October 24, 2024

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

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

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, thank you for the opportunity to respond to the request for comments on the proposed rule for notices filed under the Change in Bank Control Act (CBCA).

The CBCA requires that no one may gain control of 25 percent or more of the voting securities of an insured depository institution without prior notice of the transaction and approval from the appropriate federal banking agency. With some exceptions, current regulations additionally require notice if the acquiring entity will control 10 percent or more of any class of voting securities.

Currently, passive funds may own more than 10 percent of a bank as long as they certify that they are not seeking to control the bank's management and operations. There have been calls to end self-certification by passive investors and for the FDIC to take a more active role in monitoring passive investment.

The proposed rule for notices filed under the CBCA would create a presumption of control for acquisitions of 10 percent or more of voting securities. The FDIC could either require prior written notice to the FDIC for the indirect acquisition of control of an FDIC-supervised institution, or it could allow the acquiring person an opportunity to rebut the presumption of control in writing.

The FDIC has requested comments regarding several questions concerning this rule and, more generally, on the impact of passive investment in federally insured financial institutions.

The most important questions that the FDIC should consider are whether there is any evidence of harm resulting from passive investment in financial institutions and whether existing regulation of bank holding companies by the Federal Reserve is inadequate. In the absence of such evidence, there is no reason for rules like this to be proposed, let alone implemented.

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Americans have benefited from the opportunity to invest our savings in index funds and similar low-fee passive investment vehicles, as opposed to actively managed investment funds. The market share of exchange-traded funds and passive mutual funds now exceeds the market share of actively managed funds.

Increased federal regulation of passive investments could come at the expense of the millions of Americans who are counting on such investments for a broad range of activities including funding their retirements and paying for college expenses. It could also make it harder for U.S. businesses to attract much-needed investment dollars.

Proposed new rules governing passive investment in financial institutions that are already subject to regulation by the Federal Reserve would create uncertainty for banks and investors. In addition to the regulatory costs directly associated with this rule, it would open the door to further ill-defined and politically-motivated roadblocks to investment, including calls to consider whether future investments are determined to be “unsavory” or “unsustainable.”

The millions of Americans who have their savings invested through index funds should not be subjected to the higher costs of new regulations affecting how their dollars are invested. The FDIC should instead focus on areas such as monitoring the solvency of financial institutions. NTU urges the FDIC to reject new rules that are based on speculative fears.