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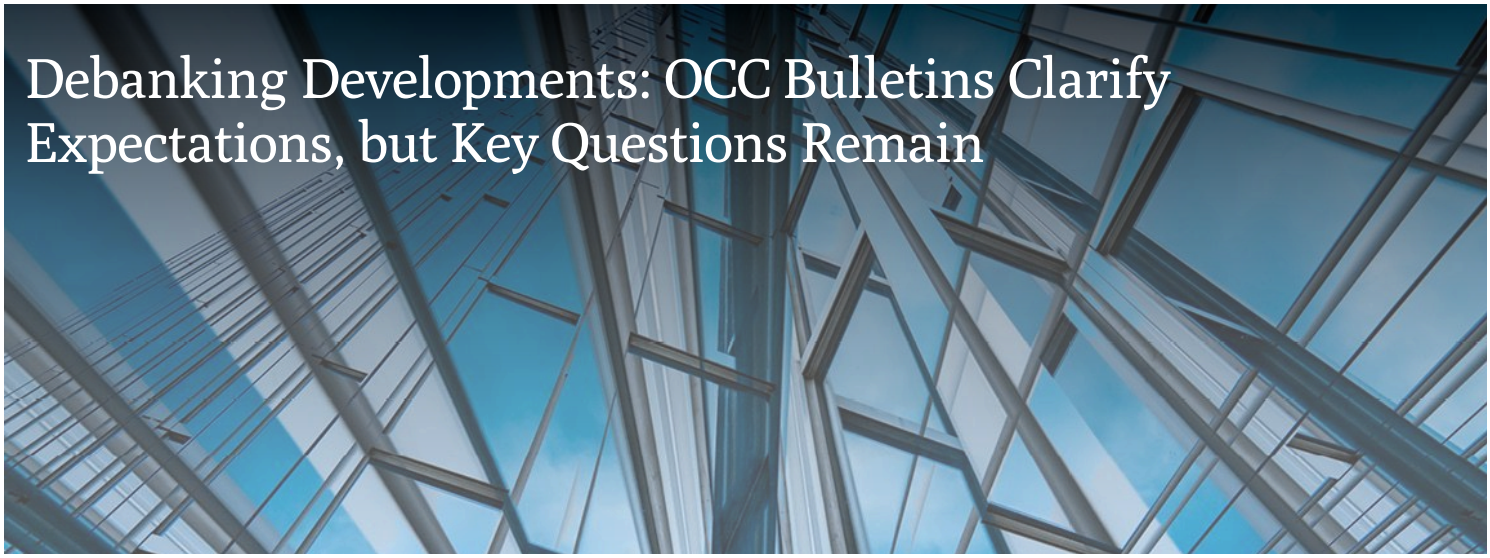

Debanking Developments: OCC Bulletins Clarify Expectations, but Key Questions Remain

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"Debanking" occurs when depository institutions close or refuse to open customer accounts, either for permissible reasons (e.g., concerns about money laundering or other high-risk factors) or for purportedly impermissible reasons (e.g., the customer's political affiliation, religion, or involvement in legal but politically disfavored industries). Amid the growing scrutiny of this practice, one of the primary depository institution regulators, the Office of the Comptroller of the Currency (OCC), very recently issued two bulletins clarifying how it will treat debanking practices in certain circumstances. While these bulletins provide new insight into how the OCC is addressing debanking under the current administration, they also leave several important questions unanswered.

RECENT PRIOR CHECKS ON DEBANKING

As we explained in earlier articles written by Winston & Strawn, Congress took the first steps to limit debanking with the introduction of the FIRM Act in April 2025.[1] If passed, it would prohibit federal banking regulators from considering reputational risk in supervising depository institutions. In response, the OCC quickly announced it would no longer examine banks for reputational risk, advising institutions to review their onboarding and offboarding processes for compliance with other obligations (e.g., Bank Secrecy Act/Anti-Money Laundering).[2]

Then, in August 2025, President Trump issued a sweeping executive order targeting "politicized or unlawful debanking."[3] Among other things, the order requires regulators to (1) remove reputation risk from guidance documents and regulatory or examination materials, (2) take remedial action against financial institutions with policies or practices requiring or encouraging any such debanking, and (3) review supervisory and complaint data to target financial institutions that engaged in "unlawful debanking on the basis of religion" for referral to the U.S. Attorney General for civil enforcement.

OCC BULLETINS: A COORDINATED REGULATORY RESPONSE

The first OCC bulletin clarifies how the OCC will consider politicized or unlawful debanking in assessing licensing applications and banks' performance under the Community Reinvestment Act (CRA).[4] It states that such debanking "implicates certain evaluative factors" for licensing filings, such as "the convenience and needs of the community to be served, fair access to financial services, [and] fair treatment of customers," among others. The OCC will therefore consider "a bank's record of and policies and procedures designed to avoid engaging in politicized or unlawful debanking" when assessing numerous types of licensing filings. Members of the public are typically given an

opportunity to submit their written comments or concerns regarding proposed expansionary activities by national banks or federal savings associations. The new position taken by the OCC that alleged debanking practices will be taken into consideration in reviewing applications increases that possibility that former customers who believe that they were unfairly or purportedly illegally "de-banked" by the applicant bank can levy allegations regarding purportedly improper debanking, at least enough to delay consummation of a proposed transaction. Accordingly, national banks and federal savings associations should pay close attention to this bulletin.

The bulletin further explains that the OCC will now also consider a bank's record of engaging in politicized or unlawful debanking when assessing its CRA performance and determining its CRA rating.

The second OCC bulletin refers to a House Subcommittee report asserting that financial institutions "coordinated with federal law enforcement to surveil and share the private financial information of persons engaged in transactions commonly associated with certain political affiliations."[5] Citing this Subcommittee report and President Trump's debanking executive order, the bulletin "remind[s]" banks of their obligations under the Right to Financial Privacy Act (RFPA) to protect their customers' financial records unless disclosure is required by law. The bulletin explains the avenues by which a government authority may secure customers' financial records from a financial institution under the RFPA and tells banks to ensure they comply with the RFPA's provision before disclosing customer financial records.

The second bulletin also cautions banks on the "proper usage" of Suspicious Activity Reports (SARs). It describes the general bases for mandatory SAR filing (e.g., upon detecting a known or suspected criminal violation or pattern of criminal violations). It then notes that banks may file voluntary SARs for suspicious transactions they believe are relevant to a possible violation of law or regulation. The bulletin goes on to remind banks not to use voluntary SARs "as a pretext to improperly disclose customers' financial information or evade the RFPA."

Finally, the second bulletin instructs banks to review the debanking executive order and adjust policies and procedures accordingly.

WINSTON INSIGHTS: THE OCC BULLETINS LEAVE IMPORTANT QUESTIONS UNRESOLVED

The OCC's bulletins reflect federal agencies' increasing focus on addressing debanking concerns. However, several critical questions remain unresolved.

First, it is still unclear how regulators will determine what constitutes "politicized or unlawful debanking." For example, although both OCC bulletins refer to President Trump's debanking executive order, and one bulletin quotes the executive order's definition of the term, neither bulletin explains how the OCC will interpret that definition.[6] Moreover, the definition is ambiguous in some material respects. The lack of clarity leaves banks to wonder how a key regulator will assess their conduct.

Second, with respect to licensing filing, the OCC says it will consider policies and procedures designed to *avoid* engaging in politicized or unlawful debanking. Yet the concept and definition of "politicized or unlawful debanking" are brand new. The OCC has not expressly listed a date for these new expectations to take effect, which suggests the expectations are immediately operative.[7] This may leave some banks scrambling to create or revise policies and procedures where current policies and procedures do not directly address the concept of politicized or unlawful debanking. Financial institutions may want to work with trusted counsel to assess existing policies and procedures and revise or create them accordingly.

Finally, SAR filing inherently requires subjective judgment in determining whether a transaction or customer relationship is suspicious. The OCC warns that it will look for "pretextual" SAR filings, but does not provide any guidance on what specific factors it may look for. This uncertainty may cause financial institutions to engage in risk analysis that thwarts the very purpose of the broad requirements for SAR filings. Financial institutions should carefully consider their internal standards for SAR/no-SAR decisioning and how those decisions are documented.

Winston & Strawn will continue to monitor regulatory developments like these and provide guidance as the landscape evolves.

If you have any questions regarding this subject or related subjects, or if you need assistance, please contact Jack Knight (Partner and Chair, Financial Services Litigation Practice), Carl Fornaris (Chair, Financial Innovation and Regulation Practice), Caitlin Mandel (Partner, White Collar & Government Investigations 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.

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[1] In addition, the Fair Access to Banking Act was introduced in February 2025 and would require banks with assets of more than $10 billion to provide access to financial services "without impediments caused by a prejudice against or dislike for a person or the business of the customer."

[2] 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.

[3] Jack Knight, Patrick Doerr & Stephanie Turner, *The Current Debate about "Debanking": Navigating Legal, Regulatory, and Reputational Challenges for Financial Institutions*, Winston.com (Aug. 11, 2025), https://www.winston.com/en/insights-news/the-current-debate-about-debanking-navigating-legal-regulatory-and-reputational-challenges-for-financial-institutions.

[4] Jonathan V. Gould, *Licensing and Community Reinvestment Act: Consideration of Politicized or Unlawful Debanking*, OCC Bulletin No. 2025-22, U.S. Off. of the Comptroller of the Currency (Sept. 8, 2025).

[5] Jonathan V. Gould, *Protecting Customer Financial Records*, OCC Bulletin No. 2025-23, U.S. Off. of the Comptroller of the Currency (Sept. 8, 2025) (citing the U.S. House of Representatives Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government).

[6] *See Licensing and Community Reinvestment Act: Consideration of Politicized or Unlawful Debanking*, OCC Bulletin No. 2025-22 (citing Executive Order, "Guaranteeing Fair Banking for All Americans" (Aug. 7, 2025)) (quoting Executive Order definition as "an act by a financial service provider 'to directly or indirectly adversely restrict access to, or adversely modify the conditions of, accounts, loans, or other banking products or financial services of any customer or potential customer 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'").

[7] It is not uncommon so far in this administration for OCC bulletins of this type to list no effective date. During the last administration, the OCC often (but not always) included an effective date in similar bulletins and guidance.

6 Min Read

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