



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

September 20, 2021

MEMORANDUM FOR: D'andra Hankinson, HUD Deputy Director of Labor & Employee Relations Division, AHEDB

FROM: 
Ricardo Miranda, Chief Negotiator
AFGE National Council of HUD Locals No. 222

SUBJECT: Demand to Bargain: COVID-19 Vaccination Mandate, Documentation, and Testing Requirements

On September 14, 2021, AFGE National Council of HUD Locals 222 (Council 222 or the Union) submitted its demand to bargain and preliminary bargaining proposals, in accordance with Article 49, Section 49.04(1) of the HUD-AFGE 2015 Collective Bargaining Agreement (CBA) and the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7114(a) and (b) and §7106(b)(2) and (3), regarding implementation of the COVID-19 vaccination mandate, attestation, and testing requirements by Department of Housing and Urban Development (HUD or the Department). In accordance with Article 49, Section 49.06(i) of the HUD-AFGE Agreement, the Union reserved the right to submit additional bargaining proposals until negotiations commence, upon receiving new information during negotiations, or discovery occurring after the implementation of the COVID-19 vaccination mandate, attestation and testing policies.

Following submission of the Union's September 14 preliminary bargaining proposals, the Safer Federal Workforce Task Force issued new guidance on September 16, 2021. In light of the Task Force's guidelines, the Union hereby modifies its bargaining proposals to include the following in lieu of our September 14 submission.

1. **Primary Concern.** The Parties (i.e., HUD and AFGE Council 222) agree that their primary concern is to protect the health and safety of HUD employees.
2. **Scope.** The scope of this Supplemental Agreement covers the implementation of the COVID-19 vaccination mandate, attestation, and testing of bargaining-unit employees. It also covers vaccine mandates, certifications, and testing of future pandemic conditions that may occur.

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3. Rights. Implementation of the Supplemental Agreement for the vaccination mandate, attestation, and testing of bargaining-unit employees shall not diminish or waive any rights of the Parties conferred by the CBA, law, or government-wide rule or regulation.
4. Successor Agreements. If this Supplemental Agreement expires because of the implementation of a new collective bargaining agreement, the Parties agree to incorporate the terms of this Supplement into the successor collective bargaining agreement.
5. Future Pandemics. The Parties agree that should a future pandemic present different issues or requirements that are not addressed by this Supplemental Agreement, the Parties may choose to negotiate with regard to those issues or requirements.
6. Precedence. If there is any conflict between HUD's vaccination mandate, attestation, and testing policies and the provisions of this Supplement or the HUD-AFGE Agreement, the terms of this Supplement and then the HUD-AFGE Agreement shall prevail.
7. Formal Discussions. HUD shall provide AFGE Council 222 and AFGE Locals with timely formal notice of all formal discussions, including those related to HUD's COVID-19 vaccination mandate, attestation, and testing policies, and invite the Union to attend and participate in those discussions, as provided in CBA Article 4, "Rights and Obligations of the Parties," Section 4.03.
8. Notice to Union. The Department will provide timely notice to the Union of any new policies, procedures, and changes in conditions of employment concerning vaccination mandates, documentation, and testing as required by CBA Article 41, Section 41.04.C, "Union Notification and Availability," and Article 49, Section 49.02, "Mid-Term Changes."
9. Notice to Bargaining Unit. The Department will notify all bargaining-unit employees of any new policies concerning vaccination mandates, attestation, and testing, including distributing this Supplement. The Department shall post all such documents on the Department's intranet (HUD@Work or successor system) and shall provide copies of or links to those policies and documents by email to employees at the time of issuance. The Department shall not implement or announce to bargaining unit employees any new policies on a vaccination mandate, attestation, and testing prior to the completion of bargaining obligations between HUD and AFGE Council 222 and AFGE Locals.
10. Government-wide Mandates. HUD shall not impose any greater or additional requirements than required by government-wide rules and regulations, including the COVID-19 guidance promulgated by the Safer Federal Workforce Task Force. For example, HUD shall not impose earlier deadlines or require more documentation than is federally mandated.
11. Vaccine Mandate: The following applies to the COVID-19 vaccine mandate and to any future vaccine mandate that may be imposed on bargaining unit employees:
 - a. HUD shall provide guidance to all bargaining unit employees that:

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- i. Clearly states what is required by the mandate.
 - ii. Identifies all relevant dates and deadlines (i.e., for the COVID-19 vaccines, employees who have not yet been vaccinated must get their first Moderna vaccine no later than October 11, 2021, or their first Pfizer-BioNTech vaccine no later than October 18, with second vaccines or the single Johnson & Johnson vaccine administered no later than November 8, in order to be fully vaccinated by November 22, 2021).
 - iii. Clearly states the procedure and criteria for requesting a reasonable accommodation based on a disability or sincerely held religious beliefs and practices.
 - iv. Clearly states the consequences of failure to comply with the mandate.
- b. For COVID-19, HUD shall consider an employee to be fully vaccinated two weeks after receiving their second dose of the Moderna or Pfizer-BioNTech vaccine or their single dose of the Johnson & Johnson vaccine.
- c. For COVID-19, consistent with the Safer Federal Workforce Task Force guidance, HUD shall consider employees who are outside the United States to be fully vaccinated two weeks after receiving the second dose of the AstraZeneca/Oxford vaccine.
- d. For COVID-19, HUD recognizes that even if an employee is fully vaccinated, an additional dose, i.e., a booster, may be appropriate.
- e. HUD shall take steps to encourage and promote employee vaccination before the deadlines, including the following actions:
- i. HUD shall offer vaccinations at HUD offices consistent with CBA Article 38, Section 38.04, “Immunization Programs.”
 - ii. For pandemic and other exceptional conditions, if HUD does not offer the relevant vaccines on site, HUD shall grant employees up to four hours of administrative leave to travel to the vaccination site, receive a vaccine, and return to work for each vaccination dose, as directed by the Safer Federal Workforce Task Force guidance, in lieu of the two hours specified in CBA Article 38, Section 38.04.
 - iii. For the COVID-19 vaccine, HUD shall grant two workdays of administrative leave if an employee has an adverse reaction to a COVID-19 vaccination dose that prevents the employee from working, for each dose of the vaccine, as directed by the Safer Federal Workforce Task Force guidance. If an employee requires more than two workdays to recover, HUD may grant emergency paid leave under the American Rescue Plan Act—if available—or permit the employee may take other

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appropriate leave (e.g., sick leave) to cover any additional absence. The Department shall not require medical documentation of any reaction to a COVID-19 vaccine.

- iv. For the COVID-19 vaccine, HUD shall grant bargaining unit employees administrative leave for time spent accompanying family members to receive a vaccine. HUD shall grant up to four hours of administrative leave per dose for each family member receiving the vaccine. Family members shall include those individuals as defined in 5 CFR § 630.201, including:
 - (1) Spouse, and parents thereof;
 - (2) Children, and spouses or domestic partners thereof;
 - (3) Parents, and spouses or domestic partners thereof;
 - (4) Siblings, and spouses or domestic partners thereof;
 - (5) Grandparents and grandchildren, and spouses or domestic partners thereof;
 - (6) Domestic partner and parents thereof; and
 - (7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- v. In accordance with guidelines provided by the Safer Federal Workforce Task Force, HUD shall reimburse bargaining unit employees for eligible local travel expenses (e.g., mileage, parking, tolls, or public transit fees) for round trip travel to the vaccination site. HUD shall advise employees of the process for obtaining reimbursement by email within one week of signing this agreement.
- vi. Within one week of signing this agreement, HUD shall advise employees of the availability of vaccines on site, where applicable, and shall inform employees of the administrative leave benefits for getting vaccines. HUD shall inform employees that they must advise supervisors of their need for administrative leave in advance, except in the case of a reaction to a vaccine, in which case employees shall request the administrative leave and/or other leave upon return to duty, consistent with the requirements of CBA Article 15, Section 15.09 (5), "Documentation for Sick Leave."
- vii. HUD shall provide all of the administrative leave benefits for employees who obtain a third dose of a COVID-19 vaccine or who accompany family members to get a third dose, in accordance with guidelines provided by the Safer Federal Workforce Task Force.
- viii. HUD shall encourage vaccination through regular emails and other media that advertise the benefits of vaccination, the availability of onsite vaccinations where applicable, and the availability of administrative leave and reimbursement of expenses for COVID-19 vaccination and recovery.

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- f. Upon request, HUD shall provide the Council 222 and/or a requesting Local with anonymized data about vaccination rates of program areas, offices, or geographic regions.
12. Reasonable Accommodations. HUD shall provide a reasonable accommodation to employees who inform management that they are not vaccinated against COVID-19 because of a disability or because of a sincerely held religious belief, practice, or observance. Within one week of signing this agreement, HUD shall provide guidance to employees on how to request a reasonable accommodation consistent with the following provisions:
- a. Disability/Medical. The Parties recognize that CBA Article 45, “Reasonable Accommodation,” governs the process of receiving, evaluating, and responding to requests for reasonable accommodations related to exceptions from the vaccine mandate. HUD must ensure its policies and actions comply with the provisions of CBA Article 45, guidance issued by the Safer Federal Workforce Task Force, the requirements of the Americans with Disabilities Act (ADA), Section 501 of the Rehabilitation Act, and Equal Employment Opportunity Commission (EEOC) guidance.
 - i. Due to the urgency and severity of the COVID-19 pandemic, including the Delta variant, HUD will take steps to shorten the approval process, including the interactive process, so that employees receive a response within one week of submitting a request if practical, but no later than 30 days after the request.
 - ii. In accordance with CBA Article 45, Section 45.04(1), “Request for Reasonable Accommodation,” the requesting employee’s first-line supervisor is authorized to approve the request for a reasonable accommodation without waiting for any other official’s approval.
 - iii. Management shall not deny or delay approval of an employee’s disability-based request for a reasonable accommodation related to vaccination unless HUD can show that approval would cause an undue hardship, defined by the Americans with Disabilities Act as an action requiring significant difficulty or expense, to the Department.
 - iv. If the employee already has a documented disability, HUD shall not ask for more documentation to establish the existence of the disability.
 - v. Management shall not require an employee who provides medical documentation from a health care provider indicating that the employee has a disability that contraindicates vaccination to obtain any additional medical examination or opinion. A statement signed by the employee’s medical provider shall be sufficient documentation if it identifies the disability and how or why a vaccine is contraindicated.

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- vi. Management shall follow the guidelines issued by the Centers for Disease Control with regard to certain conditions, and shall not subject to further questioning any employee whose medical professional asserts these conditions:
 - (1) People with a history of myocarditis or pericarditis should not receive a mRNA COVID-19 vaccine until the episode of myocarditis or pericarditis has completely resolved. People who develop myocarditis or pericarditis after a dose of an mRNA COVID-19 vaccine should not receive further doses of the vaccine.
 - (2) Immunocompromised people should follow the advice of their medical professional(s) regarding the timing of COVID-19 vaccination relative to immunosuppressive therapies and/or optimization of the individual's medical condition.
 - (3) Employees with Guillain-Barré syndrome may need to delay vaccination until an appropriate class of vaccines (i.e., mRNA vaccines) are available.
 - (4) CDC considers vaccination with COVID-19 vaccines to be contraindicated for any person with a history of a severe allergic reaction (e.g., anaphylaxis) after a previous dose or to a component of the COVID-19 vaccine or an immediate allergic reaction of any severity to a previous dose or a known (diagnosed) allergy to a component of the COVID-19 vaccine.
- b. Religious. HUD shall establish a procedure for processing requests for exemption from vaccination requirements based on an employee's sincerely held religious belief, practice, or observance that is consistent with Title VII of the Civil Rights Act of 1964 and guidance issued by the Safer Federal Workforce Task Force and the EEOC.
 - i. In accordance with EEOC guidance at "Title VII and COVID-19 Vaccinations," HUD's policies and procedures for processing requests for exemption from vaccination requirements based on an employee's sincerely held religious belief shall follow the same standards that apply to other accommodation requests. Thus, as with disability-related requests, the requesting employee's first-line supervisor is authorized to approve the request for a reasonable accommodation without waiting for any other official's approval.
 - ii. Due to the urgency and severity of the COVID-19 pandemic, including the Delta variant, HUD will establish an approval process so that employees receive a response within one week of submitting a request if practical, but no later than 30 days after the request.

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- iii. Management shall not deny or delay approval of an employee's religious belief-based request for a reasonable accommodation related to vaccination unless HUD can show that approval would cause an undue hardship, as defined for Title VII (by *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977)) as actions that have greater than a *de minimis* cost or burden or that would have negative effects on other employees.
 - iv. The Parties recognize that EEOC guidance defines religion broadly and protects beliefs, practices, and observances which may not be part of an organized religion or with which a manager may be unfamiliar. Nevertheless, the Parties realize that personal philosophies or beliefs about vaccines are not a religion, and ways of living, such as veganism, pacifism, or minimalism, similarly do not provide a religious exemption basis.
 - v. HUD shall ensure that all requests for exemption from a vaccine mandate based on sincerely held religious beliefs shall be handled fairly and equitably, and no employee shall be subjected to more questioning or investigation than another based on the employee's professed beliefs.
- c. Denial. Consistent with CBA Article 45, Section 45.04, "Denial," and EEOC guidance that processing requests based on an employee's sincerely held religious belief shall follow the same standards that apply to other accommodation requests, if the Department denies any reasonable accommodation request related to vaccination, management shall provide the employee with the disapproval in writing in plain language providing the detailed reasons for denial of the accommodation and what alternative accommodations were considered.
- i. For disability-related accommodations, management must include an explanation of why and to what extent approval would cause an undue hardship as defined under the ADA. Management shall not challenge a legitimate medical professional's opinion that vaccination may be dangerous to an employee's health or well-being.
 - ii. For religious belief-related accommodations, management must explain the grounds for rejecting the employee's assertion of a sincerely held belief, if applicable, including addressing the factors identified by the EEOC in question 8 of "Questions and Answers: Religious Discrimination in the Workplace" that may cast doubt on the employee's sincerity, and an explanation of why and to what extent approval would cause an undue hardship as defined under Title VII.
 - iii. Bargaining-unit employees who are denied their disability or religious observance reasonable accommodation request(s) to be exempt from vaccination requirements shall be given 60 days from the date they are notified of the denial to be fully vaccinated.

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- d. Consistent with CBA Article 45, Section 45.05, “Previously Approved Accommodation,” and EEOC guidance that processing requests based on an employee’s sincerely held religious belief shall follow the same standards that apply to other accommodation requests, once a reasonable accommodation based on either a disability or a sincerely held religious belief has been approved it will not be subject to further documentation or revocation. Thus, HUD shall not revoke or amend an approval issued during maximum telework following any future return to office.
 - e. Upon request by the Union at either the Council or Local level, HUD shall provide information on the number of reasonable accommodation requests related to vaccination that it has received, the number approved and disapproved, and the reasons for disapproval, if applicable. HUD shall provide the information broken out by office and geographic location, and by basis of request (disability or religion).
 - f. If an employee is exempt from the vaccination requirement due to a reasonable accommodation, management will take whatever action is necessary to protect other bargaining employees who may be exposed to the exempted employee. This may include permitting the exempt employee and/or other employees to telework; providing regular testing at HUD’s expense to all affected employees; requiring unvaccinated employees to wear masks, remain socially distant, and take other steps to avoid transmission of the virus; and improving air flow in the office. HUD shall afford the same benefits to vaccinated employees (i.e., the option to telework full time) as to unvaccinated employees in similar positions.
13. Vaccination Proof. The following applies to the COVID-19 vaccine mandate and to any future vaccine mandate that may be imposed on bargaining unit employees. Within one week of signing this agreement, HUD shall inform employees by email that there is a government-wide requirement to provide proof of vaccination.
- a. HUD shall include information about the types of documents that will be accepted as proof, which shall include a copy of any of the following: the immunization record from a health care provider or pharmacy, the COVID-19 Vaccination Record Card, medical records documenting the vaccination, immunization records from a public health or state immunization information system, or any other official documentation.
 - b. HUD shall include instructions that regardless of the document submitted, it must include the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s).
 - c. HUD shall advise employees that if the documentation provides more information than is required, the employee may redact the additional information.
 - d. HUD shall include instructions that the documents may be provided digitally, e.g., a digital photo of a document or a PDF copy.

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- e. HUD shall include instructions that employees must certify under penalty of perjury that the documentation they submit is true and correct.
 - f. HUD shall not set a deadline for submission of the proof of vaccination that is earlier than one week after the deadline to be fully vaccinated. For COVID-19 vaccinations, the deadline to submit documentation shall be no earlier than November 29, 2021.
14. Vaccination Attestation. The Parties agree that, because the Vaccine Attestation form required for COVID-19 was voluntary and because it is no longer needed due to the new requirement to provide documentation showing proof of vaccination, HUD shall take no action against any employee who has not or does not submit the attestation.
- a. Within one week of signing this agreement, HUD shall advise employees that the attestation is not required.
 - b. HUD shall destroy the attestation files and records or shall ensure that the contractor managing the software does so, no later than 30 days after signing this agreement. HUD shall advise the Union when the destruction has been completed.
15. Testing.
- a. HUD shall reimburse employees for reasonable costs associated with testing for COVID-19, including local transportation costs and any out-of-pocket medical expenses for the tests, in the following circumstances:
 - i. When HUD permits regular testing as a reasonable accommodation in lieu of vaccination.
 - ii. If an employee is exposed to COVID-19 at a HUD office.
 - iii. If an employee works in a HUD office with any unvaccinated employee.
 - iv. If an employee is exposed through their work to members of the public who may not be vaccinated or who are not required to prove their vaccination status.
 - b. HUD shall permit employees to choose any COVID-19 viral test, such as a PCR or antigen test, that has been authorized by the Food and Drug Administration.
 - c. When HUD requires employees to be tested for COVID-19, or if an employee has been exposed to COVID-19 at HUD, management shall provide employees sufficient duty time to go to the testing site, be tested, and return to the worksite, whether it is at home or at a HUD office. In accordance with the Safer Federal Workforce Task Force guidance, time spent traveling to and from a testing site and being tested is duty time.

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- d. HUD shall not require employees who are on full-time telework to be tested for COVID-19 if they are not reporting to the office that week.

16. Protection of Employee Medical Records.

- a. In accordance with the Safer Federal Workforce Task Force guidance, HUD's collection and use of both proof of vaccination and COVID-19 test results are subject to the OPM/GOVT-10 Employee Medical File (EMF) system of records notice (SORN) and OPM regulations at 5 CFR part 293, subpart E. Consistent with those requirements:
 - i. HUD is required to have written instructions for its EMF system with appropriate safeguards. HUD shall provide the Union with a copy of those instructions, including identification of the safeguards.
 - ii. HUD shall clearly identify to employees who has access to the documents, what information they can access (e.g., the existence of the document or its contents), and how they will use the information to perform their official duties. In accordance with 5 CFR § 293.504, "Composition of, and access to, the Employee Medical File System," subsection (b), the Department shall disclose an employee's medical records to agency officials only when the specific information sought is needed for the performance of official duties.
 - iii. HUD shall provide employees with the Privacy Act Statement issued by the Safer Federal Workforce Task Force, clearly labeled as such (i.e., not just a link that says "Privacy Act"), at the time the Department informs employees of the requirement to provide proof of vaccination, in addition to providing a link to the notice at any uploading site.
- b. HUD shall comply with the requirements of CBA Article 45, Section 45.14, "Privacy," regarding maintaining the confidentiality of all information in support of a reasonable accommodation request, approval, or denial. Additionally, HUD shall maintain all medical and other information obtained in connection with a vaccine mandate or in response to managing a pandemic such as COVID-19 in files separate from the individual's personnel files. Managers, supervisors, and other Department officials shall be responsible for the safe keeping and confidentiality of all such information obtained.

17. Discipline.

- a. At the time that HUD issues directives to employees regarding vaccination and documentation requirements, HUD shall advise employees of the consequences of failing to comply with the requirements.
- b. In accordance with Article 12, Section 12.01 of the HUD-AFGE Agreement, HUD management agrees to follow progressive discipline for any bargaining unit

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employee who refuses to be vaccinated for COVID-19, absent an approved reasonable accommodation, or to provide proof of the employee's vaccination status.

- c. Management shall not take any adverse action or initiate any disciplinary proceedings against bargaining unit employees while a request for a reasonable accommodation is pending, including all appeals.
 - d. Management shall not take any adverse action or initiate any disciplinary proceedings against bargaining unit employees who have not refused vaccination or to submit documentation but are simply late in doing so, provided that the employee is teleworking and is not required to work in person with other employees or the public. For example, management shall not take any action against an employee who has received all required doses of a vaccine but is not considered "fully vaccinated" by November 22, 2021.
 - e. Bargaining-unit employees who are denied their disability or religious observance reasonable accommodation request(s) to be exempt from vaccination requirements and are not yet eligible to retire shall receive severance pay due to the involuntary separation caused by the Coronavirus pandemic and vaccination mandate as an appropriate arrangement pursuant to 5 U.S.C. § 7106(b)(3).
18. Renegotiation. AFGE Council 222 and AFGE Locals may reopen negotiations to consider problems or conditions that have arisen after implementation of the COVID-19 vaccination mandate, attestation, and testing policies that were unanticipated and not addressed in this Supplement. Renegotiations will be limited to issues not already expressly covered by this Supplement.

cc: Salvatore T. Viola, AFGE Council 222 President
Michelle Pérez, Deputy Assistant Secretary for Field Policy and Management