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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**REPRESENTATIVE VIDEO PROJECT**

August 2011      A-05-09-19101

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**AUDIT REPORT**

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## Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

## Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
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# SOCIAL SECURITY

## MEMORANDUM

Date: August 4, 2011

Refer To:

To: The Commissioner

From: Inspector General

Subject: Representative Video Project (A-05-09-19101)

## OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) effectiveness in implementing the Representative Video Project (RVP).

## BACKGROUND

In December 2003, SSA published a final rule<sup>1</sup> authorizing the use of video teleconferencing (VTC) for disability adjudication hearings to provide greater scheduling flexibility, improved hearing efficiency, and additional service delivery options. SSA also stated that, in the future, the Agency might allow remote video sites to operate in private facilities owned by law firms.<sup>2</sup> In September 2008, under the *Video Hearing* backlog initiative, SSA expanded the use of VTC through RVP,<sup>3</sup> allowing representatives and claimants to attend VTC hearings at claimant representatives' offices while the administrative law judge (ALJ) is at another location. Under RVP, participating claimant representatives are required to sign an agreement with SSA and procure their own video equipment (see Appendix B).

## SCOPE AND METHODOLOGY

As part of this review, we interviewed Office of Disability Adjudication and Review (ODAR) officials concerning the implementation and operation of RVP. Additionally, we spoke to RVP participants and relevant organizations to learn about their experiences, analyzed RVP hearing data, and reviewed relevant regulations and legal issues

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<sup>1</sup> *Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration*, 68 Fed. Reg. 69003 (December 11, 2003).

<sup>2</sup> *Id.* at 68 Fed. Reg. 69005.

<sup>3</sup> RVP is part of the Commissioner's initiative to increase the number of video hearings and reducing backlogs.

associated with the project. We are not making any statements in the report opining on the legal sufficiency of the agreement or RVP. See Appendix C for our full scope and methodology.

## RESULTS OF REVIEW

During the first 18 months of the RVP, the Chicago and Kansas City Regions used the RVP sites extensively; both Regions had experienced significant hearing backlogs. Four RVP sites in the Chicago and Kansas City Regions represented 71 percent of all activity among the 23 RVP sites. About 48 percent of the RVP sites had fewer than 10 hearings. While some of the low usage related to new participation in the program, in other cases, the RVP participants experienced problems related to faulty equipment or scheduling issues. About 18 percent of the RVP hearings was conducted between three or more locations, allowing experts and other parties at a third location to participate. In terms of regional workloads, we found SSA used RVP as part of service area realignments, allowing ALJs from one region to alleviate backlogs in another region.

Before SSA implemented RVP, we found the Agency had limited communication with the public. In addition, better communication by SSA with its employees and RVP participants would have allowed all parties to more fully understand how the program was to operate. This enhanced communication would have increased the probability of identifying and addressing potential problems early in the process. Moreover, the Agency did not (1) conduct a test or pilot of RVP before its nationwide implementation or (2) monitor relevant RVP trends, such as low use by participants. Finally, during the audit, some of the parties we interviewed raised potential legal issues related to RVP. We believe the Agency should consider these issues if they have not already been addressed.

## RVP HEARING TRENDS

We reviewed RVP hearing data collected since the program began to assess trends related to hearings by (1) location of the RVP site, (2) frequency of use at particular RVP sites, (3) location of third-party connections, and (4) location of the ALJ.

### Location of RVP Sites

From October 2008 to April 2010,<sup>4</sup> ODAR reported 1,952 disability hearings with RVP participants. As of April 2010, 18 law firms and 1 State agency maintained certified RVP equipment at 23 locations. These 23 RVP locations were in 8 of SSA's 10 regions, with no RVP sites in the Denver or Seattle Regions<sup>5</sup> (see Table 1 and Appendix D). Approximately 84 percent of the hearings was held with claimants at RVP sites in the

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<sup>4</sup> Our data related to the period October 29, 2008 to April 14, 2010. As of November 2, 2010, the count of RVP hearings increased to 3,652 related to 21 law firms operating 26 RVP sites. Our analysis focuses on the trends over the first 18 months of the program. See Appendix D for more on the RVP data.

<sup>5</sup> RVP is a voluntary program.

Chicago and Kansas City Regions.<sup>6</sup> Both Regions have faced large backlogs over the past few years. Another 12 percent of the claimants was located at RVP sites in the Atlanta Region, with the remaining 4 percent of claimants in the other regions.

**Table 1: Location of RVP Sites and Volume of Hearings  
(Hearings from October 2008 to April 2010)**

Region	RVP Sites <sup>1</sup>	Hearings at RVP Sites	Percent of Hearings
I. Boston	2	32	1.6
II. New York	2	9	0.5
III. Philadelphia	1	0	N/A
IV. Atlanta	4	236	12.1
V. Chicago	7	960	49.2
VI. Dallas	2	27	1.4
VII. Kansas City	3	686	35.1
VIII. Denver	0	0	N/A
IX. San Francisco	2	2	0.1
X. Seattle	0	0	N/A
<b>Total</b>	<b>23</b>	<b>1,952</b>	<b>100</b>

**Note 1:** Hearing locations relate to where the RVP equipment is operated as well as where the claimant and his/her representative are generally located.

### Frequency of Use at RVP Sites

Of the 23 RVP sites available during the first 18 months of the program, 4 sites conducted about 71 percent of the RVP hearings (see Table 2). Two of these sites were in the Chicago Region, and the other two were in the Kansas City Region.

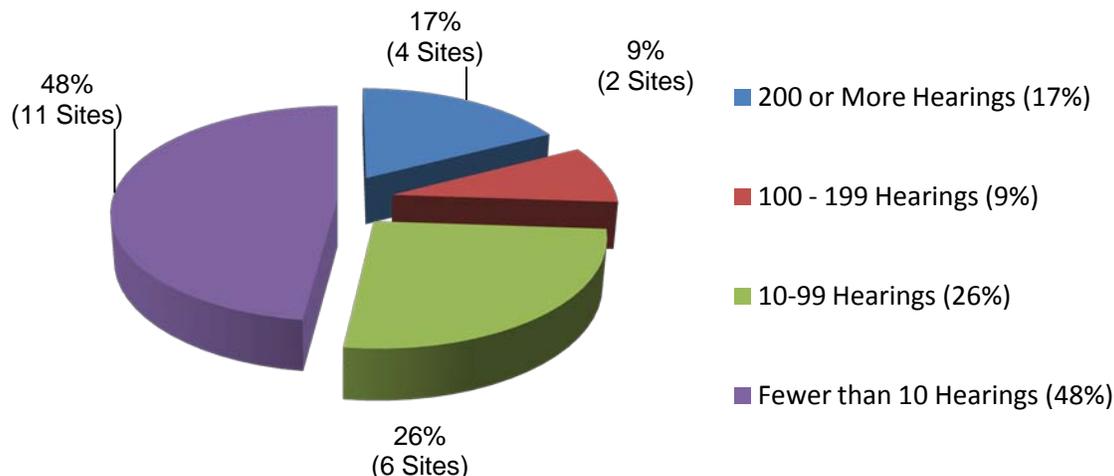
**Table 2: Frequency and Volume of Hearings at 23 RVP Sites  
(Hearings from October 2008 to April 2010)**

Total Number of RVP Hearings	Number of RVP Sites	Total Number of RVP Hearings in Each Category	Percent
200 or More	4	1,389	71.2
100 to 199	2	349	17.8
10 to 99	6	195	10.0
Fewer than 10	11	19	1.0
<b>Total</b>	<b>23</b>	<b>1,952</b>	<b>100</b>

As shown in Figure 1, while 4 RVP sites (17 percent) conducted 200 or more hearings, another 11 RVP sites (48 percent) held fewer than 10 RVP hearings. Five of these 11 sites held no hearings during this period.

<sup>6</sup> In general, we are assuming the claimant and his/her representative are located together at the RVP site. We discuss other scenarios later in this report.

**Figure 1: Frequency of Hearings at 23 RVP Sites  
(Hearings from October 2008 to April 2010)**



We discussed RVP issues with 10 law firms that represented 14 of the 23 RVP locations. We learned that some of the lower usage related to confusion over the scheduling of 3-way conferences allowing the claimant and claimant representative to be in different locations.<sup>7</sup> In addition, some law firms mentioned that equipment problems<sup>8</sup> and ALJ preferences<sup>9</sup> limited the use of the RVP equipment. For instance, staff at one law firm noted that the RVP site first attempted to connect with a hearing office in March 2010, but audio problems led to the hearing's termination. Staff at the firm stated that although the firm attempted to contact ODAR multiple times to fix the problem, as of November 2010, the equipment was still not functioning. It was not clear to the law firm staff what additional steps ODAR was taking to resolve the matter.<sup>10</sup> In another case, staff at a law firm running two different RVP sites noted that each site had different experiences based on the ALJs' receptiveness to such hearings. In one case, the RVP site was very productive, and in the other case, the site had held fewer than 10 hearings since it was established.

<sup>7</sup> We discuss this issue in the next section.

<sup>8</sup> The agreement between SSA and RVP participants states, "The representative will be solely responsible for maintenance and troubleshooting of VTC equipment. However, SSA will provide ongoing access to a help desk to assist in initial certification, equipment connectivity testing, and troubleshooting the equipment and connections to the SSA network." See Appendix B, Section III.

<sup>9</sup> The agreement between SSA and RVP participants states, "SSA makes no guarantee that the representative-owned VTC equipment or site will be used for any particular hearing...The ALJ presiding over the particular hearing will schedule the time and place of the hearing and will determine the manner in which the various participants will appear before the ALJ (i.e., in person or by means of VTC)." See Appendix B, Section III.

<sup>10</sup> We referred this and other cases to ODAR staff for follow-up. ODAR staff later contacted these RVP participants to resolve the issues.

### Third-Party Connections

In our review of the first 18 months of RVP, we found that about 18 percent of all RVP hearings had three or more parties involved. Usually, the three-way hearings involved a vocational expert or hearing reporter at a different location from the ALJ, claimant, and claimant representative.<sup>11</sup>

We also identified 65 hearings,<sup>12</sup> or about 3 percent of all RVP hearings, where the claimant was located at 1 site while the representative was alone at the RVP site.<sup>13</sup> In 43 of these hearings, the claimant was at a different location than the ALJ and claimant representative.<sup>14</sup> In the other 22 hearings, the claimant was with the ALJ while the claimant representative was at the RVP site.<sup>15</sup> At the time of our review, SSA was planning to issue guidance clarifying when it was appropriate for a claimant and the representative to be at different locations.

### Location of ALJs

We also reviewed the RVP hearings in terms of the location of the ALJ conducting the hearing to determine how regions were assisting each other under this program. We found that during the first 18 months of the program, ALJs in the Chicago, Kansas City, and Philadelphia Regions held the majority of hearings with RVP participants. Together, ALJs in the Chicago and Kansas City Regions held about 49 percent of the hearings during this period (see Table 3). Some of these hearings were conducted by National Hearing Centers (NHC), which are now located in four regions.<sup>16</sup>

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<sup>11</sup> The medical expert was at the same location as the ALJ about 98 percent of the time; the vocational expert was at the same location as the ALJ about 84 percent of the time; and the hearing reporter was at the same location as the ALJ about 82 percent of the time.

<sup>12</sup> The 65 hearings involved 10 different law firms.

<sup>13</sup> In June 2010, outside parties filed a lawsuit against SSA because of concerns that ALJs were not allowing three-way hearings where the claimant and his/her representative were in different locations. This lawsuit was dismissed on May 2, 2011.

<sup>14</sup> The agreement between SSA and RVP participants states, "The claimant and his or her representative must both appear from the same representative-owned VTC site, except in instances where the ALJ determined that it is in the best interests of the claimant to permit the claimant and his or her representative to appear from separate locations. Examples of such exceptions would be when the claimant lives in a remote area and there is limited access to representation within the standard 75-mile commuting area, or the claimant moved to a different area of the country but wishes to keep a representative with whom there is an existing business relationship." See Appendix B, Section V.

<sup>15</sup> We found that the 22 hearings involved 5 different law firms.

<sup>16</sup> NHCs, which only conduct video hearings, operate in Albuquerque, New Mexico; Baltimore, Maryland; Chicago, Illinois; Falls Church, Virginia; and St. Louis, Missouri. NHCs are directed by the Office of the Chief ALJ in Falls Church, Virginia, rather than the Regional Chief ALJs.

**Table 3: Locations of ALJs Conducting RVP Hearings by Region  
(Hearings from October 2008 to April 2010)**

Region of ALJ	RVP Hearing	Percent of Hearings <sup>1</sup>
I. Boston	39	2.0
II. New York	4	0.2
III. Philadelphia	355	18.2
IV. Atlanta	206	10.6
V. Chicago	480	24.6
VI. Dallas	55	2.8
VII. Kansas City	471	24.1
VIII. Denver	5	0.3
IX. San Francisco	19	1.0
X. Seattle	3	0.2
NHC	315	16.1
<b>Total</b>	<b>1,952</b>	<b>100</b>

**Note 1:** May not add to 100 percent because of rounding.

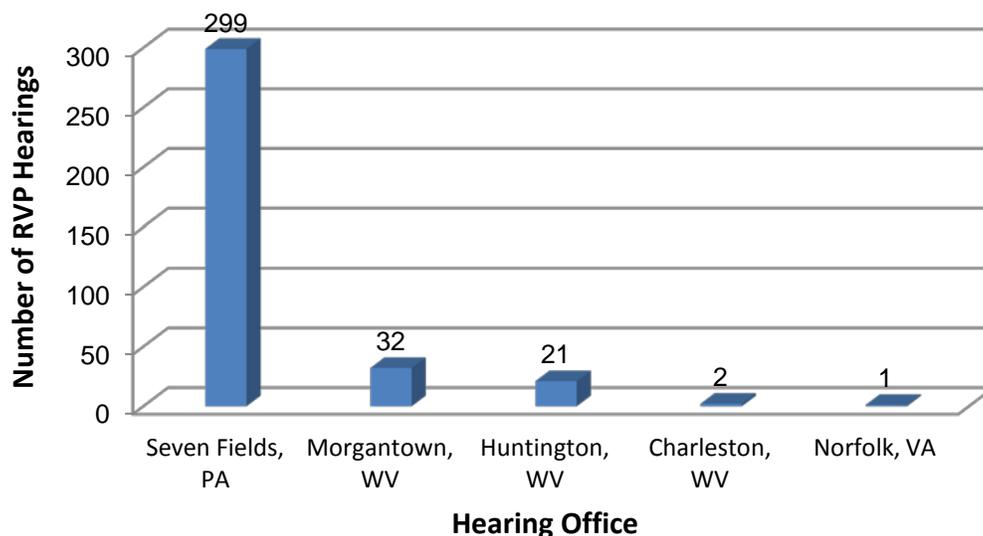
During this period, the Philadelphia Region had one authorized RVP site, though this site held no hearings. With the exception of the Huntington, West Virginia, Hearing Office, which held 21 hearings with the Atlanta Region, all of the hearings conducted by ALJs in the Philadelphia Region were held with RVP sites in Ohio, which is located in the Chicago Region (see Figure 2). Most of these hearings were between the RVP site in Youngstown, Ohio, and the Seven Fields, Pennsylvania, Hearing Office.<sup>17</sup> Of the 299 RVP hearings conducted by ALJs in the Seven Fields Hearing Office, 287 hearings (96 percent) were with the Youngstown RVP site.<sup>18</sup> This inter-regional assistance to the Youngstown area was part of the Agency's *Service Area Realignment* initiative, which modified the responsibilities of the two regions.<sup>19</sup>

<sup>17</sup> Seven Fields, Pennsylvania, is about 18 miles north of Pittsburgh, Pennsylvania.

<sup>18</sup> About 90 percent of the RVP hearings for the Youngstown RVP site were with the Seven Fields Hearing Office.

<sup>19</sup> Under a service area realignment, claimants in one part of the country are assigned to a hearing office in another part of the country to alleviate hearing backlogs.

**Figure 2: RVP Hearings Conducted by ALJs in the Philadelphia Region  
(Hearings from October 2008 to April 2010)**



## IMPLEMENTATION OF RVP

We identified a number of issues that required attention, including (1) improved communication with the public, Agency employees, and RVP participants; (2) additional measures and monitoring of RVP; and (3) a review of RVP-related legal issues. We shared some of these concerns in an April 2010 Early Alert to the Agency.<sup>20</sup>

### Communication

We found that SSA had limited communication with the public before RVP was implemented; needed to provide additional guidance for employees involved in the project; and could improve its communication with RVP participants.

#### *Communication with the Public*

After the 2003 final rule regarding VTC,<sup>21</sup> SSA did not provide additional public notices in the Federal Register pertaining to RVP. While such notification was not required, potentially interested stakeholders did not have sufficient opportunity to voice their interests and concerns regarding the operation of RVP. In addition, this public notice would have provided information to potential participants from the time the program started.

We also found that the 2003 final rule made statements about the operation of RVP that later changed without additional public notice clarifying the Agency's procedures. For

<sup>20</sup> We periodically provide SSA management with preliminary findings and recommendations when an issue merits attention before an audit is completed.

<sup>21</sup> 68 Fed. Reg. 69003.

instance, the 2003 final rule defined VTC, which would eventually encompass RVP, as a remote site program.<sup>22</sup> A remote site should be a location at least 75 miles from a hearing office. However, the physical location of more than half the RVP sites did not meet this definition.<sup>23</sup> Moreover, the 2003 final rule does not define three-way conferences to include situations where the ALJ, claimant, and claimant representative are in three different locations.<sup>24</sup>

ODAR staff informed us the Agency mentioned RVP to attendees at claimant representative conferences. We interviewed representatives from the National Organization of Social Security Claimants' Representatives (NOSSCR), the National Association of Disability Representatives (NADR), and RVP participants. The NOSSCR representatives stated its members were using RVP, whereas the NADR representative stated its membership comprised mostly individuals and small entities who would not have the volume of hearings with SSA to justify the cost of RVP equipment.

A NOSSCR representative indicated that an ODAR official contacted them before the start of RVP and described the project as a "pilot." The former Deputy Commissioner of ODAR requested a list of law firms that might be interested in the new program, and the NOSSCR representative forwarded a list of 25 members in February 2008. We found that 12 of the 23 RVP sites were associated with law firms on the NOSSCR list. ODAR management told us they were developing RVP-related videos to post to the Agency's Website, thereby providing additional notification to the public. However, ODAR may delay this outreach effort until it is certain the Agency will have sufficient capacity to handle new RVP participants. ODAR management said the Agency was planning to modify the RVP communications platform.<sup>25</sup> While SSA expects the new communication lines to be less expensive to maintain, the volume of RVP participants could increase beyond the capacities of SSA's network.

### ***Communication with Agency Employees***

We found ODAR could have improved its outreach to Agency employees pertaining to RVP to inform all parties of the intent and operation of the program. Such outreach is particularly important for the ALJs, who decide whether to use RVP as part of their hearings.

ODAR provided RVP training to regional and hearing office representatives<sup>26</sup> via teleconferences during the first 6 months of the RVP. The representatives were asked

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<sup>22</sup> 68 Fed. Reg. 69003 and 69005.

<sup>23</sup> While the service area realignment allows some RVP sites to become "remote" sites to hearing offices in other parts of the country, this may be a temporary phenomenon. We discuss this in the next section.

<sup>24</sup> Only medical and vocational experts were cited as additional parties in three-way connections.

<sup>25</sup> ODAR management said the Agency planned to change the communication lines from Integrated Services Digital Network lines to Internet Protocol lines.

<sup>26</sup> Primary participants included hearing office directors, hearing office systems administrators, and hearing schedulers.

to share this information with other employees. However, we found very little information on RVP available on ODAR's Website for individuals who did not receive this training or needed a point of contact for additional information. For instance, while ODAR's Intranet maintained a number of helpful online resources related to programs at the hearing offices, RVP-related information on the Agency's Website was limited to the name of the RVP participants. After discussing our audit findings with ODAR management, ODAR staff updated the Agency's *Video Hearing Web Site* with additional information, including instructions for scheduling RVP hearings as well as contacts for local troubleshooting. We believe this additional guidance and information will be helpful to ODAR employees.

The role and operation of RVP generated questions among some ALJs. In our discussions with ODAR management in field locations, we learned that the Regional Chief ALJs (RCALJ) were initially responsible for signing agreements with the RVP participants, but this responsibility was later relocated to the Office of the Chief ALJ.<sup>27</sup> In at least one instance, we learned that an RCALJ was uncomfortable signing such agreements because of the loss of control over the hearing environment, lack of Agency monitoring, and unclear practices by some law firms.

We discussed the RVP process with the Association of Administrative Law Judges (AALJ)<sup>28</sup> to learn about some of the ALJ experiences with the equipment. An AALJ representative noted the organization was opposed to RVP for a number of reasons,<sup>29</sup> including

- RVP presents a strong temptation for someone in the representative's office to prompt testimony from the claimant from a position not seen by the ALJ at the other end of the camera;<sup>30</sup>

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<sup>27</sup> For example, the earlier version of the agreement between SSA and RVP participants stated the RCALJ retains the responsibility for terminating RVP sites in noncompliance with the agreement. The most recent version of the agreement replaces "RCALJ" with "SSA."

<sup>28</sup> The AALJ is a union representing ALJs employed at SSA. The AALJ started as a professional association. In 1999, it became a nationally recognized union as the AALJ, International Federation of Professional and Technical Engineers, American Federation of Labor and Congress of Industrial Organizations.

<sup>29</sup> The AALJ also has an opportunity to share concerns with ODAR management via quarterly Joint Technology Advisory Committee meetings, which comprises two AALJ representatives and two management ALJs.

<sup>30</sup> RVP participants are required to procure equipment that allows an ALJ to view the entire room. The agreement between SSA and RVP participants states, "The private VTC camera should have the ability to pan and zoom to offer complete views of the room, as well as close up views. The size of the monitor may vary somewhat depending on how far participants are seated away from the monitor and camera. However, the room must have sufficient depth to permit the camera to pan and zoom so as to visualize the entire room or individual participants." See Appendix B, Attachment I.

- RVP may lead to unhealthy relationships between vocational experts and the representatives as they spend more time at the RVP site;<sup>31</sup>
- third parties participating in RVP hearings cause the video screen to be split, reducing the size of the images on the screen and the ALJ's ability to observe the participants;<sup>32</sup>
- third-party hearings are difficult to set up;<sup>33</sup>
- RVP represents SSA outsourcing an inherently governmental function;<sup>34</sup> and
- RVP creates the potential for large firms to drive out smaller practitioners.<sup>35</sup>

Continued communication regarding RVP, as well as ongoing training and support, could help alleviate some of these concerns.<sup>36</sup>

### ***Communication with RVP Participants***

In our discussions with NOSSCR members and other RVP participants, the majority of the RVP participants asked for a designated point of contact in ODAR to address questions about the program. In addition, half the RVP participants we spoke with indicated additional program guidance would also be helpful.

When asked about appropriate points of contact, ODAR management stated the Agency provided RVP participants with two email addresses as part of the application process: one related to general RVP questions and the second related to technical problems.<sup>37</sup> Additionally, the Agency initially provided RVP participants with telephone numbers to reach technical personnel with scheduling issues, though ODAR did not maintain an RVP-specific telephone number to address general questions.<sup>38</sup> Given the

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<sup>31</sup> Our audit work found few instances of vocational experts at RVP sites. In our review of the first 18 months of the program, we found that of the more than 1,500 hearings involving vocational experts, only 4 instances involved the expert at the RVP site.

<sup>32</sup> We discussed this point with ODAR technical staff and learned the underlying technology for RVP hearings limits the user's ability to control a split screen, whereas it is less problematic with hearings involving only SSA components.

<sup>33</sup> This additional work associated with third-party hearings applies to all VTC hearings.

<sup>34</sup> We discuss this issue later in the report.

<sup>35</sup> *Id.*

<sup>36</sup> The Agency and affected parties could have been reviewed these issues as part of a Federal Register announcement specific to RVP, as noted earlier, or even an RVP pilot, as we note later in this report.

<sup>37</sup> The agreement between SSA and the RVP participants states, "SSA will provide ongoing access to a help desk to assist in initial certification, equipment connectivity testing, and troubleshooting the equipment and connections to the SSA network." See Appendix B, Section III.

<sup>38</sup> Email assistance can be less timely and/or accessible than a telephone number.

RVP participants' request for additional outreach, ODAR may need to remind these participants periodically of the available program contacts to ensure timely resolution of concerns.

We also found that SSA program staff had not routinely conducted RVP site visits even though SSA reserved the right to do so in the RVP agreement. Such visits provide the Agency an opportunity to answer outstanding questions; view the RVP equipment and private conference room space; and verify compliance with various legal provisions, such as the *Americans with Disabilities Act of 1990*.<sup>39</sup>

While the RVP representatives we spoke with had worked via telephone with a technical person to set up the RVP equipment, most of the RVP participants we spoke with did not remember an SSA visit. A staff member at one RVP location noted that he had to set up his own informal point of contact in SSA to resolve equipment issues, since SSA did not formally provide a name. This staff member noted that regular communication, or at least a warning when changes are underway, would be helpful. For example, he related an incident in which his firm started having problems with the equipment in November 2009, and it was not until February 2010 that he indirectly learned the problem related to a telephone upgrade at SSA.

Toward the end of our audit work, we learned that ODAR's Office of the Deputy Commissioner conducted an informal survey of eight active RVP participants of various sizes in July and August 2010.<sup>40</sup> According to ODAR management, the RVP participants were generally happy with the program. The survey also identified a few technical issues that ODAR can address through additional training.<sup>41</sup>

The director over the RVP said his team was planning a more formal survey to each RVP participant asking about their experiences with the program—the Agency's first survey to all RVP participants. We believe this second survey to all RVP participants will assist ODAR by gauging overall user satisfaction and identifying factors associated with high and low use of the program. This survey also provides ODAR with another opportunity to ensure participants have up-to-date points of contact regarding future concerns and questions.

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<sup>39</sup> Pub. L. No. 101-336, 104 Stat. 327, as amended by the *ADA Amendments Act of 2008*, Pub. L. No. 110-325, 122 Stat. 3553, codified at 42 U.S.C. § 12101 *et seq.*

<sup>40</sup> Four of the 8 RVP participants overlapped with the 10 participants we contacted as part of our audit. Unlike ODAR, we contacted both active and inactive RVP participants, as noted earlier in this report.

<sup>41</sup> The ODAR team responsible for administering RVP was unaware of this earlier survey. While we commend the outreach effort, timely sharing of results with appropriate parties can assist with the administration of the program and ensure follow up on open issues.

## Testing and Monitoring

ODAR implemented RVP without first measuring its effectiveness or efficiency, as it did with the VTC program. In addition, ODAR was not initially monitoring the project, though it began monitoring some of the workload trends for RVP participants.

### *Piloting RVP*

Our review of documentation found that SSA initially planned to test RVP as a pilot, and drafted a proof-of-concept document that would have measured the success of RVP. This document also proposed a later evaluation of RVP. However, the Agency eventually decided to implement RVP without using a pilot or targeted performance measures, since it would delay the start of the program. This approach was very different from the VTC program where the Agency tested VTC at pilot sites, evaluated management information to determine its effectiveness, and addressed equipment problems (see Appendix E).

Had the Agency implemented RVP as a pilot, it would have had the opportunity to learn about both beneficial and problematic issues related to RVP, thereby enhancing any later RVP expansion. For example, the collection of performance data and a review of the pilot's operation should have highlighted the confusion regarding three-way hearings before full implementation.

A pilot could have also allowed for analysis of how distance from a hearing office can influence the likelihood that participants will use an RVP site. ODAR staff told us that any law firm at any location could participate in the program, though RVP participants with few or no hearings indicated their proximity to a hearing office made it less likely the ALJ would hold a video hearing versus a face-to-face hearing.<sup>42</sup>

The Agency's establishment of new hearing offices could further modify the use of existing RVP sites. For example, during the first 18 months of RVP, Ohio had 4 hearing offices and 6 of the 23 RVP sites. Because of a lack of hearing capacity in Ohio during this time, offices in the Chicago Region and nationwide used the RVP sites as part of their assistance with the hearings backlog. However, in August 2010, SSA opened two new hearing offices in Toledo and Akron, Ohio, which is likely to lessen the need for some RVP sites. One of the more active RVP sites, with more than 300 hearings in the first 18 months of the program, is located in Akron, Ohio. With this RVP site now operating within the 75-mile radius of the new Akron Hearing Office, it is likely that the need for this particular RVP site will lessen.

### *Monitoring*

At the start of our audit, after RVP had been in place for over 1 year, we found that the Agency had little management information, such as the frequency of hearings at particular RVP sites, the locations of various participants, or time and cost savings related to its use. After we issued our April 2010 Early Alert, ODAR provided us with a

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<sup>42</sup> Both a face-to-face and video hearing generally require the hearing office to occupy a full hearing room.

newly created Disability Adjudication Reporting Tools (DART) report that contained information on RVP hearings, such as the number of hearings and the location of participants.<sup>43</sup> While ODAR was producing this report, we saw no indication that ODAR staff was using this information to monitor RVP actively. According to ODAR management, the Agency was tracking RVP data at an aggregate level. The only specific RVP element regularly monitored was the number of times hearing offices had rejected a request for an RVP hearing. ODAR was not actively monitoring other trends already identified in this report, such as non-use of the equipment. We believe expanded monitoring will provide managers with additional indications of potential problems.

## Legal Concerns

During our audit, the ALJs in ODAR and the AALJ raised a number of legal issues. These issues include whether the Agency's RVP program would (1) transfer inherently governmental functions to private law firms and/or impede inherently governmental functions of ALJs;<sup>44</sup> and (2) create an unfair competitive advantage for participants.<sup>45</sup> For instance, some may interpret the limited information shared with the public on the program, combined with direct solicitation of participants from a private organization, as creating an unfair advantage for those directly invited.

In our discussions with staff in SSA's Office of the General Counsel (OGC), we learned that OGC reviewed the draft agreement between SSA and the RVP participants. However, OGC's staff was not certain whether the Agency ever considered the issues referenced above or, if so, whether OGC was asked for an opinion on these issues during the RVP planning process or implementation. In light of the fact that these issues have been noted by various parties, we believe they should be reviewed by appropriate parties to the extent they have not already been addressed by the Agency. A full review of these issues offers greater assurance that RVP operates in accordance with applicable Federal law, regulation, and Agency policy, while also protecting the interests of both the public and the Agency.

## CONCLUSION AND RECOMMENDATIONS

We found that while the majority of RVP initial activity was limited to a few RVP sites, the program assisted the Agency with hearings in backlogged regions. RVP offers the Agency an opportunity to expand video hearing capacity during a period of large backlogs and limited resources.<sup>46</sup> That said, additional steps while participation in RVP is still relatively low could strengthen the program's foundation and improve its chances

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<sup>43</sup> ODAR staff noted that the report may not be complete since it was recently created and was trying to rebuild past events. Our analysis of these data found they were generally reliable.

<sup>44</sup> FAR § 7.503.

<sup>45</sup> FAR § 6.101(a).

<sup>46</sup> Because of budget constraints, in March 2011 the Commissioner stated the Agency would not open eight planned hearing offices.

for success in the future. We believe improved external and internal communication, expanded monitoring, and a review of potential legal issues not already addressed will enhance RVP while also protecting the interests of the public and the Agency.

To enhance communication related to RVP, as well as monitor RVP workloads and outcomes, we recommend SSA:

1. Provide the public with current information on RVP in an easily accessible format, such as a Website, to ensure potentially interested parties are aware of the program.
2. Continue to educate SSA employees on the role and operation of RVP and solicit feedback to improve the program, particularly from ALJs who decide the manner in which the various participants must appear before them.
3. Periodically contact RVP participants to assess their experiences with RVP and highlight key points of contact for general and technical issues.
4. Expand the use of the DART report and other appropriate management information to monitor the use of RVP and identify potential problems.
5. Address any unresolved RVP legal issues discussed in the report.

## **AGENCY COMMENTS**

The Agency agreed with our first four recommendations. In response to the last recommendation, the Agency noted that it conducted an additional review of legal analyses related to RVP from 2004 to present and does not believe there are any unresolved RVP legal issues at this time.



Patrick P. O'Carroll, Jr.

# Appendices

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APPENDIX A – Acronyms

APPENDIX B – Representative Video Project Agreement

APPENDIX C – Scope and Methodology

APPENDIX D – Representative Video Project Participants

APPENDIX E – Video Teleconferencing Pilot and Public Notification

APPENDIX E – Agency Comments

APPENDIX G – OIG Contacts and Staff Acknowledgments

### Acronyms

ALJ	Administrative Law Judge
AALJ	Association of Administrative Law Judges
DART	Disability Adjudication Reporting Tools
GAO	Government Accountability Office
NADR	National Association of Disability Representatives
NHC	National Hearing Center
NOSSCR	National Organization of Social Security Claimants' Representatives
ODAR	Office of Disability Adjudication and Review
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OTSO	Office of Telecommunications and Systems Operations
RCALJ	Regional Chief Administrative Law Judge
RVP	Representative Video Project
SSA	Social Security Administration
VTC	Video Teleconferencing

#### Legal Citations

FAR	Federal Acquisition Regulation
Fed. Reg.	Federal Register
Pts.	Parts
Pub. L. No.	Public Law Number
U.S.C.	United States Code

# Representative Video Project Agreement

Below we provide some relevant excerpts from the Representative Video Project (RVP) agreement (Agreement) between a claimant representative and the Social Security Administration (SSA) for use of representative-owned Video Teleconference (VTC) equipment in Administrative Law Judge (ALJ) hearings.<sup>1</sup>

## I. PURPOSE

- The purpose of this Agreement is to provide to a representative of Social Security claimant(s) (Representative) the opportunity to use privately owned VTC equipment to participate in hearings conducted by ALJs of SSA's Office of Disability Adjudication and Review (ODAR). RVP provides efficient and cost effective alternative means of conducting hearings and improving SSA's service to the public. Using representative-owned VTC equipment to participate in hearings offers claimants and their representatives an opportunity to save time and travel costs that they would otherwise incur by appearing at a hearing in person.

## III. DISCLAIMERS

- Participation by the representative in this representative-owned VTC program is voluntary. SSA will not bear any of the costs for the acquisition, installation, or operation of a representative-owned VTC equipment and site.
- The representative will be solely responsible for maintenance and troubleshooting of VTC equipment. However, SSA will provide ongoing access to a help desk to assist in initial certification, equipment connectivity testing, and troubleshooting the equipment and connections to the SSA network.
- Prior to use in hearings, all representative-owned VTC equipment must be tested and certified by SSA's Office of Telecommunications and Systems Operations (OTSO) as compatible with SSA network equipment, and its ability to connect to the SSA network through the public and video connectivity sufficient for the conduct and recording of an ALJ hearing.
- SSA makes no guarantee that the representative-owned VTC equipment or site will be used for any particular hearing. Scheduling of hearing by VTC equipment will be subject to the availability of video equipped ODAR hearing space. The ALJ presiding over the particular hearing will schedule the time and place of the hearing and will determine the manner in which the various participants must appear before the ALJ (i.e., in person or by means of VTC).

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<sup>1</sup> This version of the Agreement was dated July 28, 2010.

#### IV.A. SSA RESPONSIBILITIES

- A representative of SSA might request to meet with the representative at the representative's VTC site prior to certification or at a later date. If SSA deems that a meeting is necessary, the SSA representative may inspect the site to ensure that it meets, or continues to meet, all the requirements necessary to participate as a representative-owned VTC site.

#### IV.B. REPRESENTATIVE RESPONSIBILITIES

- Adhere to all requirements and claimant protections established in the agreement.
- Inform the hearing office that it wishes to schedule a hearing using representative-owned VTC equipment by adding a comment to that effect in the comment block of the existing *Request for Hearing* (Form HA-501-US), or by informing the hearing scheduler when he or she contacts the representative to schedule the hearing.

#### V. CLAIMANT PROTECTIONS

- The claimant and his or her representative must both appear from the same representative-owned VTC site, except in instances where the ALJ determines that it is in the best interests of the claimant to permit the claimant and his or her representative to appear from separate locations. Examples of such exceptions would be when the claimant lives in a remote area and there is limited access to representation within the standard 75-mile commuting area, or the claimant moves to a different area of the country but wishes to keep a representative with whom there is an existing business relationship.
- The representative must obtain advance permission from the presiding ALJ and the claimant before permitting any persons whose presence is not ordinarily required for the hearing proceeding to be present in the representative's VTC room during the hearing and/or to see or hear any part of the hearing.
- An ALJ presiding at a hearing conducted in connection with this program may postpone the hearing if the ALJ learns that the representative or the representative's VTC site may not be in compliance with the rules, instructions, protocols, and requirements of this program. The ALJ will alert management about his or her concerns. Management will then investigate and determine if any deficiencies are present.
- If technical difficulties arise that affect the quality of the video or audio transmissions, hearing office staff, the representative's technical staff and the OTSO help desk will work to isolate the source of the problem and correct it, if possible. ODAR will make every attempt to complete scheduled hearings. If hearings cannot be completed as scheduled due to technical difficulties, the ALJ may reschedule the hearing to be held in person or via an SSA VTC site. If the source of the technical difficulty is

determined to be equipment or connectivity at the representative's VTC site, the representative will be responsible for making any necessary repairs or adjustments prior to being allowed to participate in any future hearings from the representative's VTC site.

## **VII. TERMINATION**

- SSA may terminate this Agreement if the Representative fails to abide by any of the provisions of this Agreement with respect to such site.
- Any ongoing technical difficulties determined to be caused by equipment or connectivity at the representative-owned VTC site may result in that site losing its certification. Before cancelling the site certification or terminating this Agreement, SSA will notify the Representative in writing of its intent to cancel the site certification or to terminate this Agreement and the reason for such action. SSA will give the Representative twenty (20) calendar days to correct the technical difficulties threatening its certification or to contest the termination in writing, as applicable. SSA will then determine whether to cancel the site certification or to terminate the Agreement and will issue a written notice of cancellation or termination.

## **ATTACHMENT 1. EQUIPMENT SPECIFICATIONS/PROTOCOLS FOR PRIVATE VTC SITES**

- The private VTC camera should have the ability to pan and zoom to offer complete views of the room, as well as close up views. The size of the monitor may vary somewhat depending on how far participants are seated away from the monitor and camera. However, the room must have sufficient depth to permit the camera to pan and zoom so as to visualize the entire room or individual participants.

## **ATTACHMENT 2. FACILITY REQUIREMENTS FOR PRIVATE VTC SITES**

- The site must meet the accessibility requirements established in Title III of the *Americans with Disability Act* and Sections 504 and 508 of the *Rehabilitation Act*.

# Scope and Methodology

To accomplish our objective, we:

- Reviewed the applicable Federal laws and regulations, as well as the Social Security Administration's (SSA) policies and procedures, to identify requirements related to video conferencing and the Representative Video Project (RVP).
- Reviewed the Agency's backlog reduction initiatives to identify those related to RVP.
- Reviewed the language in the agreement between SSA and RVP participants.
- Interviewed Office of Disability Adjudication and Review (ODAR) officials to discuss RVP's roll-out, operation, and monitoring.
- Interviewed RVP participants from 10 law firms representing 14 RVP sites operating as of April 2010 to obtain their experiences and comments regarding RVP.
- Interviewed staff and officials at the National Organization of Social Security Claimants' Representatives, National Association of Disability Representatives, and Association of Administrative Law Judges to obtain their comments regarding RVP.
- Analyzed ODAR's Disability Adjudication Reporting Tools report to identify the number of RVP hearings, the number of hearings per RVP site, and where these hearings were conducted in terms of both the RVP site as well as the judge holding the hearing. We also identified the number of two-way versus three-way or more RVP hearings.
- Discussed our findings with ODAR staff and management.

We found the RVP data to be sufficiently reliable to meet our objective. We are not making any statements in the report opining on the legal sufficiency of the agreement or RVP. As noted in the report, we believe this is the Agency's responsibility when starting any new program. We performed our audit at the Office of Audit in Chicago, Illinois, between November 2009 and December 2010. The principle entity audited was the Office of the Associate Commissioner of Disability Adjudication and Review. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## Representative Video Project Participants

Our data represent two periods in the Representative Video Project (RVP): (1) the first 18 months of the program and (2) the program as of November 2010 (see Table D-1). From October 29, 2008 to April 14, 2010, ODAR reported 1,952 disability hearings with 19 law firms operating 23 RVP sites. From October 29, 2008 to November 2, 2010, ODAR reported 3,652 disability hearings with 21 law firms operating 26 RVP sites.

**Table D-1: Total Numbers of RVP Hearings for Each RVP Participant**

RVP Site	Date Equipment Certified	RVP Participant Location	ODAR Region	Number of RVP Hearings (4-14-10)	Number of RVP Hearings (11-2-10)
RVP1	10-17-08	Missouri	Kansas City	236	353
RVP2	10-21-08	Massachusetts	Boston	32	44
RVP3	11-12-08	Florida	Atlanta	198	359
RVP4	12-1-08	Ohio	Chicago	151	245
RVP5	12-8-08	Missouri	Kansas City	450	954
RVP6	12-30-08	Georgia	Atlanta	15	15
RVP7	1-12-09	Ohio	Chicago	383	628
RVP8	2-10-09	Ohio	Chicago	90	281
RVP9	3-11-09	Kentucky	Atlanta	21	29
RVP10	3-25-09	Pennsylvania	Philadelphia	0	0
RVP11	11-19-09	Ohio	Chicago	5	36
RVP12	5-21-09	Arkansas	Dallas	27	46
RVP13	5-21-09	Texas	Dallas	0	0
RVP14	5-30-09	Ohio	Chicago	320	463
RVP15	12-1-09	Ohio	Chicago	1	10
RVP16	12-1-09	New York	New York	7	16
RVP17	12-1-09	New York	New York	2	3
RVP18	12-1-09	Florida	Atlanta	2	3
RVP19	12-1-09	Illinois	Chicago	10	44
RVP20	12-1-09	California	San Francisco	2	5
RVP21	1-11-10	California	San Francisco	0	0
RVP22	3-1-10	Missouri	Kansas City	0	92
RVP23	3-11-10	Vermont	Boston	0	22
RVP24	6-1-10	Missouri	Kansas City	N/A	4
RVP25	8-27-10	Ohio	Chicago	N/A	0
RVP26	10-14-10	Virginia	Philadelphia	N/A	0
<b>Totals</b>				<b>1,952</b>	<b>3,652</b>

## Video Teleconferencing Pilot and Public Notification

In 1996, the Social Security Administration (SSA) published a Notice of Social Security Ruling,<sup>1</sup> which explained that the Agency planned to explore ways for claimants to do business with it electronically. Video teleconferencing (VTC) was one of the technologies SSA identified as having the potential to better serve claimants.

In January 2001, SSA issued a Notice of Proposed Rulemaking related to VTC.<sup>2</sup> In the Notice, SSA stated that, in 2000, it conducted VTC hearings between the Huntington, West Virginia, Hearing Office and its Prestonsburg, Kentucky, remote location; the Albuquerque, New Mexico, Hearing Office and its El Paso, Texas, remote site; and the West Des Moines, Iowa, Hearing Office with tie-in to the Iowa Communications Network. At the beginning of these tests, all three sites had some equipment problems. Participation rates at Huntington-Prestonsburg and Albuquerque-El Paso were low, but the Iowa test had over 40-percent participation rate. SSA surveyed participants from the three tests to assess customer satisfaction with VTC hearings. The Iowa respondents rated the VTC hearings as convenient and good.

SSA test data showed that the processing time for VTC hearings was substantially shorter than for in-person remote location hearings during the same time period, and the ratio of hearings held to hearings scheduled was significantly higher for VTC hearings than for in-person hearings. SSA also discussed the location of expert witnesses if the experts would not be available at a hearing location.

In February 2003, SSA issued Final Rules with Request for Comment<sup>3</sup> related to VTC in the Federal Register. SSA received seven comments, one of which was concerning whether the proposal to give claimants the right to veto the use of VTC to conduct the appearances of expert witnesses. SSA concluded that claimants should not be empowered to veto use of VTC to take the testimony of expert witnesses. This caused SSA to reevaluate the proposal in that regard.

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<sup>1</sup> *Electronic Service Delivery*, 61 Fed. Reg. 68808 (December 30, 1996).

<sup>2</sup> *Scheduling Video Teleconference Hearings Before Administrative Law Judges*, 66 Fed. Reg. 1059 (January 5, 2001).

<sup>3</sup> *Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration*, 68 Fed. Reg. 5210 (February 3, 2003).

In December 2003, SSA published a Final Rule<sup>4</sup> authorizing the use of VTC for disability adjudication hearings to provide greater scheduling flexibility, improved hearing efficiency, and additional service delivery options. In this document, SSA stated,

We are investigating sharing VTC facilities with other federal agencies and states, and, if we can ensure privacy, we may eventually rent commercial space to expand use of VTC as a service delivery option. Calling into SSA's VTC network from private facilities, such as facilities owned by a law firm, may also be possible.<sup>5</sup>

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<sup>4</sup> 68 Fed. Reg. 69003 (December 11, 2003). This Final Rule adopted the earlier language in 68 Fed. Reg. 5210.

<sup>5</sup> 68 Fed. Reg. 5210 and 5211.

## Agency Comments



## SOCIAL SECURITY

### MEMORANDUM

**Date:** July 8, 2011 **Refer To:** SIJ-3

**To:** Patrick P. O'Carroll, Jr.  
Inspector General

**From:** Dean S. Landis /s/  
Deputy Chief of Staff

**Subject:** Office of the Inspector General Draft Report, "Representative Video Project" (A-05-09-19101)--  
INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Frances Cord at (410) 966-5787.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,  
“REPRESENTATIVE VIDEO PROJECT (RVP)” (A-05-09-19101)**

**Recommendation 1**

Provide the public with current information on RVP in an easily accessible format, such as a Website, to ensure potentially interested parties are aware of the program.

**Response**

We agree. In March 2011, we published “Electronic Services for Appointed Representatives” (Publication Number 07-070), a brochure that contains information about RVP. We also will update our [www.socialsecurity.gov](http://www.socialsecurity.gov) website with additional RVP information. We will continue to educate claimant representatives at conferences of the National Organization of Social Security Claimants’ Representatives and the National Association of Disability Representatives.

**Recommendation 2**

Continue to educate SSA employees on the role and operation of RVP and solicit feedback to improve the program, particularly from administrative law judges (ALJ) who decide the manner in which the various participants must appear before them.

**Response**

We agree. In August 2011, we will host the Annual Judicial Education Program for ALJs. We will include a session on video hearings and the merits of RVP.

In May 2011, as part of an ongoing effort, we trained more than half of our hearing office system administrators on video issues, including RVP. In addition, we have an extensive Intranet website that includes:

- An overview of RVP;
- Information on how to schedule RVP hearings;
- A troubleshooting guide; and
- A list of all certified RVP sites.

**Recommendation 3**

Periodically contact RVP participants to assess their experiences with RVP and highlight key points of contact for general and technical issues.

**Response**

We agree. We have established a dedicated RVP electronic mailbox where representatives may submit their concerns and questions. We are exploring other options for soliciting participants’ feedback, including ongoing outreach to current RVP participants and periodic surveys.

#### **Recommendation 4**

Expand the use of the Disability Adjudication Reporting Tools (DART) report and other appropriate management information to monitor the use of RVP and identify potential problems.

#### **Response**

We agree. We actively monitor RVP usage from various data sources including DART. The Case Processing and Management System is also an information source, and with recent upgrades, we now use it to monitor RVP usage. When there is a significant fluctuation in the number of RVP hearings at a site, we contact the site to identify the cause.

#### **Recommendation 5**

Address any unresolved RVP legal issues discussed in the report.

#### **Response**

We disagree. In response to your audit, we conducted an additional review of legal analyses related to RVP from 2004 to present and do not believe there are any unresolved RVP legal issues at this time.

## OIG Contacts and Staff Acknowledgments

### ***OIG Contacts***

Walter Bayer, Director, Chicago Audit Division

Deborah Kinsey, Audit Manager, Chicago Audit Office

### ***Acknowledgments***

In addition to those named above:

Wai Ho Yung, Auditor-in-Charge

Elizabeth Ochoa, Senior Auditor

For additional copies of this report, please visit our Website at [www.socialsecurity.gov/oig](http://www.socialsecurity.gov/oig) or contact the Office of the Inspector General's Public Affairs Staff Assistant at (410) 965-4518. Refer to Common Identification Number A-05-09-19101.

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Chairman and Ranking Minority Member, Committee on Finance

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Chairman and Ranking Minority Member, Senate Special Committee on Aging  
Social Security Advisory Board

## **Overview of the Office of the Inspector General**

The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

### **Office of Audit**

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

### **Office of Investigations**

OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

### **Office of the Counsel to the Inspector General**

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### **Office of External Relations**

OER manages OIG's external and public affairs programs, and serves as the principal advisor on news releases and in providing information to the various news reporting services. OER develops OIG's media and public information policies, directs OIG's external and public affairs programs, and serves as the primary contact for those seeking information about OIG. OER prepares OIG publications, speeches, and presentations to internal and external organizations, and responds to Congressional correspondence.

### **Office of Technology and Resource Management**

OTRM supports OIG by providing information management and systems security. OTRM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, OTRM is the focal point for OIG's strategic planning function, and the development and monitoring of performance measures. In addition, OTRM receives and assigns for action allegations of criminal and administrative violations of Social Security laws, identifies fugitives receiving benefit payments from SSA, and provides technological assistance to investigations.