



# CAN YOUR OVERDRAFT PROGRAM OVERCOME THE CURRENT NARRATIVE?

HOW TO OFFER A FULLY COMPLIANT, CONSUMER-FOCUSED SERVICE  
AMID SENSATIONAL HEADLINES AND RENEWED LEGISLATOR CRITICISM

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Efforts to increase regulations on overdraft services are nothing new. Scrutiny of financial services due to consumer complaints and sensational news headlines ebbs and flows. But what the news cycle continues to ignore are the benefits to the consumer of having a responsible, transparent service available when a financial shortfall occurs.



# ALL HYPE, LITTLE SUBSTANCE

## THE CURRENT STATE OF OVERDRAFT LEGISLATION

In response to reports of the ‘big banks’ charging consumers overdraft fees during the COVID-19 pandemic, legislators have introduced bills such as the Stop Overdraft Profiteering Act (proposed before but didn’t leave the Senate committee) and the Overdraft Protection Act (proposed for the ninth time since 2005, with all eight previous attempts unsuccessful). In the past, regulating agencies and legislators have already looked at and addressed many of the issues raised in these bills. A few common themes within the proposals that restate previously enacted guidance and regulations are:

### 1. REQUIRING REASONABLE AND PROPORTIONAL FEES

In 2010, the FDIC issued [Supervisory Guidance](#) recommending the use of reasonable and proportional overdraft fees. It was recognized that financial institutions may increase reputational risk when overdraft fees are significantly greater than the amount of the item being cleared. Financial institutions should review the amount charged for the overdraft payment compared to the amount of the underlying transaction that triggered the overdraft and assess whether the charge is reasonable and proportionate in comparison.

Additionally, all agencies (the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency and the National Credit Union Administration) have the authority to inquire at any time about a bank or credit union’s use of reasonable and proportional fees.



## WHAT HAPPENS IF THE SAFETY NET VANISHES?

With legislators handcuffing overdraft services with so many restrictions, some financial institutions may prefer to do away with the service altogether.

That, in turn, takes away a safety net that users can count on.

If that happens, they must look elsewhere to cover a shortfall—or risk incurring late fees or returned payments.

No longer the first stop for assistance, financial institutions miss the opportunity to fulfill consumers' needs. And without the related interventions typically tied to overdraft programs, account holders could find themselves in over their heads when using an alternate coverage option.

Wouldn't it better serve consumers to have a reliable safety net available from a trustworthy source like your financial institution?

### 2. CODIFYING THE OPT-IN PROVISIONS THAT THE FEDERAL RESERVE PROMULGATED, REQUIRING THAT CONSUMERS OPT-IN TO OVERDRAFT COVERAGE

When regulatory agencies amended [Regulation E](#) in 2010, they had the opportunity to mandate affirmative opt-ins for all transactions. At the time, there was a clear transition from consumers using paper checks to electronic payments—debit card transactions proliferated nationwide. The decision to require consumers to affirmatively authorize overdraft fees on ATM and everyday debit card transactions was primarily due to the smaller price-point of debit card transactions (e.g., coffee shop and vending machine purchases) compared to typical payments by check (e.g., rent and car payments).

### 3. PROHIBITING THE MANIPULATION OF TRANSACTION POSTING TO MAXIMIZE FEES

The FDIC [Supervisory Guidance](#) issued in 2010 also recommended a review of check-clearing procedures of the institution and any third-party vendor to ensure they operate in a manner that avoids maximizing consumer overdrafts and related fees through the clearing order. Examples of inappropriate procedures include batch processing checks and clearing them from the largest to smallest to increase the number of items triggering an overdraft fee.

### 4. PROVIDING ADDITIONAL DISCLOSURES TO CONSUMERS ABOUT OVERDRAFT COVERAGE PROGRAMS

In 2005, the federal bank and credit union regulatory agencies issued [Final Guidance on Overdraft Protection Programs](#). This guidance recommended that when communicating with consumers about overdraft protection, financial institutions should also inform them of other overdraft services and credit products, if any, available at the institution—including how the terms and fees for these services and products differ.



By and large, while these bills continue to make headlines and boost the reputations of those who propose or sign on to them, they simply reaffirm what financial institutions already do to protect consumers. Combined with the fact that the current rule-making agendas for the Consumer Financial Protection Bureau (CFPB) do not include overdraft services—and haven't for years—and the result is much ado about nothing.

# THE REAL DEAL

Both the proposed legislation and the headlines typically characterize all overdraft services and fees as deceptive, unfair, predatory or responsible for an individual's financial freefall. Though some financial institutions may have operated in this manner prior to current regulations, many others—especially community banks and credit unions—provided and continue to provide a valuable service characterized by transparency, fairness and consumer empowerment.

Further, overdraft privilege should not be the first stop for consumers if they need additional funds to cover a transaction. It should be the last option, after utilizing funds from another account, a credit card or a line of credit, if they have these services available to them.

However, if an account holder has difficulty managing his or her checking account, and does not have a savings account or access to a line of credit to cover an expense, a fully disclosed overdraft program can provide convenient access to liquidity. It's one of many services a financial institution should offer; some consumers may never want or need to use it, and those that do will find value in having access to a reliable safety net.

## “PRIVILEGE” IS A SERVICE

Overdraft Privilege offers unique benefits to consumers that other overdraft services may not, including:

- » The financial institution covers the negative balance (up to a certain amount) for the consumer for a fee
- » There's no certain credit score to qualify
- » There's no need to fill out an application or be approved
- » Access to liquidity with convenience, should an account holder need it

# FOLLOWING A PEOPLE-FIRST APPROACH

Overdraft services should be transparent and fit within the missions and values of community financial institutions—something legislators and news headlines rarely acknowledge.

Community banks and credit unions in particular have every reason to not only abide by the regulations, but consciously craft a service that their account holders or members find useful, reliable and trustworthy. Acting in the consumers' best interests is their lifeblood, and they know that anything that goes against that principle is bound to backfire.

*“[Overdraft Privilege] definitely fulfills a need for members to be able to pay for an item and not have it returned.”*

*– Midwestern financial institution, \$332MM assets*

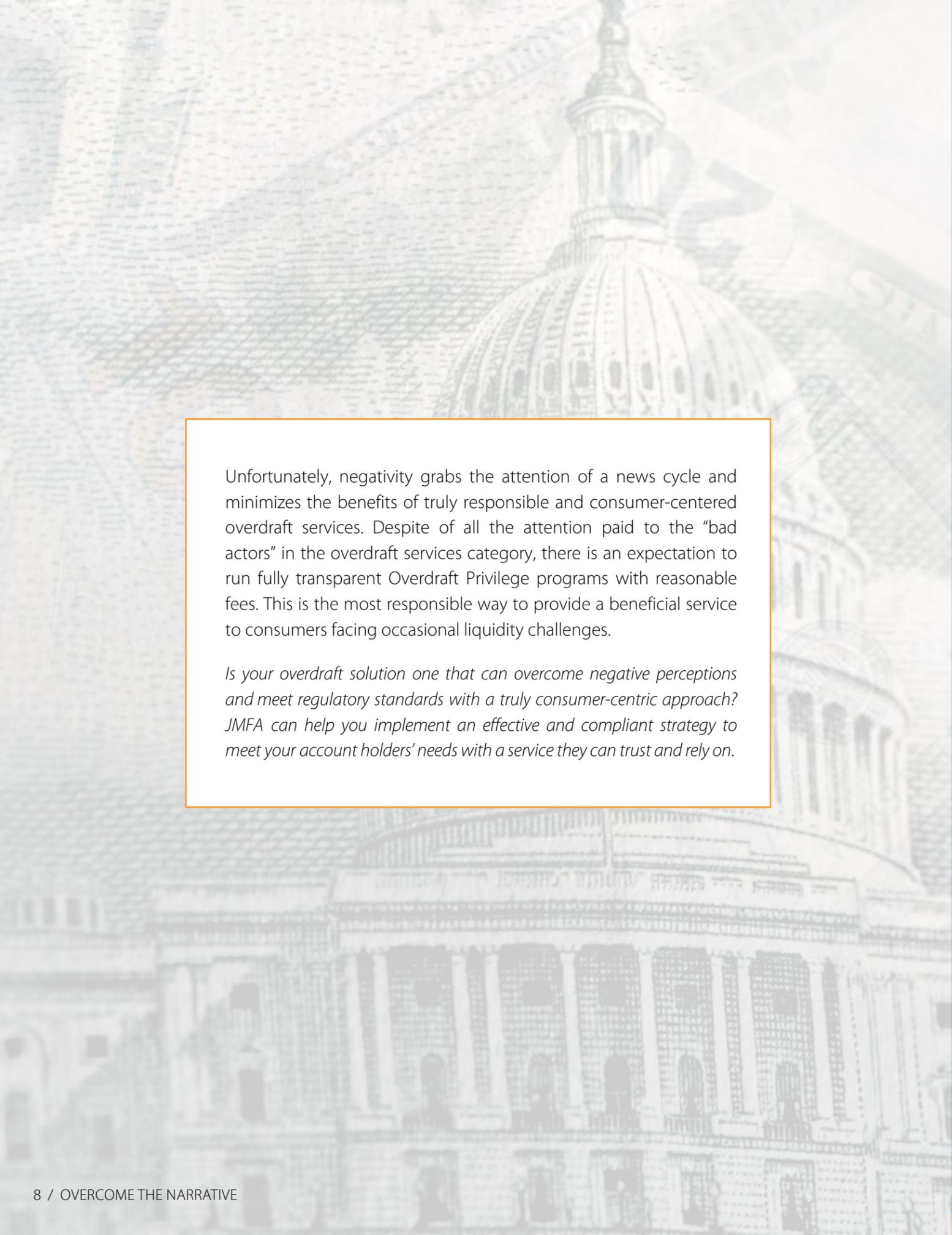


## THE IMPORTANCE OF SUPPORTING YOUR COMPLIANCE OFFICER

It's nearly impossible for one compliance person—or a small team—to stay up to date on all of the relevant regulations and interpretations. In 2019 alone, more than 56,000 regulatory alerts issued by approximately 1,200 regulatory bodies were captured by Thomson Reuters Regulatory Intelligence.

An outside overdraft program expert can help fill in knowledge gaps, free up your team's time and provide significant value through:

- » A long-term partnership dedicated to your overdraft program's success and consumer satisfaction
- » Ongoing monitoring and maintenance to optimize program performance while avoiding compliance scrutiny
- » Uniform processes, industry best practices and account holder communication materials
- » Staff training to ensure consistent and confident communication with account holders



Unfortunately, negativity grabs the attention of a news cycle and minimizes the benefits of truly responsible and consumer-centered overdraft services. Despite of all the attention paid to the “bad actors” in the overdraft services category, there is an expectation to run fully transparent Overdraft Privilege programs with reasonable fees. This is the most responsible way to provide a beneficial service to consumers facing occasional liquidity challenges.

*Is your overdraft solution one that can overcome negative perceptions and meet regulatory standards with a truly consumer-centric approach? JMFA can help you implement an effective and compliant strategy to meet your account holders' needs with a service they can trust and rely on.*

*“A fully disclosed Overdraft Privilege program is a sensible solution. It can be a socially responsible service maintained around sound financial practices.”*

*– Southwestern financial institution, \$134MM assets*

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## ABOUT THE AUTHOR

**Cheryl Lawson** has more than 30 years of experience in information technology and financial operations, as well as consulting, communications, training and project management. She serves as JMFA's principal compliance liaison for regulatory requirements of overdraft services, including consumer protection issues, and strategies that enhance safety and soundness. She is a highly sought-after authority for compliance issues related to overdraft programs and speaks at numerous industry events.

## ABOUT JMFA

JMFA is one of the most trusted names in overdraft consulting, focused on communication, transparency and improving client outcomes with a 100% compliant overdraft service. JMFA can help you deliver measurable results with proven solutions. **To learn more, please contact your local JMFA representative or call us at (800) 809-2307.**

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