



November 18, 2021

VIA ELECTRONIC SUBMISSION

The Honorable Deb Haaland
Secretary, U.S. Department of the Interior
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Re: Advancing Racial Equity and Support for Underserved Communities Through Recreation Opportunities (86 Fed. Reg. 57848; October 19, 2021).

Dear Secretary Haaland:

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration respectfully submits the following comments on the U.S. Department of the Interior (DOI)'s request for comments regarding implementation of Executive Order 13985 (EO), on advancing equity in underserved communities.¹ Advocacy encourages DOI and its subagencies to review and revise the policies and procedures outlined below to ensure greater equity for small businesses, small governmental jurisdictions, and small organizations and to adopt permanent strategies by which the agency will measure and increase equity within its policies and rulemakings.

The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to

¹ Exec. Order No. 13985, 86 Fed Reg. 7009 (January 25, 2021).

² 5 U.S.C. § 601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

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assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule’s publication in the Federal Register, the agency’s response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

Advocacy’s comments are consistent with Congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”⁶

In addition to ensuring compliance with the RFA, Congress charged Advocacy with evaluating the efforts of federal agencies in assisting minority enterprises, and making recommendations to strengthen minority and other small business enterprises.⁷ In addition, Congress has found that regulations that do not take into account the size of the regulated entities “have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources.”⁸

Background

On January 25, 2021, President Biden issued Executive Order (EO) 13985, “Advancing Racial Equity and Support for Underserved Communities through the Federal Government.”⁹ Under this EO, federal agencies are tasked with reviewing their policies to assess whether underserved communities and individuals face barriers in accessing programs and engaging in agency action.¹⁰ The EO defines “underserved community” both in terms of the demographics of the populations served, as well as geographic areas that have been denied equal opportunity to participate in government programs and policies.¹¹ The EO directs agencies to create a plan to address equitable participation in agency programs within one year of the date of its issuance.¹²

In reviewing policies that may be discriminatory or otherwise burdensome to underserved communities, DOI published a request for public comment and information regarding barriers to recreating on DOI managed lands.¹³ Subsequently, DOI held five listening sessions to gather

⁴ Small Business Jobs Act of 2010 (Pub. L. No. 111-240) § 1601.

⁵ *Id.*

⁶ 5 U.S.C. Sec. 601 note.

⁷ Pub. L. 94-305, Title II, 90 Stat 668 (1976) (codified in section 15 U.S.C. 634).

⁸ Regulatory Flexibility Act, note at (a)(3), 5 U.S.C. Sec. 601, note.

⁹ *Supra* note 1.

¹⁰ *Supra* note 1 at 7010.

¹¹ *Id.* at 7009.

¹² *Id.* at 7011.

¹³ Advancing Racial Equity and Support for Underserved Communities Through Recreation Opportunities, 86 Fed. Reg. 57848 (October 19, 2021).

additional feedback from members of the public.¹⁴ DOI offered three specific questions for stakeholders to respond to but stated that the agency would consider any comments received in its evaluation.

Advocacy also conducted public outreach to the small business community on DOI's notice by publishing an alert on its website, emailing its listservs, and participating in teleconferences with small business stakeholders and interest groups. Advocacy heard from representatives of outdoor industries including tour guides and motorcoach operators, as well as from non-profits and rural cooperatives. These stakeholders represented historically marginalized groups and communities and varied by industry area. While most stakeholders focused their comments on National Park Service (NPS) programs, some also had comments for the Fish and Wildlife Service (FWS).

I. Small businesses deserve equitable opportunities to participate in agency rulemaking.

Small business stakeholders stated that they do not feel as though they have a voice in the rulemaking process regardless of whether or not they submit comments to DOI. Many feel that it is difficult for new businesses, and especially underserved businesses and individuals, to navigate and engage with the agency. Often only those businesses who have well-established relationships with the agency are able to take advantage of DOI programs.

Advocacy urges DOI to consider ways in which the agency can modify its rulemaking process to ensure that equity for small business is a consideration in all rulemakings. While DOI is specifically seeking comments on recreation on public lands within this notice, equity considerations are a matter of good governance and agency transparency and should therefore not be optional within any of the agency's rulemakings.

Specific suggestions for increasing equity include making it easier for members of the public to comment on rulemakings both at public hearings and in written comments. Often public hearings are held at one specific location, and in the evenings. Commenters struggle with managing a business and a household while trying to travel to participate in lengthy evening meetings. Examples of these types of meetings include FWS listing designations for specific endangered and threatened species, Bureau of Ocean Energy Management scoping meetings for various leasing proposals, and other listening sessions on various topics including this one. DOI should continue to offer opportunities for virtual participation in meetings and offer a variety of scheduling options including different times and days to accommodate work and family obligations of commenters.

Another barrier to commenting on agency policies and rulemakings is the length of the written public comment period. Often the agency allows for only 30-45 days for review and comment. This timeframe is simply not workable for a small business. Small business owners have limited time to research and respond to rulemakings. Short comment periods do not allow for small businesses to participate meaningfully in the process. Often, they are not even aware of the proposal until halfway through the comment period, at which point they must then find time to read and understand lengthy technical proposals and craft substantive comments that include

¹⁴ *Id.*

data and analysis. These exercises take time away from running their businesses. Such short time frames create a disadvantage for those entities that do not have the financial means to employ sophisticated regulatory and policy representation. DOI should lengthen the time for public comments so that all interested stakeholders have a chance to submit meaningful substantive comments.

In addition to these overarching suggestions, below are specific examples of policies that impact equity for small businesses that DOI should consider. This list is not exhaustive. DOI should work with small, underserved communities, small businesses, small organizations and individual stakeholders to identify additional issues, and develop strategies to ensure that equity considerations become a permanent fixture of agency practice.

II. DOI should revise the process for designating national sites to make it streamlined and more inclusive.

There are several avenues by which an area can obtain protective historic status including designation of national parks and monuments,¹⁵ the National Register of Historic Places,¹⁶ and national historic landmarks.¹⁷ Despite these mechanisms less than eight percent of designated landmarks within the United States specifically represent the interests of underrepresented groups.¹⁸ Landmarks are an important way for communities to preserve their histories and cultures. Furthermore, landmarks can create business opportunities both in and of themselves, and within the surrounding communities as an increase in tourism results in the need for increased services.

While the National Register of Historic Places includes a variety of property types, some of the industries most affected by historic site designations are primarily made up of small businesses. Small businesses make up more than 98 percent of churches and museums—both of which are often housed in historical buildings—as well as real estate lessors—who own many of the houses, apartment buildings, and storefront properties listed on the Register. Small businesses also make up more than 90 percent of nature parks, zoos, and botanical gardens. Many small schools and banks also use historic buildings.¹⁹ Many groups that seek historic designation status are also themselves small businesses, small municipalities, and non-profits.

Stakeholders mentioned that there are significant hurdles that they must overcome in obtaining historic status. They stated that often the criteria used to evaluate historic sites was not created with an eye towards inclusion. Therefore, underrepresented groups have not had a voice both

¹⁵ 54 U.S.C. §320301 (previously P.L. 59-209, 34 Stat. 225 (1906) (codified at 16 U.S.C. §431) (recodified by P.L. 113- 287, §3, 128 Stat. 3259 (2014))). The Antiquities Act states that these sites can be designated by an act of Congress, or the President.

¹⁶ 54 U.S.C. §3021 et. seq.

¹⁷ *Id.*

¹⁸ Dr. Manuel G. Galaviz, Norma Hartel, Ashleyann Perez-Riviera, *Place, Story & Culture, An Inclusive Approach to Protecting Latino Heritage Sites*, LATINO ACCESS FOUNDATION (2021), <https://hispanicaccess.org/images/PlaceStoryCulture2021.pdf>. Note that this has not be independently verified by Advocacy.

¹⁹ U.S. Census Bureau, *2017 Statistic of U.S. Businesses* (last revised October 8, 2021), <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>.

within the agency's process for evaluation, nor in applying for historic status. Public input is critical not just in each application for designated status, but in updating the criteria by which the agency evaluates the applications. Furthermore, there are often significant economic burdens in obtaining historic status that make the process cost-prohibitive, both in terms of the actual monetary costs, as well as time costs in navigating what can sometimes be an extremely lengthy process.

Understanding whether their property may qualify is often a difficult task for these small businesses—let alone undergoing the application process and managing any necessary maintenance and inspection following designation. Obtaining this kind of knowledge and filling out the relevant paperwork may be beyond the ability of the small business owner, or it might simply be too time consuming. A simpler and more streamlined application process would open the door for many of these small businesses to participate and potentially receive the benefits of designation.

Specific suggestions for making these procedures more inclusive include offering institutional support throughout the process, and developing an advisory group to focus on diversity, equity, and inclusion principles within the historic preservation framework.²⁰ Advocacy also encourages DOI to offer additional resources and education to those seeking historic designations, and to the communities these designations may impact so that there is greater transparency about the process and its impacts.

III. The agency must simplify the process for bidding on concessions contracts on national lands to allow for more diverse pools of applicants to apply.

One of the main barriers that small minority-owned businesses face in bidding on national park contract opportunities is that they do not even know that such opportunities exist. NPS should evaluate the ways in which it promotes such opportunities to the public so that those who are long-standing vendors do not get preferential treatment in bidding, and so that new small businesses are better able to locate and bid on opportunities. Many stakeholders suggested that educational trainings would be helpful in navigating these programs. Additionally, many underserved small businesses do not know the criteria for applying, are unaware of their eligibility, and do not know who to go to within the agency should they have questions about the process. Advocacy suggests that NPS offer additional agency guidance, trainings, and mentorship opportunities to small, disadvantaged businesses. These resources will ensure that the bidding process is approachable and inclusive to those who may feel like they do not have the resources they need to take advantage of these opportunities.

²⁰ *Supra* note 14.

IV. NPS should assess fees in a manner that does not make it cost-prohibitive for certain groups to access national parks.

Advocacy has previously commented on the impact that commercial road-based fee increases have on small businesses and consumers alike.²¹ Drastic changes to fee structures are detrimental to small businesses who often must then decide whether to continue offering tours to the affected areas.²² This may also lead to a reduction in the number of visitors to national parks.

By reducing the number of visitors to national parks, tour fees harm many small businesses in gateway communities that rely on these visitors to stay afloat. In 2019, national park visitors spent an estimated \$21 billion in gateway regions, and this revenue stream accounts for nearly 350,000 jobs. The largest spending category was lodging, accounting for \$7.1 billion, then restaurants, accounting for \$4.2 billion.²³ Small businesses make up larger portions of these industries in rural areas (non-metropolitan statistical areas) where gateway communities are typically located. Establishments with fewer than 500 employees make up 97 percent of the accommodation industry in rural areas (compared to 85 percent in the US overall) and 89 percent of the food services industry in rural areas (compared to 81 percent overall).²⁴

In response to a 2017 proposed fee structure increase, Advocacy spoke to multiple small businesses to gauge the costs and potential outcomes of the proposed changes.²⁵ One small tour operator demonstrated that their fees per single charter bus trip would increase more than 750 percent, from \$500 per trip to \$4,305 per trip.²⁶ These cost increases were too large for the small operator to absorb, and the best option would be to leave the national parks market (25 percent of this operator's business). Other operators reported similar increases in costs, and they were concerned they would not be able to pass these costs through to their customers, who would choose other forms of tourism rather than pay higher prices. For many small operators, increases in tour fees could likely mean the end of their business.²⁷

While these agency actions are necessary to generate needed revenue for maintenance of national parks, NPS should consider ways in which to assess fees so that they are not disproportionately burdensome to small businesses or to consumers wishing to access the parks. This can be achieved through small incremental increases to the fee schedule rather than drastic increases. DOI may also consider tiering the fee schedule based on the size of the business and its annual receipts so that small businesses are not disincentivized from operating within national parks.

²¹ See Comments from Office of Advocacy on Road Based Commercial Tour Requirements and Fees (March 12, 2018), <https://advocacy.sba.gov/2018/03/12/advocacy-submits-comments-on-proposed-changes-to-road-based-commercial-tour-requirements-and-fees/>.

²² *Id.*

²³ U.S. Dep't of the Interior, Nat'l Park Serv., *2019 National Park Visitor Spending Effects: Economic Contributions to Local Communities, States, and the Nation* (Apr. 2020), https://www.nps.gov/nature/customcf/NPS_Data_Visualization/docs/NPS_2019_Visitor_Spending_Effects.pdf.

²⁴ *Supra* note 19.

²⁵ *Supra* note 20.

²⁶ *Id.*

²⁷ *Id.*

V. The NPS permitting process needs to be streamlined so that it is less lengthy, arduous, and costly.

Advocacy spoke with a minority-owned small business owner who operates float and paddle sport events. This owner stated that as a brand-new business it took him nearly six months to navigate the permitting process for one special use permit for a single event that his business hosted within a national park system. This was in addition to the time he spent upfront in locating information on how to apply. Furthermore, certain NPS application functions are not available online, stakeholders must call a number during business hours, and/or pay to mail forms and wait for them to be received. This owner stated that by contrast, to operate an event within state parks, he simply fills out a short online application and can pay the fees online. When he applies for the same permit with the state in subsequent years, his information is stored in the system and he does not have to fill out the application all over again.

This stakeholder's comments are not unique. Paperwork and administrative time and costs are often major barriers for small business participation in federal permitting programs. Small businesses do not have the time or resources necessary to research and apply for such permits. Advocacy suggests that NPS consider modernizing its application system so that applicants can file the necessary paperwork and pay for services online. For those applicants that apply on a frequent basis, NPS should consider a streamlined application so that they are not resubmitting the same information over and over.

Furthermore, NPS should consider a tiered fee structure such that those with smaller revenues pay a smaller percentage of fees for a special event permit. This type of structure is in place in many state and municipal locations and ensures that the costs are more equitable for small businesses.

Finally, NPS should consider posting permitted events that are open to the public on its own website and events calendars. One stakeholder mentioned that certain activities do get promotion from NPS, but others do not. He stated that he felt as though businesses with well-established relationships received preferential treatment. NPS should ensure that all its regional offices are following the same protocols and update agency guidance as necessary.

VI. DOI should offer entry-level programs within the national park systems to attract new users.

Several minority-owned recreation businesses stated that many of the users of national park systems are experienced outdoor enthusiasts who are familiar with park terrain, and engage in various activities including rock climbing, hiking, and water sports. To cater to this clientele, NPS vendors typically offer intermediate and advanced experiences leaving very few programs for novices. According to these businesses, this creates an equity issue as many underserved communities have less exposure and familiarity with the types of activities offered within the parks. One stakeholder suggested that NPS focus on offering beginner level low-cost programming, and contracting with vendors who can provide mentorship, and training for those individuals and groups who have never participated in these types of outdoor activities. Doing so would attract new users of the park systems and make them more accessible to undeserved

communities who in some instances do not have the same exposure to these types of activities. In addition to offering such programs, NPS should look to contract with new small business vendors who are trying to break through into various industries. This will ensure diversity and equity among vendors, especially small business vendors.

VII. DOI must assess the impact that critical habitat designations have on small businesses.

While not directly related to outdoor recreation, Advocacy heard from some stakeholders regarding the impact of critical habitat designations on small businesses. One specific industry that is heavily impacted by habitat designations is rural electric cooperatives. Because electric cooperatives are each a separate entity, when a habitat designation causes a dramatic cost increase for a localized area, cooperatives cannot spread the costs out among other areas as many of the big energy companies can. These cooperatives are often in low-income areas, furthering equity concerns. A recent comment from the National Rural Electric Cooperative Association (NRECA) on the lesser prairie-chicken listing stated that 85 percent of the counties in the lesser prairie-chicken's range had a higher percentage of low-income residents than the general US population. NRECA also noted that mitigation costs resulting from the listing could potentially double or triple the cost of constructing transmission lines to provide people with power. In this example, NRECA estimated approximately 8 million dollars in mitigation costs for a 15-mile transmission line.²⁸ These designations also create significant economic concerns for the consumers who live in low-income areas and who bear the costs of these regulations directly.

Advocacy strongly urges DOI to consider the impacts of critical habitat designations on regulated entities, to conduct proper and thorough RFA analyses of these designations as required by statute, and to exclude areas that based on the science are not conducive to species conservation. In many instances regulated entities are already participating in voluntary conservation efforts. DOI should work with these entities ahead of critical habitat designations to see if voluntary conservation efforts are alone sufficient, and to help strike a balance between small business and conservation interests

Conclusions and Recommendations

Advocacy encourages DOI to make equity concerns for small business, small governmental jurisdictions, and small organizations a permanent consideration in the rulemaking process, and to consider these recommendations as a starting point. If you have any questions or require additional information, please contact me or Assistant Chief Counsel Prianka Sharma at prianka.sharma@sba.gov.

²⁸ Nat'l Rural Electric Coop. Assoc., *Comment on Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status with Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment* (September 1, 2021), <https://www.regulations.gov/comment/FWS-R2-ES-2021-0015-0230>.

Sincerely,

/s/

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