



October 5, 2026

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 1E-216
Washington, DC 20219

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

Dear Ladies and Gentlemen:

Better Markets appreciates¹ the opportunity to comment on the Office of the Comptroller of the Currency's ("OCC") proposal ("Proposal")² to reorganize its rules governing the availability of non-public OCC information ("NPOI") and, most significantly, to permit OCC-supervised entities to disclose confidential supervisory information ("CSI") to six categories of third parties without prior OCC approval.

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. We also support, as discussed below, the OCC's concept of releasing supervisory information to the public once it has aged sufficiently that its release cannot affect current supervision.

The Proposal, however, goes considerably further. It would permit a national bank, Federal savings association, or other supervised entity—including, for the first time, a payment stablecoin issuer—to disclose CSI without OCC approval to affiliates (foreign affiliates included), to a broadly defined class of service providers, to candidates for senior executive positions at the bank or its holding company, to as many as three potential merger counterparties and their consultants and attorneys, and to not-for-profit entities, expressly including banking trade associations, so that those associations may "advocate for the best interests of the members

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 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>.

of the trade association.”³ The OCC is also “considering” going further still in the final rule, by extending the same self-executing exceptions to parent holding companies it does not supervise, to majority shareholders, and to bank-to-bank sharing.⁴

Better Markets has concurrently filed a comment letter opposing the Federal Deposit Insurance Corporation’s (“FDIC”) parallel proposal to expand insured depository institutions’ authority to disclose FDIC confidential information without prior approval.⁵ The OCC Proposal rests on the same incorrect premise as the FDIC proposal, would produce the same harm to examiner candor and supervisory independence, and suffers from the same absence of evidence and analysis. We therefore incorporate our FDIC letter by reference and restate its central points here.

However, the OCC Proposal is, in important respects, even more troubling than the FDIC’s. It would authorize banks to route supervisory information to bank trade associations that lobby against supervision; it reaches candidates for holding-company positions the OCC does not supervise; it applies on day one to stablecoin issuers the OCC has never examined; and it is accompanied by no impact analysis at all.⁶

The Proposal describes its central objective as correcting a framework that “over prioritizes confidentiality relative to other interests, including a supervised entity’s business need to disclose information and to whom.”⁷ That framing reflects the Proposal’s fundamental error. 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 national banks and Federal savings associations, the Deposit Insurance Fund (“DIF”), financial stability, and ultimately the American public. Confidentiality is an important and necessary structural protection for the government’s supervisory process.

By substantially expanding banks’ control over the dissemination and use of CSI, the Proposal would 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 banking agencies’ broader, ongoing 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 Federal Reserve’s 2023 review reached that conclusion, and the most recent commissioned review of SVB by the Vice Chair for

³ *Supra* 2 at 50633–34 (proposed 12 CFR 4.14(b)(1)(vi)(A)).

⁴ *Supra* 2 at 50618, 50622, 50627 (Questions 11, 12, and 16).

⁵ Better Markets, Comment Letter to the Federal Deposit Insurance Corporation, *Disclosure of Information*, RIN 3064–AG30 (October 5, 2026); *see also* 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>.

⁶ *Supra* 2 at 50628. The proposal includes only a series of conclusions that the rule “would be a potential net cost savings” for banks.

⁷ *Supra* 2 at 50611.

Supervision released last month reached the same conclusion.⁸ A proposal that raises the cost of supervisory candor moves in exactly the wrong direction after 2023.

For these reasons, and those set out below, Better Markets urges the OCC to withdraw the Proposal's expansion of bank-controlled CSI disclosure. To the extent the OCC proceeds at all, it should do so only after conducting and publishing the analysis the Proposal omits, only through a time-limited and closely monitored pilot, and only with the recommendations described in Part XVI of this letter. In summary:

- The OCC should not authorize disclosure of CSI to not-for-profit entities or trade associations under any circumstances (proposed § 4.14(b)(1)(vi));
- The OCC should not authorize disclosure of CSI to potential merger or acquisition counterparties or their advisors without prior OCC approval (proposed § 4.14(b)(1)(iv)–(v));
- The OCC should not extend any disclosure exception to candidates for boards of directors (Question 8), to parent holding companies (Question 11), to majority shareholders or other supervised entities (Questions 12 and 16), or to candidates for holding-company positions;
- Any disclosure to senior executive officer candidates should require prior OCC approval; if the OCC nevertheless proceeds, disclosure must be limited to domestic candidates, to bank-level positions, and to categories of CSI the OCC identifies in advance;
- The Proposal does not provide adequate controls to prevent abuse (Question 18), and any expanded disclosure should be adopted, if at all, only as a sunseting pilot; and
- The OCC should itself publish aged supervisory information, including aggregated and anonymized ratings and Matters Requiring Attention (“MRAs”), but only after a significant period of at least 35 years, not 25, and in place of—not in addition to—disclosure through trade associations (Question 19).

⁸ See Federal Reserve Board, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank* (April 28, 2023), available at: <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf> at 11; Starling Advisory Group, *Probative Inquiry: 2023 Financial Sector Stress Events, Preliminary Report* (Public Exposure Draft) (September 21, 2026), prepared for the Vice Chair for Supervision, available at: [https://21211564.hs-sites.com/hubfs/Probative%20Inquiry/SVB%20Probative%20Inquiry%20-%20Preliminary%20Report%20\(21.Sept.26\)%20-%20\(Public%20Exposure%20Draft\)%20-%20Final.pdf](https://21211564.hs-sites.com/hubfs/Probative%20Inquiry/SVB%20Probative%20Inquiry%20-%20Preliminary%20Report%20(21.Sept.26)%20-%20(Public%20Exposure%20Draft)%20-%20Final.pdf) at xvii, xxi (finding that risk staff “had begun calling attention to unrealized losses” but that analysis “didn’t seem to translate into a supervisory response,” and that supervisors “lacked clarity regarding decision-rights and effective institutional mechanisms by which to determine whose assessment of the risks evident at SVB should govern the supervisory response”); see also Michelle Bowman, Vice Chair for Supervision, *Initial Findings from Independent Review of Silicon Valley Bank* (September 18, 2026), available at: <https://www.federalreserve.gov/newsevents/speech/files/bowman20260918b.pdf> (summarizing the report's finding that “supervisory staff did not take prompt and decisive action”).

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

The Proposal begins from the wrong premise. The OCC portrays the current CSI framework largely as an administrative burden that “hampers a supervised entity’s ability to effectively manage its operations,” and states that “one of the OCC’s primary goals in this rulemaking is to adjust the relative weight” between confidentiality and “a supervised entity’s business need to disclose information.”⁹ The proposed rule would allow institutions themselves to make the disclosure determination for affiliates, service providers, prospective senior executive officers, potential merger counterparties and their advisors, and not-for-profit entities including trade associations.¹⁰

The Proposal therefore substantially shifts the initial decision over whether OCC confidential information should leave the traditional supervisory relationship from the OCC 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 instead prioritizes 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.

Remarkably, the OCC itself acknowledges these functions but the Proposal ignores them. The Proposal concedes that “effective supervision requires a candid exchange of information,” that “all parties must be confident that NPOI will be protected from inappropriate disclosure,” and that inadequately controlled disclosure “would chill the OCC’s ability to provide meaningful criticism to its supervised entities that is crucial for remediation of weaknesses.”¹¹ Having identified precisely the mechanism by which the Proposal could compromise safety and soundness, it never analyzes whether its six self-executing exceptions would trigger it. The agency simply asserts (with no evidence), “based on its supervisory experience,” that “the costs and benefits of confidentiality and limited disclosure of CSI favor disclosure in these circumstances.”¹²

That assertion is an example of the conclusory, evidence-free determination the Administrative Procedure Act (“APA”) does not permit. A rule finalized on this record would be arbitrary and capricious because the agency “entirely failed to consider an important aspect of

⁹ *Supra* 2 at 50611.

¹⁰ *Supra* 2 at 50633–34 (proposed 12 CFR 4.14(b)(1)).

¹¹ *Supra* 2 at 50611.

¹² *Supra* 2 at 50618.

the problem” and offered an explanation unsupported by the evidence before it.¹³ The relevant risks are not limited to the possibility that a recipient improperly leaks confidential information. Even if every qualifying confidentiality agreement works exactly as intended, the Proposal could still weaken supervision if an OCC examiner who knows that a written criticism may circulate among affiliates, outside consultants, prospective executives, merger counterparties, and a trade association becomes more cautious about making that criticism clearly and forcefully. The OCC should—but does not—address that risk at all.

II. The Proposal Would Create a “Chilling Effect” on Supervisors

The Proposal’s principal justification is that the current framework “has had a chilling effect on supervised entities’ willingness to make independent determinations about what is covered by subpart C and to seek the OCC’s approval to disclose NPOI,” and that removing the reference to criminal penalties will ensure that “supervised entities’ disclosure will no longer be inappropriately chilled.”¹⁴ The Proposal uses the words “chill” or “chilling” three times in describing the harm the Proposal is meant to cure. It offers no evidence for the claim.

Put simply, where is the OCC’s evidence? The Proposal cites no study, no survey, no data on the volume, timing, or disposition of CSI disclosure requests, and no example of a legitimate disclosure that was not made because a bank feared the current rule. The only external support the OCC identifies is that “two EGRPRA commenters” discussed sharing CSI in due diligence and that unnamed “stakeholders” have “provided feedback directly” to the agencies.¹⁵ The phrase “based on its supervisory experience” or a close variant appears eight times in the preamble, each time in place of analysis. The OCC also relies on the “feedback” of the regulated industry as though the industry’s preferences were themselves evidence of what serves supervision.

Notably, the OCC has the data that would allow it to test its own premise, and it declines to use it. In the Paperwork Reduction Act section, the Proposal discloses that “in calendar year 2025, the OCC received 102 CSI-related requests.”¹⁶ The OCC does not say how many of those requests were granted or denied, how long they took to process, how many concerned each of the six categories the Proposal would exempt, or whether any denial or delay caused any identifiable harm. An agency that possesses the relevant records and chooses not to analyze them cannot claim that the current framework “hampers” bank operations. If the OCC believes its approval process is too slow, the remedy is to fix the approval process—a point one of the OCC’s own

¹³ 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).

¹⁴ *Supra* 2 at 50611.

¹⁵ *Supra* 2 at 50612–13.

¹⁶ *Supra* 2 at 50628.

EGRPRA commenters made in supporting a framework of prior approval “readily obtainable through an established, uniform, and expeditious process.”¹⁷

More fundamentally, the OCC has the chilling problem backwards. The chill that matters for safety and soundness is an examiner’s reluctance to put a candid adverse judgment in writing when that judgment may be circulated for a bank’s commercial advantage. The Proposal concedes this dynamic exists: in explaining the fourth merger safeguard, the agency admits it must “address concerns that OCC examiners will feel pressure (or be pressured) to tailor their supervisory findings to accommodate, for example, due diligence for an on-going or future transaction.”¹⁸ The OCC’s answer to that concern is a written acknowledgment from the counterparty. A piece of paper signed by a merger partner does nothing to relieve the pressure on the examiner who knows that the ratings and MRAs she writes will be read by the bank’s acquirer, its lawyers, and its trade association.

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

Effective bank supervision requires 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.¹⁹ 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 Proposal would reinforce that dynamic.

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

¹⁷ *Supra* 2 at 50612.

¹⁸ *Supra* 2 at 50621.

¹⁹ 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>.

supervisory deficiencies—on terms set by the regulator, applied consistently across institutions, and capturing adverse as well as favorable information—could strengthen market discipline and accelerate remediation. Part XIII of this letter supports the OCC’s proposal to release aged supervisory information on exactly those terms. However, the Proposal’s bank-controlled exceptions are precisely the opposite of such a disclosure regime. They 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. 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. The Federal Reserve Board’s own SVB 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.”²⁰ The lesson is clear: changing the institutional consequences of supervisory judgments changes supervisory behavior. The OCC 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 inconsistent with the lessons of the 2023 banking crisis. SVB failed with approximately \$212 billion in assets after experiencing one of the fastest bank runs in American history.²¹ 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. 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.²² 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.

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 concluded after Signature

²⁰ *Supra* 8.

²¹ *Supra* 8 at 2.

²² *Supra* 8 at 6.

Bank's failure that the root cause was poor management; that management did not always heed examiner concerns; and that the FDIC itself could have escalated supervisory action sooner and been more forward-looking and forceful.²³ The hard-learned regulatory lesson from those failures should be straightforward: supervisors need institutional support to communicate emerging concerns candidly and to escalate them earlier. The Proposal would move in the opposite 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.

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

CSI results from the government's exercise of its statutory supervisory authority. The OCC's own regulations have long declared that non-public OCC information is the property of the Comptroller. Further, the Proposal continues to assert that the OCC "does not waive its right to control or impose limitations on the use and disclosure" of that information wherever it resides.²⁴ Yet the operative provisions treat that information as a tool the supervised bank may deploy to advance its own corporate objectives—in employment negotiations, affiliate and vendor relationships, merger negotiations, and industry advocacy. In each case the bank—not the OCC—would determine in advance whether the particular information, recipient, and circumstances justify disclosure.

There is a clear incentive mismatch between the two parties. The OCC's congressionally mandated objectives are the safety and soundness of national banks and Federal savings associations 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. 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.²⁵ 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 benefits the OCC, its examiners, the DIF, or the public.

The complete reversal of the OCC's policy is unexplained and unacknowledged. For decades the OCC has maintained—in regulation, in enforcement, and in litigation—that CSI is

²³ 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.fdicoint.gov/sites/default/files/reports/2023-10/EVAL-24-02.pdf>.

²⁴ *Supra* 2 at 50617 (proposed 12 CFR 4.13(f)); 12 CFR 4.36(b).

²⁵ *Supra* 8 at 2.

the property of the OCC, that its confidentiality is essential to the supervisory process, and that unauthorized disclosure warrants sanction. The Proposal effects a fundamental reversal of that position 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.²⁶ Heightened justification is required where a new policy rests upon factual findings that contradict those which underlay the agency’s prior policy. The Proposal does not provide those justifications. Indeed, the OCC’s new “common interest” theory—that affiliates, incoming executives, merger counterparties, and trade associations all “share a supervised entity’s interest in ensuring the efficacy of the supervision process”²⁷—is asserted as a legal conclusion without any factual support, and it proves far too much. Under that logic, there is no third party with whom a bank could not share CSI.

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

The Proposal fails to address the significant selective-disclosure problem that would result from expanded bank control over CSI. The Proposal does not require an institution to disclose *all material CSI* to a permissible recipient when it elects to disclose only some related CSI. It also does not establish a general requirement that disclosures provide sufficient context to prevent a recipient from receiving a misleading impression of the institution’s supervisory condition. An institution has an obvious reason to share favorable supervisory information when doing so advances a transaction, employment decision, affiliate relationship, or advocacy objective. It has an equally obvious reason not to provide unfavorable information unless disclosure is independently required by the OCC. 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. Positive supervisory news becomes an asset for the bank, while negative supervisory news remains a secret.

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 or a lobbying campaign. At a minimum, any expanded authorization must include an anti-selective-disclosure 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.

Selective disclosure could also draw the OCC into commercial disputes it has no role in creating. For example, assume that a bank shares favorable CSI with a potential acquirer but withholds the MRAs that would have changed the price; when the acquirer discovers the

²⁶ 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); 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).

²⁷ *Supra* 2 at 50617.

omission after closing, it could sue the seller, seek the rest of the supervisory file from the seller in discovery and from the OCC by subpoena under the procedures the Proposal retains. The OCC will then have to decide whether to produce the CSI it withheld from the deal, resist and litigate, or potentially have a court decide that the supervised bank's voluntary disclosure of part of the file waived the privilege over the rest. The OCC handles third-party subpoenas today, but at the margins. The Proposal could make it a routine participant in merger litigation, with the examination privilege as the stake and no say in the disclosure that put it there. The Proposal does not consider this. Any final rule must provide assurance the agency has considered this potential outcome and what steps the agency would take to minimize any negative consequences.

The Proposal also fails to consider how routine dissemination of CSI to affiliates, vendors, prospective executives, merger counterparties, and trade associations will affect the bank examination privilege. The OCC's answer is a regulatory declaration that disclosure under the new exceptions "does not constitute a waiver of the examination privilege."²⁸ However, the OCC cannot legislate the scope of a common-law privilege by regulation. Congress protected against waiver only for submissions to a banking regulator, not for onward disclosures by banks to commercial counterparties for business purposes.²⁹ 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 process. The Proposal does not analyze these risks.

VII. Disclosure to Bank Trade Associations and Other Not-for-Profit Entities Is Not in the Public Interest and Should Not be Finalized

The most troubling element of the Proposal is that it would permit a supervised entity to disclose CSI, without OCC approval, to any not-for-profit entity, "including a trade association," so that the recipient can "anonymize and aggregate" CSI from institutions supervised by the OCC, the Federal Reserve Board, or the FDIC and then either publish the aggregated information or, "in the case of a trade association, advocate for the best interests of the members of the trade association, including with respect to the fairness, effectiveness, and efficiency of the OCC's regulatory and supervisory processes."³⁰ Better Markets strongly urges the OCC not to proceed with this concept in any form.

The provision would only serve the banking industry's interest and provides no public benefit. The OCC's own footnote defines a banking trade association as "an organization comprised of banks for the purpose of protecting and advancing the banking industry's common interests."³¹ The provision's text then authorizes disclosure so that the association may "advocate for the best interests of its members." The Proposal thus contemplates that government supervisory information will be collected by organizations whose members are the supervised banks and deployed to lobby the OCC, the other banking agencies, and Congress about the "fairness, effectiveness, and efficiency" of supervision. The OCC does not explain how

²⁸ *Supra* 2 at 50617.

²⁹ *See* 12 U.S.C. § 1828(x); *In re Subpoena Served Upon Comptroller of the Currency*, 967 F.2d at 633–34.

³⁰ *Supra* 2 at 50633–34 (proposed 12 CFR 4.14(b)(1)(vi)(A)).

³¹ *Supra* 2 at 50622 n.44.

affirmatively providing the regulated industry with the regulator’s own confidential work product to argue for less supervision could be “necessary or appropriate for the efficacy of the supervision process,” which is the governing standard for every exception in § 4.14(b)(1).³² It cannot be. The OCC’s stated rationale—that trade associations are “established . . . for advocacy in support of consistent, efficient, and effective treatment of certain supervised entities”³³—describes a private interest, not a public one. The public interest in supervision is served by the OCC, which answers to Congress and the public, not by the trade associations that answer to the banks.

The provision would privatize the supervisor’s system-wide perspective. As Better Markets explained in our April 2026 supervisory appeals letter and in our corresponding FDIC CSI proposal letter, one of supervisors’ core advantages is their ability to evaluate an individual institution using information and experience developed across the banking system. A supervised institution does not possess that system-wide supervisory perspective. Creating a mechanism through which supervised institutions can pool CSI through their trade associations would give the banking industry something approaching a privately constructed approximation of it. Such databases would enable institutions and their representatives to compare supervisory findings, examiner approaches, remediation expectations, ratings practices, and other supervisory judgments across institutions, and then to use those comparisons to resist institution-specific 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. 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 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 OCC also does not consider that it could be sponsoring an exchange of information among competitors. CSI describes a bank’s business lines, risk limits, underwriting and pricing practices, and remediation timelines. Pooling that information through a trade association is the type of competitor information exchange the Department of Justice and Federal Trade Commission have treated with increasing suspicion since withdrawing their safe-harbor guidance in 2023. A banking supervisor should not be the reason that exchange exists.

The provision requires that CSI be anonymized and aggregated as to the supervised entities. It requires nothing with respect to the OCC personnel who wrote it. Reports of examination, supervisory letters, MRAs, and enforcement correspondence identify examiners-in-charge, examination teams, supervisory offices, and district leadership. Nothing in proposed § 4.14(b)(1)(vi) would prevent a trade association from compiling, across dozens of members and repeated three-month “collection” windows, a running record of which examiners and which OCC offices issue the most MRAs, assign the lowest ratings, demand the shortest remediation

³² *Supra* 2 at 50633 (proposed 12 CFR 4.14(b)(1)).

³³ *Supra* 2 at 50622.

timelines, or most frequently identify particular risk-management weaknesses—and then using that record, in the words of the rule, to advocate about the “fairness” of the OCC’s supervisory processes. Even a dataset in which every bank is anonymous could be fully identifying as to examiners, and an aggregated “league table” of examiner severity would be identifying as to OCC districts and offices. For example, a list of the examiners who issue the most MRAs could be a target list. Campaigns against individual federal employees by name, online and in person, are now routine, and individual bank examiners could be obvious subjects. The Proposal does not consider examiner safety and anonymity, does not require the removal of examiner-identifying information before CSI leaves the bank, and does not ask whether any OCC employee was consulted about a rule that would allow the regulated industry to compile their work product. That is a direct threat to examiner independence and to the willingness of individual examiners to make unpopular calls. The Proposal does not mention the issue nor does it define “anonymize” anywhere in proposed subpart B.

The OCC supervises a small number of very large banks. Where three or four institutions dominate a business line, “aggregated” CSI about that business line is not anonymous to someone who knows the industry—particularly the trade association whose members supplied it. The provision expressly authorizes aggregation of CSI belonging to the Federal Reserve Board and the FDIC as well as the OCC,³⁴ meaning the OCC would be authorizing its supervised banks to feed other agencies’ confidential supervisory information into an industry database. The Proposal does not indicate whether the Board or the FDIC has agreed (or even was consulted).

The provision’s only limits are a qualifying confidentiality agreement, a written agreement describing a “discrete and time-limited (not to exceed three months)” collection, and a restriction to the CSI described in that agreement.³⁵ Accordingly, the Proposal would not appear to prevent successive three-month collections or require that the OCC be notified of any collection. As a result, the “aggregated” data could be used solely in private lobbying and the not-for-profit may freely disclose anything it deems “anonymized,” because the further-disclosure restriction applies only to non-anonymized CSI.³⁶ The OCC’s stated reason for trusting not-for-profits over for-profits—that a not-for-profit “may be less likely to use the CSI in contravention of the subpart”³⁷—is conjecture. It ignores that a trade association’s entire purpose is to use information on behalf of its for-profit members.

The OCC’s own Question 19 points to the right answer: if aggregated supervisory information would improve accountability or supervision, the OCC itself should determine what information should be published, assemble it across institutions in a neutral and comprehensive manner (including adverse as well as favorable information), ensure appropriate methodological and anonymization controls for banks and examiners, 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. As discussed in Part XIII below, the OCC should adopt agency-controlled release of aged information in place of, not in addition to,

³⁴ *Supra* 2 at 50633 (proposed 12 CFR 4.14(b)(1)(vi)(A)).

³⁵ *Supra* 2 at 50634 (proposed 12 CFR 4.14(b)(1)(vi)(B)–(D)).

³⁶ *Supra* 2 at 50622.

³⁷ *Supra* 2 at 50622.

proposed § 4.14(b)(1)(vi). To the extent the OCC wishes to support legitimate academic research, it can and should do so through an OCC-administered research data program with agency-controlled access, not through bank-controlled disclosure to any entity with a tax exemption.

VIII. Any Final Rule Must Preserve Congress’s Ability to Conduct Effective Oversight

If the OCC nevertheless finalizes an exception permitting supervised institutions to disclose CSI to not-for-profit entities, including banking trade associations, it should expressly address the treatment of congressional requests for the same information. The Proposal would permit a supervised institution, without prior OCC approval, to provide CSI to a banking trade association for the express purpose of advocating regarding the “fairness, effectiveness, and efficiency” of the OCC’s regulatory and supervisory processes. Yet the Proposal does not clearly establish a comparable mechanism through which a supervised institution may respond directly to a request for CSI from a congressional committee or member of Congress exercising congressional oversight responsibilities.

That asymmetry is unjustifiable and should be addressed by the OCC. Congress created the OCC and has responsibility for overseeing it, evaluating the effectiveness of the supervisory framework it has established, and determining whether changes in law are warranted. A regulatory framework should not provide industry representatives with a more certain or less burdensome mechanism for obtaining supervisory information for advocacy purposes than is available to Congress for its oversight responsibilities.

The OCC should clarify in any final rule that an institution may respond to a written request for CSI from a duly authorized congressional committee or subcommittee, subject to appropriate confidentiality protections, under standards that are no more restrictive than those applicable to disclosure to a not-for-profit entity or trade association under proposed § 4.14(b)(1)(vi). At a minimum, the OCC should explain how its treatment of congressional requests interacts with the new bank-controlled disclosure exceptions and why any differential treatment is justified.

IX. Disclosure to Senior Executive Candidates Is Unsupported by Evidence and Disclosure to Board Candidates and Holding-Company Candidates Should Be Rejected

The Proposal would allow a bank to disclose CSI to a candidate for president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, or chief risk officer of the bank or its top-tier holding company, subject to board approval and a one-candidate-at-a-time limit.³⁸ The OCC’s justification is entirely hypothetical. The argument is that without CSI, a bank “may expend the time and effort to hire a new senior executive officer only for the person to quickly leave the position because he or she

³⁸ *Supra* 2 at 50619, 50633 (proposed 12 CFR 4.14(b)(1)(iii)).

was unable to handle the scope of issues requiring remediation.”³⁹ The OCC identifies no instance in which this set of events has occurred. It identifies no instance in which the OCC denied a request to share CSI with a candidate, no instance in which a candidate declined a position for lack of access to CSI, and no evidence that national banks have any difficulty filling these highly-remunerated positions. Banks routinely recruit senior executives into institutions under formal enforcement actions, which are public, and the current rule already permits the OCC to approve disclosure to a candidate case by case. The agency must show evidence of a problem before it removes a structural protection to solve it.

If the OCC proceeds with this concept, disclosure must be limited to domestic candidates. The Proposal floats “limiting the authority to domestic candidates” as a possible safeguard, but only for holding-company candidates.⁴⁰ If any exception is retained, it must be limited to domestic candidates for all positions. The OCC acknowledges elsewhere in the Proposal that foreign legal regimes accord different protection to information, that confidentiality agreements are difficult to enforce in foreign jurisdictions, and that U.S. and foreign privacy laws may conflict—and it relies on exactly those concerns to limit the service-provider and counterparty-advisor exceptions to U.S.-based persons.⁴¹ A confidentiality agreement signed by a candidate who is not hired and returns abroad is unenforceable in any practical sense. Better Markets recognizes that a domestic-only limit would itself constrain recruitment. However, that trade-off illustrates that the exception has not been sufficiently thought through. The Proposal is a half-baked idea, and the OCC should not finalize provisions whose basic contours it is still working out through questions to commenters.

In response to Question 8, Better Markets agrees with the OCC’s proposed decision not to extend the exception to candidates for boards of directors, and urges the OCC not to reverse that decision in the final rule.⁴² Directors are recruited in far greater numbers than senior executives, often several at a time, frequently from outside banking, and with no employment relationship to bind them; the “one candidate at a time” control that the OCC deems essential for executives would be unworkable for boards. Nor should the exception be extended to chief compliance officers, Bank Secrecy Act officers, or any other position; each expansion enlarges the universe of persons holding CSI with no corresponding analysis. The OCC should likewise delete the extension to candidates for positions at the “top-tier holding company.” The OCC does not supervise the holding company, does not have examination authority, and would have in its own words “less visibility” into whether the conditions of any exception are honored by the holding company.⁴³

X. The Holding Company’s Role in the Proposal Raises Significant Unanswered Questions about the Role of the Federal Reserve

³⁹ *Supra* 2 at 50619.

⁴⁰ *Supra* 2 at 50619.

⁴¹ *Supra* 2 at 50618–19, 50621.

⁴² *Supra* 2 at 50619, 50626 (Question 8).

⁴³ *Supra* 2 at 50618.

Several provisions of the Proposal reach entities within the Federal Reserve Board's ("Board") supervisory jurisdiction, including: 1) the extension of the executive-candidate exception to top-tier holding companies; 2) the new procedure for banks to disclose OCC CSI to the Board on 15 days' notice; 3) the invitation in Question 11 to let parent holding companies disclose OCC CSI to their own affiliates, service providers, and merger partners without OCC approval; and 4) the invitation in Questions 12 and 16 to permit bank-to-bank and bank-to-holding-company sharing.⁴⁴ Holding companies are supervised by the Board under the Bank Holding Company Act and the Home Owners' Loan Act, and the Board maintains its own CSI regulations under 12 CFR part 261, which govern the disclosure of the Board's confidential supervisory information by the holding companies the OCC's Proposal would empower.

The Proposal is silent as to whether the OCC consulted the Board about any of those provisions. It does not indicate whether the Board agrees that OCC CSI held by a holding company should be freely disclosable to the holding company's counterparties; whether the Board's rules would permit the reciprocal flow of Board CSI; or how the two frameworks would interact when, as the OCC concedes, "supervisory matters at a supervised entity are often intertwined with supervisory matters at the parent holding company."⁴⁵ Better Markets requests that the OCC place on the public record the nature and extent of its consultation with the Board and the FDIC regarding the holding-company provisions and the aggregation of other agencies' CSI under proposed § 4.14(b)(1)(vi). Absent a coordinated interagency position, the OCC should not adopt any provision that extends bank-controlled disclosure to holding companies, and it should answer Questions 11, 12, and 16 in the negative.

XI. Disclosure to Merger and Acquisition Counterparties Should Require Prior OCC Approval

The Proposal would permit a bank to disclose CSI, without OCC approval, to up to three potential counterparties in a business combination, plus each counterparty's U.S.-based consultants and attorneys, subject to seven conditions.⁴⁶ Better Markets opposes this exception and urges the OCC to retain prior approval for all disclosures of CSI in connection with mergers and acquisitions.

Mergers and acquisitions are where the selective-disclosure problem described in Part VI is most acute and where the OCC's own concern about examiners being "pressured" is most direct.⁴⁷ The Proposal would allow a bank to select which examination reports, ratings, and MRAs a buyer sees, with no explicit requirement to provide the unfavorable remainder. If supervisory information is sufficiently important to a counterparty's evaluation, the OCC must address whether selective production can itself produce misleading due diligence. It does not. And the circle of recipients is wide: three counterparties, each with a team of decision-makers,

⁴⁴ *Supra* 2 at 50618–19, 50622–23, 50627 (Questions 11, 12, and 16).

⁴⁵ *Supra* 2 at 50618.

⁴⁶ *Supra* 2 at 50619–21, 50633 (proposed 12 CFR 4.14(b)(1)(iv)–(v)).

⁴⁷ *Supra* 2 at 50621.

diligence staff, negotiators, and integration planners (the OCC declined to limit disclosure to officers and directors), plus each counterparty’s consultants and lawyers.⁴⁸ A single failed sale process could place a bank’s complete supervisory file in the hands of three competitors and their advisors.

The OCC’s own practice shows that prior approval works. The agency acknowledges that it “has historically allowed the disclosure of CSI to potential counterparties in certain transactions involving troubled institutions.”⁴⁹ That is the correct model and should be maintained. Under the current framework, the OCC decides, on a transaction-specific basis, whether disclosure serves the supervisory interest in a sound resolution of the institution’s problems, and it can condition disclosure as needed. Replacing that judgment with a self-executing exception surrenders the agency’s control at exactly the moment—an active corporate transaction—when the OCC says “appropriate separation between the supervisory process and active corporate transactions” matters most.⁵⁰ The Proposal also concedes that the “strong need for CSI” in due diligence “creates incentives to skirt the OCC’s restrictions on CSI.”⁵¹ That is a reason to enforce the current rules, not to abandon them.

XII. The Proposal Would Apply to the Stablecoin Issuers the OCC Has Never Supervised and Lacks Knowledge Of

The Proposal would revise the definition of “supervised entity” to include “any permitted stablecoin issuer or foreign payment stablecoin issuer for which the OCC has regulatory or enforcement authority pursuant to the GENIUS Act.”⁵² As a result, each of the six self-executing exceptions—including disclosure to foreign affiliates without any safeguard, disclosure to merger counterparties, and disclosure to not-for-profit entities and trade associations—would apply to a class of entities the OCC has never examined, for which the OCC has no supervisory track record, no body of examination findings, and no experience with how supervisory communications are received, used, or misused. The GENIUS Act implementing rules themselves remain in flux.⁵³

The Proposal contains no analysis of how the exceptions would operate for stablecoin issuers, whose affiliates are frequently foreign, whose corporate structures are frequently novel, whose “trade associations” are the digital-asset industry’s advocacy organizations, and whose failure modes (as the collapse of TerraUSD and the depegging of USDC during the SVB failure demonstrated) can occur in hours. As Better Markets has expressed in previous comment letters to the OCC, supervisory candor will matter more, not less, in the first years of stablecoin supervision, when the OCC is developing its understanding of these entities and its examiners

⁴⁸ *Supra* 2 at 50621.

⁴⁹ *Supra* 2 at 50620 n.41.

⁵⁰ *Supra* 2 at 50621.

⁵¹ *Supra* 2 at 50620.

⁵² *Supra* 2 at 50613–14 (proposed 12 CFR 4.11, definition of “supervised entity”).

⁵³ *Supra* 2 at 50613 n.16 (citing the OCC’s GENIUS Act implementation proposal at 91 FR 10202 (March 2, 2026)).

are making the first forward-looking judgments about their reserve management, redemption capacity, and operational risk. The OCC should not declare that it will supervise these entities and hand them the authority to distribute its supervisory findings to their affiliates, acquirers, and lobbyists without asking. At a minimum, the OCC must specifically analyze the application of each exception to stablecoin issuers; absent that analysis, stablecoin issuers should be excluded from § 4.14(b)(1) and remain subject to prior OCC approval for all disclosures of CSI.

XIII. The OCC Should Release Aged Supervisory Information After at Least 35 Years

Better Markets supports the concept that the OCC should make supervisory information available to the public once it has aged to the point that release cannot affect current supervision.⁵⁴ The OCC is right that historical release “would allow the public, and academics, to better understand the U.S. banking system and the OCC’s role in governance of that system,” would “enhance the public’s ability to provide meaningful feedback to the agency,” and would help “hold the agency accountable.”⁵⁵ Unlike the bank-controlled exceptions, this is a disclosure regime designed and administered by the regulator, applied consistently across institutions, and capturing adverse as well as favorable information. That is the right model for supervisory transparency.

The period must, however, be significant, and 25 years is not long enough. The OCC’s own rationale is that after the chosen period “most personnel involved in the communications would no longer be employed at their respective entities” and the information “would no longer be applicable to the institution.”⁵⁶ Twenty-five years does not satisfy that test. An examiner who joined the OCC at 23 and wrote a critical finding at 30 would still be a mid-career supervisor—potentially a deputy comptroller or examiner-in-charge of a large bank—when it became public under a 25-year rule. Bank executives criticized in their forties would still be in their sixties, frequently as sitting directors or chief executives. Further, the largest institutions have supervisory issues—governance, risk culture, compliance—that persist across decades; a 25-year-old MRA about a bank’s risk management may be directly “applicable to the institution” today.

Therefore, Better Markets recommends a minimum of 35 years because that would be the shortest period that satisfies the OCC’s own rationale for a typical examiner’s career, with the OCC retaining discretion to withhold or redact for good cause. In response to Question 19, this agency-controlled release should be adopted in place of disclosure to trade associations under § 4.14(b)(1)(vi), not in addition to it.

XIV. The Proposal Provides No Adequate Controls Against Abuse and Contains No Impact Analysis

⁵⁴ *Supra* 2 at 50616, 50627 (Question 19). *See also* § 4.13(b)(2).

⁵⁵ *Supra* 2 at 50616.

⁵⁶ *Supra* 2 at 50616.

Question 18. The OCC asks whether the Proposal “provides adequate controls to prevent its abuse.”⁵⁷ It does not. Beyond the specific deficiencies identified above, the Proposal contains no requirement that a bank notify the OCC of any disclosure under § 4.14(b)(1)(i), (ii), (iii), or (vi) (and, for merger counterparties, only the counterparty’s acknowledgment and waiver, not notice of what was disclosed); no requirement that a bank maintain a complete log of what was disclosed to whom (the only log requirement covers “general categories” of information disclosed to service providers); no requirement that disclosures be made available to examiners; no anti-selective-disclosure requirement; no heightened protection for ratings, MRAs, and other adverse and preliminary information; and no mechanism by which the OCC would ever learn whether the exceptions are being used as intended. The OCC’s remedy for misuse—an order to cease use and return or destroy the information under proposed § 4.13(a)(3)—presupposes knowledge the OCC would have no way to acquire.

Question 17. Requiring board approval for all disclosures under § 4.14(b) is a necessary floor, and the OCC should adopt it. But board approval is not a substitute for OCC approval; a board’s duty runs to the bank’s shareholders, not to the supervisory process.

A test period is essential. If the OCC nevertheless adopts any expanded disclosure authority, it should do so only as a time-limited pilot of no more than two years, with mandatory logging and after-the-fact notice to the OCC of every disclosure, a prohibition on disclosure of ratings and MRAs, an OCC examiner survey and review of examination-report language before and during the pilot to measure any effect on candor, public reporting of the results, and automatic sunset unless the OCC affirmatively re-adopts the authority through notice-and-comment rulemaking supported by the evidence the pilot generates. The OCC should be prepared to demonstrate, with data, that expanded disclosure has not degraded supervision before making it permanent.

The regulatory analysis ignores the Proposal’s most important potential cost. The Proposal’s regulatory analysis is even thinner than the FDIC’s. The OCC concludes that the rule “would be a potential net cost savings to small OCC-supervised banks, not a net cost”; that “[t]here are no mandated costs associated with the proposed rule”; that OIRA has determined the rule is not a significant regulatory action; and that the rule is a “deregulatory action” under Executive Order 14192 because it would produce “potential cost savings for OCC-supervised banks.”⁵⁸ The only costs the OCC considers are the hours required to sign confidentiality agreements. There is no impact analysis, no cost-benefit analysis, and no discussion whatsoever of the costs to the OCC’s own supervisory effectiveness. Specifically, the OCC does not estimate or even discuss:

- whether examiners may write supervisory findings differently when those findings can circulate to affiliates, counterparties, and trade associations;
- whether examiners may become less willing to make forward-looking or judgment-based determinations;
- whether greater dissemination will increase challenges to supervisory findings, including through the OCC’s newly expanded appeals process;

⁵⁷ *Supra* 2 at 50627 (Question 18).

⁵⁸ *Supra* 2 at 50628–29.

- whether aggregated CSI held by trade associations will allow institutions to benchmark and contest supervisory decisions and to profile individual examiners and offices;
- whether selective disclosure could create misleading impressions regarding supervisory condition in employment and merger settings;
- whether these changes could delay corrective action;
- how the exceptions would operate for stablecoin issuers; 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 may not credit unquantified “cost savings” for banks while dismissing as nonexistent a category of costs it never analyzed—the cost to the effectiveness of the agency’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.⁵⁹ The OCC’s reliance on the label “deregulatory” does not relieve it of that obligation.

XV. The Proposal Must Be Evaluated Together With the OCC’s Broader Effort to Shift Power From Supervisors to Supervised Banks

The Proposal continues a troubling trend of OCC rulemakings that would weaken the effectiveness of its own supervisory program and its examiners. In the past year the OCC has proposed to expand banks’ ability to appeal supervisory determinations to reviewers without supervisory experience;⁶⁰ joined the FDIC in narrowing the definition of “unsafe or unsound practice” and limiting supervisors’ ability to communicate emerging weaknesses through MRAs;⁶¹ proposed to restrict the violations of law that examiners may cite;⁶² and joined the other agencies in proposing revisions to the CAMELS framework that would demote the Management component and remove responsiveness to supervisory findings as an explicit evaluation factor.⁶³ The CAMELS proposal limits what supervisory weaknesses can meaningfully affect ratings. The

⁵⁹ 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.

⁶⁰ *Supra* 19.

⁶¹ 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), available at: <https://bettermarkets.org/wp-content/uploads/2025/12/Better-Markets-Comment-Letter-FDIC-OCC-Unsafe-Unsound-Practices.pdf>.

⁶² See Office of the Comptroller of the Currency, Notice of Proposed Rulemaking, *Violations of Laws or Regulations*, Docket ID OCC-2026-0529, RIN 1557-AF56 (September 1, 2026), available at: <https://www.federalregister.gov/documents/2026/09/01/2026-17822/violations-of-laws-or-regulations>. See also Better Markets Comment Letter to the Office of the Comptroller of the Currency (October 1, 2026), available at: <https://bettermarkets.org/wp-content/uploads/2026/10/Better-Markets-Comment-Letter-OCC-Violations-of-Laws-and-Regulations.pdf>

⁶³ 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>; 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>.

appeals framework increases banks' ability to challenge what supervisors decide. The unsafe-or-unsound and violations rules narrow what supervisors may say. 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. The APA does not permit the OCC to analyze this Proposal as though examiners operate in a vacuum. Where an agency undertakes several concurrent actions that operate on the same supervisory dynamics, the combined effect on supervision is an important aspect of the problem that must be considered.⁶⁴

XVI. Recommendations

Better Markets urges the OCC not to finalize the Proposal's bank-controlled disclosure exceptions. At a minimum, the OCC should:

- 1. Delete the trade association provision.** CSI should not be disclosed to industry trade associations or other not-for-profit entities under any circumstances. If the OCC believes aggregated supervisory information would serve the public, the OCC should collect, anonymize (as to banks and examiners), and publish it itself. The OCC must also ensure congressional oversight requests receive at least the same expedited procedural approval process as those for non-profits if the OCC finalizes this aspect of the rule.
- 2. Delete proposed merger and acquisition provision.** Retain prior OCC approval for all disclosures of CSI to merger and acquisition counterparties and their advisors, consistent with the OCC's historical case-by-case practice.
- 3. Retain prior OCC approval for disclosure to senior executive officer candidates.** If the OCC nevertheless retains this provision, it should limit it to domestic candidates for positions at the supervised entity itself; delete the extension to top-tier holding company candidates; exclude ratings, MRAs, and reports of examination; and require notice to the OCC of each disclosure.
- 4. Do not extend any exception to board candidates, chief compliance or BSA officers, parent holding companies, majority shareholders, or other supervised entities** (Questions 8, 11, 12, and 16).

⁶⁴ 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).

5. **Limit the affiliate exception to domestic affiliates** and require a qualifying confidentiality agreement, consistent with the limits the OCC itself proposes for service providers and counterparty advisors.
6. **Exclude stablecoin issuers** pending a specific analysis of how each exception would operate for entities the OCC has never supervised and lacks knowledge of.
7. **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.
8. **Require complete records and after-the-fact notice of all CSI disclosures.** Records should identify the information disclosed, recipient, date, asserted purpose and legal authority, and relevant confidentiality agreement, and should be available to examiners upon request.
9. **Apply heightened protections to adverse and preliminary supervisory information.** Ratings, MRAs, criticisms of management and governance, and preliminary supervisory judgments should remain subject to prior OCC authorization under every exception.
10. **Require board approval for every disclosure** (Question 17), as a floor and not a substitute for OCC approval.
11. **Adopt any expanded authority only as a sunseting pilot** with mandatory data collection and public reporting, and re-adopt it only through a subsequent rulemaking supported by that evidence.
12. **Adopt agency-controlled public release of aged supervisory information after a minimum of 35 years** (Question 19), with examiner-identifying information redacted, in place of disclosure through trade associations.
13. **Analyze the effect of expanded disclosure on examiner behavior, and evaluate the Proposal cumulatively** with the OCC's appeals, unsafe-or-unsound, violations, and CAMELS rulemakings, before finalizing any rule.
14. **Place on the record the OCC's consultation with the Board and the FDIC** regarding the holding-company provisions and the aggregation of those agencies' CSI.
15. **Explain how the Proposal incorporates the lessons of SVB and Signature Bank.** The OCC must explain why a policy that increases the audience for and potential consequences of supervisory judgments will advance rather than undermine earlier, more candid, and more forceful supervision.
16. **Require removal of examiner-identifying information from any CSI disclosed under any exception.** Analyze the risk to OCC personnel before finalizing any disclosure to third parties.

XVI. Conclusion

The Proposal repeatedly focuses on reducing burdens and improving the ability of supervised banks to use OCC confidential information for their own business and advocacy purposes. Contrary to the Proposal's goals and the focus of the current leadership of the agency, the OCC is not a business-information service for national banks, and confidential supervisory information is not primarily a corporate asset. CSI is a product of government supervision. Its confidentiality protects a supervisory process that must be candid, forward-looking, independent, and capable of identifying weaknesses before they become crises.

The OCC has asserted a chilling effect without evidence, proposed a remedy without analysis, and extended that remedy to trade associations, holding companies, merger counterparties, and stablecoin issuers without asking how it would work for any of them. 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 willing and able to identify problems early and insist that they be corrected.

The OCC should withdraw the bank-controlled disclosure provisions of the Proposal and not adopt a rule that benefits banks and their trade associations by weakening the institutional protections that allow its own examiners to do their jobs.

Sincerely,



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