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President Trump Issues Executive Order Addressing "Politicized or Unlawful" Debanking

Gibson Dunn is experienced in not only banking regulation and compliance and enforcement defense but in challenging agency action if needed and in related advocacy including in any rulemakings resulting from the Executive Order.

On August 7, 2025, President Trump signed an Executive Order directing the federal banking agencies, National Credit Union Administration (NCUA) and Small Business Administration (SBA) to investigate whether financial institutions have engaged in "politicized or unlawful debanking" practices in violation of federal law.[1] The Executive Order alleges that bank regulators have used their "supervisory scrutiny and influence" over banks to "direct" or "encourage" politicized or unlawful debanking activities, including debanking on the basis of political affiliation, religious belief, or engagement in lawful business activities.

The Executive Order mirrors language used by President Trump in recent months. In January, President Trump spoke via videoconference at the World Economic Forum in Davos, Switzerland, noting that "conservatives complain that the banks are not allowing them to do business …."[2] This week, President Trump told CNBC that "banks discriminated against me very badly," and that banks, "discriminate against many conservatives."[3] However, it is important to note that much of the emphasis on reputation risk by financial institutions was in response to federal banking agencies and the imposition of supervisory expectations. These supervisory expectations required institutions to designate certain customer types as "high risk" and subject them to heightened onboarding and monitoring requirements – and failure to do so could result in supervisory findings, including fines and ratings downgrades.

The Executive Order's stated aim is to protect Americans from being denied access to financial services on the basis of constitutionally or statutorily protected beliefs, affiliations, or political views, and to ensure that politicized or unlawful debanking is not used as a tool to inhibit such beliefs, affiliations, or political views. Instead, the Executive Order states, customer retention decisions must be made on the basis of "individualized, objective, and risk-based analyses."

What's next?

The Executive Order directs the "federal banking regulators" (which, in addition to the federal banking agencies, the Executive Order defines to include the Consumer Financial Protection Bureau (CFPB), NCUA, and SBA) to: (i) remove the use of reputation risk or equivalent concepts that could result in politicized or unlawful debanking from all guidance documents, manuals, and other materials; and (ii) consider rescinding or amending existing regulations to eliminate the risk of politicized or unlawful debanking and to ensure that an institution's or customer's reputation is "considered for regulatory, supervisory, banking, or enforcement purposes solely to the extent necessary to reach a reasonable and apolitical risk-based assessment."

The federal banking agencies already have begun modifying their guidance, examination manuals and other policy documents on reputation risk well in advance of this Executive Order. On March 20, 2025, the Office of the Comptroller of the Currency (OCC) announced that it would remove reputation risk considerations from their supervisory and regulatory toolboxes – changes which the OCC has already begun implementing.[4] On March 24, 2025, Federal Deposit Insurance Corporation (FDIC) Acting Chairman Travis Hill indicated that the FDIC planned to "eradicate" reputation risk from its regulations, guidance, examination manuals, and other policy documents. Following suit, on June 23, 2025, the Federal Reserve announced that reputation risk will no longer be a component of examination programs in its supervision of banks – changes which the Federal Reserve, too, has begun implementing.[5] Similarly, the Financial Integrity and Regulation Management (FIRM) Act, which would prohibit the use of reputation risk as a supervisory factor, has advanced out of both the Senate Banking and House Financial Services Committees.

The Executive Order also requires the federal banking regulators to conduct a review of financial institutions subject to their jurisdiction to identify whether any institution has current or historical policies that encourage politicized or unlawful debanking that violates "applicable law." Federal banking regulators are instructed to take "appropriate remedial action" to correct improper conduct identified pursuant to this review, including levying fines, issuing consent decrees, or imposing other disciplinary measures.

The Executive Order cites Section 5 of the Federal Trade Commission Act[6] (FTC Act), Section 1031 of the Consumer Financial Protection Act[7] (CFPA), and the Equal Credit Opportunity Act[8] (ECOA) as "applicable law" authorizing the federal banking regulators' enforcement authority. The Executive Order citing to these statutes reveals the Administration's views on the legality of politicized debanking practices and previews potential areas of focus for enforcement.

The FTC Act and CFPA prohibit "unfair and deceptive acts or practices." The CFPA expands on the FTC Act by also prohibiting "abusive" acts or practices.[9] By citing to the FTC Act and CFPA, the Executive Order would expand the range of fact patterns that may give rise to enforcement

action under those statutes beyond those that traditionally result in enforcement actions for unfair, deceptive, or abusive acts or practices. The CFPB has primary enforcement authority under the CFPA for banks and credit unions with assets exceeding $10 billion.[10]

ECOA prohibits creditors from discriminating against credit applicants on the basis of certain protected characteristics. Reliance on ECOA therefore limits "debanking" enforcement under that act to instances of denying credit on the basis of race, religion, or other protected status. In that connection, the Executive Order also requires the federal banking regulators to review their current supervisory and complaint data to identify potential instances of unlawful debanking on the basis of religion and to refer financial institutions to the Attorney General where the agency has reason to believe that one or more institutions "has engaged in a pattern or practice" of ECOA violations.[11] The CFPB also has enforcement authority under ECOA.[12]

Finally, the Executive Order directs the SBA to require financial institutions subject to SBA's jurisdiction and supervision to "make reasonable efforts" to identify and reinstate clients denied SBA services due to politicized or unlawful debanking and to identify potential clients denied access to financial or payment processing services due to politicized or unlawful debanking at financial institutions subject to the SBA's oversight and supervision and notify such clients of the "renewed option" to engage in "such services previously denied."[13]

What's relevant now?

"Debanking" and the agencies' supervision and regulation of reputation risk has been a top-line area of focus since the change in administration and many institutions, as a result, have been grappling with the evolving regulatory and supervisory landscape for several months. Because the Executive Order directs federal banking regulators to conduct a lookback to identify potential instances of unlawful debanking, financial institutions may encounter a variety of challenges.

1. **Financial institutions may receive broad information requests in connection with agency lookbacks.** From a practical perspective, these lookbacks could be time-consuming and costly. Institutions may not have all data available in response to broad lookbacks and should aim to scope any lookback to narrowly define the type of client or business for which information is sought or the timeframe of any lookback. In certain scenarios, institutions may be able to demonstrate that then-current regulatory guidance and/or directives, supervisory requests or findings in the examination/supervisory process shaped the institution's actions with respect to clients engaged in certain industries, and those institutions should be well-positioned to respond to requests from regulators in those instances.

   Moreover, although the Executive Order on its face focuses on "unlawful debanking" on the basis of political or religious affiliation, customer "offboarding" for other reputation risks may also be in scope for enforcement. In recent months, President Trump and other Administration officials have identified the debanking of oil and gas companies, firearms manufacturers, and cryptocurrency companies as potentially problematic.[14] All possible enforcement angles should be considered when assessing potentials risks as a result of the Executive Order.

2. **The regulatory and supervisory scheme with respect to reputation risk will continue to evolve.** While many institutions have already commenced recalibrating how they assess reputation risk as a facet embedded within measurable, traditional risk

domains in light of the Administration's and agencies' focus on the issue, there remains ample opportunity for the industry to continue to advocate with (i) policymakers in the implementation of legislation like the FIRM Act and (ii) regulators as the agencies shift away from subjective reputation risk assessments to the implementation of clearer, more objective guidance in the supervisory process. Clearly, the Executive Order suggests there is more guidance and scrutiny to come in this area. Despite the Executive Order's focus on preventing politicized or unlawful debanking, financial institutions will continue to be expected to adhere to robust initial and ongoing due diligence inquiries of customers to address core banking risk assessments, including credit risk, market risk, operational risk, and legal and compliance risk, among other core banking risks.

3. **Congress may launch investigations into financial institutions' use of reputation risk in response to this Executive Order.** Under President Trump, Congress has been focusing its oversight and investigations less on the executive branch and more on the private sector and causes perceived to be aligned with the political left. For example, for more than two years, the House Judiciary Committee has been investigating alleged efforts by social media companies and the Biden Administration to censor conservative speech. In light of the Executive Order and the fact that both House and Senate committees held hearings earlier this year on other aspects of debanking, it seems likely Congress also will examine the debanking allegations and issues addressed by the Executive Order. Congressional investigations often unfold through public letters and subpoenas, in committee or committee staff reports, and before television cameras in hearing rooms. It is advisable for financial institutions to begin thinking about the possibility of congressional investigations and organizing their responses. Effective responses to congressional investigations often involve thoughtful coordination among legal, government affairs, business, and communications resources. And the best time to marshal and organize such resources is before a crisis occurs. Here, with potential congressional investigations looming on the horizon, beginning to prepare is advisable.

In closing, we recognize that the Executive Order amplifies regulatory uncertainty on these issues given prior contrary guidance and enforcement (both formal and informal) regarding reputation risk. The Executive Order itself seemingly lays the groundwork for future penalties related to actions taken by financial institutions at the behest of their regulators. Gibson Dunn is experienced in not only banking regulation and compliance and enforcement defense but in challenging agency action if needed and in related advocacy including in any rulemakings resulting from the Executive Order. We stand ready to assist clients in thinking through the best strategies for navigating these changing tides.

Gibson Dunn will continue to closely monitor regulatory developments related to the Executive Order and other related agency actions, and our attorneys are available to support financial institutions in responding to requests for information and revising existing policies to ensure compliance with new developments and existing requirements, and to interface with government decisionmakers and strategize on approach in any further regulatory proceedings or examinations.

[1] https://www.whitehouse.gov/presidential-actions/2025/08/guaranteeing-fair-banking-for-all-americans/. The Executive Order defines "politicized or unlawful debanking" as an "act by a bank, savings association, credit union, or other financial services provider to directly or indirectly adversely restrict access to, or adversely modify the conditions of, accounts, loans, or other banking products or financial services to 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." Executive Order, § 3(a).

[2] https://www.wsj.com/finance/banking/trump-big-bank-conservative-bias-accusations-168abb27?mod=article_inline.

[3] https://www.cnbc.com/video/2025/08/05/president-trump-banks-discriminated-against-me-after-i-was-president.html

[4] Press Release, OCC, OCC Ceases Examinations for Reputation Risk (Mar. 20, 2025), https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-21.html. *See also* Comptroller's Handbook, https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/bank-supervision-process/pub-ch-bank-supervision-process.pdf.

[5] Press Release, Board of Governors for the Federal Reserve System, Federal Reserve Board announces that reputational risk will no longer be a component of examination programs in its supervision of banks (June 23, 2025), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250623a.htm. *See also* SR 95-51 (SUP): Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies, https://www.federalreserve.gov/supervisionreg/srletters/SR9551.htm.

[6] 15 U.S.C. § 45.

[7] 12 U.S.C. § 5531.

[8] 15 U.S.C. § 1691.

[9] 12 U.S.C. § 5531(a).

[10] 12 U.S.C. § 5515(a).

[11] 15 U.S.C. § 1691e(g).

[12] 15 U.S.C. § 1691c(a)(9).

[13] Executive Order, § 4(b).

[14] *See* https://www.wsj.com/politics/jpmorgan-targeted-by-republican-states-over-accusations-of-religious-bias-903c8b26?mod=article_inline; https://www.wsj.com/finance/banking/big-banks-worried-about-being-trumps-next-target-race-to-appease-republicans-15b6423a?mod=article_inline.

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