

SHRINKING GOVERNMENT BUREAUCRACY

**Reorganizing the Executive Branch to Boost
Economic Growth and Freedom**



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Proposals for Reorganizing the Executive Branch
to Boost Economic Growth and Freedom

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Executive Summary

Shrinking Government Bureaucracy is a series of policy proposals by Competitive Enterprise Institute (CEI) experts to rein in America's regulatory state, save tax dollars, boost economic growth, and lighten the burden on job creators across the nation. Some of these reforms can be achieved via executive action, while others will require Congress to take back authority from cabinet departments and agencies. For too long, Congress has allowed federal agencies and regulators to gather too much power, resulting in a bloated, unaccountable bureaucracy that imposes costs and hinders innovation throughout the U.S. economy.

In this series of policy proposals, CEI experts lay out free market solutions to immediately streamline government operations, roll back burdensome regulations, and properly align the structure of federal agencies with their core missions. These recommendations were also submitted to the White House Office of Management and Budget in response to its efforts under President Trump's Executive Order 13781, "Comprehensive Plan for Reorganizing the Executive Branch."

Regarding this effort, CEI President Kent Lassman says: "We need to ponder what the executive branch we deserve looks like and how it aligns with our Constitution and statutory limitations. The concrete suggestions found in *Shrinking Government Bureaucracy* provide a good start toward answering that question."

CEI experts recommend the following steps for rethinking and reorganizing the executive branch.

Environmental Protection Agency. The U.S. Environmental Protection Agency (EPA) needs to be made more transparent and efficient, a goal that can be achieved while continuing to protect the nation's

environment. Congress and the administration should require the agency to produce a transparent, intelligible budget. Many of the EPA's regional offices and grant programs are redundant and should be abolished. Other reform priorities include improving data quality standards for new research and transferring emergency response duties to the Federal Emergency Management Agency.

Department of Commerce. Private sector companies already fulfill the majority of the Commerce Department's mission, such as conducting market research and seeking trade opportunities. Congress and the administration need to reevaluate the need for the Commerce Department, which could mean moving government activities to better qualified agencies. Priorities include privatizing the National Weather Service, transferring Marine Sanctuaries to state management, and transferring supervision of the Patent and Trademark Office to the Office of Management and Budget.

Federal Deposit Insurance Corporation. Federal Deposit Insurance Corporation (FDIC) policies unfairly make all taxpayers liable for decisions made by banks and their customers. This gives financial institutions an incentive to disregard risky behavior and provides a false sense of security to consumers. Congress and the administration should reevaluate how the mission of the FDIC addresses the needs of 21st century consumers, and lessen the risk to taxpayers. The FDIC's coverage limit should be pared back to \$100,000, with the goal of eliminating government deposit insurance entirely.

Consumer Financial Protection Bureau. The Consumer Financial Protection Bureau (CFPB) imposes unnecessary regulatory costs and burdens on

the financial system, small lenders, and American consumers, particularly the poor and vulnerable. Further, the CFPB's authority is unconstitutional, with little to no oversight from the president or Congress. The White House should work with Congress to make the Bureau's head directly accountable to the president, remove its supervisory role over banks and credit unions, and return authority over policing deceptive business practices to the Federal Trade Commission.

Securities and Exchange Commission. The Securities and Exchange Commission (SEC) imposes needless restrictions on investors and entrepreneurs that hinders small businesses' efforts to raise the capital they need. This results in fewer opportunities for businesses to grow and create jobs and fewer opportunities for American households to invest and build financial security. Congress and the administration should work together to roll back powers granted by the Sarbanes-Oxley and Dodd-Frank Acts, eliminate barriers to investment-based crowdfunding, and transfer anti-fraud authority to the Federal Trade Commission.

National Labor Relations Board. The National Labor Relations Board (NLRB) is supposed to represent the

public interest in resolving labor disputes, but it has strayed from its mission, becoming highly politicized. Board policy now changes at the whim of the political party that holds the presidency, causing uncertainty over important rules for businesses and workers. Congress and the administration should work together to eliminate the NLRB, transfer its rulemaking authority to the Department of Labor, and move its adjudicatory authority to federal district courts.

Federal Communications Commission. The Federal Communications Commission's (FCC) regulatory control over media ownership, broadcast rules, the Internet, and the airwaves is stuck in the past. Congress and the administration should work together to liberalize America's media and communications markets to encourage the development of better technology at lower prices. Priorities should include limiting the FCC's authority over broadband network management, moving to property rights-based spectrum allocation, and folding a smaller FCC into the Department of Commerce. Imposing clear limits on the FCC's role—or even abolishing large chunks of the agency's authority—is necessary if the Internet is to remain open and free.

Introduction

By Kent Lassman, President and CEO

If there were ever a book federal agency managers should read, it is Peter Drucker's *Managing in Turbulent Times*.¹ With his signature clarity, Drucker tackles how to adapt to widespread social changes and make sound management decisions.

It was published in 1980, when new currencies, new institutions, and major demographic changes were driving a revolution in our political culture.

One could be forgiven for hearing an echo today. Consider the collision of emergent cryptocurrencies with persistent society-wide cybersecurity vulnerabilities. Think of the revolutionary changes in the past two decades in communications, transportation, electronic payments, and medicine. We are witnessing a social redefinition of the meaning of work.

All of this dramatic change is taking place in spite of the largest, most sclerotic, regulatory burden ever created in the history of governments. Today, the federal government regulates and manages its way toward more than a \$1.9 trillion economic burden on the American economy.²

Drucker demands that the responsive, adaptive manager ask the following:

“If we weren't in this already, would we go into it knowing what we now know?” And if the answer is “No,” one does not say: “Let's make another study.” One says: “How can

we get out; or at least, how can we stop putting additional resources in?”

That is good advice for policy makers. So it is a welcome development that the Office of Management and Budget, pursuant to an early 2017 executive order,³ has asked for public comment on how to restructure the executive branch and various regulatory agencies.⁴

The federal government's multitudes of offices, boards, commissions, and agencies are not at all organized and surely not suited to the task of responsible government. A description of executive branch growth from a similar government exercise in 1937 remains relevant:

The Executive Branch of the Government of the United States has thus grown up without a plan or design like barns, shacks, silos, tool sheds, and garages of an old farm. To look at it now, no one would ever recognize the structure which the founding fathers erected a century and a half ago to be the Government of the United States.⁵

Neither clarity nor efficiency in government has improved in the past eight decades. In fact, one could say today's executive branch looks less like

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a barn and more like the metaphorical manure piled inside. It is long past time for us to claim a shovel and start digging.

To aid that effort, CEI scholars are contributing to the discussion in our areas of expertise. In this series of brief policy proposals, we put forth reform ideas for specific regulatory agencies.

In the following policy proposals, CEI experts argue for significant changes to the Depression-era Federal Deposit Insurance Corporation and to drastically shrink the remit of the 21st century Consumer Financial Protection Bureau. From recommendations on how to properly scope the Environmental Protection Agency and Federal Communications Commission to bringing a sense of order to the sprawling Department of Commerce, to rethinking the functions of the Securities and Exchange Commission and National Labor Relations Board, we propose concrete and readily implementable ideas. There will be much more work left to do, but it is a good start.

Organizational change is hard. It requires adjusting the expectations and behaviors of an entire ecosystem of people—from employees to customers to vendors.

Perhaps the hardest change of all is in government organizations. But it is not impossible.

The political scientist Charles Lindblom developed an analytical framework for “muddling through,” in which practitioners make successive, limited comparisons among alternatives and then move forward with a “good enough” alternative.⁶

With respect to regulatory agencies, we have reached the point at which nearly any effort to streamline is an improvement. All that is required, as Drucker would put it, is to stop putting additional resources into agencies we would not choose to create if they were not there already. Given the scope of economic regulation in American life, even incremental improvements to the structure of government offer outsized benefits for liberty and growth.

Often, the essential question is not how we would run the government better. Rather, we need to ponder what the executive branch we deserve looks like and how it aligns with our Constitution and statutory limitations. These concrete suggestions provide a good start toward answering that question.

Environmental Protection Agency

Free Market Reforms to Increase Transparency and Efficiency and Better Protect our Environment

By Myron Ebell

The U.S. Environmental Protection Agency's (EPA) budget is the most impenetrable of all federal department and agency budgets. It is long past time to make the EPA budget at least as transparent and comprehensible as the budgets of other federal domestic agencies. The Office of Management and Budget's (OMB) FY 2018 budget request for the agency⁷ is a significant improvement in terms of transparency over previous budget requests, but there is still a long way to go.⁸

The OMB should work with the EPA to produce an intelligible budget. For years, the EPA has warded off congressional oversight of agency policy making by submitting a budget that fails to identify:

- 1) Who at the EPA is spending the appropriation;
- 2) How they are spending it; and
- 3) Pursuant to what statutory authority they are spending it.

The result is that Congress has no idea how the EPA spends taxpayer money. In particular, lawmakers cannot discern how much the agency spends on nondiscretionary duties, which are

assigned by Congress, versus how much it spends on discretionary activities of its own choosing. In submitting its annual budget justification, the EPA should use the same rational format employed by other agencies, which clearly identifies the spender, how much they spend, and the legal basis for the spending. Only when Congress can follow the money can it exercise its power of the purse to effectively oversee agency policy making.

In addition, many of the EPA's functions could be abolished, pared back, or transferred to other agencies without any negative effects on the nation's environmental quality.

Abolish the Office of Enforcement and Compliance Assurance and return its functions to the program offices. The EPA's enforcement and compliance assurance functions can be better handled by officials with the relevant expertise within each program. Returning enforcement and compliance assurance to the program offices will avoid inter-departmental communications problems and delays. For example, compliance and enforcement of the Clean Air Act would be returned to the Office of Air and Radiation.

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Abolish the EPA's 10 regional offices and transfer their emergency response capabilities into the Federal Emergency Management Agency. The EPA's 10 regional offices duplicate much of the work of the agency's headquarters and of state environmental protection agencies. The core essential function of emergency response to environmental threats and disasters can be consolidated with similar capabilities at the Federal Emergency Management Agency.

Eliminate the Integrated Risk Information System program and fold its functions into the Toxic Substances Control Act program. The Integrated Risk Information System (IRIS) program has long proven controversial because of its failure to follow sound scientific principles, garnering wide criticism, including from the National Academy of Sciences. In 2016, Congress passed a reform to the Toxic Substances Control Act that includes widely accepted scientific standards for chemical evaluations that would improve EPA risk assessments.⁹ Moving IRIS functions to the Toxic Substances Control Act program would apply those standards and improve the chemical risk assessments now performed under IRIS.

Eliminate all Healthy Communities and Smart Growth Programs and related grant programs. Deciding what is smart growth or what is a healthy community and how to pursue them are a state and local matter. The federal

government should not be involved in these decisions.

Eliminate the Environmental Justice programs and related grant programs. It is unclear how "environmental justice" fits into the EPA's mission to implement public health and safety laws. In addition, funding should not be used to fund activist movements of any kind. Grants funding local activist groups and local programs should remain local and privately funded.

Eliminate the Environmental Education programs and related grant programs. The EPA should stick to its role in implementing regulatory statutes designed to manage pollution, rather than spending taxpayer dollars on such things as a coloring book that teaches second-graders that there are "transportation alternatives to using a car" or that urge kids to go home and "talk to their parents about purchasing products for the home that are both effective and safe for the environment."¹⁰ These programs are more akin to indoctrination than promoting critical thinking and education; there should be no place for them in the federal government.

Reform EPA science programs. When the EPA was first formed in 1970, scientific knowledge about the environment and the environmental impacts of human activities was in its infancy. Though much has been learned over the past 47 years, EPA science

research and regulations have not profited from it. In fact, EPA science has been transformed over the decades into an exercise of adjusting the science to fit predetermined policy decisions. The following reforms will improve the use of science in the regulatory process:

- Apply Information Quality Act guidelines to all information used or disseminated by the EPA, as required by law.
- Bar the EPA from relying on scientific studies for which the underlying raw data are not public and available for independent scrutiny.
- Review and reissue all risk assessment guidance documents with an eye toward updating them with current scientific understanding. Compel EPA staff to operate under them, and make them enforceable.
- Identify and review all major science policy (default assumption) decisions in risk assessment and update or eliminate them based on current knowledge.
- Review and update the application of uncertainty factors in non-cancer risk assessment.
- Develop and implement conflict of interest standards for participation on science advisory boards. People whose programs have received grants or have applied for grants from the EPA should be barred from serving on advisory boards.
- Eliminate the consensus process from science advisory boards to allow for minority opinions.
- Bar the EPA from hiring the National Academy of Sciences/ National Research Council for scientific reviews unless directed by Congress.

Department of Commerce

Free Market Reforms to Reevaluate Commerce's Mission and Stop Government Favoritism

By Iain Murray

The Department of Commerce's mission statement is a charter for government interference in markets.

The Department of Commerce's mission statement is a charter for government interference in markets. It employs 47,000 people directly¹¹ and spends about \$8 billion annually¹² on its mission to promote "job creation and economic growth by ensuring fair and secure trade, providing the data necessary to support commerce, and fostering innovation by setting standards and conducting foundational research and development."¹³

In practice, this means the Department exists to reward businesses for following its favored policies. It provides bailouts, handouts, and the spoils of redistribution. In effect, the Department of Commerce is a boon to rent-seeking businesses. That alone should be reason for its elimination. Even taking the Department at its word, all of its tasks, as laid out in its mission statement, are things that happen on their own in the general functioning of markets. In addition, the Department's activities that may yield some public benefit can be parceled out to other agencies as per the following recommendations.

Break up the National Oceanic and Atmospheric Administration. The single biggest Department of Commerce agency outside of census years is the

National Oceanic and Atmospheric Administration (NOAA), which houses the National Weather Service (NWS). NOAA soaks up \$5 billion of the Department's \$8 billion annual budget.¹⁴

NOAA is actually a strange hybrid of National Aeronautics and Space Administration (NASA) and the Environmental Protection Agency (EPA). Like the EPA, NOAA was created as part of President Nixon's department reorganization in 1970. Nixon said it was needed "for better protection of life and property from natural hazards ... for a better understanding of the total environment ... [and] for exploration and development leading to the intelligent use of our marine resources."¹⁵

NOAA today boasts that it is a provider of environmental information services, a provider of environmental stewardship services, and a leader in applied scientific research. Each of these functions could be provided privately, likely at lower cost and higher quality.

NOAA today consists of six main offices:

1. National Weather Service;
2. National Ocean Service;
3. Office of Oceanic Atmospheric Research;

4. National Environmental Satellite Service;
5. National Marine Fisheries Service; and
6. Office of Marine and Aviation Operations.

Together, these form a colossal operation that has become one of the main drivers of the climate change alarm industry and as such has become harmful to future U.S. prosperity. Its mission's emphasis on prediction and management ("to understand and predict changes in climate, weather, oceans, and coasts, to share that knowledge and information with others, and to conserve and manage coastal and marine ecosystems and resources") seems designed around the fatal conceit of trying to plan the unpredictable.¹⁶ That is not to say NOAA is useless, but its current organization corrupts the useful functions. It needs to be broken up.

Make the National Weather Service (NWS) an independent agency with a view to privatization. The National Weather Service should be spun off from the Department of Commerce with a view to eventual privatization. Every day, we rely on weather forecasts and warnings provided by local radio stations and colleges that are sourced not from the NWS, but from private companies such as AccuWeather. Repeated studies have found that the forecasts and warnings provided by the private companies are more reliable than those provided by the NWS.

In fact, those private weather services are the result of gradual privatization of the government's weather functions. In the past, the NWS provided radio bulletins and even wrote weather forecasts for local newspapers.¹⁷ It is not necessary for the NWS to do that today, especially as privatization has improved the quality of weather forecasts.

The most frequent argument we hear against privatization is that the NWS provides the data the private companies use, as if privatization would entail dismantling data-gathering services. Privatizing the NWS would not mean the end of data gathering. The goal of privatization is to improve services, not abolish them, by making them more responsive to change and innovation, while removing the burden for their upkeep from taxpayers and placing it on customers. In a sense, the NWS is currently a taxpayer subsidy to AccuWeather, The Weather Channel, and others.

The NWS should be moved to a "trading fund" status, in the model of the United Kingdom's privatization. The NWS has a valuable product for which it should charge to cover its costs. With a budget of \$1 billion and an output of 1,500,000 forecasts and warnings annually, the service would only have to raise about \$600 per forecast to cover its costs.¹⁸ With multiple competing radio, TV and print outlets demanding its products, as well as companies like Amazon that rely on just-in-time delivery, the charge for a

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forecast would probably be small change for these operations, and no cost to the casual consumer. Taxpayers would save \$1 billion a year.

Once the NWS achieves trading fund status, it should move toward full privatization. The service could be privatized as a single enterprise or broken up and sold to existing companies, startups, or shareholders through an IPO. All these arrangements have proved successful in multiple privatizations around the world. The exact form of privatization would be decided as a result of the move to trading fund status, which would help identify the operation's profit and cost centers.

Privatizations generally lead to significant increases in investment and infrastructure spending, so the product we all rely on would be improved.

There will be few, if any national security implications. The armed services all have their own weather functions. Any security issues that arise can be addressed during the move to trading fund status. For example, there are some antiquated rules that prevent private operation of weather radar that can be revised with appropriate consideration for defense and air traffic control concerns.

Turn specialized centers like the National Hurricane Center and the National Environmental Satellite Service into charitable trusts. For organizations like the National Hurricane

Center that perform highly specialized and valuable research, we suggest an alternative form of privatization that was used in the privatization of scientific organizations in the UK. One such agency, the Building Research Establishment (BRE), was privatized as a charitable trust, rather than as a for-profit body, and has become one of the world's leading research led consultancies providing expert advice on better buildings and related products and services.¹⁹ Certain industries, such as insurers, would have an interest in the success of such a body and would likely become major funders.

NOAA's other main weather-related function is the National Environmental Satellite Service, which operates several satellites and collects data from military and civilian services, both domestic and international. These civilian-operated satellites could easily be managed by private entities (many TV services around the world operate from satellites managed by private entities) and could be privatized as a company either owned by all the new weather companies combined or as a charitable trust.

The various data centers provide an academic function and are used by academics internationally. They would be more appropriately funded and run by academic bodies, and therefore should be transferred to universities. The prestige of housing such bodies should be attractive enough to universities to be able to secure funding to run them.

Transfer the National Ocean Service to the United States Coast Guard and the U.S. Geological Survey. The National Ocean Service is largely a survey organization. Its various survey functions could be transferred to the U.S. Coast Guard and U.S. Geological Survey.

Privatize National Marine Sanctuaries or transfer them to their respective states. The National Marine Sanctuaries and other oceanic resources should be transferred to the states or privatized by sale, as they could earn significant income through recreation activities.

The National Marine Fisheries Service should organize the privatization of the nation's fisheries and bow out gracefully. As experience around the world shows, fisheries are managed best not by bureaucrats but by the fishermen who have a direct ownership stake in their long-term health. Where fisheries have been genuinely privatized, such as in New Zealand, with the fishermen's property rights guaranteed, fish stocks have rebounded along with fishermen's profits.²⁰

Privatize the Office of Oceanic and Atmospheric Research. The Office of Oceanic and Atmospheric Research provides the theoretical science, as opposed to the applied science of the National Hurricane Center. It consists mainly of seven research laboratories, six undersea research centers, and several joint research institutes within universities. Where appropriate, these should be

merged with their applied science counterparts and privatized as charitable trusts.

An example of a successful laboratory privatization is the Laboratory of the Government Chemist (LGC) in the UK. Before privatization, LGC had a topline revenue of £15 million (\$19.4 million) and a staff of 270.²¹ Today, it has revenue of £222 million (\$287 million) and a staff of 2,000.²² It has successfully acquired several European laboratories and is a world leader in analytical chemistry. The environmental business is here to stay, thanks to consumer demand. There is no reason why environmental laboratories cannot be privatized.

Break up the Office of Marine and Aviation Operations and reassign its assets to other NOAA agencies during this process. The Office of Marine and Aviation Operations, which provides the ships and planes used by NOAA agencies, should be broken up and its assets reassigned to the various agencies.

Residual NOAA functions left over after this process can be transferred to the EPA or NASA if they are still felt appropriate and Congress is unwilling to terminate them.

Merge the Census Bureau with other statistics agencies such as the Bureau of Justice Statistics and the Bureau of Labor Statistics to create a National Statistical Agency and privatize as many of these agencies' functions as possible. The Census Bureau has a genuine

As experience around the world shows, fisheries are managed best not by bureaucrats but by the fishermen who have a direct ownership stake in their long-term health.

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constitutional role, but its current functions far exceed its constitutional requirements. The Bureau should concentrate on its mission of keeping track of the headcount for congressional apportionment and abandon asking more and more intrusive questions, which are normally used to redistribute wealth along demographic lines or provide market research to businesses free of charge.

The Census Bureau should be merged with the various federal statistical agencies, such as the Bureau of Economic Analysis, the Bureau of Justice Statistics, and the Bureau of Labor Statistics. Many of these provide important indicators such as the murder rate, unemployment levels, or inflation indices. Given that much of this data could be compiled and provided privately, privatization of these functions should be seriously considered.

Make the Patent and Trademark Office a performance-based organization under the Office of Management and Budget. The Patent and Trademark Office also has a valid constitutional function. In 2000, it became a performance-based organization. This categorization was introduced to improve the delivery of government services while providing good value to the taxpayer. The Office of Personnel Management recommends separating service operations from their policy components by placing them in separate performance-based organizations. These report to the agency or department head with whom they negotiate to set out the “goals, measures, relationships,

flexibilities, and limitations for the organization.” In the absence of a Department of Commerce, it would need to be housed somewhere. All PBOs might be transferred to the Executive Office of the President, preferably as part of the Office of Management and Budget, which would negotiate and monitor the performance of these organizations.

Privatize the laboratories of the National Institute of Standards and Technology. The National Institute of Standards and Technology (NIST), which has a \$1 billion budget, consists mostly of research laboratories, which can be privatized along the lines described above.²³ Where necessary, the privatized laboratories can retain statutory roles, which is common in privatized laboratories around the world. Notably, most countries’ representatives to the International System of Units, the metric system’s global governing body, are academics or even private individuals. These days, the American delegates are among the few bureaucrats.²⁴

Abolish the International Trade Administration and transfer its remaining duties to the U.S. Trade Representative. Abolishing the International Trade Administration (ITA) would save taxpayers \$483 million a year. For the most part, the ITA organizes trade mission junkets, which benefit specific businesses and industries, and enforces antidumping regulations, which are a form of protectionism. Congress should abolish both of these functions.

The ITA's remaining functions, such as those related to enforcing international trade treaties, should be transferred to the office of the U.S. Trade Representative.

Abolish the Economic Development Administration and Minority Business Development Administration.

Abolishing the Economic Development Administration (EDA) and the Minority Business Development Administration (MBDA) would save \$300 million. The EDA regularly wastes taxpayer money on hopeless projects. For example, the Cedar Rapids, Iowa, convention center, which the EDA is backing to the tune of \$35 million, is projected to lose \$1.3 million annually, according to the city's own estimate. In another case, the EDA gave a \$2 million grant to a company that opened a new warehouse in Visalia, California, with the goal of creating 250 jobs. The firm took the grant and closed its existing warehouse in Brisbane, California, shedding 313 jobs in the process.²⁵ The MBDA pursues similar projects.

Transfer the Bureau of Industry and Security to the U.S. Trade Representative's office. The Bureau of Industry and Security is charged with several national security functions, such as enforcing export controls to prevent the spread of weapons of mass destruction. Such functions would be better off housed at the office of the U.S. Trade Representative, the Department of Homeland Security, or the Department of Defense.

Break up the National Telecommunications and Information Administration and transfer its management of assets to the General Services Administration and its auctioning of spectrum to the Federal Communications Commission.

The National Telecommunications and Information Administration manages the federal use of the electromagnetic spectrum. Those functions should be transferred to the General Services Administration, while the auctioning of spectrum should go to the Federal Communications Commission. Others, like the grants for promoting children's educational television, should be abolished.

Federal Deposit Insurance Corporation

Free Market Reforms to Improve Financial Safeguards and Reduce Taxpayer Risk

By Iain Murray

Federal deposit insurance introduced a systemic problem of moral hazard—the incentive to engage in more risky behavior that results when adverse consequences are lessened by a third-party guarantee.

The Franklin D. Roosevelt administration and Congress created the Federal Deposit Insurance Corporation (FDIC) during the Great Depression as a response to runs on banks that left many depositors without access to their money (as part of the 1933 Banking Act, better known as the Glass-Steagall Act). However, in return for confidence in the banking system, federal deposit insurance introduced a systemic problem of moral hazard—the incentive to engage in more risky behavior that results when adverse consequences are lessened by a third-party guarantee.

Banks are more likely to make risky investments knowing their customers' deposits are guaranteed. Customers, meanwhile, are less likely to pay attention to banks' business practices. If all banks are perceived as being equally safe, customers will choose based on other considerations beside sound investment practice, resulting in a loss of competitive market discipline in the banking system.

Ideally, the moral hazard of deposit insurance should be eliminated from the banking system by abolishing the FDIC, which would require legislation by Congress. If that were to prove not

politically possible, the impact of moral hazard could be significantly lessened by reducing the FDIC's coverage limit. The coverage limit was raised to its current level of \$250,000 from the pre-financial crisis level of \$100,000, first as an emergency measure during the crisis,²⁶ then made permanent in the Dodd-Frank Act.²⁷ Congress should reduce the level back to \$100,000 and enable the administration to then reduce it gradually to \$50,000.

The median savings balance for an American household is \$5,200, and the average is \$33,766 (a number skewed upwards by a small number of very high account balances).²⁸ Therefore, reducing the coverage level to \$100,000 and then \$50,000 would still guarantee savings for most Americans, and would end an implicit subsidy or bailout for richer Americans, who have other options for storing their wealth.

Lowering coverage levels would also reduce the FDIC's incentive to over-supervise banks. With fewer public funds at risk, the FDIC's need for prudential supervision would be lessened. It also would lessen the incentive to engage in abusive practices like Operation Choke

Point, an FDIC-led campaign to deny access to the financial system to legal but controversial businesses, like firearms dealers.²⁹

The FDIC's role in bank resolution should also be reduced, at least to the

levels present before the financial crisis.

Finally, the Consumer Financial Protection Bureau (CFPB) should no longer have a seat on the FDIC's board or any role in bank supervision.

Consumer Financial Protection Bureau

Free Market Reforms to Improve Financial Choices and Opportunities for all Americans

By Iain Murray

The current CFPB imposes significant costs on the financial system and on American consumers through overregulation.

The Consumer Financial Protection Bureau (CFPB) should be abolished. In its current form, it undermines the constitutional principle of checks and balances. If Congress wishes to establish an agency to oversee consumer financial issues, it should start again from scratch, acting in a manner that respects fundamental constitutional principles.

In addition, the current CFPB imposes significant costs on the financial system and on American consumers through overregulation. This leads to higher costs for financial services, loss of access to those services for lower income consumers, and a lack of innovation.

As the District of Columbia Circuit Court of Appeals found in *PHH Corp. v CFPB*, Congress gave the agency's director too much power when it created the CFPB as part of the 2010 Dodd-Frank Act, with little attendant accountability (the case is currently being reheard).³⁰ The CFPB director is not answerable to the president, and Congress holds no power over the Bureau, which is isolated from the appropriations process and instead gets its funding from the Federal Reserve.

If abolishing the CFPB were not to prove politically possible, at the very least the

agency should undergo significant structural reform. Its director should be made accountable to the president, as the D.C. Circuit Court urged in its original judgment.

Just as importantly, in order to make the CFPB director accountable to Congress for the agency's use of taxpayer money, the Bureau should be subject to Congress' power of the purse by having its funding come through the normal appropriations process.

To counter the problem of overregulation, Congress should pursue the following reforms:

- Force the CFPB to appreciate the effects of its regulations on financial institutions, by placing it under the supervision of a board consisting of officials from other federal financial regulatory agencies, including the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve.
- Abolish the Bureau's supervisory role and make it purely a regulatory agency. The CFPB currently has supervisory authority over banks,

thrifts, and credit unions with assets over \$10 billion, as well as over non-bank financial institutions such as mortgage lenders and servicers, payday lenders, and private student lenders. Supervisory authority should be returned to the prudential regulators.

- Revise the Bureau’s overly broad power over “unfair, deceptive or abusive acts or practices,” which to date has only been defined through enforcement. This has led to a significant chilling of financial innovation.³¹ Ideally, that power should be returned to the Federal Trade Commission (FTC) and placed under the FTC’s Unfair and Deceptive Acts and Practices responsibility. At the very least, the Bureau should be required to define its power through a rulemaking.

Congress or a new, accountable CFPB director should drastically reform the Bureau’s handling of data. The CFPB’s public consumer complaints database collates thousands of complaints leveled against financial institutions but is riddled with errors. According to a

former CFPB official, more than a quarter of the complaints registered “didn’t pan out” or were simply incorrect. For instance, a single complaint was counted as 35 different ones and another complaint was registered against a bank when it was actually against a payday lender.³² The CFPB should make its complaints database more reflective of reality or shut it down.

In addition, the Bureau has undertaken an intrusive data collection exercise involving over 500 million credit card accounts, from which account holders cannot opt out. The Bureau should end or reform this program and be more transparent about how it collects and handles Americans’ sensitive financial data. If it is unwilling to do this, Congress should shut down the program.

Finally, the CFPB should shut down its independent research program and restrain its research to analysis of independent academic examination of the issues it addresses. The Bureau’s research—such as, for example on payday loans—is often out of step with academic research on the same topics but is nevertheless used as justification for rulemakings.³³

Securities and Exchange Commission

Free Market Reforms to Increase Financial Opportunities for Investors and Entrepreneurs

By John Berlau

The nation's securities laws and the very existence of the Securities and Exchange Commission are premised on the situation American investors faced in the 1930s. Those conditions do not hold today.

The nation's securities laws and the very existence of the Securities and Exchange Commission (SEC) are premised on the situation American investors faced in the 1930s. Those conditions do not hold today.

When President Franklin D. Roosevelt signed the Securities Act of 1933 and the Securities Exchange Act of 1934, many Americans did not have electricity or a telephone.³⁴ Investors were limited to mail or physical travel to study the particulars of a given firm. Now, many Americans pay their electricity bills on their phones—from which they also can access information from all over the world on industries and firms.

Originally, under the 1933 Securities Act, securities transactions were regulated by the Federal Trade Commission (FTC) and applicable state agencies, the same as other business transactions. However, the 1934 Securities and Exchange Act created the SEC, which meant investors and entrepreneurs had to comply with a host of prescriptive mandates before offering shares of their businesses—which federal regulators considers “securities”—to investors.³⁵ Over the decades, laws such as Sarbanes-Oxley and Dodd-Frank have further piled on to

these mandates. It is long past time to peel away the regulatory onion.

Therefore, Congress and the Trump administration should abolish the Securities and Exchange Commission. In the process, they should transfer its duties to police and punish fraud to the Federal Trade Commission. At the same time, they should make participation in the stock exchanges and their rulemaking body, the Financial Industry Regulatory Authority, voluntary for entrepreneurs and investors.

Abolishing the SEC and transferring federal jurisdiction over securities to the FTC would mean that stock exchanges—including the New York Stock Exchange (NYSE) and NASDAQ—would no longer have quasi-governmental powers as “self-regulatory organizations” through their jointly controlled Financial Industry Regulatory Authority, which answers to the SEC.

Instead, they would go back to being purely optional for listing securities, as they were for nearly 150 years before the creation of the SEC. Entrepreneurs selling parts of their businesses could choose any venue they considered best to do this—whether NYSE or eBay. In

this free securities market, entrepreneurs and investors would gravitate to venues with rules that best suited them for the execution of securities transactions, just as they do today for every other kind of transaction.

Since the advent of Sarbanes-Oxley and Dodd-Frank, policy makers of both parties have come to recognize the burden these hastily passed laws have imposed on investment and capital formation and looked for ways to reduce it.

When President Obama signed the Jumpstart Our Business Startups (JOBS) Act in 2012, which offered modest deregulation of investment-based crowdfunding, he remarked that “laws that are nearly eight decades old make it impossible for [ordinary Americans] to invest” in small startups, and “a lot has changed in 80 years.”³⁶ He was right. A lot has changed since the first federal laws were enacted to regulate the securities markets, and the government needs to follow suit.

Every day on the Internet, not just products, but businesses, are bought and sold. Yet, amazingly, investors and entrepreneurs can face volumes more paperwork for a \$500 transaction that falls within the SEC’s jurisdiction than for a \$500,000 transaction that falls on other agencies’ turf.

For example, in 2012, a gas station and convenience store in North Carolina exchanged hands on eBay for about \$1.2 million.³⁷ Yet as large as it was, this transaction was governed by a fraction of the rules for a \$120 investment in a publicly traded company regulated by the SEC.

This illustrates how our securities laws are impeding capital formation. Buying an entire business requires much more due diligence than investing in a portion of a business, yet investors in the latter face far more paperwork and regulations.

Had the gas station owner sought investors and offered to sell 50 percent of the business for half a million dollars in shares, she would not have been able to make the transaction on eBay. Instead, she would be required to go through a licensed broker-dealer, because selling a piece of a business is considered a “securities transaction” and is therefore subject to the plethora of securities laws enforced by the SEC.

In the 21st century, offering a part of a business should face no more or no less rules than selling an entire business. If the gas station owner who lists on eBay engaged in deceptive or fraudulent behavior, the FTC and state agencies could address the situation as needed.

Buying an entire business requires much more due diligence than investing in a portion of a business, yet investors in the latter face far more paperwork and regulations.

National Labor Relations Board

Free Market Reforms to Better Serve the Needs of American Workers

By Trey Kovacs

The NLRB no longer operates as it was intended by Congress—as a neutral arbiter in labor disputes.

The National Labor Relations Board (NLRB), the federal agency that oversees private sector labor relations in the United States, has long outlived its usefulness. Created under the 1935 National Labor Relations Act, it was intended to implement workplace regulations and resolve labor disputes. It has both a rulemaking and an adjudicatory role.

However, the NLRB no longer operates as it was intended by Congress—as a neutral arbiter in labor disputes. During the past eight years, the NLRB overturned a cumulative 4,559 years of its own precedent.³⁸ This radical reversal of Board policy stems from politicization of the agency.

Throughout the NLRB's history, its partisan composition has depended on control of the presidency. The Board is composed of two Republican and two Democratic members, with a chairman from the president's party. This has caused case precedent to flip-flop depending on which party holds the White House. This politicization of the NLRB and oscillation of Board policy has eroded union and employer confidence in the institution, as uncertainty reigns among those regulated by the NLRB due to ever-changing precedent.

In addition, the NLRB has proven ineffective in its labor dispute resolution role, doing less work at greater cost to the taxpayer. From 1980 to 2016, the Board's annual caseload fell by 58 percent, from more than 57,000 cases to 24,200, and its output of published decisions fell by 78 percent from 1,343 to 298. Yet during that same period, the NLRB's annual budget appropriation increased from \$112 million to \$274 million.³⁹

Eliminating the National Labor Relations Board would improve the resolution of private sector labor disputes. Currently, unions and employers have incentive to file cases in hopes of reversing NLRB policy. Increased consistency in decision making by federal courts would likely undermine the incentive to attempt to reverse policy.

Abolishing the NLRB also would lessen uncertainty regarding labor policy and make it easier for businesses to plan for the future.

The agency's rulemaking authority and election duties should be transferred to the Department of Labor, which already has expertise in these areas.

The Board's adjudicatory authority should be transferred to federal district

courts. This involves reforming Section 10 of the National Labor Relations Act to revise the NLRB's adjudicatory authority.

Under this proposal, NLRB regional directors would continue to investigate unfair labor practice claims and determine whether they are meritorious. For cases that are found to have merit, the complainant could then file a charge in the appropriate federal district court.

This would bring about more consistent and fair decisions and less flip-flopping

of precedent. Federal judges serve lifetime appointments and are less likely to come from the ranks of a union or management, with the bias that comes from that experience.

In addition, sending labor disputes directly to federal court would expedite vindication of unfair labor practice claims. Currently, a case must weave its way through several levels at the NLRB before it can be appealed to a federal court. It is time to cut out the middleman.

Federal Communications Commission

Free Market Reforms to Protect Free and Open Internet

By Ryan Radia

With a handful of exceptions, the FCC continues to regulate as if it were 1996—or, in some cases, 1934.

Created by the Communications Act of 1934, the Federal Communications Commission (FCC) wields broad authority to regulate broadcasters, telecommunications services, and wireless providers. Recently, the FCC even claimed to have the power to regulate Internet access.⁴⁰ Yet the economic and technological realities that purportedly justified the creation of this agency 83 years ago no longer hold true. Information scarcity has given way to information abundance. Americans today do not depend on a tiny handful of companies to communicate with one another and learn about the world around them.

Therefore, the FCC should undertake a comprehensive review of its many regulations and eliminate those that no longer serve consumers to the extent the agency has the discretion to do so. Congress should amend the FCC's enabling statute to curtail the agency's authority to regulate the Internet and the media. Lawmakers should also consider abolishing the agency as it currently exists and moving some of its functions elsewhere in the federal government.

With a handful of exceptions, the FCC continues to regulate as if it were 1996—

or, in some cases, 1934. For example, even as the once-profitable newspaper industry has declined in recent years, FCC rules continue to restrict the ability of local broadcasters and newspapers to operate under a single owner. This is just one of many media ownership rules that artificially inflate the cost of producing local news in the name of promoting a diversity of voices. In fact, these rules are far more likely to reduce the number of viable media outlets in communities across the nation.

Similarly, the FCC's current regulatory regime for television can be traced in large part to the Cable Television Consumer Protection and Competition Act of 1992.⁴¹ Remarkably, the FCC's most recent TV broadcasting rules address the emergence of satellite carriers, which were already well established by 2000.⁴² Yet instead of seeking to relax legacy rules in light of cord-cutting, as consumers drop cable TV subscriptions in favor of Internet video platforms like Netflix and Hulu, the FCC has sought to expand its role as a television regulator, with proposals such as new set-top box rules and subjecting some Internet video services to rules designed for cable companies.

The FCC has also attempted to position itself as Internet regulator, issuing a number of rules over the past decade. These rules were rebuffed by the courts on two occasions but eventually approved in 2016 by the U.S. Court of Appeals for the District of Columbia Circuit.⁴³ Yet when Congress last overhauled the Communications Act in 1996, it made barely any mention of the Internet.⁴⁴ The one provision of law that addresses the Internet in particular (47 U.S.C. § 230) makes clear that the Internet should remain unfettered by federal or state regulation.

Unfortunately, this has not stopped the FCC from placing Internet providers under the same regime as the telephone companies descended from the old Ma Bell monopoly.

The FCC also possesses considerable

control over the airwaves, which are used by every American who owns a cell phone, Wi-Fi hotspot, or a plain old radio. Because of FCC rules, many of the most valuable airwaves cannot be licensed by wireless providers. The resulting scarcity of spectrum means consumers pay higher prices for inferior mobile broadband service than they would in a more competitive market environment.

As an independent regulatory agency, the FCC can reform some of these outdated and costly rules on its own. But to truly liberalize America's media and communications markets, Congress must step in and rewrite the Communications Act to eliminate most of the FCC's current duties. Congress should also explore folding a much smaller FCC into another arm of the federal government, such as the Department of Commerce.

To truly liberalize America's media and communications markets, Congress must step in and rewrite the Communications Act to eliminate most of the FCC's current duties.

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