



December 14, 2021

Subject: Nationwide Injunction Affecting the Implementation of Executive Order 14042 and Federal Acquisition Regulation Clause 52.223-99

Dear Partners:

On September 9, 2021, President Biden signed Executive Order (E.O.) 14042 on [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). The requirements in this E.O. are applicable to contracts and contract-like instruments (hereinafter “contracts”), with the goals of maximizing the number of individuals vaccinated and decreasing the spread of COVID-19. Specifically, this E.O. directs agencies to include a Federal Acquisition Regulation (FAR) clause, FAR 52.223-99, in certain contracts to ensure that covered contractors comply with guidance published by the [Safer Federal Workforce Task Force](#). This includes a requirement for covered contractor employees to be fully vaccinated against COVID-19 no later than January 18, 2022. To implement the requirements of the E.O., USAID issued [AAPD 21-04](#) (“Executive Order 14042 on Ensuring Adequate COVID-19 Safety Protocols for Federal Awards”).

On November 30, 2021, a federal judge in the U.S. District Court for the Eastern District of Kentucky issued a [preliminary injunction](#) to halt the U.S. Government’s enforcement of the E.O. 14042 federal contractor vaccine mandate in three states: Kentucky, Ohio, and Tennessee. On December 7, 2021, a district court judge in the Southern District of Georgia issued a [preliminary injunction](#) to halt the U.S. Government's enforcement of the E.O. 14042 federal contractor vaccine mandate throughout the nation.

The Department of Justice is actively working on the next steps in the ongoing litigation. In time, as the litigation continues, additional or amended guidance may be issued to address new legal developments, resolve logistical difficulties, or mitigate disruption to the procurement process. In the meantime, pending further direction, please note the following:

USAID will take no action to enforce the clause (FAR 52.223-99) implementing the requirements of Executive Order 14042, absent further written notice from USAID, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”). In all other circumstances, USAID will enforce the clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.

In addition, please note the injunction only applies to the application of requirements pursuant to E.O. 14042. There is no change to the Safer Federal Workforce Task Force's guidance for COVID-19 workplace safety protocols for Federal agencies. Federal agency workplace safety protocols for Federal buildings and Federally-controlled facilities still apply in all locations. Contractor employees working onsite in those facilities must still follow those Federal agency workplace safety protocols.

We appreciate your flexibility as we navigate these evolving circumstances. USAID continues to believe that following the Safer Federal Workforce Task Force procedures helps to ensure USAID mission readiness, protects all of the workforce, and bolsters public health and safety.

USAID's Office of Acquisition and Assistance will continue to monitor this situation and update its guidance, including [AAPD 21-04](#) (Revision #3) and the [COVID-19 Guidance for Implementing Partners](#). I will continue to share relevant updates as information becomes available.

For questions about this letter, please contact IndustryLiaison@usaid.gov. Please include a reference to E.O. 14042 in the subject of your communication.

All the very best,

Mark Walther
Director
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Office of Acquisition & Assistance