

The Consumer Finance Podcast – The Trump Administration’s Debanking Initiative: Risk Mitigation, Regulatory Deadlines, and Sanctions for Noncompliance

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Chris Willis:

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice, and today we're going to be digging into an issue that's sort of a signature priority for the current presidential administration and that is debanking. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And don't forget to listen to all of our other great podcasts, the [FCRA Focus](#), [The Crypto Exchange](#), [Payments Pros](#), and our auto finance podcast, [Moving the Metal](#). All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a comment on your podcast platform of choice and let us know how we're doing.

Now, as I said, today we're going to be talking about debanking, which is a very prominently announced initiative in the financial services arena of the current administration. And joining me to talk about that today is my partner, Lori Sommerfield, who's a very frequent visitor on the show. So Lori, thanks for being here, but we also have a very special guest here, and that is our longtime industry friend and expert, Marsha Courchane from Charles River Associates. Marsha, thanks for being with us today.

Marsha Courchane:

Thank you, Chris.

Chris Willis:

Marsha has a tremendous amount of experience in the financial services industry, and we're so lucky to have her on the recording today. But Lori, if you don't mind, let me start with you. Let's set the stage for the audience. All of this started, as I guess so many things do, under this administration with an executive order. So would you mind telling the audience about the executive order that has launched this venture by the federal financial regulators?

Lori Sommerfield:

Sure, Chris, and great to be with you again. The executive order in question is No. 14331, and it's entitled, *Guaranteeing Fair Banking for All Americans*. It was issued back in August, specifically on August 7th, and it's intended to address the current administration's concerns about financial institutions restricting access to banking products and services to certain individuals or businesses based on their political, religious, or ideological beliefs, particularly under prior Democratic administrations. As a result of this executive order, US policy now

basically prohibits denying access to financial products and services based on beliefs, affiliations, or political views. And banking decisions now have to be based on individualized, objective and risk-based analysis. Now, although the executive order addresses debanking through a series of directives to various federal agencies, three of them have critical deadlines, and I'd like to just focus on those in our podcast. First of all, the federal agencies were required to eliminate use of reputational risk as a factor in examinations in terms of their manuals, their regulatory guidance, and they had to do that within 180 days.

This has already been accomplished by the federal banking agencies, the CFPB, and the NCUA. So they completed that earlier than planned. Second, the SBA was required to send notices to small business lenders within 60 days, and that required those lenders to identify, notify, and reinstate customers or even potential customers that were denied financial services or payment processing services due to debanking practices by December 5th. Third, the federal banking agencies and the CFPB were required to review financial institutions subject to their purview to identify any past or current policies or practices that could have resulted in debanking, again, by December 5th. If they found any evidence of debanking, then those agencies were required to take appropriate remedial action, and that could include things like levying fines, entering into consent orders, and other types of disciplinary measures. In addition, and this is the final requirement, the federal banking agencies and the CFPB had to review their current supervisory and complaint data by February 3rd, 2026, to identify any financial institution that engaged in unlawful debanking activities on the basis of religion, which would be in violation of the Equal Credit Opportunity Act.

Chris Willis:

So Lori, the first step in this was eliminating reputational risk as a basis for examination findings by the federal banking regulators. And it may not be obvious to our audience why that has anything to do with debanking, but I think telling that story is an important part of the history of this issue. So can you draw the connection between reputational risk and debanking, please?

Lori Sommerfield:

The debanking concept began back in 2013 during the Obama administration when the U.S. Department of Justice launched Operation Choke Point. DOJ and the federal banking agencies used that initiative to effectively choke off access to banking products and services, as well as the federal payments system, for what they perceived of as certain bad actors that were conducting lawful businesses, but in industries that DOJ disfavored. Although that effort was initially targeted at payday lenders, Operation Choke Point grew over time to include other industries that could be considered, well, politically controversial, like gun dealers and tobacco companies.

Now, the way that it worked was that a federal banking agency like the OCC, FDIC, or the Federal Reserve would conduct a safety and soundness examination of a financial institution, and one element of the exam was focused on reputational risk. The agency would then make findings or express concerns about an institution having customers in certain industries due to reputational risk.

Or the federal agency would simply make it very difficult for the financial institution to provide banking products and services to companies that were disfavored or individuals affiliated with those industries by citing compliance failures or heightened credit risk that would cause the institution to have to step up its oversight. So through these forms of regulatory pressure, financial institutions almost became like a deputized enforcement arm of the DOJ.

Although debanking practices largely ceased during the first Trump administration, some pundits have said that the concept came back as Operation Choke Point 2.0 when the Biden administration later cracked down on digital assets and the crypto industry. That crackdown was largely accomplished through a series of regulatory guidance as well as the Fed's novel activities supervision program for state member banks and bank holding companies.

Chris Willis:

Thank you very much. I think that's the historical context that everybody needs because this has its roots in the behavior of the federal banking agencies under prior administrations. So Lori, you mentioned these various deadlines and commandments that were placed upon the various federal agencies by the executive order. Would you mind now saying what have those agencies actually done –both the SBA and the federal banking regulators? What's the action so far with them?

Lori Sommerfield:

Sure. Well, let's start with the SBA. The SBA was first out of the gate in carrying out the directives of the executive order and issued a memo on August 26th to its network of over 5,000 small business lenders, basically requiring them to identify, notify, and reinstate customers that might have been denied financial services. And then they were also required to just cease any banking activities if they were engaged in them. Then on September 30th, the SBA issued a letter providing a simplified reporting form that was available to small business lenders with less than \$30 billion in assets, and that was designed to make it easier and less burdensome for those lenders to comply with the executive order. So another important deadline here I think that the audience should be aware of is that small business lenders are required to submit a report to the SBA by January 5th providing evidence of their compliance with the SBA's directives, and they need to do that in order to demonstrate their good standing with the agency and avoid any punitive measures.

Chris Willis:

Like losing the ability to make SBA loans.

Lori Sommerfield:

Exactly. That would be a very big punitive measure. In terms of other actions, we know that the OCC has issued very broad and voluminous requests for information to the nine largest banks in the country evaluating whether any debanking activities have occurred. But the CFPB is taking a different approach because they're doing an internal review of investigations that have occurred over the past five years to uncover any evidence of debanking of customers based on

religious or political beliefs. And of course, that five-year lookback period would cover the entirety of the Biden administration.

Chris Willis:

Right. So we have the regulators very actively looking at this and commanding financial institutions to self-examine and confess their sins if they find any. I think that's a fair characterization of the SBA's request to small business lenders. Let's say one of the regulators finds this debanking activity. What are the potential consequences for financial institutions and small business lenders if they're found to have engaged in debanking? What bad things might happen to them?

Lori Sommerfield:

Well, as I mentioned, the federal regulators have a range of potential sanctions that are available, such as levying fines, entering into consent orders, other types of disciplinary measures. But I think that the biggest stick is Section 5(c) of the executive order, which requires that if they uncover any evidence of unlawful debanking on the basis of religion, which would be a violation of ECOA, then the regulator is required to refer the institution to the Attorney General for appropriate civil action. And that's a significant risk for financial institutions. For small business lenders though, the biggest risk is the loss of good standing with the SBA if a small business lender fails to comply with the SBA directive.

Chris Willis:

And I feel like we also should point out that the executive order itself lists a number of examples of offenders with respect to debanking activities. And I think the message is clear from that, that there is a desire on the part of the administration to publicly name and shame any financial institution who's caught doing this. And so I think in addition to the legal consequences that you outlined, Lori, there's also the possibility of a very public sort of airing of this by the administration against a financial institution that's found to be guilty.

Lori Sommerfield:

I absolutely agree with your assessment, Chris, and I think the administration is looking for a poster child who could be subject to some of these punitive measures under the debanking executive order.

Chris Willis:

Well either a poster child or maybe a top 10 most wanted list. Could be either.

Lori Sommerfield:

Could be either. I agree.

Chris Willis:

So Marsha, we've got a problem. We have something that the federal regulators seem very intent on pursuing. At least that's my perception of it. And so we have to figure out what do we do as an industry about this to try to move ourselves out of the path of this oncoming train. So I'd love for you to talk about, from your experience, what are some of the things practically that financial institutions can do to try to address the concerns that are being pursued by the federal regulators now?

Marsha Courchane:

I'm going to break this into two parts, Chris. As with any examination or supervision or anything this broad, the first thing I think the financial institutions have to do is go back and review their own written policies and procedures that pertain to account openings and account closings. One of the issues often is that policies are maintained throughout a financial institution, but they're not constantly updated. And so here you actually need to see that the policies, if they were written some time ago, are brought into line with whatever the administration is expecting now. So they're going to have to go back and gather together all of the policies and procedures that would say circumstances under which I might close an account. There's no prohibition against closing accounts as long as there are policies pertaining to why they're closed. And those policies don't run afoul of all the reasons Lori just mentioned.

And so they need to be risk-based, they need to be objective, they need to be neutral, and they need to be clear. I wouldn't say they need to be transparent yet, but they might have to be justified when these federal regulatory agencies come and ask them to justify why accounts were closed or why accounts were not open.

The second thing, which I'm going to deal with in a minute, is really the customer complaints. So you saw, or many of us saw, Elizabeth Warren had a study she released back in February looking at the CFPB's consumer complaint database. You not only see those complaints publicly, but each financial institution will have a group that looks at its own internal complaints. And so here she found nearly twice as many complaints related to account closings as to account openings, and a lot of those complaints, at least the ones she very carefully went through state by state, so every impacted state congressman would be able to have examples of what went wrong, were very vague. And so one of the issues was things would be sent out saying, I've closed your account and I'm not going to tell you why. There was no reason in many of these provided. And so I think step two for the financial institutions is to see what their methodologies are in place for commenting on account closures. So what notes do they keep in the file? What do they have in their account databases, what can they say to a regulator, if not to the customer, about why they didn't open the accounts in the first place? Might be related to what Lori had said earlier. It could have been payday lending. The other things that have come up are crypto related, guns, or tobacco, anything like that where there might have been a previously perceived reputation risk of dealing with a business or an industry that you don't much like. And so number one, your own policies and procedures, make sure they're clear, neutral, objective, and risk-based. Why do you want to close it? What's the risk? And the risk is you're going to run afoul of some other law, Bank Secrecy Act, Anti-Money Laundering or something else perhaps, or the customer is just going to default if you don't want them

continuing to overdraft or something like that. Make it clear, make it concise, make sure you record it. So that's the first. Customer complaints, that's the second.

Chris Willis:

So Marsha, let me ask you a follow-up with respect to policies and procedures, which of course I totally agree with what you just said, but it also strikes me that it is possible that financial institutions might have unwritten ways of doing business that might favor or disfavor certain types of customers that they didn't write down, but they may have adopted either for their own reasons or because of supervisory pressure from the federal banking regulators in the past. How do we go about ferreting that out in dealing with it?

Marsha Courchane:

Well, this happens not only here, Chris, as you know, with respect to this new executive order, but we've seen that for decades in terms of underwriting policies and pricing policies and everything else. You'll go through all of these records and you'll try to say, why was someone denied? And you'll find out that there was something being applied that wasn't necessarily explicit in the procedures. So if you go back and review, and you can do this by starting with a sampling of account closing, Lori mentioned there's no real time period on this executive order, but the CFPB is doing a five-year lookback. Five-year lookbacks have been used for other things like redlining. Take a sample over the last five years of why you closed and see when you look at those accounts, whether or not there is any reference to a written policy. If not, then it's time to, I guess I'd put this Lori under remediation. It's a different sort than perhaps monetary remediation, but you need to get policies in place going forward for your prospective clients, and you may need to reach out to those that have previously been declined or closed to say, look, if there wasn't a clear policy, we made a mistake. And feel free to reapply.

Chris Willis:

Marsha, let's hit on your second point, which is a review of complaints. And certainly it makes sense to review those because something might be in there and if there is something in there, it's highly likely to be detected by the regulator who's looking at you. But are there limitations that might cause us to believe that merely looking at complaints might not be enough?

Marsha Courchane:

Yeah, I think one of the biggest limitations, from what I can grasp of what I've been able to find out there already, and people who looked at the CFPB'S database are that people have tried to do simple searches on particular words. So for example, they will look at complaints and search for the word debanking. Well, debanking probably wasn't a word used a lot in the last 10 years. It's one that's being used more frequently now, and people might know to say they closed it, I think I'm being debanked. And so you'd look for that word. It may also be the case that you wouldn't see a particular reference to religion. And so if you searched on religion itself, I was turned down because of my religious or my political affiliation, you might not find that word. And that's why some of the new AI tools, the large language model tools can be really helpful because they can go through phrases that might not have the same words in them, but might

reflect the same kind of situation and allow you to, even when the words are somewhat varied or somewhat indirect, they can use those for signals for why things were debanked.

So it's a process of using, I think, newer tools than we might've had available before. And at a conference I was just out last week, it looked like many of the large banks are rolling out these tools to their internal employees at least, and starting to use them on the business side. So the banks internally, as I understand so far, a lot of them are trying very hard to conduct internal examinations of what went on. So they're looking at these databases and they will have some people at the larger ones anyway, who can use these large language tools to try to get at the semantics of the phrases used in the account denials or the account closing. But you need to look through the language, and you need to read what the phrases are. You don't want to use only very specific words. You want to use semantic representations of those words.

Chris Willis:

So Marsha, we've talked about mining the information that's in complaints, but there might also be a problem with the completeness or description in complaints. It might not point to any particular reason because the customer may not know why they were declined for an account or a loan or something like that. So what do we do with complaints when the customer doesn't know what they're complaining about?

Marsha Courchane:

Yeah, Chris, that's a great question. I think here where the customer didn't know what the complaint was, the financial institutions can search their own account databases for any terms that suggest areas of concerns. And in those account databases, they can use industry codes, kind of business codes and they can use the actual names of the entities themselves to help identify and group the areas of concern. I think one of the issues is going to be, there might not be an explicit reason provided in the complaint itself, so people might not know exactly why they were turned down. And in many cases, the complaints will say, I have no idea what I did wrong. I was just told that my accounts were being closed. There, you're not going to be able to say crypto or religion or debanked. You're going to have to try to look at, well, were they closing these accounts for a particular policy or reason?

As Lori said earlier, in Operation Choke Point, they had some very specific types of industries they were interested in restricting access to – payday lending was a big one, and crypto somewhat. Here you can use small business loans. For example, you can look at the industry and you can look at data like a KOB code, the kind of business itself, and those kinds of businesses, those codes will give you a lot of information. For example, you can look at even the business name. There are a hundred different ways of saying, well, if it's called Church of X, it's probably religious space, if it's called ministry is probably religious based. If you've got synagogue in the title, it might be religious based. And so those are fairly straightforward. You can go through and probably find several of those in your small business database. For crypto, the same thing. You can find the top 20 firms that deal with crypto assets and search on the names or the types of business, even though the complaint might not specifically do that bore you. And then once you've categorized, grouped these things yourself, you can look at what you think have preponderance of the policy, as they were acted upon at the institutions, reflected.

Chris Willis:

That's really good information, Marsha, and it really makes sense that that's a good way for financial institutions to go about analyzing sort of those indefinite complaints. But let's turn our attention back to something the OCC has said. The OCC announced publicly that it's going to examine debanking as a part of its exams under the Community Reinvestment Act, and it's updated its guidance related to those exams. So what should a nationally chartered bank do in response to that guidance from the OCC?

Marsha Courchane:

Well, up until now, they probably wouldn't even have mentioned anything about necessarily account closings or account openings or denials of account openings in CRA reports. It would be a rare thing to have seen something like that. So I think here it's going to require enhanced internal training where the staff working on Community Reinvestment Act reporting to the regulator are going to have to factor in that information. So just as before I said, you can either look at the words in the complaints themselves or you can try to categorize the complaints based on industry codes and the type of business. Here, you're going to have to summarize that information on the percentage of time that accounts were closed because of the default or delinquency behavior or the amount of time that you thought there was fraud associated with the account. You are going to have to actually put together a summary of the information you've identified from those internal data scrubs to present to the regulators as part of your CRA report so they can be confident that it was not related to politicized or unlawful debanking.

Chris Willis:

Okay, thanks. And now I'd like to give both you and Lori the chance to say any final thoughts about what financial institutions ought to be doing to mitigate their risk in this area? Lori, do you want to go first?

Lori Sommerfield:

Sure, Chris, I'd be happy to. First of all, I think we've talked about the fact that Executive Order 14331 does not contain a prescribed look-back period, but I think Marsha's suggestion of using a five-year look-back period is advisable, in part because it's consistent with the approach that the CFPB is taking in its look-back at investigations over the past five years. And it also covers the entirety of the Biden administration, which seems to be a source of concern to the current administration. My second point is one thing we haven't talked about, even though we've talked a lot about the need to analyze complaints, which is the fact that there are also customer survey data that are available. And so it's a good idea to also utilize that data to the extent that it's available to try to ascertain whether any customers believe that they have been subject to debanking activity. And then finally, I just wanted to mention the need to make sure that financial institutions are always drafting a detailed and a well-supported written statement concerning the reason why a particular individual or a company's deposit account is closed or why they were denied for a loan. Because this debanking initiative is going to go on throughout the Trump administration, so it's good to be prepared for future regulatory inquiries along those lines.

Chris Willis:

Okay, Marsha, I'm going to give you one more parting shot and then I have a last question for you, but you go first.

Marsha Courchane:

Okay. So, I like Lori's idea about being well-prepared with these well-documented reasons. And I would expect very few institutions have a checklist of reasons why something happened. And just like in past examination and supervision periods where you would want to say why someone got a differential price, I gave them a better price. Why competition? You may want to prepare now a checklist of objective, neutral risk-based reasons that you can apply. Again, it will make it easier for reporting, easier to talk to your regulators, easier to talk to your customers when you're trying to explain what happened, and you might not have that. So you might need to go prepare now looking forward. Like Chris, I believe this will continue, at least the rest of this administration, and being well-armed with objective documentation will really serve you in good stead.

Chris Willis:

Marsha, I promised you one more question and here it is. I have this nagging fear that tension is going to arise between this debanking push that we just spent this episode talking about, and banks' compliance with anti-money laundering rules and regulations. Because I feel like one of the subtext of this dialogue is the assertion that banks have used AML-related considerations as a pretext for debanking undesired industries, and that then makes me worry that banks will be unfairly criticized for having AML compliance that was too good. Do you think I'm off-base with that? Is that something we should be worried about or not?

Marsha Courchane:

I think you're only off-base in that you've limited it only to concerns about AML. BSA probably comes in here too. So I think the banks have been encouraged to be very cautious about any kind of money laundering issues. They've been very severe about BSA. They've tried to do their best with respect to both of those. And now what they're being told is you have to be walking on eggshells to make sure you didn't become too cautious. We want you not to restrict access. And as things have gone this year, surprisingly enough, this is to me, one of the areas where Liz Warren and Donald Trump are actually somewhat in agreement that we shouldn't restrict access to accounts. And so I don't think it's going to be easy. I'm glad it's you and Lori who are the lawyers giving advice to financial institutions. It will be hard to separate out your concerns about the risks of violations of AML and BSA from your risks and violation of this executive order.

Chris Willis:

Yeah, especially I feel like where a bank is honestly applying its BSA, AML restrictions to an industry that might be favored by the current administration, and that's where you really have to worry, I feel like. I'm worried about it personally.

Marsha Courchane:

Yeah, I think you're exactly right, Chris.

Chris Willis:

Yeah. So thank you Marsha. And Lori, thank you for being on the podcast as well today, too. This has been a great discussion about a very serious topic that I'm sure we will return to as it unfolds over the remaining years of this administration.

And of course, thanks to our audience for listening to today's episode as well. As I said at the beginning, don't forget to subscribe and visit our blogs, [TroutmanFinancialServices.com](https://www.troutmanfinancial.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.consumerfinancialserviceslawmonitor.com). And while you're at it, why not visit us on the web [Troutman.com](https://www.troutman.com) and add yourself to our Consumer Financial Services email list. That way we can send you copies of the alerts and advisories that we release from time to time as well as invitations to our occasional industry only webinars. And of course, stay tuned for a great new episode of this podcast every Thursday afternoon. Thank you all for listening.

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