

Advisory | **Financial Regulatory & Compliance/ Financial Services Litigation**



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Federal and State Efforts Intensify Focus on ‘Debanking’

In 2025, debanking initiatives continued to intensify, with new guidance, legislation, and other actions at both the federal and state levels aimed at so-called “discriminatory debanking.” Those actions included:

- Federal and state policymakers advancing “fair access” initiatives aimed at preventing financial institutions from denying or restricting services based on certain factors, including political opinions, religious beliefs, and environmental, social, and governance standards.
- The Guaranteeing Fair Banking for All Americans Executive Order (the Executive Order) providing that federal banking regulators must eliminate “reputational risk” as a supervisory factor and requires such regulators to identify and remediate any “politicized or unlawful debanking” practices.
- Federal agencies, including the Office of the Comptroller of the Currency (OCC) and Small Business Administration (SBA), issued parallel guidance and enforcement directives, while Congress has advanced legislation aimed at creating a uniform national standard.
- States, such as Florida, Tennessee, and Idaho enacted their own “fair access” laws prohibiting discriminatory debanking, with similar legislation pending in several other states.

The debanking considerations set forth in the new guidance and legislation, coupled with the loss of “reputational risk” and other criteria as potential grounds for exiting clients and customers, may also create shifting enforcement and litigation risks, while other purported “red flag” activity that found its way into past judicial decisions on debanking may cease to exist under the new legal regime.

Understanding the interplay of the new guidance and legislation and its potential impacts – as well as its

interplay with past precedent – may be critical to proper risk planning going forward as financial institutions consider how their account opening, closing, review, and other practices are affected by the events of 2025 and how to manage regulatory and litigation risk moving forward.

Background

“Fair access” or “anti-debanking” initiatives are designed to ensure that financial institutions provide services without discrimination against individuals or businesses engaged in lawful activity that may be viewed as controversial or politically sensitive. Such requirements generally prohibit financial institutions from denying or cancelling services to customers based solely on factors such as political opinions, religious beliefs, and environmental, social, and governance standards.

In 2025, a substantial number of federal and state initiatives targeted debanking, including regulatory and legislative efforts to bar discrimination in financial services and to eliminate reliance on “reputational risk” as a standalone supervisory factor.¹

Federal Fair Access Initiatives

- *Guaranteeing Fair Banking for All Americans Executive Order*

On Aug. 7, 2025, President Donald Trump signed an **executive order** aimed at eliminating discriminatory banking practices (i.e., debanking) based on political beliefs, religious affiliations, or lawful business activities. The executive order provides that Americans should not be “denied access to financial services because of their constitutionally or statutorily protected beliefs, affiliations, or political views.” It further provides that “politicized or unlawful debanking” should not be “used as a tool to inhibit such beliefs, affiliations, or political views.” Consistent with the OCC’s “fair access” final rule during the first Trump administration (the Fair Access Final Rule),² the executive order reaffirms that the determination of whether to offer banking services should be based on “individualized, objective, and risk-based analyses.”

Under the executive order, “politicized or unlawful debanking” means “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 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.”

As a result, federal banking regulators must eliminate all references to “reputational risk” from supervisory materials and ensure it is considered only as part of a “reasonable and apolitical risk-based assessment.” By Dec. 5, 2025, federal banking regulators were required to review supervised institutions for any past or current policies or practices, formal or informal, that may have required, encouraged, or

¹ On March 20, 2025, the OCC **announced** that it will no longer examine its regulated institutions for reputation risk and removed references to reputation risk from its Comptroller’s Handbook. On April 8, 2025, the Federal Deposit Insurance Corporation (FDIC)’s Acting Chairman Travis Hill **stated** that the FDIC is working on a rulemaking that would “prohibit FDIC supervisors from (1) criticizing or taking adverse action against institutions on the basis of reputational risk and (2) requiring, instructing, or encouraging institutions to close, modify, or refrain from offering accounts on the basis of political, social, cultural, or religious views.” Finally, on June 23, 2025, the Federal Reserve Board **announced** that reputational risk will no longer be a component of examination programs in its supervision of banks.

² The Fair Access Final Rule was set to take effect on April 1, 2021, but on Jan. 28, 2021 (shortly after former President Joseph Biden took office and imposed a regulatory freeze), the OCC **halted** the rule’s publication in the Federal Register. In doing so, the OCC noted that its “long-standing supervisory guidance stating that banks should avoid termination of broad categories of customers without assessing individual customer risk [would] remain...in effect.”

otherwise influenced “politicized or unlawful debanking,” and to take remedial or enforcement actions where appropriate. In addition, federal banking regulators must examine supervisory and complaint data to identify institutions that engaged in unlawful debanking based on religion and, where compliance cannot be achieved, refer such matters to the U.S. Department of Justice for potential civil enforcement. Separately, the executive order directs the SBA to take parallel action by notifying participating lenders and requiring such lenders to reinstate or offer renewed access to clients affected by politicized or unlawful debanking.

Following the executive order, on Dec. 1, 2025, House Financial Services Committee Chairman French Hill (R-AR) and Oversight Subcommittee Chairman Dan Meuser (R-PA) released a [staff report](#) titled “Operation Choke Point 2.0: Biden’s Debanking of Digital Assets.” The report alleges that federal regulators under the Biden administration used vague rules, informal guidance, and aggressive enforcement to discourage banks from serving digital asset clients. Committee Republicans characterize these actions as a revival of the Obama administration’s “Operation Choke Point” and seek to advance a bill to “enshrine President Trump’s Executive Order” protecting digital assets.

- *SBA Orders Lenders to End Debanking Practices*

Pursuant to the executive order, the SBA sent a [letter](#) to its network of over 5,000 lenders instructing them to end politicized or unlawful banking practices. The letter directs lenders to identify any past or current policies that led to politicized or unlawful debanking. Lenders were required to reinstate or offer renewed access to previously affected clients, notify all impacted individuals of their restored access to financial or payment services, and ensure compliance with statutory and regulatory requirements under the Small Business Act by Dec. 5, 2025. Lenders had to submit a report to the SBA by Jan. 5, 2026, documenting their compliance with the foregoing directives. Importantly, the lender is required to remain in good standing and avoid punitive measures.

- *OCC Actions to Depoliticize Banking and Preliminary Supervisory Findings*

Consistent with the executive order, on Sept. 8, 2025, the OCC [announced](#) new measures to eliminate politicized or unlawful debanking within the federal banking system. The OCC clarified that banks must provide access to financial services based on individualized, objective, and risk-based criteria rather than political, religious, or other non-financial considerations. The OCC will now consider a bank’s record and policies on debanking during its licensing determinations and Community Reinvestment Act evaluations, and it has requested information from the nine largest OCC-regulated institutions to assess compliance. The OCC also (1) updated its consumer complaint portal, (2) reminded banks of restrictions on sharing customer financial data, and (3) began reviewing its approach to Bank Secrecy Act/anti-money laundering (BSA/AML) supervision to ensure it does not contribute to unlawful debanking.

In an [interview](#), the Comptroller of the Currency, Jonathan Gould, shared that the OCC is examining whether its own actions helped fuel debanking as it prepares new rules and examiner training aimed at unlawful account closures. As part of this effort, Gould also stated that the OCC is consulting with state regulators in Florida, Tennessee, and other states that have adopted fair-access laws to assess how those measures are working in practice. Building on these initiatives, the OCC is developing new rules, examiner training, and a joint rulemaking with the FDIC to remove “reputation risk” as a pretext for limiting lawful activities, while simultaneously collaborating with the U.S. Department of the Treasury and other agencies to modernize BSA/AML requirements that may have unintentionally fueled debanking.

On Dec. 10, 2025, the OCC released [preliminary findings](#) from its supervisory review of debanking activities at the nine largest national banks it supervises. The OCC reported that, in some cases, the banks

maintained policies from 2020–2023 that imposed restrictions on certain industry sectors because they engaged in activities that were inconsistent with the bank’s values. The OCC reported that the following industry sectors were subjected to restricted access: (1) oil and gas exploration, development, or production in the Arctic; (2) coal mining or coal-powered plants; (3) firearms, firearms accessories, or ammunition manufacturing or distribution; (4) private prison construction or operation; (5) payday and payroll lending, consumer debt collection, and repossession agencies; (6) tobacco or e-cigarette manufacturing, distribution, or online retail; (7) adult entertainment; (8) political action committees and political parties; and (9) digital asset activities. Gould criticized these practices and emphasized that the OCC will hold banks accountable going forward. The OCC is also reviewing nearly 100,000 pending complaints to identify potential instances of political and religious debanking.

- *Complementary Federal Legislative Proposals*

Congress has introduced complementary debanking legislation, including the Fair Access to Banking Act,³ the Financial Integrity and Regulation Management (FIRM) Act,⁴ and, most recently, the draft Ensuring Fair Access to Banking Act.⁵ The Fair Access to Banking Act builds on the Fair Access Final Rule and, if enacted, would require institutions to focus on conducting impartial and individualized risk-based analyses. The FIRM Act seeks to statutorily remove “reputational risk” from safety and soundness evaluations and prohibit federal agencies from using it to justify politically motivated actions. The draft Ensuring Fair Access to Banking Act proposes a federal standard to prevent banks from denying services for political or ideological reasons and to enhance oversight of banking regulators. The draft (1) establishes a national fair access standard that would preempt state laws, (2) contains “reasonable regulatory-related exceptions” to address unsafe, unsound, or illicit activity, and (3) seeks to permanently repeal the use of reputational risk in regulatory supervision. These bills have garnered support from some financial industry groups and trade associations representing impacted industries.

State Fair Access Initiatives

- *Florida Fair Access Law*

In May 2023, Florida enacted its “fair access” law through **2023 Florida House Bill No. 3** (FL HB 3). FL HB 3 created new “unsafe and unsound practice” standards for certain financial institutions in Florida, prohibiting them from denying, canceling, suspending, or terminating services to current or prospective customers, or otherwise discriminating against customers, on the basis of (1) the customer’s political opinions, speech, or affiliations; (2) the customer’s religious beliefs, religious exercise, or religious affiliations; (3) any factor if it is not a quantitative, impartial, and risk-based standard, including any factor relating to the customer’s business sector; or (4) any rating, scoring, analysis, tabulation, or action that considers a social credit score based on certain factors (e.g., relating to firearm sales and fossil fuel-based energy production). Since July 1, 2023, subject financial institutions have been required to attest their compliance with the fair access law on an annual basis under penalty of perjury.

In May 2024, Florida expanded its fair access law through **2024 Florida House Bill No. 989** (FL HB 989). FL HB 989: (1) expanded the applicability of the state’s fair access law to bring into scope federal and non-Florida licensed financial institutions conducting business in the state that do not hold status as Florida qualified public depositories; (2) created a customer complaint process with the Florida Office of Financial Regulation (OFR) for customers who suspect that a financial institution violated the unsafe and

³ Fair Access to Banking Act, S. 401, 119th Cong. (2025).

⁴ Financial Integrity and Regulation Management Act, S. 875, 119th Cong. (2025).

⁵ Ensuring Fair Access to Banking Act, (introduced Feb. 4, 2025) 119th Cong. (2025).

unsound practice standard established in the fair access law; and (3) created an investigatory process with the OFR for customer complaints.

Most recently, in October 2025, the OFR published [Notices of Proposed Rules](#) to amend Rules 69U-100.323 and 69U-100.3231, Florida Administrative Code, which implement the annual attestation requirement and complaint process set forth in the fair access law. The amendment to Rule 69U-100.323 would require executive officers of financial institutions to annually attest to compliance with Section 655.0323(1)-(2), Florida Statutes, as required under Section 655.0323(3), Florida Statutes. The amendment to Rule 69U-100.3231: (1) expands the scope of persons HB 989 protects by interpreting “customer” and “prospective customer” to include any person for whom a financial institution has denied service or a business relationship; (2) interprets “score” to include any consideration of prohibited factors rather than limiting to an actual numeric scoring; and (3) imposes on financial institutions the burden of showing that any service denial was due to suspicious activity, if such grounds are claimed. The comment period closed on Nov. 13, 2025.⁶

- *Anti-Debanking Model Legislation*

Several states have introduced measures based on the Alliance Defending Freedom’s (ADF) model legislation, which seeks to prohibit discriminatory debanking based on religious or political views.

In April 2024, Tennessee enacted its fair access law based on the ADF model legislation, through 2024 Tennessee House Bill No. 2100 (TN HB 2100), imposing fair access requirements on: (1) state and national banks, savings and loan associations, savings banks, credit unions, industrial loan and thrift companies, and mortgage lenders that have more than \$100 billion in assets; and (2) insurers. Tennessee’s fair access law requires these institutions to make determinations about the provision of services based on an analysis of risk factors unique to the current or prospective customer, and prohibits them from denying or cancelling services, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of: (1) the person’s political opinions, speech, or affiliations; (2) the person’s religious beliefs, religious exercise, or religious affiliations; (3) any factor if it is not a quantitative, impartial, and risk-based standard, including any factor relating to the person’s business sector; or (4) the use of a rating, scoring, analysis, tabulation, or action that considers a social credit score based on certain factors. While TN HB 2100 does not provide for a customer complaint process, it gives customers the right to request a statement from the financial institution detailing the specific reasons for the refusal, restriction, or termination within 90 days of receiving notice.

In March 2025, Idaho enacted its fair access law based on the ADF model legislation, through 2025 Idaho Senate Bill No. 1027 (ID SB 1027), prohibiting financial institutions with more than \$100 billion in assets from discriminating in the provision of financial services based on social credit scores on the basis of the person’s: (1) exercise of religion; (2) speech, expression, or association; (3) failure or refusal to adopt any targets or disclosures related to greenhouse gas emissions; (4) failure or refusal to conduct any type of racial, diversity, or gender audit, disclosure or benefit based on race, diversity, or gender; (5) failure or refusal to facilitate or assist employees in obtaining abortions or gender reassignment services; or (6) participation in lawful business associations or business activities related to fossil-fuel based energy or

⁶ The Florida Bankers Association has filed a complaint challenging the Notice of Proposed Rule, requesting that the Division of Administrative Hearings invalidate the OFR’s proposed expansion of debanking regulations. Florida Bankers Ass’n, [FBA Files Petition Seeking Invalidation of Proposed OFR Rules](#) (Nov. 13, 2025). A hearing date of March 17 through March 19, 2026, has been set to determine the outcome of this rule. Fla. Bankers Ass’n, Inc. v. Fla. Office of Fin. Regulation, Fin. Servs. Comm’n, No. 25-006010RP (Fla. Div. Admin. Hearings).

firearms, firearm accessories, or ammunition (unless based on quantifiable financial risks). ID SB 1027 permits a customer to request, within 90 days of receiving notice, a written explanation from a subject financial institution that has refused, restricted, or terminated the provision of financial services. The institution is required to furnish a statement of specific reasons within 14 days of receiving the request, unless disclosure is prohibited by law.

Further, several states (e.g., Iowa, Oklahoma, and Georgia) introduced or re-introduced anti-debanking legislation based on the ADF model law. Meanwhile, other states (e.g., Arizona, Indiana, Louisiana, South Dakota, Nebraska, and West Virginia) proposed similar bills that failed to become law.

Implications and Considerations for Financial Institutions

While there remains no slowing down of debanking initiatives, the web of federal and state legislation and regulatory guidance continues to create a new regime for bank policy and procedure that will likely remain in place irrespective of a change in administration and that has resulting implications for enforcement and litigation risk going forward.

- **Changing Compliance and Legal Risk:** Banks and other financial institutions may face heightened scrutiny, compliance burdens, and potential enforcement if they deny or restrict services without clearly documented and permissible risk-based justifications. Explanations that may have been sufficient in the past may no longer work. Not providing additional information might lead to meritless claims when dealing with proper closures and decisions not to take on certain customers.
- **Policy Changes:** Institutions may need to revise onboarding, monitoring, and exit decisions to ensure they are impartial, individualized and tied to concrete legal, credit, or operational risks. Underlying policy may be key to further supporting proper decisions, or at least in attacking claims.
- **Discretionary Changes:** “Fair access” initiatives may impact institutions’ abilities to choose their customers, particularly where decisions may be perceived as tied to politics, religion, or ESG factors. Financial institutions may need to consider entering new areas and developing new policies and procedures for managing an expanded customer base.
- **Expanded Documentation and Transparency:** Institutions should consider whether policies, procedures, and notices may need to be revised to ensure clear explanations are provided for relationship denials or closures, decision-making is based on impartial and individualized criteria, clear and comprehensive records are maintained providing the business rationale for relationship decisions, and internal governance is enhanced, as necessary, to demonstrate compliance.
- **Changing Litigation and Enforcement:** Private actions, state attorney general investigations, and supervisory examinations may rise as new theories of liabilities or enforcement priorities are determined. Additionally, banks may face a continued uptick in lawsuits alleging improper debanking and/or discriminatory practices, even with respect to proper decisions. On the other hand, certain “reputational risk” and other criteria that may have been considered and used to form the basis of purported “red flags” for certain types of customers may no longer exist and be available for members of the plaintiffs’ bar to use and rely upon when trying to make out a basis for “aiding and abetting” or other claims. Business type and related factors that found their way into judicial decisions and enforcement actions as a way of supporting claims may cease, particularly when going forward, not banking certain individuals and businesses (along with their transaction activity) could be used as a basis for someone asserting a claim under this new regime.

By Feb. 3, 2026, the Secretary of the Treasury, in consultation with the Assistant to the President for Economic Policy, **must develop a comprehensive strategy** aimed at further combatting “politicized or

unlawful debanking” by federal banking regulators and financial institutions. This strategy may include legislative and regulatory proposals to eliminate such practices across the federal government.

This information will form yet another data point for consideration going forward.

Financial institutions should consider this upcoming information and continue to proactively review their policies and practices to align with emerging “fair access” standards, prepare for heightened regulatory scrutiny, and stay informed of ongoing legislative, regulatory, and remedial developments that may impact industry requirements.

Authors

This GT Advisory was prepared by:

- [Marina Olman-Pal](#) | +1 305.579.0779 | Marina.Olman@gtlaw.com
- [Paul J. Ferak](#) | +1 312.476.5013 | ferakp@gtlaw.com
- [John O. Lukanski](#) | +1 973.443.3225 | John.Lukanski@gtlaw.com
- [Tracy S. Combs](#) | +1 801.478.6900 | Tracy.Combs@gtlaw.com
- [Jonathan H. Claydon](#) | +1 312.456.1022 | claydonj@gtlaw.com
- [Shirin Afsous](#) | +1 703.749.1354 | Shirin.Afsous@gtlaw.com
- [Catherine Yepes](#) | +1 305.579.0547 | Catherine.Yepes@gtlaw.com
- [Tiffanie Monplaisir](#) | +1 305.579.0682 | Tiffanie.Monplaisir@gtlaw.com

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