Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING
2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 /877-276-5554
www.dob.texas.gov

INDUSTRY NOTICE 2011-2
Date: February 23, 2011

Letter on Final Overdraft Payment Supervisory Guidance, FIL-81-2010

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

RE: Final Overdraft Payment Supervisory Guidance – FIL-81-2010

Dear Chairman Bair:

Our agency has carefully studied FIL-81-2010 and considered its ramifications to state-chartered banks in Texas. The deliberations included safety and soundness concerns for the institutions along with consumer protection and availability of service issues. Our conclusion is that FIL-81-2010 will not enhance the overall soundness of our state banks and in some cases may erode stability. Further and more important, consumers, in general, may be disadvantaged, and the unbanked that we have worked so hard to bring into the forefront of financial services will be driven back into the shadow banking entities that are less regulated.

Overdraft protection programs have expanded in recent years in Texas state-chartered banks. The product has filled a void that was left when open-ended credit ceased to be a viable product for Texas banks. While there may be cases where a limited number of banks have misused the overdraft product, I do believe that the banking industry as a whole utilizes this product correctly resulting in a substantial benefit to their customers.

Because the guidance only impacts state non-member banks, it creates an uneven playing field for the state banking industry. If such guidance is needed, it should be a guidance issued jointly by all the federal bank regulators. The guidance also appears premature given the recent requirements imposed by Regulation E amendments.

In my opinion, wording in the guidance does not reflect sufficient understanding of the technical methods used in the posting of checks, transfers and debit card transactions. In addition, some of the actions recommended appear to be contrary to Texas law. It is hard to understand the basis for setting the benchmark of more than six occasions (overdrafts) in a rolling twelve-month period.

If the purpose of the guidance is to enhance consumer protection, I fear that the opposite will result. I have discussed this guidance with many of the banks that we regulate and believe that pressure from the FDIC to follow this guidance will in fact result in eliminating this product almost entirely. The disappearance of overdraft protection will force low to moderate income families, among others, to find alternative products to address their credit needs. Such alternatives will most likely cost more and require increased time and effort for the customer to secure financing. In addition, the cost of returned checks is significant both in terms of out of pocket costs and the potential for criminal action and resulting bad credit reports. There is also a high probability that a reduction in the availability of overdraft protection will result in an overall reduction in the availability of credit and decreased purchasing power.

I request that the FDIC recall or suspend Overdraft Payment Supervisory Guidance – FIL-81-2010 to allow time for proper evaluation by all the federal and state banking agencies including the Consumer Financial Protection Bureau which will have jurisdiction over these types of products.

Please contact me if you have any questions.

Sincerely,

Charles G. Cooper
Commissioner

cc:
Neil Milner, President
Conference of State Bank Supervisors

Christopher L. Williston, President
Independent Bankers Association of Texas

Eric Sandberg, President
Texas Bankers Association