



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

Division of Financial Practices
Bureau of Consumer Protection

April 7, 2016

Jeff Appel
Deputy Under Secretary
U.S. Department of Education
Office of the Under Secretary
400 Maryland Ave, SW
Washington, DC 20202

Dear Mr. Appel,

This letter is in response to your request for a staff advisory opinion regarding the Federal Trade Commission's Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 16 C.F.R. § 433, commonly known as the Holder Rule. Specifically, you note that courts commonly allow consumers to assert time-barred claims defensively, even if they would not be able to assert such claims in an affirmative lawsuit, and ask if such defensive claims would be permitted under the Holder Rule. As explained below, the Holder Rule would permit the time-barred claims or defenses against the holder, if state law would permit the time-barred claims or defenses against the seller.

The Holder Rule protects 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. In particular, the Holder Rule requires sellers that arrange for or offer credit to finance consumers' purchases to include in their credit contracts the following Notice:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED [PURSUANT HERETO OR] WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

16 C.F.R. § 433.2.

A creditor or assignee of the contract is thus subject to all claims or defenses that the consumer could assert against the seller. As you note in your request, the Guidelines that accompany the Holder Rule explain that "claims and defenses" are "not given any special definition by the Commission... . Appropriate statutes, decisions, and rules in

each jurisdiction will control, and the pertinent rules of law and equity, including rules of evidence, procedure, and statutes of limitations, will continue to apply.”¹

Thus, the Rule protects consumers’ existing claims and defenses, and does not create any new claims or defenses for the consumer. Accordingly, if a statute of limitations bars an affirmative lawsuit against a seller under state law, that law would continue to apply. If, however, other applicable state law would still permit the claim against the seller, then under the Holder Rule, the claim could be used as to subsequent holders of the contract. Further, if state law allows consumers to assert time-barred claims as defenses against the seller, then the Holder Rule would allow consumers to assert such defenses against subsequent holders as well.

Please be advised that the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinions of those staff charged with enforcement of the Holder Rule.

Sincerely,



Stephanie Rosenthal
Chief of Staff, Division of Financial Practices
Federal Trade Commission
Bureau of Consumer Protection

¹ FTC, *Guidelines on Trade Regulation Rule Concerning Preservation of Consumers’ Claims and Defenses*, 41 Fed. Reg. 20022 (May 14, 1976), available at <https://www.ftc.gov/system/files/documents/rules/holder-rule/760504hidcrule.pdf>.