Fair Access and Debanking: Recent Developments and Unanswered Questions

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I. Introduction

What began as isolated complaints from firearms dealers, cryptocurrency firms, and fossil fuel companies about unexpected account closures and service denials has evolved into a sweeping policy debate touching on fundamental questions about the proper role of banks in American society. Regulators, legislators, and the executive branch have all weighed in, producing a complex patchwork of rules, executive orders, proposed legislation, and enforcement initiatives.

At the heart of this debate lies a tension between competing values: banks' traditional discretion to manage their customer relationships and risk profiles on the one hand, and concerns about discrimination, political coercion, and the exclusion of lawful businesses from the financial services ecosystem on the other. These issues intersect with efforts to safeguard financial privacy, the evolving role of reputation risk in bank supervision, and reforms to Bank Secrecy Act compliance. This article provides an overview of these developments—from the origins of fair access concerns, the OCC's Fair Access Rule, the proliferation of state fair access legislation, and the aggressive regulatory initiatives of the second Trump administration—and identifies significant unanswered questions that will shape regulation in this area for years to come.

II. Setting the Stage for Debanking: Reasons for Account Closings, Reputation Risk and Initial Concerns

To a large extent, banks can choose what lines of business and customers they want to serve. There are, of course, limitations on that power. For example, banks cannot discriminate on the basis of race. On the other end of the spectrum, a bank can be forced to close an account if a customer uses it for illegal activities. The current debate over fair access and debanking concerns account closures that fall into gray areas at the edges of these boundaries.

A. Why Might a Bank Choose to Close an Account?

When it comes to closing accounts, banks are often caught between a rock and a hard place. The bank must inform the customer about closure, but, depending on the circumstances, might be prohibited from disclosing the reason. This can cause a former customer to feel disgruntled, indignant, and burdened with the time-consuming task of moving accounts to a different institution (if they can find one). In fact, customers often suspect a more nefarious reason, like discrimination.[1]

Most often, accounts are closed for unremarkable reasons, like excessive overdraft fees, inactivity, or failing to provide required information at account opening. Or the customer was aggressive or belligerent toward bank employees. In such circumstances, the bank can easily justify the decision to close the account to the customer.

But there are many grounds for closure that the bank may not explicitly disclose to the customer, or may be forbidden to disclose. These include suspicions of fraud, money laundering, excessive cash transfers, or illicit business transactions. The Bank Secrecy Act ("BSA") requires financial institutions to establish an anti-money laundering program, including policies, procedures, and controls to combat money-laundering, identity theft,

1. *See* JM Adjustment Servs., LLC v. J.P. Morgan Chase Bank, N.A., No. 16-10630, 2018 U.S. Dist. LEXIS 36120, at *23–26 (E.D. Mich. Mar. 6, 2018) (summary judgment granted for bank where customers' accounts were closed due to suspicious activity, not discrimination).

embezzlement, and fraud.[2] Under the BSA, banks are obliged to monitor account activity for such issues. The Financial Crimes Enforcement Network ("FinCEN") requires institutions to file a Suspicious Activity Report ("SAR") when it knows, suspects, or has reason to suspect that a transaction involved funds derived from illegal activities.[3] If a bank files a SAR, it is prohibited from disclosing to anyone involved in the transaction that the SAR was filed, or any information that would reveal the existence of a SAR.[4] Banks must also report cash transactions that exceed $10,000 in a single day, or so-called "structuring" transactions that appear to be designed to avoid this limit.[5]

A customer could accidentally and innocently run afoul of these regulations. For example, a person starts selling jewelry on Etsy and receives online payments almost exclusively. Then she attends a three-day craft fair for the first time, her jewelry is a big hit, and she has several days where she makes significant cash sales that she deposits in her account. The bank may flag the transactions as unusual and submit a SAR. Buoyed by her success, the jeweler starts accepting payments from international customers who are tied to heightened-risk countries. This may also result in a SAR filing.[6] Although the jeweler may never be aware of any issues, the bank may decide, depending on its risk appetite, that it would rather close a smaller account that generated multiple SARs rather than risk drawing scrutiny from FinCEN. From the bank's point of view, the risk of regulatory scrutiny and the operational costs of investigating suspicious transactions may outweigh the benefit of servicing the customer. If the bank decided to close the jeweler's account, she would likely never know the reason for the closure.

B. Initial Concerns About Debanking.

Many commentators argue that using the banking system to crack down on money-laundering, drug trafficking, and terrorism financing are legitimate, worthwhile goals—especially where those goals are enshrined in federal law.[7] But many argue that some government agencies and elected of-

2. *See* The Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*
3. *See* 31 C.F.R. § 1020.320(a)(2)(i) (2011).
4. *See* 31 U.S.C. § 5318(g)(2)(A)(i); 31 C.F.R. § 1020.320(e)(1)(i); 12 C.F.R. § 21.11(k)(1) (2022).
5. *See* 31 C.F.R. § 1010.311 (2016), 1010.100(xx) (2014); 31 U.S.C. § 5324(a)(1) (2024).
6. *See* Interpretive Release No. 2004-0269: Unitary Filing of Suspicious Activity and Blocking Reports, 69 Fed. Reg. 76847 (Dec. 23, 2004).
7. See *Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT)*, Fed. Deposit Ins. Corp. (Mar. 16, 2026), https://www.fdic.gov/banker-resource-center/anti-money-laundering-countering-financing-terrorism-amlcft.

ficials have overstepped their bounds by using the banking system to discourage constitutionally-protected activities or businesses.[8] Many of these critics argue that such activity unnecessarily politicizes financial services and punishes conduct that is perfectly legal.[9]

For example, in 2018, the National Rifle Association ("NRA") filed suit against the superintendent of the New York Department of Financial Services ("NYDFS"),[10] alleging NYDFS violated its First Amendment rights by coercing financial institutions to stop managing or underwriting insurance policies the NRA offered to its members.[11] In an opinion written by Justice Sonia Sotomayor, the Supreme Court ruled unanimously that "Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors."[12]

Operation Choke Point, the extent and impact of which is still debated, began with the Financial Fraud Enforcement Task Force (FFETF), which was created by the Obama Department of Justice in 2009 to combat financial fraud.[13] Investigation by the FFETF led attorneys in the DOJ's Consumer Protection Branch to target consumer fraud occurring through online commerce, focusing on online payment processors, *i.e.*, the choke point.[14] Eventually, the FDIC promulgated an expanded list of businesses it viewed as high risk for fraud: payday loans, pornography, escort services, firearms, home-based charities, credit repair services, credit card schemes, pyramid schemes, surveillance equipment, lottery sales, lifetime memberships, travel clubs, and money transfer networks.[15]

The initiative concluded in 2017 during the first year of the Trump administration.[16] Critics of Operation Choke Point argued that it used access to the banking system as a cudgel to browbeat legal businesses that the Obama administration disliked, without authorization from Congress.[17] Operation Choke Point's advocates argued that it was an anti-fraud campaign that pursued enforcement actions against fraudsters and advised

8. *See* Taylor Walker, *Americans Gain New Protections Against "Debanking,"* Goldwater Inst. (Sept. 23, 2025), https://www.goldwaterinstitute.org/americans-gain-new-protections-against-debanking/.

9. *See* John Berlau, *Government Shouldn't Engage in Debanking or Forced Banking*, Competitive Enter. Inst. (Dec. 18, 2025), https://cei.org/blog/government-shouldnt-engage-in-debanking-or-forced-banking/.

10. *See generally* Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175 (2024).

11. *Id.* at 191.

12. *Id.* at 180.

13. Dru Stevenson, *Operation Choke Point: Myths and Reality*, 75 Admin. L. Rev. 317, 324 (2023).

14. *Id.* at 324.

15. *See id.* at 333.

16. *Id.* at 318, 345.

17. *Id.* at 231, 355 n.252.

banks to exit riskier relationships out of concern for the banks' reputation risk.[18]

C. What Is Reputation Risk?

Reputation Risk has been a regulatory consideration since at least the mid-1990s.[19] Reputation risk is generally defined as "the risk to earnings or capital arising from negative public opinion."[20] In other words, a bad reputation is bad for business.

Over time, regulators developed a checklist of factors to consider when evaluating a bank's reputation risk. This list includes "strategic factors" that relate to the bank's business, and "external factors" that touch on public perception of the bank, like "perception of the bank's products and services," and "nature and amount of exposure from litigation, monetary penalties, violations of laws and regulations, and customer complaints."[21] Reputation risk is relevant to the debanking debate because banks are expected to consider reputation risk when deciding whether to exit a customer or acquire a new customer.

For example, if First National Bank of Metropolis is considering whether to accept Lex Luthor as a customer, it may consider the effect associating with the city's supervillain might have on the bank's reputation and whether that might lead its other customers to leave the bank. First National Bank of Metropolis might well decide it does not want to take on that additional risk and decline to do business with Mr. Luthor.

But this brings us to criticisms of reputation risk that have been made by commentators:

Unquantifiable: OCC examiners have recognized that reputation risk is less quantifiable than credit or market risk, and thus it can be difficult to analyze alongside quantifiable metrics.[22] If a Lannister always pays his

18. *See* Edward J. Balleisen & Melissa B. Jacoby, *Consumer Protection after the Global Financial Crisis*, 107 Geo. L.J. 813, 837 (2019).
19. *See* Julie Andersen Hill, *Regulating Bank Reputation Risk*, 54 Ga. L. Rev. 523, 529 (2020).
20. *See* Eugene A. Ludwig, Remarks at Georgetown University Center for Business-Government Relations, U.S. Comptroller of the Currency (Sept. 26, 1995), https://www.occ.treas.gov/news-issuances/speeches/1995/nr-occ-1995-101a.pdf. The Federal Reserve defines it as "the potential that negative publicity regarding an institution's business practices, whether true or not, will cause a decline in the customer base, costly litigation, or revenue reductions." *See* Bd. of Governors of the Fed. Reserve Sys., SR 95-51, Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies (Nov. 14, 1995).
21. *See* Off. of the Comptroller of the Currency, Comptroller's Handbook: Large Bank Supervision 30–31 (2019); *see also* Hill, *supra* note 19, at 547.
22. *See* Off. of the Comptroller of the Currency, Comptroller's Handbook: Bank Supervision and Examination Process, Appendix A: Risk Assessment System (1995); *see also* Hill, *supra* note 19, at 547–48.

debts and has millions of gold coins, how can you quantify the liability of his family's terrible reputation?

Pretextual: Some commentators have alleged that a bank may cite reputation risk as the reason for exiting a customer when the "real" reason is impermissible discrimination. If the bank does not want to open an account for Yoda because it does not want to bank any devotees of the ancient religion of the Force, that would be improper religious discrimination. But if the bank cites the reputation risk of associating with violent revolutionaries instead, that would be an acceptable consideration.

Subjective and Politicized: Picking up on this criticism of Operation Choke Point, commentators have argued that reputation is in the eye of the beholder and may be influenced by the priorities of whichever party controls the executive branch and heads the banking regulators.[23] Some may see Iron Man as a hero for defeating villains like Iron Monger, Whiplash, and Thanos. But others might point to Stark Industries' creating powerful weapons as engendering a negative reputation for Iron Man, his company, and any bank that would accept them as customers. Similarly, some commentators argued that Operation Choke Point focused on industries that aligned with the Republican platform, and that by focusing on these industries, the Obama Department of Justice politicized bank regulation and used reputation risk as a pretext to carry out its agenda.[24]

Derivative of Actual Wrongdoing: Another criticism of reputation risk is that it is an amorphous charge that is frequently derived from concrete misconduct that can and should be targeted through prosecutions, not by bank regulation.[25] Such critics argue that if the Operation Choke Point task force found fraud and money-laundering rampant in the payday lending industry, then those crimes should be pursued under straightforward prosecution, not "backroom exhortations" to banks to shun customers who were not charged with illegality.[26]

III. Responses to Concerns About Debanking

The response to concerns about debanking and the role of reputation risk in bank regulation spurred action at both the federal and state level.

23. *See, e.g.*, Viveca Ware, *Questioning 'Reputational' Risk*, Indep. Banker (Sept. 26, 2014), https://web.archive.org/web/20221229153428/http:/independentbanker.org/2014/09/reputation-reputation/ ("Unlike other types of risk (credit, market, liquidity, operational and legal), reputational risk is highly subjective and difficult to measure."); *see also* Hill, *supra* note 19, at 584 n.360.

24. *See* Hill, *supra* note 19, at 524, 592; Alan S. Kaplinsky, *Regulating Bank Reputation Risk*, Ballard Spahr (Feb. 6, 2025), https://www.ballardspahr.com/insights/blogs/2025/02/podcast-regulating-bank-reputation-risk.

25. *See* Hill, *supra* note 19, at 536.

26. *See* Nat'l Rifle Ass'n of Am. v. Cuomo, Original Compl. & Jury Demand at 1, 22, 25, 30, No. 1:18-cv-566 (N.D.N.Y. 2018).

A. The OCC's Fair Access to Financial Services Rule.

In January 2021, during the final days of the first Trump administration, the OCC finalized the "Fair Access to Financial Services" rule, which was designed to prevent banks from making categorical decisions to deny services to entire industries based on reputational or political considerations rather than objective, individualized risk assessments of particular customers.[27] The rule applied to certain large banks with $100 billion or more in assets, and imposed three principal obligations.[28] First, covered banks were required to make their services available to all persons in their geographic market on "proportionally equal terms."[29] Second, covered banks could not deny any person a financial service unless the denial was justified by the person's "quantified and documented failure to meet quantitative, impartial risk-based standards established in advance."[30] Third, the rule prohibited covered banks from denying financial services to any person "in coordination with others," reflecting antitrust principles that prohibit group boycotts.[31] The OCC grounded its authority for the rulemaking in Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which charges the agency with "assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction."[32]

The Fair Access rule attracted significant stakeholder attention, with the OCC receiving approximately 35,700 comments on the proposal.[33] Supporters of the rule, numbering approximately 4,200 commenters, argued banks should not be permitted to discriminate against lawful industries, politicized access to financial services was inappropriate, and categorical decisions based on the reputation of the customer's industry constituted poor risk management.[34] These proponents included firearms-related businesses, pawnbrokers, the debt collection industry, and energy sector participants who had experienced difficulty obtaining or maintaining banking relationships.[35] Opponents of the rule "challenged the legal, substantive, and procedural basis of the rulemaking."[36] Banking trade groups and Dem-

27. Fair Access to Fin. Servs., 85 Fed. Reg. 75261, 75262 (Nov. 25, 2020).
28. *Id.* at 75265.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.* at 75262.
33. Off. of the Comptroller of the Currency, Fair Access to Financial Services: Notice of Final Rule 8 (2021), https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-8a.pdf.
34. *Id.* at 8–9.
35. *Id.* at 29.
36. *Id.* at 9.

ocratic lawmakers contended the rule would lead to unwarranted government interference in bank decision-making, undermine prudent risk management by precluding consideration of reputation risk, and potentially increase systemic risks to the financial system while discouraging corporate social responsibility.[37]

Even though it was finalized on January 14, 2021, the Fair Access rule never took effect.[38] The rule was scheduled to become effective on April 1, 2021, but on January 20, 2021, the Biden administration published a memorandum announcing a "Regulatory Freeze Pending Review," which paused all pending regulations from the former administration that had not yet been published in the Federal Register.[39] On January 28, 2021, the OCC formally paused publication of the rule, and it was not revisited during the Biden administration.[40] However, the OCC's pause notice reiterated the agency's "long-standing supervisory guidance" that banks should avoid terminating services to broad categories of customers without conducting individualized customer risk assessments.[41] During the Biden administration, legislative efforts to codify fair access requirements stalled despite garnering support from Congressional Republicans.[42] The Fair Access to Banking Act was introduced in both the House and Senate in 2021 and again in 2023, but the bills did not advance to a vote in either chamber.[43]

The return of the Trump administration in January 2025, coupled with Republican majorities in both chambers of Congress, has provided renewed momentum for federal fair access regulation.[44] The new Comptroller of the Currency could also restart implementation of the Fair Access rule, but the agency has not taken any steps to move the rule forward thus far.[45]

37. Marcos Manosalvas, *Press Releases: Waters' and Meeks' Resolution to Reverse the OCC's Harmful Rule Undermining the Community Reinvestment Act Passes the House*, U.S. House Comm. on Fin. Servs. Democrats (June 29, 2020), https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=406724.

38. *OCC Puts Hold on Fair Access Rule*, Off. of the Comptroller of the Currency (Jan. 28, 2021), https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html.

39. Memorandum for the Heads of Executive Departments and Agencies, 86 Fed. Reg. 7424 (Jan. 28, 2021).

40. *OCC Puts Hold on Fair Access Rule*, *supra* note 38.

41. *Id*.

42. H.R. 1729, 117th Cong. § 8 (2021); S. 563, 117th Cong. § 8 (2021); H.R. 2743, 118th Cong. § 8 (2023); S. 293, 118th Cong. § 8 (2023).

43. H.R. 1729; S. 563; H.R. 2743; S. 293.

44. Fair Access to Banking Act, S. 401, 119th Cong. (2025–26); Fair Access to Banking Act, H.R. 987, 119th Cong. (2025–26).

45. *See* Jonathan V. Gould, *Comptroller of the Currency, Statement before the United States Senate Committee on Banking, Housing, and Urban Affairs*, U.S. Senate (Feb. 26, 2026), https://www.banking.senate.gov/imo/media/doc/gould_testimony-

B. State Fair Access Legislation.

While the OCC's Fair Access rule and related legislation stalled at the federal level, states emerged as the primary venue for fair access legislation, with Florida at the vanguard. On May 2, 2023, Florida Governor Ron DeSantis signed legislation entitled "Government and Corporate Activism," which became effective July 1, 2023.[46] The legislation imposed fair access requirements on national- and state-chartered financial institutions, Florida-licensed consumer finance lenders, and money services businesses. The law contains two core requirements.[47] First, covered institutions must make determinations about providing services based on "an analysis of risk factors unique to each current or prospective customer or member."[48] Second, it declared it an "unsafe and unsound practice" for covered institutions to deny, cancel, or discriminate in the provision of services based on a customer's political opinions, speech, or affiliations; religious beliefs, exercise, or affiliations; factors not constituting a "quantitative, impartial, and risk-based standard;" or a "social credit score" based on factors such as political opinions, firearm ownership, engagement in fossil fuel-based energy industries, and participation in diversity, equity, and inclusion programs.[49] Covered institutions are required to submit annual compliance attestations under penalty of perjury, laying the groundwork for future enforcement actions.[50]

Florida significantly expanded its fair access regime in 2024 by amending the existing law in three material ways.[51] First, the amendment expanded the scope of covered institutions to include "a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation

_2-26-26.pdf (not mentioning fair access rulemaking in discussing fair access efforts).

46. H.B. 3, 2023 Leg., Reg. Sess. (Fla. 2023).

47. *Id.* at §§ 14 (amending Fla. Stat. § 280.02(26)), 21 (creating Fla. Stat. § 516.037), 22 (creating Fla. Stat. § 560.1115), 24 (amending Fla. Stat. § 655.005) and 25 (creating Fla. Stat. § 655.0323).

48. *Id.*

49. *Id.*

50. *Id.*; *see also HB 3 Implementation for Financial Services Providers*, Fla. Off. of Fin. Regul., https://www.flofr.gov/divisions-offices/division-of-financial-institutions/non-deposit-trust-companies/hb3-implementation-for-financial-services-providers.

51. *See* H.B. 989, 2024 Leg., Reg. Sess. (Fla. 2024); *see also HB 989 Implementation for Financial Institutions*, Fla. Off. of Fin. Regul., https://flofr.gov/divisions-offices/division-of-financial-institutions/commercial-banks/hb-989-implementation-for-financial-institutions.

operating pursuant to s. 25 of the Federal Reserve Act."[52] Second, the amendments added "suspend or terminate" to the list of prohibited actions, complementing the original "deny or cancel" language.[53] Third, the amendment established a customer complaint process permitting customers who suspect a violation to submit a complaint to the regulator that triggers a mandatory investigation and response process.[54] Violations may result in enforcement under the Florida Deceptive and Unfair Trade Practices Act, with potential remedies including injunction, damages, and civil money penalties.[55]

Tennessee enacted its own fair access law, which became effective July 1, 2024.[56] Unlike the Florida legislation, Tennessee's law adopted a $100 billion asset threshold, applying only to state-chartered and national banks, savings and loan associations, savings banks, credit unions, industrial loan and thrift companies, and mortgage lenders with more than $100 billion in assets, as well as certain insurers.[57] Like Florida, Tennessee prohibits covered institutions from denying or canceling services, or otherwise discriminating in the provision of services, on the basis of political opinions, religious beliefs, factors not constituting a "quantitative, impartial, and risk-based standard," or social credit scores.[58] However, Tennessee's law differs from Florida's in several notable respects. First, it expressly excludes loans from the definition of "services." Second, it does not require annual compliance attestations.[59] Third, rather than establishing a customer complaint process with the state regulator, Tennessee allows customers refused services to request a statement detailing the specific reasons for denial from the financial institution.[60] Finally, Tennessee permits both the government and consumers to bring action under the state's UDAP statute to redress violations.[61]

Idaho became the third state to enact fair access legislation when its law took effect on July 1, 2025.[62] Idaho's approach generally tracks Tennessee's framework, incorporating a $100 billion asset threshold and providing for enforcement by the state attorney general and a private right of action.[63]

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52. Fla. Stat. § 655.005(1)(i) (defining "financial institution"); H.B. 989 § 37 (amending Fla. Stat. § 655.0323(3) by requiring financial institutions as defined in § 655.005(1)(i) to submit compliance attestations).
53. H.B. 989 § 37.
54. *Id.*
55. *Id.*
56. H.B. 2100, 2024 Gen. Assemb., 113th Sess. (Tenn. 2024).
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. S.B. 1027, 68th Leg., 1st Reg. Sess. (Idaho 2025).
63. *Id.*

Idaho's law also applies to payment processors that process more than $100 billion in payments annually.[64]

During the 2024 legislative session, at least eight to ten other states—including Arizona (S.B. 1167), Georgia (H.B. 1205), Indiana (S.B. 28), Iowa (H.F. 2409), Kentucky (H.B. 452), Louisiana (H.B. 914), Nebraska (L.B. 730), South Dakota (H.B. 1247), and West Virginia (S.B. 214)—introduced fair access legislation. These bills generally prohibited discrimination in the provision of financial services on similar enumerated bases, with some including additional prohibitions on financial institutions agreeing, conspiring, or coordinating with others to engage in prohibited activities.[65] Many of the bills also extended coverage to payment processors, payment networks, and credit card companies that processed more than a minimum dollar amount, typically $100 billion, in transactions in the prior calendar year.[66] However, none of these bills were enacted into law during the 2024 session.

In the 2025 and 2026 legislative sessions, state-level fair access activity has continued. Mississippi introduced H.B. 1597, the Guaranteeing Fair Banking for All Americans Act, in January 2026.[67] The legislation declares as state policy that "no Mississippian should be denied access to financial services because of their constitutionally or statutorily protected beliefs, affiliations, or political views," and seeks to align Mississippi regulatory standards with the federal executive order of the same name.[68] The bill prohibits state regulators from coercing financial institutions into terminating customer accounts based on nonquantitative factors and emphasizes that banking decisions must be made "solely on the basis of individualized, objective, and risk-based analyses."[69] The legislation further urges modernization of federal anti-money laundering laws and directs the Mississippi Department of Banking and Consumer Finance to review agency guidance for consistency with the new standards.[70]

The proliferation of state fair access laws has raised significant compliance concerns for financial institutions operating across multiple jurisdictions. For example, many statutes do not define "customer" or "consumer" to mean residents of the state or include explicit geographic limitations.

64. *Id.*
65. *See* S.B. 1167, 56th Leg., 2d Reg. Sess. (Ariz. 2024); H.B. 1205, 157th Gen. Assemb., 2d Reg. Sess. (Ga. 2024); S.B. 28, 123rd Gen. Assemb., 2d Reg. Sess. (Ind. 2024); H.F. 2409, 90th Gen. Assemb., 2d Reg. Sess. (Iowa 2024); H.B. 452, 2024 Reg. Sess. (Ky. 2024); H.B. 914, 2024 Reg. Sess. (La. 2024); L.B. 730, 108th Leg., 1st Reg. Sess. (Neb. 2023); H.B. 1247, 99th Leg. Sess. (S.D. 2024); S.B. 214, 2024 Reg. Sess. (W. Va. 2024).
66. *Id.*
67. H.B. 1597, 2026 Leg., Reg. Sess. (Miss. 2026).
68. *Id.*
69. *Id.*
70. *Id.*

This begs the question of whether they could be construed as applying to all customers, regardless of any connection to the state. In Florida's statute, key terms such as "quantitative, impartial, and risk-based" and "social credit score" are not defined. Financial institutions that operate across multiple states face the prospect of complying with an increasing number of fair access laws that have different scopes, prohibited factors, attestation requirements, and enforcement mechanisms. This patchwork may increase compliance costs, ultimately passed down to customers.

IV. Debanking and Fair Access in the Second Trump Administration

The second Trump administration has made combating debanking a top priority. Much of this momentum seems to have originated as backlash against ESG requirements and what has been termed "Operation Choke Point 2.0," referring to claims by some in the fintech and cryptocurrency industries that they were debanked and denied financial services during the Biden administration.[71] A notable example was venture capitalist Marc Andreesen's appearance in November 2024 on Joe Rogan's popular podcast. Andreesen alleged that financial regulators had engaged in a plot to debank the crypto industry because of its perceived unsavoriness.[72] The claims were echoed by others and gained momentum following President Trump's re-election.

The issue of debanking also has personal dimensions for President Trump and his family, who have claimed that they have had accounts closed and been denied service by banks and have filed lawsuits against major financial institutions seeking billions of dollars in damages.[73] Trump's reelection in 2024 also signaled a sea change in the area of reputation risk, which his administration has moved swiftly to erase from the regulatory landscape altogether.

71. *See* Joel Khalili, *Chokepoint 2.0: An Investigation Promises the Truth About Crypto's Biggest Conspiracy*, WIRED (Feb. 18, 2025), https://www.wired.com/story/operation-chokepoint-20-crypto-debanking-conspiracy/. Other commentators have noted that evidence of such a plot is not overwhelming. *See* Leo Schwartz, *As Accusations of 'Debanking' Grip Silicon Valley, the Crypto Industry Is Still Waiting for a Smoking Gun*, Fortune (Dec. 11, 2024), https://fortune.com/2024/12/11/debanking-andreessen-joe-rogan-operation-chokepoint-2-crypto-smoking-gun/.
72. *See* The Joe Rogan Experience, *#2334—Kash Patel*, Spotify (June 6, 2025), https://open.spotify.com/embed/episode/0VDV6g5uAyfuS4DBX48jkM/video?utm_source=generator.
73. *See* Donald J. Trump Revocable Trust v. Capital One, N.A., No. 2025-004022-CA-01 (Fla. Cir. Ct. Mar. 7, 2025), *removed to federal court*, No. 1:25-cv-21596 (S.D. Fla. Apr. 7, 2025); *see also* Trump v. JPMorgan Chase Bank, N.A., No. 1:26-cv-21106 (S.D. Fla. 2026).

A. Executive Order 14331: "Guaranteeing Fair Banking for All Americans."

On August 7, 2025, President Trump issued Executive Order 14331, titled "Guaranteeing Fair Banking for All Americans," which established the foundation for the administration's efforts to counter debanking.[74] The order declared that "[f]inancial institutions have engaged in unacceptable practices to restrict law-abiding individuals' and businesses' access to financial services on the basis of political or religious beliefs or lawful business activities."[75] It articulated the policy that "no American should be denied access to financial services because of their constitutionally or statutorily protected beliefs, affiliations, or political views."[76]

The executive order imposed several requirements on federal banking regulators.[77] First, it directed regulators to remove "reputation risk or equivalent concepts" from guidance documents, manuals, and examination materials within 180 days.[78] Second, it required regulators to conduct reviews within 120 days to identify financial institutions whose policies or practices led to "politicized or unlawful debanking" and to "take appropriate remedial action," including fines, consent orders, or "other disciplinary measures."[79] Third, it directed the Small Business Administration to require financial institutions participating in its loan programs to identify and reinstate customers denied service due to debanking.[80] Finally, it instructed regulators to review supervisory and complaint data to identify religion-based debanking and refer such cases to the Attorney General for potential civil enforcement.[81]

Interestingly, the executive order also signaled the administration's intent to treat debanking as an unfair act or practice that is actionable under Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices, and Section 1031 of the Consumer Financial Protection Act, which prohibits unfair, deceptive, or abusive acts or practices in consumer financial services. The FTC acted on this by issuing warning letters to major payment processors and card networks about debanking practices.[82]

74. Exec. Order No. 14,331, 90 Fed. Reg. 38925 (Aug. 12, 2025).
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.* at 38926.
79. *Id.* at 38926–27.
80. *Id.* at 38926.
81. *Id.* at 38927.
82. *See* https://www.ftc.gov/news-events/news/press-releases/2026/03/ftc-chairman-andrew-n-ferguson-issues-warning-letters-ceos-paypal-stripe-visa-mastercard-about-debanking-american-consumers.

B. Agency Statements and Regulatory Focus.

Federal banking regulators have taken significant steps to implement the administration's debanking agenda in response to the executive order.

Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC): The OCC has been at the forefront of the debanking crackdown. In September 2025, the OCC issued two bulletins aimed at eliminating unlawful debanking in the federal banking system.[83] Bulletin 2025-22 clarified that the OCC would consider politicized or unlawful debanking when evaluating licensing filings and Community Reinvestment Act (CRA) performance ratings.[84] The OCC also requested information from the nine largest national banks regarding their debanking activities and enhanced its online complaint platform to facilitate consumer reporting.[85]

On October 7, 2025, the OCC and FDIC issued a notice of proposed rulemaking to codify the elimination of reputation risk from their supervisory programs.[86] Among other things, the proposed rule would prohibit the agencies from criticizing or taking adverse action against an institution on the basis of reputation risk.[87] The proposed rule would also prohibit the agencies from requiring a bank to close an account or provide services on the basis of the customer's "political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of politically disfavored but lawful business activities perceived to present reputation risk."[88]

83. *OCC Bulletin 2025-22: Licensing and Community Reinvestment Act: Consideration of Politicized or Unlawful Debanking*, Off. of the Comptroller of the Currency (Sept. 8, 2025), https://www.occ.gov/news-issuances/bulletins/2025/bulletin-2025-22.html; *OCC Bulletin 2025-23: Protecting Customer Financial Records*, Off. of the Comptroller of the Currency (Sept. 8, 2025), https://www.occ.gov/news-issuances/bulletins/2025/bulletin-2025-23.html.
84. *OCC Bulletin 2025-22*, *supra* note 83.
85. *OCC Announces Actions to Depoliticize the Federal Banking System*, Off. of the Comptroller of the Currency (Sept. 8, 2025), https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-84.html.
86. *Agencies Issue Proposal to Prohibit Use of Reputation Risk by Regulators*, Fed. Deposit Ins. Corp. (Oct. 7, 2025), https://www.fdic.gov/news/press-releases/2025/agencies-issue-proposal-prohibit-use-reputation-risk-regulators; *OCC Bulletin 2025-30: Prohibition on Use of Reputation Risk by Regulators: Notice of Proposed Rulemaking*, Off. of the Comptroller of the Currency (Oct. 7, 2025), https://www.occ.treas.gov/news-issuances/bulletins/2025/bulletin-2025-30.html.
87. Off. of the Comptroller of the Currency and Fed. Deposit Ins. Corp., Prohibition on Use of Reputation Risk by Regulators: Notice of Proposed Rulemaking 1 (Oct. 7, 2025), https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-ia-2025-98a.pdf.
88. *Id.*

In December 2025, the OCC issued a preliminary report finding that all nine of the largest banks it regulates had policies between 2020 and 2023 that "made inappropriate distinctions among customers" for reasons focused on perceived reputational risks.[89] These policies resulted in limited or delayed access to accounts, financing, and banking services for businesses in certain industry sectors, including oil and gas production, coal mining, firearms, adult entertainment, and digital assets.[90] Comptroller Jonathan Gould stated: "It is unfortunate that the nation's largest banks thought these harmful debanking policies were an appropriate use of their government-granted charter and market power."[91] The OCC indicated it is "still reviewing thousands of complaints to identify instances of political and religious debanking" and intends to hold banks accountable for any unlawful debanking activities, including making referrals to the Attorney General.[92]

Consumer Financial Protection Bureau (CFPB): In December 2025, the CFPB announced it would make debanking a "key priority," while discontinuing the use of disparate impact liability in its supervision and enforcement of fair lending laws, focusing resources on "matters with direct evidence of intentional racial discrimination and identified victims."[93] The CFPB's fair lending page of its website now includes a statement that it has dedicated resources and is working with regulatory partners, including the Department of Justice, as part of the Debanking Task Force.[94]

Federal Reserve and NCUA: The Federal Reserve announced in June 2025 that reputation risk would no longer be a component of its examinations.[95] Similarly, the National Credit Union Administration proposed a rule to exclude reputation risk from its examinations, citing concerns that "examining for reputation risk diverts resources that could be better spent on other risks that have been shown to present significant, tangible threats to institutions."[96]

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89. *OCC Releases Preliminary Findings from Its Review of Large Banks' Debanking Activities*, Off. of the Comptroller of the Currency (Dec. 10, 2025), https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-123.html.
90. *Id.*
91. *Id.*
92. *Id.*
93. Consumer Fin. Prot. Bureau, Fair Lending Report of the Consumer Financial Protection Bureau for 2024 2 (2025), https://files.consumerfinance.gov/f/documents/cfpb_fair-lending-annual-report_2025-12.pdf.
94. *See* https://www.consumerfinance.gov/fair-lending/.
95. *Federal Reserve Board Announces that Reputational Risk Will No Longer Be a Component of Examination Programs in Its Supervision of Banks*, Bd. of Governors of the Fed. Reserve Syst. (June 23, 2025), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250623a.htm.
96. *NCUA Eliminates Use of Reputational Risk*, Nat'l Credit Union Admin. (Sept. 25, 2025), https://ncua.gov/newsroom/press-release/2025/ncua-eliminates-use-reputational-risk.

Small Business Administration (SBA): In late August 2025, the SBA sent letters to more than 5,000 banks ordering them to "stop the practice of Obama- and Biden-era debanking and to reinstate otherwise qualified customers who were wrongfully denied access to financial services on the basis of political, religious, or ideological beliefs."[97] Banks were required to submit compliance reports by January 5, 2026, or face "punitive measures."[98]

C. Push to Reform the SAR Process.

Another dimension of the debanking debate concerns the role of BSA compliance and SARs in driving account closures. Banks file millions of SARs each year, and accounts triggering multiple SARs are often closed because banks seek to avoid compliance burdens and regulatory risk. Account closures for SARs can appear opaque to the customer because banks are legally prohibited from disclosing to customers that a SAR has been filed, meaning they cannot explain that an account was closed due to suspicious activity reporting requirements.

Comptroller Gould has expressed a desire to simplify anti-money-laundering compliance, describing it as an area "crying out for reforms and automation."[99] The OCC's Bulletin 2025-23 addressed concerns about improper use of SARs.[100] The bulletin reminds banks that while SARs may be voluntarily filed for any "suspicious transaction" that could be "relevant to the possible violation of law or regulation," banks must not use voluntary SAR filings "as a pretext to improperly disclose customers' financial information or evade the [Right to Financial Privacy Act]."[101] A bank should only submit a voluntary SAR "where it identifies concrete suspicious activity."[102]

FDIC Acting Chairman Travis Hill, in a January 2025 speech, highlighted concerns about the BSA regime's incentive structure, noting that "the current BSA regime creates an incentive for banks to close accounts rather than risk massive fines for inadequate BSA compliance."[103] He fur-

97. *SBA Orders Lenders to End Practice of Debanking*, U.S. Small Bus. Admin. (Aug. 26, 2025), https://www.sba.gov/article/2025/08/26/sba-orders-lenders-end-practice-debanking.
98. *Id.*
99. Ebrima Santos Sanneh, *Gould Says Debanking Crackdown Will Target Big Banks*, Am. Banker (Oct. 6, 2025), https://www.americanbanker.com/news/gould-says-debanking-crackdown-will-target-large-banks.
100. *OCC Bulletin 2025-23*, *supra* note 83.
101. *Id.*
102. *Id.*
103. Travis Hill, Vice Chairman, Fed. Deposit Ins. Corp., *Charting a New Course: Preliminary Thoughts on FDIC Policy Issues*: *Speech at the American Bar Association Annual Conference*, Fed. Deposit Ins. Corp. (Jan. 10, 2025), https://www.fdic.gov/news/speeches/2025/charting-new-course-preliminary-thoughts-fdic-policy-issues.

ther noted these issues "warrant attention and scrutiny during the [new] Administration."[104]

Proposed state legislation, such as Mississippi's "Guaranteeing Fair Banking for All Americans" bill, has also called attention to SAR-related issues, noting that banks "are prohibited from communicating [SAR filings] to customers" and that the "current regulatory environment has allowed federal regulators to put intense pressure on banks that can result in financial institutions managing risk by severing their relationships with businesses and individuals to minimize regulatory risks and costs."[105]

V. Unanswered Questions

This flurry of recent developments leaves us with many unanswered questions. The resolution of these issues will leave a lasting impact on the regulatory landscape.

A. What Are the Consequences of Eliminating Reputation Risk?

The federal banking regulators' elimination of reputation risk as a supervisory concern represents a significant shift with consequences that remain to be fully seen, but that will certainly extend beyond the immediate debate over debanking. Proponents of this change argue that banks will benefit from greater objectivity, consistency, and predictability.

However, removing reputation risk could limit examiners' ability to address emerging risks and potentially unethical practices that do not immediately manifest in quantifiable financial metrics. This approach could increase the risk of bank failures by preventing regulators from addressing such issues before they materialize as concrete financial losses. Additionally, while federal regulators have retreated from reputation risk, state regulators may fill the gap by incorporating reputational and social responsibility considerations into their own supervisory frameworks—as states like New York and California have done in the past with ESG-related guidance. This could create complications for institutions operating across multiple jurisdictions.

Even with reputation risk removed from federal supervision, banks will continue to face reputational considerations as a matter of business strategy and risk management. Public controversies, litigation, and associations with high-risk clients can still affect customer trust, investor confidence, and media exposure. The elimination of reputation risk as a supervisory category places a greater burden on banks to navigate these risks without regulatory guidance or cover.

B. How Durable is the "Debanking as a UDAAP" Theory?

Any attempts by the administration to combat debanking as an unfair act or practice under the CFPA may meet with resistance similar to what

104. *Id.*
105. H.B. 1597, 2026 Leg., Reg. Sess. (Miss. 2026).

the CFPB encountered when it tried to characterize discrimination as an unfair practice in its examination manual under the Biden administration. In *Chamber of Commerce v. Consumer Financial Protection Bureau*, the U.S. District Court for the Eastern District of Texas vacated CFPB amendments that attempted to explain how discrimination could constitute an unfair act or practice, finding the agency had exceeded its statutory authority.[106] Similar statutory authority arguments may create hurdles for regulators seeking to enforce debanking prohibitions through UDAAP. Additionally, existing UDAAP provisions may not extend to business accounts, as the CFPA is limited to consumer financial services. Some legal scholars have also questioned whether UDAAP was ever intended to cover discriminatory behavior, particularly viewpoint-based discrimination as opposed to discrimination based on protected personal status.[107] Accordingly, it remains to be seen whether viewing debanking as a UDAAP is a durable theory.

C. Are State Fair Access Laws Likely to be Preempted?

Whether state fair access laws are subject to federal preemption remains a contested and unresolved legal question. In November 2023, the OCC issued a letter expressing concern about the proliferation of state fair access laws and their "impact on the ability of national banks and FSAs to provide banking services consistent with safety, soundness, and the fair treatment of customers."[108] The OCC noted that state laws purporting to impose attestation or reporting requirements on national banks or federal savings associations "may be inconsistent with the OCC's exclusive visitorial authority under federal law," and emphasized its commitment to "preserving the legal framework for preemption established by Congress, including in the Dodd-Frank Wall Street Reform and Consumer Protection Act."[109] In May 2024, the Supreme Court in *Cantero v. Bank of America, N.A.* clarified the framework for National Bank Act preemption, holding that the applicable standard—as codified by Dodd-Frank—asks whether a state law "prevents or significantly interferes with the exercise by the national bank of its powers."[110] The Court instructed lower courts not to adopt categorical rules on preemption, but rather to conduct a "practical assessment" com-

106. Chamber of Com. of the U.S. v. Consumer Fin. Prot. Bureau, 691 F. Supp. 3d 730, 744–45 (E.D. Tex. 2023).

107. Adam J. Levitin, *The Market for Ideas: Viewpoint Discrimination in Banking*, Georgetown Univ. L. Ctr. 1, 40 (Jan. 30, 2026) (unpublished manuscript), https://ssrn.com/abstract=6206878.

108. Letter from Benjamin W. McDonough, Senior Deputy Comptroller and Chief, to Chief Exec. Officers of All Nat'l Banks and Fed. Sav. Ass'ns (Nov. 9, 2023), https://www.occ.treas.gov/publications-and-resources/publications/banker-education/files/pub-ceo-letter.pdf.

109. *Id.*

110. 602 U.S. 205, 206 (2024).

paring the challenged state law to laws analyzed in prior Supreme Court decisions.[111]

A bipartisan group of congressmen also raised concerns in July 2024 that state fair access laws "may conflict with federal laws intended to combat money laundering and terrorist financing" and "pose significant challenges to compliance with critical regulations such as the Bank Secrecy Act (BSA), and the Anti-Money Laundering (AML) Act, potentially threatening national security."[112] The Department of the Treasury responded that it shared these concerns, noting that state laws similar to Florida's H.B. 989 "may materially undermine compliance with the important AML/CFT and sanctions requirements administered by [FinCEN] and Office of Foreign Assets Control (OFAC)."[113]

Applying this framework, state fair access laws may be preempted on multiple grounds, including that the attestation and investigation requirements constitute the exercise visitorial powers that the National Bank Act vests exclusively in federal regulators;[114] that the decision-making restrictions conflict with national banks' statutory and regulatory risk management duties under the OCC's safety and soundness regulations;[115] and that the restrictions significantly interfere with powers incidental to the "business of banking" granted by the National Bank Act; specifically the ability to conduct risk assessments and manage customer relationships.[116]

Defenders of the state laws may counter that the laws do not impose conflicting duties, that banks may comply with both state and federal requirements, and that some interference with national bank activities is insufficient to trigger preemption absent significant impairment of federally granted powers. Whether preemption is ultimately resolved through litigation or an OCC rulemaking, the state patchwork remains to be seen.

D. How Will State Regulators Enforce State Fair Access Laws?

The enforcement mechanisms embedded in state fair access laws vary considerably, creating uncertainty about how these requirements will be implemented in practice. There has yet to be any significant public enforcement activity. Questions also remain about how state regulators will co-

111. McDonough, *supra* note 108.
112. Letter from Josh Gottheimer, Member of Cong., et. al., to Michael J. Hsu, Acting Comptroller of the Currency, et. al. (July 8, 2024), https://www.moneylaunderingnews.com/wp-content/uploads/sites/12/2024/07/Bipartisan-Letter-to-Treasury-FinCEN-OCC-re-National-Security-Concerns-with-State-Banking-Laws.docx.pdf.
113. Letter from Brian E. Nelson, Under Sec'y for Terrorism and Fin. Intel., to Josh Gottheimer, U.S. House of Representatives (July 18, 2024), https://www.moneylaunderingnews.com/wp-content/uploads/sites/12/2024/07/JG-letter-1.pdf.
114. *See* 12 U.S.C. § 484 (2024); 12 C.F.R. § 7.4000 (2011).
115. 12 C.F.R. § 1.5 (2026).
116. *See* 12 U.S.C. § 24; 12 C.F.R. § 7.1000.

ordinate with federal agencies, how they will handle fair access complaints involving SARs or other federally protected information, and whether they have enough resources to address the volume of complaints these laws may generate.

E. Outcome of Regulatory Investigations and Bank Responses?

Major banks have disclosed regulatory investigations stemming from the executive order.[117] The extensive four-year look-back reviews required by the executive order will require analyzing consumer sentiment, complaints, surveys, and recordings to flag individuals who claimed they were wrongfully debanked, and then examining their account records and credit applications. As these investigations conclude, it will be interesting to see what public enforcement activity might follow.

F. How Will Plaintiffs Use These Issues in Litigation?

Some state fair access laws permit individuals to file lawsuits, but there has yet to be any substantial activity by plaintiffs. Private litigation in this context may prove problematic because access to banking touches on highly technical areas where private attorneys, juries, and even some judges lack specialized background knowledge, potentially leading to divergent and unpredictable outcomes.

With reputation risk no longer serving as a basis for account closure, customers may demand more specific grounds for their accounts being closed, and threaten litigation if the bank does not comply. But, as discussed above, when a bank decides to close a customer's account, the bank may only be able or willing to provide limited information. Notably, none of the executive orders, state laws, or proposed regulatory amendments discussed in this article advocate for increased transparency for the debanked customer or obligate the bank to provide the customer with clear grounds for account closure. While the bank's (internal) reason for closing an account will no longer include reputation risk, the account closure process is likely to remain opaque for customers. Indeed, a skeptic may well argue that the removal of reputation risk is not going to change much from the customer's point of view—even though it has substantial and long-lasting repercussions for both regulators and institutions.

117. *See* Capital One Fin. Corp., Quarterly Report (Form 10-Q), at 135 (May 7, 2026).