



October 5, 2026

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments – RIN 3064–AG30
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Disclosure of Information; RIN 3064–AG30

Dear Ladies and Gentlemen:

Better Markets appreciates¹ the opportunity to comment on the Federal Deposit Insurance Corporation’s (“FDIC”) proposal (“Proposal”)² to amend its regulations regarding the disclosure of confidential information.

Summary of the Proposal

Better Markets supports reasonable and evidence-based efforts to modernize administrative procedures. There may be circumstances in which carefully controlled sharing of confidential information with attorneys, accountants, auditors, and other persons with a genuine need for the information can facilitate legitimate activities without impairing the supervisory process.

The Proposal, however, goes considerably further. It would materially change the relationship among the FDIC, its supervisors, and the banking organizations it supervises by giving banks substantially greater control over the dissemination and use of information generated through the supervisory process. Under the Proposal, an insured depository institution (“IDI”) could disclose FDIC confidential information to broad categories of recipients without obtaining prior FDIC authorization whenever the institution itself determines that disclosure is “necessary or appropriate for business purposes.” The Proposal describes its objective as facilitating a more “streamlined flow” of confidential information to serve those business purposes.

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

² Federal Deposit Insurance Corporation. Notice of Proposed Rulemaking. *Disclosure of Information*, 91 FR 39726 (June 30, 2026), available at: <https://www.federalregister.gov/documents/2026/06/30/2026-13123/disclosure-of-information>.

That framing reflects the Proposal’s fundamental error. In fact, confidential supervisory information (“CSI”) is *not principally a business asset* of a supervised bank. It is generated through the exercise of the government’s supervisory authority for the purpose of protecting the safety and soundness of insured depository institutions, the Deposit Insurance Fund (“DIF”), financial stability, and ultimately the American public. Confidentiality is an important structural protection for the supervisory process itself.

By substantially expanding banks’ control over the dissemination and use of CSI, the Proposal would predictably constrain examiner candor, give supervised institutions additional leverage over their supervisors, facilitate selective use of supervisory information for banks’ private purposes, and further weaken the independence and effectiveness of bank supervision.

Those risks are especially serious in light of the lessons of the 2023 bank failures and the FDIC’s and other banking agencies’ broader efforts to constrain supervisory discretion. Silicon Valley Bank (“SVB”) and Signature Bank did not fail because supervisors acted too aggressively. They failed in significant part because the serious supervisory concerns cited by examiners were not forcefully addressed by the Federal Reserve and FDIC Boards at the time.

The 2023 bank failures demonstrate what happens when supervisory concerns are not pressed forcefully and escalated early, and the Proposal would make candid, forceful supervision harder. An examiner who knows that written criticisms may circulate to a bank’s affiliates, outside advisors, prospective senior executives, and merger counterparties faces materially higher institutional costs for making those criticisms clearly and in writing. A proposal that raises the cost of supervisory candor moves in exactly the wrong direction after 2023. The banking agencies should be removing obstacles to candid, forward-looking, and decisive supervision—not creating new ones.

For these reasons, Better Markets urges the FDIC to withdraw or substantially revise the Proposal. Better Markets is concurrently submitting a comment letter to the Office of the Comptroller of the Currency (“OCC”) on its proposal regarding the disclosure of confidential supervisory information, addressing related concerns about the protection and use of such information.³

I. The Agency’s Handling of the Comment Process Raises Significant Concerns about Consistency and Fairness

Before addressing the Proposal’s substantive policy issues, Better Markets raises a significant procedural concern. The FDIC’s handling of the comment period for the Proposal raises serious concerns about the predictability and consistency of its public participation process for its rulemakings. The agency published its extension notice on August 28, 2026, a single

³ See Better Markets, Comment Letter to the Office of the Comptroller of the Currency *Rules Regarding the Availability of OCC Information*, RIN 1557-AF50 (October 5, 2026), Office of the Comptroller of the Currency, Notice of Proposed Rulemaking, *OCC Rules Regarding the Availability of OCC Information*, 91 FR 50610 (August 5, 2026), Docket ID OCC-2026-0133, RIN 1557-AF50, available at: <https://www.federalregister.gov/documents/2026/08/05/2026-15867/rules-regarding-the-availability-of-occ-information>.

business day before the August 31 deadline.⁴ In that notice, it extended the comment period to October 5, after commenters working toward the original deadline would already have committed substantial resources to completing their submissions. The extension followed a request from banking industry groups⁵ for additional time; however, the extension did not explain why their request warranted an extension when similar extension requests have not.

This lack of transparency compounds the concerns about the consistency and administration of the agency's public comment process. In particular, this accommodation also stands in troubling contrast to the failures by the agency to extend the comment period for the Basel III capital and the enhanced supplementary leverage ratio proposals despite requests by U.S. senators. Four U.S. Senators requested a 180-day extension for the March 2026 capital proposals, including Basel III Endgame, warning that withholding additional time would establish a double standard relative to the extended opportunity afforded commenters on the 2023 Basel III proposals.⁶ Further, all Democratic members of the Senate Banking Committee requested additional time to comment following the publication of supplemental analysis on the enhanced supplementary leverage ratio proposal.⁷ In the final rule for that rulemaking process, the agencies noted that they declined to extend the comment period, citing the "volume, depth, and diversity" of the comments received.⁸ While these requests differed in duration and scope, their disparate treatment by the FDIC raises a legitimate question about the criteria the agency uses to determine when additional time is warranted.

The FDIC should identify those criteria, explain how they were applied in these proceedings, and clarify its disposition of the senators' June 2026 request. It should also explain why the extension here was published so close to the original deadline. Granting additional time

⁴ See Federal Deposit Insurance Corporation. Notice of proposed rulemaking; extension of comment period. *Disclosure of Information; Extension of Comment Period*, (August 28, 2026), available at: <https://www.govinfo.gov/content/pkg/FR-2026-08-28/pdf/2026-17649.pdf>.

⁵ See Letter to Federal Deposit Insurance Corporation from Bank Policy Institute and American Bankers Associations requesting a comment period extension (August 12, 2026), available at: <https://www.fdic.gov/federal-register-publications/aba-bpi-tyler-mondres-jeffrey-luther-rin-3064-ag30.pdf>.

⁶ See Letter from U.S. Senators to Chairman Hill, Vice Chair for Supervision Bowman, and Comptroller Gould (June 12, 2026), available at: <https://www.federalreserve.gov/apps/proposals/comments/FR-2026-0007-01-C151>. Although addressed to Chairman Hill as well as the other agency principals, the letter does not appear among the comments posted on the FDIC's own public website for comment on the March 2026 Basel III rule; available at: <https://www.fdic.gov/federal-register-publications/comments-rin-3064-af29-march-27-2026>. This apparent omission raises further concerns about the agency's administrative processes and the completeness and accessibility of its public comment record.

⁷ See Letter from U.S. Senators to Chairman Hill, Vice Chair for Supervision Bowman, and Comptroller Gould (August 8, 2025), available at: <https://www.federalreserve.gov/apps/proposals/comments/FR-2025-0038-01-C08>.

⁸ See Final Rule. *Regulatory Capital Rule: Modifications to the Enhanced Supplementary Leverage Ratio Standards*, 90 FR 55248 at 55261 (December 1, 2025), available at: <https://www.federalregister.gov/documents/2025/12/01/2025-21626/regulatory-capital-rule-modifications-to-the-enhanced-supplementary-leverage-ratio-standards-for-us>. (concluding that an extension was unwarranted given the approximately 40 comments received and their "volume, depth, and diversity").

can improve public participation, but administering extensions without timely notice or clearly articulated standards undermines confidence in the fairness and predictability of the process.

II. Confidential Supervisory Information Exists to Protect the Supervisory Process, Not Primarily to Serve Banks' Business Purposes

The Proposal begins from the wrong premise. The FDIC portrays the current CSI framework largely as an administrative burden. It emphasizes that institutions currently must obtain FDIC authorization before making many disclosures and states that the Proposal would allow a more “streamlined flow of confidential information” when sharing is “necessary or appropriate for business purposes.”⁹ The proposed rule would allow institutions themselves to make that determination for disclosures to affiliates, outside legal counsel, accountants, auditors, certain shareholders, qualifying service providers, prospective senior executive officers, and potential merger counterparties.¹⁰

The Proposal therefore substantially shifts the initial decision over whether FDIC confidential information should leave the traditional supervisory relationship from the FDIC to the supervised institution. It is in effect a substantive transfer of control. The proper question must be whether the disclosure could impair effective supervision, the governmental purpose for which the information was created. The Proposal appears to prioritize whether disclosure would make a bank's business activities more convenient or efficient.

Confidentiality serves effective supervision in several ways. It allows examiners to make preliminary and forward-looking judgments without treating every supervisory observation as a public, transactional, or potentially adversarial statement. It allows supervisors to identify weaknesses before those weaknesses are reflected in financial statements or become sufficiently developed to support formal enforcement proceedings. It encourages supervisors and institutions to engage in candid exchanges concerning emerging risks, deficient controls, governance weaknesses, and management performance. The Proposal largely ignores those critical functions.

Indeed, the FDIC states categorically that expanded disclosure without prior authorization “would not compromise safety and soundness.”¹¹ The FDIC's assertion is the kind of conclusory, evidence-free determination the Administrative Procedure Act (“APA”) forbids. The agency identifies no study, supervisory experience, pilot, or data supporting the claim, and it entirely fails to analyze the most obvious mechanism by which the Proposal could compromise safety and soundness: the effect of broader dissemination on examiner candor and the willingness to escalate.

A rule finalized on this record would be arbitrary and capricious because the agency “entirely failed to consider an important aspect of the problem” and offered an explanation

⁹ *Supra* 2 at 39733.

¹⁰ *Supra* 2 at 39732; proposed 12 CFR 309.37(a)(1).

¹¹ *Supra* 2 at 39733.

unsupported by—indeed, contradicted by—the evidence before it, including the FDIC’s own post-Signature findings.¹²

The relevant risks are not limited to the possibility that a recipient improperly leaks confidential information. Even if every confidentiality agreement works exactly as intended, the Proposal could still weaken supervision if an FDIC examiner who knows that a written criticism may circulate among affiliates, outside attorneys, consultants, prospective executives, merger counterparties, and other third parties becomes more cautious about making that criticism clearly and forcefully. The FDIC should—but does not—address that risk at all.

III. The Proposal Would Inevitably Constrain Examiner Candor and Supervisory Judgment

Effective bank supervision involves examiner judgment. Supervisors must decide whether management understands its risks, whether governance is effective, whether controls are adequate, whether an institution’s assumptions are credible, whether weaknesses are becoming more serious, and when an issue should be escalated. These judgments often must be made before quantitative financial deterioration provides definitive confirmation.

Better Markets has repeatedly emphasized the importance of protecting that supervisory judgment. In our April 20, 2026 comment letter regarding the OCC’s proposed supervisory appeals process, we explained that supervisory determinations frequently depend on expert judgments concerning risk management, internal controls, governance, liquidity and capital planning, and risk culture.¹³ We warned that allowing those judgments to be repeatedly relitigated would undermine supervisors’ ability to assess individual institutions in the broader context of the banking system and would make it more difficult for supervisors to act promptly and decisively.

We further explained that the current policy environment must be considered as a whole: banking regulators are increasingly constraining supervisory discretion, narrowing the scope of permissible supervisory determinations, and creating additional procedural opportunities for banks to challenge examiner judgments. The practical result is to increase the costs to supervisors of making an adverse determination and increase the ability of a supervised institution to resist it. The Proposal would reinforce precisely that dynamic.

To be clear, Better Markets does not oppose comprehensive, holistic transparency regarding the supervisory process that is in the public interest. For example, public disclosure of

¹² 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see *Sorenson Commc’ns Inc. v. FCC*, 755 F.3d 702, 708 (D.C. Cir. 2014) (“conclusory statements” cannot substitute for reasoned analysis).

¹³ See Better Markets Comment Letter to the Office of the Comptroller of the Currency, “Bank Appeals Process” (April 20, 2026), available at: <https://bettermarkets.org/wp-content/uploads/2026/04/Better-Markets-Comment-Letter-OCC-Bank-Appeals-Process.pdf>; see also Office of the Comptroller of the Currency. Notice of Proposed Rulemaking. “Bank Appeals Process.” (February 17, 2026), available at: <https://www.federalregister.gov/documents/2026/02/17/2026-03086/bank-appeals-process>.

serious supervisory deficiencies—on terms set by the regulator, applied consistently across institutions, and capturing adverse as well as favorable information—could theoretically strengthen market discipline and accelerate remediation. However, the Proposal is the opposite of such a disclosure regime. It would allow each institution to decide unilaterally which supervisory information leaves the supervisory relationship, for its own commercial benefit, with no obligation to disclose the unfavorable remainder.

Under the Proposal, an examiner deciding whether to characterize a bank’s governance as deficient, question the credibility of management, identify weaknesses in an internal model, criticize a proposed transaction, or escalate a supervisory concern will understand that the resulting CSI may no longer remain within a narrow supervisory relationship. Instead, the bank may be able to distribute it throughout its corporate organization and to outside lawyers, consultants, service providers, prospective executives, or potential transaction counterparties. That changes the environment in which supervision occurs.

A predictable consequence is more qualified language, greater demands for documentary support before an issue is committed to writing, increased internal review, and reluctance to make judgments that could impose significant business consequences on the institution if subsequently disclosed. Those effects may be difficult to quantify, but they are hardly speculative. Supervisory policy changes preceding the failure of SVB provide an unusually relevant warning.

The Federal Reserve Board’s own postmortem concluded that a prior shift in supervisory policy emphasizing reduced burden on firms, increasing the burden of proof on supervisors, and providing firms greater procedural protections contributed in some cases to “slower action by supervisory staff and a reluctance to escalate issues.”¹⁴ The lesson could hardly be clearer: changing the institutional consequences of supervisory judgments changes supervisory behavior. The FDIC nevertheless proposes another policy that increases the potential consequences of making candid adverse judgments without evaluating whether it will produce the same result.

IV. SVB and Signature Bank Demonstrate Why the Agencies Must Encourage Earlier and More Forceful Supervisory Judgments

The Proposal is particularly difficult to reconcile with the lessons (including from the FDIC itself) of the March 2023 banking crisis. SVB failed with approximately \$212 billion in assets after experiencing one of the fastest bank runs in American history.¹⁵ Yet the weaknesses that ultimately destroyed the institution did not suddenly arise during the forty-eight hours preceding its failure. They had been developing for years.

¹⁴ See Federal Reserve Board. *Review of the Federal Reserve’s Supervision and Regulation of Silicon Valley Bank* (April 28, 2023) at 11, available at: <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf>.

¹⁵ *Supra* 14 at 2.

SVB had foundational governance and risk-management weaknesses, inadequate liquidity risk management, serious interest-rate risk vulnerabilities, and an extraordinary reliance on uninsured deposits. By the time the institution failed, it had 31 open supervisory findings—approximately three times the number at peer institutions.¹⁶ As Better Markets recently explained in our August 17, 2026 comment letter opposing significant revisions to the CAMELS framework,¹⁷ SVB demonstrates precisely why forward-looking supervisory judgment matters. Supervisors identified governance, risk-management, and internal-control deficiencies while reported capital and earnings remained comparatively strong. Management-related supervisory concerns therefore provided information that traditional balance-sheet measures did not yet reveal. When the financial deterioration finally became unmistakably observable, the institution disappeared in approximately forty-eight hours.

That is the purpose of supervision: to identify a dangerous condition **before** the balance sheet proves beyond dispute that the supervisor was right. The FDIC’s own experience with Signature Bank reinforces the point. The FDIC concluded after Signature’s failure that the root cause was poor management; that management did not always heed examiner concerns; that management was not always responsive or timely in addressing supervisory recommendations; and that the FDIC itself could have escalated supervisory action sooner and been more forward-looking and forceful.¹⁸ The regulatory lesson from those failures should therefore be straightforward: supervisors need institutional support to communicate emerging concerns candidly and to escalate them earlier. The Proposal would move in the opposite—and wrong—direction.

It increases the potential audience for written supervisory judgments, increases their usefulness in commercial and transactional settings, and consequently increases the stakes associated with putting adverse supervisory judgments in writing. That is precisely the type of institutional pressure that can produce a more deliberative, legalistic, and cautious supervisory culture. SVB demonstrated the consequences of that culture once already.

V. The Proposal Improperly Turns Government Supervisory Information Into a Bank-Controlled Business Asset

¹⁶ *Supra* 14 at 6.

¹⁷ See Better Markets Comment Letter to the Federal Financial Institutions Examination Council, “Uniform Financial Institutions Rating System” (August 17, 2026), available at: <https://bettermarkets.org/wp-content/uploads/2026/08/Better-Markets-Comment-Letter-CAMELS.pdf>; see also Federal Financial Institutions Examination Council, “Uniform Financial Institutions Rating System.” (May 19, 2026), available at: <https://www.federalregister.gov/documents/2026/05/19/2026-09944/uniform-financial-institutions-rating-system>.

¹⁸ See Federal Deposit Insurance Corporation, *FDIC’s Supervision of Signature Bank* (April 28, 2023), available at: <https://www.fdic.gov/sites/default/files/2024-03/pr23033a.pdf>; see also FDIC Office of Inspector General, *Material Loss Review of Signature Bank of New York* (October 2023), available at: <https://www.fdicog.gov/sites/default/files/reports/2023-10/EVAL-24-02.pdf>.

The Proposal expressly authorizes disclosure where an institution concludes doing so is “necessary or appropriate for business purposes.”¹⁹ That standard illustrates the larger conceptual problem. CSI results from the government’s exercise of its statutory supervisory authority. The FDIC itself continues to declare in its current regulations (which the Proposal does not amend) that confidential information remains the property of the FDIC even when it is in another person’s possession.²⁰ Yet the operative provisions increasingly treat that information as something the supervised bank may deploy to advance its own corporate objectives. A bank could use CSI in connection with employment negotiations for senior executives, relationships with affiliates and service providers, corporate governance matters, and mergers and other transactions. In many cases the bank—not the FDIC—would no longer determine in advance whether the particular information, recipient, or circumstances justify disclosure.

There is a clear incentive mismatch between the two parties. The FDIC’s congressionally mandated objectives are effective supervision of IDIs and the protection of the DIF and the American public. The supervised institution and its management have commercial objectives. While those interests can overlap, they are not identical. Indeed, the Federal Reserve Board’s SVB postmortem explicitly recognized this basic principle: the interests of bank boards and management are not perfectly aligned with the public interest, which is precisely why prudential regulation and supervision exist.²¹ The Proposal inexplicably gives the party with the commercial interest significantly greater control over information created through a governmental process designed to constrain that party’s risk-taking. While this could be positive for banks’ commercial interests, the Proposal does not explain why it is good for the FDIC, its supervisors, the DIF, or the public.

The reversal of policy by the agency is also unexplained and unacknowledged by the Proposal. For decades the FDIC has maintained—in regulation, in enforcement, and in litigation—that CSI is the property of the FDIC, that its confidentiality is essential to the supervisory process, and that unauthorized disclosure warrants criminal and civil sanction. The Proposal effects a fundamental reversal of that position, transferring the initial disclosure decision to the supervised institution for broad categories of recipients, yet it nowhere acknowledges the reversal or explains why the factual premises underlying the prior policy—that broad circulation of supervisory information chills candid examination and erodes the bank examination privilege—no longer hold.²² Heightened justification is required where a new policy rests upon factual findings that contradict those which underlay the agency’s prior policy—and the Proposal supplies none.

¹⁹ *Supra* 2 at 39733.

²⁰ *See* 12 CFR 309.6(a).

²¹ *Supra* 14 at 2.

²² *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016); 12 CFR 309.6(a); cf. *In re Subpoena Served Upon Comptroller of the Currency*, 967 F.2d 630, 633–34 (D.C. Cir. 1992) (describing the bank examination privilege and the candor rationale underlying supervisory confidentiality).

VI. The Proposal Creates Serious Risks of Selective Disclosure and an Asymmetric Market for Supervisory Information

Expanded bank control over CSI also creates a significant selective-disclosure problem that the Proposal fails to address. The Proposal generally does not require an institution to disclose all material CSI to a permissible recipient simply because it elects to disclose some CSI. Nor does the Proposal establish a general requirement that disclosures provide sufficient context to prevent a recipient from receiving a misleading impression of the institution's supervisory condition. That creates asymmetric incentives.

An institution has an obvious reason to share favorable supervisory information when doing so advances a transaction, employment decision, affiliate relationship, or other business objective. It has an equally obvious reason not to volunteer unfavorable information unless disclosure is independently required. The result would be an information environment in which favorable supervisory information becomes commercially portable while adverse supervisory information continues to receive the full benefit of confidentiality.

In other words, positive supervisory news becomes an asset, while negative supervisory news remains a secret. It is selective transparency controlled by the supervised institution. The risk is particularly evident in mergers. The FDIC states that CSI can be "highly relevant" to potential merger counterparties and proposes allowing banks to provide such information to multiple potential counterparties without prior FDIC approval.²³ But if supervisory information is sufficiently important to the counterparty's evaluation of the institution, the FDIC must address whether selective production can itself produce misleading due diligence.

A bank should not be permitted to invoke CSI confidentiality as a shield for adverse supervisory information while simultaneously using favorable CSI as a sword to advance a transaction. At a minimum, any expanded authorization must include an anti-cherry-picking requirement. If an institution elects to disclose CSI concerning a particular supervisory subject, rating, examination, risk-management area, or supervisory determination, it should be required to provide sufficient related information to prevent the disclosure from being materially incomplete or misleading.

The Proposal also fails to consider how routine dissemination of CSI to affiliates, outside advisors, prospective executives, and merger counterparties will affect the bank examination privilege. Congress provided that submission of privileged information to a banking regulator does not waive applicable privileges, but it has not similarly protected onward disclosures made by banks to commercial counterparties for business purposes. Widespread bank-controlled dissemination invites waiver arguments in private litigation, discovery contests over supervisory materials, and the eventual judicial narrowing of a privilege that exists to protect the supervisory

²³ *Supra* 2 at 39733.

process. The Proposal could lead to CSI being shared more broadly with the public, either formally or informally through leaks. The Proposal does not mention or analyze these risks.²⁴

VII. The FDIC's Proposal to Facilitate Industry-Wide Analysis of CSI Raises Even More Serious Concerns

The Proposal goes further still by soliciting comment on whether third parties should be permitted to receive CSI from multiple banks for aggregated analysis of the supervisory process and whether organizations should be allowed to make public disclosures derived from that information. The FDIC identifies law firms and nonprofit banking trade associations as possible recipients.²⁵ We recommend that the FDIC not proceed with this concept.

Creating a mechanism through which supervised institutions can pool confidential supervisory information through their lawyers or trade associations would fundamentally alter the supervisory relationship. Such databases could enable supervised institutions and their representatives to compare supervisory findings, examiner approaches, remediation expectations, ratings practices, and other supervisory judgments across institutions. Banks could then use those comparisons to resist institution-specific supervisory judgments: why did another institution receive a less severe finding; why was a similar practice treated differently elsewhere; why did another examination team allow more time for remediation?

As Better Markets explained in our April 2026 supervisory appeals comment letter to the OCC, one of supervisors' core advantages is their ability to evaluate an individual institution using information and experience developed across the banking system.²⁶ A supervised institution does not possess that system-wide supervisory perspective.

The Proposal appears to contemplate giving the banking industry something approaching a privately constructed approximation of it. The predictable consequence would be to make every exercise of supervisory judgment more contestable. Examiners would face pressure not simply to determine the appropriate supervisory response to the institution before them but to demonstrate that every judgment could survive comparison against an industry-assembled database of supervisory practices. That would encourage convergence toward the least aggressive prior supervisory outcome and discourage supervisors from responding dynamically to emerging risks. It would also facilitate precisely the type of industry pressure that Better Markets has warned about in connection with supervisory appeals: converting expert supervisory judgment into an adversarial process in which institutions and their representatives continuously litigate the boundaries of permissible supervision.

The effect would be to materially redistribute informational power from the supervisor to the supervised industry. If the FDIC believes that public disclosure of aggregated supervisory information would improve accountability or supervision, the FDIC itself should determine what

²⁴ See 12 U.S.C. § 1828(x); *In re Subpoena Served Upon Comptroller of the Currency*, 967 F.2d 630, 633–34 (D.C. Cir. 1992); *State Farm*, 463 U.S. at 43.

²⁵ *Supra* 2 at 39734.

²⁶ *Supra* 13.

information should be published, assemble the information across institutions in a neutral and comprehensive manner, ensure appropriate methodological controls, and publish the resulting analysis. The agency should not outsource that function to industry trade associations whose members are the subjects of the supervision they would be evaluating.

At a minimum, the aggregated-data concept is sufficiently different from the Proposal's specific amendments that it should be addressed, if at all, through a separate notice of proposed rulemaking supported by a full analysis of its implications for supervisory effectiveness.²⁷

VIII. The Proposal Must Be Evaluated Together With the Agencies' Broader Effort to Shift Power From Supervisors to Supervised Banks

The Proposal continues a troubling trend of rulemakings by the agency that would weaken the effectiveness of its supervisory program. In our August 17, 2026 comment letter to the FFIEC on the proposed revisions to the Uniform Financial Institutions Ratings System (also known as the CAMELS framework),²⁸ we explained that proposed revisions to the ratings framework would demote the role of the Management component, remove responsiveness to supervisory findings as an explicit evaluation factor, and make it more difficult for governance and risk-management weaknesses to drive ratings before they have produced "material financial risk" or "observable deterioration." We warned that the proposal would transform what should be a leading supervisory indicator into a lagging one.

Better Markets similarly warned in our September 2025 comment letter to the FDIC's supervisory appeals proposal that individuals without direct supervisory experience should not be placed in a position to overturn professional supervisory judgments.²⁹ We made similar warnings in our subsequent OCC letter on its supervisory appeals process.³⁰ We believe that expanding banks' ability to relitigate supervisory determinations and failing to defer appropriately to the expertise of frontline supervisors would constrain supervisory discretion and delay remediation.

²⁷ See 5 U.S.C. § 553(b)–(c); *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) (final rule must be a "logical outgrowth" of the proposal); *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1079–81 (D.C. Cir. 2009).

²⁸ See Christopher Appel, *Regulators' Proposal to Weaken Bank Management Supervision Leaves Main Street Exposed* (August 17, 2026), available at: <https://bettermarkets.org/newsroom/regulators-proposal-to-weaken-bank-management-supervision-leaves-main-street-exposed>. See also *supra* 17.

²⁹ See Better Markets Comment Letter to FDIC Notice of Proposed Rulemaking. *Guidelines for Appeals of Material Supervisory Determinations*, 90 FR 33942 (July 18, 2025), available at: <https://bettermarkets.org/wp-content/uploads/2025/09/Better-Markets-Comment-Letter-FDIC-Guidelines-for-Appeals-of-Material-Supervisory-Determinations.pdf>; see also Federal Deposit Insurance Corporation, "Guidelines for Appeals of Material Supervisory Determinations." (January 26, 2026), available at: <https://www.federalregister.gov/documents/2026/01/26/2026-01433/guidelines-for-appeals-of-material-supervisory-determinations>.

³⁰ *Supra* 13.

Better Markets has opposed other recent efforts by the FDIC to narrow the scope of unsafe-and-unsound-practice determinations, remove reputational risk from the supervisory framework, and otherwise increase the legal and procedural hurdles supervisors face when attempting to address emerging weaknesses.³¹ This Proposal would add to that reckless trend. The CAMELS proposal limits what supervisory weaknesses can meaningfully affect ratings. The expanded appeals framework increases banks' ability to challenge what supervisors decide. This Proposal changes who can receive and use what supervisors write. The cumulative effect is to make supervisors less powerful and supervised banks more powerful.

That is particularly dangerous because the effectiveness of supervision depends substantially on institutional dynamics that are difficult to capture in formal rules. An examiner need not be expressly prohibited from issuing a finding for supervision to become less effective. It is enough to increase the burden of issuing the finding, increase the likelihood that it will be challenged, increase the audience that will scrutinize it, increase its potential transactional consequences, and make the examiner repeatedly defend why a judgment differs from outcomes obtained by other banks. Supervisors will rationally respond to those incentives. That is what constraining supervision looks like in practice. The failures of SVB and Signature Bank demonstrate the consequences.

The APA does not permit the FDIC to analyze this Proposal as though examiners and its broader supervisory framework operate in a vacuum. Where an agency undertakes several concurrent actions that operate on the same supervisory dynamics—notably, what and how supervisors may consider (CAMELS), whether their determinations can be appealed, and who may receive and use what they write (this Proposal)—the combined effect on supervision is an important aspect of the problem that must be considered.³²

IX. The Proposal's Economic Analysis Ignores Its Most Important Potential Cost

The Proposal's regulatory analysis reinforces these concerns. The FDIC devotes substantial attention to the benefits the Proposal could provide supervised institutions. It discusses reduced administrative burden, faster sharing of information, improved employment

³¹ See Better Markets, Comment Letter on the FDIC and OCC Notice of Proposed Rulemaking Regarding *Unsafe or Unsound Practices and Matters Requiring Attention* (December 23, 2025), <https://bettermarkets.org/wp-content/uploads/2025/12/Better-Markets-Comment-Letter-FDIC-OCC-Unsafe-Unsound-Practices.pdf> (opposing a restrictive definition of “unsafe or unsound practice” and new limits on supervisors' ability to identify and communicate emerging weaknesses through matters requiring attention); See also Better Markets, Comment Letter on Notice of Proposed Rulemaking *Prohibition on Use of Reputation Risk by Regulators* (December 29, 2025), <https://www.fdic.gov/federal-register-publications/better-markets-inc-philip-basil-rin-3064-ag12.pdf> (opposing codification of the removal of reputation risk as a basis for supervisory criticism). See also *supra* 29.

³² See *State Farm*, 463 U.S. at 43; cf. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

decisions, more robust merger due diligence, and “considerable efficiencies” for insured depository institutions and related entities.³³

Remarkably, the FDIC concedes that it does not have the data necessary to quantify many of these supposed benefits but nevertheless concludes that they could be “substantial” and “meaningful.”³⁴ The FDIC’s analysis of the Proposal’s costs is notably different. The FDIC principally discusses the costs associated with confidentiality agreements, merger-counterparty waivers, and related procedural requirements. It predicts that the Proposal’s costs will be “small.”³⁵

Missing from the analysis is any meaningful evaluation of the costs to the FDIC’s own supervisory effectiveness. Specifically, the FDIC does not estimate or even seriously discuss:

- whether examiners may write supervisory findings differently when those findings can circulate more broadly;
- whether examiners may become less willing to make forward-looking or judgment-based determinations;
- whether greater dissemination will increase challenges to supervisory findings;
- whether aggregated CSI will allow institutions to benchmark and contest supervisory decisions;
- whether selective disclosure could create misleading impressions regarding supervisory condition;
- whether these changes could delay corrective action;
- or whether any resulting weakening of supervision could increase losses to the DIF.

These questions concern the core statutory function affected by the Proposal. An agency cannot reasonably conclude that a proposal “would not compromise safety and soundness” without analyzing the principal mechanism through which it could do precisely that.³⁶

This asymmetry is both a policy and legal failure. An agency may not credit unquantified benefits as “substantial” and “meaningful” while dismissing as small a category of costs it never analyzed—in this Proposal, the cost to the effectiveness of the FDIC’s own supervision and, ultimately, to the DIF. Courts have vacated rules where the agency “inconsistently and opportunistically framed the costs and benefits” of its action, and reasoned decisionmaking requires attention to the disadvantages of a rule as well as its advantages.³⁷

³³ *Supra* 2 at 39738.

³⁴ *Supra* 2 at 39738-39.

³⁵ *Supra* 2 at 39739.

³⁶ *Supra* 2 at 39733.

³⁷ *See Business Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011); *Michigan v. EPA*, 576 U.S. 743, 750–53 (2015); *State Farm*, 463 U.S. at 43.

X. The FDIC Should Withdraw or Substantially Revise the Proposal

Better Markets therefore urges the FDIC not to finalize the Proposal in its current form. At a minimum, the FDIC should:

- 1. Retain prior FDIC approval for material disclosures of CSI outside the institution and its immediate supervisory and governance structure.** Administrative convenience should not displace agency consideration of whether dissemination could impair supervision.
- 2. Reject an open-ended “necessary or appropriate for business purposes” standard controlled by the supervised institution.** The FDIC should identify specific permissible purposes and categories of information rather than delegating the determination to institutions whose interests may differ from those of the agency.
- 3. Establish explicit anti-selective-disclosure protections.** An institution electing to disclose CSI concerning a supervisory matter should be required to provide sufficient related information to ensure that the disclosure is not materially incomplete or misleading.
- 4. Require institutions to maintain complete records of all CSI disclosures.** The Proposal itself asks whether such records should be required. We strongly recommend that they should. Records should identify the information disclosed, recipient, date, asserted business purpose and legal authority for disclosure, and relevant confidentiality agreement, and should be available to examiners upon request.
- 5. Apply heightened protections to adverse and preliminary supervisory information.** Examination ratings, Matters Requiring Attention, Matters Requiring Immediate Attention, criticisms of management and governance, preliminary supervisory judgments, and other information whose broader dissemination could most directly affect examiner candor should remain subject to prior FDIC authorization.
- 6. Reject the proposed concept of allowing industry organizations to aggregate CSI for analysis of the supervisory process.** If the FDIC wishes to increase transparency regarding supervision, the agency—not the supervised industry—should collect and publish appropriately anonymized and methodologically sound information.
- 7. Do not authorize public disclosures based on aggregated CSI without a separate rulemaking.** The potential implications for supervisory confidentiality, examiner independence, selective disclosure, reverse engineering, and industry challenges to supervisory decisions require a substantially more developed record.
- 8. Analyze the effect of expanded disclosure on examiner behavior before finalizing any rule.** That analysis must address whether the Proposal could chill examiner candor, delay escalation, increase the burden associated with supervisory determinations, or otherwise weaken forward-looking supervision.
- 9. Evaluate the Proposal cumulatively with the FDIC’s other recent supervisory changes.** The FDIC cannot rationally analyze each change as though examiners operate in a vacuum. The agency should consider how expanded CSI dissemination interacts with

revisions to CAMELS, supervisory appeals, unsafe-and-unsound standards, and other measures that constrain supervisory judgment.

10. Explain how the Proposal incorporates the lessons of SVB and Signature Bank.

Those failures demonstrated the need for earlier, more candid, and more forceful supervision. The FDIC must explain why a policy that increases the audience for and potential consequences of supervisory judgments will advance rather than undermine that objective.

XI. Conclusion

The Proposal repeatedly focuses on reducing burdens and improving the ability of supervised banks to use FDIC confidential information for their own business purposes. But the FDIC is not a business-information service for insured banks, and confidential supervisory information is not primarily a corporate asset. CSI is a product of government supervision.

CSI's confidentiality protects a supervisory process that must be candid, forward-looking, independent, and capable of identifying weaknesses before they become crises. The experience of SVB and Signature Bank demonstrates how much damage can result when supervisors identify serious problems but do not act quickly or forcefully enough. The lesson of those failures is to make supervisors more—not less—willing and able to identify problems early and insist that they be corrected.

The FDIC should withdraw the Proposal and not adopt a rule that benefits banks by weakening the institutional protections that allow its own supervisors to do their jobs.

Sincerely,



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