

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

January 15, 2020

Joseph M. Otting, Comptroller
Comptroller of the Currency
Department of the Treasury
400 7th St SW
Washington, D.C. 20219

Dear Comptroller Otting:

On January 9, 2020, the Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”) published in the Federal Register a joint notice of proposed rulemaking to amend the agencies’ Community Reinvestment Act (“CRA”) regulations. The comment period for the proposed rule is open until March 9, 2020.¹ Any changes made to CRA regulations must be congruent with the legislation’s original intent of ensuring banks are meeting their obligations to lend and invest in all of the communities in which they do business, including low- and moderate-income communities.

The Committee is concerned by reports alleging that certain special interest groups have submitted comments in other rulemakings while posing as consumers, small business owners, and other stakeholders. These fraudulent comments undermine legitimate debate on proposed rules by creating the false appearance that a position has widespread, grassroots support. Such misrepresentations have been increasing in frequency and complexity in recent years.² In late 2019, the Securities and Exchange Commission Chairman Jay Clayton quoted comments that were submitted under suspicious circumstances in a recent rulemaking.³ In 2016, the Consumer Financial Protection Bureau’s efforts to receive comments regarding its payday lending rule were frustrated by an influx of over a million comments, many of which were allegedly created by trade groups to appear as if they came from concerned consumers.⁴

Given the critical importance of CRA to low- and moderate-income communities, the Committee is interested in ensuring any amendments to the CRA are made with full and accurate input from all interested parties. Pursuant to its legislative and oversight authority under House Rule X,116th Congress and U.S. House Committee on Financial Services (“Committee”) Rule 5(F), the Committee is requesting further information on the OCC’s systems and policies for receiving and reviewing comments during its CRA rulemaking process.

¹ Office of the Comptroller of the Currency, Treasury and Federal Deposit Insurance Corporation, *Community Reinvestment Act Regulations*, 85 Fed. Reg.1204 (January 9, 2020) (proposed rule).

² *More Than 80% of All Net Neutrality Comments Were Sent By Bots, Researchers Say: 95 percent of all organic comments favored net neutrality, according to the analysis*, Motherboard (October 3, 2017).

³ *SEC Chairman Cites Fishy Letters in Support of Policy Change*, Bloomberg (November 19, 2019).

⁴ *Payday-lending crackdown draws 1.4 million letters of protest*, Politico (October 18, 2016).

The Committee requests that you provide written responses to the following questions by January 28, 2020.

1. Has the OCC developed or adopted protocols for reviewing comments submitted in connection with a rulemaking? If so, please provide a copy of these protocols.
2. Has the OCC developed or adopted protocols designed to detect and address comments submitted under false identities? If so, please provide a copy of these protocols.
3. How often do agency personnel receive training on the protocols referenced in questions 1 and 2?
4. The OCC relies on the Environmental Protection Agency (EPA) to collect on its behalf any electronic comments submitted via the web. The OCC directs anyone that wishes to submit comments via the web to the Federal eRulemaking Portal at www.regulations.gov. Other agencies have elected to manage their own systems for collecting comments submitted by web. Administering the electronic comment web submission system allows an agency to implement measures that could deter fraudulent commenters, including CAPTCHAs (to frustrate bots) and criminal liability warnings (to discourage commenters from using stolen identities).

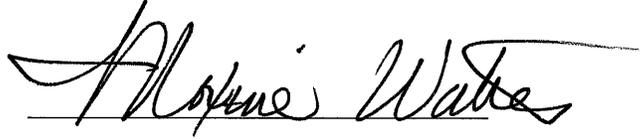
Has the OCC considered allowing the public to submit comments directly to the OCC via an OCC-managed web comment collection system? What factors prevent the OCC from managing its own system for collecting comments submitted via the web?

5. What identifying information does the OCC receive from the EPA about commenters that make submissions via the Federal eRulemaking Portal? What current databases does the OCC use to corroborate this identifying information?
6. In 2018, the OCC issued an advance notice of proposed rulemaking to obtain public input on how to revise the CRA regulations. What measures did the OCC take to screen and detect fraudulent submissions in the comments it received in response to this notice?
7. What steps does the OCC plan to take to detect and prevent the submission of comments made using false identities in response to the proposed rule to amend the CRA regulations?
8. Does the OCC have a policy to refer allegations of identity theft in connection with rulemaking comments to the Federal Bureau of Investigation or other law enforcement agencies?
9. Have the OCC and FDIC established a memo of understanding (or its equivalent) that governs how the agencies will screen and review comments submitted in connection with a joint rulemaking?

Please contact John Heinemann or Avy Mallik of the Committee staff at (202) 225-4247 if you have any questions regarding this request and to arrange for the delivery of the material requested.

Thank you for your prompt attention to this matter.

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Sincerely,

A handwritten signature in black ink, reading "Maxine Waters". The signature is written in a cursive style with a horizontal line underneath it.

MAXINE WATERS

CHAIRWOMAN

cc: The Honorable Patrick McHenry, Ranking Member