

The Road to a Fully Compliant Overdraft Solution

Simplify the journey of regulatory expectations on full consumer disclosure

In today's heightened regulatory environment, there is no such thing as too much account holder communication when it comes to overdraft programs. As an early proponent of socially responsible overdraft programs, JMFA continues to be at the forefront of consumer education initiatives that greatly enhance the success of our clients' overdraft strategies. Learn more about our on-going efforts to provide useful insight to regulators as they prepare to issue rules for overdraft services.

ABOUT JMFA:

John M. Floyd & Associates (JMFA) is a leading provider of consulting services to banks and credit unions, and one of the most trusted names in today's industry. For more than 35 years, the company has helped financial institutions across the nation improve their performance and profitability.

Overdraft solutions have been in place for decades, maybe as long as financial institutions have allowed consumers to use checking or share draft accounts. This type of "relationship" banking has enabled consumers to have their overdraft items paid when the Branch staff knew the account holder and therefore provided a "courtesy" overdraft. And while this process enabled financial institutions to avoid returning an item on a good account holder, it may have been discriminatory to account holders who did not have that same relationship.

REGULATORS FOCUS ON MAKING PRODUCTS SAFE FOR CONSUMERS

During the last decade, regulators have reviewed the use of automated overdraft solutions and implemented a menu of regulations to increase consumer understanding of the service and its cost, including – Final Guidance (2005), Regulation DD statement totals (2010), Regulation E ATM and debit card Opt-In rules. Additional guidance was delivered by the FDIC (2010), while proposed guidance by the OCC was withdrawn.

In 2011, in the wake of the Dodd-Frank legislation, the Consumer Financial Protection Bureau (CFPB) was authorized to make rules that would drive the direction of the agencies tasked with regulating banking services, i.e., FDIC, NCUA, OCC, Federal Reserve. In June 2013, the CFPB released their Study of Overdraft Programs to provide the factual basis of their efforts to develop more uniform treatment of overdraft issues across financial institutions.

This first CFPB study involved nine large banks. And while no formal rules regarding overdrafts have been issued to-date, the Bureau concluded from the study that:

- overdraft programs are costly,
- overdraft programs may lead to account closures, and
- both consumer outcomes and policies related to overdraft programs can vary considerably across banks.

Because this initial CFPB analysis was focused on larger banks where the overdraft solutions are different from the fully disclosed solution that JMFA provides, our company determined that we could provide useful insight to the CFPB as they prepare to issue rules for overdraft services².



**NEARLY 3/4 OF AMERICANS
ARE LIVING PAYCHECK TO
PAYCHECK WITH LITTLE TO NO
EMERGENCY SAVINGS¹**

AN INNOVATOR IN USER-FRIENDLY OVERDRAFT PROGRAMS

JMFA has been implementing overdraft solutions for more than 25 years as part of our Non-Interest Income consulting studies and later as a stand-alone solution. The JMFA OVERDRAFT PRIVILEGE® program has been implemented in more than 1,600 banks, thrifts and credit unions across the U.S. As a fully disclosed program, it allows consumers to be aware of their ability to overdraw their account up to a disclosed limit; with associated fee(s) should they experience a financial shortfall.

Examiners are onsite in one or more of our client organizations just about every business day of the year. We regularly update our program implementations and account holder materials to address regulatory issues raised by any agency, including the CFPB.

Because of our program's emphasis on consumer education and institutional strategies that enhance safety and soundness, JMFA OVERDRAFT PRIVILEGE® carries a **100% Compliance Guarantee**.

The JMFA OVERDRAFT PRIVILEGE® program has continually evolved to respond to all regulations and regulatory guidance. With the help of our Compliance Counsel, Oliver Ireland, JMFA has constructed the most effective overdraft solution in the marketplace. Mr. Ireland is an industry expert and heads the Banking Practice of Morrison and Foerster's Washington D.C. office. He previously served as Associate General Counsel for the Federal Reserve System and wrote (or co-wrote) many of the regulations in place today.

JMFA recognizes the importance of consumer-friendly educational media and provides effective materials. Consumers are given so many items when they open a new account, the JMFA OVERDRAFT PRIVILEGE® program materials have been designed to be easy-to-read and explain. After the account is open, consumers are reminded about how their overdraft program operates through regular communication which details the options available on their account.

JMFA COMPLIANCE EXPERTS MEET WITH REGULATORS

Recently, JMFA's Compliance team visited with the CFPB to discuss the JMFA OVERDRAFT PRIVILEGE® program in its entirety, including our consumer-oriented approach which is a strong factor in the program's success.

During this discussion with the CFPB, JMFA re-emphasized our experience in small to medium-sized financial institutions—banks, thrifts and credit unions. In 2012, JMFA conducted a series of Forums to allow our client organizations to provide input to the CFPB's Request for Comment on the impact of overdraft programs to consumers. Those national forums enabled Oliver Ireland and his legal team to respond on behalf of JMFA's clients. While the response is a part of the public record now, JMFA believes that in addressing overdrafts, the CFPB should seek to balance several principles:

- Full disclosure—account holders should be provided with clear and conspicuous information as to the terms of the services that they are getting;
- Consumer choices—account holders should have a choice as to whether or not to receive overdraft services;
- Fair practices—the practices of financial institutions should not artificially inflate or manipulate costs for consumers;
- Fair regulation—regulation should not artificially increase account holder costs or make it difficult for them to obtain services; and
- Fair and transparent markets—where overdraft services compete with other services, the regulatory scheme for overdraft services should not encourage consumers to use less regulated providers of financial services.

JMFA/MORRISON-FOERSTER LLP STUDY



Morrison-Foerster LLP is one of the premier legal firms for financial services in the United States.

In an effort to provide the CFPB with a more balanced look at how transparent overdraft programs can benefit informed account holders, JMFA teamed up with Morrison-Foerster LLP to gain additional information from 50 community banks and credit unions through a series of overdraft policy information forums and surveys. The forums, moderated by compliance experts Oliver Ireland and Obrea Poindexter, gathered information from institutions from different parts of the U.S. regarding how their account holders are affected by five areas the CFPB had identified as concerning:

- ★ *posting order that increases consumer costs;*
- ★ *opt-in rates based on misleading statements and excessive pressure;*
- ★ *disproportionate impact on low-income and young consumers;*
- ★ *alternative services; and*
- ★ *high-use accounts.*

PROPER PROGRAM STRATEGY REQUIRES A BALANCE OF RISK MANAGEMENT AND ACCOUNT HOLDER INTERACTION

In terms of account management, all institutions participating in JMFA OVERDRAFT PRIVILEGE® have policies and procedures specifically designed to manage the risk associated with regular overdraft users, and to make sure account holders do not overextend themselves financially.

In addition to the formal policies and procedures, JMFA's clients are also provided with the most effective recommendations for providing counsel to regular overdraft users about how to avoid overdraft fees and to use the program responsibly. This includes helping users balance their checkbooks and establishing budgets to avoid the use of overdraft services.

It is our approach to consumer-education that greatly enhances the service and success of the program for our clients. To facilitate this process, JMFA provides our clients with ample consumer-education materials.

THERE IS NO SUCH THING AS TOO MUCH COMMUNICATION

Through years of experience in the regulatory environment, Oliver Ireland has seen financial institutions criticized by regulators for not having disclosed the details of an overdraft solution, but we have never seen criticism for having disclosed too much!

Consumers continue to experience difficult economic situations, and many rely on their financial institution's overdraft program to help them make ends meet. When having access to a reliable service translates into the ability to pay one's mortgage or rent on time, or cover the cost of medical needs and essential services, it can make a tremendous difference in an account holder's life.

By implementing and maintaining a socially responsible overdraft program that provides clarity and communication to protect account holders from financial harm, banks and credit unions can survive and prosper in today's complicated regulatory environment.

JMFA will continue to communicate with the CFPB and other regulators as they develop the overdraft strategies for small- and medium-sized institutions in our industry. We are committed to maintaining the JMFA OVERDRAFT PRIVILEGE® program as the solution to regulatory compliance.

Full disclosure is the way.

For more information or to set up an appointment to gain insight on how JMFA can assist with meeting and achieving your goals, **call 866-857-1971 or email us at Info@JMFA.com**.

REFERENCES

1. *Bankrate.com. "Short on Savings, Americans Still Feeling Positive." June 24, 2013.*
2. *JMFA/Morrison-Foerster LLP. Overdraft Policy Information Forum Comment Letter. (June 7, 2012).*

EVALUATING YOUR OVERDRAFT PROGRAM

To provide account holders with a clearly defined overdraft service, consider the following:

- ★ *Are fees and information about how the program works completely transparent to your account holders?*
- ★ *Are fees set reasonably for your market?*
- ★ *Does your program have clearly established overdraft limits that are communicated to the account holder?*
- ★ *Are your transaction clearing policies easily defined and not designed to maximize overdrafts and related fees created by the clearing order?*
- ★ *Does your program have the ability to monitor excessive usage?*
- ★ *Are communication materials provided that outline alternative financial products that more appropriately fit the needs of excessive overdraft users?*