

Supporting Statement
Pilot Program for Participating in Administrative Law Judge Hearings by
Using Privately Owned Video Teleconferencing (VTC) Equipment

20 CFR 404.936(c) & 416.1436(c)

0960-NEW

A. Justification

1. Authorizing Laws and Regulations to Collect the Information - Section 702(a)(5) of the Social Security Act (the Act) provides that the Commissioner of Social Security may prescribe such rules and regulations as the Commissioner determines are necessary to administer the Social Security programs under title II of the Act and the Supplemental Security Income program under title XVI of the Act. On February 3, 2003, the Commissioner published a final rule with request for comment allowing us to conduct hearings before administrative law judges (ALJs) at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by video teleconferencing (¹68 FR No. 22 , 5210). In that final rule we noted that dialing into SSA's VTC network from private facilities, such as facilities owned by a law firm, could be possible at a future date. (68 FR 5210, 5211, February 3, 2003; 68 FR 69003, 69005-69006, December 11, 2003.). Appearances by video teleconference are also central to the rules for the new disability determination process (final rule published March 31, 2006 71 FR No. 62, 16423). We are now ready to pilot a program wherein private representatives and their clients may appear at ALJ hearings using privately owned video equipment. In addition, 20 CFR 404.936(c) & 416.1436(c) set forth the criterion for determining how appearances will be made before the ALJ.

2. How, by Whom and for What Purpose Information is to be Used –

Representatives who are interested in participating in the pilot program or the permanent program that we establish will need to contact a pilot program coordinator and provide some basic information about their location, the area they serve and their expected workload. Because private video sites are being used, the pilot guidelines provide for site inspections, certain on the record certifications and other claimant safeguards to help ensure that no claimants are disadvantaged by participating in their hearing from a private site. At the time of the hearing, participating representatives will be required to include in their opening statement on the record or in writing the following certifications required by the video

¹ **Please Note:** VTC Final Rule with request for public comments published on 02/03/2003 and VTC Final Rule published on 12/11/2003 are attached as supplemental documentation for reference.

program and truthfully answer under oath or affirmation any questions posed by the presiding ALJ regarding the private video site:

- ★ Provide the presiding ALJ with the names of all persons present at the private VTC site and certify on the record that the only persons who will be permitted to attend the hearing at the private VTC site will be those whom the claimant consents to having present and the ALJ considers necessary and proper to the proceeding. (This is an existing hearing requirement.)
- ★ Obtain advance permission from the ALJ before making any private audio recordings of the hearing and recognize that these are not the official record of the proceeding. (This is an existing hearing requirement.)
- ★ Certify on the record that no video recordings are being made of the proceeding.
- ★ Certify on the record that they are responsible for and capable of providing the claimant with any technical assistance necessary for the claimant to fully participate in the VTC hearing.
- ★ Certify on the record that all required equipment being used meets or exceeds the indicated specifications and that it is operating properly.
- ★ Certify on the record that the claimant has had an opportunity to review the evidence in the claim folder prior to the hearing, either at a local Social Security office or at the representative's office.

The certifications will be used by the ALJ and any reviewing authorities to ensure that claimants participating in the pilot have access to the claim file and to equipment and services equivalent to those at an OHA leased video teleconference site. The certifications required are specific to the case being heard and the certifications are intended to be oral statements made on the record at the opening of the hearing by the representative. Representatives customarily make some type of opening statement regarding the issues in the case. We employ contractors to make an official audio recording of all hearings which is part of the record of the case. Instead of making an oral statement, the representative may FAX a written document containing the certifications to the ALJ, however, we are not requiring any standard form for this document, nor are we requiring that the certifications be in writing. FAX machines are part of the standard video equipment package and are used to exchange evidence prior to or during the hearing. We do not intend to compile any data regarding certifications. They are for the use of the ALJ or reviewing officials in the event a dispute or complaint arises concerning a specific case. Some data related to the outcome of disputes or decertification actions may

be considered in pilot evaluation, but this data would come primarily from other management sources and existing management reports.

3. **Use of Information Technology to Collect the Information** – The oral certification will be a part of the electronic record of the individual case.
4. **Why Duplicate Information Cannot Be Used** - SSA has no other instrument for recording the information that ALJs and reviewing entities may need in the event of a dispute or complaint. All of the requested certification information is specific to the individual case and is not duplicative of information previously submitted in the case.
5. **How Burden on Small Businesses is Minimized** - The information is collected from representatives who choose to participate in this process and who may be able to operate more efficiently and cost-effectively by doing so. The certification information is collected as part of an already existing opening statement at the hearing and does not impact significantly upon the representative's time. This collection does not have a significant impact on a substantial number of small businesses or other small entities.
6. **Consequence of Not Collecting Information or Collecting Less Frequently** - The information is required for ALJs and any reviewing authorities to ensure the equity of the hearing process when private video sites are used.
7. **Special Circumstances Inconsistent with 5 CFR 1320.5** - There are no special circumstances that would cause this information collection to be conducted in a manner inconsistent with 5 CFR 1320.5.
8. **Solicitation of Public Comment and Other Consultations with the Public** – The 60-day advance Federal Register Notice was published on July 31, 2006, 71 FR 43270, and SSA has received no public comments. The second Notice was published on, November 1, 2006, 71 FR 64327. There have been no outside consultations with members of the public.
9. **Payment or Gifts to Respondents** - SSA provides no payments or gifts to the respondents.
10. **Assurances of Confidentiality** - The information collected is protected and held confidential in accordance with 42 U.S.C. 1306, 20 CFR 401 and 422, 5 U.S.C. 552 (Freedom of Information Act), 5 U.S.C. 552a (Privacy Act of 1974) and OMB Circular No. A-130.
11. **Justification for Sensitive Questions** - The information collection does not request information of a sensitive nature such as sexual behavior, religious beliefs, etc.

12. Estimates of Public Reporting Burden — Following is the annual burden estimate for participants in the Privately Owned VTC pilot. The total burden is reflected as burden hours, and no separate cost burden has been calculated.

The pilot is structured to operate in 2 phases beginning with 10 private video sites for six months and then expanding to 30 private sites in Phase II for an additional six months. There will be an ongoing internal ²evaluation during each phase of the pilot. SSA will review pilot performance at the end of the pilot and make final decisions regarding operating procedures for a permanent program.

Phase-I (10 sites for 6 months)

Collection Activity	Number of Respondents	Frequency of Response	Average Burden per Response	Estimated Annual Burden Hours
Expression of Interest/Initial Contact	100	1	15 Minutes	25
Certifications Made in the Opening Statement of the Hearing	10	100	10 Minutes	167
TOTALS	110			192

Number of Responses (Phase I): 1,100

² The evaluation will focus on equipment performance and hearing procedure protocols. No additional public surveys are planned as part of the evaluation process and data will be obtained primarily from other management sources and existing management reports.

Phase-II (30 sites for 6 months)

Collection Activity	Number of Respondents	Frequency of Response	Average Burden per Response	Estimated Annual Burden Hours
Expression of Interest/Initial Contact	100	1	15 Minutes	25
Certifications Made in the Opening Statement of the Hearing	30	100	10 Minutes	500
TOTALS	130			525

Number of Responses (Phase II): 3,100

Total Number of Responses (Phases I & II): 4,200³

Total Burden Hours for all Collections: 717 burden hours (See below Footnote.)

13. Estimate of Total Annual Costs to Respondents to Provide the Information –

SSA estimates the initial start up cost for the private VTC pilot at \$ 450,000 or \$15,000⁴ per respondent. The cost to respondents who wish to participate in the program will be the purchase and maintenance of video conferencing equipment, a FAX machine and a document camera as well as the cost of an ISDN line or other data connection to the public network. Equipment and maintenance costs vary and some representatives already have video equipment, therefore this represents our projected average cost. For more detail please see the attached IC of projected equipment cost. Both the government and responders should realize overall cost savings as a result of this pilot since it reduces the need for them to travel.

14. Annualized Cost to the Federal Government – The cost to Federal Government to initiate the VTC pilot is negligible.

15. Program Changes or Adjustments to the Information Collection Budget –This is a new information collection which will increase the public reporting burden.

³ The number of respondents who need to purchase equipment (30) is part of the total respondents for this collection (4,200). Because ROCIS forces to include a number for each IC created, it added 30 to the total number of respondents.

⁴ **Please Note:** SSA has rounded the annual cost to participate in the VTC pilot up to nearest thousand and the total cost is based on 30 participates required to make full equipments outlays.

16. Plans for Publication of Results of Information Collection - The results of the information collected will not be published for statistical purposes.

17. Request not to Display OMB Expiration Date - SSA is not requesting an exception to display the OMB expiration date.

18. Exception to Certification Statement - SSA is not requesting an exception to the certification requirements. Please note, however, that statistical survey methodology is not used for this information collection.

B. Collections of Information Employing Statistical Methods

Statistical methods are not used for this information collection.

Addendum to Supporting Statement

The pilot is structured to begin with 10 private video sites expanding to 30 private sites after a six month evaluation period. There will be evaluations during both phases of the pilot. After analysis of the pilot results SSA will then make decisions regarding operating procedures for a permanent privately owned VTC program. SSA will seek OMB clearance of the permanent program in a separate request.

As background for the permanent program, SSA projects that 25% of the approximately 4,000 disability representatives belonging to the two major representative organizations will express interest and that by 2010 approximately one half of those expressing interest (500) will decide to purchase private video teleconference equipment for the purpose of participating in hearings. We estimate further that each participating representative will participate in 200 hearings per year for a total of 100,000 hearings per year by 2010.