



December 4, 2023

Honorable Steven Mackey, Policy Analyst
OMB Office of Federal Financial Management
Office of Management and Budget
Executive Office of the President
725 17th St., NW
Washington, DC 20503

Re: Office of Management and Budget.
Executive Office of the President.
[Docket Number 2023-21078]
Proposed revisions to Title 2 of the Code of Federal Regulation (CFR), subtitle A,
chapters I and II.
Proposed rule; notification of proposed guidance.

Local Progress and the Local Progress Impact Lab,¹ along with thirty-seven members of our national network of local elected officials, are pleased to submit comments on OMB's proposed revisions to Title 2 of the Code of Federal Regulations (CFR), Subtitle A, Chapters I and II.

Nationwide, local government leaders have been at the forefront of innovating inclusive economic policy, creating models which have been replicated by other local governments as well as at the state, and federal level. Local elected officials in the Local Progress network ("Local Progress members") led the introduction, passage, and implementation of the first mandatory local hire ordinances, which support job opportunities by requiring that a minimum percentage of work hours created by a development project be set aside for job seekers from low-income communities within the city or county, especially low-income communities of color. These policies provide good jobs to local residents in communities that often experience barriers to employment.²

It is within this context that we—Local Progress and the Local Progress Impact Lab, and its undersigned members—are excited to see the recent Notice of Proposed Rulemaking from the Office of Management and Budget (OMB) which proposes updates to certain provisions in Title 2 of the Code of Federal Regulations (CFR), Subtitle A, Chapters I and II.

¹ Local Progress is a movement of more than 1,400 local elected officials representing over 600 jurisdictions in 48 states committed to racial and economic justice. The network includes local leaders at all positions of local governance—mayors, district attorneys, county commissioners, city councilmembers, and school board members—representing major cities, growing suburbs, and rural communities. The Local Progress Impact Lab is a tax-exempt, 501(c)(3) organization, which brings together local leaders, partners, and experts to build the knowledge, skills, and leadership needed to advance racial and economic justice at the local level.

² "[San Francisco Mandates Local Hiring For City Construction Projects](#)", CBS News San Francisco, December 7, 2010
Cornejo, Jackie, Miya Saika Chen, and Tulsi Patel. 2018. *Invest, Democratize, Organize: Lessons on Building More Equitable Cities from Nashville to Raleigh-Durham*. Partnership for Working Families, July 2018.

We are supportive of the Biden Administration’s decision to make substantial updates to the OMB’s Uniform Guidance provisions. We are particularly pleased to see updates made to certain provisions that provide clarity to recipients of federal assistance³ on how they may be permitted to use a scoring mechanism to create quality jobs for their communities, promote greater racial and gender equity in their spending, and protect workers through workforce transition plans.

1. Overview

The Uniform Guidance controls hundreds of billions of dollars in federal grant spending annually. Section 200.319 of the Uniform Guidance states that all federally-assisted procurement transactions “must be conducted in a manner providing full and open competition.” Misguided and ideologically driven conceptions of “full and open competition” have promoted the myth that contract specifications unrelated to price will limit the number of bidders on any project, thereby reducing efficiency and raising prices. Consequently, recipients of federal financial assistance, from cities to states to tribal governments, have been forced to drastically limit the application of innovative policies incentivizing racial equity, local sourcing, environmental sustainability, community involvement and good jobs in federally-assisted contracting.

The updated Uniform Guidance from the OMB to Section 200.318(l), which removes the ban on local hire, will help promote uniformity among the federal awarding agencies and avoid confusion among recipients of assistance. By permitting geographic preference in targeted hiring preferences, OMB’s Uniform Guidance is in line with Department of Transportation’s policy on local hire. This type of uniformity across the federal awarding agencies removes the administrative burden for local agencies to institute these policies in non-federal funding opportunities, and allows them to dedicate more agency resources towards mission work. This clarity is more important now than ever before. The IIJA, CHIPS and Science Act, and IRA collectively will fund hundreds of billions of dollars’ worth of construction activities through various agencies including the DOT, Department of Commerce, Department of Energy, Environmental Protection Agency, Department of the Interior, and others. Recipients of assistance under such programs can operate under this uniform framework.

2. Updated Guidance

Local Progress is supportive of the OMB’s decision to update Chapter II, Part 200, titled “Uniform Guidance, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (Uniform Guidance) to provide greater clarity to recipients of federal assistance on how they may be permitted to use federal assistance to create quality jobs for their communities, promote greater racial and gender equity in their spending, and protect workers through workforce transition plans. Local Progress is very pleased to see the following specific changes to the proposed rule::

- Section 200.318(l) permits the use of uninterrupted delivery of service provisions in subcontracts. This provision makes clear that states and localities can require potential

³ In this letter, the term “recipient” or “recipient of assistance” refers to “recipients” and “subrecipients” as defined in 2 C.F.R. 200.1.

subcontractors to agree to a labor peace agreement to ensure the protection of the government's investment and full efficiency in project execution.

- Section 200.318(c) removes the ban on geographic preference and permits recipients to give preference to local minority-owned and women-owned businesses (MWBES) during the bidding process. This provision enables contracting agencies to use local sourcing and targeted hiring goals to help reinvest in the local economy and marginalized communities.
- Section 200.319(c) removes the prohibition in the Uniform Guidance on using geographic preference requirements. Prior guidance has been interpreted as a ban on local hire goals and policies. Local hire policies, in which government funds are used to hire local workers on construction projects, can help marginalized communities address historic inequities by providing access to quality careers in construction. Local hire policies are not anti-competitive and the updated regulation will promote consistency among federal awarding agencies. Such policies also help build a middle-class tax base and revitalize local economies.⁴ One report that examined nine case-study projects concluded that local hire provisions, when properly implemented, can create significant new job opportunities for low-income local residents.⁵ This section also permits non-federal agencies to contract with small locally owned businesses, further reinvesting in the local economy. Local Progress members have championed, implemented, enforced and expanded local hire ordinance directing billions of dollars to marginalized communities and workers, and are eager to expand the impact of these policies.

Local Progress supports these proposed recommendations, and urges OMB to ensure these recommendations are included in the final rule.

3. Local Hire Ordinances Deliver Inclusive Economic Benefits

Local governments have led the way in enacting programs which use geographic and targeted hire requirements, which can have expanded inclusive economic impact under the proposed rule.

In San Francisco in 2010, Supervisor John Avalos, a founding Local Progress member, together with a community-labor coalition, passed one of the first mandatory local hire requirements for city-funded construction projects and private construction on public land.⁶ San Francisco's model program requires 30% of work hours to be performed by local residents and 50% of apprentice hours to be performed by local apprentices, includes goals for disadvantaged workers, provides financial penalties for non-compliance, and partners with union hiring halls to source local workers. In its first year, the program increased local hiring from 24% to 34% of work on covered projects, and has brought hundreds of millions of dollars into the hands of local workers over the last decade.⁷ The program has succeeded by building out a local jobs pipeline with participation

⁴ UCLA Labor Center, *Exploring Targeted Hire: An Assessment of Best Practices in the Construction Industry*, at 15 (Mar. 2014); see also Kathleen Mulligan-Hansel, *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*, Powerswitch Action (formerly Partnership for Working Families), at 4 (July 2008); Seattle Finance & Administrative Services, *2020 Priority Hire Annual Report: Purchasing and Contracting*, (May 2021).

⁵ Mulligan-Hansel, *supra* note 14, at 17.

⁶ San Francisco Administrative Code, Chapter 82, "Local Hiring for Construction"

⁷ "The Failure of Good Faith", Chinese for Affirmative Action and Brightline Defense, August 2010.

"San Francisco Local Hiring for Construction, 2011-2012 Annual Report", San Francisco Office of Economic and Workforce Development.

from community-based organizations, contractors, government agencies, community colleges, building trades unions and registered apprenticeship programs, and bringing contractors into compliance with robust data collection, reporting, monitoring and graduated enforcement penalties.

“Many said it couldn’t be done, but our coalition of community, faith-based, and labor organizations overcame legal and political obstacles to pass and implement a robust local hire program which has transformed the lives of thousands of young people of color, their communities, their families and their neighborhoods.” - John Avalos, Former San Francisco Supervisor and champion of Local Hire.

Since 2010, many municipalities across the country—such as Los Angeles, Washington D.C, Baltimore, Newark, Seattle, San Jose, Denver, Atlanta, Pittsburgh, Portland, Milwaukee, Detroit—have passed and expanded local hire policies. Robust local programs have improved their approach and are ready to be applied to a larger number of projects which receive federal funding. Indeed, because of the federal preemption of local hire in connection with federal funding, local governments must carefully limit local hire implementation to only locally- or state-funded projects, thereby adding to the administrative burdens borne by local governments.

“My grandfather found work building the Inner Harbor, our key infrastructure of the previous generation, which gave economic stability to my family. Baltimore residents see our aging infrastructure and want the opportunity to work on new projects, and ensure that our public spending benefits our local community.” - Kristerfer Burnett, Baltimore City Council

Lifting federal preemption of local hire can also help to offset the negative impacts of state preemption of local hire policies. In 2015, Nashville voters approved, by a 58% to 42% margin, a local ballot initiative backed by local community and labor organizations that required that for municipally funded construction projects that cost \$100,000 or more, 40% of construction work hours must go to Nashville residents, with 25% of those work hours (or 10% of the overall work hours) going to low-income Nashville residents.⁸ Just weeks after the city passed the ordinance, the Tennessee legislature introduced and passed a bill to override it. With the governor’s signature, it became the first state prohibition on municipal-level local hire laws in the country.

Taken together, these updates will substantially increase the ability of state and local agencies to use their procurement processes to create fulfilling, safe, high-road jobs for workers in their communities - especially for people of color, women, returning citizens, veterans, and other workers facing barriers to employment. We believe that these policy changes provide clarity for the communities we serve, promote uniformity among federal awarding agencies, reduce the administrative burden for recipients of assistance, and allow the Biden Administration to achieve its policy priorities of improving equity through the federal government.

Sincerely,

⁸ Hunter Blair, David Cooper, Julia Wolfe, and Jaime Worker, Economic Policy Institute, *Preempting Progress: State interference in local policymaking prevents people of color, women, and low-income workers from making ends meet in the South* (Sept. 30, 2020), available at <https://www.epi.org/publication/preemption-in-the-south/>.

Local Progress and Local Progress Impact Lab

Kristerfer Burnett, City Councilmember, Baltimore MD

John Avalos, Former City Supervisor, San Francisco, CA

Alex Knopp, Former Mayor, Norwalk, Connecticut

Beau Harbin, County Legislator and Minority Leader, Cortland County, NY

Dr. Veronica D. Pillar, Legislator, Tompkins County, NY

Seema Singh, Council member, City of Knoxville, TN

Cynthia Wirth, School Board Director NASD, Norristown, PA

Arnetta Murray, Councilmember, City of Iowa Colony, TX

Sam Fein, County Legislator, Albany County, NY

Nancy Metayer Bowen, Commissioner, Coral Springs, FL

Barbara A Mallett, Mayor, East Spence, NC

Stephanie Howse Jones, Councilwoman, Cleveland City Council

Rachel James, City Councilmember, City of Columbia Heights, MN

Cleo King, City Councilman, Bessemer, AL

Blake Tierney, Commissioner, City of Little Rock, AR

Valarie Bachelor, School Board Director, Oakland CA

John I. Clark, Mayor, Town of Ridgway, CO

Chuy Zárate, Trustee Place 1, Round Rock ISD, City of Austin and Round Rock, TX

Lisa Herbold, Councilmember, City of Seattle

Chris Canales, Councilmember, City of El Paso, TX

Sue Budd, City Councilmember, City of St Louis Park, MN

Peter Ceglarek, Trustee, Ferndale Public Schools

Soli Alpert, Vice Chair, Berkeley Rent Board, Berkeley, CA

Khem Irby, School Board Member, Greensboro, NC

Emily Figdor, School Board Member, City of Portland, ME

Justice Spriggs, Councilmember, City of Columbia Heights, MN

Jessie Fuentes, Alderperson, City of Chicago, IL

Canek Aguirre, Councilman, City of Alexandria, Virginia

John I. Clark, Mayor, Town of Ridgway, CO

Sabrina Javellana, Former Commissioner, City of Hallandale Beach, FL

Sarah Moore, Councilmember, City of Fayetteville AR

Jonathan Guzman, Vice-Chair of Lawrence School Committee, City of Lawrence, MA

Lisa D. Clancy, Councilmember, St. Louis County, MO

Clark Gilman, Mayor Pro Tem, City of Olympia, WA

Dillon Mader, County Board Supervisor, County of La Crosse, WI

Kayla Matos, Councilmember, City of Ithaca, NY

JoBeth Hamon, City Councilor, City of Oklahoma City, OK