

## FWHA EMERGENCY RELIEF (ER) PROGRAM ELIGIBILITY

To be eligible for FHWA ER Program funding:

1. The disaster event must be declared by a Governor's or Presidential Proclamation. In the event of a Hurricane, expenses incurred prior to landfall are not eligible for reimbursement, even if the proclamation was issued prior to landfall.
2. There must be a minimum of \$700,000 Federal share threshold in damages per disaster event.
3. The highways, roads, and/or trails to be repaired must be on the Federal Aid Highway system
  - a. Facilities that are on the Federal Aid Highway system will likely not be eligible for FEMA funding.
  - b. Local roads and/or rural minor collectors (including those with bridges) that are not designated as Federal Aid Highways are not eligible for FHWA ER Program funding and may be eligible for FEMA funding.
  - c. Functional Classification Maps outlining the Federal Aid Highway System can be located at: <http://www.fdot.gov/statistics/fedaid/default.shtm>.
4. The site must have suffered \$5,000 in actual damages (material and labor)
  - a. Detours, removal of damaged items (i.e. sign, signal,) MOT, mobilization, generator use, etc. don't count to the \$5,000 in damages, even though that work may be eligible for reimbursement.
  - b. Generally, a site is an individual location where damage has occurred.
  - c. A site could include several adjoining locations where similar damage, related to the same cause, has occurred. **Sites within ¼ of a mile may be grouped together to form an eligible ER site. Grouped sites must be on the same federal road.** Damage on a continuous stretch of roadway can be grouped, but once there is ¼ mile or more with no damage, the next damage found is a new site.
  - d. Sites not within ¼ of a mile and/or not on the same federal road cannot be combined to meet the \$5,000 minimum damage threshold.
5. Contracts must include all federal requirements prior to start of construction. Construction contract requirements are outlined on the *Local Agency Program (LAP) Checklist for Construction Contracts (Phase 58)-Federal Requirements (Form 525-010-44)*. Professional services (i.e. design, CCEI) contract requirements are outlined on the *Local Agency Program (LAP) Checklist for Federally Funded Professional Services Contracts Federal and State Requirements (Form 525-010-49)*. Both forms can be found on the LAP Website:

<http://www.fdot.gov/programmanagement/LAP/Forms/LapForms.shtm>

FHWA will not permit contract amendment to incorporate missing federal requirements once construction has started.

6. Temporary or "emergency" repairs (23 CFR 668.109(b)(4)) may begin without FHWA prior authorization
  - a. Temporary/emergency repairs are those repairs that:
    - i. Minimize the extent of damage
    - ii. Protect remaining facilities

- iii. Restore essential traffic
  - b. LAP Certification is not required to be eligible for reimbursement for temporary/emergency repairs.
  - c. Agencies are strongly encouraged to first consider using the competitive bidding method of contracting for emergency repairs.” However, emergency repair work may utilize “non-tradition” or “expedited” advertising methods after a disaster event to facilitate temporary/emergency repairs.
  - d. Safety is NOT a justification for determining ER eligibility. Safety elements include, but are not limited to lighting, signals, signage are considered permanent repairs (see item #7)
  - e. Emergency repairs must be completed within 180 days to receive 100% funding. Normal pro-rata share reimbursement (80/20 for non-interstate routes) will be applied for work performed after day 180.
- 7. Permanent repairs (23 CFR 668.109(b)(1)) must have FHWA authorization prior to start of construction. This includes emergency repairs that are the permanent repair, such as traffic signal repairs.
  - a. Permanent repairs are those repairs that restore the facility to pre-disaster condition
  - b. LAP Certification is required to be eligible for reimbursement for permanent repairs. Permanent repairs are viewed/treated as any other LAP project.
  - c. Normal FHWA/LAP procedures related to advertising, etc. are required. A public interest finding is required for force account (i.e. Local Agency staff) performing permanent repairs.
  - d. Traffic signal and signage repair/replacement is considered a permanent repair, not emergency repair.
  - e. Permanent repairs must begin by the end of the second full FHWA fiscal year following the event. FHWA’s fiscal year runs October 1<sup>st</sup> – September 30. The two-year “clock” starts at the end of the fiscal year in which the disaster event occurs. (i.e. event happens in August 2018, permanent repairs must begin by September 2020. If event happens in November 2018, permanent repairs must begin by September 2021.)
  - f. If approved by FHWA, permanent repairs on non-interstate routes are reimbursed on a pro-rated basis of approximately 80% (currently 81.93%).
- 8. Items not eligible for FHWA ER reimbursement include, but are not limited to:
  - a. Pre-existing Conditions (ex. bridge scour)
  - b. Expenses incurred prior to the event and/or prior scheduled work
  - c. Betterments (eligible with approved justification)
  - d. Damage outside the right-of-way (eligible with approved justification)
  - e. Inmate labor
  - f. Preventive Work
  - g. Damage to Contractor Equipment
  - h. Generators to only restore power to traffic Signals.
  - i. Heavy Maintenance - includes but not limited to:
    - i. Minor damage to eroded shoulders
    - ii. Filled ditches and culverts
    - iii. Mud and minor debris deposits
    - iv. Slip-outs in cut or fill slopes
  - j. Pavement Damage caused by Traffic

- k. Applicant Owned Material
  - l. Erosion Damage
  - m. Catastrophic Failure from Internal Cause
  - n. Stockpiling Materials
  - o. Purchase of equipment or tools
9. Temporary/Emergency repairs and Permanent repairs both require a NEPA review.
- a. This is particularly important if there impacts to protected or sensitive resources are possible.
  - b. Advance coordination with appropriate resource management agencies (local, state, federal) will help avoid delays.
  - c. Only FDOT can approve NEPA documents.
10. Emergency Repairs and Permanent Repairs required the following Certifications:
- a. Utility Certification
  - b. Right of Way Certification
  - c. Railroad Certification
  - d. Environmental Certification

For temporary/emergency repairs, certification can be completed during construction.  
For permanent repairs, certification must be provided prior to initial authorization.

**Please note:** Just because the \$5,000 site threshold is met does not guarantee that FHWA will approve funding. It just means that it is eligible for a Detailed Damage Inspection Report to be submitted for consideration.

Additional information, including the FHWA ER manual can be found online at:

<https://www.fhwa.dot.gov/programadmin/erelief.cfm>

The FHWA ER Manual supersedes this document in any areas of conflict.