WINSTON & STRAWN LLP

CLIENT ALERT

Senate Banking Committee Pushes Regulators to Abandon Reputational Risk Assessments in Response to "Debanking" Concerns

APRIL 10, 2025

On March 6, 2025, Senate Banking Committee Chairman Senator Tim Scott (R-SC) introduced the FIRM Act, a bill that would prohibit financial regulators from considering reputational risk as a factor in their assessment of financial depository institutions. On April 8, Congressmen Andy Barr (R-KY) and Ritchie Torres (D-NY) introduced a companion bill to the House of Representatives. The bills are a response to bipartisan concern about improper "debanking," the practice of banks shutting down accounts of or refusing services to high-risk customers. While banks have broad discretion over customer accounts, some policymakers believe that banks have unfairly restricted access to financial services for certain groups and industries out of concern about their associated reputational risk.

At a hearing prior to the introduction of the Senate bill, Senator Scott remarked that "no regulator, and no bank, is above the principles of fairness and market access." Ranking Member Senator Elizabeth Warren (D-MA) agreed that debanking is a critical issue and called for support for the CFPB's efforts to combat the practice.

On March 13, the Banking Committee voted to advance the FIRM Act to the full Senate for its consideration. The bill's stated objective is to "curtail the political weaponization of Federal banking agencies by eliminating reputational risk as a component of the supervision of depository institutions." To accomplish this, the bill would require all "Federal banking agencies" (defined to include the OCC, FDIC, Federal Reserve, NCUA, and CFPB) to

> remove from any guidance, rule, examination manual, or similar document established by the agency any reference to reputational risk … regarding the supervision of depository institutions such that reputational risk … is no longer taken into consideration by the Federal banking agency when examining and supervising a depository institution.

Further, the bill would prohibit any Federal banking agency from, among other things, making a supervisory ratings decision or taking enforcement action "based … on any matter concerning or related to reputational risk." The bill also affirms that "financial service providers are private entities entitled to provide services to whichever customers they so choose, provided that those decisions do not violate the law."

While this bill is not yet law, agencies are already taking action. In February, Senator Scott asked Federal Reserve Chair Jerome Powell if he would commit to working with the Banking Committee to end debanking, and Chair Powell replied that he was "happy to make that commitment." On March 20, the OCC announced that it "will no longer examine its regulated institutions for reputation risk," while emphasizing that this "does not alter the OCC's expectation that banks remain diligent and adhere to prudent risk management practices across all other risk areas." And as of March 25, the FDIC is reportedly drafting a rule to remove reputational risk from its examinations.

In the context of bipartisan attention to the issue of debanking, along with the potential for a dramatic change to supervision, banks might consider whether now is the right time to refresh their customer onboarding and offboarding processes. When responding to the increased concern about debanking, financial institutions also need to ensure they are continuing to comply with other obligations, such as BSA/AML, which are not addressed in the proposed text of the FIRM Act. Banks should work with their counsel to develop an unbiased approach to testing customer accounts for AML risks, utilizing objective and clearly documented standards.

We expect that debanking will remain the subject of political debate and regulatory change, and we are monitoring these developments. If you have any questions or would like further information, please contact the authors of this article.

3 Min Read

Authors

Caitlin M.R. Mandel

Elise M. LeCrone

Nag Young Chu

Related Topics

Debanking | FIRM Act | BSA/AML | Consumer Financial Protection Bureau (CFPB) | OCC

Related Capabilities

Financial Services Transactions & Regulatory | Government Investigations, Enforcement & Compliance | Financial Services Litigation | Financial Services

Related Professionals

Caitlin M.R. Mandel

Elise M. LeCrone

Nag Young Chu