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Confederate Symbols: Relation to Federal Lands and Programs

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Summary

Congress is considering the relationship of Confederate symbols to federal lands and programs. A number of federal agencies administer assets or fund activities in which references to the Civil War Confederacy, Confederate flags and artifacts, and commemorations of Confederate soldiers are present. In particular, the National Park Service (NPS), Department of Veterans Affairs (VA), and Department of Defense (DOD) manage multiple sites or programs involving Confederate symbols.

NPS manages over 100 units of the National Park System with resources related to Civil War history. Some of these units contain works commemorating Confederate soldiers or actions. NPS also administers national cemeteries that display the Confederate flag at certain times. Further, the agency is connected with some state and local Confederate memorials through its historic preservation assistance to nonfederal sites. NPS manages its Confederate-related assets in the context of its statutory mission to preserve historic and cultural resources unimpaired for future generations. NPS engages in interpretation and education about these symbols.

Through its National Cemetery Administration, VA administers 143 national cemeteries, many of which contain the remains of Confederate soldiers. VA also provides grants to assist with the establishment of state veterans' cemeteries. Confederate graves in VA cemeteries may have a special headstone that includes the Southern Cross of Honor and may display the Confederate flag at certain times. In addition, 34 monuments and memorials located in national cemeteries explicitly honor Confederate soldiers or officials. VA manages these memorials and monuments in the context of its mandate to maintain national cemeteries as "national shrines."

Within DOD, the Army administers 10 major installations named after Confederate military leaders. The Army also has jurisdiction over Arlington National Cemetery, which contains Section 16 for Confederate graves and a monument to Confederate dead. More broadly, the military services have considered Confederate symbols in the context of policies on flag displays and policies for good order and discipline within units.

The presence of Confederate symbols in federal lands and programs may raise multiple questions for Congress. Confederate flags, statues, plaques, and similar memorials have been valued historical symbols for some Americans but have signified racism and oppression for others. How should differing views on these symbols' meaning be addressed? What constitutes a Confederate symbol, and should some or all of these symbols be removed from federal sites or, alternatively, preserved for their historical significance? Are current interpretive efforts adequate to convey the history of these symbols, or should federal agencies offer additional education and dialogue about their role in Civil War history and in subsequent historical eras? How, if at all, should current practices of honoring the Confederate dead in national cemeteries be changed? To what extent, if any, should the presence of Confederate symbols at nonfederal sites affect federal funding for programs connected to these sites?

President Trump has issued two executive orders seeking to bolster protections for statues, monuments, and memorials, including those related to the Confederacy. Recent legislative proposals, including H.R. 970, H.R. 4135, H.R. 4179, H.R. 6395, H.R. 7155, H.R. 7164, H.R. 7217, H.R. 7573, H.R. 7612, H.R. 7646, H.Res. 1005, S. 3957, S. 4049, and S. 4076 in the 116th Congress, would address Confederate symbols in different ways. They range from bills concerned with individual Confederate symbols to those that would broadly affect all Confederate symbols on federal lands. In some cases, questions could arise about how the proposals would be implemented from a logistical and financial standpoint and how they would interact with existing authorities.

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Introduction

The iconography of the Confederate states in the U.S. Civil War is a contested part of American historical memory.[1] Confederate flags, statues, plaques, and similar memorials have been valued historical symbols for some Americans, but have signified racism and oppression for others. Further, Confederate symbols sometimes have been associated with hate crimes in the United States,[2] such as the June 2015 shooting deaths of nine people in a historically black church in Charleston, SC. More recently, public reactions to the police killing of George Floyd have included demands and actions to remove Confederate statues, flags, and other symbols from places of public prominence.[3] By contrast, President Trump has issued two executive orders seeking to bolster protections for statues, monuments, and memorials, including those related to the Confederacy.[4]

Congress is considering the role of Confederate symbols on federal lands and in federal programs. While no comprehensive inventory of such symbols exists, numerous federal agencies administer assets or fund activities in which Confederate memorials and references to Confederate history are present. The National Park Service (NPS, within the Department of the Interior), the Department of Veterans Affairs (VA), and the Department of the Army within the Department of Defense (DOD) all administer national cemeteries that may display the Confederate flag at certain times. Many units of the National Park System are related to Civil War history and contain resources commemorating Confederate soldiers or actions. The Army has military installations named in honor of Confederate generals, and some Navy ships historically have been named after Confederate officers or battles.[5] The U.S. Capitol complex contains works

[1] For discussions of the role of Confederate iconography in U.S. history since the Civil War, see, for example, David W. Blight, *Race and Reunion: The Civil War in American Memory* (Belknap/Harvard University Press, 2002), and John Coski, *The Confederate Battle Flag: America's Most Embattled Emblem* (Belknap/Harvard University Press, 2006).

[2] There is no generally accepted definition of what constitutes a "Confederate symbol," and bills related to Confederate symbols have defined the term in different ways. See the "Recent Legislation" section for more information.

[3] For example, the state of Mississippi enacted a law on June 30, 2020, to remove the image of the Confederate battle flag from its state flag design (Rick Rojas, "Mississippi Governor Signs Law to Remove Flag with Confederate Emblem," *New York Times*, June 30, 2020, at https://www.nytimes.com/2020/06/30/us/mississippi-flag.html). For other examples, see Michael Warren, "Statue Removals Show Change Is Coming—Even in the Capital of the Confederacy," *CNN*, June 13, 2020, at https://www.cnn.com/2020/06/13/politics/statues-confederate-richmond-virginia/index.html; Sarah Asch, "As Confederate Memorials Draw Fire, Capitol Monuments Remain but Removals in North Texas," *Austin American-Statesman*, June 11, 2020, at https://www.statesman.com/news/20200611/as-confederate-memorials-draw-fire-capitol-monuments-remain-but-removals-planned-in-north-texas; Rachel Scully and James Bikales, "A List of the Statues Across the US Toppled, Vandalized or Officially Removed Amid Protests," *The Hill*, June 12, 2020, at https://thehill.com/homenews/state-watch/502492-list-statues-toppled-vandalized-removed-protests; National Park Service, "Investigation Concluded in Vandalism to Confederate Monument at Fort Donelson National Battlefield," news release, June 24, 2020, at https://www.nps.gov/fodo/learn/news/investigation-concluded-in-vandalism-to-confederate-monument-at-fort-donelson-national-battlefield.htm; and "How Statues Are Falling Around the World," *New York Times*, June 24, 2020, at https://www.nytimes.com/2020/06/24/us/confederate-statues-photos.html.

[4] U.S. President, "Executive Order on Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence," June 26, 2020, at https://www.whitehouse.gov/presidential-actions/executive-order-protecting-american-monuments-memorials-statues-combating-recent-criminal-violence/; and "Executive Order on Building and Rebuilding Monuments to American Heroes," July 3, 2020, at https://www.whitehouse.gov/presidential-actions/executive-order-building-rebuilding-monuments-american-heroes/. For more information, see CRS In Focus IF11596, *Monuments and Memorials: Federal Criminal Law Protections*, by Mainon A. Schwartz. Among other provisions, one of the orders announces a federal policy of withholding funding tied to public spaces or law enforcement for state or local entities that do not protect monuments and memorials, including Confederate monuments and memorials, from destruction or vandalism.

[5] For more information, see CRS Insight IN10756, *Confederate Names and Military Installations*, by Barbara Salazar

commemorating Confederate soldiers and officials, including statues in the National Statuary Hall Collection.[6] Various federal agencies, such as the General Services Administration and the Department of Transportation, are connected with sites of Confederate commemoration, either on federal properties or through nonfederal activities that receive federal funding.

The presence of Confederate symbols on federal lands, and at some nonfederal sites that receive federal funding, may raise multiple questions for Congress. How should differing views on the meaning of these symbols be addressed? Which symbols, if any, should be removed from federal sites, and which, if any, should be preserved for their historical significance?[7] Should every tribute to a person who fought for the Confederacy be considered a Confederate symbol? Should federal agencies give additional attention to education and dialogue about the history of these symbols—including their role in Civil War history and in subsequent historical eras—or are current interpretive efforts adequate? How, if at all, should current practices of honoring the Confederate dead in national cemeteries be changed? To what extent, if any, should the presence of Confederate symbols at nonfederal sites affect federal funding for programs connected to these sites? How, if at all, should the federal government address public protests that sometimes have involved damage to Confederate symbols? To what extent should decisions about Confederate statues and memorials on nonfederal lands be left to the states or localities where they are located?

This report focuses primarily on Confederate symbols administered by three federal entities—NPS, VA, and DOD. Each of these entities manages multiple sites or programs that involve Confederate symbols. The report begins with a discussion of recent legislative proposals, and then discusses the agencies' current policies with respect to Confederate symbols, along with issues for Congress.

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[6] For information on the National Statuary Hall and a list of statues in the National Statuary Hall Collection, see CRS Report R42812, *National Statuary Hall Collection: Background and Legislative Options*, by Jacob R. Straus and R. Eric Petersen. Separately, in June 2020, House Speaker Nancy Pelosi ordered the removal of four portraits in the House of Representatives of former Speakers of the House who had served the Confederacy during the Civil War. See Rep. Nancy Pelosi, "Pelosi Orders Removal of Portraits of Confederate House Speakers from U.S. Capitol Ahead of Juneteenth," press release, June 18, 2020, at https://pelosi.house.gov/news/press-releases/pelosi-orders-removal-of-portraits-of-confederate-house-speakers-from-us-capitol; and Emily Cochrane, "Pelosi Orders Removal of Four Confederate Portraits From the House," *New York Times*, June 18, 2020, at https://www.nytimes.com/2020/06/18/us/politics/pelosi-confederate-portraits-house.html.

[7] For a range of perspectives concerning the removal or retention of Confederate commemorative works in public spaces, see, for example, "Editorial: Time to Remove all Tributes to Confederacy," *San Diego Union-Tribune*, June 12, 2020, at https://www.sandiegouniontribune.com/opinion/editorials/story/2020-06-12/time-to-remove-all-tributes-to-confederacy-nascar; Eugene Robinson, "There Is No Earthly Reason This Nation Should Be Defiled by Confederate Statues," *Washington Post*, June 22, 2020, at https://www.washingtonpost.com/opinions/solving-the-confederate-monument-problem-is-easy-tear-them-all-down/2020/06/22/10bb8082-b4ae-11ea-a510-55bf26485c93_story.html; Cameron Hilditch, "Confederate History and the American Soul," *National Review*, June 17, 2020, at https://www.nationalreview.com/2020/06/confederate-history-and-the-american-soul/; American Historical Association, "Historians on the Confederate Monument Debate," accessed July 1, 2020, at https://www.historians.org/news-and-advocacy/everything-has-a-history/historians-on-the-confederate-monument-debate; Hannah Natanson, "There's a New Way to Deal with Confederate Monuments: Signs That Explain Their Racist History," *Washington Post*, September 22, 2019, at https://www.washingtonpost.com/history/2019/09/22/theres-new-way-deal-with-confederate-monuments-signs-that-explain-their-racist-history/; Bruce Westrate, "Another Confederate Soldier Falls," *National Review*, July 17, 2020, at https://www.nationalreview.com/2020/07/another-confederate-soldier-falls/; and Catesby Leigh, "Why We Should Keep Confederate Statues Standing," *The Federalist*, July 1, 2020, at https://thefederalist.com/2020/07/01/why-we-should-keep-confederate-statues-standing/.

Other Contested Symbols

In addition to Confederate statues and the Confederate flag, other types of commemorative works have been protested, removed, or proposed for removal in locations across the United States. In particular, recent debates have extended to statues and memorials honoring individuals who played a historical role in the subjugation of Native Americans and the enslavement of Black Americans. These include works commemorating Christopher Columbus, based on his role in European colonization and its impacts on indigenous populations, as well as statues of U.S. President Andrew Jackson, based on his role in the relocation of Indian tribes and its effects. Memorials to the Franciscan priest Junipero Serra, an early California missionary controversial for his treatment of Native Americans, have been the subject of protests in California. In Washington, DC, the Emancipation Memorial in Lincoln Park has been debated due to its depiction of a man who appears to be an emancipated slave crouched on one knee next to the feet of Abraham Lincoln. To the extent that these and other contested commemorative works are found on federal lands, or are included in the federal programs discussed in this report, issues and legislative options applicable to the Confederate works discussed here likely also would apply to these works.

Another source of controversy relates to the Nazi emblems and inscriptions found on a few German prisoner-of-war headstones located in Department of Veterans Affairs (VA) cemeteries. Some have found it offensive that these headstones, created in the mid-1940s, were permitted to bear Nazi inscriptions or swastikas, given their location alongside the graves of American soldiers. Currently, VA is reviewing the best course of action for these headstones. For more information, see CRS In Focus IF11587, *Removal of Nazi Symbols and Inscriptions on Headstones of Prisoners of War in VA National Cemeteries*.

Recent Legislation

As shown in **Table 1**, the 116th Congress is considering bills with varying provisions on Confederate commemorative works, names, and other symbols under federal jurisdiction. One measure has been enacted into law: P.L. 116-92, the National Defense Authorization Act (NDAA) for FY2020, prohibited the Secretary of Defense from giving DOD assets names that refer to the Confederacy but did not require a review of previously named assets. More recently, the House-passed and Senate-passed versions of NDAA for FY2021 both would direct the renaming of military installations named for Confederate leaders. The 115th and 114th Congresses also considered legislative proposals on Confederate symbols, which were not enacted into law. Of the pending proposals in the 116th Congress, some may be relatively straightforward to implement, whereas others might give rise to questions about implementation. Depending on specific bill provisions, such questions could include what constitutes a Confederate symbol, how required agency actions toward Confederate symbols would be funded, whether or not a given display of a symbol would qualify as a historical or educational context, and how implementation would be affected by statutory requirements for historic preservation and other existing protections.

Table 1. Legislation Addressing Confederate Symbols, 116th Congress

Bill/Law No.	Title	Provisions Addressing Confederate Symbols
P.L. 116-92, §1749	National Defense Authorization Act for FY2020	Prohibits the Secretary of Defense from giving new or existing assets names that refer to, or contain reference to, the Confederate States of America (CSA), including the name of anyone who served in the Confederacy or names that reference a Confederate battlefield victory, as names for new or existing assets. The bill states that it does not require the Secretary of Defense to initiate a review of previously named assets.
S. 3957	Confederate Monument Removal Act	Would require the Architect of the Capitol to identify and remove from the U.S. Capitol all statues of individuals who voluntarily served in the Confederate army. The statues would be stored at the Smithsonian Institution or, if funded by a state, could be returned to the state at its request. Includes mandatory appropriations of $2 million to the Architect of the Capitol and $3 million to the Smithsonian Institution to carry out these actions.
S. 4049, §377	National Defense Authorization Act for FY2021	Would require the Secretary of Defense to establish a commission on the naming of Department of Defense (DOD) assets that commemorate the CSA or any person who served voluntarily with the CSA. The commission would have three years to establish a plan to remove all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederacy from all DOD assets and rename assets as necessary. The only exemption would be for Confederate grave markers as determined by the commission.
S. 4076	Removing Confederate Names and Symbols from Our Military Act	Would require the removal of Confederate names, symbols, displays, monuments, and paraphernalia from DOD assets and would require that affected assets be renamed within one year.
H.R. 970	Robert E. Lee Statue Removal Act	Would direct the Secretary of the Interior to develop and submit to Congress a plan and timeline for the removal of the monument to Robert E. Lee at Antietam National Battlefield in Maryland.
H.R. 3055	Department of the Interior, Environment, and Related Agencies Appropriations Act, 2020	As passed by the House, H.R. 3055 included a provision that no funds in the bill could be used by the National Park Service (NPS) to purchase or display a Confederate flag, except where the flags are used to provide historical context. This provision was not included in the final FY2020 Interior Appropriations Act, P.L. 116-94.
H.R. 4135	—	Would direct the Secretary of the Interior to remove a statue commemorating Albert Pike, who served as a senior officer in the Confederate army, from a site near Judiciary Square in Washington, DC. Would require the removal to be carried out with nonfederal funds.[a]
H.R. 4179	No Federal Funding for Confederate Symbols Act	Would prohibit the use of federal funds for the creation, maintenance, or display of any Confederate symbol on any federal property. Defines the term *Confederate symbol* to include Confederate battle flags, symbols or signs that honor the Confederacy, and monuments or statues that honor the Confederacy, its leaders, or its soldiers. Specifies that the funding prohibition would not apply to museum or educational exhibits or if the funds are being used to remove the symbol from the federal site. Also would direct the Secretary of Defense to rename 10 military installations currently named for Confederate military leaders.[b]
H.R. 6395, §§1749 and 2829	National Defense Authorization Act for FY2021	Would prohibit public display of the Confederate battle flag on DOD property. "Department of Defense property" means all installations, workplaces, common access areas, and public areas of DOD and includes bumper stickers and clothing in such areas. Exemptions would include display in DOD museums, historical displays where the flag is depicted but is not the main focus of the display, state flags and state-issued license plates that include images of the Confederate flag, or grave sites of Confederate soldiers. Would require DOD, within a year of enactment, to develop a plan for and commence renaming military installations and defense properties within its jurisdiction named for "any person who served in the political or military leadership of any armed rebellion against the United States."

Bill/Law No.	Title	Provisions Addressing Confederate Symbols
H.R. 7155	National Commission on Modernizing Military Installation Designations Act	Would establish the National Commission on Modernizing Military Installation Designations. The commission, composed of individuals appointed by service secretaries as well as members of Congress, would review and make recommendations for renaming installations and department properties that have designations not in line with the values of this country or the mission of the U.S. military.
H.R. 7164	Honoring Real Patriots Act of 2020	Would require the Secretary of Defense to change the name of any military installation or other property under DOD jurisdiction that currently is named after any individual who took up arms against the United States during the American Civil War or any individual or entity that supported such efforts.
H.R. 7217	Confederate Monument Removal Act	Would require the Architect of the Capitol to identify and remove from the U.S. Capitol all statues of individuals who voluntarily served in the Confederate army. The statues would be stored at the Smithsonian Institution or, if funded by a state, could be returned to the state at its request. Includes mandatory appropriations of $2 million to the Architect of the Capitol and $3 million to the Smithsonian Institution to carry out these actions.
H.R. 7573	—	Would require removal from the U.S. Capitol of certain specific statues and busts, including the bust of John Cabell Breckinridge, who served as Secretary of War in the Confederate army. Also would require the Architect of the Capitol to identify and remove from the U.S. Capitol all statues of individuals who voluntarily served in the Confederate army. The statues would be stored at the Smithsonian Institution or, if funded by a state, could be returned to the state at its request. Includes mandatory appropriations of $2 million to the Architect of the Capitol and $3 million to the Smithsonian Institution to carry out these actions.
H.R. 7612, §§441-443	Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021	Would provide that no funds in the bill could be used by NPS to purchase or display a Confederate flag, except where the flags are used to provide historical context. Would require NPS, within 180 days of enactment, to "remove from display" all physical Confederate commemorative works. Would require the Secretary of the Interior to develop and submit to Congress an inventory of "all assets under the jurisdiction of the Department of the Interior with Confederate names."
H.R. 7646	Protect America's Statues Act of 2020	Would withhold certain federal grants from any jurisdiction that does not enforce federal laws protecting statues and monuments. Would prohibit state, local, and tribal governments that are in violation of the Veterans' Memorial Preservation and Recognition Act of 2003 or the Anti-Riot Act of 1968 from receiving federal historic preservation and transit capital investment grants.
H.Res. 1005	—	Would express the sense of the House of Representatives that the United States can achieve a more perfect union through avoidance and abatement of "government speech" that promotes or displays symbols of racism, oppression, and intimidation. Such government speech is defined with reference to the Supreme Court's conclusion in *Walker v. Sons of Confederate Veterans* that messages on state-issued license plates constitute government speech not protected by the First Amendment.[c]

Source: CRS.

a. The statue was erected in honor of Albert Pike's service to the Masons, rather than his service in the Confederate army, but includes mention of his Civil War role. On June 19, 2020, protesters toppled and burned the statue of Pike. NPS reportedly has stated that it intends to mitigate the damage to the statue. See, for example, Rob Hotakainen, "Trump Admin Reportedly Plans to Restore Confederate Statue," *Greenwire*, June 25, 2020, at https://www.eenews.net/greenwire/stories/1063452481/.

b. The 10 installations are Fort Rucker (AL), Fort Benning (GA), Fort Gordon (GA), Camp Beauregard (LA), Fort Polk (LA), Fort Bragg (NC), Fort Hood (TX), Fort A. P. Hill (VA), Fort Lee (VA), and Fort Pickett (VA). For more information, see CRS Insight IN10756, *Confederate Names and Military Installations*, by Barbara Salazar Torreon.

c. The case involved a proposal by a group in Texas for a novelty license plate displaying a Confederate battle flag.

National Park Service

NPS manages over 100 units of the National Park System that have resources related to Civil War history.[8] Some of these park units contain works commemorating Confederate soldiers or actions. Additionally, NPS administers 14 national cemeteries that, under agency policy, may display the Confederate flag at certain times of year.[9] The agency also provides education and interpretation related to Civil War history and the Confederate states. Park gift shops operated by concessioners sometimes sell books or other items that display Confederate symbols. Further, NPS is connected with historic preservation of some nonfederal Confederate memorials through its assistance to nonfederal sites such as national heritage areas, national historic landmarks, and nonfederal properties on the National Register of Historic Places. These aspects of the NPS portfolio have come under scrutiny.

Confederate Commemorative Works in the National Park System

NPS has estimated that it oversees "about 233 Confederate memorials" at sites across the National Park System.[10] Confederate commemorative works are found at numerous NPS battlefields and other Civil War-related park units.[11] Many of these works (such as the monument shown in **Figure 1**) are listed on, or are eligible for listing on, the National Register of Historic Places, and thus are afforded certain protections under the National Historic Preservation Act (NHPA).[12] In particular, Section 106 of the NHPA requires agencies to undertake consultations before taking actions that may adversely affect these listed or eligible historic properties, and Section 110(f) of the act provides similar, but stronger, protections for historic properties that have been designated as national historic landmarks.[13] Some Confederate commemorative works

[8] For a list of national park units with Civil War resources, see NPS, "The Civil War: Related Parks and Heritage Areas," at https://www.nps.gov/civilwar/relatedparks.htm; and NPS, "Civil War Parks," at https://www.nps.gov/features/waso/cw150th/civwarparks.html. Some of the parks on the list have primary interpretive themes that are unrelated to the Civil War.

[9] NPS Director's Order 61, "National Cemetery Operations," at https://www.nps.gov/policy/DOrders/DO_61.pdf, hereinafter referred to as NPS Director's Order 61; and NPS Reference Manual 61, *National Cemetery Operations*, at https://www.nps.gov/policy/DOrders/RM-61.pdf, hereinafter referred to as NPS Reference Manual 61.

[10] NPS, "Confederate Monuments and Memorials Discussion Guide: A Guide for National Park Service Interpreters," Summer 2017, at https://mylearning.nps.gov/wp-content/uploads/2019/06/Confederate_Monuments_and_Memorials_Discussion_Final_Draft_07-15-2019.pdf; hereinafter referred to as "NPS Confederate Memorials Discussion Guide."

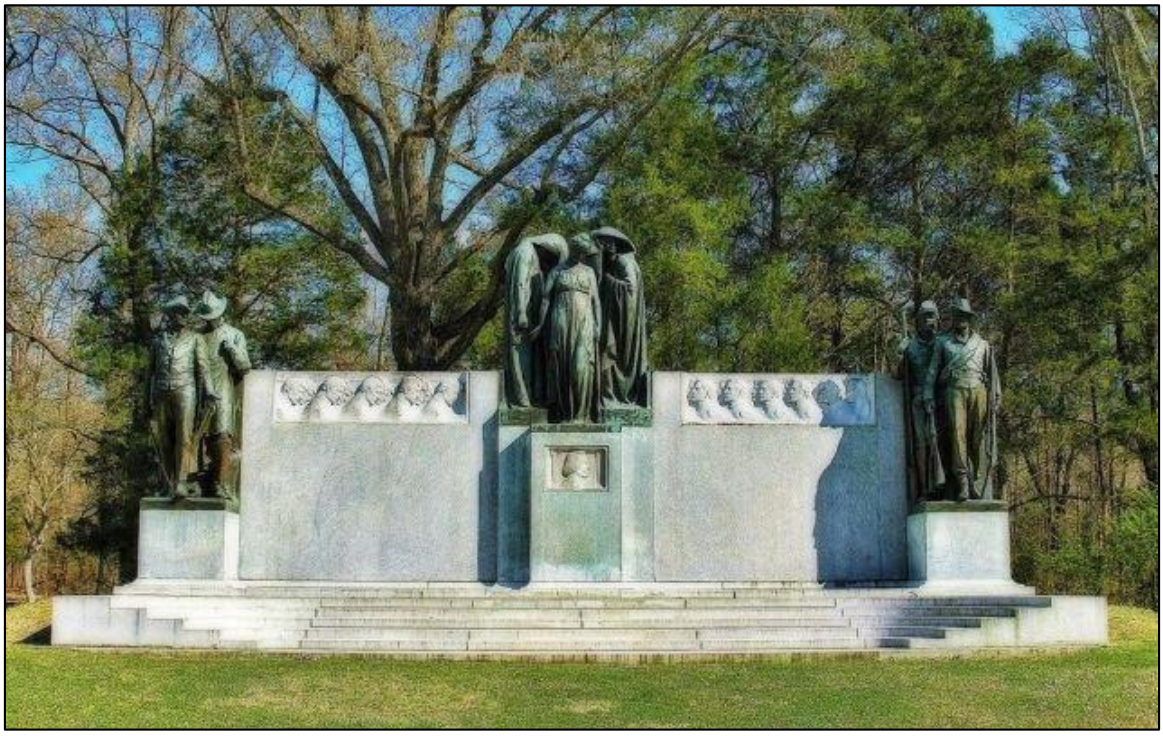
[11] See footnote 8 for more information on NPS Civil War parks. Confederate commemorative works are not necessarily confined to park units that relate to the Civil War. For example, NPS administers the statue of Confederate officer Albert Pike that stood in Judiciary Square in Washington, DC. This statue was erected in honor of Pike's service to the Masons, rather than his service in the Confederate army, but includes mention of his Civil War role. Protesters toppled and burned the Albert Pike statue on June 19, 2020; see Perry Stein, Clarence Williams, and Peter Hermann, "Protesters topple only outdoor Confederate statue in the nation's capital," *Washington Post*, June 20, 2020, at https://www.washingtonpost.com/local/public-safety/protesters-topple-only-confederate-statue-in-the-nations-capital/2020/06/20/d996348c-b2a8-11ea-8f56-63f38c990077_story.html.

[12] P.L. 89-665, as amended; 54 U.S.C. §300101 ff. For more information on the NHPA, see CRS Report R45800, *The Federal Role in Historic Preservation: An Overview*, by Mark K. DeSantis.

[13] 54 U.S.C. §§306107 and 306108. For more on the NHPA's Section 106 and Section 110 requirements, see Advisory Council on Historic Preservation, "Section 106 Overview," at https://www.achp.gov/protecting-historic-properties. Also see regulations at 36 C.F.R. Part 800, and see NPS, "National Historic Landmarks Program," at https://www.nps.gov/orgs/1582/index.htm; and NPS, "National Register of Historic Places," at https://www.nps.gov/subjects/nationalregister/index.htm.

in parks are not eligible for historic property designations, for example because they were constructed relatively recently.[14]

Figure 1. Confederate Monument, Shiloh National Military Park, Tennessee



Source: National Park Service, "Shiloh Battlefield—Confederate Monument," at https://www.nps.gov/places/shiloh-battlefield-confederate-monument.htm.

Note: The monument is listed on the National Register of Historic Places.

NPS policies govern the establishment and removal of commemorative works in national park units (except in the District of Columbia, where the Commemorative Works Act applies).[15] Concerning the *establishment* of new works, under NPS policy, new commemorative works in

[14] Generally, to be eligible for listing on the National Register of Historic Places, properties must be at least 50 years old and must meet criteria for integrity and significance. Some Confederate commemorative works in national park units were built more recently. For example, the statue of General Robert E. Lee at Antietam National Battlefield that is proposed for removal in H.R. 970 was erected by a private landowner in 2003. NPS does not maintain comprehensive statistics on the dates of establishment of Confederate commemorative works in park units. One broad study of Confederate commemorative works throughout the United States found two periods in which the dedication of such works was highest—the 1900-1920 period and the 1950-1970 period (Southern Poverty Law Center, *Whose Heritage? Public Symbols of the Confederacy*, April 2016, at https://www.splcenter.org/20160421/whose-heritage-public-symbols-confederacy). An exception to the policies concerning the age of resource eligibility for the National Register applies to national cemeteries, which "are considered exceptionally significant as a result of their Congressional designation as nationally significant places of burial and commemoration." Resources in national cemeteries are defined to meet the criteria for listing on the National Register regardless of their age. See NPS, "National Register Eligibility of National Cemeteries – A Clarification of Policy," September 8, 2011, at https://www.nps.gov/subjects/nationalregister/upload/Final_Eligibility_of_VA_cemeteries_A_Clarification_of_Policy_rev.pdf.

[15] The Commemorative Works Act (P.L. 99-652, as amended; 40 U.S.C. §§8901-8909) prohibits the establishment of commemorative works in the District of Columbia unless specifically authorized by Congress, and contains other provisions applicable to commemorative works in DC. For more information, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

park units must be authorized by Congress or approved by the NPS Director. In Civil War parks, the policies preclude approval unless a work is specifically authorized by Congress or "would commemorate groups that were not allowed to be recognized during the commemorative period."[16] Many Confederate commemorative works currently in NPS units would not have been subject to the NPS policies at the time of their establishment, because they were erected prior to NPS acquisition of the land.[17]

Concerning *removal* of commemorative works from NPS units, the agency's policies state the following:

> Many commemorative works have existed in the parks long enough to qualify as historic features. A key aspect of their historical interest is that they reflect the knowledge, attitudes, and tastes of the persons who designed and placed them. These works and their inscriptions will not be altered, relocated, obscured, or removed, even when they are deemed inaccurate or incompatible with prevailing present-day values. Any exceptions from this policy require specific approval by the Director.[18]

NPS could face a number of constraints in considering removal of a Confederate commemorative work, depending on specific circumstances. Some commemorative works were established pursuant to acts of Congress, and thus likely could not be removed administratively by NPS.[19] In other cases, such as those where the works existed prior to a park's establishment, requirements in park-establishing legislation that NPS preserve the park unit's resources could constrain the agency's options for removal.[20] Broadly, NPS's mission under its Organic Act is to "conserve the scenery and the natural and historic objects and the wild life" in park units and to provide for their use "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."[21] This fundamental mission could be seen as being at odds with potential administrative actions to remove existing works from park units. NPS could thus conclude that an act of Congress would be required to authorize the removal of particular works.[22] Also, historic property protections under the NHPA would apply if a commemorative work is eligible for listing on the National Register of Historic Places. NPS has stated that the agency "is committed to preserving these memorials while simultaneously educating visitors holistically about the actions, motivations, and causes of the soldiers and states they commemorate."[23]

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[16] NPS *Management Policies*, §§9.6.1 and 9.6.2. For non-Civil War parks, the Director would approve establishment only when there is "compelling justification" and "the association between the park and the person, group, or event is of exceptional importance." Additionally, a person being commemorated must have been dead for at least 5 years, and a commemorated event must have occurred at least 25 years earlier.

[17] Additionally, NPS policies have changed over time; for example, the current policy on removal of commemorative works (NPS *Management Policies*, §9.6.4) appeared in the 2001 version of the NPS *Management Policies*, but not in the previous version.

[18] NPS *Management Policies*, §9.6.4.

[19] Examples include P.L. 84-107, which dedicated Arlington House in Arlington National Cemetery to Robert E. Lee; P.L. 74-167, which established Kennesaw Mountain National Battlefield Park and provided for monuments and memorials to be erected in the park to honor either the Union or Confederate Armies; and 30 Stat. 737 (April 9, 1898), which authorized the monument to Confederate general Albert Pike in Washington, DC, discussed in footnote 11.

[20] For example, the 1895 law establishing Gettysburg National Military Park (28 Stat. 651) required the Secretary of War to "establish and enforce proper regulations for the custody, preservation, and care of the monuments now erected or which may be hereafter erected within the limits of the said national military park."

[21] 54 U.S.C. §100101.

[22] In some cases, proposals to remove Confederate works could also require the involvement of other entities, such as the Commission of Fine Arts or the National Capital Planning Commission for some works in Washington, DC.

[23] NPS Confederate Memorials Discussion Guide, p. 11.

In addition to structures such as monuments and memorials, some national park units have flown Confederate flags in various contexts, such as in battle reenactments. Prior to 2015, NPS did not have a specific policy regarding the display of the Confederate flag outside of national cemeteries.[24] After the 2015 shootings in a Charleston, SC, church, then-NPS Director Jonathan Jarvis stated the following in a policy memorandum:

> Confederate flags **shall not be flown** [NPS emphasis] in units of the national park system and related sites with the exception of specific circumstances where the flags provide historical context, for instance to signify troop location or movement or as part of a historical reenactment or living history program. All superintendents and program managers should evaluate how Confederate flags are used in interpretive and educational media, programs, and historical landscapes and remove the flags where appropriate.[25]

This policy remains in effect unless rescinded or amended.

Confederate Flags in NPS National Cemeteries

NPS administers 14 national cemeteries, mainly related to the Civil War.[26] NPS cemeteries contain graves of both Union and Confederate soldiers. Under NPS policies, they are administered "to preserve the historic character, uniqueness, and solemn nature of both the cemeteries and the historical parks of which they are a part."[27]

NPS policies address the display of Confederate flags at the graves of Confederate soldiers in NPS national cemeteries.[28] The policies allow the Confederate flag to be displayed in some national cemeteries on two days of the year. If a state observes a Confederate Memorial Day, NPS cemeteries in the state may permit a sponsoring group to decorate the graves of Confederate veterans with small Confederate flags. Additionally, such flags may also be displayed on the nationally observed Memorial Day, to accompany the U.S. flag on the graves of Confederate veterans. In both cases, a sponsoring group must provide and place the flags, and remove them as soon as possible after the end of the observance, all at no cost to the federal government. At no time may a Confederate flag be flown on an NPS cemetery flagpole.[29]

Sale of Confederate-Themed Items in NPS Gift Shops

Some NPS units have shops operated by concessioners, cooperating associations, or other partners, which sell items related to the themes and features of the park. Following the 2015 shootings in a Charleston, SC, church, NPS addressed the sale of Confederate-themed items in NPS shops, particularly items displaying the Confederate flag. NPS asked its concessioners and other partners to voluntarily end sales of items that "depict a Confederate flag as a stand-alone feature, especially items that are wearable and displayable." NPS specified that "books, DVDs, and other educational and interpretive media where the Confederate flag image is depicted in its historical context may remain as sales items as long as the image cannot be physically detached."[30]

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[24] For NPS policies within national cemeteries, see the section on "Confederate Flags in NPS National Cemeteries."

[25] NPS Policy Memorandum, "Confederate Flags," June 24, 2015, hereinafter cited as NPS June 2015 Policy Memo.

[26] NPS, "National Parks and National Cemeteries," at https://www.nps.gov/ande/planyourvisit/np-natcems.htm.

[27] NPS Director's Order 61.

[28] NPS Director's Order 61 and NPS Reference Manual 61.

[29] NPS Reference Manual 61, p. 33.

[30] NPS June 2015 policy memorandum. The memorandum stated that Confederate flags were defined to include the

NPS Heritage Partnership and Historic Preservation Programs

NPS's responsibilities include assisting states, localities, and private entities with heritage and historic preservation efforts. NPS provides financial and technical assistance to congressionally designated national heritage areas, which consist primarily of nonfederal lands in which conservation efforts are coordinated by state, local, and private entities.[31] Some heritage areas encompass sites with commemorative works and symbols related to the Confederacy.[32]

NPS also administers national historic landmark designations and the National Register of Historic Places (hereinafter referred to as the *National Register*). Through these programs, the Secretary of the Interior confers historic preservation designations primarily on nonfederal sites.[33] The designations provide certain protections to the properties and make them eligible for preservation grants and technical preservation assistance. Some nonfederal sites commemorating the Confederacy have been listed on the National Register, and some have been designated as national historic landmarks. In debates about removing Confederate symbols at the state and local levels, these NPS-designated sites are sometimes involved. For example, the Monument Avenue Historic District in Richmond, VA, which contained a series of monuments to Confederate officers, is a national historic landmark district that has been the subject of debate.[34] In July 2020, the city of Richmond began the removal of Confederate statues, including those of General Thomas Jonathan "Stonewall" Jackson and Matthew Fontaine Maury, a naval officer.[35]

As discussed above, National Register properties and national historic landmarks have some protections under Sections 106 and 110 of the NHPA.[36] However, the designations generally do not prohibit nonfederal landowners from altering or removing their properties, nor would such actions necessarily be subject to NHPA requirements.[37] However, if the removal or alteration of a

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Stainless Banner, the Third National Confederate Flag, and the Confederate Battle Flags.

[31] For more information on national heritage areas, see CRS Report RL33462, *Heritage Areas: Background, Proposals, and Current Issues*, by Mark K. DeSantis and Laura B. Comay.

[32] For example, the Tennessee Civil War National Heritage Area, whose motto is "Telling the Whole Story of America's Greatest Challenge, 1860-1875," preserves commemorative works and historical sites related to the Union and Confederate sides of the war, including sites related to the African-American experience. For more information, see the website of the Tennessee Civil War National Heritage Area at http://www.tncivilwar.org/.

[33] For information on the National Historic Landmarks program, see NPS, "National Historic Landmarks Program," at https://www.nps.gov/orgs/1582/index.htm. For information on the National Register of Historic Places, see NPS, "National Register of Historic Places," at https://www.nps.gov/subjects/nationalregister/index.htm.

[34] For example, see Paul Bedard, "Richmond, 'Capital of Confederacy,' Braces for Battle Over Robert E. Lee Monument," *Washington Examiner*, August 14, 2017, at https://www.washingtonexaminer.com/richmond-capital-of-confederacy-braces-for-battle-over-robert-e-lee-monument.

[35] Aimee Ortiz, "Richmond Removes Confederate Statues from Monument Avenue," *New York Times*, July 2, 2020, at https://www.nytimes.com/2020/07/02/us/stonewall-jackson-statue-richmond.html.

[36] See footnote 13 for more information. Under Section 106 (54 U.S.C. §306108), before approving any federally funded or permitted undertaking, federal agencies must take into account the effects of the undertaking on historic properties and may need to engage in certain consultations. Under Section 110(f) (54 U.S.C. §306107), before approving any federal undertaking that might directly and adversely affect a national historic landmark, federal agencies must "to the maximum extent possible" make plans and take actions to minimize harm to the landmark.

[37] Nonfederal landowners that choose to remove or alter historic properties would not be subject to §§106 or 110(f) of the NHPA if the work was not federally funded and required no federal approvals. However, such alterations might have implications as to whether these properties continue to be considered "historic" moving forward. Federal regulations provide for the removal of properties from the National Register in the event that the property " has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing" (36 CFR §60.15(a)(1)). Similar regulations apply to the removal or national historic landmark designations (36 CFR §65.9(b)(1)).

historic property is undertaken with the use of federal funds (either in whole or in part) or requires federal approval (in the form of a permit, license, or other instrument), NHPA requirements may apply.[38] Also, conferral of a National Register or national historic landmark designation does not give NPS the authority to rename properties, such as those named in commemoration of individuals who served the Confederacy.[39] For example, some stakeholders seek to rename the Edmund Pettus Bridge in Selma, AL, replacing the name of Pettus, who was a Confederate army officer. Although the bridge is designated as a national historic landmark and is part of the congressionally designated Selma to Montgomery National Historic Trail, the federal government (including NPS) generally lacks authority to make or order alterations to the bridge's displayed name.[40]

Department of Veterans Affairs

National Cemeteries

The Department of Veterans Affairs administers 143 national cemeteries and 33 soldier's lots and memorial areas in private cemeteries through the National Cemetery Administration (NCA). All cemeteries administered by the NCA are "considered national shrines as a tribute to our gallant dead."[41]

The first national cemeteries were developed during the Civil War and were administered by the military.[42] Over time, the federal government created new national cemeteries and took control of cemeteries that previously had been administered privately or by the states. The NCA was created in 1973 when all national cemeteries administered by the Army at that time, with the exception of

[38] Section 106 of the NHPA applies to any federal *undertaking*. 36 C.F.R. §800.16(y) defines an *undertaking* as: "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval."

[39] Some stakeholders have expressed interest in exploring the federal role in renaming properties—including nonfederal properties—that are listed on the National Register or designated as a national historic landmark and that reflect Confederate history. Although NPS administers these historic recognition programs, the federal government does not generally have the authority to rename historic properties owned by nonfederal entities, either administratively or at the direction of Congress. In some instances, NPS may have the authority to alter the way in which specific historic properties are referred to in documents and programs administered by the federal government. For names of natural geographic features, the federal Board of Geographic Names (BGN) is responsible for maintaining uniform name usage throughout the federal government. The BGN has policies in place for the renaming of such features under specific circumstances, regardless of ownership.

[40] In reference to an earlier proposal in the Alabama state legislature to rename the bridge, see Brian Lyman, "Senate Votes to Rename Pettus Bridge," *Montgomery Advertiser*, at https://www.montgomeryadvertiser.com/story/news/politics/southunionstreet/2015/06/03/ala-senate-votes-rename-edmund-pettus-bridge/28409105/. Alabama has enacted statutory barriers to local efforts to alter or remove Confederate monuments. See Alabama Memorial Preservation Act, Ala. Code § 41-9-232 ("(a) No architecturally significant building, memorial building, memorial street, or monument which is located on public property and has been so situated for 40 or more years may be relocated, removed, altered, renamed, or otherwise disturbed."); State v. City of Birmingham, No. 1180342, __ So. 3d __, 2019 WL 6337424 (Ala. Nov. 27, 2019) (holding that city violated Alabama Memorial Preservation Act by placing a plywood screen around the base of a monument to Confederate soldiers and sailors).

[41] National Cemeteries Act of 1973, P.L. 93-43, 38 U.S.C. §2403(c).

[42] For additional information on the history of national cemeteries, see Department of Veterans Affairs, *History and Development of the National Cemetery Administration*, October 2015, at https://www.cem.va.gov/cem/docs/factsheets/history.pdf.

Arlington National Cemetery and Soldier's Home National Cemetery in Washington, DC, were transferred to VA.[43]

Numerous national cemeteries and lots contain the remains of former Confederate soldiers and sailors, including those who died while being held prisoner by the United States or in federal hospitals during the Civil War.[44] Under current law, however, persons whose only military service was in the Confederate army or navy are not eligible for interment in national cemeteries.[45]

State Veterans' Cemeteries

The NCA is authorized to provide grants to state, territorial, or tribal governments to assist with the establishment of state veterans' cemeteries.[46] These grants may be used only for establishing, expanding, or improving cemeteries and cannot be used for land acquisition or regular operating expenses. State veterans' cemeteries that receive federal grants must adhere to federal law regarding eligibility for interment, but may add additional restrictions on eligibility such as residency requirements. Thus, since Confederate veterans are not eligible for interment in national cemeteries, they also are not eligible for interment in state veterans' cemeteries that receive federal grants.

Monuments and Memorials in National Cemeteries

Federal law permits VA to accept monuments and memorials donated by private entities and to maintain these monuments and memorials in national cemeteries, including those dedicated to individuals or groups.[47] The VA website identifies 34 monuments and memorials in national cemeteries that explicitly honor Confederate soldiers, sailors, political leaders, or veterans.[48] Some of these monuments and memorials predate federal control of the cemeteries where they are located. For example, one of the Confederate monuments at Point Lookout Confederate Cemetery in Maryland was erected before the state transferred control of that cemetery to the federal government. Other monuments and memorials were more recently established, such as the Confederate monument erected by the United Daughters of the Confederacy and the Sons of Confederate Veterans in 2005 at Camp Butler National Cemetery in Illinois. **Table 2** provides a list of national cemeteries with Confederate monuments and memorials and the dates, if available, of their establishment.

[43] P.L. 93-43.

[44] For additional information on the interment of Confederate soldiers, sailors, and veterans in national cemeteries, see Department of Veterans Affairs, *Federal Stewardship of Confederate Dead*, July 2016, at https://www.cem.va.gov/CEM/publications/NCA_Fed_Stewardship_Confed_Dead.pdf.

[45] 38 U.S.C. §2402.

[46] 38 U.S.C. §2408. A list of state veterans' cemeteries is at https://www.cem.va.gov/cem/cems/allstate.asp.

[47] 38 U.S.C. §2407.

[48] Information on individual national cemeteries is available at https://www.cem.va.gov/cem/cems/allnational.asp. Details on monuments and memorials located in those cemeteries are listed under the "Historical Information" section of each cemetery's VA website.

Table 2. Confederate Monuments and Memorials in National Cemeteries Administered by the Department of Veterans Affairs (VA)

State	National Cemetery	Number of Monuments and Memorials	Dates of Establishment of Monuments and Memorials
Alabama	Mobile National Cemetery	1	1940
Arkansas	Fort Smith National Cemetery	1	Not listed
	Little Rock National Cemetery	1	1884
Illinois	Camp Butler National Cemetery	1	2005
	Confederate Mound	1	Not listed
	North Alton Confederate Cemetery	1	1909
	Rock Island Confederate Cemetery	5	2003; 4 monuments not listed
Indiana	Crown Hill Confederate Mound	1	1933 (updated 1993)
	Woodlawn Monument Site	1	1912
Maryland	Loudon Park National Cemetery	1	1912 (approx.)
	Point Lookout Confederate Cemetery	2	1876, 1910
Missouri	Jefferson Barracks National Cemetery	1	1988
	Springfield National Cemetery	1	1901
	Union Confederate Monument Site	1	Not listed
New Jersey	Finn's Point National Cemetery	1	1910
New Mexico	Santa Fe National Cemetery	1	1993
New York	Woodlawn National Cemetery	2	1911,[a] 1937
Ohio	Camp Chase Confederate Cemetery	2	1897, 1902
	Confederate Stockade Cemetery	4	1910, 1925 (2 monuments), 2003
Pennsylvania	Philadelphia National Cemetery	1	1911
South Carolina	Beaufort National Cemetery	1	1997
Virginia	Ball's Bluff National Cemetery	1	Not listed
	Hampton National Cemetery	1	Not listed
Wisconsin	Fort Crawford Cemetery Soldiers' Lot	1	1930s (approx.)

Source: Congressional Research Service (CRS) compilation of data from the website of the Department of Veterans Affairs (VA) at https://www.cem.va.gov/cem/cems/allnational.asp and the National Cemetery Administration's 2016 report *Federal Stewardship of Confederate Dead*.

Notes: VA does not list the dates of establishment for all monuments and memorials.

a. The Shohola Monument, erected in 1911, commemorates the deaths of Union and Confederate soldiers in a railroad accident in Pennsylvania during the Civil War.

Headstones and Grave Markers

Veterans interred in national cemeteries, or in state or private cemeteries, generally are eligible for headstones or grave markers provided at no cost by VA.[49] For Confederate veterans, government headstones or grave markers may be provided only if the grave is currently unmarked. The person requesting a headstone for a Confederate veteran may select a standard VA headstone, which includes identifying information about the veteran and his or her service and an emblem of belief corresponding to the veteran's faith, or a special Confederate headstone that includes the Southern Cross of Honor as shown in **Figure 2**.[50] The Southern Cross of Honor was created by the United Daughters of the Confederacy in 1898 and is the only Confederate emblem permissible on a government headstone or grave marker.

Figure 2. The Southern Cross of Honor on a Confederate Headstone

Source: Action Sports Photography/Shutterstock.com.

Note: The Southern Cross of Honor medal as awarded by the United Daughters of the Confederacy includes an image of the Confederate battle flag. When engraved on a government headstone, however, the Confederate battle flag is not included.

Display of Confederate Flags at National Cemeteries

Similar to NPS policy, VA policy allows for small flags of the former Confederate States of America (Confederate flags) to be placed at individual gravesites of Confederate veterans, with or without a U.S. flag, on Memorial Day and on Confederate Memorial Day in states that have designated a Confederate Memorial Day.[51] In states without a Confederate Memorial Day, another

[49] 38 U.S.C. §2306. For additional information on burial benefits available to veterans, see CRS Report R41386, *Veterans' Benefits: Burial Benefits and National Cemeteries*.

[50] Available emblems of belief are at https://www.cem.va.gov/hmm/emblems.asp. For Union Civil War veterans and veterans of the Spanish-American War, headstones with a shield engraved in the background are available.

[51] Department of Veterans Affairs, *Flags in VA National Cemeteries*, NCA Directive 3220, November 22, 2005, Section 8.d.1.

date may be selected by the cemetery administrator. VA does not provide the Confederate flags. The display is allowed only at national cemeteries where Confederate soldiers and sailors are buried. Any display of a Confederate flag must be requested by a sponsoring historical or service organization, which must provide the flags. The sponsoring organization must also place and remove the flags at no cost to the government.

VA also permits the family members of a deceased veteran to display a Confederate flag during an interment, funeral, or memorial service at a national cemetery in accordance with federal law, which permits the display of "any religious or other symbols chosen by the family."[52]

In 2016, the House of Representatives agreed to an amendment to the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2017, that would have prohibited VA from implementing its policy that permitted a Confederate flag to fly from a flagpole, subordinate to the U.S. flag, at national cemeteries with Confederate veterans buried in mass graves on the same days that small graveside Confederate flags were permitted.[53] The House of Representatives passed the bill as amended, but the Confederate flag provision was not included in the final omnibus appropriations legislation and did not become law.[54] On August 12, 2016, VA announced that the agency was amending its policy such that a Confederate flag may no longer fly from a fixed flagpole at any national cemetery at any time.[55]

Department of Defense

Confederate Flag Display

Between June and July 2020, military leaders issued a series of policy orders that restricted displays of the Confederate battle flag. On July 17, 2020, after media reports indicated that DOD had circulated a draft of a department-wide policy banning the display of the Confederate flag,[56] Defense Secretary Mark Esper released a guidance memorandum.[57] This DOD-wide guidance permits display of flags that promote "unity and esprit de corps" and provides a list of flags fulfilling this criterion that does not include the Confederate flag.[58] The Secretary wrote in the memorandum, "Flags are powerful symbols, particularly in the military community for whom flags embody common mission, common histories, and the special, timeless bond of warriors," adding, "The flags we fly must accord with the military imperatives of good order and discipline, treating all our people with dignity and respect, and rejecting divisive symbols."[59]

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[52] 38 U.S.C. §2404(h)(1)(c).

[53] H.Amdt. 1062 to H.R. 4974 (114th Congress). The VA policy on flying a Confederate flag from a flagpole was provided in Section 8.d.2 of NCA Directive 3220.

[54] P.L. 115-31, Consolidated Appropriations Act, 2017.

[55] Letter from Ronald E. Walters, Interim Undersecretary for Memorial Affairs, Department of Veterans Affairs, to Representative Jared Huffman, August 12, 2016.

[56] Lolita C. Baldor, "Pentagon Draft Policy Would Ban Confederate Flag Displays," *Military Times*, July 6, 2020, at https://www.militarytimes.com/news/pentagon-congress/2020/07/06/pentagon-draft-policy-would-ban-confederate-flag-displays/.

[57] DOD, text of Secretary Esper's guidance memo, at https://media.defense.gov/2020/Jul/17/2002458783/-1/-1/1/200717-FLAG-MEMO-DTD-200716-FINAL.PDF.

[58] DOD News Release, "Secretary of Defense Dr. Mark T. Esper Guidance on Public Display or Depiction of Flags in the Department of Defense," July 17, 2020, at https://www.defense.gov/Newsroom/Releases/Release/Article/2278101/secretary-of-defense-dr-mark-t-esper-guidance-on-public-display-or-depiction-of/.

[59] Meghann Myers, "Confederate Flag Effectively Banned from Military Installations," *Navy Times*, July 17, 2020, at

Earlier, on June 5, 2020, Marine Commandant Gen. David H. Berger signed MARADMINS Number 331/20, banning the public display of the Confederate battle flag. This instruction directs Marine Corps commanders to identify and remove from display the Confederate battle flag or its depiction within workplaces, common-access areas, and public areas on their installations.[60] This also includes its depiction on items such as clothing, bumper stickers, mugs, flags, posters, etc. Excluded from this directive are works of art or historical displays where the flag is depicted but is not the main focus of the display; state flags and license plates that include images of the Confederate flag; and Confederate soldiers' grave sites.[61]

On June 9, 2020, the Navy announced that the Chief of Naval Operations (CNO), Adm. Mike M. Gilday, had directed his staff to begin crafting an order that bans the flag from "all public spaces and work areas aboard Navy installations, ships, aircraft and submarines."[62] The CNO's order is meant to ensure unit cohesion; preserve good order and discipline; and uphold the Navy's core values of honor, courage and commitment.[63]

On July 2, 2020, Air Force Lt. Gen. Kevin Schneider, the commander of U.S. Forces Japan, issued an order banning the Confederate flag on U.S. military installations in Japan. Schneider said in issuing his order: "The Confederate Battle Flag does not represent the values of U.S. Forces assigned to serve in Japan. While I acknowledge some might view it as a symbol of regional pride, many others in our force see it as a painful reminder of the history of hate, bigotry, treason, and devaluation of humanity that it represents."[64]

On July 21, 2020, the U.S. Coast Guard Commandant, Admiral Karl Schultz, followed the Navy and the Marine Corps and prohibited public displays of the Confederate flag at all Coast Guard workplaces, common access areas, public areas, and operating facilities.[65] This includes barracks and other quarters where the flag is readily visible as well as the exterior of Coast Guard family housing.[66] Also prohibited are displays on clothing, bumper stickers, and other vehicle adornments.

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https://www.navytimes.com/news/your-military/2020/07/17/confederate-flag-effectively-banned-from-military-installations/.

[60] U.S Marine Corps, "Removal Public Displays of the Confederate Battle Flag," MARADMINS: 331/20, June 5, 2020, at https://www.marines.mil/News/Messages/Messages-Display/Article/2210513/removal-public-displays-of-the-confederate-battle-flag/.

[61] Diana Stancy Correll, "Marine Corps Bars Public Display of Confederate Flag on Installations," *Marine Corps Times*, June 6, 2020, at https://www.marinecorpstimes.com/news/your-marine-corps/2020/06/06/marine-corps-bars-public-display-of-confederate-flag-on-installations/.

[62] Geoff Ziezulewicz, "CNO Says No More Confederate Battle Flags in Public Spaces and Work Areas," *Navy Times*, June 9, 2020, at https://www.navytimes.com/news/your-navy/2020/06/09/cno-says-no-more-confederate-battle-flags-in-public-spaces-and-work-areas/.

[63] Ibid.

[64] Joseph Ditzler, "U.S. Forces Japan Commander Orders Ban on Confederate Battle Flag," *Stars and Stripes*, July 2, 2020, at https://www.stripes.com/news/pacific/us-forces-japan-commander-orders-ban-on-confederate-battle-flag-1.637294.

[65] Bridget Johnson, "Coast Guard Bans 'Uniquely Divisive' Confederate Flag as Symbol That 'Threatens Our Black Shipmates,'" *Homeland Security Today*, July 9, 2020, at https://www.hstoday.us/federal-pages/dhs/uscg/coast-guard-bans-uniquely-divisive-confederate-flag-as-symbol-that-threatens-our-black-shipmates/.

[66] Ibid.

Military Installations

Currently, there are 10 major Army installations in southern states named after Confederate military leaders and no such installations for the other military departments. For more information on these installations and the naming policy and procedures for each military department, see CRS Insight IN10756, *Confederate Names and Military Installations*.

The NDAA for FY2020 (P.L. 116-92) included a provision in Section 1749 prohibiting the DOD from giving assets names that refer to the Confederate States of America (CSA), including the name of anyone who served in the Confederacy or names that reference a Confederate battlefield victory. The provision explicitly stated that it did not require the Secretary of Defense to initiate a review of previously named assets.

Navy Ships

Currently, the fleet has no ships named after Confederate officers. However, in the fleet is the USS *Chancellorsville* (CG-62), a guided-missile cruiser commissioned in 1989 and named after the Battle of Chancellorsville, Virginia, April 30-May 6, 1863. According to some historians, this battle was considered a major Confederate victory under the leadership of Gen. Robert E. Lee.[67] Four ships have been named for Confederate officers: USS *Robert E. Lee* (SSBN-601) in 1960, USS *Stonewall Jackson* (SSBN-634) in 1964, USS *Hunley* (AS-31) in 1962, and USS *Dixon* (AS-37) in 1971. All four have been decommissioned.[68]

Tattoos and Body Markings

According to DOD, a servicemember's right of expression should be preserved to the maximum extent possible in accordance with the constitutional and statutory provisions of Title 10 of the *U.S. Code* and consistent with good order and discipline and the national security.[69] However, if a commander determines the display of Confederate symbols is detrimental to the good order and discipline of the unit, then the commander can ban such displays.

Some military recruits with Confederate flag tattoos have been barred from joining the military based on policies prohibiting certain types of tattoos.[70] The Army, Navy, Air Force, and Marine Corps all have policies that prohibit tattoos that are injurious to good order and discipline. There is no explicit prohibition against the Confederate flag and symbols in tattoos.[71] For more information, see CRS Report R44321, *Diversity, Inclusion, and Equal Opportunity in the Armed Services: Background and Issues for Congress*.

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[67] For more information, see CRS Report RS22478, *Navy Ship Names: Background for Congress*, by Ronald O'Rourke, in the section, "Ships Named for the Confederacy or Confederate Officers."

[68] Ibid.

[69] Department of Defense Instruction (DoDI) 1325.06, *Handling Dissident and Protest Activities among Members of the Armed Forces*, 2009 (incorporating change 1, February 22, 2012), at http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132506p.pdf; and "DOD Prohibitions on Participation in Extremist Activities" in CRS Insight IN11086, *Military Personnel and Extremism: Law, Policy, and Considerations for Congress*, by Kristy N. Kamarck.

[70] See, for example, Jeff Schogol, "Confederate Flag Tattoo Stops Man from Joining Marines," *Marine Times*, January 26, 2016, at https://www.marinecorpstimes.com/news/your-marine-corps/2016/01/26/confederate-flag-tattoo-stops-man-from-joining-marines/.

[71] See above section on "Confederate Flag Display" for discussion of broader DOD policies concerning the display of the Confederate flag.

Arlington National Cemetery and Army Cemeteries

Confederate Flag Display

Arlington National Cemetery is under the jurisdiction of the U.S. Army. The Army policy states in Department of the Army (DA) Pamphlet 290–5, *Administration, Operation, and Maintenance of Army Cemeteries*, that on Memorial Day, or on the day when Confederate Memorial Day is observed, a small Confederate flag of a size not to exceed that of the U.S. flag may be placed on Confederate graves at private expense.[72] Individuals or groups desiring to place these flags must agree in writing to absolve the federal government from any responsibility for loss or damage to the flags. Confederate flags must be removed at private expense on the first workday following Memorial Day or the day observed as Confederate Memorial Day.[73]

Confederate Graves and Confederate Memorial

On June 6, 1900, Congress authorized $2,500 for a section of Arlington National Cemetery to be set aside for the burial of Confederate dead.[74] Section 16 was reserved for Confederate graves, and among the 482 persons buried there are 46 officers, 351 enlisted men, 58 wives, 15 southern civilians, and 12 unknowns.[75] To further honor the Confederate dead at Arlington, the United Daughters of the Confederacy petitioned to erect a monument that was approved by then-Secretary of War William Howard Taft on March 4, 1906, and sculpted by Moses Ezekiel (see **Figure 3** and **Figure 4**).[76] President Woodrow Wilson unveiled the memorial on June 4, 1914. Over the years, there has been some criticism of the depiction of slaves on the frieze of the memorial. On July 8, 2020, the Army stated that it is working with DOD "on guidance for display of divisive symbols. Any review would include this memorial."[77]

[72] DA Pamphlet 290–5, *Administration, Operation, and Maintenance of Army Cemeteries*; see Flags Used on Memorial Day 2-7 on p.2, and Grave-Decorating Flags 6-11 on p. 30, at http://www.apd.army.mil/epubs/DR_pubs/DR_a/pdf/web/p290_5.pdf.

[73] Erin Blakemore, "The Battle over Confederate Heritage Month" JSTOR Daily, April 14, 2017, at https://daily.jstor.org/the-battle-over-confederate-heritage-month/; and Carl R. Weinberg. "The Strange Career of Confederate History Month." *OAH Magazine of History* 25, no. 2 (2011): 63-64, at http://www.jstor.org/stable/23210248.

[74] Arlington National Cemetery, "Confederate Memorial," at https://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Confederate-Memorial. According to this site, after the Spanish-American War "in the spirit of national reconciliation, the U.S. Congress authorized that a section of Arlington National Cemetery be set aside for the burial of Confederate dead." Included were the Confederate soldiers buried in the national cemeteries at Alexandria, VA, and at the Soldiers' Home in Washington, DC, and reinterred in the Confederate section in 1901.

[75] Ibid.

[76] Ibid.

[77] Richard Sisk, "Army Reviewing 'Confederate Memorial' Featuring Slaves at Arlington National Cemetery," Military.com, July 9, 2020, at https://www.military.com/daily-news/2020/07/09/army-reviewing-confederate-memorial-featuring-slaves-arlington-national-cemetery.html.

Figure 3. Confederate Memorial in Arlington National Cemetery

Source: Arlington National Cemetery, at https://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Confederate-Memorial.

Note: Moses Ezekiel was a well-known sculptor and Confederate veteran who was later buried at the base of the monument in 1921. The bronze monument stands 32 feet in height and is the South represented as a woman atop a base with a frieze composed of 14 inclined shields for each Confederate state and the border state Maryland. The memorial is surrounded by Confederate graves.

Figure 4. Details of the Base of the Arlington Confederate Memorial

Source: Arlington National Cemetery at http://www.arlingtoncemetery.net/csa-memorial-017-062803.jpg.

Note: Included in the base are mythological figures and illustrated images of the trials and tribulations of Southerners during the war.

Issues for Congress

Members of Congress have been divided in recent years on the treatment of Confederate symbols on federal lands and at sites that receive federal funding. Some legislation has sought to withhold funding for the maintenance of Confederate symbols, other legislation to remove Confederate symbols outright, and still other legislation to maintain the status quo in terms of these symbols' presence on federal lands. Also at issue has been the application of federal law to attempts by members of the public to forcibly remove these symbols, such as at recent protests in Washington, DC, and elsewhere.

National Park Service

NPS has considered Confederate symbols at park sites in the context of the agency's mission to preserve its historic and cultural resources unimpaired for future generations. Absent congressional authorization, NPS's preservation mandates could constrain the agency from taking administrative actions such as removing Confederate commemorative works from NPS units. Under both the Obama and Trump Administrations, NPS has expressed that some Confederate symbols in park units are required to be preserved under agency statutes and could be framed and interpreted appropriately through educational activities.[78] At the same time, the Obama Administration took steps to discourage or end some other uses of Confederate symbols—in particular the use of the Confederate flag in a "stand-alone" context.[79] This policy has remained in place under the Trump Administration.

Congress faces questions about whether Confederate symbols should continue to be subject to NPS's requirements for resource preservation or whether legislation should be enacted to facilitate or require the removal of these symbols from park sites. If removal of these symbols is desired, other questions might include which symbols should be removed, whether removals should be subject to the procedural requirements of Section 106 of the NHPA, and whether actions also should include changes to policies for commemorating deceased Confederate soldiers at NPS cemeteries. An additional consideration would be how to fund potential removals of Confederate monuments and memorials. NPS, which faces a sizable backlog of deferred maintenance, has stated in the past that it may lack funds to dispose of unneeded or unwanted assets.[80]

Department of Veterans Affairs

Controversy over the display of Confederate symbols on public lands and supported with federal funds affects VA, its national cemeteries, and current law and policy regarding the provision of headstones for Confederate gravesites. VA's laws and policies permit existing Confederate graves in national cemeteries to remain undisturbed and permit Confederate monuments and memorials in national cemeteries and the use of a Confederate symbol on government headstones. Legislation such as the 116th Congress's H.R. 4179, which references Confederate symbols, raises questions about how existing headstones, monuments, and memorials would be treated within the context of maintaining national cemeteries as "national shrines," as well as whether or not future headstones issued by VA for unmarked Confederate graves should include the Southern Cross of Honor.

Department of Defense

The Department of the Army has no formal administrative process for renaming military installations, nor is there a DOD-wide policy on renaming assets named for the Confederacy. Following the 2015 shootings in a Charleston, SC, church, then-Army Chief of Public Affairs Brigadier General Malcolm Frost said, "Every Army installation is named for a soldier who holds a place in our military history. Accordingly, these historic names represent individuals, not causes

[78] See, for example, NPS June 2015 Policy Memo, and NPS Confederate Memorials Discussion Guide, Summer 2017.

[79] NPS June 2015 Policy Memo.

[80] For more information, see CRS Report R44924, *National Park Service Deferred Maintenance: Frequently Asked Questions*, by Laura B. Comay.

or ideologies."[81] However, on July 8, 2020, during testimony before the House Armed Services Committee, Chair of the Joint Chiefs of Staff Army Gen. Mark Milley left open the discussion of changing the names.[82] Milley stated, "I personally think that the original decisions to name those bases after Confederate generals … those were political decisions … 100 years ago and they're going to be political decisions today."[83] He also supported the idea of a commission to be created to look into renaming the posts. The NDAA for FY2020 (P.L. 116-92) included a provision in Section 1749 prohibiting the Secretary of Defense from giving assets names that refer to the CSA but did not require the Secretary to review previously named assets. (See "Recent Legislation" section.)

The House and the Senate have separately endorsed removing Confederate leaders' names from military installations as part of the NDAA for FY2021.[84] On July 21, 2020, the House voted to bar the Confederate battle flag from being displayed on DOD property as part of its version of the NDAA for FY2021, H.R. 6395. Section 1749 of the House-passed version would prohibit public display of the Confederate battle flag on DOD property with certain exceptions, such as historical displays and grave markers, and would authorize $1 million for the commission's work. Another provision, Section 2829, would require DOD, within a year of enactment, to develop a plan for and commence renaming military installations and defense properties within its jurisdiction named for "any person who served in the political or military leadership of any armed rebellion against the United States."

Section 377 of the Senate-passed version, S. 4049, also would establish a commission, require a three-year timeline, and authorize $2 million for the commission. The commission is to examine and establish criteria to rename symbols, displays, monuments, and other paraphernalia that honor the CSA and its leaders across DOD assets. This includes assets such as any base, installation, street, building, facility, aircraft, ship, plane, weapon, equipment, or other DOD-owned or -controlled property. The Senate passed S. 4049 on July 23, 2020. President Trump has threatened to veto the NDAA for FY2021 if the final legislation includes a provision to rename military installations currently named for Confederate leaders.

Proponents of renaming the installations contend that there are noteworthy national military leaders from other conflicts who demonstrated selfless service and sacrifice, including Medal of Honor recipients, who would be more appropriate for such an honor. Opponents of renaming these installations cite the bureaucracy of creating a new review process and the difficulty of satisfying the various viewpoints over which names (if any) would be selected as subjects of contention.

[81] Vera Bergengruen, "No Plans to Change Names of Bases Honoring Confederate Generals," *Military Times*, August 17, 2017, at http://www.military.com/daily-news/2017/08/17/no-plans-change-names-bases-honoring-confederate-generals.html.

[82] Meghann Myers, "Military's Top Officer Is Open to Renaming Army Posts Honoring Confederate Generals," *Military Times*, July 8, 2020, at https://www.militarytimes.com/news/your-military/2020/07/09/militarys-top-officer-is-open-to-renaming-army-posts-honoring-confederate-generals/.

[83] Ibid.

[84] Also in the 116th Congress, H.R. 7164, the Honoring Real Patriots Act of 2020, would require the Secretary of Defense to rename any military property "that is currently named after any individual who took up arms against the United States during the American Civil War or any individual or entity that supported such efforts."

Other Issues

Under the National Historic Preservation Act, any federal agency that considers the removal—or provides funding, assistance, or approval for the removal—of historic properties would be subject to the applicable procedural considerations required by law (Section 106 for properties listed or eligible for listing on the National Register and Section 110(f) for properties designated as national historic landmarks). These requirements are to be concluded before federal funding is provided or a federal license issued.[85] As a result, the immediate removal of some Confederate commemorative works likely would violate an agency's legal requirements under the NHPA, absent congressional authorization.

To the extent that Congress seeks to expedite the removal of historic properties that commemorate the Confederacy on federal lands (or that require federal funding or approval), a variety of legislative options are available. For example, Congress might consider a legislative proposal stating that, notwithstanding any other provision of law, relevant Confederate works shall be treated as being in an "exempted category" under 36 C.F.R. §800.14(c). This provision typically allows agencies to propose a "category of undertakings that may be exempted from" Section 106 review. Alternatively, Congress could direct agencies to propose or seek to develop such an exemption through the administrative process outlined in regulations.[86] Congress could also consider a proposal to more generally exempt Confederate historic properties either from NHPA protection or from Section 106 compliance.[87] Other options might include providing additional appropriations to NPS's Historic Preservation Fund account to expedite Section 106 review and compliance for the removal of Confederate works.

Alternatively, Congress might wish to reinforce or expand protections for Confederate works beyond those provided by the NHPA and other statutes. For example, Congress might consider a legislative proposal that explicitly prevents federal agencies from removing Confederate works and/or providing assistance for the removal of such properties. Such a proposal could be specific to certain works or could apply broadly, depending on the wording of the provision. Other options could include withholding historic preservation grants and/or other federal grants from jurisdictions that do not prevent the removal of Confederate monuments or that fail to enforce federal statutes such as the Veterans' Memorial Preservation and Recognition Act (VMPRA), as proposed in H.R. 7646 in the 116th Congress.

Congress also might wish to reinforce or counter the funding policies articulated by President Trump in his June 26 "Executive Order on Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence" (June 26 Order). The June 26 Order articulated two federal policies of withholding federal funds from entities that fail to protect public monuments, memorials, and statues—including Confederate ones—from destruction or vandalism. Specifically, the policies reference withholding federal "support tied to public spaces" from state and local governments and withholding federal "support from State and local law enforcement agencies" in those circumstances. The June 26 Order then directs the "heads of all executive departments and agencies" to "examine their respective grant programs and apply" those policies to the extent appropriate and consistent with applicable law. Congress could

[85] 54 U.S.C. §306108.

[86] 36 C.F.R. §800.14.

[87] For example, in the 116th Congress, H.R. 7612 includes the following provision: "Notwithstanding any other provision of law or policy to the contrary, within 180 days of enactment of this Act, the National Park Service shall remove from display all physical Confederate commemorative works, such as statues, monuments, sculptures, memorials, and plaques, as defined by NPS, Management Policies 2006, §9.6.1."

separately authorize or prohibit federal agencies from considering these policies when administering grants.

Other issues concern the federal response to actions by the public to forcibly remove or alter Confederate commemorative works, either on federal lands or in other situations where a federal nexus is present. For example, in certain circumstances, the VMPRA criminalizes the willful injury or destruction (or attempted willful injury or destruction) of "any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States."[88] The June 26 Order, among other things, directed the Department of Justice to prioritize prosecutions under existing federal statutes protecting monuments, memorials, and statues, including the VMPRA. Congress may consider whether to pass additional measures to protect monuments or whether to abolish or restrict the measures already in place. Any legislative action by Congress could apply only to activities within the realm of Congress's constitutional authority. CRS In Focus IF11596, *Monuments and Memorials: Federal Criminal Law Protections*, discusses this issue and relevant legislative options in greater detail.

In sum, Congress faces multiple questions and proposals concerning Confederate symbols on federal lands and in federally funded programs. Legislation in the 116th Congress would address Confederate symbols in different ways. Proposals range from those concerned with individual Confederate symbols to those that would broadly affect all Confederate symbols on federal lands. Some of these proposals may be more or less difficult to implement from a logistical or financial standpoint, and questions may arise about how some proposals would interact with existing authorities.

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[88] 18 U.S.C. § 1369(a).

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