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Emergency Relief for Disaster-Damaged Public Transportation Systems: In Brief

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Contents

| | |
|--|----|
| Introduction | 1 |
| Relationship Between FEMA and FTA | 1 |
| FTA’s Emergency Relief Program | 2 |
| Project Requirements | 3 |
| National Environmental Policy Act | 3 |
| Planning | 4 |
| Insurance | 4 |
| Charter Rule | 4 |
| Program Appropriations | 4 |
| Hurricane Sandy | 5 |
| Hurricanes Harvey, Irma, and Maria | 6 |
| Extreme Weather and Earthquake in 2018 | 7 |
| Declared Disasters of 2017, 2020, 2021, and 2022 | 7 |
| Program Authority and the COVID-19 Pandemic | 8 |
| Issues for Congress | 9 |
| Program Funding | 9 |
| Resilience | 10 |
| Emergency Preparation | 11 |

Tables

| | |
|--|---|
| Table 1. Hurricane Sandy Public Transportation Emergency Relief Funding Allocations | 5 |
| Table 2. Hurricanes Harvey, Irma, and Maria Public Transportation Emergency Relief Allocations | 6 |
| Table 3. Emergency Relief Funding Allocations for Declared Disasters in 2018 | 7 |
| Table 4. Emergency Relief Funding Allocations for Declared Disasters of 2017, 2020, 2021, and 2022 | 8 |

Contacts

| | |
|--------------------------|----|
| Author Information | 12 |
|--------------------------|----|

Introduction

Both the Federal Transit Administration (FTA) in the Department of Transportation (DOT) and the Federal Emergency Management Agency (FEMA) in the Department of Homeland Security have responsibilities in the event of damage to public transportation systems as the result of an emergency or disaster. This report focuses on FTA’s responsibilities in the context of FEMA’s broader role in disaster and emergency assistance, and specifically on FTA’s Public Transportation Emergency Relief (ER) Program (49 U.S.C. §5324; 49 C.F.R. §602). The report briefly examines the relationship between FEMA and FTA, outlines the operation of FTA’s ER Program, and discusses several issues of concern with the ER Program that Congress may wish to consider. These issues include program funding, especially in advance of disasters; funding for public transportation infrastructure resilience; and preparation for disasters by public transportation agencies.

Characteristics of Public Transportation

Public transportation (also known as *public transit*, *mass transit*, and *mass transportation*) is defined in federal law (49 U.S.C. §5302) as “regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and ... [do] not include—(i) intercity passenger rail transportation ...; (ii) intercity bus service; (iii) charter bus service; (iv) school bus service; (v) sightseeing service; (vi) courtesy shuttle service for patrons of one or more specific establishments; or (vii) intra-terminal or intra-facility shuttle services.” The main forms of public transportation are bus, subway, commuter rail, light rail, paratransit (also known as demand response), and ferryboat. Paratransit is non-fixed route service—often for the elderly and persons with disabilities—using automobiles, vans, and small buses in response to calls from passengers.

Most public transportation systems are owned and operated by governmental entities, including states, territories, tribes, cities, counties, and public transit authorities. Public transportation systems are widely distributed throughout urban and rural areas, but most of the infrastructure and ridership are concentrated in the largest urban areas. For example, in 2019, the year prior to the onset of the Coronavirus Disease 2019 (COVID-19) pandemic, about three-quarters of all public transportation trips were taken in 10 large urban areas: New York, Chicago, Los Angeles, Washington, San Francisco, Boston, Philadelphia, Seattle, Miami, and Atlanta. The New York City area alone, an area that includes parts of New Jersey and Connecticut, accounted for about 4 of every 10 public transportation trips nationally in 2019.

Sources: Federal Transit Administration, *National Transit Database: National Transit Summaries and Trends 2021*, p. 5, at https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-11/2021%20National%20Transit%20Summaries%20and%20Trends_1-1.pdf; and American Public Transportation Association, Table 2 in *2022 Public Transportation Fact Book*, 73rd ed., January 2023, at <https://www.apta.com/wp-content/uploads/APTA-2022-Public-Transportation-Fact-Book.pdf>.

Relationship Between FEMA and FTA

The Public Transportation ER Program was created in 2012 as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141, §20017). One provision required FTA to enter into a memorandum of agreement (MOA) with FEMA to “improve coordination between the Department of Transportation and the Department of Homeland Security ... and ... to expedite the provision of Federal assistance for public transportation systems for activities relating to a major disaster or emergency.”¹ The MOA, issued on March 4, 2013, details aspects of the relationship between FEMA and FTA.

For major disasters and emergencies declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288, as amended), the MOA notes, “FEMA has

¹ Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141), §20017(b).

primary federal responsibility for emergency preparedness, response, and recovery ... and DOT plays a supporting role, providing technical assistance and assisting FEMA during the response to and recovery from such declared event.” However, if funding is available to FTA for emergency or major disaster relief, then FTA “will be the primary payor of expenses incurred by public transportation agencies.”²

FEMA’s Public Assistance (PA) Program is the federal government’s main disaster relief program for state, local, tribal, and territorial governments that receive a Stafford Act declaration. Financial assistance for affected public facilities, including public transportation systems, is available when authorized as part of a presidential declaration of an emergency or major disaster under the Stafford Act. In addition to helping transit agencies pay to replace or repair disaster-damaged vehicles, equipment, and facilities, FEMA PA assistance can help pay some of the costs of evacuations and other emergency transportation needs.³

The MOA notes that the availability of FTA funding has two advantages for public transportation agencies. First, bad weather or other events that damage public transportation facilities but are not serious enough to warrant a presidential declaration under the Stafford Act could be eligible for support from FTA’s ER Program. Such events are eligible for FTA assistance when the governor of a state has declared an emergency and the Secretary of Transportation concurs. The term *emergency* in FTA’s ER Program means a natural disaster affecting a wide area or a catastrophic failure from any external cause (49 U.S.C. §5324(a)(2)). Second, under the FTA ER Program, most public transportation agencies may receive funding directly;⁴ by contrast, under the PA program, public transportation agencies receive funding as subgrantees, through the state, tribe, or territory named in the Stafford Act declaration.⁵

FTA’s Emergency Relief Program

FTA’s Public Transportation ER Program provides federal funding on a reimbursement basis to states, territories, local government authorities, Indian tribes, and public transportation agencies for damage to public transportation facilities or operations as a result of a natural disaster or other emergency and to protect assets from damage related to future disasters.⁶

Organizations eligible to apply for ER funding are entities that already receive federal transit funding directly from FTA, such as states, local government authorities, and public transit systems. Eligible recipients also may apply for ER funding on behalf of subrecipients, providers of public transit services that receive FTA funding via a recipient.

The Public Transportation ER Program provides federal support for both capital and operating expenses. *Capital expenses* include projects for emergency protective measures, such as debris

² FTA and Federal Emergency Management Agency (FEMA), “Memorandum of Agreement,” p. 3, at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grant-programs/emergency-relief-program/118886/fta-fema-moa.pdf>.

³ For more information on FEMA’s Public Assistance (PA) Program, see CRS Report R46749, *FEMA’s Public Assistance Program: A Primer and Considerations for Congress*, by Erica A. Lee.

⁴ States administer federal public transportation funding for agencies only in rural areas and urbanized areas of less than 200,000 people. Federal funding for agencies in urbanized areas of 200,000 people or more, where the vast majority of public transportation service occurs, is distributed to local public authorities.

⁵ CRS Report R47002, *Federal Public Transportation Program: In Brief*, by William J. Mallett.

⁶ FTA, *Emergency Relief Manual: A Reference Manual for States & Transit Agencies on Response and Recovery from Declared Disasters and FTA’s Emergency Relief Program (49 U.S.C. 5324)*, March 2023, at <https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/emergency-relief-manual-reference-manual-states> (hereinafter cited as FTA, *Emergency Relief Manual*).

removal and sandbagging; emergency and permanent repairs, including replacing transit vehicles and facilities that have been damaged; and projects to protect facilities from future damage, known as *resilience projects*. Sometimes a capital project can involve both damage restoration and resilience elements. *Operating expenses* include evacuation activities; rescue operations; and temporary transit service before, during, or after an emergency event. Operating costs are eligible for reimbursement for one year beginning on the date a disaster is declared under the ER Program, although the Secretary of Transportation may extend that period to two years after determining a compelling need.⁷

The federal share for most capital and operating projects under the program is 80%, but the Secretary of Transportation may increase this share up to 100%. When it is not clear if funding will be available after a disaster, FTA notes that “the transit agency should work closely with both FEMA and FTA to ensure the broadest eligibility for potential reimbursement.”⁸

Ineligible expenses for Public Transportation ER Program funding include heavy maintenance; project costs reimbursed from other sources, such as insurance proceeds or FEMA; revenue losses from service disruptions; and catastrophic failures from an internal cause. FTA defines *heavy maintenance* as “work that would usually be done by a public transit agency to repair damage normally expected from seasonal and occasionally unnatural conditions or occurrences, such as snow removal, debris removal from seasonal thunderstorms, and major repairs required due to deferred maintenance.”⁹ Also ineligible are projects that “change the function of the original infrastructure and that FTA has not approved in advance as resilience projects” and projects that are already funded in an existing FTA grant.¹⁰

In addition to funding, the Public Transportation ER Program gives the Secretary of Transportation authority to provide more flexibility to transit agencies in the use of urban and rural formula program funds for emergency purposes and to temporarily waive federal requirements in the use of federal funding. For example, noncompetitive procurement can be allowed in an emergency when a competitive bidding process would be too time-consuming. FTA also may increase requirements for recipients of ER funding, such as more frequent financial reporting or enhanced project oversight.

Project Requirements

Projects funded by the Public Transportation ER Program may be subject to different federal requirements than those that exist for projects funded through other federal public transportation programs administered by FTA. Some of the major differences include treatment under the National Environmental Policy Act of 1969 (NEPA; P.L. 91-190) and planning, insurance, and charter rule requirements.

National Environmental Policy Act

Before awarding federal public transportation funds, FTA must evaluate a project’s potential environmental effects, as required by NEPA and associated laws and regulations. Many ER Program-funded projects are likely to qualify for an abbreviated review process known as a *categorical exclusion* (CE). A CE “means a category of actions that the agency has determined ... normally do not have a significant effect on the human environment” (40 C.F.R. §1508.1(d)).

⁷ 49 U.S.C. §5324(b)(2).

⁸ FTA, *Emergency Relief Manual*, p. 31.

⁹ *Ibid.*, p. 38.

¹⁰ *Ibid.*, p. 39.

Examples of ER Program-funded projects that are likely to qualify for a CE include buying replacement buses and repairing flooded rail lines.

Planning

Federally funded projects typically require inclusion in state and metropolitan planning documents, known as the Statewide Transportation Improvement Program (STIP) and the Transportation Improvement Program (TIP). Public transportation ER projects can be excluded from these requirements for “emergency and permanent repairs that do not involve functional, locational, or capacity changes.”¹¹ Emergency and permanent repair projects that do involve a functional, locational, or capacity change and resilience/enhancement projects are required to be included in the STIP and the TIP.

Insurance

To be eligible for a Public Transportation ER Program grant, an applicant must supply documentation showing proof of insurance required under federal law for the structures related to the grant application.¹² The applicant also must certify that it has insurance required under state law (49 U.S.C. §5324(f)). FTA notes that “insurance required under certain circumstances under federal law includes, but may not be limited to, flood insurance and insurance for facilities previously repaired, restored, or rehabilitated with assistance received under the Stafford Act.”¹³ Moreover, FTA will reimburse only the eligible expenses remaining after accounting for insurance proceeds, although “deductibles consistent with sound management practices associated with otherwise eligible expenses ... are eligible for reimbursement.”¹⁴

Charter Rule

FTA’s Charter Rule (49 U.S.C. §5323(d); 49 C.F.R. Part 604) generally prohibits federally funded public transportation agencies from operating charter bus service. The restriction aims to protect private bus operators from unfair competition from publicly subsidized transit agencies.¹⁵ Despite the prohibition, emergency operations can be provided without violating the charter rule. Emergency operations include evacuations, rescue operations, and services to return evacuees to their homes after the disaster or emergency. These services can be provided for up to 45 days from the emergency or disaster declaration, although FTA can extend this period. To receive an extension, transit agencies must submit a request for relief from the charter regulation through the Emergency Relief Docket (49 C.F.R. §601, Subpart D).

Program Appropriations

Unlike the Federal Highway Administration’s (FHWA’s) Emergency Relief Program for disaster-damaged roads and bridges, FTA’s ER Program does not have a permanent annual funding authorization from the Highway Trust Fund (HTF). All funds are authorized on a “such sums as necessary” basis and require an appropriation from the Treasury’s general fund. An appropriation

¹¹ *Ibid.*, p. 46.

¹² For more details on insurance requirements, see “Policies Regarding Insurance,” in FTA, *Emergency Relief Manual*, pp. 49-55.

¹³ FTA, *Emergency Relief Manual*, p. 49.

¹⁴ *Ibid.*, p. 38.

¹⁵ FTA, “Charter Bus Service Regulations,” at <https://www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service-regulations-0>.

can be for the program generally or to fund repairs after specific disasters. There have been four appropriations to the Public Transportation ER Program since its enactment in 2012:

- \$10.9 billion in the Disaster Relief Appropriations Act, 2013 (P.L. 113-2), Title X, Chapter 9, enacted January 2013, in response to Hurricane Sandy, which struck the United States in October 2012;
- \$330 million in the Bipartisan Budget Act of 2018 (P.L. 115-123), Division B, Subdivision 1, Title XI, enacted February 2019, in response to Hurricane Harvey, which struck the United States in August 2017, and Hurricanes Irma and Maria, which struck the United States in September 2017;
- \$10.5 million in the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20), Title XI, enacted June 2019, in response to several extreme weather events and an earthquake in 2018; and
- \$213.9 million in the Disaster Relief Supplemental Appropriations Act, 2023, Title X, Division N of the Consolidated Appropriations Act, 2023 (P.L. 117-328), enacted December 2022, for transit systems affected by major declared disasters occurring in calendar years 2017, 2020, 2021, and 2022.

Hurricane Sandy

Hurricane Sandy affected 12 states and the District of Columbia. The Disaster Relief Appropriations Act, 2013, provided \$10.9 billion for FTA’s Public Transportation ER Program for recovery, relief, and resilience projects and activities in areas impacted by Hurricane Sandy. Approximately \$10.2 billion remained available after sequestration under the Budget Control Act of 2011 (P.L. 112-25), and \$185 million was transferred from FTA to the Federal Railroad Administration. After administrative costs, FTA allocated the remaining funding to projects in three categories: (1) recovery response, recovery, and rebuilding costs incurred by affected agencies; (2) competitive resilience projects that will protect or otherwise increase the resilience of public transportation equipment and facilities to future hurricanes and storms in the areas affected by Hurricane Sandy; and (3) locally prioritized resilience projects at designated transportation agencies in the New York metropolitan area.¹⁶ The vast majority of the funding was allocated to projects in the New York metropolitan area. This area has some of the largest public transportation systems in the country, and they were the hardest hit by Hurricane Sandy (**Table 1**).

Table 1. Hurricane Sandy Public Transportation Emergency Relief Funding Allocations

| State | Hurricane Sandy Recovery | Competitive Resilience | Local Priority Resilience | Total |
|---------------------|--------------------------|------------------------|---------------------------|-----------------|
| New York | \$3,704,125,669 | \$1,550,283,080 | \$896,074,743 | \$6,150,483,492 |
| New Jersey | \$604,542,910 | \$1,363,684,836 | \$338,904,626 | \$2,307,132,372 |
| New York/New Jersey | \$1,274,065,328 | — | — | \$1,274,065,328 |
| Connecticut | \$80,208 | \$169,957,772 | — | \$170,037,980 |
| Pennsylvania | \$1,192,568 | \$86,758,000 | — | \$87,950,568 |
| Massachusetts | \$344,311 | \$35,065,132 | — | \$35,409,443 |

¹⁶ FTA, “Fourth Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy,” 81 *Federal Register* 43705-43707, July 5, 2016.

| State | Hurricane Sandy Recovery | Competitive Resilience | Local Priority Resilience | Total |
|----------------------|--------------------------|------------------------|---------------------------|-------------------------|
| District of Columbia | — | \$21,000,000 | — | \$21,000,000 |
| Rhode Island | \$5,949,180 | — | — | \$5,949,180 |
| New Hampshire | — | \$25,781 | — | \$25,781 |
| Total | \$5,590,300,174 | \$3,226,774,601 | \$1,234,979,369 | \$10,052,054,144 |

Source: Federal Transit Administration (FTA), “FTA Funding Allocations for Hurricane Sandy Recovery and Resiliency,” at <https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/fta-funding-allocations-hurricane-sandy-recovery-and>.

Notes: Funding allocated to New York/New Jersey was for recovery projects of the Port Authority of New York and New Jersey. Data are as of March 2021.

Hurricanes Harvey, Irma, and Maria

On February 9, 2018, Congress appropriated \$330 million for FTA’s Public Transportation ER Program in response to Hurricanes Harvey, Irma, and Maria. Damage to transit systems associated with Hurricane Harvey was concentrated in Texas, particularly flooding in Houston, and the damage associated with Hurricane Irma was concentrated in Puerto Rico and Florida. Hurricane Maria’s effects on transit systems were concentrated in Puerto Rico. FTA announced an initial allocation of funds by purpose and location on May 31, 2018, and a second allocation on August 23, 2019 (**Table 2**).¹⁷

Table 2. Hurricanes Harvey, Irma, and Maria Public Transportation Emergency Relief Allocations

| State/Territory | Response, Recovery, and Rebuilding | Resilience | Total |
|---|------------------------------------|---------------------|----------------------|
| Florida | \$18,548,000 | \$6,619,000 | \$25,167,000 |
| Georgia | \$187,000 | — | \$187,000 |
| Puerto Rico | \$197,789,000 | \$25,721,000 | \$223,510,000 |
| Texas | \$16,850,000 | \$6,713,000 | \$23,563,000 |
| Virgin Islands | \$1,554,000 | \$5,164,000 | \$6,718,000 |
| Total | \$234,928,000 | \$44,217,000 | \$279,145,000 |
| Allocation for states and direct recipients without a direct allocation | | | \$1,000,000 |
| Unallocated | | | \$47,380,000 |
| Reserved for administrative expenses and program management oversight | | | \$2,475,000 |
| Total | | | \$330,000,000 |

Sources: FTA, “Emergency Relief Program Allocations for Areas Affected by Hurricanes Harvey, Irma & Maria,” at <https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/emergency-relief-program-allocations-areas-affected>; FTA, “Emergency Relief Funding Allocations 08/2019,” at <https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/emergency-relief-funding-allocations-082019>.

Note: *Unallocated* is held in reserve for “latent damages, damages not assessed in smaller areas, cost increases, and additional Emergency Relief needs.”

¹⁷ FTA, “Allocation of Public Transportation Emergency Relief Funds in Response to Hurricanes Harvey, Irma, and Maria,” 83 *Federal Register* 25104-25108, May 31, 2018.

Extreme Weather and Earthquake in 2018

Congress appropriated \$10.5 million for the Public Transportation ER Program for major declared disasters in 2018. FTA allocated these funds, less 0.75% for administration, for damage caused by events including Hurricanes Michael and Florence, Typhoon Mangkhut and Super Typhoon Yutu, and the earthquake that occurred in Alaska on November 30, 2018 (**Table 3**).

Table 3. Emergency Relief Funding Allocations for Declared Disasters in 2018

| State/Territory | Disaster | Funding Recipient | Amount |
|---|--|--|---------------------|
| Alaska | Flooding (May 11-13, 2018) | Alaska Railroad Corporation | \$797,000 |
| Alaska | Earthquake (Nov. 30, 2018) | Alaska Railroad Corporation | \$5,475,935 |
| Alaska | Earthquake (Nov. 30, 2018) | Municipality of Anchorage | \$159,000 |
| Florida | Hurricane Michael (Oct. 7-19, 2018) | Bay County Transportation Organization | \$3,643,000 |
| Northern Mariana Islands | Typhoon Mangkhut (Sept. 10-11, 2018) and Super Typhoon Yutu (Oct. 24-26, 2018) | Commonwealth Office of Transit Authority | \$351,000 |
| North Carolina | Hurricane Florence (Sept. 7-29, 2018) | Research Triangle Regional Public Transportation Authority | \$29,000 |
| South Carolina | Hurricane Florence (Sept. 7-29, 2018) | Charleston Area Regional Transportation Authority | \$8,000 |
| Reserved for administrative expenses and program management oversight (0.75%) | | | \$790,650 |
| Total | | | \$10,542,000 |

Source: FTA, “FTA Emergency Relief Funding Allocations for Transit Systems Affected by Major Declared Disasters Occurring in 2018,” at <https://www.transit.dot.gov/grant-programs/emergency-relief-program/fta-emergency-relief-funding-allocations-transit-systems>.

Note: Dates are incident periods as determined by the Federal Emergency Management Agency (FEMA).

Declared Disasters of 2017, 2020, 2021, and 2022

Congress appropriated \$213.9 million for the Public Transportation ER Program for “transit systems affected by major declared disasters occurring in calendar years 2017, 2020, 2021, and 2022.”¹⁸ FTA announced the availability of this funding on March 27, 2023.¹⁹ On July 31, 2023, FTA awarded \$102.3 million to 17 affected transit agencies. On August 2, 2023, FTA reopened the application submission period for 90 days for the remaining \$110 million.²⁰ These funds were awarded to eight transit agencies on February 5, 2024, all but two of which had not received funding in the first round of distribution.²¹ **Table 4** reflects the total amount awarded in funding rounds one and two.

¹⁸ Consolidated Appropriations Act, 2023 (P.L. 117-328).

¹⁹ FTA, “Federal Transit Administration Announces Availability of \$212.3 Million in Emergency Relief Funding to Help Transit Agencies Affected by Disasters,” March 27, 2023, at <https://www.transit.dot.gov/about/news/federal-transit-administration-announces-availability-2123-million-emergency-relief>.

²⁰ FTA, “Emergency Relief Program—2023 NAERF (Re-Opened),” August 2, 2023, at <https://www.transit.dot.gov/notices-funding/emergency-relief-program-2023-naerf-re-opened>.

²¹ FTA, “Biden-Harris Administration Announces Nearly \$110 Million in Relief Funding to Help Public Transportation (continued...)”

Table 4. Emergency Relief Funding Allocations for Declared Disasters of 2017, 2020, 2021, and 2022

| State/ Territory | Recipient | Funding Amount |
|---------------------|---|----------------------|
| California | Los Angeles County Metropolitan Transportation Authority | \$1,200,000 |
| Florida | Collier County Board of County Commissioners | \$125,690 |
| | Florida Department of Transportation | \$3,983,518 |
| | Hillsborough Regional Transit (HART) | \$2,150,656 |
| | Lee County Transit | \$8,464,227 |
| | Sarasota County | \$217,909 |
| Kentucky | Kentucky Transportation Cabinet | \$4,312,200 |
| Louisiana | New Orleans Regional Transit Authority | \$222,081 |
| | Plaquemines Port Harbor & Terminal District | \$18,623,506 |
| Missouri | Bi-State Dev. Agency of the Missouri-Illinois Metropolitan District | \$27,675,000 |
| New Jersey | New Jersey Transit Corporation | \$75,000,000 |
| New York | New York Metropolitan Transportation Authority (MTA) | \$25,000,000 |
| | Niagara Frontier Transportation Authority | \$201,160 |
| Puerto Rico | Municipality of Hormigueros | \$396,000 |
| | Municipality of Ponce | \$154,937 |
| | Puerto Rico Highway and Transportation Authority—Arroyo | \$6,769 |
| | Puerto Rico Highway and Transportation Authority—Las Marias | \$312,419 |
| | Puerto Rico Highway and Transportation Authority—Tren Urbano | \$43,248,150 |
| Texas | Brazos Transit District | \$400,000 |
| | Capital Metropolitan Transportation Authority | \$300,931 |
| | Concho Valley Transit District | \$215,895 |
| | Corpus Christi Regional Transportation Authority | \$11,744 |
| | North Central Texas Council of Governments | \$90,000 |
| Total | | \$212,312,792 |

Sources: FTA, “Biden-Harris Administration Announces \$102.3 Million in Disaster Relief Funding for Transit Agencies Nationwide,” July 31, 2023, at <https://www.transit.dot.gov/about/news/biden-harris-administration-announces-1023-million-disaster-relief-funding-transit>; and FTA, “Biden-Harris Administration Announces Nearly \$110 Million in Relief Funding to Help Public Transportation Providers Recover from Natural Disasters,” February 5, 2024, at <https://www.transit.dot.gov/about/news/biden-harris-administration-announces-nearly-110-million-relief-funding-help-public>.

Program Authority and the COVID-19 Pandemic

No Public Transportation ER Program funding was provided in response to the emergency brought on by the Coronavirus Disease 2019 (COVID-19) pandemic. Instead, \$69.5 billion was

Providers Recover from Natural Disasters,” February 5, 2024, at <https://www.transit.dot.gov/about/news/biden-harris-administration-announces-nearly-110-million-relief-funding-help-public>.

provided directly by formula to transit agencies in three separate acts.²² Nevertheless, FTA used its emergency powers authority to allow transit agencies to use regular urban and rural formula funds for capital and operating expenses directly related to the COVID-19 emergency, such as vehicle cleaning and temporary transit services. FTA also permitted transit agencies to use federal funds for pandemic-related operating expenses with a 100% federal share, even in large urban areas where using federal funds for operating expenses is typically not allowed. Relief from other regulatory requirements also was made available through requests to FTA's Emergency Relief Docket.²³ The emergency relief authorities related to the COVID-19 pandemic ended May 11, 2023.²⁴

Issues for Congress

Program Funding

Because the Public Transportation ER Program does not have a permanent annual authorization, FTA cannot provide funding immediately after a disaster or emergency. Transit agencies, therefore, typically rely on FEMA for funding their immediate needs. The Government Accountability Office (GAO) has observed that this could make it more difficult for transit agencies to respond immediately after a disaster and that the reliance on FEMA can cause transit agencies to be confused about which federal agency to approach for help if FTA funds later become available. The MOA between FEMA and FTA seeks to coordinate the agencies' roles and responsibilities, but FTA cannot define its role with certainty ahead of an appropriation. Consequently, as GAO has noted, "FTA and FEMA will have to determine their specific roles and responsibilities on a per-incident basis."²⁵

In contrast, FHWA's ER Program for disaster-damaged roads and bridges has a permanent annual authorization from the HTF, which allows it to have a quick-release funding mechanism. Adding a permanent authorization of funding from the mass transit account of the HTF and quick-release mechanism to FTA's ER Program, similar to that in FHWA's ER Program, would allow FTA funds to be approved and distributed within a few days of a disaster. Such an authorization, however, would place a new claim on resources of the HTF, adding to the current gap between revenues and outlays.²⁶

Another issue is the risk of duplication of funding (also known in emergency management as duplication of benefits). By law, transit agencies cannot be reimbursed twice for the same expense, and FTA and FEMA have procedures in place to avoid this occurrence. These procedures were strengthened after GAO recommended that the agencies identify and develop

²² In FY2020, \$25 billion was provided in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136). In FY2021, \$14 billion was provided in the Consolidated Appropriations Act, 2021 (P.L. 116-260), and \$30.5 billion was provided in the American Rescue Plan Act of 2021 (P.L. 117-2).

²³ FTA, "U.S. Department of Transportation Announces Increased Flexibility to Help Transit Agencies Respond to Coronavirus," March 13, 2020, at <https://www.transit.dot.gov/about/news/us-department-transportation-announces-increased-flexibility-help-transit-agencies>.

²⁴ FTA, "Dear Colleague Letter," May 2, 2023, at <https://www.transit.dot.gov/sites/fta.dot.gov/files/2023-05/Dear-Colleague-Letter-Emergency-Relief-Funding-Guidance-Updates-Associated-with-the-End-of-COVID-Disaster-Declarations.pdf>.

²⁵ Government Accountability Office (GAO), *Emergency Transportation Relief: Agencies Could Improve Collaboration Begun During Hurricane Sandy Response*, GAO-14-512, May 28, 2014, p. 29, at <https://www.gao.gov/assets/670/663627.pdf>.

²⁶ CRS Report R47573, *Funding and Financing Highways and Public Transportation Under the Infrastructure Investment and Jobs Act (IIJA)*, by Robert S. Kirk and William J. Mallett.

new controls to prevent duplication, particularly when transit funding is submitted as part of a larger request from a city, county, or state government.²⁷ However, according to GAO, “this change did not resolve the issue of duplicated effort and project delays for applicants.”²⁸ For example, an affected transit agency must work with FEMA for funding, but if FTA subsequently receives an appropriation, “the applicant must end their FEMA application and restart the application process with FTA, which may delay repairing public transportation systems.”²⁹

Resilience

GAO has observed that FTA’s ER Program has fewer limits and more flexibility than the emergency relief programs administered by FEMA and, to some extent, FHWA.³⁰ The FTA’s ER Program, for example, does not have a limit on the amount that can be spent on resilience projects, as FEMA funding does. The FTA’s ER Program also allows damaged assets to be improved or upgraded when being replaced, whereas FEMA funding is generally limited to restoring a facility to its pre-disaster design. As FTA notes, “it may not always be feasible or advisable to replace damaged assets with identical facilities, vehicles, or equipment. As a result, projects to repair, replace, or reconstruct assets may include improvements and upgrades as necessary to meet current safety and design standards.”³¹ FHWA ER funding may be used for resiliency projects, but the improvements must meet current safety and design standards and must be “economically justifiable.”³²

Although there may be advantages to allowing Public Transportation ER funds to be used for upgrades and resilience, doing so requires Congress to appropriate larger amounts than might otherwise be necessary. ER also could be a way for transit agencies to fund projects that have little direct connection to the goals of repairing damages and making the transit systems resilient to future storm events. GAO found that some Hurricane Sandy funding awards were used for projects that were probably outside the program’s scope.³³

Another issue is whether to expand the resilience mission and funding of the Public Transportation ER Program to more fully cover climate risk to undamaged surface transportation infrastructure. If this were desired, the additional amounts could be made available in annual or supplemental appropriations bills, as needed. This could, however, increase demands for ER funds and again raise concerns about “mission creep.” Instead, states and transit authorities could be encouraged to use their federal formula funds for resilience efforts by providing an increased federal share for resilience projects.

An alternative would be to create a stand-alone program dedicated to preventive retrofitting or rebuilding of at-risk public transportation infrastructure. The Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58, §11405; 23 U.S.C. §176) created the Promoting Resilient Operations for

²⁷ GAO, *Emergency Transportation Relief: Federal Transit Administration and FEMA Took Actions to Coordinate, But Steps Are Needed to Address Risk of Duplicate Funding*, GAO-20-85, November 2019, p. 13, at <https://www.gao.gov/products/gao-20-85>.

²⁸ GAO, *Disaster Recovery: Actions Needed to Improve the Federal Approach*, GAO-23-104956, November 2022, p. 27, at <https://www.gao.gov/assets/gao-23-104956.pdf>.

²⁹ *Ibid.*

³⁰ GAO, *Emergency Transportation Relief: Agencies Could Improve Collaboration Begun During Hurricane Sandy Response*, GAO-14-512, pp. 16-22, at <https://www.gao.gov/products/gao-14-512>.

³¹ FTA, *Emergency Relief Manual*, p. 30.

³² 23 U.S.C. §125(d)(2).

³³ GAO, *DOT Discretionary Grants: Problems with Hurricane Sandy Transit Grant Selection Process Highlight the Need for Additional Accountability*, GAO-17-20, at <https://www.gao.gov/assets/690/681603.pdf>.

Transformative, Efficient, and Cost-Saving Transportation (PROTECT) program with both formula and competitive elements. Public transportation facilities are eligible under the program, but most of the funding will be administered by state departments of transportation, and transit projects will have to compete for funding with highway, port, and intercity passenger rail projects. A resilience program specifically for public transportation projects with funding authorized from the mass transit account of the HTF might be an option for providing better-targeted federal support. For example, the Resilient Transit Act of 2022 (S. 5094, 117th Congress) proposed to provide \$300 million per year by formula from the mass transit account of the HTF for resilience projects as part of the existing State of Good Repair Program (49 U.S.C. §5337).

Emergency Preparation

In a review of FTA's role in helping transit agencies protect transit vehicles from natural disasters and other emergencies, the DOT's Office of Inspector General (OIG) noted that, in accordance with federal law, "FTA does not require recipients to develop plans to protect rolling stock before an emergency and assumes a limited role in discussing such activities."³⁴ OIG also noted that FTA could improve its technical assistance to transit agencies in emergency preparation by developing and sharing lessons learned from events such as Hurricane Sandy. FTA responded that it provides technical assistance in various ways, including a database of resilience strategies, and that this assistance has improved over time.³⁵ However, FTA agreed to send a "Dear Colleague" letter to all FTA recipients to make them aware of its resources and to update those resources as necessary. The "Dear Colleague" letter was issued on May 8, 2019.³⁶

The IIJA (§13009) authorized the establishment of 1 national and 10 regional Transportation Resilience and Adaptation Centers of Excellence (23 U.S.C. §520). As the name suggests, these centers are to promote resilient transportation infrastructure, including public transportation infrastructure, through research and technical assistance to local, regional, tribal, state, and national stakeholders. The IIJA authorized \$100 million per year from the general fund of the U.S. Treasury for FY2022 through FY2026; to date, no funding has been appropriated.

To improve emergency preparation, Congress could provide FTA with the authority to require plans and procedures in the protection of public transportation assets and services. Currently, the Secretary of Transportation, and therefore FTA, has the authority to regulate the operations of transit agencies in the event of a national or regional emergency but not prior to such an event (49 U.S.C. §5334(b)). Additionally, if this goal were considered a sufficiently high priority, Congress could provide more funding for technical assistance in transportation for dealing with emergencies. This could involve appropriating funds for the Centers of Excellence program or providing funding to FTA specifically for providing technical assistance to transit agencies in dealing with emergencies.

³⁴ Department of Transportation, Office of Inspector General (OIG), *FTA Has an Opportunity to Further Promote Lessons Learned to Enhance the Protection of Rolling Stock at Transit Agencies*, Report ZA2019048, April 3, 2019, at <https://www.oig.dot.gov/sites/default/files/FTA%20Rolling%20Stock%20Final%20Report%5E4-3-19.pdf> (hereinafter cited as OIG, *FTA Has an Opportunity*).

³⁵ Letter from K. Jane Williams, Acting Administrator, Federal Transit Administration, to Mary Kay Langan-Feirson, Assistant Inspector General for Acquisition and Procurement Audits in OIG, *FTA Has an Opportunity*, pp. 15-16.

³⁶ K. Jane Williams, Acting Administrator, Federal Transit Administration, "Dear Colleague: Emergency Relief," May 8, 2019, at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/policy-letters/132371/fta-administrator-policy-letter-emergency-relief.pdf>.

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