

HEARTLAND CREDIT UNION ASSOCIATION

February 12, 2016

Heartland Credit Union Association
2055 Craigshire Road
St. Louis, MO 63146

Submitted via: Regulations.gov

Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: Holder Rule Review, FTC File No. P164800

Dear Sir or Madam:

On behalf of the 1.453 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Federal Trade Commission's (FTC) systematic review of the efficiency, costs, benefits, and impact of the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (Holder Rule).

HCUA supports the goal of this rule to protect consumers from any harmful practices during the purchase of consumer goods or services. Credit unions exist to serve their members, and have a strong tradition of protecting the interests of members and putting their needs first. While member service is one of the most important tenets of the credit union movement, once a contract for a consumer purchase is assigned to another party there are sometimes aspects of this agreement that are then beyond the reach or control of the credit union. To that end, HCUA supports compliance with the Holder Rule, but has some concerns about the possibility that credit unions could be held liable for the bad behavior of others when it is beyond their ability to prevent it. Furthermore, we believe the recent addition of a new regulator for consumer financial issues, in conjunction with the credit union industry's history of compliance with the Holder Rule, renders it unnecessary to expand its scope in any way.

Background of the Holder Rule for Credit Unions

The Holder Rule applies to sellers of goods, such as automobile dealers, who provide or arrange financing for their customers. Sellers are required to include a notice in their loan agreement, or ensure that lenders they refer customers to include the notice in their loan agreement, that preserves the consumer's claims and defenses against the seller of the goods. The Holder Rule does not directly create a duty by a financial institution to place the notice in a loan agreement unless a financial institution has a relationship with the seller or automobile dealer, or unless the lender is selling the goods, such as an automobile, directly to the consumer. Credit unions who engage in indirect auto lending can be impacted by this rule

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because of their relationships with auto dealers, but the rule may also apply in any situation where the credit union is considered both the seller and the lender. An example of this could be credit union sales of repossessed property.

Credit Unions Support Fair Treatment of Consumers in Arrangements with Auto Dealers and in Other Consumer Contracts

Some credit unions have arrangements with auto dealers in which the dealer provides opportunities for the credit union to make an auto-secured loan. In this type of an arrangement, the Holder Rule is applicable, and it is necessary for the notice to be present in the loan agreement when the credit union finances the loan for the consumer. As such, the consumer could possibly hold the credit union liable if the contract is then assigned. This puts the onus on the financial institution to take proper precautions to assure the assignee is a legitimate business that is not defrauding the consumer. However, even outside of the Holder Rule, taking precautions for due diligence when dealing with a third party is not a unique requirement. Credit unions take such precautions in nearly all similar arrangements, and are required in most instances by the National Credit Union Administration (NCUA) or the Consumer Financial Protection (CFPB) to do so. The mission of member service and credit unions' unique structure as member-owned financial institutions also make it standard that they would take such precautions. Accordingly, the FTC should not expand the scope of this rule in any way that would add additional compliance burdens for credit unions, since they are already operating in a manner consistent with the intent of the Holder Rule.

A Credit Union Can only Control the Compliance of a Seller to a Certain Extent

Some credit unions have expressed concern to HCUA that no matter how many controls they put in place during the review process of an indirect loan, it can be impossible in some circumstances to prevent fraud or mistreatment of the consumer further down the line. For example, they noted it would be impossible to determine if a consumer was fairly treated in compliance with all consumer protection laws, and to monitor all potential compliance violations by a car dealer in an indirect auto loan unless the credit union was present for the underwriting. These credit unions reasoned that if they were part of the underwriting process, this would defeat the purpose of indirect lending. As such, we urge the FTC to consider the fact that in consumer contracts, there are certain aspects of consumer protection that are beyond a first party creditor's control once the contract is assigned. The FTC should consider this if changes are made to the Holder Rule.

Thank you for the opportunity to comment on this review of the Holder Rule. If you have any questions concerning our letter, please feel free to contact me.

Sincerely,

Don Cohenour
Marla Marsh