

The CFPB Shuts Down Controversial "Regulation Through Guidance" Practices

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The acting head of the Consumer Financial Protection Bureau (CFPB) continues to winnow out regulatory tools used by agency staff under the prior administration. Just a month after revoking certain interpretative rules and announcing the deprioritized enforcement of others, the CFPB has now reportedly discontinued the Bureau's longstanding practice of "regulation through guidance."

An internal agency memorandum circulated last week by Acting Director Russell Vought apparently did not mince words in criticizing the Bureau's prior use of "guidance" to effectuate backdoor rulemaking: "For too long this agency has engaged in weaponized practices that treat legal restrictions on its authorities [to engage in rulemaking] as barriers to be overcome rather than laws that we are oath-bound to respect. This weaponization occurs with particular force in the context of the Bureau's use of sub-regulatory 'guidance.'" Vought's concern: "[G]uidance materials [have been used] improper[ly] where they impose rights or obligations on private parties outside of the notice-and-comment process prescribed by the Administrative Procedure Act [APA]." That is, to create new regulatory rules, the APA—5 U.S.C. § 553—requires federal agencies like the CFPB to first publish a Notice of Proposed Rulemaking in the *Federal Register* and to allow the public an opportunity to comment "through submission of written data, views, or arguments." The prior CFPB regime's practice of publishing informal "guidance" to impose de facto rules and obligations on covered parties, without prior notice, did not comply with these statutory requirements. Much of the CFPB's prior guidance left ambiguous their non-binding nature and whether non-compliance would trigger enforcement action by the CFPB. Vought seeks to remedy that concern.

Importantly, the CFPB directive last week seeks more than just a prohibition of *future* guidance that "purport[s] to create rights or obligations binding on persons or entities outside the Bureau." The CFPB is also reportedly committed to "rescind[ing] all 'guidance' that has unlawfully regulated private parties in the past." As the agency's comprehensive internal review concludes in the coming weeks, the CFPB is expected to ultimately renounce significant existing guidance—from advisory opinions to blog posts—that contravene the APA and the Bureau's constitutional authority for regulatory rulemaking.

Vought's internal messaging at the CFPB notably occurred on the same day last week that the White

House published its own “Memorandum for the Heads of Executive Departments and Agencies.” See [Directing the Repeal of Unlawful Regulations, Presidential Memoranda \(Apr. 9, 2025\)](#). In that Memorandum, the administration instructed agency heads to review and repeal all “facially unlawful regulations” within the next 60 days that do not conform with the recent *Loper Bright* decision and nine other Supreme Court opinions. With the assistance of its agency heads, including at the CFPB, the executive branch thus continues its path forward to deregulate.

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National Law Review, Volume XV, Number 107

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