

CFPB Withdraws Guidance Documents in Shift from Nonbinding Policymaking

May 15, 2025

After ordering the review of all existing guidance put forth by the Consumer Financial Protection Bureau (CFPB), acting CFPB Director Russell Vought announced the withdrawal of almost 70 guidance documents dating back to the agency's founding in 2011. The withdrawals are effective as of May 12, 2025.

The rescinded documents include interpretive rules, policy statements and advisory opinions that cover a range of consumer protection regulations. Notably, more than 40 of the documents were issued under former Director Rohit Chopra, who faced criticism during his tenure for pushing regulatory boundaries and allegedly overstepping the CFPB's authority. The announcement showcases the CFPB's intent to end the practice of so-called regulation by guidance and to stick closely to a much more narrowly defined set of supervisory and enforcement priorities, as we discussed in this April 23 alert.

Overview

Noting the CFPB's historical reliance on nonbinding policy guidance, Vought writes in the notification that often such guidance has taken interpretations "inconsistent with statutory text" that impose compliance burdens without following the notice and comment requirements of the Administrative Procedure Act (APA).

Stating that new regulatory obligations should only be imposed "when consistent with applicable law and after an agency follows appropriate procedures," Vought provides the following rationale for withdrawing the guidance:

1. **Guidance should only reduce compliance burdens:** Citing a "changed" policy, Vought notes that the CFPB will issue guidance only when it is necessary and when it will reduce compliance burdens.
2. **Reduced enforcement activities:** The CFPB is reducing its enforcement activities only to those statutorily required in an effort to avoid "duplicative" enforcement with other federal or state regulators. Vought therefore notes that withdrawing interpretive guidance that might have "guided" such enforcement activities that the CFPB has indicated it will no longer be undertaking "should not adversely affect regulated parties."
3. **No reliance interests:** Vought states that the benefits to withdrawing the guidance outweigh any reliance interests, as the guidance is generally nonbinding and may even be unlawful if it exceeds the relevant statute or regulation.

Key documents rescinded

"The 67 rescinded documents impact most federal consumer financial protection laws, including the Fair Credit Reporting Act, the Truth in Lending Act, the prohibition on unfair, deceptive, or abusive acts or practices in the Consumer Financial Protection Act (CFPA), and the Electronic Fund Transfer Act.

Examples of guidance documents that were withdrawn include the CFPB's policy statement on abusive acts or practices; policy statements that expanded the information publicly available on the CFPB's consumer complaints database; guidance that warned that the inclusion of "unlawful or unenforceable" terms in consumer contracts could constitute a deceptive act or practice under the CFPA by misleading consumers; and a circular that detailed what records financial institutions must retain to evidence a consumer's prior consent when continuing to assess overdraft fees."

Also of note is the CFPB's withdrawal of the "buy now, pay later" (BNPL) interpretive rule, a subject of ongoing litigation brought by a fintech industry group, which will now be rendered moot by the CFPB's announcement. The interpretive rule would have held that providers of BNPL products that issue "digital user accounts" to access credit products to purchase goods and services are "card issuers" under Regulation Z, and would have

subjected BNPL providers to certain provisions of Regulation Z.

What's next?

Vought does leave open the possibility that some guidance may be reissued in the future, once CFPB staff determines whether the guidance is statutorily prescribed, whether the guidance's interpretation is consistent with the relevant statute or regulation, and whether it imposes or decreases compliance burdens.

While the CFPB may promulgate new guidance in the future, it also is possible that in the face of ambiguous regulatory or statutory provisions, courts may step in to resolve interpretive questions following the US Supreme Court's *Loper Bright* ruling last year. *Loper Bright* overruled the decades-old precedent of *Chevron* that instructed courts to defer to agency interpretations of statutory authority. By contrast, *Loper Bright* directs courts to "exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires." We also expect states to continue to fill the regulatory void by enforcing their consumer protection statutes in the absence of CFPB activity.

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