Chapter 13

Federal consumer financial law is a labyrinthian system Daedalus might admire. It is a patchwork quilt of interwoven laws and regulations administered by independent agencies, some with overlapping jurisdiction and purpose. Despite its chaotic look and feel, the true marvel is that this convoluted system of "regulatory jumble[1]" largely works.

In the decade since the Dodd-Frank Act was enacted, the fissures in the financial regulatory regime have revealed faults and inefficiencies in the system. The world has changed. Greater access to technology and information and an emphasis on convenience has upended the way consumers and financial institutions interact. The Consumer Financial Protection Bureau has reshaped the way financial firms work with the government and consumers alike. Most recently, the Covid-19 global pandemic has spotlighted the financial system's clunky design and immobility in the face of changing circumstances.

As the facts of today clash with the past, it is important that the financial regulatory framework adapt. Congress, regulators and policymakers must continually consider ways to improve, modernize, and update the laws. The goal should not be to reach an unattainable state of regulatory nirvana but to build a better, more nimble system that works for more people especially those who are most vulnerable.

This chapter will explore the contours of the regulatory framework underpinning consumer financial law with an analysis of the role of the Bureau, other federal agencies and states. This chapter will also analyze the successes and failures of the current regulatory system and opportunities for improvement.

I. The Federal Financial Regulatory System

Overview of Consumer Financial Protection Bureau and its Jurisdiction

The Consumer Protection Bureau (the Bureau) is one of many financial services industry watchdogs. Congress endowed the agency with expansive authority and jurisdiction to take on the task of coordinating and concentrating consumer protection powers previously held by seven other agencies.

The concept of a consumer protection agency appears in the 1972 NCCF report. But scholars generally credit the Bureau's beginning to Senator Elizabeth Warren. In 2007, then-professor Warren advocated for added consumer protection in the financial services industry. Up to that point, regulation, examination and supervision were primarily concerned with ensuring the safety and soundness of financial institutions with consumer protection as an ancillary concern.[2] Further complicating matters, these regulatory functions were spread among several federal and state agencies with disparate agendas and ideologies. No one agency devoted its time and resources to the specific task of promoting the needs of the average consumer or protecting them in the financial marketplace.

Professor Warren noted that a consumer's financial health could significantly impact his or her overall wellbeing. In recognition of this fact, she envisioned a protection agency modeled after the Consumer

---

[1] Elizabeth Warren, *Unsafe at Any Rate: If it's good enough for microwaves, it's good enough for mortgages. Why we need a Financial Product Safety Commission* (2007) [HYPERLINK "https://democracyjournal.org/magazine/5/unsafe-at-any-rate/"].

[2] Safety and soundness assessments are focused on ensuring an institution's profitability rather than the prevention of consumer harm. *See* Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 Rev. Banking & Fin. L. 321, 330–31 (2013).

Product Safety Commission that would set minimum safety standards and improve consumer confidence in the financial marketplace. Shortly after Professor Warren's proposal was published, the subprime mortgage market collapsed. And her ideas paved the way for augmented consumer rights and checks in the financial services industry.

Bureau Organizational Structure

In 2010, Congress passed the Dodd-Frank Act which included the Consumer Financial Protection Act (CFPA). The CFPA established the Bureau as an independent executive agency within the Federal Reserve System.[3] Accordingly, the Federal Reserve funds the Bureau. Each year, the Director determines an amount reasonably necessary to carry out the functions of the agency, which the Federal Reserve subsequently releases.[4]

Importantly, neither the Bureau's request for funding nor the Bureau's activities, in general, are subject to the Federal Reserve's approval.[5] Congress also lacks the authority to review the Bureau's request for funds.[6] The CFPA requires the Director to provide the Office of Management and Budget (OMB) with a copy of its financial operating plans and forecasts, but the OMB lacks approval authority over the funding as well.[7] And although the Comptroller General conducts annual financial audits of the Bureau, which are ultimately provided to the President and Congress, the CFPA does not provide the Comptroller General, the President or Congress with explicit authority to intervene should an audit suggest the Bureau's budget is unreasonable.[8] In this way, the Bureau maintains a level of independence from the federal reserve, other members of the executive branch, the President, and Congress.

The purpose of the Bureau is to consistently implement and enforce Federal consumer financial law to ensure that all consumers have access to financial services markets and that those markets are fair, transparent, and competitive.[9] The primary functions of the Bureau are to:

- conduct financial education programs;
- handle consumer complaints and publish information identifying risks to consumers and the proper functioning of markets;
- supervise covered persons;
- issue rules, orders and guidance regarding federal consumer financial law; and
- perform other activities as necessary to carry out the functions of the Bureau.[10]

To accomplish these functions, the Bureau is statutorily required to maintain specific functional units or offices at the agency. Those offices and units include: a Research unit, community affairs unit, a unit dedicated to the collection and tracking of consumer complaints, an office of fair lending, office of

---

[3] *See* Section 1011(a) of the Dodd-Frank Act.
[4] *See* Section 1017(a) of the Dodd-Frank Act.
[5] *See* Section 1012(c)(2) of the Dodd-Frank Act.
[6] *See* Section 1017(a)(2)(C) of the Dodd-Frank Act.
[7] *See* Section 1017(a)(4) of the Dodd-Frank-Act.
[8] *See* Section 1017(a)(5)(A) of the Dodd-Frank Act.
[9] *See* Section 1021 of the Dodd-Frank Act.
[10] *See* Section 1021(c) of the Dodd-Frank Act.

financial Education, office of service member affairs, and an office of financial protection for older Americans.[11]

Overview of Bureau Authority & Covered Persons

The CFPA consolidates in the Bureau many of the federal consumer protection powers previously held by seven other regulators.[12] These regulators included the Officer of Comptroller of the Currency (OCC), National Credit Union Administration (NCUA), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD).[13] Unlike the five bank regulators, the FTC exercised authority over certain nondepository institutions but did not have substantial supervisory authority over them. Because state regulators filled that void, supervision standards and procedures were fractured and varied by state.[14]

The CFPA endowed the Bureau with rulemaking, supervisory and enforcement authority over "covered persons." Covered persons include depository institutions with over $10 billion in assets and certain nondepository institutions that offer consumer financial products or services. The Bureau's regulation of nondepository institutions is significant given they were not subject to substantial federal supervision prior to the Bureau's creation.[15] The Bureau can supervise nondepositories of all sizes in the residential mortgage, private education lending, and payday lending markets.[16] The Bureau may also exercise supervisory authority over nondepositories that the Bureau determines pose a risk to consumers and larger participants in markets for consumer financial services.[17]

To date, the Bureau has issued rules defining larger participants in the markets for consumer reporting, debt collection, student loan servicing, international money transfer, and automobile financing and certain automobile leasing activities.[18] Prior to the Dodd-Frank Act, nondepository institutions often competed with banks but were not subject to the same consumer protection standards or compliance requirements. So, the goal for defining larger participants was to capture larger players in each market and obtain a broader view of the issues in those markets. The Bureau also sought to level the playing field between nondepository institutions and depository institutions by making sure both were subject to fair and equal levels of supervision. The Bureau developed larger participant rules by analyzing statistical data and cost-benefit analyses by market. But this data was largely imperfect given there were no requirements for these nondepositories to register with regulators. The Bureau now has the authority to require these entities to register their existence with the Bureau for tracking purposes.[19]

[11] *See* Sections 1013(b)-(g) of the Dodd-Frank Act.
[12] Congressional Research Service, The Consumer Financial Protection Bureau (CFPB): A Legal Analysis at 2 (2014).
[13] Congressional Research Service, The Consumer Financial Protection Bureau (CFPB): A Legal Analysis at 2 (2014).
[14] Congressional Research Service, The Consumer Financial Protection Bureau (CFPB): A Legal Analysis at 3(2014).
[15] *See* Congressional Research Service, The Consumer Financial Protection Bureau (CFPB): A Legal Analysis at 2 (2014)
[16] *See* [HYPERLINK "https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/defining-larger-participants-student-loan-servicing-market/"].
[17] *See* Section 1024(a)(1)(C). See also 12 C.F.R. 1091.
[18] *See* 12 C.F.R. 1090; 12 C.F.R. §1001.
[19] *See* Section 1022(c)(7) of the Dodd-Frank Act.

Noticeably, the Dodd-Frank Act explicitly excludes auto dealers from the Bureau's nondepository jurisdiction. This is the case even though some either directly or indirectly facilitate extensions of credit to consumers like other covered entities.[20] The auto dealer exemption does not apply to those that "offer financing, including leases, directly to consumers and do not routinely assign the loan or lease to an unaffiliated third party; provide services related to real property transactions; or offer any other consumer financial product or service not related to the sale or servicing of vehicles or boats, as applicable." But most auto dealers fall outside of this exception, and thus escape Bureau oversight.[21]

Bureau Rulemaking Authority

The Bureau has broad rulemaking powers. Generally, it has the authority to implement, administer and enforce "federal consumer financial law."[22] Federal Consumer financial laws means the CFPA, the laws for which authorities are transferred under subtitles F and H of the CFPA, any Bureau rule or order issued pursuant to the CFPA, and the "enumerated consumer laws." The 18 enumerated consumer laws include:

- the Alternative Mortgage Transaction Parity Act of 1982;
- the Consumer Leasing Act of 1976;
- the Electronic Fund Transfer Act[23];
- the Equal Credit Opportunity Act;
- the Fair Credit Billing Act;
- the Fair Credit Reporting Act[24];
- the Home Owners Protection Act of 1998;
- the Fair Debt Collection Practices Act;
- subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act;
- sections 502 through 509 of the Gramm-Leach- Bliley Act[25];
- the Home Mortgage Disclosure Act of 1975;

[20] *See* Section 1029 of the Dodd-Frank.

[21] *See* Donald C. Lampe, Ryan J. Richardson, *The Consumer Financial Protection Bureau at Five: A Survey of the Bureau's Activities*, 21 N.C. Banking Inst. 85, 130 (2017).

[22] *See* Section 1022(a) of the Dodd-Frank Act.

[23] Except for Section 920 of the Electronic Funds Transfer Act, the CFP transferred rulemaking authority for this law from the Federal Reserve to the Bureau. *See* Section 1002(12) of the Dodd-Frank Act; *see also* [HYPERLINK "https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/electronic-fund-transfers-regulation-e/"].

[24] The CFPA did not transfer to the Bureau authorities under sections 615(e) and 628 of the Fair Credit Reporting Act.

[25] The CFPA did not transfer authority under the Safeguards Rule in the Gramm-Leach-Bliley Act. The FTC has authority over this rule. *See* Section 1002(12)(J) of the Dodd-Frank Act.

- the Home Ownership and Equity Protection Act of 1994;
- the Real Estate Settlement Procedures Act of 1974;
- the S.A.F.E. Mortgage Licensing Act of 2008;
- the Truth in Lending Act;
- the Truth in Savings Act;
- section 626 of the Omnibus Appropriations Act, 2009; and
- the Interstate Land Sales Full Disclosure Act.[26]

Federal regulators have each grappled with the question of how to best implement rules broad enough to cover their respective jurisdictions yet narrowly tailored to prevent over-inclusiveness. Part of this equation is determining whether such rules should be prescriptive, results-oriented, or a hybrid of the two.[27] Prescriptive rules provide specific, detailed requirements; whereas results-oriented or principal-based rules describe high-level, broad principles or standards that entities must meet.[28] While prescriptive and principal-based rules both have their merits, there may be circumstances that make one more effective than the other. Given their specificity, prescriptive rules can quickly stale due to changes in circumstance. Principal-based rules are generally thought to be more flexible and adaptive but lack clarity.[29]

Most of the enumerated consumer laws are prescriptive in nature. However, the CFPA provides the Bureau with another powerful, principal-based tool for prosecuting bad conduct. The Bureau has authority to enforce against unfair, deceptive, or abusive acts or practices (UDAAP).[30] UDAAP's flexibility gives the agency wide latitude in determining whether certain conduct causes harm to consumers. The law provides examples of conduct considered "unfair" and "abusive", but the Bureau does not have to undertake rulemaking to further define these standards prior to enforcing them.[31] This flexibility has created a level of uncertainty among covered institutions especially with respect to the "abusiveness" standard. Since the FTC has long had the authority to prosecute "unfair" and "deceptive" acts, entities can take their cues from robust precedents in those areas to determine whether their conduct will violate the law. But the FTC does not have authority to prosecute "abusive" conduct.[32] The Bureau has

[26] *See* Section 1002(12) of the Dodd-Frank Act.
[27] *See* Heath P. Tarbert, *Rules for Principles and Principles for Rules: Tools for Crafting Sound Financial Regulation*, Harvard Business Law Review, Vol. 10 (2019-2020).
[28] *See* Heath P. Tarbert, *Rules for Principles and Principles for Rules: Tools for Crafting Sound Financial Regulation*, Harvard Business Law Review, Vol. 10 (2019-2020).
[29] *See* Dan Awrey, Regulation Financial Innovation: A More Principles-Based Proposal?, Brook. J. Corp. Fin. & Com. L., Vol. 5, 274-279 (2011) [HYPERLINK "https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1097&context=bjcfcl"].
[30] *See* Section 1031(a) of the Dodd-Frank Act.
[31] *See e.g. Consumer Financial Protection Bureau v. Navient Corporation*, 2017 WL 3380530 (M.S. Pa. 2017). *See also* Section 1031(b) of the Dodd-Frank Act.
[32] *See Section 5 of the FTC Act;* § 8:11.Concurrent Jurisdiction with CFPB, Consumer Protection and the Law § 8:11.

had to wade into unchartered waters when applying this standard.[33] In February 2020, it issued a policy intended to clarify the abusiveness standard, but the uncertainty among covered institutions remains.[34]

As part of the Bureau's rulemaking process, it must monitor risks and trends in the financial marketplace and produce an annual report.[35] The Bureau must also consider a rule's potential impact in addition to costs and benefits to consumers and covered persons. The CFPA provides the Bureau with the authority to exempt classes of persons or products from a rule or the CFPA.[36] If the Bureau enacts a "significant" rule or order, it is required to assess its effectiveness within the first five years. Beyond this initial assessment, there is no CFPA requirement for the Bureau to continually assess the effectiveness of a rule.[37]

The Bureau's broad rulemaking authorities are subject to some oversight. The Financial Stability Oversight Council may set aside Bureau regulation that poses a risk to the safety and soundness of the U.S. financial system, which acts as a check on the Bureau's rulemaking powers.[38]

Bureau Supervisory Authority

The CFPA establishes the Bureau as the foremost financial regulatory agency conducting rulemaking or exams for matters of federal consumer financial law.[39] The Bureau examines covered persons to assess their compliance, obtain information about their activities or internal policies, and detect risks to consumers and the financial services market.[40]

The Bureau's authority to supervise and examine covered non-banks is virtually on par with its authority for depository institutions with over $10 billion in assets. With respect to both non-banks and depository institutions, the Bureau is required to coordinate examinations with other federal and prudential regulators.[41] But for nondepositories, the Bureau is required to scale examinations based on

---

[33] *See* § 8:11.Concurrent Jurisdiction with CFPB, Consumer Protection and the Law § 8:11.
[34] *See* [HYPERLINK "https://www.federalregister.gov/documents/2020/02/06/2020-01661/statement-of-policy-regarding-prohibition-on-abusive-acts-or-practices"].
[35] *See* Section 1022(b)(2)(A) of the Dodd-Frank Act. Additionally, note that the Bureau can require covered persons and supervised entities to provide information in support of its monitoring requirements.
[36] *See* Section 1022(b)(2)-(3) of the Dodd-Frank Act.
[37] The Regulatory Flexibility Act also requires the Bureau to conduct a review of rules within 10 years of their enactment. *See* [HYPERLINK "https://www.consumerfinance.gov/about-us/newsroom/bureau-outlines-plan-review-rules-under-regulatory-flexibility-act/"].
[38] *See* Section 1023(a) of the Dodd-Frank Act. The members of the Financial Stability Oversight Council include voting members: the Secretary of the Treasury, Chairman of the Board of Governors of the Federal Reserve System, Comptroller of the Currency, the Chairman of the SEC, the Chairperson of the Commodity Futures Trading Commission; the Director of the Federal Housing Finance Agency; the Chairman of the NCUA Board, Chairperson of the FDIC, Director of the Bureau, and a presidential appointee; and non-voting members: the Director of the Office of Financial Research, Director of the Federal Insurance Office, a designated state insurance commissioner, a designated state banking supervisor, and a designated state securities commissioner. *See* Section 111 of the Dodd-Frank Act.
[39] *See* Section 1024(d) of the Dodd-Frank Act; Section 1025(b).
[40] *See* Section 1024(b)(1) of the Dodd-Frank Act; Section 1025(b)(1) of the Dodd-Frank Act.
[41] *See* Section 1024(c)(2) of the Dodd-frank Act; Section 1025(c)(2) of the Dodd-Frank Act.

the risk profile of these entities using factors such as asset size, volume of business, and risk to consumers.[42]

Although limited, the Bureau has some authority over nondepositories with $10 billion or less in assets. Prudential regulators have primary authority to enforce compliance with federal consumer financial law.[43] But the Bureau may require these institutions to provide information to assist in the Bureau's work[44] and may also participate in prudential exams on a limited basis[45].

Bureau Enforcement Authority

The Bureau's supervisory authority is backed by its enforcement authority. The CFPA gives the Bureau the power to file a civil lawsuit before a federal court or an administrative judge to enforce a covered person's compliance with federal consumer financial law.[46] The Bureau has a number of civil remedies available to it including: rescission or reformation of contracts; refund of moneys or return of real property; restitution; disgorgement or compensation for unjust enrichment; payment of damages or other monetary relief; limiting the activity of the violator; notifying the public of the violation and recouping associated fees; and civil money penalties. The Bureau may also recover costs associated with pursuing an action against a violator. However, it cannot recover exemplary or punitive damages.[47]

The CFPA establishes a three-tiered structure for the assessment of penalties. As of the effective date of the CFPA, a court or administrative body could assess a penalty of up to $5,000 (Tier 1), $25,000 (Tier 2), or $100,000 (Tier 3) for each day a violation of law continued.[48] The per-day penalty amount is based on whether the entity violated the law a) without intent or recklessness (Tier 1); b) recklessly (Tier 2) or c) intentionally (Tier 3). These amounts are adjusted annually due to inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.[49] The Bureau has the authority to compromise, modify, or remit any penalty a court or administrative body assesses. [50]

Generally, the Bureau determines an appropriate penalty by considering the number of violations of a consumer financial law and the number of consumers harmed by the violation. Where a practice violates several federal consumer financial laws, the Bureau's policy is to assess one penalty. However, if a practice or conduct includes or leads to multiple violations of a law, the Bureau may determine whether separate penalties are appropriate.[51] Similarly, if a practice affects multiple consumers, the Bureau will assess a penalty for each consumer.[52] For example, if a financial institution's conduct is unfair, deceptive, or abusive and a violation of the Real Estate Settlement Procedures Act, the Bureau

[42] *See* Section 1024(b)(2) of the Dodd-Frank Act.
[43] *See* Section 1026(d) of the Dodd-Frank Act.
[44] *See* Section 1026(b) of the Dodd-Frank Act.
[45] *See* Section 1026(c)(1) of the Dodd-Frank Act.
[46] *See* Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 Rev. Banking & Fin. L. at 357.
[47] *See* Section 1055(a)(3) of the Dodd-Frank Act.
[48] *See* Consumer Financial Protection Bureau, Office of Enforcement Policies and Procedures Manual, V. 3.0 (2017).
[49] The current penalties are: Tier 1 - $5,883; Tier 2 - $29,416; and Tier 3 - $1,176,638. *See* 12 C.F.R. 1033.
[50] *See* Section 1055(c) of the Dodd-Frank Act.
[51] *See* Consumer Financial Protection Bureau, Office of Enforcement Policies and Procedures Manual at 125, V. 3.0 (2017).
[52] *See* Consumer Financial Protection Bureau, Office of Enforcement Policies and Procedures Manual at 126, V. 3.0 (2017).

would assess one penalty. But if a financial institution fails to acknowledge a Qualified Written Request under the Real Estate Settlement Procedures Act and then fails to respond within the timeframes under that Act, the Bureau may assess a penalty for both violations.[53] If the financial institution failed to acknowledge and respond to Qualified Written Requests from 100 consumers, the Bureau may assess penalties for both violations for each of the 100 consumers.[54]

The Bureau is required by law to consider six mitigating factors when calculating penalties:

- Size of financial resources
- Good faith
- Gravity of the violation or failure to pay
- Severity of the risks to or losses of the consumer
- History of previous violations; [and]
- Such other matters as justice may require.[55]

Pursuant to the Bureau's internal policy, it also considers Bureau penalty precedents and precedents set by other prudential and federal regulators. [56] The Bureau's penalty structure has been criticized given its broad discretion to seek penalties and the perceived lack of transparency regarding the Bureau's penalty calculations.

<u>Express Limitations on the Bureau's Authority</u>

Although the Bureau's authority is vast, it is not unlimited. Section 1027 of the Dodd-Frank Act contains express limits on the Bureau's authority. The Bureau cannot exercise its authority over any merchant, retailer, or seller who is selling any nonfinancial good or service.[57] Additionally, the Bureau does not have authority over a merchant, retailer, or seller who offers a consumer financial product or service to a consumer in connection with the sale or purchase of a non-consumer financial product.[58] Both of these limitations are subject to certain restrictions.[59]

Generally, the activities of real estate brokers, accountants or accounting firms, and attorneys are outside the Bureau's jurisdiction. Similarly, the Bureau does not have authority over agents or brokers of a buyer or seller of a manufactured or modular home or facilitators or negotiators of contracts for those homes. The Bureau also does not have authority over persons regulated by a state insurance regulator, a state securities commission, the U.S. Securities and Exchange Commission, the Commodity Futures

---

[53] *See* Consumer Financial Protection Bureau, Office of Enforcement Policies and Procedures Manual at 125, V. 3.0 (2017).
[54] *See* Consumer Financial Protection Bureau, Office of Enforcement Policies and Procedures Manual at 126, V. 3.0 (2017).
[55] *See* Consumer Financial Protection Bureau, Office of Enforcement Policies and Procedures Manual at 125, V. 3.0 (2017). *See also* Section 1055(c)(3) of the Dodd-Frank Act.
[56] *See* Consumer Financial Protection Bureau, Office of Enforcement Policies and Procedures Manual at 129, V. 3.0 (2017).
[57] *See* Section 1027(a)(1) of the Dodd-Frank Act.
[58] *See* Section 1027(a)(2) of the Dodd-Frank Act.
[59] *See* Section 1027(a)(2)(A) of the Dodd-Frank Act.

Trading Commission, or the Farm Credit Administration. Generally, each of the aforementioned limitations apply in so far as the actor is not engaged in a significant provision of financial products or services, the provision is incidental to the actor's business or the actor is not engaged in an activity that is subject to a consumer law for which the Dodd-Frank Act transferred authority to the Bureau.[60]

Furthermore, the Bureau generally cannot exercise its authority over the solicitation or making of voluntary contributions to certain tax-exempt organizations.[61] And the Bureau cannot voluntarily exercise authority over employee benefit and compensation plans or arrangements and a number of specified plans under the Internal Revenue Code ("specified plans or arrangements").[62] Like other limitations imposed on the Bureau, the exemptions covering tax-exempt contributions and specified plans or arrangements apply only if the activity does not constitute a significant provision of financial products or services and the activity is not subject to enumerated consumers laws over which the Bureau has authority.

Aside from the limitations pertaining to certain activities, the Bureau cannot define insurance as a "financial product or service" under the rule.[63] It also does not have authority to impose a usury limit on an extension of credit.[64]

Bureau Authority Post-Seila Law

It is against this regulatory backdrop that we consider the ramifications of the Supreme Court's recent decision in *Seila Law v. Consumer Financial Protection Bureau*.[65] Since its inception, there have been numerous challenges to the Bureau's structure. As of mid-2018, at least six organizations had aired their grievances before courts and administrative bodies.[66] If left unaddressed, the most recent successful challenge in *Seila Law* has the potential to inject confusion into the financial regulatory space. Moreover, the effects of the decision are likely to be felt beyond the financial services realm.

In 2017, the Bureau issued a civil investigative demand (CID) to a law firm concerning its debt-related services. The law firm, Seila Law LLC, refused to respond to the CID on the grounds that the Bureau's structure was unconstitutional. The law firm argued that the Bureau's single-director structure violated the Separation of Powers doctrine in the Constitution since the President could only remove the Director for cause. The Bureau challenged the law firm's defiance by initiating court action, and the case made its way to the U.S. Supreme Court. One of the more peculiar facts in the case is that the Bureau conceded that its leadership structure was unconstitutional. Although the move was provocative, the concession had no bearing on the Court's ultimate decision.[67]

---

[60] *See* Section 1027 of the Dodd-Frank Act.
[61] *See* Section 1027(l) of the Dodd-Frank Act.
[62] *See* Sections 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986.
[63] *See* Section 1027(m) of the Dodd-Frank Act.
[64] *See* Section 1027(o) of the Dodd-Frank Act.
[65] *See Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020).
[66] § 6:1.Enforcement, Prac. Guide to Consumer Fin. Protection Bureau Regs. § 6:1.
[67] *Seila Law*, 140 S. Ct. at 2196-97 (("*[A]micus* contends that we should dismiss the case because the parties agree on the merits of the constitutional question and the case therefore lacks "adverseness. . . . To the contrary, while the Government agrees that the agency is unconstitutionally structured, it believes it may nevertheless enforce the demand on remand.").

Despite three lower court rulings in favor of the Bureau, the Supreme Court found that the single-director structure was unconstitutional.[68] The Court noted that the President's removal power is quintessentially executive in nature as it provides the President with the ability to exercise control over presidential appointees.[69] The Court determined that the President's ability to exercise removal power "is the rule, and not the exception."[70]

The Court identified two recognized exceptions to the President's broad removal powers.[71] The first exception comes from the *Humphrey's Executor* case. In it, the Court upheld a statute protecting FTC Commissioners from removal except in the case of their "inefficiency, negligent of duty, or malfeasance in office." The *Humphrey's Executor* Court believed, "[r]ightly or wrongly[72]", that the FTC acted as a quasi- legislative, quasi-judicial agency that did not exercise purely executive powers[73]. In *Seila Law*, Chief Justice Roberts emphasized that the organizational structure in *Humphrey's Executor* differed from the Bureau's in that its leadership was a non-partisan, five-member board of commissioners. Additionally, FTC commissioners were expected to use their combined cumulative expertise rather than politics to direct agency actions.[74] The second exception to the President's removal powers applies to "inferior officers" of the executive branch.[75] In *Morrison v. Olson*, the Court determined an inspector general was an inferior officer because he had limited jurisdiction and tenure and lacked policymaking or significant administrative authority.[76]

With respect to both exceptions, the *Seila Law* Court believed the central question was whether the restriction on removal impeded the President's ability to perform his or her constitutional duties, which would render the restriction unlawful.[77] The Court found that the Director's for-cause removal restriction impeded the President's ability to perform essential functions contrary to *Humprhrey's Executor* and *Morrision*. The Court also declined to establish a third exception to cover the Bureau's leadership structure. Relying on the Dodd-Frank Act's severability clause, the Court found that the offending for-cause removal provision could be severed from the Act, leaving the law and the Bureau's authority ostensibly intact. The Court reasoned that "Congress would prefer that [the Court] use a scalpel rather than a bulldozer in curing the constitutional defect . . . ."[78]

For many, the *Seila Law* opinion was unsatisfying and confusing. One commentator argues that the Court's opinion was doomed to confuse given the Supreme Court's for-cause removal precedent is confusing.[79] Another commentator argues that the Court's decision worsened rather than repaired

---

68 *See Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020).
69 *See Seila Law*, 140 S. Ct. at 2197.
70 *See* Seila Law, 2190.
71 *See Seila Law*, 2197.
72 *See* Seila Law, 2198.
73 *See Seila Law*, 2198.
74 *See Seila Law*, 2198-99.
75 *See* U.S. v. Perkins, 6 S. Ct. 449 (1886); Morrison v. Olson, 108 S.Ct. 2597 (1988).
76 *See* Morrison v. Olson, 108 S.Ct. 2597 (1988).
77 *Seila Law* at 2199.
78 *Seila Law* at 2210-2211.
79 *See* Jerry L. Marshall, Of Angels, Pins, and For-Cause Removal: A Requiem for the Passive Virtues, The University of Chicago Law Review Online (2020) [HYPERLINK "https://lawreviewblog.uchicago.edu/2020/08/27/seila-mashaw/"].

alleged structural issues with the Bureau.[80] Overall, the decision seemed to raise more questions than it answered. If left unresolved, those questions could have deleterious effects. The Court's dicta in *Seila Law* casts doubt on the Bureau's authority in addition to that of other regulators. It adds to the uncertainty regarding what constitutes an executive agency or executive action. It also threatens to disrupt the tradition of keeping financial regulation beyond the reach of partisan politics.

First, the Court refuses to resolve the question of whether the Director had the authority to issue valid orders or ratify Bureau actions while for-cause removal protection was in place.[81] The Court disagreed with the Petitioner's claim that the Bureau's pre-*Seila Law* structure rendered the "entire agency…unconstitutional and powerless to act."[82] However, the Court refused to apply this same logic to assess whether the Director had the authority to issue orders or ratify Bureau actions prior to *Seila Law*. The Court's reluctance to directly address the issue throws into question the constitutionality of any and all actions undertaken by the Bureau since its inception.

This unresolved issue may affect not only the Bureau but also the actions of any independent agency with a single-leadership structure. The Court appears to question whether the the Social Security Administration and the Federal Housing Finance Agency are constitutionally structured given their single-leadership structure.[83] Unwinding the actions of agencies such as the Bureau and the Federal Housing Finance Agency would wreak havoc given the countless actions they have undertaken during their relatively short existences. With respect to the Bureau, "[t]his . . . includes major enforcement actions and rulemakings that have reshaped the market for consumer financial products and services over the last nine years."[84] The problem is compounded when you consider the Social Security Administration, which has existed since 1935.

To resolve any issue regarding its past actions, the Director has attempted to ratify Bureau actions again now that the Court has stripped the Director's removal protections.[85] The Bureau might also attempt to rely on the de facto officer doctrine enunciated in *Ryder v. United States*.[86] The effectiveness of both of these options is currently murky.[87] Organizations have already pounced on the *Seila Law* ruling, seeing it

---

[80] *See* Markham S. Chenoweth & Michael P. DeGrandis, *Out of the Separation of-Powers Frying Pan and into the Nondelegation Fire: How the Court's Decision in Seila Law Makes the CFPB's Unlawful Structure Even Worse*, University of Chicago Law Review Online (2020) ("[B]y eliminating the CFPB director's for-cause removal protections, *Seila Law* effectively transfers Congress's appropriations power from an independent director to the president himself. Thus, after *Seila Law*, the ramifications of Congress divesting its core constitutional powers are worse than ever.") [HYPERLINK "https://lawreviewblog.uchicago.edu/2020/08/27/seila-chenoweth-degrandis/"].
[81] *See Seila Law* at 2208.
[82] *See Seila Law* at 2208.
[83] *See Seila Law* at 2202.
[84] *See* Scott A. Cammarn, Nihal S. Patel, and Rachael Rodman, Seila Law LLC v. Consumer Financial Protection Bureau: Has the Supreme Court Tamed or Empowered the CFPB?, National Law Review, Volume X, Number 184 (2020) [HYPERLINK "https://www.natlawreview.com/article/seila-law-llc-v-consumer-financial-protection-bureau-has-supreme-court-tamed-or"].
[85] *See* [HYPERLINK "https://files.consumerfinance.gov/f/documents/cfpb_ratification_bureau-actions_2020-07.pdf"].
[86] *See* Scott A. Cammarn, Nihal S. Patel, and Rachael Rodman, *Seila Law LLC v. Consumer Financial Protection Bureau: Has the Supreme Court Tamed or Empowered the CFPB?*, National Law Review, Volume X, Number 184 (2020) [HYPERLINK "https://www.natlawreview.com/article/seila-law-llc-v-consumer-financial-protection-bureau-has-supreme-court-tamed-or"]. *See also* Ryder v. United States, 515 U.S. 177 (1995).
[87] *See* Scott A. Cammarn, Nihal S. Patel, and Rachael Rodman, *Seila Law LLC v. Consumer Financial Protection Bureau: Has the Supreme Court Tamed or Empowered the CFPB?*, National Law Review, Volume X, Number 184

as an opportunity to challenge the authority of executive agencies at large. Leaning heavily on the case, the Community Financial Services Association (CFSA) argued the Bureau erred in issuing payday loan rules because it was unconstitutionally structured and only a validly constituted agency could participate in the required rulemaking process.[88] In two consolidated cases before the Supreme Court, Fannie Mae and Freddie Mac shareholders allege the Federal Housing Finance Agency is unconstitutionally structured given *Seila Law* since it is an independent agency led by a single director.[89] The Bureau should expect continual challenges to its authority for issuing past actions, and other independent agencies should expect the same.

[WHAT IS AN EXECUTIVE AGENCY/WHAT IS EXECUTIVE AUTHORITY?]

The Court's opinion also fails to consider the reality that the growth of the U.S. economy has demanded a larger federal presence, and thus, more federal agencies. The management duties of the President shifted to federal agencies due to necessity and circumstance. "A combination of factors including, but not limited to, the mobilization for the Civil War, industrialization, massive immigration, technological change, and widespread pressure to lessen the impacts of economic booms and busts and systemic disruptions to major national systems (transportation, economy, trade) generated [public] pressure for an expanded scope of activities for the national government." The government's increased involvement spawned federal programs and agencies to implement them.[90] Given additional technological advances, globalization, and industry changes, the government and, therefore, the president's responsibilities have continued to grow. But the Court in *Seila Law* appears to draw an arbitrary line in the sand, willing the nation to stop progressing and searching for ways to accommodate this change. It is unrealistic to expect a president to bear the burden of this change alone or to micromanage agency heads he appoints to lighten the load.

Moreover, the outcome in *Seila Law* means the fate of the Bureau's current director may depend on the outcome of presidential elections. Some agencies do not fit snuggly into any of the three branches of government to protect them from the caprices of elected officials such as the President or Congress.[91] "Typically, financial regulators have a measure of insulation from the political process to provide consistency and certainty in financial markets."[92] Post-*Seila Law*, the appointment of the Bureau's

---

(2020) [HYPERLINK "https://www.natlawreview.com/article/seila-law-llc-v-consumer-financial-protection-bureau-has-supreme-court-tamed-or"].

[88] *See Community Financial Services Association of America, Ltd. et al. v. Consumer Financial Protection Bureau et al.*, No. 1:18-cv-295 (W.D. Tex.).

[89] Brief for Petitioner at ___, Steven T. Mnuchin, Secretary of the Treasury, et al. v. Patrick J. Collins, *petition for cert. filed*, No. 19-422 (U.S., Sept. 25, 2019).

[90] See Administrative Conference of the United States, *Sourcebook of United States Executive Agencies*, 2d ed., 19 (2018) [HYPERLINK "https://www.acus.gov/sites/default/files/documents/ACUS%20Sourcebook%20of%20Executive%20Agenices%202d%20ed.%20508%20Compliant.pdf"].

[91] Administrative Conference of the United States, *Sourcebook of United States Executive Agencies*, 2d ed., 10 (2018) [HYPERLINK "https://www.acus.gov/sites/default/files/documents/ACUS%20Sourcebook%20of%20Executive%20Agenices%202d%20ed.%20508%20Compliant.pdf"].

[92] Scott A. Cammarn, Nihal S. Patel, and Rachael Rodman, *Seila Law LLC v. Consumer Financial Protection Bureau: Has the Supreme Court Tamed or Empowered the CFPB?*, National Law Review, Volume X, Number 184 (2020) [HYPERLINK "https://www.natlawreview.com/article/seila-law-llc-v-consumer-financial-protection-bureau-has-supreme-court-tamed-or"].

Director may well become another political pendulum, lessening the likelihood that the Bureau will have consistent leadership or direction and increasing the potential for volatile financial markets.[93]

The Court also laments what it sees as a lack of accumulated expertise resulting from the Director's 5-year term limit but dims the chances that the Bureau's leadership will remain consistent. First, the Court's emphasis on this point appears somewhat out of place. Although having consistent agency leadership has clear benefits, the link between the Director's tenure and the preservation of the separation of powers doctrine seems tenuous. Second, the Court created yet another area of uncertainty regarding the mechanics of the Director's term limit. It is unclear whether the Director's term limit remains intact or whether the term limit is superfluous given the President's ability to remove the Director at-will.

Although the Court answers the question of whether the Bureau is a constitutionally constructed entity, it raises more questions and avenues for repudiating Bureau actions in the process. Resolving the uncertainty may require congressional action.

Contested Areas of Bureau Jurisdiction

[CONTESTED AREAS OF BUREAU JURISDICTION DISCUSSION]

Most agree that the Bureau's jurisdiction is broad, but there is still some ambiguiety and uncertainty about its exact parameters. Some of the uncertainty may be due to ambiguities in the Dodd-Frank Act and Court interpretations of the same, but other uncertainty may simply be the result of a relatively young agency trying to chart its own path. Despite the lingering questions regarding the Bureau's jurisdiction, the Bureau consolidated the consumer protection powers of numerous agencies into one, adding critical focus and attention to the important task of mitigating consumer harm. This process created a more streamlined, coordinated and effective financial regulatory system, which benefits the financial services industry and consumers alike.

Jurisdiction of Other Federal Agencies and Prudential Regulators

With the creation of the Bureau, the Dodd-Frank Act consolidated consumer protection functions exercised by seven agencies into one.[94] The Act simultaneously transferred the primary responsibilities for many consumer protection functions to the Bureau while reinforcing the jurisdiction of preexisting regulators. In doing so, it created additional areas of jurisdictional overlap and the potential for

---

[93] *See e.g.* Jerry L. Marshall, Of Angels, Pins, and For-Cause Removal: A Requiem for the Passive Virtues, The University of Chicago Law Review Online (2020) [HYPERLINK "https://lawreviewblog.uchicago.edu/2020/08/27/seila-mashaw/"]. ("The standard forms of for-cause removal provide that an officer may be removed only for "inefficiency, neglect of duty, or malfeasance." Conduct of this sort, of course, interferes with faithful execution of the law. Removal of an officer on these grounds, thus, is consistent with the president's constitutional responsibility. Removal on other grounds, for example, that the officer has angered the president because his or her testimony before Congress embarrassed the president or the administration, would seem unconnected to the president's executive authority under the Constitution. To be sure, the president might have that authority of unfettered removal by law").

[94] The Dodd-Frank Act dissolved the Office of Thrift Supervision. Additionally, the Dodd-Frank Act transferred HUD's rulemaking authorities for the Real Estate Settlement Procedures Act to the Bureau and reinforced HUD's jurisdiction over the Fair Housing Act. See Section 1027(s) of the Dodd-Frank Act.

redundancies. Today, multiple federal agencies work independently and together to ensure the strength and safety of the financial market. Overlap occurs in each of the Bureau's jurisdictional areas. **Appendices A and B** provide an overview of the complex federal financial regulatory framework.

There are five main regulatory entities that have overlapping jurisdiction with the Bureau – the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration (the "Depository Regulators"), and the Federal Trade Commission.

Board of Governors of the Federal Reserve System (Federal Reserve)

The Federal Reserve System is the nation's central bank.[95] Congress created the agency to foster a financial system that was safer, adaptable and more stable.[96] The Board of Governors is the agency arm of the Federal Reserve System and is made up of seven presidential appointees. The agency oversees bank holding companies and certain subsidiaries, savings and loan holding companies, state-chartered banks that have elected to join the Federal Reserve System, Edge Act and Agreement Corporations, institutions the Financial Stability and Oversight Council has deemed "systemically significant"[97], certain nonbank financial companies, and certain insurance holding companies.[98] The Federal Reserve has rulemaking, supervisory and enforcement authority over regulated entities. Through these processes, it provides safety and soundness, consumer protection, and financial system risk oversight. Aside from regulating institutions, the Federal Reserve conducts U.S. monetary policy, operates and regulates parts of the payment system, and serves as a lender to banks, among other activities.

Office of the Comptroller of the Currency (OCC)

The OCC is the chartering authority and primary regulator of nationally chartered banks under the National Bank Act, federally chartered thrift institutions under the Home Owners Loan Act[99], and U.S. federal branches of foreign banks[100]. It provides consumer protection and safety and soundness oversight for these entities through its rulemaking, supervisory and enforcement powers.[101] Its enforcement powers include the ability to revoke national charters and issue cease and desist orders.[102]

Federal Deposit Insurance Corporation (FDIC)

Congress created the FDIC in response to the Great Depression to protect consumer assets by insuring deposits at financial institutions. The FDIC has primary supervisory and enforcement authority over state-chartered banks and thrifts that are not members of the Federal Reserve System and FDIC-insured

[95] *See* [HYPERLINK "https://www.federalreserve.gov/aboutthefed/structure-federal-reserve-system.htm"].
[96] *See* [HYPERLINK "https://www.federalreserve.gov/faqs/about_12594.htm" \l ":~:text=Ask%20Us-,What%20is%20the%20purpose%20of%20the%20Federal%20Reserve%20System%3F,stable%20monetary%20and%20financial%20system"].
[97] For example, financial market utilities participating in payment clearance and settlement.
[98] *See* [HYPERLINK "https://www.federalreserve.gov/aboutthefed/files/pf_5.pdf"].
[99] *See* [HYPERLINK "https://www.occ.treas.gov/about/what-we-do/index-what-we-do.html"].
[100] *See* Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework title* at 8.
[101] *See* [HYPERLINK "https://www.occ.treas.gov/about/what-we-do/index-what-we-do.html"].
[102] Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework title*, R44918 (2020).

branches of foreign banks.[103] The FDIC may also exercise regulatory authority over almost all federally insured institutions by issuing rules and examining them for potential risks.[104] The Dodd-Frank Act also gave the FDIC authority to remedy issues with failing or troubled banks.[105] Similar to the Federal Reserve, the FDIC examines regulated entities for safety and soundness, consumer protection compliance, and risks to the financial system.

National Credit Union Administration (NCUA)

The NCUA insures, regulates and charters federally insured credit unions. These credit unions can include both federally and state-chartered credit unions, the latter of which may elect to become federally insured. Like the Bureau, the NCUA has rulemaking, supervisory and enforcement powers. NCUA examines credit unions for safety and soundness but also consumer protection compliance.

The Depository Regulators and the Bureau exercise concurrent consumer protection jurisdiction over insured depository institutions with over $10 billion in assets ("Larger Depository Institutions"), insured depository institutions with $10 billion or less in total assets that are affiliates of Larger Depository Institutions, and other affiliates of Larger Depository Institutions.[106]

Federal Trade Commission (FTC)

The Federal Trade Commission supervises nondepository institutions that provide consumer financial products and services in addition to other entities. Consumer protection is one of the agency's central missions. It can exercise rulemaking, investigative, and enforcement authority to that end. Unlike the Depository Regulators, the FTC lacks supervisory authority.[107]

The FTC and the Bureau have concurrent jurisdiction over certain nondepositories. The Consumer Financial Protection Act transferred enforcement authority for the enumerated consumer financial laws to the Bureau, but the FTC retained the power to enforce violations of these laws pursuant to its unfair and deceptive acts and practices enforcement authority.[108] So, for example, the FTC could not bring an action under the Truth in Lending Act. But the FTC could allege that these violations constituted unfair or deceptive acts or practices under the FTC Act. The FTC and the Bureau also share concurrent jurisdiction over other laws including the Fair Credit Reporting Act and the Military Lending Act, which both the FTC and the Bureau can enforce.[109]

[FTC PENALTY LIMIT]

Coordination

[103] *See 12 U.S.C. 1820(b); see also* Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework title at 14*, R44918 (2020).
[104] *See* [HYPERLINK "https://www.fdic.gov/about/strategic-plans/strategic/supervision.html"].
[105] *See* Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework title at 14*, R44918 (2020).
[106] *See* Joint Memorandum of Understanding on Supervisory Coordination (2012).
[107] *See* [HYPERLINK "https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority"].
[108] *See* Section 1061(b)(5) of the Dodd-Frank Act; Section 5 of the FTC Act.
[109] *See e.g.* [HYPERLINK "https://www.ftc.gov/news-events/media-resources/consumer-finance"]. Additionally, note that the Department of Defense has rulemaking authority for the Military Lending Act.

The CFPA and financial regulators have tried to resolve potential confusion and uncertainty caused by jurisdictional overlap in various ways. First, the law attempts to carve out the parameters of each regulators' jurisdiction. With respect to institutions with $10 billion in assets or less, the CFPA provides that prudential regulators have exclusive examination authority and primary enforcement authority for violations of the laws under the Bureau's jurisdiction.[110] The Bureau has exclusive supervisory authority and primary enforcement authority for violations of federal consumer financial law for institutions with more than $10 billion in assets.

To the extent jurisdictions overlap, the CFPA encourages coordination among federal regulators and prudential regulators. The Act includes a general requirement for the Bureau to coordinate its activities with prudentials and other federal regulators to the extent possible.[111] In addition to the general coordination requirement, the law explicitly requires the Bureau to consult with prudential regulators and other relevant agencies prior to proposing a rule and during the rule's comment period.[112] Although other regulator's do not have the authority to veto a proposed rule, the Bureau is required to publish a regulator's objection at the time it issues its final rule. Additionally, the Financial Stability Oversight Council (FSOC), composed of representatives from various financial regulatory agencies, has the authority to set aside any rule that poses a risk to the U.S. banking system or the stability of the financial system.[113] FSOC's oversight in addition to the CFPA's consultation requirement encourages coordination and cooperation among regulators.

The Bureau is also required to coordinate its supervisory activities. The CFPA requires the Bureau to coordinate exam schedules, conduct simultaneous exams if possible, and share draft examination reports with prudential regulators.[114] The Bureau is also required to use preexisting information an institution has provided to a federal or state regulator to complete its supervisory functions to the extent possible.[115] With respect to nondepositories, the Bureau is required to coordinate its supervisory activities with the Federal Trade Commission.[116]

Agencies also coordinate on enforcement matters. One of the most apparent areas of regulatory overlap is in enforcement actions against unfair and deceptive acts. Prior to the Bureau, the FDIC, FTC, OCC and Federal Reserve enforced the FTC's rule prohibiting unfair and deceptive practices.[117] Although the FTC's rule did not directly apply to financial institutions, given they are outside of its jurisdiction, financial regulators adopted rules substantially similar to that of the FTC. The Dodd-Frank Act transferred rulemaking authority for deceptive and unfair acts from these financial regulators to the Bureau. To resolve potential confusion, the Bureau, FTC, FDIC, OCC, Federal Reserve Board and NCUA issued joint guidance clarifying their roles in prosecuting unfair and deceptive practices. Additionally, the agencies

---

[110] *See* Section 1026(d)(1) of the Dodd-Frank Act.
[111] *See e.g.* Section 1015 of the Dodd-Frank Act.
[112] *See* Section 1022(b)(2)(B) of the Dodd-Frank Act.
[113] *See* Section 1023 (a) of the Dodd-Frank Act.
[114] *See* Section 1025(e)(1) of the Dodd-Frank Act. *See also* Section 1024 (b)(3) of the Dodd-Frank Act.
[115] *See* Section 1025(a)(3) of the Dodd-Frank Act.
[116] *See* Section 1024(c)(3)(A) of the Dodd-Frank Act.
[117] *See* Interagency Guidance regarding Unfair or Deceptive Credit Practices (Aug. 2014) [HYPERLINK "https://www.fdic.gov/news/financial-institution-letters/2014/fil14044a.pdf"]; Catherine M. Sharkey, *Agency Coordination in Consumer Protection*, 2013 U. Chi. Legal F. 329 (2013).

cautioned that the new prohibitions against unfair and deceptive practices in the CFPA encompassed conduct similar to what is outlawed in the FTC Act.[118]

Memorandums of Understanding (MOU) are yet another tool that financial regulators use to mitigate jurisdictional conflicts. An MOU is an unenforceable written agreement in which each party agrees to conduct itself in a certain way pursuant to a framework that is usually detailed in the document. An MOU is used to encourage coordination and cooperation between the Bureau and an external party, i.e. generally, a federal or state agency or an organization with a shared mission or interest. That shared mission or interest might take the form of, among other things, an investigation into alleged misconduct, the establishment of policies for financial institutions, tracking financial literacy data, or a general commitment to protect American consumers[119]. For example, the Bureau and the Federal Trade Commission established at least four MOUs aimed at coordinating their activities given their overlapping consumer-protection jurisdiction.[120] In a 2019 MOU, the Bureau and the FTC agree to share information regarding targets of investigations, proposed or final rulemakings, and planned enforcement actions. The Agreement also provides that the FTC and Bureau will not initiate separate enforcement actions against a covered person at the same time. Additionally, the Bureau agrees to share its exam schedule, and upon request, its exam reports.

[redacted]

The process of establishing an MOU can take time and protracted negotiations between parties. Each party comes to the table desiring to craft an agreement that meets its own organizational needs and standards, and each party may approach the negotiations with a different understanding of what that means. But generally, federal regulators view the process of establishing an MOU as a positive step toward cooperation, and therefore worthwhile. For a list of MOUs commonly requested, see **Appendix C**.

Benefits and Drawbacks of Jurisdictional Overlay

Overlapping jurisdiction adds additional levels of oversight to the financial market. It affords regulators several "bites at the apple" to uncover noncompliance and potentially harmful conduct, which ultimately benefits consumers. It also gives financial firms more than one opportunity to "present their case" before a regulator, increasing the odds of unbiased outcomes.[121] Additionally, jurisdictional intersections provide agencies with an opportunity to benefit from each other's respective expertise. The Federal Trade Commission, for example, was created almost 100 years prior to the Bureau. In that time, the FTC has developed expertise with investigating and prosecuting data breach cases. While both the FTC and Bureau have authority over nondepositories, including credit reporting agencies, the FTC used its expertise to take a lead role investigating the most recent data breaches. This ultimately advantages regulators, regulated entities, and consumers alike – all of whom benefit from a uniform understanding of the law and consistent enforcement.

---

[118] *See* Interagency Guidance regarding Unfair or Deceptive Credit Practices (Aug. 2014) [HYPERLINK "https://www.fdic.gov/news/financial-institution-letters/2014/fil14044a.pdf"].
[119] *See* Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission (2019)
[120] *See* Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission (2019)
[121] *See e.g.* Government Accountability Office, *Financial Regulation Complex and Fragmented Structure Could be Streamlined to Improve Effectiveness*, GAO-16-175 (2016) [HYPERLINK "https://www.gao.gov/assets/680/675400.pdf"].

Despite best efforts to coordinate functions, the overlapping jurisdiction creates opportunities for redundancy and waste. It increases the risk that no one regulator has a complete picture of an institution, resulting in compliance concerns slipping through the cracks. Additionally, it forces institutions to expend resources preparing for multiple exams by multiple regulators and raises the likelihood that a regulated entity receives conflicting feedback.

Overall, the jurisdictional intersections among financial regulators may benefit regulators, consumers, and financial institutions. But the industry may need to continue considering ways to streamline their efforts to prevent unwanted redundancy and confusion.

State Jurisdiction and Preemption

States also play a role in the financial regulatory landscape. But the extent to which they should is an ever-growing subject of debate. Congress has given deference to states in the handling of banking matters within their borders. State preemption has been reserved for state laws that conflict with federal authorities. However, innovative technologies and changing consumer tastes have altered the way we bank. Financial products and services are delivered to diverse customers in various states, blurring the lines between what we have traditionally thought of as interstate and intrastate commerce.

The United States banking framework is a dual banking system in which national and state banks coexist and operate within their own spheres. National banks are charted under federal law and generally subject to federal oversight; whereas state banks are state-chartered and overseen.[122] This dual system was created by Congress's passage of the National Currency Act in 1863 and the National Bank Act in 1864. Those acts provided banks with the opportunity to receive a federal charter to operate nationally, conditioned on the satisfaction of certain requirements.[123] Because national banks operate within states, federal preemption is used to eliminate confusion and overlap while reinforcing the overarching authority of the federal government to protection national institutions and enact laws intended to have a national impact. Naturally, federal preemption, which is essentially the supplanting of state legislation with federal regulation, causes tension and friction between federal actors and states.

[FEDERALISM]

[redacted]

The preemption regime in the Dodd-Frank Act attempts to strike a balance between recognizing a state's right to protect its consumers, on the one hand, and standardizing the application of national law while creating a floor for consumer protection standards, on the other. It also attempted to clarify the state of current preemption standards for banking laws. At the outset, the Supreme Court has recognized three bases for preemption: 1) express or implied preemption; 2) field or implied preemption; and 3) conflict preemption.[124] The Dodd-Frank Act embraces a conflict preemption standard.[125] Conflict preemption applies when there is an "irreconcilable conflict" between federal and

---

[122] *See* Christine Daleiden, *Financial Reform for Consumers: An Overview of the Dodd-Frank Act and the Consumer Protection Bureau*, Haw. B.J. (April 2011).
[123] *See* Congressional Research Service, *Federal Preemption in the Dual Banking System: An Overview and Issues for the 116th Congress*, R45726 (2019).
[124] *See Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194 at 1197(2011).
[125] *See* Section 1041(a)(1) of the Dodd-Frank Act.

state law, meaning it would be impossible to comply with both.[126] Under the Dodd-Frank Act, a state law is not preempted unless it is "inconsistent" or in conflict with the Act.[127] The law specifies that a State affording consumers more protection than the Dodd-Frank Act confers does not constitute a conflict.[128]

The Dodd-Frank Act provides that state consumer financial laws will be preempted in only one of three instances: 1) the state law has a discriminatory effect on national banks; 2) a court or the OCC determines the law "prevents or significantly interferes" with a national bank's exercise of its powers; or 3) the law is preempted by another federal law. The first scenario addresses instances of overt and latent discrimination. A state law that discriminates against a national bank might be one in which the national bank is required to pay a fee that state banks are not. But it might also encompass a situation where a national bank is required to pay both a national and state fee; whereas a state bank might only be required to pay state fees.[129]

The Dodd-Frank Act's second preemption scenario codifies the court's ruling in *Barnett Bank of Marion County, N.A. v. Nelson*.[130] In *Barnett*, the State of Florida attempted to prohibit a Bank from selling insurance although it was permitted to do so under federal law. The Court found that states cannot forbid or significantly impair powers Congress has granted to national banks.[131] A state law that impairs a national bank's power to conduct an activity that is integral to its business would likely "significantly impair" powers granted to a national bank. [132] The facts in *Baptista v. JPMorgan Chase Bank, N.A.* illustrate this concept. In yet another Florida case, the state attempted to prohibit a national bank from imposing check-cashing fees. The Court found that Florida's law created a "clear conflict" between the Dodd-Frank Act and the Bank's federal authorization and, thus, was preempted.[133] *Baptista* also highlights that a state's good intentions when enacting a conflicting law is not relevant to the Court's determination of whether a state law is preempted.[134] Along the same lines, the Dodd-Frank Act also reinforces federal preemption of state usury laws given federal authorities.[135]

On the other end of the spectrum, the Dodd-Frank Act bolstered states' rights by clarifying that state laws apply to bank subsidiaries. Prior to Act, the Supreme Court in the *Watters* case established the preemption standard as to subsidiaries of national banks.[136] In *Watters*, the court considered whether a state could impose licensing, visitorial and reporting requirements on a national bank subsidiary. The Court found that because federal law authorized national banks to conduct activities through their subsidiaries, states could not impair or impede this right by imposing additional requirements on

---

[126] *See* Dori K. Bailey, *Preemption Principles: Weighing the Impact of Dodd-Frank*, Banking & Fin. Services Pol'y Rep. at 2 (July 2015).
[127] *See* Section 1041(a)(2) of the Dodd-Frank Act.
[128] *See* Section 1041(a)(2) of the Dodd-Frank Act.
[129] *See* Dori K. Bailey, *Preemption Principles: Weighing the Impact of Dodd-Frank*, Banking & Fin. Services Pol'y Rep. (July 2015).
[130] *See* Section 1044 of the Dodd-Frank Act.
[131] *See Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996).
[132] *See* Dori K. Bailey, *Preemption Principles: Weighing the Impact of Dodd-Frank*, Banking & Fin. Services Pol'y Rep. (July 2015).
[133] *See Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194 (2011).
[134] *See* Dori K. Bailey, *Preemption Principles: Weighing the Impact of Dodd-Frank*, Banking & Fin. Services Pol'y Rep. (July 2015).
[135] *See* Section 1044 of the Dodd-Frank Act.
[136] *See Watters v. Wachoiva Bank, N.A.*, 551 U.S. 1 (2007).

subsidiaries to operate in a state. The Court also found that a state could not impose its laws on a bank domiciled outside the state. The Dodd-Frank Act overturned the *Watters* decision and clarified that national bank subsidiaries and affiliates are subject not only to state consumer financial laws but *all* state laws (unless the subsidiary or affiliate is a national bank).[137]

Apart from national banks and federal savings associations, the Dodd-Frank Act also provides state attorneys general, or a state regulatory agency depending on the circumstance, with the authority to bring an action for violations of the Dodd-Frank Act. [138] Additionally, the law authorizes states to enforce rules promulgated pursuant to the Act against a national bank or federal savings association.[139]

State enforcement of federal consumer financial law creates additional regulatory overlap in the financial system. As with federal stakeholders, the Bureau and states are generally required to coordinate activities with one another. Here too, the Bureau employs the use of memorandums of understanding to establish procedures that will govern their working relationship. These memorandums may be executed to account for coordination on an ongoing basis or to develop a strategy to coordinate on a specific investigation.

Today, the dual-banking system is starting to show some wear. As our national economy grows, so too does the need for greater federal oversight and presence. Innovation and the rise of technology, for example, have illuminated the redundancies of state involvement in the increasingly interstate activity of banking. Commerce is increasingly interstate due in large part to the internet. Fintechs, like peer-to-peer payment services, have capitalized on weaknesses in traditional methods of banking and offer streamlined bank-like services digitally using convenient payment platforms. These platforms generally work by accessing a consumer's traditional bank account, which allows these fintechs to avoid accepting and holding deposits and the resulting regulation. Nondepository institutions like these fintechs have traditionally been chartered by state authorities, subjecting them to various state laws, including those imposing usury limits.[140]

As the chartering agency for banks, controversy has arisen over the OCC's plan to charter fintechs – a move opposed by state regulators and banks. An OCC charter would largely remove states from the regulatory equation and require fintechs to satisfy uniform national banking standards, including consumer protection laws. It would also increase the opportunity for fintechs to compete with banks on a national level, which would benefit consumers overall.

So far, the OCC's efforts to charter fintech institutions have failed in the courts. Under the National Banking Act, as part of issuing a charter, the OCC is required to make a determination that an institution can "commence the business of banking."[141] A federal court in New York found that the "the business of

[137] *See* Section 1044 of the Dodd-Frank Act.
[138] *See* Section 1042(a)(1) of the Dodd-Frank Act.
[139] *See* Section 1042(a) of the Dodd-Frank Act.
[140] *See* Maria T. Vullo, *The New York State Department of Financial Services Wins Big Against Office of the Comptroller of the Currency Over the Ability to Preempt the States in Chartering "Fintech" Non-Depository Companies* (2019) [HYPERLINK "https://wp.nyu.edu/compliance_enforcement/2019/05/08/the-new-york-state-department-of-financial-services-wins-big-against-office-of-the-comptroller-of-the-currency-over-the-ability-to-preempt-the-states-in-chartering-fintech-non-deposi/"].
[141] *See* 12 U.S.C. 27; *See* Maria T. Vullo, *The New York State Department of Financial Services Wins Big Against Office of the Comptroller of the Currency Over the Ability to Preempt the States in Chartering "Fintech" Non-*

banking unambiguously requires receiving deposits as an aspect of the business", and therefore, did not include activities like those of nondepository fintechs.[142] However, the ruling did not end the fintech quest for chartering. The OCC issued its first full-service charter, rather than its controversial fintech charter, to the first fintech in 2020.[143] Additionally, the Acting Comptroller announced that the OCC plans to introduce a payments charter that would preempt state payments licensing requirements.[144]

[STATE BANK CHARTERS BEING ISSUED FOR CRYPTO, E.G. WYOMING]

[redacted]

Given the rise and popularity of fintechs, questions concerning where they fit in the banking ecosystem will continue. It may be time for Congress to consider creating a new chartering system to accommodate fintech activities, lessen redundancies caused by state oversight, and bring fintechs into the financial regulatory fold.

[HOME STATE RULES v. 50-STATE OVERSIGHT DISCUSSION]

II. Regulatory Modernization

[OVERVIEW]

Regulatory Effectiveness

The federal financial regulatory regime is a dizzying array of federal and state stakeholders, jurisdictional mishmash, and subsurface tension. But each actor has a role to play. The fact that their roles overlap does not diminish the importance of each. The Bureau, OCC, NCUA, Federal Reserve, FDIC, and FTC each perform a consumer protection compliance function. But this reflects the high priority the financial system places on consumer confidence and safety. The Great Depression, the Great Recession, the global Covid-19 pandemic, and countless other catastrophic events have spotlighted the essential role consumers play in the health and stability of the U.S. financial market and the global economy. They have also highlighted the vital role finances play in consumers' overall quality of life. Multiple financial services regulators equates to multiple opportunities to prevent misconduct and consumer harm. But federal regulators and prudentials should continue to coordinate their activities to eliminate redundancies and take advantage of the benefits of their close working relationships. Opportunities for greater cooperation include:

- Increasing the number of joint examinations of supervised entities;
- Increasing the number of joint rulemakings and guidance (e.g. working together to proactively develop a comprehensive incident response plan across the financial market to combat consumer harms related to catastrophic or unforeseen events such as the Covid-19 pandemic);

Depository Companies (2019) [HYPERLINK "https://wp.nyu.edu/compliance_enforcement/2019/05/08/the-new-york-state-department-of-financial-services-wins-big-against-office-of-the-comptroller-of-the-currency-over-the-ability-to-preempt-the-states-in-chartering-fintech-non-deposi/"].

[142] *See Vullo v. Office of Comptroller of Currency*, 378 F. Supp. 3d 271, 292 (S.D.N.Y. 2019).

[143] *See* [HYPERLINK "https://www.occ.treas.gov/news-issuances/news-releases/2020/nr-occ-2020-99.html"].

[144] *See* Judith E. Rinearson and Mehreen Ahmed, *It's Ba-ack! OCC Planning A New Fintech Charter: "Payments Charter 1.0"*, National Law Review, Volume X, Number 188 (2020) [HYPERLINK "https://www.natlawreview.com/article/it-s-ba-ack-occ-planning-new-fintech-charter-payments-charter-10"].

- **[ADDITIONAL OPPORTUNITIES TO COORDINATE]**

One of the benefits of shared jurisdiction is the ability to draw from skillsets and expertise. The Dodd-Frank Act established the Bureau as the preeminent expert in consumer financial protection. While each prudential regulator has a view into the intersection of safety and soundness and consumer protection as to the entities they regulate, the Bureau has a broad view of consumer protection across all markets. As such, regulators should afford the Bureau deference in this area. The same can be said of the FTC with respect to data breaches at nondepository institutions. The FTC has developed a skillset for adeptly investigating and prosecuting poor practices that lead to data breaches. The Bureau should rely on this skillset rather than retreading the FTC's well-established footpath. Although establishing formal lines of authority among regulators is not yet necessary, the Bureau should consider negotiating a Memorandum of Understanding with the relevant financial regulators stating that the Bureau is the primary consumer compliance examiner, and the FTC should consider doing the same with respect to establishing itself as the nation's data breach specialist.

[redacted]

Additionally, states are an important part of the consumer financial law regime. But the value of state actors operating in an increasingly interstate financial environment is decreasing. The growth of the national economy has led to a need for a greater federal presence, and thus, preemption. Additionally, the cost of federalism grows with federal dominance. The Bureau is illustrative of this reality. The argument for preemption is stronger in a world where the Bureau exists given it is well-designed to supervise national providers of financial products and services. Congress should continue to consider whether the states' expenditure of resources to regulate these entities makes sense given states' limited view into a national provider's overall business or national impact.

On the other hand, state oversight has advantages. States have a legitimate interest in protecting their consumers, and they are uniquely positioned to understand the needs of consumers in their respective markets. As the nation's "laboratories"[145], state oversight offers a ground-level view of issues that may surface on a national level. In this way, states act as a first warning system and provide federal regulators with opportunities to course-correct and prevent or mitigate consumer harm on a national scale. **[ADVANTAGES OF STATE OVERSIGHT].** Enacting a "home-state rules" regime would maintain state presence in the consumer protection space while eliminating the redundancies created by 50-state oversight. **[HOME STATE RULES RESEARCH AND MARQUETTE]**. This path is not without its risks. A home-state rules regime could result in businesses migrating to states with the least consumer protections and operational restrictions. States should weigh the pros and cons of enacting a home-state rules regime to determine how to best balance the need to guard against consumer harm with that of encouraging competitive financial markets.

Opportunities for Modernization

[145] *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious, or unreasonable. . . . But, in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold.")

It is incumbent on financial regulators and Congress to continue to find ways to make the financial regulatory system more agile and responsive to the dynamic needs of firms and consumers. Improving the system calls us to take a clear-eyed look at the way the world has changed and imagine a financial system that serves our present and future needs. With this vision, we consider the following to be opportunities to improve the federal financial regulatory landscape.

Auto Dealer Authority

Congress should consider revisiting the auto dealer exception to Bureau oversight.[146] The high cost of cars means consumers often finance the purchase through credit. As of 2019, the auto loan market was the third largest market behind mortgages and student loans. According to a 2018 study by New York's Federal Reserve Bank, approximately 45% of American consumers had an auto loan or auto loan debt.[147] Consumer demand for used cars has dramatically increased along with the cost of procuring one since the global pandemic due to reduced auto production and concerns about close-quarters on public transportation.[148] Furthermore, in an indirect lending relationship, auto dealers receive compensation for their referrals of consumer credit to lending institutions. This markup is based on the difference between the interest rate charged by lenders and the rate charged to a consumer.[149] So, Auto dealers' profits are directly linked to the cost to consumers. Dealer Markups have resulted in consumers of color, i.e. African-Americans and Hispanics, paying significantly higher dealer markups unrelated to their ability to repay the loan. In perhaps one of the most flagrant instances of discrimination, a dealership in the New York's Bronx borough allegedly instructed its employees to charge higher prices to these consumers specifically.[150] This issue has led the FTC to consider exercising its authority under the Dodd-Frank Act to regulate dealer markups to prevent abuses and discrimination.[151]

Currently, auto dealers are supervised by the FTC, but shared jurisdiction between the FTC and the Bureau is appropriate. First, the Dodd-Frank Act conferred to the Bureau jurisdiction over nondepositories in markets for residential mortgages and private education lending in addition to larger participants in markets for consumer financial services. Auto dealers represent yet another large consumer credit market that is ripe for Bureau supervision. Additionally, the FTC's current jurisdiction includes auto sales, and the Bureau's includes auto financing. As facilitators of consumer credit, auto dealers are inextricably linked to the current auto lending market. Thus, the FTC and the Bureau should share oversight duties to fully cover the scope of activities in the auto lending market.

Tying Seila Law's Loose Ends

[146] *See* discussion in Chapter 13, Section I. *See also* Section 1029 of the Dodd-Frank Act.
[147] *See* Congressional Research Service, *The Automobile Lending Market and Policy Issues*, IF11192 (April 2019).
[148] *See e.g.* [HYPERLINK "https://www.npr.org/2020/10/28/927971920/a-pandemic-sticker-shock-used-car-prices-are-through-the-roof"].
[149] *See* Congressional Research Service, *The Automobile Lending Market and Policy Issues*, IF11192 (April 2019) [HYPERLINK "https://fas.org/sgp/crs/misc/IF11192.pdf"].
[150] *See* Complaint at 26, Federal Trade Commission v. Liberty Chevrolet Inc., et al., (S.D.N.Y. 2020) (No. 20-CV-3945) [HYPERLINK "https://www.ftc.gov/system/files/documents/cases/bronx_honda_complaint_0.pdf"].
[151] *See* Statement of Commissioner Rebecca Kelly Slaughter *in the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda Commission File No. 1623238, (May 2020) [HYPERLINK "https://www.ftc.gov/system/files/documents/public_statements/1576006/bronx_honda_2020-5-27_bx_honda_rks_concurrence_for_publication.pdf"].*

Congress should consider taking steps to resolve the uncertainty resulting from the Court's *Seila Law* decision. The opinion raises questions about the constitutionality of the Bureau's actions during the time the Director enjoyed for-cause removal protection. It has also created uncertainty concerning the Director's five-year term. Congress could pursue one of two options for resolving future uncertainties. It could enact legislation clarifying that the Bureau is an executive agency subject to the President's direct influence. Alternatively, it could restyle the Bureau as a bipartisan, commission-led independent agency similar to the FTC's leadership structure. The latter would be in keeping with the tradition of insulating financial regulators from the political process. Also, with the implementation of staggered terms for the commissioners, the Bureau would benefit from the continuation of organizational policies and consistent, focused direction. This structure would also afford the Bureau the opportunity to benefit from the commissioner's collective expertise and acquired institutional knowledge. Finally, the structure would be a stronger defense against continued efforts to challenge the Bureau's constitutionality.

[PRINCIPLE-BASED RULES]

[OCC CHARTER FOR FINTECHS]

[BUREAU REORG AROUND MARKETS]

[BUREAU REQUIRE NONDEPOSITORIES TO REGISTER]

[COST/BENEFITS DISCUSSION]

[redacted]

Appendix A: Federal Financial Regulators and Who They Supervise[152]

[redacted]

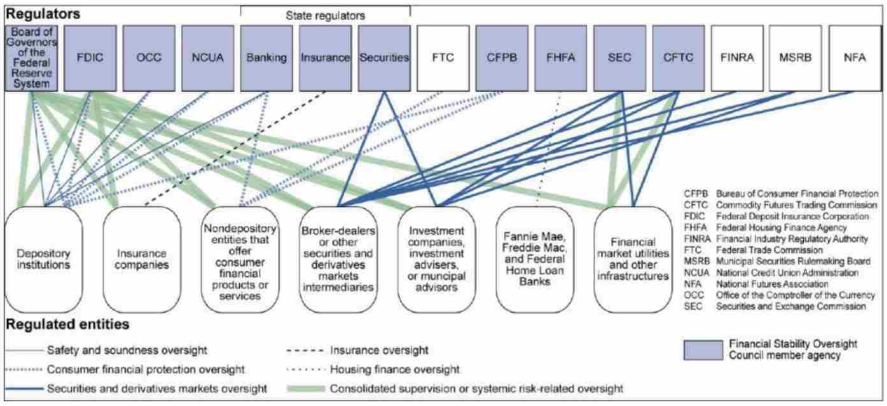
Table 1. Federal Financial Regulators and Who They Supervise

Regulatory Agency	Institutions Regulated	Other Notable Authority
	Depository Regulators	
Federal Reserve	Bank holding companies and certain subsidiaries (e.g., foreign subsidiaries), financial holding companies, securities holding companies, and savings and loan holding companies Primary regulator of state banks that are members of the Federal Reserve System, foreign banking organizations operating in the United States, Edge Corporations, and any firm or payment system designated as systemically significant by the FSOC	Operates discount window ("lender of last resort") for depositories; operates payment system; conducts monetary policy
Office of the Comptroller of the Currency (OCC)	Primary regulator of national banks, U.S. federal branches of foreign banks, and federally chartered thrift institutions	
Federal Deposit Insurance Corporation (FDIC)	Federally insured depository institutions Primary regulator of state banks that are not members of the Federal Reserve System and state-chartered thrift institutions	Operates deposit insurance for banks; resolves failing banks
National Credit Union Administration (NCUA)	Federally chartered or federally insured credit unions	Operates deposit insurance for credit unions; resolves failing credit unions
	Securities Markets Regulators	
Securities and Exchange Commission (SEC)	Securities exchanges; broker-dealers; clearing and settlement agencies; investment funds, including mutual funds; investment advisers, including hedge funds with assets over $150 million; and investment companies Nationally recognized statistical rating organizations Security-based swap (SBS) dealers, major SBS participants, and SBS execution facilities Securities sold to the public	Approves rulemakings by self-regulated organizations
Commodity Futures Trading Commission (CFTC)	Futures exchanges, futures commission merchants, commodity pool operators, commodity trading advisors, derivatives clearing organizations, and designated contract markets Swap dealers, major swap participants, swap execution facilities, and swap data repositories	Approves rulemakings by self-regulated organizations
	Government-Sponsored Enterprise Regulators	
Federal Housing Finance Agency (FHFA)	Fannie Mae, Freddie Mac, and Federal Home Loan Banks	Acting as conservator (since Sept. 2008) for Fannie and Freddie
Farm Credit Administration (FCA)	Farm Credit System, Farmer Mac	
	Consumer Protection Regulator	
Consumer Financial Protection Bureau (CFPB)	Nonbank mortgage-related firms, private student lenders, payday lenders, and larger "consumer financial entities" determined by the CFPB Statutory exemptions for certain markets Rulemaking authority for consumer protection for all banks; supervisory authority for banks with over $10 billion in assets	

[152] Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework title*, R44918 (2020).

Appendix B: Regulatory Jurisdiction by Agency and Type of Regulation[153]

Figure 1. Regulatory Jurisdiction by Agency and Type of Regulation



Source: Government Accountability Office (GAO), *Financial Regulation*, GAO-16-175, February 2016, Figure 2.

[153] Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework title*, R44918 (2020).

Appendix C: Most requested Memorandums of Understanding