

The Backlog of Requests for Aid from the Federal Highway Administration's Emergency Relief Program

December 10, 2024

Congressional Research Service

<https://crsreports.congress.gov>

R48297



R48297

December 10, 2024

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The Federal Highway Administration's (FHWA's) Emergency Relief (ER) program provides funds to states to repair disaster-damaged highways and bridges. Once FHWA determines that an emergency qualifies for the ER program, states are eligible to receive at least 80% of the cost of repairs. The ER program receives a set amount of funding every fiscal year. Congress has periodically appropriated additional funds for the program, the amount of which has varied. State requests for emergency relief routinely exceed the program's annual funding. Because of the discrepancy between the ER program's funding and the states' needs, the program has a recurring funding shortfall of hundreds of millions of dollars or more.

The ER program is funded through a permanent \$100 million annual authorization from the Highway Trust Fund, an amount that has not been raised since it was established in 1972. Because of inflation, the annual authorization has diminished in value by approximately 91% through FY2023. At the same time, the number of major natural disasters, defined as those costing more than \$1 billion (in 2024 dollars), has increased, which may have escalated the ER program's costs. The states' total requests for emergency relief in a fiscal year routinely exceed \$100 million; requests for relief related to a single disaster have exceeded \$1 billion.

To make up the difference between program costs and permanent annual authorization for the program, Congress has provided additional funds through annual and supplemental appropriations legislation. From FY2013 to FY2023, the permanent annual authorization provided 14% of the program's funding. The other 86% came from additional annual and supplemental appropriations. Additional funding formerly came from the Highway Trust Fund, but since FY2006, all additional funding for the ER program has come from the general fund. Whereas money from the Highway Trust Fund is reserved for surface transportation programs, money from the general fund can be dedicated to a much broader range of programs. As a result, the ER program now competes with a wide array of other congressional priorities for the majority of its funding.

Because emergencies and supplemental appropriations occur at unpredictable intervals, ER program funding and expenses are inconsistent. Especially in the wake of major disasters, the states may need more ER funds than FHWA has available. While waiting for Congress to approve more funding, FHWA delays distributing funds or distributes funds to the states in proportion to their needs, meaning that every state receives less ER funding than it qualifies for. As a result, states may delay ER projects or temporarily repurpose highway formula funds, thereby delaying other highway projects.

Since 2012, Congress has made changes to the ER program that increased the program's expenses. Prior to 2012, Congress capped the amount of ER funding per disaster per state at \$100 million; in 2012, this cap was eliminated. At the same time, Congress also increased the federal share of emergency repair costs from 80% to 90% for some of the most expensive ER projects. In 2021, Congress extended the period during which emergency repairs are fully covered by federal dollars from 180 days to 270 days. At times, Congress has also increased the ER program's expenses by waiving program requirements. For example, Congress has increased the federal share for certain projects from 80% or 90% to 100%.

To mitigate the ER program's recurring funding shortfall, Congress could increase the program's funding, reduce expenses, or both. To increase funding, Congress could continue to provide money to the ER program from the Highway Trust Fund, the general fund of the U.S. Treasury, or both. However, transfers from either fund present drawbacks. The current approach of providing most of the money from the general fund has provided additional dollars beyond what are available from the Highway Trust Fund but has also resulted in recurring funding shortfalls and project delays. Additionally, the Highway Trust Fund may not be able to provide stable funding for initial appropriations for the ER program beyond FY2027, and supplements from the general fund may not always be prioritized over other potential uses of general fund dollars. Finally, Congress could reduce program expenses or withdraw federal support for roadway infrastructure in emergencies. For example, Congress could reinstitute a cap on per-disaster funding, reduce the federal share of costs across ER projects, or eliminate the ER program. However, a reduction in federal aid to disaster-damaged highways and bridges would likely increase the burden on state and local governments in the wake of major disasters.

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Introduction

Recent disasters, both natural and human-made, have battered bridges and highways in the United States. For example, in March 2024, a container ship struck a support tower of the Francis Scott Key Bridge in Baltimore, MD, causing the bridge to collapse into the Patapsco River. The Federal Highway Administration (FHWA) estimates that replacing the bridge will cost \$1.7 billion to \$1.9 billion over four years.¹ In September 2024, Hurricane Helene and Hurricane Milton damaged highways and bridges across multiple states, leading to hundreds of road closures. These high-profile, high-cost disasters have called attention to a recurring challenge for the federal transportation program: the availability of funding for the FHWA's Emergency Relief (ER) program.

The ER program provides funds to states to repair or replace federal-aid highways and bridges damaged by natural and human-made disasters. After the President or a state governor declares a disaster, the affected state's department of transportation assesses the damage and submits an application for ER funding to FHWA.² Once FHWA determines that an emergency qualifies for the ER program, states are eligible to receive at least 80% of the cost of repairs.³

The program is funded through a permanent annual authorization of \$100 million from the Highway Trust Fund as well as additional annual and supplemental appropriations from the Treasury general fund. FHWA distributes ER program funds to the states twice a year in semiannual allocations.⁴ Outside of these semiannual allocations, FHWA may also provide "quick release" funds to a state in the wake of a major disaster to cover emergency operations.⁵

Requests for disaster aid routinely exceed the ER program's funding. When this occurs, each state with an approved ER project receives a portion of the ER program funds available. As a result, states may wait years to receive funding for qualifying ER projects.

This report begins by discussing the disparity between the ER program's funding and potential costs. This report also describes recent changes to the ER program that increased the amount of eligible repair costs. Finally, this report discusses potential legislative options regarding the ER program and its funding, including (1) transferring funds from other sources, (2) increasing the annual funding authorization for the ER program, or (3) reducing or removing federal contributions to ER projects.

For general information about the ER program, see CRS Report R47724, *Emergency Relief Program for Disaster-Damaged Highways and Bridges*.

¹ Brian Witte, "Maryland Officials Release Timeline, Cost Estimate, for Rebuilding Bridge," Associated Press, May 2, 2024, <https://apnews.com/article/baltimore-bridge-collapse-body-found-cdd8441c5dff48028d1e141b943ca31e>.

² See Federal Highway Administration (FHWA), *Emergency Relief Manual*, May 31, 2013, pp. 30-33, <https://www.fhwa.dot.gov/reports/erm/er.pdf#page=35>. Note the *Emergency Relief Manual* was last updated in 2013.

³ See the "Increase in the Federal Share for ER Projects" section for more information about the federal share for emergency relief (ER) projects.

⁴ Technical assistance from FHWA provided to the Congressional Research Service (CRS), October 18, 2024.

⁵ FHWA, *Emergency Relief Manual*, May 31, 2013, pp. 30, 33-34, <https://www.fhwa.dot.gov/reports/erm/er.pdf#page=35>.

ER Program Requests Exceed Funding

ER Program Funding

The ER program receives a set amount of funding every fiscal year. Congress has periodically appropriated additional funds for the program, the amount of which has varied.

Annual Authorization

The ER program is funded with a permanent⁶ \$100 million annual authorization from the Highway Trust Fund.⁷ The \$100 million authorization was established in 1972 and has remained unchanged.⁸ Because of inflation, the purchasing power of the annual authorization has diminished by approximately 91% from FY1972 to FY2023. Thus, \$100 million in FY2023 would have the purchasing power of about \$9.4 million in FY1972 (**Figure 1**).⁹

⁶ Authorizations are considered permanent when they do not have dates on which they expire. The \$100 million annual authorization for the ER program occurs without any repeated action by Congress. See CRS Report R46497, *Authorizations and the Appropriations Process*, by James V. Saturno.

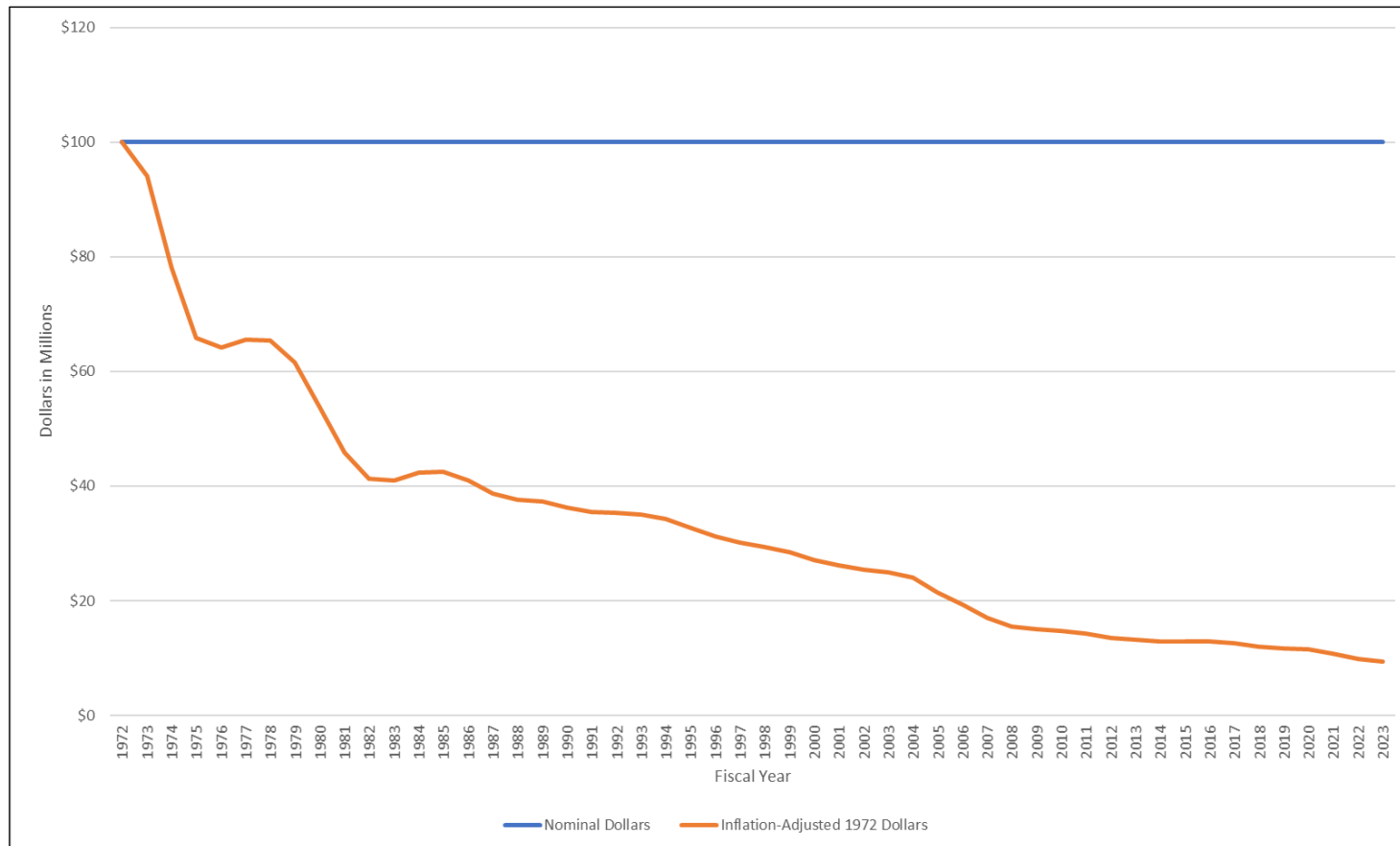
⁷ 23 U.S.C. §125.

⁸ Yuko J. Nakanishi and Pierre M. Auza, *FEMA and FHWA Emergency Relief Funds Reimbursements to State Departments of Transportation*, National Cooperative Highway Research Program (NCHRP), NCHRP Synthesis 472, 2015, p. 6, <https://nap.nationalacademies.org/read/22164/chapter/3?term=manual#6>.

⁹ Calculated using the U.S. Bureau of Economic Analysis's Highways and Streets price index.

Figure I. Purchasing Power of the Emergency Relief (ER) Program's Annual Authorization, FY1972-FY2023

In nominal dollars and inflation-adjusted 1972 dollars



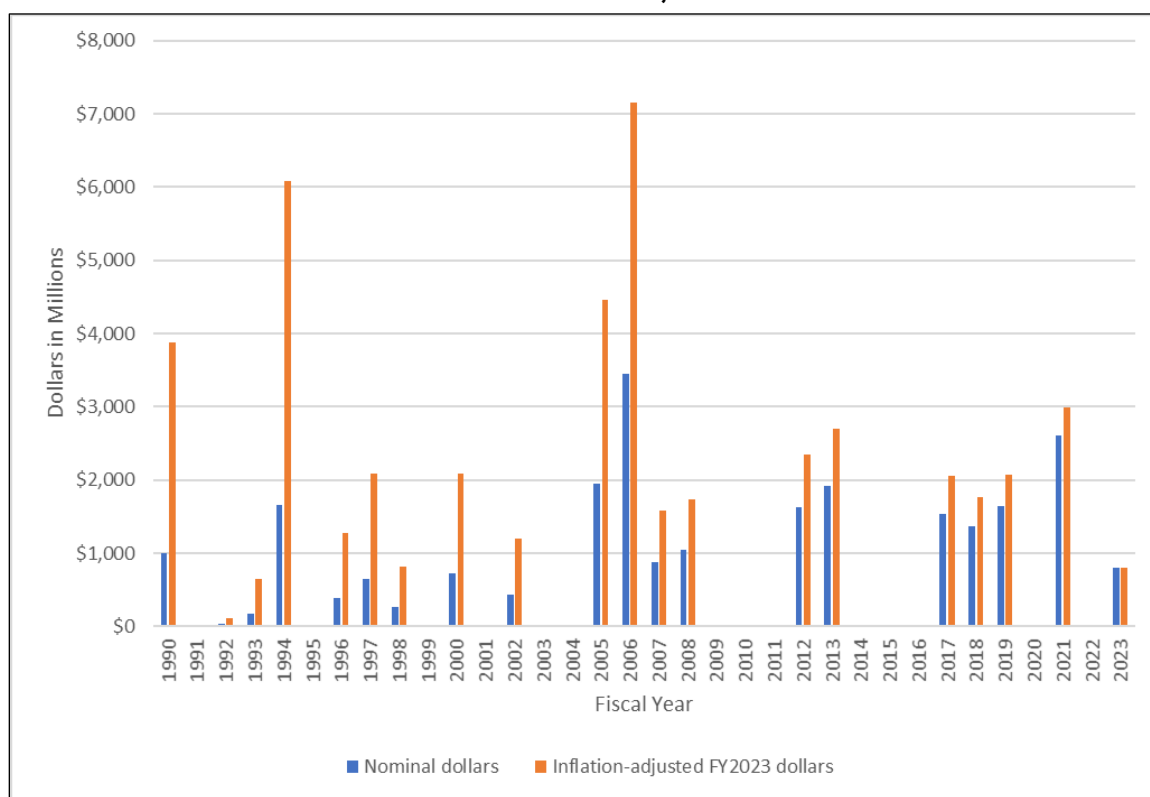
Source: Congressional Research Service (CRS) based on Bureau of Economic Analysis, National Data: National Income and Produce Accounts, Table 5.9.4: Price Indexes for Gross Government Fixed Investment by Type, September 27, 2024, line 25, <https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpBMSwyLDNdLCJkYXRhIjpBWyJjYXRIZ29yaWVzIiwU3VydMVSII0sWVJOSVBBXIRhYmxlX0xpc3QiLCIzOTkiXVI9>.

Additional Appropriations

The annual cost of ER projects typically exceeds the \$100 million annual authorization. Congress has periodically appropriated additional funds from the Treasury's general fund to cover the shortfall. (For a list of additional appropriations since FY1990, see **Table A-1**.) Congress has provided additional funds through both annual and supplemental appropriations legislation. From FY1990 to FY2023, Congress provided approximately \$47 billion (in 2023 dollars) in annual and supplemental appropriations to the ER program. During this period, the annual authorization from the Highway Trust Fund provided approximately 14% of the program's funding. The other approximately 86% came from additional annual and supplemental appropriations.¹⁰ **Figure 2** shows the additional funds appropriated to the Emergency Relief Fund from FY1990 to FY2023.

Figure 2. Additional Funds Appropriated to the Highway Emergency Relief Fund, FY1990-FY2023

In nominal dollars and inflation-adjusted 2023 dollars



Source: Federal Highway Administration (FHWA), Office of Program Administration; and “Motion to Instruct Conferees on H.R. 2112, Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2012,” House debate, *Congressional Record*, daily edition, vol. 157, part 167 (November 3, 2011), p. H7277, <https://www.congress.gov/congressional-record/volume-157/issue-167/house-section/article/>

¹⁰ Between FY1990 and FY2023, the annual authorizations accounted for roughly \$7.612 billion of ER program funding, whereas the additional appropriations accounted for roughly \$47.591 billion. These numbers have been adjusted for inflation to FY2023 dollars using Bureau of Economic Analysis, *National Income and Produce Accounts, Table 5.9.4 Price Indexes for Gross Government Fixed Investment by Type*, September 27, 2024, line 25, <https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWjYjYXRIZ29yaWVzIiwU3VydMVS5lloSWyJOSVBBX1RhYmxlX0xpc3QiLCIzOTkiXV19>.

H7273-6. Inflation adjustment calculated using Bureau of Economic Analysis, *National Data: National Income and Produce Accounts, Table 5.9.4 Price Indexes for Gross Government Fixed Investment by Type*, September 27, 2024, line 25, <https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNldCJkYXRhIjpbWyJjYXRIZ29yaWVzIiwiaU3VydmV5IiI0sWVjOSVBBXIRhYmxlX0xpc3QiLCIzOTkiXVI9.>

Notes: In 1994, the Northridge earthquake struck California, damaging infrastructure in the Los Angeles area, including Interstate 10. Congress authorized \$950,000,000 from the Highway Trust Fund for repairs related to the Northridge earthquake. In 2005, several hurricanes damaged highway infrastructure across multiple states. In FY2006, FHWA allocated more than \$1 billion each to Louisiana and Mississippi to repair roads and bridges damaged by Hurricane Katrina alone.

In the past, Congress provided supplemental funding for the ER program from the Highway Trust Fund, which draws revenue mainly from fuel taxes and other transportation taxes. However, by the early 2000s, Highway Trust Fund revenue could no longer cover federal highway program expenses.¹¹ In 2005, several hurricanes, especially Hurricane Katrina, caused extensive damage to highway infrastructure across multiple states, and the Highway Trust Fund balance was insufficient to cover the cost of repairs. In part to avoid disruptions to other federal highway programs that relied on the Highway Trust Fund, Congress appropriated funding for the ER program from the Treasury's general fund.¹²

Since FY2006, all additional funding for the ER program has come from the Treasury's general fund. Whereas money from the Highway Trust Fund is reserved for surface transportation programs, money from the general fund can be dedicated to a much broader range of programs.¹³ As a result, Congress balances the ER program's funding needs with a wide array of other priorities. All four of the most recent presidential Administrations have requested additional funding for the ER program.¹⁴

Return and Reimbursement of Emergency Relief (ER) Program Funds

Previously allocated funds may sometimes be returned to the ER program. For example, the Federal Highway Administration (FHWA) may withdraw funds that had been allocated for a specific project. FHWA works with states to identify previously allocated ER funds that states do not expect to obligate. FHWA withdraws these allocated funds and returns them to the ER fund to be reallocated to other ER projects.

The ER program may also be reimbursed for previous allocations. In some cases, highway projects that qualify for ER program funding also receive insurance proceeds or compensation from at-fault parties. However, many years may pass between when a disaster occurs and when the ER program is compensated. For example, FHWA allocated a total of \$19,682,233 in ER program funds to the state of Washington after the Skagit River Bridge in

¹¹ Jeff Davis, *Ten Years of Highway Trust Fund Bankruptcy: Why Did It Happen, and What Have We Learned?*, Eno Center for Transportation, September 5, 2018, <https://enotrans.org/article/ten-years-of-highway-trust-fund-bankruptcy-why-did-it-happen-and-what-have-we-learned/>.

¹² For example, such sums as may be necessary were authorized to be appropriated by Section 1112 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (P.L. 109-59). The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (P.L. 109-148), appropriated \$2.75 billion from the Treasury general fund for the Highway ER program.

¹³ 26 U.S.C. §9503(c).

¹⁴ Norman Y. Mineta, *Fiscal Year 2006 Budget In Brief*, U.S. Department of Transportation (DOT), p. 33, https://www.transportation.gov/sites/dot.gov/files/docs/dot_budget_highlights_fy_2006.pdf; Peter Baker and Raymond Hernandez, "Obama's Storm-Aid Bid to Be About \$50 Billion," *New York Times*, December 5, 2012, <https://www.nytimes.com/2012/12/06/nyregion/obama-to-ask-congress-for-50-billion-in-storm-aid.html>; Letter from Mick Mulvaney, former director of the Office of Management and Budget, to Rep. Paul D. Ryan et al., November 17, 2017, p. 59, https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/Letters/fy_2018_hurricanes_supp_111717.pdf; and The White House, Office of Management and Budget, "Letter Regarding Critical Supplemental Funding Needs, White House," June 28, 2024, <https://www.whitehouse.gov/omb/briefing-room/2024/06/28/letter-regarding-critical-supplemental-funding-needs/>.

Mount Vernon, WA, collapsed on May 23, 2013. Litigation regarding liability for the bridge collapse continued for several years. Ultimately, the Washington Department of Transportation received insurance proceeds from the responsible parties and returned \$16,621,345 to FHWA. FHWA placed this amount in the ER fund in August 2023.

Because program funds may be returned or reimbursed and because quick release funds may be released as needed, the balance of the ER fund may fluctuate between the program's semiannual allocations to the states.

ER Program Costs

ER program allocations provide data about the program's costs over time. ER program requests for aid provide insights into the program's funding levels at given points in time.

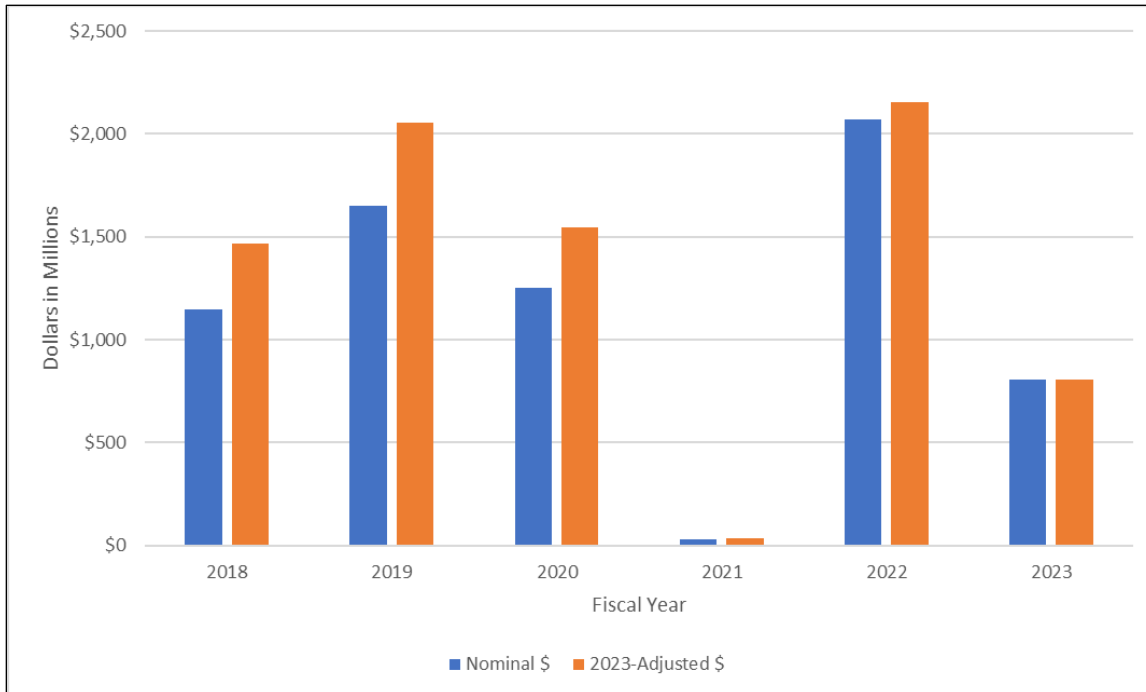
ER Program Allocations

Throughout the year, states submit requests for aid to the ER program. These requests include damage assessments and estimates of repair costs.¹⁵ FHWA distributes ER program funds to the states twice a year. Outside of these semiannual allocations, FHWA may also provide quick release funds to a state in the wake of a major disaster to cover emergency operations.

ER program allocations vary from year to year depending on the availability of funding and the number and cost of qualifying disasters. Allocations typically exceed the annual \$100 million authorization. **Figure 3** illustrates the ER program's allocations for FY2018-FY2023.

Figure 3. ER Program Allocations, FY2018-FY2023

In nominal dollars and inflation-adjusted 2023 dollars



Source: FHWA, Technical Assistance to CRS, September 11, 2023. Inflation adjustment calculated using Bureau of Economic Analysis, *National Data: National Income and Produce Accounts*, Table 5.9.4 Price Indexes for Gross

¹⁵ FHWA, *Emergency Relief Manual*, May 31, 2013, p. 31, <https://www.fhwa.dot.gov/reports/erm/er.pdf#page=36>.

Government Fixed Investment by Type, September 27, 2024, line 25, <https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXZlZjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRIZ29yaWVzZiwiU3VydmV5Il0sWyJOSVBBXIRhYmxlX0xpc3QiLCIzOTkiXVI9>.

Notes: In FY2020, FHWA prorated ER allocations. In FY2021, FHWA did not execute semiannual allocations of ER program funds and distributed only “quick release” funds that fiscal year. For more information, see “Delayed Funding to States for ER Projects.”

ER Program Requests for Aid

The ER program’s allocations do not capture the full scope of the requests to the program; allocation data do not account for requests for aid that the program is unable to fulfill. Because requests for aid routinely exceed program funds, FHWA maintains a separate list of unfulfilled requests. According to FHWA’s ER program’s *Emergency Relief Manual*,

When ER funds are not available for allocation to the States to cover either additional funding needs on previously approved ER events or funding needs for new disaster requests awaiting action by the Division Administrator, ER funding requests received in Headquarters are recorded and held by the Office of Program Administration pending action by Congress to replenish the ER accounts through a supplemental appropriation.¹⁶

The difference between the funds available for allocation and the requests for aid leads to a recurring funding gap, also sometimes called a *backlog*. The additional funding provided by Congress may temporarily resolve this backlog, but a backlog can build up again over time.

Extent of the Funding Gap

The ER program already had a backlog of funding requests when the Francis Scott Key Bridge collapsed on March 25, 2024. On June 5, 2024, then FHWA Administrator Shailen Bhatt testified to the Senate Committee on Environment and Public Works that the ER program is committed to providing \$4.4 billion to the states but had less than \$900 million available in the ER fund.¹⁷ The funding gap in June 2024, therefore, was approximately \$3.5 billion. On November 7, 2024, after disasters including Hurricane Helene and Hurricane Milton, the backlog had increased to over \$8 billion.¹⁸

The ER program’s funding gap is not a new phenomenon. In 2007, the U.S. Government Accountability Office (GAO) conducted a study of the fiscal stability of the ER program. FHWA officials told GAO that “FHWA financial management systems do not track reimbursement backlogs,” but GAO found evidence of funding gaps dating to 1997 and ranging from \$259 million to \$741 million.¹⁹ In 2011, the ER fund was identified as having approximately \$140 million in reserves against a backlog of funding requests totaling more than \$2 billion.²⁰

¹⁶ FHWA, *Emergency Relief Manual*, May 31, 2013, p. 48, <https://www.fhwa.dot.gov/reports/erm/er.pdf#page=53>.

¹⁷ U.S. Congress, Senate Environment and Public Works Committee, *Oversight of the Federal Highway Administration’s Emergency Relief Program*, 118th Cong., June 5, 2024, <https://www.epw.senate.gov/public/index.cfm/2024/6/oversight-and-budget-of-the-federal-highway-administration>.

¹⁸ Technical assistance from FHWA provided to CRS, November 18, 2024.

¹⁹ U.S. Government Accountability Office (GAO), *Highway Emergency Relief: Reexamination Needed to Address Fiscal Imbalance and Long-Term Sustainability*, GAO-07-245, February 2007, p. 19, <https://www.gao.gov/assets/d07245.pdf#page=24>.

²⁰ “Nomination of Cathy Bissoon to be United States District Judge for the Western District of Pennsylvania,” Senate executive session, *Congressional Record*, vol. 157, part 155 (October 17, 2011), p. S6585, <https://www.congress.gov/congressional-record/volume-157/issue-155/senate-section/article/S6583-1>. While the hearing was called to discuss a judicial nomination, the Senators also discussed transportation appropriations legislation.

The ER program's funding gap varies over time because (1) the program's commitments arise through unpredictable emergency events, (2) the majority of the program's funding comes through irregular supplemental appropriations legislation, and (3) the purchasing power of the ER program's appropriation has eroded relative to the cost of the repairs.

Increasing Frequency of Billion-Dollar Disasters

Natural disasters costing more than \$1 billion in 2023 dollars have occurred more frequently in recent years than in previous decades. This may result in higher costs for the ER program. The National Oceanic and Atmospheric Administration tracks weather and other natural disasters that exceed \$1 billion in total damages (adjusted for inflation). This includes damages across many sectors, including transportation infrastructure. From 1980 to 2010, the United States experienced an average of approximately five disasters per year for which the damages exceeded \$1 billion (adjusted for inflation). From 2011 to 2023, the average number of billion-dollar disasters per year was approximately 16. In 2023, the United States experienced 28 such disasters.

Funding and Highway Project Delays

Delayed Funding to States for ER Projects

The ER program's funding availability affects how FHWA allocates funds to the states for ER projects. The agency cannot allocate funding beyond its authorized and appropriated amounts. FHWA adjusts its allocation of funds to stay within the program's means, distributing funding to the state ER projects on a proportional basis. Each state's allocation is computed using a ratio of total available funding to total needs. For example, in FY2020, ER funding fell short of requests for aid. FHWA generally fully funded requests at or below \$250,000, but all other requests were funded at a proportional rate of 79.26%.

FHWA also has the option of delaying or not executing a standard nationwide distribution, which allows time for its funds to be replenished via the annual \$100 million authorization or further supplemental appropriations.²¹ In FY2021, FHWA did not provide semiannual allocations of ER program funds, distributing only quick release funds that fiscal year. In September and December 2021, Congress passed P.L. 117-43 and P.L. 117-328, which combined provided the ER program with an additional \$3.4 billion. As a result, FHWA resumed the semiannual allocations, allocating about \$2 billion in FY2022 and \$800 million in FY2023.²²

In some cases, states may wait years to receive the full federal share for an ER project, which can delay those projects and strain state transportation budgets.²³ As part of the 2007 study, GAO reported that "in almost all of our site visits [to California, Florida, Mississippi, North Dakota, and Ohio], program officials stated that the Emergency Relief program's reimbursement backlogs (i.e., delayed reimbursements) are a fiscal burden on state and local governments."²⁴

²¹ GAO, *Highway Emergency Relief: Reexamination Needed to Address Fiscal Imbalance and Long-Term Sustainability*, GAO-07-245, February 2007, pp. 18-19, <https://www.gao.gov/assets/d07245.pdf#page=23>.

²² FHWA keeps some emergency relief funding in reserve to ensure it has sufficient funds to cover quick release allocations. This may account for the difference between the \$3.4 billion in additional funding in FY2022 (as well as \$200 million in annual authorizations) and the roughly \$2.9 billion allocated in FY2022 and FY2023.

²³ Ibid.

²⁴ Ibid, pp. 19, 42.

Delays to Other Highway Projects

States can use regular federal-aid highway formula funds to temporarily fund ER projects. That funding would then be reimbursed to the formula program when and if ER funds become available.²⁵ However, shifting formula funds to ER projects could delay other planned projects that would have used formula funds. For example, after Hurricane Katrina, the ER program did not have sufficient funds to cover the damage to highway infrastructure. While waiting for supplemental funding from Congress, the Mississippi Department of Transportation delayed regular federal-aid highway projects to fund ER projects. For states with smaller highway budgets, temporarily transferring funding from formula programs may not be feasible or may be insufficient.²⁶

Program Changes and Increased Expenses

In August 2011, Hurricane Irene cost lives and inflicted widespread damage across multiple states.²⁷ The hurricane severely damaged highway infrastructure in several states. For example, Senator Bernie Sanders testified,

In Vermont alone, preliminary estimates to the federal-aid highway system are well in excess of \$500 million and likely will be much more. That is an incredible amount of money for a small State such as Vermont. For a State that receives a total Federal apportionment of \$210 million annually, the scale of damage relative to our State's ability to pay for it cannot be overstated.²⁸

In the wake of Hurricane Irene, multiple Members of Congress proposed legislative changes that would have altered the ER program or provided additional funding.²⁹ In July 2012, Congress passed the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141), which included two statutory changes that increased how much the federal government could obligate for ER projects. First, Congress eliminated the \$100 million cap on federal obligations for a single catastrophic failure or single disaster.³⁰ Second, Congress provided authority for the federal government to cover up to 90% of costs for repair work that would otherwise have qualified for a lower federal share.³¹

Elimination of the \$100 Million Cap

MAP-21 eliminated the cap on federal funds for ER projects. Prior to MAP-21, the law stated that federal obligations for ER projects “resulting from a single natural disaster or a single

²⁵ FHWA, *Emergency Relief Manual*, May 31, 2013, pp. 48-49, <https://www.fhwa.dot.gov/reports/erm/er.pdf#page=53>.

²⁶ GAO, *Highway Emergency Relief: Reexamination Needed to Address Fiscal Imbalance and Long-Term Sustainability*, GAO-07-245, February 2007, p. 19, <https://www.gao.gov/assets/d07245.pdf#page=24>.

²⁷ National Oceanic and Atmospheric Administration, National Hurricane Center, *Tropical Cyclone Report: Hurricane Irene*, AL092011, 2011, https://www.nhc.noaa.gov/data/tcr/AL092011_Irene.pdf.

²⁸ *Congressional Record*, vol. 157, no. 135, June 21, 2024, <https://www.congress.gov/congressional-record/volume-157/issue-135/senate-section/article/S5513-2>.

²⁹ S.Amdt. 615; S.Amdt. 738; S.Amdt. 2541.

³⁰ P.L. 112-141, §1107.

³¹ P.L. 112-141, §1508.

catastrophic failure in a State shall not exceed \$100 million.”³² As a result of MAP-21, the ER program now covers the federal share (i.e., 80%-90%) of all eligible project costs without limit.

Prior to MAP-21, Congress had at times exempted certain emergency response projects from this cap and approved additional funds beyond the \$100 million cap. For example, in 1994, the Northridge earthquake struck California, damaging multiple highway facilities.³³ Less than a month later, Congress passed the Emergency Supplemental Appropriations Act of 1994 (P.L. 103-211), which provided that the \$100 million cap did not apply to this earthquake. In the same legislation, Congress authorized an additional \$950 million “to cover expenses arising from the January 1994 earthquake in Southern California and other disasters.”³⁴

Increase in the Federal Share for ER Projects

In addition to eliminating the \$100 million cap, MAP-21 increased the federal share of costs for some of the most expensive ER projects. The ER program divides repairs into two categories: (1) emergency repairs that occur within the first 270 days and (2) emergency repairs that occur after the first 270 days and permanent repairs that occur at any time.³⁵ For emergency repairs that occur within the first 270 days, the federal share is 100%.³⁶ For emergency repairs that occur after the first 270 days and for all permanent repairs, the federal share of project costs is usually determined by the type of road: 90% federal share for Interstate highways and 80% for non-Interstate federal-aid highways.³⁷

MAP-21 created an exception to these federal shares. 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 disaster occurs, the share for eligible repairs becomes “up to 90%.” For example, if a state spent \$1 billion on non-Interstate highway ER projects in FY2024, the federal share across those projects would be 80%. However, if the state’s total formula funds for FY2024 were less than \$1 billion, the federal share for the state’s ER projects would increase up to 90%.

A 10% increase in the federal share of repair costs for large-scale disasters can represent a significant portion of a state’s transportation budget. Similarly, 10% of repair costs for large-scale disasters can also represent a significant portion of the ER program’s funding.

Extension of the Period of 100% Federal Share for Emergency Repairs

In 2021, as part of the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58), Congress increased the federal share for ER projects under certain circumstances. Prior to 2021, the federal

³² 23 U.S.C. §125(d)(1), 2006 ed. and Supplement IV, <https://uscode.house.gov/view.xhtml?req=granuleid:USC-2010-title23-section125&num=0&edition=2010>.

³³ *Congressional Record*, vol. 141, no. 9, January 17, 1995, <https://www.congress.gov/congressional-record/volume-141/issue-9/senate-section/article/S1000-3>.

³⁴ P.L. 103-211, Ch. 6.

³⁵ 23 C.F.R. §668.103 defines *emergency repairs* as “those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of: (1) minimizing the extent of the damage, (2) protecting remaining facilities, or (3) restoring essential traffic.”

³⁶ Hari Kalla, Associate Administrator for Infrastructure, *Defining and Managing Emergency Relief Repair Activities Eligible for 100 Percent Federal Funding (Revised)*, FHWA, HISM-10, March 7, 2022, <https://www.fhwa.dot.gov/specialfunding/er/220307.cfm>.

³⁷ 13 U.S.C. §120(e).

share was 100% for emergency repairs “accomplished within 180 days.” The IIJA extended this period from 180 days to 270 days.³⁸ Congress had previously extended this period from 90 days to 180 days in 1991.³⁹

Increased Expenses for Specific Projects

In addition to programmatic changes that raised the federal share on ER projects, Congress has at times waived program requirements for specific disasters and projects, increasing overall program costs. As discussed above, Congress repeatedly waived the previous \$100 million cap on ER disasters. Congress has also raised the federal share to 100% for specific ER projects. For example, the I-35W Mississippi River bridge in Minneapolis, MN, collapsed on August 1, 2007, and was deemed eligible for ER program funding. On August 6, 2007, Congress passed a law that, among other provisions, raised the federal share for the bridge reconstruction project to 100%.⁴⁰ More recently, Congress has twice raised the federal share to 100% in response to destructive hurricanes that damaged infrastructure in Puerto Rico: in 2018 in the wake of Hurricanes Irma and Maria, and in 2022 in the wake of Hurricane Fiona.⁴¹

Considerations for Congress

Congress has a variety of options for addressing the disparity between ER program funding and expenses. This section discusses some of these options, which could be implemented separately or in combination. Those options include transferring funds, raising annual authorizations, and reducing or removing federal contributions to ER projects.

Transferring Funds

In the past, Congress has provided additional funds to the ER program to address funding availability. Before 2005, these funds were transferred from the Highway Trust Fund. Since 2005, these funds have been transferred from the Treasury’s general fund. In the past, Congress has passed supplemental funding legislation for the ER program at irregular intervals, contributing to funding challenges and project delays.

General Fund

Congress could continue to appropriate money from the Treasury’s general fund for the ER program, as it has done since 2005. For example, as part of the Consolidated Appropriations Act, 2023 (P.L. 117-328), Congress appropriated \$803 million from the general fund for the ER program.

By relying on general fund appropriations, Congress is funding the ER program from the same source from which many other federal programs and activities derive funding. As a result, the ER program priorities compete with other congressional priorities for the general fund appropriations.

³⁸ P.L. 117-58, §11107; 23 U.S.C. §120(e)(1), 2006 ed. and Supplement V, <https://uscode.house.gov/view.xhtml?hl=false&edition=2011&req=granuleid%3AUSC-1994-title23-section120&f=treesort&num=0>.

³⁹ P.L. 102-240, §1022(a).

⁴⁰ P.L. 110-56.

⁴¹ P.L. 115-123; P.L. 117-328.

Highway Trust Fund

Prior to 2005, Congress provided supplemental funding for the ER program from the Highway Trust Fund. Unlike the general fund, the Highway Trust Fund is dedicated to surface transportation programs. In this case, ER program priorities compete with other surface transportation program priorities but not with other congressional priorities.

However, the Highway Trust Fund does not generally have sufficient revenue to cover ER program expenses. Since 2001, Highway Trust Fund expenditures have exceeded revenue that derive from dedicated taxes.⁴² Since 2008, Congress has several times transferred money from the Treasury general fund to the Highway Trust Fund. The IIJA transferred \$118 billion that the Congressional Budget Office (CBO) estimates will, if current trends continue, keep the Highway Trust Fund operating through FY2027.⁴³ Without changes to its revenue sources or expenditures, the Highway Trust Fund may not be able to provide sufficient funding for the ER program needs in the long run.

Raising the Annual Authorization

Congress could raise the permanent annual authorization for the ER program. Congress has previously considered increasing the ER program's \$100 million permanent annual authorization. For example, the U.S. Department of Transportation's FY2004 budget request included a proposal to increase the annual authorization to \$200 million. In 2003, Senator James Inhofe introduced S. 1072 in the 108th Congress that would have increased the annual authorization to \$300 million.⁴⁴ A higher annual authorization would provide greater fiscal stability than irregular supplemental funding because annual authorizations are predictable and recurring.

If Congress were to increase the permanent annual authorization, determining the level of increase may be an area of contention. Congress might consider the historical average needs of the ER program and raise the annual authorization to maintain a surplus in the ER fund. Congress might restore the ER program's original purchasing power, which would require raising the annual authorization to somewhere in the region of \$700 million to \$1 billion. Congress might also take a gradual approach and index the annual authorization to inflation to maintain the purchasing power of the authorization into the future. Any option that increases the annual authorization would increase the burden on the Highway Trust Fund (as discussed above, CBO projects that the Highway Trust Fund may run out of money by 2028).

Reducing Federal Contributions to ER Projects

Other options for Congress to address the ER program's funding shortfall rely on reducing program expenses. Options include (1) capping funding per disaster and (2) reducing the federal share of project costs.

⁴² Joseph Kile, *Testimony: The Status of the Highway Trust Fund and Options for Paying for Highway Spending*, Congressional Budget Office (CBO), June 18, 2015, p. 4, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50297-transportationtestimony-senate.pdf>.

⁴³ CBO, *Baseline Projections: Highway Trust Fund Accounts*, June 2024, <https://www.cbo.gov/system/files/2024-06/51300-2024-06-highwaytrustfund.pdf>.

⁴⁴ See FHWA, "Statement of Mary E. Peters, Administrator, Federal Highway Administration, DOT, Before the Committee on Environment and Public Works Subcommittee on Transportation and Infrastructure, United States Senate, Hearing on the Fiscal Year 2004 Budget of the Federal Highway Administration," February 27, 2003, <https://www.fhwa.dot.gov/pressroom/test030227.cfm>; 108th Congress, S. 1072, as passed in the Senate.

Capping Funding per Disaster

Congress could reinstitute a cap on ER program funding per disaster. The ER program had a per-disaster cap on funding of \$100 million until 2012, although Congress could waive the cap. A cap would prevent high-cost disasters, such as Hurricane Katrina or the collapse of Baltimore's Francis Scott Key Bridge, from depleting the ER fund.

A cap on ER program funding would likely increase the burden on state and local governments in the wake of major disasters or cause delays in reconstruction. If state and local governments are unable to cover the remaining costs, post-disaster recovery could be delayed until costs were recouped by other methods. This likely would prolong disruptions to travel and economic activity. Such an approach would have greater effects with more costly disasters: the more expensive the disaster repairs, the more a cap would reduce the federal share of a recovery. A cap would reduce federal funding for major projects while having no effect on federal funding for smaller projects below the cap level.

Reducing the Federal Share of Project Costs

Congress could address the ER program's funding shortfall by reducing the federal share for ER projects. Under MAP-21 and the IIJA, Congress increased the federal share for certain ER projects; Congress could reverse both of these changes to the prior level, reduce the federal share to a lower level, or reduce the federal share for certain ER projects. Reducing the federal share would reduce funding for all projects at the same rate. This effect differs from a cap.

Appendix. Appropriated Funds for the Federal Highway Administration Emergency Relief Program

Table A-1. Appropriated Funds for the Federal Highway Administration Emergency Relief Program: FY1990-FY2023

Excludes annual \$100 million permanent authorization

Public Law	Date Enacted	Title of Appropriations Act	Highway Trust Fund (Nominal \$)	General Fund (Nominal \$)	Inflation-Adjusted 2023 \$
P.L. 101-130	Oct. 26, 1989	FY1990 Dire Emergency Supplemental to Meet the Needs of Natural Disasters of National Significance	\$1,000,000,000		\$3,961,934,564
P.L. 102-368	Sept. 18, 1992	Dire Emergency Supplemental Appropriations Act, 1992	\$30,000,000		\$112,473,393
P.L. 103-75	Jan. 5, 1993	Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act, 1993	\$175,000,000		\$651,024,691
P.L. 103-211	Jan. 25, 1994	Emergency Supplemental Appropriations Act, 1994	\$1,665,000,000		\$6,053,235,347
P.L. 104-134	Apr. 26, 1996	Omnibus Consolidated Rescissions and Appropriations Act, 1996	\$300,000,000		\$996,731,465
P.L. 104-208	Sept. 28, 1996	Omnibus Consolidated Appropriations Act, 1997	\$82,000,000		\$272,439,934
P.L. 105-18	June 12, 1997	1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia	\$650,000,000		\$2,077,061,222
P.L. 105-174	May 1, 1998	1998 Supplemental Appropriations and Rescissions Act	\$259,000,000		\$807,388,136
P.L. 106-346	Oct. 23, 2000	Department of Transportation and Related Agencies Appropriations Act, 2001	\$720,000,000		\$1,998,320,838

Public Law	Date Enacted	Title of Appropriations Act	Highway Trust Fund (Nominal \$)	General Fund (Nominal \$)	Inflation-Adjusted 2023 \$
P.L. 107-117	Jan. 10, 2002	Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002	\$175,000,000		\$471,868,567
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		\$714,543,830
P.L. 108-324	Oct. 13, 2004	Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005	\$1,202,000,000		\$2,741,025,426
P.L. 108-447	Dec. 8, 2004	Consolidated Appropriations Act, 2005	\$741,000,000		\$1,689,766,922
P.L. 109-148	Dec. 30, 2005	Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006		\$2,750,000,000	\$5,662,881,758
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	\$1,446,325,741
P.L. 110-28	May 25, 2007	U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007		\$871,022,000	\$1,579,053,860
P.L. 110-161	Dec. 26, 2007	Consolidated Appropriations Act, 2008		\$195,000,000	\$321,906,582
P.L. 110-329	Sept. 30, 2008	Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009		\$850,000,000	\$1,403,182,538

Public Law	Date Enacted	Title of Appropriations Act	Highway Trust Fund (Nominal \$)	General Fund (Nominal \$)	Inflation-Adjusted 2023 \$
P.L. 112-55	Nov. 18, 2011	Consolidated and Further Continuing Appropriations Act, 2012		\$1,622,000,000	\$2,337,212,980
P.L. 113-2	Jan. 29, 2013	Disaster Relief Appropriations Act of 2013		\$1,920,900,000	\$2,687,363,420
P.L. 114-254	Dec. 10, 2016	Further Continuing and Security Assistance Appropriations Act, 2017		\$1,004,017,000	\$1,341,640,651
P.L. 115-31	May 5, 2017	Consolidated Appropriations Act, 2017		\$528,000,000	\$705,552,061
P.L. 115-123	Feb. 9, 2018	Bipartisan Budget Act of 2018		\$1,374,000,000	\$1,758,395,836
P.L. 116-20	June 6, 2019	Additional Supplemental Appropriations for Disaster Relief Act, 2019		\$1,650,000,000	\$2,055,818,195
P.L. 117-43	Sept. 30, 2021	Extending Government Funding and Delivering Emergency Assistance Act		\$2,600,000,000	\$2,973,386,248
P.L. 117-328	Dec. 29, 2022	Consolidated Appropriations Act, 2023		\$803,000,000	\$803,000,000

Source: Federal Highway Administration (FHWA), Office of Program Administration; and “Motion to Instruct Conferees on H.R. 2112, Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2012,” House debate, *Congressional Record*, daily edition, vol. 157, part 167 (November 3, 2011), p. H7277, <https://www.congress.gov/congressional-record/volume-157/issue-167/house-section/article/H7273-6>. Inflation adjustment calculated using Bureau of Economic Analysis, *National Data: National Income and Produce Accounts, Table 5.9.4 Price Indexes for Gross Government Fixed Investment by Type*, September 27, 2024, line 25, <https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpjbMSwyLDNdLCJkYXRhIjpjbWVjYjYXRIZ29yaWVzIiwiaU3VydmV5Ii0sVWVjOSVBBXIRhYmxlX0xpc3QiLCIzOTkiXV19>.

Notes: P.L. 113-2 provided \$2.022 billion. The amount shown under P.L. 113-2 reflects 5% rescission due to sequestration. Inflation adjustments rely on estimates of a measure of price changes over time and thus cannot be considered exact.

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