

# *Federal Bureau of Investigation*

## *Agents Association*

February 15, 2022

Lee J. Loftus  
Assistant Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC

Dear Mr. Loftus:

I write on behalf of the FBI Agents Association (FBIAA), which is comprised of more than 90% of all active-duty FBI Special Agents. The FBIAA appreciates your commitment to ensuring that FBI employees have a safe work place during the ongoing pandemic, and we hope that you can help our members address unnecessary new COVID-19 self-testing burdens imposed by the Safer Federal Workforce Task Force (the “Task Force”).

Special Agents recently learned that they will be subjected to intrusive new burdens related to COVID-19 self-testing. Since January 7, 2022, FBI employees who are required to conduct regular COVID-19 screening tests have been authorized to use and submit FDA-authorized COVID-19 self-administered tests to satisfy those requirements. On January 11th, the Task Force updated testing policy for COVID-19 screening to require that agencies establish new testing protocols for all employees by February 15, 2022.<sup>1</sup> The new guidance requires that all agencies establish regular testing programs for employees who are not fully vaccinated, including those who have approved or pending exemption requests, and that screening tests “should not be both self-administered and self-read by the employee unless observed by the agency or an authorized telehealth provider.” In response to this new guidance, the FBI informed employees that the Department of Justice had updated agency rules, and that as of February 9, 2022, all self-tests used for screening would need to be witnessed by an independent third party. Examples of acceptable witnesses included telehealth appointments and the use of a supervisor or designated point-of-contact.

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<sup>1</sup> <https://www.saferfederalworkforce.gov/faq/testing/>

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February 15, 2022

Page 2

This new third party witness requirement is unnecessary, burdensome, and insulting to Special Agents, and we hope that you will help persuade the Task Force to reconsider applying this new standard to FBI Special Agents. There is no need for this requirement because Special Agents have been complying with existing testing protocols and there is no evidence that Special Agents have submitted improper test results. Of course, this should not come as any surprise, because Special Agents—both vaccinated and unvaccinated—are already held to the highest standards of conduct, particularly in maintaining honesty and integrity. All Special Agents are already subject to rigorous background investigations, credit checks, and polygraph tests, and must maintain a Top Secret clearance. It is inexcusable that unvaccinated FBI Special Agents who have applied for Reasonable Accommodation (RA) through the Equal Employment Opportunity (EEO) process, and have complied with all prior testing requirements, are now facing additional burdens that presume they cannot be trusted. Put simply, Special Agents know that every action they take and every document they submit to the government is subject to the highest ethical standards, and their reputations and careers are at risk if they act improperly.

Against this background, the Task Force and the Department of Justice should remove the third-party witness requirement. There is no reason to require Special Agents involve their Bureau colleagues or other third parties in regular self-tests they were already properly using and conducting. Such a requirement only wastes the time and resources of the Bureau and/ or medical professionals, and subjects Special Agents to unnecessary involvement of others in their ongoing COVID-19 testing requirement.

The pandemic and social unrest have made the past few years very challenging for Special Agents, but they are proud to continue to protect our country. FBI Special Agents are trusted to serve and sacrifice for the American people every day, and trusting Special Agents with a COVID-19 self-test is well within reason. There is no justification for our members to be treated with suspicion or marginalized.

We appreciate your consideration of these concerns, and your continuing support of Special Agents and other law enforcement professionals.

Sincerely,

A handwritten signature in black ink that reads "Brian O'Hare". The signature is written in a cursive style and is positioned above a light blue horizontal line.

Brian O'Hare President