NCLC

**National
Consumer Law
Center**

*Fighting Together
for Economic Justice*

NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

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Acting Director David Uejio
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Effect of the Supreme Court's Standing Decision on the CFPB's Work

Dear Acting Director Uejio:

We are writing to highlight the effect of the Supreme Court's recent decision in *TransUnion L.L.C. v. Ramirez*, 141 S. Ct. 2190 (U.S. June 25, 2021) on the CFPB's work. The *Ramirez* decision significantly impairs the ability of consumers to privately enforce numerous federal consumer laws in federal court, particularly disclosure requirements. Many of these federal consumer laws are statutes that the CFPB administers.

The *Ramirez* decision follows up on the Court's 2016 decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), which, like *Ramirez*, addressed whether the injury a consumer suffered due to an inaccurate credit report met the concreteness requirement for Article III standing. Ramirez further limits consumers' standing, for example by rejecting risk of harm as a basis for suit in federal court except to the extent that the suit seeks prospective relief such as an injunction.

As detailed in this issue brief, these Supreme Court decisions will affect private enforcement of, among other statutes, the Equal Credit Opportunity Act (ECOA), Electronic Funds Transfer Act (EFTA), Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA), Real Estate Settlement Procedures Act (RESPA), and Truth in Lending Act (TILA).

In light of *Ramirez,* the CFPB should take the following steps to maximize the enforceability of the consumer protection statutes that it administers.

Amicus Program

- File amicus briefs to support private litigants' standing in federal court to enforce federal consumer protection statutes.

- Submit amicus briefs in state courts regarding the importance of broad interpretations of state standing doctrines for the enforcement of consumer protection statutes.

- File amicus briefs in support of the availability of injunctive relief in private suits wherever such relief is not clearly and explicitly foreclosed by the relevant consumer protection statute.

Regulations

- Do not rely solely or primarily on disclosures as a consumer protection tool when drafting regulations due to the barriers that the *Ramirez* decision creates to privately enforcing them.
- Avoid adopting any regulations or policies that would have the effect of explicitly or impliedly preempting state laws, and issue guidance or clarification of the limited scope of preemption of state laws for statutes such as the FCRA that do provide for federal preemption. Given the Supreme Court's restrictive view of Article III standing, it is particularly important that state courts not dismiss state law consumer protection claims on the misguided basis that federal law preempts them.
- Issue interpretations or regulations saying that injunctive relief is available to consumers under the FCRA, the FDCPA, RESPA, and other consumer protection statutes wherever such relief is not clearly and explicitly foreclosed by the relevant statute.

Supervision and Enforcement

- Take standing as well as private enforceability of a provision into account when determining CFPB supervision and enforcement priorities.
- Consider which state standing doctrines will create additional barriers to private enforcement when determining CFPB supervision and enforcement priorities.

Thank you for your time and attention. We look forward to the opportunity to discuss these ideas with the appropriate staff at the CFPB.

For more information about NCLC's *Ramirez* resources, please see: www.nclc.org/training-and-additional-resources/transunion-l-l-c-v-ramirez.html.

Sincerely,

Carolyn Carter
Deputy Director
ccarter@nclc.org