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LEGAL UPDATE

President Trump Signs Executive Order on Debanking

On August 7, 2025, President Trump signed an Executive Order titled "Guaranteeing Fair Banking For All Americans" to combat perceived "politicized or unlawful debanking" practices by regulated financial institutions against persons or entities based on their political affiliations, religious beliefs, or business activities. This Legal Update provides an overview of the Executive Order's requirements and key takeaways for banks and credit unions that may face new scrutiny by their regulators in the area of fair access following the Order.

The Executive Order defines "politicized or unlawful debanking" as an act "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." The Executive Order seeks to address concerns raised by some industries and politicians that federal financial regulators have pressured or instructed banks to close customer accounts, deny customers services, or modify account or loan terms by exercising leverage during the supervisory process, especially under the guise that these customers posed a reputational risk to the institution.

The Executive Order directs the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation (the "FDIC"), the National Credit Union Administration, and the Consumer Financial Protection Bureau (together, the "Agencies") to, within 180 days, remove the use of reputation risk or equivalent concepts from guidance, manuals, and other Agency materials, and to provide formal guidance to examination staff regarding the removal of such concepts. In addition, the Executive Order directs the Agencies to rescind or amend regulations that could result in "politicized or unlawful debanking" and to ensure their supervised institutions consider customer reputation only to the extent necessary to reach an apolitical risk-based assessment. The Executive Order instructs the Secretary of the Treasury to develop a strategy for further legislative and regulatory measures to combat "politicized or unlawful debanking" activities.

In addition, the Executive Order directs each of the Agencies to, within 120 days, conduct a review to identify which of their regulated institutions have had or have any formal or informal policies or practices that "require, encourage, or otherwise influence" engagement in "politicized or unlawful debanking." The Agencies must then take "appropriate remedial action" against such banks or credit unions, which may include fines, consent orders, and other "disciplinary measures." The potential legal bases for these actions include Section 5 of the Federal Trade Commission Act and Section 1031 of the Consumer Financial Protection Act (the "CFPA")—which prohibit unfair and deceptive practices and, in the case of the CFPA, abusive practices—as well as the Equal Credit Opportunity Act (the "ECOA"). The Executive Order also directs the Agencies to, within 180 days, review their current complaint data to identify financial institutions that engaged in unlawful debanking on the basis of religion. If the

institutions are unable to "obtain compliance" under the ECOA, the Agencies are to refer the matters to the U.S. Attorney General.

Newly-confirmed Comptroller of the Currency Jonathan Gould issued a statement on August 7, stating that "[i]t is unacceptable for banks to discriminate against any customer on the basis of political or religious beliefs or lawful business activities," confirming that the agency will propose a rule to remove references to reputation risk from its regulations, and advising that it will commence a review of its supervised institutions and take remedial actions "if appropriate." In an August 8 statement, FDIC Acting Chairman Travis Hill similarly noted that the FDIC plans to issue a rulemaking and review whether FDIC-supervised institutions have engaged in politicized or unlawful debanking. In an August 7 statement, Congressman Dan Meuser, Chairman of the House Oversight and Investigations Subcommittee, noted that he and House Financial Services Committee Chairman French Hill are focused on codifying the principle of fair access into law.

Takeaways

- Financial institutions should expect their upcoming examinations to cover the area of "fair access" as an area of supervisory review. Policies and procedures related to account opening and closure, underwriting, loan modifications, alert generation, customer due diligence, and suspicious activity reports ("SARs") will likely be requested as part of initial examination scoping. A sample of account opening and closure decisions and SAR narratives will likely be requested and reviewed within a fair access examination component. Management should expect that they and their respective teams could be interviewed on their existing policies and practices, and may have to explain or defend past decisions during the examination.

- To get ahead of these upcoming examinations, financial institutions should review their policies and procedures for explicit references to the concept of "reputational risk" and other similar terms, and should prepare for questions by exam staff. Financial institutions should consider targeted reviews of account denials and closures, especially for customers in certain industries or who are aligned with certain causes that have been the focus of the recent push to eliminate debanking. Those industries include cryptocurrency, firearms, oil, gas, and energy companies, and groups or organizations affiliated with political and religious causes.

- Going forward, the Executive Order may require financial institutions to update deposit and loan policies and procedures, as well as policies and procedures that fall under the Bank Secrecy Act Officer's jurisdiction. Financial institutions may need to both remove language from policies and procedures that can cause scrutiny, but also incorporate certain "magic" language, such as a commitment to providing fair access. They may also need to amend customer-facing disclosures to remove language suggesting that accounts will be closed or modified based on reputation risks presented by the customer. Financial institutions should be proactive and include account opening and closure decisions, alert reviews, SAR filing decisions, and related areas within the scope of their internal and third-party compliance reviews and audits. They should also train employees in these areas and maintain documentation regarding the training program and attendance.

- Financial institutions will likely be expected to provide and document more comprehensively the objective bases for their account opening and closure decisions and other decisions that negatively impact customers. They should be prepared for customers to be more active in demanding the reasons behind such decisions.

- Financial institutions should expect that the Agencies will utilize supervisory mechanisms, such as matters requiring attention, to drive changes in policies, procedures, and practices if the institutions are not proactive. For institutions that examiners believe have displayed a pattern or practice of denying fair access, informal or even formal enforcement actions, such as civil money penalties, could be on the table. In the event of an especially egregious case in a regulator's eyes, the new Agency leadership could seek to drive wider industry behavior by assessing a substantial penalty. It should be noted that the concept of UDAP/UDAAP is particularly flexible and, as has been demonstrated by prior administrations, the terms can be interpreted broadly and creatively to serve as the legal basis for supervisory or enforcement actions.

- While past practice will be under the microscope by the terms of the Executive Order, financial institutions should prepare for and expect that the Agencies will seek compliance with the spirit and letter of the Executive Order going forward. Failure to comply with the principles in the Executive Order could be dealt with more severely than other examples of non-compliance in the institution's past.

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Luse Gorman, PC regularly advises financial institutions on regulatory and compliance developments from the federal financial regulators and on agency enforcement actions against banks and credit unions. If you have any questions related to this Legal Update, please reach out to Brendan Clegg at (202) 274-2034 or by email at bclegg@luselaw.com, or Anahita Mohtasham at (202) 274-2030 or by email at amohtasham@luselaw.com. To learn more about our firm and services, please visit our website.