October 16, 2025

Avoiding Prohibited “Debanking” Practices: Compliance Considerations for the Fair Banking Executive Order

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"Guaranteeing Fair Banking for All Americans"

Executive Order 14331– titled "Guaranteeing Fair Banking for All Americans" – was signed in August of this year and is aimed at scrutinizing bank practices related to the denial of financial services or termination of accounts - a practice commonly referred to as "debanking." More recently, the Office of the Comptroller of the Currency (OCC) has issued guidance on how it will consider such debanking in assessing banks’ licensing applications, and how banks should comply with the Order in light of existing legal obligations. This guidance is discussed in further detail below.

The core premise of the Executive Order is that bank regulators have, in the past, used supervisory influence to foster politicized access to banking services, leading financial institutions to restrict access based on a customer’s political or religious beliefs, or their engagement in lawful, yet disfavored, business activities. The administration asserts that no American should be denied access to essential financial services due to constitutionally or statutorily protected beliefs or views.

The Order applies widely to banks, savings associations, credit unions, and other nonbanks, without imposing a minimum size threshold. Moreover, the regulatory directives require a look-back review of both past and current policies, so financial institutions must conduct due diligence on their historical practices, which carries implications for compliance assessments.

Defining "Politicized or Unlawful Debanking"

The Order broadly prohibits activities deemed "politicized or unlawful debanking," which is defined as any act by a financial service provider that directly or indirectly restricts access to, or adversely modifies the conditions of, accounts, loans, or other banking products or financial services based on the customer's political or religious beliefs, or on lawful business activities that the provider disagrees with or disfavors for political reasons.

That said, it is important for financial institutions to note that the Order does not prohibit risk-based decisions entirely; rather, the Order is structured to permit the restriction of services based on bona fide credit risk or anti-money laundering (AML) risk, provided these decisions are properly documented and justified. However, operating under this distinction may pose a challenge for financial institutions, as described below.

A Focus on Individualized, Objective, and Risk-Based Analyses

The main principle of the Executive Order is the requirement that banking decisions be made solely on the basis of "individualized, objective, and risk-based analyses." This demand for objective analysis – in addition to raising other compliance concerns – increases the documentation standard for account closures and denials, particularly those involving clients in sectors or with affiliations that might generate media attention or political controversy.

Under this framework, if a decision to deny services or terminate a relationship is challenged – either by a customer complaint or during a routine regulatory review – the financial institution must be able to demonstrate that the decision was predicated upon specific, measurable risk factors unique to that client, rather than generalized industry profiles or subjective reputational concerns. In many cases, this may require a significant overhaul of banks' internal risk scoring and adverse action justification procedures.

Federal Banking Regulator Directives

The Executive Order issued specific, time-bound instructions to Federal banking regulators—including the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board (FRB)—to implement policy changes and enforcement measures.

- *Debanking policies or practices*. Within 120 days of the Order's signing (approximately December 5, 2025), Federal banking regulators must complete a review to identify financial institutions that have had

any past or current, formal or informal, policies or practices that could be considered as fostering politicized or unlawful debanking. As this mandate creates substantial enforcement risk based on *historical* conduct, financial institutions should conduct internal look-back reviews of their service denial and account closure records to assess whether any adverse decisions might have relied on generalized reputational risk, political affiliations, or broad industry categorizations rather than specific, objective findings.

The Order contemplates that enforcement actions might be brought under laws such as Section 5 of the Federal Trade Commission Act, Section 1031 of the Consumer Financial Protection Act, and the Equal Credit Opportunity Act. Regulators are directed to take appropriate remedial actions in the event violations are identified, which can include levying fines, issuing consent decrees, or imposing other disciplinary measures.

- *Reputation risk*. One of the more impactful directives of the Executive Order is the instruction for all Federal banking regulators to remove the use of "reputation risk or equivalent concepts or considerations" from their guidance, examination manuals, and supervisory materials. This mandate formalizes a trend that was already underway, as the FDIC, FRB, and OCC had previously announced the removal of “reputation risk” from their supervision programs prior to the Order’s issuance.

That said, although the term "reputation risk" is formally eliminated, banks retain their obligation to manage safety and soundness, which is often functionally linked to reputational damage (e.g., association with illicit activity causing operational or liquidity risk). The Order, therefore, appears to shift the compliance burden to financial institutions that must now translate intangible reputational concerns into quantifiable and documentable risks (e.g., specific BSA/AML compliance risk, legal liability, or liquidity risk) and revise their internal policies to reflect this framework.

- *Religious discrimination*. The Executive Order also prioritizes enforcement related to discrimination based on religion, and directs federal banking regulators to, within 180 days (by February 3, 2026), review supervisory and complaint data to identify any financial institution that has engaged in unlawful debanking on the basis of religion.

The basis for this enforcement effort is the Equal Credit Opportunity Act (ECOA), which makes it unlawful for any creditor to discriminate against an applicant with respect to any aspect of a credit transaction based on religion, among other protected characteristics. If a financial institution is identified and is unable to obtain compliance under ECOA's remedial provisions, the regulators are directed to refer the matter to the Attorney General.

- *Small Business Administration*. Finally, the Order instructs the Small Business Administration to require all financial institutions subject to its jurisdiction to make reasonable efforts to identify and reinstate clients and potential clients previously denied services due to unlawful debanking in violation of applicable SBA program requirements, such as those related to Section 7(a) of the Small Business Act. This directive effectively integrates fair access requirements into the operational compliance structure required for participation in SBA loan programs.

OCC Guidance and Enforcement Mechanisms

The Office of the Comptroller of the Currency (OCC) has recently issued bulletins to clarify how it intends to enforce the Executive Order, leveraging supervisory tools such as licensing decisions and Community Reinvestment Act (CRA) ratings.

The OCC clarified in Bulletin 2025-22 that it will consider a bank's past record and current policies and procedures regarding politicized or unlawful debanking when evaluating licensing activities. This means that a bank’s operations and licensed activities could be delayed or restricted in the event such debanking policies or procedures are identified. This review could also impact numerous critical areas, such as applications for new charters, business combinations, conversions, branching expansions, changes in control, and changes in directors and senior executive officers.

The OCC has also specified that considerations of politicized or unlawful debanking will be assessed in determining a bank’s CRA rating. The inclusion of debanking activity in the CRA assessment broadens the interpretation of the "convenience and needs of the community" factor, which was the historical focus of the CRA. It suggests that the definition of the "community" served includes not only traditional low- and moderate-income neighborhoods but also the full spectrum of lawful business activities and constitutional beliefs within the bank’s operating area. This represents an expansive application of fair access principles that requires banks to ensure ideological neutrality is maintained throughout their decisioning models.

Consistent with its general supervisory approach, the OCC will tailor the consideration of unlawful debanking in CRA and licensing assessments based on the size, complexity, and overall risk profile of the bank.

Bank Secrecy Act vs. Debanking Risk

A challenge for financial institutions in complying with the Executive Order lies in balancing the Orders's neutrality demands with mandatory compliance obligations, particularly under the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) laws. Banks must be cautious in considering these factors, as service denial or account termination for even legitimate, apolitical reasons (e.g., specific BSA/AML concerns) may still invite regulatory scrutiny under the Order's framework if the client or applicant operates within a disfavored, controversial, or politicized industry.

The OCC addressed this tension through Bulletin 2025-23, which focuses on protecting customer financial records and clarifying the use of Suspicious Activity Reports (SARs). The bulletin reminds banks of their legal obligations under the Right to Financial Privacy Act, which generally prohibits financial institutions from providing government authorities access to a customer's financial records unless specific procedures are followed. The bulletin addresses concerns that financial institutions might misuse the BSA framework for politicized purposes, and warns banks not to use voluntary SARs as a pretext to improperly disclose customers' financial information or evade the Right to Financial Privacy Act. Rather, voluntary SARs should only be submitted when identifying "concrete suspicious activity" that genuinely relates to possible violations of law, even if reporting is not strictly required.

CFPB Debanking Enforcement

Despite the recent shift away from many enforcement priorities under the current Consumer Financial Protection Bureau – including the agency's traditional fair lending remit – the CFPB has recently indicated that enforcement efforts will continue at least with respect to the Executive Order on debanking.

In late September, CFPB enforcement attorneys were instructed via email to "identify current and past investigations where we obtained information related to an entity's reasons for refusing to open accounts, freezing accounts, or closing accounts," and to report any evidence of a financial institution making decisions "on the basis of religion, political beliefs, or lawful business activities," in line with the Executive Order's mandate.

Compliance Recommendations for Financial Institutions

The implementation of this Executive Order introduces significant operational and legal challenges for financial institutions, which may require changes to risk management policies and compliance protocols. Summarized below are several recommendations for compliance strategies:

- *Policy and Documentation Overhaul*: Financial institutions should review and revise all account opening and termination policies, as well as decisioning tools and procedures. These revisions must eliminate any reliance on subjective factors or "reputation risk." All adverse decisions, particularly those involving clients in controversial or politically sensitive sectors, should transition to individualized, objective documentation that clearly articulates concrete, measurable risks (e.g., specific BSA/AML findings, quantifiable credit risk).

- *Targeted Data Look-Back Review*: Anticipating regulatory scrutiny of past practices, financial institutions should conduct a targeted look-back review of service denials or account terminations over the past three to five years. The review should identify decisions concerning clients that could be viewed as being based on religion, political activity, or lawful but disfavored business activities to identify and potentially remediate high-risk historical practices.

- *BSA/AML and RFPA Reinforcement*: Compliance and BSA/AML teams should update policies and training materials to explicitly address the proper boundaries for filing Suspicious Activity Reports, specifically reinforcing the prohibition against using voluntary SARs as a pretext for politicized debanking or circumventing the RFPA requirements regarding customer financial privacy.

- *Strategic Risk Integration*: Senior management and strategy teams should be briefed on the integration of debanking assessments into critical regulatory outcomes. The risk of delayed licensing activities, derailed mergers, or lowered CRA ratings resulting from politicized debanking practices requires high-level consideration and integration into strategic planning.