

GAO

Report to the Subcommittee on
Transportation, Housing and Urban
Development, and Related Agencies,
Committee on Appropriations, House of
Representatives

November 2011

HIGHWAY EMERGENCY RELIEF

Strengthened Oversight of Project Eligibility Decisions Needed

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Highlights of [GAO-12-45](#), a report to the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations, House of Representatives

Why GAO Did This Study

The Federal Highway Administration (FHWA), within the U.S. Department of Transportation (DOT), administers the Emergency Relief Program to provide funds to states to repair roads damaged by natural disasters and catastrophic failures. In 2007, GAO reported that in recent years states' annual demand for emergency relief funds often exceeded the program's \$100 million annual authorization from the Highway Trust Fund and required supplemental appropriations from general revenues to address a backlog of funding requests from states. GAO recommended that FHWA tighten eligibility standards and coordinate with states to withdraw unneeded emergency relief funds, among other actions. For this report, GAO reviewed (1) Emergency Relief Program funding trends since 2007, (2) key program changes made in response to GAO's 2007 report, and (3) the extent to which selected emergency relief projects were approved in compliance with program eligibility requirements. GAO reviewed projects in New York, Texas, and Washington state, states selected based on the amount and frequency of funding allocations since 2007, among other factors.

What GAO Recommends

GAO makes several recommendations including that FHWA establish (1) time frames to limit states' requests for emergency relief funds and to close completed projects and (2) standardized procedures for reviewing emergency relief documentation and making eligibility decisions. DOT provided technical comments on project time frames and costs which GAO incorporated as appropriate.

View [GAO-12-45](#) or key components. For more information, contact Phillip R. Herr at (202) 512-2834 or herrp@gao.gov

HIGHWAY EMERGENCY RELIEF

Strengthened Oversight of Project Eligibility Decisions Needed

What GAO Found

From fiscal years 2007 through 2010, the Emergency Relief Program received about \$2.3 billion, of which \$1.9 billion came from three supplemental appropriations compared with about \$400 million authorized from the Highway Trust Fund. FHWA allocated this funding to 42 states and 3 territories to reduce the backlog of funding requests, with \$485 million in unfunded requests remaining as of June 2011. This backlog list did not include funding requests for August 2011 damages from Hurricane Irene. Because the program lacks time frames to limit states from requesting funds years after events occur, the June 2011 backlog list includes about \$90 million for events that occurred prior to fiscal year 1994. Without time limits for emergency relief funding requests, FHWA's ability to anticipate and manage future program costs is hindered.

In response to GAO's 2007 report, FHWA withdrew about \$367 million of unobligated emergency relief funds from states and redistributed most of this funding for other emergency relief needs. However, additional funding remains unused, including (1) at least \$63 million allocated to states before fiscal year 2007 that has yet to be obligated to projects and (2) \$341 million obligated between fiscal years 2001 and 2006 that remains unexpended. Due to a lack of time frames for states to close-out completed projects, FHWA lacks project status information to determine whether unexpended funding is no longer needed and could be deobligated. FHWA has not addressed GAO's 2007 recommendation to revise its regulations to limit the use of emergency relief to fully fund projects that have grown in scope and cost as a result of environmental or community concerns. The Emergency Relief Program faces the continued risk of escalating costs due to projects that have grown in scope beyond the program's goal of restoring damaged facilities to predisaster conditions.

GAO's review of 83 emergency relief project files in three FHWA state offices found many instances of missing or incomplete documentation—as such, GAO was unable to determine the basis by which FHWA made many eligibility determinations. For example, about half of the project files did not include required repair cost estimates, and 39 of 58 (67 percent) emergency repair projects approved for 100 percent federal funding did not contain documentation of completion within 180 days—a requirement for states to receive 100 percent federal funding. FHWA lacks clear requirements for how states submit and FHWA approves key project documentation, which has resulted in FHWA state offices applying eligibility guidelines differently. Establishing standardized procedures for reviewing emergency relief documentation and making eligibility decisions would provide greater assurance that projects are in fact eligible and that FHWA makes eligibility determinations consistently and transparently.

Instances of Missing or Incomplete Emergency Relief Project Documentation

GAO-identified areas of concern regarding eligibility	Instances
Missing or incomplete detailed damage inspection reports	47 of 83
Missing repair cost estimates	42 of 83
Missing or incomplete dates for 100 percent federal funding projects	39 of 58
Missing documentation for specific improvements	6 of 15

Source: GAO analysis of Emergency Relief Project documentation in three FHWA state offices.

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Abbreviations

Caltrans	California Department of Transportation
DDIR	detailed damage inspection report
DOT	U.S. Department of Transportation
FHWA	Federal Highway Administration
FMIS	Fiscal Management Information System
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
S.R.1	State Route 1
TXDOT	Texas Department of Transportation
WSDOT	Washington State Department of Transportation

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

November 8, 2011

The Honorable Tom Latham
Chairman
The Honorable John W. Olver
Ranking Member
Subcommittee on Transportation, Housing and
Urban Development, and Related Agencies
Committee on Appropriations
House of Representatives

In recent years, many states have experienced natural disasters, such as hurricanes, floods, and storms, which have caused catastrophic damage to transportation infrastructure and overwhelmed the capacity of state and local governments to respond and recover. Reconstruction after these events can cost taxpayers billions of dollars. As part of the continuing federal role in responding to and recovering from natural disasters and similar events, the Federal Highway Administration (FHWA), within the U.S. Department of Transportation (DOT), administers the Emergency Relief Program which provides funding to repair or reconstruct federal-aid highways and roads on federal lands damaged or destroyed by natural disasters and other catastrophic events.¹

Since 1972, Congress has authorized \$100 million annually in contract authority for FHWA's Emergency Relief Program to be paid from the Highway Trust Fund.² However, in recent years the Highway Trust Fund

¹Federal-aid highways are roads that are eligible to receive federal funding through a series of formula grant programs collectively known as the federal-aid highway program. About 1 million miles of roadway across the country are eligible for federal aid and these roads accounted for about 83 percent of the vehicle miles traveled on the nation's roadways in 2007. The federal government has provided assistance to states in response to natural disasters for many years. The Emergency Relief Fund was established in 1938 (Act of June 8, 1938, 75th Cong., 3d. Sess., ch. 328, § 4, 52 Stat. 633, 634-635).

²The Highway Trust Fund is funded on a user-pay principle; it derives revenues primarily from taxes collected on motor fuel and truck-related items and distributes that revenue to the states primarily through a series of formula grant programs collectively known as the federal-aid highway program. The Highway Trust Fund was created in 1956 (Highway Revenue Act of 1956, Pub. L. No. 84-627, § 209, 70 Stat. 387, 397). Contract authority allows federal agencies to incur obligations in advance of appropriations. A subsequent appropriation is needed to liquidate the obligations. Pursuant to this authority, up to \$100 million is authorized to be obligated in any one fiscal year for the program. Any unobligated balance remains available until expended. 23 U.S.C. § 125(c)(1).

has not been the only source of funds for the Emergency Relief Program. The \$100 million annual authorization of contract authority has remained constant since 1972, and due to inflation, it has declined in real value. States' need for assistance from fiscal years 1998 through 2006 consistently exceeded the \$100 million annual authorization of contract authority, resulting in a backlog of funding requests that reached \$740 million in 2004. As a result, the program has relied on supplemental appropriations for 86 percent of its funding from fiscal years 1998 through 2006.³ In past years, supplemental appropriations were drawn from the Highway Trust Fund. However, with the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in August 2005, Congress authorized additional necessary funding for the Emergency Relief Program in excess of the \$100 million annual contract authority to be appropriated from general revenues.⁴

In our 2007 report, we identified a significant fiscal imbalance between available funds and eligible projects in the Emergency Relief Program.⁵ We found that FHWA was not recapturing or redistributing unused Emergency Relief Program allocations to states with immediate program needs, as specified in FHWA's program guidance. We also raised concerns about the use of emergency relief funds to fully finance projects whose scope and costs had grown as a result of environmental and community concerns. We made several recommendations to FHWA to improve its management, including ensuring that unneeded emergency relief allocations were withdrawn on a timely basis so the backlog of unfunded requests could be addressed, and to revise program regulations to tighten the eligibility criteria for emergency relief funding, among other recommendations.

As requested and in light of these concerns, this report reviews (1) FHWA Emergency Relief Program funding trends since our 2007 report, (2) key changes to the Emergency Relief Program implemented in response to concerns raised in our 2007 report, and (3) the extent to which selected

³GAO, *Highway Emergency Relief: Reexamination Needed to Address Fiscal Imbalance and Long-term Sustainability*, [GAO-07-245](#) (Washington, D.C.: Feb. 23, 2007).

⁴Pub. L. No. 109-59, § 1112, 119 Stat. 1144, 1171 (2005).

⁵[GAO-07-245](#).

emergency relief projects were approved in compliance with program eligibility requirements.

To identify Emergency Relief Program funding trends and key changes made to the program since our 2007 report, we reviewed federal statutes, including supplemental appropriation acts, and FHWA data on emergency relief allocations to states from fiscal years 2007 through 2010. Our scope of work did not include any Emergency Relief Program activities in response to Hurricane Irene, which occurred in August 2011. We also reviewed and analyzed financial data from FHWA's fiscal management information system (FMIS) on emergency relief allocations and obligations to states as of May 31, 2011, as well as funds that were obligated to and expended by states for events occurring from fiscal years 2001 through 2010. We reviewed the procedures used by FHWA to enter and verify data into FMIS, and we found the data to be sufficiently reliable for our purposes. We also reviewed FHWA Emergency Relief Program regulations and guidance, including FHWA's *Emergency Relief Manual* as revised in 2009. We interviewed FHWA officials in the Office of Program Administration to determine why and how specific changes were made to the program.

To determine the extent to which selected emergency relief projects were approved in compliance with program eligibility requirements, we reviewed federal statutes, regulations, and FHWA guidance on emergency relief eligibility requirements and examined a sample of emergency relief project files in three FHWA division offices. We selected a nongeneralizable sample of 88 emergency relief project files from FHWA division offices in three states—New York, Texas, and Washington state—to demonstrate the range of practices and projects that the Emergency Relief Program funds across the country. Five of the 88 projects in our review had been withdrawn by states because, in part, FHWA had determined them ineligible for emergency relief funds, bringing the total number of projects reviewed to 83. We selected New York, Texas, and Washington state because they were among the states receiving the most funding allocations from fiscal years 2007 through 2010, among other factors. We chose the files according to several criteria, including a criterion to examine a mix of active and closed projects that were obligated more than \$1 million in emergency relief funds. Prior to our site visits, we requested that the division offices provide all documentation they maintain for each of the projects selected in our sample, which represented approximately 67 percent of all emergency relief funds that FHWA obligated to those states during that time period. We reviewed all the documentation provided during our site

visits, and requested follow-up information as necessary. To gather additional information on the project files, we reviewed the procedures used to manage and oversee emergency relief projects and interviewed officials in the FHWA division offices and state departments of transportation for all three states. We provided the results of our file review to FHWA for their comment and incorporated their responses as appropriate.

We conducted this performance audit from November 2010 to November 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I provides a more detailed description of our scope and methodology.

We provided a copy of this report to DOT for review and comment. DOT officials provided technical comments by e-mail, including information on Emergency Relief Program time frames and growth of project costs. We incorporated this information into the draft as appropriate.

Background

The Emergency Relief Program, authorized by section 125 of title 23 of the U.S. Code, provides assistance to repair or reconstruct federal-aid highways and roads on federal lands that have sustained serious damage from natural disasters or catastrophic failures. Congress has provided funds for this purpose since at least 1938. Examples of natural disasters include floods, hurricanes, earthquakes, tornadoes, tsunamis, severe storms, and landslides. Catastrophic failures qualify if they result from an external cause that leads to the sudden and complete failure of a major element or segment of the highway system that has a disastrous impact on transportation. Examples of qualifying causes of catastrophic failures include acts of terrorism or incidents such as a barge striking a bridge pier causing the sudden collapse of the structure or a truck crash resulting in a fire that damages the roadway. For natural disasters or other events to be eligible for emergency relief funding, the President must declare the event to be an “emergency” or a “major disaster” under the Robert T. Stafford

Disaster Relief and Emergency Assistance Act⁶ or the governor must declare an emergency with the concurrence of the Secretary of Transportation.⁷

Since 1972, Congress has authorized \$100 million annually in contract authority for the Emergency Relief Program to be paid from the Highway Trust Fund. Accordingly, FHWA may obligate up to \$100 million in any one fiscal year for the program. Any unobligated balance remains available until expended.⁸

Additionally, obligations to a single state resulting from a single natural disaster or a single catastrophic failure may not exceed \$100 million.⁹ In some cases, Congress has enacted legislation lifting this cap for large-scale disasters. Moreover, as provided in FHWA's regulations, states are eligible for assistance under the Emergency Relief Program if the cost of the damage from a single event exceeds \$700,000 for emergency assistance.¹⁰ The \$700,000 threshold includes the damage cost for all sites in any state affected by the disaster. According to FHWA guidance, each prospective damage site must have at least \$5,000 of repair costs to qualify for funding assistance—a threshold intended to distinguish unusually large expenses eligible for emergency relief funding from costs that should be covered by normal state maintenance funding.

The Emergency Relief Program's authorizing statute and FHWA's regulations and guidelines distinguish between emergency and

⁶Pub. L. No. 93-288, 88 Stat. 143 (1974), as amended, codified at 42 U.S.C. ch. 68. In September 2011, the Federal Emergency Management Agency issued the National Disaster Recovery Framework which provides a structure for federal, state, tribal, and local agencies to coordinate disaster recovery activities in response to Stafford Act events, which may include emergency relief from FHWA. See Federal Emergency Management Agency, *National Disaster Recovery Framework: Strengthening Disaster Recovery for the Nation* (Washington, D.C., September 2011).

⁷23 U.S.C. § 125(d).

⁸23 U.S.C. § 125(c)(1).

⁹23 U.S.C. § 125(d).

¹⁰The criteria for administering emergency relief funds are set out in 23 C.F.R. Part 668. See, also, FHWA, *Emergency Relief Manual* (Washington, D.C., November 2009). The \$700,000 threshold reflects a presumption that lesser repairs should be covered as heavy maintenance or routine repair activities and paid for using other funds. See 23 C.F.R. § 688.105.

permanent repairs. Emergency repairs are made during and immediately following a disaster to quickly restore essential highway traffic service, minimize the extent of damage, or protect remaining facilities, including removing debris and constructing detours and temporary roadway surfaces. Permanent repairs are undertaken, normally after emergency repairs have been completed, to restore seriously damaged highway facilities to predisaster conditions. In some instances, such as the destruction of a bridge, complete replacement may be needed. In these cases, the bridge would be rebuilt to current design standards¹¹ (see fig. 1 for photographs of typical emergency and permanent repair examples).

Figure 1: Examples of Emergency and Permanent Repairs



Emergency repair example: debris removal



Permanent repair example: bridge replacement

Sources: FHWA Washington state and Texas division offices.

¹¹The *Emergency Relief Manual* makes a distinction between current design standards and “betterments,” which change the function or character of the facility and are discussed later in this report. The program manual states that repaired facilities may be built to current design standards, which could result in improved or added features that do not change the function or character of the facility. For example, a repaired length of roadway may have wider lanes or shoulders and additional roadside safety hardware that result from following current design standards. According to the manual, these features are not betterments.

The Emergency Relief Program may fund up to 100 percent of emergency repair project costs incurred within the first 180 days following an eligible disaster.¹² The program funds permanent repair projects and emergency repair project costs after the first 180 days at the percentage normally provided for work on that type of federal-aid highway.¹³ For example, the federal share for interstate highway projects is 90 percent of the cost, and the federal share for most other federal projects is 80 percent.¹⁴ Also, construction on permanent repairs must begin by the end of the second fiscal year following the year in which the disaster occurred;¹⁵ however, FHWA may grant time extensions for projects needing extensive environmental evaluation, litigation, or complex right-of-way. In addition, the program is not intended to pay for “betterments,” projects that change the function or character of the highway facility, such as expanding road capacity. However, FHWA may determine that betterments are eligible for program funding if they pass a benefit-cost test that weighs their cost against the prospective cost to the Emergency Relief Program for potentially chronic future repairs.

Figure 2 shows processes and areas of responsibilities for the Emergency Relief Program.

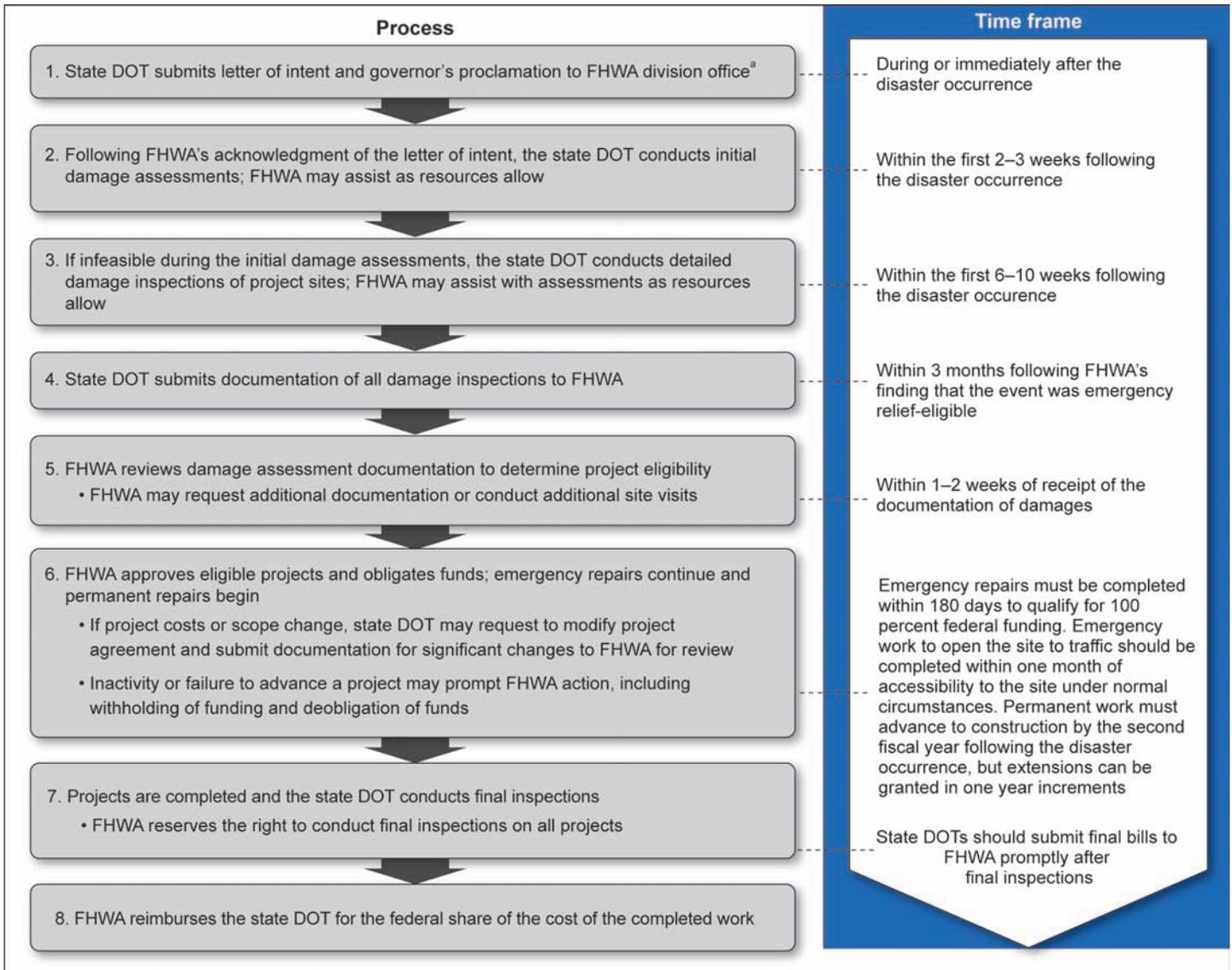
¹²23 U.S.C. § 120(e).

¹³The Emergency Relief Program also funds the repair of roads on federal lands through the Emergency Relief for Federally Owned Roads Program, which is administered through FHWA’s Office of Federal Lands Highway. This program is intended to fund unusually large expenses to repair and reconstruct roads and bridges on federal lands that are seriously damaged by a natural disaster or a catastrophic failure. The program may fund 100 percent of the cost of repairs to federal roads.

¹⁴States with high percentages of federally owned public lands may be reimbursed at a higher federal share percentage, in accordance with a predetermined sliding scale percentage.

¹⁵23 C.F.R. Part 668.

Figure 2: Emergency Relief Project Processes and Areas of Responsibility



Source: GAO analysis of FHWA information.

^aA governor's declaration is not required if the President has declared the event to have been an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

FHWA division offices located in each state review applications for emergency relief submitted by the state departments of transportation and decide the eligibility of emergency relief projects. Once the division

office determines that an event is eligible for funding, it requests an emergency relief allocation from FHWA's Office of Program Administration, which manages the allocation of emergency relief to division offices.¹⁶ If funding is not immediately available, the request is added to a nationwide list of funding requests, known as the emergency relief backlog list, which is used to apprise Congress of states' requests for funding for specific events. As funding becomes available for obligation—either through the program's \$100 million annual authorization of contract authority or through a supplemental appropriation from Congress—FHWA enters into a project agreement for individual projects formalizing the conditions of its project approval and incurs obligations, based on the damage estimates prepared by states and approved by FHWA.¹⁷

As with other federal-aid highway programs, FHWA reimburses the states for emergency relief work as that work is completed and invoiced. If emergency relief funding is not immediately available for emergency relief work, FHWA may obligate other available transportation funds¹⁸ as may be necessary for the immediate execution of emergency relief work and reimburse any funds actually expended once emergency relief funds become available.¹⁹ Because estimates are based on circumstances existing at the time funds are obligated, more funding is sometimes obligated than is ultimately needed. FHWA may deobligate unexpended funds which will not be needed by states, increasing the amount of funds available for obligation for use for other projects.

The level of FHWA's oversight in the design and construction of federal-aid projects, including emergency relief, is determined by the

¹⁶FHWA allocates available budget authority to states in a manner that is in some respects similar to the process by which funding is apportioned for purposes of the federal-aid highway formula grant programs. Unlike those programs, however, allocation has no statutory or even regulatory basis. However, as with apportionments, when funds are allocated, cash is not actually disbursed. Instead, states are notified that they have federal funds available for their use. As projects are approved, funding is obligated. Federal funds are only expended when the federal government makes payments to the states for costs as work is completed.

¹⁷23 U.S.C. § 106(a)(2),(3).

¹⁸Only funds for programs authorized under title 23 of the U.S. Code are available for emergency relief work.

¹⁹23 U.S.C. § 125(c)(2).

classification of the roadway. Since the passage of the Intermodal Surface Transportation Efficiency Act in 1991,²⁰ states have been allowed to assume an increased amount of oversight responsibility for the design and construction of federal-aid projects. However, this expanded authority does not diminish FHWA's responsibility to determine whether projects are eligible for federal funds or ensure that federal funds are efficiently and effectively managed. States are primarily responsible for oversight of federal-aid highway projects, including emergency relief, on federal-aid highways that are off the National Highway System—which represent approximately 83 percent of the nation's road miles. In addition, states may assume responsibility for National Highway System projects not on the Interstate Highway System.²¹ State departments of transportation may approve design plans and estimates and conduct project inspections to ensure the completion of emergency relief projects, among other things. FHWA exercises full oversight responsibility for many projects on the Interstate Highway System, as shown in table 1.²²

²⁰Pub. L. No. 102-240, § 1016, 105 Stat. 1914, 1945 (1991), codified as positive law at 23 U.S.C. § 106(c). See, also, 23 U.S.C. § 106(g) requiring federal oversight.

²¹The National Highway System is approximately 160,000 miles of roadway, and it includes the Interstate Highway System as well as other roads important to the nation's economy, defense, and mobility.

²²Each state's department of transportation and the FHWA division office in that state have a federal-aid program stewardship and oversight agreement in place which documents the expectations and roles and responsibilities of the state and FHWA in implementing the federal-aid highway program.

Table 1: Types of Projects Receiving State Oversight versus FHWA Oversight

Type of project	Mileage	Design and construction oversight	Exceptions
Federal-aid highways off the National Highway System	798,000	State assumes oversight responsibilities for design, plans, specifications, estimates, contract awards, and inspection of projects.	State determines state oversight is not appropriate
National Highway System, non-Interstate routes	115,000	State <i>may</i> assume the oversight responsibilities for design, plans, specifications, estimates, contract awards, and inspections of projects.	State or FHWA determines state oversight is not appropriate
National Highway System, Interstate routes	47,000	FHWA exercises full oversight responsibilities to (1) prescribe design and construction standards, (2) approve design plans and estimates, (3) approve the selection of the contract award, (4) inspect the progress of construction, and (5) render final acceptance on projects when they are completed.	Certain types of projects, or projects below a dollar threshold, where FHWA and state have agreed state oversight is appropriate

Source: GAO analysis.

Although FHWA administers the Emergency Relief Program in the same manner as the regular federal-aid highway program, there are important differences between the two. The regular program derives revenues from highway users and funding is provided on a multiyear basis through formulas designed to ensure that each state receives its “fair share” based on estimated contributions to the Highway Trust Fund. Since the passage of SAFETEA-LU, a majority of emergency relief funds, as we have reported, have derived from general revenues, for expenses that for the most part cannot be planned for, and states compete for funding based on need. While formula funding for the regular federal-aid highway program is limited by amounts annually apportioned to the states, any emergency relief funds that a state receives are in addition to such apportionments. And while regular federal-aid program projects require a state to match its federal funding amount, emergency repair projects may qualify for 100 percent federal funding.

Our 2007 report identified concerns regarding FHWA’s financial oversight of the Emergency Relief Program and the program’s eligibility criteria and made several recommendations to FHWA.²³

- First, we found that FHWA was not routinely recapturing all unused program funds allocated to states—including unused unobligated emergency relief funds as well as unexpended obligated funds—that

²³ [GAO-07-245](#).

were not needed for eligible projects. This contributed to a situation in which states with immediate disaster needs were placed on the backlog list of states requesting funds, while states with no current disaster needs retained their allocations.²⁴ We therefore recommended that FHWA division offices annually coordinate with states to identify unused emergency relief funds and withdraw any unneeded amounts. Funds in excess of any outstanding need, if any, would be identified to Congress for rescission or to reduce future appropriations.

- Second, we expressed concern that the scope of eligible activities had expanded in recent years as a result of congressional waivers or FHWA rulemaking to revise eligibility criteria. As a result, emergency relief funds were being used to fully finance projects that had expanded in scope and costs beyond the typical emergency relief project. To address this concern, we recommended that FHWA tighten the eligibility criteria for funding, which could include limitations on the use of emergency relief funds to fully finance projects that grew in scope and costs as a result of environmental and community concerns.
- Third, we noted that the lack of a standard definition of what constitutes an eligible damage site might allow many smaller costs to be charged against the program and recommended that FHWA clarify its program manual to better define an eligible site.

²⁴[GAO-07-245](#).

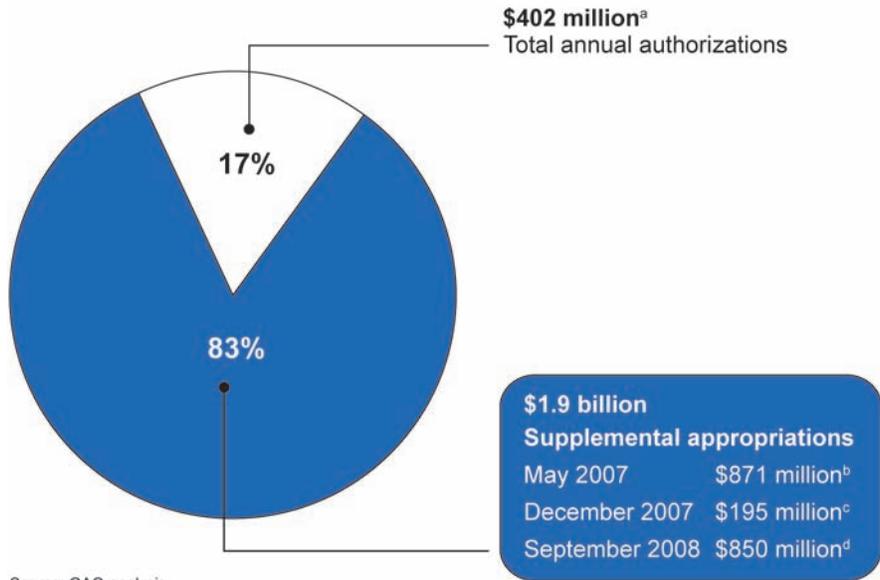
Supplemental Appropriations Comprise Most Emergency Relief Funding Provided to States, and a Backlog of Funding Requests Remains

From Fiscal Years 2007 through 2010, Congress Provided More than \$2.3 Billion for Emergency Relief Events and to Address a Backlog of Unfunded Requests

From fiscal years 2007 through 2010, Congress provided more than \$2.3 billion to the Emergency Relief Program, including more than \$1.9 billion in three supplemental appropriations from general revenues and about \$400 million in contract authority paid from the Highway Trust Fund (see fig. 3). The supplemental appropriations represented 83 percent of the program's funding over that time period. This percentage has been fairly consistent over time: 86 percent of the total Emergency Relief Program funding provided from fiscal years 1990 through 2006 came from supplemental appropriations.²⁵

²⁵[GAO-07-245](#).

Figure 3: Total Emergency Relief Program Funding, Fiscal Years 2007 through 2010



Source: GAO analysis.

^aIn fiscal year 2007, FHWA received almost \$102 million in contract authority rather than the typical \$100 million. The additional \$2 million was the Emergency Relief Program's share of additional budget authority provided to all highway programs to align total highway budget authority with revised revenue from the Highway Trust Fund for that year.

^bU.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, title IV, ch. 8, 121 Stat. 112, 160 (2007).

^cConsolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. K, title I, 121 Stat. 1844, 2384 (2008).

^dConsolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, div. B, title I, ch. 10, 122 Stat. 3574, 3598 (2008).

Two of the supplemental appropriations that Congress provided to the Emergency Relief Program since fiscal year 2007 were used to address the backlog of unfunded emergency relief requests from states. In May 2007, Congress provided \$871 million²⁶ to help clear a backlog of \$736 million in funding requests from 46 states. In September 2008, when the backlog list reached more than \$560 million, Congress provided \$850 million to address this backlog and provide additional funds for future

²⁶U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. Pub. L. No. 110-28, title IV, ch. 8, 121 Stat. 112, 160 (2007).

requests.²⁷ In December 2007, Congress provided \$195 million for the reconstruction of the Interstate 35 West Bridge in Minnesota.²⁸

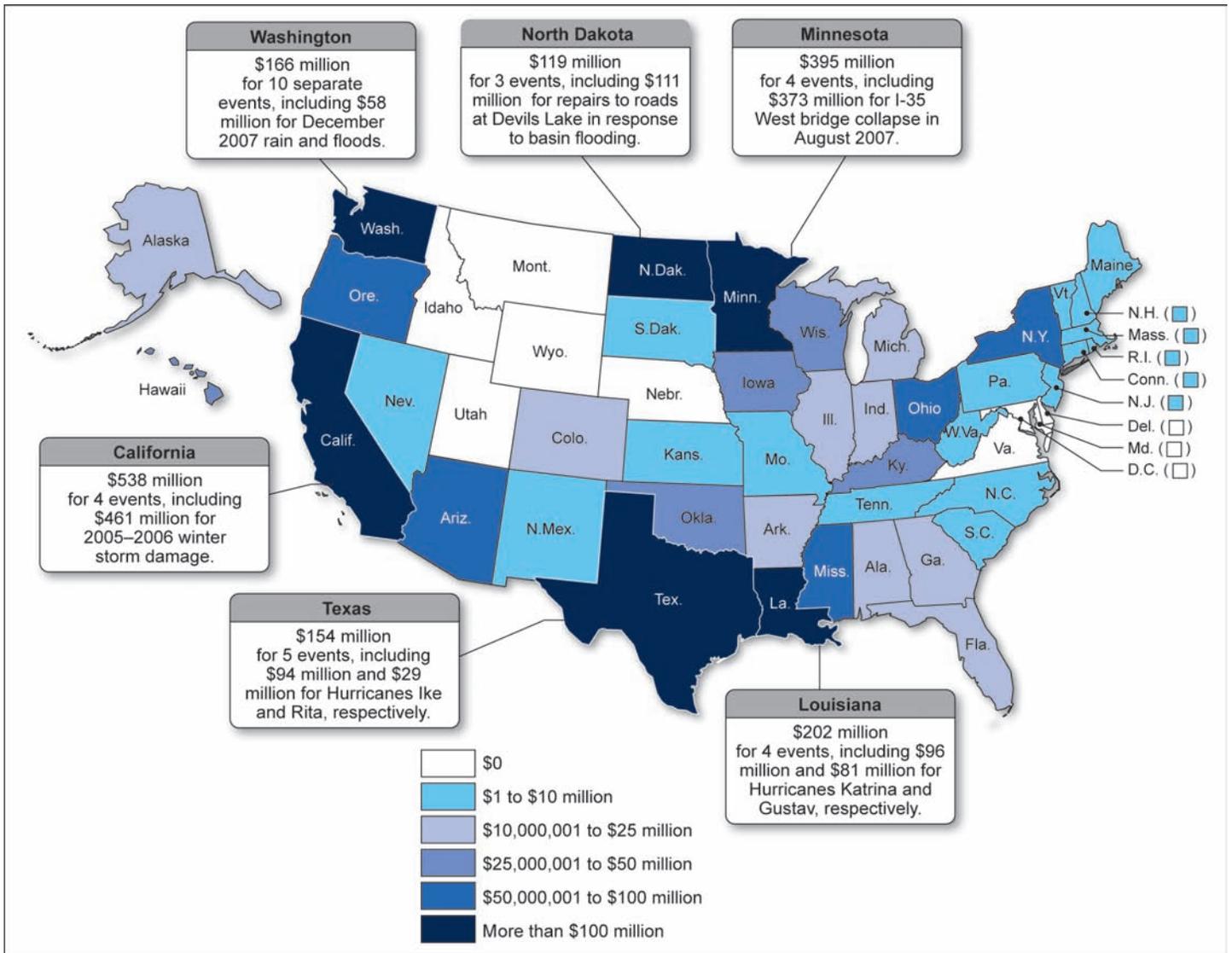
FHWA has allocated all of the \$2.3 billion provided to the program since fiscal year 2007, as well as an additional \$100 million carried over from previously provided program funding, among 42 states and three territories.²⁹ Sixty-five percent of the allocations (almost \$1.6 billion) went to six states—California, Louisiana, Minnesota, North Dakota, Texas, and Washington state (see fig. 4). California received almost \$538 million, the most of all states, and most of this was a result of the 2005–2006 winter storms. Washington state was allocated almost \$166 million in response to 10 events ranging from a single event estimated to cost \$1 million to about \$58 million to respond to flooding caused by severe rains in December 2007.

²⁷Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, div. B, title I, ch. 10, 122 Stat. 3574, 3598 (2008).

²⁸Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. K, title I, 121 Stat. 1844, 2384 (2008). This supplemental appropriation followed separate legislation passed soon after the bridge collapsed, in which Congress authorized \$250 million in emergency relief funds for this project. See Pub. L. No. 110-56, § 1(c), 121 Stat. 558 (2007).

²⁹Of the \$2.4 billion that FHWA allocated to states from fiscal years 2007 through 2010, about 59 percent (\$1.4 billion) was allocated for events that occurred during those years. FHWA allocated the remaining 41 percent (\$988 million) for events that occurred from fiscal years 2001 through 2006.

Figure 4: Emergency Relief Allocations by State, Fiscal Years 2007 through 2010



Sources: GAO analysis of FHWA data; Map Resources (map).

Note: The three territories that were provided allocations from fiscal years 2007 through 2010 were American Samoa (\$23 million), Puerto Rico (\$20 million), and U.S. Virgin Islands (\$730,591).

In our 2007 report we noted that Congress has, on occasion, expanded Emergency Relief Program eligibility criteria and increased the amount of program funding to respond to specific disasters.³⁰ For example we noted that Congress directed the Emergency Relief Program to fund 100 percent of all repair and reconstruction of highways, roads, and bridges necessitated by Hurricanes Katrina, Rita, and Wilma, because the states' resources were inadequate to deal with the string of disasters.³¹ From fiscal years 2007 through 2010, FHWA allocated about \$484 million in emergency relief in response to two events—one in Minnesota and one in North Dakota.

- *Collapse of the Interstate 35 West Bridge in Minneapolis, Minnesota.* Since 2007, FHWA allocated about \$373 million³² for the reconstruction and repair of an 8-lane, 1,900 foot bridge spanning the Mississippi River which collapsed on August 1, 2007, killing 13 people and injuring 145 others.³³ Five days after the disaster, Congress passed legislation that authorized the use of emergency relief funds for the repair and reconstruction of the bridge, waived the \$100 million limitation on emergency relief obligations, and established a 100 percent federal share for all repair costs for the project.³⁴
- *Basin flooding of roadways at Devils Lake, North Dakota.* Since fiscal year 2007, North Dakota was allocated more than \$111 million in emergency relief funding for projects associated with Devils Lake—a large natural basin that lacks an outlet for rising water to flow out of

³⁰[GAO-07-245](#).

³¹Department of Defense, Emergency Supplemental Appropriation to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, Pub. L. No. 109-148, ch. 9, 119 Stat. 2778 (Dec. 30, 2005).

³²This amount includes \$195 million made available through the December 2007 supplemental appropriation.

³³The National Transportation Safety Board later determined that the probable cause of the collapse was inadequate load capacity of critical bridge components due to an error in the bridge's design. See National Transportation Safety Board, *Collapse of I-35W Highway Bridge, Minneapolis, Minnesota, August 1, 2007*, Highway Accident Report NTSB/HAR-08/03 (Washington, D.C., Nov. 14, 2008). Emergency Relief Program rules define a catastrophic failure as a sudden failure of a major element or segment of a federal road which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance.

³⁴Pub. L. No. 110-56, § 1(a), (b), 121 Stat. 558 (2007).

the lake. Starting in the early 1990s, the lake level has risen dramatically, threatening adjacent roadways. Although Emergency Relief Program regulations define a natural disaster as a sudden and unusual natural occurrence, FHWA determined that the gradual and predictable basin flooding at Devils Lake is eligible for Emergency Relief Program funding.³⁵ In 2005, through SAFETEA-LU, Congress authorized up to \$10 million of Emergency Relief Program funds to be expended annually, up to a total of \$70 million, to address an additional problem at Devils Lake and make repairs to certain roads which were impounding water and acting as dams.³⁶ In the absence of other authority, this funding must come out of the \$100 million annual authorization of contract authority, effectively reducing the annual emergency relief funding available to other states. As of March 2010, the Emergency Relief Program has provided more than \$256 million for projects related to Devils Lake flooding.³⁷

Emergency Relief Faces Risk from Escalating Costs of Events Occurring in Past Years

In recent years, Congress has provided significant supplemental funding to the Emergency Relief Program, but as of June 2011, a \$485 million backlog of funding requests from states remained. This backlog did not include funding requests for August 2011 damages from Hurricane Irene. The backlog list provides a snapshot of states' funding requests at a given time and is subject to change as states experience new eligible events. According to guidance in FHWA's *Emergency Relief Manual*, requested amounts are based on the states' anticipated need for emergency relief for the current fiscal year and may be less than the total emergency relief needs for any specific event.

The June 2011 backlog list contained almost \$90 million in formal funding requests for several events that occurred between 1983 and 1993 that were previously determined to be eligible by FHWA. Specifically, California requested almost \$83 million for a single, long-term project in response to a 1983 rockslide, known as Devil's Slide, and an additional \$6.5 million for four other events from fiscal years 1990 through 1993.

³⁵In 1996, FHWA amended its Emergency Relief Program regulations to explicitly provide that raising road grades in response to an unprecedented rise in basin water levels was an emergency relief-eligible activity. 23 C.F.R. § 668.109(b)(8).

³⁶Pub. L. No. 109-59, § 1937, 119 Stat. 1510 (2005).

³⁷App. II provides additional information on Devils Lake emergency relief projects.

According to FHWA, these requests are for approved emergency relief events with projects that have had delays due to environmental issues or cost overruns.

Once an event has been approved for emergency relief by FHWA, current program rules do not establish a time limit in which states must submit all funding requests for repairs. Although FHWA requires states to submit a list of projects within three months of approving a state's application for emergency relief,³⁸ eligibility stemming from an approved event does not lapse, and a state's list of projects may be amended at any time to add new work. Consequently, FHWA faces the risk of receiving reimbursement requests from states for projects years after an event occurs, including requests for projects that have experienced significant delays and cost increases over time, due to environmental or community concerns. The June 2011 backlog list included project funding requests for two events that occurred more than 10 years ago and which demonstrate FHWA's risk of escalating long-term costs due to older events.

Devil's Slide tunnel for State Route 1 in California. Total costs estimated to be more than \$631 million in emergency relief funds resulted from the ongoing construction of a tunnel in response to a 1983 landslide in California. The Devil's Slide area in California is an unstable cliff formation on the Pacific coast near San Francisco that is subject to reoccurring rock slides onto State Route 1 (S.R.1). Following a major landslide over the winter of 1983 that closed S.R.1 for 3 months, the California Department of Transportation (Caltrans) began to pursue the idea of relocating S.R.1 away from the slide area. The project required a comprehensive environmental impact study, which took several years to complete. The study was subsequently challenged in U.S. District Court, which delayed construction for several more years and resulted in an additional environmental review. As we reported in 2007, in the years that passed since the original environmental impact study, community attitudes shifted in favor of relocating S.R.1 by way of a tunnel through the mountain behind Devil's Slide so that S.R.1 would not be affected by future rock slides. In 1998, Congress declared the Devil's Slide project to be eligible for emergency relief³⁹ and, after an additional environmental

³⁸23 C.F.R. § 668.113(a).

³⁹The Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, § 1217(a), 112 Stat. 107, 214 (1998).

review, the tunnel alternative was selected in 2002 and construction of a pair of 4,200-foot-long, 30-foot-wide tunnels began in 2006—23 years after the originating emergency relief event.

Construction of the tunnel is ongoing, with a planned completion in March 2013. To date, FHWA has obligated about \$555 million in emergency relief funds to the Devil's Slide tunnel project out of an estimated cost of \$631 million. The \$631 million total project cost estimate includes the \$83 million requested on the June 2011 backlog list—which is for work completed during fiscal year 2011—as well as an additional \$120 million to be requested in the future to fully reimburse Caltrans to complete the project.

Alaskan Way Viaduct in Seattle, Washington. The June 2011 backlog list also contained a “pending” request of \$40.5 million from Washington state in response to a February 2001 earthquake which damaged the Alaskan Way Viaduct—a 2-mile double-deck highway running along Seattle’s waterfront.⁴⁰ In the months after the event, FHWA approved \$3.6 million for emergency relief repairs to cracks in several piers supporting a section of the viaduct, which were completed by December 2004. At the time of the earthquake, the Washington State Department of Transportation (WSDOT) had begun considering options for replacing the viaduct, which was approaching the end of its design life. After continued monitoring, WSDOT found that the viaduct had experienced accelerated deterioration as a result of the earthquake and requested \$2 billion in emergency relief to replace the viaduct. Congress directed FHWA and state and local agencies to determine the specific damages caused by the earthquake and the amount eligible for emergency relief.⁴¹ In response, FHWA found that while the replacement of the entire viaduct was not eligible for emergency relief, the project was eligible to receive \$45 million to replace the section of the viaduct damaged by the

⁴⁰According to FHWA’s *Emergency Relief Manual*, a pending request is considered an initial estimate of emergency relief needs that is subject to change and is not to result in an actual emergency relief allocation. Instead, pending requests are used to keep FHWA’s Office of Program Administration apprised of the most current needs for any known eligible event.

⁴¹SAFETEA-LU directed DOT, along with WSDOT and the city of Seattle, Washington, to conduct a comprehensive study to determine the specific damage to the Alaskan Way Viaduct from the 2001 earthquake and the amount of assistance from the emergency relief fund for which the viaduct is eligible. Pub. L. No. 109-59, § 1934, 119 Stat. 1482.

earthquake.⁴² FHWA further found that if WSDOT decided to move forward with a more comprehensive replacement project for the entire facility, the estimated amount of emergency relief eligibility could be applied to that project. WSDOT now plans to replace the entire viaduct with a bored tunnel under downtown Seattle, with an estimated cost of almost \$2 billion. According to FHWA's Washington state division office, the \$40.5 million listed on the June 2011 emergency relief backlog list will be obligated toward the construction of the larger replacement project for the viaduct.

The lack of a time limit for states to submit emergency relief funding requests raises the risk of states filing claims for additional funding years after an event's occurrence, particularly for projects that grow significantly in cost or scope over time. States may have good reasons for submitting funding requests years after an event—particularly for larger-scale permanent repairs that may take years to complete—but such projects can grow unpredictably. The example of the relocation of S.R. 1 away from Devil's Slide and the cost and scope increases that resulted from more than two decades of delays to complete lengthy environmental reviews and address community concerns is case and point. The absence of a time limit for states to submit funding requests hinders FHWA's ability to manage future claims to the program and creates a situation where Congress may be asked to provide additional supplemental appropriations for emergency relief years after an event occurs. Furthermore, states requesting emergency relief funds for projects many years after an event raises questions as to whether the repairs involved meet the goal of the Emergency Relief Program to restore damaged facilities to predisaster conditions.

In 2007 we recommended that FHWA revise its regulations to tighten program eligibility criteria, which could include limitations on the use of emergency relief funds to fully finance projects that grew in scope and cost as a result of environmental and community concerns. In July 2011, DOT's regulatory agenda⁴³ included a planned rulemaking for the Emergency Relief Program that would, among other actions, consider

⁴²FHWA, WSDOT, Seattle City Department of Transportation, *Alaskan Way Viaduct Emergency Relief Eligibility, Report to Congress* (Washington, D.C., June 2007).

⁴³The regulatory agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and recently completed actions of the DOT.

specific time restrictions for states when filing a claim for emergency relief eligible work.⁴⁴ However, in October 2011, FHWA withdrew this planned item from its agenda. According to an FHWA official, the planned rulemaking was withdrawn because it was premature and because FHWA is still determining what changes if any are needed to address GAO's 2007 recommendations.

FHWA's Program Revisions Have Not Fully Addressed Prior Concerns

FHWA Now Has Procedures to Withdraw Some Unused Emergency Relief Allocations from States, But Lacks Information to Verify Whether Additional Unused Allocations Are Still Needed

Since our 2007 report, FHWA has implemented a process to withdraw unused allocations and reallocate funding to benefit other states. FHWA undertook these actions in response to our recommendation to require division offices to annually coordinate with states to identify and withdraw unused allocations that are no longer needed so funds may be used to reduce the backlog of other program requests.⁴⁵ Since 2007, FHWA has based its allocations on a state's estimate of anticipated emergency relief obligations for the fiscal year. Prior to fiscal year 2007, FHWA's policy was to allocate the full amount of each state's emergency relief request, based on total available program funds.

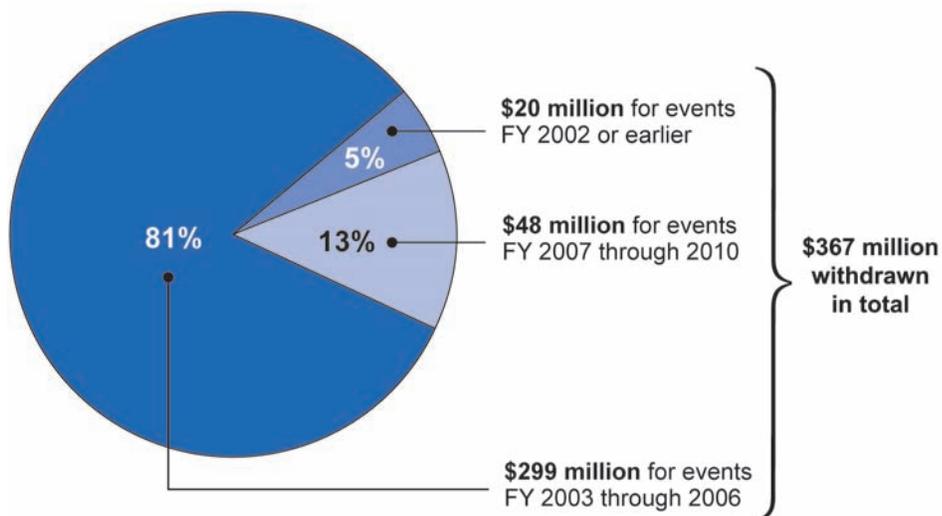
In fiscal years 2010 and 2011, FHWA division offices coordinated with states to identify and withdraw unused allocations representing approximately \$367 million in emergency relief funds from a total of 25

⁴⁴According to DOT's Spring 2011 regulatory agenda, the rulemaking would have considered amending 23 C.F.R. Part 668 to update the annual threshold for an emergency relief event, raise the site threshold and clarify the definition of a site and other definitions, and provide specific time limit restrictions for states when filing a claim for emergency relief eligible work. This rulemaking would also have considered requiring states to develop a plan for obligation needs for emergency relief funding and impose restrictions on the applicability of "quick release" emergency relief allocations.

⁴⁵GAO-07-245. We also recommended that in the event these funds are not needed for other eligible projects, FHWA should identify these funds to Congress either for rescission or to reduce future appropriations.

states and 2 territories.⁴⁶ To withdraw unused funds from states, FHWA reviews its financial database, FMIS, to identify the amount allocated to each state that has not been obligated to specific projects. FHWA then asks each state to identify remaining fiscal year need for new obligations and the amount of any allocations that will no longer be needed. FHWA then withdraws the amount determined by the state to be no longer needed and reallocates that amount to other nationwide emergency relief needs, such as unfunded requests on the backlog list. Most of the withdrawn allocations were originally allocated to states from fiscal years 2003 to 2006, as shown in figure 5. Of the \$299 million that was withdrawn for events occurring from fiscal years 2003 to 2006, about \$230 million was withdrawn from Florida.

Figure 5: Unobligated Emergency Relief Allocations Withdrawn from States since 2007 by the Fiscal Year in Which the Events Occurred



Source: GAO analysis of FHWA data.

Note: Percentages do not add to 100 percent due to rounding.

⁴⁶The \$367 million in unused allocations were withdrawn on two separate occasions: on December 1, 2009, FHWA withdrew \$105 million, and on November 24, 2010, FHWA withdrew \$262 million.

FHWA reallocated \$295 million of the \$367 million withdrawn from states for other nationwide requests.⁴⁷ According to FHWA, the remaining \$72 million that was withdrawn but not yet reallocated will be made available to states in future allocations.

As of the end May 2011, \$493 million that FHWA allocated to states in response to events occurring since 1989 remains unobligated.⁴⁸ A significant portion of this amount likely reflects the recent allocation of \$320 million in April 2011. However, at least \$63 million of the unobligated balance is for older allocations, provided prior to fiscal year 2007. Specifically, New York's unobligated balance includes almost \$52 million provided after the September 11, 2001, terrorist attacks for roadway repairs delayed due to ongoing building construction around the World Trade Center site.⁴⁹ FHWA's New York division reported that these repairs are not expected to be completed until 2014. In addition, California maintained an unobligated balance of more than \$11 million from the October 1989 Loma Prieta earthquake. According to FHWA California division officials, FHWA sought to withdraw some of this allocation, but Caltrans and local officials indicated that this allocation was necessary to complete environmental mitigation and bike path projects that were part of reconstruction of the collapsed Bay Bridge connecting San Francisco and Oakland in California.

Although the *Emergency Relief Manual* states that FHWA division offices are to identify and withdraw unused program funding allocations annually, we found several instances in which division offices applied unused allocations from existing events to new events in the same state without requesting a new allocation. Specifically, our file review at the FHWA

⁴⁷FHWA redistributed this \$295 million, as well as other funds made available to the program, through two separate allocations to states. In March 2010, FHWA allocated approximately \$339 million to states, which included amounts from the first withdrawal of \$105 million from December 2009. In April 2011, FHWA allocated \$320 million to states, which included amounts from the second withdrawal of \$262 million.

⁴⁸Unobligated funds refer to amounts that have been allocated to states by FHWA, but have yet to be obligated for specific projects. This amount includes all allocations to states as of the end of May 2011.

⁴⁹In total, as of the end of May 2011, \$97 million made available to New York for emergency relief in response to the September 11, 2001, terrorist attacks has yet to be used. This includes the unobligated balance of \$52 million, as well as an additional \$45 million that has been obligated to projects but not expended as of the end of May 2011. This unexpended balance is discussed later in this report.

Washington state and New York state division offices identified three events from fiscal years 2009 and 2010 that the division offices approved as eligible and funded with allocations that were no longer needed from previous events. This practice, which was permitted in the 1989 version of the *Emergency Relief Manual*, limits FHWA's ability to track unobligated balances for specific events and determine whether those funds are no longer needed and may be withdrawn. FHWA took steps to limit divisions from using this practice by removing language permitting the practice in the 2009 *Emergency Relief Manual*. According to FHWA, this change was made so that funds could be more equitably distributed across the nation to address the backlog of funding requests, rather than allowing states to hold unused funds in reserve for future events.

Although FHWA removed the language permitting this practice from the manual, FHWA has not provided written guidance to its divisions to prohibit them from applying unused allocations to new events in the same state, and the practice is still being used. For example, in February 2011, FHWA's headquarters allowed the Washington state division to shift unused funds from a prior event to a new event, and in doing so, the division office did not submit a request for an allocation of funds for those new events and FHWA headquarters did not provide an allocation for those events. Consequently, FHWA headquarters did not have a record for the events, nor did it know the amount of funds made available by the division for these events. Furthermore, FHWA headquarters officials were unable to determine how prevalent this practice was across division offices. As a result, FHWA headquarters lacks information on what funding was made available and remains unobligated to states for specific events. Because Emergency Relief Program funding is not subject to the annual limits that the regular federal-aid highway program is, states have an incentive to retain as much emergency relief funding as possible by not returning unused funds. The lack of information on the amount of funds that could be made available for specific events could prevent FHWA from verifying whether allocations provided to states are still needed or may be withdrawn and used to meet current needs.

In Addition to Unused Allocations, Obligated Funds Remain Unexpended

In addition to the unused allocations, substantial amounts of obligated emergency relief funding have not been expended. About \$642 million in emergency relief funding obligated for states from fiscal years 2001 through 2010 remains unexpended as of May 2011—including about \$341 million in emergency relief funds obligated from fiscal years 2001 through 2006.⁵⁰ In total for the Emergency Relief Program, 8 percent of all funding obligated from fiscal years 2001 through 2006 has yet to be expended (see table 2).

Table 2: Emergency Relief Program Obligations and Expenditures, Fiscal Years 2001 through 2006

Dollars in millions

	Fiscal year						Total
	2001	2002	2003	2004	2005	2006	
Obligations	\$360	\$67	\$195	\$1,082	\$1,991	\$758	\$4,454
Expenditures	314	65	191	1,072	1,803	667	4,113
Unexpended balance	46	2	5	10	188	91	341
Percent expended	87%	97%	98%	99%	91%	88%	92%

Source: GAO analysis of FHWA financial data.

Note: The amounts provided for each fiscal year were rounded to the nearest million and may not add to the total amount provided due to rounding.

Almost half of the unexpended balance from fiscal years 2001 through 2006 is for projects in response to several extraordinary events that occurred during those years, including the September 11, 2001, terrorist attacks in New York and Gulf Coast Hurricanes Katrina, Rita, and Wilma in 2005. Specifically, about \$45 million of the \$46 million that remains unexpended for fiscal year 2001 is for repair projects to facilities around the World Trade Center site in New York City. Of the \$188 million that remains unexpended for fiscal year 2005, about \$118 million is for projects in Louisiana in response to Hurricane Katrina. As of the end of May 2011, FHWA obligated about \$952 million to 155 emergency relief projects in Louisiana for this event and has since made reimbursements to the state for all but 1 of these projects, providing approximately 88 percent of the amount obligated.

⁵⁰Unexpended funds refer to program funding that has been obligated to specific projects but has yet to be paid out to states (expended) in reimbursement for completed work.

Although substantial unexpended obligated funding remains, FHWA lacks information to determine the amount that is unneeded and could be deobligated because there is no time frame for closing out completed emergency relief projects. FHWA division officials in New York and Texas reported that many emergency relief projects are administered by local public agencies, including towns and counties, and these entities are often slow to process their reimbursement requests through the state department of transportation. As such, FHWA lacks information on the status of these projects and whether projects are ongoing or have been completed. For example, in Texas, 28 of 30 projects since 2007 included in our file review were listed as active in FHWA's national database, FMIS. However, according to Texas Department of Transportation (TXDOT) officials, construction on 23 of the 28 active projects was in fact completed and waiting to be closed out. FHWA division office officials reported that FMIS is not a project management system and does not provide the actual status of the construction of projects. As such, states may have completed some emergency relief projects but not processed reimbursement requests from local public agencies or completed final project financial audits. Projects remain active in FMIS until final vouchers have been processed to reimburse states. DOT's Office of Inspector General and external independent auditors have both identified inactive or unexpended obligations as a significant concern within FHWA.⁵¹ Without clear time frames for states to close out completed emergency relief projects, FHWA lacks important information on the status of projects and whether unexpended project funds are no longer needed and may be deobligated to be made available for other emergency relief projects.

Prior Concerns about Project Eligibility Have Yet to Be Addressed

FHWA has yet to address our longstanding concern about, and our 2007 recommendation for addressing, the use of emergency relief funds to finance projects that have grown in scope beyond the original intent of the program, which is to restore damaged facilities to predisaster

⁵¹DOT, *Agency Financial Report Fiscal Year 2010* (Washington, D.C., Nov. 8, 2010), and DOT, Office of Inspector General, *Report on Inactive Obligations, FHWA*, Report No. FI-2004-039 (Washington, D.C., Mar. 31, 2004).

conditions.⁵² In 1996, we questioned FHWA's decision to use more than \$1 billion in emergency relief funds to replace the Cypress Viaduct in Oakland, California, which collapsed as a result of the Loma Prieta earthquake in October 1989.⁵³ FHWA engineers initially estimated that replacing the destroyed structure along its predisaster alignment would cost \$306 million. In response to public concern, Caltrans identified several alternative alignments that it studied in a 2-year environmental review. In 1991, Caltrans and FHWA decided to replace the destroyed 1.5-mile structure, which had bisected a residential area, with a new 5-mile structure running through active rail yards. This cost estimate later increased to more than \$1.1 billion at the time of our 1996 report—an increase of almost \$800 million from FHWA's initial estimate of \$306 million to restore the facility to its predisaster condition. As such, we questioned whether the improvements and costs resulting from the significant relocation and changes in scope should have been funded through the Emergency Relief Program rather than the regular federal-aid highway program. We recommended that FHWA modify its guidance to clearly define what costs can be funded through the Emergency Relief Program, particularly when an environmental review recommends improvements or changes to the features of a facility from its predisaster condition in a manner that adds costs and risks to the project.

Although FHWA took steps to address our 1996 recommendation,⁵⁴ in 2007, we reported several cases in which the Emergency Relief Program was used to fund large projects—such as a bridge replacement or road relocation—that were either delayed, had grown in project scope and costs, or went beyond the original intent of the Emergency Relief Program

⁵²Our 2007 recommendation was that FHWA revise its regulations to tighten program eligibility criteria, which could include limitations on the use of emergency relief funds to fully finance projects that grew in scope and cost as a result of environmental and community concerns. We also recommended that Congress consider tightening the eligibility criteria for emergency relief funding, either through amending the purpose of the Emergency Relief Program, or by directing FHWA to revise its program regulations.

⁵³GAO, *Emergency Relief: Status of the Replacement of the Cypress Viaduct*, [GAO/RCED-96-136](#) (Washington, D.C.: May 6, 1996). The Cypress Viaduct was a two-tiered portion of Interstate 880 and an integral component of the area's transportation system.

⁵⁴In response to our recommendation, FHWA amended its guidance to more clearly indicate when limits should be placed on emergency relief funding, and when full funding is appropriate, and we closed this recommendation.

to restore damaged facilities to predisaster conditions.⁵⁵ First, we noted that relocating California S.R. 1 at Devil's Slide could have been addressed through the state's regular federal-aid highway program, rather than through the Emergency Relief Program. If the regular federal-aid highway program had been used, the project would not have been eligible for 100 percent federal funding,⁵⁶ and the federal government would have saved an estimated \$73 million.⁵⁷ Second, we reported that the reconstruction of the U.S. Highway 90 Biloxi Bay Bridge in Mississippi—which was destroyed in August 2005 during Hurricane Katrina—grew in scope and cost by \$64 million as a result of community concerns. Specifically, in response to a concern raised by a local shipbuilder about the proposed height of the new bridge, Mississippi department of transportation expanded the scope of the bridge reconstruction to increase the bridge height to allow for future ships to pass under the bridge. The original design was to provide an 85-foot clearance at a cost of \$275 million, but this scope was expanded to its current design to provide a 95-foot clearance at a cost of \$339 million.⁵⁸

FHWA has clarified its definition of an eligible damage site as we recommended in 2007, through its revisions to its *Emergency Relief Manual* in 2009. Specifically, FHWA's 2009 revisions clarified that grouping damages to form an eligible site based solely on a political subdivision (i.e., county or city boundaries) should not be accepted. This change addressed our concern that FHWA division offices had different interpretations of what constituted a site, such that damage sites that were treated as eligible for emergency relief in one state may have not been eligible in another state.

⁵⁵[GAO-07-245](#).

⁵⁶The Surface Transportation Assistance Act of 1982 established the federal share as 100 percent at the time the Devil's Slide rockslide occurred. See 23 U.S.C. § 120(f)(1982). In addition, the Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998, made the Devil's Slide project eligible for Emergency Relief Program funding. Pub. L. No. 105-178, § 1217(a), 112 Stat. 107, 214 (1998).

⁵⁷Had the Devil's Slide project been funded through the state's regular federal-aid highway program, it would have been eligible to receive 88.5 percent federal funding or approximately \$558 million—about \$73 million less than the \$631 million estimated total project cost to be reimbursed through the Emergency Relief Program.

⁵⁸[GAO-07-245](#).

Incomplete Information in Emergency Relief Project Files in Three States Raises Concerns about FHWA's Eligibility Decisions and Program Oversight

Documentation for Many Project Files We Reviewed Was Missing, Incomplete, or Inconsistent

In our review of 83 selected emergency relief project files in three FHWA division offices, we found that many of the project files reviewed did not contain documentation called for in the *Emergency Relief Manual* to support FHWA decisions that projects met program eligibility requirements.⁵⁹ Of the 83 projects in our review (totaling about \$198.5 million in federal funds), 81 projects (about \$192.8 million in federal funds) had at least one instance of missing or incomplete documentation. As a result of this missing information, we were unable to determine the basis of FHWA's eligibility decisions for many of the projects in our file review.

The *Emergency Relief Manual* directs FHWA division offices to maintain files containing information on the methods used to evaluate disasters and FHWA's assessment of damages and estimates of cost. According to the Emergency Relief Program regulations, program data should be sufficient to identify the approved disaster and permit FHWA to determine the eligibility of the proposed work.⁶⁰ In our file review, we identified several areas of concern with FHWA's eligibility determinations based on

⁵⁹Among the 88 projects in our review, 5 projects had been withdrawn by states as FHWA had determined them ineligible for emergency relief funds, or they were reimbursed through a third party insurance settlement, bringing the total number of projects reviewed to 83.

⁶⁰23 C.F.R. § 668.113.

missing, incomplete, or inconsistent documentation, as illustrated in table 3 and described below (see app. III for detailed results of our file review).

Table 3: Instances of Missing or Incomplete Project Documentation

Areas of concern regarding eligibility	New York	Texas	Washington state	Total instances
Missing or incomplete detailed damage inspection reports	16 of 22	28 of 28	3 of 33	47 of 83
Missing repair cost estimates	12 of 22	14 of 28	16 of 33	42 of 83
Missing or incomplete emergency repair completion dates to support 100 percent federal funding	18 of 18 ^a	0 of 17	21 of 23	39 of 58 ^b
Missing betterment justification	1 of 1	0 of 4	5 of 10	6 of 15 ^c

Source: GAO analysis of FHWA Emergency Relief Program documentation.

^aThe 18 projects with emergency repairs in New York provided only a month and year for the completion of repairs. Without a specific date we could not confirm completion was within 180 days of the disaster occurrence. These 18 projects are indicated as partially complete for having a completion date on file for 100 percent funded work in app. III, figure 6.

^bFifty-eight of the 83 projects in our review included emergency repairs and were approved to receive 100 percent federal share funding for either all or a portion of the total project cost.

^cFifteen of the 83 projects in our review were identified as betterments in project documentation or by FHWA division office officials with whom we spoke.

Missing or Incomplete Detailed Damage Inspection Reports

Forty-seven of 83 project files (57 percent) lacked documentation for on-site damage inspections. In particular, they did not include a detailed damage inspection report (DDIR) or the DDIR was not complete. According to the *Emergency Relief Manual*, on-site detailed damage inspections are conducted by the applicant or a state department of transportation representative if the applicant is a local public agency, and an FHWA representative, if available, to determine the extent of damage, scope of repair work, preliminary estimate of the repair cost, and whether a project is eligible for emergency relief funding. FHWA provides its division offices with a DDIR form that states may use to document their inspections and provide critical information necessary for determining project eligibility, such as a listing of preliminary repair cost estimates for equipment, labor, and materials for both emergency and permanent repairs. Without such information on file for some projects, we could not confirm that FHWA had that information to make emergency relief project eligibility determinations.

These documents may be missing due to lack of clear requirements from FHWA. FHWA requires documented on-site damage inspections but does

not have a clear requirement for how states submit the inspections to FHWA officials or for how they approve inspection reports; as a result, the three division offices we visited applied the *Emergency Relief Manual* guidelines differently. For example, none of the 28 project files we reviewed in Texas included a DDIR because FHWA's Texas division office relies instead on a "program of projects," which is a spreadsheet of all projects requesting emergency relief funds. In response to a draft version of this report, FHWA's Office of Program Administration explained that state departments of transportation may use any format to submit the data necessary for FHWA to make an eligibility determination. FHWA's Texas division officials stated that they find the program of projects useful and believed it to be an FHWA requirement; however, we found that the *Emergency Relief Manual* guidance was ambiguous and did not directly state that this document can be used in place of DDIRs. One section the *Emergency Relief Manual* indicates that the state department of transportation is to submit the program of projects to the FHWA division office, but it also states that the program of projects should relate the damage to that described in the DDIRs. Furthermore, the manual suggests in an appendix that the program of projects is actually a package of all DDIRs resulting from the detailed damage inspections.

In addition, our file review found that the project descriptions in the program of projects did not always provide the detailed information regarding damages and proposed repairs outlined in the *Emergency Relief Manual* and found on a DDIR. For example, for one Texas project totaling close to \$1.7 million in both emergency and permanent repairs, the project description was the same for both emergency and permanent repairs and did not indicate what specific repair activities were conducted for each repair type. Differentiation between emergency and permanent repairs is important because emergency repairs are eligible for a higher federal share and do not require prior FHWA authorization. Without documentation showing a clear distinction between the emergency and permanent repairs—information that should be identified and documented on a DDIR per program guidance—we could not determine the basis for FHWA's decision that this project met the eligibility requirements for both repair types. Overall, we found the program of projects was less useful than the DDIR for evaluating the full range of information necessary to determine the basis for FHWA's eligibility determinations.

Missing Repair Cost Estimates

We found that about half of the projects in our sample (42 of 83) did not include repair cost estimates. The *Emergency Relief Manual* states that at a minimum the division office's project file should contain copies of the FHWA field engineer's assessments on damage and estimates of cost.

Officials in each of the FHWA division offices that we visited reported that the state's department of transportation is responsible for preparing repair cost estimates, but that FHWA area engineers also conduct some on-site inspections to verify the cost estimates provided. In total, 42 projects in our sample did not include any repair cost estimates; thus, we could not confirm that FHWA officials had this information to make eligibility determinations for those projects. For example, a portion of two projects in our sample for emergency and permanent repairs was to remove sand from drainage ditches and was initially approved by the FHWA Texas division office for reimbursement of up to \$1.3 million, although the project file included no repair cost estimate for any of the work associated with the project. Additionally, no information was available in the project file to explain the FHWA Texas division office's decision to later approve a nearly 40 percent increase from \$1.3 million to the final approved amount of \$1.85 million. In responding to a draft of this report, DOT stated that the cost of the project increased because more sand was removed from the drainage ditches than originally estimated. However, no documentation of this change was included in FHWA's project files.

FHWA officials reported that the division office in Texas reviews a sample of preliminary cost estimates based on risk, among other factors, prior to making any eligibility decisions. According to the officials, FHWA's Texas division office reviewed preliminary cost estimates of at least 10 of the 30 projects included in our file review before determining eligibility. The officials also reported that this sampling approach is consistent with FHWA's stewardship agreement with TXDOT and the fact that states have assumed oversight responsibility for design and construction of many federal-aid highway projects, including emergency relief projects.⁶¹ FHWA also reported that TXDOT's oversight responsibilities do not extend to determining whether particular projects are eligible for federal funds. Furthermore, the *Emergency Relief Manual* states that Emergency Relief Program eligibility determinations reside with FHWA, and estimated repair costs should be documented to determine eligibility. As such, the practice of reviewing a sample of preliminary cost estimates does not appear to be consistent with the requirements in the *Emergency Relief*

⁶¹23 U.S.C. § 106(c)(2) states that for projects that are not on the National Highway System, the state shall assume the responsibilities of the Secretary of Transportation under this title for design, plans, specifications, estimates, contract awards, and inspection of projects, unless the state determines that such assumption is not appropriate.

Missing or Incomplete
Emergency Repair Completion
Dates to Support Eligibility for
100 Percent Federal Funding

Manual, and as a result, we could not determine the basis of FHWA's eligibility decisions for those project cost estimates it did not review.

We found other cases in which cost increases were not documented according to the internal policies established by each of the division offices we visited. In New York and Texas, FHWA division officials stated they require additional documentation to justify cost increases of 25 percent or more. In Washington state, FHWA division office officials stated they require additional documentation if costs increase by 10 percent or more. Yet 14 percent of the project files we reviewed (12 of 83) showed total cost increases that exceeded the limits established by the three division offices and no additional documentation was on file to support the increases.⁶²

The majority of the emergency repair project files that we reviewed did not include documentation demonstrating that emergency repairs were completed within 180 days from the event to be eligible for 100 percent federal reimbursement.⁶³ Fifty-eight of the 83 projects we reviewed included emergency repairs approved to receive 100 percent federal funding reimbursement if repairs were completed within 180 days of the event occurrence. However, 39 of the 58 (67 percent) did not have documentation on file to show the completion date of those repairs (see table 3). In total, only 14 of 58 (24 percent) emergency repair projects provided a completion date that was within 180 days of the event's occurrence. For the majority (39 of 58) of projects, we were unable to confirm whether the emergency repairs were completed within 180 days and whether these projects were eligible to receive 100 percent federal reimbursement.

The *Emergency Relief Manual* does not clearly establish specific requirements that states demonstrate and FHWA verify the date of project

⁶²For example, the FHWA Washington state division had approved a project to repair erosion on a state road caused by flooding, including improvements to the roadway for which a cost-savings to the Emergency Relief Program was claimed. The approved DDIR on file indicated a total estimated cost of \$2 million, but our review of FMIS records found that the total cost had grown to \$2.8 million—36 percent more than the approved estimate—without documentation to support the increase.

⁶³Emergency repairs must be completed within 180 days from the event to be eligible for 100 percent federal funding. See 23 U.S.C. § 120(e); also see the FHWA regulation 23 C.F.R. § 668.107(a).

completion. As such, FHWA lacks a standardized process for verifying the completion of emergency repairs within 180 days on projects for which it does not exercise full oversight. By law, states assume oversight responsibility for the design and construction of many federal-aid highway projects,⁶⁴ including the vast majority of emergency relief projects in the three divisions we visited. As such, the states—rather than FHWA—were responsible for conducting final inspections of emergency relief projects. States are required to conduct a final inspection for all federal-aid highway projects under state oversight, and these inspections could be useful to determine federal share eligibility of emergency repairs if they provide project completion dates. While officials in each of the three state departments of transportation told us that they conduct final inspections of emergency repairs, we found only two final inspection reports prepared by states in FHWA’s records to confirm the completion of emergency repairs within the required time frame. In addition, when we reviewed final inspection reports from one of the state departments of transportation in our review, we were frequently unable to verify completion dates. Specifically, 11 of the 12 final inspections performed by officials at New York State Department of Transportation for projects in our review did not include project completion dates. Although the *Emergency Relief Manual* states that FHWA division offices reserve the right to conduct a final inspection of any emergency relief project, only the FHWA Texas division reported conducting spot inspections for a sample of emergency relief projects.⁶⁵

In commenting on a draft of this report, DOT stated that the FHWA New York state division office uses other means to verify completion of emergency repairs within 180 days. According to DOT, the state often submits its DDIRs to FHWA after emergency repairs are completed, which allows FHWA to verify the eligibility and completion of an emergency repair when it reviews the DDIR. DOT reported that the FHWA division office does not sign the DDIR until it confirms the work is completed, and that its signature indicates verification that the work was performed within the required time frame. However, our file review found

⁶⁴23 U.S.C. § 106(c)(2).

⁶⁵These inspections include an on-site review of completed work and documentation maintained in the TXDOT project files to determine whether emergency repair project charges were incurred after the 180 day time frame, and if so, whether the federal share was changed to 80 percent.

that 14 of the 18 emergency repair projects in New York that were approved for 100 percent federal funding did not have an FHWA signature on the DDIR.

In addition to a lack of documentation, we found eight instances in which permanent repair projects may have incorrectly received 100 percent federal share reimbursement.⁶⁶ According to the *Emergency Relief Manual*, absent specific legislative approval, permanent repair work is not to be considered emergency repair work even if it is completed within 180 days. However, we found instances in which projects were determined to be permanent repairs based on information in the project files, but were later authorized to receive 100 percent federal share. For example, in one project in our review, FHWA's Washington state division office approved permanent repairs to a state highway for \$2.6 million in estimated damages caused by a landslide. Our review of FHWA financial records for this project indicates that FHWA later authorized a federal reimbursement of \$5.3 million, roughly 99 percent of the total project cost of nearly \$5.4 million. FHWA Washington state division officials reported that this project was considered to be a permanent repair performed as an incidental part of emergency repair work.⁶⁷ However, the project files did not include any emergency repair work to accompany the approved permanent repairs. According to these officials, the FHWA Washington state division interpreted the 2003 version of the *Emergency Relief Manual* as allowing incidental permanent work to be funded at 100 percent federal share either with or as emergency repair work. However, the manual states that during the 180 day period following the disaster, permanent repair work is reimbursed at the normal pro rata share unless performed as an incidental part of emergency repair work. As such, based on the program guidance, this project should have been reimbursed at 86.5 percent federal share.

⁶⁶Permanent repair projects—and emergency repair project costs after the first 180 days—are typically reimbursed using an 80 or 90 percent federal share depending on the percentage normally provided for work on that type of federal-aid highway.

⁶⁷Eight of the Washington state projects in our sample included incidental repairs. An incidental repair is a permanent repair performed as an incidental part of the emergency repair work. Prior to the November 2009 revisions to the *Emergency Relief Manual*, FHWA treated incidental repairs as eligible for reimbursement based on 100 percent federal share. The incidental repairs included in the total took place prior to the manual revision and received 100 percent federal share reimbursement.

Missing and Inconsistent Support for Betterments

A primary purpose of the Emergency Relief Program is to restore highway facilities to predisaster conditions, not to provide improvements or added protective features to highway facilities. However, according to FHWA regulations and the *Emergency Relief Manual*, such improvements may be considered eligible betterments if the state provides economic justification, such as a benefit-cost analysis that weighs the cost of the betterment against the risk of eligible recurring damage and the cost of future repair through the Emergency Relief Program.⁶⁸ In our file review we identified two areas of concern regarding betterments, including instances of missing documentation of benefit-cost analyses:

- *Lack of documentation of required benefit-cost analyses.* Six of the 15 projects (40 percent) identified as betterments in our review did not contain the required benefit-cost analyses in their files to justify the betterment.⁶⁹ As a result we were unable to determine the basis on which FHWA approved these six betterments. We also found one instance in which the benefit-cost analyses used to justify an approved betterment did not meet Emergency Relief Program requirements. Specifically, FHWA's New York division office approved a betterment of almost \$1.6 million to repair and improve a damaged roadway and shoulder caused by an April 2007 storm. However, we found that the report prepared to justify the betterment did not weigh the cost of the proposed betterment against the risk of future damages and repair costs to the Emergency Relief Program, as required by program regulations. Consequently, we were unable to determine the basis on which FHWA approved the \$1.6 million betterment.
- *Lack of documentation indicating whether projects include betterments.* We found that it was often difficult to determine which projects included betterments, as FHWA lacks a standard process for where and how betterments should be identified in project documentation. The *Emergency Relief Manual* states that betterments must receive prior FHWA approval and that further development of

⁶⁸23 C.F.R. § 668.109(b)(6). The *Emergency Relief Manual* states that a proposed betterment may be considered eligible for emergency relief if it includes a benefit-cost analysis demonstrating a projected savings in future recurring repair costs under the Emergency Relief Program.

⁶⁹The 15 projects in our sample were identified as betterments based either on documentation in the files or by FHWA division office officials with whom we spoke.

contemplated betterments should be accomplished with FHWA involvement, necessitating that proposed betterments are specifically identified. We found eight project files with indications that the projects may have included betterments that were not identified explicitly in project documentation or by FHWA officials.⁷⁰ For example, following the completion of emergency repairs to remove debris and protect a bridge against erosion caused by a landslide, the FHWA Washington state division office approved an additional \$3.7 million in permanent repairs in response to continued erosion and movement of the hillside. The documentation in the project file indicated that this permanent work was added to stabilize the slide area in anticipation of future flooding. According to officials from the FHWA Washington state division, this slide stabilization project was a betterment, but the project file did not contain documentation to indicate that this project was in fact a betterment.

FHWA provides considerable discretion to its division offices to tailor the Emergency Relief Program within states and lacks a standard mechanism to specifically identify whether a project includes a betterment. FHWA's Office of Asset Management has developed an Economic Analysis Primer for FHWA division offices to use when evaluating benefit-cost analyses for federal-aid program projects. However, neither the *Emergency Relief Manual* nor the Economic Analysis Primer provide sample benefit-cost analyses or specific guidance on what information should be included in the benefit-cost analysis to demonstrate that the proposed betterment will result in a savings in future recurring repair costs under the Emergency Relief Program. Because we had found betterments without documentation of the required benefit-cost analyses on file and identified possible betterments that were not explicitly identified as such, we could not confirm that federal funds were being reimbursed in accordance with the requirements of the Emergency Relief Program. Further, absent specific guidance for identifying and approving betterments to its division offices, FHWA cannot be assured that the Emergency Relief Program is being administered consistently.

⁷⁰These eight projects were identified as possible betterments because the project files contained documentation discussing cost savings to the Emergency Relief Program or the scope of work matched the *Emergency Relief Manual* descriptions of the types of repairs that are only eligible for emergency relief funding if the project is an FHWA approved betterment. Examples provided in the *Emergency Relief Manual* include stabilizing slide areas and slopes, lengthening or raising bridges, replacing culverts with bridges, and adding lanes to the highway, among others.

Conclusions

The federal government plays a critical role in providing financial assistance to states in response to natural disasters and other catastrophic events. Given the costs of these events and the significant fiscal challenges facing both states and the federal government, it is increasingly necessary that federal financial support be delivered in an effective, transparent, and accountable manner so that limited funds are put to their best use. FHWA's stewardship of the Emergency Relief Program could be better structured to meet that necessity.

First, because some emergency relief projects can be delayed for many years due to environmental or community concerns and projects can grow significantly in scope and cost, the federal government faces the risk of incurring long-term costs for such projects. FHWA has limited tools to control its exposure to the costs of older events and ensure that as projects grow in scope and cost that they do not go beyond the original intent of the program, which is to assist states to restore damaged facilities to their predisaster conditions. Once an event has been approved for emergency relief by FHWA, the Emergency Relief Program as currently structured does not limit the time during which states may request additional funds and add projects, which increase the size of FHWA's backlog list. Because Emergency Relief Program funding is not subject to the annual limits of the regular federal-aid highway program, states have an incentive to seek as much emergency relief funding as possible. Consequently, without reasonable time limits for states to submit funding requests for such older events, FHWA's ability to anticipate and manage future costs to the Emergency Relief Program is hindered, as is Congress' ability to oversee the program. Furthermore, without specific action by FHWA to address the recommendation from our 2007 report that it revise its emergency relief regulations to tighten eligibility criteria, the Emergency Relief Program will continue to face the risk of funding projects with scopes that have expanded beyond the goal of emergency relief and may be more appropriately funded through the regular federal-aid highway program.

Second, while FHWA has taken some important steps in response to our 2007 report to manage program funding by withdrawing unobligated balances from states, it faces challenges in tracking allocations that have been provided to states. In particular, because FHWA division offices have allowed states to transfer unobligated allocations from an existing event to new events, and because FHWA headquarters is not tracking which divisions have done so, FHWA headquarters does not have the information needed to identify and withdraw all unneeded funds. In addition, without time frames to expedite the close-out of completed

emergency relief projects, FHWA lacks useful information to help determine whether obligated but unexpended program funds are no longer needed and could be deobligated.

Finally, the fact that we could not determine the basis of FHWA's eligibility decisions in three states on projects costing more than \$190 million raises questions about whether emergency relief funds are being put to their intended use and whether these issues could be indicative of larger problems nationwide. While federal law allows states to assume oversight over design and construction of much of the federal-aid highway program, including many emergency relief projects, FHWA is ultimately responsible for ensuring that federal funds are efficiently and effectively managed and that projects receiving scarce emergency relief funds are in fact eligible. This is especially important in light of the fact that emergency relief funds have been derived principally from general revenues in recent years and that the funds that states receive are above and beyond the funding limits for their regular federal-aid highway program funds. Without clear and standardized procedures for divisions to make and document eligibility decisions—including documenting damage inspections and cost estimates, verifying and documenting the completion of emergency repair projects within the required time frame, and evaluating information provided to justify proposed betterments—FHWA lacks assurance that only eligible projects are approved, and that its eligibility decisions are being made and documented in a clear, consistent, and transparent manner.

Recommendations for Executive Action

To improve the accountability of federal funds, ensure that FHWA's eligibility decisions are applied consistently, and enhance oversight of the Emergency Relief Program, we recommend that the Secretary of Transportation direct the FHWA Administrator to take the following four actions:

- Establish specific time frames to limit states' ability to request emergency relief funds years after an event's occurrence, so that FHWA can better manage the financial risk of reimbursing states for projects that have grown in scope and cost.
- Instruct FHWA division offices to no longer permit states to transfer unobligated allocations from a prior emergency relief event to a new event so that allocations that are no longer needed may be identified and withdrawn by FHWA.

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- Establish clear time frames for states to close out completed projects in order to improve FHWA’s ability to assess whether unexpended program funds are no longer needed and could be deobligated.
 - Establish standardized procedures for FHWA division offices to follow in reviewing emergency relief documentation and making eligibility decisions. Such standardized procedures should include:
 - clear requirements that FHWA approve and retain detailed damage inspection reports for each project and include detailed repair cost estimates;
 - a requirement that division offices verify and document the completion of emergency repairs within 180 days of an event to ensure that only emergency work completed within that time frame receives 100 percent federal funding; and
 - consistent standards for approving betterments, including guidance on what information the benefit-cost analyses should include to demonstrate that the proposed betterment will result in a savings to the Emergency Relief Program, and a requirement that FHWA approval of funding for betterments be clearly documented.

Agency Comments and Our Evaluation

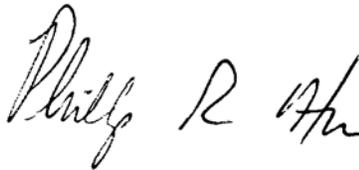
We provided a draft of this report to DOT for review and comment. DOT officials provided technical comments by email which we incorporated into the report, as appropriate. In response to our finding that the Emergency Relief Program lacks a time limit for states to submit emergency relief funding requests, and our recommendation to establish specific time frames to limit states’ ability to request emergency relief funds years after an event’s occurrence, DOT noted that the program does include general time frames for states to submit an application and have work approved. We incorporated this information into the final report; however, since a state’s list of projects may be amended at any time to add new work, we continue to believe that FHWA’s ability to anticipate and manage future costs to the Emergency Relief Program is hindered absent specific time frames to limit states’ requests for additional funds years after an event’s occurrence. Such time frames would provide FHWA with an important tool to better manage program costs.

DOT also commented that its ability to control the costs of some of the projects cited in the report that have grown in scope and cost over the years is limited in some cases by the fact that DOT received statutory

direction from Congress to fund these projects. For example, Congress directed FHWA to provide 100 percent federal funding for all emergency relief projects resulting from Hurricane Katrina in 2005. We incorporated additional information to recognize this statutory direction; however, a determination by Congress that a particular event should qualify for relief under the Emergency Relief Program, or for other individual actions, does not relieve FHWA of its stewardship and oversight responsibilities. Except as Congress otherwise provides, this includes its responsibility to determine whether enhancements to projects or betterments are consistent with its regulations and the intent of the Emergency Relief Program to restore damaged facilities to predisaster conditions. We continue to believe that, as a steward of public funds, FHWA generally has the discretion to take reasonable steps to limit the federal government's exposure to escalating costs from projects that grow in scope over time.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of this report until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees and the Secretary of Transportation. In addition, this report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or herrp@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.



Phillip R. Herr
Director, Physical Infrastructure Issues

Appendix I: Objectives, Scope, and Methodology

To identify Emergency Relief Program funding trends since our 2007 report,¹ we reviewed federal statutes, including supplemental appropriations to the Emergency Relief Program made since 2007, and Federal Highway Administration (FHWA) documentation on annual funding authorizations to the program. We also reviewed FHWA data on emergency relief funds allocated to states in response to emergency relief events from fiscal years 2007 through 2010, as provided by FHWA's Office of Program Administration. We interviewed FHWA officials in the Office of Program Administration to gather specific information on how data on allocations was collected and we also reviewed FHWA financial data on total allocations to states from FHWA's fiscal management information system (FMIS). We interviewed officials from FHWA Federal Lands Highway, FHWA's North Dakota Division Office, and the North Dakota state department of transportation concerning funding and project activities for the Devils Lake, North Dakota, emergency relief projects. To gather additional information on the Devil's Slide project in California, we interviewed the FHWA California division office and reviewed information on the estimated project costs.

To identify key changes to the Emergency Relief Program implemented in response to concerns raised in our 2007 report, we reviewed recommendations made to FHWA in our 2007 report and FHWA Emergency Relief Program regulations and guidance, including FHWA's *Emergency Relief Manual*, as revised in 2009. We compared information in the current version of the *Emergency Relief Manual* with information in the previous version to determine which elements were revised. We interviewed FHWA officials in the Office of Program Administration to determine why specific changes were made, and we interviewed officials in three FHWA division offices to determine how program changes were implemented. To corroborate information provided by FHWA regarding its process of withdrawing unused Emergency Relief Program funds from states, we reviewed FMIS data on the emergency relief funds that were allocated among all states and territories, obligated to specific projects, and the remaining unobligated balance for all active Emergency Relief Program codes as of May 31, 2011. To determine other amounts of program funding that remained unused, we reviewed data in FMIS on the amount of emergency relief funding obligated to specific projects and expended by all states and territories for events occurring from fiscal

¹[GAO-07-245](#).

years 2001 through 2010. We provided FHWA officials with our methodology for gathering data from FMIS to ensure that our data queries were accurate. To ensure the reliability of data collected in FMIS we interviewed FHWA officials on the procedures used by FHWA and states' departments of transportation to enter and verify financial information entered into FMIS. We found these data to be sufficiently reliable for our purposes.

To determine the extent to which selected emergency relief projects were awarded in compliance with program eligibility requirements, we reviewed federal statutes and regulations, and FHWA guidance on emergency relief eligibility requirements. We selected a nongeneralizable sample of state department of transportation and FHWA division offices in three states—New York, Texas, and Washington state. The states selected are not representative of the conditions in all states, the state departments of transportation, or FHWA division offices, but are intended to be examples of the range of practices and projects being funded by the Emergency Relief Program across the country. These states were selected based on several criteria:

1. The overall amount of emergency relief funding allocated to a state from fiscal years 2007 through 2010, to identify those states that were allocated the most funding (at least \$15 million) over that period, based on allocation data provided by FHWA headquarters.
2. Frequency of funding requests to identify those states that requested funds for three or more fiscal years from 2007 through 2010.
3. The occurrence of an eligible emergency relief event since FHWA updated its *Emergency Relief Manual* in November 2009. For our purposes, we used emergency relief eligible events beginning October 1, 2009, as a proxy for identifying states with emergency relief events since the November 2009 manual update.

A total of 10 states met all three criteria. We narrowed our selection down by eliminating those states that experienced outlier events, such as North Dakota's reoccurring basin flooding at Devils Lake and the catastrophic failure of the Interstate 35 West bridge in Minnesota. We judgmentally selected New York, Texas, and Washington state to reflect a geographic dispersion of states.

We reviewed a sample of emergency relief project files in the FHWA division office in each of these states to determine whether the project

files included required or recommended documentation cited in federal statute, regulations, and FHWA program guidance. Such documentation included the President or state governors' proclamation of a disaster, detailed damage inspection reports, cost estimates for repairs, photographs of the damage, and other information. Across the three division offices, we selected a nongeneralizable sample of 88 Emergency Relief Program files out of a total universe of 618 project files for emergency relief projects approved by FHWA in those states from fiscal years 2007 through 2010. Among the 88 projects in our review, 5 projects had been withdrawn by states as FHWA had determined them ineligible for emergency relief funds, or they were reimbursed through a third party insurance settlement, bringing the total number of projects reviewed to 83. The project files we reviewed represented approximately 67 percent of all emergency relief funds obligated to those states during that time period.² Those projects were selected based on the following criteria:

1. All projects with more than \$1 million in obligated federal funds between fiscal years 2007 and 2010, including a mix of active and closed projects and various event or disaster types.
2. Projects with more than \$1 million in obligated federal funds for events from fiscal years 2001 through 2006 on the list of formal emergency relief funding requests as of March 7, 2011, that were either currently active or were completed more than five years after the event occurred.
3. Projects that had other characteristics that we determined to warrant further review, such as events with \$0 amounts listed in FHWA's FMIS database for total cost or which had expended relatively small amounts of funding compared with the obligated amounts in FMIS.

Prior to our site visits, we requested that the division offices provide all documentation they maintain for each of the projects selected in our sample. We reviewed all the documentation provided during our site visits, and requested follow-up information as necessary. In conducting our file review, a GAO analyst independently reviewed each file and completed a data collection instrument to document the eligibility

²We also reviewed three older projects in Washington state that were selected because the projects had more than \$1 million in obligated federal funds from events in fiscal years 2001 through 2006 and were on the backlog of funding requests at the time of review.

documentation that was included for each file. A second reviewer independently reviewed the file to verify whether the specific information identified by the first reviewer was present in the file. The analysts met to discuss and resolve any areas of disagreement until a consensus was reached on whether the required information was included in the file. To gather additional information on the project files we reviewed and the procedures used to manage and oversee emergency relief projects, we interviewed officials in the FHWA division offices and the departments of transportation in our three selected states. We provided the results of our file review to FHWA for their comment and incorporated their responses as necessary within our analysis.

Lastly, we contacted state and local audit organizations through the National Association of State Auditors, Comptrollers, and Treasurers for the three states we reviewed, as well as North Dakota, to obtain reports or analyses that were conducted on FHWA's Emergency Relief Program. None of the states in our review had conducted substantive work on the Emergency Relief Program.

We conducted this performance audit from November 2010 to November 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Summary of Emergency Relief Funding for Projects at Devils Lake, North Dakota

Devils Lake in North Dakota lies in a large natural basin and lacks a natural outlet for rising water to flow out of the lake. Starting in the early 1990s, the lake level has risen dramatically—nearly 30 feet since 1992—which has threatened the roadways near the lake which were built in the 1930s and 1940s when lake water levels were lower. In April 2000, FHWA issued a memorandum that authorized raising the roads at Devils Lake in response to a predicted rise in the water level of the lake that was within 3 feet of causing inundation, as forecasted by the National Weather Service or U.S. Geological Survey. This allowance to repair roadways prior to damages incurred by an event is a unique provision for the FHWA Emergency Relief Program, which otherwise funds only post-disaster repair or restoration. The basin flooding events at Devils Lake also precipitated a related problem at Devils Lake, as some communities around the lake plugged culverts under roadways to impound rising water and protect property from flooding, which increased the roadways' risk of failure. These roads were subsequently referred to as “roads-acting-as-dams” which required additional improvements to ensure their structural integrity to serve as dams.

Devils Lake projects involve multiple stakeholders, depending on the location and type of roadway. FHWA's North Dakota division office is responsible for overseeing the Emergency Relief Program projects administered by North Dakota department of transportation. FHWA's Office of Federal Lands Highway is responsible for the oversight of the Emergency Relief on Federally Owned Roads program, which covers projects on the Spirit Lake Tribe Indian Reservation. The Central Division of Federal Lands Highway leads the overall coordination among the federal, state, and local agencies. FHWA reported that the two FHWA offices are working together to address the roads-acting-as dams projects which affect state highways and roads on the Spirit Lake Tribe Indian Reservation. The North Dakota department of transportation and the Spirit Lake Tribe are responsible for administering the construction projects on their respective roads.

To ensure the integrity of the roads at Devils Lake, Congress included funding provisions in Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) to raise the roadways and make improvements to roads-acting-as-dams. Through SAFETEA-LU, Congress authorized up to \$10 million of Emergency Relief Program funds to be expended annually, up to a total of \$70 million, for work in the

Devils Lake region of North Dakota to address the roads-acting-as-dams situation.¹ These funds are known as section 1937 funds for the provision in SAFETEA-LU which authorized them. In the absence of other authority, this \$10 million must come out of the \$100 million annual authorization of contract authority that funds the Emergency Relief Program, effectively reducing the annual emergency relief funding available to other states to \$90 million. SAFETEA-LU also included language that exempted the work in the Devils Lake area from the need for further emergency declarations to qualify for emergency relief funding.²

According to a June 24, 2011, FHWA policy memo, the final allocation of section 1937 funds was made on March 16, 2011, and the \$70 million limit has been reached. Although rising water levels at Devils Lake are expected to continue into the future, no further federal-aid highway funds are eligible to raise roads-acting-as-dams or to construct flood control and prevention facilities to protect adjacent roads and lands.

¹Pub. L. No. 109-59, § 1937, 119 Stat. 1510 (2005).

²Ibid. § 1937 (a)

Appendix III: Results of GAO’s File Review of Emergency Relief Project Documentation Available in Three FHWA Division Offices

Figure 6 represents the results of our review of 88 selected project files from FHWA’s division offices in New York, Texas, and Washington state. Our data collection instrument was used to collect the values for each field during our file review, and that information was summarized and analyzed by at least two GAO analysts (see app. I for a complete discussion of our file review methodology).

Figure 6: Results of GAO’s File Review of Emergency Relief Projects in Three FHWA Division Offices

New York										
GAO project number	DDIR on file	FHWA engineer signature on DDIR	State/local engineer signature on DDIR	Repair cost estimate	Repair type	Completion date recorded in file for 100 percent funded work	Dates provided show 100% funded work completed in 180 Days	FHWA verification of completion within 180 days	Betterment	Benefit-cost analysis on file for betterment
NY-1	Y	N	Y	N	E/P	Y	DK ^b	N	N	
NY-2	Y	N	Y	Y	E/P	Y	DK ^b	N	Y	N
NY-3	Y	N	N	N	DK	Y	DK ^b	N	N	
NY-4	Y	N	Y	N	E/P	Y	DK ^b	N	N	
NY-5	Y	N	Y	Y	E	Y	DK ^b	N	N	
NY-6	Y	Y	Y	Y	P				N	
NY-7	Y	N	Y	Y	E/P	Y	DK ^b	N	N	
NY-8	Y	N	Y	Y	E	Y	DK ^b	N	N	
NY-9	Y	N	Y	Y	DK				N	
NY-10	Y	N	N	N	E/P	Y	DK ^b	N	N	
NY-11	Y	N	Y	Y	E/P	Y	DK ^b	N	DK ^e	
NY-12	Y	N	N	N	E/P	Y	DK ^b	N	N	
NY-13	Y	N	N	N	E	Y	DK ^b	N	N	

- Y** Documentation was on file (Y=yes)
- Y** Documentation was on file but only partially complete
- DK** Unable to determine the value based on documentation on file (DK=don't know)
- N** Documentation was not on file (N=no)
-  Not applicable to that project
- E** Emergency repair
- P** Permanent repair
- I** Incidental permanent repair

**Appendix III: Results of GAO's File Review of
Emergency Relief Project Documentation
Available in Three FHWA Division Offices**

GAO project number	DDIR on file	FHWA engineer signature on DDIR	State/local engineer signature on DDIR	Repair cost estimate	Repair type	Completion date recorded in file for 100 percent funded work	Dates provided show 100% funded work completed in 180 Days	FHWA verification of completion within 180 days	Betterment	Benefit-cost analysis on file for betterment
NY-14	Y	N	Y	Y	E	Y	DK ^b	N	N	
NY-15	Y	N	N	N	E	Y	DK ^b	N	N	
NY-16	Y	N	Y	Y	E	Y	DK ^b	N	N	
NY-17	Y	N	Y	N	E	Y	DK ^b	N	N	
NY-18	Y	Y	Y	N	E	Y	DK ^b	N	N	
NY-19	Y	Y	Y	N	E	Y	DK ^b	N	N	
NY-20	Y	Y	Y	Y	E/P	Y	DK ^b	N	N	
NY-21	Y	Y	Y	N	E	Y	DK ^b	N	N	
NY-22	Y	Y	Y	N	DK	Y	DK ^b	N	N	

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-  Unable to determine the value based on documentation on file (DK=don't know)
-  Documentation was not on file (N=no)
-  Not applicable to that project
-  Emergency repair
-  Permanent repair
-  Incidental permanent repair

**Appendix III: Results of GAO's File Review of
Emergency Relief Project Documentation
Available in Three FHWA Division Offices**

Texas										
GAO project number	DDIR on file	FHWA engineer signature on DDIR	State/local engineer signature on DDIR	Repair cost estimate	Repair type	Completion date recorded in file for 100 percent funded work	Dates provided show 100% funded work completed in 180 Days	FHWA verification of completion within 180 days	Betterment	Benefit-cost analysis on file for betterment
TX-1	N			N	E	Y	Y	Y	N	
TX-2	N			Y	E	Y	N	N	N	
TX-3	N			Y	P				N	
TX-4	N			Y	P				N	
TX-5	N			Y	P				N	
TX-6	N			Y	E	Y	Y	N	N	
TX-7	N			N	E	Y	Y	N	N	
TX-8	N			Y	E	Y	Y	N	Y	Y
TX-9	N			N	E	Y	Y	N	N	
TX-10	N			Y	P				Y	Y
TX-11	N			Y	P				Y	Y
TX-12	N			Y	P				Y	Y
TX-13	N			N	DK	N		N	N	
TX-14	N			Y	E/P	Y	Y	N	N	
TX-15 ^a										
TX-16	N			N	E	Y	N ^c	N	N	
TX-17	N			N	E	Y	N ^c	N	N	

- Y Documentation was on file (Y=yes)
- Y Documentation was on file but only partially complete
- DK Unable to determine the value based on documentation on file (DK=don't know)
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- Not applicable to that project
- E Emergency repair
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**Appendix III: Results of GAO's File Review of
Emergency Relief Project Documentation
Available in Three FHWA Division Offices**

GAO project number	DDIR on file	FHWA engineer signature on DDIR	State/local engineer signature on DDIR	Repair cost estimate	Repair type	Completion date recorded in file for 100 percent funded work	Dates provided show 100% funded work completed in 180 Days	FHWA verification of completion within 180 days	Betterment	Benefit-cost analysis on file for betterment
TX-18	N			N	P				N	
TX-19	N			N	E	Y	N ^c	N	N	
TX-20	N			N	P				N	
TX-21	N			Y	E	Y	Y	N	N	
TX-22	N			Y	E	Y	Y	N	N	
TX-23	N			Y	E	Y	Y	N	N	
TX-24	N			Y	P				N	
TX-25 ^a										
TX-26	N			N	E	Y	N ^c	N	N	
TX-27	N			N	P				N	
TX-28	N			N	E	Y	Y	N	N	
TX-29	N			N	E	Y	Y	N	N	
TX-30	N			N	E	Y	Y	N	N	

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- Y** Documentation was on file but only partially complete
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**Appendix III: Results of GAO's File Review of
Emergency Relief Project Documentation
Available in Three FHWA Division Offices**

Washington State

GAO project number	DDIR on file	FHWA engineer signature on DDIR	State/local engineer signature on DDIR	Repair cost estimate	Repair type	Completion date recorded in file for 100 percent funded work	Dates provided show 100% funded work completed in 180 Days	FHWA verification of completion within 180 days	Betterment	Benefit-cost analysis on file for betterment
WA-1	Y	Y	Y	N	P				N	
WA-2	N	DK	DK	N	DK	N		N	N	
WA-3	Y	Y	Y	Y	E/P	N		N	N	
WA-4	Y	Y	Y	Y	E/P	Y	Y	Y	Y	Y
WA-5	Y	Y	Y	N	DK	N		N	Y	N
WA-6	Y	Y	Y	Y	I	Y	N	N	Y	N
WA-7	Y	Y	Y	Y	P				DK ^e	
WA-8	N	DK	DK	N	DK				DK ^e	
WA-9	Y	Y	Y	Y	I	Y	N ^d	N	N	
WA-10	Y	Y	Y	Y	DK	Y	N	N	N	
WA-11	Y	Y	Y	Y	E	N		N	N	
WA-12	Y	Y	Y	N	E/P	N		N	N	
WA-13	Y	Y	Y	N	E/P	N		N	N	
WA-14	Y	Y	Y	N	E/P	Y	Y	N	Y	N
WA-15	Y	Y	Y	N	E/P	N		N	DK ^e	
WA-16	Y	Y	Y	N	E/P	N		N	Y	Y
WA-17	Y	Y	Y	N	E/P	N		N	DK ^e	
WA-18	N	DK	DK	N	DK	N		N	DK ^e	

- Y** Documentation was on file (Y=yes)
- Y** Documentation was on file but only partially complete
- DK** Unable to determine the value based on documentation on file (DK=don't know)
- N** Documentation was not on file (N=no)
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**Appendix III: Results of GAO's File Review of
Emergency Relief Project Documentation
Available in Three FHWA Division Offices**

GAO project number	DDIR on file	FHWA engineer signature on DDIR	State/local engineer signature on DDIR	Repair cost estimate	Repair type	Completion date recorded in file for 100 percent funded work	Dates provided show 100% funded work completed in 180 Days	FHWA verification of completion within 180 days	Betterment	Benefit-cost analysis on file for betterment
WA-19 ^a										
WA-20 ^a										
WA-21	Y	Y	Y	N	E/I	N		N	N	
WA-22	Y	Y	Y	N	E/P	N		N	N	
WA-23	Y	Y	Y	Y	E/P	N		N	N	
WA-24	Y	Y	Y	Y	E/P	N		N	DK ^e	
WA-25	Y	Y	Y	N	E/P	N		N	Y	N
WA-26	Y	Y	Y	Y	E/I	N		N	N	
WA-27	Y	Y	Y	N	E/P	N		N	DK ^e	
WA-28 ^a										
WA-29	Y	Y	Y	Y	E/P	N		N	N	
WA-30	Y	Y	Y	Y	E/P	N		N	Y	Y
WA-31	Y	Y	Y	Y	E/I/P	N		N	Y	Y
WA-32	Y	Y	Y	Y	I	Y	N ^d	N	N	
WA-33	Y	Y	Y	Y	E/I/P	N		N	Y	Y
WA-34	Y	Y	Y	N	E	Y	Y	N	N	
WA-35	Y	Y	Y	Y	E/I/P	Y	N ^d	N	N	
WA-36	Y	Y	Y	Y	E/P	N		N	Y	N

- Y** Documentation was on file (Y=yes)
- Y** Documentation was on file but only partially complete
- DK** Unable to determine the value based on documentation on file (DK=don't know)
- N** Documentation was not on file (N=no)
-  Not applicable to that project
- E** Emergency repair
- P** Permanent repair
- I** Incidental permanent repair

Source: GAO analysis.

^aThese projects had been withdrawn by states as they had been determined ineligible by FHWA for emergency relief funds or were reimbursed through a third party insurance settlement.

**Appendix III: Results of GAO's File Review of
Emergency Relief Project Documentation
Available in Three FHWA Division Offices**

^bThe information provided included the month and year repairs were completed; without an exact date, we could not confirm completion was within 180 days of the disaster occurrence.

^cThe completion dates provided were beyond the first 180 days after the disaster occurrence and were also for a mix of emergency and permanent repairs, but the state or division remarks field in FHWA's Fiscal Management Information System modifications to the federal-aid project agreements noted completion within 180 days.

^dThe state or division remarks field in FHWA's Fiscal Management Information System modifications to the federal-aid project agreements noted that portions of the repairs were not completed within 180 days of the disaster occurrence and the federal share was modified appropriately.

^eThese project files contained an indication that the project was a betterment—for example, discussion of the project's cost savings to the Emergency Relief Program—although the term betterment was not specifically used, or the scope of work of the project matched the *Emergency Relief Manual's* description of betterments.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Phillip Herr, (202) 512-2834 or herrp@gao.gov

Staff Acknowledgments

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