

EMERGENCY RELIEF PROGRAM (ER)

Fiscal year (FY)	2021	2022	2023	2024	2025	2026
Authorization	\$100 M	\$100 M	\$100 M	\$100 M	\$100 M	\$100 M

Note: Except as indicated, all references in this document are to the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021).

Program Purpose

The BIL continues the Emergency Relief program, which provides funds for emergency repairs and permanent repairs on Federal-aid highways and roads, tribal transportation facilities, and roads on Federal lands that the Secretary finds have suffered serious damage as a result of natural disasters or catastrophic failure from an external cause.

Statutory Citations

- §§ 11106, 11107 and 11519; 23 U.S.C. 120(e) and 125

Funding Features

- Funded by a permanent authorization of \$100 million per year in contract authority from the Highway Account of the Highway Trust Fund. Funds are exempt from the Federal-aid highway obligation limitation. [23 U.S.C. 125(c)]

Federal Share

100% Federal share

- 100% Federal share for emergency repair work—work to minimize damage, protect facilities, or restore essential travel—that is accomplished in the first **[New] 270** (instead of 180) days after the disaster occurs. FHWA may extend this time period taking into consideration any delay in the ability of the State to access damaged facilities to evaluate damage and the cost of repair. [§11107(2)(A); 23 U.S.C. 120(e)(1) and (3)]

Up to 90% Federal share

- The BIL modified the types of projects that qualify for the 90% Federal share to **[NEW] “eligible repairs”**, versus the prior “eligible permanent repairs”, for a State that incurs an amount of eligible expenses due to natural disasters or catastrophic failures for a given Federal fiscal year that exceeds its highway apportionment under 23 U.S.C. 104 for the fiscal year in which the disasters or failures occurred. [§11107(2)(B); 23 U.S.C. 120(e)(4)]

Eligible Activities

- The BIL continues all prior ER eligibilities and adds **[NEW]**, the following expansions—
 - Adds wildfire to the examples of natural disasters for which ER funding is authorized. [§11106(1); 23 U.S.C 125(a)(1)]
 - 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. [§11106(2)]

- 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:
 - 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
 - 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
 - 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 [§11106(3)(C); 23 U.S.C. 125(d)(3)]

Program Features

- In accordance with 23 U.S.C. 125(d)(2)(B), 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:
 - 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. [§11106(3)(A); 23 U.S.C 125(d)(2)(A)]

Additional Requirements include:

- The BIL requires FHWA to update the emergency relief manual to encourage the use of Complete Streets design principles and consideration of access for moderate- and low-income families impacted by a declared disaster. [§11519(b)]
- The BIL requires FHWA to develop best practices for improving the use of resilience in the emergency relief program and other emergency relief efforts and provide these best practices to State Departments of Transportation. [§11519(b)(2) and (3)]
- The BIL requires FHWA to develop and implement a process to track the consideration of resilience as part of the emergency relief program, and the costs of emergency relief projects. [§11519(b)(4)]

Additional Information and Assistance

- For more information about this program, visit: <https://www.fhwa.dot.gov/programadmin/erelief.cfm>
- FHWA can connect you with your local FHWA office and support you with technical assistance for planning, design, construction, preserving, and improving public roads and in the stewardship of Federal funds. For assistance, visit: https://www.fhwa.dot.gov/bipartisan-infrastructure-law/technical_support.cfm.