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## Regulation by Enforcement is Dead

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Addressing the Mortgage Bankers Association (MBA) 2018 Annual Convention in Washington, DC on October 15, 2018, BCFP Acting Director Mick Mulvaney advised that regulation by enforcement is dead, and that he does not care much for regulation by guidance either. He noted to the members that they have a right to know what the law is.

Acting Director Mulvaney advised that if a party is doing something that is against the law, the BCFP will take action against them. However, he advised the difference between the BCFP now from its approach under the prior Director is that if someone is doing something that complies with the law and the BCFP doesn't like it, the BCFP will not take action.

With regard to UDAAP, Acting Director Mulvaney stated that he believes the concepts of "unfair" and "deceptive" are well established in the law, but that is not so with regard to the concept of "abusive". He noted he asked his staff to provide examples of what is abusive that is not also either unfair or deceptive. And he signaled that the BCFP will look to engage in rulemaking on abusive.

As we have [reported](#) the MBA and other trade groups recently sent a letter to the BCFB seeking reforms in connection with the BCFP's loan originator compensation rule. When asked by MBA President and CEO Robert Broeksmit about the letter, Acting Director Mulvaney advised that he knew the letter was received and that it is being reviewed by staff, but that he had not actually seen the letter. Mr. Broeksmit then handed Mr. Mulvaney a copy of the letter, drawing laughs from the audience.

With regard to payday lending, Acting Director Mulvaney advised that it can be really dangerous for people given the high interest rates, but that people want it so it exists. He noted he has told payday lenders they exist because bank regulators forced banks out of the business. But he stated that the OCC has signaled it will allow banks back in, and that the way to fix payday lending is through competition.

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