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COMMITTEE ON AGRICULTURE

COMMITTEE ON SMALL BUSINESS

Congress of the United States
House of Representatives
Washington, DC 20515-2301

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June 22, 2021

The Honorable Isabel Casillas Guzman
Administrator
Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Dear Administrator Guzman:

Under clause 1(q) of Rule 10 of the Rules of the United States House of Representatives, the Committee on Small Business has legislative jurisdiction over the United States Small Business Administration (SBA) and the programs it operates under the authorizations provided in the Small Business Act[1] and the Small Business Investment Act,[2] including financial aid, regulatory flexibility, paperwork reduction, and the participation of small businesses in federal government procurement and federal government contracts. The Committee also has continuing jurisdiction to study and investigate the problems of all types of small businesses.

On January 20, 2021, President Biden signed Executive Order 13985, titled "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."[3] Although this Executive Order claims a noble purpose and purports to mandate equity in federal government decisions, its effect may be just the opposite – in fact mandating legal preferences for certain classes of individuals and essentially instituting reverse discrimination.

The Order states that equal opportunity is the bedrock of American democracy, defines equity as "the consistent and systematic, fair, just and impartial treatment of all individuals,"[4] and "the Federal Government's goal in advancing equity is to provide everyone with the opportunity to reach their full potential."[5]

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[1] 15 U.S.C. § 631 et seq. (1953).
[2] 15 U.S.C. § 661 et seq. (1958).
[3] Executive Order No. 13,985, *available at* https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.
[4] *Id.* at 2.
[5] *Id.* at 1.

In addition, the Order charges each federal government agency with assessing "whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for all, including individuals who belong to underserved communities that have been denied such treatment…" [6]

However, Section 5 of the Order requires the head of each agency to, in consultation with the Director of the Office of Management and Budget, "select certain of the agency's programs and policies for a review that will assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs," and provide a report to the Assistant to the President for Domestic Policy and determine "whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs."[7]

In your testimony before the House Committee on Small Business on May 26, 2021, you said, "[w]e must eliminate the historic barriers that have left too many entrepreneurs behind…"[8] You specifically cited the Small Business Administration's Restaurant Revitalization Fund, in which the program's" first 21 days were reserved for the priority applications of women, veterans, and socially and economically disadvantaged individuals, and all other applicants were barred from consideration until the funds were exhausted. As you know, the class prioritization of certain indivi duals in Small Business Administration programs has been challenged in several federal lawsuits.[9]

Although we disagree with its premise, the Small Business Administration's (SBA) Restaurant Revitalization Fund prioritization was created by the Democrat majorities of the House and Senate and enacted by statute through a partisan budget reconciliation process and not through an Executive Order. We would remind you that under Article I of the Constitution, Congress holds the power to legislate,[10] and your Oath of Office requires you to vow to support and defend the Constitution and the 14th Amendment equal protection clause.[11]

The SBA's programs are absolutely vital to entrepreneurs, and must be open to all entrepreneurs without separating applicants into preferred categories, special classifications, and prioritized groups. These programs can mean a small business's success or failure, and should not hold places for some with certain racial, social, or economic qualities but not others.

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[6] *Id.* at 2.
[7] *Id.* at 3.
[8] *An Examination of COVID-19 Programs: Hearing Before H. Comm. On Small Bus.*, 117th Cong. 6 (2021) (statement of The Honorable Isabel Guzman, Administrator, U.S. Small Business Administration), *available at* https://smallbusiness.house.gov/uploadedfiles/05-26-21_hon._guzman_testimony.pdf.
[9] *See Greer's Ranch Café et al. v. Guzman,* Case No. 4:21-cv-00651-O (N.D. Tx. 2021), *available at* https://assets.documentcloud.org/documents/20773795/order-granting-tro-against-biden-administration.pdf, *Vitolo et al. v. Guzman*, 2021 Case No. 21-5517/5528 (6th Cir.), *available at* https://www.opn.ca6.uscourts.gov/opinions.pdf/21a0120p-06.pdf.
[10] U.S. Const. amend. XIV.
[11] 15 U.S.C. § 3331, *available at* https://www.govinfo.gov/content/pkg/USCODE-2013-title5/pdf/USCODE-2013-title5-partIII-subpartB-chap33-subchapII-sec3331.pdf.

Accordingly, I request that you provide to my office, 1433 Longworth Building, Washington, DC, by June 25, 2021:

1. A full accounting of any and all changes currently being contemplated, under consideration or have been made since January 20, 2021 to Small Business Administration programs, policies, Standard Operating Procedures, and guidance pursuant to Executive Order 13985;

2. Any and all memoranda, white papers, emails, notes, or other internal SBA documents discussing possible changes to all Small Business Administration programs, policies, Standard Operating Procedures, and guidance pursuant to Executive Order 13985;

3. A full accounting of any meetings with the Office of Management and Budget and/or Office of Information and Regulatory Affairs to discuss possible changes to Small Business Administration programs, policies, Standard Operating Procedures, and/or guidance pursuant to Executive Order 13985;

4. Any and all Executive Office of the President documents, including those by the White House Domestic Policy Council, Office of White House Counsel, Office of Management and Budget, Office of Information and Regulatory Affairs, and Office of the Vice President, that describe possible changes to Small Business Administration programs, policies, Standard Operating Procedures, and guidance pursuant to Executive Order 13985;

5. Any and all Office of Management and Budget and Office of Information and Regulatory Affairs documents, including white papers, memoranda, reports, or budgets that describe possible changes to Small Business Administration programs, policies, Standard Operating Procedures, and guidance pursuant to Executive Order 13985; and

6. Any and all other Executive Branch documents that describe possible changes to Small Business Administration programs, policies, Standard Operating Procedures, and guidance pursuant to Executive Order 13985.

True equality is achieved with equal treatment for all, not by prioritizing certain groups or classes of individuals. The United States Supreme Court has said "at the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of racial, religious, sexual or national class."[12] Its original intention was the protection of African-Americans from discrimination, but the 14th Amendment has been read more broadly to include other types of discrimination, including gender.

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[12] *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 602 (1990) (O'CONNOR, J., dissenting) (quoting *Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 1083 (1983)); cf. *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656, 666 (1993) (the injury in fact was a denial of equal treatment and not inability to obtain a benefit).

As small businesses begin to emerge from the struggles of the COVID-19 pandemic, they must be assured of equal eligibility for Small Business Administration programs and not exclusion due to the prioritization of some individuals. As Chief Justice Roberts has notably written, "[T]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[13] I hope you share this goal.

We look forward to your timely response.

Sincerely,

Jim Hagedorn
Ranking Member
Subcommittee on Underserved, Agricultural,
and Rural Business Development

[13] *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality opinion).