 |

Sources: FHWA, Technical Assistance to CRS, September 11, 2023. Updated in March 2024 with data from Peter J. Stephanos, *Memorandum: Allocation of Emergency Relief Funds, FY 2024 Obligation Needs, to the Office of Federal Lands Highway*, DOT, FHWA, Office of Stewardship, Oversight and Management, January 23, 2024, <https://www.fhwa.dot.gov/specialfunding/er/240123flhf.cfm>; and Peter J. Stephanos, *Memorandum: Allocation of Emergency Relief Funds, FY 2024 Obligation Needs*, DOT, FHWA, Office of Stewardship, Oversight and Management, January 23, 2024, <https://www.fhwa.dot.gov/specialfunding/er/240123fy.cfm>.

Notes: Does not reflect withdrawals or reallocation of funds. Nominal dollars are amounts not adjusted for inflation. Data run by FHWA in early September 2023. Total amounts in **Table I** of this report differ from amounts in **Table B-I** because **Table B-I** does not include data on FY2017 and does include allocation adjustments made through August 2023. Does not include \$432 million in quick release funding. Values may not sum to totals shown because of rounding.

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