

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
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October 27, 2021

The Honorable Kiran Ahuja
Director
U.S. Office of Personnel Management
1900 E Street, NW
Washington, D.C. 20415

The Honorable Robin Carnahan
Administrator
U.S. General Services Administration
1800 F St NW
Washington, DC 20006

The Honorable Shalanda Young
Acting Director
Office of Management and Budget
1650 Pennsylvania Avenue NW
Washington, DC 20502

Dear Director Ahuja, Administrator Carnahan, and Acting Director Young:

On October 7, 2021, the U.S. Office of Personnel Management (OPM), the White House Office of Management and Budget (OMB), and the General Services Administration (GSA) provided a staff-level briefing on President Biden's Executive Orders 14042 and 14043.¹ These orders require federal employees to be vaccinated against COVID-19 infection to remain employed and federal contractors to ensure their employees and their subcontractors' employees are vaccinated to retain federal contracts. The briefing shed some light on how the Administration plans to administer these orders, but several questions remain unanswered.

OPM, OMB, and GSA explicitly intend to enforce compliance with the President's vaccine mandates with as few exemptions as possible.² Through these orders, the President and his administration are mandating that virtually all federal employees and employees of federal contractors be vaccinated or risk losing their livelihoods. Furthermore, federal contractors must ensure their workforces are vaccinated or risk losing their contracts.³

¹ Exec. Order No. 14042, 86 Fed. Reg. 50985 (Sept. 9, 2021); Exec. Order No. 14043, 86 Fed. Reg. 50989 (Sept. 9, 2021); Briefing by Off. of Personnel Mgmt., Off. of Mgmt. & Budget, and General Serv. Admin. Staff, to H. Comm. on Oversight & Gov't Reform Minority Staff (Oct. 7, 2021).

² Briefing by Off. of Personnel Mgmt., Off. of Mgmt. & Budget, and General Serv. Admin. Staff, to H. Comm. on Oversight & Gov't Reform Minority Staff (Oct. 7, 2021).

³ *Id.*

OPM, OMB, and GSA believe there will be minimal employee attrition due to these mandates. They did not, however, substantiate the reasons for this belief. If they are wrong about attrition from either category of employees, they risk significant disruption of agency missions, major adverse consequences for workers, families and businesses, and the breach of an untold number of federal contracts.

OPM's, OMB's, and GSA's insistence on allowing extremely few exemptions is also troubling. For example, as represented to our staff, the Biden Administration may intend to allow medically-related exemptions only for those already proven to be allergic to available vaccines and those under other exemptions yet to be specified by the Centers for Disease Control and Prevention (CDC).⁴ The possibility of exemptions for those already possessing natural immunity to COVID-19 was not adequately addressed by the President's orders,⁵ and it was likewise inadequately addressed by the briefing. Yet, science is emerging that natural immunity may be as or more effective than vaccine-induced immunity.⁶ The scope of religious exemptions also was insufficiently addressed, and there as yet seems to be no room for exemptions based on personal reasons like those that would validly lead an employee, in consultation with their doctor, to decline vaccination. Additionally, for those individuals seeking federal employment or federal-contractor employment after the President's mandates, vaccination status will delay onboarding or result in pulled offers of employment.⁷

The President's authoritarian and extreme mandates infringe upon American freedoms, are unprecedented, and may ultimately be deemed unlawful.⁸ Meanwhile, the rates of new COVID-19 cases, hospitalizations and deaths in the United States have been declining substantially and steadily from their peaks around the date the President issued these mandates.⁹ It is entirely possible that by the time the mandates can be fully implemented, the alleged predicates for their imposition will have dissipated. The mandates will be another example of President Biden's sluggish response to the virus but more consequential since many Americans will be forced to forego their livelihood and in some cases their retirement funds.

⁴ Centers for Disease Control and Prevention, *Pfizer-BioNTech COVID-19 Vaccine Overview and Safety (also known as COMIRNATY)* (last updated Oct. 16, 2021); Centers for Disease Control and Prevention, *Moderna COVID-19 Vaccine Overview and Safety* (last updated Oct. 15, 2021); Centers for Disease Control and Prevention, *Johnson & Johnson's Janssen COVID-19 Vaccine Overview and Safety* (last updated Oct. 4, 2021); Briefing by the Off. of Personnel Mgmt., Off. of Mgmt. & Budget, General Serv. Admin. Staff, to H. Comm. on Oversight & Gov't Reform Minority Staff (Oct. 7, 2021).

⁵ Allen Smith, *Is 'Natural Immunity' a Valid Exception to Vaccine Mandates?*, SHRM, Sept. 27, 2021.

⁶ See, e.g. Jemima McEvoy, *Prior COVID Infection Is as Effective at Preventing the Virus as Vaccination, U.K. Study Suggests*, FORBES (Oct. 18, 2021); Marty Makary, *Natural Immunity to COVID Is Powerful. Policymakers Appear Afraid to Say So*, WASH. POST (Sept. 15, 2021).

⁷ *Id.*

⁸ Over 100 years ago, in the last Supreme Court case on a government vaccine mandate, the Court ruled in favor of a Massachusetts vaccine mandate in response to the smallpox virus. But the ruling considered the state's power to protect public health and public safety, not the federal government's power. And failure to become vaccinated in Massachusetts resulted in a five-dollar fine, not losing employment. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905).

⁹ Centers for Disease Control and Prevention, *COVID Data Tracker Weekly Review, Interpretive Summary for October 22, 2021*, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> (last visited October 27, 2021).

To help Committee Republicans understand the Biden Administration's plans to implement the President's vaccine mandates for federal employees and employees of federal contractors, we request the following documents and information as soon as possible but no later than November 10, 2021, for the time period January 20, 2021, to the present, unless otherwise noted below.

1. The number of current federal employees vaccinated in total and by agency.
2. The number of current federal-contractor and federal-subcontractor employees vaccinated.
3. All documents and communications referring or relating to OPM, OMB, and GSA data tracking employee terminations or disciplinary actions on the basis of vaccination status.
4. All documents and communications referring or relating to OPM, OMB, and GSA data on identifying challenging areas for employee attrition, such as law enforcement.
5. All documents and communications referring or relating to what OPM, OMB, and GSA are doing to work with the CDC to address treating COVID-19 natural immunity as a substitute for vaccination.
6. All documents and communications referring or relating to whether OPM, OMB, and GSA will, at any point, be working with a third-party provider on vaccination record storage and employee termination tracking.
7. All documents and communications referring or relating to OPM, OMB, and GSA guidance for the surveying of employee vaccination and testing status.
8. All documents and communications referring or relating to COVID-19 testing options for federal employees, employees of federal contractors and subcontractors, and new hires who will be subject to the vaccine mandates.
9. All documents and communications referring or relating to time-off requirements for federal employees, employees of federal contractors and subcontractors, and new hires who will be subject to compliance with the vaccine mandates.
10. All documents and communications referring or relating to telework requirements for federal employees, employees of federal contractors and subcontractors, and new hires who will be subject to the vaccine mandates.
11. All documents and communications referring or relating to religious, medical, natural-immunity-based, or other possible exemptions for federal employees, federal contractors, and new hires who will be subject to the vaccine mandates.

12. All communications between or among OPM, OMB, and GSA employees referring or relating to the design, implementation or enforcement of the planned vaccine mandates or alternatives to them.
13. All communications between or among OPM, OMB components other than the Office of Information and Regulatory Affairs (OIRA), and GSA and OIRA employees referring or relating to the design, implementation or enforcement of the vaccine mandates or alternatives to them.
14. All documents and communications between or among OPM, OMB, and GSA components or between or among OPM, OMB, and GSA employees and White House or Department of Justice employees reflecting analysis by the White House, the Department of Justice, OPM, OMB, and GSA, or other components of the Department of Labor concerning the legality of the vaccine mandates.

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Jody Hice
Ranking Member
Subcommittee on Government
Operations

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Gerald Connolly, Chairman
Subcommittee on Government Operations