

# the sub bank report

Issue 1

March 2026



## Subchapter S Bank Statistics — Summary

Source: FDIC BankFind Suite API

| Metric                                  | Value         |
|-----------------------------------------|---------------|
| Reference Quarter                       | 2025 Q4       |
| <b>Count</b>                            |               |
| Number of Subchapter S Banks            | 1,422         |
| Total US Commercial Banks               | 4,408         |
| S-Corp Share of All Banks (%)           | 32.3%         |
| <b>Balance Sheet (\$ 000s)</b>          |               |
| Total S-Corp Assets                     | \$732,267,512 |
| Total S-Corp Assets — % of Industry     | 2.9%          |
| Total S-Corp Deposits                   | \$616,107,835 |
| Total S-Corp Deposits — % of Industry   | 3.0%          |
| Total S-Corp Loans & Leases             | \$491,054,057 |
| Total S-Corp Loans — % of Industry      | 3.7%          |
| Total S-Corp Equity Capital             | \$73,068,276  |
| Total S-Corp Equity — % of Industry     | 2.8%          |
| <b>Income Statement (\$ 000s)</b>       |               |
| Total S-Corp Net Income                 | \$11,587,235  |
| Total S-Corp Net Income — % of Industry | 3.9%          |
| Total S-Corp Interest Income            | \$39,148,436  |
| Total S-Corp Interest Expense           | \$13,305,003  |
| Total S-Corp Noninterest Income         | \$7,419,634   |
| Total S-Corp Noninterest Expense        | \$20,053,523  |
| <b>Employees</b>                        |               |
| Total S-Corp Employees                  | 106,503       |
| S-Corp Employees — % of Industry        | 5.2%          |

All dollar amounts in \$000s (thousands).

Percentages reflect S-corp share of all US commercial banks. Employee numbers are full-time equivalent.



# Legislative Update

Subchapter S Bank Association | March 2026

## 21<sup>st</sup> Century ROAD to Housing Act

Last month, the House passed HR 6644, the Housing for the 21<sup>st</sup> Century Act. On March 12, the Senate passed an amended version of the bill—the 21<sup>st</sup> Century ROAD to Housing Act. The Senate’s legislation establishes a series of grants and pilot programs for housing construction, revises federal definitions to encourage greater housing unit production, and includes a prohibition on large institutional investors purchasing single-family homes.

As reported in our February Brief, HR 6644 included Title VI—Strengthening Community Banks’ Role in Housing. This provision was removed from the Senate’s version. The Subchapter S Bank Association supports the reinstatement of Title VI in any final legislation.

## HR 6955: Main Street Capital Access Act

On March 4, the House Financial Services Committee passed HR 6955, the Main Street Capital Access Act, by a vote of 26–16. As noted in our February Brief, Pat Kennedy Jr. and Dub Sutherland attended the bill’s introduction last month. The legislation is designed to revitalize de novo bank formation and ensure that community lenders can continue to serve families, small businesses, and local economies.

Key provisions include:

- A three-year phase-in period for de novo banks to meet federal capital requirements, rather than requiring immediate compliance upon opening.
- Updates to deposit funding rules, including relaxed regulations on brokered deposits and certain custodial and reciprocal deposits.
- Streamlined approval processes for bank mergers, particularly those involving institutions with assets below \$ 10 billion.

Having cleared committee, the bill now awaits a full House floor vote. The Subchapter S Bank Association continues to support its advancement.

## OCC Final Rules: Reducing Regulatory Burden on Community Banks

On March 3, 2026, the OCC announced two final rules aimed at reducing regulatory burdens on community banks. The first rule rescinds the Fair Housing Home Loan Data System regulation, eliminating duplicative and largely obsolete data collection requirements on home loan applications that had applied exclusively to national banks. The OCC stated this change will not materially affect its fair housing supervisory capabilities.

The second rule simplifies corporate licensing requirements by broadening eligibility for expedited or reduced filing procedures for community bank transactions and activities. Comptroller Jonathan Gould characterized both actions as part of a broader effort to level the playing field for community banks, noting that decades of one-size-fits-all regulation have contributed to cutting the number of community banks in the United States in half. The OCC’s news release on these rules can be found under <https://www.occ.treas.gov/news-issuances/news-releases/2026/nr-occ-2026-13.html>

## Federal Banking Agencies Propose Overhaul of Capital Framework

On March 19, the Federal Reserve, OCC, and FDIC jointly issued three proposals to overhaul the U.S. bank capital framework established in the wake of the financial crisis. The proposals are as follows:

- Basel III Endgame Proposal — Establishes standardized risk-weighting methodologies for credit, equity, and operational risks at the largest banks, and simplifies the framework by subjecting large institutions to a single set of risk-based capital calculations. Smaller banks would have the option to elect into this approach.
- GSIB Surcharge Revision — Revises the surcharge for globally systemically important banks, including modifications to better reflect changes in the financial system and economy, and assigns surcharges in increments of 10 basis points rather than 50.



- Standardized Approach Revision—Seeks to better align capital requirements with the risk profile of traditional lending activities.

Federal Reserve staff estimate the proposals would lower aggregate common equity tier 1 (CET1) capital requirements by 5% to 8%, depending on bank size. Vice Chair for Supervision Michelle Bowman

noted that post-crisis requirements have “constrained credit availability, pushed activity into the less-regulated non-bank sector, and added complexity and costs without meaningfully enhancing safety and soundness.” The rest of Vice Chair Bowman’s comments can be read under <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20260319.htm>

## Subchapter S Banks: Trends, Conversions, and Performance

### Introduction

This analysis examines trends in the subchapter S bank sector using quarterly call report data sourced from the FDIC BankFind Suite API, spanning 2009 Q1 through 2025 Q4. We attempt to provide a comprehensive view of how S-corp banks have evolved over more than 16 years — through the aftermath of the financial crisis, the Tax Cuts and Jobs Act, a global pandemic, and an extended period of industry-wide consolidation.

### The Long Decline in Numbers

The number of subchapter S banks has fallen steadily from 2,529 in 2009 Q1 to 1,422 in 2025 Q4 — a drop of 1,107 banks, or 43.8%. That sounds dramatic until you consider that the entire US banking industry contracted almost identically over the same period, with total bank count falling 47.1% from 8,338 to 4,408. S-corp banks held their share

of the industry surprisingly well, rising from 30.3% of all US banks in 2009 to a peak of 34.3% in 2017 Q4, and settling at 32.3% as of the latest quarter.

The consolidation story isn’t uniquely an S-corp phenomenon, it’s an industry-wide trend, and S-corps have slightly outpaced C-corps in survival rate. More than one in three US banks currently operates as a subchapter S corporation.

### The Mega-Bank Distortion: Quarterly Trends vs. Trends Ex-Top 4

We analyzed quarterly trends and computed S-corp shares of industry totals. One of the most striking findings in the data is the degree to which the four largest C-corp banks, JPMorgan Chase, Bank of America, Wells Fargo, and Citigroup, distort headline S-corp share figures. When these four institutions are excluded from the denominator, S-corps’ share of industry metrics roughly doubles across every metric:

| Metric              | Full Industry | Ex-Top 4 C-Corps |
|---------------------|---------------|------------------|
| Share of Assets     | 2.9%          | 4.7%             |
| Share of Deposits   | 3.1%          | 4.9%             |
| Share of Loans      | 3.7%          | 5.4%             |
| Share of Net Income | 3.9%          | 6.5%             |
| Share of Employees  | 5.2%          | 8.0%             |

\* Figures as of 2025 Q4. Source: FDIC BankFind Suite API.



The jump is particularly pronounced for net income and employees, suggesting that relative to the rest of the banking industry, excluding the four largest institutions, S-corps are a considerably more significant force than headline figures imply. For community banking specifically, the ex-top 4 figures are arguably the more meaningful benchmark.

Both the asset share and loan share have declined over the period even on an ex-top 4 basis, from 5.73% to 4.73% on assets, suggesting some genuine shrinkage relative to mid-size and regional C-corps as well, and not merely mega-bank growth distorting the comparison.

The pattern is consistent when averaged across the full 2009–2025 period rather than viewed at a single point in time:

| Metric              | Full Industry (Avg.) | Ex-Top 4 C-Corps (Avg.) |
|---------------------|----------------------|-------------------------|
| Share of Assets     | 3.3%                 | 5.4%                    |
| Share of Deposits   | 3.6%                 | 5.9%                    |
| Share of Loans      | 3.9%                 | 5.9%                    |
| Share of Net Income | 3.3%                 | 7.0%                    |
| Share of Employees  | 6.0%                 | 9.3%                    |

\* Simple averages of quarterly figures over the full period 2009 Q1 – 2025 Q4 (68 quarters). Net income averages exclude quarters where industry net income was negative (2009 Q3–Q4), which would produce misleading percentage figures. Source: FDIC BankFind Suite API.

### The Tax Cuts and Jobs Act Shock in the Conversions Data

The conversions data tells a clear and compelling policy story. Through 2017, each year saw roughly 10–25 new S-corp elections per quarter, with S-to-C terminations running in the low single digits outside of Q1. Then in 2018 Q1, the first quarter after the Tax Cuts and Jobs Act took effect, which cut the corporate tax rate from 35% to 21%, S-to-C terminations spiked to 45 in a single quarter, by far the highest reading in the entire dataset.

The full-year 2018 net change was -57, the worst year on record. In plain terms: dozens of banks that had elected S-corp status for its tax advantages concluded that the tax math no longer worked in their favor once the corporate rate fell, and they terminated their elections effective January 1, 2018. Elections have remained subdued since, 2024 Q1 saw only 2 new C-to-S elections versus 22 terminations, and 2016, the last full year before

the TCJA, recorded the best net gain of the entire period at +18.

It is worth noting that this post-TCJA shift is not a sign of weakness in the subchapter S bank sector. Banks that converted back to C-corp status did so because the new tax environment made the C-corp structure genuinely more advantageous for their owners. The S-corp election has always been a tool for optimizing after-tax returns, and the data simply reflect that tool being used as intended. If anything, the conversion data is a testament to how actively and efficiently community bank owners manage their tax structure in response to policy changes.

### M&A Activity: S-Corp Banks Are More Often Targets Than Acquirers

Across the full dataset, 1,444 M&A deals involved at least one S-corp party. Of those, S-corp banks were the target in 584 deals (40%) and the acquirer in only 361 deals (25%), with the remaining 499 deals



(35%) involving two S-corp parties. That asymmetry, S-corps being absorbed at a higher rate than they absorb others, likely reflects their smaller average size and community bank profile, which makes them attractive acquisition targets for growing regional institutions.

M&A activity peaked in 2011 with 128 deals, likely reflecting post-financial-crisis consolidation. It has fallen steadily since, hitting 44–45 deals in 2023–2024, roughly one-third of the peak pace. One notable uptick: 2025 Q4 saw 18 deals, the highest quarterly reading since 2022, driven mainly by S-corp targets (10 deals). Whether this represents the beginning of a new consolidation wave or a one-quarter anomaly remains to be seen.

### The Financial Crisis and COVID Net Income Anomalies

S-corp banks’ share of industry net income produced some striking, and potentially misleading, figures during the financial crisis. In 2009 Q3 and Q4, the ‘S-Corp % of Net Income’ metric turned sharply negative, hitting -25% and -30% respectively. This does not mean S-corp banks were losing money. In fact, they continued posting modest positive earnings throughout the crisis. The negative percentage arises purely from the math: when you divide a positive number (S-corp earnings) by a negative number (total industry net income, which was dragged below zero by catastrophic losses at the largest banks), the result is a negative percentage. The table below illustrates this clearly:

| Quarter | S-Corp Net Income (\$000s) | All Bank Net Income (\$000s) | S-Corp % of Net Income |
|---------|----------------------------|------------------------------|------------------------|
| 2009 Q3 | \$2,604,274                | -\$10,509,931                | -24.8%*                |
| 2009 Q4 | \$2,885,220                | -\$9,633,133                 | -30.0%*                |
| 2010 Q1 | \$1,183,663                | \$17,611,923                 | 6.7%                   |
| 2010 Q2 | \$2,381,368                | \$39,410,025                 | 6.0%                   |

\* Negative percentage is a mathematical artifact of negative industry-wide net income, not a reflection of S-corp bank losses. Source: FDIC BankFind Suite API.

The mirror image appeared in 2020 Q2, when S-corps captured 11.4% of all US bank net income — their highest share in the dataset. As large banks built massive loan loss reserves in the initial

COVID period, community banks were comparatively less affected, temporarily boosting S-corps’ share of the industry’s positive earnings:

| Quarter | S-Corp Net Income (\$000s) | All Bank Net Income (\$000s) | S-Corp % of Net Income |
|---------|----------------------------|------------------------------|------------------------|
| 2020 Q1 | \$1,929,740                | \$18,718,361                 | 10.3%                  |
| 2020 Q2 | \$4,281,793                | \$37,484,376                 | 11.4%                  |
| 2020 Q3 | \$6,745,697                | \$88,742,737                 | 7.6%                   |
| 2020 Q4 | \$9,108,760                | \$148,083,076                | 6.2%                   |

\* S-corp share peaked in 2020 Q2 as large banks front-loaded loan loss reserves. As reserve builds tapered and large bank earnings recovered through the year, the S-corp share normalized. Source: FDIC BankFind Suite API.



Both episodes illustrate how sensitive the share-based metrics are to mega-bank behavior and reinforce the value of the ex-top 4 comparison as a supplementary lens.

### Conclusion

As an industry, Subchapter S banks have weathered the financial crisis and pandemic, navigated new tax laws, and absorbed a decades-long wave

of industry consolidation—all while maintaining their share of the banking landscape more effectively than their declining numbers suggest. Representing nearly a third of all US banks yet holding assets a fraction of the industry total, S-corp banks consistently punch above their weight. When measured against the banks that actually compete in the same markets and for the same customers, the Subchapter S sector remains a durable and consequential part of the American financial system.

### Data Sources

- **FDIC BankFind Suite API—Quarterly call report financials for all FDIC-insured institutions.** Available at: <https://banks.data.fdic.gov/docs/>

## Trust Shareholders and Inadvertent Terminations

The tax and structural benefits of electing Subchapter S status under the Internal Revenue Code are well understood. What is less frequently discussed, however, is the ease with which that election can be inadvertently terminated through changes in share ownership. In particular, through the transfer of S corporation stock to a trust that does not qualify as an eligible shareholder. Under the Internal Revenue Code, only certain trusts are permitted to hold S corporation stock. When shares pass to an ineligible trust, the S election is immediately at risk. For Subchapter S banks and bank holding companies, whose shareholder base is often composed of founding families and multi-generational ownership structures, this risk is particularly significant. This article examines the trust eligibility rules applicable to S corporation banks and bank holding companies, the most common causes of inadvertent terminations, the Internal Revenue Service (“IRS”) relief mechanisms available when such terminations occur, and the practical steps that Subchapter S banks, bank holding companies, and their advisors should take to protect their elections.

### Subchapter S Shareholder Eligibility

Generally, in order for a trust to be an eligible Subchapter S shareholder, it must meet the requirements of a grantor trust, a Qualified Subchapter

S Trust (“QSST”), or an Electing Small Business Trust (“ESBT”).

**Grantor Trusts** Grantor trusts are trusts whose assets are treated as owned by the grantor for federal income tax purposes and are eligible S corporation shareholders during the grantor’s lifetime and for a period of 2 years following the grantor’s death. The Internal Revenue Code (“IRC”) includes several ways in which, through the grantor’s retention of certain rights and powers during his or her lifetime, a trust can qualify as a grantor trust. Some of the most common are the grantor’s retention of the right to: (a) amend or revoke the trust; (b) control the beneficial enjoyment of the trust property without the approval of an adverse party; (c) receive distributions of income from the trust without the approval of an adverse party; (d) replace trust property with property of equal value; or (e) borrow from the trust without adequate security.

**QSSTs** To qualify as a QSST, a trust must: (a) have only one current income beneficiary who is a U.S. citizen or permanent resident; (b) distribute trust property only to the current income beneficiary during his or her lifetime; (c) require all trust income be distributed to the current income beneficiary at least annually, and (d) upon the termination of the trust during the income beneficiary’s lifetime, distribute all trust assets to the current income bene-



fiary. In addition, the current income beneficiary must timely file a QSST election with the IRS.

**ESBTs** To qualify as an ESBT, all beneficiaries must be individuals, estates, or certain charitable organizations who are otherwise eligible S corporation shareholders. No interest in the trust may be acquired by purchase. In addition, the trustee must timely file an ESBT election with the IRS. Unlike a QSST, an ESBT may have multiple beneficiaries and is not required to distribute income annually.

### Inadvertent Termination

There are several common ways in which Sub S bank and bank holding company S elections may be inadvertently terminated. The most frequent cause is the failure to timely make a required election as either a QSST or an ESBT. Both QSST elections, which are filed by the current income beneficiary, and ESBT elections, which are filed by the trustee of the trust, must be filed within 16 days and 2 months of the date the shares are transferred to the trust. A missed or late filing can immediately render the trust an ineligible shareholder and trigger a termination of the S election. To help avoid missed elections, Sub S banks and bank holding companies should consider requiring trust shareholders to provide confirmation that all required elections have been timely filed.

Transfers of S corporation stock to an ineligible trust, whether pursuant to a will, a lifetime transfer as part of an estate plan, or the operation of a trust's terms upon the death of a grantor or beneficiary, are another common cause of inadvertent terminations. A transfer of S corporation stock to an ineligible trust will result in the immediate termination of the S corporation's S election. For this reason, we recommend Sub S banks and bank holding companies not only review all proposed transfers to trusts, but also reexamine the Subchapter S shareholder eligibility of existing trust shareholders upon the death of, in the case of a grantor trust, the grantor, or, in the case of a QSST or ESBT, a beneficiary.

A third common cause is a grantor trust's retention of S corporation stock upon the death of the grantor. Upon the grantor's death, the trust loses its grantor trust status and has two years to either file a QSST or ESBT election or transfer the shares to an eligible S corporation shareholder. To avoid this scenario, we recommend including in your shareholder

agreement a requirement that the shareholder's estate notify the bank or bank holding company within a certain period of time following the shareholder's death. This notification gives the bank or bank holding company the time it needs to ensure all required elections are timely made or the shares are, prior to the expiration of the 2-year holding period, transferred to an eligible Sub S shareholder.

### Reinstatement of S Election

When an S election is inadvertently terminated, the avenue for relief will be determined by the cause of the inadvertent termination and the amount of time that has passed since the inadvertent termination. If inadvertent termination results from a trustee's or beneficiary's failure to timely file an ESBT or QSST election, automatic relief is available so long as the S election was not knowingly terminated; the trust would have qualified as an ESBT or QSST but for the missed election, and a late election is filed within 3 years and 75 days of the date the shares were transferred to the trust. In addition, the late election must include statements from all shareholders that while the S election was inadvertently terminated, they have reported their income on all affected returns as if the bank's or bank holding company's S election was effective.

If a late ESBT or QSST election is not made within 3 years and 75 days of the date the shares were transferred to the trust, the bank or bank holding company's only remaining option would be to request a Private Letter Ruling ("PLR") from the IRS. This is a lengthy and expensive process. Therefore, we recommend taking steps to ensure any missed elections are identified well in advance of the 3 year and 75-day automatic relief period.

### Preventing Inadvertent Terminations

Preventing inadvertent terminations requires a combination of strong shareholder agreement provisions, proactive monitoring, and a disciplined internal process for reviewing and approving transfers of S corporation stock to trusts. An important first step is ensuring that the bank or bank holding company has a shareholder agreement in place. Many Subchapter S banks and bank holding companies, particularly those whose shares are held by a single or small number of families, do not have a shareholder agreement, often because the infor-



mality of the ownership structure has historically made one seem unnecessary. However, without a shareholder agreement, the bank or bank holding company has no contractual means of requiring notice of proposed transfers, obtaining confirmation of trust eligibility, or overseeing the timely filing of required elections, leaving it exposed to preventable termination events.

At a minimum, a Subchapter S bank or bank holding company's shareholder agreement should require: (a) any shareholder proposing to transfer shares to a trust obtain prior approval from the bank or bank holding company; (b) all trust shareholders provide written confirmation, within a specified period following the transfer of shares to the trust, that all required QSST or ESBT elections have been timely filed with the IRS; (c) that the estate of a deceased shareholder notify the bank or bank holding company within a specified period following the shareholder's death; and (d) annual certifications from all shareholders that they remain eligible Subchapter S shareholders. Some shareholder agreements also require, prior to the transfer of shares to a trust, a legal opinion from

the shareholder's counsel confirming the Subchapter S shareholder eligibility of the trust. All these provisions help protect the bank or bank holding company against inadvertent terminations.

In addition to these shareholder agreement provisions, we recommend Subchapter S banks and bank holding companies conduct a periodic (at least once every 2 years) audit of all trust shareholders, during which the bank or bank holding company confirms that all required elections remain on file, that IRS acknowledgment of each election has been received and retained, and that no changes in trust structure, beneficiaries, or trustee have occurred that could affect the trust's eligibility as an S corporation shareholder. Together, these measures significantly reduce the risk that a termination event will go undetected long enough to exceed the 3 year and 75-day automatic relief period and force the bank or bank holding company to request a private letter ruling.

If you have any questions regarding the matters discussed in this article, please contact Michael Finley at [mfinley@kslawllp.com](mailto:mfinley@kslawllp.com).



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