Louisiana: R. Collins Vallee, Special Counsel, Consumer Protection Unit, Department of Justice, R. 5475–76.

Massachusetts: Lawrence R. Buxbaum, Assistant Attorney General, Chief, Consumer Protection Division, Department of the Attorney General, Commonwealth of Massachusetts, Tr. 1300–1314.

Minnesota: Thomas J. Tahnk, Supervisor of Consumer Credit, Banking Division, Department of Commerce, Tr. 2196–2207, R. 7145–49.

New Jersey: Carl F. Fianchi, Department of Community Affairs, State of New Jersey, R. 1639.

New York: Louis J. Lefkowitz, Attorney General, State of New York, R. 1004–1005; see also Tr. 9–31. Betty Furness, Chairman and Executive Director, New York State Consumer Protection Board, Tr. 31–43, R. 1216–1219. Thomas J. Mackell, District Attorneys, Queens County, R. 1012–1016. Bess Myerson, Commissioner, New York City Department of Consumer Affairs, Tr. 360–382, R. 1017–1023. Anita De Gregorio, Administrative Assistant, Office of Consumer Affairs, County of Onondaga, R. 5483–5594, 5676.

Oregon: Roger Rook, District Attorney, Oregon City, R. 5333–34.

Pennsylvania: Joel Weisberg, Director, Division of Consumer Affairs, Commonwealth of Pennsylvania, R. 5255–56.

Puerto Rico: Maximiliano Trujillo, Assistant Secretary, Department of Consumer Affairs, Consumer Services Administration, R. 5272–73.

South Dakota: John S. DeVany, Commissioner of Consumer Affairs, Office of Attorney General, State of South Dakota, R. 3505–3506.

Utah: W. S. Brimhall, Commissioner of Financial Institutions, State of Utah, R. 57.

Virginia: William T. Lehner, Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, Commonwealth of Virginia, R. 5262–63. Carl A. S. Coan, Jr., Chairman, Consumer Protection and Public Utility Commission, Fairfax County, R. 5605–07.

Wisconsin: Robert W. Warren, Attorney General, State of Wisconsin, R. 1755–1766, 5458–59. Hon. Harout O. Sanasarian, Wisconsin State Assemblyman, Tr. 510–526, R. 1224–1236. Daniel A. Milan, Director, Bureau of Consumer Protection, State of Wisconsin, Tr. 526–540. Richard Victor, Assistant Attorney General, Office of Consumer Protection, Department of Justice, State of Wisconsin, Tr. 2173–2181.

[6] Hon. Edward Thompson, J.S.C., Administrative Judge, Civil Court of the City of New York ("collective approval" of the proposed rule expressed "on behalf of the 120 judges" of the Civil Court), R. 560–561 and 1654–1655. Hon. Arthur Dunn, Associate Judge, Circuit Court of Cook County, Illinois, Tr. 757–775.

[7] Hon. Ron Basford, R. 1719.

[8] R. 137–325 and R. 3528–3580.

[9] *E.g.*, Local 320, Office and Professional Employees International Union, R. 14; North Carolina Consumers Council, Inc., R. 328; Rhode Island Consumers' Council, R. 945–969; NAACP Legal Defense and Education Fund, National Office for the Rights of the Indigent, R. 978–986; Center for Analysis of Public Issues, Princeton, N.J., R. 987–997; United Auto Workers, R. 1301–1307; Leland Blabee Broadcasting Company, Tucson, Arizona, R. 2526–2527; consumer Advisory Council, Office of Consumer Affairs, Executive Office of the President, R. 3386–3387; Arizona Consumers Council, R. 3515–3520; Minnehaha County Farmers Union, Sioux Falls, South Dakota, R. 2468.

[10] *E.g.*, Atlanta Legal Aid Society, Atlanta, Georgia, "Each year the Society's attorneys handle approximately 17,000 cases, of which about 35% are consumer problems . . . [M]any of these cases eventually involve litigation in which the holder in due course concept is an important factor." R. 20, plus two case histories, R. 21–23; "An analysis . . . makes one thing abundantly clear: the holder in due course concept is the very heart of these operations. For it is essential to the disreputable seller that he be able to realize payment and then flee (either by actually leaving the jurisdiction or by ceasing operation) before this deception becomes apparent." R. 23. "This office is prepared to deliver . . . . over one hundred case histories involving unfair consumer notes with which we have come in contact within the last six months." Memphis and Shelby County Legal Services Association, *Memphis*, Tennessee, R. 1626–1627. "We are confronted almost daily with the harsh and inequitable effects of the holder in due course doctrine." Legal Aid Society of Metropolitan *Denver*, Colorado, R. 3344–3447.

[11] *E.g.*, R. 15, 91, 390, 1365, 1366, 1678.

[12] *E.g.*, ". . . [T]hese will be additional steps to help clean up the inequities of the market place. There is no reason why the holder-in-due-course should assume no responsibility for performance." Stewart Lee, Chairman, Department of Economics and Business Administration, Geneva College, R. 17; John F. Disterhof, California Institute of Technology, R. 1595; Prof. William Seeman, University of Cincinnati, R. 1680; Prof. Phoebe Harris, Mississippi State University, R. 2528.

[13] Law professors Eovaldi (Tr. 784), Guttman (Tr. 1314), Kripke (Tr. 437), Leary (Tr. 967), Wagman (Tr. 600) and Willier (Tr. 1033).

[14] *E.g.*, "[Y]our proposed rule . . . is both excellent and long overdue. I have worked with a great many retailers and I speak from very intimate knowledge." Donald Von Rase, R. 7; "I have no personal axe to grind, but I have seen many of my employees and fellow workers gravely hurt by these contracts and feel that this protection is essential for the consumer." A. Kazanow, Treasurer, Long Transportation Co., R. 13; "As manager of a Credit Union I have seen many of our members 'taken in' . . ." Donn Ashcroft, R. 352; "[L]egal technicalities of this kind . . . are certainly doing a disservice to the free enterprise system." F. Kavli, President, Kavlico Electronics, Inc., R. 1683.

[15] Alvin F. Friedman, Vice President, Amalgamated Trust and Savings Bank, Chicago, R. 1357–1361; R. L. Mullins, Chairman, The Wolfe City National Bank, Wolfe City, Texas, R. 3398–3399.

[16] *E.g.*, R. 1521; "I feel the . . . regulation would be harmful to the consumer rather than help them." Diana M. Bird, R. 2547, R. 2565.

[17] Hon. John R. Rarick, United States House of Representatives, R. 2455–2456. Hon. Willard J. Moody, State Senator, Commonwealth of Virginia, R. 1645.

[18] *E.g.*, Hughes Motor Co., R. 51; Western Auto Associate Store, Farrant, Alabama, R. 61; O'Fallon Frozen Food Lockers, R. 389; Horace Terry Pontiac Co., R. 393; Lou Backrodt Chevrolet, R. 1380–1381; Bill Hull's Appliances, Inc., R. 1519; Sid's Appliance Centers, R. 1529; Carl's TV Sales and Service, R. 3423; Fiore Brothers, Inc., General Contractors, R. 3486.

[19] *E.g.*, First National Bank, Elkhart, Indiana, R. 52; First National Bank of McMinn County, Athens, Tennessee, R. 66–67; Farmers National Bank of Lititz, Pennsylvania, R. 69; Northwest Pennsylvania Bank & Trust Co., Oil City, Pennsylvania, R. 83; The Citizens Bank of South Hill, Virginia, R. 85; The Citizens Bank, Farmington, New Mexico, R. 96; First Bank of Immokalee, Florida, R. 1674; Citizens National Bank, Ennis, Texas, R. 2522; Webster Groves Trust Co., Webster Groves, Missouri, R. 3502, Marine National Exchange Bank, Milwaukee, R. 58–60; National Bank of Detroit, Michigan, R. 2496–2498.

[20] *E.g.*, Cessna Finance Corp., R. 81–82; Security Mutual Finance Corp., Decatur, Alabama, R. 95; Transamerica Financial Corp., R. 1648–1650; Household Finance Corp., R. 1728–1734; Budget Finance Plan, Los Angeles, R. 2026–2031.

[21] *E.g.*, General Electric Credit Corporation, R. 1989–1993; Ford Motor Credit Company, R. 2057–2070; General Motors Acceptance Corp., R. 2457.

[22] *E.g.*, Professional Remodelers Association of Greater Chicago, R. 1363–1364; National Institute of Locker and Freezer Provisioners, R. 1670–1671; National Association of Engine and Boat Manufacturers, R. 2296–2313; Georgia Tire Dealers and Retreaders Association, R. 3581–3582.

[23] *E.g.*, National Independent Automobile Dealers Association (R. 2189–2190) and Independent Automobile Dealers Associations of: Texas, R. 53–54; Pennsylvania, R. 55–56; Florida, R. 2544; Lubbock, Texas, R. 3478; Alabama, R. 3478; Alabama, R. 3526–3527. National Automobile Dealers Association (R. 2356–2366) and Automobile Dealers Associations of: Texas, R. 53–54; Pennsylvania, R. 55–56; Florida, R. 2544; Lubbock, Texas, R. 3478; Alabama, R. 3526–3527. National Automobile Dealers Associations of: Indiana, R. 1640–1644 and Dayton, Ohio, R. 2463–2464; Volkswagen American Dealers Association, R. 2350–2355.

[24] *E.g.*, Banking; American Industrial Bankers Association, R. 27–30; Illinois Bankers Association, R. 1690–1691; American Bankers Association, R. 1861–1862; Consumer Bankers Association, R. 1907–1924; District of Columbia Bankers Association, R. 2480–2485.

Finance: Independent Finance Association of Illinois, R. 1372–1379; National Consumer Finance Association (1,200 member finance companies), R. 1994–1997; Illinois Consumer Finance Association, R. 2021–2025.

Other; Connecticut Credit Union League, R. 1660–1661; United States Savings and Loan League, R. 1735–1736.

[25] *E.g.*, American Express Company, R. 1212–1215; Western States Bankcard Association, R. 1863–1906; Texaco, Inc., R. 2004–2005; Charge Card Association, R. 2476–2479; Carte Blanche Corp., R. 3404–3405.

[26] *E.g.*, "[W]hat you would be doing if you adopt this kind of regulation would be 'kill the goose that lays the golden egg'. . .", Tom Sealy, Esq., Stubbeman, McRae, Sealy, Laughlin & Browder, Midland, Texas, R. 87–90; Ugo F. Ippolito, Esq., Birmingham, Michigan, R. 97–98; Philip Dale Segrest, Esq., Montgomery, Alabama, R. 367–369; "I strongly urge you to curb and restrain this curious fascination for changing society by administrative ruling." Jon Oden, Esq., Amarillo, Texas, R. 1681.

[27] *E.g.*, Edward A. Dauer, Assistant Professor of Law, University of Toledo, Ohio, R. 3396–3397.

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FEDERAL TRADE COMMISSION

[16 CFR Part 433]

PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Notice of Proceeding, Proposed Amendment to Trade Regulation Rule, Statement of Reason for Proposed Amendment, Invitation To Propose Issues of Fact for Consideration in Public Hearings, Invitation To Comment on Proposed Amendment

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. Section 41, *et seq.*, the provisions of Part I, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR § 1.11 *et seq.*, and Section 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code, (Administrative Procedure) has initiated a proceeding for the promulgation of an amendment to the above referenced Trade Regulation Rule.

In accordance with the above notice, the Commission proposes to revise § 433.2:

§ 433.2 Preservation of Consumers' Claims and Defenses, Unfair or Deceptive Acts or Practices.

In connection with any Purchase Money Loan (as that term is defined in § 433.1) or any sale or lease of goods or services, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair or deceptive act or practice within the meaning of Section 5 of that Act, for a seller or a creditor, directly or indirectly, to take or receive a consumer credit contract which fails to contain the following provision in at least ten point, boldface type:

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 BE LIMITED TO AMOUNTS PAID BY THE DEBTOR HEREUNDER.

(38 Stat. 717, as amended, 15 U.S.C. sec. 41 et seq.)

STATEMENT OF REASON FOR THE PROPOSED AMENDMENT

It is the Commission's purpose, in issuing this statement, to set forth its reason for the proposed amendment with sufficient particularity to allow and encourage informed comment. While this statement adverts to issues of fact, law, and policy, it should not be interpreted as designating disputed issues of fact. Such designations shall be made by the Commission or its duly authorized Presiding Official in accordance with the Commission's Procedures and Rules of Practice.

The Commission has conducted lengthy public proceedings on the "holder in due course" doctrine and related problems in consumer sales transactions. Extensive testimony, data, and information were elicited in the course of the proceedings. On the basis of information contained in those proceedings, the Commission promulgated a TRR relating to the Preservation of Consumer's Claims and Defenses, 16 CFR 433. In that proceeding the Commission determined that it constitutes an unfair or deceptive act or practice for a seller to separate, by means of a form consumer credit contract, a buyer's duty to pay from the seller's duty to perform as promised, and that this practice is injurious to consumers and to the market as a whole.

While the proceedings on 16 CFR 433 were primarily concerned with the commercial conduct of sellers, the record contains detailed information about related commercial practices of creditors which causes the Commission to have reason to believe that many creditors are participants in the aforesaid practice, that it is unfair and deceptive for them to engage in the practice and that the proscriptions of the rule can more effectively be enforced if creditors are subject to its provisions. Therefore, in the interest of (1) encompassing within the rule all participants in the aforesaid practice whose participation is unfair or deceptive and (2) facilitating enforcement of the rule, the Commission hereby proposes the aforesaid amendment.

At issue in the instant proceeding are simply the questions of whether creditors participate in the aforesaid practice, whether it is unfair or deceptive for them to do so, and whether the rule could be more readily enforced if creditors were made subject to it. The Commission is not, in this proceeding, reopening the question of the applicability of the rule to sellers.

INVITATION TO PROPOSE ISSUES OF FACT FOR CONSIDERATION IN PUBLIC HEARINGS

All interested parties are hereby given notice of opportunity to propose disputed issues of fact, in contrast to legislative fact, which are material and necessary to resolve. The Commission, or its duly authorized presiding official, shall, after reviewing submissions hereunder, identify any such issues in a Notice which will be published in the FEDERAL REGISTER. Such issues shall be considered in accordance with Section 18(c) of the Federal Trade Commission Act, as amended by Public Law 93-637, and in accordance with rules promulgated thereunder. Proposals shall be accepted until no later than January 15, 1976 by the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580. A proposal should be identified as a "Proposal Identifying Issues of Fact-Holder in Due Course," and, when feasible and not burdensome, submitted in five copies. The time and place for public hearings will be set forth in a later Notice which will be published in the FEDERAL REGISTER.

INVITATION TO COMMENT OF THE PROPOSED AMENDMENT TO 16 CFR 433.2

All interested parties are hereby notified that they may also submit, to the Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580, such data, views, or arguments on any issues of fact, law, or policy, which may have some bearing on the proposed amendment. Written comments, other than proposals identifying issues of fact, will be accepted until forty-five days before commencement of public hearings, but at least until January 15, 1976. To assure prompt consideration of a comment, it should be identified as a "Holder in Due Course Comment" and, when feasible and not burdensome, submitted in five copies.

Issued: November 14, 1975.

By the Commission.

CHARLES A. TOBIN,
Secretary.

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