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National Park Service: Government Shutdown Issues

Like other federal agencies, the National Park Service (NPS) has halted most operations during occasional government shutdowns resulting from lapses in appropriations. In the past three decades, such shutdowns occurred in late 1995/early 1996, October 2013, early 2018, and, most recently, from December 22, 2018, to January 25, 2019. Although government shutdowns have affected many agencies and programs, public and congressional attention has focused particularly on certain impacts, one of which is the effect of a shutdown on the National Park System.

Agency actions during a shutdown are governed by the Antideficiency Act (31 U.S.C. §§1341-1342, §§1511-1519) and related guidance, including Circular No. A-11 from the Office of Management and Budget (OMB). One OMB requirement is for agency heads to develop and maintain shutdown plans, known as *contingency plans*, detailing how each agency is to prepare for and operate during a funding gap. NPS has updated its shutdown contingency plan several times in the past decade.

Most recently, in November 2023, NPS released a contingency plan (hereinafter referred to as the November 2023 plan) addressing visitor access and related topics during a shutdown, including staffing levels and funding for limited visitor services. Recent NPS contingency plans have had differing provisions on these topics. During earlier shutdowns, NPS's policies were debated in Congress and among stakeholders. Issues included, on the one hand, concerns about economic losses to states, localities, and job sectors dependent on park tourism when parks were inaccessible; and, on the other hand, concerns about damages to park resources and threats to visitor health and safety when parks were accessible but not fully staffed. Other topics of debate have related to the availability of funding outside of annual discretionary appropriations to enable limited staffing and visitor services during a lapse.

NPS Staffing Levels in a Shutdown

NPS's November 2023 plan indicates that approximately 68% of its workforce would be furloughed in a shutdown. This projected furlough is lower than in some earlier NPS contingency plans. For instance, plans executed in the October 2013 shutdown and the December 2018–January 2019 shutdown identified approximately 87% of NPS employees for furlough.

Accessibility of Park Units in a Shutdown

NPS's November 2023 plan states that the majority of the 428 NPS units would be “closed completely to public access” during a shutdown. However, park areas that “by their nature are physically accessible to the public,” such as many open-air parks and memorials, would remain accessible, although with “significantly reduced visitor services.” This differs from the NPS approach in the shutdown of October 2013 (during the Obama

Administration), when all parks were “closed to public visitation and use.” To implement the closures in 2013, NPS required all visitors to leave the parks. Where possible, park roads were closed and access was denied. According to a 2014 NPS report, the 16-day shutdown in 2013 resulted in an overall loss of 7.88 million visits to the parks and a loss of \$414 million in NPS visitor spending in gateway communities across the country. No such assessments are available for subsequent shutdowns. In the 118th Congress, H.R. 5728 would require the Congressional Budget Office to report to Congress during a shutdown on any lost NPS revenue due to closures of NPS lands and historic sites, among other estimates.

With regard to park accessibility, the November 2023 plan appears more similar to NPS's approach in the shutdown of December 2018–January 2019 (during the Trump Administration), when parks generally were to remain accessible except in the case of facilities or areas that would typically be locked during non-business hours. Because many park units (such as many national historic sites) consist solely of buildings and areas that would be locked in non-business hours, such units would be fully closed in a shutdown.

Limited Visitor Services in a Shutdown

NPS's November 2023 contingency plan states that certain agency activities would continue in a shutdown, including both *excepted* activities (necessary to protect life and property or otherwise authorized or implied by law) and *exempted* activities (funded from permanent appropriations, eligible unobligated balances, or other available sources). The *excepted* activities identified in the plan include, for example, law enforcement, border surveillance, fire suppression, and emergency response. The *exempted* activities include, among others, “critical” visitor services at park areas accessible to the public, such as restroom maintenance, trash collection, road maintenance, and campground operations. Park superintendents may also determine on a case-by-case basis whether concessioner-run services such as hotel and food services may continue in accessible areas.

Under the November 2023 plan, certain funding sources could be used for the *exempted* visitor services and operations at parks during a shutdown. Two of these sources are (1) recreation fees collected under the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814); and (2) if received, donations from states and other entities to support services at individual parks.

Recreation Fees

NPS charges, collects, and retains recreation fees under FLREA. The agency had an estimated unobligated balance of \$324 million in FLREA fees at the end of FY2023 and estimates collections of \$365 million in FY2024. According

to a multi-agency report with 2020 data, 156 of (at that time) 423 NPS units charged an entrance fee and/or “expanded amenity” fee. Under FLREA and NPS policy, generally 80%-100% of fees are retained for use by the collecting unit, with the remaining collections available agency-wide. NPS has broad discretion in using fee revenues for purposes specified in FLREA, which include interpretation; visitor services; and facility maintenance, repair, and enhancement related to visitor access and health and safety. Current NPS policy is that parks are to use 55% of fees for deferred or preventative maintenance.

NPS’s November 2023 contingency plan states that during a shutdown, at publicly accessible park areas, “NPS may use the minimal level of FLREA funding necessary to provide critical health, public safety and protection services as an exempt activity in a manner that maintains restrooms and sanitation, trash collection, road maintenance, campground operations, law enforcement emergency operations, and the protection of park resources.” Staff levels necessary to provide these services would vary by park. If park resources could not be adequately protected, then NPS might restrict access to areas as needed, according to the plan.

NPS first used FLREA recreation fees in a similar manner during the December 2018–January 2019 shutdown. As that shutdown proceeded, issues were reported in some park units that remained accessible. These included trash buildups, restroom waste problems, and accidental and intentional damage to natural resources, among others. In response, on January 6, 2019, NPS announced that during that shutdown, the agency would use revenues from recreation fees for certain activities in park units. The activities included maintaining restrooms, collecting trash, operating campgrounds, providing law enforcement and emergency services, maintaining roads, and staffing entrance gates to provide critical safety information. After the announcement, multiple parks began to fund these activities with recreation fees, enabling some staff that had previously been furloughed to return to work on these matters. (The January 2019 contingency plan provided that, during a shutdown, the NPS director could allocate agency-wide FLREA fees to park units that did not collect fees or had “insufficient balances.” The November 2023 plan does not clarify how park-specific versus agency-wide FLREA funding would be allocated.) After the 2018-2019 shutdown ended, NPS officials stated that the agency would “fully restore” the FLREA recreation fee account to pre-shutdown levels by moving obligations made in the shutdown from the FLREA account to NPS’s main discretionary account.

Some Members of Congress questioned the legality of using FLREA fees for operations during the 2018-2019 shutdown and restoring the account thereafter. On September 5, 2019, the Government Accountability Office (GAO) issued a legal opinion (B-330776) stating that the Department of the Interior (DOI) violated the purpose statute (31 U.S.C. §1301(a)) and the Antideficiency Act when it obligated FLREA fees during the shutdown for expenses normally charged to NPS discretionary appropriations. GAO stated that DOI should report its violation of the Antideficiency Act as required by Title 31, Section 1351, of the *U.S. Code* and take actions to prevent

future violations. On September 6, 2019, DOI responded, disputing the GAO opinion in part on the grounds that NPS had used FLREA fees in the past for operating expenses similar to those the fees covered in the shutdown. The extent to and purposes for which FLREA fees could be available in any government shutdown remain in debate.

Donations

NPS has authority at 54 U.S.C. §101101 to accept monetary donations for park system purposes. In NPS shutdowns at least since 1995, some nonfederal entities (primarily states) have donated money to NPS to operate selected parks or park activities, with the aim of fostering public access and ameliorating economic losses to communities from reduced park tourism. For example, during the 2013 shutdown, several states (Arizona, Colorado, New York, South Dakota, Tennessee, and Utah) donated varying sums to reopen national park units using state funding. Following a model used in 1995-1996, these states developed agreements with NPS to donate calculated amounts for park operating costs for a certain number of days, during which time the parks would be open to the public and staffed by NPS employees. In the 2018-2019 shutdown, several states (including Arizona, New York, and Utah) and the territory of Puerto Rico similarly donated funds for daily operations at individual parks for specified periods. Some localities, park partner groups, and other private entities also made donations for specific activities or services within parks. NPS’s November 2023 plan also authorizes park superintendents to accept donations from states and other entities to support operations in a shutdown.

Agreements between NPS and states for shutdown donations have typically provided that NPS would refund to the donor any unobligated balances that remain if the shutdown ends before all the donated monies are spent. However, any funding actually used for park operations could be reimbursed only through an act of Congress. For example, after the 2013 shutdown, multiple bills were introduced to reimburse the states for their shutdown donations. These bills were not enacted, so the states were not reimbursed. Some Members of Congress, along with the states themselves, contended that state reimbursement should be prioritized, given that federal appropriations were ultimately provided (retroactively) for the shutdown period. Others took the view that the states had accepted the uncertainty of reimbursement when they agreed to make the donations. In the 118th Congress, H.R. 5743 and S. 2972 would require the Secretary of the Interior to repay states for any funds used to operate NPS units in a shutdown.

For Further Reading

On federal government shutdowns, see CRS Report R41759, *Past Government Shutdowns: Key Resources*; CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*; CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*; and CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*.

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