

United States Senate

WASHINGTON, DC 20510

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

March 31, 2017

Dear Comptroller Dodaro:

On March 22, 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) jointly issued a guidance titled “Interagency Guidance on Leveraged Lending” (Guidance).¹ I write to seek your determination of whether the Guidance constitutes a “rule” for purposes of the Congressional Review Act (CRA).

With limited exceptions, the CRA defines a “rule” as follows:

*‘[R]ule’ means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing[.]*²

Based upon this broad definition, the Government Accountability Office has rightly pointed out that “agency pronouncements may be rules within the definition of 5 U.S.C. § 551, and the CRA, even if they are not subject to notice and comment rulemaking requirements under section 553.”³

Though the OCC, Board, and FDIC did not pursue notice and comment, the Guidance appears to be generally applicable and prescribes detailed policy. For these reasons, I respectfully request that you evaluate whether or not the Guidance is a “rule” under the CRA. Because the OCC, Board, and FDIC are currently applying it assiduously, with meaningful consequences for supervised firms, please respond determinatively by June 1, 2017.

Sincerely,



Pat Toomey
U.S. Senator

¹ OCC Bulletin 2013-9, available at <https://www.occ.treas.gov/news-issuances/bulletins/2013/bulletin-2013-9a.pdf>

² 5 U.S.C. § 804(3)

³ B-323772, Sept. 4, 2012