

comfort level in appearing by VTC and help to ensure that they perceive the hearing process as fair. The satisfaction of claimants with their hearing experiences is, of course, an important consideration in the administration of the Social Security hearings process.

It is also important that we try to ensure that preferences against appearing by VTC do not undermine the effectiveness with which we are able to use VTC, as could happen if such preferences frequently caused claimants to decline to appear by VTC. However, we believe we should pursue that end by promoting and continually improving the claimant-service advantages of VTC while also preserving the opportunity of claimants to appear in person.

*Comment:* An organization stated that we should guarantee the right of claimants to an in-person hearing to the extent of allowing the claimant to withdraw consent to participate in VTC proceedings even up to the point of arriving at the VTC site (because they may not realize that they do not want to proceed with a VTC appearance until they arrive at the site), and by ensuring that claimants do not lose their place in queue if they decline (or withdraw consent for) a VTC hearing.

*Response:* Under the provisions of §§ 404.936 and 416.1436, as they currently exist and as revised when these final rules become effective, claimants who object to the time or place of the hearing are required to “notify the [ALJ] at the earliest possible opportunity before the time set for the hearing.” Under our existing provisions on dismissing requests for hearing based on failure to appear at a scheduled hearing, a request for hearing may be dismissed if a claimant does not appear at the scheduled hearing and has not given the ALJ, before the time set for the hearing, a good reason why he or she cannot appear at the scheduled hearing. (See §§ 404.957(b) and 416.1457(b), which we are not revising.) Under the above provisions, a claimant who has been scheduled to appear by VTC may establish good cause for changing the time or place of the hearing by notifying the ALJ at the earliest possible opportunity before the time set for the hearing that he or she has an objection to appearing by VTC. The notice of hearing will advise the claimant of that requirement. A timely statement by the claimant of any objection to appearing by VTC will cause the ALJ to find that there is good cause to change the time and place of the scheduled hearing and to reschedule the hearing for a time and place at which the claimant may appear in person (see §§ 404.936(e) and

416.1436(e)). No hard and fast rule for the latest time for a claimant to object to appearing by VTC may be set because many different factors (including the delayed appointment of a representative who opposes participation in VTC) could affect whether the claimant has notified the ALJ of his or her objection at the earliest possible time. In addition, as we discussed above, claimants who decide to decline to appear by VTC will not lose their place in the queue of individuals awaiting hearings.

*Comment:* An organization commented that while VTC hearings have the potential to be an improvement over some in-person hearings (such as those conducted in hotel rooms), there are concerns and we should not schedule a VTC hearing and require the claimant to respond affirmatively to choose an in-person hearing. This commenter noted that many claimants with mental impairments, cognitive limits, low education, and communication limitations will have difficulty understanding and responding to the notice.

*Response:* As discussed above, we believe that the policy of generally requiring claimants to take action to opt out of a scheduled appearance by VTC will be administratively beneficial and otherwise warranted. For the reasons set forth below, we also believe that the policy of generally requiring claimants affirmatively to decline to appear by VTC will not involve any significant risks for claimants, including those individuals who do not have an appointed representative and who may have mental, educational, and linguistic limitations—

- Hearing office staff will have provided claimants with information concerning their options for how they may appear at the hearing during the pre-hearing case preparation that occurs before the notice of hearing is issued;
- The ALJ will have discretion to prevent issuance of a notice scheduling a claimant to appear by VTC in instances in which the ALJ concludes that there are circumstances that make it necessary not to have the claimant appear by VTC;
- The notices of hearing used to schedule claimants to appear by VTC will explain VTC procedures and the option to appear in person in clear, easily understood language; and
- The claimant will be able to opt out of appearing by VTC merely by stating a desire not to appear in that way or a desire to appear in person.

*Comment:* An organization of individuals who represent claimants in proceedings before us reported that it generally supported the proposed rules

and the use of VTC hearings, so long as the right to a full and fair hearing is adequately protected and the quality of VTC hearings is ensured. This organization reported that its members had had mixed experiences with the VTC tests and noted that while a member who had experience with one VTC hearing was dissatisfied with the quality of the VTC transmission (which was not sufficient to allow the ALJ to perceive shortness of breath and sweating experienced by the claimant), another member who had represented several hundred claimants in the Iowa test now preferred VTC to in-person hearings because of the calming effect that VTC procedures had on his clients, the reduction in claimant travel, and the quality of VTC facilities. This organization offered the general comment that its members could be expected not to encourage their clients to participate in VTC hearings if there is no travel advantage and the quality of the hearing experience is inadequate.

*Response:* We believe that providing high quality VTC facilities and travel advantages for claimants who use VTC services will be of critical importance in ensuring the active cooperation of claimant representatives in encouraging their clients to use those services. We will not achieve our goals in implementing VTC procedures unless claimant representatives support their use. For that reason, and because providing claimants high quality hearing experiences with as little inconvenience to them as reasonably possible is inherently part of our overall mission, we intend to ensure that our VTC facilities are of high quality and that the travel claimants are required to undertake to attend their hearings is reduced by participation in our VTC services. The Associate Commissioner for Hearings and Appeals will consider those factors in determining whether a service area should be designated as ready for VTC use.

*Comment:* An organization commented that we should establish procedures to ensure that files can be reviewed and that additional evidence is associated with the file. The organization noted that problems have occurred in these respects at in-person, remote-site hearings, especially where the hearing is conducted by a visiting ALJ, and these problems would also exist in VTC hearings.

*Response:* As we stated in the NPRM, we will make certain that claimants participating in VTC procedures will have the “same access” to the hearing record as individuals not participating in those procedures. It is our intent in this regard to ensure that claimants who