

SUPPLEMENT 32

Between the

U.S. Department of Housing & Urban Development

and

American Federation of Government Employees HUD Council 222 of AFGE Locals

SUBJECT: Implementation of the COVID-19 vaccination mandate and the HUD COVID-19 Response Return to Safe Workplace Plan of October 2021

Part 1 – Vaccine Mandate

I. Purpose.

1. **Primary Concern.** The Parties (i.e., HUD and AFGE Council 222) agree that their primary concern is to protect the health and safety of HUD employees and the members of the public with whom they interact.
2. **Scope.** The scope of this Supplemental Agreement covers the implementation of the COVID-19 vaccination mandate, conditions under which employees may return to offices, and the HUD COVID-19 Response Return to Safe Workplace Plan of October 2021 (Return to Safe Workplace Plan) but expressly does not incorporate the language of the Return to Safe Workplace Plan into the CBA. The Parties acknowledge that the Agency has the discretion to implement any policies or terms of its Return to Safe Workplace Plan that are not in conflict with this Supplement or the CBA under the Federal Service Labor-Management Relations Statute. In accordance with 5 U.S.C. 7116 (a) and (b), the Parties agree that they will not engage in any unfair labor practice. Further, in accordance with 5 U.S.C. 7116(a)(7), the Parties acknowledge that it will be an unfair labor practice for the Agency to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of Title 5 of the U.S.C.), which is in conflict with any applicable Supplement or CBA provision if such provision was in effect before the date the rule or regulation was prescribed. This Supplement shall be in effect until a new Successor Agreement is implemented pursuant to Section 3, renegotiated, or if the Parties agree otherwise. If the national emergency concerning the COVID-19 pandemic as declared by the President is terminated under 50 U.S.C. 1622, the Agency shall notify the Union.

The provisions agreed upon relating to the implementation and enforcement of the vaccine mandate are not in effect and will not be in effect, applied or enforced until such time (and assuming) the preliminary injunction against the vaccine mandate imposed by the court in *Feds for Medical Freedom, et al., v. Joseph R. Biden, Jr., et al.* is lifted.

3. **Successor Agreements.** If this Supplemental Agreement expires because of the implementation of a new collective bargaining agreement (Agreement or CBA), the

Parties agree the terms of this agreement that are mandatory subjects of bargaining may continue as part of a new CBA if specifically agreed-to by the parties, and as set forth in the body of the new CBA, at the time that a new CBA becomes effective.

4. Precedence. If there is any conflict between the Return to Safe Workplace Plan and the provisions of this Supplement or the CBA, the terms of this Supplement or the CBA in effect at the time govern. The Agency agrees not to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of Title 5 of the U.S.C.) which is in conflict with any applicable Supplement or CBA provision if such provision was in effect before the date the rule or regulation was prescribed.
5. Renegotiation. The Parties agree to comply with Article 49 regarding mid-term bargaining. The Parties agree that they only have to negotiate changes in conditions in employment that rise to the level that trigger bargaining obligations under the Federal Service Labor-Management Relations Statute as interpreted by precedential Federal Labor Relations Authority case law at the time (e.g., de minimis or substantial impact standard).
6. State, Local, and Tribal Laws and Requirements. Any state, local and/or tribal laws and requirements and changes concerning COVID-19 that affect AFGE Council 222 bargaining-unit employees' conditions of employment not expressly covered in this Supplement or the HUD-AFGE Agreement must be bargained with the Union prior to implementation at the National, Regional, or Local level as appropriate. The Parties agree that they only have to negotiate changes in conditions in employment that rise to the level that trigger bargaining obligations under the Federal Service Labor-Management Relations Statute as interpreted by precedential Federal Labor Relations Authority case law at the time (e.g., de minimis or substantial impact standard).

II. Rights.

7. Rights. Implementation of this Supplemental Agreement shall not diminish or waive any rights of the Parties or employees conferred by the CBA, law, or government-wide rule or regulation.
8. Notice to Union. Management will comply with all required bargaining obligations, including those covered by Articles 41 and 49 of the HUD-AFGE Agreement.
9. Notice to Bargaining Unit. The Department will notify all bargaining unit employees of HUD policies and requirements related to COVID-19, including this Supplement.
 - a. The Department shall post all such documents on the Department's intranet (HUD@Work or successor system); and
 - b. HUD will inform employees of the mailbox established to serve as a clearinghouse for all COVID-19 questions related to Departmental operations. HUD shall send out periodic reminders of or updates to that information.

10. Representation. The following provision shall be non-precedential and shall expire along with this Supplement. Given the highly unprecedented nature of enforcement of the COVID-19 vaccine mandate, HUD shall permit employees to have a union representative present for any discussion related to non-compliance with the vaccine mandate if requested by the employee.
11. Conduct. Employees should promptly bring allegations of harassment because of vaccination status or perceived vaccination status to Management's attention. Management will review the allegations and determine what steps, if any, may be appropriate to address them. This does not limit Management's right to take action as authorized by EO 14043 and in accordance with 5 U.S.C. § 7106.

III. Vaccine Mandate.

12. Guidance. HUD shall provide guidance to all bargaining unit employees that they shall have until November 22, 2021, to complete their full COVID-19 vaccination process. To meet the November 22nd deadline, federal employees must receive the last dose of their vaccine no later than November 8, 2021, except in limited circumstances where an exception is legally required.

Further, HUD shall provide guidance to all AFGE bargaining unit employees that states the procedures for requesting an exception to the vaccine mandate based on a medical reason are governed by Article 45 of the HUD-AFGE Agreement and this Supplement, and procedures for requesting an exception to the vaccine mandate based on a sincerely held religious belief are governed by this Supplement, and shall notify employees of the consequences of failure to comply with the mandate.

13. COVID-19 Vaccination Status.
 - a. As of the date of this Supplement, HUD considers an employee to be fully vaccinated two weeks after receiving the requisite number of doses of a COVID-19 vaccine approved or authorized for emergency use by the U.S. Food and Drug Administration or that has been listed for emergency use by the World Health Organization. For Pfizer-BioNTech, Moderna, or AstraZeneca/Oxford, that is 2 weeks after an employee has received the second dose in a 2-dose series. For Johnson and Johnson (J&J)/Janssen, that is 2 weeks after an employee has received a single-dose.
 - b. If the requirements to be considered "fully vaccinated" are revised to include booster doses or other vaccines not addressed in this Supplement, the Parties agree to bargain the procedures and appropriate arrangements on how to comply with the new definition of fully vaccinated status in accordance with Section 4 of Executive Order 14003 and 5 U.S.C. Section 7106(b)(1), (2) and (3).
14. Promoting Vaccination. HUD shall take steps to encourage and promote employee vaccination before the deadlines.

- a. Employees may access www.vaccines.gov/search to find locations administering the COVID-19 vaccine. Employees will receive duty time or appropriate leave to obtain the mandated COVID-19 vaccine, in accordance with the Safer Federal Workforce Task Force at <https://www.saferfederalworkforce.gov/faq/leave>, and as outlined in the COVID Leave Fact Sheet on HUD@work (http://hudatwork.hud.gov/HUD/chco/doc/COVID_Leave_Factsheet_11-2-2021.pdf), in lieu of the two hours specified in CBA Article 38, Section 38.04.
- b. Employees who have an adverse medical reaction to the COVID-19 vaccine shall be provided with appropriate leave in accordance with the Safer Federal Workforce Task Force guidance at <https://www.saferfederalworkforce.gov/faq/leave>, and as outlined in the COVID Leave Fact Sheet on HUD@work (http://hudatwork.hud.gov/HUD/chco/doc/COVID_Leave_Factsheet_11-2-2021.pdf).
- c. For the COVID-19 vaccine, HUD shall grant AFGE bargaining unit employees appropriate leave for time spent accompanying family members to receive a vaccine consistent with the guidance provided by the Safer Federal Workforce Task Force at <https://www.saferfederalworkforce.gov/faq/leave>, and as outlined in the COVID Leave Fact Sheet on HUD@work (http://hudatwork.hud.gov/HUD/chco/doc/COVID_Leave_Factsheet_11-2-2021.pdf). Family members shall include those individuals as defined in 5 C.F.R. § 630.201, including:
 - i. Spouse, and parents thereof;
 - ii. Children, and spouses or domestic partners thereof;
 - iii. Parents, and spouses or domestic partners thereof;
 - iv. Siblings, and spouses or domestic partners thereof;
 - v. Grandparents and grandchildren, and spouses or domestic partners thereof;
 - vi. Domestic partner and parents thereof; and
 - vii. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- d. HUD shall consider all sites that are authorized to administer COVID-19 vaccinations, including but not limited to state and local health departments, hospitals and other health care centers, pharmacies, and medical providers' offices, to be "preapproved" by the Agency. For COVID-19, in accordance with guidelines provided by the Safer Federal Workforce Task Force at <https://www.saferfederalworkforce.gov/faq/leave>, reasonable transportation costs that

are incurred as a result of obtaining the vaccine from a preapproved site, as defined above, will be handled in accordance with local travel cost reimbursement consistent with the Federal Travel Regulations and Article 23 of the CBA.

- e. HUD shall encourage vaccination through regular emails and communications.
- f. Other than employee misconduct situations, for any leave related to vaccinations, HUD shall exhaust all administrative or emergency leave options consistent with the guidance provided by the Safer Federal Workforce Task Force at <https://www.saferfederalworkforce.gov/faq/leave>, and as outlined in the COVID Leave Fact Sheet on HUD@work (http://hudatwork.hud.gov/HUD/chco/doc/COVID_Leave_Factsheet_11-2-2021.pdf) before requiring a bargaining unit employee to use annual, sick, or other personal leave.
- g. Employees will receive appropriate leave to obtain the booster related to the mandated COVID-19 vaccine, in accordance with the Safer Federal Workforce Task Force at <https://www.saferfederalworkforce.gov/faq/leave>, and as outlined in the COVID Leave Fact Sheet on HUD@work (http://hudatwork.hud.gov/HUD/chco/doc/COVID_Leave_Factsheet_11-2-2021.pdf).

IV. Medical Information and Vaccine Documentation.

- 15. Protection of Employee Medical Records. All medical information collected from individuals, including vaccination information, test results, and any other information obtained as a result of testing and symptom monitoring will not be maintained in the employee's Official Personnel Folder and will be treated in accordance with applicable laws and HUD policies on confidentiality and privacy, and will be accessible only to those with a need to know. If sending medical information, to ensure confidentiality and privacy, employees should ensure information is encrypted before sending. HUD will provide its employees with step-by-step instructions for submitting required vaccination documentation.
- 16. Access to Documentation. Employee records related to COVID-19 vaccination mandate compliance may be disclosed only to the appropriate officials who need to know the information to ensure effective implementation of the safety protocols, exception process, or to conduct related legal processes in compliance with applicable statutes, regulations, relevant federal agency guidance or by consent of the affected employee. HUD shall ensure that employees also have access to their own vaccine-related records and information on how to update or correct those records, if necessary.
- 17. Data. Upon request, and no more than monthly, when there are updates to the data and it can be gathered, and HUD has the approval to release the data, HUD shall provide AFGE Council 222 with anonymized data about vaccination rates (including full and partial vaccination rates) of each HUD office (Headquarters, Regional and Field Offices). If providing such data would allow for an individual to be identified (e.g., due

to the size of a local office), then the Department is not obligated to provide data to that level of specificity.

18. Vaccination Proof. The following applies to the COVID-19 vaccine mandate. HUD shall inform employees by email that there is a government-wide requirement to provide proof of vaccination.
 - a. HUD shall include information about the types of documents that will be accepted as proof of vaccination. Acceptable forms of proof include a clear and legible copy of the following: the CDC COVID-19 Vaccination Record Card, the record of immunization from a health care provider or pharmacy, medical records documenting the vaccination, immunization records from a public health or state immunization information system, or any other official documentation containing required data points.
 - b. HUD shall include instructions that documents submitted must include 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).
 - c. HUD shall include instructions that employees may provide a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such record that clearly and legibly displays the information outlined above.
 - d. HUD shall include instructions that employees must certify under penalty of perjury that the documentation they submit is true and correct.

HUD shall set a deadline of November 22, 2021 for submission of the proof of vaccination.

19. Vaccination Attestation. Submission of documentation to show proof of COVID-19 vaccination and attestation to its accuracy fulfills any existing or prior COVID-19 vaccine attestation request.

V. Vaccine Exceptions – The provisions in this section are non-precedential and will expire along with this Supplement.

20. Policy and Guidance. The following provisions are non-precedential and will expire along with this Supplement.

Employees may request an exception from COVID-19 vaccinations based on a medical reason or sincerely held religious belief, practice or observance.

- a. The Parties recognize that a medical condition that precludes an employee's ability to receive the COVID-19 vaccination may or may not be determined to be a disability under relevant law on a case-by-case basis. For requests for an exception to the vaccine mandate, based on a disability or a medical exception, the process may be initiated by an employee or a representative of the employee (who may be a Union representative). The process to

consider an exception begins upon receipt of an oral or written request by the individual asking for the exception or their representative, and can include submission of: (1) a verbal request to any Management Official or the Reasonable Accommodation Branch, (2) a HUD-1000 form, or (3) the medical exception template and submission to: reasonableaccommodationbranch@hud.gov (for medical requests). The employee's submission of the medical exception template is voluntary.

- b. For religious exceptions based on a sincerely held belief, practice or observance, the process to request such an exception may be initiated by the employee or a representative of the employee (who may be a Union representative). The process to consider an exception begins upon Management's receipt of an oral or written request by the individual or their representative asking for the exception, and must include submission of an e-mail or written request to: religiosexceptioncovidvaccine@hud.gov. The employee's submission of the model Safer Federal Workforce Task Force's religious exception request form is voluntary.
- c. Upon signature and execution of this Supplement by the Parties, the Department shall send notification to employees via e-mail of the complete above listed methods for requesting medical and religious exceptions to the COVID-19 vaccination requirements. The Parties acknowledge that employees may submit a request for a religious or medical exception at any time prior to an employee's proposed removal for failure to comply with the requirements related to the vaccine mandate.

21. Reasonable Accommodations Based on Medical Conditions. The following provisions are non-precedential and will expire along with this Supplement.

Article 45, Section 45.04 of the CBA is applicable for the deadlines for HUD to process requests for employees who have a disability and who make a disability-related request to be excepted from vaccination. The Parties recognize that a medical condition that precludes an employee's ability to receive the COVID-19 vaccination may or may not be determined to be a disability under relevant law on a case-by-case basis, but that the deadlines in Article 45, Section 45.04 of the CBA shall nevertheless apply for all exception requests related to a medical reason.

- a. Employees may submit requests for an exception at any time up until they are removed, retire, or resign from federal service.
- b. Management shall seriously consider to the maximum extent possible granting an interim accommodation until the Agency's decision on the exception is issued to protect other employees' health and safety as an appropriate arrangement pursuant to 5 U.S.C. 7106(b)(3).

- c. An employee who submits an exception request shall have their mandatory vaccination requirement held in abeyance pending the issuance of the Agency's final decision regarding the exception request.

- 22. Informed Declaration of Accuracy. HUD shall remind employees that any requests for an exception must attest to the following: "I declare that the information provided is true and correct to the best of my knowledge and ability. Any intentional misrepresentation to the Federal Government may result in legal consequences, including termination or removal from Federal Service."
- 23. Review of Requests for Reasonable Accommodations Based on Disability and Requests for Medical Exceptions. The following provisions are non-precedential and will expire along with this Supplement.

The Parties recognize that CBA Article 45, "Reasonable Accommodation," covers the process of receiving, evaluating, and responding to requests for reasonable accommodations from employees who have a disability and who make a disability-related request to be excepted from vaccination. The Parties recognize that medical conditions that preclude an employee's ability to receive the COVID-19 vaccination may or may not be determined to be a disability under relevant law on a case-by-case basis.

If the Agency determines that an employee does not have a disability, but may have a medical condition that prevents them from taking the COVID-19 vaccination, under this limited circumstance, HUD agrees to follow the Article 45 process.

- 24. Requests for Religious Exceptions. The following provisions are non-precedential and will expire along with this Supplement. This Supplement contains the procedures for processing exception requests for COVID-19 vaccination requirements based on an employee's sincerely held religious belief, practice, or observance that is consistent with Title VII of the Civil Rights Act of 1964.
 - a. The request for the religious exception to the COVID-19 vaccination requirements will be processed within 30 business days from the date of the written or oral request, absent any mitigating circumstances allowed under the law or unless otherwise agreed upon by the employee and the Department.
 - b. The Parties recognize that EEOC guidance defines religion broadly and recognizes beliefs, practices, and observances which may not be part of an organized religion or with which a manager may be unfamiliar. Nevertheless, the Parties realize that personal philosophies or beliefs about vaccines are not a religion, and ways of living, such as veganism, pacifism, or minimalism, similarly do not provide a religious exemption basis.

- c. Upon request, for each exception request, HUD shall identify to the requesting employee and their representatives an Agency Official, or designee, for the exception request.
 - d. HUD shall ensure that all requests for exception from a vaccine mandate based on sincerely held religious beliefs shall be handled fairly and in accordance with the law. The Parties agree that in reviewing such requests, the Agency Official(s) shall remain unbiased regardless of their own specific beliefs.
 - e. An employee who submits an exception request shall have their mandatory vaccination requirement held in abeyance pending the issuance of the Agency's final decision regarding the exception request.
25. Decision, Denial and Reconsideration of Religious Exception Requests. The following provisions are non-precedential and will expire along with this Supplement.
- a. The employee and Agency Official, or designee, shall engage in an interactive process, where appropriate, to propose and determine whether an exception to the vaccine mandate will be granted. The employee may choose to be represented by the Union or another representative in this process. It is the Parties' objective that the entire religious exception request process be resolved, to the extent possible, between the employee and Agency Official, or designee, to preserve privacy and confidentiality and to resolve matters in the most expeditious, informal means possible.
 - b. The process to consider a religious exception request should begin immediately upon receipt by HUD of an oral or written request by the individual or their representative asking for the exception, acknowledging the request within seven (7) days of receipt.
 - c. While the Agency may request that an employee submit documentation supporting their exception request, an employee is not required to submit any written evidence from a religious leader in support of their religious exception; however, nothing precludes an employee from voluntarily doing so, and the Agency will take such evidence into consideration. If Management requests a meeting with the employee regarding the exception request, the employee may have either their Union representative or other representative present for all such meetings.
 - d. The Department may ask for an explanation of how the employee's religious belief conflicts with the employer's COVID-19 vaccination requirement. Although prior inconsistent conduct is relevant to the question of sincerity, an individual's beliefs – or degree of adherence – may change over time and, an employee's newly adopted or inconsistently observed practices may, in some circumstances, nevertheless be sincerely held. An employer should not assume that an employee is insincere simply because some of the employee's practices

deviate from the commonly followed tenets of the employee's religion, or because the employee adheres to some common practices but not others.

- e. Factors that – either alone or in combination – might undermine an employee's credibility include, but are not limited to: whether the employee has behaved in a manner markedly inconsistent with the professed belief (although employees need not be scrupulous in their observance); whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons; whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons. No one factor or consideration is determinative, and employers should evaluate religious objections on an individual basis.
- f. If an employee is approved for a religious exception to the vaccination requirement, the Agency may require mitigation measures, on a case by case basis, which may include, but shall not be limited to:
 - i. Modification of job duties including job restructuring; and
 - ii. Modification of job environment (e.g., masking, social distancing policies, teleworking, testing, self-screening, etc.)
- g. In accordance with EEOC's standards for religious accommodations, to prove undue hardship, the Agency will follow Title VII. The Agency should rely on objective information. Certain common and relevant considerations during the COVID-19 pandemic include, for example, whether the employee requesting a religious accommodation to a COVID-19 vaccination requirement works outdoors or indoors, works in a solitary or group work setting, or has close contact with other employees or members of the public (especially medically vulnerable individuals). Another relevant consideration is the number of employees who are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer).
- h. Any disapproval of a request for religious exception to the COVID-19 vaccination requirements must be made in writing in plain language providing the reason(s) for denial of the exception. The denial letter will include the details of the reconsideration process including all relevant timeframes, and will notify the employee of the next steps in the process. The Department will maintain documentation of the results of religious exception requests to the COVID-19 vaccination requirements.
- i. Employees who receive a denial to a religious exception request from the vaccination mandate, may request reconsideration. Management will identify a Reconsideration Official who will review the request for reconsideration. Employees will have 10 business days upon receipt of the denial to request

reconsideration and the Reconsideration Official, or designee, will provide a response to the employee's request for reconsideration within 10 business days of receipt of the employee's request for reconsideration. The reconsideration response will be in writing and include the process for appealing the denial.

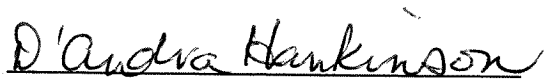
- j. If an employee's request for religious exception to the COVID-19 vaccination requirements is denied or the Reconsideration Official does not reverse the decision, the employee has a right to file an EEO complaint. The employee may elect alternatively to appeal the denial through the Grievance process; however, they may only choose one process.
 - k. All information in support of a religious exception request to COVID-19 vaccination requirements, approval, or denial will be confidential. This means that all information the agency obtains in connection with such request must be kept in files separate from an individual's personnel files. It also means that any employee who obtains or receives such information is strictly bound by these confidentiality requirements. Managers and supervisors are responsible for the safe keeping and confidentiality of all information obtained during the processing of such requests. Any employee who obtains or receives such information as part of the request process is strictly bound by these confidentiality requirements.
26. Compliance Following Denial. The employee shall receive the first dose within 2 weeks of the date the Agency's denial becomes final, as defined above, and shall receive the 2nd dose, if applicable, within 6 weeks of the first dose. Once the employee is fully vaccinated in accordance with CDC guidelines, the employee shall be in compliance with EO 14043.
27. No Revocation. So long as pandemic conditions exist, once a decision has been made on whether to except an employee from being vaccinated, that decision will not be revoked, except as permitted by law.

VI. Discipline.

28. Leave. The Parties understand that frequent use of different types of approved leave available (e.g., administrative leave, COVID-19 emergency leave, weather and safety leave, sick leave, annual leave, advanced sick or annual leave, leave without pay, etc.) due to verifiable exposure to or contraction of COVID-19, an employee getting a vaccine shot for him/her/self and/or eligible family members, to attend to children or elderly relatives in the household while teleworking, quarantine, school closure, etc., per se does not constitute misconduct. The Parties recognize that Management may allow employees flexibility in accordance with HUD leave and work schedule policies.

29. Notice to Employees. At the time that HUD issues directives to employees regarding vaccination and documentation requirements, HUD shall advise employees of the consequences of failing to comply with the requirements.
30. Employee Education. Prior to initiating disciplinary action against an employee regarding non-compliance with the vaccination mandate, the Department will communicate with employees regarding the benefits of vaccination and ways to obtain the vaccine, inform employees of the process for requesting a legally required exception, and put employees on notice that discipline could result for non-compliance.
31. Progressive Discipline. The Department will adhere to Article 12 of the CBA. The Department will consider guidance provided by the Safer Federal Workforce Task Force.
32. Compliance Following Disciplinary Actions. If an employee responds during the discipline notice period by submitting proof of progress toward full vaccination (i.e., completion of a required vaccination dose), the agency will hold the discipline in abeyance to afford the employee a reasonable period of time to become fully vaccinated in accordance with the guidance of the Office of Management and Budget (<https://www.whitehouse.gov/omb/briefing-room/2021/11/24/update-on-implementation-of-covid-19-vaccination-requirement-for-federal-employees/>). In pursuing any disciplinary action, the Agency will provide the required procedural rights to an employee.
33. Pending Exception Request Determination. An employee who submits an exception request shall have the mandatory vaccination requirement held in abeyance until the Agency issues its final decision, including any applicable reconsideration process, in accordance with this Supplement and the CBA. This shall not include the grievance or EEO compliance processes.
34. Late Submissions. If an employee who claims they are fully vaccinated is able to demonstrate to the agency a good faith effort to locate required documentation, HUD will hold any disciplinary action associated with failure to comply with the vaccination requirement in abeyance for a short period of time, pending the employee's submission of documentation providing proof of vaccination.

For the Agency:



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For the Union:



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