

For Federal Contractors

Update Regarding Executive Order 14042 (October 19, 2022)

Consistent with the October 14, 2022 notification from the Office of Management and Budget (“OMB”) and the Safer Federal Workforce Task Force (“Task Force”) below, OMB has issued [guidance](#) to agencies concerning the implementation of Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors* (Sept. 9, 2021). Despite the lifting of the nationwide bar to enforcement on October 18, 2022, at this time agencies should not: (1) take any steps to require covered contractors and subcontractors to come into compliance with previously issued Task Force guidance; or (2) enforce any contract clauses implementing Executive Order 14042. To allow time to develop advice and processes for meeting agencies’ obligations under Executive Order 14042 and applicable court orders, agencies should follow the instructions provided in the OMB guidance [here](#).

Update Regarding Executive Order 14042 (October 14, 2022)

The Office of Management and Budget (“OMB”) and the Safer Federal Workforce Task Force (“Task Force”) previously provided notice that, to ensure compliance with an applicable preliminary nationwide injunction, Federal agencies would take no action to enforce contract clauses implementing requirements of Executive Order 14042 absent further written notice. In anticipation of a potential narrowing of the existing nationwide injunction on October 18, 2022, due to developments in ongoing litigation, OMB and the Task Force are clarifying that they anticipate that at least three guidance documents will be issued following any narrowing of the nationwide injunction.

First, after the anticipated narrowing of the nationwide injunction, and following consultation with legal counsel and contracting officials, OMB will provide notification to Federal agencies regarding, among other things, compliance with applicable injunctions and whether contract clauses implementing Executive Order 14042 should be included in any new solicitations and contracts.

Second, after the anticipated narrowing of the nationwide injunction, the Task Force will begin a process to update its guidance regarding COVID-19 safety protocols for covered contractor and subcontractor workplace locations. Such guidance will be updated in accordance with Executive Order 14042, following development and review by the Task Force. The updated Task Force guidance will provide a timeline for implementation to ensure that covered contractors and subcontractors are able to come into compliance with any COVID-19 safety protocols specified by the Task Force that they are not presently following. The Director of OMB will review the updated Task Force guidance and make a determination regarding whether the updated Task Force guidance promotes economy and efficiency in Federal contracting. Such a determination would be published in the Federal Register, pursuant to Executive Order 14042.

Third, if the OMB Director makes such a determination, OMB will provide additional guidance to agencies on timing and considerations for provision of written notice from agencies to contractors regarding enforcement of contract clauses implementing Executive Order 14042, except as barred by any applicable injunctions.

Until OMB issues the third guidance document described above, agencies should not: (1) take any steps to require covered contractors and subcontractors to come into compliance with previously issued Task Force guidance; or (2) enforce any contract clauses implementing Executive Order 14042.

Background

On September 9, 2021, President Biden signed Executive Order (EO) 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), which directs executive departments and agencies (“agencies”) to include in covered Federal Government contracts or contract-like instruments (“contracts”) a clause requiring the contractor and any subcontractors to comply with all Task Force guidance for covered contractor or subcontractor workplace locations that has been approved by the Director of OMB based upon a determination that the guidance will promote economy and efficiency in Federal contracting.

On November 10, 2021, the Task Force issued updated [Guidance for Federal Contractors and Subcontractors](#) (“November 10, 2021 Guidance”) that: (1) required all covered contractor employees to become fully vaccinated for COVID-19 by January 18, 2022, unless the employee is legally entitled to an accommodation; (2) imposed masking and physical distancing requirements in covered contractor workplaces; and (3) required contractors to designate an individual or individuals to coordinate COVID-19 workplace safety efforts at

covered contractor workplaces. The Acting Director of OMB determined that the November 10, 2021 Guidance would promote economy and efficiency in Federal contracting.

On December 7, 2021, a Federal district court in Georgia issued a nationwide injunction prohibiting the enforcement against all Federal contractors of the vaccination requirement established pursuant to Executive Order 14042 and the November 10, 2021 Guidance. On August 26, 2022, the U.S. Court of Appeals for the Eleventh Circuit held that the district court's injunction should be narrowed to prohibit enforcement only as to the plaintiffs in that case—a group of states and members of a single industry trade organization. The Eleventh Circuit's decision narrowing the district court's injunction will take effect when that court issues its mandate, which is scheduled to occur on October 18. In addition, several other Federal district courts have issued injunctions affecting certain states and contractors and subcontractors within those states. Those injunctions remain in effect.

The November 10, 2021 Guidance noted that, pursuant to Executive Order 14042, the Task Force would consider updating its guidance for contractor or subcontractor workplace locations. During the pendency of the nationwide injunction, the Task Force has not updated its guidance for contractor and subcontractor workplace locations.

Summary of Anticipated Steps Following Any Narrowing of a Nationwide Injunction

If and when there is no longer a nationwide injunction in effect on or after October 18, 2022, the following three steps will take place before any renewed enforcement of contract clauses implementing requirements of Executive Order 14042 (as discussed in further detail above):

1. Initial OMB Notification to Agencies on Compliance with Applicable Injunctions.

OMB anticipates that it will provide an initial notification to agencies to ensure that they comply with applicable injunctions, including as it relates to any inclusion of a contract clause implementing requirements of Executive Order 14042 in solicitations and new contracts. (NOTE: On October 19, 2022, OMB issued this notification, which can be found [here](#).)

2. Updated Task Force Guidance on COVID-19 Safety Protocols for Covered Contractor and Subcontractor Workplace Locations.

Following the issuance by OMB of the initial notification to agencies, the Task Force intends to update its guidance regarding COVID-19 safety protocols for covered contractor and subcontractor workplace locations. The Task Force will include in its updated guidance a timeline for implementation by contractors and subcontractors. The Director of OMB will also review the updated Task Force guidance and make a determination regarding whether the new guidance promotes economy and efficiency in Federal contracting. Such a determination would be published in the Federal Register, pursuant to Executive Order 14042.

3. OMB Guidance to Agencies on Provision of Written Notice from Agencies to Contractors on Resumption of Enforcement of Contract Clauses. In accordance with the Task Force's prior communications, OMB will provide guidance to agencies on timing and considerations for the provision of written notice from agencies to contractors regarding enforcement of contract clauses implementing requirements of Executive Order 14042, except as barred by any applicable injunctions. Such guidance from OMB will not be issued prior to the updated Task Force guidance.

Until all three of these steps are taken, OMB advises Federal agencies that they should not take any action to enforce any requirement that covered contractors comply with the COVID-19 safety protocols specified in the November 10, 2021 Guidance.

On September 9, President Biden signed Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), which directs executive departments and agencies to ensure that contracts and contract-like instruments covered by the order include a clause requiring the contractor—and their subcontractors at any tier—to, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Task Force. These workplace safety protocols will apply to all covered contractor employees, including employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. This action is a key step in implementing part of the President's [Path Out of the Pandemic: COVID-19 Action Plan](#).

- **Read the [COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors \(Updated November 10, 2021; PDF, Download Adobe Reader\)](#).** It sets forth workplace safety protocols for contractor or subcontractor workplace locations pursuant to Executive Order 14042 on Ensuring Adequate COVID Safety Protocols for Federal Contractors. *(Note: a revised PDF was posted on November 11, 2021 that corrected an inadvertent typographical error.)*
- **Read the [FAR Council Memorandum on Issuance of Agency Deviations to Implement Executive Order 14042 \(Issued September 30, 2021; PDF, Download Adobe Reader\)](#).** It supports agencies in their issuance of deviations to incorporate a clause into their solicitations and contracts that implements Safer Federal Workforce Task Force [guidance on workplace safety protocols for contractor or subcontractor workplace locations](#).
- **Read [Frequently Asked Questions for Federal Contractors](#).**

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For questions or comments, email the Safer Federal Workforce Task Force at SaferFederalWorkforce@gsa.gov

