

THE
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FTC Confirms Holder Rule

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The FTC has [published a notice in the Federal Register](#) announcing that it has decided to retain its Holder Rule without modification. The FTC stated in the notice that it received 19 comments, all of which urged retaining the rule.

As part of a systematic review of all of its rules and guides, the FTC sought public comment on the Holder Rule in November 2015, including the rule's efficiency, costs and benefits, and impact. Officially titled the "Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses," the rule requires sellers that arrange for or offer credit to finance the purchase of consumer goods or services to include a specified "holder notice" in the credit contract. The notice must state that any holder of the contract is subject to all claims and defenses the consumer could assert against the seller of the financed goods or services, with the consumer's recovery limited to the amount paid by the consumer under the contract.

In the notice, the FTC restates its May 2012 advisory opinion which provided that the rule does not limit affirmative recovery to situations where the seller's conduct warrants rescission of the contract, or where the goods or services sold to the consumer are worthless.

Also in the notice, the FTC affirms that the ability of a consumer to bring an affirmative claim based on the Holder Rule does not depend on whether state law authorizes affirmative actions against holders. In particular, the FTC indicates that it disagrees with the Eighth Circuit's 1999 decision in *LaBarre v. Credit Acceptance Corp.*, in which the court concluded that a Minnesota consumer could not rely on the holder notice to bring an action against an assignee of the credit contract because a Minnesota statute providing similar protections only allowed consumers to raise the statutory protections as a defense or set-off. The FTC states that, in its judgment, the Eighth Circuit "erred by limiting recovery under the Holder Rule to defense or set-off under the Minnesota statute. The Minnesota statutory limitation might apply to claims and defenses asserted under the specific subdivision of the Minnesota Code, but would not apply to other claims and defenses that a consumer might assert against the seller."

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