



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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CA-23-05, Uninterrupted Service Delivery Provisions in Federal Financial Assistance Awards and Subawards.

Controller Alerts are designed to highlight emerging financial management issues that may require agency attention or action. These Alerts are intended to inform the Chief Financial Officer (CFO) community of key issues where the Office of Management and Budget (OMB) believes further action may be warranted, but do not constitute official guidance or prescribe specific tasks for agencies beyond consideration of appropriate steps to address the issue.

The purpose of this Controller Alert is to inform agencies of the importance of properly communicating to eligible applicants and recipients of Federal financial assistance awards that 2 CFR § 200.319(b) does not prohibit including provisions in Federal financial assistance awards and subawards assuring that federally funded services not be subject to disruption due to labor disputes (known as “uninterrupted service delivery requirements”). Agencies should consider updating their FAQs and Notice of Funding Opportunities (NOFOs) to ensure this information is appropriately communicated to applicants, recipients, and subrecipients.

OMB has heard both from the public and from Federal agencies that there is confusion as to whether recipients are prohibited by 2 CFR Part 200 (the Uniform Guidance) from imposing “uninterrupted service delivery” requirements on subrecipients. 2 CFR § 200.319(b)(1) provides that contracts should not have “unreasonable requirements” such as those that are specifically included to restrict competition. Specifically, some state and local government executives and procurement officers have expressed concern that requirements that subrecipients ensure that services funded by Federal financial assistance awards *not* be interrupted by labor disputes could be found in violation of the Uniform Guidance because of the subjectivity of the term “unreasonable” in 2 CFR § 200.319(b)(1).

Labor disputes can threaten the efficient and timely completion of construction projects undertaken by the Federal Government and also by other projects supported by Federal financial assistance. Therefore, with respect to 2 CFR § 200.319(b)(1), it is reasonable for a recipient or subrecipient, acting in accordance with its own sound business judgment, to include uninterrupted service delivery requirements in its contracts under Federal financial assistance awards, as necessary, and when otherwise consistent with Federal law. However, it is unlikely to be the case that every award or subaward under a Federal financial assistance award requires the contractor to ensure uninterrupted operation. This is a case-by-case determination based on the particular project or services in question.

Therefore, Federal awarding agencies should make clear that the Uniform Guidance does not prohibit recipients from including uninterrupted service delivery requirements, when,

in their sound business judgment, the requirements will contribute to the economy and efficiency of the project and when otherwise consistent with Federal law applicable to the program. Further, Federal awarding agencies should clarify that they will generally defer to the recipient's judgment under the Uniform Guidance concerning the appropriateness of any uninterrupted service delivery requirement.

To the extent practicable and permitted under the program's statutory authority, agencies are encouraged to include in their NOFOs and FAQs information clarifying that uninterrupted service delivery provisions are not prohibited under the Uniform Guidance.

Please direct them questions regarding this Controller Alert to
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/s/

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