From: Daniel Ikenson
Sent: Wednesday, October 23, 2024 9:11 PM
To: Comments
Subject: August 19, 2024 Regulations Implementing the Change in Bank Control Act; Comment Request (RIN 3064-AG04)

Federal Deposit Insurance Corporation

550 17th Street, NW

Washington, DC 20429

Re: Request for Comments on Change in Bank Control Act, RIN 3064-AG04

Dear Members of the Federal Deposit Insurance Corporation:

The latest federal overreach through a new proposed rule by the Federal Deposit Insurance Corporation (FDIC), which will amend existing regulations that implement the Change in Bank Control Act (CBCA), goes against the leadership and guidance of former-President Jimmy Carter, who just turned 100 last week. The change expands FDIC's oversight to include investments in banks by passive index funds by requiring asset managers to obtain authorization from the FDIC for any acquisitions that would result in an accumulated ownership of 10% or more of the value of a regulated bank's stock.

Former President Jimmy Carter received praise from across the political spectrum for his leadership in freeing important parts of the U.S. economy from the asphyxiating tentacles of the regulatory state for his 100th birthday. Writing in the *Wall Street Journal*, former Senator Phil Graham (R-TX) credited Carter's deregulation of the airlines, trucking, railroad, energy, and communications sectors as reforms that made possible the quarter-century economic boom that began in the Reagan years.

We desperately need that kind of leadership today from the FDIC.

Since 2009, federal regulatory excess has reemerged as one of the greatest threats to U.S. economic dynamism. The financial services and banking sectors – both critical infrastructure to virtually every other industry in the economy – are routinely in the crosshairs of regulators who consider Wall Street an adversary to restrain, rather than a vital organ of the economy. What these ideologues never seem to grasp is that the costs of their crusades are always borne heaviest by the folks on Main Street.

The FDIC rationalizes this new rule as necessary to ensure that large asset managers do not exert improper influence over the operations of FDIC-regulated banks. But the maneuver looks less motivated by concern about the banking system and more motivated by gaining leverage over the highly profitable asset-management industry, which is otherwise mostly outside the jurisdiction of the FDIC.

The new rule is redundant because the Federal Reserve Board (FRB) already regulates bank holding companies, including oversight of concerns arising from changing ownership structures. Such investors are already required to obtain approval from the Federal Reserve Board (FRB) – a waiver that exempts them from the need of FDIC approval.

But the FDIC now deems FRB's approval insufficient because of "recent developments in equity markets [that] may be contributing to elevated risk of excessive indirect control or concentration of ownership in FDIC-supervised institutions." Here, the FDIC refers to the rapid growth of investment in index funds and exchange-traded funds (ETFs), which seek to replicate the composition of an underlying index (e.g., the S&P 500) and which could result in asset management firms and other financial services firms – through the multitude of index funds they offer – accumulating controlling shares in banks.

Today, more than half of all U.S. households own mutual funds and more than half of those funds are passively invested. The new obligation of fund managers to notify more than one agency of an imminent accumulation of 10% of shares by completing different kinds of paperwork subject to different standards and different levels of rigor will increase delays and compliance costs. Those costs will be passed onto shareholders – mostly middle-class Americans – in the form of higher transaction costs or wealth management fees, resulting in smaller returns on investment and slower portfolio growth.

Moreover, it will reduce investment in the banking sector, which is a concern that motivated FDIC Vice Chairman Travis Hill to oppose the new reporting requirement. He said: "[T]he willingness of outside capital to invest in banks is critical to our capital framework and financial stability. We should always be mindful of the consequences of actions that could

discourage capital from coming into the banking industry, and I generally believe that ensuring the appropriate level of passivity, rather than restricting investment, should be the goal of any endeavors in this area."

Hill's concerns could have been corroborated or even quantified. Regrettably, despite executive orders requiring most federal agencies to conduct analyses of the likely costs and benefits of proposed rules, the FDIC undertook no rigorous analysis. Instead, it merely estimated the added costs of private-sector compliance with the new rules by considering only the paperwork involved: $227,517! When will regulators fulfill their obligations to give an honest accounting of the consequences of their rules?

Federal agency rulemaking – the process through which unelected, unaccountable, often politically-motivated bureaucrats write and implement regulations (or "administrative laws") without the consent of the governed – has become an enormous burden on the U.S. economy. The estimated costs of regulation in 2022 amounted to $3.1 trillion (about 12% of U.S. GDP). The number of final rules published in the Federal Register – rules with which compliance requires private sector firms to divert and devote precious resources – skyrocketed from about 19,000 in 1996 to over 118,000 in 2022. The Code of Federal Regulations today exceeds 100 million words and continues to grow.

It is not only the compliance costs that are concerning, but the secondary, collateral costs of reckless rulemaking. In some cases, thoughtful regulation of business activity may be necessary. But, by and large, regulations invite unintended consequences. Though intended to discipline the activities of firms in the mortgage supply chain, the Consumer Financial Protection Bureau's zealous implementation of the Dodd-Frank Act, which includes increased fees for mortgage origination, for example, has the perverse effect of reducing the availability of small mortgages or mortgages available to consumers with lower credit scores. And that has contributed to the shortage of starter homes in the United States.

We don't need this type of leadership. Jimmy Carter's often-overlooked legacy may be worth examining for lessons that could help policymakers reverse the modern resurgence of federal regulatory overreach.

Sincerely,

Daniel Ikenson

An international trade policy scholar and consultant, I am the founder of Ikenomics Consulting (www.ikenomics.com); former director of trade, investment, and innovation at the Asia Society Policy Institute in Washington, DC; former director of policy research at ndp | analytics; and

> former director of the Cato Institute's Center for Trade Policy Studies, where I researched, wrote, and spoke about all manner of trade policy from October 2000 until March 2021

Daniel J. Ikenson
Founder and President
Ikenomics Consulting
www.ikenomics.com