

Out of Many/One Union
AFGE NVAC/AFL-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

NATIONAL GRIEVANCE

NG-10/27/2021

7H/00399077

Date: October 27, 2021

To: Denise Biaggi-Ayer
Executive Director
Office of Labor Management Relations
Denise.Biaggi-Ayer@va.gov
Sent via electronic mail only

From: Sarah Hasan, Staff Counsel, National Veterans Affairs Council (#53) ("NVAC"),
American Federation of Government Employees, AFL-CIO ("AFGE")

RE: National Grievance against the Department of Veterans Affairs for Failing to Comply with Law, Policy, and Contract in Disclosing Employee COVID-19 Vaccination Status Records

STATEMENT OF THE CHARGE

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) ("MCBA"), American Federation of Government Employees/National Veterans Affairs Council ("NVAC" or "the Union") is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Department of Veterans Affairs ("Department") for disclosing employee records relating to COVID-19 vaccination status, including whether employees sought religious or medical exceptions. To date, the Department has failed to remedy these violations, and as such, continues to violate the Master Agreement, VA policy, and federal law.

Specifically, the Department violated Articles 2, 3, 17, 24, 30, 47, and 49 of the MCBA; 5 U.S.C. §7116(a) (the "Statute"); 5 U.S.C. §552a ("Privacy Act"); 42 U.S.C. §12112 (d)(4)(C) ("Americans with Disabilities Act" or "ADA"); 29 C.F.R. §1630.14 (c); VA Handbook 6300.5 (Procedures for Establishing & Managing Privacy Act Systems); VHA Directive 7716 (Occupational Health Record Keeping System); VA Notice 22-01 and any and all other relevant articles, laws regulations, and past practices not herein specified. The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

STATEMENT OF THE CASE

Background

On July 26, 2021, Secretary McDonough announced that all Title 38 healthcare personnel were required to be vaccinated against COVID-19. On August 13, 2021, Secretary McDonough expanded the COVID-19 vaccine mandate to include hybrid Title 38 and Title 5 healthcare personnel. On September 9, 2021, President Biden announced a six-pronged, comprehensive COVID-19 Action Plan and signed Executive Order 14043 requiring all federal executive branch workers to be vaccinated against COVID-19, subject only to exceptions provided by law.

On October 4, 2021, the Department issued VA Notice 22-01, Mandatory Coronavirus Disease 2019 (COVID-19) Vaccination Program for VA Employees (“Notice”). *See* Exhibit 1. According to Section 4(c) of VA Notice 22-01, the information provided by employees would be protected under the Privacy Act and other applicable “statutes, regulations, [and] VA policy.” Supervisors are responsible for ensuring that information pertaining to vaccination, or exceptions thereto, are “kept secure and confidential under the systems of records Notice OPM/GOVT-10 or 08VA05, as applicable.” *See* Exhibit 1, VA Notice 22-01, Section 5(l)(4). Under Appendix A, Section 4 of this Notice, there is a note against disclosure of vaccination status:

VA medical facility [Employee Occupational Health] staff may not identify individuals according to their vaccination status or otherwise indicate whether an individual has been vaccinated unless that individual has provided a qualifying authorization to [Employee Occupational Health] permitting the disclosure on VA Form 10-5345, Request for and Authorization to Release Health Information. Questions should be referred to the local Privacy Office.

On October 20, 2021, Rebecca Mimmall sent an email titled “Employee COVID-19 Vaccination Status Reports Reminder.” *See* Exhibit 2. This email was sent on behalf of the VHA Healthcare Operations Center to all:

1. VHA VISN Directors;
2. VHA VISN Deputy Network Directors;
3. VHA VISN Administrative Representatives;
4. VHA Central Office Senior Leaders, Executive Assistants, and Support Staff;
5. VHA Central Office Senior Leaders;
6. “VHA 15HOC Healthcare Ops Ctr Action;” and
7. “VHA 15HOC Healthcare Ops Ctr Field Operations.”

The body of the email reminds recipients that employee COVID-19 vaccination status and compliance reports can be accessed using a link to a SharePoint page. According to the email, the link provides access to two workbooks that are updated daily. Since this email contains a reminder, it is reasonable to assume prior emails were sent to the same recipients that were similar in nature to the October 20, 2021 email.

The SharePoint page purports to contain two workbooks. The first is “DVA Workgroup LEAF Submission Status” which provides employee names and TMS (Talent Management

System) workgroup submission status across the Department. The second is “DVA Submitted Exceptions by Site” which provides summaries of employees’ claims of medical and religious exceptions to COVID-19 vaccination. Neither workbook can be viewed within SharePoint and must be downloaded to a desktop to be viewed. The email provides screenshots to show how users can download these workbooks.

The security features of the SharePoint site are not highlighted within the email, nor whether an individual must securely log in to download these workbooks. The email does not contain any instructions as to what users should do once the information is downloaded, how to secure the workbooks on their desktops, whether such information can be shared and with whom, or any notices with respect to the privacy rights of employees whose names, vaccination status, claimed exceptions, and other information is contained within these workbooks. This email does not contain a prohibition against disclosing the workbooks, or contents thereof, with third parties outside the original recipients of the email. The email does not explain how or why the recipients have a need to know this information, for whom the information is intended, or for what purpose. The email does not cite any rule, law, or regulation under which its disclosure is authorized.

The Department requires its employees to denote COVID-19 vaccination status or exceptions within the Light Electronic Action Framework (“LEAF”) or on its “COVID-19 Vaccination Form” (VA Form 10-230). *See Exhibit 3.* Employees can check one of four options to complete the form:

1. Employees can confirm that they are fully vaccinated and provide documentation of the vaccine administered, dates of administration, and the healthcare entity that administered the vaccine. This selection does not authorize the use or disclosure of Employee Occupational Health to release the employee’s vaccination record.
2. Employees can confirm that they are fully vaccinated and simultaneously submit VA Form 10-5345 to expressly authorize Employee Occupational Health to use and disclose the employee’s health information relating to the COVID-19 Vaccination record.
3. Employees can indicate they have a medical exception requiring accommodation from compliance with the COVID-19 vaccine mandate. This selection does not authorize the use or disclosure of Employee Occupational Health to release the employee’s vaccination record or claimed exception.
4. Employees can indicate they have a religious exception requiring accommodation from compliance with the COVID-19 vaccine mandate. This selection does not authorize the use or disclosure of Employee Occupational Health to release the employee’s vaccination record or claimed exception.

VA Form 10-203 also includes a Privacy Act Statement on page 2, which states:

Pursuant to 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021), we are authorized to collect this information. The authority for the system of records notices (SORN) associated with this collection of information, OPM/GOVT-10, Employee Medical File System of Records, 75 Fed. Reg. 35099 (June

21, 2010), amended 80 Fed. Reg. 74815 (Nov. 30, 2015), for title 5 employees, and 08VA05, Employee Medical File System Records (Title 38)-VA, for title 38 employees, also includes 5 U.S.C. chapters 33 and 63 and Executive Order 12196, Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980). Providing this information is mandatory, and we are authorized to impose penalties for failure to provide the information pursuant to applicable Federal personnel laws and regulations.

The form also includes a section on "Routine Uses:"

While the information requested is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or other laws concerning health and safety in the work environment; to adjudicative bodies (e.g., the Merit System Protection Board), arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; to contractors, grantees, or volunteers as necessary to perform their duties for the Federal Government; to other agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of the routine uses can be found in the SORNs associated with this collection of information.

Through its October 20, 2021 email reminder, and all prior emails of the same nature, the Department violated the Privacy Act by accessing records within a system of records and disclosing those records to individuals within the Department without the express, written consent of employees. *See* 5 U.S.C. §552a. The COVID-19 vaccination status records disclosed by the Department are employee occupational health records, which contain private health and religious information of employees.

The Department's repeated disclosures of employees' COVID-19 vaccination status do not fall within any of the routine uses noted in either the SORN for Title 38 employees (08VA05, Employee Medical File System Records (Title 38)-VA) or the SORN for Title 5 employees (OPM/GOVT-10, Employee Medical File System of Records). Furthermore, the Department failed to update the SORN for Title 38 employees to include a routine use exception that would allow for disclosure such as that in Exhibit 2, a change that would have necessitated a review period for public comment.

The Privacy Act requires agencies to establish safeguards that ensure the security and confidentiality of records. 5 U.S.C. § 552a(e)(10). Additionally, disclosure is not permitted under any exception in 5 U.S.C. §552a(b), and as an unwarranted invasion of personal privacy, is also prohibited under the Freedom of Information Act.

The workbooks on SharePoint can be accessed by senior management, human resources officials, and administrative/support staff with a simple download to their respective computer desktops. Once downloaded, there is no safeguard to ensure that these confidential medical records are stored separately from employee personnel files. Similarly, there is no indication that the workbooks' properties limit who can access them or share them once downloaded. By

providing such unfettered access of an employee's personal health conditions, disabilities, and/or religious opinions to dozens of Department officials who ostensibly have no need for such detailed information, there is an unmitigated risk of continued unauthorized disclosure that harms the privacy interests of employees. Doing so further violates the Privacy Act which requires the Department to "establish appropriate administrative, technical, and physical safeguards" that "ensure the security and confidentiality of records," and to "protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained." 5 U.S.C. § 552a(e)(10).

Here, the Department's violation of the Privacy Act is intentional and willful. *See* 5 U.S.C. § 552a(g)(4). From the text of the October 20, 2021 email, it appears that the Department has committed repeated violations of the Privacy Act. Given that the records provided by employees on VA Form 10-230 and maintained by the Department explicitly contain Privacy Act statements, it must have been known that the disclosure of this information was subject to certain restrictions. Moreover, it is immaterial that the disclosure was internal to the VA. The loss of a constitutionally protected privacy interest itself qualifies as a concrete, particularized, and actual injury sufficient for a violation of the Privacy Act.¹ Furthermore, the ongoing and substantial threat to that privacy interest articulates a concrete, particularized, and imminent injury. *Id.*

By maintaining employee occupational health records on SharePoint to be viewed, downloaded, and stored by dozens of people, the Department has failed to maintain information regarding medical conditions of employees in separate medical files or to treat this information as confidential as required by the Americans with Disabilities Act, ("ADA"). *See* 42 U.S.C. §12112(d)(4)(c). Under the Rehabilitation Act, the Department must ensure information "regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record." 29 C.F.R. §1630.14(c)(1). This requirement applies to all medical information, including COVID-19 vaccination status, request for medical exception, and any relevant paperwork reflecting the same. Thus, while agencies may require employees to bring in documentation of vaccination, this information, like all medical information, must be kept confidential and stored separately from the employee personnel files.² There is no indication that the workbooks containing employees' COVID-19 vaccination status or need for medical exceptions were stored apart from personnel records or as separate confidential medical files, either on SharePoint or once downloaded onto the personal computers of the recipients of the October 20, 2021 email.

The Department failed to notify and provide an opportunity to bargain to the Union regarding a negotiable issue concerning a change to the terms and conditions of work, and instead, unilaterally implemented a change to the disclosure of employees' occupational health data without their express consent. The Department failed to satisfy its bargaining obligations

¹ *See In re. Off. of Pers. Mgmt. Data Security Breach Litigation*, Nos. 17-5217, 17-5232 (D.C. Cir. Jun. 21, 2019).

² *See Complainant v. Dep't of Justice*, EEOC No. 0520130125 (EEOC 2014) (An agency violated the Rehabilitation Act when the complainant's medical records were placed in the human resources department's adverse action files, because these files were accessible by anyone in the HR department and were not separate confidential medical files.)

prior to implementing this change in conditions of employment. In refusing to notify, consult, and negotiate in good faith with the Union prior to disclosing employee occupational health data, including requests for accommodation, without the express consent of employees, the Agency committed an unfair labor practice under 5 U.S.C. §§7116(a)(1) and (a)(5). Further, the Agency violated Article 47, Section 2, which sets forth the Parties' responsibilities regarding mid-term bargaining at the national level, and Article 49 which requires the Department to provide reasonable, advance notice to the Union before changing conditions of employment.

Article 2 of the MCBA requires that the Agency comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating 5 U.S.C. §7116 and 5 U.S.C. §552a, as set forth above, the Agency also failed to comply with Article 2. Further, the Department violated Article 3 which encourages the parties to maintain a cooperative labor-management relationship based on mutual respect, open communication, consideration of each other's views, and minimizing collective bargaining disputes. The Department violated Articles 17 and 24 which require the Department to safeguard employees' privacy interests in the workplace and through its official records, respectively. Finally, the Department violated Article 30, Section 7(B) which requires statements or records of employee-claimed exceptions to vaccinations be kept confidential. In committing these violations of contract, federal law, and Department-wide policy, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

The Department violated VA Handbook 6300.5 when it failed to publish a SORN in the Federal Register to reflect a change to the disclosure standards of employee occupational health records for both Title 5 and Title 38 employees. The Department also violated VHA Directive 7716, which required the confidentiality of occupational health care records of its employees pursuant to the Privacy Act.

Finally, the Department violated VA Notice 22-01, Sections 4(c), 5(1)(4) and Appendix A, Section 4 when it violated the Privacy Act, failed to keep secure and confidential information obtained pursuant to the Notice, and disclosed employees' vaccination status without written consent or authorization pursuant to VA Form 10-5345.

Violations

By failing to fulfill its obligations, the Department violated and continues to violate, the following:

- Article 2 of the MCBA: requiring the Agency to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the Agency to maintain an effective, cooperative labor-management relationship with the Union;
- Article 17 of the MCBA: requiring the Agency to protect employees' privacy rights;
- Article 24 of the MCBA: requiring the Agency to comply with federal law, regulation, Department policy, and the MCBA in the collection, maintenance, and retention of official records;

- Article 30 of the MBCA: requiring the Department to keep confidential any statements or records of medical or religious exceptions to vaccinations;
- Article 47 of the MCBA: requiring the Department to notify and bargain with the NVAC over proposed changes in personnel policies, practices, or working conditions affecting two or more local unions;
- Article 49 of the MCBA: requiring the Department to provide reasonable, advance notice and bargain with the Union prior to making changes in conditions of employment;
- 5 U.S.C. §§7116(a)(1) and (a)(5): requiring the Agency to consult and negotiate in good faith with the Union;
- The Privacy Act of 1974 (5 U.S.C. §552a), VA Handbook 6300.5, and VHA Directive 7716: requiring the Agency to satisfy certain requirements in establishing, maintaining, and disseminating information within a system of records;
- VA Notice 22-01 requiring vaccination status and information be kept secure and confidential unless disclosure was authorized by employees in writing;
- The Americans with Disabilities Act and the Rehabilitation Act of 1973 (42 U.S.C. §12112(d)(4)(c); 29 C.F.R. §1630.14(c)(1)) requiring the Department to maintain employees' medical files confidential and separate from personnel records;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedies Requested

The Union asks that, to remedy the above situation, the Department agree to the following:

- Return to the *status quo ante* and immediately cease and desist any dissemination of information pertaining to employee COVID-19 Vaccination Status Records without the express written consent of employees;
- Fully comply with its contractual obligations under Articles 2, 3, 17, 24, 30, 47 and 49 of the MCBA; its statutory and regulatory obligations under 5 U.S.C. § 7116(a), 5 U.S.C. §552a, 42 U.S.C. §12112 (d)(4)(C), 29 C.F.R. §1630.14 (c)(1), 29 C.F.R. § 1614.203; and its obligations to comply with policy under VA Handbook 6300.5, VHA Directive 7716, and VA Notice 22-01;
- To make-whole any bargaining unit employee injured by the Agency's unlawful intrusion of personal privacy;
- To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §552a(g);
- Distribute an electronic notice posting, signed by the Secretary, to all bargaining unit employees concerning the Agency's unfair labor practice in disclosing employee occupational health records without express written consent of employees and by changing conditions of employment without first notifying and bargaining with the Union;
- Provide mandatory training to responsible management officials concerning the Privacy Act and associated obligations in the MCBA and VA policy;
- Agree to comply with any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

- Agree to any and all other appropriate remedies in this matter.

Time Frame and Contact

This is a National Grievance, and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions, please contact the undersigned at the AFGE Office of the General Counsel. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.

Submitted by,



Sarah Hasan
Staff Counsel, National VA Council
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
hasans@afge.org

cc: Thomas McGuire, Deputy Director, OLMR
Donald Stephen, Staff Director, OLMR
Roy Ferguson, Director, Staff Operations, OLMR
Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Thomas Dargon, Jr., Supervisory Attorney, AFGE/NVAC

MANDATORY CORONAVIRUS DISEASE 2019 (COVID-19) VACCINATION PROGRAM FOR VA EMPLOYEES

1. **PURPOSE.** The purpose of this notice is to inform employees of the recent requirement to certify COVID-19 vaccination status and provide proof of vaccination or request an exception within the established timeframes or face disciplinary action, up to and including removal from the Department. The process for requesting an exception is outlined below. The notice establishes a Department-wide policy and provides guidance for mandatory Coronavirus disease 2019 (COVID-19) vaccination among employees in the Department of Veterans Affairs (VA). This policy is in accordance with Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, signed by the President on September 9, 2021, which requires all agencies to implement a program to require COVID-19 vaccination for all of its Federal employees. This notice revises VA Directive and Handbook 5019, Employee Occupational Health Service, Part IV, Paragraph 2, Vaccinations, along with the authority and responsibilities in VA Directive and Handbook 5019. The procedures for implementation are listed in Appendix A of the notice. This notice is applicable to all VA employees, including employees of the Veterans Health Administration (VHA) previously covered by VHA Directive 1193, Coronavirus Disease 2019 Vaccination Program for Veterans Health Administration Health Care Personnel (VHA HCP). This notice does not apply to employees of the Office of Inspector General (OIG), which administers a separate vaccination program for OIG employees.

Under Secretaries, Assistant Secretaries, Other Key Officials, Deputy Assistant Secretaries and field facility heads are authorized to administer the provisions of this notice for employees under their respective jurisdictions, including the approval of temporary exceptions on a limited basis in emergency situations to onboard new employees prior to individuals becoming fully vaccinated when there is a mission-critical hiring need.

Except as otherwise specifically set out in this notice, this authority may be redelegated in writing to subordinate officials with whatever limitations deemed necessary to ensure proper exercise of authority.

2. **AUTHORITIES.**

- a. Executive Order (EO) 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees.
- b. EO 13991, Protecting the Federal Workforce and Requiring Mask-Wearing.
- c. 38 U.S.C. § 7421, Personnel Administration: in general.
- d. 5 C.F.R. § 339.205, Medical Evaluation Programs.

3. BACKGROUND.

- a. The emergence of SARS-CoV-2, the virus that causes COVID-19, has led to a continuing global pandemic with dramatic societal and economic impact on individuals and communities since late 2019. To combat this ongoing global health threat, and to reduce the risk of symptomatic laboratory-confirmed COVID-19, hospitalization due to COVID-19, and associated deaths, the Centers for Disease Control and Prevention (CDC) and its Advisory Committee on Immunization Practices (ACIP) recommends everyone 12 years of age and older receive a COVID-19 vaccination. **NOTE:** Current CDC COVID-19 vaccination recommendations by vaccine product can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines.html>.
- b. The Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard for workplace safety against COVID-19 embraces vaccination by facilitating access to vaccination and requiring employers to provide reasonable time and paid leave for employee vaccinations and any side effects. However, if all employees are fully vaccinated in some well-defined areas of health care workplaces, they are exempt from some requirements of OSHA's temporary standard. **NOTE:** OSHA's Emergency Temporary Standard is available at: <https://www.osha.gov/coronavirus/ets>.
- c. As of September 24, 2021, there have been 336,032 Veteran and employee cases of COVID-19 in VA, and 14,658 known deaths. Greater than 25,800 of these COVID-19 cases have occurred among VA staff. During the same period, over 316,000 employees and other health care personnel in VHA have been vaccinated against COVID-19. **NOTE:** VA COVID-19 National Summary is available at: <https://www.accesstocare.va.gov/Healthcare/COVID19NationalSummary>.
- d. The advent of vaccines does not eliminate the grave danger from exposure to SARS-CoV-2 in workplaces where some members of the workforce are not fully vaccinated. In fact, VHA community living centers (CLCs), without fully vaccinated staff introduce a potentially significant source of SARS-CoV-2 infections leading to ongoing viral transmission among vulnerable populations in the CLCs. In addition, transmission of circulating viral variants raises public health concerns that hospitalization rates will rise, along with serious or fatal outcomes for those who contract COVID-19.
- e. Employees at VA serve Veterans and their families. They have a duty to protect their colleagues with whom they may interact and to promote the efficiency of the civil service. Accordingly, employees must take every reasonable step to prevent serious illness and death for themselves, their coworkers, and the public. Further, employees must help stop the transmission of COVID-19 and its variants. In addition to other prevention efforts, which may include masking, physical distancing, respiratory etiquette, and hand hygiene, vaccination against COVID-19 is fundamental to the prevention of COVID-19 for both Veterans and

employees, and to the mitigation of transmission of this virus among susceptible populations in the workplace.

- f. Employees who are on maximum telework, virtual, or working remotely are not excused from this requirement. Their absence from duty due to serious illness or death would seriously impair the VA's important mission to serve Veterans. Further, employees working offsite may interact with the public as part of their duties and agencies may need to recall employees who are on maximum telework or working remotely.
- g. Millions of doses of vaccines have been administered since emergency use authorization by the Food and Drug Administration (FDA), with rigorous and intensive safety monitoring, and rare serious health problems reported after vaccination. Additionally, the Pfizer-BioNTech COVID-19 vaccination was granted FDA approval on August 23, 2021. All FDA-authorized or approved COVID-19 vaccines prevent nearly all hospitalizations and deaths due to COVID-19.
- h. Federal Equal Employment Opportunity (EEO) laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the Rehabilitation Act and Title VII of the Civil Rights Act of 1964, any amendments to those laws, and other EEO considerations. For employees requesting an exception to being fully vaccinated based on a medical condition or a sincerely held religious belief in the designated VA electronic system (or VA Form 10-230), the submission will be used to notify the employee's supervisor to initiate the reasonable accommodation process.
- i. Current scientific evidence suggests that among persons with previous SARS-CoV-2 infection, full vaccination provides additional protection against reinfection. Accordingly, CDC recommends that all eligible persons should be offered vaccination, including those with previous SARS-CoV-2 infection, to reduce their risk for future infection.
- j. In addition to CDC and ACIP, other preeminent health care organizations, such as the American Medical Association, American Nurses Association, and the American Hospital Association, urge the public to get vaccinated against COVID-19. Moreover, the American College of Physicians strongly encourages vaccination of physicians, other health care professionals, and patients when available. On July 13, 2021, a Multisociety Statement from the leading Infectious Diseases Societies was issued in the *Infection Control & Hospital Epidemiology* journal recommending that the COVID-19 vaccination should be a condition of employment for all health care personnel.

4. POLICY.

- a. All VA Administrations and Staff Offices must implement a mandatory COVID-19 vaccination program by requiring all employees, including VHA HCP, to receive a complete COVID-19 vaccination series or obtain an exception for medical or religious reasons. This is required by Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees. Compliance with this policy is a requirement and the procedures are documented in Appendix A of this notice. Employees in violation of this policy may face disciplinary action up to and including removal from Federal service.
- b. Employees are required to provide acceptable proof of vaccination status (as defined in this notice) and certify under penalty of perjury that the documentation submitted is true and correct, even if an employee has previously attested to their vaccination status or provided information under VHA Directive 1193.
- c. Information provided by the employee will be protected as required by the Privacy Act, and any other relevant statute, regulation, or VA policy.
- d. When there is an urgent mission-critical hiring need in limited emergency situations to onboard new employees prior to those individuals being fully vaccinated, an exception to the vaccination requirement may be approved by the agency head or designee. When such exceptions are approved, the newly hired employee(s) must be fully vaccinated within 60 calendar days of their start date and follow safety protocols for not fully vaccinated individuals until they are fully vaccinated. The authority to approve exceptions has been delegated to Under Secretaries, Assistant Secretaries, Other Key Officials, and field facility heads.
- e. Under Secretaries, Assistant Secretaries, Other Key Officials and field facility heads are authorized to administer the provisions of this notice for employees under their respective jurisdictions, including the approval of temporary exceptions on a limited basis in emergency situations to onboard new employees prior to individuals becoming fully vaccinated when there is a mission-critical hiring need. Except as otherwise specifically set out in this notice, this authority may be redelegated in writing to subordinate officials with whatever limitations deemed necessary to ensure proper exercise of authority.

5. DEFINITIONS.

- a. **COVID-19 Vaccine.** According to the CDC, the COVID-19 vaccine is defined as an FDA-approved or authorized commercially available product recommended by the CDC for the prevention of COVID-19. Employees who have already been vaccinated with or, in the event there is limited supply, elect to be vaccinated with any CDC recommended vaccine series under emergency use authorization by the FDA or listed for emergency use by the World Health Organization (WHO), will be considered as meeting the requirements under this notice and EO 14043. CDC guidelines should be followed to determine whether individuals who

received COVID-19 vaccines that are not approved or authorized by FDA may be considered fully vaccinated. Additional information is available on the CDC website: [When You've Been Fully Vaccinated | CDC](#).

- b. **Designated Agency Official(s) (DAO).** The employees who are designated by the appropriate Under Secretary, Assistant Secretary, Other Key Official, Deputy Assistant Secretary (or equivalent), or their designees, to provide oversight to administer the provisions of this policy and monitor compliance. These officials are equivalent to Program Managers and are not making decisions on individual submissions or exception requests.
- c. **Employee.** EO 14043 defines the term "employee" to mean any employee as defined in 5 U.S.C. 2105 (including an employee paid from non-appropriated funds as referenced in 5 U.S.C. 2105(c)). The term includes any individual employed by the VA in a paid or unpaid position, including those appointed to full-time and part-time positions under title 5 or title 38, title 38 hybrid employees, individuals assigned to perform work for the VA under Intergovernmental Personnel Act agreements, temporary and intermittent employees, students, trainees, interns, volunteers, and persons employed on a fee basis. The term also includes telework, remote, and virtual employees.
- d. **Face Mask.** The Department of Labor, Occupational Safety and Health Administration (OSHA) and CDC define face mask as a disposable surgical, medical procedure dental or isolation mask that covers the nose and mouth and fits snugly against the sides of face without gaps.
- e. **Fully Vaccinated.** The CDC considers an individual "fully vaccinated" for COVID-19 two weeks after receipt of the requisite number of doses of a COVID-19 vaccine either approved or authorized for emergency use by the FDA or that has been listed for emergency use by the WHO. For Pfizer-BioNTech, Moderna, or AstraZeneca/Oxford, that is two weeks after an employee has received the second dose of a two-dose series. For Johnson and Johnson (J&J)/Janssen, that is two weeks after receipt of a single-dose. Clinical trial participants from a United States 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, are considered fully vaccinated two weeks after they complete the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. There is currently no post-vaccination time limit on fully vaccinated status. VHA HCP covered under VHA Directive 1193 were required to receive a complete COVID-19 vaccine series by October 8, 2021. That deadline still remains in effect. All other VA employees are required to receive a complete COVID-19 vaccine series by November 8, 2021 in order to be considered fully vaccinated by November 22, 2021.
- f. **Government-wide travel restrictions.** Restrictions on official government travel as established by the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Agency Model Safety Principles. Restrictions on official government

travel are outlined in VA travel policy and communicated in the Office of Human Resources and Administration/Operations, Security and Preparedness (HRA/OSP), Office of the Chief Human Capital Officer (OCHCO) Bulletins and VA Administration-specific policies.

- g. **Physical distancing.** OSHA defines physical distancing as maintaining a sufficient distance between two people such that the risk of disease transmission through inhalation of virus-containing particles from an infected individual is significantly reduced. Adequate physical distancing to prevent droplet transmission of infectious diseases is generally considered to be at least six (6) feet when indoors. This term is also referred to as social distancing.
- h. **Remote employee.** An employee approved for a special type of arrangement as defined in VA Handbook 5011, Part II, Chapter 4 under which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to the agency worksite on a regular and recurring basis. Employees on approved full-time telework that are not expected to report to the office due to a temporary exception granted during the COVID-19 pandemic are not considered remote employees. Remote employees are covered by this notice.
- i. **Telework employee.** An employee that is approved for a flexible work arrangement as defined in VA Handbook 5011, Part II, Chapter 4 under which an employee performs the duties and responsibilities of their position and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. Teleworking employees are required to report to the agency worksite at least twice each pay period on a regular, recurring basis unless a temporary exception applies. Telework employees are covered by this notice.
- j. **VHA HCP.** VHA HCP refers to all paid and unpaid persons who work in or travel to VHA locations who have the potential for direct or indirect exposure to patients or infectious materials, including body substances (e.g., blood, tissue, and specific body fluids); contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air. These VHA HCP may include, but are not limited to, emergency medical service personnel, nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, health professions trainees (HPTs), and persons (e.g., clerical, dietary, environmental services, laundry, security, maintenance, engineering and facilities management, administrative, billing, and volunteer personnel) not directly involved in patient care but potentially exposed to infectious agents that can be transmitted from VHA HCP and patients. VHA HCP include all VA licensed and unlicensed, clinical and administrative, paid and without compensation, full- and part-time, intermittent, fee basis employees who are expected to perform any or all of their work at these locations. VHA HCP also includes VHA personnel and contractor personnel providing home-based care to Veterans and drivers and other personnel whose duties put them in contact with

patients outside VA medical facilities. **NOTE:** VA employees who work in VHA locations but are not part of VHA are not subject to the requirements and deadlines for VHA HCP. Instead, they must follow all requirements and deadlines for all other VA Employees.

- k. **VHA Locations.** VHA locations include, but are not limited to, VA medical facilities (hospitals) and associated clinics, CLCs, community-based outpatient clinics (CBOCs), domiciliary units, Vet centers and VA-leased medical facilities.
- l. **Virtual employee.** An employee who performs “virtual work” as defined in VA Handbook 5011, Part II, Chapter 4. Virtual work is defined as work performed on a full-time basis using a VA-leased space or at a VA facility other than the facility that hired the employee. Virtual employees must adhere to all local safety measures in place for COVID-19 at the VA-leased space or VA facility where they perform work. Virtual employees are covered by this notice.

5. RESPONSIBILITIES.

- a. **The Assistant Secretary for HRA/OSP** shall be responsible for serving as liaison to the Office of Management and Budget (OMB) to establish the criteria, frequency, and reporting method for the collection of Government-wide COVID-19 vaccination data.
- b. **Under Secretaries, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries (or equivalent), or their designees,** shall:
 - (1) Administer, monitor, and comply with the COVID-19 vaccination program for employees under their jurisdiction.
 - (2) Identify DAOs in writing to provide program oversight for provisions of this policy and monitor compliance.
 - (3) Respond to any reporting requirements needed to evaluate the COVID-19 vaccination program as identified by the Assistant Secretary for HRA/OSP in coordination with the VHA Office of Occupational Safety and Health (19HEFB).
- c. **The Director of VHA Analytics, Performance and Integration** shall aggregate, analyze, and report to the facility leadership all metrics prescribed by HRA/OSP in coordination with the COVID-19 Coordination Team and the VHA Office of Occupational Safety and Health (19HEFB) for the purposes of evaluating the COVID-19 vaccination program. Personally Identifiable Information (PII) and Personal Health Information (PHI) are subject to the Privacy Act, and within VHA, the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA Rules). The information may not be used or disclosed unless an individual has a legitimate need to know the information in the performance of their duties or as otherwise permitted by law.

- d. The Assistant Secretary for HRA/OSP in coordination with the VHA Office of Occupational Safety and Health (19HEFB) shall:
- (1) Share the reporting requirements set forth by OMB with DAOs, collate and aggregate the vaccination data to submit to OMB.
 - (2) Determine the need for development of any internal reporting criteria and the requirements needed to evaluate COVID-19 vaccination rates within VA, including the determination of all aggregate metrics for which Under Secretaries, Assistant Secretaries, Other Key Officials, Deputy Assistant Secretaries (or equivalent) will evaluate the COVID-19 vaccination program.
 - (3) Coordinate information sharing and actions with VA Administrations, Staff Offices, and Interagency partners. This includes collaborating with the OCHCO to evaluate program compliance and requests for employee vaccination data.
- e. **The Chief Human Capital Officer** shall:
- (1) Advise management and operating officials on the policies and procedures in this notice.
 - (2) Communicate guidance to the human resources field facilities on the vaccination program requirements.
- f. **Field facility directors, field facility heads, and installation heads** shall:
- (1) Ensure that all aspects of this policy are implemented at their facility.
 - (2) Ensure that employees have access to training or education pertaining to proper use of face masks and other mitigation strategies that reduce the spread of SARS-CoV-2, the virus that causes COVID-19, including how to access face masks, when to wear a mask, the appropriate type of mask to wear, when to replace a mask, and proper disposal of masks, according to local conditions.
 - (3) Address non-compliant employees, in conjunction with the supervisor, human resources officer, and District Counsel as necessary.
 - (4) Create a VA facility ad hoc workgroup of subject matter experts regarding matters of local implementation and application of procedures and guidelines of this notice.
- g. **Human Resources Officers (HRO)/Human Capital Management (HCM)** shall:
- (1) Provide notification to all employees and prospective employees of the requirement to participate in the COVID-19 vaccination program and comply with the procedures outlined in this notice.

- (2) Provide no less than two such notifications within two weeks after publication of this notice, including that employees in violation of this requirement may face disciplinary action up to and including removal from Federal service.
 - (3) Notify prospective employees, of the mandatory COVID-19 vaccination program in job opportunity announcements and tentative and final offers.
 - (4) Provide advice and guidance on addressing non-compliant employees, in conjunction with the supervisor and the Office of General Counsel as necessary.
 - (5) Use the Automated Labor and Employee Relations Tracker (ALERT-HR) to process and track all written counselings, disciplinary actions and (major) adverse actions, including appeals, resulting from the failure to comply with EO 14043 and this notice.
- h. The **DAO(s)** for implementing the COVID-19 vaccination program for a VA location(s) shall provide program oversight to administer the provisions of this policy and monitor COVID-19 vaccination compliance of all employees.
- i. **VHA HCPs** are required to comply with the requirements in this notice as described below. VHA HCPs must:
- (1) Receive a complete COVID-19 vaccine series no later than October 8, 2021, or, if an exception applies, wear a face mask, physically distance, be subject to Government-wide travel restrictions, and comply with additional mitigation requirements such as COVID-19 testing.
 - (2) Submit the required information in the designated VA system for electronic submission (or a completed COVID-19 Vaccination Form, VA Form 10-230) and attach proof of vaccination or complete a voluntary release of information form (VA 10-5345) to disclose the VA vaccination record (if vaccinated through Employee Occupational Health) no later than 14 calendar days after publication of this notice. The documentation must include information about 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). Acceptable forms of documentation include a copy of the signed 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 containing the required information.
 - (3) If a VHA HCP is seeking an exception to being fully vaccinated for medical or religious reasons, the VHA HCP must complete the required information using the designated VA system for electronic submission, or submit a completed COVID-19 Vaccination Form, VA Form 10-230, requesting an

exception, acknowledging the requirement to wear a face mask, physically distance, be subject to Government-wide travel restrictions, and required COVID-19 testing and any other mitigation requirements.

- (a) Requesting an exception for a medical condition requires the VHA HCP to indicate they are requesting an exception using the designated system for electronic submission, on a VA Form 10-230, or by providing other documentation as identified in national collective bargaining agreement(s), as required. If a VHA HCP requests a medical exception, the supervisor is required to engage in the reasonable accommodation process in accordance with VA Handbook 5975.1, Processing Requests for Reasonable Accommodation from Employees and Applicants with Disabilities.
 - (b) Requesting a religious exception must be indicated by the VHA HCP using the designated system for electronic submission, on a VA Form 10-230, or by providing documentation identified in national collective bargaining agreement(s). If the VHA HCP declares a religious exception, the supervisor is required to engage in the reasonable accommodation process. The supervisor may consult with religious accommodation advisors for guidance on the request. VA policy on religious accommodations is found in VA Directive 5975, Diversity and Inclusion.
 - (c) While a request for medical or religious exception is being reviewed, the employee will wear a face mask, physically distance, and submit to COVID-19 testing (and any other mitigation requirements) as prescribed in VA policy and any other approved interim accommodation. Official travel will also be restricted in accordance with applicable VA travel guidance.
 - (d) Face masks must be worn as outlined in local and national VA policies and in accordance with collective bargaining agreements and memoranda of understanding with labor unions.
- (4) VHA HCPs will be in violation of the COVID-19 mandatory vaccination policy if they have not submitted the required information in the designated VA system for electronic submission or on a completed VA Form 10-230 within 14 calendar days of publication of this notice.
- (5) VHA HCPs covered under VHA Directive 1193 are still required to receive a complete COVID-19 vaccine series by October 8, 2021.
- j. **All other VA employees**, including VHA non-HCPs, are required to comply with the requirements in this notice by November 22, 2021. Employees must:
- (1) Receive a complete COVID-19 vaccine series no later than November 8, 2021, to meet the November 22, 2021, deadline, or, if an exception applies, wear a face mask, physically distance, be subject to Government-wide travel

restrictions, and comply with additional mitigation requirements such as COVID-19 testing.

- (2) Submit required documentation in the designated VA system for electronic submission (or a completed COVID-19 Vaccination Form, VA Form 10-230) and attach proof of vaccination or complete a voluntary release of information form (VA 10-5345) to disclose the VA vaccination record (if vaccinated through Employee Occupational Health) by November 22, 2021. The documentation must include information about the type of vaccine, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s). Acceptable forms of documentation include a copy of the signed 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 containing the required information.
- (3) If an employee is seeking an exception to being fully vaccinated for medical or religious reasons, they must complete the required information using the designated VA system for electronic submission, or submit a completed COVID-19 Vaccination Form, VA Form 10-230, requesting an exception, acknowledging the requirement to wear a face mask, physically distance, be subject to Government-wide travel restrictions, required COVID-19 testing and any other mitigation requirements. The request for an exception should be submitted by October 18, 2021, but no later than November 22, 2021.
 - (a) Requesting an exception for a medical condition requires the employee to indicate they are requesting an exception using the designated system for electronic submission, on a VA Form 10-230, or by providing other documentation as identified in national collective bargaining agreement(s), as required. If an employee requests a medical exception, the supervisor is required to engage in the reasonable accommodation process in accordance with VA Handbook 5975.1, Processing Requests for Reasonable Accommodation from Employees and Applicants with Disabilities.
 - (b) Requesting a religious exception must be indicated by the employee using the designated system for electronic submission, on a VA Form 10-230, or by providing documentation identified in national collective bargaining agreement(s) as required. If an employee requests a religious exception, the supervisor is required to engage in the reasonable accommodation process. The supervisor may consult with religious accommodation advisor(s) for guidance on the request. VA policy on religious accommodations is found in VA Directive 5975, Diversity and Inclusion.

- (c) While a request for medical or religious exception is being reviewed, the employee will wear a face mask, physically distance, and submit to COVID-19 testing (and any other mitigation requirements) as prescribed in VA policy and any other approved interim accommodation. Official travel will also be restricted in accordance with applicable VA travel guidance.
 - (d) Face masks must be worn as outlined in local and national VA policies and in accordance with collective bargaining agreements and memoranda of understanding with labor unions.
- (4) VA employees will be in violation of the COVID-19 mandatory vaccination policy if they have not submitted the required information in the designated VA system for electronic submission or on a completed VA Form 10-230 no later than November 22, 2021.

NOTE: Employees with a medical or religious exception to being fully vaccinated must submit the request for an exception electronically in the designated VA system or on a completed VA Form 10-230 to the supervisor. The request for exception should be submitted by October 18, 2021, but no later than November 22, 2021.

- (5) VA employees are required to receive a complete COVID-19 vaccine series by November 8, 2021 or submit a request for medical or religious exception by November 22, 2021. A completed form must include:
- (a) Documentation of receipt of a complete COVID-19 vaccine series by November 8, 2021; or
 - (b) Documentation requesting an exception to being fully vaccinated.
- k. **Applicants** who begin VA employment prior to November 22, 2021, must be fully vaccinated by November 22, 2021. Applicants who begin VA employment after November 22, 2021, must be fully vaccinated prior to entrance on duty. Exceptions to the vaccination requirement for VA applicants are applicable only in limited circumstances where:
- (1) A reasonable accommodation is legally required, or
 - (2) When there is an emergent mission-critical hiring need allowing a 60-day extension to being fully vaccinated prior to beginning VA employment.

i. **Supervisors** shall:

- (1) Document and track issues of non-compliance with the COVID-19 vaccination policy, including adherence to masking and testing requirements.
- (2) Consult with HROs, LRACs, DAOs, and the Office of General Counsel to address employees that are non-compliant with this notice.

(3) Engage in the reasonable accommodation process in accordance with VA policy. In assessing a request for accommodation, the supervisor will consider the impact to the agency's mission in determining whether to grant the employee's request along with any other factors relevant to the facts and circumstances specific to the employee and VA policy. Supervisors may consult with the religious accommodation advisor(s) for guidance on such religious accommodation requests.

(4) Ensure that the information entered through electronic submission or submission of a physical copy of VA Form 10-230, and the documentation of proof of vaccination is kept secure and confidential under the system of records Notice OPM/GOVT-10 or 08VA05, as applicable.

m. **Local Reasonable Accommodation Coordinators (LRAC)** shall process requests for reasonable accommodations based on medical conditions in accordance with VA Handbook 5975.1, Processing Requests for Reasonable Accommodations for Applicants and Employees.

6. REFERENCES.

- a. 38 U.S.C. § 7301(b), Functions of Veterans Health Administration: in general.
- b. 38 U.S.C. § 7318(b) – National Center for Preventative Health.
- c. 38 U.S.C. § 7421 – Personnel administration: in general.
- d. Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing
- e. Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees.
- f. 5 C.F.R. Part 339 - Medical Qualification Determinations .
- g. 29 C.F.R. § 1910, Occupational Safety and Health Standards.
- h. VHA Directive 1193, Coronavirus Disease 2019 Vaccination Program for Veterans Health Administration Health Care Personnel.
- i. VA Handbook 5975.1, Processing Requests for Reasonable Accommodation From Employees And Applicants With Disabilities.
- j. VA Handbook 5975, Diversity and Inclusion.
- k. VA Form 10-230, COVID-19 Vaccination (VA): <https://vaww.va.gov/vaforms/> and <https://www.va.gov/find-forms/>. **NOTE:** The first link is an internal VA website that is not available to the public. To access the form, type VA Form 10-230 into the search bar.

- l. VA. Department of Veterans Affairs. VA COVID-19 National Summary.
 - m. CDC. Guidance for Wearing Masks.
 - n. CDC. Post-vaccination considerations for workplaces.
 - o. United States COVID-19 Cases and Deaths by State: https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days. CDC. Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-after-vaccination.html>.
 - p. Equal Employment Opportunity Commission (EEOC). Pandemic Preparedness in the Workplace and the Americans with Disabilities Act.
 - q. Occupational Safety and Health Administration (OSHA). Emergency Temporary Standard.
 - r. FDA. Information on COVID-19 Vaccines.
 - s. Safer Federal Workforce Task Force. Protecting the Federal Workforce During the COVID-19 Pandemic.
 - t. Safer Federal Workforce Task Force. Frequently Asked Questions.
8. **RESPONSIBLE OFFICE.** Office of the Chief Human Capital Officer, Worklife and Benefits Service.
9. **RELATED HANDBOOKS AND DIRECTIVES.** VA Directive and Handbook 5019, Employee Occupational Health Service, VHA Directive 1193, Coronavirus Disease 2019 Vaccination Program for Veterans Health Administration Health Care Personnel.
10. **RESCISSION.** This notice will be rescinded when revised VA Handbook 5019 is published to include COVID-19 vaccination requirement, within one year.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
Dat P. Tran
Acting Assistant Secretary for
Enterprise Integration

/s/
Gina M. Grosso
Assistant Secretary for Human
Resources and Administration/
Operations, Security, and Preparedness

**Department of Veterans Affairs
Washington, DC 20420**

**VA NOTICE 22-01
October 4, 2021**

DISTRIBUTION: Electronic Only

PROCEDURES FOR IMPLEMENTING THE COVID-19 VACCINATION PROGRAM

1. NOTIFICATION OF MANDATORY COVID-19 VACCINATION.

- a. Human Resources Officers (HRO)/Human Capital Management (HCM) will notify all VA employees that they are required to participate in the COVID-19 vaccination program. Employees will be notified through their respective programs. In VA Central Office, Administration Heads, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries (or equivalent) and their designees will fulfill this role.
- b. Each VA facility and Staff Office, for VA Central Office, shall provide no less than two such notifications within two weeks after publication of this notice, including that employees in violation of this notice may face disciplinary action up to and including removal from Federal service. VHA HCP covered under VHA Directive 1193 were required to receive a complete COVID-19 vaccine series by October 8, 2021. That deadline still remains in effect.
- c. Human Resources will notify prospective employees who begin work after publication of the mandatory COVID-19 vaccination program in job opportunity announcements and tentative and final offer letters. New employees who are scheduled to begin VA employment on or after November 22, 2021, will be asked to provide proof they are fully vaccinated or will be advised to request a medical or religious exception prior to the individual's entrance on duty. If a new employee does not provide the required proof of vaccination status or have an approved exception, the new employee may not be extended a final offer of employment or onboarded.
- d. Employees can contact the VA medical facility ad hoc workgroup of subject matter experts regarding matters of local implementation and application of procedures and guidelines of this notice. Employees of the National Cemetery Administration may contact the Employee and Labor Relations Team. Other VA employees may contact their servicing HR office for information.

2. VACCINE PROGRAM COMPLIANCE.

- a. **VHA HCP.** All VHA HCP must comply by submitting the required information in the identified VA electronic system (or a completed VA Form 10-230) to the supervisor no later than 14 calendar days after publication of this notice. The completed information submitted electronically (or on VA Form 10-230) must include:
 - (1) Documentation showing receipt of a complete COVID-19 vaccine series by October 8, 2021; or
 - (2) Documentation requesting an exception to being fully vaccinated.

- b. **Other VA Employees and VHA non-HCP.** All other VA employees, including VHA non-HCP, must comply by submitting the required information in the identified VA electronic system (or a completed VA Form 10-230) to the supervisor no later than November 22, 2021. The completed information submitted electronically (or on VA Form 10-230) must include:
- (1) Documentation showing receipt of a complete COVID-19 vaccine series by November 8, 2021, submitted no later than November 22, 2021; or
 - (2) A request for a medical or religious exception to being fully vaccinated. The request for exception should be submitted by October 18, 2021, but no later than November 22, 2021.

c. **Proof of Vaccination.**

- (1) If a VA employee is vaccinated by VA, in lieu of submitting proof of vaccination, an employee may voluntarily elect to sign a release of information form (VA Form 10-5345) for the VA to release the information to the supervisor. The information released to the supervisor is limited to the information required to verify receipt of the required COVID-19 vaccine doses (type of vaccine administered, date(s) of administration, and the name of the healthcare professional(s) or clinic site(s) administering the vaccine(s)).
- (2) If a VA employee is vaccinated outside of VA, the employee must complete the required information in the designated VA electronic system (or VA Form 10-230). The employee must attach acceptable documentation verifying vaccination in the designated electronic system or with the accompanying VA Form 10-230 delivered to the supervisor.

NOTE: Acceptable documentation includes a signed 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 immunization records from a public health or state immunization information systems, a copy of medical records documenting the vaccination, or a copy of any other official documentation containing all data points required.

d. **Compliance When an Exception Applies.**

- (1) If a VA employee is requesting an exception to being fully vaccinated for medical or religious reasons, the employee must complete the required information in the designated VA system for electronic submission (or VA Form 10-230). Declaring an exception requires acknowledging the requirement to wear a face mask, physically distance, undergo COVID-19 testing, sign an authorization to release test results, and any other mitigation strategies when under conditions in the work environment as outlined in national VA guidance. COVID-19 testing will be performed as

prescribed in VA policy. Official travel will also be restricted in accordance with applicable VA travel guidance.

- (2) Employees with an exception are required to wear a face mask as prescribed within the policies and procedures of this notice. Employees who refuse or fail to wear a face mask as prescribed will be considered non-compliant with this notice and may be subject to disciplinary action.
- e. **VA Applicants and New Employees.** New VA employees (both VHA HCP and non-HCP) are required to participate in the mandatory COVID-19 vaccination program. New VA employees must complete a COVID-19 vaccination series by November 8, 2021 or seek an exception. Employees who start government service at VA after November 22, 2021, must be fully vaccinated or have an approved exception prior to entrance on duty.
- f. **Health Professions Trainee (HPT) Compliance.** Monitoring compliance and documentation of HPT compliance with this notice is the responsibility of the Designated Education Officer via the Trainee Qualifications and Credentials Verification Letter (TQCVL) process. However, VA may choose to offer vaccine to HPTs, and must document vaccinations of HPTs using the same process used for other VA employees. HPT seeking an exception for medical or religious reasons must be evaluated using the processes set forth in this notice. The denial of an accommodation request must be supported by the relevant facts and meet the applicable legal standard. When an accommodation is denied, the HPT must receive their first (or, if a one-dose series, only) dose within two weeks of the final determination to deny the accommodation. If receiving a two-dose series, the HPT should receive the second dose within six weeks of receiving the first dose. If an HPT received a first dose of a two-dose series prior to seeking an accommodation, and the request for accommodation is denied, the HPT must receive their second dose within two weeks of the final determination to deny the accommodation (or within a week of the earliest day by which they can receive their second dose), whichever is later.
- g. **Extended Leave of Absence.** Employees on an extended leave of absence (utilizing annual leave, sick leave, donated annual leave, military leave, leave without pay, paid parental leave, unpaid leave under the Family and Medical Leave Act, or leave of absence due to receiving workers' compensation) are required to submit documentation establishing they are fully vaccinated (or request an exception) prior to returning to VA duty. Such employees are not subject to the requirement to be vaccinated by November 22, 2021, when on an extended leave of absence and will not return to work until a later date. If an employee has provided notice to the supervisor that they are leaving their position and are on leave until the date of separation, the EO 14043 vaccine requirement will not be enforced. Volunteers, students, seasonal employees, and interns on an extended break are not required to submit documentation showing they are fully vaccinated by November 22, 2021 when they will not be

reemployed until a later date. Documentation showing the volunteer, student, or intern is fully vaccinated will be required prior to return to duty.

- h. **Detailed Employees.** Employees on detail with VA should follow the procedures of their home agency for submitting documentation to demonstrate compliance with the EO 14043 vaccination requirement. VA employees on detail to other Executive branch agencies must follow the VA procedures outlined in this notice to comply with the vaccination requirement. VA employees on detail to positions outside of an Executive branch agency covered by EO 14043 should submit documentation establishing they are fully vaccinated (or request an exception) prior to returning to VA duty. VA employees on detail at VA from non-Federal entities via assignment through Intergovernmental Personnel Act (IPA) agreements will be required to follow the VA procedures outlined in this notice to comply with the vaccination requirement.
 - i. **COVID-19 Vaccination Form.** The VA Form 10-230 is available at: <https://vaww.va.gov/vaforms/> and <https://www.va.gov/find-forms/>. **NOTE:** The first link is an internal VA website that is not available to the public. To access the form, type VA Form 10-230 into the search bar.
3. **EXCEPTIONS.** VA employees may request an exception to being fully vaccinated only for medical or religious reasons as prescribed in this notice. In such cases, VA employees must complete the required information in the designated VA system for electronic submission (or submit a completed VA Form 10-230), requesting the exception, acknowledging the requirement to wear a face mask, physically distance, be subject to Government-wide travel restrictions, required COVID-19 testing, and any other mitigation requirements. The confidential nature of Personally Identifiable Information (PII) and Protected Health Information (PHI) must be protected as required by statute, regulation, and VA and VHA policies.
- a. **Medical Exception.** VA employees who decline to receive the COVID-19 vaccine because of a medical condition must complete the required information in the designated VA system for electronic submission (or submit a completed VA Form 10-230), declaring an exception. The request for an exception for current employees who are non-VHA HCP should be submitted by October 18, 2021, but no later than November 22, 2021. The submission will be used to notify the employee's supervisor to initiate the reasonable accommodation process. If the request for reasonable accommodation is denied, the employee is required to be fully vaccinated as outlined below.
 - b. **Religious Exception.** VA employees who decline to receive the COVID-19 vaccine because of a deeply held religious belief, practice, or observance must complete the required information in the designated VA system for electronic submission (or submit a completed VA Form 10-230), requesting an exception. The request for an exception for current employees who are non-VHA HCP should be submitted by October 18, 2021, but no later than November 22, 2021. The submission will be used to notify the employee's supervisor to initiate the

reasonable accommodation process. If the request for reasonable accommodation is denied, the employee is required to be fully vaccinated as outlined below.

- c. **Denial of an Exception.** The final determination to allow an exception will be based on the approval or denial of the reasonable accommodation request. The denial of a reasonable accommodation must be supported by the relevant facts and meet the applicable legal standards. When an accommodation is denied, the employee must receive their first (or, if a one-dose series, only) dose within two weeks of the final determination to deny the accommodation. If receiving a two-dose series, the employee should receive the second dose within six weeks of receiving the first dose. If an employee received a first dose of a two-dose series prior to seeking an accommodation, and the request for accommodation is denied, the employee must receive their second dose within two weeks of the final determination to deny the accommodation (or within a week of the earliest day by which they can receive their second dose), whichever is later.

4. DOCUMENTATION.

- a. **Vaccination Performed by VA.** When the VA employee is vaccinated in VHA Employee Occupational Health (EOH), the person administering the vaccine, EOH staff or designee, must document the vaccination in accordance with VA Handbook 5019, Employee Occupational Health Service, August 3, 2017, or as directed by VHA's Office of Employee Occupational Health. The VA employee must complete the required information in the designated VA system for electronic submission (or VA Form 10-230). Acceptable and complete documentation verifying vaccination (with information on the type of vaccine administered, date(s) of administration, and name of health care professional(s) or clinic site(s) administering the vaccine(s)) must also be delivered to the supervisor in the designated electronic system or on the accompanying VA Form 10-230 as applicable in the requirements. In lieu of submitting proof of vaccination, an employee may voluntarily elect to sign a release of information form (VA Form 10-5345) for VHA EOH to release the information to the supervisor insofar as the vaccination information is available from VHA EOH. The information released to the supervisor is limited to the information required to verify receipt of the required COVID-19 vaccine doses.
- b. **Vaccination Performed by Other Providers.** When the VA employee is vaccinated outside of VHA EOH, the employee must complete required information in the designated VA system for electronic submission (or VA Form 10-230). Acceptable and complete documentation verifying vaccination (with information on type of vaccine administered, number of doses received, date of administration, and name of health care professional(s) or clinic site(s) administering vaccine) must also be delivered to the supervisor in the designated electronic system or with the accompanying VA Form 10-230. Veteran employees vaccinated through primary care or other providers may also

authorize the release of vaccination information or provide a copy of the vaccination documentation from their own records

NOTE: VA medical facility EOH staff may not identify individuals according to their vaccination status or otherwise indicate whether an individual has been vaccinated unless that individual has provided a qualifying authorization to EOH permitting the disclosure on VA Form 10-5345, Request for and Authorization to Release Health Information. Questions should be referred to the local Privacy Office.

5. SAFETY PROTOCOLS FOR VA PERSONNEL NOT FULLY VACCINATED.

- a. VA employees who do not receive COVID-19 vaccination due to medical or religious exception must designate this in the designated VA system for electronic submission (or VA Form 10-230), wear a face mask while in any VA facility, including both clinical and non-clinical areas. In addition, unvaccinated VA employees are required to wear a face mask during performance of their assigned duties and responsibilities, as outlined in local conditions.
- b. The face mask must be worn until the individual is considered fully vaccinated for COVID-19 and completes the information in the designated VA system for electronic submission (or VA Form 10-230). Face masks should be worn as outlined in local and national policies, collective bargaining agreements and memoranda of understanding with labor unions. Face masks will be made available and distributed per the local community level of transmission. A face mask must be replaced when it becomes wet, visibly soiled, torn, or damaged. Alternatives to face masks may be considered in limited situations, such as when an employee is unable to wear a face mask and is approved for a reasonable accommodation due to a qualifying disability or for religious reasons. Fitted N95 respirators or other respirators are not required by this policy, but they should be used when appropriate to task (e.g., when caring for a patient on airborne infection isolation precautions); if N95 or higher respirators are used, they also serve the purpose of being considered a face mask for this notice. Employees that require mask alternatives based on a medical condition can request a reasonable accommodation through their supervisor or contact their RA Coordinator.

NOTE: Local policy and memoranda of understanding with labor unions may require that all individuals wear a face mask, regardless of vaccination status, if a risk of transmission of SARS COV-2 exists.

- c. VA employees may remove their face mask only in accordance with VA and VHA masking guidance.
- d. VA employees will submit to COVID-19 testing.
- e. VA employees will observe Government-wide travel restrictions.

f. VA employees will adhere to all other mitigation and safety strategies deemed necessary and appropriate for the circumstances.

6. VA EMPLOYEES IN VIOLATION OF THIS NOTICE.

a. **VHA HCP.** VHA HCP will be in violation of this notice if they have not submitted the required information in the designated VA system for electronic submission (or VA Form 10-230) to the supervisor no later than 14 calendar days after publication of this notice. A completed form must include:

- (1) Documentation showing receipt of a complete COVID-19 vaccine series by October 8, 2021; or
- (2) Documentation requesting an exception to being fully vaccinated.

NOTE: Acceptable documentation includes a signed 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 immunization records from a public health or state immunization information systems, a copy of medical records documenting the vaccination, or a copy of any other official documentation containing all data points.

b. **Other VA Employees and VHA non-HCP.** All other VA employees, including VHA non-HCP, will be in violation of this notice if they have not submitted the required information in the designated VA system for electronic submission (or VA Form 10-230) to the supervisor by the dates listed below. The completed information submitted electronically (or on VA Form 10-230) must include:

- (1) Documentation of receipt of a completed COVID-19 vaccine series by November 8, 2021 submitted no later than November 22, 2021; or
- (2) A request for a medical or religious exception to being fully vaccinated. The request for an exception should be submitted by October 18, 2021, but no later than November 22, 2021.

NOTE: Acceptable documentation includes a signed 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 immunization records from a public health or state immunization information systems, a copy of medical records documenting the vaccination, or a copy of any other official documentation containing all data points.

c. **Exceptions.** If a VA employee has an exception for medical or religious reasons, they must complete the required information in the designated VA system for electronic submission (or VA Form 10-230), declaring the exception and acknowledging the requirements to wear a face mask, physically distance, and undergo COVID-19 testing when under conditions as outlined in VA guidance. COVID-19 testing will be performed as prescribed in VA policy.

Official travel will also be restricted in accordance with applicable VA travel guidance. This submission will be used to notify the employee's supervisor to initiate the reasonable accommodation process. Approval of the requested accommodation is subject to the outcome of the reasonable accommodation process. The VA Form 10-230 is available at: <https://vaww.va.gov/vaforms/> and <https://www.va.gov/find-forms/>. **NOTE:** The first link is an internal VA website that is not available to the public. To access the form, type VA Form 10-230 into the search bar.

- d. **Masking.** Employees who refuse or fail to wear a face mask as prescribed will be considered non-compliant with this notice.
- e. **Compliance with Requirement.** Compliance with this notice is a requirement. VA employees in violation of this notice may face disciplinary action up to and including removal from Federal service.

From: Mimi All, Rebecca.Mimmi@va.gov On Behalf Of VHA Healthcare Operations Center

Sent: Wednesday, October 20, 2021 12:45 PM

To: VHA VISN Directors <VHAVISNDirectors@va.gov>; VHA VISN DNDs <VHAVISNDND@va.gov>; VHA VISN Admin Reps <VHAVISNAdminReps@va.gov>; VHA CO Senior Leaders EA & Support Staff <vhacosseas@va.gov>; VHA CO Senior Leaders <vhacossealead@va.gov>
Cc: VHA 15HOC Healthcare Ops Ctr Action <VHA15HOCHealthcareOpsCtrAction@va.gov>; VHA 15HOC Healthcare Ops Ctr Field Operations <VHA15HOCHealthcareOpsCtrFieldOperations@va.gov>
Subject: Employee COVID-19 Vaccination Status Reports Reminder

Good Afternoon,

As a reminder, employee COVID-19 Vaccination Status and compliance reports can be found here: [COVID-19 Vaccination Effort - DVA Workgroup Reports - All Documents \(sharepoint.com\)](https://sharepoint.com)

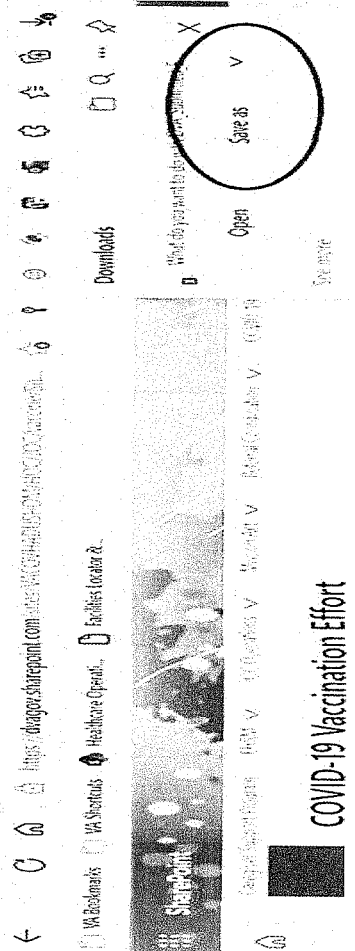
There are two workbooks available, refreshed daily (weekdays). Please note that users must download a copy of the file to their desktop to view and filter, as opposed to trying to view within Sharepoint. (Note: Select "Download" and then use the "Save As" option to save a copy locally - screenshot provided below).

- "DVA Workgroup LEAF Submission Status"
 - o Provides by name and TMS workgroup submission status across DVA
- "DVA Submitted Exceptions by Site" - this is as-of 10/18. A different version of this report is being developed and will be available in the coming days.
 - o Provides VHA facility level summaries of exceptions and allows filtering by percent of submissions.

Additional refinements and expansions are being worked to add to and enhance these reports, including occupational series breakdowns. Questions on this may be addressed through either your applicable VISN Support Team or to @VHA 15HOC Healthcare Ops Ctr Action

Thank you,
Healthcare Operations Center

To Download a Local Copy:





I am a VA: Employee Volunteer Other (ex: Trainee, Resident, Intern, Fee Basis, or Researcher)

Please indicate: _____

PLEASE CHECK ONE STATEMENT BELOW AND COMPLETE AND SIGN THE LAST SECTION OF THIS FORM PRIOR TO SUBMISSION TO YOUR SUPERVISOR:

FULLY VACCINATED *(Required documentation attached):*

I have received a complete COVID-19 vaccine series. Please complete the following information:

Type of vaccine administered:

- ASTRAZENECA/OXFORD
 JOHNSON AND JOHNSON (J&J)/JANSSEN
 MODERNA
 PFIZER

Date(s) of Administration: _____

Name of health care professional, clinical site, or vaccination event that administered the vaccine:

To verify the information entered, please attach a copy of the documents showing you received your vaccine(s). Acceptable forms of documentation include a copy of:

- The signed record of immunization from a health care provider or pharmacy,
- COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020,
- Record of immunization from a health care provider or pharmacy;
- Medical records documenting the vaccination; or
- Immunization records from a public health or state immunization information system.

FULLY VACCINATED *(Attached is a VA Form 10-5345 to authorize Employee Occupational Health to release my COVID-19 vaccination record to verify my vaccination status):*

I have received a complete COVID-19 vaccine series and was vaccinated by the Department of Veterans Affairs. I authorize the use and disclosure of my health information as related to COVID-19, including test results and vaccination status, to promote the health and safety of the Federal workforce and the efficiency of the civil service.

MEDICAL EXCEPTION:

I have a medical exception to receiving the COVID-19 vaccination and am requesting a reasonable accommodation. This submission will be used to notify my supervisor to initiate the reasonable accommodation process. Approval of the requested accommodation is subject to the outcome of the reasonable accommodation process. If the accommodation is approved, I acknowledge that according to requirements and guidelines within the VA Notice, Mandatory Coronavirus Disease 2019 (COVID-19) Vaccination Program for VA Employees, I must:

- Wear a face mask;
- Physically distance;
- Submit to COVID-19 testing;
- Be subject to Government-wide travel restrictions on official travel; and
- Any other mitigation strategies required as part of the accommodation.

RELIGIOUS EXCEPTION:

I have a sincerely held religious belief that prevents me from receiving the COVID-19 vaccine and am requesting a reasonable accommodation. This submission will be used to notify my supervisor to initiate the reasonable accommodation process. Approval of the requested accommodation is subject to the outcome of the reasonable accommodation process. If the accommodation is approved, I acknowledge that according to requirements and guidelines within the VA Notice, Mandatory Coronavirus Disease 2019 (COVID-19) Vaccination Program for VA Employees I must:

- Wear a face mask;
- Physically distance;
- Submit to COVID-19 testing;
- Be subject to Government-wide travel restrictions on official travel; and
- Any other mitigation strategies required as part of the accommodation.

NOTE: Declaring an exception for a medical condition or religious exception requires the supervisor to engage in the reasonable accommodation process in accordance with VA Handbook 5975.1 and VA Directive 5975.

I sign this document under penalty of perjury that the above is true and correct, and that I am the person named below. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. § 1001). I have read and fully understand the information on this form and have been given the opportunity to have my questions answered. I understand that making a false statement on this form or violation of the VA policy may result in disciplinary action up to and including removal from Federal service.

Name (print): _____

Dept./Serv: _____

Employee Signature: _____ Date (MM/DD/YYYY): _____

VA employees provide this form to your supervisor.

Supervisor Signature: _____ Date (MM/DD/YYYY) _____

Health Professions Trainees (HPTs) requesting medical or religious exemptions provide this form to the Designated Education Officer (DEO); and proof of vaccination is provided to the DEO via the Trainee Qualifications and Credentials Verification Letter (TQCVL). HPTs who request a medical or religious exception will follow the same reasonable accommodation process established for employees.

Privacy Act Statement:

Authority:

Pursuant to 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021), we are authorized to collect this information. The authority for the system of records notices (SORN) associated with this collection of information, OPM/GOVT-10, Employee Medical File System of Records, 75 Fed. Reg. 35099 (June 21, 2010), amended 80 Fed. Reg. 74815 (Nov. 30, 2015), for title 5 employees, and 08VA05, Employee Medical File System Records (Title 38)-VA, for title 38 employees, also includes 5 U.S.C. chapters 33 and 63 and Executive Order 12196, Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980). Providing this information is mandatory, and we are authorized to impose penalties for failure to provide the information pursuant to applicable Federal personnel laws and regulations.

Purpose

This information is being collected and maintained to promote the safety of Federal workplaces and the Federal workforce consistent with the above-referenced authorities, Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

Routine Uses

While the information requested is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or other laws concerning health and safety in the work environment; to adjudicative bodies (e.g., the Merit System Protection Board), arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; to contractors, grantees, or volunteers as necessary to perform their duties for the Federal Government; to other agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of the routine uses can be found in the SORNs associated with this collection of information.

Consequence of Failure to Provide Information:

While the information requested is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or other laws concerning health and safety in the work environment; to adjudicative bodies (e.g., the Merit System Protection Board), arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; to contractors, grantees, or volunteers as necessary to perform their duties for the Federal Government; to other agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of the routine uses can be found in the SORNs associated with this collection of information.