

**Supporting Statement for Form HA-4608
Waiver of Your Right to Personal Appearance
Before An Administrative Law Judge**

20 CFR 404.948(b) (1) (i) and 416.1448(b) (1) (i)

OMB No. 0960-0284

A. Justification

1. The authority for collecting this information is contained in *sections 205(a), 702, 1631(e)(1)(A) and (B), and 1869(b)(1) of the Social Security Act, as amended*. These authorities require that if a claimant for benefits under the Social Security Act wishes to waive his or her statutory right to appear in person (or through a representative) and present evidence at a hearing before the Administrative Law Judge (ALJ) of the Office of Hearings and Appeals, he or she must request such a waiver in writing. *20 CFR 404.948(b)(1)(i) and 416.1448(b)(1)(i)* gives authority for ALJs to decide a case on the record and not conduct an oral hearing when the claimant and all the parties indicate in writing that they do not wish to appear at an oral hearing.
2. The statutes and courts have required that a hearing before an Administrative Law Judge of the Office of Hearings and Appeals must be waived in writing and must convincingly show that this due process right has been waived voluntarily and knowingly; i.e. with the knowledge of the advantage of personal appearance and the consequences of a waiver of the right to appear at the hearing. A request for waiver is not routinely granted, as such an action may be detrimental to the claimant's interests. Collection of the information on form HA-4608 facilitates an assessment as to whether the request is based upon a misunderstanding or misinformation. Without the form, the ALJ could not approve the waiver of the hearing unless the claimant submitted a written statement requesting waiver and the document demonstrated that the claimant had the required knowledge and was making the waiver voluntarily. This would require additional contact with the party or the scheduling of a hearing at substantial administrative expense to the government. The form with the needed information on it, therefore, serves to reduce the number of contacts required with claimants and to make the claimant's personal appearance at the administrative hearing unnecessary when the legal conditions for waiver have been met.
3. At this point the form HA-4608 is available on-line to view and print, but is not yet available for direct electronic submission. Electronic submission of form data is an Agency goal for doing business with SSA, unless face to face contact with the individual is required as part of the process or the circumstances are so sensitive or complex that interactions with a trained SSA employee is critical. In this case the

HA-4608 qualifies for electronic use as early as practicable. However, electronic intake can only occur if there is functional equivalency at the back end to receive and process the electronic submission. This expenditure of Systems resources must compete with other priority initiatives for very limited funds. The HA-4608 is currently used in about 2 per cent of requests for hearing by claimants (12,000); and cannot compete with the legislative mandates that are driving the use of systems development funds for more widely used forms. Accordingly, this collection is not currently scheduled for electronic receipt and processing.

4. This is the only SSA form that provides the claimant with all the required information about his or her rights to a personal appearance at a hearing so that the waiver can be made knowingly and voluntarily. It also provides the claimant with a form on which to make the required waiver statement. There is no similar information already available.
5. The collection of this information does not involve small businesses or other small entities.
6. We collect this information once from a title II or title XVI claimant. A claimant has a statutory and regulatory right to waive a personal appearance at an ALJ hearing. Inhibiting this right would violate a claimant's rights under the pertinent statutes and also increase the number of administrative law judge hearings, which must be conducted at government expense. Therefore, the information could not be collected less frequently. There are no technical or legal obstacles to reducing the burden.
7. There are no special circumstances that would cause this information collection in a manner inconsistent with 5 CFR 1320.5.
8. The 60-day advance Federal Register (FR) notice was published on April 23, 2007 at 72 FR 20154. The second notice was published on June 13, 2007 at 72 FR 32697. There were no public comments. Consultations were not held outside the agency.
9. SSA provides no payment or gifts to the respondents.
10. The information provided on this form is protected and held confidential in accordance with 42 USC 1306, 20 CFR 401 and 402, 5 USC 552 (Freedom of Information Act), 5 USC 552a (Privacy Act of 1974) and OMB Circular No. A-130.
11. The information collection does not contain any questions of a sensitive nature.
12. SSA estimates that 12,000 respondents will complete the form. The average burden is 2 minutes with an annual burden of 400 hours. The total burden is reflected as burden hours. No separate cost burden has been calculated.
13. There is no known cost burden to the respondents.

14. Using SSA's standard cost formula the annual cost to the Federal Government is \$18,480. This estimate is a projection of printing, distribution and processing costs for the form. However, increasing use of on-line access will reduce printing and distribution expense even as other costs may rise.
15. This is an extension of a previously approved collection of information that will result in no program increase in SSA's overall burden.
16. The results of the information collections will not be published.
17. OMB has granted SSA an exemption from the requirement that the expiration date for OMB approval be printed on its program forms. SSA produces millions of public-use forms, many of which have a life cycle longer than that of an OMB clearance. SSA does not periodically revise and reprint its public-use forms, (e.g., on an annual basis). This exemption was granted so that otherwise useable editions of forms would not be taken out of circulation because the expiration date had been reached. In addition, government waste has been avoided because stocks of forms will not have to be destroyed and reprinted.
18. SSA is not requesting an exception to the certification requirements. Please note, however, that statistical survey methodology is not used for this information collection.

B. Collections of Information Employing Statistical Methods

Statistical methods are not used for this information collection.