

# Insights

## **Shifting Regulatory Policy and Focus: Impact of the Recent Executive Order on Debanking**

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On August 7, 2025, President Donald Trump issued an Executive Order titled “Guaranteed Fair Banking for All Americans”. The Executive Order prohibits financial institutions from engaging in “politicized or unlawful debanking” practices. “Debanking” is a term used in recent years to describe the practice by financial institutions of restricting or altering access to financial services, such as deposit accounts, loan or other banking products and services, based on a customer’s (or potential customer’s) political or religious affiliations, or on the lawful business activities deemed to be disfavored for political reasons.

The Executive Order directs “Federal banking regulators” (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, and the Small Business Administration (“SBA”)) to take immediate action in order to restore access to financial services for consumers and businesses impacted by previous debanking efforts. This includes eliminating reputational risk considerations from regulatory guidance which could lead to debanking, and establishing enforcement, reporting and remediation requirements across the Federal Banking regulators. The Executive Order is effective immediately and contains the following components, which will be implemented over the next 180 days (by February 3, 2026):

1. Removal of Reputation Risk Considerations from Regulatory Guidance Each Federal banking regulator is directed to eliminate references to reputational risk and any comparable concepts that may contribute to politicized or unlawful debanking from all guidance documents, manuals, and related materials, with the exception of existing regulations or other materials subject to notice-and-comment rulemaking. Regulators shall also instruct all examiners to adopt this approach immediately in their supervisory activities concerning financial institutions within their jurisdiction.

Additionally, Federal banking regulators should evaluate whether to rescind or amend current regulations to remove or modify provisions that could facilitate politicized or unlawful banking practices. The consideration of a financial institution’s reputation for regulatory, supervisory, or enforcement purposes should be limited strictly to instances where it is necessary to form a reasonable and impartial risk-based assessment of the institution.

2. Review of Supervised Financial Institutions’ (Past and Present) Debanking Practices

Within 120 days of the Executive Order (December 5, 2025), each Federal banking regulator must review financial institutions under their authority to identify those with current or past policies or practices promoting politicized or unlawful debanking. Regulators are instructed to take remedial action, including possibly levying fines, issuing consent decrees, or imposing other disciplinary measures against institutions that are or have previously engaged in politicized or unlawful debanking in violation of applicable law, including section 5 of the

Federal Trade Commission Act (15 U.S.C § 45), section 1031 of the Consumer Financial Protection Act (12 U.S.C. § 5531) and the Equal Credit Opportunity Act (15 U.S.C. §§1691-1691f) (“ECOA”). Furthermore, current supervisory and complaint data must be reviewed by regulators to identify institutions that have engaged in unlawful debanking on the basis of religion. In such cases, the matter may be referred to the Attorney General for possible civil action.

Ultimately, politicized or unlawful debanking actions taken by financial institutions may be treated as potential UDAP/UDAAP or ECOA violations.

### **3. Instruction for the SBA**

Within 60 days of the Executive Order (October 6, 2025), the SBA must provide notice to all financial institutions for which it guarantees loans through its lending program that such institutions are required to comply with each of the following obligations within 120 days of the Executive Order (December 5, 2025): (i) Make reasonable efforts to identify, notify, and reinstate any previous customers (including any subsidiaries) of the institution denied financial services due to a politicized or unlawful banking action; and (ii) Identify and notify all potential customers previously denied access to financial services or payment processing services provided by the financial institution or any subsidiaries due to a politicized or unlawful debanking action and provide such potential customer an opportunity to reengage in the previously denied services.

### **4. Long-term Strategies to Combat Politicized or Unlawful Debanking**

The Executive Order directs the Secretary of the Treasury, in consultation with the Assistant to the President for Economic Policy, to develop a comprehensive strategy to broadly combat politicized or unlawful debanking activities of financial regulators and financial institutions. This includes possible legislative or regulatory options.

#### ***What should financial institutions do in the immediate short term?***

Financial institutions should review their prior and existing policies and practices to identify possible actions that may be deemed as “politicized or unlawful debanking.” In the event such actions are identified, institutions should immediately update their policies and procedures to remove such practices. Likewise, financial institutions should update their policies to align with the most up-to-date supervisory and regulatory guidelines concerning reputational risk. It is strongly recommended that any decisions to deny or restrict services must be based on “individualized, objective, and risk-based standards,” as directed by the Executive Order, and all such decisions should be supported by documented credit, legal compliance or safety and soundness concerns.

#### ***What can financial institutions expect in the future?***

The full impact of the Executive Order is still unknown but given the broad mandate to the Secretary of the Treasury, we can expect additional actions by regulators, as well as possible congressional action, to further address politicized or unlawful debanking. At a minimum, institutions should anticipate heightened regulatory scrutiny of these practices. Moreover, because the Executive Order directs regulators to examine past instances of debanking and reputational risk decisioning, institutions may also face a new wave of increased litigation risk.

We continue monitoring the on-going developments concerning the Executive Order and resulting regulatory changes. For assistance or additional guidance on the impacts of the Executive Order on your institution, please contact Maria Vladimirova-Geltz or any member of Krieg Devault’s Financial Institutions practice group.

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