Monthly News Brief

SUBCHAPTER S BANK ASSOCIATION, INC.

August 2026

This month's Subchapter S Bank Association News Brief covers introduction of the S Corporation Modernization Act, the FDIC's interim final rule implementing reciprocal deposit relief, a proposed overhaul of Regulation O's insider lending thresholds, new OCC supervisory manuals, publication of the Community Reinvestment Act proposal, and continued momentum in de novo chartering.

Federal Legislation

S Corporation Modernization Act Introduced in House and Senate

Rep. Mike Carey (R-Ohio), a member of the House Ways and Means Committee, introduced the S Corporation Modernization Act on July 24, with a companion measure from Sen. Tim Sheehy (R-Montana). The bill carries two provisions the Association has supported for years: allowing IRAs to own S corporation stock under rules comparable to other qualified retirement plans, and raising the shareholder limit from 100 to 250. Current law confines IRA ownership of S corporation bank stock to institutions whose stock was already held by an IRA as of October 22, 2004, and the shareholder cap has moved only three times since Congress created the structure.

The bill would also allow an inside basis adjustment election after a shareholder's death, raise the passive income threshold that triggers the Sting Tax and repeal the automatic loss of S status after three years, treat employee owners like ESOPs for purposes of the shareholder cap, preserve suspended losses on transfer at death, and repeal Section 409A. It has been referred to committee, and no markup is scheduled.

Sources: Carey news release · Bill text

Regulatory Developments

FDIC Interim Final Rule Implements Reciprocal Deposit Relief

The FDIC Board approved an interim final rule on August 27 implementing Section 902 of the 21st Century ROAD to Housing Act, covered in last month's News Brief. It replaces the general cap in the brokered deposit regulations, previously the lesser of $5 billion or 20 percent of an agent institution's total liabilities, with a tiered calculation capped at $30 billion: 50 percent of total liabilities up to $1 billion, 40 percent of the portion between $1 billion and $10 billion, and 30 percent above that. For a bank with $800 million in liabilities, that is $400 million of exclusion capacity against roughly $160 million under the prior test.

The rule also expands the definition of agent institution to include composite 3 institutions that remain well capitalized. The prior standard required a composite condition of outstanding or good, so a downgraded but still well capitalized bank lost access to the exception. An institution that exceeds its cap is no longer an agent institution and must report all of its reciprocal deposits as brokered.

The rule took effect September 1. Comments are due October 1, and the FDIC will coordinate with the FFIEC on updated Call Report instructions.

Sources: FDIC Financial Institution Letter · Federal Register

OCC Releases Supervisory Manuals and Proposes a Violations Framework

The OCC announced on August 27 that it had substantially revised PPM 5310-3, Bank Enforcement Actions and Related Matters, and released PPM 5400-11, Matters Requiring Attention, publicly for the first time. The manuals accompany a joint OCC and FDIC final rule narrowing the definition of unsafe or unsound practice. Comptroller of the Currency Jonathan V. Gould described the package as codifying the agency's return to risk-based supervision, saying examiners and institutions should prioritize material financial risks and substantive violations of law over concerns about policy, process, and documentation.

The revised enforcement manual sets out three guiding principles: escalation, tailoring, and limiting corrective actions to those essential to address specific deficiencies. Of note for community institutions, it provides that the OCC may escalate to an enforcement action against a large or complex bank for practices that would not trigger a similar response against a community bank. The agency also proposed a rule codifying its MRA framework for violations of law, establishing substantive and technical categories and allowing non-substantive violations to be handled outside the MRA process. Comments are due 30 days after Federal Register publication.

Sources: OCC News Release 2026-72 · OCC Bulletin 2026-41 · OCC Bulletin 2026-42

Regulation O Overhaul Would Raise Insider Lending Thresholds

The Federal Reserve and the FDIC each proposed on July 31 to raise the dollar thresholds governing credit extended to bank executive officers, directors, principal shareholders, and their related interests. Regulation O has not been substantively updated since 1979. These are two separate documents with different scope, and which one governs an institution depends on its charter. Comments on both are due October 5.

Both agencies would raise the same two thresholds: the trigger for prior board approval, from $500,000 to $2 million, and the other purpose limit on lending to an executive officer, from $100,000 to $400,000. Neither is a flat figure. Each is the lower of a capital percentage or the dollar cap, meaning 5 percent of unimpaired capital and surplus or $2 million for board approval, and 2.5 percent or $400,000 for executive officer lending. For most community institutions the capital prong binds first: a bank with $20 million in capital and surplus would face a $1 million board approval trigger, not $2 million. Both proposals would also eliminate the existing $25,000 floor.

Four further changes appear only in the Federal Reserve's proposal. Exempt credit card debt would rise from $15,000 to $60,000, certain interest-bearing overdrafts from $5,000 to $20,000, the inadvertent overdraft exception from $1,000 to $4,000, and public disclosure of loans to executive officers and principal shareholders from $500,000 to $2 million. National banks would pick these up automatically, because the OCC's rules incorporate Regulation O by reference. State nonmember banks and state savings associations take only what the FDIC adopts in Section 337.3.

Sources: Federal Reserve proposal, 91 Fed. Reg. 49,526 · FDIC proposal, 91 Fed. Reg. 50,730

CRA Proposal Published; Comments Due October 13

The OCC and FDIC's proposed Community Reinvestment Act amendments, reported in last month's News Brief, were published in the Federal Register on August 12. Comments are due October 13.

Publication clarifies the proposed tier structure. Banks under $1 billion in assets would be small banks evaluated only under the small bank lending test, against the current $412 million threshold. A new intermediate category would cover $1 billion to $10 billion, replacing the current intermediate small bank range of $412 million to $1.649 billion. Large bank status would begin above $10 billion. An intermediate bank could also earn an overall satisfactory rating on its lending test alone, rather than needing at least satisfactory on both the lending and community development tests.

Sources: Federal Register

De Novo Chartering Momentum Continues

Speaking at the Wyoming Blockchain Symposium on August 19, Comptroller of the Currency Jonathan V. Gould said the OCC has received 40 applications for new bank charters over roughly the past 18 months, 23 of them involving some form of digital asset activity. The agency averaged fewer than four charter applications a year from 2011 through 2014. The OCC has also reported deciding many applications within 120 days of a complete filing, and that a full-service national bank opened for the first time in five years. On August 11 it commended the FDIC's revised deposit insurance application procedures as aligned with its own effort to reverse the decline in de novo chartering.

Sources: OCC News Release 2026-69

Upcoming Comment Deadlines

- **October 1, 2026:** FDIC interim final rule on reciprocal deposits
- **October 5, 2026:** Federal Reserve and FDIC Regulation O proposals
- **October 13, 2026:** OCC and FDIC Community Reinvestment Act proposal
- **30 days after Federal Register publication:** OCC proposed rule on Matters Requiring Attention for violations of laws and regulations

Subchapter S Bank Association 29th Annual Conference

Join us for the Subchapter S Bank Association's 29th Annual Conference on October 22nd and 23rd, 2026 at San Antonio Marriott Rivercenter on the River Walk in beautiful downtown San Antonio! Listen to the latest in strategies and tactics to improve bank performance and ensure ongoing compliance from the leading professionals in the industry!

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