



December 9, 2021

Social Security Administration,
Office of Legislative and Congressional Affairs, Attn: Director
Office of Regulations and Reports Clearance,
3100 West High Rise, 6401 Security Blvd.,
Baltimore, MD 21235

RE: Agency Information Collection Activities: New Emergency Request, 86 Fed. Reg. 68717
(December 3, 2021), Docket No: SSA-2021-0027]

Submitted via regulations.gov

Dear Sir or Madam,

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR). Founded in 1979, NOSSCR is a professional association of attorneys and other advocates who represent individuals seeking Social Security disability or Supplemental Security Income (SSI) benefits. NOSSCR members represent these individuals with disabilities in legal proceedings before the Social Security Administration and in federal court. NOSSCR is a national organization with a current membership of approximately 2,500 members from the private and public sectors and is committed to the highest quality legal representation for claimants.

NOSSCR supports the safe reopening of hearing offices and encourages SSA to hold as many in-person hearings as possible. Although we have not seen the actual questions, we submit these comments based on the description in the 86 Fed. Reg. 68717 (December 3, 2021) announcement because we recognize SSA's urgency in beginning these screening protocols. We may submit additional comments once we receive the collection instrument from SSA.

According to the New Emergency Request, the questionnaire "will ask questions relating to personal experience of any COVID symptoms; exposure to someone diagnosed with COVID; or travel by means other than land travel, such as car, bus, ferry, or train. SSA will use the screener responses to determine if the in-person hearings participant is 'cleared' or 'not cleared' to enter an SSA hearing office. If participants answer 'no' to all questions, they are 'cleared' to participate. If they answer 'yes' to any part of the screener, they will be 'not cleared.'"

MAIN OFFICE
161 Airport Executive Park • Nanuet, New York 10954 • P 845.682.1880 • F 845.517.2277 • nosscr@nosscr.org

GOVERNMENT AFFAIRS OFFICE
1025 Connecticut Ave, NW, Suite 709 • Washington, DC 20036 • P 202.457.7775 • F 202.457.7773

Lawyer Referral Service: 845.682.1881

www.nosscr.org

While we recognize the need to screen for people who might have contagious cases of COVID-19, we believe these questions are too open-ended and could result in the unnecessary cancellation of hearings for claimants who have waited two or more years for an in-person hearing and who, in fact, pose minimal risk of transmitting COVID-19 to OHO staff or others.

Throughout the country, many offices and other places of business have reopened and have implemented screening questionnaires. NOSSCR recommends that SSA follow the guidance of medical offices, including having a temperature check before entering, and asking questions that are more likely to prevent only those who actually have COVID-19 from entering the hearing offices.

The question asking about “personal experience of any COVID-19 symptoms” is too vague. It should include a timeframe, as well as specific symptoms for those who may not know what they are. For example: “Are you currently experiencing any symptoms of COVID-19 including fever or chills, cough, shortness of breath, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting or diarrhea?”

There are disability claimants whose chronic impairments overlap with COVID-19 symptoms, such as headaches or diarrhea. Barring such people from in-person hearings because of their disabilities would violate Section 504 of the Rehabilitation Act. SSA should develop reasonable modifications, such as showing a recent negative covid test result, for such situations and include information about how to request modifications on the screener. Because symptoms of COVID-19 are similar to those of other conditions, including some that are not contagious, the question about symptoms should be followed by one asking about exposure. “Have you been exposed to someone with COVID-19 within the past 14 days?” Someone experiencing COVID-19 symptoms who has not been exposed is unlikely to have the virus.

The question about travel is illogical. An individual who has traveled by plane is not necessarily more at risk of getting COVID-19 than one who has used another mode of transportation. Planes have increased ventilation systems that lessen the spread of many airborne diseases. There are claimants and other members of the public who have no choice but to fly to their nearest hearing office and this question would prevent such a traveler from ever having an in-person hearing. More important than the type of travel are the other passengers. A person is at less risk of contracting COVID-19 in a carrier with fewer other passengers. As with symptoms, the timeframe for travel is important, as travel over 14 days ago should pose no current risk. A better question would be “If you answered yes to question 1 [the question about symptoms], have you traveled by public transportation within the past 14 days, sitting in close proximity to someone who might have COVID-19?”

An answer of “yes” to any of the proposed questions should not be an automatic bar to participating in an in-person hearing. An individual who has COVID-19 symptoms, who traveled by air, or even who has been exposed to COVID-19 does not necessarily have COVID-19, particularly if that person is vaccinated.

Another question should ask the vaccination status of the individual. This can help the screener assess the risk someone may pose. Example: “Have you been fully vaccinated against COVID-

19? Fully vaccinated means at least 2 weeks have passed since the second dose of a two dose vaccine such as Pfizer or Moderna or 2 weeks after one dose of a one dose vaccine such as Johnson & Johnson.” An individual who has been fully vaccinated but who has symptoms or may have been exposed to COVID-19 should present a negative COVID-19 test taken within the past 3 days or take a rapid test before entering the hearing office.

Because many claimants desperately need their in-person hearings, NOSSCR recommends that hearing offices also maintain a stock of rapid COVID-19 tests that can be taken by anyone whose answers cause concern, so that only those who actually test positive are prevented from entering the hearing office.

The same questions, screening procedures, and safety precautions being implemented at hearing offices should also be used to reopen field offices. Members of the public are in desperate need of personal assistance provided by these offices, and sufficient staff should be in these offices to process applications and other documents that have been languishing for months.

NOSSCR recommends that the same questions be asked to staff, and all visitors, including claimants and their representatives, to ensure the safety of all who enter the hearing office.

Thank you for considering our comments before implementing the COVID-19 screening procedures at hearing offices. We look forward to receiving the collection instrument with the actual proposed questions and may submit additional comments after review.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Silverstone".

Barbara Silverstone
Executive Director