

## **FHWA EMERGENCY RELIEF (ER) PROGRAM – QUICK REFERENCE GUIDE (1/17/2023 Update)**

The Emergency Relief (ER) Manual (Revised) is located here: [fhwa.dot.gov/reports/erm/er.pdf](https://www.fhwa.dot.gov/reports/erm/er.pdf)

The Emergency Relief Program website is located here: [fhwa.dot.gov/programadmin/erelief.cfm](https://www.fhwa.dot.gov/programadmin/erelief.cfm)

The BIL ER Fact Sheet is located here: [fhwa.dot.gov/bipartisan-infrastructure-law/er\\_fact\\_sheet.cfm](https://www.fhwa.dot.gov/bipartisan-infrastructure-law/er_fact_sheet.cfm)

Roads and bridges on Federal-aid highways that are damaged as a direct result of a natural disaster or catastrophic failure from an external cause are eligible for ER funding. The State Transportation Agency (STA) decides if it will seek ER funding for repair of either State or local agency owned Federal-aid highways.

An event must cause at least **\$700,000 (Federal share)** in eligible damage for the event to be eligible for ER funding. By policy, each ER eligible site must meet a **minimum of \$5,000 in repair costs per site**. Generally, a site is an individual location where damage has occurred. However, a site could include several adjoining locations where similar damage, such as slope failures caused by flooding or destruction of traffic signs over an area, related to the same cause has occurred.

ER funding is limited to the cost of repair or reconstruction of a comparable facility. The Bipartisan Infrastructure Law (BIL) amended the definition of a **comparable facility** to 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 AND (**NEW**) incorporates economically justifiable improvements that will mitigate the risk of recurring damage from extreme weather, flooding, and other natural disasters. More information regarding the BIL implementation is included on the last page of this document.

Generally, all elements within the cross section of a highway damaged as a result of a disaster are eligible for repair under the ER program, including, but not limited to, pavement, shoulders, slopes, guardrail, traffic control devices, bridges, culverts, bike/pedestrian paths, fencing, and retaining walls.

ER funds are not intended to fund repairs of preexisting damage, non-disaster related damage, or previously scheduled work. A project is considered scheduled if the "construction phase" of a replacement structure is included in the FHWA approved STIP at the time of the event. However, the BIL (**NEW**) removes the restriction on ER eligibility for the repair or reconstruction of a **bridge** if the construction phase of a replacement structure is included in the approved STIP at the time of the event.

ER projects shall be promptly constructed, and projects that have not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occurrence will not be advanced unless suitable justification to warrant retention is furnished to the FHWA Division Office.

**Emergency Repairs - Emergency repairs** are made during or right after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Repairs that go beyond these three objectives are permanent repairs. The federal share for emergency repair work accomplished in the first **270 days (NEW** changed from 180 days by the Bipartisan Infrastructure Law) after the disaster occurs is 100%. Work completed after the initial 270 days will be at the normal pro rata federal share.

Due to the nature of an emergency, the environmental process for **emergency repairs** can occur after repairs have already been made. Repair projects under the ER program must comply with the requirements of the National Environmental Policy Act (NEPA) of 1969. **Emergency repairs** to restore essential travel, minimize the extent of damage, or protect remaining facilities are normally classified as categorical exclusions under 23 CFR 771.117(c)(9). As a result of MAP-21, 23 CFR 771(c)(9) was amended on February 19, 2013 to categorically exclude repair, reconstruction, restoration, retrofitting, or replacement of damaged eligible facilities if the work:

1. occurs within the existing right of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
2. is commenced within a 2-year period beginning on the date of the declaration.

Contracts for both **emergency repairs** and permanent repairs must incorporate all applicable federal requirements. As such, FHWA Form 1273 must be included in all contracts pursuant to 23 CFR 633.102. **Emergency repairs are not exempt from federal requirements.** ROW, railroad, and utility certifications are still required for all projects even though this work may be completed following repair work. The Davis-Bacon Act, Americans with Disabilities Act (ADA), Disadvantaged Business Enterprise (DBE) requirements, Buy America, Equal Employment Opportunity (EEO), and all other FHWA Form 1273 requirements apply.

**Permanent Repairs** - Permanent repairs are those repairs undertaken after the occurrence of a disaster to restore the highway to its pre-disaster condition. They usually occur after emergency repairs have been completed. Federal funding for permanent repairs will be at the normal pro rata share. The total cost of ER funding for a project is limited to the cost of repair or reconstruction of a comparable facility 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. **Permanent repairs are to be administered using normal Federal-aid contracting procedures** although use of streamlined procedures is encouraged.

#### **ER Application Process – Standard Application Process**

1. **Declaration** - To be considered for ER funding, a disaster declaration/proclamation is required, either from the President or the Governor. FHWA must concur on a Governor's proclamation. It should specify the affected area and the severity of damage. Only those areas included in the Governor's proclamation or the Presidents' declaration may be considered for ER funding.
2. **Notification** - The STA sends a "letter of intent" to the FHWA Division to give notice that it plans to request ER funds. This is usually done as soon as it is clear that there is eligible damage.
3. **Acknowledgment** - The FHWA Division Administrator (DA) acknowledges in writing the STA's letter of intent. This acknowledgment letter will allow temporary operations, emergency repairs, and preliminary engineering to start before FHWA authorization.

4. **Disaster Assessment** - Depending on the disaster, the initial damage assessment may be based on windshield surveys of a sample of sites or detailed damage inspections at many or all sites. If windshield surveys are done initially, detailed damage inspections are done later.
5. **ER Funding Application** - The STA must submit an application for ER funding to the FHWA Division within two calendar years of the date of disaster, including a comprehensive list of all eligible project sites and repair costs. Additional ER funding may be requested as damage inspections are completed with more accurate estimates. The above steps are usually completed over a 6 to 10 weeks.
6. **Division Administrator's Finding** - The FHWA DA notifies the STA that ER funding for the disaster is approved or denied. If the President has issued a major disaster declaration, the DA need not concur that a disaster occurred.
7. **Request for ER Funding Allocation** - At the same time, the FHWA Division requests an allocation of ER funds from the FHWA Office of Program Administration. The request must include the date of the DA's approval, description of the event, estimated total cost of damage repair and Federal share, ER funds needed for obligation in the current FY, list of counties in the disaster area, and U.S. Congressional district numbers for the disaster area. Copies of the Governor's Proclamation (if one was issued), the STA letter of intent, the DA's acknowledgment, and the Damage Survey Summary Report
8. **Detailed Damage Inspections** - The Detailed Damage Inspections Reports (DDIRs) are used to prepare the comprehensive list of projects. Requests for additional ER funds are to be based on estimates from DDIRs and the comprehensive list of projects.

**Quick Release** - Quick Release allocations generally provide limited funds to help the STA with initial emergency repair costs. They are intended as a "down payment" to immediately provide funds for emergency operations until the Standard application may be submitted and approved. The amount of a Quick Release is typically discussed between FHWA Division staff, ER Program staff in HQ, and VTrans staff. However, the Federal Highway Administrator ultimately decides if a Quick Release will be made and in what amount.

**Emergency Projects that do not qualify for FHWA Emergency Relief funding but need to be expedited:**

1. Reach out to FHWA as quickly as possible to determine if a project/storm event is eligible for ER funding. In an emergency, even if a project/storm event does not qualify for ER funding, the repair work can still be expedited. FHWA encourages expedited procedures for emergency situations.
2. Follow state procedures to acquire an emergency declaration from the Secretary of Transportation for expedited construction.
3. If on the NHS, FHWA must also approve the use of expedited procedures in accordance with our approved 2015 Stewardship and Oversight Agreement. Please provide FHWA a copy of this declaration.
4. Request FMIS construction authorization for this work ASAP using the date of the declaration as the authorization date.
5. Additional funding from FHWA is not available for this work. Funding follows the same formula of a regular project.

## The Bipartisan Infrastructure Law (BIL):

The BIL continues all prior ER eligibilities and adds (**NEW**), the following expansions:

1. Adds wildfire to the examples of natural disasters for which ER funding is authorized.
2. Removes the restriction on ER eligibility for the repair or reconstruction of a bridge if the construction phase of a replacement structure is included in the approved Statewide transportation improvement program at the time of the event.
3. Provides that the cost of an improvement that is part of an ER project shall be an eligible expense under the ER program if the improvement is a protective feature that will mitigate the risk of recurring damage or the cost of future repair from extreme weather, flooding, and other natural disasters. Protective features include:
  - a. Raising roadway grades
  - b. Relocating roadways in a floodplain to higher ground above projected flood elevation levels or away from slide prone areas
  - c. Stabilizing slide areas
  - d. Stabilizing slopes
  - e. Lengthening or raising bridges to increase waterway openings
  - f. Increasing the size or number of drainage structures
  - g. Replacing culverts with bridges or upsizing culverts
  - h. Installing seismic retrofits on bridges
  - i. Adding scour protection at bridges, installing riprap, or adding other scour, stream stability, coastal or other hydraulic countermeasures, including spur dikes
  - j. The use of natural infrastructure to mitigate the risk of recurring damage or the cost of future repair from extreme weather, flooding, and other natural disasters

The total cost of an ER project may not exceed the cost of repair or reconstruction of a **comparable facility**. The BIL amended the definition of a comparable facility to one that:

1. Meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life; and
2. (**NEW**) Incorporates economically justifiable improvements that will mitigate the risk of recurring damage from extreme weather, flooding, and other natural disasters. [§11106(3)(A); 23 U.S.C 125(d)(2)(A)]

## FHWA Division Office Contact Information:

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