



OSBD

InBOX

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Oklahoma Attorney General Challenges the FDIC's Overdraft Protection Guidance

Included with this edition of the Inbox is a letter from Oklahoma Attorney General Scott Pruitt to FDIC Chairman Sheila Bair regarding the application of the FDIC's recent Overdraft Protection Guidance. The Attorney General's letter provides further support for the view that the Overdraft Guidance is not only an inequitable regulatory burden being applied to state-chartered non-member banks but also illegal if it results in enforcement action that is not supported by statutory or regulatory law. We appreciate the Attorney General's strong position on this matter and his determination to protect both Oklahoma consumers and businesses.



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

February 8, 2011

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

Re: Overdraft Protection Guidance

Dear Chairman Bair:

Your office has previously received correspondence from Mick Thompson, Bank Commissioner for the State of Oklahoma, addressing his concerns about enforcement of the FDIC's final guidance addressing the risks associated with overdraft payment programs (the "Overdraft Guidance"). As Oklahoma's Attorney General, I also have serious concerns about the FDIC's current application of the Overdraft Guidance and demand that such application cease.

First, the Overdraft Guidance at issue is not statutory in nature, nor is it the product of an administrative rule making process, yet it is being treated as law for enforcement purposes. More troubling is the fact that compliance with the Overdraft Guidance is being factored into the examination ratings of state-chartered institutions. As you know, these examination ratings directly impact the insurance premiums charged to institutions by the FDIC.

Second, the Overdraft Guidance is more strict than the regulations dealing with overdraft programs that apply to other financial institutions insured by the FDIC. This disparate treatment creates an uneven playing field and places state-chartered banks at a competitive disadvantage compared to national banks, Federal Reserve member banks, and credit unions. This situation is leading state-chartered institutions that are not members of the Federal Reserve to consider becoming either nationally chartered institutions or a Federal Reserve member. I strongly believe that state-chartered banks that are subject to state regulation allows for more competition in the financial services industry. Furthermore, state regulation allows for another layer of consumer protection in this very important sector of our economy.

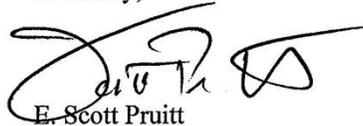
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Third, the FDIC's enforcement of the Overdraft Guidance may result in unintended consequences for consumers. Consumers that believe they have opted into an overdraft protection program and are fully aware of their bank's fees for this service, may instead find themselves subject to returned check fees from merchants, and even criminal prosecution by their local District Attorney.

Finally, the Consumer Financial Protection Bureau (CFPB) will soon be issuing rules governing these types of programs and banking services. It seems to be an inefficient use of resources by regulators and banks to work under Overdraft Guidance containing standards that may not be the law in a few short months.

As Attorney General, it is my responsibility to make sure consumers are vigorously protected in my state. However, it is also my responsibility to make sure regulated industries have a voice in making the rules that will govern their conduct and that such rules are fairly enforced. Please be advised that I am prepared to pursue all available legal remedies to ensure the fair treatment of Oklahoma's state-chartered banks.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a long horizontal flourish extending to the right.

E. Scott Pruitt
Attorney General

ESP:clb