

MEMORANDUM OF UNDERSTANDING

Between
U.S. Department of Housing and Urban Development
and
National Federation of Federal Employees-IAM, Locals 1450, 1804 and 259 (“Locals”)

Subject: Implementation of Executive Order 14043 and HUD’s Safe Return to Workplace Plan.

Scope: This Memorandum of Understanding “MOU”) is the agreement between the Locals and the respective management representatives acting for and on behalf of the U.S. Department of Housing and Urban Development for the regions covered by Locals 1450 (Region IX), 1804 (Detroit) and 259 (Memphis) effectuating HUD’s Safe Return to Workplace Plan which includes the vaccination requirement imposed by Executive Order 14043 (“EO”). This MOU sets forth the rights and obligations of bargaining unit employees for reentry and post-reentry pursuant to M-21-25, Memorandum for the Heads of Executive Departments and Agencies, issued June 10, 2021, as may be revised and CPM 2021-17, Additional Guidance on Post-Reentry Personnel Policies and Work Environment, issued July 23, 2021. The provisions agreed upon in this MOU relating to the implementation and enforcement of the vaccine mandate are not in effect and will not be in effect, applied, or enforced until such time (and assuming) the preliminary injunction against the vaccine mandate imposed by the court in *Feds for Medical Freedom, et al., v. Joseph R. Biden, Jr., et al.* is lifted.

This MOU will remain in effect during the President’s national emergency declaration of the COVID-19 pandemic. The parties may mutually agree to terminate this MOU. If the Agency proposes to change the office safety protocols in this MOU, Management shall provide the Union notice and the opportunity to bargain changes that trigger a duty to bargain in accordance with the locals’ CBA.

Covid-19 (SARS-CoV-2), the WHO designation for the virus causing the coronavirus pandemic, is highly contagious and transmitted by inhalation of the virus, deposition of the virus on exposed mucous membranes, and touching mucous membranes with soiled hands contaminated with virus. The principal goals of this MOU are to prevent Covid-19 infections among employees and their families while fostering a physical work environment conducive to achieving HUD’s mission.

HUD and the Locals acknowledge that Covid-19 infections are preventable.

This MOU sets forth the rights and obligations of the bargaining unit employees covered by this MOU and HUD.

1. Management will communicate in good faith with NFFE regarding the vaccination requirements in Executive Order 14043. Pursuant to the respective collective bargaining agreements of the Locals, the Locals may demand to bargain all matters which are negotiable and not covered by agreement.

2. HUD shall provide the Locals and employees with at least thirty (30) days notice before changing the operating status for bargaining unit employees (five days per week of telework) to any lesser number of days. Nothing in this agreement shall limit the Local's bargaining rights as prescribed by the Labor Management Statute, EO 14003 until rescinded or revoked, and case law for matters not otherwise covered by this MOU.
3. The Parties agree to adopt what CDC currently (November 3, 2021) considers "fully vaccinated", as may be amended. Employees shall have the option to choose the type of COVID-19 vaccine that is FDA approved or authorized for emergency use to meet the vaccination requirement.
4. Employees shall have until November 22, 2021 to complete their full COVID-19 vaccination process. To meet the November 22nd deadline, federal employees must receive the last dose of their vaccine no later than November 8, 2021, except in limited circumstances where an exception is legally required in accordance with the Safer Federal Workforce Task Force guidance. The vaccination mandate has been held in abeyance pending the conclusion of litigation, referenced above. If the vaccination mandate is reimposed, employees shall comply with any requirements imposed by OMB or the President to be fully vaccinated.
5. Employees may request an exception from COVID-19 vaccinations for medical or religious reasons. Employees will request the exception by completing the required religious or medical exception template and submitting an email to reasonableaccommodationbranch@hud.gov, religiousexceptioncovidvaccine@hud.gov or other process as mutually agreed by the parties or as permitted by law or regulation. If the exception request is denied, HUD shall provide the reasons for the denial and the affected employee may proceed to appeal the denial pursuant to any processes of the respective collective bargaining agreements or other legal processes.
6. An employee who submits an exception request shall have their mandatory vaccination requirement and any associated discipline related to the vaccine mandate held in abeyance pending the issuance of HUD's final written decision regarding the exception request, as will be provided in the HUD reconsideration decision.
7. If an employee is unsuccessful in obtaining an exception, the employee shall receive the first dose within 2 weeks after the date a final written decision has been issued by HUD, pursuant to paragraph 6, and shall receive the 2nd dose, if applicable, within 6 weeks of the first dose. Once the employee is fully vaccinated in accordance with CDC guidelines, the employee shall be in compliance with EO 14043.
8. An employee's EPPES rating shall not be adversely impacted as it relates to the vaccination requirement while a vaccination exception request is pending.
9. HUD shall provide the Locals with a report, in January 2022, or when the data becomes available, and thereafter only when the data changes, when available, on the number of bargaining unit employees requesting exceptions; the number of medical and religious

exceptions for bargaining unit employees; the number of approved and denied requests for bargaining unit employees; and, the number of reconsiderations for bargaining unit employees.

10. Supervisors and managers are reminded that the Locals' respective collective bargaining agreements, e.g. NFFE 1450 LMA Article 14.03, allow awards for special acts of service that may include creating a safer workplace under the criteria for an award. NFFE 1450's LMA states that this type of award may be given to an individual or to a group of individuals.
11. An employee may elect to leave federal service because of the mandatory vaccination requirement prior to a proposed removal, and in such circumstances shall be considered to have separated for non-disciplinary reasons.
12. Employees who are not fully vaccinated per EO 14043 shall have access to all federal employee benefits they would otherwise be entitled to, in accordance with law.
13. Employees who are vaccinated shall demonstrate proof of vaccination. Acceptable forms of proof include the CDC COVID-19 Vaccination Record Card, a clear and legible copy of the record of immunization from a health care provider or pharmacy, a copy of medical records documenting the vaccination, a copy of immunization records from a public health or state immunization information system, or a copy of any other official documentation containing required data points. The data that must be on any official documentation are the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s). Employees must certify under penalty of perjury that the documentation they are submitting is true and correct. If an employee who claims they are fully vaccinated is able to demonstrate to the agency a good faith effort to locate required documentation, HUD may, within its sole discretion, hold any disciplinary action associated with failure to comply with the vaccination requirement in abeyance for a short period of time, pending the employee's submission of documentation providing proof of vaccination. HUD may create a tip sheet to provide guidance for employees who are vaccinated but who have not been provided with documentation acceptable under this paragraph. HUD shall provide an email hotline with designated official(s) to respond to employee questions on acceptable vaccination documentation where the employee has not been able to obtain the described documentation.
14. Employees who experience an adverse medical reaction to the COVID-19 vaccine shall be provided with appropriate leave as outlined in the Safer Federal Workforce Task Force guidance.
15. Nothing shall prevent an employee from filing a workers compensation claim for experiencing an adverse medical reaction to the COVID-19 vaccine, and nothing prevents management from contesting that claim.

16. The agency has a testing requirement for unvaccinated bargaining unit employees based on community levels when they are required to report to a HUD facility, or interact with the public, other employees or stakeholders, and has notified the Union. HUD will pay for diagnostic testing for bargaining unit employees in the case of a COVID exposure in the HUD workplace, as determined by our exposure reporting process, if not covered by the employee's insurance.
17. HUD shall take all necessary measures to ensure the privacy and confidentiality of employees' information including COVID-19 vaccination status as well as all COVID-19 related information. Such information may be disclosed only to the appropriate agency officials who need to know the information to ensure effective implementation of the safety protocols, in compliance with applicable statutes, regulations, relevant federal agency guidance or by consent of the affected employee.
18. Employees shall have the option to choose the type of COVID-19 vaccine that is FDA approved or authorized for emergency use to meet the vaccination requirement.
19. Employees may access www.vaccines.gov/search to find locations administering the vaccine.
20. Employees will receive duty time or appropriate leave to get vaccinated in accordance with the Safer Federal Workforce Task Force guidance.
21. Employees shall be provided with appropriate leave for employees to transport family members to vaccinations as outlined in the Safer Federal Workforce Task Force guidance.
22. HUD shall adhere to the due process protections of the respective locals' collective bargaining agreements in any disciplinary or adverse actions consequent to the implementation of EO 14043.
23. Employees who have had a prior COVID-19 infection are required to be fully vaccinated, as outlined in HUD's Return to Safe Workplace Plan, Health and Safety Standards, pg. 4, and the Safer Federal Workforce Task Force guidance.
24. Management shall investigate and address demonstrated allegations of harassment, discrimination or hostility because of vaccination status or perceived vaccination status. Employees should promptly bring such incidents to management's attention. This does not limit management's right to take action as authorized by EO 14043, its associated guidance, and in accordance with 5 USC 7106.

25. Upon a change in the operating status for bargaining unit employees (five days per week of telework to any lesser number of days), for offices of more than 10 employees, HUD shall provide the Locals with the total number of employees who are vaccinated and unvaccinated in each HUD office that is subject to a NFFE contract, unless release of the numbers of vaccinated or unvaccinated employees would violate the Privacy Act or would result in the identification of individual employees or contractors; this information will include information on contractors if available. Contractors accessing HUD facilities are required to follow the terms and conditions of their contract, which include COVID-19 safety protocols, as directed by the Safer Workplace Task Force and the Parties Return to Office MOU. Furthermore, HUD shall update and keep current the information provided to the Locals until the national emergency as declared by the President terminates under 50 U.S.C. 1622.
26. HUD shall provide the Locals with the status of all suspension and removal personnel actions for NFFE bargaining unit employees related to the mandatory vaccination requirement as they occur.
27. In recognition of the fluid nature of the COVID-19 pandemic, the parties will establish a joint Union/Management Committee to discuss changes to CDC guidance and/or guidance in the Safer Federal Workforce Task Force FAQs (collectively “Guidance”) that substantially impact conditions of employment. The committee will be comprised of up to four (4) representatives of Management and up to four (4) representatives of NFFE. The Union’s participation in this committee shall be regular duty time and not counted against Union official time. Upon request by either party to convene the committee, the parties shall meet as soon as practicable to discuss changes and consider any needed modifications to this Memorandum of Understanding (“MOU”), which shall then be adopted by mutual agreement. Committee discussions shall be limited only to new issues that develop after the execution of this MOU as a result of a substantive change made to the Guidance related to the COVID-19 pandemic.
28. If an employee has provided notice that they are leaving their position no later than the end of PP26 (Saturday, January 1, 2022) and are on leave until the date they depart, management agrees that they will not enforce the vaccine requirement of EO 14042 during this time unless the employee elects to remain with HUD.
29. If the employee’s initial request for a medical exception is denied they will have an opportunity to request reconsideration within 5 business days after issuance of the initial denial.
30. If the employee’s initial request for a religious exception is denied they will have an opportunity to request reconsideration within 5 business days after issuance of the initial denial. HUD will consider only lawful factors in determining whether a requested exception is legally required. The Parties recognize that EEOC guidance defines religion broadly and recognizes beliefs, practices, and observances which may not be

part of an organized religion or with which a manager may be unfamiliar. It also includes religious beliefs that may be new, uncommon, or not part of a formal church or sect, which may be subscribed to by a small number of people. Nevertheless, the Parties realize that personal philosophies, beliefs, or social or political views about vaccines are not a religion, and ways of living, such as veganism, pacifism, or minimalism, similarly do not provide a religious exception basis.

31. The medical or religious reconsiderations shall be conducted by a person or persons who did not materially participate in the original denial of the exception request.
32. The Step 1 hearing official for any grievance filed pursuant to the mandatory vaccination requirement shall be a centralized senior management official who did not issue the original action and/or denial giving rise to the grievance.
33. The Step 2 hearing official for any grievance filed pursuant to the mandatory vaccination requirement shall be a centralized senior management official who did not issue the original action and/or denial giving rise to the grievance.
34. HUD and NFFE are currently engaged in bargaining regarding the reentry, and will resolve bargaining obligations as expeditiously as possible. HUD announced on March 24, 2022 that all employees are required to return to their offices effective April 25, 2022. Bargaining had not yet been completed with NFFE. The Locals reserve all rights of action pursuant to HUD's announcement.
35. Except as may be specifically agreed in this MOU, Flexiplace policy will be reserved for future bargaining as requested by HUD management.
36. The Parties agree that HUD has been "open for business" throughout the duration of the pandemic.
37. HUD and the Locals ("Parties") agree that under non-routine circumstances, employees may be required by management to reenter physical offices in advance of general reentry. A non-routine circumstance requires that an employee be physically present in the office to perform a specific function that may only be accomplished in the physical office.
 1. An employee entering the office under these circumstances must be provided with a CDC recommended or FDA approved facemask (ASTM Level 2 or higher); other safety equipment to help prevent the employee from potential contact with the coronavirus, such as gloves or hand sanitizer, and cleaning supplies; and, be provided with a sanitary work environment in accordance with CDC or local public health guidance.
38. Voluntary reentry by employees is allowed by HUD consequent to a change in status from mandatory telework to maximum telework, with supervisory approval in accordance with the terms of this MOU.

39. HUD shall provide the Locals and employees with at least thirty (30) days notice before changing the operating status for bargaining unit employees from five days per week of telework to any lesser number of days. Nothing in this agreement shall limit the Local's bargaining rights as prescribed by the Labor Management Statute, EO 14003 until rescinded or revoked, M-21-25 and other related guidance; and case law for matters not otherwise covered by this MOU.
40. The Parties agree to adopt and to incorporate by reference HUD Covid-19 Response, Return to Safe Workplace Plan, Headquarters and Field Offices, provided to the Union April 2022 and dated March 2022 ("March 2022 Document" or "Return to HUD Safe Workplace Plan"), which supersedes the May 2021 and October 2021 Document. The Parties agree that this document sets forth the minimum requirements for reentry where not modified and superseded by this MOU. Management will issue notice to the Union and an opportunity to negotiate over changes to the Return to Safe Workplace Plan which trigger a duty to bargain, consistent with the collective bargaining agreements and Chapter 71 of the Labor Management Statute. Conflicts between the HUD documents and this MOU shall be resolved in favor of this MOU.
41. Any changes or modifications to the Return to Safe Workplace Plan, or other similar guidance issued by HUD or the Safer Federal Workforce Taskforce, not covered by this MOU, which trigger a duty to bargain shall be subject to bargaining consistent with the Parties' respective collective bargaining agreements and Chapter 71 upon demand by the Locals.
42. The Locals agree that HUD may immediately institute changes, in response to an adverse change in pandemic conditions, that increase the protection of employees such as reducing occupancy levels of offices; increasing telework; evacuating offices; or, ordering more stringent prevention measures for offices, such as wearing face masks. The parties also recognize that after adverse conditions ease, Management may revert these changes and return to the prior state. There shall be notice to the Locals after implementation of the changes in preventive measures. The Locals preserve the option to demand Impact and Implementation bargaining pursuant to their respective collective bargaining agreements.
43. Once the 30 day notice is issued altering maximum telework status, employees hired after March 20, 2020 and who were allowed to work outside of their local commuting area during the pandemic shall report to the official work site within that 30 days as required by the Locals' collective bargaining agreements and this MOU. Official worksite is defined, under OPM regulations, as the specific location of the employee's position of record where the employee regularly performs his/her duties or an alternative worksite. The employee shall remain on maximum telework status during the 30 day period.
44. Any return of employees to physical workplaces shall be a graduated increase guided by how HUD can most effectively and safely achieve its mission and pursuant to M-21-25.