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National Association of Federally-Insured Credit Unions

June 29, 2020

The Honorable Mitch McConnell Majority Leader United States Senate Washington, D.C. 20510	The Honorable Charles E. Schumer Minority Leader United States Senate Washington, D.C. 20510
The Honorable Nancy Pelosi Speaker U.S. House of Representatives Washington, D.C. 20515	The Honorable Kevin McCarthy Minority Leader U.S. House of Representatives Washington, D.C. 20515

Re: The need for a bipartisan commission for the Consumer Financial Protection Bureau

Dear Leader McConnell, Speaker Pelosi, Leader Schumer and Leader McCarthy:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to ask you to consider the leadership structure of the Consumer Financial Protection Bureau (CFPB). As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 120 million consumers with personal and small business financial service products.

NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current leadership of the agency, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential Administration to another. The U.S. Supreme Court highlighted this fact when it released a decision this morning in *Seila Law v. the Consumer Financial Protection Bureau* that found the firing of the single director only for "just cause" to be unconstitutional. The opinion accompanying the decision lays out the serious concerns with the single director structure of the CFPB, including:

> *"Because the CFPB is headed by a single Director with a five-year term, some Presidents may not have any opportunity to shape its leadership and thereby influence its activities. A President elected in 2020 would likely not appoint a CFPB Director until 2023, and a President elected in 2028 may never appoint one. That means an unlucky President might get elected on a consumer-protection platform and enter office only to find herself saddled with a holdover Director from a competing political party who is dead set against that agenda. To make matters worse, the agency's single-Director structure means the President will not have the opportunity to appoint any other leaders— such as a chair or fellow members of a Commission or Board—who can serve as a check on the Director's authority and help bring the agency in line with the President's preferred policies."* (p. 24)

The majority of the Court agreed with these concerns today when they wrote:

> *"…the CFPB is led by a single Director who cannot be described as a "body of experts" and cannot be considered "non-partisan" in the same sense as a group of officials drawn from both sides of the aisle. 295 U. S., at 624. Moreover, while the staggered terms of the FTC Commissioners prevented complete turn-overs in agency leadership and guaranteed that there would always be some Commissioners who had accrued significant expertise, the CFPB's single-Director structure and five-year term guarantee abrupt shifts in agency leadership and with it the loss of accumulated expertise."* (p. 16-17)

Both the House and Senate have legislation pending in the forms of H.R. 6116 and S. 3990 that would address these concerns by replacing the CFPB's single director structure with a bipartisan commission. We believe this approach is an appropriate and sensible remedy that would bring long term stability to the Bureau in light of the Court's decision. In addition to safeguarding the CFPB from executive and political interference, a Senate confirmed, bipartisan commission will provide a balanced and deliberative approach to supervision, regulation, and enforcement by encouraging input from all stakeholders. The majority of the Court seemed to echo that need for Congressional action when they wrote:

> *"As in every severability case, there may be means of remedying the defect in the CFPB's structure that the Court lacks the authority to provide. Our severability analysis does not foreclose Congress from pursuing alternative responses to the problem—for example, converting the CFPB into a multimember agency. The Court's only instrument, however, is a blunt one."* (p. 36)

It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission.

We thank you for your leadership and appreciate the opportunity to share our thoughts. We look forward to continuing to work with you on pandemic relief and economic recovery. Should you have any questions or require any additional information, please contact Brad Thaler, NAFCU's Vice President of Legislative Affairs, at 703-842-2204 or bthaler@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO

cc: Members of the United States Senate
Members of the U.S. House of Representatives