



September 20, 2023

Samantha Towery  
National Park Service  
CUA Program Manager  
303-880-0962

**RE: Coalition for Outdoor Access Comments on National Park Service Online Commercial Use Authorization Application and Reporting System**

Ms. Towery:

The Coalition for Outdoor Access (COA) welcomes this opportunity to submit comments on the National Park Service (NPS) Online Commercial Use Authorization Application and Reporting System noticed on the National Park Service Planning, Environment, and Public Comment website on July 26, 2023.

**1. About the Coalition for Outdoor Access**

The Coalition for Outdoor Access (COA) is an alliance of organizations with a shared interest in improving the recreational permitting systems of the Federal land and water management agencies. COA was founded in 2014 to advocate for system changes that would enable outdoor leaders to provide more opportunities to the public to recreate on Federal public lands. COA's Steering Committee consists of a cross-section of the community of individuals and organizations that provide guided and facilitated recreation and educational services to the public. The services provided by our organizations and other organizations like us make it possible for people to experience public lands in a safe and enjoyable way. The organizations currently represented on the COA Steering Committee are:

- [American Mountain Guides Association](#)
- [Association of Outdoor Recreation and Education](#)
- [National Outdoor Leadership School](#)
- [The Wilderness Society](#)
- [Angler's Covey](#)
- [The Mountaineers](#)
- [REI Coop](#)
- [YMCA of Greater Seattle](#)

Because COA has a representative membership of outdoor leaders working in the recreation space, we are uniquely positioned to comment on this proposal. We can offer insights and

perspectives on the proposal from organizations and businesses that provide a wide range of recreation services.

## **2. General Comments**

COA congratulates NPS on the rollout of the new online application and reporting system for prospective and current CUA holders. This new system will make acquiring and managing an NPS CUA easier and more efficient. We are particularly pleased to see that the system includes functionality for identifying where CUA opportunities exist. By making this information available in a centralized online location, NPS is will make access to NPS recreation opportunities more visible and equitable. We commend the Park Service for including this feature in the system.

## **3. Standardized CUA Application Fee**

COA supports NPS's plan to standardize the application fee for CUAs with the rollout of this system. This will address ongoing concerns about unpredictable CUA application fees that vary significantly from park unit to park unit.

While we support the standardized fee, we think setting the fee at \$350 will create a significant barrier to access for some users. Small outfitters that serve historically excluded communities will be particularly hard hit, since paying the application fee is no guarantee that an applicant will receive a permit.

COA concurs with the recommendation made by COA member the American Mountain Guides Association (AMGA). In its comments, AMGA acknowledges, as we do, that NPS is subject to a statutory requirement to recover all costs associated with the administration of the CUA program. To ensure that NPS is able to satisfy this requirement without creating a barrier to access, we recommend that NPS set the application fee at \$250 and recover a higher proportion of the cost through the management fee. This approach will ensure the burden of cost recovery is carried primarily by those who have an opportunity to generate revenue through a CUA.

## **4. Acknowledgement of 54 U.S.C. § 101925(d)**

Section 101925 of title 54 of the U.S. Code governs commercial use authorizations. Subsection (d) of section 101925 reads as follows:

(d) Nonprofit Institutions.—

Nonprofit institutions are not required to obtain commercial use authorizations unless taxable income is derived by the institution from the authorized use.

We have observed that NPS field staff often ignore this provision of law and require nonprofit organizations to obtain CUAs even when they will derive no taxable income from the activity covered by the authorization. In locations where no additional CUAs are available, this means that nonprofits have no way of securing access.

The rollout of the online CUA system represents an opportunity for the agency to come back into compliance with the limitations set forth in section 101925(d). To do so, NPS should incorporate a prominent notification into the online CUA system that will notify nonprofit entities that they are not required to obtain CUAs when no taxable income is derived from the activity for which they plan to use National Park Service lands.

NPS should also provide more comprehensive training to NPS personnel that ensures that field staff are aware of this limitation in the Concessions Management Improvement Act of 1998. This is vitally important, since there appears to be a widespread lack of understanding of what this section means and how it works.

In particular, in training its personnel, NPS should educate field staff on how the tax law aspects of section 101925(d) apply to nonprofit organizations providing outdoor recreation and education programs. Nearly all of these organizations have been recognized as tax-exempt organizations because their primary function is to provide educational services to the public. Education is a recognized tax-exempt function under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

In the overwhelming majority of situations, nonprofit organizations that provide outdoor experiences on public lands do so as part of this educational “exempt function.” Income received by a nonprofit organization in the course of carrying out its exempt function is not considered taxable income by the IRS. As such, the income these organizations receive from providing these services in the form of fees and tuition is not taxable income. This is true for nonprofit experiential education programs, university outdoor programs and organizations like the YMCA. It is rare for the income received by these entities from providing this core function to be treated as taxable income by the IRS. The National Park Service has a legal obligation to recognize this fundamental fact in its administration of 54 U.S.C. § 101925.

Furthermore, because the overwhelming majority of nonprofit organizations receive no taxable income from providing outdoor experiences on public lands, NPS should not place a significant burden of proof on nonprofit outdoor leaders. Instead, NPS should accept a signed declaration accompanied by a copy of the nonprofit’s IRS determination letter as proof that that the nonprofit applicant receives no taxable income from the covered activity. No additional proof should be required.

We recognize the Park Service’s need to manage the guided recreational activities of nonprofit organizations. We recommend that the Service make use of Special Park Use Permits to manage this use. We also urge the Park Service to recognize that nonprofit organizations may choose to waive their rights under 54 U.S.C. § 101925(d) and seek an NPS CUA in order to obtain a multiyear use authorization. This option should remain open to the nonprofit community.

## 5. Conclusion

The Coalition for Outdoor Access thanks the National Park Service for the opportunity to comment on the proposed online application system.

Sincerely,

Matt Wade  
Executive Director  
[American Mountain Guides Association](#)

David Leinweber  
Owner/President  
[Angler's Covey Inc.](#)

Jeannette K. Stawski  
Executive Director  
[Association of Outdoor Recreation and Education](#)

Liz Tuohy  
Acting Director of NOLS Expeditions  
[National Outdoor Leadership School](#)

Betsy Robblee  
Conservation and Advocacy Director  
[The Mountaineers](#)

Jeremy Oyen  
Senior Manager, REI Experiences  
[REI Coop](#)

Paul Sanford  
Director of Policy Analysis  
[The Wilderness Society](#)

Courtney Aber  
National BOLD & GOLD Director  
[YMCA of Greater Seattle](#)