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LEGAL UPDATE

OCC Announces Changes to Licensing Procedures and CRA Evaluations to Incorporate Debanking Reviews

On September 8, 2025, the Office of the Comptroller of the Currency (the "OCC") announced actions, including issuing two Bulletins, to "end the weaponization of the financial system" by "rooting out" activities that "unlawfully debank or discriminate against customers on the basis of political or religious beliefs, or lawful business activities." The OCC issued the Bulletins as part of its ongoing efforts to implement the August 7, 2025 Executive Order titled "Guaranteeing Fair Banking For All Americans" (the "Executive Order"). Our previous Legal Update related to the Executive Order can be found here.

The first, Bulletin 2025-22, describes the OCC's consideration of debanking in licensing applications and in banks' performance evaluations under the Community Reinvestment Act ("CRA"). Regarding licensing filings, the OCC will consider debanking in applications focused on fiduciary powers, branching, combinations, liquidation, changes in control, changes in directors and officers, conversions, and new charters. The OCC stated that debanking implicates factors in those filings such as the convenience and needs of the community to be served, fair access to financial services, fair treatment of customers, and the transaction's impact on depositors, creditors, and customers. The agency's "holistic" review of the filings will include a case-by-case analysis of an applicant's record of, and policies and procedures designed to avoid engaging in, debanking. Regarding CRA evaluations, the OCC states that engagement in debanking is a factor the OCC may consider on a case-by-case basis as part of its evaluation of a bank's record of meeting the credit needs of the entire community, which may affect the bank's CRA rating.

Titled "Protecting Customer Financial Records," Bulletin 2025-23 separately instructs banks to ensure compliance with the federal Right to Financial Privacy Act ("RFPA") before disclosing customers' financial records in response to requests from government agencies. Based on allegations of banks' financial surveillance of their customers based on their political affiliations, the Bulletin reminds banks that only a set of "limited circumstances," such as receipt of a subpoena or search warrant, permit them to share their customers' financial records with a government authority. This Bulletin also reminds banks that they should not voluntarily file suspicious activity reports ("SARs") that are not required by applicable regulations as a "pretext to improperly disclose customers' financial information or evade the RFPA." Instead, the Bulletin instructs banks that they should submit a voluntary SAR only when the institution "identifies concrete suspicious activity," such as activity that could form the basis for a SAR but for the fact that the conduct falls under the applicable dollar threshold in the regulations.

The OCC's announcement also details that the agency has updated its online customer complaint website to assist consumer reporting and identification of debanking by OCC-supervised institutions. The OCC also notes that it is reviewing its approach to the Bank Secrecy Act / anti-money laundering ("BSA/AML") supervisory framework and may make changes in those areas to address debanking issues.

Takeaways

- In combination with public statements from the Comptroller following the issuance of the Executive Order, the announcement and Bulletins clearly indicate that the issues of fair access and debanking will be OCC supervisory priorities in the year ahead. Expect the OCC to continue to roll out guidance documents related to the Executive Order's implementation. Other aspects of licensing, supervision, and enforcement will likely soon be modified to incorporate measures to address debanking. While not the primary focus, the Bulletins reiterate the agency's expectation that OCC-supervised banks will review the Executive Order and revise their policies and procedures to focus exclusively on objective standards for evaluating customers, and eliminate language suggesting that being part of certain industries or having certain affiliations could affect the outcome of decisions to provide them with products and services.

- Under Bulletin 2025-22, OCC-chartered banks should expect that the licensing analysts on applications for nearly all corporate activities will request some level of documentation around fair access, which may include copies of policies and procedures, even if fair access is not directly related to the filing at issue. A negative supervisory finding or suspicion of previous debanking discovered by a parallel examination may prove a significant hurdle for the application's success, much as fair lending or UDAP issues did during prior Administrations.

- Banks should expect that CRA examinations will feature a fair access component, and management may need to explain or defend past actions in written responses or during interviews. The OCC will likely treat negative supervisory findings related to debanking, as previous Administrations treated fair lending findings, which could meaningfully factor into, if not become the primary basis for, a ratings downgrade. A less-than-Satisfactory CRA rating could indefinitely block a bank's strategic objectives such as engaging in M&A or opening new branches.

- Bulletin 2025-23 suggests that banks' policies and procedures to implement the RFPA—including the controls around providing customer financial records in response to routine government requests—could be the subject of an examiner request under a burgeoning fair access component of an examination. Banks should review and update their document production policies as necessary.

- In addition, BSA Officers should expect that their procedures for filing voluntary SARs that do not meet applicable regulatory thresholds will be evaluated to determine whether they have been or could be used to report activity perceived as unfairly focused on certain industries, affiliations, or groups. BSA Officers may need to defend or explain the purpose and context of past SAR filings or conduct lookback reviews to identify whether SARs were filed for reasons that the Executive Order and these Bulletins suggest was improper. Outside

the context of debanking, the OCC's statement that banks should only submit a voluntary SAR where they identify "concrete" suspicious activity could be read as a general relaxation of the expectations around SAR filings.

- While the OCC is the first federal agency to link debanking to evaluation of licensing applications and CRA performance evaluations, state-chartered banks should expect the Federal Deposit Insurance Corporation and Federal Reserve Board to follow suit shortly.

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Luse Gorman, PC regularly advises financial institutions on regulatory and compliance developments and enforcement actions from, and licensing applications to, the federal banking agencies. 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 to 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.