

Why overdraft is such a big deal

Sheila Bair was incredulous when a banker questioned the need for FDIC's overdraft guidance. Only 40% of banks use automated "robo overdraft" programs, the FDIC chairman pointed out. The rest of the industry is already doing what the guidelines recommend, she said, namely counseling people who have a problem with overdrafts—defined as those who incur six or more per year.

Bankers want to know: Who is counseling regulators who have forgotten what their role is? This "guidance," they said, is becoming de facto law for FDIC institutions.

This exchange occurred at ABA's Government Relations Summit last month, where normally polite bankers became blunt in their comments to regulators. Contrary to what is portrayed in the media and in the halls of government, the vast majority of traditional bankers play by the rules and appreciate the necessity of rules. And that's their point: A few bad actors who broke the rules or took advantage of loopholes, combined with the actions of many unregulated players prompted the financial crisis.

The Dodd-Frank Act appropriately addresses many of those abuses. But the act did not stop there. It became a Christmas tree of unrelated provisions, all of them requiring detailed regulations to implement. Bankers understand that, and some even have sympathy for the regulators in what is a nearly impossible task, given the short timeframe.

But when regulators take it upon themselves to put their own additional spin on what is required, or go beyond what is required, such sympathy evaporates. This has been the case with the Federal Reserve's unnecessarily narrow interpretation of the Durbin Amendment relating to debit interchange fees, and to the FDIC's overdraft guidance, issued last November. While not part of Dodd-Frank, the guidance is part of the groundswell of overkill.

The bankers at last month's meeting finally said, "Enough!"

One of them, having heard Mark Pearce, director of FDIC's new Division of Depositor and Consumer Protection, describe the OD guidance as motivated by a concern over the risk of these programs—reputation risk, the risk of legal penalties, credit risk—rebutted that notion.

"This isn't about risk," he said. "No bank has failed because of overdrafts. This is about social engineering."

In the real world many people don't keep track of their finances and overdraw their accounts. Nobody is denying that there have been some abuses of overdraft protection systems, but these abuses have already been addressed. More to the point, the existence of abuses doesn't mean that the practice of covering overdrafts is not helpful in many cases and welcomed by real-world consumers.

When an agency decides that it knows better, and imposes its brand of "medicine," that is also an abuse—an abuse of power. At the ABA Summit, bankers reminded their regulators that they are not the last word.

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