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Executive Order Guarantees Efforts Against Debanking Will Continue

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On Thursday, August 7, 2025, President Donald Trump signed an executive order (EO), "Guaranteeing Fair Banking Access for All Americans," aimed at combatting "politicized or unlawful debanking." Debanking generally refers to the practice of denying financial services or closing existing bank accounts of a customer deemed risky to the financial institution. The new EO specifically targets "politicized or unlawful debanking," defined as an act by a financial services provider to restrict access to or adversely modify the conditions of banking products or financial services on the basis of a customer or potential customer's **political or religious beliefs or lawful business activities** that the financial service provider disagrees with for political reasons. As an example of these debanking activities, the EO references "Operation Chokepoint," an Obama-era Department of Justice initiative described at the time as intended to combat fraud by targeting banks' business operations with high-risk industries, but which critics claim cut off access to banks for lawfully operating businesses, including payday lenders, firearms dealers and tobacco companies that were "disfavored" for political reasons.

Alleging that individuals and companies have been subject to debanking based on political affiliations, religious beliefs or lawful business activities, the EO states that decisions to offer financial services must be made on individualized, objective and risk-based analyses. The EO is the latest action by the White House toward eliminating debanking and, more broadly, promoting fair banking, an effort that has garnered significant attention at both the federal and state levels.

Directives to Federal banking regulators

The EO contains several directives to Federal banking regulators to remediate past occurrences and guard against future instances of debanking. The term "Federal banking regulators" includes[1] the Small Business Administration (SBA), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), the National Credit Union Administration (NCUA)and the Federal Reserve Board (Federal Reserve).

Removing reputation risk

Federal banking regulators must, within 180 days of the EO, remove any considerations of "reputation risk" (and similar concepts) from guidance materials used to regulate or examine supervised financial institutions (other than existing regulations or materials requiring notice-and-comment rulemaking). Regulators must issue new, formal guidance to their examiners including these changes. The EO also encourages regulators to consider rescinding or changing existing regulations that could lead to unlawful debanking. As discussed below, several prudential bank regulators have already removed or begun the process of removing such references.

SBA requirements

Within 60 days of the EO, the SBA must provide notice to its SBA-backed lenders requiring that each institution, within 120 days of the EO:

1. Make reasonable efforts to identify and reinstate previous clients denied services due to politicized or unlawful debanking in violation of SBA statutory and regulatory requirements.
2. Identify potential clients denied access to the institution'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.

Federal strategy to combat debanking

Within 180 days of the EO, the treasury secretary, along with the assistant to the president for economic policy, must craft a strategy that includes other measures to protect against politicized or unlawful debanking by financial regulators and financial institutions (including through legislative or regulatory options).

Remedial action against financial institutions

Federal banking regulators must, within 120 days of the EO, identify financial institutions that have past or current policies or practices that require, encourage or influence politicized or unlawful debanking and take appropriate remedial action against the institution for violations of applicable law – including section 5 of the Federal Trade Commission Act, section 1031 of the Consumer Financial Protection Act and the Equal Credit Opportunity Act (ECOA). Remedial actions may include levying fines, issuing consent decrees or imposing other disciplinary measures as permitted by law.

Review of complaints data

Within 180 days of the EO, the Federal banking regulators must 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 ECOA, and may refer matters to the attorney general as appropriate.

Other federal and state initiatives against debanking

The EO follows a series of efforts at the federal and state levels to eliminate so-called politicized and unlawful debanking and fair access to banking.

White House

Shortly after the inauguration, the White House released an EO promoting the growth of the digital assets and technologies sectors by "protecting and promoting [their] fair and open access to banking services." More recently, Trump signed an EO establishing a commission to study perceived threats to religious liberty, including "debanking of religious entities."

Federal agencies

The prudential bank regulators announced reviews of their guidance materials for references to "reputation risk," with the OCC stating in March that it had removed such references, and the FDIC announcing a similar review and its plans to "eradicate this concept from our regulatory approach." The Federal Reserve followed suit, announcing in June that it will not consider reputation risk in its examinations of banks, and that it had begun to review and replace references to reputation risk in its materials. After last week's issuance of the EO, the FDIC alluded to a forthcoming rulemaking that would prohibit examiners from

“criticizing institutions on the basis of reputation risk or directing or encouraging institutions to close accounts on the basis of political, social, religious, or other views,” while the **OCC noted it will propose a rule** to remove reputation risk references from its regulations. In April, US Attorney Erik S. Siebert and Assistant Attorney General Harmeet K. Dhillon of the US Department of Justice Civil Rights Division announced the establishment of the Eastern District of Virginia Equal Access to Banking Task Force, formed to investigate debanking against Virginians.

Congress

This session, the Senate introduced two pieces of legislation aimed at eliminating debanking. The “Fair Access to Banking Act” is based on the OCC’s Fair Access Rule introduced during the first Trump administration, and would penalize covered financial institutions for, among other things, denying services based on reputation risk. The “Financial Integrity and Regulation Management (FIRM) Act” would prevent federal banking agencies from using reputation risk as a basis for regulating financial institutions. A congressman recently announced plans to introduce a bill to codify the EO into law.

States

Three states – Florida, Idaho and Tennessee – have passed “fair access” legislation to prohibit discrimination in financial services access based on political or religious affiliation. These laws generally prohibit financial institutions from using “social credit scores” or other criteria that is not quantitative and impartial to deny or restrict access to their services. “Social credit scores” refer to any analysis that penalizes a consumer for certain ideological or religious beliefs or for being involved in certain industries. Other states, such as Arizona, Georgia, Indiana, Iowa, Kentucky, Louisiana, South Dakota, Nebraska and West Virginia, have introduced similar legislation for consideration.

Looking forward

This initiative is personal for Trump and the administration, as evidenced by the Trump organization’s own litigation against a major bank based on alleged debanking activities. While many of the issues are clearly political, they are not entirely without precedent. For example, in recent years, including under the Biden administration, we saw a renewed focus on ensuring banks are communicating clearly with consumers who may have access to banking services limited or terminated entirely. As institutions work to consider and mitigate their risk, mindful of the short timelines imposed on the Federal banking regulators to implement the EO’s directives, reviews of policies and procedures, consumer engagement, complaints and other data are a natural starting point. One challenge we expect clients to face will be balancing the risk tied to the issues cited in the EO and other account management and onboarding controls, which historically have considered industry risk beyond reputational concerns. Less obvious, perhaps, but equally important, is consideration of the potential litigation risk tied to these efforts and, in turn, the need to involve counsel to provide privileged legal advice.

Notes

1. “Federal banking regulators” refers to “the Small Business Administration (SBA) and the Federal member agencies of the Financial Stability Oversight Council with supervisory and regulatory authority over banks, savings associations, or credit unions.”

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