LUSE GORMAN

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LEGAL UPDATE

FDIC Proposes to Permit CSI to Be Shared More Freely in Mergers and Acquisitions

On June 30, 2026, the Federal Deposit Insurance Corporation (the "FDIC") issued a notice of proposed rulemaking (the "Proposed Rule") that would permit insured depository institutions that are state non-member banks to disclose confidential supervisory information ("CSI") with potential merger or acquisition partners without first obtaining FDIC authorization, so long as the information is shared for a "legitimate business purpose" and the parties enter into a qualifying confidentiality agreement. Additionally, holding companies would also be permitted to disclose CSI to the same categories of recipients, and under the same conditions, as their subsidiary banks. This is a significant expansion of the current regulation, which only permits an institution to disclose CSI to certain of its advisors and its personnel without prior FDIC approval.

A Broader Circle of People Can Receive the CSI—*Without* Asking the FDIC First

Subject to having a qualifying confidentiality agreement in place, among other guardrails (explained below), the Proposed Rule would make the following recipients eligible to receive CSI without FDIC approval:

- The institution's directors, officers, and employees;
- Affiliates of the institution and their directors, officers, and employees;
- The institution's external legal counsel, accountants, and auditors;
- An institution's shareholder owning more than 50% of its voting stock (i.e., a holding company);
- "Qualifying service providers" (i.e., providers of financial products and service support, advisory or consulting services, or technological infrastructure to the institution);
- Individuals who have received an offer to serve as a senior executive officer of the institution (President, CEO, COO, CFO, etc.); and

- Directors, officers, employees, affiliates (including directors, officers, and employees of affiliates), auditors, and legal counsel of a potential deal partner (or "counterparty") with which the institution is contemplating a merger or other transaction.

Information Sharing Guardrails

The Proposed Rule includes the following guardrails:

- **Limited to up to three potential deal partners over any five-year period** this limitation disappears once a transaction agreement is entered into between an institution and a counterparty;
- The counterparty must sign a **written waiver** giving up claims against the FDIC related to the shared CSI;
- The shared CSI **cannot substitute for the counterparty's own independent due diligence of the institution**;
- Only those counterparty representatives who **actually need the information** for due diligence may see it; and
- The institution must have a **confidentiality agreement** in place with the counterparty before or at the same time the CSI changes hands.

The Proposed Rule would also make it easier for the FDIC to approve other disclosure requests on a case-by-case basis and generally allows sharing of CSI that is more than 25 years old without FDIC approval.

Takeaway

Although the Proposed Rule only applies to state non-member banks, Comptroller of the Currency Jonathan Gould, who is also an FDIC Board member, noted his support of the FDIC Board's approval of the Proposed Rule, indicated he would like the final rule to expand disclosure authority even further and that the OCC's own proposal on the topic is imminent. Neither the Federal Reserve Board or the National Credit Union Administration have remarked on the Proposed Rule or indicated whether they would follow suit on the subject. The Proposed Rule's comment period closes August 31, 2026, and institutions are encouraged to consider commenting on the FDIC's 30 open questions.[1]

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[1] Disclosure of Information, 91 Fed. Reg. 39,726 (June 30, 2026), *available at* https://www.federalregister.gov/documents/2026/06/30/2026-13123/disclosure-of-information.

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