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Federal Debanking Scrutiny Prompts Compliance Questions

By **Michelle Rogers, Elyse Moyer and Christine Thebaud** (October 23, 2025, 4:08 PM EDT)

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The U.S. Small Business Administration recently instructed its network of more than 5,000 lenders to cease any "politicized or unlawful debanking" actions[1] in direct response to President Donald Trump's recent Executive Order No. 14331 on fair banking access.[2]

The order, issued on Aug. 7, directs "federal banking regulators," including the SBA, to remediate past instances and prevent against future acts of politicized or unlawful debanking, which it refers to as the practice of withholding financial services based on a customer's or potential customer's political, religious or lawful business activities with which the institution may disagree.[3]

As an example of these debanking activities, the executive order references "Operation Chokepoint," an Obama-era U.S. Department of Justice initiative described at the time as intended to combat fraud by targeting banks' business operations with high-risk industries.

As part of the initiative, federal regulators increasingly examined financial institutions for so-called reputation risk, which critics claim cut off access to banks for lawfully operating businesses, including payday lenders, firearms dealers and tobacco companies that were seemingly disfavored for political reasons.

Under the executive order, federal banking regulators must:

- Remove considerations of reputation risk, and similar concepts, from guidance materials used to regulate or examine supervised financial institutions;
- Issue new, formal guidance to their examiners including these changes;
- Identify financial institutions that have past or current policies or practices that require or encourage politicized or unlawful debanking and take appropriate remedial action; and
- Review their current supervisory and complaints data to identify any financial institution that has engaged in unlawful debanking on the basis of religion in violation of the Equal Credit Opportunity Act.

The order also required the SBA to remind its network of lenders of their obligations when

participating in its loan guarantee programs, and order those lenders to conduct the aforementioned review.

The SBA's Aug. 26 letter sets forth a series of requirements, guided by a specific (and relatively short) deadline, that were recently accompanied by additional instructions to smaller lenders. Still, the SBA's guidance leaves lenders of all sizes with questions as they navigate this compliance challenge.

Requirements for All SBA-Backed Lenders

The SBA's letter directs lenders to undertake a series of actions by Dec. 5:[4]

- Identify past or current policies or practices that require, encourage or influence the lender to engage in politicized or unlawful debanking.
- Make reasonable efforts to identify, reinstate and provide notice to any previous clients of the lender or its subsidiaries denied service through a politicized or unlawful debanking action.
- Identify potential clients denied access to the lender's financial services or payment processing services due to politicized or unlawful debanking and provide notice of the denied access and the renewed option to engage in the services.

By Jan. 5, each lender must also submit to the SBA a report addressing and demonstrating their compliance with the executive order.

The SBA claims that failure to carry out the above actions could result in a lender losing its good standing with the SBA and subject it to "punitive measures,"[5] including "non-renewal of delegated authority, a headquarters meeting, increased reporting, a Supervisory Letter, requiring a Board Resolution or Commitment Letter, and for intermediaries, withholding of technical assistance grant funds and, as identified in the Fair Banking Executive Order, referral to the U.S. Attorney General for appropriate civil action."[6]

Some Clarity for Smaller Lenders

Following calls from the industry for clarification on how to comply with the directives, on Sept. 30 the SBA issued additional guidance — but only applicable to institutions with less than $30 billion in total assets as of June 30, and that are supervised by one of the federal banking regulators.[7]

These lenders can demonstrate compliance with the requirements set forth in the SBA's letter by submitting a form that outlines certain required information. Notably, the form mandates a five-year lookback period for reviews.

More specifically, to comply with the SBA's letter, lenders must conduct a "reasonable review" of notices from state and federal banking agencies, reports to boards of directors or senior management, and written formal and informal policies and practices from the past five years to determine if the institution permitted debanking through an institution-wide policy or practice.

If any such policy is found, the institution must identify any previous or potential clients who were denied services as the result of a politicized or unlawful debanking action.

Lenders must report the number of any such instances and summarize them "with sufficient detail to allow for follow-up by the SBA."[8] Any efforts to redress previous debanking instances must also be summarized and reported.

Contemporaneous Efforts Around Debanking

The SBA's letter joins a series of ongoing efforts to combat debanking at the federal level.

On Sept. 8, the Office of the Comptroller of the Currency issued two bulletins aimed at eliminating so-called politicized or unlawful debanking by the banks it supervises.

The first bulletin reminds banks that debanking activities may be considered in reviews of Community Reinvestment Act performance and licensing filings for corporate activities, such as opening new branches or completing mergers and acquisitions,[9] and the second reminds banks of their legal obligations regarding the release of customer financial records and the voluntary submission of suspicious activity reports.[10]

The OCC has also requested information from its nine largest banks on their activities as part of an ongoing review to evaluate politicized or unlawful debanking, but has not publicly announced a lookback period for responding to the requests.

The OCC and other prudential bank regulators, including the Federal Reserve, Federal Deposit Insurance Corp. and National Credit Union Association, have all announced that reputation risk will no longer be a part of their examination and supervisory processes. Further, the OCC and FDIC recently issued a joint notice of proposed rulemaking to codify the elimination of reputation risk from their supervisory programs. [11]

The agencies' proposed — and identical — rules would, among other things, prohibit the agencies from criticizing or taking adverse action against an institution on the basis of reputation risk, and from requiring or encouraging an institution to do or not do business with a third party on the basis of reputation risk, or on the basis of political, social, cultural, or religious views or beliefs.

Congress has also expanded its ongoing efforts against debanking. On Sept. 23, the U.S. House Committee on Oversight and Government Reform expanded its investigation of "politically motivated discrimination" to include instances of debanking.[12] Relatedly, committee Chairman James Cromer, R-Ky., also sent a letter to the National Association of Insurance Commissioners seeking information on whistleblower reports that allege insurance companies have canceled insurance policies due to the insured entity or individual's political affiliation or lawful business activities.

The committee is also working with conservative research and public policy firms to help inform legislation to address "debanking and financial political discrimination," according to a committee announcement.[13]

Lingering Concerns

Despite the additional guidance from the SBA for smaller lenders, questions remain for lenders of all sizes. It is unclear whether larger SBA lenders should adopt the guidance applicable to smaller lenders, such as the five-year lookback period for the review.

Additionally, lenders remain unsure whether the required report is a one-time or recurring requirement, and whether past decisions based on reputation risk will be seen as compliant with Section 7(a) of the Small Business Act and the SBA's Standard Operating Procedures Manual or policy notice, as those decisions aligned with regulatory expectations at the time.

In the meantime, SBA-backed lenders of all sizes should not delay in beginning to compile information responsive to the SBA's requests and can use the SBA's form as a guide for preparing the January report. The federal government shutdown that took effect on Oct. 1 will inevitably complicate further clarity from the SBA.

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[1] SBA Orders Lenders to End Practice of Debanking, U.S. Small Business Administration, https://www.sba.gov/article/2025/08/26/sba-orders-lenders-end-practice-debanking (last visited September 22, 2025).

[2] Exec. Order No. 14331, 90 Fed. Reg. 38925 (August 7, 2025).

[3] Id.

[4] U.S. Small Business Administration , Office of the General Counsel, https://www.naggl.org/wp-content/uploads/2025/08/OGC-Debanking-Ltr-BanksPDF.pdf (last visited Oct. 14, 2025).

[5] Id.

[6] Id.

[7] U.S. Small Business Administration , Office of the General Counsel, https://bankingjournal.aba.com/wp-content/uploads/2025/10/9.30.25-Debanking-Letter.pdf (last visited Oct. 14, 2025).

[8] Id.

[9] Licensing and Community Reinvestment Act:Consideration of Politicized or Unlawful Debanking, OCC Bulletin 2025-22 (September 8, 2025).

[10] Protecting Customer Financial Records, OCC Bulletin 2025-23 (September 8, 2025).

[11] Prohibition on Use of Reputation Risk by Regulators, OCC and FDIC (Oct. 7, 2025).

[12] Chairman Comer Expands Investigation of Politically Motivated Discrimination in the U.S. Financial System, United States House Committee on Oversight and Government Reform, https://oversight.house.gov/release/chairman-comer-expands-investigation-of-politically-motivated-discrimination-in-the-u-s-financial-system/ (last visited Oct. 14, 2025).

[13] Id.
