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The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey:

On behalf of our members, I am writing today in response to the hearing on the nomination of Mr. Rohit Chopra to be the next Director of the Consumer Financial Protection Bureau (CFPB). Credit Union National Association (CUNA) represents America's credit unions and their 120 million members.

We look forward to working with the next CFPB Director, one that we hope will recognize the unique structure of credit unions and the enormous benefit they provide to consumers in need of high-quality, low-cost financial services.

That said, we continue to have significant concerns about the untenability of the Bureau's single Director structure. Stability of leadership and clarity of mission are critical features of any efficient and effective regulatory body. The CFPB – as it stands – has neither. There may be no better sign of that instability than the fact that Congress is now considering a new Director nomination for the third time in nine years despite the role's statutory term of five-years. For that reason and others, we believe the best path forward for the CFPB is for Congress to pass legislation establishing a multi-person, bipartisan commission to lead the Bureau, as was originally proposed by the Obama administration in 2009.

Now is a particularly critical time for Congress to act on commission legislation. In June 2020, the U.S. Supreme Court issued a landmark opinion in the *Seila Law* case striking down the "for-cause" removal provision in the Consumer Protection Act.¹ The practical effect of the Court's decision was to render the Director removable by the President for any reason. The judicial elimination of one of the pillars of the CFPB's independence not only substantially changes the Bureau's ability to reliably police consumer financial protection laws but virtually guarantees a political seesaw that will harm regulated entities and consumers alike.

Looking back to 2010, the legislative record makes clear that Congress pushed for structural safeguards exactly for the purpose of ensuring the Bureau's independence from presidential control. In fact, no iteration of the legislation establishing a consumer protection bureau envisioned an individual director serving at the President's pleasure. Congress did not want the CFPB to be a de facto executive agency as it is now. And Congress should act swiftly to establish a bipartisan commission, as the current Bureau is an administrative Frankenstein the 111th Congress would have rejected.

Proponents of the CFPB have historically hailed it as a regulatory agency with an obligation to fairly and independently administer federal consumer protection law. However, the current structure has proven to be its Achilles' heel and has resulted in an agency that is only independent from the minority political party. During the Bureau's short history, without a commission structure, its actions have been marked by wild swings in its approach to rulemakings, supervisory practices, and enforcement policies.

¹ *Seila Law LLC v. CFPB*, 140 S. Ct. 2183 (2020).

It is undeniable that credit unions have been affected by these regulatory swings over the last decade. The probability of this instability continuing would decrease at a consumer financial protection agency led by a bipartisan commission. Such a commission would effectively eliminate the uncertainty that results when the promulgation of regulation and enforcement is levied at the whim of a single individual. Given the impact consumer financial protection has on the daily lives of Americans, a commission would be a suitable mechanism to encourage a balanced, transparent approach to regulation characterized by public discourse and democratic policy-making.

Consumers deserve better than a winner-take-all political bureau. Only through the establishment of a bipartisan commission will the Bureau have the type of independence that proponents herald and the steady approach to regulation that consumers and regulated entities need. We appreciate that commission legislation has been introduced in previous Congresses and encourage this Congress to finally cure the Bureau's fatal flaw.

We look forward to working with you on this matter. On behalf of America's credit unions and their 120 million members, thank you for your consideration of this request.

Sincerely,



Jim Nussle
President & CEO