



OS
B
D

InBOX

Volume 3, Number 1

January 6, 2011

Commissioner Thompson addresses concerns with FDIC Overdraft Protection Guidance in letter to Chairman Bair

MICK THOMPSON
BANK COMMISSIONER



BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA

December 27, 2010

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: Overdraft Protection Guidance

Dear Chairman Bair:

The purpose of this letter is to notify you of recent comments and questions that I have received in response to the FDIC's final guidance addressing the risks associated with overdraft payment programs (the "Overdraft Guidance"). Specifically, I have heard from state-chartered non-member institutions that are requesting information on how to either (1) convert to a nationally chartered institution, or (2) become a Federal Reserve member institution. The sole purpose of these conversion proposals is to avoid what is perceived as unequal regulatory enforcement as a result of the FDIC's Overdraft Guidance.

The Overdraft Guidance applies only to state-chartered non-member institutions supervised by the FDIC. On the other hand, the recent amendments to Federal Reserve Regulation E that address the "opt-in" requirements of overdraft protection apply to all federally insured financial institutions (the "Reg E Amendments"). The Overdraft Guidance goes beyond the requirements of the Reg E Amendments, and while the Overdraft Guidance is neither statutory nor regulatory "law," its terms indicate that it will be enforced as such. For example, the Overdraft Guidance provides that overdraft payment programs will be reviewed at each examination and "those that are found to pose unacceptable safety and soundness or compliance risks will be factored into examination ratings and corrective action will be taken where necessary."

I believe that if an institution's overdraft program is in compliance with the Reg E Amendments and does not include unfair and deceptive practices, it should not subject the institution to enforcement action.

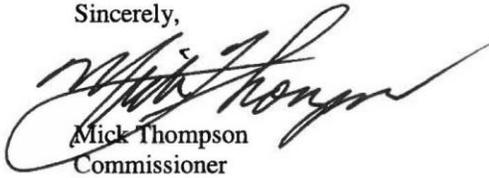
In summary, I agree with the philosophy of eliminating abusive features of all consumer banking products. However, because the United States system of banking supervision allows for multiple

The Honorable Sheila Bair
December 27, 2010
Page 2

charter types and a choice of regulators, supervision by one regulator that creates an **unlevel regulatory environment** should be avoided. This is especially true now that the Consumer Financial Protection Bureau will soon have jurisdiction over these types of products and can implement law that applies equally to all financial institutions. I ask that until the CFPB addresses these types of issues, the FDIC caution its examiners against enforcement of the Overdraft Guidance in a way that goes beyond the "legal" requirements of the Reg E Amendments.

If there is anything that I can do to assist in this matter, please contact me.

Sincerely,



Mick Thompson
Commissioner

C: Neil Milner, President
Conference of State Bank Supervisors

Roger Beverage, President
Oklahoma Bankers Association

Craig Buford, President
Community Bankers Association of Oklahoma