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CLIENT ALERT

Recent Administration Actions Implicating Financial Inclusion Could Impact Financial Institutions

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In the absence of active enforcement by federal banking regulators, many financial institutions are choosing this moment to take a second look at their compliance policies and procedures. Recent administrative actions implicating access to financial services may particularly require financial institutions to reevaluate their Consumer Due Diligence (CDD) procedures and Consumer Identification Program (CIP).

BIPARTISAN FOCUS ON DEBANKING

- Debanking has become a key topic under the new administration. On January 27, President Trump admonished two large financial institutions while speaking at the World Economic Forum, alleging that the institutions had inappropriately debanked accountholders for political reasons.[1] Continuing the emphasis on political debanking, Federal Reserve Chair Jerome Powell testified at a February 11 Senate hearing that the Federal Reserve would remove from its supervision manuals references to reputational risk, the financial risks associated with potential negative public opinion toward a national bank's actions.[2] Other federal regulators have since followed suit. The Office of the Comptroller of the Currency announced on March 20 that it would no longer examine national banks for reputational risk.[3] And Acting Federal Deposit Insurance Corporation (FDIC) Chairman Travis Hill wrote in a March 24 letter to Congress that the FDIC was "actively working on a rulemaking to ensure supervisors do not criticize activities or actions on the basis of reputational risk."[4]

Concern about debanking has also grown into a bipartisan issue. In a February 4 letter to President Trump, Sen. Elizabeth Warren expressed her own concerns about unfair debanking practices.[5] But Sen. Warren particularly voiced disagreement with the debanking of vulnerable populations, such as accountholders with criminal histories or delinquent overdraft fees.

As Sen. Warren's letter notes, the Consumer Financial Protection Bureau proposed or finalized several rules aimed at debanking before Trump's inauguration.[6] But the Bureau's current posture casts doubt on both whether these rules will become effective and how they will be enforced. Even so, the current bipartisan focus on debanking suggests the issue is ripe for future regulatory or enforcement developments. And, while federal regulators remain inactive, state attorneys general and private litigants may ramp up debanking-related actions to match the issue's political temperature. For instance, Idaho recently enacted a bill to prohibit large financial institutions from debanking individuals based on certain political speech or activity, such as the refusal to adopt greenhouse emissions targets

or activities related to fossil fuels or firearms.[7] Effective July 1, the Idaho law provides for both state and private enforcement.[8] Financial institutions should thus revisit their compliance practices regarding account termination and closely monitor the space for further developments.

Immigration Developments and Financial Inclusion

The administration has also emphasized a more aggressive posture toward deportations and immigration restrictions. In light of this posture, questions have arisen surrounding undocumented individuals' abilities and appetites to open financial accounts. The Department of the Treasury's Financial Crimes Enforcement Network's (FinCEN) regulations require banks to maintain customer identification programs, under which customers are required to show certain identity-establishing documents to open an account.[9]

Financial institutions may note that these regulations do not require a U.S. or state-issued form of identification. Banks and credit unions can accept consular identification cards, such as the Matrícula Consular card.[10] For interest-bearing accounts, banks and credit unions may also accept an Individual Taxpayer Identification Number from applicants who do not have Social Security numbers.[11]

As the role of financial regulators takes shape in this administration, it is possible that regulations will change. And there is precedent for political debates about the Matrícula Consular card. When FinCEN's regulations permitting the Matrícula Consular card's use were finalized in 2003, the topic was hotly debated, culminating in competing House bills to codify or proscribe the card's use.[12] As financial institutions search for the best way to serve existing and future accountholders, they should ensure their compliance practices surrounding account termination and consumer identification comply with the law as it stands today, while also monitoring these spaces for potential changes.

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[1] White House, "Remarks by President Trump at the World Economic Forum" (Jan. 23, 2025).

[2] Bloomberg, "Powell Vows to Cut Fed Manual Language Amid Debanking Concerns" (Feb. 11, 2025).

[3] News Release 25-21, Off. of Comptroller of Currency, "OCC Ceases Examination for Reputation Risk" (Mar. 20, 2025).

[4] Letter from Travis Hill to Rep. Dan Meuser, at 2 (Mar. 24, 2025).

[5] Letter from Sen. Elizabeth Warren to Pres. Donald Trump, at 2 (Feb. 4, 2025).

[6] *Id.*at 3; *see also, e.g.*, Press Release, Consumer Fin. Prot. Bureau, "CFPB Proposes Rule to Ban Contract Clauses that Strip Away Fundamental Freedoms" (Jan. 13, 2025).

[7] Transparency in Financial Services Act, S.B. 1027, 68th Legis., 1st Reg. Sess. (Id. 2025).

[8] *Id.*

[9] 31 C.F.R. § 1020.220.

[10] Consumer Fin. Prot. Bureau, "Checklist for Opening a Bank or Credit Union Account," at 2.

[11] *Id.* at 3.

[12] *Compare* 21st Century Access to Banking Act, H.R. 773, 108th Cong. (2003) (codifying the Matrícula Consular card as a valid form of identification), *with* Financial Customer Identification Verification Improvement Act, H.R. 3674, 108th Cong. (2003) (prohibiting the Matrícula Consular card's use as a valid form of identification).

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