Comment on Proposed ACUS Recommendation: Internet Evidence in Agency Adjudication
Jeffrey S. Lubbers, Special Counsel

Preamble:

At line 76–78, it says, “Some agencies apply the Federal Rules of Evidence; others have developed evidentiary rules to suit their specific need.” While this is not literally incorrect, I think it gives the false impression that there’s a 50-50 split between these two types of approaches among agencies. I believe that very few agencies have adopted the FRE, at least in whole cloth. So, I would prefer that the sentence read, “A few agencies apply the Federal Rules of Evidence, some use it as a guide, and others have developed evidentiary rules to suit their specific need.”