

Coastal Barrier Resources Act

Guidance to Assist Federal Agencies in Determining Whether Federal Financial Assistance is Subject to CBRA

Overview

The Coastal Barrier Resources Act (CBRA) of 1982 and subsequent amendments ([16 U.S.C. 3501 et seq.](#)) established the [John H. Chafee Coastal Barrier Resources System](#) (CBRS), a defined set of geographic units along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The CBRS units are depicted on a set of maps maintained by the U.S. Fish and Wildlife Service (FWS). There are two types of units included within the CBRS, System Units and Otherwise Protected Areas (OPAs). The only federal funding restriction within OPAs is for federal flood insurance. This guidance only applies to System Units, which are subject to CBRA's full range of federal funding restrictions.

With some [exceptions](#), no new federal expenditures or financial assistance may be made available for [any purpose](#) within the System Units of the CBRS, [including, but not limited to](#): construction or purchase of roads, structures, facilities, or related infrastructure; and most projects to prevent the erosion of, or otherwise

stabilize, any inlet, shoreline, or inshore area (16 U.S.C. 3504(a)).

Most new [federal flood insurance](#) is also prohibited within the CBRS (16 U.S.C. 3502(a)(3) and 42 U.S.C. 4028). Federal regulatory actions, including the issuance of permits or other authorizations under federal law (e.g., under section 404 of the Clean Water Act, section 10 of the Rivers and Harbors Act, or sections 10(a)(1)(A) and 10(a)(1)(B) of the Endangered Species Act), are not [prohibited](#) by CBRA. Likewise, tax deductions (e.g., casualty loss and mortgage interest) and tax credits (e.g., for energy efficiency or mortgage interest) are not affected by CBRA. Expenditures by private, state, or local entities are also not prohibited by CBRA.

Role of Funding Agencies and FWS

Each federal funding agency is responsible for determining whether their expenditures constitute “financial assistance” as defined in the statute (see below), and therefore are subject to the prohibition on federal financial assistance for development within the CBRS. If asked, FWS may provide an informal and non-binding

opinion as to whether a particular expenditure meets the definition.

Purpose of this Guidance

The Bolstering Ecosystems Against Coastal Harm Act (Pub. L. 118-117), enacted on November 25, 2024, directed each federal agency affected by CBRA to revise or issue regulations and guidance as necessary to ensure compliance. FWS has developed this guidance to assist federal agencies in determining whether their expenditures fall within two of the four exceptions to the definition of “financial assistance,” described below (16 U.S.C. 3502(a)(3)(A)(iii) and (iv)). The statutory provisions described in this document contain legally binding requirements. However, this guidance document is not regulatory and does not impose legally binding requirements on any federal agency or other entity.

The attached decision support tool is intended to assist federal agencies in determining which forms of financial assistance fall under the exceptions in the definition of “financial assistance” listed at iii and iv below and are therefore not subject to CBRA.

Interpreting the Definition of Financial Assistance

“Financial assistance,” as defined by CBRA (16 U.S.C. 3502(a)(3)(A)), means “any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than-



(i) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;



(ii) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation [commonly known as Ginnie Mae, Fannie Mae, and Freddie Mac];



(iii) assistance for environmental studies, planning, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

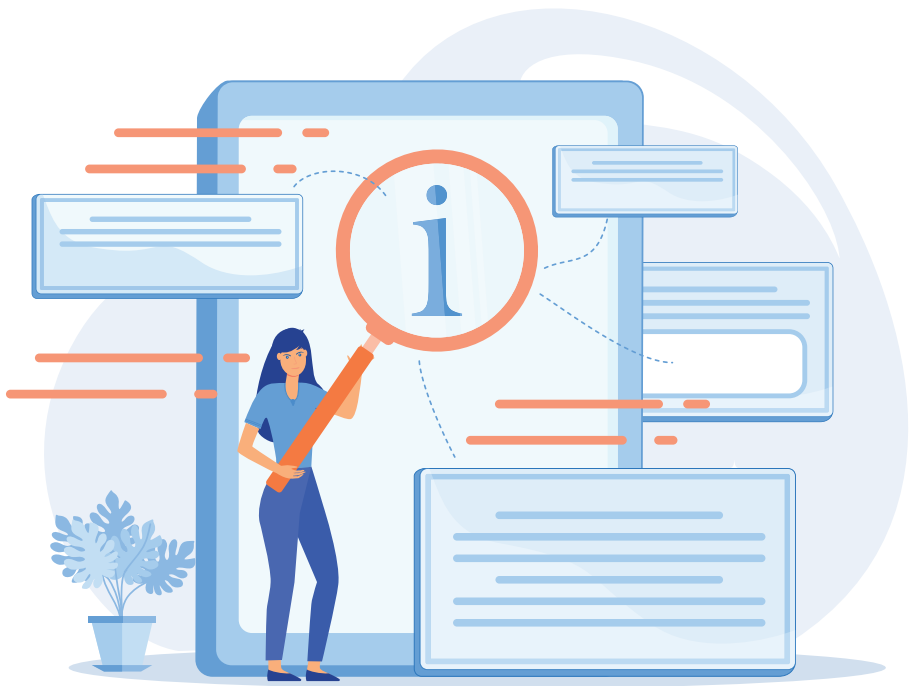


(iv) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age survivors or disability insurance program.”

The definition also includes federal flood insurance provided through the National Flood Insurance Program (16 U.S.C. 3502(a)(3)(B)).

Updates to 1983 Advisory Guidelines

On October 6, 1983, FWS published in the *Federal Register* (48 FR 45664) a set of advisory guidelines regarding the provisions of CBRA. The advisory guidelines address the limitations on federal expenditures and financial assistance, and exceptions to the limitations; elaborate on the definitions of expenditures and financial assistance in the law; prescribe a consultation process with FWS; and provide examples of the types of federal programs that would be affected by CBRA. The advisory guidelines focused on the general prohibition and three examples in [16 U.S.C. 3504\(a\)](#) and identified additional specific examples that would be considered prohibited expenditures and financial assistance (48 FR 45665-66). However, many of the federal programs and agencies identified as examples in the advisory guidelines are no longer in existence or have changed significantly since 1983.



This updated guidance replaces the list of examples of affected programs with the attached decision support tool, which is designed to assist federal agencies in evaluating their respective programs and activities to determine whether they are subject to CBRA. Unlike the 1983 advisory guidelines, which interpreted 16 U.S.C. 3504(a), this decision support tool is based on the statutory definition of “financial assistance” in [16 U.S.C. 3502\(a\)\(3\)](#). We have determined that it is appropriate to focus on the threshold issue to avoid devoting agency resources to consultations related to expenditures that are not subject to CBRA because they do not fall within that definition.

This updated guidance also specifies that FWS does not consider expenditures for planning and technical assistance to be subject to CBRA (which is a noteworthy difference from the 1983 advisory guidelines). While any federal expenditures or financial assistance for the carrying out of actual on-the-ground projects within a System Unit would in most cases be subject to CBRA, any federal funding for related planning and technical assistance is not (e.g., administrative grants under the Coastal Zone Management Act that support coastal planning, U.S. Army Corps of Engineers feasibility studies, water quality management planning grants). This change in interpretation is better aligned with the exceptions in the statutory definition of “financial assistance” for “assistance for environmental studies, planning, and assessments that are required incident to the issuance of permits or other authorizations under Federal law.”

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Decision Support Tool to Determine Whether Federal Financial Assistance is Subject to the Coastal Barrier Resources Act (CBRA)*

Before beginning, please note that this tool should not be used for any of the following:

- Federal flood insurance (prohibited by CBRA; 16 U.S.C. 3502(a)(3)(B) and 42 U.S.C. 4028)
- Federal deposit or account insurance (exempt from CBRA under 16 U.S.C. 3502(a)(3)(A)(i))
- Purchase of mortgages or loans by Fannie Mae, Freddie Mac, or Ginnie Mae (exempt from CBRA under 16 U.S.C. 3502(a)(3)(A)(ii))
- Regulatory actions, including the **issuance of permits** (not prohibited by CBRA)
- **Tax credits or deductions** (not prohibited by CBRA)
- **Private, state, or local expenditures/financial assistance** (not prohibited by CBRA)
- Projects **within Otherwise Protected Areas**. OPAs restrict only flood insurance.

Start here

Question 1. Does the federally funded action involve construction or other physical activity on the ground within a [System Unit](#) of the [Coastal Barrier Resources System](#) (CBRS)?

No – go to question 2(a)

Question 2(a). Could the action **facilitate development** (including the construction/reconstruction of buildings/infrastructure, provision of housing, easements, the conveyance of real estate)?

Examples:

- Real estate transactions
- Technical assistance
- Compliance and enforcement activities with respect to permits
- Acquisition of equipment
- Remote sensing/mapping activities (including drone flights)
- GIS analysis

Yes – go to question 2(b)

Question 2(b). Does the action involve **construction/reconstruction, repair/renovation, installations, earth movement/ground disturbance, and/or physically impact the landscape?**

Examples:

- Maintenance, replacement, construction/reconstruction, or repair of buildings and infrastructure (e.g., road, airport runway, septic system, electrical lines, water supply)
- Construction of conservation/recreation facilities (e.g., wildlife viewing platform, boat ramp, trail)
- Installation of signage
- Shoreline stabilization

Examples:

- Environmental studies
- Planning or assessments
- VA or FHA mortgages
- Rental assistance
- Provision of easement

Examples:

- Building repair/renovation
- Trail maintenance (including herbicide use)
- Installing research equipment (e.g., stream gauges), fencing, or signage that is permanent or semi-permanent (i.e., will not be removed over the short term)
- Prescribed burns
- Dredging
- Beach nourishment
- Habitat restoration (e.g., planting activities, invasive plant removal)

Examples:

- Social security payments
- Crisis counseling
- Unemployment insurance payments
- Childcare assistance payments
- Food assistance (e.g., SNAP, school lunches)

No

Answer: Action is likely exempt from CBRA's definition of "financial assistance"; if so, CBRA consultation is not required. See [16 U.S.C. 3502\(a\)\(3\)\(A\)\(iv\)](#) to confirm.

Yes

Answer: Action may or may not be subject to CBRA. Review the specific exclusions below. If subject to CBRA, use the [flow chart](#) to determine whether the funding is prohibited, or a [consultation](#) is warranted.

No

Answer: Action is likely exempt from CBRA's definition of "financial assistance"; if so, CBRA consultation is not required. See [16 U.S.C. 3502\(a\)\(3\)\(A\)\(iv\)](#) to confirm.

Yes

Answer: Action is likely subject to CBRA (see below for additional considerations). If subject to CBRA, use the [flow chart](#) to determine whether the funding is prohibited, or a [consultation](#) is warranted.

Specific Exclusions Under [16 U.S.C. 3502\(a\)\(3\)\(A\)\(iii\)](#)

Federal funding for the following activities is not prohibited:

Environmental studies
Planning
Assessments

if required incident to the issuance of permits or other authorizations under Federal law.

However, consultation may be required for any present or future construction-related activities associated with the study, planning, or assessment.

Examples:

- Handling (e.g., tagging, vaccinating, or feeding) wildlife
- Temporary wildlife nesting signage
- Seed collection
- Pretreating roads for winter weather
- Collecting water samples from a vessel

Additional Considerations

There may be very limited cases where activities in this category could be considered "entirely unrelated to development." CBRA consultation for this type of action may not be required. Federal agencies are advised to contact the appropriate Ecological Services [Field Office](#) for additional guidance.

*The purpose of this decision support tool is to assist federal agencies in determining whether **any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect federal assistance** for a project or activity is subject to CBRA or may be exempt from the definition of financial assistance at [16 U.S.C. 3502\(a\)\(3\)\(A\)\(iii\) and \(iv\)](#). The examples provided are not exhaustive, and this decision tree should be used in conjunction with the attached fact sheet and the statute.