

Chapter 13 Outline

I. Intro

II. Jurisdiction

- Bureau Jurisdiction

- *Parameters of Bureau Jurisdiction*
 - DFA outline of Bureau authority
 - Exemplary issue - Bureau authority with respect to car dealers
 - Enumerated statutes under the Bureau's jurisdiction
 - Principal based vs. prescriptive rules
 - Express limits on Bureau's Authority
 - E.g. Bureau cannot issue legislation implementing usury ceilings
 - *Seila Law Case*
 - Summary of case
 - Consistencies/Inconsistencies with how other executive agencies operate currently (how are executive agencies currently classified and why?)
 - Consistencies/Inconsistencies with current structure of the Bureau
 - DFA v. Seila Law
 - Does the holding conflict with DFA requirements, expectations, or structure?
 - E.g. Is there a conflict between what OMB and White House can do with respect to the Bureau under the DFA?
 - Are there inconsistencies between the DFA's express provisions compared to the new model the case created?
- *Advantages*
 - What is the benefit of having supervision in a consumer protection agency?
- *Disadvantages*
- *Lingering questions*

- Areas of Shared Jurisdiction

- *Interagency (Bureau-Federal/Bureau-Prudential Interplay)*
 - How is jurisdiction determined?
 - DFA - Is there a particular provision that establishes areas of joint jurisdiction?
 - E.g. Bureau has supervisory authority over banks, thrifts, and credit unions with assets over \$10 billion (see [[HYPERLINK](https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/institutions/) "https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/institutions/"])
 - Working Together
 - How do Bureau/federal regulators decide who handles a particular matter/issue when they both have authority?

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- Address limits on fines/penalties that can be assessed (e.g. FTC v. Bureau)
- Advantages
 - How does this approach serve consumers? (consumer groups likely favor more “cops on the beat”)
 - FTC/Bureau and Data Breach
 - Bureau has authority via unfair deceptive application to data breaches
 - Bureau and FTC have specific skillsets, and FTC has more experience and expertise with handling data breaches
- Disadvantages
 - Are there redundancies?
 - Does shared jurisdiction result in multiple examinations/excess expenditure of resources?
 - Friction in findings/interpretations of each regulator?
- Lingering questions
- *Federalism (Federal-State Interplay)*
 - How is Jurisdiction Determined?
 - DFA – Does this regulation establish parameters of where Bureau has authority vs. states?
 - Preemption
 - Waters vs. Wachovia (2007) – preemption background
 - DFA language on preemption (explore what has happened with preemption since DFA enactment)
 - Summary of OCC bank chartering and preemption of state law
 - Working Together
 - How do Bureau and states work together in the areas of supervision, regulation and enforcement (e.g. see notes re [\[HYPERLINK "file:///Z:/External%20Affairs/Consumer%20Advisory%20Boards/Taskforce/Meetings/Chair/CSBS/CSBS%20-%20July%202022%20Listening%20Session%20Notes.docx"\]](#))?
 - How do they decide who handles which matter from an supervision/enforcement perspective?
 - Advantages
 - Do costs of federal/state supervision outweigh benefits?
 - Consumer groups likely favor more “cops on the beat”
 - Disadvantages
 - Patchwork quilt of laws (data privacy laws)
 - Friction in findings from each regulator?
 - Do costs of federal/state supervision outweigh benefits?
 - Lingering questions
- Chart of jurisdiction (Appendix?)

III. Regulatory Modernization

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- Regulatory Effectiveness (what works)

- Areas where Bureau and other regulators have cooperated, where they haven't, and where they should cooperate
- Overlapping Jurisdiction
 - Preemption
 - Growth of a national economy leads to a seeming need for more federal preemption. Cost of federalism grows with federal dominance. States want power to protect their consumers. States have proven responsible regulators. Marquette decision fostered competition beyond state boundaries thus more consumer choice. But with the presence of a national entity (cfpb) is preemption more appropriate than before this national entity?
 - Interagency/Prudential Regulators
 - CFPB are the experts in consumer financial protection. CFPB has the overall view of consumer welfare. Prudential regulators have legitimate views as to the intersection of safety and soundness with consumer protection but CFPB has the broad view across markets. Other regulators are siloed.
 - Taskforce recommends continuation on the current path. Coordinate among regulators as best they can. Formal lines of authority are not yet needed. The CFPB-FTC relationship continues to evolve. Shared jurisdiction can be a good thing because each entity has a skill set, CFPB specializes in financial institutions while FTC is a data breach specialist. It's a messy configuration but it works.
 - MOUs
 - Who does the Bureau have MOUs with for general practices, e.g. FTC, DOE, etc., and other case-by-case ones, e.g. for specific investigations
 - Bank Policy Institute RFI response - "Work with other federal regulators to make clear that cfpb is the consumer compliance examiner. Do this by revising the mou that exists now between federal regulators."
 - Why did the Bureau terminate certain MOUs?
 - What other bodies should the Bureau have MOUs with?

- Regulatory Modernization (What doesn't work as well/Updates)

Where should the Bureau have authority? Where should the Bureau have more authority?

Where should the Bureau have less authority (if applicable)

- *Exemplary issue* - MLA (what authority does Bureau currently have; should it have supervisory/enforcement authority); what role does the DOD play?)
- *FTC/Auto Dealer Issue* – Shared jurisdiction over auto dealers (Bureau and FTC) is appropriate given Bureau covers financial service providers within state transactions in other purchase transactions (FTC-auto sale, Bureau-auto finance)
- *Principal-based rules* - Taskforce leans toward principal-based rules with the use of enforcement action to clarify rules via incremental actions. The Taskforce acknowledges

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that this approach can create uncertainty within the regulated community, so the Taskforce endorses the use of safe harbors and issuance of more and frequent guidance by regulators.

- *Seila Law* - Does Congress need to take any action to resolve potential conflicts or confusion?

IV. Cost Benefit Analysis Structure (Ross)

- Intro/Preface
- History of Cost-Benefit Analysis in Agency Rulemaking
- Dodd-Frank Cost-Benefit Requirement
- Purpose of Cost-Benefit Analysis
- Principles and Best Practices of Cost-Benefit Analysis
- Implementation of CBA
- Evaluation of CFPB's Regulatory Guidance "Regulatory Analysis Policies and Procedures for Substantive Rulemaking"^[1]
- Valuing Benefits
- Criticisms of Cost-Benefit Analysis
- Recommendations for Reform

^[1] Is there a public link?