



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**U.S. Department of the Interior Followed  
Office of Management and Budget Guidance  
for Shutdown Plans During 2018 – 2019  
Lapse in Appropriations**



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

MAY 06 2020

To: David L. Bernhardt  
Secretary of the Interior

From: Mark Lee Greenblatt  
Inspector General

A handwritten signature in black ink, appearing to read "Mark Lee Greenblatt".

Subject: Evaluation Report – U.S. Department of the Interior Followed Office of Management and Budget Guidance for Shutdown Plans During 2018 – 2019 Lapse in Appropriations  
Report No. 2019-CR-050

We reviewed actions the Department of the Interior (DOI) and three of its bureaus took during the partial lapse in Government appropriations that occurred from December 22, 2018, through January 25, 2019. Our objective was to determine whether the three DOI bureaus—the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM)—deviated from their published shutdown plans during the 35-day partial shutdown and, if so, whether they changed the plans in accordance with guidance from the Office of Management and Budget (OMB).

We confirmed that the bureaus did change their published shutdown plans midway through the shutdown, but they did so in accordance with OMB guidance and by following a thorough process of approval by senior DOI officials.

## Scope of Evaluation

Section 124 of OMB Circular A-11 outlines the actions executive branch agencies should take if annual appropriations lapse before a budget is passed. The circular addresses what activities can be carried out during a lapse in appropriations, the plans agencies should create to ensure an orderly shutdown, and when these shutdown plans should be implemented. The circular requires that agencies submit their shutdown plans to the OMB for review at least every 2 years.

Our evaluation focused on the changes made to the three bureaus' shutdown plans during the 2018 – 2019 lapse in appropriations, as well as the personnel, processes, and guidance involved in making those changes. We reviewed the bureaus' initial and revised shutdown plans, and supporting documents from the DOI and the bureaus showing their processes for determining operational changes during the shutdown. We also interviewed senior DOI and bureau officials who were responsible for changing the plans, examined their emails related to

the changes, and spoke with OMB officials about their role in reviewing changes to the plans.<sup>1</sup> We conducted our work in accordance with the *Quality Standards for Inspection and Evaluation* as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe our work provides a reasonable basis for our conclusion.

We did not review the funding mechanisms used to support specific changes to the bureaus' shutdown plans so that our work would not overlap with work conducted by the U.S. Government Accountability Office (GAO). On September 5, 2019, the GAO issued a legal opinion on the DOI's compliance with appropriations laws in its use of NPS appropriations (specifically, the use of fees collected under the authority of the Federal Lands Recreation Enhancement Act, or FLREA) during and after the shutdown.<sup>2</sup> Our findings do not affect any of the conclusions in the GAO opinion.

## Background

On December 22, 2018, after appropriations lapsed, the DOI and its bureaus began implementing the bureaus' shutdown plans. Over the next 2 weeks, as a timeline for passing a budget remained uncertain, key officials from the bureaus, the DOI, and the OMB held daily conference calls to discuss the shutdown's status and its impacts on operations and employees.

Shortly after the new year, news reports surfaced that BLM and FWS employees had been working to provide limited services despite the shutdown. The BLM used employees to work on oil and gas permitting, and the FWS opened 38 (out of more than 560) national wildlife refuges for specific activities, such as planned hunts; it also provided wildland fire mitigation and security of public resources at its refuges. In addition, the NPS provided limited services at parks that were kept open during the shutdown.

## Results of Evaluation

We confirmed that the NPS, FWS, and BLM changed their published shutdown plans, but OMB Circular A-11 permits such deviations and the bureaus followed the circular when making their changes. Although shutdown plans are developed in advance and are not executed unless appropriations lapse, the OMB acknowledges that "the duration of a lapse is inherently uncertain." Therefore, the circular provides that agencies may change their plans, in consultation with the OMB, during a lapse. The circular states that plans should "designate personnel responsible for implementing and adjusting the plan[s] to respond to the length of the lapse in appropriations and changes in external circumstances." The circular also notes that "[a]gency heads, in consultation with their general counsels," are responsible for developing and maintaining shutdown plans, and that the plans can include retaining or recalling employees whose "compensation is financed by a resource other than annual appropriations."

---

<sup>1</sup> Our review of the BLM was limited to an examination of emails and to collecting secondhand accounts from DOI senior officials, as the BLM staff members who were directly responsible for changing and implementing initial and revised plans during the shutdown no longer worked for the bureau.

<sup>2</sup> U.S. Government Accountability Office. *Department of the Interior—Activities at National Parks during the Fiscal Year 2019 Lapse in Appropriations*. Publication No. B-330776, September 5, 2019. <https://www.gao.gov/assets/710/701165.pdf>.

Senior officials, at the DOI and bureau levels, contributed to implementing and adjusting the bureaus' shutdown plans. Senior budget, human resources, and operations officials at each of the bureaus worked with their regional staffs to identify employees to recall to duty. In addition, the DOI's senior budget, human resources, and policy officials gave the bureaus real-time updates on the shutdown's effects on the DOI and provided technical support and guidance for amending the plans. Finally, the then DOI Deputy Solicitor of General Law provided legal analyses on the compensation of retained and recalled employees.

On January 4, 2019 (the 14th day of the shutdown), the then Deputy Solicitor of General Law sent a memorandum to all Assistant Secretaries and Bureau Directors stating that DOI bureaus that collect FLREA funds (including the FWS, the BLM, and the NPS) can use those funds for "specifically authorized purposes" during a lapse in appropriations. The next day, you, as the Acting Secretary at the time, issued a memo to the NPS instructing it to modify its shutdown plan to provide details on its use of FLREA funds. Around the same time, the bureaus began modifying their plans, in some cases specifically to address the use of FLREA funds and in other cases adding more general language regarding funding sources to support additional exempt employees.<sup>3</sup> Some examples of these changes include the following:

- The NPS added new language to its shutdown plan delineating the use of FLREA funds to pay exempt employees who worked during the shutdown.<sup>4</sup>
- The FWS revised its plan several times as the shutdown continued, posting official versions on January 4 and 18, 2019. The changes related primarily to increasing the number of staff identified as exempt and emphasizing that employees would be paid using non-annually appropriated funds or carryover funds (e.g., unexpired 2-year funds), as the circular permitted.
- The BLM reorganized parts of its plan, including combining sections and adding a section covering fire management and the retention of fire-related personnel. The bureau also added that exempt employees would be financed from permanent appropriations (receipts) and unobligated balances from prior years (such as FLREA funds) and noted that "keeping employees working is in the best interest of the Bureau."

Once the bureaus had updated their plans, the senior DOI officials, including the then Deputy Solicitor of General Law, reviewed the plans for compliance in each of their professional areas (budget, human resources, policy, and legal) before sending the plans to the OMB.

We asked OMB officials whether the OMB had approved the plans, or whether it objected to any of the changes in the plans. They explained to us that the OMB does not formally approve shutdown plans, but suggested that the OMB was cognizant of the changes to the DOI bureaus' plans as they were being developed. The OMB also noted that consulting with Federal

---

<sup>3</sup> "Exempt" employees are paid through funding other than annual appropriations, or with unexpired appropriated money carried over from a prior year.

<sup>4</sup> In its legal opinion, the GAO concluded that the DOI violated appropriations laws, specifically 31 U.S.C. 1301(a), when it obligated FLREA fees for expenses that would normally be charged to the NPS' *Operation of the National Park System* appropriation.

agencies about their shutdown plans is “an iterative process with questions and answers on whether the plans are consistent with guidance in section 124 of OMB Circular A-11.”

## **Conclusion**

The partial lapse in appropriations that occurred from December 22, 2018, through January 25, 2019, resulted in the longest Federal Government shutdown in U.S. history. Although the GAO disagreed with the DOI’s use of FLREA funds during the shutdown, our evaluation—which focused only on the processes and guidance for changing shutdown plans—found that the DOI and the three bureaus we reviewed adhered to the procedures outlined in the OMB circular’s guidance for changing shutdown plans during a lapse in appropriations. The three bureaus did change their published plans, but they did so in accordance with the circular, after input and review from key bureau and DOI officials, and in consultation with the OMB. Given our conclusion and the GAO’s work, we are discontinuing further evaluation of the matter.

We appreciate the cooperation and assistance we received from DOI and bureau staff during our evaluation. We do not require a response to this memorandum. Please contact Central Region Manager Amy Billings at 303-236-9243 if you have any questions.

cc: Scott Cameron, Acting Assistant Secretary for Policy, Management and Budget  
William Perry Pendley, Deputy Director Exercising the Authority of the Director, BLM  
Aurelia Skipwith, Director, FWS  
David Vela, Deputy Director Exercising the Authority of the Director, NPS

