

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No. 1:21-cv-163-RSB-BKE

**PLAINTIFFS' AMENDED MOTION FOR PRELIMINARY INJUNCTION AND
BRIEF IN SUPPORT**

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INTRODUCTION

This case is not about whether vaccines are good or bad. It is about whether the Biden Administration, which has already admitted it is “not the role of the federal government” to mandate vaccinations,¹ may impose a public health policy on essentially every employee of every federal contractor in the country based on a pretextual appeal to improved efficiency and economy in federal contracting. The President’s intentions could not be clearer. He intends to require vaccination of every American possible—without congressional authorization—under whatever pretense he can find.

For proof, look no further than Executive Order 14042 (and its accompanying guidance), which Plaintiffs challenge here. The Procurement Policy Act permits the President to impose conditions on federal contracts only when they promote economy and efficiency in federal contracting. 40 U.S.C. § 121(a). But this mandate has almost nothing to do with ensuring that federal contracts will be completed in an efficient and economical fashion. Under the Mandate, Plaintiffs’ employees must be vaccinated or terminated—regardless of whether they work on federal contracts—if there is a *chance* they may come in contact with an employee who is working on a federal contract. There are no exceptions for employees who work alone, outdoors, or exclusively remotely, and there is no allowance for even minimal contact without falling within the coercive requirements of the Mandate, even if the employees simply walk past other employees in an outdoor parking lot. Nor does the Contractor Mandate give federal contractor employees the option to regularly test for COVID-19 instead of being vaccinated.

¹ Office of Public Engagement, Transcript, Press Briefing by Press Secretary Jen Psaki (July 23, 2021), <https://bit.ly/303pHZt> (last visited Nov 5, 2021).

Complying with those requirements is onerous enough. But the contractual language is not limited to those conditions. Instead, federal contractors must agree to comply with any *future amendments* to the administrative guidance and CDC COVID-19 safety recommendations, whatever they may be. That means the contractual requirements change whenever the online guidance does. And the Administration amends the guidance constantly—including on September 23, September 30, October 21, November 1, and November 10. Safer Federal Workforce Task Force, What’s New? (last visited Nov. 19, 2021), <https://www.saferfederalworkforce.gov/new/>.

These ongoing changes to the guidance extend even to its most significant aspects, like the deadline for compliance. Originally, the federal government took the position that all federal contractors must be fully vaccinated by December 8, 2021, which meant every unvaccinated employee would have had to obtain their final vaccine dose by November 24, 2021. But on November 4, 2021, after lawsuits challenging the Mandate were filed across the country, the White House issued a press release extending the deadline for full vaccination to January 18, 2022. Office of Public Engagement, Fact Sheet: Biden Administration Announces Details of Two Major Vaccination Policies (Nov. 4, 2021), <https://bit.ly/3C19fpT> (last visited Nov. 5, 2021). The OMB dutifully issued a new determination rubberstamping that change. 86 Fed. Reg 63,418; attached to Declaration of Charles (“Peeler Dec.”), Exhibit 11, at Ex. E. Plaintiffs thus now face a December 7, 2021, deadline for their employees to receive a first dose of the Moderna vaccine. That timeline remains unworkable, especially given the number of covered employees to be vaccinated, the data collection and reporting requirements imposed on federal contractors, and the ambiguities in and ever-changing nature of the guidance.

None of this should be allowed to happen because the Contractor Mandate is unlawful for multiple, independent reasons. The Federal Property and Administrative Services Act, 40 U.S.C. § 121 (the “Procurement Act”), the authority under which the President purported to issue the Mandate, does not grant him the vast authority to mandate vaccinations for all employees of federal contractors and subcontractors. Further, the Administration did not put the Contractor Mandate through the rigors of notice-and-comment before issuance, contrary to the clear requirements of the Office of Federal Procurement Policy Act, as well as the similar requirements applicable to the actions of the Federal Acquisition Regulatory Council (“FAR Council”) and the Office of Management and Budget (“OMB”). In addition to its statutory and regulatory failings, the Contractor Mandate also unconstitutionally violates separation of powers by imposing a nationwide vaccination mandate for federal contractors without any authority grounded in the Constitution or any intelligible guiding principle from Congress.

In short, the President’s purported rationale for this mandate is pure pretext. The Mandate will impose massive, irreparable harm on the State Plaintiffs, which all have instrumentalities and agencies that serve as federal contractors and subcontractors. Plaintiffs receive billions of dollars under federal contracts.² Absent immediate relief from this Court, the Contractor Mandate will put Plaintiffs in an impossible position: they must comply with the Mandate, which may not be possible absent termination of all unvaccinated employees, *or* risk losing billions of dollars in federal funding. And that is just for the Mandate as it exists right now—there is no way to know what (inevitable) amendments may put the state agencies in breach with no advance notice. This Court should

² See, e.g., Declaration of Jason Guilbeault (“AU Dec.”), Exhibit 1, at ¶ 7 (\$17.1 million); Declaration of Michael P. Shannon (“GA Tech Dec.”), Exhibit 2, at ¶ 7 (\$663.8 million); Declaration of Margaret A. Amstutz, PhD (“UGA-1 Dec.”), Exhibit 13, at ¶ 6 (\$56 million); Declaration of Kathleen E. Toomey (“GDPH Dec.”), Exhibit 4, at ¶ 4 (two contracts totaling \$2.9 million); Declaration of James B. Aydelotte (“BVRHS Dec.”), Exhibit 5, at ¶ 12 (\$338,700); Declaration of Torrey E. Lawrence (“UI Dec.”), Exhibit 6, at ¶ 5 (\$22 million); of Matthew K. Wilde (“BSU Dec.”), Exhibit 7, at ¶ 5 (\$25 million); Declaration of Donna Lybecker (“ISU Dec.”), Exhibit 8, at ¶ 5 (\$23 million); Declaration of Finis E. St. John IV (“UAS Dec.”), Exhibit 9, at ¶ 6 (\$663 million for the University of Alabama, the University of Alabama Birmingham, and the University of Alabama Huntsville); Declaration of Nathan Checketts (“UDOH Dec.”), Exhibit 10, at ¶ 5 (\$811,000.00).

recognize this profound executive overreach for what it is and issue a preliminary injunction.³

BACKGROUND AND STATEMENT OF FACTS

A. President Biden establishes the Safer Federal Workforce Task Force

In January 2021, President Biden established the Safer Federal Workforce Task Force (“Task Force”) by executive order. Exec. Order No. 13991, *Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing*, 86 Fed. Reg. 7045 (Jan. 20, 2021) (“EO 13991”). The Task Force’s mission is to “provide ongoing guidance to heads of agencies on the operation of the Federal Government, the safety of its employees, and the continuity of Government functions during the COVID-19 pandemic.” *Id.* The Task Force’s guidance must include “public health best practices as determined by the CDC,” and further guidance on COVID-19 testing, vaccination, transmission, and workplace best practices, among other things. *Id.* The President did not purport to issue EO 13991 or create the Task Force under his Procurement Act Authority, 40 U.S.C. § 121. And at least until September 2021, none of the Task Force’s operations had anything to do with federal contracting.

B. President Biden issues Executive Order 14042

On September 9, 2021, President Biden announced that his patience was “wearing thin” with unvaccinated Americans. Office of Public Engagement, Transcript, Remarks by President Biden on Fighting the COVID-19 Pandemic (Sept. 9, 2021), <https://bit.ly/3wgXRVR>. President Biden generalized that “[m]any of us are frustrated with the nearly 80 million Americans who are still not vaccinated.” *Id.* As a result, President Biden signed Executive Order 14042, *Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors* (“EO 14042” or “Order”). See EO 14042, attached to Peeler Dec. at Ex. A. In that Order, President Biden relied on the Procurement Act to direct federal agencies to implement a mass vaccination requirement for all employees of federal

³ The Contractor Mandate has been challenged in lawsuits across the country. Five such challenges are: *State of Texas v. Biden et al.*, No. 3:21-cv-00309 (S.D. Tx.); *State of Texas v. Nelson et al.*, No. 8:21-cv-02524 (M.D. Fl.); *State of Missouri et al. v. Biden et al.*, no. 4:21-cv-01300 (E.D. Mo.); *Brnovich et al. v. Biden et al.*, No. 2:21-cv-01568 (D. Az.); and *Commonwealth of Kentucky et al. v. Biden et al.*, No. 3:21-cv-00055 (E.D. Ky.).

contractors and subcontractors. *Id.* at 1. EO 14042 gave no factual support for its summary conclusion that the Order as promoted “economy and efficiency in Federal Procurement.” *Id.* According to the President, the implementation of vaccine mandates “will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work for the Federal Government.” *Id.*

President Biden’s implementation plan had several layers. *Id.* First, he directed the Task Force to prescribe COVID-19 guidance for federal contractors. *Id.* Next, he directed the OMB Director to “determine whether the Task Force guidance would “promote economy and efficiency in Federal contracting,” and if so, to publish her determination in the Federal Register. *Id.* This OMB “determination,” however, was a foregone conclusion. Before President Biden turned this “determination” over to the OMB Director, President Biden had already declared “[t]his order promotes economy and efficiency in Federal procurement. . . .” *Id.* President Biden further directed that once the OMB Director rubberstamped the Task Force guidance:

- All executive agencies subject to the Procurement Act must include a clause in their contracts that requires contractors and all subcontractors to comply with all present and *future* guidance issued by the Task Force;
- The FAR Council must amend the FAR to include the same clause; and
- Agencies should ensure that any contracts not governed by the FAR contain the same clause. *Id.*

C. The Task Force issues the mandatory, binding guidance

On September 24, 2021, the Task Force issued *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* (the “First Task Force Guidance”). Peeler Dec. at Ex. B. The First Task Force Guidance has been amended on several occasions—on September 30, October 1, October 21, November 1, and most recently on November 10, 2021 (the updated guidance is specifically referred

to as the “Current Task Force Guidance” and generally referred to as the “Task Force Guidance”). Peeler Dec. at Ex. C; *see also* Safer Federal Workforce Task Force, What’s New? (last visited Nov. 19, 2021), <https://www.saferfederalworkforce.gov/new/> (linking past amendments). Among other things, the Task Force Guidance—which, again, is mandatory for all federal agencies under Executive Order 14042—requires federal contractors and subcontractors to ensure their employees are vaccinated and that “all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace.” *Id.* at 6. Contractual obligations requiring federal contractors to comply with the CDC guidance are effective immediately. To comply with the President’s revised deadline for vaccination, all “covered contractor employees” must receive the final dose of the COVID-19 vaccine by January 4, 2022. *See Supra* Introduction. Thus, to comply with the January 4 deadline, covered employees must obtain their first dose of the Moderna vaccine by December 7, 2021, their first dose of the Pfizer vaccine by December 14, 2021, or the single dose of the Johnson & Johnson vaccine by January 4, 2022. Centers for Disease Control and Prevention, *Different COVID-19 Vaccines*, (Oct. 20, 2020), <https://bit.ly/3wphNWb>.

The scope of the Mandate is staggering. A “covered contractor employee” is “any full-time or part-time employee of a covered contractor” who is working “at a covered contractor workplace.” Peeler Dec., Ex. C at 3. The definition of a “covered contractor workplace” requires employees who do not work on federal contracts to be vaccinated unless a federal contractor “can affirmatively determine that none of its employees on another floor or in separate areas of the building will come into contact with” an employee who works on federal contracts. Peeler Dec., Ex. B at 10, Q11.⁴ Thus,

⁴ *See* Safer Federal Workforce Task Force, FAQs: Federal Contractors (last visited Nov. 18, 2021), <https://www.saferfederalworkforce.gov/faq/contractors/>. The Task Force’s Frequently Asked Questions were previously within the First Task Force Guidance; however, they were removed from the Current Task Force Guidance and are instead located on the Task Force website. The content published in response to each question remains the same.

the mandate “includes employees of covered contractors who are not themselves working on or in connection with a covered contract.” Peeler Dec., Ex. C at 3. Under the current guidance, federal contractors with multiple buildings must affirmatively determine that there will be no interaction between covered contractor employees and non-covered contractor employees—even in common areas like lobbies, elevators, stairwells, and parking garages—or the non-covered employees may also have to be vaccinated.

D. Agency implementation

As the President directed in EO 14042, the OMB Director published a determination in the Federal Register on September 28, 2021, stating, in conclusory fashion, that “compliance by Federal contractors and subcontractors with the COVID-19-workplace safety protocols detailed in that guidance will improve economy and efficiency by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract.” 86 Fed. Reg. 53,691 (Sept. 28, 2021) (the “OMB Determination”); *see* Peeler Dec. at Ex. D. The Director referenced no research or data to support her conclusion and there was no opportunity for the public to comment or submit data.

On September 30, 2021, in response to EO 14042, the First Task Force Guidance, and the First OMB Determination, the FAR Council issued Class Deviation Clause 52.223-99 (“FAR Deviation Clause”) with accompanying guidance. Peeler Dec. at Ex. F. The FAR Deviation Clause commits the contractor to complying “with all guidance, including guidance conveyed through Frequently Asked Questions, *as amended during the performance of this contract*, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.” *Id.* (emphasis added). The FAR Council never published the FAR Deviation Clause in the Federal Register for the purpose of receiving public comment. Several agencies have now implemented the FAR Deviation Clause by issuing

memoranda requiring compliance with the Mandate. *See, e.g.*, Declaration of Jason Guilbeault (“AU Dec”), Exhibit 1, at ¶ 6; Declaration of Jill Tincher (“UGA-1 Dec.”), Exhibit 3, at ¶ 7.

On November 16, 2021, however, the OMB Director issued a revised OMB determination (the “Revised OMB Determination”) purporting to “rescind[] and supersede[] the Director’s prior notice.” 86 Fed. Reg. 63,418 (Nov. 16, 2021); Peeler Dec. at Ex. E. The Revised OMB Determination purports to be effective immediately and provides a limited notice-and-comment period through December 16, 2021 under a purported waiver of the Procurement Policy Act’s ordinary requirements. *Id.* Both EO 14042 and the Task Force Guidance provided that the FAR Council⁵ must conduct a “rulemaking” to amend the FAR⁶ to require federal contractors to comply with the Task Force Guidance. Peeler Dec. at Exs. A, B, and C. The Guidance further recommended that before the FAR rulemaking, agencies should “exercise their authority to deviate from the FAR” to implement their own vaccine mandates. Peeler Dec. at Ex. B. at 12, Q15.

E. Plaintiffs’ roles as federal contractors

Plaintiffs have thousands of contracts and subcontracts with the federal government, meaning thousands of Plaintiffs’ employees are “covered contractor employees” under the Mandate. *See, e.g.*, Declaration of Teresa MacCartney (“Board of Regents Dec.”), Exhibit 12, at ¶ 18; AU Dec. at ¶ 8; GA Tech Dec. at ¶ 7; UGA-1 Dec. at ¶ 4.⁷ Federal contracts comprise significant portions of Plaintiffs’ budgets. For example, Plaintiff Board of Regents (“Board of Regents”) of the University System of Georgia’s (“University System”) impacted research institutions—Augusta University, Georgia Institute of Technology, and the University of Georgia—collectively maintain over 2,000 federal

⁵ The Federal Acquisition Regulatory Council was established to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government, in accordance with Title 41, Chapter 7, Section 421 of the Office of Federal Procurement Policy (“OFPP”) Act.

⁶ The Federal Acquisition Regulation (“FAR”) is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds. *See, e.g.*, <https://bit.ly/3BKz39j>.

⁷ Due to President Biden announcing a new vaccination deadline just yesterday, November 4, 2021, various declarations that were signed prior to November 4 referenced herein refer to the prior deadline of December 8, 2021 instead of the new January 4, 2022 deadline.

agency contracts. Board of Regents Dec. at ¶ 18; *see* AU Dec. at ¶ 8; GA Tech Dec. at ¶ 7; UGA-1 Dec. at ¶ 6. These three institutions generated approximately \$736,968,899.00 in revenue from federal contracts for fiscal year 2021. Board of Regents Dec. at ¶ 19. The University System derives approximately 9% of its annual budget from federal contracts within Augusta University, Georgia Institute of Technology, and the University of Georgia alone. Board of Regents Dec. at ¶¶ 7, 19.

Plaintiffs are attempting to comply with the Contractor Mandate, at great cost to themselves and the taxpayers. For example, the Board of Regents' impacted institutions have begun: (1) tracking employee vaccination statuses; (2) creating a process to review requests for accommodation; (3) identifying impacted employees and locations; (4) expending their financial resources to ensure compliance; and (5) tracking the above data from their subcontractors to ensure that they are likewise complying with the mandate. Board of Regents Dec. at ¶ 21. Despite diligently working to attempt compliance, the impacted institutions are deeply concerned they will be unable to reach full compliance by the January 4, 2022 deadline. Board of Regents Dec. at ¶ 22. Further, while it has encouraged all Board employees to obtain a COVID-19 vaccine, the Board is concerned that all covered institutions may not reach full compliance by the January 4, 2022 deadline. Board of Regents Dec. at ¶ 23. Based on the Board of Regents' understanding of the Contractor Mandate, if its covered contractor employees do not obtain a final dose of a COVID-19 vaccine by January 4, 2022, those employees will have to be removed from working on federal contracts and relocated to a workplace that is not a covered contractor workplace or be terminated. Board of Regents Dec. at ¶ 24.

The employee discipline and termination process is lengthy, costly, and will require the states to expend extensive resources to ensure compliance. Board of Regents Dec. at ¶ 26; UI Dec. at ¶ 13. Plus, the loss of technically-skilled employees will impact Plaintiffs' ability to perform the services required by their contracts, especially because it may not be possible to replace those employees in the

current labor market.⁸ Board of Regents Dec. at ¶ 26; GA Tech Dec. at ¶ 7; UGA-2 Dec. at ¶ 10; UI Dec. at ¶ 13.

Many state agencies administer services for their citizens that depend on federal agency contracts. For example, Plaintiff Alabama Department of Agriculture and Industries (“ADAI”), which provides services for farmers and consumers of agricultural projects. Declaration of Richard Stewart Pate (“ADAI Dec.”), Exhibit 14, at ¶ 13. ADAI has leased property to the United States Department of Agriculture (“USDA”) continuously for the past 26 years. On October 20, 2021, a USDA officer sent ADAI a lease amendment incorporating a “mandatory Executive Order 14042 [clause] . . . which needs to be part of every Federal contract now.” ADAI requested clarification on October 22, 2021, to which USDA sent the following response: “[I]t’s ‘encouraged’ for the Lessors to sign, BUT if you don’t, then [USDA] won’t be able to do any future lease actions with you if you don’t, as well as anything regarding the current lease, such as an extensions or expansions if needed. So we’d have to move out when the lease expires.” ADAI Dec. at Ex. A (emphasis in original). While the precise number of ADAI’s unvaccinated employees is as yet undetermined, Alabama’s county rates for full vaccination range from 22.74% in Russell County to 49.73% in Lowndes County, indicating that the majority of ADAI’s employees are likely in jeopardy of termination. *Vaccine Doses Administered*, Alabama Public Health, <https://bit.ly/3CL87rm>. Thus, ADAI is likely to have unvaccinated employees that will have to be removed from federal contracts, relocated, or disciplined. Each Plaintiff faces this kind of choice.

⁸ See Georgia Department of Labor, Georgia Unemployment Rate Hits All-Time Low Amid Strong Job Growth (Nov. 18, 2021), <https://bit.ly/2Z3fyeS> (stating that Georgia’s unemployment rate dropped to 3.1 percent in October, the lowest rate in Georgia’s recorded history); see also U.S. Bureau of Labor Statistics, State Employment and Unemployment Summary (Oct. 22, 2021), <https://www.bls.gov/news.release/laus.nr0.htm> (stating that in the month of September, “Nebraska and Utah had the lowest jobless rates, 2.0 percent and 2.4 percent, respectively. The rates in Georgia (3.2 percent) and Nebraska (2.0 percent) set new series lows.”).

LEGAL STANDARD

Plaintiffs seek a preliminary injunction under Federal Rule of Civil Procedure 65(a) to “preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

ARGUMENT

I. Plaintiffs are likely to succeed on the merits.

The Contractor Mandate is illegal for multiple, independent reasons, any one of which makes Plaintiffs “likely to succeed on the merits.” *Winter*, 555 U.S. at 20.

A. The Contractor Mandate exceeds the President’s authority under the Procurement Act.

1. The Procurement Act does not give the President unlimited authority.

The Procurement Act only empowers the President to issue “policies and directives” that have a reasonably close nexus to “provid[ing] the Federal Government with an economical and efficient system for . . . contracting.” 40 U.S.C. § 101; *see* 40 U.S.C. § 121(a). The authorized “policies and directives” may only be those necessary to “carry out” the Procurement Act. *Id.*

The Procurement Act does not give the President *any* power to make decisions that have vast economic and political significance or that alter the federal/state balance. *First*, when the executive branch lays claim to powers of “vast economic and political significance,” the Supreme Court requires that “Congress [] speak clearly” before the executive branch may exercise such powers. *Ala. Ass’n of Realtors v. HHS*, 141 S. Ct. 2485, 2489 (2021) (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). *Second*, when the executive branch invokes powers that would “significantly alter the balance between federal and state power,” Congress must impart those powers with even greater clarity. *Id.*

In that context, the Supreme Court’s “precedents require Congress to enact *exceedingly clear language*” granting the executive branch such authority. *Id.* (emphasis added) (citing *U.S. Forest Serv. v. Compasture River Preservation Ass’n.*, 140 S. Ct. 1837, 1850 (2020)); see *Bond v. United States*, 572 U.S. 844, 858 (2014) (same). Nothing in the Procurement Act meets these demanding standards and thus any action that the President purportedly takes under the Act that has vast economic significance or alters the federal/state balance is unlawful.

Even if the Act permitted the issuance of procurement regulations that did not need to comply with the major questions doctrine and clear statement rule, the Act does not give the President unlimited authority. See *Chamber of Com. of the U.S. v. Reich*, 74 F.3d 1322, 1330 (D.C. Cir. 1996). That means that the exercise of purported “procurement authority” must have a “nexus” with “some delegation of the requisite legislative authority by Congress . . . reasonably within the contemplation of that grant of authority.” *Chrysler Corp. v. Brown*, 441 U.S. 281, 304, 306 (1979). If there is not a “reasonably close nexus between the efficiency and economy criteria of the Procurement Act and any exactions imposed upon federal contractors,” the order issued under the Act is unlawful. *Liberty Mut. Ins. v. Friedman*, 639 F.2d 164, 170 (4th Cir. 1981); see *Reich*, 74 F.3d at 1331.

2. The Contractor Mandate is beyond the President’s authority under the Procurement Act.

The Contractor Mandate exceeds the President’s authority under the Procurement Act for three independent reasons.

First, the Contractor Mandate is beyond the President’s Procurement Act authority because the Mandate is a procurement regulation that purports to control numerous third parties, not a mere “polic[y]” or directive[],” 40 U.S.C. § 101. “[P]olicies and directives” refer *only* to the President’s power to direct the way in which procurement authority is exercised by the executive branch, *not to issue sweeping regulations on third parties*. Cf. *Centralizing Border Control Policy Under the Supervision of the Attorney General*, 26 Op. O.L.C. 22, 23 (2002) (“Congress may prescribe that a particular executive function

may be performed only by a designated official within the Executive Branch, and not by the President.”).

Second, the Contractor Mandate is beyond the President’s Procurement Act authority because the Mandate not only has “vast economic and political significance,” but would also “significantly alter the balance between federal and state power.” *Ala. Ass’n of Realtors*, 141 S. Ct. at 2489 (internal citation omitted); see *BST Holdings, L.L.C. v. OSHA*, No. 21-60845, 2021 U.S. App. LEXIS 33698, at *23 (5th Cir. Nov. 12, 2021) (“[T]he major questions doctrine confirms that [a related] Mandate exceeds the bounds of [executive] statutory authority.”). The decision whether millions of Americans must be vaccinated is plainly one of “vast economic and political significance,” *Ala. Ass’n of Realtors*, 141 S. Ct. at 2489, and one which Congress did not speak to when it enacted the Procurement Act. Indeed, the Mandate is a thinly veiled attempt by President Biden to do what he has admitted he could not do: impose a nationwide vaccine mandate. That is something no President has previously done and, if upheld by the courts, would permit Presidents, at the stroke of a pen, to advance virtually any public health (or, indeed, public policy) goal by imposing requirements on the millions of Americans who happen to work for federal contractors. Further, the determination whether to require vaccinations falls within the discretion of the States—not the federal government. See, e.g., *Barsky v. Bd. of Regents*, 347 U.S. 442, 449 (1954) (“It is elemental that a state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there.”); *Hill v. Colorado*, 530 U.S. 703, 715 (2000) (“It is a traditional exercise of the States’ police powers to protect the health and safety of their citizens.”). The Procurement Act does not authorize the President to issue public health mandates, yet that is what he has done.

Third, the Mandate is also unlawful because no “reasonably close nexus” exists between the Contractor Mandate and “the efficiency and economy criteria of the Procurement Act.” *Friedman*, 639 F.2d at 170. Other than a series of conclusory statements that the Mandate promotes “efficiency and

economy in Federal procurement,” the President made no attempt to show any link at all between the scope of the Mandate and efficiency and economy in federal procurement. Peeler Dec. at Ex. A. Rather, the Mandate’s application to contractor employees that neither work on federal contracts nor pose a real risk of transmitting COVID-19 on a federal contract worksite (for example, federal contractor employees who work solely from home) makes clear that the President made a *public health policy*, not a policy with any “reasonably close nexus” to “the efficiency and economy criteria of the Procurement Act.” *Friedman*, 639 F.2d at 170. The Task Force mandates that a “covered contractor employee” must include all full-time or part-time employees that work on a federal contract, in connection with a federal contract, or at a contractor workplace. Peeler Dec. at Ex. A, 3–4. Thus, the Mandate requires that employees who do not even work on federal contracts be vaccinated if they simply walk past another employee in the building lobby. *See id.*, 10–11. And the Contractor Mandate does not exempt remote workers, employees who work exclusively or primarily outdoors, or employees who work in a socially distanced environment.

The Revised OMB Determination attempts to show a nexus between the Mandate and economy and efficiency, but it is a plainly pretextual attempt to “find the best rationale” for a preordained outcome. *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2575 (2019). To begin with, the Revised OMB Determination was announced and published only after a flood of lawsuits pinpointed the mandate’s many legal failings. This naked attempt at *post hoc* rationalization violates the “foundational principle of administrative law” that agencies may not “invoke belated justifications” to shore up “convenient litigating positions.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1909 (2020) (citations and quotations omitted). This Court should recognize the Administration’s attempt to manufacture unnecessary delay for what it is.

Regardless, OMB’s “economy and efficiency” analysis involves no evidence and little reasoning that is specific to federal contractors. OMB admits that the Mandate is being issued to

combat “a once in a generation pandemic” which threatens the “health and safety of the American people,” and reaches “all Americans.” 86 Fed. Reg at 63,423; Peeler Dec. at Ex. E. But that does not explain why the Mandate will improve efficiency or economy in federal contracting. OMB cites general statistics about how COVID-19 spreads but does not assert that past spread has harmed the efficiency or economy of any federal contracts. Nor has OMB explained why vaccination, rather than simply masking, social distancing, or other measures, is necessary to prevent federal contracts from being disrupted by COVID-19 (assuming, again, that has happened). And OMB ignores the tremendous scope of the Mandate. Even assuming OMB could justify vaccinating some employees who work on federal contracts, that does not explain why non-contract employees must be vaccinated, much less those that work outdoors or at home.

That means the Mandate is certain to promote *inefficiency* by jeopardizing contractors’ ability to timely perform under federal contracts. Employee terminations and departures, which will inevitably follow from the Contractor Mandate, will result in contractors losing individuals servicing federal contracts that have valuable institutional knowledge. Those employees (with their years of experience and specialized training) will not be replaceable, especially given critical labor shortages ongoing. *See* GDPH Dec., ¶ 10. Further promoting inefficiency, the Mandate requires each federal contractor to implement administrative measures to monitor and enforce the Mandate, adding operational costs on top of the costs of recruiting, replacing, and re-training employees. *See* GA Tech. Dec., ¶¶ 11–16 (detailing the administrative hurdles and costs required for compliance with the Contractor Mandate); UGA-1 Dec., ¶¶ 4–8 (same); GDPH Dec., ¶¶ 8–10 (same).

B. The Contractor Mandate is unlawful for failure to follow notice-and-comment rulemaking requirements.

The Contractor Mandate is *doubly* unlawful for failure to comply with notice-and-comment rulemaking.

1. The Procurement Policy Act requires the Administration to submit the Task Force Guidance and the FAR Deviation Clause to notice and comment rulemaking.

a. The Office of Federal Procurement Policy Act, 41 U.S.C. § 1707(a) (“Procurement Policy Act”), requires that before issuing “a procurement policy, regulation, procedure, or form,” an agency must subject “that procurement policy, regulation, procedure, or form” to the strictures of notice-and-comment rulemaking, if it “(A) relates to the expenditure of appropriated funds; and (B) (i) has a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form; or (ii) has a significant cost or administrative impact on contractors or offerors.” 41 U.S.C. § 1707(a). This applies to “an amendment or modification” of an existing procurement policy, rule, or regulation. *Id.* § 1707(a)(1).

b. Both the Task Force Guidance and the FAR Deviation Clause are a “procurement policy, regulation, procedure, or form.” *Id.* § 1707(a). The Task Force Guidance is a procurement policy because it prescribes a standard course of action for federal contractors as they perform their obligations pursuant to federal contracts and changes their obligations to maintain a safe workplace. *See* 48 C.F.R. §§ 22.000–23.1105. Similarly, the FAR Deviation Clause is a “procurement regulation,” as it is a part of the Federal Acquisition Regulation and governs federal contracting and procurement for certain executive agencies. And both have “a significant cost or administrative impact on contractors or offerors,” 41 U.S.C. § 1707(a)(1)(A)–(B), for the reasons already given. *See supra* I.A.2.

The Task Force Guidance and the FAR Deviation Clause also both “relate[] to the expenditure of appropriated funds,” 41 U.S.C. § 1707(a)(1)(A), as they set out the preconditions to federal contracting. Pursuant to EO 14042, federal agencies must comply with the Task Force Guidance as a condition of federal contracting. All federal agencies awarding procurement contracts are subject to the FAR, and many have already issued contract guidance to their contracting officials directing them to use the FAR Deviation Clause to require compliance with the Task Force Guidance. *See, e.g.,*

BVRHS Dec. at ¶ 12 (noting the CDC has already sought to modify contracts to include the Contractor Mandate).

So, 41 U.S.C. § 1707(a) plainly required the Defendants to satisfy the notice-and-comment provisions of the Procurement Policy Act with respect to the Task Force Guidance and the FAR Deviation Clause, but that did not happen. Indeed, the Defendants have all but admitted that was unlawful by issuing a Revised OMB Determination attempting to justify the previous lack of notice and comment, citing 41 U.S.C. § 1707(d). But the Revised OMB determination does not solve the notice-and-comment problem. The determination cites the waiver in § 1707(d), which permits an agency to issue a new procurement policy, regulation, or procedure without first undergoing public notice and comment only when the policy is “effective on a temporary basis” and “urgent and compelling circumstances make compliance with the requirements impracticable.” *Id.* § 1707(d), (e). Those elements are not met here. First, neither the Task Force Guidance nor the FAR Deviation Clause are temporary. The contractual provision that Plaintiff Agencies are being asked to sign has no expiration date—it will remain in the contract for its entire duration. Peeler Dec. at Ex. F. And there is no automatic end to the Task Force Guidance, either. Once contractors commit themselves to comply with the FAR Deviation Clause, they must comply indefinitely. That is not the kind of “temporary” policy that § 1707(d) was meant to cover.

Second, no urgent and compelling circumstances warrant this departure from normal practice. Courts “narrowly construe[] and only reluctantly countenance[]” a departure from the ordinary notice-and-comment requirements, which is permissible only in “emergency situations.” *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004); *see Sorenson Communs. Inc. v. FCC*, 755 F.3d 702, 705–06 (D.C. Cir. 2014). Here, OMB’s putative rationale for impracticability due to urgent and compelling circumstances is inherently contradictory. As explained above, if the Mandate is not meant to further the economy and efficiency of federal contracting, it is unlawful. *See supra* at I.A.2. But the “urgent

and compelling” circumstances that OMB points to have nothing to do with federal contracting. According to OMB, notice and comment is impracticable because “this is a once in a generation pandemic” which threatens the “health and safety of the American people,” and reaches “all Americans.” 86 Fed. Reg at 63,423; Peeler Dec. at Ex. E. As already explained, that does nothing to connect the Mandate to economy and efficiency in federal contracting. And even if OMB could show some connection, it would still be required to show that the harm to federal contracting would occur within the few months before normal notice and comment could be completed. It has not, and cannot, make that showing.

As if that were not enough, the revised determination also *pushes back* the deadline for contractors to comply with the mandate while simultaneously arguing that it is responding to “urgent and compelling” circumstances.⁹ OMB offers no explanation for that contradiction. Nor could it, because there is no urgency. The pandemic has been ongoing since early 2020. OMB gives no explanation for why “economy and efficiency” in federal contracting did not require action until now. The answer is obvious—the only thing that has changed is the President’s decision to mandate vaccinations by whatever means necessary. The incongruence between the urgency that OMB claims and the circumstances surrounding its actions confirms that there is no reason the revised guidance could not have undergone normal notice and comment.

2. The FAR Council failed to provide public notice and comment to implement the Contractor Mandate.

a. The FAR is the primary regulation governing federal procurement and government contracting. The FAR Council oversees the FAR and “assist[s] in the direction and coordination of Government-wide procurement policy.” 41 U.S.C. § 1302(a). The FAR Council consists of two

⁹ OMB suggests this was necessary to “align[] the vaccination deadline for Federal contractors with the vaccination deadline for private companies” under OSHA’s “Emergency Temporary Standard.” Peeler Dec. at Ex. E. That makes no sense, because the OSHA Temporary Emergency standard has been stayed by Fifth Circuit Court of Appeals. *BST Holdings, LLC*, 2021 U.S. App. LEXIS 33698, at *27.

councils that must coordinate to revise the FAR, but primary responsibility to “prepare[], issue[], and maintain[]” the FAR lies jointly with the Secretary of Defense, the Administrator of General Services, and the NASA Administrator. 41 U.S.C. § 1303(a)(1); 48 C.F.R. § 1.103(b). A “significant revision” to the FAR is any revision that “alter[s] the substantive meaning of any coverage in the FAR [s]ystem,” and has “a significant cost or administrative impact on contractors” or a “significant effect beyond the internal operating procedures of the issuing agency.” 48 C.F.R. § 1.501-1. Before the FAR Council may make “significant revisions” to the FAR, it must provide an opportunity for public comments and consider those comments when making its decision. *Id.* §§ 1.501-1; 1.501-2. The FAR explains that the FAR Council will consider the “[v]iews of agencies and nongovernmental parties” when crafting “acquisition policies and procedures.” *Id.* § 1.501-2(a). When initiating a public comment period, DOD, NASA, and GSA must jointly publish a notice in the Federal Register. *Id.* §§ 1.501-2(b); 1.201-1; 1.103. The notices must contain the text of the revision and provide at least 30 days, but preferably at least 60 days, for receipt of comments. *Id.* § 1.501-2(b), (c).

b. The FAR Deviation Clause implementing the Task Force Guidance—Deviation Clause 52.223-99—is a significant revision as defined by the FAR yet was not subject to notice-and-comment rulemaking. Deviation Clause 52.223-99 alters the substantive meaning of contractors’ obligations to their workforces and workplace safety duties under FAR Subparts 22 and 23. *See* 48 C.F.R. §§ 22.000–23.1105. Complying with Deviation Clause 52.223-99 will have a crushing administrative impact on federal contractors, as described elsewhere in this brief. *See supra* I.A.2. To comply, contractors must ensure all their covered employees are vaccinated, implement masking and social distancing in workplaces, create and implement a contact-tracing program, and monitor the Task Force’s website so they can scramble to comply with any new guidance that the Task Force may release at a moment’s notice. Thus, Deviation Clause 52.223-99 is a significant revision and is thereby subject to notice and comment procedures. But the FAR Council did not even attempt to comply. *See Sunoco, Inc. v. United*

States, 59 Fed. Cl. 390, 396 (Fed. Cl. 2004). Nor did the FAR Council even attempt to invoke the “urgent and compelling circumstances” exception. 48 C.F.R. § 1.501-3(b); *see supra* I.B.1.

Instead of providing public notice and a comment period for the Contractor Mandate, the FAR Council began enforcing the Mandate as a purported FAR class deviation. That is unlawful, first, because Deviation Clause 52.223-99 does not fit the definition of a deviation, which is meant to be a slight departure from an existing FAR clause or minimal change to the procurement process for a particular contract. *See* 48 C.F.R. § 1.401(a)–(f). But, more importantly, even class deviations must be submitted as a FAR revision and subjected to notice and comment when they are implemented on a permanent basis. *Id.* § 1.404(b). Deviation Clause 52.223-99 has no expiration date, yet there was no notice and comment.

The President directed the FAR Council to implement the Task Force Guidance to ensure that federal agencies would incorporate the requirements of the Mandate into those contracts, and the executive branch has provided no indication that those requirements are time limited. As a result, the FAR Council was required to treat the implementation of the Task Force Guidance as a FAR revision subject to notice and comment. It has failed to do so. That failure requires invalidation of Deviation Clause 52.223-99. *Sunoco, Inc.*, 59 Fed. Cl. at 396; 48 C.F.R. §§ 1.501-1; 1.501-2.

C. If the Procurement Act authorizes the Contractor Mandate, then the Procurement Act and the Mandate are unconstitutional.

1. The Procurement Act and the Mandate are unconstitutional under the non-delegation doctrine.

a. All legislative powers granted by the Constitution are vested in Congress. U.S. Const., art. I, § 1. “Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.” *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529–30 (1935); *Nat’l Cable Television Ass’n v. United States*, 415 U.S. 336, 342 (1974). “Congress cannot grant to an officer under its control what it does not possess.” *Bowsher v. Synar*, 478 U.S. 714, 726 (1986). The

principle of nondelegation “is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the constitution.” *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892); *Indus. Union Dep’t, AFL-CIO v. API*, 448 U.S. 607, 673 (1980) (Rehnquist, J., concurring in judgment). While Congress may delegate a certain extent of its authority, it must “lay down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform” in order to constitutionally delegate authority. *Mistretta v. United States* 488 U.S. 361, 372 (1989) (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)).

The specificity of the principle that Congress must supply under the intelligible principal test depends, at least in part, on the “extent and character” of the power conferred. *J.W. Hampton, Jr., & Co.*, 276 U.S. at 406; see *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 475 (2001) (“[T]he degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred.”). Congress cannot delegate “powers which are strictly and exclusively legislative,” but may delegate with respect to areas of “less interest, [for] which a general provision may be made, and power given to those who are to act under such general provisions to fill up the details.” *United States v. Cooper*, 750 F.3d 263, 266–67 (3d Cir. 2014) (quoting *Wayman v. Southard*, 23 U.S. 1, 42–43 (1825)); see *United States Telecomms. Ass’n v. FCC*, 855 F.3d 381, 402 (D.C. Cir. 2017) (Brown, J., dissenting) (articulating the same principle and describing the exclusively legislative issues as “important subjects, which must be entirely regulated by the legislature itself”). And when delegating powers in a way that impacts the federal/state balance of power, even more clarity than normal is required for a delegation to be effective. See *Gun Owners of Am., Inc. v. Garland*, 992 F.3d 446, 456 (6th Cir. 2021) (applying the clear statement rule to Congress’s attempt to delegate issues that would authorize a departure “from the Constitution’s traditional distribution of authority”), *vacated for reh’g en banc on other grounds*, 2 F.4th 576, 577 (2021).

b. If this Court concludes that the Procurement Act is so capacious as to permit the President to adopt the Contractor Mandate, the Act would violate the nondelegation doctrine. Under the Procurement Act, the President's actions must have a nexus to promoting "econom[y] and efficien[cy]" in contracting. 40 U.S.C. §101. Especially if this Court agrees that these terms are broad enough to give the President the authority to impose a vaccine mandate under the guise of the vague, conclusory "economy" and "efficiency" concerns that he has articulated here, then the Procurement Act is unconstitutional. Under this reading, the Act would lack any boundaries that would direct the President as to how he is permitted to exercise delegated authority, eliminating the possibility that Congress has effectively delegated authority under the Act. *Mistretta*, 488 U.S. at 372–73.

Even if the Procurement Act's open-ended policy aims could be sufficient guidance in certain contexts to support delegation, the "extent and character" of the powers the President seeks to exercise through the Contractor Mandate are so expansive that they are nondelegable. Because the Mandate regulates the public health, something traditionally reserved to the States, even more clarity would be required in order for Congress to have authorized the Contractor Mandate by delegation. *See infra* I.C.2. Here, the President can point to no intelligible principle that would guide his unilateral implementation of a sweeping vaccination requirement, which is so significant in its extent and character that it is not subject to delegation to begin with. Accordingly, if the Procurement Act were read to authorize the Contractor Mandate, both would be unconstitutional.

2. The Procurement Act and the Mandate are unconstitutional because they exceed Congress' authority.

"[L]aws that undermine the structure of government established by the Constitution" by usurping state sovereignty are "not consistent with the letter and spirit of the [C]onstitution," and are therefore "not [a] proper means" for Congress to exercise its enumerated powers under the Necessary and Proper Clause. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 559 (2012) (internal citations, quotation marks, and alterations omitted); U.S. Const. art. I, § 8, cl. 18. Even if a particular policy is

“necessary” to a legislative scheme, it is not “proper” if it unduly expands federal powers at the States’ expense. *Id.* at 559–60; *Printz v. United States*, 521 U.S. 898, 923–25 (1997). That is especially true where Congress attempts to regulate purely noneconomic inactivity like an individual’s choice to not receive a vaccination, which exceeds Congress’s powers under the Commerce Clause. *See BST Holdings*, 2021 U.S. App. LEXIS 33698, at *21 (holding that vaccine mandates “likely exceed[] the federal government’s authority under the Commerce Clause because [they] regulate[] noneconomic inactivity that falls squarely within the States police power.”). Relatedly, the Tenth Amendment provides guidance as to whether a particular legislative action encroaches on state sovereignty and is thus not a “proper” exercise of Congress’ constitutional authority: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const. amend. X.

The Contractor Mandate purports to regulate purely noneconomic inactivity, public health, and enacts an extensive mass vaccination mandate that would affect millions of people, even though the States’ police power has long included public health regulation. *See supra* I.A.2. The Contractor Mandate thus surpasses Congress’s authority by encroaching on state sovereignty and attempting to unduly expand federal powers. *See Sebelius*, 567 U.S. at 559. That intrusion on Plaintiff-States’ sovereignty has a real-world impact. States have the authority to determine the vaccination policies that should be applicable to their citizens. When the federal government seeks to infringe on the States’ sovereignty in this sensitive area—as the Contractor Mandate does—the result is arbitrary legal requirements within a particular state, whereby some citizens must be vaccinated and others would not, simply based on whether the citizen has a tangential proximity to an employee of a federal contractor. That intrusion would (and currently does, under the Mandate) interfere with the States’ ability to craft uniform public health policy. Thus, the Mandate is not constitutionally “proper,” and, even if Congress had intended to authorize the executive branch to issue the Contractor Mandate,

that delegation would be unconstitutional.

II. Plaintiffs Will Suffer Substantial and Irreparable Harm Absent Preliminary Relief

The second prong in the preliminary injunction analysis is whether injunctive relief is required due to “a substantial likelihood of irreparable injury.” *Siegel v. LePore*, 234 F.3d 1163, 1179 (11th Cir. 2000). Absent an injunction, Plaintiffs face the untenable position of having to choose between (1) reassigning and physically moving or terminating all covered employees who choose not to get vaccinated, which will likely undermine Plaintiffs’ ability to complete the contracts due to loss of needed personnel; or (2) risk breaching federal contracts collectively worth billions of dollars that Plaintiffs will later be unable to recover, while losing out on the contracts themselves, which will then undermine Plaintiffs’ ability to recruit talented students and researchers. Both outcomes would constitute irreparable harm. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 220–21 (1994) (Scalia, J., concurring) (“[A] regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs.”); *Odebrecht Constr., Inc. v. Sec’y, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1289 (11th Cir. 2013) (“[N]umerous courts have held that the inability to recover monetary damages . . . renders the harm suffered irreparable.”); *Georgia v. United States*, 398 F. Supp. 3d 1330, 1344 (S.D. Ga. 2019) (Plaintiffs “experience irreparable harm in the loss of the contract. . . , the loss of employees, . . . [etc.]”); *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004) (classifying the loss of good will as irreparable harm); *Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1344 (Fed. Cir. 2013) (recognizing that irreparable injury may include “different types of losses that are often difficult to quantify, including lost sales and erosion in reputation and brand distinction”). These irreparable harms are imminent because the Contractor Mandate requires covered employees to receive a final vaccine dose by January 4, 2022. *See, e.g.*, Board of Regents Dec. at ¶ 24.

In all probability, on January 4, Plaintiffs will have many covered contractor employees who have not been vaccinated unless Plaintiffs engage in mass firings. For the Georgia Plaintiffs, nearly

50% of Georgians are fully vaccinated; the remaining 50% have yet to obtain a vaccine. Ga. Dep't of Pub. Health, Press Release, *50% of Georgians Fully Vaccinated Against COVID-19* (Oct. 25, 2021), <https://bit.ly/3bIQ0GL>. While the precise number of covered employees that will remain unvaccinated is unknown, under these odds there is a serious threat that Plaintiffs will be unable to achieve total compliance without mass layoffs or voluntary departures by employees.¹⁰ See GA Tech Dec., ¶ 13; UGA-1 Dec., ¶¶ 4–6. For example, Georgia Tech employs approximately 20,182 employees, including student employees, the majority of whom will likely be subject to the Contractor Mandate. GA Tech Dec., ¶¶ 9–10. Even if Georgia Tech's covered contractor employees beat the state average vaccination rate by 20% (using 70% as an example), thousands of employees will have to be vaccinated, removed, replaced, disciplined, or terminated by January 4. Other named Plaintiffs will undergo similarly severe hardships. With high levels of threatened personnel loss—and the delay associated with recruiting, hiring, and training new employees, especially in such a tight labor market—many Plaintiffs risk being unable to carry out current federal contractual obligations. See GA Tech Dec., ¶ 14; ADAI Dec., ¶ 14; BSU Dec., ¶ 14; ISU Dec., ¶ 11; UI Dec., ¶ 14.

On the other hand, Plaintiffs may simply be *unable* to comply with the Contractor Mandate. This will cause Plaintiffs to lose tens and hundreds of millions of dollars that they will never be able to get back. See GA Tech Dec., ¶ 7 (Georgia Tech received \$663,868,899.00 in annual revenue from federal contracts in fiscal year 2021, accounting for 33% of total revenue); UGA-1 Dec., ¶ 6 (UGA received \$56 million in fiscal year 2021); AU Dec., ¶ 7 (Augusta University received \$17.1 million in fiscal year 2021); UI Dec., ¶ 5 (University of Idaho received \$22 million); BSU Dec., ¶ 5 (Boise State University received \$25,057,355); ISU Dec., ¶ 5 (Idaho State University received \$25,057,355); UAS Dec., ¶ 6 (putting the current value of federal contracts to the University of Alabama, the University

¹⁰ According to a Kaiser Family Foundation poll conducted in October 2021, more than a third of unvaccinated workers say they would leave their job if their employer required vaccination or testing, rising to seven in ten if no testing option was available. See KFF COVID-19 Vaccine Monitor: October 2021 at Figure 10, <https://bit.ly/2Z3iEzw>.

of Alabama Birmingham, and the University of Alabama Huntsville at \$663,079,382).

No dollar amount can address the inevitable (1) loss of personnel, (2) loss of institutional knowledge vested in each employee, (3) loss of specialized workers, (4) damage to reputation, (5) damage to good will, and (6) inability to carry out their respective missions, all of which constitute irreparable harms. *See Georgia v. United States*, 398 F. Supp. 3d 1330, 1344 (S.D. Ga. 2019) (holding plaintiffs would “experience irreparable harm in the loss of the contract. . . , the loss of employees, . . . [etc].”); *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) (finding that “the loss of customers and goodwill is an irreparable injury”) (quoting *Ferrero v. Associated Materials Inc.*, 923 F.2d 1441, 1449 (11th Cir.1991)); *Mrs. Fields Franchising, LLC v. MFGPC*, 941 F.3d 1221, 1235 (10th Cir. 2019) (where the court identified “diminishment of competitive positions in marketplace” and “loss of employees’ unique services” as factors supporting irreparable harm); *Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1344 (Fed. Cir. 2013); *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (stating “[a]n organization is harmed if the actions taken by the defendant have perceptibly impaired the organization’s programs”).

Here, Plaintiff universities will suffer nonmonetary harm through a loss of “recruiting and retaining talented faculty and students,” because “[t]he talented individuals [Plaintiffs] recruit as faculty, staff, and students have every expectation of having these challenging and exciting research opportunities available to them via the federal contracting process.” UGA-1 Dec., ¶ 10; *see, e.g.*, AU Dec., ¶ 18; GA Tech Dec., ¶ 15. The universities will also suffer irreparable harm from the masking and social distancing requirements in the Mandate. The social distancing requirements in particular would effectively end a university’s ability to hold in-person instruction in many classes, which undermines the core function of a university—to educate its students.

III. The Balance of Equities and Public Interest Favors Granting Preliminary Relief

The balance of the equities and public interest factors also weighs in favor of granting Plaintiffs' motion. When the government is the opposing party, these two factors "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010). Defendants have no lawful interest in enforcing an unconstitutional and unlawful policy. *See Odebrecht Const., Inc.*, 715 F.3d at 1290. That is especially true because individual freedoms and liberties are at stake. An injunction would serve the public interest because, absent an injunction, unvaccinated covered contractor employees across the country face reassignment, relocation, discipline, or termination. The public interest is further served with a preliminary injunction since covered contractor employees must choose either to keep their job by complying with an unlawful and unconstitutional mandate or to lose the ability to put food on the table. Defendants, on the other hand, would simply have to maintain their *status quo* rather than taking any affirmative act. *See United States v. Lambert*, 695 F.2d 536, 540 (11th Cir. 1983) ("Preservation of the status quo enables the court to render a meaningful decision on the merits."). Indeed, Defendants would merely have to maintain the same position they had in July 2021, when the White House admitted it was "not the role of the federal government" to mandate vaccination. *See supra* Introduction.

CONCLUSION

Plaintiffs respectfully ask this Court to preliminarily enjoin Defendants from implementing and enforcing the Contractor Mandate.

Respectfully submitted this 19th day of November, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2021, I caused to be electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record

This 19th day of November, 2021.

/s/ Harold D. Melton

Harold D. Melton (Ga Bar No. 501570)
Troutman Pepper Hamilton Sanders LLP
Bank of America Plaza, Suite 3000
600 Peachtree Street N.E.
Atlanta, Georgia 30308-2216
Harold.Melton@Troutman.com
(404) 885-3000
(404) 885-3900

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.

1:21-cv-00163-RSB-BKE

DECLARATION OF JASON GUILBEAULT

1. My name is Jason Guilbeault, and I am the Director of Post Award Services for Augusta University. In this capacity, I am familiar with the operations and services of our federal agency contracts at Augusta University, including but not limited to those matters at issue in this litigation and described more fully herein.

Augusta University and Its Relationship with the Board of Regents

2. Augusta University is a public research university and serves as one of the 26 higher education institutions within the University System of Georgia (the “University System”).

3. As the Director of Post Award Services for Augusta University, I am also an employee of the Board of Regents (the “Board”) of the University System.

4. All Augusta University employees are also employees of the Board.

Augusta University and Its Federal Contracts

4. Federal funding is a crucial component of Augusta University’s budget

operations. Losing our federal contracts would significantly negatively impact our budget and prevent us from performing the research and providing services set forth in our federal contracts.

5. Augusta University has a portfolio of at least 45 federal government agreements and contracts, many concerning the university's healthcare research for the Department of Veterans Affairs and Department of Health and Human Services. Augusta University's health and research arm—Augusta University Health—is Georgia's only public academic health center, where world-class clinicians daily perform lifesaving research and development work under federally funded agreements and contracts.

6. Many, if not all, of the federal agencies associated with Augusta University's contracts have already issued memorandums requiring compliance with the Contractor Mandate.

7. For fiscal year 2021, Augusta University received approximately \$17,100,000 in annual revenue from federal contracts.

8. Augusta University maintains at least 45 active covered federal contracts with approximately 200 employees who work on those contracts.

9. The 200 employees who work on federal agency contracts are spread across 25 buildings, including multiple hospitals.

10. A total of approximately 4,068 individuals share the common areas of those 25 buildings.

11. There are approximately 6,161 total employees at Augusta University.

Augusta University's Compliance with the Contractor Mandate

12. Augusta University is concerned that we will be unable to gather, process and make any necessary personnel decisions based on all of the required vaccine data on our employees by the January 4, 2022 deadline.

13. To comply with the Contractor Mandate, we have begun:

- a. Tracking employee vaccination statuses;
- b. Creating a process to review requests for accommodation;
- c. Identifying impacted employees and locations;
- d. Expending our own financial resources to ensure compliance; and
- e. Tracking data from our subcontractors to ensure that they are likewise performing (a), (b), (c) and (d) above.

14. Despite diligently working to attempt compliance, Augusta University has serious concerns about the burdens of compliance and the risks associated with not reaching full compliance by the January 4, 2022 deadline.

15. Despite diligently working to encourage all Augusta University employees to obtain a COVID-19 vaccine, Augusta University is seriously concerned that not all of Augusta University's "covered contractor employees" are likely to obtain full vaccination status by the January 4, 2022 deadline, which may necessitate removing employees from federal contracts, relocating employees and/or terminating employees.

16. A loss of employees would negatively impact Augusta University's ability to perform its contracts and provide educational, research, and related services to the community.

17. Replacing and re-training any loss of employees would impose significant costs and administrative burdens on Augusta University. Finding

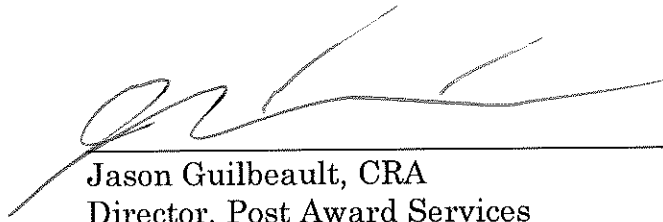
qualified applicants in this labor market is difficult. Work performed under our federal contracts often require specialized knowledge and skills that are not easily replaceable.

18. A loss of federal contracts or loss of personnel for non-compliance with the Contractor Mandate would negatively impact Augusta University's standing as a prominent research university and negatively impact Augusta University's ability to attract high-quality students, faculty, and staff.

19. To comply with the Contractor Mandate, Augusta University expects there will be significant financial and operational costs and administrative burdens associated with the continued compliance and enforcement of the Contractor Mandate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 4th day of November, 2021.



Jason Guilbeault, CRA
Director, Post Award Services
Augusta University

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.
1:21-cv-00163-RSB-BKE

DECLARATION OF MICHAEL P. SHANNON

1. My name is Michael P. Shannon, and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true.

2. I am the Vice President & Deputy Chief Business Officer for the Georgia Institute of Technology (“Georgia Tech”). In this capacity, I am familiar with the business operations of Georgia Tech, including but not limited to those matters at issue in this litigation and described more fully herein.

Georgia Tech and Its Relationship with the Board of Regents

3. Georgia Tech is a public research university and serves as one of the 26 higher education institutions within the University System of Georgia (the “USG”). The Board of Regents (“Board”) is a state agency that governs and manages the USG

and its member institutions, including Georgia Tech.

4. Georgia Tech is not a separate legal entity, and therefore, all Georgia Tech employees are also employees of the Board.

Georgia Tech and Its Federal Contracts

5. Georgia Tech is a federal contractor and has federal contracts that would be considered covered contracts under the President's Executive Order 14042 ("the EO") and the guidance issued by the Safer Federal Workforce Task Force ("the guidance").

6. As the Vice President & Deputy Chief Business Officer, I am currently engaged in Georgia Tech's implementation of the EO and the guidance, both of which require federal contractors to mandate Covid vaccines for employees working on covered contracts ("Contractor Mandate").

7. For fiscal year 2021, Georgia Tech received \$663,868,899.00 in annual revenue from federal covered contracts, as currently defined in the guidance. This accounts for 33% of Georgia Tech's annual revenue for fiscal year 2021.

8. These federal contracts are crucial to the development of Georgia Tech's applied and fundamental research programs, and a loss of these federal contracts would negatively impact Georgia Tech's ability to address the United States' security concerns and other national priorities that these federal contracts support.

9. Georgia Tech employs approximately 20,182 employees, including student employees.

10. Based on current federal guidance, Georgia Tech has determined that a majority of these employees would likely be subject to the vaccine requirement.

Georgia Tech's Compliance with the Contractor Mandate

11. To comply with the Contractor Mandate, Georgia Tech has spent a significant amount of time and financial resources to identify covered employees and covered locations, inform impacted employees, create a portal for employees to submit their vaccination information or requests for accommodations, increase vaccination capacity at its campus healthcare center, monitor continuing updates to the guidance, as well as contacting subcontractors to ensure they are also taking steps to comply with the Contractor Mandate.

12. To fully comply with the Contractor Mandate, Georgia Tech will need to expend a great deal of resources to determine alternative working arrangements, if applicable, and/or the appropriate means of enforcement with respect to covered contractor employees who refuse to comply. Based upon the guidance, enforcement may include disciplinary measures, such as removal.

13. Despite diligently working to comply with the Contractor Mandate, the burdens and operational impact of compliance with the January 4, 2022 deadline presents serious consequences for Georgia Tech.

14. A loss of employees would negatively impact Georgia Tech's ability to perform its contracts and provide educational, research, and related services to the community.

15. A loss of federal contracts or loss of personnel for non-compliance with the Contractor Mandate would negatively impact Georgia Tech's standing as a prominent research university and negatively impact Georgia Tech's ability to attract high-quality students, faculty, and staff.

16. Georgia Tech expects there will be significant financial costs and administrative burdens associated with continued compliance and enforcement of the Contractor Mandate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 4th day of November, 2021.

DocuSigned by:

3189B3D288C443C...

Michael P. Shannon
Vice President &
Deputy Chief Business Officer
Georgia Institute of Technology

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.
1:21-cv-00163-RSB-BKE

DECLARATION OF JILL TINCHER

1. My name is Jill Tinch. I am the Executor Director of Sponsored Projects Administration for the University of Georgia ("UGA") and am knowledgeable of the facts set forth herein.

2. Sponsored projects are externally funded activities supporting the research, public service, instruction, or cooperative extension mission at the University of Georgia. Funding for sponsored projects includes funding from federal contracts, subcontracts and cooperative agreements.

3. Federal funding is a crucial component of UGA's budget operations. Losing our federal contracts would significantly and negatively impact our budget and could render us unable to conduct important research and development activities impacting our state, the nation, and the world.

4. UGA has hundreds of federal contracts, subcontracts, and cooperative agreements with federal agencies such as the CDC, NSF, NIH, and the FBI.

5. Work performed under these contracts includes the development of a new, more advanced influenza vaccine designed to protect against multiple strains of influenza virus in a single dose; the study of influenza virus emergence and infection in humans and animals while also making preparations to combat future outbreaks or pandemics; and sample collection from a variety of avian and mammalian species internationally for the identification and characterization of emerging influenza viruses and to develop predictive models describing the epidemiology of influenza in wild avian species.

6. For fiscal year 2021, UGA recognized at least \$56 million in revenue from federal contracts, subcontracts and cooperative agreements.

7. To date, the National Institutes of Health, Centers for Disease Control and Prevention, and Federal Bureau of Investigation have already issued amendments/modifications requiring UGA's compliance with the Contractor Mandate (as that term is used in the Complaint).

8. Debarment for non-compliance with the mandate could negatively impact UGA's standing as a prominent research university and negatively impact UGA's ability to attract high-quality students, faculty, and staff.

9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 3 day of November, 2021.

A handwritten signature in black ink, appearing to read "Jill Tincher", written over a horizontal line.

Jill Tincher
Executive Director, Sponsored Projects
Administration, University of Georgia

EXHIBIT 4

I, Kathleen E. Toomey, hereby declare:

1. I make this declaration based on my personal and professional knowledge and experience, information available to me in my position in public service, and publicly available information.

2. I am currently serving as Commissioner of the Georgia Department of Public Health and as the State Health Officer. In these roles, I oversee programs related to health promotion and disease prevention, maternal and child health, infectious disease and immunization, environmental health, epidemiology, emergency preparedness and response, emergency medical services, volunteer health services, healthy equity, vital records, the State Public Health Laboratory and other services. I was appointed Commissioner in March of 2019 by Governor Brian Kemp. Prior to my appointment, I served as District Health Director for Fulton County and in many other leadership roles with state and federal health agencies.

3. The Georgia Department of Public Health (DPH) is the state agency responsible for protecting and promoting public health through organized state and community efforts involving 18 health districts and 159 county health departments pursuant to O.C.G.A. §§ 31-2A-1 et seq.; these efforts include maintenance of the State's official vital records registration system pursuant to O.C.G.A. § 31-10-2.

4. DPH is a federal contractor, contracting with the U.S. Centers for Disease Control and Prevention (CDC) to participate in the Vital Statistics Cooperative Program (VSCP) by contributing State data on births, deaths and fetal deaths to be included in the National Vital Statistics System (NVSS). The VSCP contract has a term of five years and a total maximum value of \$2,805,020.00 in federal funds. The federal funds support staffing and other resource needs for the State Office of Vital Records.

5. DPH also contracts with the CDC to support the National Death Index (NDI) program which collects death records from states and other jurisdictions to support the scientific research community. The NDI contract has a term of one year and a total maximum value of \$106,743.00 in federal funds. The federal funds support resource needs for the State Office of Vital Records.

6. On or about October 22, 2021, DPH received notice that the VSCP and NDI contracts are covered by Executive Order (E.O.) 14042 and accompanying guidance from the Safer Federal Workforce Task Force. The notice specified that DPH must immediately sign a contract modification requiring vaccination of personnel assigned to the contract and/or to any covered workplace.

7. The deadlines specified in the notice allow only eighteen (18) days to sign and return the contract modification and only twelve (12) days to facilitate the first shot of the COVID-19 vaccine by impacted personnel. Thus, for example, if the notice is signed and returned on November 9, 2021, as required by the CDC, DPH would already be behind schedule with employee vaccinations.

8. Based on the federal mandate, for individuals selecting a vaccine that requires two doses, the first dose would need to be administered no later than November 3, 2021 in order for the second dose to be administered by November 24, 2021, and the individual to be considered "fully

vaccinated” by the final deadline of December 8, 2021. Essentially, DPH has been given only 7 business days in which to facilitate the first dose of vaccination for impacted employees. This process would include, at a minimum, the following tasks: (a) drafting and sending a legal notice to all impacted employees; (b) responding to employee inquiries; (c) providing necessary time off from work to accommodate absence while obtaining the shot, as well as any recovery time needed following the shot; and (d) ensuring adequate coverage in the workplace during this very short time period (just over 1 week) when all of the unvaccinated staff would need to become vaccinated.

9. Based on the federal mandate, two DPH worksites are included in the vaccine requirement with impact to over 500 employees. DPH does not require employees to provide information on vaccination status, but statewide only half of Georgia’s residents are fully vaccinated, so the impact of the federal mandate on DPH personnel could be significant. This impact could include staff assigned to critical areas such as environmental health, immunizations, emergency medical services, epidemiology, maternal and child health, etc.

10. Given the short timeframes outlined in the federal mandate, it is not feasible for DPH to satisfy the requirements and ensure full vaccination of all impacted personnel by the deadline. The potential for any loss of federal funding would have a negative impact on DPH and could compromise the vital records program or other critical public health services supported by the Department that are also a critical part of national data reporting. Similarly, any attrition of staff that may be caused by issuance of a vaccine mandate notice would be problematic as DPH already struggles to maintain adequate staffing, particularly in health professions where shortages already exist such as nursing, epidemiology, laboratory technicians, etc.

11. Based on the foregoing, even if every effort is made, it is highly unlikely that DPH will be able to comply with the federal contractor vaccination mandate.

12. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Kathleen E. Toomey".

Kathleen E. Toomey, M.D., M.P.H.
Commissioner
State Health Officer

EXHIBIT 5

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The States of Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, West Virginia; Brian P. Kemp in his official capacity as Governor of the State of Georgia; Kay Ivey in her official capacity as Governor of the State of Alabama; Brad Little in his official capacity as Governor of the State of Idaho; Henry McMaster in his official capacity as Governor of the State of South Carolina; the Board of Regents of the University System of Georgia; Gary W. Black in his official capacity as Commissioner of the Georgia Department of Agriculture; Alabama Department of Agriculture and Industries; Alabama Department of Public Health; Alabama Department of Rehabilitation Services; Idaho State Board of Education,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as President of the United States; Safer Federal Workforce Task Force; United States Office of Personnel Management; Kiran Ahuja in her official capacity as director of the Office of Personnel Management and as co-chair of the Safer Federal Workforce Task Force; Office of Management and Budget; Shalanda Young in her official capacity as Acting Director of the Office of Management and Budget and as a member of the Safer Federal Workforce Task Force; General Services Administration; Robin Carnahan in her official capacity as Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as Administrator of the General Services Administration and as co-chair of the Safer Federal Workforce Task Force; Jeffrey Zients

**DECLARATION OF JAMES B.
AYDELOTTE**

CIVIL ACTION NO. 1:21-TC-05000

in his official capacity as co-chair of the Safer Federal Workforce Task Force and COVID-19 Response Coordinator; L. Eric Patterson in his official capacity as Director of the Federal Protective Service; James M. Murray in his capacity as Director of the United States Secret Service; Administrator Deanne Criswell in her official capacity as Administrator of Federal Emergency Management Agency; Rochelle Walensky in her official capacity as Director of the Center for Disease Control; United States Department of Defense; Lloyd Austin in his official capacity as the United States Secretary of Defense; United States Department of Health and Human Services; Xavier Becerra in his official capacity as the United States Secretary of Health and Human Services; National Institutes of Health; Francis S. Collins in his official capacity as Director of the National Institutes of Health; United States Department of Veterans Affairs; Denis McDonough in his official capacity as United States Secretary of Veterans Affairs; National Science Foundation; Sethuraman Panchanathan in his official capacity as Director of the National Science Foundation; United States Department of Commerce; Gina Raimondo in her official capacity as United States Secretary of Commerce; National Aeronautics and Space Administration; Bill Nelson in his official capacity as Administrator of the National Aeronautics and Space Administration; United States Department of Transportation; Richard Chávez, in his official capacity as the Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as United States Secretary of Energy,

Defendants.

I, James B. Aydelotte, declare as follows:

1. I am more than eighteen years of age and I am legally competent to make this declaration. I have personal knowledge of the facts set forth herein and can testify as to the truth of the statements contained herein if called upon as a witness at the trial of this action.

2. My position is as a State Registrar and Bureau Chief of the Bureau of Vital Records and Health Statistics (the Bureau). My basic duties include management of Idaho's Vital Statistics System, the publication of public health statistics, and Bureau management.

3. The Idaho Department of Health and Welfare (the Department) is a federal contractor.

4. The Bureau of Vital Records and Health Statistics fulfills five (5) federal contracts on behalf of the Department. These five contracts would likely be considered covered contracts under the executive order. Any additional federal contracts held by the Department and fulfilled by different divisions within the Department which may be subject to the vaccine mandate are outside the scope of this declaration

5. Annually, federal dollars tied to the contracts managed by the Bureau approximate \$338,700.

6. Those contracts are important to the State of Idaho because under them the State joins all other vital statistics jurisdictions to create the national vital statistics data file. This data file is used at all levels of government and academia for program planning, evaluation, and scientific research. Additionally, the contracts with the Social Security Administration facilitate the direct issuance of social security numbers to Idaho newborns and aids in the closure of social security benefits of the deceased. The funds derived from these contracts directly fund bureau operations.

7. The Bureau employs approximately ten employees who support the Bureaus' work on its federal contracts. Of the ten, four telecommute full time and do not physically work at the worksite

any longer. Five employees work full time, in person at the worksite, and one employee works a hybrid of telework and in person.

8. I am informed that there are roughly 100 other Department employees working for different divisions at the worksite shared by the Bureau's employees.

9. The percentage of Idaho residents age 18 and older who have completed their vaccine series is 57.7% according to the state's vaccine data dashboard accessed 11/1/2021. <https://public.tableau.com/app/profile/idaho.division.of.public.health/viz/COVID-19VaccineDataDashboard/LandingPage>

10. If employees resign due to the vaccine mandate, the loss of employees will negatively impact the Bureau's ability to perform its contracts and provide services to its citizens.

11. A loss of federal contracts jeopardizes the direct issuance of social security numbers for Idaho's children and the timely termination of social security benefits upon notification of death. Furthermore, the loss of Idaho vital statistics data submitted to the Centers for Disease Control and Prevention will degrade the quality of the national vital statistics data file.

12. I received an email from a Bureau staff member who received it from the CDC on October 22, 2021 instructing the Department to execute a mandatory contract modification for the purpose of adding language implementing the Contractor Mandate in two existing contracts and one existing purchase order fulfilled by the Department's Bureau of Vital Records and Health Statistics. The email stated, "Contractors will sign and return the modification via email to the Contracting Officer of record by November 9, 2021.

I, James B. Aydelotte, hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 2nd day of November, 2021.

**James B.
Aydelotte**

Digitally signed by James B. Aydelotte
DN: cn=James B. Aydelotte, c=US,
o=Division of Public Health, ou=Vital
Statistics,
email=James.Aydelotte@dhw.idaho.gov
Date: 2021.11.02 09:39:14 -06'00'

EXHIBIT 6

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The States of Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, West Virginia; Brian P. Kemp in his official capacity as Governor of the State of Georgia; Kay Ivey in her official capacity as Governor of the State of Alabama; Brad Little in his official capacity as Governor of the State of Idaho; Henry McMaster in his official capacity as Governor of the State of South Carolina; the Board of Regents of the University System of Georgia; Gary W. Black in his official capacity as Commissioner of the Georgia Department of Agriculture; Alabama Department of Agriculture and Industries; Alabama Department of Public Health; Alabama Department of Rehabilitation Services; Idaho State Board of Education,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as President of the United States; Safer Federal Workforce Task Force; United States Office of Personnel Management; Kiran Ahuja in her official capacity as director of the Office of Personnel Management and as co-chair of the Safer Federal Workforce Task Force; Office of Management and Budget; Shalanda Young in her official capacity as Acting Director of the Office of Management and Budget and as a member of the Safer Federal Workforce Task Force; General Services Administration; Robin Carnahan in her official capacity as Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as Administrator of the General Services Administration and as co-chair of the Safer Federal Workforce Task Force; Jeffrey Zients

**DECLARATION OF TORREY E.
LAWRENCE, Provost and Executive Vice-
President for the University of Idaho**

CIVIL ACTION NO. 1:21-TC-05000

in his official capacity as co-chair of the Safer Federal Workforce Task Force and COVID-19 Response Coordinator; L. Eric Patterson in his official capacity as Director of the Federal Protective Service; James M. Murray in his capacity as Director of the United States Secret Service; Administrator Deanne Criswell in her official capacity as Administrator of Federal Emergency Management Agency; Rochelle Walensky in her official capacity as Director of the Center for Disease Control; United States Department of Defense; Lloyd Austin in his official capacity as the United States Secretary of Defense; United States Department of Health and Human Services; Xavier Becerra in his official capacity as the United States Secretary of Health and Human Services; National Institutes of Health; Francis S. Collins in his official capacity as Director of the National Institutes of Health; United States Department of Veterans Affairs; Denis McDonough in his official capacity as United States Secretary of Veterans Affairs; National Science Foundation; Sethuraman Panchanathan in his official capacity as Director of the National Science Foundation; United States Department of Commerce; Gina Raimondo in her official capacity as United States Secretary of Commerce; National Aeronautics and Space Administration; Bill Nelson in his official capacity as Administrator of the National Aeronautics and Space Administration; United States Department of Transportation; Richard Chávez, in his official capacity as the Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as United States Secretary of Energy,

Defendants.

I, Torrey E. Lawrence, declare as follows:

1. I am more than eighteen years of age and I am legally competent to make this declaration. I have personal knowledge of the facts set forth herein and can testify as to the truth of the statements contained herein if called upon as a witness at the trial of this action.
2. My position is as Provost and Executive Vice President of the University of Idaho. I am the chief academic officer for the University of Idaho and serve as the chief executive in the absence of the President.
3. The Regents of the University of Idaho ("University of Idaho") is a federal contractor.
4. The University of Idaho has federal contracts that would be considered covered contracts under the guidance.
5. Federal dollars tied to those contracts total approximately \$22 million per year, based on an average of the last three years' worth of federal contracts.
6. Those contracts are important to the State of Idaho and the University of Idaho because under them the University of Idaho conducts fundamental research, education, and essential state services to fulfill its land grant mission. Some examples of this important work include services to disabled children across the State of Idaho; important land management research that benefits rural, underserved areas consisting of hard-working Idaho farmers and their families that serve the State of Idaho's largest agriculture commodities industries; important research on mitigating and understanding wildfire; and important research fighting climate change and addressing carbon free energy production.
7. The University of Idaho has worksites that would be considered covered workplaces under the guidance.

8. The University of Idaho currently employs approximately 5,474 employees, including employees who work on federal contracts and those who do not.

9. The University of Idaho has determined that the vast majority, if not all, 5,474 of its employees would be subject to the vaccine mandate in that it would be difficult, if not impossible, to segregate the “covered contractor employees” (as that term is defined in the September 24, 2021 Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors) from the non-covered employees, as required by the September 24, 2021, guidance.

10. According to the Idaho Division of Public Health’s COVID-19 Vaccine Data Dashboard (<https://public.tableau.com/app/profile/idaho.division.of.public.health/viz/COVID-19VaccineDataDashboard/LandingPage>), the percentage of unvaccinated citizens in the state aged 12+ is 44.9%, as of November 1, 2021.

11. The University of Idaho anticipates some meaningful number of unvaccinated workers will choose to quit their job rather than be vaccinated.

12. The University of Idaho anticipates some meaningful number of unvaccinated workers will be subject to employee discipline (up to termination) for not getting vaccinated in violation of the mandate.

13. Disciplining the University of Idaho’s employees is slow and difficult because the University utilizes various categories of employment with varying disciplinary processes and protections, including tenured faculty, professional staff on term contracts, graduate students, and classified employees. The termination process includes required notices to the employees, opportunities to respond, hearings before administrative bodies, and appeal processes. The

termination process for faculty will require that these employees continue to draw a salary during a portion of the process.

14. A loss of employees will negatively impact the University of Idaho's ability to perform its contracts and provide services to its citizens through the loss of important institutional knowledge; losing employees who are critical to complete the work contemplated in the federal contracts; negatively affecting employee morale; undermining the operation of the University as a whole; impacting its ability to hire new employees to fill the vacated positions, when it is already having a difficult time filling positions due to national labor shortages; the risk of employees facing discipline sabotaging University of Idaho systems or stealing University of Idaho data; and overall negatively impacting our ability to comply with our educational and land grant mission.

15. A loss of federal contracts jeopardizes the health, safety and well-being of the State's citizens in the following ways: a) the State of Idaho is currently operating in crisis or critical standards of health care. Pulling critical medical resources to provide vaccinations to potentially hundreds or thousands of University of Idaho employees in a short period of time in relatively small, rural communities, puts a strain on the State's limited health care resources and could jeopardize the ability of our health care providers to provide critical healthcare to those in need of that health care; b) the loss of \$22 million in annual contracts would require the University of Idaho to lay off hundreds of employees across the State of Idaho, negatively impacting the ability of our employees to provide for their families and increasing the strain on local communities; c) the loss of critical research dollars would prevent the completion of important research conducted by the University of Idaho, as partially detailed above in paragraph 6.

16. Because of the breadth of the mandate, the University of Idaho will not be able to comply with the timeline set forth under the guidance for the following reasons: a) the State of Idaho is currently operating in crisis or critical standards of health care. Pulling critical medical resources to provide vaccinations to potentially hundreds or thousands of University of Idaho employees in a short period of time in relatively small, rural communities, puts a strain on the State's limited health care resources and could jeopardize the ability of our health care providers to provide critical healthcare to those in need of that health care; b) it is unknown whether there is sufficient availability of vaccine doses in the small rural communities in which the University of Idaho operates to fully vaccinate all of the University of Idaho's currently unvaccinated employees; c) based on the experience of other governmental entities which have imposed vaccination mandates, we believe that we will have a substantial number of employees who will refuse to be vaccinated, resulting in a substantial number of employees who will be out of compliance when the deadline passes.

17. I, Torrey E. Lawrence, hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 2nd day of November, 2021.

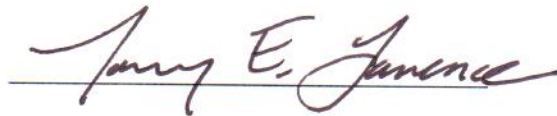
A handwritten signature in dark ink, reading "Torrey E. Lawrence", is written over a horizontal line.

EXHIBIT 7

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The States of Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, West Virginia; Brian P. Kemp in his official capacity as Governor of the State of Georgia; Kay Ivey in her official capacity as Governor of the State of Alabama; Brad Little in his official capacity as Governor of the State of Idaho; Henry McMaster in his official capacity as Governor of the State of South Carolina; the Board of Regents of the University System of Georgia; Gary W. Black in his official capacity as Commissioner of the Georgia Department of Agriculture; Alabama Department of Agriculture and Industries; Alabama Department of Public Health; Alabama Department of Rehabilitation Services; Idaho State Board of Education,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as President of the United States; Safer Federal Workforce Task Force; United States Office of Personnel Management; Kiran Ahuja in her official capacity as director of the Office of Personnel Management and as co-chair of the Safer Federal Workforce Task Force; Office of Management and Budget; Shalanda Young in her official capacity as Acting Director of the Office of Management and Budget and as a member of the Safer Federal Workforce Task Force; General Services Administration; Robin Carnahan in her official capacity as Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as Administrator of the General Services Administration and as co-chair of the Safer Federal Workforce Task Force; Jeffrey Zients

**DECLARATION OF
MATTHEW K. WILDE**

CIVIL ACTION NO. 1:21-TC-05000

in his official capacity as co-chair of the Safer Federal Workforce Task Force and COVID-19 Response Coordinator; L. Eric Patterson in his official capacity as Director of the Federal Protective Service; James M. Murray in his capacity as Director of the United States Secret Service; Administrator Deanne Criswell in her official capacity as Administrator of Federal Emergency Management Agency; Rochelle Walensky in her official capacity as Director of the Center for Disease Control; United States Department of Defense; Lloyd Austin in his official capacity as the United States Secretary of Defense; United States Department of Health and Human Services; Xavier Becerra in his official capacity as the United States Secretary of Health and Human Services; National Institutes of Health; Francis S. Collins in his official capacity as Director of the National Institutes of Health; United States Department of Veterans Affairs; Denis McDonough in his official capacity as United States Secretary of Veterans Affairs; National Science Foundation; Sethuraman Panchanathan in his official capacity as Director of the National Science Foundation; United States Department of Commerce; Gina Raimondo in her official capacity as United States Secretary of Commerce; National Aeronautics and Space Administration; Bill Nelson in his official capacity as Administrator of the National Aeronautics and Space Administration; United States Department of Transportation; Richard Chávez, in his official capacity as the Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as United States Secretary of Energy,

Defendants.

I, Matthew K. Wilde, declare as follows:

1. I am more than eighteen years of age and I am legally competent to make this declaration. I have personal knowledge of the facts set forth herein and can testify as to the truth of the statements contained herein if called upon as a witness at the trial of this action.

2. I currently serve as General Counsel for Boise State University. I have been employed with the General Counsel's office at Boise State since January 2013. As General Counsel for Boise State, I act as in-house counsel to Boise State University and represent the University's legal interests. As part of my duties as General Counsel, I am familiar with and provide advice to the University's Office of Sponsored Programs, which includes federal contracts and "contract-like" instruments. Throughout the COVID-19 pandemic, I have worked closely with the University's public health experts to ensure the University's response comports with state and federal law. My basic duties also include providing guidance to the University's Human Resources professionals, and thus I am familiar with the impact of the pandemic on staffing.

3. Boise State University, with a main campus located in Boise, Idaho, is considered a federal contractor due to a number of contracts and contract-like instruments related to the University's research activities.

4. I am familiar with Executive Order 14042 and the Safer Federal Workforce Task Force Guidance for Federal Contractors and subcontractors issued on September 24, 2021. Boise State University holds federal contracts and "contract-like instruments" that would be considered covered contracts under this guidance.

5. Federal dollars tied to those current contracts and contract-like instruments approximate \$25,057,355.

6. Those contracts are important to the State of Idaho and Boise State University because, under the contracts, the State receives funding for many important public benefits, including support for: (i) Center for Advanced Energy Studies (<https://caesenergy.org/about-us/#mission>) consortium activities involving Idaho National Laboratory, University of Idaho, Idaho State University, and Boise State University, such as state-of-the-art microscopy and analysis equipment and facilities for faculty, students, and businesses to research radiological and non-radiological materials at the atomic level; (ii) protecting native plants and animals from environmental changes; (iii) reducing the risk of death or injury to infants using common lounging and seating products, such as bouncers, swings, rockers, strollers, carriers, and loungers; and (iv) teaching Idaho entrepreneurs how to obtain resources to grow their businesses, including contracting directly with the U.S. government..

7. Due to an inability to restrict the movements of, and confine federal contractors and those who perform duties necessary to the performance of federal contracts to one or more limited-access locations for their work, Boise State believes the entire campus would be considered a covered workplace under the guidance.

8. Boise State employs approximately 3,500 full- and part-time employees on the campus in Boise, which include employees who work on federal contracts and contract-like instruments and those who do not, but who perform work in connection with those federal contractors.

9. Boise State employs approximately 3,500 individuals that would be subject to the vaccine mandate.

10. In September of 2021, the University conducted a campus-wide survey related to vaccine status. I am informed by the University's Public Health Officer, and on that basis

believe that of the approximately 3,500 of the University's employees received the survey. Of the approximately 3,500 employees, 2388, or 66% responded to the survey. Attached hereto as Exhibit A is a true and correct copy of the results of the University's survey related to the COVID-19 vaccine. Among the responses, 79 employees indicated that they had not received at least one dose of the vaccine, and of those, 49 indicated they probably or definitely will not get the vaccine.

11. Based on responses to the survey, and a State Executive Order prohibiting vaccines as a requirement to access a State service or benefit, Boise State anticipates a number of unvaccinated workers will refuse to receive the vaccine, despite Executive Order 14042.

12. As indicated above, based on a lack of response to the survey, and the number of responses indicating a lack of intent to receive the vaccine, Boise State anticipates a number of unvaccinated workers will be subject to employee discipline (up to termination) for not receiving vaccination in violation of Executive Order 14042.

13. Administering discipline to public employees generally is difficult. Similarly, disciplining Boise State's employees is slow and difficult due to statutory protections afforded groups of employees under the law.

14. A loss of employees will negatively impact Boise State's ability to perform its contracts and provide services to its students, during a time in which hiring and retaining employees has already been difficult.

15. A loss of federal contracts jeopardizes the health, safety and well-being of the University and the State of Idaho's citizens. Boise State's federal contracts and contract-like instruments provide funding for approximately 300 employees, totaling approximately \$1.7 million annually in employee salaries. Federal contracts and contract-like instruments fund

approximately 126 projects at the University, each one of which has far-reaching impacts on the State of Idaho. One of Boise State's covered contracts, for example, is a cooperative agreement from the US Department of Commerce, National Institute of Standards and Technology for the Manufacturing Extension Partnership (MEP). The last award was for \$815,236 to Boise State University's TechHelp, who leads the state MEP working in partnership with Idaho universities. The program provides assistance to manufacturers, food and dairy processors, the service industry, and inventors to grow revenue, increase productivity and performance, and to strengthen competitiveness. TechHelp reports an annual impact of assisting 80 manufacturers with a \$100,000 economic impact and creating 170 jobs.

16. Because of the breadth of Executive Order 14042, Boise State will not be able to comply with the timeline set forth under the Task Force Guidance. The University's classified employees and tenured faculty are entitled to due process before any employment action can be taken against them, and, with the short time period for complying, there is insufficient time for these processes to be followed. Additionally, there is insufficient time to process the requests for exemptions.

I, Matthew K. Wilde, hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 2nd day of November, 2021.

Matthew Wilde
Matthew Wilde (Nov 2, 2021 09:45 MDT)

Matthew K. Wilde

EXHIBIT A


BOISE STATE UNIVERSITY
OFFICE OF INSTITUTIONAL RESEARCH

Boise State University Campus Vaccination Status Survey Results

Executive Summary

The Office of Institutional Research administered a campus vaccination survey on behalf of the Boise State Public Health Office in September 2021. A total of 10,478 students and employees responded, for a 51% response rate. Eighty-eight percent of respondents indicated that they have received at least one dose of a COVID-19 vaccine, 9% indicated they have not been vaccinated, and 3% were either unsure because of participation in a vaccine study or they preferred not to answer. A greater proportion of employees are vaccinated (94.5%) than are students (86.6%). The highest vaccination rate was reported among faculty (97.8%) and the lowest rate was for students living on campus (84.9%). Among the 9% (n=945) who are not vaccinated, 21% said they definitely or probably will choose to receive the vaccine. The main factors influencing the decision to become vaccinated or not (among those who have not received a vaccine) are perceived safety of the vaccine (57%) and the desire for additional information (38%).

*Boise State Campus Vaccination Status Survey Results					
	% Vaccinated	Responses	Surveys Sent	Response Rate	**MoE
Total	88.2%	10,478	20,463	51.2%	<1%
All Employees	94.5%	2,388	3,587	66.6%	1.2%
Employees - Faculty Only	97.8%	859	1,156	74.3%	1.7%
Employees - Prof & Classified	92.6%	1,529	2,431	62.9%	1.5%
All Students	86.6%	8,303	17,173	48.3%	<1%
Students Living On Campus	84.9%	1,620	3,085	52.5%	1.7%
Students Living Off Campus	87.0%	6,683	14,088	47.4%	<1%

* Students enrolled exclusively in online only programs and concurrent enrollment students were not surveyed.

**Margin of Error was calculated at a 95% confidence level. Using the example of the "All Students" category above: with 86.6% of respondents saying "yes" they have received at least one dose of a COVID-19 vaccine, and you are looking at the overall results, then we would be 95% sure that the true percentage of the population is 86.6% +/- 1% (between 85.6% & 87.6%).

Note: Of all respondents, 945 (9%) indicated they have not received at least one dose of a COVID-19 vaccine. Of those, 197 (or 20.8%) said they definitely or probably will get the vaccine, and 27 (or 2.9%) said that they were interested in scheduling an appointment at the campus clinic. This latter group was redirected to the clinic site after completing the survey.

Employee Vaccination Status by Work Location		
	Responses	% Vaccinated
Faculty	859	97.8%
In-person	255	98.8%
Remote	190	95.8%
Hybrid	411	98.5%
Professional and Classified	1529	92.6%
In-person	559	91.1%
Remote	316	91.8%
Hybrid	641	94.4%

Vaccination Status Survey Respondent Profile			
	% of Population	% of Responses	Difference
Overall			
Female	55.6%	61.8%	6.2%
Male	44.2%	38.0%	-6.1%
Student			
<i>Gender</i>			
Female	56.1%	63.0%	6.8%
Male	43.8%	36.9%	-6.8%
<i>Residency</i>			
Resident	61.6%	63.1%	1.4%
Non Resident	38.4%	36.9%	-1.4%
<i>Academic Level</i>			
Freshman	20.5%	18.9%	-1.7%
Sophomore	18.7%	17.3%	-1.4%
Junior	21.1%	20.4%	-0.7%
Senior	26.7%	28.1%	1.3%
Post-Bacc Undergraduate	2.5%	3.0%	0.5%
Graduate	10.4%	12.4%	2.0%
Employee			
<i>Gender</i>			
Female	54.0%	58.2%	4.2%
Male	45.1%	41.2%	-3.9%
<i>Employee Type</i>			
Full-Time Total	72.6%	84.3%	11.7%
Full-Time FACULTY	22.6%	28.2%	5.5%
Full-Time PROFESSIONAL	36.2%	42.5%	6.3%
Full-Time CLASSIFIED	13.8%	13.7%	-0.1%
Part-Time Total	27.4%	15.7%	-11.7%
Part-Time FACULTY	9.6%	7.8%	-1.8%
Part-Time PROFESSIONAL	4.9%	4.1%	-0.8%
Part-Time CLASSIFIED	12.9%	3.8%	-9.1%
*Any difference in the % of respondents vs. the overall population greater than 5 is highlighted.			
There are some notable demographic differences between the overall population surveyed and the respondents.			
(1) Females are overrepresented in the responses by 6.2 percentage points compared to the population.			
(2) Part-time employees are underrepresented in the responses by 11.7 percentage points compared to the population.			
(3) Only 3.8 % of part-time classified employees responded to the survey, but they comprise 12.9% of the employee population.			

EXHIBIT 8

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The States of Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, West Virginia; Brian P. Kemp in his official capacity as Governor of the State of Georgia; Kay Ivey in her official capacity as Governor of the State of Alabama; Brad Little in his official capacity as Governor of the State of Idaho; Henry McMaster in his official capacity as Governor of the State of South Carolina; the Board of Regents of the University System of Georgia; Gary W. Black in his official capacity as Commissioner of the Georgia Department of Agriculture; Alabama Department of Agriculture and Industries; Alabama Department of Public Health; Alabama Department of Rehabilitation Services; Idaho State Board of Education,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as President of the United States; Safer Federal Workforce Task Force; United States Office of Personnel Management; Kiran Ahuja in her official capacity as director of the Office of Personnel Management and as co-chair of the Safer Federal Workforce Task Force; Office of Management and Budget; Shalanda Young in her official capacity as Acting Director of the Office of Management and Budget and as a member of the Safer Federal Workforce Task Force; General Services Administration; Robin Carnahan in her official capacity as Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as

**DECLARATION OF IDAHO STATE
UNIVERSITY**

CIVIL ACTION NO. 1:21-TC-05000

Administrator of the General Services Administration and as co-chair of the Safer Federal Workforce Task Force; Jeffrey Zients in his official capacity as co-chair of the Safer Federal Workforce Task Force and COVID-19 Response Coordinator; L. Eric Patterson in his official capacity as Director of the Federal Protective Service; James M. Murray in his capacity as Director of the United States Secret Service; Administrator Deanne Criswell in her official capacity as Administrator of Federal Emergency Management Agency; Rochelle Walensky in her official capacity as Director of the Center for Disease Control; United States Department of Defense; Lloyd Austin in his official capacity as the United States Secretary of Defense; United States Department of Health and Human Services; Xavier Becerra in his official capacity as the United States Secretary of Health and Human Services; National Institutes of Health; Francis S. Collins in his official capacity as Director of the National Institutes of Health; United States Department of Veterans Affairs; Denis McDonough in his official capacity as United States Secretary of Veterans Affairs; National Science Foundation; Sethuraman Panchanathan in his official capacity as Director of the National Science Foundation; United States Department of Commerce; Gina Raimondo in her official capacity as United States Secretary of Commerce; National Aeronautics and Space Administration; Bill Nelson in his official capacity as Administrator of the National Aeronautics and Space Administration; United States Department of Transportation; Richard Chávez, in his official capacity as the Director of the Department of Transportation; the United States Department of Energy; and Jennifer Granholm in her official capacity as United States Secretary of Energy,

Defendants.

I, Donna Lybecker, declare as follows:

1. I am more than eighteen years of age and I am legally competent to make this declaration. I have personal knowledge of the facts set forth herein and can testify as to the truth of the statements contained herein if called upon as a witness at the trial of this action.
2. My position is Idaho State University's Acting Vice President for Research. My basic duties include overseeing the Office for Research, which includes sponsored programs, grants and contracts, and support coming to the university, including federal contracts.
3. Idaho State University is a federal contractor.
4. Idaho State University has federal contracts that would be considered covered contracts under the guidance.
5. Depending on how broadly the mandate is interpreted, federal dollars tied to those contracts likely approximate \$23,233,502.
6. Those contracts are important to Idaho State University because under them Idaho State University provides education, examines human health, and produces research efforts on timely topics such as advanced energy, cyber security, and security of natural resources.
7. Idaho State University has worksites that would be considered covered workplaces under the guidance.

8. Idaho State University employs approximately 3473 individuals at those worksites, which includes some employees who directly and indirectly work on federal contracts and many who do not.
9. Idaho State University has determined most if not all of these employees would likely be subject to the vaccine mandate under current guidance.
10. Idaho State University utilizes various categories of employment with varying disciplinary processes and protections across campus, including tenured faculty, professional staff on term contracts, graduate students, and classified employees.
11. A loss of employees may negatively impact Idaho State University's ability to perform its contracts and provide services such as education, research, and service to the community.
12. A loss of federal contracts may additionally jeopardize the health, safety, and well-being of the State's citizens.
13. I, Donna Lybecker, hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my current understanding and belief.

DATED this _____ day of November, 2021.

Donna Lybecker  Digitally signed by Donna
Lybecker
Date: 2021.11.01 17:00:51 -06'00'

EXHIBIT 9

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

State of Georgia, *et al.*,

Plaintiffs,

v.

Civil Action No. 1:21-cv-00163-JRH-BKE

Joseph R. Biden, *et al.*,

Defendants.

**DECLARATION OF
FINIS E. ST. JOHN IV, Chancellor**

I, Finis E. St. John IV, hereby declare:

- 1) I am the Chancellor of the University of Alabama System and serve as the chief executive officer of the System, reporting to The Board of Trustees of The University of Alabama. The University of Alabama System is one of Alabama's largest employers and the state's largest higher education enterprise, and comprises three doctoral research universities and the UAB Health System.
- 2) Upon the request of the Attorney General of the State of Alabama, I make this declaration based upon information provided to me as the Chancellor of the University of Alabama System by personnel having this information reasonably available to them in their positions with the System's constituent universities, and in reliance upon their reporting to me in my position as Chancellor of the University of Alabama System.
- 3) The Board of Trustees of The University of Alabama is an entity created by the Constitution of The State of Alabama, which is vested with full management and control of the three doctoral research universities in the University of Alabama System (Ala. Const. Art. 14, Sec. 264), which are The University of Alabama (located in Tuscaloosa), The University of Alabama at Birmingham, and The University of Alabama in Huntsville. The three doctoral research universities that comprise the University of Alabama System receive funding from the State.
- 4) I have reviewed Executive Order 14042, the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors, and the FAR Council's Class Deviation Clause 52.223-99. On September 9, 2021, the President signed Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*


("Executive Order"), requiring federal contractors to comply with guidance issued by the Safer Federal Workforce Task Force. On September 24, 2021, the Task Force published *Guidance for Federal Contractors and Subcontractors*, including Frequently Asked Questions. I refer to these documents together below as the "Federal Contractor Mandate."

- 5) I understand that, in essence, the Federal Contractor Mandate will be implemented through the inclusion of a contract clause in new, extended, renewed, and modified federal contracts and contract-like instruments. I understand that the Federal Contractor Mandate has defined "covered employees" and "covered workplaces" in a way that requires all employees at University of Alabama System campuses to be "fully vaccinated," unless they are entitled to a medical or religious accommodation, by December 8, 2021, or otherwise makes it impracticable to comply with the Federal Contractor Mandate without requiring all such employees to be vaccinated or receive such an accommodation.
- 6) The following represents the available data on federal contracts and those employees who work directly on federal contracts and whose salaries depend in whole or in part on the funds provided by those federal contracts (not including federal contracts or contract-like instruments involving the medical/clinical operations of the University of Alabama at Birmingham):

CAMPUS	VALUE OF CURRENT FEDERAL CONTRACTS	APPROX. NUMBER OF EMPLOYEES WORKING DIRECTLY ON FEDERAL CONTRACTS
The University of Alabama (UA)	\$119,126,493	586
The University of Alabama at Birmingham (UAB)	\$18,119,327	300
The University of Alabama in Huntsville (UAH)	\$525,833,562	1,275

- 7) The University of Alabama System is making every reasonable effort to encourage vaccination and has pursued a vigorous vaccine campaign on all our campuses. Despite these efforts, we are concerned that some employees will refuse to be vaccinated, and our universities will suffer harm if we lose employees.
- 8) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

November 2, 2021



 Finis E. St. John IV
 Chancellor
 University of Alabama System

EXHIBIT 10

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

DECLARATION OF NATHAN
CHECKETTS

Civil Action No. 1:21-cv-163

1. I am over the age of 18 and have personal knowledge of the facts set forth in this Declaration.
2. I am the Executive Director of the Utah Department of Health (UDOH).
3. UDOH has at least three contracts with the federal government.
4. UDOH has federal contracts that could be considered covered contracts under the guidance issued by the Task Force.
5. Federal dollars tied to those contracts total \$811,000.
6. Those contracts are important to UDOH because under them UDOH:

- a. Shares data with the National Center for Health Statistics for its use, which reduces requests and workload on UDOH.
- b. Implements interoperability between systems to reduce manual work and reduces needs of partner agencies to utilize multiple systems.
- c. Receives information back that standardizes the information for national and state comparisons related to diagnoses, race, and industry and occupation.

7. UDOH has worksites that would be considered covered workplaces under the guidance.

8. UDOH employs 1,125 at the worksite where staff paid by these contracts work. This figure includes employees who work on federal contracts and those who do not.

9. With no known accommodations at this time, UDOH employs 1,125 individuals that would be subject to the vaccine mandate.

10. The % of unvaccinated citizens in the state is 29.9%.

11. UDOH anticipates some meaningful amount of unvaccinated workers will choose to quit their job rather than be vaccinated.

12. UDOH anticipates some meaningful amount of unvaccinated workers will be subject to employee discipline (up to termination) for not getting vaccinated in violation of the mandate.

13. Many UDOH employees are career service employees. Employee discipline takes time as the process for disciplining career service employees follows steps prescribed in state administrative rule (R477-11). Career service employees have the ability to grieve actions taken against them “including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice.” (R477-1)

14. A loss of employees across its programs will negatively impact UDOH’s ability to provide other services to Utahns. Before implementing a vaccine mandate, UDOH already faces employee shortages in many areas including finance, health informatics, and nursing.

15. A loss of these federal contracts would make it more difficult for UDOH to share data with the National Center for Health Statistics, to reduce manual work, and to standardize information for national and state comparisons.

16. Because of the breadth of the mandate, UDOH will not be able to comply with the timeline set forth under the guidance because the most common COVID-19 vaccine series used in the state require two vaccine doses that must be administered at least three weeks

apart in order to have the individual be fully vaccinated. In addition, most UDOH employees are career service employees that are provided a progressive discipline process that includes an opportunity to file a grievance on actions taken against them.

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED: November 5, 2021.

/s/ Nathan Checketts

NATHAN CHECKETTS

*(Signed copy of document bearing signature
of Nathan Checketts is being maintained in
the office of the Filing Attorney)*

EXHIBIT 11

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.
1:21-cv-00163-RSB-BKE

DECLARATION OF CHARLES PEELER

1. My name is Charles Peeler and I am more than eighteen years of age, legally competent to make this declaration, and am knowledgeable of the information contained herein.

2. Attached as **Exhibit A** is a true and accurate copy of Executive Order 14042, titled *Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors*.

3. Attached as **Exhibit B** is a true and accurate copy of the Safer Federal Workforce Task Force's *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* as published on September 24, 2021.

4. Attached as **Exhibit C** is a true and accurate copy of the Safer Federal Workforce Task Force's updated *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* as published on November 10, 2021.

5. Attached as **Exhibit D** is a true and accurate copy of the Office of Management and Budget's *Determination of the Promotion of Economy and*

Efficiency in Federal Contracting Pursuant to Executive Order No. 14042, 86 Fed. Reg. 53,691.

6. Attached as **Exhibit E** is a true and accurate copy of the Office of Management and Budget's *Determination of the Acting OMB Director Regarding the Revised Safer Federal Workforce Task Force Guidance for Federal Contractors and the Revised Economy & Efficiency Analysis*, 86 Fed. Reg. 63,418.

7. Attached as **Exhibit F** is a true and accurate copy of Class Deviation Clause 52.223-99.

**Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that
the foregoing is true and correct.**

This 19th day of November, 2021.

/s/ Charles Peeler
Charles Peeler

EXHIBIT A

BRIEFING ROOM

Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors

SEPTEMBER 09, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and section 301 of title 3, United States Code, and in order to promote economy and efficiency in procurement by contracting with sources that provide adequate COVID-19 safeguards for their workforce, it is hereby ordered as follows:

Section 1. Policy. This order promotes economy and efficiency in Federal procurement by ensuring that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with a Federal Government contract or contract-like instrument as described in section 5(a) of this order. These safeguards will decrease the spread of COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work for the Federal Government. Accordingly, ensuring that Federal contractors and subcontractors are adequately protected from COVID-19 will bolster economy and efficiency in Federal procurement.

Sec. 2. Providing for Adequate COVID-19 Safety Protocols for Federal Contractors and Subcontractors. (a) Executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A) (agencies), shall, to the extent permitted by law, ensure that contracts and contract-like instruments (as described in section 5(a) of this order) include a clause that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance or Guidance), provided that the Director of the Office of Management and Budget (Director) approves the Task Force Guidance and determines that the Guidance, if adhered to by contractors or subcontractors, will promote economy and efficiency in Federal contracting. This clause shall apply to any workplace locations (as specified by the Task Force Guidance) in which an individual is working on or in

connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order).

(b) By September 24, 2021, the Safer Federal Workforce Task Force (Task Force) shall, as part of its issuance of Task Force Guidance, provide definitions of relevant terms for contractors and subcontractors, explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance, and any exceptions to Task Force Guidance that apply to contractor and subcontractor workplace locations and individuals in those locations working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order).

(c) Prior to the Task Force publishing new Guidance related to COVID-19 for contractor or subcontractor workplace locations, including the Guidance developed pursuant to subsection (b) of this section, the Director shall, as an exercise of the delegation of my authority under the Federal Property and Administrative Services Act, *see* 3 U.S.C. 301, determine whether such Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. Upon an affirmative determination by the Director, the Director's approval of the Guidance, and subsequent issuance of such Guidance by the Task Force, contractors and subcontractors working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order), shall adhere to the requirements of the newly published Guidance, in accordance with the clause described in subsection (a) of this section. The Director shall publish such determination in the *Federal Register*.

(d) Nothing in this order shall excuse noncompliance with any applicable State law or municipal ordinance establishing more protective safety protocols than those established under this order or with any more protective Federal law, regulation, or agency instructions for contractor or subcontractor employees working at a Federal building or a federally controlled workplace.

(e) For purposes of this order, the term "contract or contract-like instrument" shall have the meaning set forth in the Department of Labor's proposed rule, "Increasing the Minimum Wage for Federal Contractors," 86 Fed. Reg. 38816, 38887 (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, that term shall have the meaning set forth in that final rule.

Sec. 3. Regulations and Implementation. (a) The Federal Acquisition Regulatory Council, to the extent permitted by law, shall amend the Federal Acquisition Regulation to provide for inclusion in Federal procurement solicitations and contracts subject to this order the clause described in section 2(a) of this order, and shall, by October 8, 2021, take initial steps to implement appropriate policy direction to acquisition offices for use of the clause by recommending that agencies exercise their authority under subpart 1.4 of the Federal Acquisition Regulation.

(b) By October 8, 2021, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts and contract-like instruments as described in section 5(a) of this order that are not subject to the Federal Acquisition Regulation and that are entered into on or after October 15, 2021, consistent with the effective date of such agency action, include the clause described in section 2(a) of this order.

Sec. 4. Severability. If any provision of this order, or the application of any provision of this order to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

Sec. 5. Applicability. (a) This order shall apply to any new contract; new contract-like instrument; new solicitation for a contract or contract-like instrument; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument, if:

- (i) it is a procurement contract or contract-like instrument for services, construction, or a leasehold interest in real property;
 - (ii) it is a contract or contract-like instrument for services covered by the Service Contract Act, 41 U.S.C. 6701 *et seq.*;
 - (iii) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or
 - (iv) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public;
- (b) This order shall not apply to:
- (i) grants;
 - (ii) contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended;
 - (iii) contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, as that term is defined in section 2.101 of the Federal Acquisition Regulation;
 - (iv) employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or
 - (v) subcontracts solely for the provision of products.

Sec. 6. Effective Date. (a) Except as provided in subsection (b) of this section, this order is effective immediately and shall apply to new contracts; new contract-like instruments; new solicitations for contracts or contract-like instruments; extensions or renewals of existing contracts or contract-like instruments; and exercises of options on existing contracts or contract-like instruments, as described in section 5(a) of this order, where the relevant

contract or contract-like instrument will be entered into, the relevant contract or contract-like instrument will be extended or renewed, or the relevant option will be exercised, on or after:

(i) October 15, 2021, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 3(a) of this order; or

(ii) for contracts and contract-like instruments that are not subject to the Federal Acquisition Regulation and where an agency action is taken pursuant to section 3(b) of this order, October 15, 2021, consistent with the effective date for such action.

(b) As an exception to subsection (a) of this section, where agencies have issued a solicitation before the effective date for the relevant action taken pursuant to section 3 of this order and entered into a new contract or contract-like instrument resulting from such solicitation within 30 days of such effective date, such agencies are strongly encouraged to ensure that the safety protocols specified in section 2 of this order are applied in the new contract or contract-like instrument. But if that contract or contract-like instrument term is subsequently extended or renewed, or an option is subsequently exercised under that contract or contract-like instrument, the safety protocols specified in section 2 of this order shall apply to that extension, renewal, or option.

(c) For all existing contracts and contract-like instruments, solicitations issued between the date of this order and the effective dates set forth in this section, and contracts and contract-like instruments entered into between the date of this order and the effective dates set forth in this section, agencies are strongly encouraged, to the extent permitted by law, to ensure that the safety protocols required under those contracts and contract-like instruments are consistent with the requirements specified in section 2 of this order.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,

September 9, 2021.

EXHIBIT B

Safer Federal Workforce Task Force
COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
Issued September 24, 2021

Introduction

On September 9, President Biden announced his [Path Out of the Pandemic: COVID-19 Action Plan](#). One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), (“the order”) which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause (“the clause”) that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Task Force”), provided that the Director of the Office of Management and Budget (“OMB”) approves the Task Force Guidance (the or this “Guidance”) and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance. The Director of OMB has, as authorized by Executive Order 14042, approved this Guidance and has, an exercise of the delegation of authority (see 3 U.S.C. § 301) under the Federal Property and Administrative Services Act determined that this Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. The Director has published such determination in the Federal Register.

Definitions

Community transmission – means the level of community transmission as set forth in the [CDC COVID-19 Data Tracker County View](#).

Contract and contract-like instrument – has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” [86 Fed. Reg. 38,816, 38,887](#) (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location – means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract – means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor – means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee – means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered

contractor workplace. This includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

Covered contractor workplace – means a location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace – means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated – People are considered [fully vaccinated](#) for COVID-19 two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine. There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will be considered by the Task Force and OMB for possible updating of this Guidance.

For purposes of this Guidance, people are considered fully vaccinated if they have received COVID-19 vaccines currently approved or authorized for emergency use by the U.S. Food and Drug Administration (Pfizer-BioNTech, Moderna, and Johnson & Johnson [J&J]/Janssen COVID-19 vaccines) or COVID-19 vaccines that have been listed for emergency use by the World Health Organization (e.g., AstraZeneca/Oxford). More information is available at [Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC](#).

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website [here](#).

Mask – means any mask that is consistent with CDC recommendations as set forth in [Types of Masks and Respirators | CDC](#). This may include the following: disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

Guidance

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products. Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

1. Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than December 8, 2021. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they are not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have an urgent, mission-critical need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated, the agency head may approve an exception for the covered contractor—in the case of such limited exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their

employer with one of the following documents: a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), 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 verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements related to masking and physical distancing while in covered contractor workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC's guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).
- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a [workplace risk assessment](#). Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the [CDC COVID-19 Data Tracker County View website](#) for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

3. *Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.*

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.

The designated individual (or individuals) must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including by communicating the required workplace safety protocols and related policies by email, websites, memoranda, flyers, or other means and posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in this Guidance in a readily understandable manner. This includes communicating the COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present at covered contractor workplaces. The designated individual (or individuals) must also ensure that covered contractor employees comply with the requirements in this guidance related to the showing or provision of proper vaccination documentation.

Frequently Asked Questions

Vaccination and Safety Protocols

Q1: How do covered contractors determine vaccination status of visitors to covered contractor workplaces?

A: Covered contractors should post signage at entrances to covered contractor workplaces providing information on safety protocols for fully vaccinated and not fully vaccinated individuals, including the protocols defined in the masking and physical distancing section above, and instruct individuals to follow the appropriate workplace safety protocols while at the covered contractor workplace. Covered contractors may take other reasonable steps, such as by communicating workplace safety protocols to visitors prior to their arrival at a covered contractor workplace or requiring all visitors to follow masking and physical distancing protocols for not fully vaccinated individuals.

Q2: Do covered contractors need to provide onsite vaccinations to their employees?

A: Covered contractors should ensure their employees are aware of [convenient opportunities to be vaccinated](#). Although covered contractors may choose to provide vaccinations at their facilities or workplaces, given the widespread availability of vaccinations, covered contractors are not required to do so.

Q3: What should a contractor employee do if a covered contractor employee has lost or does not have a copy of required vaccination documentation?

A: If covered contractor employees need new vaccination cards or copies of other documentation proof of vaccination, they should contact the vaccination provider site where they received their vaccine. Their provider should be able to provide them with new cards or documentation with up-to-date information about the vaccinations they have received. If the location where the covered contractor employees received their COVID-19 vaccine is no longer operating, the covered contractor employees should contact their State or local health department's [immunization information system \(IIS\)](#) for assistance. Covered contractor employees should [contact their State or local health department](#) if they have additional questions about vaccination cards or vaccination records.

An attestation of vaccination by the covered contractor employee is not an acceptable substitute for documentation of proof of vaccination.

Q4: Who is responsible for determining if a covered contractor employee must be provided an accommodation because of a disability or because of a sincerely held religious belief, practice, or observance?

A: A covered contractor may be required to provide an accommodation to contractor employees who communicate to the covered contractor that they are not vaccinated for COVID-19, or that they cannot wear a mask, because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. The contractor is responsible for considering, and dispositioning, such requests for accommodations regardless of the covered contractor employee's place of performance. If the agency that is the party to the covered contract is a "joint employer" for purposes of compliance with the Rehabilitation Act and Title VII of the Civil Rights Act, both the agency and the covered contractor should review and consider what, if any, accommodation they must offer.

Q5: Are covered contractor employees who have a prior COVID-19 infection required to be vaccinated?

A: Yes, covered contractor employees who have had a prior COVID-19 infection are required to be vaccinated. More information from CDC can be found [here](#).

Q6: Can a covered contractor accept a recent antibody test from a covered contractor employee to prove vaccination status?

A: No. A covered contractor cannot accept a recent antibody test from a covered contractor employee to prove vaccination status.

Workplaces

Q7: Does this Guidance apply to outdoor contractor or subcontractor workplace locations?

A: Yes, this Guidance applies to contractor or subcontractor workplace locations that are outdoors.

Q8: If a covered contractor employee is likely to be present during the period of performance for a covered contract on only one floor or a separate area of a building, site, or facility controlled by a covered contractor, do other areas of the building, site, or facility controlled by a covered contractor constitute a covered contractor workplace?

A: Yes, unless a covered contractor can affirmatively determine that none of its employees on another floor or in separate areas of the building will come into contact with a covered contractor employee during the period of performance of a covered contract. This would include affirmatively determining that there will be no interactions between covered contractor employees and non-covered contractor employees in those locations during the period of performance on a covered contract, including interactions through use of common areas such as lobbies, security clearance areas, elevators, stairwells, meeting rooms, kitchens, dining areas, and parking garages.

Q9: If a covered contractor employee performs their duties in or at only one building, site, or facility on a campus controlled by a covered contractor with multiple buildings, sites, or facilities, are the other buildings, sites, or facility controlled by a covered contractor considered a covered contractor workplace?

A: Yes, unless a covered contractor can affirmatively determine that none of its employees in or at one building, site, or facility will come into contact with a covered contractor employee during the period of performance of a covered contract. This would include affirmatively determining that there will be no interactions between covered contractor employees and non-covered contractor employees in those locations during the period of performance on a covered contract, including interactions through use of common areas such as lobbies, security clearance areas, elevators, stairwells, meeting rooms, kitchens, dining areas, and parking garages.

Q10: Are the workplace safety protocols enumerated above the same irrespective of whether the work is performed at a covered contractor workplace or at a Federal workplace?

A: Yes. The Guidance applies to all covered contractor employees and to all contractor or subcontractor workplace locations. While at a Federal workplace, covered contractor employees must also comply with any additional agency workplace safety requirements for that workplace. Because covered contractor employees working on a covered contract need to be fully vaccinated after December 8, 2021, covered contractor employees who work only at a Federal workplace need to be fully vaccinated by that date as well, unless legally entitled to an accommodation.

Q11: How does this Guidance apply to covered contractor employees who are authorized under the covered contract to perform work remotely from their residence?

A: An individual working on a covered contract from their residence is a covered contractor employee, and must comply with the vaccination requirement for covered contractor employees, even if the employee never works at either a covered contractor workplace or Federal workplace during the performance of the contract. A covered contractor employee's residence is not a covered contractor workplace, so while in the residence the individual need not comply with requirements for covered contractor workplaces, including those related to masking and physical distancing, even while working on a covered contract.

Scope and Applicability

Q12: By when must the requirements of the order be reflected in contracts?

A: Section 6 of the order lays out a phase-in of the requirements for covered contracts as follows:

- *Contracts awarded prior to October 15 where performance is ongoing* – the requirements must be incorporated at the point at which an option is exercised or an extension is made.
- *New contracts* – the requirements must be incorporated into contracts awarded on or after November 14. Between October 15 and November 14, agencies must include the clause in the solicitation and are encouraged to include the clause in contracts awarded during this time period but are not required to do so unless the solicitation for such contract was issued on or after October 15.

Q13: Must the order’s requirements be flowed down to all lower-tier subcontractors and, if so, who is responsible for flowing the clause down?

A: Yes. The requirements in the order apply to subcontractors at all tiers, except for subcontracts solely for the provision of products. The prime contractor must flow the clause down to first-tier subcontractors; higher-tier subcontractors must flow the clause down to the next lower-tier subcontractor, to the point at which subcontract requirements are solely for the provision of products.

Q14: Does the Guidance apply to small businesses?

A: Yes, the requirement to comply with this Guidance applies equally to covered contractors regardless of whether they are a small business. This broad application of COVID-19 guidance will more effectively decrease the spread of COVID-19, which, in turn, will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at workplaces where they are performing work for the Federal Government.

Q15: What steps are being taken to promote consistent application of the order’s requirements across agencies?

A: The FAR Council will conduct a rulemaking to amend the FAR to include a clause that requires covered contractors performing under FAR-based contracts to comply with this Guidance for contractor and subcontractor workplace locations. Prior to rulemaking, by October 8, 2021, the FAR Council will develop a clause and recommend that agencies exercise their authority to deviate from the FAR using the procedures set forth in subpart 1.4. Agencies responsible for contracts and contract-like instruments that are not subject to the FAR, such as concession contracts, will be responsible for developing appropriate guidance by October 8, 2021 to incorporate requirements into their covered instruments entered into on or after October 15, 2021.

Q16: If the Safer Federal Workforce Task Force updates this Guidance to add new requirements, do those requirements apply to existing contracts?

A: Yes. Covered contractors are required to, for the duration of the contract, comply with all Task Force Guidance for contractor or subcontractor workplace locations, including any new

Guidance where the OMB Director approves the Guidance and determines that adherence to the Guidance will promote economy and efficiency in Federal contracting. The Task Force and OMB plan to ensure any workplace safety protocols reflect what is necessary to decrease the spread of COVID-19.

Q17: What constitutes work performed “in connection with” a covered contract?

A: Employees who perform duties necessary to the performance of the covered contract, but who are not directly engaged in performing the specific work called for by the covered contract, such as human resources, billing, and legal review, perform work in connection with a Federal Government contract.

Q18: Do the workplace safety protocols in the Guidance apply to covered contractor employees who perform work outside the United States?

A: No. The workplace safety protocols in the Guidance do not apply to covered contractor employees who only perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the FAR.

Compliance

Q19: Does this clause apply in States or localities that seek to prohibit compliance with any of the workplace safety protocols set forth in this Guidance?

A: Yes. These requirements are promulgated pursuant to Federal law and supersede any contrary State or local law or ordinance. Additionally, nothing in this Guidance shall excuse noncompliance with any applicable State law or municipal ordinance establishing more protective workplace safety protocols than those established under this Guidance.

Q20: Can a covered contractor comply with workplace safety requirements from the Occupational Safety and Health Administration, including pursuant to any current or forthcoming Emergency Temporary Standard related to COVID-19, instead of the requirements of this Guidance?

A: No. Covered contractors must comply with the requirements set forth in this Guidance regardless of whether they are subject to other workplace safety standards.

Q21: What is the prime contractor’s responsibility for verifying that subcontractors are adhering to the mandate?

A: The prime contractor is responsible for ensuring that the required clause is incorporated into its first-tier subcontracts in accordance with the implementation schedule set forth in section 6 of the order. When the clause is incorporated into a subcontract, a subcontractor is required to

comply with this Guidance and the workplace safety protocols detailed herein. Additionally, first-tier subcontractors are expected to flow the clause down to their lower-tier subcontractors in similar fashion so that accountability for compliance is fully established throughout the Federal contract supply chain for covered subcontractor employees and workplaces at all tiers through application of the clause.

EXHIBIT C

Safer Federal Workforce Task Force
COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
Updated November 10, 2021

Introduction

On September 9, President Biden announced his [Path Out of the Pandemic: COVID-19 Action Plan](#). One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), (“the order”) which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause (“the clause”) that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Task Force”), provided that the Director of the Office of Management and Budget (“OMB”) approves the Task Force Guidance (the or this “Guidance”) and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance. The Director of OMB has, as authorized by Executive Order 14042, approved this Guidance and has, an exercise of the delegation of authority (see 3 U.S.C. § 301) under the Federal Property and Administrative Services Act determined that this Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. The Director has published such determination in the Federal Register.

Definitions

Community transmission – means the level of community transmission as set forth in the [CDC COVID-19 Data Tracker County View](#).

Contract and contract-like instrument – has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” [86 Fed. Reg. 38,816, 38,887](#) (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location – means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract – means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor – means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee – means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace. This includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

Covered contractor workplace – means a location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace – means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated – People are considered [fully vaccinated](#) for COVID-19 two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine. There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will be considered by the Task Force and OMB for possible updating of this Guidance.

For purposes of this Guidance, people are considered fully vaccinated if they have received COVID-19 vaccines currently approved or authorized for emergency use by the U.S. Food and Drug Administration (Pfizer-BioNTech, Moderna, and Johnson & Johnson [J&J]/Janssen COVID-19 vaccines) or COVID-19 vaccines that have been listed for emergency use by the World Health Organization (e.g., AstraZeneca/Oxford). More information is available at [Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC](#).

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website [here](#).

Mask – means any mask that is consistent with CDC recommendations as set forth in [Types of Masks and Respirators | CDC](#). This may include the following: disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

Guidance

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products. Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

1. Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than January 18, 2022. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they are not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have an urgent, mission-critical need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated, the agency head may approve an exception for the covered contractor—in the case of such limited exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their employer with one of the following documents: a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), 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 verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements related to masking and physical distancing while in covered contractor workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC's guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).

- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a [workplace risk assessment](#). Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the [CDC COVID-19 Data Tracker County View website](#) for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.

The designated individual (or individuals) must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including by communicating the required workplace safety protocols and related policies by email, websites, memoranda, flyers, or other means and posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in this Guidance in a readily understandable manner. This includes communicating the COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present at covered contractor workplaces. The designated individual (or individuals) must also ensure that covered contractor employees comply with the requirements in this guidance related to the showing or provision of proper vaccination documentation.

Frequently Asked Questions

Frequently Asked Questions regarding this Guidance can be found here:

<https://www.saferfederalworkforce.gov/faq/contractors/>

All Task Force Guidance, FAQs, and additional information for Federal contractors and subcontractors can be found here:

<https://www.saferfederalworkforce.gov/contractors/>

EXHIBIT D

proposed information request may be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 29, 2021.

ADDRESSES: You may submit comments identified by Control Number 1235–0024, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Wage and Hour Division (WHD) of the Department of Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* Section 3(l) of the Act establishes a minimum age of 16 years for most non-agricultural employment, but allows the employment of 14- and 15-year olds in occupations other than manufacturing and mining if the Secretary of Labor determines such employment is confined to: (1) Periods

that will not interfere with the minor's schooling; and (2) conditions that will not interfere with the minor's health and well-being. FLSA section 11(c) requires all covered employers to make, keep, and preserve records of their employees' wages, hours, and other conditions of employment. Section 11(c) authorizes the Secretary of Labor to prescribe the recordkeeping and reporting requirements for these records. The regulations set forth reporting requirements that include a Work Study Program application and written participation agreement. In order to use the child labor work study provisions, § 570.37(b) requires a local public or private school system to file with the Wage and Hour Division Administrator an application for approval of a Work Study Program as one that does not interfere with the schooling or health and well-being of the minors involved. The regulations also require preparation of a written participation agreement for each student participating in a Work Study Program and that the teacher-coordinator, employer, and student each sign the agreement.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval for an extension of this information collection in order to ensure effective administration of Work Study programs.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Work Study Program of the Child Labor Regulations.

OMB Control Number: 1235–0024.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms,

Federal, State, Local, or Tribal Government.

Total Respondents: WSP Applications: 10; Written Participation Agreements: 500.

Total Annual Responses: WSP Applications: 10.

Written Participation Agreements: 1,000.

Estimated Total Burden Hours: 1,529.

Estimated Time per Response: WSP Application: 121 minutes; Written Participation Agreements: 31 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0.

Dated: September 20, 2021.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2021–20956 Filed 9–27–21; 8:45 am]

BILLING CODE 4510–27–P

OFFICE OF MANAGEMENT AND BUDGET

Determination of the Promotion of Economy and Efficiency in Federal Contracting Pursuant to Executive Order No. 14042

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of determination.

SUMMARY: The Director of the Office of Management and Budget determines that compliance by Federal contractors and subcontractors with the COVID–19 workplace safety protocols detailed in the Safer Federal Workforce Task Force guidance issued on September 24, 2021 will improve economy and efficiency by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract.

DATES: September 24, 2021.

ADDRESSES: The Safer Federal Workforce Task Force Guidance for Federal Contractors and Subcontractors on COVID–19 Workplace Safety is available at: <https://www.saferfederalworkforce.gov/new/>.

FOR FURTHER INFORMATION CONTACT: Cristin Dorgelo, 725 17th Street N, Email address: Cristin.a.dorgelo@omb.eop.gov, telephone number: (202) 456–4066. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: As explained in Executive Order No. 14042

on *Ensuring Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors*, compliance with COVID-19-related safety protocols improves economy and efficiency by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract. Section 2(c) of E.O. 14042 requires that, before Federal contractors and subcontractors must adhere to any guidance from the Safer Federal Workforce Task Force pursuant to Executive Order No. 14042, the Director of the Office of Management and Budget must determine that such guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. Based on my review of the Safer Federal Workforce Task Force's COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors, scheduled for issuance on September 24, 2021, and exercising the President's authority under the Federal Property and Administrative Services Act (see 3 U.S.C. 3011) delegated to me through Executive Order No. 14042, I have determined that compliance by Federal contractors and subcontractors with the COVID-19-workplace safety protocols detailed in that guidance will improve economy and efficiency by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract.

Shalanda Young,
Acting Director, Office of Management and Budget.

[FR Doc. 2021-21184 Filed 9-24-21; 4:15 pm]

BILLING CODE 3110-01-P

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of senior executive service performance review board.

SUMMARY: This notice announces the membership of the National Capital Planning Commission Senior Executive Service Performance Review Board in accordance with section 4314(c) of Title 5, U.S.C. and 5 CFR 430.311.

FOR FURTHER INFORMATION CONTACT: Debra L. Dickson, Director of Administration, National Capital

Planning Commission, 401 Ninth Street NW, Suite 500, Washington, DC 20004, (202) 482-7229.

SUPPLEMENTARY INFORMATION: The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission from October 1, 2021, to September 30, 2023: Paige Cottingham-Streater, Executive Director, Japan U.S. Friendship Commission; John Farrell, Executive Director, U.S. Arctic Research Commission; and Christopher J. Roscetti, Technical Director, Defense Nuclear Facilities Safety Board.

Dated: September 22, 2021.

Debra L. Dickson,
Director of Administration, National Capital Planning Commission.

[FR Doc. 2021-20961 Filed 9-27-21; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA 2021-0102]

RIN 3133-AF39

Request for Information and Comment on Digital Assets and Related Technologies

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for information and comment; extension of comment period.

SUMMARY: On July 27, 2021, the NCUA Board (Board) published in the **Federal Register** a document entitled "Request for Information and Comment on Digital Assets and Related Technologies" (RFI) and invited comments from interested parties regarding the current and potential impact of activities connected to digital assets and related technologies on federally insured credit unions (FICUs), related entities, and the NCUA. The Board noted that it was broadly interested in receiving input on commenters' views in this area, including current and potential uses in the credit union system, and the risks associated with them. To allow interested persons more time to consider and submit their comments, the Board has decided to extend the comment period for an additional 30 days.

DATES: The comment period for the RFI published July 27, 2021, at 86 FR 40213, is extended. Responses to the RFI must now be received on or before October 27, 2021.

ADDRESSES: You may submit comments by any one of the following methods

(Please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments for NCUA Docket 2021-0102.

- **Fax:** (703) 518-6319. Include "[Your name] Comments on 'Request for Information and Comment on Digital Assets and Related Technologies.'"

- **Mail:** Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- **Hand Delivery/Courier:** Same as mailing address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Policy and Analysis: Scott Borger, Senior Financial Modeler and Todd Sims, National Payment Systems Officer, Office of National Examinations and Supervision, (703) 518-6640; **Legal:** Thomas Zells, Senior Staff Attorney, Office of General Counsel, (703) 518-6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: On July 27, 2021, the Board published in the **Federal Register** an RFI inviting comments from interested parties regarding the current and potential impact of activities connected to digital assets and related technologies on FICUs, related entities, and the NCUA.¹ The Board published the RFI with the aim of engaging the broad credit union industry and other stakeholders and learning how emerging DLT and DeFi applications are viewed and used. The RFI emphasized that the NCUA hopes to learn how the credit union community is using these emerging technologies and gain additional feedback as to the role the NCUA can play in safeguarding the financial system and consumers in the context of these emerging technologies. In order to continue to

¹ 86 FR 40213 (July 27, 2021).

EXHIBIT E

Dated: November 11, 2021.

Jessica L. Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2021-25037 Filed 11-12-21; 11:15 am]

BILLING CODE 7050-01-P

OFFICE OF MANAGEMENT AND BUDGET

Determination of the Acting OMB Director Regarding the Revised Safer Federal Workforce Task Force Guidance for Federal Contractors and the Revised Economy & Efficiency Analysis

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of determination; request for comments.

SUMMARY: The Director of the Office of Management and Budget (“OMB”) determines that compliance by Federal contractors and subcontractors with the COVID-19 workplace safety protocols detailed in the Safer Federal Workforce Task Force (“Safer Federal Workforce Task Force” or the “Task Force”) guidance (the “Guidance”) to be issued on November 10, 2021, will promote economy and efficiency in Federal contracting by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract, and the Director approves the guidance. This notice accordingly rescinds and supersedes the Director’s prior notice issued on September 24, 2021.

DATES: To be ensured consideration, comments must be received on or before December 16, 2021.

ADDRESSES: You should submit comments via the Federal eRulemaking Portal at <https://www.regulations.gov/>. Follow the instructions for submitting comments.

Please be advised OMB will post all comments received that relate to this notice of determination on <https://www.regulations.gov> without making any change to the comments or redacting any information.

All comments posted are available and accessible to the public. So, do not include any information you would not like to be made publicly available, such as Social Security numbers, personal addresses, telephone numbers, and email addresses. It is the responsibility of the commenter to safeguard personal information.

FOR FURTHER INFORMATION CONTACT: Cristin Dorgelo, 725 17th Street NW,

Email address: cristin.a.dorgelo@omb.eop.gov, telephone number: (202) 456-4066. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Section 2 of Executive Order 14042 (“Executive Order 14042” or the “order”) requires that, before Federal contractors and subcontractors must adhere to any guidance from the Task Force, the Director of OMB must approve such guidance and determine that such guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. Based on my review of the Task Force’s COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors, scheduled for issuance on November 10, 2021 (reproduced in relevant part in Part I below), as well as the economy-and-efficiency analysis presented in Part II below, and exercising the President’s authority under the Federal Property and Administrative Services Act (see 3 U.S.C. 301) delegated to me through Executive Order 14042, I approve the Guidance and have determined that the COVID-19-workplace safety protocols detailed in that Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. This notice accordingly rescinds and supersedes my prior notice issued on September 24, 2021. 86 FR 53691.

This notice consists of the following sections. Part I consists of revised Guidance from the Task Force. Part II consists of an economic analysis of the COVID-19-workplace safety protocols detailed in such Guidance and the effect on economy and efficiency in Federal procurement. Part III addresses procedural requirements.

Part I. Safer Federal Workforce Task Force Guidance

On September 9, President Biden announced his Path Out of the Pandemic: COVID-19 Action Plan. One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause (“the clause”) that the

contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Task Force, provided that the Director of OMB approves the Task Force Guidance and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition

Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance.

A. Definitions

Community transmission—means the level of community transmission as set forth in the CDC COVID-19 Data Tracker County View.¹

Contract and contract-like instrument—has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” 86 FR 38816, 38887 (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued

under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location—means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract—means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor—means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee—means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace. This includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

Covered contractor workplace—means a location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace—means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated—people are considered fully vaccinated for COVID-19 two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine.² There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will

be considered by the Task Force and OMB for possible updating of this Guidance.

For purposes of this Guidance, people are considered fully vaccinated if they have received COVID-19 vaccines currently approved or authorized for emergency use by the U.S. Food and Drug Administration (Pfizer-BioNTech, Moderna, and Johnson & Johnson [J&J]/Janssen COVID-19 vaccines) or COVID-19 vaccines that have been listed for emergency use by the World Health Organization (e.g., AstraZeneca/Oxford). More information is available at Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC.³

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website.⁴

Mask—means any mask that is consistent with CDC recommendations.⁵ This may include the following: Disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: Masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

B. Requirements

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace

³ CDC, Interim Clinical Considerations for Use of COVID-19 Vaccines, <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html>.

⁴ CDC, People who received COVID-19 vaccine as part of a clinical trial in the United States, <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#vaccinated-part-clinical-trial>.

⁵ CDC, Types of Masks and Respirators (Sept. 23, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>.

¹ CDC, COVID-19 Integrated County View, <https://covid.cdc.gov/covid-data-tracker/#county-view>.

² CDC, When You’ve Been Fully Vaccinated (last updated Oct. 15, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products.

Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

1. Vaccination of Covered Contractor Employees, Except in Limited Circumstances Where an Employee Is Legally Entitled to an Accommodation

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than January 18, 2022. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they are not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have an urgent, mission-critical need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated, the agency head may approve an exception for the covered contractor—in the case of such limited

exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their employer with one of the following documents: A copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), 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 verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements Related To Masking and Physical Distancing While in Covered Contractor Workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC’s guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).

- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).

- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide

exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a workplace risk assessment.⁶ Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the CDC COVID-19 Data Tracker County View website for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols.⁷ When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

3. Designation by Covered Contractors of a Person or Persons To Coordinate COVID-19 Workplace Safety Efforts at Covered Contractor Workplaces

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may

comprise some or all of their regular duties.

The designated individual (or individuals) must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including by communicating the required workplace safety protocols and related policies by email, websites, memoranda, flyers, or other means and posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in this Guidance in a readily understandable manner. This includes communicating the COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present at covered contractor workplaces. The designated individual (or individuals) must also ensure that covered contractor employees comply with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Frequently Asked Questions

Frequently Asked Questions regarding this Guidance can be found here: <https://www.saferfederalworkforce.gov/faq/contractors/>.

All Task Force Guidance, FAQs, and additional information for Federal contractors and subcontractors can be found here: <https://www.saferfederalworkforce.gov/contractors/>.

Part II. Economy-and-Efficiency Analysis

The following analysis outlines the ways in which the Guidance set forth in Part I will promote economy and efficiency in Federal procurement.

The Guidance requires vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation. It imposes requirements related to masking and physical distancing in covered contractor workplaces. And it requires covered contractors to designate a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The Guidance is issued pursuant to Executive Order 14042, which the President promulgated, in part, under the Federal Property and Administrative Services Act (FPASA). The FPASA, 40 U.S.C. 101 *et seq.* provides that the President “may prescribe policies and directives that the President considers necessary to carry out” the Act, which

includes a purpose of “provid[ing] the Federal Government with an economical and efficient system for . . . [p]rocur[ing] and supplying property and nonpersonal services.” 40 U.S.C. 101(1), 121(a).

This analysis of the economic impact of the Guidance is based on OMB’s subject matter expertise and OMB’s review and analysis of the academic literature on interventions to prevent the spread of COVID-19.

As explained below, the overall effect of enacting these protocols for Federal contractors and subcontractors will be to decrease the spread of COVID-19, which will in turn decrease worker absence, save labor costs on net, and thereby improve efficiency in Federal contracting. Indeed, numerous private companies have undertaken vaccine mandates that were announced or take effect before the Federal Government’s mandate on Federal contractors takes effect and private companies have also imposed masking and physical distancing requirements at their workplaces. Just as these private businesses have concluded that vaccination, masking, and physical distancing requirements will make their operations more efficient and competitive in the market, we have concluded that the Guidance will realize economy and efficiency in Federal contracting.

A. COVID-19 Infection Imposes Significant Costs on Contractors and the Federal Government

The primary goal of the safety protocols is to reduce the spread of COVID-19 among contractor employees. COVID-19 is a highly communicable disease that tends to spread between people who are indoors, sharing space, and in close quarters—conditions common in typical workplaces.⁸ There is also evidence that COVID-19 can be spread by asymptomatic individuals. One study estimated that more than half of transmissions come from individuals who do not have symptoms (Johansson et al., 2021). Individuals who do not have symptoms are likely to continue to report to work and therefore may spread the disease to their coworkers. As such, safety protocols applied even in the absence of observable illness among employees can meaningfully reduce the spread of COVID-19. Moreover, because employees working at a single workplace will regularly come into contact, safety protocols applied to all

⁶ OSHA, Recommended Practices for Safety and Health Programs, <https://www.osha.gov/safety-management>.

⁷ CDC, COVID-19 Integrated County View, <https://covid.cdc.gov/covid-data-tracker/#county-view>.

⁸ See U.S. Environmental Protection Agency, Indoor Air and Coronavirus (COVID-19), <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

employees in a workplace can meaningfully reduce the spread of COVID-19.

The CDC recommends that individuals remain isolated for ten days after symptom onset, which would mean workers who catch the virus can miss up to eight days of work.⁹ Furthermore, those individuals could infect other workers, who would also miss eight days of work. Additional exposed workers would likely need to quarantine and would also miss work.

Workers unable to work generate substantial costs on employers. An imperfect proxy for the cost to an employer of a foregone hour of work is the worker's hourly pay. We calculate the average hourly wage for a Federal contractor to be approximately \$31.51, making the average pay for eight days \$2,016.¹⁰ Wages are higher in Washington, DC, Maryland and Virginia, where many contractors are located, ranging from \$33.36 in Virginia to \$42.83 in Washington, DC, making the average pay for eight days in those areas \$2,135 and \$2,741, respectively. Such costs are substantial and, if borne by contractors, such costs would be expected to be passed on to the Federal Government, either in direct cost or lower quality, including delays.

Fortunately, vaccines, masks, and physical distancing have all been proven to reduce the prevalence of COVID-19 infection, and vaccines have been shown to greatly reduce the severity of breakthrough infections. And vaccines, masking, and physical distancing are all low-cost interventions.

B. COVID-19 Vaccination Reduces Net Costs

Requiring any workers who have not yet done so to receive a COVID-19 vaccine would generate meaningful efficiency gains for Federal contractors. COVID-19 vaccines provide strong and persistent protection against infection, illness, and hospitalization (see Tenforde, et al., 2021 and references). Reducing the number of infected people mechanically reduces transmission, and some preliminary evidence also indicates that vaccines also reduce transmission by people who contract "breakthrough" infections (Ke, et al.,

2021). The vaccine requirement in the Guidance buttresses other workplace-specific safety protocols and provides protection against infection outside of the workplace, increasing the likelihood that the full set of protocols will prevent infection and illness and preserve the productivity of people working on or in connection with Federal contracts.¹¹

Because vaccines are widely available for free, the cost of implementing a vaccine mandate is largely limited to administrative costs associated with distributing information about the mandate and tracking employees' vaccination status. Such costs are likely to be small.¹² Other costs of vaccination include employees quitting and using sick time when experiencing side effects from vaccination. However, based on experiences shared by private companies detailed below, we expect few employees to quit because of the vaccine mandate, and side effects lead to significantly less sick leave than COVID-19 infection. And unlike COVID-19 infection, side effects are not contagious to other employees.

Consistent with the view that COVID-19 vaccines promote economy and efficiency, numerous private companies have undertaken vaccine mandates that were announced or take effect before the Federal Government's mandate on Federal contractors takes effect. Led originally by companies like United Airlines and Tyson Foods, a wide and growing swath of private companies have determined that vaccine mandates are net beneficial to their companies.¹³

While anecdotal reports suggest that vaccine mandates may lead some workers to quit their jobs rather than comply, which could create some cost associated with replacing them, we know of no systematic evidence that this has been a widespread phenomenon, or that it would be likely

to occur among employees of Federal contractors. In fact, the experience of private companies is to the contrary. For example, United Airlines reported in October 2021 that 99.7 percent of the airline's workforce complied with the vaccination requirements, Tyson Foods reported more than 96 percent of its workforce is now vaccinated, and healthcare providers such as California's Kaiser Permanente reported placing only two percent of employees on administrative leave for failing to comply with vaccine requirements.¹⁴ And finally, even if some non-negligible number of workers were to quit rather than comply with a vaccine mandate, the cost of replacing those workers would be a one-time cost, while the benefits of increased vaccination (including among replacement workers, who would be vaccinated) would be long-lasting.

C. Masking and Physical Distancing Reduces Net Costs

COVID-19 is generally thought to be spread by respiratory particles and aerosols.¹⁵ Masking and physical distancing have proven effective in reducing the spread of COVID-19. One study found that communities with the greatest physical distancing had a 31 percent lower risk of COVID-19 than communities with poor physical distancing, and that communities where individuals reported always using face masks outside of the home, even with poor physical distancing, had 62 percent reduced risk of COVID-19 compared to communities where face masks were never worn (Kwon et al., 2020). Another study found that full population masking reduces transmission of the virus by 25.8 percent (Leech et al., 2021). Similarly, a study of masking and ventilation improvements in Georgia schools found that COVID-19 incidence was 37 percent lower in schools where masks were required and 39 percent lower in schools with improved ventilation

¹¹ Note that the other safety protocols discussed above will still be appropriate even after the vaccine requirement is implemented, e.g., to protect against breakthrough infections and emerging variants of the virus, or for the benefit of workers who may be unable to receive a vaccine for medical or religious reasons, until such time as public health conditions improve and CDC guidance related to masking and physical distancing changes.

¹² For example, the Occupational Safety and Health Administration estimated that providing information would take ten minutes per firm (84 FR 61476 cl. 3) and that tracking employees' vaccination status would take five minutes per employee (id. 84 FR 61488 cl. 2).

¹³ The Major Companies Requiring Workers to Get COVID Vaccines, *Fortune* (Aug. 23, 2021), <https://fortune.com/2021/08/23/companies-requiring-vaccines-workers-vaccination-mandatory/>. See greater discussion on page 12 of the White House Vaccination Requirements Report (Oct. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/Vaccination-Requirements-Report.pdf>.

¹⁴ COVID Vaccine Some 5 Percent of Unvaccinated Adults Have Quit Their Jobs Over a Mandate Survey Shows CNBC (Oct. 28, 2021), <https://www.cnbc.com/2021/10/28/covid-vaccine-some-5percent-of-unvaccinated-adults-have-quit-their-jobs-over-a-mandate-survey-shows.html>; How Tyson Foods Got 60,500 Workers to Get the Coronavirus Vaccine Quickly, *N.Y. Times* (Nov. 4, 2021), <https://www.nytimes.com/2021/11/04/business/tyson-vaccine-mandate.html>; Vaccine mandates stoked fears of labor shortages. But hospitals say they're working, *Washington Post* (Oct. 16, 2021), <https://www.washingtonpost.com/health/2021/10/16/hospital-covid-vaccine-mandate/>.

¹⁵ CDC, Prevent Getting Sick: How COVID Spreads (last updated July 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

⁹ See Centers for Disease Control and Prevention, Recommendations for Ending Isolation (last updated Sept. 14, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html#anchor_1631308518116.

¹⁰ This calculation uses the distribution of NAICS codes in the contractor population and average salary of those NAICS codes from the Occupational Employment and Wage Statistics program at the Bureau of Labor Statistics, <https://www.bls.gov/oes/>.

(Gettings et al., 2021). This research shows that masking, physical distancing, and improved ventilation will all reduce the likelihood that COVID-19 spreads among the contractor workforce. These preventative measures will decrease worker absence and allow contract workers to continue their work without the need to take time off to recover from COVID-19. Thus, mask wearing and physical distancing are likely to reduce the spread of COVID-19 within contractor workplaces, reducing worker absence and maintaining productivity.

The costs of masking and physical distancing are minimal. For example, contractors may have to pay for masks for their employees. Masks can cost as little as \$0.13 per mask and would need to be provided only to employees who do not already have their own masks.¹⁶ Physical distancing can often be done without additional costs. Numerous private companies like Walmart require all employees to wear masks and physically distance, embodying a judgment that these mitigation measures promote economy and efficiency in the workplace.¹⁷

D. Conclusion

For these reasons, it is OMB's expert opinion that the Guidance will promote economy and efficiency in Federal Government procurement. All plans for economic recovery and growth are predicated on the need to prevent additional spread of the COVID-19 virus and facilitate vaccinations, and no employer, whether public or private, can expect to see increased productivity or economic efficiency without a healthy workforce. The safety protocols that are set forth by the Safer Federal Workforce Task Force are meant to ensure that COVID-19 does not easily spread within the workplace, so that Federal contractor employees can continue to be productive.

E. References

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Part III. Procedural Requirements

A. Public Contract Requirements Under Public Law 111-350

I am making my determination pursuant to a Presidential delegation under 3 U.S.C. 301. That determination is therefore not subject to the procedural requirements of Public Law 111-350, codified at 41 U.S.C. 1707. *See NRDC, Inc. v. U.S. Dep't of State*, 658 F. Supp. 2d 105, 109 & n.5, 111 (D.D.C. 2009) (when an agency acts pursuant to 3 U.S.C. 301, the agency "stands in the President's shoes" and that action is "not reviewable under the APA"); *Detroit Int'l Bridge Co. v. Canada*, 189 F. Supp. 3d 85, 100 (D.D.C. 2016) ("Several cases have concluded that an agency's action on behalf of the President, involving discretionary authority committed to the President, is 'presidential' and unreviewable under the APA."). To the extent that 41 U.S.C. 1707 is applicable to my determination set forth in this document, there are urgent and compelling circumstances that justify departing from the notice-and-comment and delayed-effective-date requirements in 41 U.S.C. 1707.

The notice-and-comment and delayed-effective-date requirements of subsections (a) and (b) of 41 U.S.C. 1707 "may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with the requirements impracticable." 41 U.S.C. 1707(d). This statutory exception is implemented in FAR section 1.501-3, which provides that "[a]dvance comments need not be solicited when urgent and compelling

circumstances make solicitation impracticable prior to the effective date of the coverage, such as when a new statute must be implemented in a relative short period of time."

Urgent and compelling circumstances justify waiving the notice-and-comment requirement for this notice. This is a once in a generation pandemic, which has already resulted in more than 46,405,253 cases of COVID-19, hospitalized more than 3,283,045 Americans, and taken more than 752,196 American lives. The pandemic continues to present an imminent threat to the health and safety of the American people, including due to the emergence of the B.1.617.2 (Delta) variant, which is a variant of concern that spreads more easily than previously discovered variants of SARS-CoV-2. This threat reaches all Americans, including those working for Federal contractors and subcontractors. The Guidance directly addresses this imminent threat by requiring vaccination. The CDC has determined that the best way to slow the spread of COVID-19, including preventing infection by the Delta variant, is for individuals to get vaccinated. According to the CDC, vaccinated individuals are 5 times less likely to be infected and 10 times less likely to experience hospitalization or death due to COVID-19 than unvaccinated individuals. The Guidance thus promotes the most important, urgent public health measure to slow the spread of COVID-19 among Federal contractors and subcontractors—which is critical to avoiding worker absence and unnecessary labor costs that could hinder the efficiency of federal contracting.

The minimum delay required by subsections (a) and (b) of 41 U.S.C. 1707 is also incompatible with a fundamental purpose of issuing this determination. The Guidance set forth in Part I changes the vaccination deadline for Federal contractors from December 8, 2021, to January 18, 2022. If the determination implementing this change were required to comply with subsections (a) and (b) of 41 U.S.C. 1707 (requiring 30 days for comment, and another 30 days to become effective), the earliest possible effective date for this determination would be January 9, 2022. But waiting until January for this determination to become effective would prevent the change in deadlines from having practical effect, as Federal contractors and subcontractors would still be legally obligated to meet the December 8, 2021, vaccination deadline until this determination became effective. That alone establishes urgent and compelling

¹⁶ Mask costs were taken from a search of Amazon and would likely be lower for a contractor who would be able to order in bulk.

¹⁷ The Major Companies Requiring Workers to Get COVID Vaccines, *Fortune* (Aug. 23, 2021), <https://fortune.com/2021/08/23/companies-requiring-vaccines-workers-vaccination-mandatory/>.

circumstances to warrant making this determination immediately effective.

Additionally, even if there were no prior deadline that contractors and subcontractors were obligated to meet, urgent and compelling circumstances would still exist because the broader economy-and-efficiency purpose of this determination would be severely undermined by the minimum delay required under subsections (a) and (b) of 41 U.S.C. 1707. As an initial matter, such a delay would interfere with an important purpose of the Task Force Guidance—aligning the vaccination deadline for Federal contractors with the vaccination deadline for private companies under recent regulatory actions. In particular, the Occupational Safety and Health Administration (OSHA) issued an Emergency Temporary Standard (ETS) requiring employers with 100 or more employees to ensure their workers are fully vaccinated or tested for COVID-19 on at least a weekly basis, and the Centers for Medicare & Medicaid Services (CMS) issued a rule requiring health care workers at facilities participating in Medicare and Medicaid to be fully vaccinated. 86 FR 61402; 86 FR 61555. Those rules set a deadline of January 4, 2022, for employees to receive their final COVID-19 vaccination dose—*i.e.*, January 18, 2022, for a fully vaccinated covered workforce. The Task Force’s decision to set the same deadline for Federal contractors and subcontractors will make it easier for private employers to administer successful vaccination policies across their workforce and will allow Federal contractors and subcontractors to implement their requirements on the same timeline as other employers in their industries.¹⁸ For example, a large employer covered by the ETS may have some but not all of their workplaces covered by the vaccination requirement for Federal contractors and subcontractors. For such an employer, that would mean some workplaces are governed by the ETS and some by the Task Force Guidance. Or, an employer may have some workers covered by the CMS rule, and other workers covered by the vaccination requirement for Federal contractors and subcontractors. For employers in these circumstances, having the same

deadline across all requirements will promote consistency and administrability of public health standards, and eliminate potential confusion and frustration that disparate deadlines could produce. It could also avoid needless costs in having multiple systems of records and internal accountability established for different deadlines. Ensuring that private employers do not need to meet different compliance dates across different Federal vaccination policies is thus important to the success of their vaccination programs and to promoting economy and efficiency in Federal procurement.

Moreover, in order for such alignment to be effective, employers require regulatory certainty in the near-term. An immediately effective notice gives contractors and subcontractors a clear understanding not only of their responsibilities under Federal law but also the deadline for complying with those responsibilities. By contrast, absent an immediately effective determination of that deadline, such employers would have to wait until comments are received and a determination is finalized to know with certainty the deadline for ensuring that their covered employees are fully vaccinated. That would cause much of the administrability problems and frustration that alignment is intended to avoid, undermining the critical efforts to curb the spread of COVID-19 among Federal contractors and subcontractors and preventing alignment of the relevant deadlines.

Compliance with the procedural requirements of 41 U.S.C. 1707(a) and 1707(b) would fundamentally undermine the effort to provide private companies with aligned deadlines and regulatory certainty, as outlined above. As noted above, under those requirements the earliest effective date for this determination would be January 9, 2022. Simply put, that is far too late to provide regulatory certainty for Federal contractors, as that is *past* the date that covered employees of covered Federal contractors must receive their final COVID-19 vaccination dose (January 4, 2022), and it is less than ten days before the deadline for covered contractor employees to be fully vaccinated (January 18, 2022). Thus, compliance with the procedural requirements of 41 U.S.C. 1707(a) and 1707(b) would undermine the success of the Federal Government’s vaccination efforts and economy and efficiency in Federal procurement.

Thus, to the extent that it is found that my determination is subject to the procedural requirements in 41 U.S.C.

1707, I have concluded that urgent and compelling circumstances exist under section 1707(d). The requirements of this notice are accordingly effective immediately upon filing with the **Federal Register**. Additionally, to the extent that it is found that my determination is subject to the procedural requirements in 41 U.S.C. 1707, this determination is temporary, consistent with section 1707(e). And regardless of whether this determination is subject to the procedural requirements in 41 U.S.C. 1707, I am soliciting comment on all subjects of this determination, which would also be consistent with sections 1707(c) and (e), if those provisions applied.

B. Administrative Procedure Act

My determination is not subject to the procedural rulemaking requirements of the Administrative Procedure Act (APA).

As noted above, this determination is pursuant to a delegation from the President under 3 U.S.C. 301. When any agency acts pursuant to such a delegation, the agency “stands in the President’s shoes” and its actions “cannot be subject to judicial review under the APA.” *NRDC v. State*, 658 F. Supp. 2d at 109 & n.5, 111.

Even if the APA were applicable, the notice-and-comment requirements of 5 U.S.C. 553 exempt “a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” 5 U.S.C. 553(a)(2). This determination relates to procurement and contractors—*i.e.*, “contracts” under section 553(a)(2)—and is thus exempt from the APA’s notice-and-comment requirements.

Moreover, even if the notice-and-comment requirements of 5 U.S.C. 553 were applicable, the good-cause exception is satisfied here. 5 U.S.C. 553(b)(3)(B) waives notice-and-comment requirements if “the agency for good cause finds” that compliance would be “impracticable, unnecessary, or contrary to the public interest.” Notice and comment is impracticable in situations where delay would result in harm. *See, e.g., Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012). Applicable procedures are “[i]mpracticable” if “the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings” or negotiated rulemaking. *N.J., Dep’t of Envtl. Prot. v. EPA*, 626 F.2d 1038, 1046 (D.C. Cir. 1980) (quoting S. Doc. No. 248, at 200 (1946)); *see also United States v. Cotton*, 760 F. Supp. 2d 116, 129 (D.D.C. 2011). Such “good cause” would also exempt an agency from the delayed effective

¹⁸ Unlike the vaccination deadline for covered employees of Federal contractors, the vaccination deadline for Federal employees under Executive Order 14043 does not require alignment with private companies, because there is no subset of private companies also subject to Executive Order 14043. Thus, the exigencies of combatting the global pandemic require maintaining the current vaccination deadline for Federal employees of November 22, 2021.

date under 5 U.S.C. 553(d). For the reasons explained above, notice-and-comment rulemaking and a delayed effective date would be impracticable, because the resulting delay in the effective date would not provide Federal contractors and subcontractors sufficient time to ensure compliance in time for the January 18, 2022, vaccination deadline.

* * * * *

Shalanda Young,

Acting Director.

[FR Doc. 2021-24949 Filed 11-10-21; 4:15 pm]

BILLING CODE 3110-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, November 18, 2021.

PLACE: Due to the COVID-19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (www.ncua.gov) and access the provided webcast link.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Share Insurance Quarterly Report.
2. NCUA's 2022-2026 Strategic Plan.
3. NCUA Rules and Regulations, Service Facilities.
4. Board Briefing, NCUA's Modernized Examination Tools.
5. Board Briefing, Update to NCUA's Response to the COVID-19 Pandemic.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703-518-6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2021-25032 Filed 11-12-21; 11:15 am]

BILLING CODE 7535-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 17 meetings of the Arts Advisory Panel to the National Council on the Arts will be

held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; haless@arts.gov, or call 202/682-5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:
Our Town (review of applications): This meeting will be closed.

Date and time: December 2, 2021; 11:00 a.m. to 1:00 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 2, 2021; 2:30 p.m. to 4:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 3, 2021; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 3, 2021; 2:30 p.m. to 4:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 3, 2021; 11:00 a.m. to 1:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 6, 2021; 2:00 p.m. to 4:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2021; 11:30 a.m. to 1:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2021; 2:30 p.m. to 4:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 7, 2021; 2:00 p.m. to 4:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 8, 2021; 11:30 a.m. to 1:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 8, 2021; 2:00 p.m. to 4:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 1:30 p.m. to 3:30 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 1:00 p.m. to 3:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 3:30 p.m. to 5:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: December 14, 2021; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: December 16, 2021; 1:00 p.m. to 3:00 p.m.

Dated: November 10, 2021.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021-24928 Filed 11-15-21; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-201; NRC-2021-0175]

New York State Energy Research and Development Authority; Irradiated Nuclear Fuel Processing Plant; Western New York Nuclear Service Center

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an

EXHIBIT F

FAR Deviation Clause

Executive Order 14042

Ensuring Adequate COVID Safety Protocols for Federal Contractors

Baseline is FAC 2021-07, published in the Federal Register on August 11, 2021.

September 24, 2021

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

[52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

(a) *Definition.* As used in this clause -

United States or its outlying areas means—

- (1) The fifty States;**
- (2) The District of Columbia;**
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;**
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands;**
and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.**

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)]

EXHIBIT 12

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No. 1:21-cv-00163-RSB-
BKE

DECLARATION OF TERESA MACCARTNEY

1. My name is Teresa MacCartney, and I am the Acting Chancellor for The Board of Regents (the “Board”) of the University System of Georgia (the “University System”). In this capacity, I am familiar with the operations and services provided under federal agency contracts within the University System, including but not limited to those matters at issue in this litigation and described more fully herein.

**THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA
AND ITS BROAD IMPACT ON STATE OF GEORGIA EMPLOYEES**

2. The Board is composed of nineteen members, five of whom are appointed from the state-at-large, and one from each of the state’s fourteen congressional districts.

3. The Board oversees the twenty-six higher education institutions that comprise the University System, including four research universities, four comprehensive universities, nine state universities, and nine state colleges.

4. The four research universities include Augusta University, Georgia Institute of Technology, Georgia State University, and the University of Georgia.

5. The University System further includes the Georgia Archives which identifies, collects, manages, preserves, and provides access to records and information about Georgia.

6. The University System employs nearly 100,000 employees, more than 50,000 full time. Every employee of the twenty-six higher education institutions within the University System is an employee of the University System.

7. The University System has an annual budget of more than \$9.8 billion for fiscal year 2021.

8. The University System's economic impact on the state was \$18.6 billion in fiscal year 2020, according to the most recent study conducted by the Selig Center for Economic Growth.

9. According to the Selig Center for Economic Growth report, there are approximately 155,010 full and part-time jobs across the state that are economically dependent upon the University System.

10. Of the 155,010 jobs noted in the report, 34% are on the campuses while 66% are off campuses. This indicates that for every person employed at the University System including its member institutions, two people in the local community have jobs related to the presence of the institution.

The University System's Response to COVID-19

11. The University System has provided students with access to COVID-19 vaccination sites on 15 campuses statewide.

12. Students can schedule their first or second dose at the University System campus closest to them, regardless of whether they are enrolled at that institution.

13. Since the beginning of the pandemic, the University System has worked closely with the Georgia Department of Public Health and the Governor's Office and Task Force to make sure the University System's students keep learning and stay healthy.

14. While the University System strongly encourages that all faculty, staff, students and visitors get vaccinated, it has not mandated vaccination.

The University System and Its Federal Contracts

15. Universities, Colleges, and research institutions within the University System maintain and/or provide services under thousands of contracts with various federal agencies.

16. The University System employees who work on these federal agency contracts work on numerous University System campuses and in remote locations.

17. Upon review, three of the four research universities – Augusta University, Georgia Institute of Technology, and the University of Georgia – maintain the majority of the University System's federal agency contracts.

18. Augusta University, Georgia Institute of Technology, and the University of Georgia collectively maintain and/or provide services to over 2,000 federal agency contracts and subcontracts.

19. Augusta University, Georgia Institute of Technology, and the University of Georgia's federal contracts generated approximately \$736,968,899.00 in revenue in fiscal year 2021.

The University System's Attempt to Comply with the Contractor Mandate

20. Due to the large number of impacted employees statewide, the University System is concerned about its compliance obligations under the Contractor Mandate, to include gathering, evaluating, and making personnel decisions based on all of the required vaccine data on its employees by the January 4, 2022 deadline.

21. To comply with the Contractor Mandate, the impacted institutions have begun:

- a. Tracking employee vaccination status;
- b. Creating a process to review employee accommodation requests;
- c. Identifying impacted employees and locations;
- d. Expending its own financial resources to ensure compliance; and
- e. Tracking data from subcontractors to ensure that they are likewise performing (a), (b), (c), and (d) above.

22. Despite diligently working to achieve compliance, the University System is concerned that the impacted institutions may not reach full compliance by the January 4, 2022 deadline.

23. Despite diligently working to encourage all University System employees to obtain a COVID-19 vaccine, not all of the University System's covered contractor employees may reach full compliance by the January 4, 2022 deadline.

24. The University System values and relies on its employees who are covered contractor employees. The University System would be irreparably harmed

if it is required to remove employees from federal contracts, relocate employees to other workplaces, or discipline or terminate employees who are covered contractor employees but do not obtain their final dose of a COVID-19 vaccine by January 4, 2022.

25. The University System would have to expend substantial resources to remove, relocate, or otherwise terminate covered contractor employees who choose not to get vaccinated under the Contractor Mandate.

26. The employee discipline and termination process can be lengthy and require extensive resources.

27. Replacing and re-training new employees would impose significant costs and administrative burdens on The University System. Work performed under federal contracts often requires specialized knowledge and skills that are not easily replaceable, therefore finding qualified applicants in the current labor market is likely to be difficult

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 4th day of November, 2021.

DocuSigned by:

Teresa MacCartney

947027B6B8774ED...
Teresa MacCartney
Acting Chancellor
The Board of Regents of the
University System of Georgia

EXHIBIT 13

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.

1:21-cv-00163-RSB-BKE

DECLARATION OF MARGARET A. AMSTUTZ, Ph.D.

1. My name is Margaret A. Amstutz, Ph.D. I am the Associate Provost for Academic Programs & Chief of Staff in the Provost's Office at the University of Georgia ("UGA"). I am also UGA's Institutional Designee for Compliance with the Federal Task Force Guidance and am knowledgeable of the facts set forth herein.

2. UGA is a public research university and serves as one of the 26 higher education institutions within the University System of Georgia (the "University System"). The Board of Regents ("Board") is a state agency that governs and manages the USG and its member institutions, including UGA.

3. All UGA employees are also employees of the Board.

4. UGA is concerned about the burdens of compliance with the Contractor Mandate (as referenced in the Complaint), including the requirement to gather all of the required vaccine data on our employees by the January 4, 2022 deadline.

5. To comply with the Contractor Mandate, we have begun to implement processes for:

- a. Identifying impacted employees and locations;
- b. Reviewing requests for accommodations;
- c. Tracking employee vaccination statuses;
- d. Expending our own financial resources to ensure compliance; and
- e. Tracking data from our subcontractors to ensure that they are likewise performing (a), (b), and (c) above.

6. Despite diligently working towards compliance with the Contractor Mandate, UGA has serious concerns about the burdens of compliance and the risks associated with not reaching full compliance by the January 4, 2022 deadline.

7. Despite diligently working to encourage all UGA employees to obtain a COVID-19 vaccine, it is possible that not all of UGA's "covered contractor employees" who are required to obtain full vaccination status will do so by the January 4, 2022 deadline.

8. The Contractor Mandate is unclear with respect to who is a "covered contractor employee" and which locations are "covered contractor workplaces." The guidance under the Contractor Mandate continues to change, as recently as November 1, 2021, making compliance even more challenging.

9. UGA values and relies on all its employees, including those who fall within the scope of covered contractor employees.

10. Federal contracts are critical to recruiting and retaining talented faculty and students. These funding opportunities often engage researchers around applied and real-world problems and offer cutting-edge research opportunities for our research community. The talented individuals we recruit as faculty, staff, and students have every expectation of having these challenging and exciting research opportunities available to them via the federal contracting process. They have spent

years of study in preparation for undertaking this level and scope of work in their disciplines. Their professional development as faculty and students is tied to their ability to engage in research that pushes the boundaries of knowledge within those disciplines. It is not difficult to imagine that faculty performing the work of federal and federal flow-through contracts and subcontracts may not be interested in continuing at our institution if doing so required them to relinquish these funding opportunities. In the event federal contract and subcontract funding were removed, it seems unlikely other sources would be able to provide equal research support. As a result, faculty and students who are directly impacted, as well as others – whether in solidarity with those impacted or because of a desire to be able to work on federal contract projects in the future – may be incentivized to leave UGA for other institutions. UGA's reputation as a research university is likely to suffer in the event UGA is unable to act as a federal contractor.

11. A requirement to remove, relocate, discipline or otherwise terminate covered contractor employees who refuse to comply with the Contractor Mandate could require the expenditure of significant UGA resources.

12. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 4 day of November, 2021.

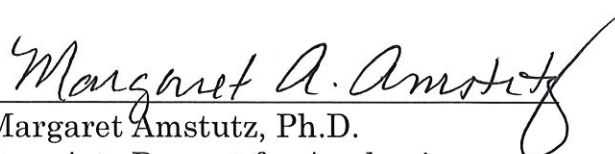

Margaret Amstutz, Ph.D.
Associate Provost for Academic
Programs & Chief of Staff
University of Georgia

EXHIBIT 14

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

State of Georgia, *et al.*,

Plaintiffs,

v.

Civil Action No. 1:21-cv-00163-JRH-BKE

Joseph R. Biden, *et al.*,

Defendants.

**DECLARATION OF
RICHARD STEWART PATE**

I, Richard Stewart Pate hereby declare:

Background and Experience

1. I make this declaration based on my personal and professional knowledge and experience, information available to me in my position in public service, and publicly available information.
2. I am the Commissioner of the State of Alabama Department of Agriculture and Industries (“ADAI”, or the “Department”).
3. As the Commissioner of ADAI, I am the chief executive officer of ADAI and have management and control of ADAI.

The Alabama Department of Agriculture and Industries

4. ADAI is an agency of the State of Alabama and receives funding from the State.
5. ADAI is a state agency responsible for serving farmers and consumers of agricultural projects. The Department provides expert regulatory control over products and services, and promotes national and international consumption of Alabama products.
6. ADAI employs several hundred people.
7. I have reviewed Executive Order 14042, the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors, and the FAR Council’s Class Deviation Clause 252.223-7999. I refer to these documents together below as the “Contractor Mandate.” I understand that the

Contractor Mandate requires federal contractors to, in turn, require their covered employees to be “fully vaccinated” by December 8, 2021.

8. ADAI has federal contracts that would be considered covered contracts under the Contractor Mandate.
9. State law prohibits ADAI from soliciting its employees’ vaccination status. *See* Ala. Act. 2021-493 § 1(a). However, I understand that about half of all Alabamians have not received the vaccine, and it is reasonable to assume that roughly the same proportion of ADAI employees have not received the vaccine either.
10. ADAI has worksites that would be considered covered workplaces under the Contractor Mandate.
11. ADAI stands to lose funds if it does not comply with the Contractor Mandate.
12. ADAI has leased property to the United States Department of Agriculture (“USDA”) continuously for the past 26 years.


The Impact of the Contractor Mandate on ADAI

13. We estimate that a substantial percentage of our employees will resign if the federal government enforces the Contractor Mandate.
14. Losing employees due to the Contractor Mandate jeopardizes the ability of ADAI—and, accordingly, of the State—to perform its contracts and provide important services to citizens. Particularly vulnerable are ADAI’s programs related to protecting consumers and ensuring a safe food supply.
15. The federal government did not alert ADAI that it was considered a “federal contractor” until *October 20, 2021*—a mere 12 days ago. I have attached to this declaration as **Exhibit A** a true and correct copy of correspondence between ADAI and a USDA officer, who stated that “the mandatory Executive Order 14042 . . . needs to be part of every Federal contract now.” *Id.*
16. Two days later, ADAI requested clarification about whether compliance with the Contractor Mandate was required to continue contracting with the federal government. USDA responded as follows:

[I]t’s “encouraged” for the Lessors to sign, BUT if you don’t, then [USDA] won’t be able to do any future lease actions with you if you don’t, as well as anything regarding the current lease, such as an extensions or expansions if needed. So, we’d have to move out when the lease expires.

17. If ADAI does not—or cannot—comply with the Contractor Mandate, then the federal government has threatened it will cancel its lease and will refuse to “do any future lease actions” with ADAI going forward, depriving ADAI of the revenues it had relied on for its quarter-century contracting relationship with the federal government.
18. Considering that the Contractor Mandate demands compliance by December 8, ADAI would need all impacted employees to begin the vaccination process *today* for the Pfizer vaccine, or within the next three weeks for the Johnson and Johnson vaccine—it is already too late to pick the Moderna vaccine.¹
19. The federal government’s deadlines have made compliance extremely difficult, if not impossible.
20. If ADAI does not comply with the Contractor Mandate, then ADAI will lose significant funding for these critical programs. If ADAI complies with the Contractor Mandate, it stands to lose a significant percentage of its workforce.
21. The Contractor Mandate therefore forces ADAI to choose between losing funding and losing workers. In either event, the Contractor Mandate will render ADAI less effective and will jeopardize the welfare of the Alabamians who benefit from ADAI’s programs.
22. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

11-2-21
Date


Richard Stewart Pate
Commissioner
Alabama Department of Agriculture and Industry

¹ Center for Disease Control, Different COVID-19 Vaccines, (Oct. 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines.html>.

Exhibit A

From: "Santelman, Brenda K - APHIS" <brenda.k.santelman@usda.gov>
Date: October 22, 2021 at 12:00:29 PM CDT
To: "Guy, Gunter" <gunter.guy@agi.alabama.gov>
Cc: "Brooks, Hassey" <Hassey.Brooks@agi.alabama.gov>, "Frazier, Michael" <Michael.Frazier@agi.alabama.gov>
Subject: RE: USDA Lease Amendment No. 1 Montgomery, AL

Gunter,

Because your lease contract is under the dollar threshold, it's "encouraged" for the Lessors to sign, BUT if you don't, then we won't be able to do any future lease actions with you if you don't, as well as anything regarding the current lease, such as an extensions or expansions if needed. So we'd have to move out when the lease expires.

Regarding the safety provisions, it's basically just indicating that all persons/contractors entering the USDA space needs to be vaccinated per the recent President's Executive Order.

Please let me know if you plan on signing the LA or not as I need to document your response accordingly and report it up.

Thanks!



BRENDA SANTELMAN | Lease Contracting Officer | APHIS MRPBS AAMD, Realty | ☎ 612-336-3231 | 📠 612-336-3553 | 250 Marquette Ave, Ste 410, Minneapolis, MN 55401

From: Guy, Gunter <gunter.guy@agi.alabama.gov>
Sent: Friday, October 22, 2021 11:37 AM
To: Santelman, Brenda K - APHIS <brenda.k.santelman@usda.gov>
Cc: brooks, hassey <hassey.brooks@agi.alabama.gov>; Frazier, Michael <Michael.Frazier@agi.alabama.gov>
Subject: RE: USDA Lease Amendment No. 1 Montgomery, AL

Brenda, can you please guide me to the specific provisions that applies to the USDA lease with us. It appears that it's not retroactively applied to a previously executed lease agreement until it has to be renewed? Any clarification on that would also be appreciated since I will have to get approval from our Commissioner. Thanks.

N. Gunter Guy, Jr.
General Counsel
Alabama Dept. of Ag and Industries
334-240-7118
Gunter.guy@agi.alabama.gov

From: Santelman, Brenda K - APHIS <brenda.k.santelman@usda.gov>
Sent: Wednesday, October 20, 2021 6:08 PM
To: Guy, Gunter <gunter.guy@agi.alabama.gov>
Subject: USDA Lease Amendment No. 1 Montgomery, AL

Hi Gunter,
Please see the attached Lease Amendment (LA) No. 1 for our USDA lease in Montgomery, AL. The LA is including the mandatory Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, which needs to be part of every Federal contract now.

Please sign and return **at your earliest convenience**, but no later than November 12, 2021. If you have any questions, please don't hesitate to reach out to me.

Thank you!



BRENDA SANTELMAN | Lease Contracting Officer | APHIS MRPBS AAMD, Realty | ☎ 612-336-3231 | 📠 612-336-3553 | 250 Marquette Ave, Ste 410, Minneapolis, MN 55401

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