



**CITIZENS
AGAINST
GOVERNMENT
WASTE**

Thomas A. Schatz, *President*

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cagw.org

November 18, 2024

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Change in Bank Control Act/RIN 3064–AG04

Dear Mr. Sheesley,

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in government. On behalf of CAGW’s more than one million members and supporters nationwide, I offer the following comments concerning the Federal Deposit Insurance Corporation’s (FDIC) Regulations Implementing the Change in Bank Control Act (CBCA).

CAGW opposes the notice of proposed rulemaking because it places undue regulatory burdens on investors and asset managers, and possibly violates the Administrative Procedure Act of 1946 (“APA”). Although the FDIC has the ability to review CBCA notices, they are currently reviewed by the Federal Reserve Board (FRB). Adopting the FDIC regulation would require the submission of CBCA notices and passivity agreements to both the FDIC and the FRB, creating a duplicative, inefficient review and approval process.

FDIC Chairman Martin J. Gruenberg noted that the proposal would give “the FDIC the ability to request a notice of change in control or negotiate passivity commitments with a proposed acquirer, *notwithstanding* whether the Federal Reserve Board reviews a notice or accepts passivity commitments pursuant to its legal authority with respect to depository institution holding companies.”¹ This would create competing standards for asset managers and investors to meet the requirements of both agencies. The FDIC also stated its intention to “strengthen its passivity commitments with investors.” There could not be a clearer statement of a federal agency’s declaration that it does not care that another federal agency is performing the same job or how adoption of the regulation would waste the taxpayers’ money.

The inconsistency and duplication that would be created by the FDIC regulation also raises concerns about impeding the flow of capital to banks from investors through index funds, which could impede the stability of American financial markets by. The government should not limit the amount or size of investments in these vital institutions.

Index funds cost less and have lower risks than other funds and are often used for longer-term investments. In 2024, passively managed funds including index funds controlled more assets than actively managed funds. Any confusion or uncertainty that results in a reduction or restriction in access to

¹ FDIC, “Statement by Martin J. Gruenberg Chairman FDIC Notice of Proposed Rulemaking Amending Regulations Implementing the Change in Bank Control Act,” July 30, 2024, <https://www.fdic.gov/news/speeches/2024/statement-martin-j-gruenberg-chairman-fdic-notice-proposed-rulemaking-amending>.

capital and places the security of such investments at risk because of government overreach are unacceptable, especially without proper consideration and examination.

The FDIC has neither offered compelling evidence nor an explanation that the approval and oversight process must be reworked. The FDIC has also not demonstrated that asset managers and investors have violated their agreements. To promulgate such a rule without presenting the necessary information and conducting a comprehensive examination of the issue would be a clear violation of the APA.² There must be further review of the impact on the economy that would occur by new and duplicative restrictions on asset managers.

CAGW agrees with House Committee on Financial Services Vice-Chairman French Hill (R-Ark.) who called for financial regulators to end “all ongoing rulemaking actions and suspend the proposal or promulgation of any regulations,” and to “abandon any action or plan to force through a politicized regulatory agenda.”³ The FDIC should focus on its mission rather than attempting to overregulate a process that is working as intended.

Again, I appreciate the opportunity to offer comments on this issue and the FDIC’s consideration of our response.

Sincerely,

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² Administrative Procedures Act of 1946, Title 5 – Government Organization and Employees, 5 USC Part I, Chapter 5, Subchapter II: Administrative Procedure, <https://uscode.house.gov/view.xhtml?path=/prelim@title5/part1/chapter5/subchapter2&edition=prelim>.

³ Rep. French Hill (R-Ark.), “Release: Rep. Hill calls on financial regulators to stand down on their relentless rulemaking agendas,” November 13, 2024. <https://hill.house.gov/news/documentsingle.aspx?DocumentID=9378>.