



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Financial Practices

April 12, 2021

Staff Note Regarding the Holder Rule and Large Transactions

The Commission's Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 16 C.F.R. Part 433 (commonly known as "the Holder Rule"), does not contain a maximum transaction limit. In 1976, however, FTC staff issued guidelines, which were never adopted by the Commission, that stated that the Holder Rule "incorporates" an exemption for large transactions in the Truth in Lending Act ("the TILA"), 15 U.S.C. § 1603, and Regulation Z, 16 C.F.R. Part 226.¹ Prompted by comments taking opposing views on whether the Holder Rule incorporates the TILA's exemption for large transactions, staff has reexamined this issue.² We conclude that this statement in the 1976 staff guidelines is contrary to the text of the Holder Rule and the intent of the Commission when the Holder Rule was adopted.

Because the Holder Rule was not adopted pursuant to the TILA, it is not inherently subject to the exemptions set forth in that Act.³ Nor does the text of the Rule adopt the TILA's exemption for large transactions. To the contrary, when the Rule was adopted in 1975, the Commission declined to adopt such a limitation. Some industry representatives requested an exemption for high price sales, but the Commission expressly rejected this proposal, stating that the practice that the Rule addresses "does not cease to be unfair simply because it involves a larger amount of money."⁴ On its face, the Holder Rule applies to the sale or lease of goods or services to consumers with no ceiling on the size of the transaction.⁵

¹ Guidelines on Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, at 9, 41 Fed. Reg. 20022, 20024 (May 14, 1976) ("Additional limitations on [transactions to which the Holder Rule applies] are present because the definitions of 'Financing a Sale' and 'Purchase Money Loan' expressly refer to the Truth in Lending Act and Regulation Z, and thus incorporate the limitations contained in these laws. As a result, even with respect to transactions involving a sale of consumer goods or services, a purchase involving an expenditure of more than \$25,000 is not affected by the Rule."). Staff notes that a growing number of consumer transactions, such as automotive loans, involve expenditures or finance charges that exceed \$25,000.

² See Confirmation of rule, 84 Fed. Reg. 18711 n. 5 (May 2, 2019) (discussing comments received during regulatory review of the Holder Rule and stating that staff will review the relevant guidelines and educational materials in light of these comments).

³ See Final Regulations, 40 Fed. Reg. 53506, 53523 (1975) (citing FTC Act as authority for promulgating the Rule).

⁴ 40 Fed. Reg. at 53527.

⁵ 16 C.F.R. § 433.1(b), 433.2.

The argument that the transaction limit in the TILA applies to the Holder Rule has arisen because the Rule borrows the definitions of “Finance Charge” and “Credit Sale” from the TILA to identify the credit agreements in which the Rule’s notice must appear.⁶ These definitions, however, do not contain a limitation based on the amount of the transaction or financing.⁷ Since the TILA was enacted in 1968, the TILA’s exemption for large transactions has always been in a separate section – section 104.⁸

The text of the Holder Rule does not incorporate these TILA exemptions explicitly or by cross-referencing section 104 of the TILA. Under general principles of statutory and rule construction, the breadth of a given term is a separate issue from whether exemptions that appear elsewhere apply.⁹ In addition, a statute or regulation that borrows or references portions of another law does not incorporate all of the limitations in the law that is referenced.¹⁰

Thus, as the Commission stated in 1975 when it announced the Holder Rule, the Rule is not limited to transactions below a certain amount.¹¹ The Commission explicitly rejected industry proposals to insert a limitation, and the Rule itself includes no such limitation, directly or by reference to the TILA limitations set forth in section 104 of that statute. Although the 1976 staff guidelines stated that the Holder Rule “incorporated” TILA exemptions, those guidelines included a preface that cautioned that the guidelines had not been formally reviewed or adopted by the Commission, and did not alter or amend the Rule or the official Statement of Basis and Purpose published with the Rule.¹² Thus, the statement that the Holder Rule

⁶ *Id.* § 433.1(d), (e).

⁷ 15 U.S.C. §§ 1602(h), 1605(a) (2020); 12 C.F.R. §§ 1026.2(a)(16), 1026.4(a).

⁸ 15 U.S.C. § 1603 (2020); Pub. L. 90-321, Title I, § 104, May 29, 1968, 82 Stat. 147 (codified as 15 U.S.C. § 1603). In 1975, Section 104 of the TILA exempted credit transactions, other than real property transactions, in which the total amount to be financed exceeded \$25,000. 15 U.S.C. § 1603(3) (1970). In 2010, the Dodd-Frank Act amended this exemption by substituting \$50,000 for the \$25,000 ceiling and mandating future adjustments for inflation. Pub. L. No. 111-203, § 1100E, 124 Stat. 2111, 1871 (2010); *see also* 76 Fed. Reg. 18354 (Apr. 4, 2011) (amending Reg. Z to implement new ceiling and inflation adjustments); 12 C.F.R. Part 1026, Supp. I, Official Interpretations, Section 1026.3 - Exempt Transactions, 3(b) Credit Over Applicable Threshold Amount (2020).

⁹ *Cf. Energy Research Found. v. Def. Nuclear Facilities Safety Bd.*, 917 F.2d 581, 582 (D.C. Cir. 1990) (whether a government board is an “agency” within the statutory meaning of the term in open government laws is a separate issue from whether exemptions in the statutes allow it to close meetings or withhold records.)

¹⁰ *Cf. United States v. Kirvan*, 86 F.3d 309, 313 (2d Cir. 1996) (“An exception in a statute is presumed to apply only to the section to which it is attached.”)

¹¹ 40 Fed. Reg. at 53527.

¹² Guidelines on Trade Regulation Rule Concerning Preservation of Consumers’ Claims and Defenses, at 2, 41 Fed. Reg. 20022 (“The analysis is informal and advisory in that it has not been formally reviewed or adopted by the Commission. Nor does anything here alter or amend either the Rule or the official Statement of Basis and Purpose published with it.”). A press release announcing the results of the Commission’s review of auto credit transactions in 2011 contained a paragraph that assumed the Holder Rule incorporated both the \$25,000 TILA ceiling and the amendment, effective July 2011, that increased this limit to \$50,000. *See* <https://www.ftc.gov/news-events/press-releases/2011/05/ftc-finds-broad->

incorporated the \$25,000 limit in TILA's exemptions was not supported by the Holder Rule or canons of construction, and was contrary to the intent stated by the Commission when it adopted the Rule.

/s/
Division of Financial Practices

compliance-among-auto-dealers-rule-protects. For the reasons stated above, the assumption in this release that the Holder Rule incorporates the TILA's transaction limit was unfounded. Moreover, FTC staff opinions and court decisions examining the application of the Holder Rule to student loans have rejected the argument that modifications to TILA's exemptions since 1975 – such as the exemption for federally-insured student loans – create exemptions from the Holder Rule. *See Jackson v. Culinary School of Washington*, 788 F. Supp. 1233, 1250-51 (D.D.C. 1992) (applying standard rules of statutory construction, definitional terms in the FTC Holder Rule do not change with subsequent amendments to TILA's exemptions). Thus, the Holder Rule does not incorporate exemptions in the TILA's section 104 or amendments thereto.