

Comment from Senior Fellow Nina A. Mendelson on *Mass, Computer-Generated, and Fraudulent Comments* (draft circulated May 11, 2021).  
May 20, 2021

Thank you for the opportunity to comment on the draft recommendation in advance of the May 24, 2021, committee meeting.

**Lines 21-24:** I'd earlier commented on the language now appearing on lines 21-24 and had suggested language modifications, which appear in the draft. I want to emphasize that the key management challenge for agencies for large volumes of comments is simply that – their volume – and not whether they're organized or near-identical.

**Line 54:** Instead of saying that the value of malattributed and computer-generated comments “may be limited, or at least different” compared with those from individual citizens, it would be more appropriate to say that the value of these comments “is likely to be limited, or at least different”. This aspect of the draft appears, somewhat incongruously, to be more solicitous of these comments – particularly malattributed ones - than genuine comments coming from individuals. We have identified hypothetical scenarios in which computer-generated and malattributed comments could offer value, and in particular, there may well be future uses of AI in this area, but I am unaware of any example to date that has use in a rulemaking.

**Line 159, Lines 167-169:** I appreciate the comments from Liaison Representative Rebecca Orban and Senior Fellow Dick Pierce regarding the eRulemaking program's “Tips” and “Commenter's Checklist.” As the draft Recommendation recognizes, agencies certainly should communicate what makes for a useful comment directly to citizens. However, this recommendation should not cross-reference or endorse the “Commenter's Checklist.” As we discussed in earlier meetings, the draft recommendation does not yet tackle how agencies should handle these comments from ordinary citizens, including the “views” which APA 553 entitles interested persons to submit, and this issue is beyond the scope of the consultants' report.

In addition, agencies function under a range of statutory regimes, under which comments on particular issues may have varying relevance. Meanwhile, the Commenter's Checklist treats public comment content as a one-size fits all issue. Finally, the Commenter's Checklist and Tips could change over time, so we should not "incorporate by reference" or endorse them by reference in this recommendation. For these reasons, the committee should not endorse the Commenter's Checklist and Tips.

**Lines 114 and following:** The draft does not yet contain a definition of computer-generated comments - and I suspect it needs to. In some sense, any e-rulemaking comment is going to have significant computer involvement, because all comments must be submitted online and typically must have been word processed as well. In addition, any comment we might consider computer-generated (as with the 7 million comments in the net neutrality rulemaking from the 19-year old) also will have some human involvement - if nothing else, to write the code that generated the comments. Captchas and reCaptchas are aimed at ensuring that a human submits each \*individual\* comment - maybe that concept also could help supply the core of the definition. Unfortunately, I don't have any particular language to suggest, but hope that others with greater expertise will.