

CLIENT ALERT



Debanking Developments: U.S. Senator Introduces Debanking Bill

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Many of our previous Winston & Strawn debanking news alerts have focused on Executive Branch efforts to address what it considers politicized or unlawful debanking (e.g., when financial institutions close or refuse to open customer accounts based on a customer's political affiliation, religion, or involvement in legal but politically disfavored industries).^[1] As explained in our earlier client alerts, some state legislatures (particularly Florida) have taken measures to prevent or regulate certain debanking activity for financial institutions that operate in those states.^[2] Now, those efforts are gaining traction in the U.S. Senate.

On October 30, 2025, Senator Thom Tillis (R-NC) introduced a discussion draft^[3] of the *Ensuring Fair Access to Banking Act* to the general public.^[4] Although the bill is nominally designed to “limit the circumstances under which a Federal financial regulator may require a financial institution to terminate a specific account,” the bill in fact proposes much more.

First, the bill establishes a federal “fair access” standard that prohibits covered financial institutions from “clos[ing], cancell[ing], or declin[ing] to provide equal enjoyment of a covered financial service” to customers except in defined circumstances.^[5] Those circumstances include (1) compliance with federal law; (2) responsiveness to a “valid regulatory reason” from a federal financial regulator; and (3) reasons relating to account history risk, credit history risk, criminal history risk; or (4) carrying out a valid business activity applicable to similarly situated customers.^[6]

Importantly, the term “valid regulatory reason” includes reasons relating to unsafe and unsound practices under 12 U.S.C. § 1831p–1; violations of law, rules, regulations, orders, and conditions; and activities that will lead to the issuance of a matter requiring attention.^[7] However, the term expressly *excludes* reasons relating to the potential that negative publicity or negative public opinion about the customer or its business practices will adversely affect the financial institution through declines in customer base, declines in customer confidence, litigation, or revenue reductions.^[8] Thus, for example, a regulator's concern that the negative publicity associated with one customer's unethical business practices will cause other bank customers to leave will not be a lawful basis for the bank to exit that customer relationship.

The bill also makes clear that the four permissible circumstances described above may not be motivated by any customer's expression that is protected by the First Amendment or the customer's business type or industry sector. The only exception is where the financial institution concludes that serving the prospective customer “would not be as profitable as another, mutually exclusive opportunity or action.”^[9]

Next, the bill grants enforcement authority to federal and state banking regulators and state attorneys general through civil litigation in federal court, with the ability to recover 125% of compensatory damages and up to 375% of compensatory damages in cases of willful violations. The bill also establishes a blanket preemption of state fair-access laws and regulations, which may be a welcome relief for financial institutions from the patchwork of state regulation that has been developing in the absence of federal legislation.^[10]

In addition, the bill permanently removes reputational risk from federal bank examiners' examination guidelines. This is notable because it would statutorily reinforce the OCC's announcement in March that it had ceased examinations for reputation risk^[11] and its October joint proposal with the FDIC to eliminate reputation risk from the agencies' supervisory programs.^[12] The ultimate effect of this proposed statutory language is that any future attempt by the OCC or FDIC (particularly under a different administration) to reinstitute reputational risk in their examination process will be stymied by the proposed language.

The bill also proposes several process-related reforms to financial examination and supervision, with an overriding goal of reining-in financial regulators' independence from Congressional and Executive oversight. The bill would amend the Freedom of Information Act to empower certain members of Congress to request the Confidential Supervisory Information (CSI) created during an examination.^[13] Per Senator Tillis, this amendment "provides Congress with a key to the examination room, establishing a passive, ongoing disincentive to examiner overreach."^[14]

Further, the bill would place the Federal Reserve's Inspector General under Senate confirmation and establish a new Inspector General within the Treasury Department to "receive, review, and investigate" allegations of "supervisory, regulatory, and examination abuses and misconduct" by federal financial regulators.^[15] The only example of such misconduct in the bill is "ideological bias demonstrated by the covered agency or any employee of the covered agency."^[16]

Finally, and significantly, the bill would cause the Secretary of the U.S. Department of the Treasury (Treasury) to amend Treasury's regulations at 31 C.F.R. Part X and increase the minimum reporting thresholds for

- Currency Transaction Reports to \$45,000 (from the 55-year-long \$10,000 standard),
- Suspicious Activity Reports filed by banks to \$10,000 (from the current \$5,000), and
- Suspicious Activity Reports filed by money services businesses to \$4,000 (from the current \$2,000) (or \$10,000 (from the current \$5,000) in cases where identification of suspicious transactions is derived from record review of sold or processed money orders).

In unveiling the proposed legislation, Senator Tillis stated that historical lack of inflation adjustments for these triggers "increas[ed] the likelihood that a customer is de-banked due to standard, non-illicit financial transactions."^[17]

If this bill is passed, it would create a significant litigation risk for financial institutions accused of alleged illegal debanking. Since Senator Tillis's bill is currently only a discussion draft and has not yet been officially introduced in the Senate, it is unlikely to be passed in the very near future. However, this kind of legislation is clearly gaining momentum, so financial institutions should prepare for possible changes ahead. Winston & Strawn will continue to provide debanking updates as issues evolve.

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 (Partner and Chair, Financial Innovation & Regulation Practice), Patrick Doerr (Partner, White Collar & Government Investigations Practice), or your Winston & Strawn relationship attorney. Winston & Strawn Associate Arman Aboutorabi contributed to this alert. You can visit our White Collar & Government Investigations page for more information.

[1] See, e.g., Jack Knight, Caitlin Mandel, Patrick Doerr & Arman Aboutorabi, *Debanking Developments: New Regulatory Scrutiny Coming After Trump Executive Order*, Winston & Strawn (Oct. 6, 2025), <https://www.winston.com/en/insights-news/debanking-developments-new-regulatory-scrutiny-coming-after-trump-executive-order>; Jack Knight, Patrick Doerr & Stephanie Turner, *Untangling 'Debanking' Exec Order And Ensuing Challenges*, Law360 (Aug.

29, 2025), https://www.law360.com/banking/articles/2379809?nl_pk=f47e0d5e-c049-4477-92b6-7ce98d917e83&utm_source=newsletter&utm_medium=email&utm_campaign=banking&utm_content=2025-09-02&read_main=1&nlsidx=0&nlaidx=11; Jack Knight, Carl Fornaris, Caitlin Mandel, Patrick Doerr & Stephanie Turner, *Debanking Developments: OCC Bulletins Clarify Expectations, but Key Questions Remain*, Winston & Strawn (Sept. 12, 2025), <https://www.winston.com/en/insights-news/debanking-developments-occ-bulletins-clarify-expectations-but-key-questions-remain>.

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

[3] A “discussion draft” is a proposed bill released to solicit feedback before a formal introduction to Congress.

[4] A full copy of the draft can be found [here](#).

[5] “Covered financial institutions” are depository institutions as defined in the Federal Deposit Insurance Act (12 U.S.C. § 1813(c)) that had more than \$100 billion in total assets in the past calendar year or were controlled by a bank holding company that controlled more than \$100 billion in total assets in the past calendar year. *Id.* “Covered financial services” generally include accounts, loans, and extensions of credit. *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] News Release 2025-21, *OCC Ceases Examinations for Reputation Risk*, (Mar. 20, 2025), <https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-21.html>.

[12] Bulletin 2025-30, *Prohibition on Use of Reputation Risk by Regulators: Notice of Proposed Rulemaking*, (Oct. 7, 2025), <https://www.occ.treas.gov/news-issuances/bulletins/2025/bulletin-2025-30.html>.

[13] See *supra* note 3.

[14] Senator Tillis’s summary of the bill can be found [here](#).

[15] *Id.*

[16] *Id.*

[17] See *supra* note 13.

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