

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



February 12, 2016

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Holder Rule Review, FTC File No. P164800

Dear Chairwoman Ramirez:

As the chief law enforcement officer for the District of Columbia, I appreciate the opportunity to submit this comment in response to the Federal Trade Commission's review of its Holder Rule regulation, 16 CFR Part 433. The purpose of this letter is to respond to the three primary issues on which the FTC has sought comment, which are:

- (1) Is there a continuing need for the Holder Rule as currently promulgated?*
- (2) What benefits has the Holder Rule provided to consumers?*
- (3) What modifications, if any, should the Commission make to the Holder Rule to increase its benefits to consumers?*

When the FTC first promulgated its Trade Regulation Rule concerning the Preservation of Consumers' Claims and Defenses, otherwise known as the Holder Rule, it did so to protect consumers who enter into credit contracts with a seller of goods or services by preserving their right to assert claims and defenses against any holder of the contract, even if the original seller subsequently assigns the contract to a third-party creditor or assignee. The Holder Rule provides recourse to consumers who otherwise would be legally obligated to make full payment to a creditor despite a breach of warranty, misrepresentation, or even fraud on the part of a seller. State Attorneys General have used and continue to use the Holder Rule to obtain relief for consumers deceived into purchasing services, such as vacation club memberships or education offered by for-profit colleges, that were not delivered as promised.

The Commission has recognized that consumers often simply fail to read the terms of consumer contracts. SBP, 40 Fed. Reg. 53506, 53525. The contracts consumers are asked to sign are often

long, complicated, and full of confusing terms. Embedded deep within these terms are Holder Rule notices, which make them hard to find and easy to disregard. When read by consumers, the “legalistic” wording of the notice may make it difficult for consumers to understand their rights. SBP, 40 Fed. Reg. 53506, 53526. In order to help consumers better understand their rights, I recommend the Holder Rule notice be modified to make it more readily understood by consumers. I also recommend that the Holder Rule Notice state that a consumer’s right to assert claims is unconditional and cannot be waived, so that consumers will be less subject to deceptive statements that state otherwise.

I agree with a recommendation that has been made by others, that the Holder Rule be amended to require its notice be included in collection notices. This change should not create significant additional expense to debt collection notices, particularly those sent in bulk, but will ensure consumers are more fully informed of their rights.

Lastly, I urge the Commission to expand the application of the Holder Rule beyond sellers such that, even in the absence of an express notice, lenders who are assigned the underlying contract or other holders of consumer credit contracts are subject to all claims and defenses that could be asserted against the original seller of the goods or services. There is clear precedent under the UCC for reading the Holder Rule into such contracts. Specifically, Article 9 of the UCC, adopted by the District of Columbia and all fifty states, makes an omitted Holder Rule notice part of a credit-sale agreement as a matter of law. D.C. Code §§ 28:9-403(d), 9-404(d). This change will further advance the original purpose of the Holder Rule, which is to protect consumers from having to continue to pay for goods or services that were purchased as a result of either deception or an unfair trade practice.

In closing, I believe the continued promulgation, as well as clarification and expansion of the Holder Rule, would benefit consumers.

Sincerely,



Karl A. Racine
Attorney General for the District of Columbia