



# What the Consumer Financial Protection Bureau Means for Private Sector Colleges and Universities

Association of Private Sector Colleges and Universities  
2012 Annual Convention & Expo  
June 20, 2012, 3:45 pm - 5 pm PT  
Mandalay Bay Hotel and Casino, Las Vegas, Nevada

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## AGENDA

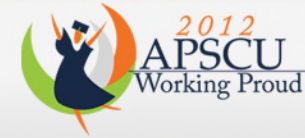
- Introduction
- The Dodd-Frank Wall Street Reform and Consumer Protection Act – How we Got Here...
- CFPB: Overview and Structure
- CFPB: Focus on Private Educational Loans and Students
- CFPB: Preparing for Supervision and Examinations
- CFPB: Navigating Investigations and Enforcement
- CFPB: Whistleblowers and Service Providers
- Coordination with Other Federal and State Agencies
- What's Next for the CFPB and Private Schools?

# INTRODUCTION



- The new Consumer Financial Protection Bureau (“CFPB”) has launched a new era of **regulation, supervision and initiatives** targeted at private student loans and protecting service members.
- The CFPB has **supervision authority** over private student lenders, enforces the laws against unfair student lending practices, and requires lenders to follow the rules of the road and give students the information they need to make smart choices about student loans.
- The CFPB is **promoting strong consumer financial protections** for **servicemembers** and their families.

# WHAT'S THE COST OF NONCOMPLIANCE?

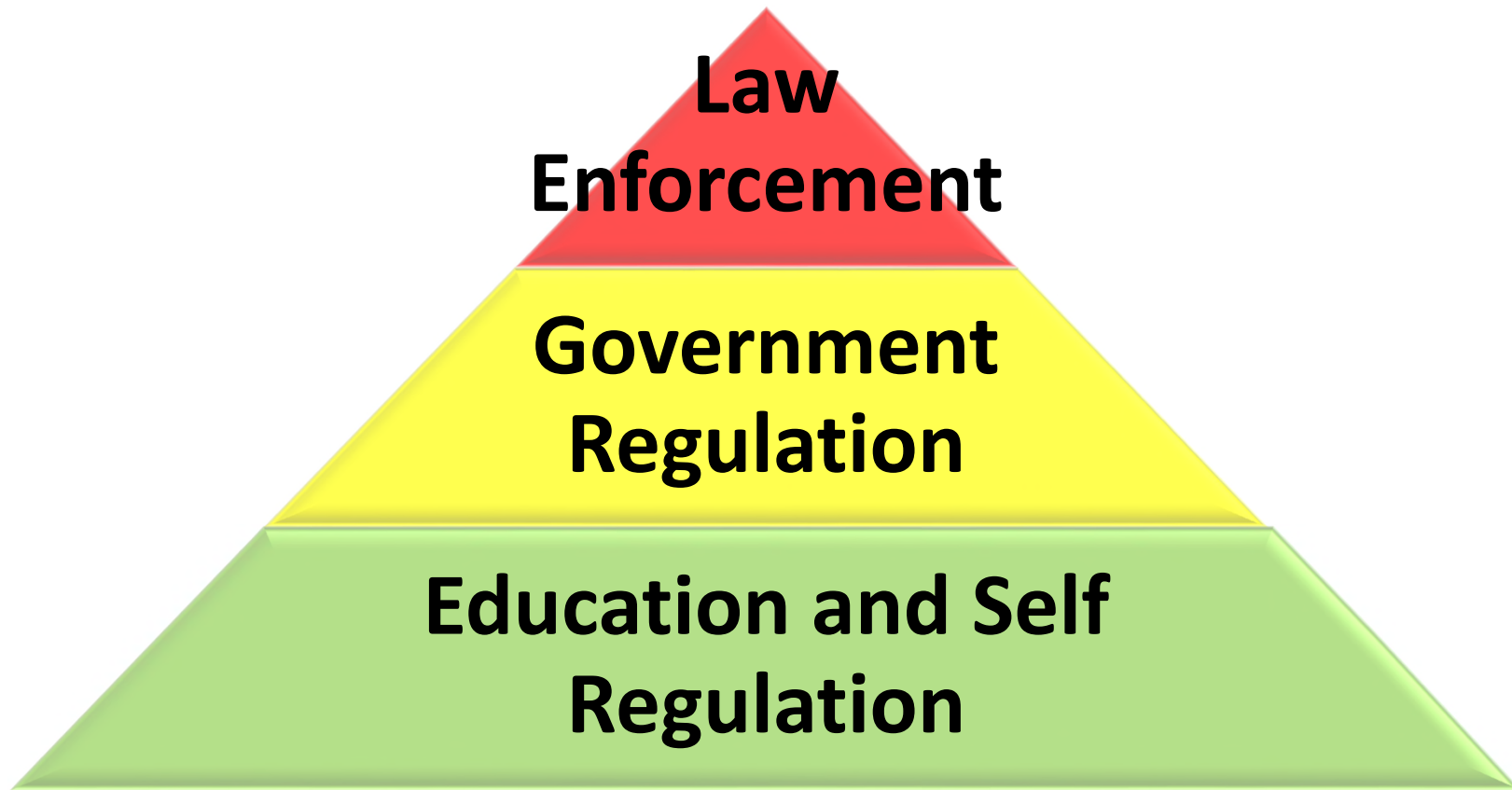
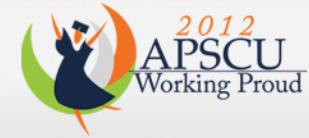


- In today's rapidly changing regulatory environment private schools are confronted by a growing number of compliance challenges including difficulty from a resource perspective to address the many changes concurrently

- Schools that invest in ongoing monitoring and conduct frequent monitoring as part of a mature compliance framework can drastically reduce the business and financial consequences associated with noncompliance

- In addition to immediate and short-term impacts such as monetary losses, litigations and brand damage, schools also risk negatively impacting their accreditation and ratings with the CFPB, which in turn can affect the ability to execute key growth strategies

# THE CONSUMER PROTECTION PYRAMID



WHERE DOES THE CFPB FIT IN WITH OTHER REGULATORS AND GOVERNMENT AGENCIES?



Consumer Financial Protection Bureau



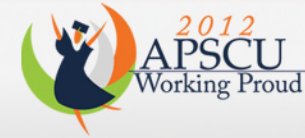
#APSCU2012

WORKING PROUD

Working Proud

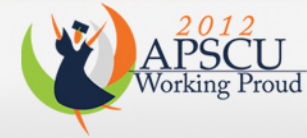
**DODD-FRANK WALL STREET REFORM AND  
CONSUMER PROTECTION ACT  
AND THE  
CONSUMER FINANCIAL PROTECTION BUREAU  
  
HOW WE GOT HERE....**





## DODD-FRANK ACT – HOW WE GOT HERE...

- President signed Dodd-Frank Act into law on July 21, 2010.
- Over 2,000 pages long.
- Enacted in wake of the worst financial crisis since the Great Depression.
- Addresses a variety of issues that arose as a result of the crisis, including the perception that consumer protection was fragmented and, in some cases inconsistent with other regulatory functions.
- Expected to generate more than 300 regulations.



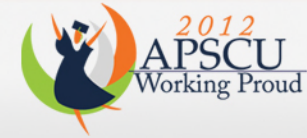
## DODD-FRANK ACT-HOW WE GOT HERE...

### Consumer Financial Protection Act of 2010

- Title X of the Dodd-Frank Act.
- Consolidates many federal consumer protection responsibilities into a new Bureau of Consumer Financial Protection (not Agency)
- Strips rulemaking authority for a host of federal consumer statutes from other agencies and authorizes CFPB to prescribe uniform rules
- Strips federally-chartered institutions of a significant degree of charter preemption authority
- Consolidates and Duplicates various supervisory and program authority areas related to nonbank products and services, including private student loans.

# CFPB: OVERVIEW AND STRUCTURE

# CFPB: OVERVIEW AND STRUCTURE

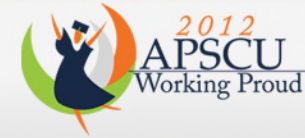


## CFPB STRUCTURE



Note: ★ indicates notable office for private student lenders and service providers

# CFPB: OVERVIEW AND STRUCTURE



## CFPB FOCUS

- **Educate** – “An informed consumer is the first line of defense against abusive practices.”
- **Enforce** – “Like a neighborhood cop on the beat, the CFPB supervises banks, credit unions, and other financial companies, and we will enforce Federal consumer financial laws.”
- **Study** – “The consumer bureau gathers and analyzes available information to better understand consumers, financial services providers, and consumer financial markets.”

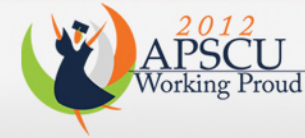
# CFPB: OVERVIEW AND STRUCTURE



## CFPB Core Functions

- Conduct rulemaking, supervision, and enforcement for Federal consumer financial protection laws
- Restrict unfair, deceptive, or abusive acts or practices
- Take consumer complaints
- Promote financial education
- Research consumer behavior
- Monitor financial markets for new risks to consumers
- Enforce laws that outlaw discrimination and other unfair treatment in consumer finance

## CFPB: OVERVIEW AND STRUCTURE



### CFPB Staff Includes Experiences Consumer Protection Attorneys and New Names

“Most members of current staff have come from other agencies. They include ... Timothy R. Burniston, a senior associate director for the Federal Reserve’s consumer affairs division; Peggy L. Twohig, director of the office of consumer protection at Treasury; and Alice Hrdy and Lucy Morris from the Federal Trade Commission’s consumer protection division.”

*Source: Edward Wyatt, “Adviser to Consumer Agency Had Role in Lending,” NY Times (Oct. 27, 2010).*

# CFPB: OVERVIEW AND STRUCTURE



## Student Debt, Student Loan, Servicemembers and Older American Initiatives

A graphic for the Student Debt Repayment Assistant. It features a green book with a red bookmark and a white dollar sign on the cover. To the right, the text reads "Student debt repayment assistant" in orange and blue, with "Know your options" in white on a dark grey bar below.

**Student debt**  
repayment assistant

Know your options

A graphic for the "Know Before You Owe" student loans initiative. It features the text "Know Before You Owe" in blue and orange, with "student loans" in blue below. To the right is a screenshot of a website interface.

**Know**  
**Before You Owe**  
student loans

A graphic for the Servicemembers and Veterans initiative. It features a shield with vertical stripes on the left. To the right, the text reads "Servicemembers and veterans" and "Plan your future and protect your finances".

**Servicemembers and veterans**

Plan your future and protect your finances

A graphic for the Older Americans initiative. It features a silhouette of a person climbing a steep, rocky hill on the left. To the right, the text reads "Older Americans" and "Navigate financial challenges safely".

**Older Americans**

Navigate financial challenges safely



# CFPB: FOCUS ON PRIVATE STUDENT LOANS AND STUDENTS

## CFPB FOCUS ON PRIVATE STUDENT LOANS

1. Private Student Loan Ombudsman
2. General Consumer Response Initiative
3. Know Before You Owe: student loans and Student Debt Repayment Assistant
4. Private Student Loan Market Study
5. Servicemember Outreach and Education
6. Rulemaking
7. Supervision and Examination Authority over Private Student Loans
8. Investigation and Enforcement Authority

# PRIVATE STUDENT LOAN OMBUDSMAN



- Private student loans had been overseen by a patchwork of government agencies.

- Dodd-Frank established an Ombudsman for private student loans within the CFPB to assist borrowers with private student loan complaints.

## Rohit Chopra



A screenshot of a web browser displaying an article from the Consumer Financial Protection Bureau (CFPB). The article title is "Too Big to Fail: Student debt hits a trillion" and the author is Rohit Chopra. The article text discusses the growing size of the private student loan market, its impact on borrowers, and the challenges it poses for the economy and education. The browser's address bar shows the URL "http://www.consumerfinance.gov/bk" and the page title "Too Big to Fail: Student debt hits a trillion". The CFPB logo and navigation menu are visible at the top of the article page.

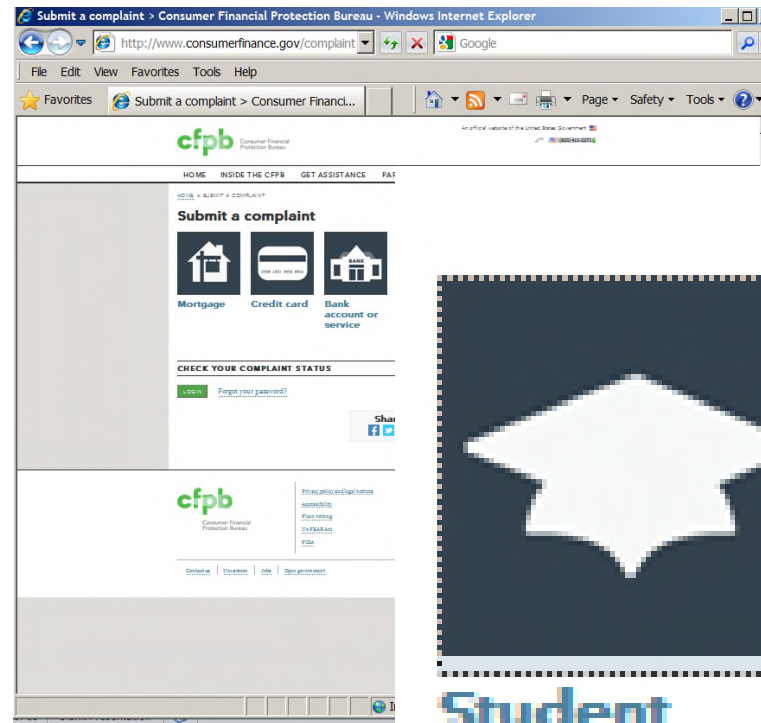
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# CFPB: FOCUS ON STUDENTS



## Consumer Response Initiative

- The Consumer Response team began taking consumer complaints about private student loans, and other consumer loans on March 1, 2012.



**Student  
loan**

# CFPB: FOCUS ON STUDENTS



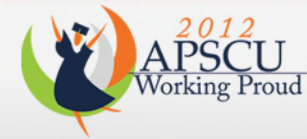
- **White House Student Loan Transparency Initiative**

- “We have heard from thousands of student loan borrowers who say that they simply didn’t understand what they signed up for. Many of them chose private loans before exhausting their cheaper federal loan options, which protect them when they run into trouble. Some resorted to credit cards and other high-priced loans. And all too often, borrowers got in way over their heads.” - Remarks of CFPB Director Richard Cordray at the White House (June 5, 2012)

- **10 Schools Agree to Voluntary Disclosures:**

- Arizona State University, Miami Dade College, North Carolina A&T, the State University System of New York, Syracuse University, the University of Massachusetts system, the University of North Carolina at Chapel Hill, the University of Maryland system, the University of Texas system, and Vassar College

# CFPB: FOCUS ON STUDENTS



## CFPB & DOE “Know Before You Owe: student loans”

University of the United States (UUS)  
Private 4-year

Example only, fictional data

### How to pay for college

Prepared for Abigail Adams, first year student

#### How much will it cost each year?

TOTAL COST FOR FULL TIME ATTENDANCE		\$ 29,000 / yr
Tuition and Fees	\$ 21,000	
Housing and Meals	\$ 3,000	
Books and Supplies	\$ 2,000	
Transportation and other personal expenses	\$ 1,000	
TOTAL GRANTS AND SCHOLARSHIPS		\$ 11,000 / yr
Grants from your school	\$ 5,000	
Federal Pell Grant	\$ 4,300	
Grants from your state	\$ 300	
Other scholarships you can use	\$ 1,000	
What you will pay for one year		\$ 18,000 / yr

#### How does your cost compare?

#### What are your loan and work study options?

FEDERAL LOANS THAT YOU ARE ELIGIBLE FOR		\$ 8,000 / yr
Pell Grant	\$ 2,300	
Subsidized Stafford Loan	\$ 3,000	
Unsubsidized Stafford Loan	\$ 2,300	
FEDERAL WORK STUDY	\$ 4,000 / yr	
PRIVATE STUDENT LOANS	\$ 6,000 / yr	

#### UUS student loan default rate

The percentage of students from this school who defaulted on their Federal Stafford loans within the first 3 years of repayment.

0.3%

#### UUS graduation rates

The percentage of students who graduate within 6 years

71%

#### UUS retention rates

The percentage of non-graduating students who re-enroll the following year

85%

#### After graduation, how much will you owe?

ESTIMATED MONTHLY PAYMENT FOR FEDERAL LOANS	\$ 451 / mo
Estimated total federal loan debt	\$ 37,000
ESTIMATED MONTHLY PAYMENT FOR PRIVATE LOANS	\$ 209 / mo
Estimated total private loan debt	\$ 26,000
YOUR TOTAL ESTIMATED DEBT	\$ 63,000
Your estimated monthly payment for all loans	\$ 708 / mo

#### UUS 4-year average

UUS 4-year average: 71% (graduation), 85% (retention)

4-year private school average: 70% (graduation), 80% (retention)

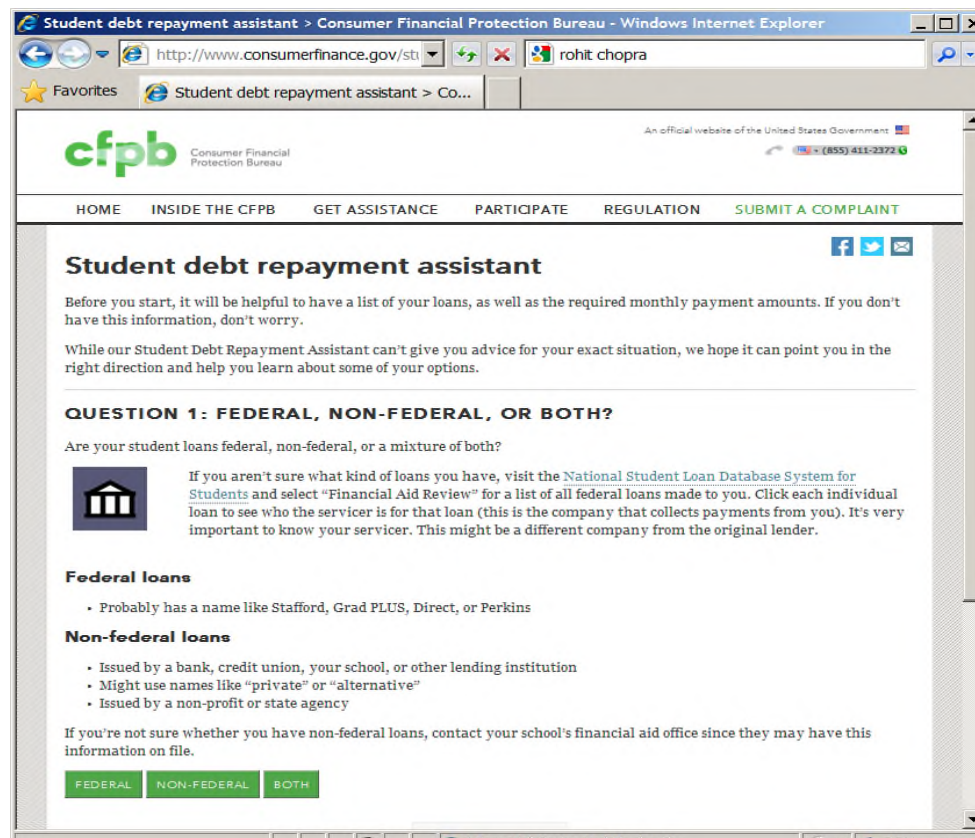
University of the United States (UUS)  
Financial Aid Office  
123 Main Street  
Anytown, ST 12345  
(123) 456-7890  
FinancialAid@uus.edu

For further explanation and next steps, visit <http://www.uu1.com/school/persona/uu1>

# CFPB: FOCUS ON STUDENTS



## Student Debt Repayment Assistant



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WORKING PROUD Working Proud

# PRIVATE STUDENT LOAN MARKET STUDY



- The CFPB asked the public, students, families, the higher education community, and the student loan industry – both lenders and servicers – to provide information on this financial product voluntarily.
  - Information available to shop for private student loans
  - The role of schools in the marketplace
  - Underwriting criteria
  - Repayment terms and behavior
  - Impact on choice of field of study and career choice
  - Servicing and loan modification
  - Financial education and default avoidance
- Dodd-Frank requires the CFPB and the Department of Education to produce a report to Congress by July 21, 2012.
- The CFPB will also use the information it gathers to prioritize its own regulatory and education work.

## Request for Information Regarding Private Education Loans and Private Educational Lenders





# CFPB SERVICEMEMBER AND VETERAN INITIATIVES



Servicemembers  
and veterans  
Plan your future and  
protect your finances

**Repeat Offenders Against Military Database (ROAM)** - joint effort with state Attorneys General and the Department of Defense to combat scams directed at servicemembers, veterans, and their families. ROAM is intended to track companies and individuals who repeatedly target the military community. Law enforcement officials across the country, including state Attorneys General, United States Attorneys, local officials, and Judge Advocates (JAGs), will be able to contribute to and search the database.

- Led by Holly Petraeus, Assistant Director for Servicemember Affairs
- Focused on unique financial challenges of servicemembers and veterans
  - Lending
  - Affinity Programs
  - Opportunities
- Presidential Executive Order on “GI Bill”

# CFPB REGULATION OF PRIVATE EDUCATIONAL LOANS



- CFPB has specific supervisory authority over any non-bank that offers or provide any “private educational loans” as defined in Section 140 of Truth in Lending Act (“TILA”). Section 1024(a)(1)(D).
- Schools that extend credit to their students may provide “private education loans” as defined in TILA and Regulation Z.
  - Schools that assess finance charges on extensions of credit are making “private education loans” unless term limited to 90 days or less.
  - Schools that do not assess finance charges but provide for repayment term of more than 12 months are making private education loans.
- Specific authority over “private education lenders” supersedes “merchant exemption”
- CFPB also has authority to supervise financial products and services that pose a “risk to consumers”

## CFPB Consumer Laws and Regulations

TILA

### Subpart F – Special Rules for Private Education Loans Special Disclosure Requirements for Private Education Loans (§ 226.46)

The disclosures required under Subpart F apply only to private education loans. Except where specifically provided otherwise, the requirements and limitations of Subpart F are in addition to the requirements of the other subparts of Regulation Z.

A private education loan means an extension of credit that:

- Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965;
- Is extended to a consumer expressly, in whole or part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; and
- Does not include open-end credit or any loan that is secured by real property or a dwelling.

A private education loan does not include an extension of credit in which the covered educational institution is the creditor if:

- The term of the extension of credit is 90 days or less; or
- An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

### Content of Disclosures (§ 226.47)

#### Disclosure Requirements

This section establishes the content that a creditor must include in its disclosures to a consumer at three different stages in the private education loan origination process:

- 1) Application or Solicitation Disclosures – With any application or solicitation;
- 2) Approval Disclosures – With any notice of approval of the private education loan; and
- 3) Final Disclosures – After the consumer accepts the loan. In addition, Section 226.48(d) requires that the disclosures must be provided at least three business days prior to disbursement of the loan funds.

#### Rights of the Consumer

The creditor must disclose that, if approved for the loan, the consumer has the right to accept the loan on the terms approved for up to 30 calendar days. The disclosure must inform the consumer that the rate and terms of the loan will not change during this period, except for changes to the rate based on adjustments to the index used for the loan and other changes permitted by law. A consumer also has the right to cancel the loan, without penalty, until midnight of the third business day following the date on which the consumer receives the final disclosures.

CFPB

FFIEC Rev. 5/2011

TILA 46

# CFPB: Preparing for Supervision and Examination

# CFPB: PREPARING FOR SUPERVISION AND EXAMINATION

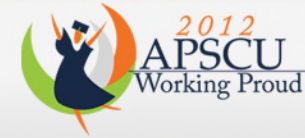


## Areas of Focus by the CFPB related to Private Educational Loans\*

- Unfair, Deceptive and Abusive Acts and Practices
- Equal Credit Opportunity Act (ECOA) and Regulation
- Truth in Lending Act
- Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.)
- Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)
- Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.)
- Gramm-Leach-Bliley Act of 2009
- Internal Revenue Code\* (may report to the IRS)
- State Statutory and Regulatory Requirements (may report to state AGs)

\* non-exhaustive list  
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# WHAT'S HAPPENING AT THE CFPB ON NONBANK SUPERVISION?



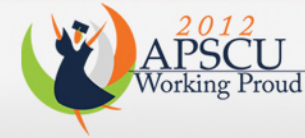
- **Dodd-Frank Supervision Authority** – Under the law, the CFPB has authority to oversee nonbanks, regardless of size, in certain specific markets, including private education lenders and their *service providers* ...
- **Supervision and Examination Manual**
- **Attorney-Client Privilege and Attorney Work Product Considerations—CFPB Rulemaking Efforts**

# CFPB SUPERVISION AND EXAMINATION



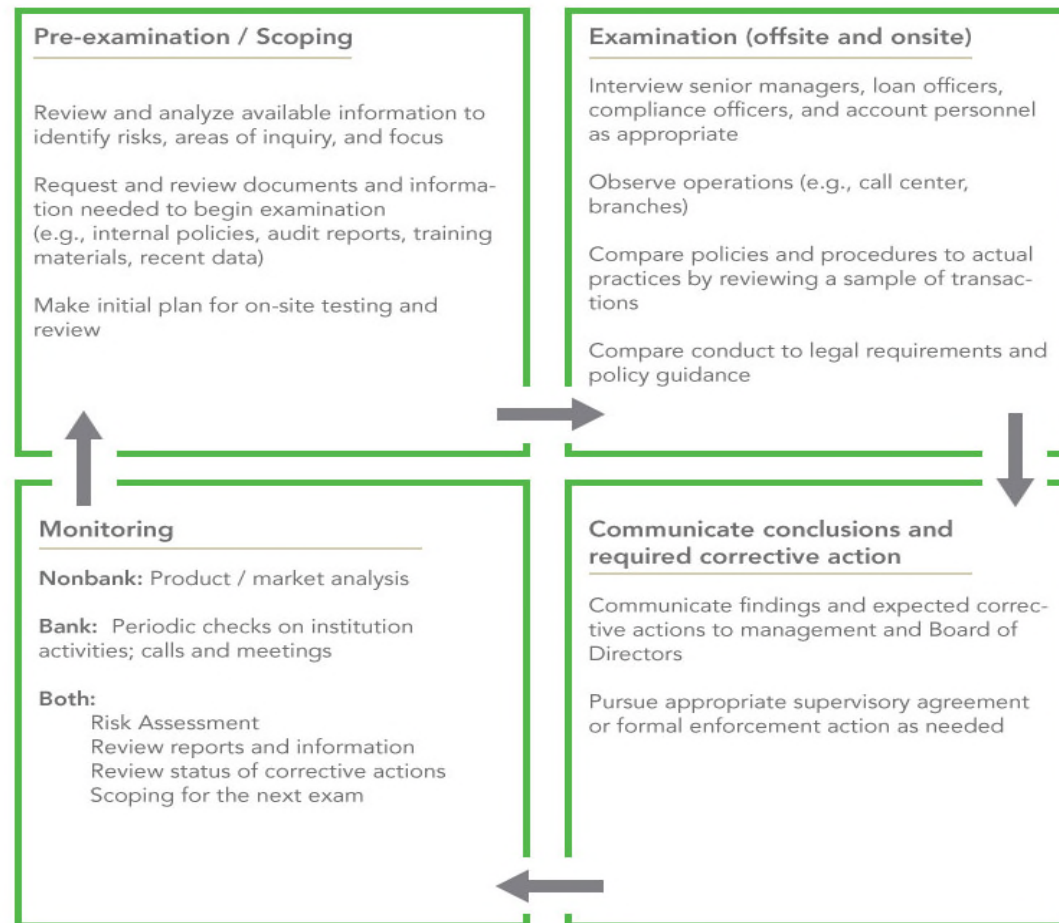
- The statutory frameworks for supervision of large depository institutions and their affiliates and for non-depository consumer financial service companies are largely the same.
- The purpose of supervision, including examination, to:
  - assess compliance with **Federal consumer financial laws**,
  - **obtain information about activities and compliance systems or procedures**, and
  - **detect and assess risks to consumers** and to markets for consumer financial products and services;
- The requirement to **coordinate** with other Federal and state regulators; and
- The requirement to use where **possible publicly available information and existing reports** to Federal or state regulators pertaining to supervised entities.

# SUPERVISION PROCESS PRINCIPLES



- **Consumer Focus:** CFPB will focus on an institution's ability to detect, prevent, and correct practices that present a significant risk of violating the law and causing consumer harm
- **Data Driven:** Supervision staff (examiners and analysts) will use data from a wide range of sources: data obtained from the entity and through direct observation during monitoring and examination; information provided by the CFPB's Research, Markets and Regulations and Consumer Education and Engagement divisions, the Office of Fair Lending and Equal Opportunity, the Enforcement division, Consumer Response Center, and Offices addressing the special needs of students, Older Americans, Service members, and the underserved; and other state and Federal regulatory agencies.
- **Consistency:** CFPB will use the same procedures to examine all supervised entities that offer the same types of consumer financial products or services, or conduct similar activities.

# CFPB EXAMINATION CYCLE

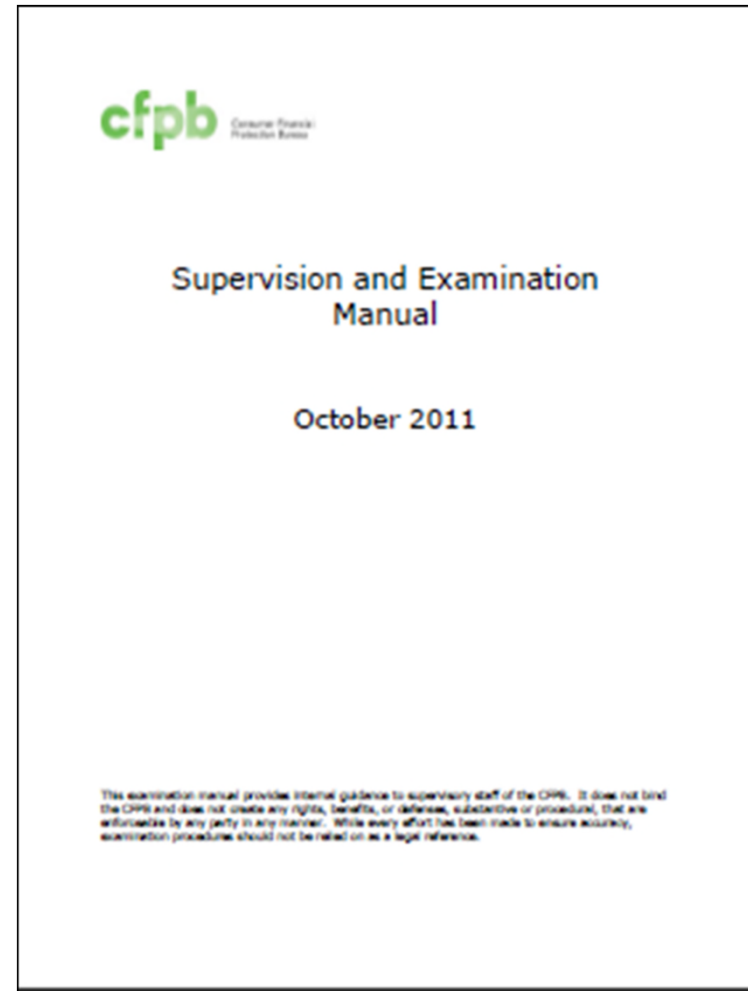




# CFPB SUPERVISION AND EXAMINATION MANUAL



- The [first part](#) describes the supervision and examination process.
- The [second part](#) contains examination procedures, including both general instructions and procedures for determining compliance with specific regulations.
- The [third part](#) presents templates for documenting information about supervised entities and the examination process, including examination reports.



# CFPB EXAMINATION STEPS



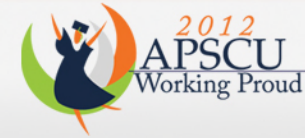
- Collect and review available information (from within the CFPB, from other Federal and state agencies, and from public sources), consistent with statutory requirements;
- Request and review supplementary documents and information from the entity to be examined;
- Develop and obtain internal approval for a preliminary risk focus and scope for the onsite portion of the examination;
- Go onsite to observe, conduct interviews, and review additional documents and information;
- Consult internally if the examination indicates potential unfair, deceptive, or abusive acts or practices; discrimination; or other violations of law;
- Draw preliminary conclusions about the regulated entity's compliance management and its statutory and regulatory compliance;
- Consult internally about follow-up corrective actions that the institution should take, whether through informal agreement or a formal enforcement action, if warranted by findings;
- Draft the examination report;
- Obtain appropriate internal review and approval for the examination work and draft examination report;
- Share the draft report with the prudential regulator and obtain and consider any comments they may offer, consistent with statutory requirements; and
- After final internal clearance, finalize and transmit the report to the supervised entity.
- During the examination, the Examiner in Charge will communicate with appropriate supervised entity personnel about preliminary findings and conclusions.
- CFPB will seek cooperation from the entity to correct any problems identified.

# CFPB ENFORCEMENT AUTHORITY



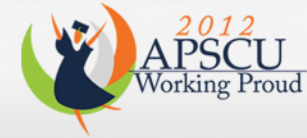
- CFPB is authorized to conduct investigations to determine whether any person is, or has, engaged in conduct that violates Federal consumer financial law.
- **Investigations may be conducted jointly with other regulators, and may include:**
  - subpoenas or civil investigative demands for testimony,
  - responses to written questions,
  - documents, or
  - other materials

## CFPB ENFORCEMENT AUTHORITY (CONT'D)



- Rescission or reformation of contracts.
- Refund of money or return of real property.
- Restitution.
- Disgorgement or compensation for unjust enrichment.
- Payment of damages or other monetary relief.
- Public notification regarding the violation.
- Limits on the activities or functions of the person against whom the action is brought.
- Civil monetary penalties (which can go either to victims or to financial education).

# CFPB REFERRALS FROM EXAMS



- Criminal Wrongdoing – Department of Justice
- Tax Law Non-Compliance - The CFPB is also required under the CFPA to refer information identifying possible tax law non-compliance to the Internal Revenue Service (IRS).
- Other Government Agencies

# CFPB EXAM PROCESS IN DETAIL



- For most full-scope examinations, the Examiner in Charge, or designee, contacts the supervised entity's management approximately 60 days prior to the scheduled onsite date for the examination to arrange either a telephone or in-person discussion of the examination Information Request.
- The principal purpose of the discussion is to gather current information to ensure that the request is tailored to what is necessary to properly conduct the examination of that particular institution.
- Examination – telephone, mail, in-person, combination
- Closing Meeting
- Examination Rating – 1 – 5 (1 is highest rating / lowest risk)
- Examination Report – Corrective Action
- Board of Directors / Principals Meeting

# WHAT WILL THE CFPB BE LOOKING FOR?



- **Compliance Management System: A compliance management system is how a supervised entity:**
  - Establishes its compliance responsibilities;
  - Communicates those responsibilities to employees;
  - Ensures that responsibilities for meeting legal requirements and internal policies are incorporated into business processes;
  - Reviews operations to ensure responsibilities are carried out and legal requirements are met; and
  - Takes corrective action and updates tools, systems, and materials as necessary.

## Checklist

- Board and management oversight;**
- Compliance program**
  - Policies and procedures,
  - Training, and
  - Monitoring and corrective action.
- Training**
- Response to consumer complaints**
- Compliance audit.**

# UNFAIR, DECEPTIVE OR ABUSIVE PRACTICES



- Under the Consumer Financial Protection Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any **unfair, deceptive or abusive** act or practice.
- The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with **any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.**
- In addition, CFPB **has supervisory authority for detecting and assessing risks** to consumers and to markets for consumer financial products and services



# UNFAIR ACTS AND PRACTICES DEFINED



**The standard for unfairness in the CFPA is that an act or practice is unfair when:**

1. It causes or is likely to cause substantial injury to consumers,
2. The injury is not reasonably avoidable by consumers, and
3. The injury is not outweighed by countervailing benefits to consumers or to competition

## Checklist

- Does an act or practice hinder a consumer's decision-making.
- The injury must not be outweighed by countervailing benefits to consumers or competition.
- To be unfair, the act or practice must be injurious in its net effects — that is, the injury must not be outweighed by any offsetting consumer or competitive benefits that also are produced by the act or practice. Offsetting consumer or competitive benefits of an act or practice may include lower prices to the consumer or a wider availability of products and services resulting from competition.

# DECEPTIVE ACTS OR PRACTICES DEFINED



**A representation, omission, act or practice is deceptive when**

1. The representation, omission, act, or practice misleads or is likely to mislead the consumer,
2. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances, and
3. The misleading representation, omission, act, or practice is material

## Checklist

- Acts or practices that may be deceptive include: making misleading cost or price claims; offering to provide a product or service that is not in fact available; using bait-and-switch techniques; omitting material limitations or conditions from an offer; or failing to provide the promised services.
- Is a representation, omission, act, or practice is likely to mislead:
  - Is the statement prominent enough for the consumer to notice?
  - Is the information presented in an easy-to-understand format that does not contradict other information in the package and at a time when the consumer's attention is not distracted elsewhere?
  - Is the placement of the information in a location where consumers can be expected to look or hear?
  - Finally, is the information in close proximity to the claim it qualifies?

# ABUSIVE ACTS OR PRACTICES DEFINED



- **Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or**
- **Takes unreasonable advantage of –**
  - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
  - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
  - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

## Examples

**The TSR prohibits as an abusive practice requesting or receiving any fee or consideration in advance of:**

- debt relief services;
- obtaining any credit repair services;
- recovery services, and
- offers of a loan or other extension of credit, the granting of which is represented as “guaranteed” or having a high likelihood of success

## UDAAP Checklist

To initially identify potential areas of UDAAP concerns, the CFPB will obtain and review copies of the following to the extent relevant to the examination:

- Training materials.
- Lists of products and services, including descriptions, fee structure, disclosures, notices, agreements, and periodic and account statements.
- Procedure manuals and written policies, including those for servicing and collections.
- Minutes of the meetings of the Board of Directors and of management committees, including those related to compliance.
- Internal control monitoring and auditing materials.
- Compensation arrangements, including incentive programs for employees and third parties.
- Documentation related to new product development, including relevant meeting minutes of Board of Directors, and of compliance and new product committees.
- Marketing programs, advertisements, and other promotional material in all forms of media (including print, radio, television, telephone, Internet, or social media advertising).
- Scripts and recorded calls for telemarketing and collections.
- Organizational charts, including those related to affiliate relationships and work processes.
- Agreements with affiliates and third parties that interact with consumers on behalf of the entity.
- Consumer complaint files.
- Documentation related to software development and testing, as applicable.
- Management Policies and Procedures
- Transaction testing
- Interviews with consumers

# CFPB: NAVIGATING INVESTIGATIONS AND ENFORCEMENT

# CFPB INVESTIGATIONS AND ENFORCEMENT



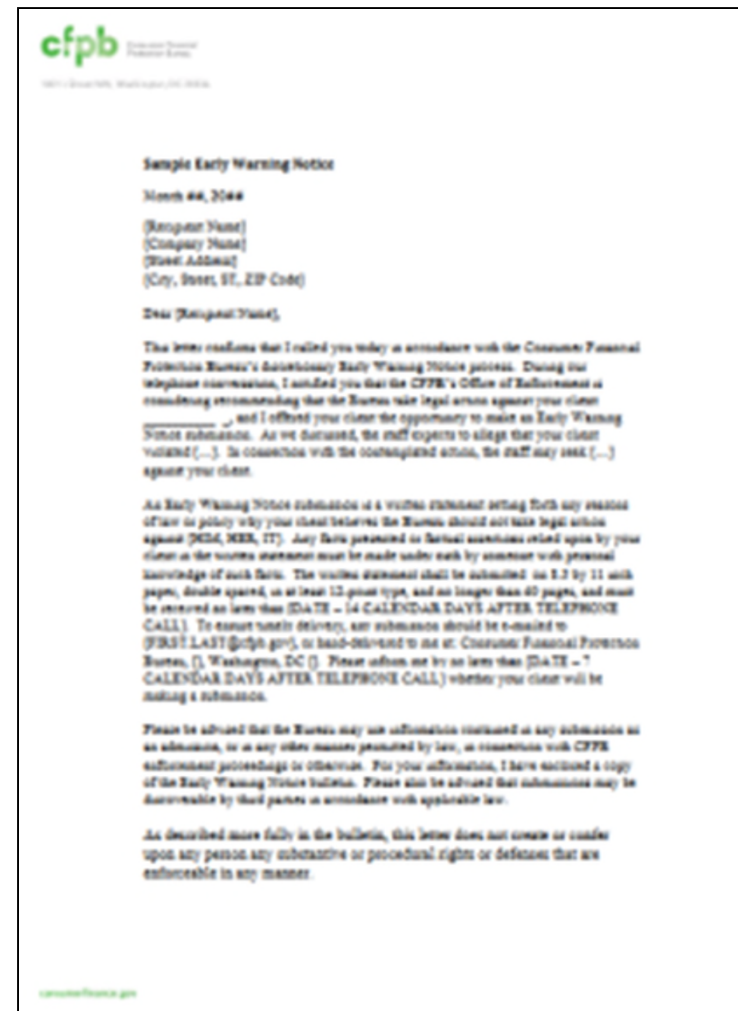
- **CFPB may investigate, issue subpoenas and civil investigative demands, and compel testimony**
- **CFPB may conduct hearings and adjudications to enforce compliance, including issuing cease-and-desist orders**
- **CFPB may initiate actions for civil penalties or an injunction**
  - Penalties up to \$1M per day for knowing violations
  - No exemplary or punitive damages
- **Criminal referrals to DOJ**
- **Whistleblower protection**
- **State attorneys general may also enforce the CFPA with notice to the CFPB**
- **May enforce rules issued by the FTC to the extent such rules apply to a covered a person or service provider**
- **No express private right of action under the CFPA**

# EARLY WARNING NOTICE OF POTENTIAL ENFORCEMENT



- The *Early Warning Notice* is not required by law, but CFPB believes it will promote even-handed enforcement of consumer financial laws.

- The decision to give notice in particular cases is discretionary and will depend on factors such as whether prompt action is needed.



# KEY STEPS TO RESPONDING TO AN INVESTIGATION



**1. Review the CID** – A review of the CID, among many things, will identify the purpose of the investigation, the assigned staff enforcement attorneys, the production deadline (e.g., 30 days from issuance), the definitions, instructions, and interrogatory and document requests.

## **2. Establish a Response Team –**

- Gather documents and answers interrogatory questions
- Ensure compliance with legal obligations
- Confidentiality
- Assess whether responsive information is privileged
- Take proper steps to preserve responsive materials (e.g., implementation of a document preservation policy)
- Avoid liability, and preventing future claims and damage to the company
- In addition, a recipient of a CID will need to decide whether public disclosure is required pursuant to other applicable legal and regulatory obligations.



# KEY STEPS TO RESPONDING TO AN INVESTIGATION (CONT'D)



## 3. Assess the CID for Possible Modification Requests –

- Once the team is assembled, legal counsel needs to determine the scope and timing of the CID response and whether any modifications are needed.
- The scope of the Bureau's authority in issuing the CID also needs to be determined.

## 4. Meet and Confer with Bureau Enforcement Attorneys –

- Within 10 days after receipt of the CID.

# KEY STEPS TO RESPONDING TO AN INVESTIGATION (CONT'D)



## 5. Petition to Modify or Set Aside the CID –

- May file a petition to modify or set aside an information request if the request is filed within 20 days of receipt of the CID unless an extension is granted by the head of the Office of Enforcement.

## 6. Electronically Stored Information –

- The identification, collection, review, and processing of electronically stored information, such as emails, poses certain challenges on most businesses.
- The burden and cost continues to increase as the amount of electronically stored information that the average organization or custodian regularly maintains continues to rise.

# KEY STEPS TO RESPONDING TO AN INVESTIGATION (CONT'D)



## 7. Production –

- The CID instructions will cover specifics regarding production formats and logistics.
- Material that is withheld based on asserting a privilege is required to be identified on a privilege log.



## Notice and Opportunity to Respond and Advise

- According to a bulletin published in January 2012, before the Office of Enforcement recommends that the Bureau commence enforcement proceedings, the Office of Enforcement may give the subject of such recommendation notice of the nature of the subject's potential violations and may offer the subject the opportunity to submit a written statement in response.

# CFPB SOLICITS WHISTLEBLOWERS



- “We are providing whistleblowers and other knowledgeable sources with a direct line of communication to the CFPB,” said Rich Cordray, Assistant Director of Enforcement for the CFPB. “Their tips will help inform Bureau strategy, investigations, and enforcement. And they will help us fulfill our commitment to consumers.”
- The whistleblower channels announced include:
  - [whistleblower@cfpb.gov](mailto:whistleblower@cfpb.gov);
  - (855) 695-7974; and
  - Website (to be launched)
- The consumer finance whistleblower protections have significant implications for legal and regulatory compliance and raise a number of challenges for providers of consumer financial products and services. Covered employers will need to consider such issues as:
  - How to maintain legal and regulatory compliance with consumer financial protection laws and regulations;
  - How to ensure that, to the extent there is a violation of consumer financial protection law or regulations, an employee will take advantage of internal reporting mechanisms as opposed to bypassing such mechanisms and going straight to the CFPB;
  - How to conduct internal investigations without encouraging whistleblowers; and
  - How to successfully mediate any problems discovered.

# CFPB AND SERVICE PROVIDERS TO COVERED FINANCIAL PRODUCTS OR SERVICES PROVIDERS



Service Providers may be liable under the CFPA for acts and practices that violate the law or assist others in doing so. The CFPB recommends that supervised financial institutions take steps to ensure that business arrangements with service providers do not present unwarranted risks to consumers. According to the CFPB, these steps include:

- 1) Due Diligence;
- 2) Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials;
- 3) Appropriate contract provisions;
- 4) Internal controls and on-going monitoring; and
- 5) Taking prompt action to fully address any problems identified through the monitoring process.

# CONSUMER PROTECTION WORKING GROUP



- Announced in January 2012 (after State of the Union Address)
- Unit within the Financial Fraud Enforcement Task Force that was created in late 2009, and is led by the U.S. Department of Justice (“DOJ”).
- Will “address several areas of concern, including ... for-profit schools that engage in fraud or misrepresentation...”
- CFPB, FTC, DOJ, DoE Inspector General, state AGs, and more are participating

# WHAT'S NEXT AT THE CFPB AND PRIVATE SCHOOLS?



- ✓ **Know Before You Owe Refinement**
  - ✓ Increased push for voluntary adoption
- ✓ **Examinations of Supervised Entities**
- ✓ **Investigations and Enforcement**
- ✓ **Nonbank Rulemaking**
- ✓ **Private Student Loan Study to Congress**
- ✓ **Consumer Arbitration Report and Possible Prohibition**

# FEBRUARY 2011



A screenshot of the Consumer Financial Protection Bureau (CFPB) website as viewed in Microsoft Internet Explorer. The browser's address bar shows "http://www.consumerfinance.gov/". The website header includes the CFPB logo and navigation links for "About", "How do I...", and "Learn". The main content area features three large colored boxes: an orange box for "submit a credit card complaint" with a credit card icon, a blue box for "Building the cfpb a progress report" with a forklift icon, and a teal box for "tell your story" with a person icon. Below these are two smaller white boxes: "Know Before You Owe student loans" with a document icon, and "Student debt repayment assistant Know your options" with a book icon.

#APSCU2012

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# MAY 2012



A screenshot of the Consumer Financial Protection Bureau (CFPB) website as viewed in Internet Explorer. The browser's address bar shows "http://www.consumerfinance.gov/". The website header includes the CFPB logo and the text "Consumer Financial Protection Bureau" and "An official website of the United States Government". A navigation menu contains links for HOME, INSIDE THE CFPB, GET ASSISTANCE, PARTICIPATE, REGULATION, and SUBMIT A COMPLAINT. The main content area features a large blue banner with the heading "How will you pay for college?" and a sub-heading "Students and families across the country are sifting through acceptance letters and financial aid information...". Below this is a link "Learn more and compare schools side-by-side." To the right of the banner is a sidebar with three sections: "Submit a complaint", "Check the status of your complaint", and "Tell your story". At the bottom of the page, there is a section titled "Continuing our promise of diversity" with a sub-heading "Today is my first day as the Director of the Office of Minority and Women Inclusion at the" and a date "MAY 9". The browser's status bar at the bottom shows "Internet | Protected Mode: On" and "100%".

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# QUESTIONS AND DISCUSSION



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