



**U.S. Department of Transportation
Federal Highway Administration**



**Emergency Relief for
Federally Owned Roads**

Disaster Assistance Manual

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Emergency

Relief for

Federally

Owned Roads

Disaster Assistance Manual

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**U.S. Department of Transportation
Federal Highway Administration
Washington, DC 20590**

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CHAPTER 1 GETTING STARTED



1 Introduction

The *Emergency Relief for Federally Owned Roads Program*, or ERFO Program, was established to assist federal agencies with the repair or reconstruction of tribal transportation facilities, federal lands transportation facilities, and other federally owned roads that are open to public travel, which are found to have suffered serious damage by a natural disaster over a wide area or by a catastrophic failure.

This update to the ERFO Manual incorporates the program changes made by the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L.112-141). MAP-21 changed the facilities that are eligible.

1.1 Purpose

The purpose of this manual is to provide federal land management agencies (FLMA) with guidance and instructions to apply for federal assistance. Federal land management agencies are “Applicants” under the ERFO Program. Tribal, state, county, etc. (also known as local government entities) that have the authority to repair or reconstruct eligible facilities must apply through a FLMA.

1.2 Program Intent

The intent of the ERFO program is to pay the unusually heavy expenses for the repair and reconstruction of eligible facilities, which are found to have suffered serious damage by a natural disaster over a wide area or by a catastrophic failure (23 CFR §668.201 and 23 CFR §668.205 (a)). The ERFO program is **not** intended to cover all repair costs but rather supplement FLMA repair programs.

Repairs are classified as either emergency or permanent repairs.

- a) Emergency repairs are those repairs undertaken during or immediately after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Prior approval is not required, however all other eligibility requirements of the program still apply.
- b) Permanent repairs are those repairs undertaken after the occurrence of the disaster to restore facilities to their pre-disaster conditions. Prior approval is required.

1.3 Authority

The Emergency Relief for Federally Owned Roads Program is authorized under Title 23, United State Code, Sections 120 and 125. This law authorizes an emergency fund and expenditure for the repair or reconstruction of eligible transportation facilities that the Secretary of Transportation has found to have suffered serious damage as the result of a natural disaster over a wide area or as the result of a catastrophic failure.

1.4 Stewardship and Oversight

The Office of Federal Lands Highway is responsible for efficient and effective management of public funds entrusted by Congress and for ensuring that the ERFO Program is administered consistent with laws, regulations, and policies.

Applicants are expected to prioritize the repair of ERFO projects that are in the public's best interest, based on available funds. Federal agencies and local government entities have the responsibility to perform emergency repairs, shift project and program priorities, give emergency relief work prompt attention and priority over non-emergency work, and assist the Office of Federal Lands Highway in its stewardship and oversight responsibilities.

1.5 Overview

Federal and local government entities must be prepared to respond quickly when disasters strike. This manual provides applicants with procedural information to enable this quick response.

Chapter 1 presents a brief overview of the ERFO program, its statutory authority and intent.

Chapter 2 presents the ERFO Program's administrative process from disaster approval to disaster closeout.

Chapter 3 presents the funding process and includes accountability and reporting requirements.

Chapter 4 identifies ERFO eligible facilities and eligible repairs.

Chapter 5 lists roles and responsibilities of an applicant, local government entities, and Federal Lands Highway offices.

1.6 Highlights of Federal Emergency Relief Programs

The Federal Government has three emergency relief programs which provide assistance for the repair and reconstruction of seriously damaged facilities caused by natural disasters or catastrophic events.

1.6.1 ERFO Program

- a) Authorized under Title 23, United States Code, Sections 120 and 125.
- b) Provides financial assistance for the repair of tribal transportation facilities, federal lands transportation facilities, and other federally owned roads that are open to the general public for use with a standard passenger vehicle.
- c) Funds are provided from the Highway Trust Fund and occasionally the General Fund through the Federal-aid Highway Emergency Relief Program.
- d) Further clarified under 23 CFR §668, Subpart B; and with interagency agreements.
- e) The ERFO share payable under this program is 80 to 100 percent of the cost.

1.6.2 Federal-aid Highway Emergency Relief (ER) Program

- a) Authorized under Title 23, United States Code, Sections 120 and 125.
- b) Provides assistance for roads and bridges on Federal-aid highways. Federal-aid highways are public roads that are classified as arterials, urban collectors and rural major collectors.
- c) Local roads and rural minor collectors are not eligible.
- d) A cost-sharing program established by law between the Federal Government and the state transportation departments and/or local highway authorities. The federal share ranges from 80 percent to 100 percent.
- e) Some ERFO eligible roads are also Federal-aid highways. The state transportation department and/or local highway authorities may elect to receive reimbursement for eligible repairs from either the ER or ERFO programs for these facilities.

- f) The FHWA published an Emergency Relief Manual, which includes detailed guidance on the Emergency Relief process, including the eligibility of repair work for funding. Copies of the manual may be obtained from the Federal Highway Administration, Office of Program Administration (HIPA), 1200 New Jersey Ave. S.E., Washington, DC 20590-9898; or over the internet at <http://www.fhwa.dot.gov/reports/erm/er.pdf>.

1.6.3 Robert T. Stafford Disaster Relief and Emergency Assistance Act, Federal Emergency Management Agency

- a) Authorized under Title 42, United States Code, Section 5121, et seq.
- b) Grants and eligibility of repairs are determined by individual presidential declarations that may authorize local government entities to repair, restore, reconstruct, or replace public facilities that are damaged or destroyed by a major disaster and for associated expenses incurred by such government.
- c) Considered as an alternative funding source to repair damage that is not eligible under the ERFO or Emergency Relief programs for local government entities.

For additional information on the Federal Emergency Management Agency (FEMA) Program, contact the FEMA Office of Emergency Information and Public Affairs in Washington, D.C. A copy of its Public Assistance Guide, FEMA 322, may be obtained over the internet at <http://www.fema.gov/public-assistance-policy-and-guidance>.

1.7 ERFO Share Payable

The total cost of a project may not exceed the cost of repair or reconstruction of a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life (23 U.S.C. Sec. 125). The ERFO share payable for repair or reconstruction of eligible facilities varies depending on the nature of the repairs, when the work is accomplished, and the facilities being repaired.

- a) Tribal transportation facilities and federal lands transportation facilities are eligible for 100 percent reimbursement.
- b) Other federally owned roads that meet the definition of open to public travel are eligible for 100 percent reimbursement for emergency repairs. Permanent repairs are eligible for reimbursement at the standard federal share of 80% subject to the sliding scale. The sliding scale is available over the internet at <https://www.fhwa.dot.gov/legregs/directives/notices/n4540-12a2.htm>.

1.8 Funding

Emergency funds are appropriated annually from the Highway Trust Fund. The emergency funds may be supplemented by special appropriations out of the Highway Trust Fund or the General Fund. During periods of insufficient funds, the agencies should continue to make

necessary repairs using their funds. Other funds obligated shall be reimbursed when ERFO funds are available (23 U.S.C. Section 125(c)).

- a) When ERFO funds are insufficient to meet anticipated needs, the FLH will place a priority on allocating funds for:
 - (1) Reimbursement (payback) of Applicant funds, including local government entity funds used on approved ERFO repairs;
 - (2) Reimbursement of Tribal Transportation Program and Federal Lands Transportation Program (TTP and FLTP) funds used on approved ERFO repairs;
 - (3) Construction engineering and contract modifications for ongoing ERFO construction projects;
 - (4) Emergency repairs of high-use facilities that are critical to the agencies' mission and/or health and welfare of the local community/region; and
 - (5) Other current fiscal year obligations.
- b) ERFO funds will not be approved to supplant other funds for the correction of pre-existing, non-disaster related deficiencies nor will ERFO funds be approved for the repair or reconstruction of facilities affected by long term, pre-existing conditions, or predictable developing situations (23CFR §668.105(b) and 23CFR §668.109(c)(6)).
- c) ERFO funds shall not duplicate assistance under another federal program or compensation from insurance or any other source. Diligent efforts shall be made to recover costs from legally responsible parties to reduce the project costs (23 CFR §668.205).
- d) ERFO funds will not be approved for heavy maintenance, routine emergency repair activities, emergency services (e.g. ambulances, helicopters), repair or relocation of utilities, snow removal, or economic losses (e.g., material stockpile or equipment damage, lost revenue, or personal injury).
- e) Agencies may supplement ERFO funds to address agency priorities not approved for ERFO funding.

1.9 Funding Threshold

- a) The minimum threshold for eligible repair is \$700,000 for each natural disaster and catastrophic failure.
- b) The minimum threshold for each site (Emergency and Permanent Repairs) is \$5,000.
- c) If the combined repairs for an individual natural disaster for all the agencies that manage eligible facilities is less than \$700,000, the agencies are expected to fund the repair costs using their agency funds.

1.10 Environmental Compliance

The recipient of ERFO funds is responsible for compliance with all pertinent federal, state, and local laws.

1.11 Economic Hardship

Agencies shall strive to anticipate their probable needs for additional funding that may result from disaster events and budget accordingly. Economic hardship is not a factor in determining eligibility.

1.12 Approvals/Determinations

- a) The Director of each Federal Lands Highway Division (FLHD) determines if a natural disaster or catastrophic failure is eligible for ERFO funding.
- b) The finding for natural disasters will be based on both the extraordinary character of the natural disturbance and the wide area of impact. Storms of unusual intensity occurring over a small area do not meet these conditions.
- c) FLHD Director determination concerning the extraordinary nature of the natural disturbance is not necessary when the President issues a Major Disaster Declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
- d) Emergency repairs do not require prior concurrence of the FLHD Director, however sufficient documentation, including pictures of the damage must be provided to establish eligibility prior to reimbursement. It is incumbent on the agency with jurisdiction over damaged facilities to restore essential travel, protect remaining facilities, and minimize the extent of damage.
- e) Permanent repairs must have prior program approval unless the FLHD Director determines that it is more economical or practical to perform such work with the emergency repairs.

1.13 Timing

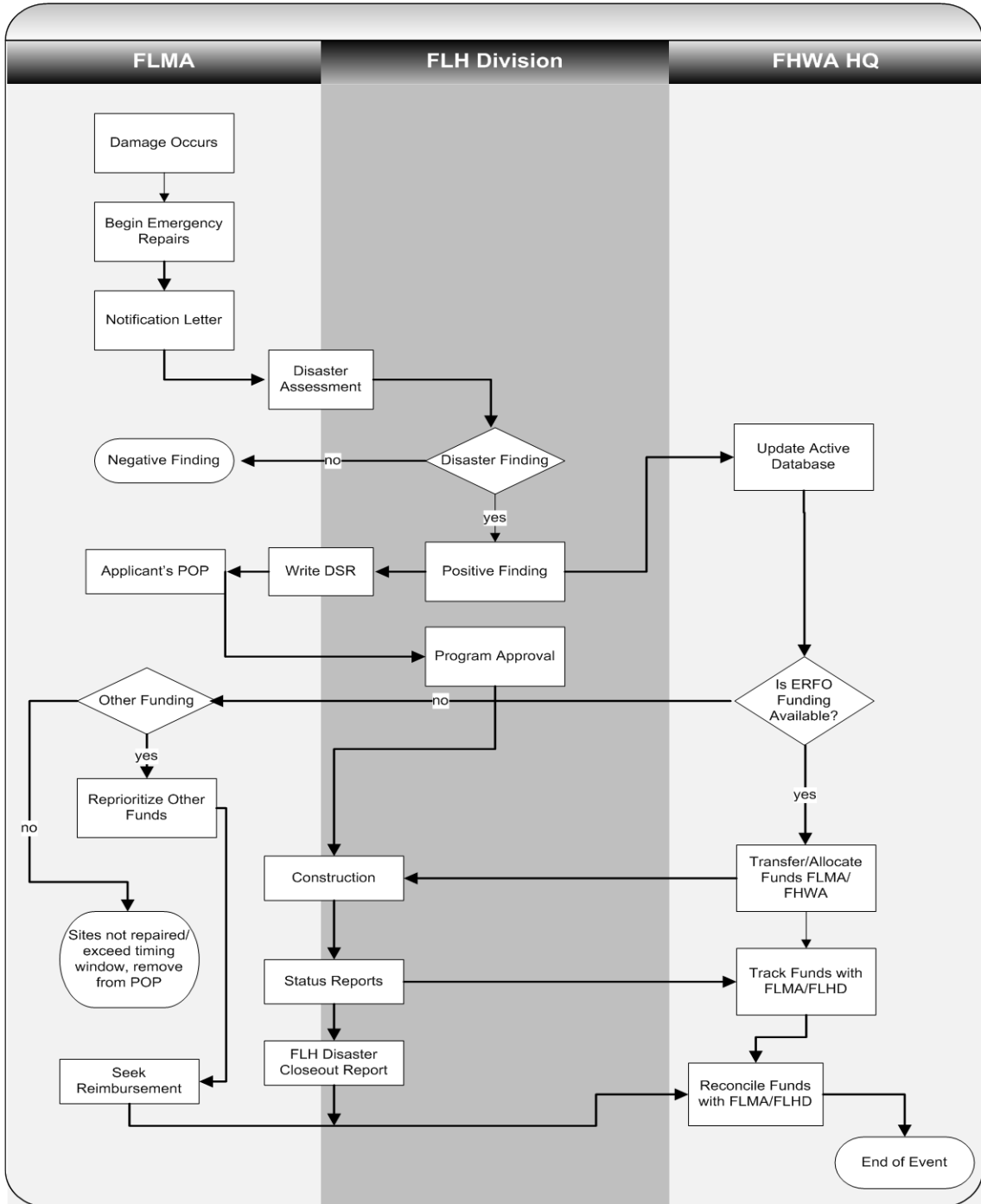
- a) Emergency relief projects shall be promptly constructed and given priority over non-emergency work. (23CFR §668.205 (b) and (e)).
- b) Projects not under construction by the end of the second fiscal year following the year in which the disaster occurred will be reevaluated and will be withdrawn from the approved program of projects unless suitable justification is provided by the agencies to warrant retention 23CFR§668.205 (e).

1.14 Interagency Agreement Needed for Participation in the ERFO Program

Participation in the ERFO program requires a national interagency agreement be in place prior to release of funds.

CHAPTER 2 THE PROCESS

2 Process Flow Chart



ERFO PROCESS TIMELINE

Disaster Occurs

↓
Notice of Intent (NOI): **FLMA** submits by letter to FLHDE **within 45 days**

↓
Acknowledge NOI: **FLHD Director** replies by letter **within 14 calendar days**

↓
Disaster Assessment: **FLMA** and **FLHD** complete **as soon as practical**

↓
Disaster Assessment Report: **FLHD** completes **ASAP** following Disaster Assessment

↓
Positive/Negative Finding: **FLHD Director** replies by letter **within 6 weeks** after the receipt of the NOI

↓
Program of Projects (POP) Request: **FLMA** submits **within 3 months** after the date of the Positive Finding

↓
POP Approval: **FLHD Director** completes **within 30** calendar days

↓
Funds Request: **FLMA** submits for current fiscal year obligations

↓
Emergency Repairs: **FLMA** completes **within 180 days** of the damage

↓
Permanent Repairs: **FLMA** must award construction contract by the **end of the second fiscal year** following the fiscal year in which the disaster or catastrophic failure occurred. This allows from **25 to 36 months** completing design and beginning construction. Projects may be withdrawn from the POP unless a time extension is approved by the FLHD Director

↓
Time Extension Justification: **FLMA** must submit to the FLHD Director for approval at least **60 days prior** to the end of the second fiscal year following the fiscal year in which the disaster occurred

↓
Disaster Status Report: **FLMA** submits by **November 30** for the preceding fiscal year

↓
Prior-year Unobligated Balance Report: **FLMA** submits to FLH headquarters within the first quarter of the new fiscal year

↓
Annual ERFO Funds Request: **FLMA** submits needs for the next fiscal year to the FLH ERFO Program Manager by **September 15**

↓
Final Disaster Status Report: **FLMA** submits the final closeout report to the FLHD Director within 6 months after the final inspection

↓
Project Closeout/Funds Reconciliation: **FLMA** completes permanent repairs and closes out the disaster within 4 years of the disaster

2.1 Damage/Disaster

The Federal Highway Administration (FHWA) will determine if there has been a natural disaster (i.e., severe storms, tidal waves, earthquakes, landslides) of sufficient extent and intensity to warrant ERFO funding consideration. To this end, FHWA defines the following:

Natural disaster: An unusual natural occurrence such as a flood, hurricane, severe storm, tidal wave, earthquake, or landslide which causes serious damage.

Serious damage: heavy, major, or unusual damage to an eligible facility which severely impairs the safety or usefulness of the facility or results in closure.

Wide area: a tract sufficiently large to encompass parts or all of several entities such as counties, states, or federal agency management units (individual forests, parks, refuges, regions, districts, and so on) and can include areas outside of federal lands. Significant flooding would involve a number of major drainage basins.

Special Note: Serious damage to roads caused by extraordinary storms occurring over small areas would not be considered eligible for ERFO funding.

Catastrophic failure: The sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

2.1.1 Occurrence

- a) When a natural disaster or catastrophic failure occurs (an “event”), an **Informal Notice of Intent** shall be initiated by the Applicant within two weeks via telephone or email to the Division ERFO Coordinator.
- b) It is the responsibility of the Applicant to assess the damage and to submit a **Formal Notice of Intent** to the Federal Lands Highway Division Director (FLHDD) no more than 45 days after the event. [See Appendix C.1](#) for a sample letter and [C.1.1](#) for letter instructions. If a Notice of Intent is submitted more than 45 days after the damage occurs provide justification for the delay.
- c) The FLHDD will respond within two weeks of receipt of the Applicant’s formal Notice of Intent letter with an **Acknowledgment Letter** (see [Appendix C.2](#)).

Special Notes:

- Photograph damage before beginning emergency repairs. Eligibility of emergency repairs will be based on submitted photographs.
- The Applicant may request Quick Release of ERFO funds for emergency repairs prior to the approval of a Program of Projects. These funds are only to be used by agencies to make emergency repairs to re-establish their vital transportation system(s) after an event. A request

for Quick Release shall be reviewed by the FLHD on a case-by-case basis (see [Sections 3.1.2](#) and [Appendix C.6](#)).

2.1.2 Disaster Assessment

The FLHD ERFO Coordinator and the Applicant (including the Tribal Coordinator for FHWA agreement tribes when appropriate) must plan and conduct an assessment of the damage and prepare a Disaster Assessment Report. This report shall document the cause and extent of damage and provide a recommendation to the FLHDD for either a positive or negative finding. If a presidential disaster declaration has been issued, the FLHDD may waive or limit the assessment efforts.

Isolated damage sites unrelated to, or away from, the eligible disaster may be excluded from the Disaster area.

- a) Applicant Responsibility Checklist. The Applicant must name a representative who is responsible for providing the following:
 - (1) List of damaged sites and include;
 - i. The National Tribal Transportation Facility Inventory number or National Federal Lands Transportation Facility Inventory number,
 - ii. Brief description of the damage.
 - (2) Maps that show the location of damaged sites;
 - (3) Current bridge inspection reports to assist with the identification of bridge damage caused by the event;
 - (4) In the case of catastrophic failure, obtain details of the cause of the failure, responsible parties, and impact of the damage; and
 - (5) Available pertinent data on the cause and extent of the damage such as:
 - i. Estimated costs to repair damage,
 - ii. Photographs and GPS coordinates of specific damage in each area,
 - iii. Rainfall and runoff data (hydrograph),
 - iv. Impact of the damage on the transportation system,
 - v. Dates that damage occurred,
 - vi. Summary of emergency repair efforts and costs.

Special Note: The ERFO Coordinator will not conduct a field assessment until all of the available information is provided. Delays in submitting information will not extend the eligibility time period.

b) Disaster Assessment – Field Review

The Team will review a representative sample of damage sites in each area cited by the Applicant in the Notice of Intent letter to determine the extent, type, cost, impact, and eligibility of the damage. In addition, the team will develop a preliminary estimate of costs to repair damaged sites and/or facilities to their pre-disaster conditions.

c) Disaster Assessment – Report to FLHDD

The ERFO Coordinator will prepare the *Disaster Assessment Report* for submission to the FLHDD. The report must either support or dispute eligibility for ERFO funding and provide a recommendation of either a positive or negative finding ([see Appendix C.3](#)). The report shall include the following elements:

- (1) Natural disaster intensity and severity. In the case of flooding or severe storms, the report shall include available information regarding high-water elevations, stream-gage data, and rain-gage data. This information is not required if the President issues a major disaster declaration;
- (2) Catastrophic failure cause and unexpected nature. Document the significance of the damaged facility, the impact to the road users, and the sudden nature of the failure. Explain if the failure was caused by the expected gradual and progressive deterioration of materials or by lack of maintenance. If appropriate, give the names of parties that may have contributed to the failure. Also state if compensation will pay for any of the repairs, such as insurance or cost-share;
- (3) Dates of the occurrence;
- (4) Extent of the affected area, including areas outside the lands administered by federal agencies;
- (5) Description of the damage to eligible facilities and other roads (federal-aid highways, state, county, city, and tribe);
- (6) Copies of emergency relief reports and newspaper articles, as available;
- (7) Copies of presidential disaster declarations and/or governor proclamations;
- (8) Approximate cost of repairs or reconstruction of the damage;
- (9) Photographs of typical damage and appropriate maps showing the location of each area and extent of damage;

- (10) Copies of ERFO coordinators' trip reports;
- (11) Discussion of the impact of the subject damage. For example, a destroyed bridge with limited traffic has little impact, but a bridge serving as the principal access to homes, large tracts of land, or carrying large amounts of traffic will have a significant impact and therefore, may qualify for Quick Release of ERFO funds for emergency repairs; and
- (12) Concluding statement. A final summary statement indicating that a natural disaster has (or has not) caused serious and widespread damage to eligible facilities or a catastrophic failure on an eligible facility resulting in a disastrous impact has (or has not) occurred. Include a specific recommendation for a finding.

Special Note: *Two disasters treated as one.* Disasters can occur so closely in time that the damage is difficult or impossible to evaluate and track as two separate events. In these cases, the Applicant should request in a letter to the FLHDD that the two disasters be recognized as a single event. Treating two disasters as one may simplify the processing of the repair and reconstruction projects by having a single ERFO finding resulting from the two disasters. The supporting data must prove that facilities have suffered severe damage in both disasters and such damage is of sufficient severity to justify ERFO assistance.

2.2 Disaster Finding

The FLHDD will make a disaster finding determination generally no later than six weeks after receipt of the *Notice of Intent*.

Positive Finding Determination The FLHDD will issue a letter to the Applicant committing ERFO funds to repair eligible damage, subject to availability. The positive finding letter will establish the disaster number ([see Appendix C.4](#)).

Negative Finding Determination The FLHDD will advise the Applicant by letter when the damage is not eligible for the ERFO program ([see Appendix C.5](#)).

Special Note: Eligibility questions that cannot be resolved by the FLHDD and the Applicant may be appealed to the Federal Lands Highway Associate Administrator with copies to the Director of the Office of Program Development, and the ERFO Program Manager. The appeal should be submitted within two weeks of the receipt of the negative finding.

2.3 Damage Survey Report (DSR)

For disasters with few sites, the DSR(s) may be prepared while making the disaster assessment. The FLHD ERFO Coordinator and Applicant will jointly develop a plan to proceed with DSR preparation. The Applicant has the lead responsibility for DSR preparation.

2.3.1 DSR Preparation

The Damage Site Survey Team shall make a detailed inspection of, and prepare a DSR for each damage site. Every report should include a description of the extent and cause of the damage, a description of the proposed repairs, and a cost estimate. When completed, all team members shall sign the report. When the team consists of Applicant and FLHD personnel, the FLHD team member shall indicate if they think the site is eligible or ineligible. (For detailed instructions on how to complete a DSR, [see Appendix C.9](#)).

Special Note: The Applicant must provide an area map complete with all damage sites clearly numbered according to the corresponding DSR number (see Appendix [C.9.1](#) and [9.2](#)). The map shall accompany the submittal of completed DSRs to the FLHD.

- a) In addition to completing the DSR, the team shall identify *emergency* repairs completed and emergency repairs remaining.
- b) Identify *permanent* repairs necessary to restore the site to its pre-disaster condition.
- c) Identify major environmental issues that may have a substantive effect on repair costs and timelines.
- d) Justify betterments, if proposed.
- e) Identify repair options, if applicable.
- f) Identify level of environmental review expected [e.g., Categorical Exclusion (CE), Environmental Assessment/Finding of No Significant Impact (EA/FONSI), Environmental Impact Statement (EIS)].
- g) Provide detailed high quality color photographs for each site properly numbered and referenced to a particular damage site and DSR.
- h) Provide a sketch of the damage and proposed repairs.
- i) Provide quantity calculations for major work items.
- j) Provide the National Tribal Transportation Facility Inventory (NTTFI) or National Federal Lands Transportation Facility Inventory (NFLTFI) route or asset number.
- k) Provide Road Management Objectives (Forest Service) and Maintenance Intensity (Bureau of Land Management).

2.3.2 DSR Personnel – Roles and Responsibilities

Applicants are encouraged to proactively conduct damage site surveys and begin preparation of the DSRs. This can greatly accelerate advancement of the Program of

Projects. In a case where the FLHD is unable to provide team personnel, the Applicant personnel will be authorized to perform the damage site surveys and complete the DSRs. [See Appendix C.8](#) for a list of recommended equipment.

- a) FLHD personnel will review all DSRs and may conduct field reviews of selected sites prior to approving the damage description, scope of the proposed repair, and cost estimate.
- b) Based on the results of these reviews, the Applicant will modify the DSRs as deemed necessary by the FLHD ERFO coordinator.

2.3.3 DSR Submittal

The Applicant should submit DSRs thru the ERFO Coordinator to the FLHDD for approval as soon as possible after the positive finding. The ERFO Coordinator will provide courtesy copies to the Tribal Coordinator for FHWA agreement tribe sites. Betterment requests and justifications should accompany submission of the DSR.

Special Note: DSRs must be completed and submitted for approval no later than nine months after the positive finding.

2.3.4 Combining Damage Sites

It may be appropriate in some situations to combine damage sites so as to prepare a single DSR for a road or road segment. Typically, the use of one DSR to combine damage sites is reserved for damage that will be repaired in the same construction contract. The team will identify each individual site by mile post and will prepare a cost estimate complete with recommended repairs and photographs for each site. The DSR form will then represent a summary of the costs to repair the damage sites along the total length of road or road segment. However, damage sites **shall not** be combined just to meet the \$5,000 minimum threshold requirement for ERFO consideration.

Sites such as bridge replacements and major landslides shall have separate DSRs.

2.3.5 Amended DSRs

Amended DSRs must be completed when the following applies:

- a) The Applicant wants to revise the scope of approved repairs during design or construction. Examples of scope revisions that require amended DSRs include:
 - (1) Modifying, adding, or deleting major construction items;
 - (2) Revising the roadway cross-section;
 - (3) Extending the project limits; or
 - (4) Electing to decommission the road.

- b) The cost estimate increases more than \$50,000 for DSRs less than \$250,000.
- c) The cost estimate increases more than 20 percent for DSRs over \$250,000.
- d) When multiple sites have been combined into one DSR and some of the site repairs must be delayed, those deferred repairs shall be separated from the projects that can be repaired promptly and accounted for separately.

2.4 Program of Projects Proposed by the Applicant

The initial POP should be submitted to the FLHDD, thru the ERFO Coordinator, within 90 days after receipt of the *positive finding*. The submittal must contain the following:

- a) **POP Letter:** includes the completed DSRs and the Program of Projects Table, requests ERFO funds for the repair of damaged sites ([see Appendix C.10](#)), and requests FLHD assistance to repair damage, if applicable.
- b) **POP Table:** a list of all the DSRs submitted for approval indicating the proposed agency responsible for repair ([see Appendix C.11](#)).
- c) **DSRs:** Initial DSRs must be submitted no later than nine months after the *positive finding* date to be eligible.

2.4.1 Request FLHD to Perform Work

The FLMA should request design and construction assistance from FLH as soon as it is determined that the FLMA cannot perform the repairs. Requests must allow sufficient time for FLH to design and award the project. The FLHDD shall inform the Applicant by letter within 30 calendar days of the request, the work that the FLHD agrees to perform.

2.5 Approved Program of Projects (POP)

2.5.1 Program of Projects Approval Letter

The POP approval letter from the FLHDD establishes the maximum amount of funds approved for the repair of eligible damage. The POP approval shall be completed within 30 calendar days of receipt of the Applicant's POP ([see Appendix C.12](#)). The purpose of this letter is to:

- a) Identify projects in the Applicant's proposed programs that are approved, including any required changes.
- b) Identify *future project approvals* required by the FLHDD such as plans, specifications, and estimates; concurrence in award; rejection of bids; and project acceptance. Project selection will be based on project complexity, cost, and past performance; it may include randomly selected projects.

- c) Identify work the FLHD agrees to perform.
- d) Provide approval of the use of *force account* when it is determined that it is in the best interest of the public.

2.5.2 ERFO Fund Availability

Even though the funding level is approved in the FLHDD's Program of Projects Approval Letter, ERFO funds may or may not be available. If ERFO funds are not available, the Applicant or local government entity is expected to use other funds to cover the cost of the approved repairs until ERFO funds are available for reimbursement.

2.5.3 Revisions to the POP

When DSRs are amended or new sites added, a revised POP request must be submitted to the FLHDD for approval as soon as possible. The agency responsible for submitting the revised POP varies as follows:

- a) Applicant. When the Applicant or local government is the lead agency for the repair of a project, the Applicant must request a revision to the DSR and the POP to ensure the availability of funds. It requires approval by the FLHDD.
- b) FLH Division. When the FLHD is the lead agency for the repair of a project, the FLHDD will revise the Program of Projects with concurrence of the Applicant.

As stated previously, new DSRs will not be approved if submitted more than nine months after the date of the positive finding.

2.6 Environmental Compliance

The lead agency must comply with all applicable federal, state, and local environmental laws and permit requirements dealing with issues such as wetlands; resource conservation; clean water; endangered species; farmland; unexploded ordnances; and cultural resources.

Special Note: Environmental compliance must be coordinated with the FLHDD to ensure ERFO Projects comply with all laws (including Title 23, U.S.C.), regulations, and executive orders.

2.6.1 Emergency Repairs

Regardless of which agency administers the project, emergency repairs meet the criteria for a Categorical Exclusion (CE) and normally do not require environmental studies or further NEPA approvals by FHWA (see Federal Highway Administration's implementing regulations for the National Environmental Policy Act, specifically, 23 CFR §771.117(c)(9)(i)).

2.6.2 Permanent Repairs

NEPA documentation (e.g., Categorical Exclusion, Environmental Assessment, Environmental Impact Statement, and Record of Decision) is the responsibility of the lead agency administering the project.

2.6.3 Applicant and local government entities as Lead Agency

The lead agency shall coordinate (via letter addressed to the FLHDD) environmental compliance with the FLHD. If requested, the Applicant shall submit documentation that shows compliance with all applicable federal, state, and local environmental laws to the FLHD for approval prior to initiating construction activities funded wholly or in part by the ERFO Program. In the very rare case when an Applicant or local government entity prepares an Environmental Impact Statement (EIS), the FLHD is required by law to be the lead or co-lead agency. If an EIS is being considered by the Applicant he/she shall notify the FLHDD before issuing the Notice of Intent in the Federal Register.

2.6.4 FLHD as Lead or Signatory Agency

Title 23, Code of Federal Regulations, Part 771 will be the basis of the FLHD environmental process. The FLHD Project Development and Design Manual will provide additional environmental guidance. The Applicant would normally participate as a cooperating agency at the request of the FLHD.

2.7 Construction Contracts and Force Account Repairs

All ERFO funded projects shall be designated with the prefix “ERFO”.

2.7.1 Emergency Repairs

Under 23 CFR §668.205(d), emergency repairs may be performed by the method of contracting (advertised contract, negotiated contract, or force account) which the applicant or the Federal Highway Administration (FHWA) (where FHWA performs the work) determines to be most suited for this work. Where time and conditions warrant, applicants are strongly encouraged to first consider using the competitive bidding method of contracting for emergency repairs.

- a) Force Account. The term force account means the direct performance of highway construction work by a federal or local government entity by use of labor, equipment, materials, and supplies furnished by the entity accomplishing the work and used under their direct control.
- b) Solicited Contract. A solicited contract may be warranted due to the emergency character of the work. The federal or local government entity may contact a reasonable minimum number of contractors by telephone to solicit quotes for a specific scope of work. A summary showing how the solicitation was conducted, who was contacted, and the responses by the contractors must be prepared.

c) Sole Source Contract.

- (1) Under certain emergency circumstances where it is critical to restore essential travel in an expedited manner, it may be appropriate to enter into a sole source contract with one firm. The contracting agency must document the process it used for selecting and negotiating a reasonable price with a single firm. Lump sum contracting should be used only when unusual or rare circumstances are present making it virtually impossible to estimate quantities of work.
- (2) The FLHDD shall determine whether the price of a sole source contract is reasonable under the circumstances of the situation. The contracting agency should conduct a cost analysis prior to the award of any contract to assure that prices are fair and reasonable to aid in this determination. The FLHDD reserves the right to withhold funding or to reduce its participation when prices are not deemed to be reasonable.

2.7.2 Permanent Repairs

- a) Permanent repair and reconstruction work, not accomplished as emergency repairs, must be done by contract awarded by competitive bidding unless the contracting agency or tribe demonstrates some other method is more cost effective to the satisfaction of the FLHDD. The contracting agency should ensure an opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or call for bids.
- b) ERFO construction projects can be accelerated using contracting techniques such as cost-plus-time bidding, lane rental, design-build contracting, abbreviated plans, shortened advertisement period for bids, incentive/disincentive clauses and utilizing a short list of qualified bidders.

2.7.3 Contract Requirements

Contracts for both permanent repair work and emergency repairs must incorporate all applicable federal requirements. As such, FHWA Form 1273 must be included in all contracts pursuant to 23 CFR §633.102. FHWA Form 1273 includes, but is not limited to, the following requirements:

- a) Davis-Bacon Act, 23 U.S.C. 113. While contracting agencies are empowered to begin emergency repairs immediately, they must comply with 23 U.S.C. 113 requirements so that properly documented costs will be eligible for reimbursement once the FLHDD makes a finding that the disaster is eligible for emergency relief funding. Title 23 U.S.C. 113 requirements do not apply to local government entity employees who perform emergency repairs or construction work on a force account basis.
- b) Buy America provisions in 23 U.S.C. 313 and FHWA implementing regulations (23 CFR §635.410) apply to all ERFO funded projects. Under certain circumstances the FLHDD may grant, a waiver from these requirements if the

Secretary finds that the application of Buy America would be inconsistent with the public interest or that the required steel or iron products are not produced in the United States in sufficient quantities of a satisfactory quality. [23 U.S.C. 313(b) and 23 CFR §635.410(c)].

- c) Americans with Disabilities Act (ADA) are applicable on non-federal facilities and Architectural Barriers Act regulations are applicable on federal facilities.
- d) Equal Employment Opportunity (EEO) requirements prohibit discrimination and requires contractors to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR §35, 29 CFR §1630 and 41 CFR §60) and orders of the Secretary of Labor.
- e) Convict Labor prohibition in 23 U.S.C. 114 applies to ERFO projects. Convict labor cannot be used in ERFO construction projects.
- f) Suspended or Debarred Contractors are prohibited from doing business with contractors who have been suspended or debarred. This prohibition includes contractors with principals who have been suspended or debarred. The contracting agency is responsible for determining whether any contractor or its principals are suspended or debarred.

2.8 Time Limitations

ERFO projects shall be constructed promptly. 23 CFR §668.205(e).

2.8.1 Emergency repairs

- a) Since it is in the public interest for emergency repairs to be performed as soon as possible, such repairs may be started without prior approval from the FLHDD and shall be completed within 180 days after the event.
- b) The method of contracting may be determined by the Applicant.

Special Note: Photographs must be taken prior to beginning any emergency repairs to document the extent and severity of the damage.

2.8.2 Permanent repairs

- a) *Force account* projects must be completed by the end of the second fiscal year following the event year.
- b) Contracted projects must be under construction by the end of the second fiscal year following the event year. This requirement gives the Applicant 25 to 36 months to award the permanent repair construction contract and to begin construction.

2.8.3 Contract Award Time Extensions

Projects not under contract for permanent repair by the end of the second fiscal year following the event year shall be withdrawn from the POP and considered non-emergency permanent repairs unless the FLHDD approves a time extension. Time extension requests must be submitted to the FLHDD for approval at least 60 days prior to the end of the eligible period. The Applicant is responsible for submitting suitable justification for contracts that will not be awarded prior to the end of the second fiscal year following the event year. The justification must include dates of completed milestones that demonstrate the project was given prompt attention and priority over non-emergency work ([see Appendix C.16](#)).

- a) The FLHDD may grant a one year contract award time extension ([see Appendix C.17](#)) if one of the following exist:
 - (1) The Applicant gave the project prompt attention and priority over non-emergency work;
 - (2) A new disaster event significantly increases or changes an eligible site or prevents access to the site; or
 - (3) Repairs are delayed due to ongoing litigation.
- b) Contract award time extensions will **NOT** be granted in the following situations:
 - (1) Lack of available ERFO or agency resources delayed the project;
 - (2) Repairs proposed for *force account* crews are delayed; or
 - (3) Repairs were not given prompt attention and priority over non-emergency work;
- c) Time extensions beyond one year will not be considered by the FLHDD. Beyond one year, an appeal to the FLH Associate Administrator will be required for unique or extraordinary circumstances that are beyond the control of the Applicant. Generally, the Applicant should not expect a time extension to be granted beyond one year. This is to keep within the intent of the program and to optimize the use of available funding.

2.9 Disaster Status, Unobligated Balance, and Disaster Closeout Reports

2.9.1 Disaster Status Reports

- a) Applicants and the FLH TTP Office must submit a Disaster Status Report to the FLHD office by November 30 of each year ([see Appendix C.20](#)). The information in this report provides the cumulative expenditure/obligation of each site through the end of the previous fiscal year. If complete reports are not received, funding will be withheld or delayed.

This report serves as the final Closeout Report when all projects have a date listed under the final column (Date Closed).

- b) The ERFO Coordinators must summarize the results of the previous fiscal year accomplishments (e.g., Disaster Approvals and Amounts and Positive and Negative Findings, Damage Site Information, Time Extensions, Disaster Closed, Funds Obligated by Applicant, Design and Construction Workload, etc.). The ERFO Coordinators must submit this Fiscal Year Accomplishment Report to the ERFO Program Manager by December 31 of each year.

2.9.2 Unobligated Balance Reports

- a) Applicants and the FLH TTP Office must submit a Prior-year Unobligated Balance Report to FLH headquarters within the first quarter of the new fiscal year. If reports are not received or are incomplete, funding (reinstatement) of the unobligated balances will be delayed until all data inconsistencies (including prior-year obligations) have been reconciled between the Applicant or FLH TTP Office and the FLH program headquarters office.

Additionally, quarterly reports of unobligated balances by disasters must be submitted to the ERFO Program Manager.

2.9.3 Closeout

The FHWA expects that all ERFO projects will be completed by the end of the fourth year following the event year and the FLHDD will begin closing out projects at that time. If all projects are not complete, a partial closeout of the event may be conducted.

- a) **Applicant and FLH TTP Office Closeout Report.** When all sites are completed submit the Request for Closeout Letter (C.19) along with a signed Disaster Status Report (C.20) and several pictures of completed repairs. At final closeout, the Disaster Status Report must identify the actual costs of repair for each DSR. Individual sites that are combined into a single construction contract may be reported together. *Force account* work may be reported on a road-by-road basis. Combining costs from multiple DSRs, other than as stated above, is not permitted.
- b) **Partial Closeout.** Upon request, partial closeout of completed site repairs may be initiated prior to completion of all site repairs. The partial closeout may include a review of ongoing construction projects as well as completed projects.
- c) **FLH Division Review.** The FLHDD will review the Disaster Status Report for consistency with the approved POP and conduct follow-up field reviews as needed. Individual DSRs will be selected for an in-depth review based on the following:
 - (1) Actual costs greater than 20 percent of the approved POP amount;
 - (2) High cost or technically complex projects;

- (3) Force account projects; and
 - (4) Representative of the majority of projects.
- d) **Field Review Notification.** The Applicant or FLH TTP Office will be notified when projects are selected for an in-depth field review ([see Appendix C.21](#)) and shall assemble all contract documents and all financial records that support the costs submitted in the Closeout Report ([see Appendix C.22](#)).
- (1) Contract documents include plans, specifications, permits, contract changes, contract payments, contract award and release of claim documents, NEPA documentation, and environmental compliance documentation.
 - (2) Financial records, such as payroll, travel, per diem; materials, supplies, equipment rental, and equipment hours must be properly documented and made available for each selected DSR.
- e) **Field Review Agenda.** The Applicant and FLH TTP Office's administration of the ERFO program will be reviewed and evaluated. The following questions will be posed to ensure compliance with applicable laws, regulations, and policies:
- (1) General – What degree of support and oversight did the main (regional/state) office provide? Were projects given prompt attention and priority over non-emergency work?
 - (2) DSR Scope – Were projects built in substantial conformance with the approved DSRs?
 - (3) Completion time – Were the construction projects awarded by the second fiscal year following the event year? Were *force account* projects completed by the end of the second fiscal year following the event year? Were time extensions requested and approved for delayed work?
 - (4) DSR revisions – Were the DSRs revised when appropriate (e.g., 20 percent cost differential, change in scope)?
 - (5) Environmental compliance – Did the lead agency request (via letter addressed to the FLHDD) the FLHD's participation as a cooperating agency? Was supporting documentation that shows compliance with all applicable federal, state, and local environmental laws submitted to FLHD? How was compliance documented (e.g., CE, EA/FONSI, EIS)? If an EIS was prepared, was the FLHD notified and did the FLHD serve as the lead or co-lead agency?
 - (6) Engineering – How was engineering managed (e.g., in-house, contract)? Were the design plans and specifications adequate? Did the plans and specifications have peer or Program Manager Review for compliance with the approved DSR scope? Were reviews conducted by the FLHD if noted in the approved POP?

- (7) Materials and supplies – What kinds of materials and supplies were purchased? Were they eligible? Were all materials supported with adequate documentation? How were agency-furnished materials accounted for?
- (8) Repairs – How were the repairs administered (e.g., in-house, contracts)? Were permanent repairs approved prior to construction? If contract modifications occurred, were they adequately documented? Were there any salvaged items or materials?
- (9) Accounting
- i. *Records.* Is there adequate detail to determine if the charges are appropriate (e.g., location of work, who worked, time worked, and material placed or removed)? Are the agency-submitted final costs supported by their financial records?
 - ii. *Non-eligible work.* If projects included non-eligible work, were non-ERFO costs funded and tracked separately? Were the accounts adjusted at project completion to reflect actual expenses? Was FLH notified that non-ERFO work was combined with ERFO work prior to award?
 - iii. *Other funding sources.* Were ERFO funds used to replace other funding sources (e.g., repairs programmed prior to the disaster, damage caused by legally responsible parties, share cost agreements)?
 - iv. *Force account rates.* Are the equipment rental rates reasonable and based on an appropriate schedule?
 - v. *Right-of-way acquisitions.* What kind of documentation is available to ensure that all requirements (e.g., Uniform Act) are met?
- f) **FLHD Closeout Report.** The Closeout Report will recommend the final approved Program amount and will summarize the results of the office and/or field review. If the results of the field review indicate that additional projects should be reviewed, additional follow-up field reviews will be conducted as needed.
- g) **Closeout Letter.** The Closeout Letter from the FLHDD will revise the amount of the approved POP, summarize the results of the closeout review, and request that the ERFO Program Manager begin funding reconciliation with the Applicant's headquarters or the FLH TTP Office ([see Appendix C.23](#)).
- (1) Submitted costs that cannot be satisfactorily assigned to a specific DSR will not be allowed.
 - (2) When non-eligible repairs are added to a project and the funding sources of those repairs are not satisfactorily documented, all ERFO expenditures may be disallowed.

- h) **Funds Reconciliation.** Based on the FLHD final Disaster Closeout Letter, the ERFO Program Manager will reconcile funds with the Applicant or FLH TTP Office ([see Section 3.4](#)).
- (1) Funds transferred in excess of the final approved Program Amount will either be withdrawn by FLH Headquarters from the Applicant or must be returned by the FHWA agreement tribe to the FLH TTP Office.
 - (2) If non-ERFO funds were used to make eligible repairs, the event will not be closed until ERFO funds become available and the Applicant or FHWA agreement tribes are reimbursed.



CHAPTER 3 FUNDING



3 Introduction

The Highway Trust Fund (Contract Authority) is the source of Emergency Relief funds. Congress may supplement Emergency Relief funds with General funds (Budget Authority). Title 23, United States Code, Section 125, authorizes funds for emergency and permanent repairs of Federal-aid highways, tribal transportation facilities, federal lands transportation facilities and other federally-owned roads. Congress can also authorize additional emergency relief funds through supplemental appropriation acts.

3.1 ERFO Funding Process

3.1.1 Requesting ERFO Funds

The FLH ERFO Program Manager will only accept requests for funds from the Federal Land Management Agencies (Applicant), FHWA agreement tribes, and Federal Lands Highway Divisions (FLHD).

Special Note: The term “FHWA agreement tribes” refers to tribes who have a formal agreement with FLH in the Tribal Transportation Program (TTP), and “BIA tribes” refers to tribes who work directly with the BIA in the TTP.

States, counties, and BIA tribes cannot request funds directly from the ERFO Program Manager.

- a) The BIA must request funds needed to reimburse BIA tribes or FHWA agreement tribes (that do not request funds directly from FLH Headquarters) for work performed.
- b) Applicants or the FLHD may request funds needed to reimburse states and counties for work performed.

3.1.2 Types of Requests

There are two types of ERFO funds requests:

- a) **Quick Release Request.** At any time after a natural disaster or catastrophic failure Applicants may request quick release of ERFO funds from the FLH Division. All tribes must request Quick Release through the BIA. The purpose of the Quick release is to expedite the release of funds to make emergency repairs to re-establish vital transportation system(s) within 6-months after an event occurs. The requests will be reviewed by the FLHD on a case-by-case basis. The process to request Quick Release is:
 - (1) The Applicant makes the request by phone to the FLH ERFO Coordinator and follows up with an e-mail to the FLHD Director ([see Appendix C.6](#)). The e-mail must include the following:
 - i. Cause of damage,
 - ii. Dates of damage,
 - iii. Facilities damaged,
 - iv. Emergency repairs needed,
 - v. Location of damage, and
 - vi. Congressional District if known.
 - (2) The FLHDD evaluates the need for a quick release after determining with a reasonable certainty that the event threshold will be met.
 - (3) FLHDD sends a request to the e-mail group in Outlook named “FHWA ER Quick Release” after consulting with the FLH Headquarters.” This e-mail group has been set up for rapid communication of all quick release requests.
 - (4) The Office of Program Administration sends a recommendation to the Administrator by e-mail.

- (5) The Administrator decides whether to recommend quick release for the Secretary's approval. Once the expedited quick release request is approved, the Office of the Administrator will send an e-mail to the e-mail group in Outlook named "FHWA ER Quick Release" indicating the approval and amount of the quick release.
 - (6) The Office of Policy's Congressional Affairs Team will coordinate a concurrent notification to the congressional authorizing and appropriations committees through the Grants Notification System. The Office of Public Affairs will then issue a press release.
 - (7) When approved the Federal Lands Headquarters will notify the FLHD Director and the Tribal Transportation Program Director. The FLH Division will notify the Applicant and local government entity. ([See Appendix C.7](#))
- b) **Annual ERFO Funds Request.** Any time after the POP has been approved; the Applicant, FHWA agreement tribe, or FLHD may request the annual transfer of ERFO funds. Requests must be in writing (email) and must include a copy of the POP Approval Letter. ([See Appendix C.18](#))
- (1) Requests must be restricted to only those funds that will be obligated within the current fiscal year.
 - (2) Requests should not exceed the authorized POP amount.
 - (3) The ERFO Program Manager will consolidate these requests and submit them to the Emergency Relief (ER) Program Manager.

3.1.3 Allocation/Transfer of ERFO Funds/Obligation Authority

- a) **Applicant, FLH TTP Office, and FLH Division.** The ERFO Program Manager will transfer to the Applicant or allocate to the FLHD offices or FLH TTP Office amounts not to exceed the approved POP. All ERFO fund allocations shall be entered into the Department of Transportation (DOT) accounting system by state and funding program code. The ERFO Program Manager will allocate Obligation Authority, by disaster, state, and funding program code to the Applicant's headquarters, the FLH TTP Office, or the FLHD as described below.

Special Notes:

- Allocation requests require the Secretary of Transportation approval and a minimum of three days Congressional Notification.
- Allocation of ERFO funds will not be released if prior year Disaster Status Reports have NOT been submitted to the FLHD. In addition, allocation of ERFO funds may not be released until prior-year obligations have been reconciled between the Applicant and the FLH program headquarters offices.

- (1) Applicants will receive an Allocation of ERFO Funds letter with a summary of the Applicant's current fiscal year ERFO program allocations. In addition, the FHWA Office of Budget and Finance shall issue a Form 370 (Allotment Advice Form) to the Applicant, confirming the allocation authority and limitation.
- (2) The FLH TTP Office and the FLHD will receive an Allocation Memorandum from the ERFO Program Manager with a summary of the FLHD's current fiscal year ERFO program allocations.
- (3) Each ERFO Allocation Memorandum will provide funding program codes that indicate the type of ERFO funds authorized. The Applicant, the FLH TTP Office, and the FLHD must use these funding program codes to track the obligation and expenditure of all ERFO funds received. The Applicant, FLH TTP Office, and FLHD must report the obligation of funds to the ERFO Program Manager by event number and funding program code(s). The four-digit program fund code historically used follows the format PC-09W0 and TR60.

b) Local government entities (States, counties, tribes)

- (1) State, county, borough, etc. may enter into a reimbursable agreement with the FLHD or an Applicant. With this method, ERFO funds needed for the repair costs are allocated by an Allocation Memorandum to the FLHD or the Applicant by event number, state, and funding program code. Work is done on a reimbursable basis and paid per provisions in the agreement.
- (2) Indian Tribal Governments may enter into a PL 93-638 contract with the Bureau of Indian Affairs (BIA) for repairs performed by the tribes. The BIA is normally the Applicant for Tribal-administered projects and will request and receive funds from the ERFO Program Manager for tribal projects unless the tribe is a FHWA agreement tribe and the tribe made a funds request directly to FLH Headquarters.
- (3) FHWA agreement tribes will receive funds through a Reference Funding Agreement with the FLH TTP Office if they made a funds request directly to FLH Headquarters.

3.2 Advancing Projects during an ERFO Fund Shortage

When all available funds are exhausted, ERFO fund requests will be held until the U.S. Congress authorizes additional funds. Applicants shall submit prioritized lists of the emergency and permanent repairs shown in the approve POP, based on available funding. Recognizing that prompt congressional action is not always possible, the following options or combinations of options may be used to fund or advance ERFO projects on an interim basis.

3.2.1 Unobligated balances from other approved disasters

If an Applicant has received funds for an ERFO disaster, the unobligated balance can be used on other approved disasters. The Applicant is required to obtain approval from the ERFO Program Manager when this option is needed. This use of ERFO funds is not allowable when funds are limited by law to a specific disaster or the use of the funds exceeds the approved POP for that disaster.

3.2.2 Other Funds

- a) **Non-ERFO funds.** Other funds used to perform approved ERFO repairs will be reimbursed equal to the total approved expensed amount.
- b) **Federal Lands Highway Program (FLHP) Funds.** TTP and FLTP funds may be used to perform eligible repairs on facilities that are eligible for that particular category of funds.

3.2.3 ERFO Funding Priorities

When available ERFO funds are insufficient to meet current fiscal year fund requests, the ERFO Program Manager will allocate funds as shown below. Listed in priority order, they are:

- a) Reimbursement of Applicant funds, including tribal and local government entity funds used on approved ERFO repairs;
- b) Reimbursement of TTP and FLTP funds used on approved ERFO repairs;
- c) Construction engineering and contract modifications for ongoing ERFO construction projects;
- d) Emergency repairs of high-use facilities that are critical to the agencies' mission and/or health and welfare of the local community/region; and
- e) Current fiscal year obligations.

3.3 Fiscal Responsibility and Reporting Requirements

The Applicant and the FLH TTP Office is responsible for the administration of ERFO funds and the obligation authority that has been transferred with it. This includes compliance with all applicable laws, regulations, and fiscal reporting requirements.

3.3.1 Projects with combined funding

When a construction contract includes both eligible and ineligible ERFO work, the agency administering the contract has the following responsibilities.

- a) Prior to award, amend the DSR to separate eligible and ineligible work, and include the source of funding for the ineligible work in the amended document. Failure to do so may jeopardize ERFO funding.
- b) Ensure that separate accounts are established.
- c) Charge work not eligible for ERFO funding to non-ERFO accounts.
- d) Report ERFO and non-ERFO obligations/expenditures separately in the Disaster Status Report.

3.3.2 Reporting Requirements

Each event requires Unobligated Balances Reports and Disaster Status Reports to be submitted to the ERFO Coordinator documenting the status of all approved funds.

Special Note: The ERFO Program Manager will withhold funds if the reporting requirements shown below are not met.

- a) **Unobligated Balances.** All entities that are advanced ERFO Funds, must report all unobligated balances quarterly. The end of fiscal year reports must be reconciled with FLH Headquarters prior to reinstatement of the funds or transfer of new funds.
 - (1) **Applicants.** The Applicant shall report the amount of unobligated ERFO funds (by program code) to the FHWA using a Standard Form 133, Report on Budget Execution (generally done by the Applicant's Budget Office). At the end of each fiscal year the ERFO Program Manager and the Applicant will reconcile all reported amounts. Per written request by the Applicant, the ERFO Program Manager will reinstate the unobligated fund balances (by event number and program code) as soon as possible following the reconciliation process.
 - (2) **Tribes.** Tribes shall report the amount of unobligated ERFO funds (by program code and disaster) to either the BIA or the FLH TTP Office. At the end of each fiscal year the ERFO Program Manager and the Applicant or FLH TTP Office will reconcile all reported amounts. Per written request by the Applicant or FLH TTP Office, the ERFO Program Manager will reinstate the unobligated fund balances (by event number and program code) as soon as possible following the reconciliation process.
 - (3) **FLHD Office.** The ERFO Program Manager and the FLHD will reconcile all reported amounts of prior year unobligated ERFO funds (by event number and program code). Per written request from the FLHD the ERFO Program Manager will reinstate the unobligated funds (by event number and program code) as soon as possible following the reconciliation process.

- b) **Disaster Status Report.** The Applicant, FLH TTP Office, and the FLHD must prepare and submit a Disaster Status Report for each disaster by November 30 of each year. The information on this report should reflect the status of each disaster through the end of the previous fiscal year.
- (1) **Applicant.** Annually submit the Disaster Status Report to the FLHD. As a final closeout report by the Applicant, the Disaster Status Report must present a final accounting of the costs claimed for the event by each DSR. The final Disaster Status Report must be submitted to the FLHD ERFO Program Coordinator within six months of the completion of all repairs ([see Appendix C.20](#)). Supplemental funds used to address agency priorities not approved for ERFO funding must also be reported. The BIA must include the status of work performed by tribes.
 - (2) **TTP Office.** Annually submit the Disaster Status Report for all work conducted by FHWA agreement tribes, which requested funds directly from the FLH Headquarters, to the BIA and the FLHD. As a final closeout report by the TTP Office, a Disaster Status Report must present a final accounting of the cost claimed for the event by each DSR. The final closeout report must be submitted to the BIA and the FLHD within six months of the completion of all repairs ([see Appendix C.20](#)).
 - (3) **FLHD.** Submit the Disaster Status Report for any work conducted by the FLHD to the Applicant. In addition, submit these and all reports received from the Applicants and the FLH TTP Office to the ERFO Program Manager. As a final closeout report by the FLHD, a Disaster Status Report must present a final accounting of the cost claimed for the event by each DSR. The final closeout report must be submitted to the Applicant and the ERFO Program Manager within six months of the completion of all repairs ([see Appendix C.20](#)).
- c) **Closeout Supporting Documentation.** Costs that cannot be satisfactorily assigned to a specific DSR will not be reimbursed. For each DSR, provide the following ([see Appendix C.22](#)):
- (1) **Labor.** Time keeping document (time slip, time and attendance report, etc.);
 - (2) **Material.** Stock slip, vendor invoice;
 - (3) **Equipment.** Mobilization, operation costs, depreciation or replacement costs, and rental costs;
 - (4) **Contracts.** Plans, specifications, schedule of items, award documents, modifications, and final payment and contract release documents; and
 - (5) **Expenditures.** Print out from the agency's financial system with expenditures summarized by category listed above. Provide documentation that shows release of all obligated funds.

3.4 Fund Reconciliation

Based on the FLHD final Disaster Closeout Letter, the ERFO Program Manager will reconcile funds with the Applicant's headquarters, FLH TTP Office, and the FLHD.

- a) **Funds Available.** Agencies will be reimbursed when non-ERFO funds were used to make eligible repairs.
- b) **Funds not available.** If ERFO funds are not available for transfer or allocation, the event will not be closed until funds become available and are either transferred to the Applicant or allocated to the FLHD or FLH TTP Office by event number, state, and program code.
- c) **Excess Funds.** Funds that were transferred or allocated in excess of the final approved amount will be withdrawn, de-allocated, or returned to the Federal Government by check.



CHAPTER 4 ELIGIBILITY



4 Introduction

The intent of the ERFO program is to fund repair of **serious** damage to eligible facilities caused by a natural disaster or catastrophic failure. ERFO funds will not be approved to supplant other funds for the correction of pre-existing, non-disaster related deficiencies nor will ERFO funds be approved for the repair or reconstruction of facilities affected by long term, pre-existing conditions, or predictable developing situations. Damage will be approved on a site-by-site basis and can not include work considered to be heavy maintenance. Betterments added to prevent future damage must be economically justified.

Repair costs of a damaged site (emergency and permanent repairs) totaling less than \$5,000 are NOT eligible for ERFO funding. In addition, *damages at two or more sites shall NOT be combined to meet that threshold.*

4.1 Eligible Facilities

Tribal transportation facilities, Federal lands transportation facilities, and other federally owned roads that are open to public travel (23 U.S.C. Section 125 (e)(2)) are eligible. With respect to a road, FHWA defines the following:

Open to Public Travel: Except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

Eligibility is further defined as follows:

4.1.1 Tribal Transportation Facility.

A tribal transportation facility is a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory (NTTFI) described in Title 23, United States Codes, Section 202(b)(1).

4.1.2 Federal Lands Transportation Facility.

A federal lands transportation facility is a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national federal lands transportation facility inventory (NFLTFI) described in Title 23, United States Code, Section 203(c).

4.1.3 Other Federally Owned Roads.

Roads that do not meet the definition of a tribal transportation facility or a federal lands transportation facility are eligible if, in addition to meeting the definition of "open to public travel", they have an engineered surface and they are actively maintained for standard passenger vehicles.

4.1.4 Transit Systems

Transit systems that are tribal or federal lands transportation facilities are eligible as follows:

- a) Open to the general public on a published regular schedule.
- b) Vehicles and routes that normally are used to transit the public.
- c) Boat docks that primarily serve eligible transit system boats.
- d) Shelters primarily used by transit passengers.
- e) Other buildings, structures, maintenance vehicles, and support facilities are not eligible.
- f) Privately owned transit vehicles are not eligible.

4.1.5 Trails

Trails that are tribal or federal lands transportation facilities are eligible as follows:

- a) Trails must have an engineered surface such as asphalt, concrete, an elevated wood/composite structure, or a well compacted crushed aggregate or chemically stabilized earth surface that is stable and firm in all weather conditions, and
- b) Exhibits substantial use and pedestrian capacity, free of vegetation, and has adequate drainage, or
- c) Listed on the National Trails System Act of 1968 ([see Appendix E](#)).
- d) Sidewalks are not eligible unless they are contiguous with an eligible road or parking area that is also damaged.



4.1.6 Parking Areas

Parking areas are eligible as follows:

- a) Tribal or federal lands transportation facilities, and
- b) Serves high use recreation sites, federal economic generators, eligible trails or transit systems, and
- c) Is an engineered facility with an engineered surface such as asphalt, concrete or crushed aggregate that is stable and firm in all weather conditions.

4.2 Cost Limitations

- a) Damage will generally be repaired to restore safe passage consistent with the pre-disaster conditions of the facility.
- b) The total cost may not exceed the cost to repair or reconstruct a comparable facility, which meets the geometric and construction standards required for the types and volume of traffic the facility will carry over its design life.
- c) Costs to provide long term resiliency and reduce the potential for future loss must be documented and approved as a Betterment.

4.3 Eligible Repair Costs

Generally repair of serious damage to eligible facilities directly caused by an event and necessary to restore traffic is eligible. However it is not the intent of the program to cover all repair costs. The following is a more detailed discussion of eligible costs and eligible repairs.

4.3.1 Boat Ramps

Boat ramps are not eligible.

4.3.2 Bridges

a) General:

- (1) Only repair of disaster-related damage is eligible. If repair of disaster damage would not correct pre-disaster structural deficiencies, then Permanent Repairs are only eligible if other funds are used to simultaneously correct the structural deficiencies.
- (2) When a bridge is destroyed or repairs are not feasible, the cost of a comparable facility that meets current geometric and construction standards for the type and volume of traffic it will carry during its design life is eligible.
- (3) Bridges that are scheduled for replacement (included in a TIP) are eligible for reasonable Emergency Repairs to restore essential traffic, but are not eligible for Permanent Repairs.

b) Temporary/Prefabricated/Portable bridges will be approved based on the following conditions:

- (1) Placement of the temporary bridge is needed to maintain essential traffic and failure to place the bridge would result in a disastrous impact.
- (2) Bridge may be leased or purchased contingent upon the following stipulations:
 - i. Purchase price minus resale value only.
 - ii. An economic analysis is completed prior to the purchase that demonstrates significant cost benefit of purchasing over leasing.
 - iii. Removal of the structure following permanent repairs.

Special Note: Maintenance of bridges after installation is not eligible.

4.3.3 Culverts

- a) Damaged culverts are eligible for repairing or resetting. Replacement to current standards may be eligible if found to be reasonable based on the amount of damage, age of the culvert, likelihood of recurring damage and relative cost of repair or replacement.
- b) Destroyed culverts may be replaced to current engineering design standards or environmental requirements. For aquatic organism passage, [see Section 4.5 Environmental Requirements](#).

4.3.4 Damage beyond Highway Right-of-Way

Damage beyond the normal highway right-of-way width, including damage that is caused by or attributed to the highway facility (even if the applicant may be found liable for the damage) is not eligible.

4.3.5 Debris Removal

Debris typically includes trees, other woody materials, soil and rock. Debris removal from roadways and water courses around bridge piers to nearby locations within the right-of-way is eligible for ERFO funds.

- a) Debris removed on roads is limited to that necessary to assure the safety and full function of the roadway.
- b) Debris removed from watercourses is limited to that necessary to protect the structural integrity of the road or bridge and is limited to debris within the actual drainage channel and right-of-way boundary (or typical boundary if none).
- c) The costs of hauling timber to sawmill or to other locations beyond the proximity of the highway right-of-way are not eligible for ERFO funds.



4.3.6 Decommissioning or Storing

Decommissioning or storing eligible roads in lieu of repair is eligible. Funds are capped at the cost to repair eligible damage on the road. A portion of the decommissioned road can be left to function as a trail; however, trail construction along the abandoned facility is NOT eligible. Suitable turnaround facilities at the beginning of the decommissioned road section are eligible. Re-contouring is not eligible except at stream crossings.

Roads identified in a Decommissioning Plan will NOT be approved for ERFO funding. Decommissioning costs should be funded as originally planned.

4.3.7 Delayed Projects

Costs expended after the eligible period are not eligible for funding unless a time extension has been granted.

4.3.8 Detour Routes

- a) Construction costs are eligible that restore essential traffic consistent with anticipated volume and type of traffic, considering appropriate speeds, safety considerations, duration of use, and overall costs.
- b) Detour construction that establishes pre-disaster levels of service requires prior approval by the FLHD Director.
- c) Routine maintenance of detour routes, not related to increase traffic volumes such as mowing, brushing, maintaining drainage, pavement signing and snow and ice removal are not eligible for ERFO funding.

4.3.9 Direct Costs

Direct costs must be properly documented in accordance with acceptable accounting standards (e.g., time slips, time and attendance reports, time books, contracts, receipts) and readily available for inspection by the ERFO coordinator. These costs include salaries, wages, fringe benefits, consultant services, travel, materials, supplies, and equipment directly used to accomplish the repair of eligible damage.

- a) **Salaries.** Regular and overtime salaries and wages of all permanent and temporary employees directly engaged in the performance of work on ERFO projects are eligible for reimbursement. Timekeeping procedures must allocate employees' time to a specific site, each day on an hourly basis. A timekeeping document, such as time slip, time and attendance report, or time book, must be available for examination by audit personnel to support direct labor costs claimed. A responsible employee having knowledge that the time distribution is accurately reported should sign the document.
- b) **Payroll Additives.** Usually referred to as labor surcharge, a set percentage over and above the total direct labor costs charged to a project is eligible for ERFO participation. This surcharge covers costs of various types of leave allowances, industrial accident insurance coverage, and other employee benefits. The allowable percentage rates will normally vary from year to year. Therefore, the records used in developing percentage rates should be preserved under suitable control.
- c) **Travel and Per Diem expenses** properly assigned to an eligible site and directly attributable to individual ERFO projects in accordance with Federal Joint Travel Regulation – are eligible for ERFO funding.
- d) **Materials and Supplies**
 - (1) Materials purchased for a repair project are eligible provide the supplier's invoice properly identifies the project on which the materials were used.

- (2) Materials issued from stock warehouses or agency produced or purchased stockpiles are eligible provided the costs are properly supported and a responsible employee having knowledge that the supplies or materials were actually incorporated into the project signs the stock issue slip or supplier's invoice.
- e) Equipment costs may be eligible as follows:
- (1) Purchase (minus resale value) must be approved in advance by the FLHD Director and must be cost effective when compared to renting.
 - (2) Rentals may include applicant-owned equipment, equipment rented from another public entity, and equipment rented from commercial sources. Rental rates should include operation, maintenance, and depreciation costs.
 - i. Applicant owned equipment rates must be properly supported by verifiable analysis covering specific sizes and types of equipment. Costs in excess of normal depreciation to cover increased cost to replace equipment are not allowed. Lacking such documented cost analysis the rates developed by the State Transportation Agency and approved by the FHWA Division Administrator will be allowed.
 - ii. Equipment rented from a commercial source must be determined to be reasonable by the FLHDD. Reasonable rates are those consistent with the most current edition of the Associated Equipment Distributors Manual or rates charged by a recognized rental agency
 - iii. Documentation required to support costs include a commercial invoice or other applicant-generated time and equipment use report that specifies, for each DSR the equipment was used on, the date of use and hours of operation. The equipment use record must be signed by the applicant's employee.
- f) Construction equipment and materials that are NOT eligible for ERFO funds include:
- (1) Replenishing or paying losses for damaged or destroyed material stockpiles (i.e., sand gravel, pipe, etc.) and items awaiting installation not incorporated into the roadway.
 - (2) Damages to an applicant's equipment (i.e., motor graders, tractors, etc.) and other losses (i.e., maintenance sheds, offices, picnic tables, trash cans, tent pads, boat launch ramps, etc.).

4.3.10 Embankments



Embankment replacement to repair serious damage is eligible under the following conditions:

- a) Failures extending into the traveled way.
- b) Failures NOT extending to the traveled way are eligible if the roadway is in imminent danger of failure or if the damage severely impairs safety or usefulness of the roadway.

4.3.11 Emergency Repairs

Emergency repairs are those repairs undertaken during or immediately after a natural disaster or catastrophic failure to restore essential travel, protect remaining facilities, and minimize the extent of damage. Repairs that go beyond these three objectives are permanent repairs. Emergency repairs shall reduce, to the greatest extent feasible, the cost of permanent repairs. Emergency repairs completed more than 180 days after the event may be approved, on a case by case basis, if access to the damage was not feasible. In no case will repairs completed more than one-year after the event be considered Emergency repairs.

4.3.12 Force Account Repair Costs

Force account repair costs that exceed the costs comparable to those expected by the competitive bidding process are not eligible.

4.3.13 Heavy Maintenance

Work usually done to repair damage normally expected from seasonal and occasionally unusual natural conditions or occurrences is considered heavy maintenance and is not eligible. This includes work at a site that is required as a direct result of a disaster which can reasonably be accommodated by a state or local road authority's maintenance, emergency or contingency program even though it exceeds the minimum site threshold of \$5,000.

4.3.14 Indirect Costs

Costs that are not allocable to a specific project such as administration, overhead, general supervision, contract administration other than construction engineering, and project planning and scheduling are considered indirect costs that may be eligible for funding.

For guidance concerning indirect costs, refer to FHWA Memorandum "Clarification of Policy on Indirect Costs of State and Local Governments," May 5, 2004 (available online at <http://www.fhwa.dot.gov/legsregs/directives/policy/indirectcost.htm>).

Appendix E of 2 CFR §225 points out the need to properly account for "extraordinary or distorting expenditures" in order to ensure an equitable distribution of indirect costs to all benefiting cost objectives (ERFO and non-ERFO awards/activities). Not making allowances for the one-time infusion of significant amounts of ERFO dollars is not allowed. Submit a separate indirect cost rate that equitably allocates indirect costs to ERFO projects to the FLHD Director for review and approval.

4.3.15 Levees and Dikes

Levees and dikes constructed for water control are not eligible. Roads on top of these structures are eligible (usually limited to the top 12 inches) after repair to levees or dikes are completed.

4.3.16 Permanent Repairs

Permanent repairs are those repairs undertaken after the occurrence of a disaster to restore the facility to its pre-disaster condition. Permanent repairs performed prior to authorization are not eligible, unless it is determined by the FLHDD to be the most economical and feasible operation to quickly restore essential traffic. Funding is limited to the cost to repair or reconstruct a comparable facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.

4.3.17 Post Construction Costs

Post construction costs are limited. When repairs have been completed and the facility is open for use the owner is expected to resume maintenance and management of the facility. Costs that are required as a condition of a permit or consultation with a regulatory agency are eligible for up to one year after the project is substantially complete. Costs such as monitoring, remediation, or follow up related to slides, invasive species, animal migration, or other project impacts are not eligible.

4.3.18 Preventative Work

Preventative work to avoid damages is not eligible unless approved as betterment.

4.3.19 Programmed Work

Programmed work to repair or replace facilities damaged during a disaster is not eligible. This work must be financed as originally intended. A project is considered “programmed” if the construction phase is included in the FHWA, TTP, FLMA or State Transportation Improvement Program or if contract plans are being prepared.

4.3.20 Right-of-Way

Right-of-way acquisition required for repair of eligible damage is eligible for ERFO funding.

4.3.21 Slides

- a) Debris removal and reconstruction to provide a safe usable roadway is eligible.
- b) Pre-existing slides are eligible only if the slide is significantly accelerated by the disaster. Pre-existing, slow moving slides that are not significantly accelerated during the event are not eligible.
- c) Slide stabilization is eligible if it is a cost effective betterment. A detailed analysis of the slide must be submitted for review. The cost of the analysis is the responsibility of the Applicant agency. ERFO funds may not be provided for all corrective measures performed by the applicant to “stabilize” the slide. ERFO funds generally are limited to paying the cost to provide a usable road. The analysis must show that stabilization costs do not exceed anticipated future ERFO costs to remove debris and provide a usable road.
- d) The cost of monitoring slide stabilization measures after construction is NOT eligible for ERFO funds.
- e) Slides that occur after the disaster period may be eligible for ERFO funds if written documentation shows that the slides were the direct result of the disaster event.

4.3.22 Stone Masonry

- a) Stone masonry repairs on walls meeting current standards are eligible provided the applicant is able to document the pre-disaster condition of the masonry and the stone masonry damage is the result of the event.
- b) Stone masonry is only eligible if the damaged/destroyed feature had stone masonry and it is approved by the FLHD Director.
- c) Substandard Stone Walls. A replacement wall meeting current standards is eligible for ERFO funds if the applicant agrees to reconstruct the entire wall to current standards and uses non-ERFO funds to replace the undamaged portion(s) of the wall. However, if a small section is damaged, ERFO funds could be used to repair the wall to pre-disaster conditions.

4.3.23 Stream Channel Reconstruction

Reconstruction of the stream channel necessary for the continued safe operation of bridge and drainage facilities is eligible for ERFO funding.

4.3.24 Studies

Studies undertaken to make transportation or land management decisions are not eligible. These include studying and gathering information for:

- a) Access Travel Management or Long Range Transportation Planning.
- b) Alternatives not approved for ERFO funding.
- c) Long-term environmental impacts such as climate change or hydrologic change resulting from fires.
- d) Road closure/decommissioning.

4.3.25 Supplemental Damage

Additional damage to a previously-approved site may be eligible.

- a) Damage that occurs before permanent repairs are completed is eligible for ERFO funds provided:
 - (1) The additional damage could not have been anticipated and appropriate emergency ERFO repairs were made to prevent further damage.
 - (2) The repairs are not the responsibility of a contractor.
- b) When additional damage is the result of a subsequent eligible disaster event, the repairs are eligible. The repairs may be combined under either event as follows:
 - (1) If the cost of the additional damage is applied to the original disaster, an amended Damage Survey Report (DSR) is required.
 - (2) If the cost of the additional damage is applied to the new event, a new DSR is required and the original DSR for that site must be amended.
- c) Damage that occurs after permanent repairs are completed may be eligible if it can be shown that the damage was directly caused by the event and not by other factors, and the repair shows signs of failure within three months after final inspection.

4.3.26 Surfacing

- a) Traffic Damage. In general, repair of roadway surfacing, due to traffic damage, even if damage is aggravated by saturated subgrade conditions is not eligible unless the following:
 - (1) Damage was caused by vehicles making emergency repairs to eligible facilities

- (2) Damaged was caused by public traffic on officially designated detour routes
 - (3) Damage is documented within 6-month of the disaster
 - (4) Pre-disaster condition of the surface is well documented.
 - (5) Legal loads were hauled over the damage areas.
- b) Major roadway surfacing loss is eligible.
 - c) Roadway surface upgrades beyond the pre-disaster conditions are not eligible.
 - d) Frost heaving and resulting pot holes are not eligible even if the roadbed has been saturated by floodwaters.

4.3.27 Traffic Control

Traffic control at eligible sites, such as signs, barricades, and flagging traffic through or around damaged sections of roadway or bridges, is eligible.

4.4 Betterments

Betterments (added features) that increases resiliency and helps to protect highway facilities from possible future ERFO eligible damage may be eligible if the applicant demonstrates through a life cycle cost analysis that it is economically justified to the ERFO program. The analysis should apply the best available scientific and economic information available to forecast and assess future risk factors.

- a) Requests for funding betterments must be submitted by the applicant to the FLHD Director for approval. The justification and economic analysis should be submitted with the DSR within nine months of the positive finding.
- b) Life Cycle Cost Analysis. Betterments must be clearly justified to the ERFO program through a life cycle cost analysis. The analysis must be based solely on the present and future expected cost to the ERFO program. The analysis cannot include normal operation and maintenance costs of pre-disaster deficient facilities, or other factors typically included in highway benefit/cost evaluations, such as maintenance costs, traffic delay costs, added user costs, motorist safety, and economic impacts. The analysis period is typically limited to 25 to 50 years.

Special Note: In many instances betterments will fail to meet the test of being economically justified to the ERFO program. If the betterment provides considerable benefit when other factors are considered, the applicant is encouraged to use other funds, as appropriate, to fund it. These other funds must be identified to the FLHD Director on the annual Disaster Status Report.

- c) Examples of Betterments. The following examples may help protect highway facilities from possible future damage and as a result may be approved:
 - (1) Raising roadway grades.
 - (2) Relocating roadways to higher ground or away from slide-prone areas.

- (3) Stabilizing slide areas.
- (4) Stabilizing slopes.
- (5) Installing riprap.
- (6) Lengthening or raising bridges to increase waterway openings.
- (7) Deepening channels.
- (8) Increasing the size or number of drainage structures.
- (9) Replacing culverts or low water crossings with bridges.
- (10) Installing seismic retrofits on bridges.
- (11) Adding scour protection at bridges.
- (12) Adding spur dikes.

4.5 Environmental Requirements

- a) NEPA. Repair, reconstruction, restoration, retrofitting, or replacement of damaged eligible facilities is categorically excluded from the requirements relating to environmental assessments or environmental impact statements (23CFR §771.117(c)(9)) if the work:
 - (1) occurs within the existing right of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
 - (2) is commenced within a 2-year period beginning on the date of the Governor's or Presidential disaster declaration.

However, if impacts to protected or otherwise sensitive or high-value resources are possible, advance coordination with the appropriate local, state, and federal resource agencies should be closely considered to avoid or minimize project delays or shutdowns.

- b) Funding. When project changes are required to avoid, minimize, or mitigate environmental impacts related to the repair or reconstruction of eligible facilities, the additional costs are fully funded up to 100% of the least cost, environmentally viable alternative that meets current standards when the Applicant submits the following documentation:
 - (1) The specific section of the law, regulation, policy, or treaty that prohibits repair in-kind;
 - (2) The specific impacts of the repair in-kind alternative that must be avoided, minimized, or mitigated;
 - (3) A project description and cost estimate of the least cost, environmentally viable project that will meet the minimum requirements;

- (4) FLMA certification that the scope changes are necessary and in the public's best interest; and
 - (5) Results of consultation with regulatory agencies, if applicable.
- c) Aquatic Organism Passage
- (1) Costs for upsizing culverts or making other modifications to accommodate aquatic organism passages are eligible when required; and
 - (2) Costs of major improvements (e.g., replacing a culvert with a bridge), will not be considered eligible for ERFO funding, except when expressly approved by the FLHDD.

4.6 Replacement Facilities

Restoration in kind on the same alignment is the most common and typically the most cost effective repair. When it is not practical and economically feasible from an engineering perspective to restore a damaged element to its pre-existing condition or if there is an alternative such as an alignment shift that has a lower cost, a Replacement Facility alternative should be developed.

4.6.1 Design Standards

Replacement facilities may be built to current design standards (e.g. AASHTO, FLH Project Development and Design Manual, Local Agency Design Standards) required for the type and volume of traffic that the facility will carry over its design life.

4.6.2 Funding

ERFO funds are limited to the least cost alternative that meets current engineering standards. The Applicant may supplement ERFO funds with other funds to construct an alternate facility.

4.7 Resolving Eligibility Issues

Resolving eligibility issues shall be handled between the FLHD and applicant ERFO coordinators.

4.7.1 Unresolved Disputes

Unresolved disputes may be forwarded to the FLHDD.

4.7.2 Appeals

Appeals may be elevated to the FLH Associate Administrator with copies to the following:

- a) Director, Office of Program Development
- b) ERFO Program Manager



Chapter 5 Roles and Responsibilities

5.1 Applicant

The applicant's representative is responsible for coordinating ERFO activities at the following organizational levels:

- a) Field
 - (1) Takes photos of the damage prior to repairs to help justify and document site eligibility.
 - (2) Initiates emergency repairs.
 - (3) Advises higher authorities about the severity and extent of the damage.
 - (4) Participates on disaster assessment teams and provides all available information required for the Disaster Assessment Report.
 - (5) Arranges for advance briefing sessions.
 - (6) Ensures that all teams evaluate the damage in a consistent manner.
 - (7) Leads completion of Damage Survey Reports.
 - (8) Completes all required documentation from the beginning to end for the Program of Projects (see Chapter 2).
 - (9) Requests approval to use force account.
 - (10) Oversees the development of Plans, Specifications, and Estimates.
 - (11) Designates the Contracting Officer for work being administered by the applicant.
 - (12) Concurs in award/rejection of bids.
 - (13) Accepts completed construction.
 - (14) Insures prompt and efficient completion of ERFO repairs.
 - (15) Requests funds from Regional/State offices.
 - (16) Administers transfer of ERFO funds from applicant's headquarters office.
 - (17) Recovers ERFO repair costs from legally responsible parties and contacts the ERFO Program Manager about re-payment policies.
 - (18) Submits the following to the Federal Lands Highway Division office through the applicant's Regional/State/District office:
 - i. Notice of Intent Letter.
 - ii. Program of Projects.
 - iii. Requests for changes.
 - iv. Plans, Specifications, & Estimates.
 - v. Suitable justification for all requests for Time Extension(s).

vi. Disaster Status Report.

vii. Any request for Federal Lands Highway assistance in project development and/or construction process.

b) Regional/State/District Office is responsible for the following activities:

- (1) Notifies the Federal Lands Highway Division's ERFO Coordinator of a natural disaster or catastrophic failure.
- (2) Arranges Disaster Assessment activities.
- (3) Assigns a single point of contact (POC) to coordinate with the Federal Lands Division ERFO Coordinator.
- (4) Participates in Disaster Assessment activities in the field.
- (5) Assembles the following:
 - i. Program of Projects.
 - ii. Revisions for the disaster.
- (6) Prepares all ERFO correspondence for the applicant field unit including but not limited to the following:
 - i. Notice of Intent Letter.
 - ii. Program of Projects Letter.
 - iii. Time Extension requests.
 - iv. All Disaster Status Reports (including partial).
 - vi. Any request for a Federal Lands Highway Division assistance in project development and/or construction process.
- (7) Monitors and ensures prompt and efficient completion of all repairs.
- (8) Provides:
 - i. Technical assistance.
 - ii. Copies of this ERFO Manual.
 - iii. Training.
 - iv. Information.
 - v. Eligibility guidance to applicant (field units).
 - vi. Documentation that facilities meet eligibility requirements.
 - vii. Maps identifying public and administrative routes.
- (9) Requests funds through the applicant's headquarters office.
- (10) The Bureau of Indian Affairs has the responsibility to inform local government entities, who have facilities under their jurisdiction that are on the national tribal transportation facility inventory, that their facilities are eligible for the ERFO Program.

- (11) The BIA is responsible for all ERFO Program activities for all tribes from the start of the disaster through the approval of the Program of Projects. When FHWA agreement tribes request funds directly from FLH Headquarters (after approval of the Program of Projects), the FLH TTP Office is responsible for management of the ERFO Program for FHWA agreement tribes.

c) Headquarters

- (1) Advises applicant field units of the amount of ERFO funds available for their disasters.
- (2) Requests the following from the Federal Lands Highway Headquarters office:
 - i. ERFO fund transfers.
 - ii. Liquidating cash.
- (3) Reinstatement of year-end unobligated ERFO fund balances.
- (4) Reports annual obligations and expenditures of ERFO funds to Federal Lands Highway Headquarters office.

5.2 Federal Lands Highway

- a) Tribal Transportation Program Director is responsible for administering funds transferred to FHWA agreement tribes.
 - (1) Transfers funds through Reference Funding Agreements.
 - (2) Ensures costs are tracked by site.
 - (3) Oversees development of Plans, Specifications, and Estimate (PS&E).
 - (4) Ensures compliance with NEPA and all applicable environmental law and regulations.
 - (5) Ensures repairs are within scope of approved DSRs and POP.
 - (6) Submits annual Disaster Status Reports to the FLHD Director.
 - (7) Submits annual Unobligated Balance Report to the FLH ERFO Program Manager.
 - (8) Submits time extensions when required and justified.
 - (9) Provides Contract and Financial records at Disaster Closeout.
 - (10) Facilitates funding reconciliation prior to final closeout.
- b) Division ERFO Coordinators are primarily responsible for coordination of the ERFO Program and subsequent activities with the applicant's Regional/State office. They are also responsible for ERFO program issues and activities within the Federal Lands Highway Division office and with the Federal Lands Highway Headquarters office including but not limited to the following:
 - (1) Receives informal Notices of Intent from the applicant.

- (2) Contacts other federal agencies to see if they have related damage.
- (3) Notifies the Federal Lands Highway Division Director.
- (4) Notifies Federal Lands Highway ERFO Program Manager.
- (5) Writes the Notice of Intent, Acknowledgment Letter.
- (6) Conducts Disaster Assessments to verify the significant impact of the natural disaster or catastrophic failure and then coordinates all Disaster Assessment activities necessary for preparing Disaster Assessment Reports.
- (7) Writes the Disaster Assessment Report.
- (8) Provides joint guidance briefings prior to beginning the Damage Surveys.
- (9) Coordinates Damage Survey Team(s) assignments.
- (10) Instructs the Damage Survey Team(s) about the following:
 - i. How to perform the detailed damage site inspections.
 - ii. How to prepare the Damage Survey Reports.
 - iii. Eligibility requirements.
- (11) Reviews and ensures completeness of all pertinent documentation including, but not limited to, the following:
 - i. Damage Survey Reports.
 - ii. Applicant Program of Projects and subsequent revisions.
 - iii. Disaster Status Reports.
 - iv. Time Extension requests.
- (12) Makes recommendations to the Federal Lands Highway Division Director.
- (13) Discusses eligibility questions with the Federal Lands Highway Division Director.
- (14) Forwards eligibility questions that cannot be resolved between the Federal Lands Highway Division Director and the applicant to the Federal Lands Highway ERFO Program Manager for resolution.
- (15) Spends as much time in the field as practical when Damage Survey Reports are being prepared.
- (16) Retains the original of each Damage Survey Report and furnishes a copy of each completed Damage Survey Report to the applicant.
- (17) Reviews the applicant's Program of Projects.
- (18) Writes and forwards the Program of Projects Approval Letter and corresponding spreadsheets to the Federal Lands Highway Division Engineer for signature/approval.
- (19) Writes ERFO correspondence for the Federal Lands Highway Division Director.

- (20) Reviews and recommends approval of a variety of documents including, but not limited to, the following:
 - i. Applicant's Disaster Status/ Reports.
 - ii. Completed ERFO projects.
 - iii. Plans, Specifications, and Estimates on selected projects
 - iv. Damage Survey Reports and their amendments.
 - v. Program of Projects and their revisions.
 - vi. Time Extensions.
 - (21) Monitors in-house design efforts.
 - (22) Requests funds from Federal Lands Highway Headquarters office.
 - (23) Administers allocated ERFO funds.
 - (24) Serves as Contracting Officer's Representative (COR) on reimbursable agreements.
 - (25) Prepares Disaster Status Reports for in-house work.
 - (26) Forwards Disaster Status Reports to the Federal Lands Highway ERFO Program Manager.
 - (27) Conducts Disaster Closeout reviews in a timely manner, makes closeout recommendations to the Federal Lands Highway Division Director, and prepare final Closeout Letters.
 - (28) Prepares and Forwards Fiscal Year Accomplishment Report to the Federal Lands Highway ERFO Program Manager.
- c) Division Director - Is ultimately responsible for successful administration of the ERFO Program within the Federal Lands Highway Division office. Specific duties include, but are not limited to, the following:
- (1) Designates the Federal Lands Highway Division's ERFO Coordinator.
 - (2) Acknowledges the applicant's Notice of Intent Letter.
 - (3) Designates and dispatches Disaster Assessment Team(s), as necessary.
 - (4) Issues Positive or Negative Findings.
 - (5) Determines ERFO eligibility.
 - (6) Approves Damage Survey Reports, Program of Projects and subsequent changes/amendments.
 - (7) Delivers the ERFO Program for in-house work.
 - (8) Approves the following:
 - i. Requests for Time Extensions.
 - ii. Plans, Specifications, and Estimate package.

iii. Force Account work.

- (9) Concur in award/rejection of bids.
- (10) Accepts completed construction for repairs performed by the Federal Lands Highway Division.
- (11) Requests funds from Federal Lands Highway Headquarters office.
- (12) Administers allocated ERFO funds.
- (13) Completes disaster closeout in a timely manner.
- (14) Enters into reimbursable agreements with local government entities, prior to performing work.
- (15) Ensures compliance with NEPA and all applicable environmental law and regulations.
- (16) Forwards final Disaster Repair Closeout Report and letter to the Federal Lands Highway office.

d) ERFO Program Manager

- (1) Administers the nationwide ERFO Program and assures overall program quality through management oversight, program stewardship and funds accountability.
- (2) Coordinates with the Federal Highway Administration's Emergency Relief (ER) Program Manager the following :
 - i. Annual ERFO fund allocations and transfers.
 - ii. Disaster Numbers.
 - iii. Reporting requirements.
 - iv. ERFO Funds Request for fiscal year.
 - v. Resolves conflicts between the ER and ERFO Programs.
- (3) Transfers and allocates funds.
- (4) Coordinates with applicant, division, and headquarters personnel.
- (5) Issues policy and procedures.
- (6) Reviews eligibility appeals from applicants and makes recommendations to the Director, Office of Program Development and the Associate Administrator, Office of Federal Lands Highway.
- (7) Updates the ERFO Manual.
- (8) Develops, conducts, and/or assists in ERFO training.
- (9) Develops and monitors interagency agreements.
- (10) Assists applicants in the reconciliation and reinstatement of end-of-year unobligated ERFO funds by Program Code.

- (11) Coordinates with the applicant's headquarters offices and the Federal Lands Highway Division's ERFO Coordinators on monitoring program activities.
 - (12) Develops:
 - i. Method to track fund transfers and allocations.
 - ii. Fiscal year obligation projections.
 - (13) Leads the following efforts:
 - i. Overall ERFO quality assurance.
 - ii. Program stewardship.
 - (14) Monitors the following:
 - i. ERFO field activities.
 - ii. ERFO funds request and Program of Projects.
 - iii. Obligation of ERFO funds.
 - (15) Notifies each applicant how ERFO funds will be transferred.
 - (16) Provides:
 - i. Status and Fiscal Year Accomplishment reports, as required.
 - ii. Technical assistance and training.
 - iii. Status of the ERFO Program to the ER Program Manager.
 - iv. Guidance regarding administration of the ERFO Program.
 - (17) Reinstates unobligated ERFO funds to applicants at the end of the fiscal year.
 - (18) Reconciles fund transfers with the final Disaster Repair Closeout Report and letter.
- d) Federal Lands Highway Director, Office of Program Development
 - (1) Advises the applicant's headquarters office about the availability of funds.
 - (2) Approves ERFO Policy changes and ERFO Program agreements.
 - (3) Replies to congressional and public correspondence.
 - (4) Decides appeals.
 - e) Associate Administrator, Office of Federal Lands Highway
 - (1) Delegates Administration of the ERFO Program.
 - (2) Decides appeals.

5.3 Tribal and Local government entities

- a) Tribe, state, county, and other government agencies:

- (1) Takes photos of the damage prior to repairs to help justify and document site eligibility.
- (2) Initiates emergency repairs.
- (3) Notifies an Applicant that NTTFI or NFLTFI facilities have been damaged and requests that the Applicant submit a Notice of Intent to apply for ERFO funds.
- (4) Participates on disaster assessment teams and provides all available information required for the Disaster Assessment Report.
- (5) Recovers ERFO repair costs from legally responsible parties.
- (6) Participates in completion of Damage Survey Reports.
- (7) Requests approval to use force account.
- (8) Insures prompt and efficient completion of ERFO repairs.
- (9) Participates on final inspection of ERFO projects.
- (10) Requests funds from an Applicant or FLH.
 - i. All Quick Release requests must be made through an Applicant. FHWA agreement tribes must apply through the BIA.
 - ii. All tribes (including FHWA agreement tribes) may only request funds that are needed for the current fiscal year from the BIA after the Program of Projects is approved.
 - iii. FHWA agreement tribes may only request funds needed for the current fiscal year directly from FLH Headquarters after approval of the Program of Projects.
- (11) Enters into a funding agreement with an Applicant, the FLH TTP Office, or the Federal Lands Highway Division Engineer.

Special Note: FHWA agreement tribes must enter into Reference Funding Agreements with the FLH TTP Office when they request funds directly from FLH Headquarters.
- (12) Submits the following as required.
 - i. Plans, Specifications, & Estimates.
 - ii. Suitable justification for all requests for Time Extension(s).
 - iii. Disaster Status Reports each year until the disaster is closed.
 - iv. Disaster Closeout Reports and supporting documentation
- (13) Tribes that receive advance funding must submit a quarterly Unobligated Balance Report to the entity from whom they received the funds (BIA or FLH TTP Office) until the disaster is closed.

- (14) Advance funds transferred to tribes that are in excess of the final approved amount must be returned to the FLH ERFO Program through the FLH TTP Office.

5.4 Federal Highway Administration

The Secretary of the Department of Transportation has delegated the administration of the emergency relief provision contained in Title 23 United States Code, Section 125, to the Federal Highway Administrator.

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APPENDIXES

Appendix A – Definitions

Abbreviated plans. A set of construction drawings for a project, may not contain detailed plan and profile sheets, cross-section sheets, and culvert profile sheets. The drawings must provide all essential information necessary to describe the repairs to be accomplished and to allow bidders to properly estimate unit prices for the contract.

Acknowledgement letter. A letter issued by the Federal Lands Highway Division Director (FLHDD) to the applicant upon receipt of the applicant's Notice of Intent letter providing basic information about the subsequent disaster assessment, eligibility information, and application procedures, including the necessary coordination and cooperation between the applicant and FLHD Director.

Administrative road. A road under the jurisdiction of a federal agency or Native American Indian tribal government that does not meet the definition of a public road. These roads may be closed locally at any time for any reason and remain closed indefinitely. Some of these roads may be gated or closed by earth barricades.

Allocation. An administrative distribution of funds for programs that do not have statutory distribution formulae. Allocations are made authorizing an amount of funds, by program code, for a specific ERFO disaster event.

Allotment. Provides current year obligation authority to the FLH or federal agency (FHWA's Allotment Advice Form 370).

AOP. Aquatic Organism Passage

Applicant. Any federal agency which submits an application for emergency relief (ERFO funds) and that has authority to repair or reconstruct eligible facilities.

Betterment. Added features/facilities, not existing prior to the natural disaster or catastrophic failure, to help prevent future damage.

BIA. Bureau of Indian Affairs.

Catastrophic failure. The sudden failure of a major element or segment of an eligible facility which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

CFLHD. Central Federal Lands Highway Division.

Comparable facility. A facility which meets the current geometric and construction standards required for the type and volume of traffic that the facility will carry over its design life.

Construction engineering. The work performed to supervise the construction operations through inspection of construction repairs, payments to the contractor, and otherwise representing the interests of the government.

Construction limits. The limits on each side of the project which establish the area disturbed by construction operations and beyond which no disturbance is permitted.

Damage Survey Report (DSR). A FLH ERFO form that documents damage by road/route number and mile post, scope of work, estimated repair costs, and eligibility recommendations.

Damage site survey team. A team composed of Federal Highway Administration (FHWA) and applicant representatives responsible for conducting inspections of damage sites. They collect the information used to prepare the Damage Survey Report.

Decommissioning or Storing. Decommissioning, including storage of the road, may include one or more of the following:

- a) Blocking the entrance to a road and installing water bars;
- b) Removing culverts, re-establishing drainage-ways; and
- c) Removing unstable fills, pulling back road shoulders, obliteration, and erosion control.

Disaster assessment. An on-site evaluation of a site or sites conducted by a Disaster Assessment Team to determine extent, type, impact of damage, and cost to repair damage.

Disaster assessment report. Documentation of the extent, type, impact, and cost of damage to transportation facilities that is used to determine whether an event, a natural disaster or catastrophic failure, has occurred and includes recommendations for a Positive or Negative Finding to the FLHD Director.

Disaster assessment team. A team of FHWA and applicant representatives who conduct a Disaster Assessment.

Disaster number. Reference number issued by the FLH ERFO Program Manager to the applicant indicating state, fiscal year of the disaster event (four digits only), sequential number of approved events for that state; and federal agency.

For example, WA2010-2-NPS indicates that it is for the second disaster event in Washington during fiscal year 2010 for the National Park Service. It could be either the first or the second Emergency Relief (ER) or ERFO disaster event in Washington.

DSR. See Damage Survey Report.

DSR number. Number assigned to each Damage Survey Report by the applicant. The number may contain the road/route number and the mile post number.

EFLHD. Eastern Federal Lands Highway Division.

Emergency repairs. Those repairs, including necessary preliminary engineering, construction engineering, and temporary traffic operations, undertaken within 6 months after a natural disaster or catastrophic failure to:

- a) Restore essential travel;
- b) Protect remaining facilities, and
- c) Minimize the extent of damage.

Engineered Surface. Consisting of manufactured materials (asphalt, concrete or crushed aggregate material) that are firm and stable under all weather conditions.

Equipment. Apparatus that is tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

ERFO. Emergency Relief for Federally Owned roads.

ERFO Coordinator. An individual designated by the FLHD Director to have overall ERFO Program coordination responsibility within the Division.

ERFO funds. Emergency relief funds available for expenditure under the authority of 23 U.S.C. 125(a) and (c).

ERFO Program Manager. An individual designated by the FLH Associate Administrator and the Director, Office of Program Development, who is the FLH point of contact for the administration and oversight of the nationwide ERFO Program.

Event. See Natural Disaster and Catastrophic Failure.

Event number. See Disaster Number.

Facility. A public highway, road, bridge, trail, or transit system.

Federal-aid billing system. The financial accounting system used by the FHWA's Federal-aid Divisions to reimburse states for eligible federal-aid expenses.

Federal-aid Division office. FHWA field office located in every state.

Federal Lands Highway Division Director. The individual designated to have overall responsibility for the operations of one of the three FLH Divisions.

Federal Lands Highway Associate Administrator. The individual designated to have overall responsibility for the administration and delivery of the FLH Program.

Federal Lands Highway Director, Office of Program Development. The individual designated to have overall responsibility for the program development and oversight of the FLH Program.

Federal Lands Transportation Facility. A public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national federal lands transportation facility inventory (23 U.S.C. Sec. 101(8)).

FHWA. Federal Highway Administration.

FHWA Agreement Tribes. Tribes who have a formal agreement with FLH in the Tribal Transportation Program (TTP).

Finding. A letter or other official correspondence issued by the FLHD Director to an applicant giving notification that, pursuant to 23 U.S.C. 125, eligible facilities have (positive finding) or have not (negative finding) been found to have suffered serious damage as the result of a natural disaster over a wide area, or a catastrophic failure.

FLH. Federal Lands Highway.

FLHD. Federal Lands Highway Division

FLHDD. Federal Lands Highway Division Director

FLHP. Federal Lands Highway Program.

FLMA. Federal Land Management Agency.

FLTP. Federal Lands Transportation Program

Force account. A method of reimbursement for repair work performed by the applicant that is based on actual labor, equipment, and material costs.

Functionally obsolete. A bridge is functionally obsolete when the deck geometry, load carrying capacity (comparison of the original design load to the state legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.

FY. Fiscal year.

Heavy maintenance. Work usually done to repair damage normally expected from seasonal and occasionally unusual natural conditions or occurrences is considered heavy maintenance. This includes work at a site required as a direct result of a disaster which can reasonably be accommodated by a state or local road authority's maintenance, emergency or contingency program even though it exceeds the minimum site threshold of \$5,000. Repair work which normally includes the following:

- a) Grading roads rutted by traffic;
- b) Cleaning or reshaping ditches;
- c) Correction of minor embankment or cut slope slip-outs;
- d) Removal of minor deposits of debris on roadways;
- e) Correction of minor erosion damage to traveled way, shoulders (i.e., loss of surfacing down to sub-grade), or embankments;
- f) Removal of minor mud deposits on roadways;
- g) Minor pavement settlement unless significantly accelerated by the disaster event;
- h) Minor damage to guardrail;
- i) Minor riprap damage;
- j) Replacement of short, isolated sections of surfacing washed away by flood water;
- k) Cleaning of culverts;
- l) Minor damage to culverts;
- m) Minor repair of fencing;
- n) Repair or replacement of isolated traffic signs;
- o) Area-wide projects to correct extensive minor damage; and
- p) Specialized equipment not normally required by routine maintenance.

Indirect Cost. Costs that are incurred for an approved site that are not readily assignable to a specific DSR without effort disproportionate to the results achieved.

Interagency agreement. A Memorandum of Agreement (MOA) between the FHWA and a federal agency establishing procedures for ensuring full cooperation under the ERFO Program and the administration of ERFO funds to repair or reconstruct agencies' eligible facilities damaged by natural disasters or catastrophic events.

Lead Agency. The agency who either awards a contract to repair damage or whose personnel and equipment are used to repair damage.

Life cycle cost analysis. A systematic quantitative method of assessing the desirability of adding Betterment to an ERFO project. The analysis must be based solely on discounted future ERFO eligible repair costs (both with and without the betterment), and the present cost of the betterment. The analysis cannot include other factors typically included in highway life cycle cost evaluations, such as traffic delay costs, added user costs, motorist safety, maintenance, and economic impacts.

MAP-21. Moving Ahead for Progress in the 21st Century Act

Major loss. A loss of materials from a roadway (e.g. gravel surfacing) that results in the operation or usefulness of the roadway being severely diminished to the extent that the roadway is not traversable by all classes of vehicles or the roadway is no longer safe to travel.

National Environmental Policy Act (NEPA). A law enacted in 1969 that set the national environmental policy, established the basis for environmental impact statements, and created the Council on Environmental Quality. NEPA also requires federal agencies to use an interdisciplinary approach in planning and decision making for actions that impact the environment, and the preparation of an environmental impact statement on all major federal actions significantly affecting the human environment.

Natural disaster. A sudden and unusual natural occurrence such as a flood, hurricane, severe storm, tidal wave, earthquake, or landslide that causes serious damage over a wide geographical area.

Notice of Intent letter. First formal application for ERFO funds submitted by the applicant to the FLHD Director (see Appendix C.1).

Open to public travel. Open to the general public except during scheduled periods, extreme weather conditions, or emergencies. Roads must be open for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

Parking lots. Areas that are all weathered engineered surfaced (asphalt, concrete or crushed aggregate material) at locations designated for parking vehicles and staging of recreational equipment providing access to significant points of interest.

POP. Program of Projects.

Permanent work (permanent repair). Repair or reconstruction to pre-disaster or other allowed geometric and construction standards and related PE and CE in accordance with an approved DSR.

Preliminary engineering (PE). The preparation of plans, specifications, and estimates and other related documentation for use to construct repairs.

Program code. An alpha-numeric code used by the FHWA and the applicant to track the obligation and expenditure of ERFO funds.

Program of Projects (POP). A list of projects either proposed by the applicant or approved by the FLHD Director. The approved Program of Projects establishes the maximum amount of ERFO funds to be distributed pending availability.

Programmed project. A project in which the construction phase is included in the FLH Program or State Transportation Improvement Plan, or in which the contract plans are being prepared for advertisement within the next three years.

Public authority. A federal, state, county, town or township, American Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road. Any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Quick Release. A transfer of ERFO funds for emergency repairs made prior to the approval of the Program of Projects and after the positive finding is issued. These funds are only to be used by the applicant to make emergency repairs to re-establish its vital transportation system(s) after a catastrophic failure or natural disaster over a wide area.

Replacement facilities. Completely reconstructed (vs. repaired) facility built to current standards.

Right-of-way. Land acquired for and devoted to transportation purposes.

Road Management Objectives (RMOs). The U.S. Forest Service's official forest plan implementation documents that display the intent and purpose of each road to provide access for the implementation of land and resource management plans. RMOs must be attested to as accurate by a line officer, usually the U.S. Forest Service District Ranger.

Roadway cross-section. The finished or proposed finished road section between construction limits.

Serious damage. Heavy, major, or unusual damage to a highway which severely impairs the safety, or usefulness of the highway or results in road closure and must be beyond the scope of heavy maintenance.

Sidewalk. A path with an engineered surface along the side of a street or road for people to walk on.

Sliding Scale. The standard ERFO share of the Permanent Repair of federally owned roads that are not tribal transportation facilities or federal lands transportation facilities is 80%. Title 23, United States Code, Section 120 (b)(1) and (2), allows an upward adjustment (the "Sliding Scale") of the ERFO share for states that have a large amount of federal lands. The Sliding Scale is found over the internet at <http://www.fhwa.dot.gov/legsregs/directives/notices/n4540-12a2.htm>.

State Transportation Agency. The department, commission, board, or official of any state charged by its laws with the responsibility for transportation facilities.

Statewide Transportation Improvement Program (STIP). A staged, multi-year, statewide, intermodal program (list) of transportation projects consistent with the Statewide Transportation Plan including the long-term vision of the state's multi-modal and intermodal transportation system.

Structurally deficient. A bridge is structurally deficient when there is an extreme restriction on its load-carrying capacity, or it is frequently over-topped during flooding events causing severe traffic delays.

Trail. A pedestrian route developed primarily for outdoor recreational purposes. A pedestrian route developed primarily to connect elements, spaces, or facilities within a site is not a trail.

Transportation Improvement Program (TIP). A staged, multi-year, metropolitan, intermodal program (list) of transportation projects that is consistent with the short-term and long-term vision of the metropolitan area's intermodal transportation system.

Traveled way. The portion of the roadway for the movement of vehicles, exclusive of the shoulders.

Tribal transportation facility. A public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory (23 U.S.C. Sec. 101(31)).

TTP. Tribal Transportation Program

TTP Coordinator. The tribes point of contact for the Tribal Transportation Program

Transit. Public transportation that provides regular, continuing shared-ride surface transportation services that are open to the general public

WFLHD. Western Federal Lands Highway Division.



Appendix B – ERFO Disaster Assistance Service Area Reference Matrix

ERFO Disaster Assistance Service Area Reference Matrix						
State	Federal Lands Management Agency/ Servicing Federal Lands Highway Division Office					
	Bureau of Indian Affairs Department of Defense Army Corps of Engineers	Bureau of Land Management	Forest Service	Bureau of Reclamation	Fish and Wildlife Service	National Park Service
Alabama	EFLHD		EFLHD		EFLHD	EFLHD
Alaska	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD
Arizona	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Arkansas	EFLHD		EFLHD		EFLHD	EFLHD
California	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Colorado	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Connecticut	EFLHD		EFLHD		EFLHD	EFLHD
Delaware	EFLHD		EFLHD		EFLHD	EFLHD
Florida	EFLHD		EFLHD		EFLHD	EFLHD
Georgia	EFLHD		EFLHD		EFLHD	EFLHD
Hawaii	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Idaho	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD
Illinois	EFLHD		EFLHD		EFLHD	EFLHD
Indiana	EFLHD		EFLHD		EFLHD	EFLHD
Iowa	EFLHD		EFLHD		EFLHD	EFLHD
Kansas	CFLHD		EFLHD	CFLHD	EFLHD	CFLHD
Kentucky	EFLHD		EFLHD		EFLHD	EFLHD
Louisiana	EFLHD		EFLHD		EFLHD	EFLHD
Maine	EFLHD		EFLHD		EFLHD	EFLHD
Maryland	EFLHD		EFLHD		EFLHD	EFLHD
Massachusetts	EFLHD		EFLHD		EFLHD	EFLHD
Michigan	EFLHD		EFLHD		EFLHD	EFLHD
Minnesota	EFLHD		EFLHD		EFLHD	EFLHD
Mississippi	EFLHD		EFLHD		EFLHD	EFLHD
Missouri	EFLHD		EFLHD		EFLHD	EFLHD
Montana	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD
Nebraska	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Nevada	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
New Hampshire	EFLHD		EFLHD		EFLHD	EFLHD
New Jersey	EFLHD		EFLHD		EFLHD	EFLHD
New Mexico	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
New York	EFLHD		EFLHD		EFLHD	EFLHD
North Carolina	EFLHD		EFLHD		EFLHD	EFLHD
North Dakota	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Ohio	EFLHD		EFLHD		EFLHD	EFLHD
Oklahoma	CFLHD		EFLHD	CFLHD	EFLHD	CFLHD
Oregon	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD
Pennsylvania	EFLHD		EFLHD		EFLHD	EFLHD
Puerto Rico	EFLHD		EFLHD		EFLHD	EFLHD

ERFO Disaster Assistance Service Area Reference Matrix

State	Federal Lands Management Agency/Service Federal Lands Highway Division Office					
	Bureau of Indian Affairs Department of Defense Army Corps of Engineers	Bureau of Land Management	Forest Service	Bureau of Reclamation	Fish and Wildlife Service	National Park Service
Rhode Island	EFLHD		EFLHD		EFLHD	EFLHD
South Carolina	EFLHD		EFLHD		EFLHD	EFLHD
South Dakota	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Tennessee	EFLHD		EFLHD		EFLHD	EFLHD
Texas	CFLHD		EFLHD	CFLHD	CFLHD	CFLHD
Utah	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD
Vermont	EFLHD		EFLHD		EFLHD	EFLHD
Virginia	EFLHD		EFLHD		EFLHD	EFLHD
Virgin Islands	EFLHD		EFLHD		EFLHD	EFLHD
Washington	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD	WFLHD
Washington, DC	EFLHD		EFLHD		EFLHD	EFLHD
West Virginia	EFLHD		EFLHD		EFLHD	EFLHD
Wisconsin	EFLHD		EFLHD		EFLHD	EFLHD
Wyoming Yellowstone Grand Tetons	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD	CFLHD WFLHD WFLHD

Legend

EFLHD Eastern Federal Lands Highway Division 21400 Ridgetop Circle Sterling, VA 20166 Phone: (571) 434- 1547	CFLHD Central Federal Lands Highway Division 12300 West Dakota Ave. Lakewood, CO 80228 Phone: (720) 963-3425	WFLHD Western Federal Lands Highway Division 610 East Fifth Street Vancouver, Washington 98661-3801 Phone: (360) 619-7620
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Appendix C – Correspondence (Samples, Instructions, Tables and Reports)



C.1 Notice of Intent

Letter to be written by the Applicant's Regional or State Office

Date

Federal Lands Highway Division Director
Federal Highway Administration
[Division name]
[Address]
[City, State, Zip]

This letter is our formal Notice of Intent to apply for emergency relief funds to assist with the needed repairs and reconstruction under provisions of 23 U.S.C. 125. On [date], we conveyed by telephone to [name] our informal Notice of Intent to seek emergency relief funds.

We request a finding on the eligibility of damage to roads and trails that occurred on the [Forest, District, Park, Reservation] in the Counties of [name] in the state of [name].

The damage occurred on [specific date(s)].

Damage included failure over a wide area of:

[number] bridges
[number] bridge approaches
[number] roads

The damage was caused by *[describe the nature and intensity of the disaster event or catastrophic failure]*.

The preliminary cost estimate to restore eligible facilities to their pre-event condition is:
[list or state dollar amounts]

Counties covered by a presidential disaster declaration include *[list]*.

Counties covered by a Governor's Proclamation of Emergency include *[list]*.

Please ensure that responses to this letter are copied to [name, title, address].

If you have any questions, please contact [name, title] at [telephone number].

Sincerely,

Signature

[Name]

[Title]

cc: FLHD ERFO Coordinator

C.1.1 Notice of Intent letter instructions

First formal application for ERFO funds submitted by the applicant to the FLHD Director.
(Special note: Please include the FLH ERFO coordinator on your distribution list.)

Components of the letter should include the following:

- a) Statement of intention to apply for Emergency Relief
- b) Request for a *finding*
- c) Location of damage
- d) Date(s) of occurrence
- e) Types of damage
- f) Estimate of repair/reconstruction costs
- g) General indication of the extra-ordinary character of the natural disturbance
- h) Indication of the extent of areas affected outside the land(s) administered by the applicant
- i) Counties covered by U.S. presidential disaster declaration made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)

C.2 Acknowledgment Letter

To be written by FLHD Director

Date

[Applicant]

[Address]

[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
Acknowledgment Letter
(event name i.e. 2010 June Flooding)
Region/Unit, State

Dear Applicant:

This letter is to acknowledge receipt of your Notice of Intent dated [date] to apply for Emergency Relief for Federally Owned roads (ERFO) funds under 23 U.S.C. 125 for the repair of roads and trails on the [Forest, District, Park, Reservation].

You should proceed with the performance of the emergency operations necessary to restore essential travel; to protect the remaining facilities; to reduce the extent of damage; to begin preliminary engineering (consisting of surveys, designs, and permanent restoration work that is required as an associated part of the emergency operations) and to use agency forces and/or negotiated equipment rental contracts as necessary to perform the work.

To maintain eligibility of repairs for ERFO funds, you must (1) photograph each site prior to making any repairs to document the extent of damage, and (2) track emergency repair expenditures by damage site.

The eligibility of such repairs for ERFO funds will be contingent upon the issuance of a *positive finding* on the eligibility of the disaster and subsequent approval of the repairs by Western [Central, Eastern] Federal Lands Highway Division, Federal Highway Administration. The basis for the decision will be a Disaster Assessment Report with estimates of cost to repair or reconstruct the damaged routes and (evidence of wide area damage and intensity of the disaster event) or (evidence the failure occurred on a major segment of the road system causing a disastrous impact). [Since your estimated damage is less than the current threshold, other ERFO eligible Federal Land Management Agency or tribe damage from the same disaster event must be reviewed to determine if the minimum threshold of \$700,000 is met.]

Submit all information listed in Paragraph 2.1.2a of the ERFO Disaster Assistance Manual. Upon receipt, a representative from this office will contact your field unit representative to make arrangements to review the disaster event damage to determine eligibility and begin preparing the Disaster Assessment Report. If a *positive finding* is made, we will make further arrangements for individual site inspections (if required) to prepare Damage Survey Reports.

You have the option to request the Quick Release of ERFO funds which may only be used to offset (reimburse) the eligible costs to agencies for making emergency repairs to re-establish its vital transportation system(s). These funds, subject to availability, may be only transferred after a *positive finding* has been issued.

If you have questions or need further information, please contact the Federal Lands Highway Division ERFO coordinator, [name] at [telephone number].

Sincerely,

Signature

[Name]

[Title]

cc: Local FHWA Division Office; FLH ERFO Program Manager; Superintendent of Field Unit (include cc list from Notice of Intent Letter), (FHWA Tribal Coordinator if applicable),

C.3 Disaster Assessment Report

To be written by the Federal Lands Highway Division ERFO coordinator

The Disaster Assessment Report should include the following elements:

- a) The intensity of the natural disaster or catastrophic failure. In the case of flooding, the Disaster Assessment Report shall include available information regarding high water elevations, stream-gauge data, and rain-gauge data.
- b) Description of the nature, cause, and seriousness of the failure (if a catastrophic failure). Explain if the catastrophic failure was caused by gradual and progressive deterioration or the lack of maintenance. If appropriate, give the names of parties that may have contributed to the failure. Also state if insurance, cost share, or other compensation will pay for any of the repairs.
- c) Dates of the occurrence.
- d) Extent of the affected area.
- e) Description of the damage to eligible facilities and other roads (Federal-aid highways, state, county, and city).
- f) Copies of Emergency Relief Reports and newspaper articles, as available.
- g) Copies of presidential disaster declarations and governor proclamations, as available.
- h) Approximate cost of repairs or reconstruction of the damage.
- i) Photographs of typical damage and appropriate maps showing the location of each area and extent of damage.
- j) A discussion on the impact of the subject damage. For example, a destroyed bridge with limited traffic has little impact, but a bridge serving as the principal access to homes, large tracts of land, or carrying large amounts of traffic will have a significant impact.
- k) A concluding statement indicating a natural disaster or catastrophic failure causing severe damage has (or has not) occurred to eligible facilities and makes a specific recommendation for a *finding*.

C.4 Positive Finding Letter

To be written by FLHD Director

Date

[Applicant name]

[Address]

[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
Positive Finding Letter, (ERFO Disaster Number)
(event name), (event dates)

Dear Applicant:

Your letter dated [insert date], requested Emergency Relief for Federally Owned roads (ERFO) funds be made available for the repair of [FMLA Unit, State]. The dates of said damage are from [beginning date] to [end date].

An assessment of the [catastrophic failure/natural disaster] has been completed and pursuant to Title 23 U.S.C. Section 125, I find that Emergency Relief funds, subject to availability, will be provided for eligible repairs on the following [Forest, District, Park, Reservation].

The disaster identification number will be [ERFO disaster event number]. Please use this number as the reference for any correspondence.

Arrangements will be made by my staff to assist you in completing joint damage site inspections and reports.

Upon completion of the site inspections, your office must submit a Program of Projects within 90 days from receipt of this letter.

The Program of Projects must include detailed descriptions and estimated costs of emergency repairs and proposed permanent repairs at each damage site. Following its approval by this office, ERFO funds may be requested by your headquarters office in accordance with the established procedures.

ERFO work shall be given prompt attention and priority over non-emergency work and programmed projects. Projects not under construction by the end of the second fiscal year following the year that the disaster occurred will be withdrawn from the approved Program of Projects unless suitable justification is provided by the applicant to warrant retention.

If you have questions or need further information, please contact the Federal Lands Highway ERFO Coordinator, [name] at [telephone number].

Sincerely yours,

Signature

[Name]

[Title]

cc: Local FHWA Division Office; FLH ERFO Program Manager; Superintendent of Field Unit (include cc list from Notice of Intent Letter), (FHWA Tribal Coordinator if applicable)

C.5 Negative Finding Letter

To be written by the FLHD Director

Date

[Applicant name]

[Address]

[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
Negative Finding Letter
(event name i.e. 2010 June Flooding)

Dear Applicant:

Your letter of [date] requested Emergency Relief for Federally Owned Roads (ERFO) funds are made available for the repair of roads on [FMLA Unit, State]. The dates of the damage are from [beginning date] to [ending date].

An assessment of damage has been completed. It was found that certain damage did occur; however, these damages are [give brief explanation such as: considered heavy maintenance; roads are ineligible; threshold not met; does not meet the criteria for serious damage].

If you disagree with this finding, you may appeal as outlined in the ERFO Manual. If you have any questions or need further information, please contact the Federal Lands Highway ERFO Coordinator, [name] at [telephone number].

Sincerely,

Signature

[Name]

[Title]

cc: Local FHWA Division Office; FLH ERFO Program Manager; Superintendent of Field Unit (include cc list from Notice of Intent Letter), (FHWA Tribal Coordinator if applicable)

C.6 Quick Release Request E-mail

To be written by the Applicant's regional or state office or FHWA agreement tribe

To: Federal Lands Highway Division Director
cc: FLHD ERFO Coordinator

Subject: Quick Release

Body: As discussed by phone call with (name) on (date), I am requesting Quick Release of ERFO funds in the amount of (amount) to perform Emergency Repairs.

Damage was caused by (flooding, storm, earthquake, wind, etc), between (dates).

The facilities damaged include (routes, corridors, structures, etc.).

Emergency Repairs will include (provide description of proposed repairs).

Damage occurred in (Park, Forest, District, Reservation, Refuge, Reservation, etc). (Also provide Congressional District and counties if known)

C.7 Quick Release Response E-mail

To be written by FLH Division Director

To: Applicant
cc: Applicant National ERFO Coordinator
Applicant Regional ERFO Coordinator
FLH ERFO Program Manager
FLHD ERFO Coordinator

Subject: Quick Release Reply

Body: Your request for Quick Release of ERFO funds has been approved in the amount of (amount). Funds will be transferred to (your national headquarters/ the FLH Division/ TTP Office) in the next couple days.

These funds can only be used to pay for emergency repairs on eligible transportation facilities. If you have any questions please contact (name) FLH ERFO Coordinator.

C.8 Site Inspection Equipment List

Description	Provider	
	Applicant	Federal Lands Highway
A map identifying applicant's facilities which clearly depict the damage site.	X	
A copy of the current ERFO Manual.		X
Supply of Damage Survey Report forms.		X
Camera and method to identify the photographed location (e.g., marker and pad, small chalk board and chalk).	X	X
A measuring tape or electronic distance measuring device.	X	X
Clipboard, pencils, pens, stapler, and extra staples, calculator, paper, and straight edge.	X	X
Applicant-owned equipment rental rates (with operator rate included).	X	
Local market, private industry operator labor rates (with operator rate included).	X	
Tabulation of recent average unit contract prices for selected repairs.	X	
Local market, private industry equipment rental rates.	X	
Notebook computer as needed.	X	X
Global Positioning System (GPS) Equipment	X	X
Hard hats.	X	
Safety vests.	X	X
First-aid kit.	X	X
Traffic control devices (i.e., cones).	X	
Steeled-toe boots (optional).	X	X
Communication equipment (telephone/radio).	X	X
Clinometer	X	X
Compass	X	X
Spot Light	X	X

C.9.1 Instructions

- a) **Sheet no. ___ of ___:** Sheet numbers are entered to sequence the DSRs.
- b) **DSR No.:** Applicant assigned number given to each DSR containing at least the route number, name of road, and mile post.
- c) **Disaster No.:** The disaster number is provided in the *Positive Finding* letter.
- d) **Applicant:** Enter the name of the field unit (National Forest, National Park, etc.) and agency name.
- e) **Unit:** Forest Service District Office or U.S. Corp of Engineer project.
- f) **County:** Enter the name of the county in which the damage site is located.
- g) **State:** Enter the two-letter abbreviation of the state in which the damage site is located.
- h) **Inspection date:** Enter the inspection date.
- i) **Location of damage:** Enter the facility name, number of the facility (enter the NTTFI or NFLTFI number if the NTTFI/NFLTFI box is checked), and milepost of the damage site in miles or kilometers according to your agency's metric policy.
- j) **NTTFI/NFLTFI Check Box:** Check the box if the facility is on the National Tribal Transportation Facility Inventory or the National Federal Lands Transportation Facility Inventory.
- k) **ADT:** Enter the average daily traffic for the road.
- l) **Bridge data:** Enter type of bridge and the bridge number.
- m) **Road data:** Enter the road classification, traveled way width, and surface type and thickness; shoulder width, thickness, and surface type and thickness.
- n) **Latitude/longitude:** Geographical position of the site.
- o) **Maintenance Level:** Operational maintenance level (Forest Service) or Maintenance Intensity (Bureau of Land Management).
- p) **Description and cause of damage:**
 - (1) Provide a clear description about how the damage occurred.
 - (2) Describe the amount of material lost, noting the length, width, and depth.
 - (3) Include the size and condition of the structures.
 - (4) Note any signs of a preexisting condition for slides and slumps such as sealed pavement cracks, vegetation growing in slope cracks, horizontal drains. Note pre-disaster condition of culverts and roadside ditches.
 - (5) Provide a sketch or cross-section drawing with dimensions that illustrates the damage and current roadway width.
- q) **Scope of work:**
 - (1) Describe both emergency and permanent repairs.

- (2) Provide a brief outline of alternate repair option(s), if considered.
- r) **Cost estimate for emergency repairs:** Show all emergency repairs as well as temporary traffic control devices, warning signs, DSR preparation, NEPA, and erosion control.
- (1) **Quantity:** Enter the number of units of equipment, labor, or materials. Show backup calculations on supplemental sheets.
 - (2) **Unit:** Enter the unit of measures.
 - (3) **Description:** Enter the name of the equipment, labor, and materials.
 - (4) **Unit price:** Enter the unit price for the item.
 - (5) **Cost:** Calculate the COST by multiplying the QUANTITY by the UNIT PRICE.
 - (6) **Force account:** Mark this box if the emergency repairs were done by the applicant's employees.
 - (7) **Contract:** Mark this box if the emergency repairs were done by a contractor.
 - (8) **Total emergency repairs:** Add up the costs for each item and enter the total.
- s) **Cost estimate for permanent repairs:** Use the type of cost items that typically appear in competitively bid construction contracts.

Special Note: Do not use units of equipment and labor on more than 10 percent of the permanent repair costs. Do not use lump sum for more than 25 percent of repair costs.

- (1) **Quantity:** Enter the number of units of equipment, labor, or materials.
 - (2) **Unit:** Enter the unit of measure.
 - (3) **Description:** Enter the name of the equipment, labor, and materials.
 - (4) **Unit price:** Enter the unit price for the item.
 - (5) **Cost:** Calculate the COST by multiplying the QUANTITY by the UNIT PRICE.
 - (6) **Force account:** Mark this box if the permanent repairs will be done by the applicant's employees.
 - (7) **Contract:** Mark this box if the permanent repairs will be done by a contractor.
 - (8) **Permanent Repair Construction Amount:** Total the construction costs.
- t) **Identify betterment and provide justification in the block provided:** Add separate sheets as needed for life cycle cost analysis calculations.
- u) **Preliminary engineering:** Calculate the cost of preliminary engineering, which includes environmental clearance, as a percentage of the permanent repair construction amount. Average preliminary engineering costs are 15 percent.
- v) **Construction engineering:** Calculate the cost of construction engineering as a percentage of the permanent repair construction amount. Average construction engineering costs are 10 percent.

- w) **Permanent Repair - Sliding Scale:** Permanent Repairs include the permanent repair construction amount, the preliminary engineering, and the construction engineering amounts. Enter 100% of the Permanent Repair for NTTFI/NFLTFI facilities. Enter 80% or the Sliding Scale percentage of the Permanent Repairs for "other federally owned roads".
- x) **Total Emergency Repairs and ERFO Share of Permanent Repairs:** Enter the total cost for both the emergency and ERFO share of permanent repairs. If the facility is a cost share road, adjust the total amount to reflect the applicant's share. ERFO funds can pay only for the applicant's share of the repair costs.
- y) **Submitted by:** Fill in the applicant's field unit, submitter's name, title, signature, and date.
- z) **Reviewed by:** Reserved for use by Federal Lands Highway field reviewer. Enter reviewer's name and title; note your opinion of eligibility/ineligibility by marking the appropriate box; sign and date.
- aa) **Recommended by:** Reserved for use by Federal Lands Highway Division ERFO coordinator. Enter the coordinator's name and title; note your opinion of eligibility/ineligibility by marking the appropriate box; sign and date.
- bb) **Combining sites:** One or more eligible damage sites can be reported on one Damage Survey Report (DSR); however, large slides and bridges may not be grouped on one report. Use supplemental sheets as needed.

When multiple sites are combined on one DSR, provide separate supplemental sheets for each site. For each site, provide a description of damage, scope of repairs, and cost estimate. Summarize the cost by site on the first page of the DSR.

C.9.2 Supplemental Sheets

- a) Duplicate the information contained on the original DSR about the site(s) at the top of each supplemental sheet.
- b) The following items are required and should be attached to supplemental sheets:
 - (1) Additional explanations of the damage, scope of work, estimated costs of repairs, betterment justification, etc.
 - (2) Sketches or drawings illustrating the damage or proposed repairs.
 - (3) Photographs of the damage site(s).
 - (4) Map(s) showing the site location(s).
 - (5) Backup calculations for major construction item quantities.

C.10 Applicant's Program of Projects Letter

To be written by Applicant's regional or state office

Date

Federal Lands Highway Division Director
 Federal Highway Administration
 [Division name]
 [Address]
 [City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
 Program of Projects Request Letter No: (number), (ERFO Disaster Number)
 (event name i.e. 2010 June Flooding), (event dates)

Dear [Division Director name]:

We request (*initial/revised*) Program of Projects approval for roads damaged in disaster [disaster number] which occurred on [date] as a result of a (*natural disaster/catastrophic failure*) under our jurisdiction as summarized below.

Program of Projects Summary Table				
Location of Damage	Organization Performing the Repairs	Previously Approved Amount	Requested Amount	Total Requested Amount
Pike NF	FS	\$0	\$80,000	\$80,000
	CFLHD	\$0	\$60,000	\$60,000
San Isabel NF	FS	\$130,000	\$20,000	\$150,000
	CFLHD	\$140,000	\$0	\$140,000
Subtotal	FS	\$130,000	\$100,000	\$230,000
	CFLHD	\$140,000	\$60,000	\$200,000
Grand Total		\$270,000	\$160,000	\$430,000

Attached is our (*initial/revised*) proposed Program of Project's spreadsheet. (*Submit the original Damage Survey Reports if not previously submitted.*)

We request that the [Division name] Federal Lands Highway Division perform the following work (*includes description and site location.*):

If you have any further questions, please contact [name], at [telephone number].

Sincerely,

Signature _____

[Name]

[Title]

Enclosure: Program of Projects Table

cc: FLHD ERFO Coordinator, (FHWA Tribal Coordinator when applicable)

C.11 Program of Projects Table

Program of Projects Table Number 2							Date:	12/5/2014
Disaster Number:		CO 2014-1 FS		Agency Sub Unit:		San Isabel National Forest		
Previously Approved Program of Projects								
DSR Number	FLTP or TTP (Y/N)	DESCRIPTION OF REPAIR	Applicant	Federal Lands Highway Division Office	Federal Lands Highway Tribal Transportation Program	Total	PERMANENT REPAIR METHOD (Force Account or Contract)	
						\$0		
520-3.4	Y	Repair failed road shoulder and replace surfacing	\$60,000			\$60,000	Contract	
3250-2.3	Y	Repair eroded embankment	\$70,000			\$70,000	Contract	
5430-25.8	Y	Repair bridge abutment		\$140,000		\$140,000	Contract	
						\$0		
						\$0		
						\$0		
						\$0		
						\$0		
		Program Totals	\$130,000	\$140,000	\$0	\$270,000		
Changes to Program of Projects								
DSR Number	FLTP or TTP (Y/N)	DESCRIPTION OF REPAIR	Applicant	Federal Lands Highway Division Office	Federal Lands Highway Tribal Transportation Program	Total	PERMANENT REPAIR METHOD (Force Account or Contract)	
						\$0		
520-3.4	Y	Repair failed road shoulder and replace surfacing	\$20,000			\$20,000	Contract	
3250-2.3	Y	Repair eroded embankment				\$0	Contract	
5430-25.8	Y	Repair bridge abutment				\$0	Contract	
						\$0		
						\$0		
						\$0		
						\$0		
		Program Totals	\$20,000	\$0	\$0	\$20,000		
Revised Program of Projects								
DSR Number	FLTP or TTP (Y/N)	DESCRIPTION OF REPAIR	Applicant	Federal Lands Highway Division Office	Federal Lands Highway Tribal Transportation Program	Total	PERMANENT REPAIR METHOD (Force Account or Contract)	
						\$0		
520-3.4	Y	Repair failed road shoulder and replace surfacing	\$80,000			\$80,000	Contract	
3250-2.3	Y	Repair eroded embankment	\$70,000			\$70,000	Contract	
5430-25.8	Y	Repair bridge abutment		\$140,000		\$140,000	Contract	
						\$0		
						\$0		
						\$0		
						\$0		
		Program Totals	\$150,000	\$140,000	\$0	\$290,000		

C.12 Program of Projects Approval Letter

To be written by the Federal Lands Highway Division Director

Date

[Applicant name]

[Address]

[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads

Program of Projects Approval Letter No: (number), (ERFO Disaster Number)

(event name), (event dates)

Dear Applicant:

The proposed Program of Projects submitted with your letter dated [date], is approved as indicated below.

Program of Projects Summary Table				
Location of Damage	Organization Performing the Repairs	Previously Approved Amount	Requested Amount	Total Requested Amount
Pike NF	FS	\$0	\$80,000	\$80,000
	CFLHD	\$0	\$60,000	\$60,000
San Isabel NF	FS	\$130,000	\$20,000	\$150,000
	CFLHD	\$140,000	\$0	\$140,000
Subtotal	FS	\$130,000	\$100,000	\$230,000
	CFLHD	\$140,000	\$60,000	\$200,000
Grand Total		\$270,000	\$160,000	\$430,000

We are pleased to advise you that Federal Lands Highway is available to assist your agency per your request to perform work dated [date]. A representative from our office will be in contact with your field unit representative to coordinate this effort.

U.S.C. Title 23 requires the Federal Highway Administration (FHWA) to comply with the National Environmental Policy Act for projects using Title 23 funds. Please contact our Environmental Manager, (name), at (phone number) to coordinate compliance activities for repairs performed by your agency.

Federal Highway Administration approval is required at stages *Approval of Plans, Specifications, and Estimates packages; Concurrence in rejection of bids; and Concurrence in award.*

This letter provides advice on program approval only and does not transfer obligation authority or cash to accomplish approved repairs. Funds, subject to availability, in the amount of [amount] may be requested on an as-needed/written request basis. Please advise your office headquarters to formally request these funds from the Federal Lands Highway ERFO Program Manager. **[Please note: Transfer of ERFO funds will be withheld if prior year Disaster Status Reports have not been submitted to the Federal Lands Highway Division Engineer.]**

We will be requesting our Washington Headquarters to arrange the transfer of obligation authority on an as-needed/written request basis in the amount of [amount] to [Division name] Federal Lands Highway Division.

ERFO work shall be given prompt attention and priority over non-emergency work and programmed projects. Projects not under construction by the end of fiscal year XXXX will be withdrawn from the approved POP unless a suitable justification is provided to warrant a time extension.

If you have questions or need further information, please contact the Federal Lands Highway Division ERFO Coordinator, [name], at [telephone number].

Sincerely,

Signature

[Name]

[Title]

Enclosure: Program of Projects Table

cc: Local FHWA Division Office; FLH ERFO Program Manager; Applicant's National and Regional ERFO Coordinators, Superintendent of Field Unit (include cc list from Applicant's POP Letter), FLHD Environmental Manager, (FHWA Tribal Coordinator if applicable)

C.13 Request for ERFO Funds

To be written by the Applicant's headquarters or FHWA agreement tribe

Date

[Applicant name]
[Address]
[City, State, Zip]

Federal Lands Highway Associate Administrator
Federal Highway Administration
400 Seventh Street SW – HFL-1
Washington, DC 20590

Re:/Subject: Emergency Relief for Federally Owned Roads
Request for ERFO Funds Letter No: (number)

Dear Associate Administrator:

This is to request ERFO funds in the amount of [dollars] for the disasters shown on the attached table which will be obligated in fiscal year [year].

Thank you for your assistance in this matter. If there are any questions, please contact [name] at [telephone number].

Sincerely,

Signature
[Name]
[Title]

Enclosure: Annual ERFO Funds Request Table (see C.18)

cc: FLH ERFO Program Manager, (BIA Regional Office and FHWA Tribal Coordinator when applicable)

C.14 Transfer of ERFO Funds

To be written by the Federal Lands Highway ERFO Program Manager

Date

HFPD5-[month and FY]-[Program Code][FLMA Letter No. sequence]*[Tracking No.]

Refer to: HFPD-5

[Applicant name]
[Applicant Title]
[FLMA]
[Address]
[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
Allocation of ERFO Funds Letter No: (number)

Dear Applicant:

The purpose of this letter is to provide to [FLMA] funds made available under the Emergency Relief for Federally Owned Roads (ERFO) Program.

Based upon information provided by your staff, this office has determined that a total of [amount] in [Program Code] needs to be allocated. Therefore, we are allocating [amount] in [Program Code] Contract Authority to the disasters shown in Table A.

(OPTIONAL PARAGRAPH—BUDGET AUTHORITY)

A Federal Highway Administration Advice of Funds and an 1151 Non-expenditure Transfer for the amount of the allocation will be processed by our Office of Budget and Finance. Please bear in mind that obligations cannot be incurred until the 1151 Non-expenditure Transfer has been posted by Treasury and all activity against this funding must be reported separately from Federal-aid Program funding on the SF-133.

(OPTIONAL PARAGRAPH—CONTRACT AUTHORITY)

The Federal Highway Administration (FHWA) Office of Budget will issue a completed FHWA Form 370 confirming the allocation of funding shortly. Please continue to report ERFO obligations on the SF-133, separately from other Highway Trust Funds.

If there are any questions, please contact [ERFO Program Manager] at [telephone number].

Sincerely yours,

Signature

[Name]

[Title]

Enclosure must include Table for both Divisions and FLMA's

cc: Local FHWA Division Office; FLH ERFO Program Manager; Applicant's National and Regional ERFO Coordinators, Superintendent of Field Unit (include cc list from Applicant's Funds request letter), (FHWA Tribal Coordinator if applicable)

C.15 Allocation Memorandum to a Federal Lands Highway Division

To be written by the ERFO Program Manager

HFPD5-[month and FY]-[Program Code][FLMA Letter No. sequence]*[Tracking No.]

Subject: **ACTION:** Emergency Relief for Federally
Owned Roads (ERFO) Funding
[Fiscal Year], Allocation

Date:

From: Director, Office of Program Development

In Reply Refer To: [HFPD5]

To: Federal Lands Highway Division Directors

This memorandum allocates [amount] to Disasters [ERFO disaster number] [amount] and [ERFO disaster number] [amount] for approved repairs in ERFO funds, PC-[code], as shown on the attached Table A. The accounting flex field information is as follows: Fund, [identification], Budget Year, 0000, and BPAC, [identification].

By copy of this memorandum, we are requesting the Office of Budget and Finance to make the appropriate adjustments in the Financial Management Information System for [contract or budget] authority and obligation limitation, in accordance with Table A.

If you have any questions regarding this memorandum, please contact [name], ERFO Program Manager, at [telephone number].

Attachment

cc: FLHD ERFO Coordinator

C.16 Request for Time Extension

To be written by the Applicant's regional or state office, or FHWA Tribal Coordinator

Date

Federal Lands Highway Division Director
Federal Highway Administration
[Division name]
[Address]
[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
Time Extension Request Letter No: (number), (ERFO Disaster Number)
(event name i.e. 2010 June Flooding), (event dates)

Dear [Division Director name]:

The [Applicant name] requests a [time] extension for approved ERFO site [site location] which resulted from disaster number [disaster number].

Please see the attached table for justification statement and dates of major milestones.

If you have any further questions, please contact [name], [title], at [telephone number].

Sincerely,

Signature

[Name]

[Title]

Attachment

cc: FLHD ERFO Coordinator; (BIA Regional Office or FHWA Tribal Coordinator if applicable)

C.16.1 Request for Time Extension Table

To be written by the applicant

Damage Survey Report Number	Justification statement	Project Status and Timeline
<i>Example: BLU 2300-4.9</i>	<i>Example: We were delayed from accessing this site because of damage to county road, Route 6, that occurred during the OR 2007-2-BIA disaster. The damage at M.P. 1.0 has severely damaged the bridge abutment and it will not be repaired until later this fall. Route 2300 is a well maintained road that is the primary access to the landfill.</i>	<i>Example: (Provide completion/planned completion dates for the following deliverables) Applicant's POP Letter: [date] Topographic Survey and Mapping: [date] Environmental Resource Surveys: [date] Preliminary Design: [date] Draft NEPA Document: [date] Biological Assessment/Opinion: [date] Final NEPA (ROD, FONSI, CE): [date] Final PS&E: [date] Contract Award: [date] Contract Completion: [date]</i>

C.16.2 Instructions for Time Extension Table

- a) Submit justification for each DSR
- b) Provide description of why the project was not completed on time. Provide description of primary purpose and need of the road.
- c) Provide dates of major project milestones (actual/projected) as listed below to demonstrate the project was advanced on a priority basis and that a time extension is justified
 - (1) POP Letter date (Applicant's first submittal)
 - (2) Topographic survey and mapping date
 - (3) Environmental survey completion dates
 - (4) Preliminary design date
 - (5) Engineering recommendation dates (Geotechnical, Hydraulic, Structures, etc.)
 - (6) Draft NEPA document date
 - (7) Biological Assessment and Opinion dates
 - (8) Final NEPA document (ROD, FONSI, CE) date
 - (9) Final PS&E date
 - (10) Advertisement date
 - (11) Construction award date
 - (12) Construction completion date

C.17 Approval of Request for Time Extension

To be written by the Federal Lands Highway Division Director

Date

[Applicant name]

[Address]

[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads

Approval of Request for Time Extension Letter Number : ____, (ERFO Disaster Number)

(event name), (event dates)

Dear Applicant:

We received your letter dated [date] requesting a time extension for Emergency Relief for Federally Owned Roads (ERFO) projects damaged in the [disaster number] disaster.

Based upon the information you presented, approval/disapproval is indicated on the attached table. The projects must be under contract as indicated on the attached table in order to ensure continued eligibility of ERFO funds.

Sites not eligible for time extensions should be removed from future ERFO fund requests. Any expenditure of ERFO funds on these sites after the approved completion date is prohibited. In addition, expenditure of any other program/agency funds after that date will not be reimbursed under the ERFO Program.

If you have questions or need further information, please contact the Federal Lands Highway Division ERFO coordinator, [name] at [telephone number].

Sincerely,

Signature

[Name]

[Title]

Attachment

cc: FLH ERFO Program Manager; Applicant's National and Regional ERFO Coordinators, Superintendent of Field Unit (include cc list from Time Extension Request Letter), (FHWA Tribal Coordinator if applicable),

C.17.1 Time Extension Approval Table

To be written by the Federal Lands Highway Division Director

Damage Survey Report Number	Previously Approved Contract Date	New Approved Contract award Date	Rationale for Decision
<i>Example: BLU 2300-4.9</i>	<i>Example: 9/30/2011</i>	<i>Example: 9/30/2012</i>	<i>Example: The time extension is approved based on another eligible ERFO disaster delaying the repair of this site. We expect that the repair of this site will be accomplished as soon as access across the county bridge is restored.</i>

C.19 Request for Closeout

To be written by the Applicant or FHWA Tribal Coordinator

Date

Federal Lands Highway Division Director
Federal Highway Administration
[Division name]
[Address]
[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
Request for Closeout Letter Number : ____, (ERFO Disaster Number)
(event name), (event dates)

Dear [Division Director name]:

The [Applicant name] requests a [final/partial] closeout of approved ERFO site(s) which resulted from disaster number [number]. The site(s), shown on the attached Disaster Status Report, have been repaired according to the description of repairs on the most recent DSR and the approved Program of Projects (except as noted). The total expenditure to repair all damage was [amount].

If you have any further questions, please contact [name], [title], at [telephone number].

Sincerely,

Signature

[Name]

[Title]

Attachment: Disaster Status Report

cc: FLHD ERFO Coordinator

C.21 Site Selection for In-depth Review Letter

To be written by the Federal Lands Highway Division Director

Date

[Applicant name]

[Address]

[City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
Disaster Closeout Site Selection, (ERFO Disaster Number)
(event name), (event dates)

Dear Applicant:

We received your notification that (*all/a portion of the*) eligible ERFO activities associated with [disaster number] have been completed. Based on the Disaster Status Report you submitted the following sites were selected for an in-depth review.

<u>ERFO Disaster</u>	<u>DSR</u>	<u>Closeout Amount</u>
(disaster number)	(DSR number)	(amount)

The purpose of the Closeout Review is to determine if the requirements and guidelines of the ERFO Program were met. The closeout review agenda and the contract documents and financial records that must be provided at the closeout meeting are found in the ERFO Disaster Assistance Manual in Sections 2.9.2, Section 3.3.2 and Appendix C.22. It would be helpful if your engineering, and budget and finance staff were available to answer questions that may arise during the review.

As soon as you assemble the required contract and financial records, please contact the FLH ERFO Coordinator, (name) at (telephone number) to schedule the closeout review meeting.

Sincerely,

Signature

[Name]

[Title]

cc: Superintendent of Field Unit (include cc list from Disaster Closeout Request Letter), Applicant's Regional Office, (FHWA Tribal Coordinator if applicable),

C.22 Disaster Closeout Submittal

The Applicant must submit the following documentation for each site selected for an in-depth review.

- a) Financial Records
 - (1) Summarize final expenditures by fiscal year and Budget Object Code (BOC)
 - (2) Provide a print out from the financial system that shows the details for each BOC shown
 - i. Travel (including dates)
 - ii. Salary/Payroll (including names and dates)
 - iii. Vehicles/Equipment (type, size, dates)
 - iv. Contracts (vendor, dates)
 - v. Materials/Supplies (description, dates)
- b) Preconstruction
 - (1) NEPA
 - i. Correspondence with FLH Environmental Manager regarding Title 23 compliance
 - ii. CE determination and Checklist for Permanent Repairs
 - iii. EA and Decision Notice or EIS and Record of Decision
 - (2) Design
 - i. Hydraulic, Geotechnical, structural, pavement recommendations
 - ii. Bid/Plan Quantities and Engineer's Estimate justification/calculations
 - iii. Permits
- c) Contracts - Pre-construction and Construction
 - (1) Solicitation - Pre-award documents, Bids, Negotiations, Quotes
 - (2) Award Documents - Amount, Date, Vendor, Accounting information
 - (3) Bid Schedule/Plans/Specifications
 - (4) Contract Administration
 - i. Notice to proceed, Work Orders, Final Inspection
 - ii. Daily Diaries
 - iii. Invoices/Payments
 - iv. Quantity measurements and/or truck/weigh tickets
 - (5) Contract Modifications
 - i. Supporting documentation, and price determination
 - ii. Accounting information
 - (6) Contract Closeout
 - i. Final Acceptance and Payment
 - ii. Contract Release

C.23 Closeout Letter

To be written by the Federal Lands Highway Division Director

Date

[Applicant name]
 [Address]
 [City, State, Zip]

Re:/Subject: Emergency Relief for Federally Owned Roads
 Program of Projects Letter [number]
 (**Partial/Final**) Disaster Closeout, (ERFO Disaster Number)
 (event name), (event dates)

Dear Applicant:

We received your notification that (*all/a portion of the*) eligible ERFO activities associated with [disaster number] have been completed.

The revised total program and authorized expenses for eligible ERFO repairs for this disaster is [amount]. The previously approved program amount of [amount] was (**Overrun/Underrun**) by [amount].

Program of Projects Summary Table				
Location of Damage	Organization Performing the Repairs	Previously Approved Amount	Requested Amount	Total Requested Amount
Pike NF	FS	\$80,000	\$3,000	\$83,000
	CFLHD	\$60,000	\$5,500	\$65,500
San Isabel NF	FS	\$150,000	(\$10,000)	\$140,000
	CFLHD	\$140,000	\$15,000	\$155,000
Subtotal	FS	\$230,000	(\$7,000)	\$223,000
	CFLHD	\$200,000	\$20,500	\$220,500
Grand Total		\$430,000	\$13,500	\$443,500

We have conducted a final review of the damage repair and supporting records and have discussed our findings with [name] from your office on [date]. As a result of our review, we find all repairs to be accomplished in reasonably close conformity to the approved program. We hereby grant final acceptance of the subject damage repairs. The expertise and diligence of your office and field personnel in restoring damaged roadways to stable and serviceable conditions through innovative and cost-savings techniques are appreciated.

By copy of this letter we are advising our Washington Headquarters to close the (Applicant name) portion of ERFO Disaster (disaster number) at the Final Approved Program amount of (amount) and to begin final funding reconciliation with your Washington Headquarters office.

By copy of this letter, we are also advising our Washington Headquarters to close the (FLH Division) portion of ERFO Disaster (disaster number) at the final approved program amount of (amount) and to begin final funding reconciliation with our office.

If you have any questions, please contact [name] at [telephone number].

Sincerely,

Signature

[Name]

[Title]

cc: Local FHWA Division Office; FLH ERFO Program Manager; Applicant's National and Regional ERFO Coordinators, Superintendent of Field Unit (include cc list from Disaster Closeout Request Letter), (FHWA Tribal Coordinator if applicable)

Appendix D – Law and Regulation

D.1 Select Provisions of 23 U.S.C., Highways, Related to the ERFO Program

Sec. 101. Definitions.

a) Definitions. In this title, the following definitions apply:

- (1) County. The term "county" includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.
- (2) Federal-aid highway. The term "Federal-aid highway" means a highway eligible for assistance under this chapter other than a highway classified as a local road or rural minor collector.
- (3) Federal lands access transportation facility. - The term "Federal Lands access transportation facility" means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government.
- (4) Federal lands transportation facility. - The term "Federal lands transportation facility" means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory described in section 203(c).
- (5) Highway. - The term "highway" includes -
 - i) a road, street, and parkway;
 - ii) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure including public roads on dams, sign, guardrail, and protective structure, in connection with a highway; and
 - iii) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.
- (6) Maintenance. - The term "maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.
- (7) Public authority. - The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll- free facilities.
- (8) Public road. - The term "public road" means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

- (9) Tribal transportation facility. - The term "tribal transportation facility" means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory described in section 202(b)(1).

23 U.S.C. Sec. 120. Federal share payable

- (b) Emergency Relief. - The Federal share payable for any repair or reconstruction provided for by funds made available under section 125 for any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on the system as provided in subsections (a) and (b), except that –
- (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the cost of the repairs;
 - (2) the Federal share payable for any repair or reconstruction of Federal land transportation facilities, Federal land access transportation facilities, and tribal transportation facilities may amount to 100 percent of the cost of the repair or reconstruction;
 - (3) the Secretary shall extend the time period in paragraph (1) taking into consideration any delay in the ability of the State to access damaged facilities to evaluate damage and the cost of repair; and
 - (4) the Federal share payable for eligible permanent repairs to restore damaged facilities to predisaster condition may amount to 90 percent of the cost of the repairs if the eligible expenses incurred by the State due to natural disasters or catastrophic failures in a Federal fiscal year exceeds the annual apportionment of the State under section 104 for the fiscal year in which the disasters or failures occurred.

Sec. 125. Emergency relief

- (a) In General. - Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any area of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of -
- (1) a natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or
 - (2) catastrophic failure from any external cause.
- (b) Restriction on Eligibility. -

(1) Definition of construction phase. - In this subsection, the term "construction phase" means the phase of physical construction of a highway or bridge facility that is separate from any other identified phases, such as planning, design, or right-of-way phases, in the State transportation improvement program.

(2) Restriction. - In no case shall funds be used under this section for the repair or reconstruction of a bridge -

(A) that has been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration; or

(B) if a construction phase of a replacement structure is included in the approved Statewide transportation improvement program at the time of an event described in subsection (a).

(c) Funding. -

(1) In general. - Subject to the limitations described in paragraph (2), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to establish the fund authorized by this section and to replenish that fund on an annual basis.

(2) Limitations. - The limitations referred to in paragraph (1) are that -

(A) not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out this section, except that, if for any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated for the fiscal year, the unobligated balance of that amount shall -

(i) remain available until expended; and

(ii) be in addition to amounts otherwise available to carry out this section for each year; and

(B)

(i) pending such appropriation or replenishment, the Secretary may obligate from any funds appropriated at any time for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as are necessary for the immediate prosecution of the work herein authorized; and

(ii) funds obligated under this subparagraph shall be reimbursed from the appropriation or replenishment.

(d) Eligibility. -

(1) In general. - The Secretary may expend funds from the emergency fund authorized by this section only for the repair or reconstruction of highways on Federal-aid highways in accordance with this chapter, except that -

(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has

declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

- (B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs by not later than 2 years after the natural disaster or catastrophic failure.
- (2) Cost limitation. -
- (A) Definition of comparable facility. - In this paragraph, the term "comparable facility" means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.
 - (B) Limitation. - The total cost of a project funded under this section may not exceed the cost of repair or reconstruction of a comparable facility.
- (3) Debris removal. - The costs of debris removal shall be an eligible expense under this section only for -
- (A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or
 - (B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192).
- (4) Territories. - The total obligations for projects under this section for any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000.
- (5) Substitute traffic. - Notwithstanding any other provision of this section, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charged for comparable service, may be expended from the emergency fund authorized by this section for Federal-aid highways.
- (e) Tribal Transportation Facilities, Federal Lands Transportation Facilities, and Public Roads on Federal Lands. -
- (1) Definition of open to public travel. - In this subsection, the term "open to public travel" means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.
 - (2) Expenditure of funds. - Notwithstanding subsection (d)(1), the Secretary may expend funds from the emergency fund authorized by this section, independently or in cooperation with any other branch of the Federal Government, a State agency, a tribal government, an organization, or a person, for the repair or reconstruction of tribal

transportation facilities, Federal lands transportation facilities, and other federally owned roads that are open to public travel, whether or not those facilities are Federal-aid highways.

(3) Reimbursement. -

(A) In general. - The Secretary may reimburse Federal and State agencies (including political subdivisions) for expenditures made for projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility.

(B) Transfers. - With respect to reimbursements described in subparagraph (A) -

(i) those reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation; and

(ii) the budget authority associated with the expenditure shall be restored to the agency from which the authority was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

(f) Treatment of Territories. - For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

(g) Protecting Public Safety and Maintaining Roadways. - The Secretary may use not more than 5 percent of amounts from the emergency fund authorized by this section to carry out projects that the Secretary determines are necessary to protect the public safety or to maintain or protect roadways that are included within the scope of an emergency declaration by the Governor of the State or by the President, in accordance with this section, and the Governor deems to be an ongoing concern in order to maintain vehicular traffic on the roadway

D.2 Title 23, Code of Federal Regulations

[NOTE: These regulations have not been updated to address changes made by the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141)]

PART 668 EMERGENCY RELIEF PROGRAM

Subpart B Procedures for Federal Agencies for Federal Roads – Authority granted under: 23 U.S.C. 101, 120(e), 125 and 315; 49 CFR §1.48(b).

§ 668.201 Purpose.

To establish policy, procedures, and program guidance for the administration of emergency relief to Federal agencies for the repair or reconstruction of Federal roads which are found to have suffered serious damage by a natural disaster over a wide area or by catastrophic failure. [43 FR 59485, 12/21/1978]

§668.203 Definitions.

- (a) Applicant. Any Federal agency which submits an application for emergency relief and which has authority to repair or reconstruct Federal roads.
- (b) Betterments. Added protective features, such as, the relocation or rebuilding of roadways at a higher elevation or the extension, replacement or raising of bridges, and added facilities not existing prior to the natural disaster or catastrophic failure such as additional lanes, upgraded surfacing, or structures.
- (c) Catastrophic failure. The 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. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.
- (d) Emergency repairs. Those repairs, including necessary preliminary engineering, construction engineering, and temporary traffic operations, undertaken during or immediately after a natural disaster or catastrophic failure (1) to restore essential travel, (2) to protect remaining facilities, or (3) to minimize the extent of damage.
- (e) Federal roads. Forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads as defined under 23 U.S.C. 101(a).
- (f) Finding. A letter or other official correspondence issued by the Direct Federal Division Engineer (Direct Federal Division Engineer) to a Federal agency giving notification that pursuant to 23 U.S.C. 125, Federal roads have (Affirmative Finding) or have not (Negative Finding) been found to have suffered serious damage as the result of (1) a natural disaster over a wide area, or (2) a catastrophic failure.

- (g) Natural disaster. An unusual natural occurrence such as a flood, hurricane, severe storm, tidal wave, earthquake, or landslide which causes serious damage.
- (h) Permanent work. Repair or reconstruction to pre-disaster or other allowed geometric and construction standards and related Preliminary Engineering and Construction Engineering.
- (i) Direct Federal Division Engineer. Director of one of the Direct Federal field offices located in Vancouver, WA; Denver, CO; and Arlington, VA. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.205 Policy.

- (a) This emergency relief program is intended to pay the unusually heavy expenses in the repair and reconstruction of Federal roads resulting from damage caused by natural disasters over a wide area or catastrophic failures.
- (b) Emergency relief work shall be given prompt attention and priority over non-emergency work.
- (c) Permanent work shall be done by contract awarded by competitive bidding through formal advertising, where feasible.
- (d) It is in the public interest to perform emergency repairs immediately and prior approval or authorization from the Direct Federal Division Engineer is not required. Emergency repairs may be performed by the method of contracting (advertised contract, negotiated contract, or force account) which the applicant or the Federal Highway Administration (where Federal Highway Administration performs the work) determines to be most suited for this work.
- (e) Emergency relief projects shall be promptly constructed. Projects not under construction by the end of the second fiscal year following the year in which the disaster occurred will be reevaluated by the Direct Federal Division Engineer and will be withdrawn from the approved Program of Projects unless suitable justification is provided by the applicant to warrant retention.
- (f) The Finding for natural disasters will be based on both the extraordinary character of the natural disturbance and the wide area of impact. Storms of unusual intensity occurring over a small area do not meet these conditions.
- (g) Diligent efforts shall be made to recover repair costs from the legally responsible parties to reduce the project costs where highway damages are caused by ships, barge tows, highway vehicles, vehicles with illegal loads, and similar improperly controlled objects or events.
- (h) Emergency funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Where other funding compensates for

only part of an eligible cost, emergency relief funding can be used to pay the remaining costs. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.207 Federal share payable from emergency fund.

The Federal share payable under this program is 100 percent of the cost.

[43 FR 59485, Dec. 12, 1978]

§ 668.209 Eligibility of work.

- (a) Permanent work must have prior program approval in accordance with paragraph (a) of § 668.215 unless such work is performed as emergency repairs.
- (b) Emergency repairs, including permanent work performed incidental to emergency repairs, and all Preliminary Engineering may begin immediately and do not need prior program approval. Reimbursement shall be contingent upon the work ultimately being approved in accordance with the requirements of paragraph (a) of § 668.215.
- (c) To qualify for emergency relief, the damaged or destroyed road or trail must be designated as a Federal road.
- (d) Replacement highway facilities are appropriate when it is not practical and economically feasible to repair or restore a damaged element to its preexisting condition. Emergency relief is limited to the cost of a new facility constructed to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.
- (e) Emergency relief funds may participate to the extent of eligible repair costs when proposed projects contain betterments or other work not eligible for emergency funds.
- (f) Work may include:
 - (1) Repair to, or reconstruction of, seriously damaged highway elements for a distance which would be within normal highway right-of-way limits, including necessary clearance of debris and other deposits in drainage courses, where such work would not be classed as heavy maintenance.
 - (2) Restoration of stream channels when the work is necessary for the satisfactory operation of the federal road. The applicant must have responsibility and authority for maintenance and proper operation of stream channels restored.
 - (3) Betterments where clearly economically justified to prevent future recurring damage. Economic justification acceptable to the Direct Federal Division Engineer must weigh the cost of such betterments against the risk of eligible recurring damage and the cost of future repair.

- (4) Actual Preliminary Engineering and Construction Engineering costs on approved projects.
- (5) Emergency repairs. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.211 Notification, damage assessment, and finding.

- (a) Notification. During or as soon as possible after a natural disaster or catastrophic failure, each applicant will notify the Direct Federal Division Engineer of its tentative intent to apply for emergency relief and request that a Finding be made.
- (b) Acknowledgment. The Direct Federal Division Engineer will promptly acknowledge the notification and briefly describe subsequent damage assessment, Finding, and application procedures.
- (c) Field report. The applicant shall cooperate with the Direct Federal Division Engineer to promptly make a field survey of overall damage and in the preparation of a field report.
- (d) Finding. Using the field report and other information deemed appropriate, the Direct Federal Division Engineer will promptly issue a Finding, and if an Affirmative Finding is made, establish the date after which repair or reconstruction will be considered for emergency relief, and note the dates of the extraordinary natural occurrence or catastrophic event responsible for the damage or destruction.
- (e) Detailed site inspections.
 - (1) If an Affirmative Finding is made, the applicant shall cooperate with the Direct Federal Division Engineer to make a detailed inspection of each damage site.
 - (2) If it appears certain an Affirmative Finding will be made, the Direct Federal Division Engineer may elect to make these site inspections at the time damage is initially assessed pursuant to paragraph (c) of this section.
- (f) The Applicant shall make available to Federal Highway Administration personnel conducting damage survey and estimate work maps depicting designated Federal roads in the affected area. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.213 Application procedures.

- (a) Based on the detailed site inspections and damage estimates prepared pursuant to paragraph (e) of § 668.211, the Applicant will submit an application in the form of a letter to the Direct Federal Division Engineer which shall include a list of projects for which emergency relief is requested. The application shall be submitted within three (3) months after an Affirmative Finding.

- (b) The list of projects shall include emergency repairs, Preliminary Engineering, and permanent work, and provide for each project a location, length, project number, type of damage, description of work with a separate breakdown for betterments including a justification for those intended for emergency relief funding, proposed method of construction, estimated cost, and any other information requested by the Direct Federal Division Engineer.
- (c) If the initial list of projects is incomplete, a subsequent list(s) of projects shall be forwarded to the Direct Federal Division Engineer for approval consideration as soon as possible. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.215 Programming and project procedures.

- (a) The Direct Federal Division Engineer will advise the applicant in writing which projects in the application, or in any subsequent submittals pursuant to paragraph (c) of § 668.213 are approved, including any approval conditions. Approved projects shall constitute the approved Program of Projects (program).
- (b) Plans, specifications, and estimates shall be developed based on work identified in the approved program.
- (c) The Direct Federal Division Engineer will approve PS&Es, concur in the award of contracts or the rejection of bids, determine that construction by the force account method is in the public interest, and accept completed work in accordance with interagency procedures established by the Direct Federal Division Engineer.
- (d) The applicant shall notify the Direct Federal Division Engineer in writing of the semi-annual status and completion of each emergency relief project constructed by applicant forces. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

Appendix E – Designated National Scenic and Historic Trails

National Trails System Act of 1968

E.1 National Scenic Trails

- a. Appalachian National Scenic Trails (NST)
- b. Arizona National (NST)
- c. Continental Divide (NST)
- d. Florida (NST)
- e. Ice Age (NST)
- f. Natchez (NST)
- g. New England (NST)
- h. North Country (NST)
- i. Pacific Crest (NST)
- j. Pacific Northwest (NST)
- k. Potomac Heritage (NST)

E.2 National Historic Trails

- a) Ala Kahakai National Historic Trails (NHT)
- b) California (NHT)
- c) Captain John Smith Chesapeake (NHT)
- d) El Camino Real de los Tejas (NHT)
- e) El Camino Real de Tierra Adentro (NHT)
- f) Iditarod (NHT)
- g) Juan Bautista de Anza (NHT)
- h) Lewis and Clark (NHT)
- i) Mormon Pioneer (NHT)
- j) Nez Perce (Nee-Me-Poo) (NHT)
- k) Old Spanish (NHT)
- l) Oregon (NHT)
- m) Overmountain Victory (NHT)
- n) Pony Express (NHT)
- o) Santa Fe (NHT)
- p) Selma to Montgomery (NHT)
- q) Star-Spangled Banner (NHT)
- r) Trail of Tears (NHT)
- s) Washington-Rochambeau (NHT)