

October 5, 2026

Honorable Travis Hill
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Disclosure of Information; RIN 3064–AG30

Dear Chairman Hill:

The Independent Community Bankers of America (“ICBA”) appreciates the opportunity to comment on the Federal Deposit Insurance Corporation’s (“FDIC”) proposal to amend rules governing the disclosure of confidential information, including confidential supervisory information (“CSI”).¹ Under the current framework, banks are generally not free to share their examination findings or concerns with outside parties. They can discuss them with their lawyers, accountants, and regulators, but their ability to disclose examination-related information to others is restricted.²

Currently, examination reports belong to the regulator and information in those reports is generally considered nonpublic/confidential supervisory information.³ A bank therefore cannot freely share the report or its contents with third parties, such as other banks, trade associations, consultants, or the public. Improper disclosure can result in significant penalties, potentially including administrative or criminal sanctions.

This proposed rule would move toward reforming those limitations, which often stand in the way of sound public policy. In general, it would permit banks to share CSI with affiliates, service providers, and merger counterparties without seeking case-by-case agency approval. Among other changes, the proposal would provide discretionary disclosure of confidential information by removing prior approval requirements, so long as a “qualifying confidentiality agreement” is in place. Information could be shared with several categories of third parties, including legal counsel, accountants/auditors, majority shareholders, “qualifying service providers” (including fintechs), and potential merger counterparties. The proposal also poses and seeks comment on 28 supplemental questions, including the contemplation of sharing CSI with nonpartisan, non-profit trade associations.

¹Disclosure of Information, 91 Fed. Reg. 39,726 (proposed June 30, 2026) (to be codified at 12 C.F.R. pts. 306, 309) [RIN 3064–AG30] (“NPRM”).

² Hill, Julie Andersen, “When Bank Examiners Get it Wrong: Financial Institutions Appeals of Material Supervisory Determinations,” *Washington University Law Review*, Vol. 92 Num. 5, 2015, *available at* <https://journals.library.wustl.edu/lawreview/article/5068/galley/21901/view/> at 1111.

³ *Id.*

ICBA firmly supports this approach. First, enhancing the ability for banks to share CSI with third parties will not only improve communication and exchange of information among stakeholders in the financial services ecosystem, but it also holds the promise to serve as the infrastructure on which further enhancements can be built. Second, ICBA welcomes the proposal's solicitation of comments on the ability for banks to share CSI with centralized third parties, such as trade associations, which could facilitate interaction between community banks and fintech vendors. And finally, while not contemplated in the scope of this proposed rule, ICBA encourages FDIC to reevaluate the definition and legal premise of CSI as 'property.'

General Comments

The Proposal shares many goals with the Office of Comptroller of the Currency's ("OCC") similarly proposed rule ("OCC Proposal"), published in August 2026.⁴ Each proposal would replace case-by-case agency approval with standing authorizations, conditioned in most cases on a written confidentiality agreement enforceable by the agency. But they differ in important respects, and this letter focuses on those differences. ICBA is submitting a separate letter to FDIC in response to the FDIC Proposal, with certain portions of that letter referenced here.

Enhancing Bank-Fintech Supervision and Ending the Game of "Telephone"

For many community banks, fintech and other third-party providers are integral to executing strategic plans, managing risk, and delivering innovative, affordable financial services, particularly in rural and underserved markets. Yet these providers are often effectively firewalled from regulators during examinations, even when they are directly responsible for addressing identified weaknesses.

The current framework limits banks' ability to have full and transparent discussions with their third-party vendors in anticipation of, or during, a bank examination. Questions or requests for information on how a technology works, or nuanced questions about its downstream effects, are likely best to be answered by the subject matter expert. This expertise is often found within the third-party service provider ("TPSP"), and yet, current CSI framework inhibits banks' abilities to have a conversation with their TPSP in response to agency examinations of questions.

As a result, banks may have to relay supervisory feedback through multiple layers of translation, while service providers lack the context necessary to respond efficiently and examiners lose valuable insight into how these arrangements operate. Uncertainty about what CSI may be shared further complicates remediation.

ICBA and the American Fintech Council made this point in a recent letter to the federal banking agencies.⁵ The letter explained that banks are often reluctant to ask supervisory staff for permission to let fintech partners support examinations directly, and that partners working across multiple banks face inconsistent expectations depending on charter type, primary regulator, or supervisory region. Kayce Seifert's Open Banker essay, "Modernizing Supervisory Information Sharing: A Former Regulator's

⁴ Disclosure of Information, 91 Fed. Reg. 50,610 (proposed Aug. 1, 2026) ("OCC Rules Regarding the Availability of OCC Information," [Docket ID "OCC-2026-0133"]) ("OCC Proposal").

⁵Independent Community Bankers of America & American Fintech Council, Joint Letter on Modernizing CSI to the Federal Reserve, FDIC, and OCC (Jan. 13, 2026), <https://www.icba.org/w/joint-letter-on-modernizing-csi>.

Perspective,”⁶ describes the same dynamic from the fintech side, likening the resulting process to “a game of charades” in which a bank can gesture at a supervisory finding but cannot share it directly with the partner responsible for fixing it.

ICBA believes that this proposal would provide a clear, limited pathway for appropriate engagement with key service providers would reduce unnecessary burden, improve remediation, and make supervision more effective without undermining the fundamental protections of CSI.

Bank-to-Trade Association CSI Sharing Should Be Permitted

The proposal acknowledges⁷ that there “may be value in third party entities being able to receive certain FDIC confidential information on an aggregated basis from multiple insured depository institutions,” and specifically names “nonpartisan nonprofit banking trade associations” as an example of the kind of entity that could benefit.

ICBA agrees and urges the FDIC not merely to permit this sharing but to make it a clear, standing authorization rather than a case-by-case discretionary allowance. Indeed, the OCC Proposal goes further and explicitly includes this permissibility in its Proposal, subject to certain requirements and limitations.

The value of trade association CSI sharing goes beyond public transparency about the supervisory process in the aggregate. It also serves an internal, practical function of identifying latent but widespread deficiencies in the supervisory process.

For example, in the prior administration, there was an increase in examination findings regarding the unsatisfactory handling of representment of returned checks. If trade associations were made aware of examiner expectations not being met on a wide-scale basis, as was the case with representment of checks, then trade associations could have amplified that message quicker and reforms could have been implemented sooner.

A trade association that can lawfully receive CSI from multiple member banks describing how a given rule was actually applied in the field is uniquely positioned to spot these patterns, raise them with the agency in the aggregate (without attributing any finding to a specific institution), and help the FDIC drive toward the consistent, predictable application of its own rules.

As such, ICBA recommends that the FDIC explicitly incorporate an affirmative authorization for banks to transmit information to nonpartisan, nonprofit trade associations, rather than a discretionary allowance requiring case-by-case approval. However, for public policy purposes and compliance with anti-trust laws, this information should be used in an aggregated, de-identified manner, for public-facing transparency reporting and for advocacy purposes, including raising patterns of examiner expectations to more quickly transmit the expectations and identify potential inconsistencies.

Reevaluating the Legal Premise of CSI

Finally, the restrictions and governance surrounding the current CSI regime rests on the unexamined premise that examination reports, supervisory correspondence, and related materials are the property of the FDIC, and unauthorized disclosure amounts to theft of government property under 18 U.S.C.

⁶Kayce Seifert, Modernizing Supervisory Information Sharing: A Former Regulator's Perspective, Open Banker (Sept. 30, 2025), <https://openbanker.beehiiv.com/p/supinfosharing>.

⁷NPRM, *supra* note 1, at 39,733 (Section II.C.7.d, Disclosure of Data for Aggregated Analyses).

641.⁸ However, ICBA contends that this is a misinterpretation of Title 18, as supported by recent jurisprudence.

In *Kelly v. United States*,⁹ New Jersey state officials closed local access toll lanes to the George Washington Bridge to create massive traffic jams in Fort Lee, New Jersey, as political payback. The US Attorney General charged the defendants with federal wire fraud and federal-program fraud statutes, arguing they stole the Port Authority's property.

In a unanimous decision, the Supreme Court ruled that Title 18 fraud laws require a specific intent to obtain money or property. The Court found that realignment of the toll lanes was an exercise of regulatory power, which the Court had previously determined to not meet the property requirement.¹⁰ In short, the enforcement of police rights does not constitute 'property.'

After the *Kelly* decision, the Second Circuit applied the Supreme Court's ruling to confidential information, overturning its previous ruling in *United States v. Blaszczak*. There, a medical company shared confidential information to Blaszczak, a hedge fund consultant, regarding the timing of proposed reimbursement rates, which would potentially impact share price. While the panel in the Second Circuit initially held that the confidential information misappropriated "property" or "a thing of value," the court reversed that ruling in light of the *Kelly* decision, where it found that regulatory information does not constitute government "property."

Therefore, if CSI is not government property to begin with, then the FDIC's authority to restrict its disclosure by banks rests on narrower grounds, such as safety and soundness. And as discussed above, judicious sharing of CSI would actually enhance, not detract, from the banking system's safety and soundness. As such, ICBA urges the FDIC to use this rulemaking as an opportunity to disclaim reliance on Title 18 as a basis for restricting bank disclosure of CSI.

Responses to the FDIC's Specific Questions

(Only Questions Addressed are Reproduced)

Question 1: *Does the proposed reorganization of part 309 achieve its intended objectives? If not, how can the structure and organization of part 309 be further improved to enhance the FDIC's disclosure of information regulations? Are there additional structural and organizational changes to the proposal that would help reduce burden?*

Yes. Separating FOIA procedures, discretionary CSI disclosure, and non-party legal proceeding disclosure into distinct subparts, and relocating service of process to new part 306, will make the regulation considerably easier for community bank compliance staff and counsel to navigate. ICBA has no objection to the proposed structure and encourages the FDIC to finalize it substantially as proposed.

Question 5: *Should the FDIC provide additional clarity on disclosure of records or information that is confidential information of both the FDIC and another federal or state supervisory agency? If so, what additional clarity would be helpful?*

⁸18 U.S.C. § 641 (criminalizing the theft or conversion of "any record, voucher, money, or thing of value of the United States or of any department or agency thereof").

⁹*Kelly v. United States*, 590 U.S. 391, 401 (2020).

¹⁰ *Kelly v. United States*, 590 U.S. 391, 401 (2020).

Yes. Community banks that are examined or supervised by more than one agency (for example, a state non-member bank subject to both FDIC and state supervision) need a clear rule for information that is simultaneously the confidential information of the FDIC and of another agency. ICBA recommends that the FDIC state affirmatively that satisfying the disclosure standard of the agency whose confidential information is more permissive should not, by itself, be treated as a violation of the more restrictive agency's rule, and that the FDIC commit to working with the other federal banking agencies and the Conference of State Bank Supervisors toward a harmonized, single standard for jointly-held confidential information.

Question 6: *Are the proposed defined terms appropriate for the purpose and intent of proposed subpart B? Should the FDIC include any additional defined terms or modify any of the proposed defined terms? Should the FDIC include any additional defined terms or modify any of the proposed defined terms?*

The defined terms in proposed section 309.31 (affiliate, authorized director, confidential information, parent holding company, person, qualifying confidentiality agreement, and qualifying service provider) are generally appropriate.

However, as discussed above, ICBA recommends that the FDIC add a defined term for “nonpartisan, nonprofit trade association” or similar, to make explicit that such organizations are eligible recipients of aggregated CSI under the framework discussed in connection with Questions 20 through 23 below.

Question 7: *Is the proposed definition of confidential information appropriate? Should the definition be revised to broaden or narrow it to appropriately capture the types of FDIC information that should be treated as confidential by insured depository institutions?*

ICBA supports the proposed definition, including its clarification that documents an insured depository institution prepares for its own business purposes and holds in its own possession are not converted into confidential information merely because a copy also happens to reside in FDIC files. This distinction, drawn from the FDIC's own experience and echoed in industry commentary about remediation plans and internal notes, should be retained and, if anything, stated even more explicitly in the regulatory text itself rather than only in the Supplementary Information.

Question 8: *Is the proposed definition of qualifying confidentiality agreement appropriate? What, if any, additional terms or requirements should the FDIC consider to appropriately protect the integrity of confidential information? For example, should a qualifying confidentiality agreement be required to be governed by U.S. law or include provisions that impose restrictions on how the confidential information is used, require the eventual destruction or return of the confidential information by the recipient, or require the recipient to acknowledge and consent to be subject to the FDIC's regulatory, examination, and enforcement authorities?*

The proposed definition is appropriate and strikes a reasonable balance. ICBA supports requiring that the agreement be governed by U.S. or state law and include use and non-disclosure restrictions, as proposed. A confidentiality agreement with robust use restrictions, access limits, and FDIC third-party-beneficiary enforcement rights, as already proposed, is sufficient without also subjecting the recipient to the FDIC's full supervisory jurisdiction.

Question 9: *Is the proposed definition of qualifying service provider appropriate? Should the definition be revised to broaden or narrow it to capture the universe of third parties that insured depository institutions should be able to share information with without requiring FDIC approval?*

The definition is appropriately broad, and ICBA supports its explicit inclusion of third-party fintech companies. ICBA recommends one addition: the definition, or a parallel provision, should also encompass other insured depository institutions with which the disclosing institution shares, or is evaluating, a relationship with a common qualifying service provider, consistent with the bank-to-bank sharing authorization recommended above.

Question 14: *Does the proposal appropriately identify the types of parties to, and circumstances in which, an insured depository institution should be permitted to share confidential information without the prior approval of the FDIC? Are there additional parties or circumstances in respect of which an insured depository institution should be permitted to share confidential information without the prior approval of the FDIC? If so, please explain why the benefits of permitting greater information sharing with such parties and in those circumstances would outweigh the costs associated with the risk of inappropriate disclosure of confidential information. Are there any parties listed in section 309.37(a) of the proposal that should be removed or narrowed?*

The proposal is a meaningful improvement but does not go far enough. ICBA recommends that section 309.37(a) be expanded to permit, without prior FDIC approval and subject to a qualifying confidentiality agreement, disclosure to nonpartisan, nonprofit trade associations, for purposes of aggregated analysis of the supervisory process, including identifying inconsistent examiner interpretations of the same rule across regions or exam teams, and to inform the marketplace on the quality of service delivered by specific vendors

To avoid potential anti-trust concerns, the trade association would likely need to ensure that it does not unduly suppress prices or supply chains that could call into question its ‘Monopsony Power.’ However, as banks are the consumer of vendor services, this collaboration would facilitate a pro-competitive marketplace. In particular, this would better inform vendor risk management and provide more consistent, predictable supervision.

Question 18: *Is twenty-five years the appropriate amount of time required to have passed to permit the disclosure of historical confidential information? If not, what other time period would be more appropriate?*

Twenty-five years is a reasonable outer bound, but ICBA encourages the FDIC to consider a shorter period. For example, ten years, consistent with the ordinary designation period the Proposal would establish for confidential commercial information under proposed section 309.24, given that the safety-and-soundness and market-sensitivity concerns that justify CSI confidentiality diminish considerably well before a quarter-century has passed.

Question 20: *To what extent should the FDIC permit sharing confidential information with additional third parties for purposes of aggregating information across insured depository institutions? To what type(s) of entities should the FDIC consider allowing access to such information? What safeguards, if any, should the FDIC consider to help ensure such information sharing would not raise antitrust or other concerns?*

As discussed above, ICBA urges the FDIC to permit sharing with nonpartisan, nonprofit trade associations as a standing authorization, not merely a discretionary allowance. Law firms engaged by such associations or by groups of banks for this purpose should likewise be eligible recipients. Antitrust concerns could be addressed by requiring that any shared information be aggregated and de-identified before use for public-facing or advocacy purposes and by prohibiting the use of aggregated data to

coordinate pricing, terms, or competitive conduct.

Question 21: *If the FDIC were to permit FDIC-supervised institutions to share confidential information with organizations for these purposes, should the FDIC place limits on the types and nature of information that may be shared? Should the FDIC consider different types of limits or requirements depending on the type of entity receiving the information?*

ICBA supports reasonable limits tailored to purpose rather than entity type: information shared for aggregated public transparency reporting should generally be limited to examination ratings, MRA and enforcement-action trends, and similar structured data capable of meaningful aggregation, while information shared for the internal purpose of identifying inconsistent examiner interpretations may need to include more granular, narrative supervisory feedback in order to be useful, but should remain confidential to the receiving trade association and not be further disclosed except in aggregated, de-identified form.

Question 22: *Should the FDIC take any steps to mitigate the risk that the identity of a specific institution that is the subject of the information can be reverse engineered, and if so how?*

Yes. ICBA recommends that any public-facing use of aggregated CSI be subject to suppression rules (e.g., not publishing aggregated statistics drawn from fewer than a specified number of institutions), consistent with standard practice for other forms of aggregated regulatory and statistical disclosure, such as the FDIC's own Community Banking Structure Reference Data.¹¹ This safeguard can be addressed through the qualifying confidentiality agreement rather than through additional FDIC pre-clearance of each public statement.

Question 23: *To what extent should such organizations be able to make public disclosures on the basis of aggregated information that has been derived from FDIC confidential information? What, if any, risks may be posed by inaccuracies in such public disclosures, and what, if any, requirements should the FDIC consider to mitigate such risks?*

Trade associations should be permitted to make public disclosures based on properly aggregated and de-identified CSI without a separate FDIC approval requirement for each disclosure, provided the underlying qualifying confidentiality agreement's aggregation and suppression safeguards are followed.

Question 24: *Should an FDIC-examined service provider be permitted to share confidential information with insured depository institutions that are potential partners? If so, what conditions or safeguards should apply to such arrangements? Should an FDIC-examined service provider be permitted to share confidential information with any other type of parties?*

Yes. ICBA supports extending proposed section 309.37(e) to cover disclosure by an FDIC-examined service provider to insured depository institutions that are evaluating whether to enter into a relationship with that provider, not only to institutions with which the provider already has an existing partnership. A bank conducting vendor due diligence has the same need for accurate supervisory information about a prospective service provider as it does about an existing one, and in some respects a greater need, since the decision whether to enter the relationship at all is precisely when this information is most useful. The same qualifying confidentiality agreement safeguard that the Proposal

¹¹FDIC, Community Banking Structure Reference Data (Fourth Quarter 2025), <https://www.fdic.gov/community-banking-research-program/community-banking-structure-reference-data-fourth-quarter-2025>.

already requires for existing partnerships is sufficient to extend to prospective ones.

Question 25: *Would the proposed amendments clarify and streamline the process for requesting discretionary disclosure of FDIC confidential information?*

Yes. Eliminating the requirement that FDIC approval for disclosure by “other persons” be preceded by a written request in all circumstances, and recognizing that exigent circumstances may call for a different process, is a sensible and practical improvement.

Question 26: *What are the advantages and disadvantages of permitting FDIC-supervised institutions to disclose confidential information to the categories of third parties identified in the proposed rule? Should these provisions apply to other categories of third parties and, if so, why? If the FDIC were to extend the applicability of these provisions to other third parties, are there additional requirements that should apply and, if so, to what type of information sharing arrangements?*

The principal advantage of the categories already identified in the Proposal is faster, more efficient handling of routine business needs without sacrificing confidentiality, since every category remains subject to a qualifying confidentiality agreement.

ICBA recommends extending these provisions to other insured depository institutions sharing or evaluating a common third-party service provider relationship, and nonpartisan, nonprofit trade associations receiving CSI for aggregated analysis, in each case subject to the same qualifying confidentiality agreement framework already proposed for other categories of recipients.

Conclusion

ICBA commends the FDIC for undertaking this long-overdue modernization of its information disclosure regulations and supports the Proposal. We urge the FDIC to build on it by (1) allowing nonpartisan, nonprofit trade associations to collect and aggregate CSI to promote consistent application of supervisory standards and (2) disclaiming reliance on the CSI-as-government-property premise, consistent with *Kelly v. United States*.

Each of these changes can be made within the FDIC's existing statutory authority, through this rulemaking, without weakening the core confidentiality protections that legitimately protect depositor confidence and market stability.

Thank you for the opportunity to comment on this Proposal. ICBA looks forward to continuing to work with the FDIC on this important rulemaking. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Michael Emancipator

SVP, Regulatory Counsel

Independent Community Bankers of America