



Alice P. Frazier, Chairman  
Michael J. Burke, Jr., Chairman-Elect  
Shon B. Myers, Vice Chairman  
Jill Sung, Treasurer  
Douglas E. Parrott, Secretary  
Jack E. Hopkins, Immediate Past Chairman  
Rebeca Romero Rainey, President and CEO

October 5, 2026

Honorable Jonathan V. Gould  
Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 7th Street SW  
Washington, DC 20219

**Re: OCC Rules Regarding the Availability of OCC Information; Docket ID OCC-2026-0133; RIN 1557-AF50**

Dear Comptroller Gould:

The Independent Community Bankers of America (“ICBA”) appreciates the opportunity to comment on the Office of the Comptroller of the Currency’s (“OCC”) proposal to revise its rules governing the disclosure of non-public OCC information (“NPOI”), including confidential supervisory information (“CSI”) (the “Proposal”).<sup>1</sup> The Proposal would permit national banks, federal savings associations, and other supervised entities to share CSI in several defined circumstances without first obtaining OCC approval, including with affiliates, service providers, senior executive officer candidates, potential counterparties to business combinations, not-for-profit entities, and certain government agencies.

The Proposal shares many goals with the Federal Deposit Insurance Corporation’s (“FDIC”) similarly proposed rule (“FDIC Proposal”), published in June 2026.<sup>2</sup> 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.

## **General Comments**

### ***Ending the Game of “Telephone” Between Banks, Their Partners, and Examiners***

Fintechs and other third-party providers are integral to how community banks deliver competitive products, manage risk, and serve rural and underserved markets. Yet these providers are often firewalled from the supervisory process, even when they are directly responsible for addressing identified weaknesses. This leads to several suboptimal outcomes.

First, banks must relay examiner feedback through multiple layers of translation, increasing the propensity for errors or miscommunication. Second, even if the information is successfully transmitted, the service

---

<sup>1</sup> OCC Rules Regarding the Availability of OCC Information, 91 Fed. Reg. 50,610 (proposed Aug. 5, 2026) (to be codified at 12 C.F.R. pts. 4, 5, 7, 21, 163) [Docket ID OCC-2026-0133; RIN 1557-AF50] (“Proposal”).

<sup>2</sup> Disclosure 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] (“FDIC Proposal”).

providers still lack the overall context to respond. And finally, bank examiners and supervisors lose insight into how these arrangements actually operate. ICBA and the American Fintech Council described this dynamic in a joint letter to the OCC, the FDIC, and the Federal Reserve earlier this year,<sup>3</sup> and a former regulator has likened the result to “a game of charades.”<sup>4</sup>

### ***The OCC’s Sharing of Information with Not-for-Profits will Increase the Line of Vision for All Parties***

The most significant difference between FDIC’s and OCC’s proposals is their treatment of aggregated sharing. Whereas the FDIC Proposal only discusses the concept as a question in the preamble, the OCC’s Proposal explicitly incorporates that ability into the text of the proposed regulation. ICBA urged the FDIC to turn that concept into a clear, standing authorization, similar to OCC’s Proposal.

The Proposal would permit a supervised entity, without prior approval, to share CSI with a not-for-profit entity that aggregates anonymized CSI across supervised institutions and either publishes the aggregated results or uses them to advocate on its members’ behalf regarding the effectiveness of regulation, subject to a qualifying confidentiality agreement and a written description of the information collection.

This proposed authority would achieve several public policy goals to enhance the bank supervisory framework. Beyond increasing public transparency, this system would enable trade associations to spot latent but widespread problems in how a rule is being applied. Or conversely, serve as a more efficient mechanism to transmit changes in agency policy or priorities. For example, if this authority existed several years ago, ICBA could have engaged sooner in response to examinations that found deficiencies in bank treatment of returned checks. The absence of a policy like the one being proposed resulted in exam inconsistencies, perceptions of unfair treatment, and several months of potential harm.

However, to address any concern around antitrust law, aggregated data should be de-identified before any public or advocacy use, and should not be used to coordinate pricing, terms, or other competitive conduct.

Finally, while ICBA supports permitting a bank, at its sole discretion, to share confidential supervisory information with the trade associations, it must expressly be **voluntary**. Trade associations can provide that perspective, help identify inconsistent supervisory practices across regions, and raise systemic concerns with the agencies without attributing them to any individual institution. But the final rule must make clear that disclosure is solely at the bank's option and creates no obligation to share CSI with any party. The permission should confer no right of access on any third party, including advocacy groups, community organizations, or other nonprofits that may seek to access CSI.

### ***The OCC Is Right to Remove the Criminal-Penalty Reference and Narrow Its Property Claim***

In the letter to FDIC, ICBA explained that the current CSI regime rests on the largely unexamined premise that supervisory materials are government property whose unauthorized disclosure may be prosecuted as theft under 18 U.S.C. 641. ICBA urged the FDIC to disclaim reliance on that premise in light of *Kelly v. United States*,<sup>5</sup> in which a unanimous Supreme Court held that the exercise of regulatory power is not

---

<sup>3</sup> Independent 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>.

<sup>4</sup> Kayce Seifert, Modernizing Supervisory Information Sharing: A Former Regulator’s Perspective, Open Banker (Sept. 30, 2025), <https://openbanker.beehiiv.com/p/supinfosharing>.

<sup>5</sup> *Kelly v. United States*, 590 U.S. 391 (2020).

“property” for purposes of federal fraud statutes, and the Second Circuit’s subsequent decision in *United States v. Blaszczyk*,<sup>6</sup> which applied *Kelly* to hold that a federal agency’s confidential regulatory information was not “property” for purposes of the federal fraud statutes at issue.

As such, ICBA is pleased to see OCC’s preamble to the Proposal references *Kelly v. United States*, and incorporates the Supreme Court ruling by removing reference to section 641 from the rule.

### ***Service Provider Conditions Should Not Put the Exception Out of Reach for Community Banks***

While both the FDIC and OCC proposals would permit sharing with service providers, the OCC Proposal differs by requiring the service provider to acknowledge and consent to “regulation and enforcement by the OCC to the same extent as if the service was being performed by the supervised entity itself” and “acknowledges itself to be an institution-affiliated party.”

The Bank Service Company Act inherently applies to any service provider that a bank employs, and therefore, every service provider is already, by definition, an institution-affiliated party subject to regulation and enforcement of banking agencies. ICBA is concerned that the proposed inclusion of this express language would be overbearing on bank-service provider relationship and would ‘chill’ the service provider’s interest in entering into a confidentiality agreement that contains such express language.

The burden of that refusal would fall disproportionately on community banks. A large bank may have the leverage to negotiate such terms with a core processor or technology vendor. A community bank typically does not. The practical result would be that the service provider exception is available to the institutions that least need it and unavailable to those it was designed to help. The OCC already has authority over services performed for national banks under the Bank Service Company Act,<sup>7</sup> and the Proposal’s other safeguards provide ample protection.

### ***The OCC Should Adopt the Service-Provider-to-Bank Pathway***

The FDIC proposal would permit an FDIC-examined service provider to share its own examination-related confidential information directly with an insured depository institutions with which it has an existing relationship. The OCC’s Proposal contains no equivalent provision and we urge the OCC to mirror this provision.

Additionally, we are requesting that permissibility be expanded further, to allow service providers to share that information with *prospective* bank clients, not just *existing* bank clients, as well. As we have stated in our letter to FDIC, 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.

## **Responses to the OCC’s Specific Questions**

*(Only Questions Addressed are Reproduced)*

***Definitions of CSI and NPOI (Proposed § 4.12).*** *Is the proposed definition of CSI appropriate, and should*

---

<sup>6</sup> *United States v. Blaszczyk*, 56 F.4th 230 (2d Cir. 2022).

<sup>7</sup> 12 U.S.C. § 1867(c).

*the exclusion in proposed § 4.12(b)(3) be limited to the OCC or expanded to include other regulators?*

ICBA supports the proposed definitions. The exclusion for information that is in the supervised entity's possession, was not prepared for a regulator in response to supervisory or enforcement activity, and is not supervisory feedback parallels the FDIC's clarification that a bank's own business documents do not become confidential merely because a copy resides in agency files. ICBA recommends that the OCC confirm, in the regulatory text, that internal documents a bank prepares to manage its own remediation work, such as project plans, board and committee materials, and internal notes, are not CSI except to the extent they reproduce supervisory findings. ICBA also supports extending the exclusion to information prepared for other regulators, including state banking supervisors and the Securities and Exchange Commission, so that the same document is not treated differently depending on which agency requested it.

***Parent holding companies.*** *Should parent holding companies be permitted to use the § 4.14 exceptions to the same extent as the supervised entity?*

Yes. Most community national banks with holding companies have overlapping boards and management, and supervisory matters at the bank and holding company are, as the OCC acknowledges, "often intertwined."

***Not-for-profit entities (Proposed § 4.14(b)(1)(vi)).*** *Should the provision contain additional safeguards or require supervised entities to specify purposes beyond what the Proposal requires? Should other entities be covered?*

As discussed above, ICBA strongly supports this provision and does not believe additional safeguards beyond suppression rules and antitrust protections are needed. ICBA recommends that the OCC expressly include nonpartisan, nonprofit banking trade associations and their agents, permit recurring collections, and confirm that advocacy includes engagement with the OCC and its Ombudsman.

***Disclosure of aged information (Proposed § 4.13(b)(2)).*** *Is 25 years the appropriate period for disclosure of older NPOI, and should such information be aggregated or anonymized?*

ICBA believes 25 years is a reasonable outer bound but encourages the OCC to consider a shorter period. The safety-and-soundness and market-sensitivity concerns that justify CSI confidentiality diminish over time.

## **Conclusion**

ICBA commends the OCC for this long-overdue modernization of its information disclosure rules and supports the Proposal. In several areas, ICBA strongly supports OCC's proposal, especially as it relates to the sharing of CSI with non-profit organization. And in certain other areas, ICBA recommends that OCC mirror FDIC proposed regulations, such as explicit language for service provider consent and adding the FDIC's service-provider-to-bank pathway, including for prospective partners.

Thank you for the opportunity to comment on this Proposal. ICBA looks forward to continuing to work with the OCC on this important rulemaking. If you have any questions, please do not hesitate to contact me at [Michael.Emancipator@icba.org](mailto:Michael.Emancipator@icba.org).

Sincerely,

Michael Emancipator  
SVP, Regulatory Counsel