

Comment from Special Counsel Jeffrey S. Lubbers on *Virtual Hearings in Agency Adjudication*
April 19, 2021

I have read the draft recommendations and do have a few comments:

First, I think that overall it is very thoughtful and well drafted. But I do have a few specific comments, some of which are borne out of spending the last year teaching on Zoom.

1. There are some important issues concerning the recording of the hearings. Who has control of the recording button? When will the recording be paused? If recording is inadvertently turned off, what happens? Who can edit the recording to remove irrelevant or hot mic type comments at the beginning and end? How long will the recordings be archived and made accessible? Some programs like Zoom automatically delete recordings after X days.
2. On line 63 in the preamble and again line 123 in the recommendation, you refer to “individuals who live in underserved communities” such as “people who live in rural areas.” I think this paints people who live in rural areas with an overbroad brush. Might it be better to substitute “individuals who live in areas with weak or inconsistent internet access”--or something like that?
3. On line 82 the concept of “telepresence systems” should be explained—maybe in a footnote.
4. Recommendation 1 begins with “Agencies should offer virtual hearings when legally permissible” I don’t think you intend this inference, but it seems like you are saying that whenever agencies can legally use virtual hearings, they should—even if in-person hearings could be used. In other words, I don’t think you want to leave the impression that ACUS is generally favoring virtual hearings over in-person hearings. Maybe there should be a sentence or two at the beginning that makes clear that this whole recommendation is addressed to situations where in-person hearings are infeasible.
5. On line 120, I think you should delete “foreign language” and just leave it as “interpreters.”
6. Recommendation 3 urges that virtual hearings be open to the public. But the public would need to have notice of the meeting, or be invited to the hearing to view it. And this brings up the issues of requiring registration, passwords, etc.
7. Recommendation 10 on technical support is necessary. One issue I’ve had, especially at the beginning, is technical problems in setting up two (much less three) monitors.

I look forward to seeing the next draft.

Jeffrey S. Lubbers