

The Current Debate about “Debanking”: Navigating Legal, Regulatory, and Reputational Challenges for Financial Institutions

AUGUST 11, 2025

Debanking—closing accounts or refusing to open accounts for customers perceived to be high risk—has become a hotly debated topic in recent years among groups on both sides of the political aisle. The debate involves allegations that banks have improperly debanked customers for political, rather than risk-based, reasons. Such accusations have shined a spotlight on banks’ account management practices, resulting in changes to regulatory practices and a new executive order from President Trump requiring additional regulatory changes and investigations. All of which will mean increased risk for financial institutions.

In this alert, we provide an overview of the origins of the debanking controversy, recent debanking-related changes to the regulatory landscape, and the key points in President Trump’s recent debanking executive order. We also highlight practical steps financial institutions can take to manage risks and reduce the likelihood of becoming involved in debanking investigations.

HISTORICAL CONTEXT OF THE DEBANKING CONTROVERSY

Although the term is fairly new, debanking as a practice has long existed under the broader umbrella of “de-risking,” whereby financial institutions decline to serve certain customers or categories of customers due to perceived risks. The practice increased after the 2008 financial crisis alongside increased regulatory and law enforcement pressure to combat money laundering, terrorism financing, and other illicit activities. At that time a number of financial institutions became less willing to take on risk for certain accounts, which resulted in widespread debanking in sectors traditionally considered high risk, such as money services.^[1]

Advocacy groups began to allege that some banks were improperly debanking customers based on political or religious beliefs, or for being part of politically disfavored industries. For example, some have alleged that federal regulators pushed banks to debank gun manufacturers, payday loan companies, crypto companies, and energy companies based on the perceived reputational risks associated with those industries.^[2]

The debanking controversy gained further steam in the last few years, with congressional hearings and allegations of improper debanking by high-profile conservative organizations. For example, the Trump Organization alleged in 2021 that the entire organization was improperly debanked based on political views.^[3] Additionally, the Chair of the House Financial Services Committee alleged that prudential regulators threatened banks if they continued to partner with digital-asset companies.^[4]

The additional scrutiny of debanking by regulators and law enforcement is one of the rare issues that is supported by both Democrats and Republicans. For example, Democratic Senator Elizabeth Warren—ranking member of the Senate Banking Committee—wrote to President Trump in February “strongly agree[ing] that debanking is a serious issue” and asking him to “take action on preventing the debanking of too many Americans across the country, including consumers unfairly locked out of the financial system due to overdraft fees, religious affiliation, or political beliefs.”^[5] A few months later, as Winston explained in a previous alert, Republican Senator and Chair of the Senate Banking Committee Tim Scott introduced a bill to prohibit financial regulators from considering reputational risk as a factor in their assessment of financial depository institutions based on concerns about improper debanking.^[6]

Banks have largely denied accusations that they engaged in any improper debanking, emphasizing that account closures and denials are based on risk management, compliance, or other lawful grounds.^[7]

RECENT CHANGES IN DEBANKING LANDSCAPE

The current debanking controversy has led to several major regulatory shifts. First, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Company have all announced that reputational risk will no longer be a component of their supervisory and examination programs.^[8] To the extent perceived reputational risk has led to debanking, this regulatory change will likely lead to a reduction in that practice.

Second, state attorneys general and banking regulators have initiated inquiries into allegations of improper debanking. For example, nineteen state attorneys general sent a letter to JPMorgan Chase alleging that it improperly debanked the National Committee for Religious Freedom.^[9] Other large national banks have faced similar inquiries from coalitions of state attorneys general. Given the bipartisan concern about the practice, it is likely that financial institutions will face more of these inquiries from state attorneys general.

Third, several states have introduced or enacted legislation prohibiting debanking based on political or religious affiliation. For example, a debanking bill is pending in Georgia that would prohibit banks with \$2 billion or more in

assets from debanking a person based on the person's exercise of constitutional rights or their "social credit score," which includes such things as the person's "failure or refusal to adopt any policy or make any disclosure relating to emissions of greenhouse gases."^[10]

PRESIDENT TRUMP'S AUGUST 7, 2025 DEBANKING EXECUTIVE ORDER

President Trump has been one of the most outspoken critics of what he calls improper debanking, stating that banks "discriminate against many conservatives."^[11] On August 7, 2025, President Trump issued a sweeping new executive order targeting "politicized or unlawful debanking."^[12] The executive order alleges, among other things, that some financial institutions participated in government-directed surveillance programs targeting conservatives, and that regulators used their influence over regulated banks "to direct or otherwise encourage politicized or unlawful debanking activities." The executive order states that such practices violate the Equal Credit Opportunity Act and that banking decisions must instead be made on the basis of "individualized, objective, and risk-based analyses."^[13]

President Trump's executive order has a number of important requirements:

- First, the executive order directs "appropriate Federal banking regulator[s]" to remove the use of reputation risk from guidance documents and other materials used to regulate or examine financial institutions within 180 days.
- Second, the order directs the Small Business Administration to require all financial institutions for which it guarantees loans to make reasonable efforts within 120 days to identify and reinstate previous customers denied service based on a politicized or unlawful debanking action and to identify all potential customers denied access to financial services or payment processing services based on such debanking action and notify them of their right to access previously denied services.
- Third, it directs the Secretary of the Treasury to develop a strategy for further measures to combat politicized or unlawful debanking.
- Fourth, the executive order requires federal banking regulators to identify financial institutions that have had "any past or current, formal or informal, policies or practices that require, encourage, or otherwise influence . . . politicized or unlawful debanking and to take appropriate remedial action." Such remedial action includes fines, consent decrees, and other disciplinary measures.
- Finally, it also requires federal banking regulators to review supervisory and complaint data to identify financial institutions that engaged in "unlawful debanking on the basis of religion" and potentially refer them to the United States Attorney General for potential civil enforcement action.

IMPLICATIONS FOR FINANCIAL INSTITUTIONS

This new landscape presents several risks and challenges for financial institutions:

- **Regulatory Risk:** The prospect of enhanced federal and state scrutiny may lead to new reporting requirements, broader investigations, and enforcement actions.
- **Litigation Risk:** Alleged victims of debanking may pursue lawsuits, creating legal exposure and reputational harm.
- **Reputational Risk:** Although reputational risk will no longer be assessed by many federal banking regulators, media and political attention is still something that must be monitored.
- **Operational Risk:** Banks may face increased compliance burdens as they navigate complex and sometimes conflicting legal requirements across jurisdictions.

PRACTICAL STEPS FOR FINANCIAL INSTITUTIONS

To mitigate the risk of being targeted by regulatory or law enforcement investigations, banks should consider the following practical steps:

- **Documented, Objective, Neutral Criteria:** Ensure that account opening and closure decisions are based on documented, objective, and neutral criteria that are uniformly applied.
- **Prepare for Regulator Inquiries:** Be prepared to demonstrate that any historical debanking efforts were based on similar objective and neutral criteria, and meet with counsel early when there are any hints of debanking not based on such criteria.
- **Enhanced Training:** Provide additional training for customer-facing employees, compliance personnel, and decision-makers on nondiscrimination obligations, legal developments, and the importance of avoiding even the appearance of bias.
- **Robust Recordkeeping:** Maintain comprehensive records of account decisions, including the business rationale for closures or denials, to demonstrate compliance with applicable laws and policies.
- **Policy Reviews:** Review and update policies and procedures to ensure that they reflect evolving legal standards and regulatory expectations, including state-level nondiscrimination laws.
- **Complaint Resolution:** Establish or strengthen mechanisms for prompt investigation and resolution of customer complaints regarding account closures or denials.

CONCLUSION

The issue of debanking presents significant and evolving risks for financial institutions based on many factors, including possible regulatory and law enforcement scrutiny. To remain compliant and prepared, banks should stay informed of new enforcement actions and legal developments. Winston & Strawn LLP will continue to track these changes and is available to assist clients in navigating the complexities of this landscape.

If you have any questions regarding this or related subjects, or if you need assistance, please contact [Jack Knight](#) (Partner and Chair, Financial Services Litigation Practice), [Patrick Doerr](#) (Partner, White Collar & Government Investigations Practice), [Stephanie Turner](#) (Associate, White Collar & Government Investigations Practice), or your Winston & Strawn relationship attorney. You can also visit our [White Collar & Government Investigations](#) page for more information on this and related subjects.

[1] Tracey Durner & Liat Shetret, *Understanding Bank De-Risking and Its Effect on Financial Inclusion*, Oxfam Digital Repository (Nov. 2015), <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/582310/rr-bank-de-risking-181115-en.pdf;jsessionid=23E34D0B5C0000F0EB3DBC8947232D1C?sequence=4>.

[2] Julie Hill, *Why Government Shouldn't Regulate Reputation Risk at Banks*, Mercatus Center (Apr. 23, 2020), <https://www.mercatus.org/research/policy-briefs/why-government-shouldnt-regulate-reputation-risk-banks>.

[3] Casey Harper, *Political Push Against Debanking Gains Steam*, Governing.com (Mar. 18, 2025), <https://www.governing.com/policy/political-push-against-debanking-gains-steam>.

[4] Press Release, Opening Remarks from Chairman Meuser: *The Biden Administration's Operation Choke Point 2.0 Was Carried Out by The Prudential Regulators to Target and Debank the Digital Asset Ecosystem*, U.S. House Comm. on Fin. Servs. (Feb. 6, 2025), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409457>.

[5] Letter from Sen. Elizabeth Warren, Ranking Member of Senate Comm. on Banking, Housing, & Urban Affs., to Pres. Donald J. Trump, *Requesting Action on Debanking* (Feb. 4, 2025), https://www.banking.senate.gov/imo/media/doc/letter_to_trump_on_debanking.pdf.

[6] Caitlin Mandel, Elise McCrone, & Jeremy Chu, *Senate Banking Committee Pushes Regulators to Abandon Reputational Risk Assessments in Response to "Debanking" Concerns*, Winston.com (Apr. 10, 2025), <https://www.winston.com/en/insights-news/senate-banking-committee-pushes-regulators-to-abandon-reputational-risk-assessments-in-response-to-debanking-concerns>.

[7] For instance, some financial services companies explained that regulatory requirements to weigh reputational risks were a major factor in exiting or avoiding certain customers. See Nupur Anand & Saeed Azhar, *U.S. Lenders Weighed Reputation Rules, Not Politics, in Closing Accounts, Sources Say*, Reuters (Aug. 7, 2025), <https://www.reuters.com/sustainability/boards-policy-regulation/us-lenders-weighed-reputation-rules-not-politics-closing-accounts-sources-say-2025-08-07/>.

[8] See, e.g., Press Release, *Federal Reserve Board Announces that Reputational Risk Will No Longer be a Component of Examination Programs in its Supervision of Banks*, Fed. Reserve (June 23, 2025), [https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250623a.htm#:~:text=June%2023%2C%202025-.Federal%20Reserve%20Board%](https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250623a.htm#:~:text=June%2023%2C%202025-.Federal%20Reserve%20Board%20)

[9] Letter from State Attorneys General to Jamie Dimon, CEO of JPMorgan Chase & Co., *Discrimination by Chase Due to Religious or Political Affiliation* (May 2, 2023), <https://www.ag.ky.gov/Press%20Release%20Attachments/23.5.2%20Letter%20to%20Chase.pdf>.

[10] S.B. 341, Reg. Sess. (Ga. 2025). Florida passed legislation requiring “financial institutions subject to the financial institutions codes” to submit annual attestations certifying, among other things, that they have not debanked customers based on factors such as a “social credit score.” H.B. 3, 2023 Leg. (Fla.).

[11] Press Release, *Fact Sheet: President Donald J. Trump Guarantees Fair Banking for All Americans*, White House (Aug. 7, 2025), <https://www.whitehouse.gov/fact-sheets/2025/08/fact-sheet-president-donald-j-trump-guarantees-fair-banking-for-all-americans/>.

[12] The executive order defines “politicized or unlawful debanking” as an act to restrict access to or adversely modify the conditions of a banking product or financial service “on the basis of the customer’s or potential customer’s political or religious beliefs, or on the basis of the customer’s or potential customer’s lawful business activities that the financial service provider disagrees with or disfavors for political reasons.”

[13] *Id.*

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