

Russell Wheeler (Public Member), Comments on Nov. 16, 2021, Regulation of Representatives etc.

P Ln

Kudos to all for a very solid draft. Here are a few substantive and a few stylistic suggestions.

- 2 34 Just for clarity, consider replacing “do so” with “enforce rules” (to make clear that the reference is not to “determine”).
 - 3 47 For brevity, replace “non-adversarial” with “not”—and in line 48, delete “setting forth”.
52 Consider rather than “ensuring . . .” perhaps “seeking”. It’s too much to say the practices will “ensure” these conditions.
 - 4 66 Do the drafters intend “refer to” to carry the same meaning as “incorporate by reference” (the text at line 9 of the Nov. 5 draft)? I read the two phrases to mean different things, but perhaps it’s a shorthand with which I am unfamiliar.
 - 5 98 Although the next sentence clarifies the point, I suggest changing “other agency rules” to “other rules of the agency”.
- 111-12 The subhead, “Agency Action in Response to a Violation of Rules” could be read to assume guilt. Perhaps “. . . Action in Response to a Complaint of a Rule Violation”.
- 112 “consistent with their authority to do so” (line 113) seems superfluous given line 112’s “may take”.
- 116 ¶ 7, as I read it, makes no provision for actions short of the “adjudication” referenced in sub¶ c. (The Preamble, at p.2, line 34, refers to “warnings”.) Perhaps an initial sub¶ along the lines of “The use of informal or formal warnings in lieu of adjudication, depending on such factors as the severity or frequency of the conduct.”
- 118 Consider whether ¶ 7 should specify that agency officials may take action even without a complaint—in other words, initiate an action based on information available to them.
- 6 124 Should ¶ 7 say anything about ranges of discipline available to the agency?
132 Perhaps rephrase as “In light of the requirements of Agencies should, in compliance with the Agency Practice Act (5 U.S.C. § 500), agencies should only . . .” (It’s a little softer way of telling agencies to obey the law.)
 - 7 147 Consider inserting “or in the document” after “webpage”. Same at line 150.
157 Perhaps add, after “misconduct” something like “and reprimands imposed”?