§ 24.2 [Corrected]

■ 6. a. On page 61795, in the first column, in amendment 17, in § 24.2, paragraph (b)(1)(ii), ''allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's Call Report'' is corrected to read ''allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the Consolidated Reports of Condition and Income (Call Report)'';
■ b. On page 61795, in the second column, in amendment 17, in § 24.2, paragraph (b)(2)(i), ''the bank's Consolidated Reports of Condition and Income (Call Report) filed under 12 U.S.C. 161'' is corrected to read ''the Call Report'';
■ c. On page 61795, in the second column, in amendment 17, in § 24.2, paragraph (b)(2)(ii), ''allowances for loan and lease losses'' is corrected to read ''allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,''; and ''the bank's Call Report as filed under 12 U.S.C. 161'' is corrected to read ''the Call Report''.

§ 32.2 [Corrected]

■ 7. a. On page 61795, in the second column, in amendment 19, in § 32.2, paragraph (c)(1)(ii), ''allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Call Report'' is corrected to read ''allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the Consolidated Reports of Condition and Income (Call Report)'';
■ b. On page 61795, in the second column, in amendment 19, in § 32.2, paragraph (c)(2)(i), ''the bank's or savings association's Consolidated Reports of Condition and Income (Call Report)'' is corrected to read ''the Call Report''; and
■ c. On page 61795, in the second column, in amendment 19, in § 32.2, paragraph (c)(2)(ii), ''allowances for loan and lease losses'' is corrected to read ''allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,''.

§ 34.81 [Corrected]

■ 8. On page 61795, in the second and third columns, remove heading ''PART 34—REAL ESTATE LENDING AND APPRAISALS,'' remove amendments 20 and 21, and renumber the subsequent amendments to reflect the removal.

Dated: November 27, 2019.

Jonathan V. Gould,

Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–27168 Filed 12–17–19; 8:45 am]

BILLING CODE 4810–33–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

CFR Correction

■ In Title 12 of the Code of Federal Regulations, Parts 600 to 899, revised as of January 1, 2019, on page 700, in § 703.114, remove paragraph (3) that appears below paragraph (d).

[FR Doc. 2019–27403 Filed 12–17–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

Control Policy: End-User and End-Use Based; Correction

CFR Correction

■ In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2019, on page 412, in part 744, supplement no. 4, in the table under ''AFGHANISTAN'', the entry for Ibrahim Haqqani is correctly revised to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* * *	*
AFGHANISTAN	* * *	*	* * *	*
	Ibrahim Haqqani, a.k.a., the following two aliases: —Hajji Sahib; *and* —Maulawi Haji Ibrahim Haqqani Afghanistan	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	77 FR 25057, 4/27/12.
*	* * *	*	* * *	*

[FR Doc. 2019–27402 Filed 12–17–19; 8:45 am]

BILLING CODE 1301–00–D

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2017–0015]

RIN 0960–AI09

Setting the Manner for the Appearance of Parties and Witnesses at a Hearing

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are publishing a final rule we proposed in November 2018 regarding setting the time, place, and manner of appearance for hearings at the administrative law judge (ALJ) level of our administrative review process, with modifications. Our final rule states that we (the agency) will determine how parties and witnesses will appear at a hearing before an ALJ, and that we will set the time and place for the hearing accordingly. We will schedule the parties to a hearing to appear by video teleconference (VTC), in person, or, in limited circumstances, by telephone. Under this final rule, we will decide how parties and witnesses will appear at a hearing based on several factors, but the parties to a hearing will continue to have the ability to opt out of appearing by VTC at the ALJ hearings level. Finally, we are revising our rule to state that, at the ALJ hearing level, if we need to send an amended notice of hearing, or if we need to schedule a supplemental hearing, we will send the amended notice or notice of supplemental hearing at least 20 days

before the date of the hearing. The date of hearing indicated in the amended notice or notice of supplemental hearing will be at least 75 days from the date we first sent the claimant a notice of hearing, unless the claimant has waived his or her right to advance notice.

DATES: This rule is effective January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Susan Swansiger, Office of Hearings Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605–8500. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

To provide better customer service and most efficiently manage our workloads, while maintaining accuracy and fundamental fairness in our hearing process, we seek to maximize the case processing efficiencies and flexibility allowed by all appropriate manners of appearance at hearings. Available manners of appearance for hearings include in person, by VTC, and in limited circumstances, by telephone. In support of these goals, our Office of the Inspector General and the Administrative Conference of the United States (ACUS) have repeatedly recommended that we increase use of VTC technology to conduct administrative hearings. As well, the Social Security Advisory Board (SSAB) has commented that the use of VTC ''obviously meets the requirements of due process and it is in widespread use in other types of adjudications.'' [1]

To achieve the increased efficiency and reduced processing delays of hearings referenced by ACUS and the SSAB, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 15, 2018.[2] In the NPRM, we proposed clarifications and revisions to our rule for setting the manner of appearance for parties and witnesses at a hearing. To the extent that we already discussed at length the reasons for and details of the proposed changes, we will not repeat that information here.

The changes that we proposed and are now adopting will provide us with the flexibility we need to address service challenges by allowing us to balance our hearing workloads in a way that we expect will reduce overall wait and processing times across the country, and the processing time disparities among offices. However, in response to the overwhelming preference expressed by public commenters in response to the NPRM, we are retaining the existing option for a party to a hearing to opt out of appearing by VTC at the ALJ hearing level. If the AC exercises removal authority for a case, it will continue to follow all the rules that apply to the ALJ level of adjudication.[3]

Besides the changes we proposed for setting the time, place, and manner of appearance for hearings, we also proposed one clarification to our rule regarding the notice of hearing at the ALJ hearing level. Under our current rule, we send a notice of hearing at least 75 days prior to the date of the scheduled hearing to all parties and their representative, if any.[4] In addition to the time and place of a hearing, the notice has other information, including the issues to be decided, the right to representation, how to request a change in the time of the hearing, and how appearances will be made. We proposed to clarify that when we send an amended notice of hearing or notice of supplemental hearing, we would send the amended notice or notice of supplemental hearing at least 20 days prior to the hearing. If we need to change the date of a hearing, the date we choose will always be at least 75 days from the date we first sent the claimant a notice of hearing, unless the claimant has waived his or her right to advance notice.

Finally, we also proposed in the NPRM to make changes to our rule about scheduling hearings before disability hearing officers (DHO) in §§ 404.914 and 416.1414. Our proposed changes to those sections generally tracked our proposed changes to the regulations that regard scheduling hearings before ALJs, including our proposal to not allow a party to a hearing to opt out of appearing by VTC. We are not pursuing changes to §§ 404.914 and 416.1414 at this time.

We made changes from the proposed rule in the final rule.

- We removed the proposed revisions to §§ 404.914 and 416.1414.
- We changed ''them'' to ''witnesses'' for clarity in final §§ 404.936(c)(4) and 416.1436(c)(4).
- We retained existing §§ 404.936(d) and 416.1436(d), which allow a party to a hearing before an ALJ to object to appearing by VTC, and we moved and re-ordered the proposed text from the NPRM paragraphs (d) and (e) to (e) and (f) respectively.
- We added ''or notice of supplemental hearing'' to the paragraph heading in final §§ 404.938(d) and 416.1438(d) to ensure readers understand the breadth of the paragraphs.

In response to the NPRM, we received and posted 244 public comments that addressed issues within the scope of our proposed rule, and we received one comment that we did not post because an individual made it in his or her official capacity as a Social Security Administration (SSA) employee. Below we respond to the significant concerns that public commenters raised that are within the scope of the final rule.

Public Comments and Discussion

Authorizing the Agency To Set the Time, Place, and Manner of Appearance for Hearings

Comment: Some commenters opposed our proposal to allow the agency, rather than an ALJ, to set the time, place, and manner of appearance for the hearing. They maintained that our proposed changes are inconsistent with longstanding rule providing that ALJs set the time, place, and manner of appearance at hearings, and that ALJs should continue to do so as a fundamental function of their authority.

Response: Because the agency, rather than any individual adjudicator, is responsible for managing our nationwide hearing process, we are best placed to appropriately balance the overriding concerns that have animated our hearing process since it began in 1940: Our hearing process provides due process for each claimant and works efficiently and uniformly across the country.[5] We intend to balance concerns about due process, efficiency, and uniformity under this final rule and implement a standard, uniform scheduling process nationwide, while keeping maximum flexibility. By managing the process of scheduling hearings, maximizing our ability to transfer workloads, and exercising flexibility to determine the manner of appearance, we intend to promote a more timely hearing process that

[1] SSAB, *Improving the Social Security Administration's Hearing Process,* at 21 (Sep. 2006), available at: *http://www.ssab.gov/Portals/0/OUR_WORK/REPORTS/HearingProcess_2006.pdf.*

[2] 83 FR 57368, available at *https://www.federalregister.gov/documents/2018/11/15/2018–24711/setting-the-manner-for-the-appearance-of-parties-and-witnesses-at-a-hearing.*

[3] 20 CFR 404.956, 416.1456.

[4] 20 CFR 404.938(a), 416.1438(a).

[5] *See, e.g., Barnhart* v. *Thomas,* 540 U.S. 20, 28–29 (2003); *Richardson* v. *Perales,* 402 U.S. 389, 399 (1971).

provides greater consistency between the length of time a claimant requests a hearing and the date a hearing can be held. We expect that shifting the administrative task of scheduling hearings from individual ALJs to the agency will allow us to increase the overall efficiency of our hearing process and provide more consistent service to the public.

Further, allowing the agency to set the claimant's manner of appearance is an administrative, logistical function that does not affect an ALJ's qualified decisional independence or significantly alter the functioning of our hearing process. Under this final rule, our current policy of generally assigning cases to ALJs on a rotational basis with the earliest hearing requests receiving priority will remain the same. We will also continue to make scheduling decisions in conjunction and consultation with our ALJs. Our ALJs will continue to provide their availability for hearings, decide necessary participants to the hearing, and evaluate the sufficiency of a record in determining when a hearing should be held. As part of this evaluation, the ALJ will have the opportunity to raise any factors in a particular case that would assist us in choosing the most appropriate time, place, and manner of appearance for the parties and witnesses.

Comment: Some commenters expressed concern that the rule does not define any standards to determine whether a VTC hearing is less efficient than conducting a hearing in-person, nor does the rule include any standards for determining if there is good reason to conduct a hearing by VTC or in person.

Response: When we consider whether it would be less efficient to schedule a party to appear by VTC, we will consider the overall efficiency of our hearing process. As we explained above and in our NPRM, we expect the final rule to help us reduce imbalances in the wait time among hearing offices by making it easier for us to shift cases from overburdened hearing offices to hearing offices with fewer requests for hearing pending per ALJ. Leveraging VTC technology to better balance our workloads is key to addressing our oldest pending cases, and it also allows us to act quickly when service needs arise from unanticipated emergencies, *e.g.,* by transferring cases to a hearing office not in close geographical proximity to the claimant. All of these efficiencies will promote our ultimate goal of decreasing the total number of cases pending at the hearing level, and giving each claimant a more timely hearing and hearing decision.

Moreover, due to advances in video technology and our investments in VTC technology, our adjudicators are able to hear, see, and interact with the parties to a hearing as effectively through VTC as they would during an in-person appearance. Accordingly, we do not believe there are categorical circumstances that will always provide a good reason to schedule an individual to appear by VTC or in person. The overall efficiency of the hearing process and the need to provide fair, timely hearings to each claimant will continue to guide our decisions on how we schedule the manner of appearance under the final rule.

Not Allowing the Parties to a Hearing To Opt Out of or Object To Appearing by VTC

Comment: Multiple commenters stated that claimants should continue to have the option to opt out of or object to appearing by VTC in favor of appearing in person. Some commenters noted that when we revised our rule related to VTC hearings in the past, we specifically declined to require claimants to appear by VTC. The commenters maintained that our current policy works well and should not be changed.

Response: We acknowledge the commenters' near-universal preference for our current policy, which allows a party to a hearing before an ALJ to opt out of appearing by VTC. In response to this expressed preference, in the final rule we retained the regulatory provision allowing a party to a hearing before an ALJ to opt out of appearing by VTC, as it currently appears in §§ 404.936(d) and 416.1436(d). The AC will continue to follow all the rules that apply to ALJs when they remove a case.[6] However, we maintain our position, which we stated in the NPRM, that an individual's decision to decline appearing by VTC can adversely affect the efficiency of our hearing process, and may result in a longer wait time for the individual's in-person hearing.

While we are retaining the opt out provision, we note that VTC technology is expected to help us reduce imbalances in the wait time among hearing offices. As well, the use of VTC technology allows us to shift cases in which the claimant did not object to appearing by VTC from overburdened hearing offices to hearing offices with fewer requests for hearing pending per ALJ. We anticipate that the effect of these process improvements will be to improve the balance across the country and decrease the total number of cases pending at the ALJ hearing level, thereby providing claimants with more timely hearing decisions and benefit payments to individuals whom we find entitled to disability benefits.

Comment: A commenter also expressed that we should retain the ability to opt out of appearing by VTC based on the commenter's assertion that not all individuals with disabilities have access, nor can they arrange access, to the internet to appear by VTC.

Response: As previously mentioned, under this final rule, a party to a hearing before an ALJ will still have an opportunity to opt out of appearing by VTC. Nevertheless, we note that this comment appears to reflect a misunderstanding of our intent and how we conduct VTC hearings. We conduct VTC hearings in our facilities or at those representative's offices that are suitably equipped. We do not require any individual to have internet access at their home when we conduct a VTC hearing.

Section 504 of the Rehabilitation Act of 1973

Comment: Many commenters said that our proposed rule would violate section 504 of the Rehabilitation Act of 1973 (section 504).[7] These comments primarily regarded our proposal to remove the option for parties to opt out of or object to appearing at a hearing by VTC.

Response: As noted above, we are not proceeding with our proposal to remove the option for parties to opt out of or object to appearing at a hearing by VTC. Moreover, we have pre-existing procedures for handling section 504 accommodation requests that we will continue to follow after the effective date of this final rule.

Evaluating Subjective Complaints and Activities of Daily Living When the Parties to a Hearing Appear by VTC

Comment: Some commenters alleged that there are substantive differences between VTC hearings and in-person hearings when the adjudicator has to make findings about the intensity, persistence, and limiting effects of the individual's symptoms. The commenters opined that when an individual appears by VTC, the adjudicator may not be able to evaluate the intensity, persistence, and limiting effects of his or her symptoms in a policy compliant manner. Other commenters also asserted that only an

[6] 20 CFR 404.956, 416.1456.

[7] 29 U.S.C. 794, Public Law 93–112, title V, Sec. 504, Sept. 26, 1973, 87 Stat. 394.

in-person appearance can adequately convey some aspects of a claimant's presence, such as odor. These commenters noted that grooming and hygiene are among the activities of daily living that an adjudicator considers when deciding some claims such that a claimant may reasonably prefer to appear in person to permit the adjudicator to smell him or her. Several commenters also expressed concerns about technological issues and variability in the quality of VTC hearings.

Response: We are committed to ensuring all hearings are conducted in a consistent and fair manner using modern technology, and because of the efforts we have made to ensure this happens, we disagree that an appearance by VTC may adversely affect the adjudicator's ability to evaluate the intensity, persistence, and limiting effects of an individual's symptoms. Due to advances in video technology and our investment in VTC technology, our adjudicators are able to hear, see, and interact with the parties to a hearing as effectively through VTC as they would during an in-person appearance. Our video network infrastructure allows us to conduct daily business in a reliable and stable manner, including holding over 1.7 million video hearings since we began conducting video hearings [8] and opened five National Hearing Centers that exclusively use video technology in their business process. Moreover, as we explained in the NPRM, over the past three years we have refreshed all VTC equipment and infrastructure, resulting in better technological quality and experience for users. All SSA-owned video units on our network use the Real Presence Group platform, which is designed for large enterprise-wide usage necessary for a national network of our size. Our video platform provides clear picture and audio for all participants. Desktop video units have been replaced with new larger Convene desktops with a 27-inch flat panel monitor and Eagle Eye camera, ideal for smaller spaces. Hearing rooms are also equipped with a 65-inch monitor and Eagle Eye camera. We will continue to refresh our video inventory to keep pace with new technology and industry standards, including consulting ACUS's recommendations. Our ALJs and staff are properly trained to operate the VTC equipment and to alert management of any technical issues, which can be dealt with on a case-by-case basis by support personnel.

The high quality of our VTC hearings, and the essential parity in quality between VTC and in-person hearings, is further evidenced by a study conducted by our Office of Quality Review (OQR) in 2017 (which we included in the rulemaking docket when we published the NPRM). This study found that there was no statistically significant difference in the quality rates of fully favorable or unfavorable decisions, regardless of whether the hearings were conducted in person or by VTC.

We also disagree with the comments that claimants must be in the same room as adjudicators to detect aspects of the claimant's presence that can only be discerned in person, such as odor. We note that when an adjudicator evaluates an individual's symptoms, he or she is required to limit the evaluation to the individual's statements about symptoms and the evidence in the record that is relevant to the individual's impairments and activities of daily living.[9] An adjudicator does not assess the individual's overall character or truthfulness in the manner typically used during an adversarial proceeding.[10] Instead, when relevant, the adjudicator receives testimony from the claimant about his or her activities of daily living, and evaluates whether the claimant's statements are consistent with the objective and other evidence of record. Moreover, although an adjudicator cannot make firsthand observations about an individual's body odor when the individual appears by VTC, the distance between the adjudicator and the individual during an in-person appearance may similarly render the adjudicator unable to make firsthand observations about body odor.

Objection To Scheduling Expert Witnesses To Appear by Telephone

Comment: Some commenters also objected to our proposal to schedule expert witnesses to appear by telephone, stating that we should remove this option (which already exists). These commenters cited concerns regarding assumed technical difficulties with telephone connections, concerns that expert witnesses appearing via telephone would not adequately pay attention to the hearing proceedings, and concerns about the security of personally identifiable information (PII) if the expert witness is not in a private location. Commenters also stated that experts appearing via telephone may not be able to view the electronic file during the hearing to review evidence submitted at or shortly after the hearing.

Response: We disagree with these comments, and note that under our existing procedures, we already use telephone hearings for expert witnesses without experiencing the projected technical difficulties cited by the commenters. Under our current rule, expert witnesses frequently appear at hearings by telephone. Experts conducted 21 percent of hearing testimony via telephone in FY 2018 and 37 percent thus far in 2019.[11]

In the past, we have encountered some complications when a hearing office did not place calls to expert witnesses through the video units, but instead used desk phones or teleconference lines. In such situations, the participants at the other video site may have had difficulty hearing the expert witness. To avoid this problem, we issued reminder instructions to all hearing office managers to place calls to experts using the video equipment. Additionally, we require expert witnesses to have a landline telephone connection, which should minimize any connection issues that may be associated with wireless calls. If an expert witness did not comply with our expectations and requirements for hearings testimony, we would address those compliance issues as we do now, in a manner separate and apart from this final rule. Similarly, we already require expert witnesses to properly protect PII,[12] and any issues related to this concern would not be affected by this final rule.

Moreover, our subregulatory guidance provides procedures for ALJs to follow to ensure all participants are able to hear the ALJ and other participants, if multiple participants appear by different means.[13] Our subregulatory guidance also provides procedures for ALJs to ensure that expert witnesses review any additional evidence received between the time the expert reviewed the file and the time of the hearing and to summarize on the record any pertinent testimony for expert witnesses

[8] *See* the Supporting Document ''Number of administrative law judge hearings held by video teleconferencing since 2005,'' under Docket No. SSA–2017–0015 at: *www.regulations.gov.*

[9] Social Security Ruling 16–3p.

[10] *Id.*

[11] *See* the Supporting Document ''Telephone Appearances by Vocational Expert (VE) Witnesses and Medical Expert (ME) Witnesses,'' under Docket No. SSA–2017–0015 at: *www.regulations.gov.*

[12] *https://www.ssa.gov/appeals/public_experts/Medical_Experts_(ME)_Handbook-508.pdf; https://www.ssa.gov/appeals/public_experts/Vocational_Experts_(VE)_Handbook-508.pdf; https://www.fedconnect.net/FedConnect/PublicPages/PublicSearch/Public_Opportunities.aspx* (Reference number SSA–RFQ–15–0214); and *https://www.fedconnect.net/FedConnect/PublicPages/PublicSearch/Public_Opportunities.aspx* (Reference number SSA–RFQ–15–0182).

[13] Hearings, Appeals, and Litigation Law (HALLEX) Manual I–2–6–15.

who do not attend the entire hearing.[14] We do not plan to modify those existing procedures under the final rule.

Sending an Amended Notice of Hearing or Notice of Supplemental Hearing 20 days Before the Date of the Hearing

Comment: A number of commenters opposed our proposal to clarify that when we need to update the information in a notice of hearing at the ALJ hearing level, we will send an amended notice of hearing or notice of supplemental hearing at least 20 days, rather than 75 days, in advance of the date of the scheduled hearing. Noting that we generally allow 5 days mailing time for notices to arrive, these commenters stated that claimants and appointed representatives may receive the amended notice fewer than 20 days, and possibly only 15 days, before the hearing. Observing that claimants often need to arrange transportation (*e.g.,* paratransit, a ride from a friend or relative, etc.), arrange childcare, reschedule medical appointments, or meet other needs, these commenters further stated that it would be inappropriate and insufficient for us to provide only 20 or fewer days' notice about a change to the date or time of a hearing. The commenters additionally stated that if claimants receive an amended notice only 15 calendar days before the scheduled hearing, these claimants may be unable to meet other requirements that apply at the ALJ hearing level, such as: (1) Requesting a subpoena at least 10 business days in advance of a scheduled hearing, or (2) informing the ALJ about or submitting written evidence at least 5 business days before the date of the scheduled hearing.

Another commenter stated that our proposal to reduce the amount of advance notice that we must provide when updating ''critical facts'' about a scheduled hearing is problematic. This commenter stated that our current practice, which allows a party to a hearing to waive the right to advance notice of the hearing, is sufficient, and that the proposed changes will lead to inefficiencies and fewer policy-compliant decisions.

Response: We disagree with the commenters. As we explained in our NPRM, if we need to change the date of a scheduled hearing, the new date will always be at least 75 days from the date we first sent the claimant a notice of hearing, unless the claimant has waived the right to advance notice. With this safeguard in place, we expect that the vast majority of claimants will be able to meet other requirements that apply at the ALJ hearing level.[15] However, if a claimant is unable to comply with relevant timeframes based on his or her receipt of an amended notice of hearing, the claimant can inform us of that difficulty and request an exception based on an unusual, unexpected, or unavoidable circumstance beyond the claimant's control that prevented him or her from complying with the applicable timeframe.[16]

Further, we frequently send amended hearing notices to update information other than the time or date of the hearing. For example, we send an amended notice of hearing when we change the name of the medical or vocational expert who will testify, add a new witness, change the manner of appearance, or change the ALJ assigned to the case. As explained in the NPRM, under our current rule, these changes required us to send a notice 75 days in advance, resulting in rescheduled hearings and unnecessary delays in many cases. By changing the timeframe to 20 days, we are able to make these types of changes with less impact to our hearings workload and without unnecessarily delaying the hearing.

If we need to change the time or date of a scheduled hearing, we will continue to work with both claimants and representatives to accommodate schedules, including following our standard business process of requesting potential dates and times that the representative will be available for hearing.[17] In this regard, we understand that a representative's schedule of availability, once provided to a hearing office, may change. We remain committed to working with both claimants and representatives when we need to reschedule a hearing and will make every effort to provide adequate advance notice that will not impede the claimant's ability to comply with deadlines like the 10-day deadline for submitting subpoena requests and the 5-day deadline for submitting or informing us of written evidence. Additionally, we will continue to consider good cause for changing the time of the hearing due to issues including, but not limited to, the availability of transportation.

VTC as a Tool To Improve Efficiency

Comment: Some commenters expressed that we failed to demonstrate VTC hearings are more efficient than in-person hearings, or that they reduce processing times. These commenters further stated that we did not provide adequate data to justify the proposed changes, and that we relied on outdated data to support our rationale that more VTC appearances will result in more timely hearings. Some commenters criticized the quality of the data we relied on, and provided studies they asserted refute our conclusions.

Response: We disagree with these commenters. In the preamble to our NPRM, we provided an extensive discussion about our historical and ongoing experience using VTC technology and the flexibility it provides to manage our hearing workloads. We also explained that the number of ALJs available to conduct in-person hearings is generally limited to those ALJs stationed at, or geographically close to, the assigned hearing office or within travel distance to one of our permanent remote sites. As we explained, requiring an ALJ to travel to a remote hearing site for an in-person hearing reduces the amount of time the ALJ can devote to holding other hearings and issuing decisions from his or her assigned hearing office.

We further explained that prior studies, both internal and external, have found that utilizing VTC technology to conduct administrative hearings provides multiple benefits, including improved processing times and additional flexibility with respect to aged and backlogged hearing requests.

We stand by the quality of the data we relied on in the 2017 study by our OQR, which found there was no statistically significant difference in the quality rates of fully favorable or unfavorable decisions, regardless of whether the hearings were held in person or via VTC. The data used in the study represented a national random sample of recent cases. The data sample also fully accounts for improved technological changes that we implemented in the past three years.

Several commenters said that a 2018 Government Accountability Office (GAO) study refutes our findings, and supports the conclusion that individuals who had in-person hearings received favorable decisions at a higher rate than claimants who had VTC hearings.[18] However, unlike our studies, the GAO study was not designed to study the effects of VTC on allowance rates, and it did not account for all factors that

[14] HALLEX I–2–6–70 and I–2–6–74.

[15] *See, e.g.,* 20 CFR 404.935(a), 404.939, 404.949, 404.950(d)(2), 416.1435(a), 416.1439, 416.1449, 416.1450(d)(2).

[16] *See* 20 CFR 404.935(b)(3), 404.939, 404.949, 404.950(d)(2), 416.1435(b)(3), 416.1439, 146.1449, 416.1450(d)(2).

[17] *See* 20 CFR 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii).

[18] GAO, *Social Security Disability, Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions,* GAO–18–37 (December 2017), available at: *https://www.gao.gov/assets/690/688824.pdf.*

could affect this relationship. Further, GAO's study covered cases from 2007 to 2015, the earlier of which did not benefit from technological enhancements that we fully accounted for in the more recent OQR study. GAO studied variances in allowance rates, but not the accuracy of the decisions. Notably, the GAO study found there was no meaningful difference in allowance rates between similar claims decided by adjudicators at our National Hearing Centers, which exclusively conduct VTC hearings, and traditional hearing offices.

Many of the studies and articles cited by commenters in support of their statements that VTC will impact the fairness of hearings do not account for technological enhancements that occurred after the respective studies were conducted, or the non-adversarial nature of our proceedings. For example, one commenter relied on a study from the 1970s that found differences between video testimony and live testimony, particularly with regard to the perception of honesty.[19] However, that study does not reflect the significant technological advancements that have occurred since the 1970s; these advancements enable the fact finder to see, hear, and interact with individuals as easily by VTC as in person. A 2007 article, also cited by commenters, that examined eviction hearings held by VTC, and that analyzed the impact of the conclusions in the criminal proceedings, is also not directly relevant to our VTC hearings.[20] SSA hearings are non-adversarial and have the benefit of technological enhancements over the past 12 years. Another commenter cited the Advisory Committee Notes to Rule 43 of the Federal Rules of Civil Procedure regarding testimony at trial, which is distinguishable because our hearings are not trials, and adjudicators are not bound by the procedures set forth in the Federal Rules of Evidence.

As we previously explained, we expect that we will be able to better balance our workloads by increasing our use of VTC technology. Specifically, we expect that we will be able to decrease the total number of cases pending at the ALJ hearing level by shifting cases from overburdened hearing offices to hearing offices with fewer requests for hearing pending per ALJ. In addition, as we discussed earlier, we are retaining the existing option allowing a claimant to decline a video hearing, which already exists at the ALJ hearing level, and the AC will continue to apply ALJ hearing rules for cases they remove for a hearing.

Discussion of Our Use of the ACUS and SSAB Studies

Comment: Some commenters stated that we mischaracterized the findings of a study from ACUS to justify our proposed changes. Specifically, commenters stated that we implied that ACUS's report endorses mandatory appearances by VTC.

Response: We disagree that we mischaracterized ACUS's study, as evidenced by the fact that when ACUS submitted a comment on our proposed rule, ACUS merely stated that its views were already reflected in its reports and recommendations, and ACUS thanked us for considering its views and drawing upon its research studies. Moreover, in the NPRM, we explained that ACUS: Has identified a number of advantages to using VTC at administrative hearings; has noted that agencies with high volume caseloads are likely to receive the most benefit, cost savings, or both from using VTC; published a Handbook on Best Practices for Using Video Teleconferencing in Adjudicatory Hearings; [21] documented that VTC has been widely accepted as an important tool that increases our ability to hold hearings and improve public service; and has repeatedly recommended that we increase our use of VTC hearings to achieve greater efficiency. Thus, we did not state or imply that ACUS supported our specific proposal to disallow the parties to a hearing to opt out of or object to appearing by VTC.

We recognize that ACUS specifically recommended expansion of VTC on a voluntary basis, while allowing a party to have an in-person hearing or proceeding if he or she selected that option.[22] However, as set forth in our NPRM, we based our proposed rule not solely on the ACUS study, but also on: Our own extensive experience with VTC hearings; multiple internal and external studies that have documented the benefits of VTC hearings; technological advances that enable an adjudicator to see, hear, and interact with individuals as easily by VTC as in person; our need to balance workloads and address service challenges while maintaining fairness and participant satisfaction; and SSAB's specific recommendation that we eliminate the ability to opt-out of VTC hearings. Regardless, we reiterate that we are retaining the existing option for a party to a hearing to opt out of appearing by VTC at the ALJ hearing level and AC hearing removal.

Objections to the Rule Based on the Regulatory Flexibility Act and Paperwork Reduction Act

Comment: One commenter objected to the NPRM based on the assertion that the NPRM, and thus this final rule, require a Regulatory Flexibility Act (RFA) analysis. The commenter made several claims to support this view, including, ''[s]ome claimants will withdraw hearing requests rather than go through with a VTC hearing'' which, the commenter contends, will affect experts and representatives. The commenter also contended ''[r]epresentatives with disabilities that require the reasonable modification of an in-person hearing will have to stop or curtail their work on Social Security cases if they can no longer choose to represent only claimants who have opted out of video hearings.'' Finally, the commenter stated, ''The proposed changes to notice rules may also require additional travel costs or hiring of supplemental staff for representatives if hearings are changed with only 20 days' notice.''

Response: We disagree with this commenter. In our NPRM, we explained that our proposed rule would not have a significant economic impact on a substantial number of small entities because they would affect individuals only. Accordingly, we certified that an analysis as provided in the RFA, as amended, was not required. We certify the same with respect to this final rule.

We note that the commenter's assertion that an RFA analysis is required is predicated, in part, on our proposal to disallow a party to a hearing to opt out of, or object to, appearing by VTC. As previously mentioned, in this final rule, we are retaining the existing option for a party to a hearing before an ALJ to object to appearing by VTC. Additionally, at this time, we are not pursuing changes to our rule about scheduling hearings before DHOs.

While the commenter also asserted that our proposal to send an amended notice of hearing or notice of supplemental hearing at least 20 days before the date of the hearing would

[19] Gerald R. Williams, et al., *Juror Perceptions of Trial Testimony as a Function of the Method of Presentation: A comparison of Live, Color Video, Black-and-White Video, Audio, and Transcript Presentations,* 1975 BYU L. Rev. (1975).

[20] Sossin, Lorne and Yetnikoff, Zimra, *I Can See Clearly Now: Videoteleconference Hearings and the Legal Limit on How Tribunals Allocate Resources.* Windsor Yearbook of Access to Justice, 2007 (August 5, 2007), available at: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1205123.*

[21] The ACUS Handbook is available at: *https://www.acus.gov/report/handbook-best-practices-using-video-teleconferencing-adjudicatory-hearings.*

[22] ACUS Recommendation 2011–4, Agency Use of Video Hearings: Best Practices and Possibilities for Expansion, 76 FR 48789, 48796 (2011), available at: *https://www.acus.gov/recommendation/agency-use-video-hearings-best-practices-and-possibilities-expansion.*

require additional travel or supplemental staff costs, the commenter did not explain why. Furthermore, as explained above, if we need to change the date of a hearing, the date we choose will always will be at least 75 days from the date we first sent the claimant a notice of hearing, unless the claimant has waived his or her right to advance notice. Additionally, if we need to change the date or time of a hearing, or schedule a supplemental hearing, we will continue to work with claimants and representatives to accommodate schedules.

Comment: The same commenter stated our NPRM was invalid because we stated in the preamble that the proposed rule did not impose any new or significantly revise existing public reporting requirements under the Paperwork Reduction Act (PRA), and the commenter did not believe this to be correct.

Response: The rationale the commenter provided to support this assertion reflected a misunderstanding of the PRA. When we published the NPRM, our PRA characterization was accurate: We were not creating, nor were we revising, any public information collection tools. The public already uses existing form HA–55 (Objection to Appearing by Video Teleconferencing (OMB No. 0960–0671)) to request a change in time, place, or manner of hearing. We will not be substantively changing this form, particularly since we are retaining the opt-out provision. We will be adding very minor language changes in the supplemental explanation section of this form; this language will clarify that if one declines the VTC option, there is a chance a delay in hearing will result. This change is considered non-substantive under the PRA because it does not add or remove any questions, nor does it provide new information that is needed to complete the form. Accordingly, although we are submitting a non-substantive change request for this modification, we do not need to undergo full PRA approval, nor do we need to seek public comment on the change.

As well, we are making a minor change to form HA–510 (Waiver of Written Notice of Hearing (Form HA–510, OMB No. 0960–0671)) to reflect that we will now be providing a notice of amended or supplemental hearing 20, not 75 days, in advance of the hearing. Because we already solicited comment on this change through the proposed rule (*i.e.,* the form language change is simply a reflection of the policy change), we do not need to seek additional comment under the PRA. We are thus clearing this change as well through the non-substantive change request process.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule did not meet the requirements for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB did not conduct formal review of this final rule.

Executive Order 13771 and Cost Information

This rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature, and it will result in no more than de minimis, if any, costs in any one year after implementation.

At this time, the Office of the Chief Actuary estimates that this final rule will have a negligible effect on scheduled old-age, survivors, and disability insurance benefits and Federal Supplemental Security Income payments.

The Office of Budget, Finance, and Management estimates administrative savings of less than 15 work years and $2 million annually.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it only affects individuals. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

SSA already has existing OMB PRA-approved information collection tools relating to this final rule: Objection to Appearing by Video Teleconferencing (Form HA–55, OMB No. 0960–0671), and Waiver of Written Notice of Hearing (Form HA–510, OMB No. 0960–0671). Because we are retaining the opt-out provision for video teleconference (VTC) in this final rule, we are only adding minor instructional changes to Form HA–55 to caution claimants that by opting out of appearing by VTC, they may experience a delay in being scheduled for a hearing. In addition, due to the change in timing for amended or continued hearing notices, we are also making a minor change to Form HA–510 to show the change in timing for requesting the waiver for those affected by this change. However, because these modifications are minor in nature, and either reflect existing policy (HA–55), or have already been presented for public comments through rulemaking (HA–510), we will obtain OMB approval for these changes through a non-substantive change request, which does not require public notice and comment under the PRA. Thus, this final rule does not create or significantly alter any existing information collections under the PRA.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Andrew Saul,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR chapter III, parts 404 and 416, as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Revise § 404.929 to read as follows:

§ 404.929 Hearing before an administrative law judge-general.

If you are dissatisfied with one of the determinations or decisions listed in § 404.930, you may request a hearing. The Deputy Commissioner for Hearings

Operations, or his or her delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Deputy Commissioner for Hearings Operations, or his or her delegate, may assign your case to another administrative law judge. In general, we will schedule you to appear by video teleconferencing or in person. When we determine whether you will appear by video teleconferencing or in person, we consider the factors described in § 404.936(c)(1)(i) through (iii), and in the limited circumstances described in § 404.936(c)(2), we will schedule you to appear by telephone. You may submit new evidence (subject to the provisions of § 404.935), examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she will issue a decision based on the preponderance of the evidence in the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and, subject to the provisions of § 404.935, any new evidence that may have been submitted for consideration.

■ 3. Revise § 404.936 to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

(a) *General.* We set the time and place for any hearing. We may change the time and place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. The ''place'' of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by video teleconferencing, in person or, when the circumstances described in paragraph (c)(2) of this section exist, by telephone.

(c) *Determining manner of hearing to schedule.* We will generally schedule you or any other party to the hearing to appear either by video teleconferencing or in person.

(1) When we determine whether you will appear by video teleconferencing or in person, we consider the following factors:

(i) The availability of video teleconferencing equipment to conduct the appearance;

(ii) Whether use of video teleconferencing to conduct the appearance would be less efficient than conducting the appearance in person; and

(iii) Any facts in your particular case that provide a good reason to schedule your appearance by video teleconferencing or in person.

(2) Subject to paragraph (c)(3) of this section, we will schedule you or any other party to the hearing to appear by telephone when we find an appearance by video teleconferencing or in person is not possible or other extraordinary circumstances prevent you from appearing by video teleconferencing or in person.

(3) If you are incarcerated and video teleconferencing is not available, we will schedule your appearance by telephone, unless we find that there are facts in your particular case that provide a good reason to schedule your appearance in person, if allowed by the place of confinement, or by video teleconferencing or in person upon your release.

(4) We will generally direct any person we call as a witness, other than you or any other party to the hearing, including a medical expert or a vocational expert, to appear by telephone or by video teleconferencing. Witnesses you call will appear at the hearing pursuant to § 404.950(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by video teleconferencing or by telephone. We will consider directing witnesses to appear in person only when:

(i) Telephone or video teleconferencing equipment is not available to conduct the appearance;

(ii) We determine that use of telephone or video teleconferencing equipment would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual's appearance in person.

(d) *Objecting to appearing by video teleconferencing.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by video teleconferencing. If you object to appearing by video teleconferencing, you must notify us in writing within 30 days after the date you receive the notice. If you notify us within that time period and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by video teleconferencing, if you change your residence while your request for hearing is pending, we may determine how you will appear, including by video teleconferencing, as provided in paragraph (c)(1) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(2) If you notify us that you object to appearing by video teleconferencing more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 404.911.

(e) *Objecting to the time or place of the hearing.* (1) If you wish to object to the time or place of the hearing, you must:

(i) Notify us in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or 30 days after receiving notice of the hearing, whichever is earlier; and

(ii) State the reason(s) for your objection and state the time or place you want the hearing to be held. If the administrative law judge finds you have good cause, as determined under paragraph (e) of this section, we will change the time or place of the hearing.

(2) If you notify us that you object to the time or place of hearing less than 5 days before the date set for the hearing or, if earlier, more than 30 days after receiving notice of the hearing, we will consider this objection only if you show you had good cause for missing the deadline. To determine whether good cause exists for missing this deadline, we use the standards explained in § 404.911.

(f) *Good cause for changing the time or place.* The administrative law judge will determine whether good cause exists for changing the time or place of your scheduled hearing. If the administrative law judge finds that good cause exists, we will set the time or place of the new hearing. A finding that good cause exists to reschedule the time or place of your hearing will generally not change the assignment of the administrative law judge or how you or another party will appear at the hearing, unless we determine a change will promote efficiency in our hearing process.

(1) The administrative law judge will find good cause to change the time or place of your hearing if he or she determines that, based on the evidence:

(i) A serious physical or mental condition or incapacitating injury makes it impossible for you or your representative to travel to the hearing, or a death in the family occurs; or

(ii) Severe weather conditions make it impossible for you or your representative to travel to the hearing.

(2) In determining whether good cause exists in circumstances other than those set out in paragraph (f)(1) of this section, the administrative law judge will consider your reason(s) for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays that might occur in rescheduling your hearing, and whether we previously granted you any changes in the time or place of your hearing. Examples of such other circumstances that you might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) You unsuccessfully attempted to obtain a representative and need additional time to secure representation;

(ii) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(iii) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(iv) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(v) Transportation is not readily available for you to travel to the hearing; or

(vi) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

■ 4. Amend § 404.938 by revising paragraphs (b)(3) and (5) and (c) and adding paragraph (d) to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

* * * * *

(b) * * *

(3) How to request that we change the time or place of your hearing; * * *

(5) Whether your appearance or that of any other party or witness is scheduled to be made by video teleconferencing, in person, or, when the circumstances described in § 404.936(c)(2) exist, by telephone. If we have scheduled you to appear by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a video teleconferencing site and explain what it means to appear at your hearing by video teleconferencing;

* * * * *

(c) *Acknowledging the notice of hearing.* The notice of hearing will ask you to return a form to let us know that you received the notice. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail.

(d) *Amended notice of hearing or notice of supplemental hearing.* If we need to send you an amended notice of hearing, we will mail or serve the notice at least 20 days before the date of the hearing. Similarly, if we schedule a supplemental hearing, after the initial hearing was continued by the assigned administrative law judge, we will mail or serve a notice of hearing at least 20 days before the date of the hearing.

■ 5. Amend § 404.950 by revising paragraphs (a) and (e) to read as follows:

§ 404.950 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, either by video teleconferencing, in person, or, when the conditions in § 404.936(c)(2) exist, by telephone, to present evidence and to state his or her position. A party may also make his or her appearance by means of a designated representative, who may make the appearance by video teleconferencing, in person, or, when the conditions in § 404.936(c)(2) exist, by telephone.

* * * * *

(e) *Witnesses at a hearing.* Witnesses you call may appear at a hearing with you in the same manner in which you are scheduled to appear. If they are unable to appear with you in the same manner as you, they may appear as prescribed in § 404.936(c)(4). Witnesses called by the administrative law judge will appear in the manner prescribed in § 404.936(c)(4). They will testify under oath or affirmation unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witness any questions material to the issues and will allow the parties or their designated representatives to do so.

* * * * *

■ 6. Amend § 404.976 by revising paragraph (b) to read as follows:

§ 404.976 Procedures before the Appeals Council on review.

* * * * *

(b) *Oral argument.* You may request to appear before the Appeals Council to present oral argument. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. You will appear before the Appeals Council by video teleconferencing or in person, or, when the circumstances described in § 404.936(c)(2) exist, we may schedule you to appear by telephone. The Appeals Council will determine whether any other person relevant to the proceeding will appear by video teleconferencing, telephone, or in person as based on the circumstances described in § 404.936(c)(4).

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 7. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 8. Revise § 416.1429 to read as follows:

§ 416.1429 Hearing before an administrative law judge-general.

If you are dissatisfied with one of the determinations or decisions listed in § 416.1430, you may request a hearing. The Deputy Commissioner for Hearings Operations, or his or her delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Deputy Commissioner for Hearings Operations, or his or her delegate, may assign your case to another administrative law judge. In general, we will schedule you to appear

by video teleconferencing or in person. When we determine whether you will appear by video teleconferencing or in person, we consider the factors described in § 416.1436(c)(1)(i) through (iii), and in the limited circumstances described in § 416.1436(c)(2), we will schedule you to appear by telephone. You may submit new evidence (subject to the provisions of § 416.1435), examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she will issue a decision based on the preponderance of the evidence in the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and, subject to the provisions of § 416.1435, any new evidence that may have been submitted for consideration.

■ 9. Revise § 416.1436 to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

(a) *General.* We set the time and place for any hearing. We may change the time and place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. The ''place'' of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by video teleconferencing, in person or, when the circumstances described in paragraph (c)(2) of this section exist, by telephone.

(c) *Determining manner of hearing to schedule.* We will generally schedule you or any other party to the hearing to appear either by video teleconferencing or in person.

(1) When we determine whether you will appear by video teleconferencing or in person, we consider the following factors:

(i) The availability of video teleconferencing equipment to conduct the appearance;

(ii) Whether use of video teleconferencing to conduct the appearance would be less efficient than conducting the appearance in person; and

(iii) Any facts in your particular case that provide a good reason to schedule your appearance by video teleconferencing or in person.

(2) Subject to paragraph (c)(3) of this section, we will schedule you or any other party to the hearing to appear by telephone when we find an appearance by video teleconferencing or in person is not possible or other extraordinary circumstances prevent you from appearing by video teleconferencing or in person.

(3) If you are incarcerated and video teleconferencing is not available, we will schedule your appearance by telephone, unless we find that there are facts in your particular case that provide a good reason to schedule your appearance in person, if allowed by the place of confinement, or by video teleconferencing or in person upon your release.

(4) We will generally direct any person we call as a witness, other than you or any other party to the hearing, including a medical expert or a vocational expert, to appear by telephone or by video teleconferencing. Witnesses you call will appear at the hearing pursuant to § 416.1450(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by video teleconferencing or by telephone. We will consider directing witnesses to appear in person only when:

(i) Telephone or video teleconferencing equipment is not available to conduct the appearance;

(ii) We determine that use of telephone or video teleconferencing equipment would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual's appearance in person.

(d) *Objecting to appearing by video teleconferencing.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by video teleconferencing. If you object to appearing by video teleconferencing, you must notify us in writing within 30 days after the date you receive the notice. If you notify us within that time period and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by video teleconferencing, if you change your residence while your request for hearing is pending, we may determine how you will appear, including by video teleconferencing, as provided in paragraph (c)(1) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(2) If you notify us that you object to appearing by video teleconferencing more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 416.1411.

(e) *Objecting to the time or place of the hearing.* (1) If you wish to object to the time or place of the hearing, you must:

(i) Notify us in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or 30 days after receiving notice of the hearing, whichever is earlier; and

(ii) State the reason(s) for your objection and state the time or place you want the hearing to be held. If the administrative law judge finds you have good cause, as determined under paragraph (e) of this section, we will change the time or place of the hearing.

(2) If you notify us that you object to the time or place of hearing less than 5 days before the date set for the hearing or, if earlier, more than 30 days after receiving notice of the hearing, we will consider this objection only if you show you had good cause for missing the deadline. To determine whether good cause exists for missing this deadline, we use the standards explained in § 416.1411.

(f) *Good cause for changing the time or place.* The administrative law judge will determine whether good cause exists for changing the time or place of your scheduled hearing. If the administrative law judge finds that good cause exists, we will set the time or place of the new hearing. A finding that good cause exists to reschedule the time or place of your hearing will generally not change the assignment of the administrative law judge or how you or another party will appear at the hearing, unless we determine a change will promote efficiency in our hearing process.

(1) The administrative law judge will find good cause to change the time or place of your hearing if he or she determines that, based on the evidence:

(i) A serious physical or mental condition or incapacitating injury makes it impossible for you or your representative to travel to the hearing, or a death in the family occurs; or

(ii) Severe weather conditions make it impossible for you or your representative to travel to the hearing.

(2) In determining whether good cause exists in circumstances other than those set out in paragraph (f)(1) of this section, the administrative law judge will consider your reason(s) for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays that might occur in rescheduling your hearing, and whether we previously granted you any changes in the time or place of your hearing. Examples of such other circumstances that you might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) You unsuccessfully attempted to obtain a representative and need additional time to secure representation;

(ii) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(iii) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(iv) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(v) Transportation is not readily available for you to travel to the hearing; or

(vi) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

■ 10. Amend § 416.1438 by revising paragraphs (b)(3) and (5) and (c) and adding paragraph (d) to read as follows:

§ 416.1438 Notice of a hearing before an administrative law judge.

* * * * *

(b) * * *

(3) How to request that we change the time or place of your hearing;

* * * * *

(5) Whether your appearance or that of any other party or witness is scheduled to be made by video teleconferencing, in person, or, when the circumstances described in § 416.1436(c)(2) exist, by telephone. If we have scheduled you to appear by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a video teleconferencing site and explain what it means to appear at your hearing by video teleconferencing;

* * * * *

(c) *Acknowledging the notice of hearing.* The notice of hearing will ask you to return a form to let us know that you received the notice. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail.

(d) *Amended notice of hearing or notice of supplemental hearing.* If we need to send you an amended notice of hearing, we will mail or serve the notice at least 20 days before the date of the hearing. Similarly, if we schedule a supplemental hearing, after the initial hearing was continued by the assigned administrative law judge, we will mail or serve a notice of hearing at least 20 days before the date of the hearing.

■ 11. Amend § 416.1450 by revising paragraphs (a) and (e) to read as follows:

§ 416.1450 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, either by video teleconferencing, in person, or, when the conditions in § 416.1436(c)(2) exist, by telephone, to present evidence and to state his or her position. A party may also make his or her appearance by means of a designated representative, who may make the appearance by video teleconferencing, in person, or, when the conditions in § 416.1436(c)(2) exist, by telephone.

* * * * *

(e) *Witnesses at a hearing.* Witnesses you call may appear at a hearing with you in the same manner in which you are scheduled to appear. If they are unable to appear with you in the same manner as you, they may appear as prescribed in § 416.1436(c)(4). Witnesses called by the administrative law judge will appear in the manner prescribed in § 416.1436(c)(4). They will testify under oath or affirmation unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witness any questions material to the issues and will allow the parties or their designated representatives to do so.

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■ 12. Amend § 416.1476 by revising paragraph (b) to read as follows:

§ 416.1476 Procedures before the Appeals Council on review.

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(b) *Oral argument.* You may request to appear before the Appeals Council to present oral argument. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. You will appear before the Appeals Council by video teleconferencing or in person, or, when the circumstances described in § 416.1436(c)(2) exist, we may schedule you to appear by telephone. The Appeals Council will determine whether any other person relevant to the proceeding will appear by video teleconferencing, telephone, or in person as based on the circumstances described in § 416.1436(c)(4).

[FR Doc. 2019–27172 Filed 12–17–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9888]

RIN 1545–BN18

Guidance Under Section 355(e) Regarding Predecessors, Successors, and Limitation on Gain Recognition; Guidance Under Section 355(f)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the distribution by a distributing corporation of stock or securities of a controlled corporation without the recognition of income, gain, or loss. In particular, the final regulations provide guidance in determining whether a corporation is a predecessor or successor of a distributing or controlled corporation for purposes of the exception under section 355(e) of the Internal Revenue Code (Code) to the nonrecognition treatment afforded qualifying distributions. In addition, the final regulations provide certain limitations on the recognition of gain in certain cases involving a predecessor of a distributing corporation. The final