



February 12, 2016

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

**RE: Holder Rule Review, FTC File No. P164800**

Dear Ms. Rosenthal,

The MBA<sup>1</sup> appreciates the opportunity to respond to the Federal Trade Commission's (FTC) request for comments on the overall costs and benefits and regulatory and economic impact of the "Holder Rule." The regular review of existing regulations and guidelines is an essential part of creating an efficient and functional marketplace and MBA commends the FTC for this effort.

Specifically, the FTC has requested feedback on the continued need for the Rule, whether the Rule should be modified, and what if any benefits the Rule creates, among other questions. For the reasons discussed here, MBA does not believe that expansion of assignee liability is necessary and that any such expansion via the Holder Rule could be harmful to the marketplace and to consumers. Moreover, considering the establishment of assignee liability under other provisions of law, attention should be given to whether the rule is necessary.

The Holder Rule was developed to provide protection to consumers who procure goods or services using credit, even if that credit contract is sold to a third party. The Rule provides that any holder of a consumer credit contract is subject to the same claims and defenses that a consumer could assert against the original seller so long as the consumer has paid on the debt. Recovery is limited to amounts paid by the consumer.

Assignee liability is a key concern in the mortgage market where mortgage loans are bought, sold, and securitized. When lenders have the ability to sell or securitize loans in the secondary market rather than hold them on a balance sheet, more capital is available to make additional loans, increasing access to affordable credit for a greater number of borrowers. The pricing and

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mba.org](http://www.mba.org).

availability of this liquidity is driven by the buyers' and investors' ability to accurately gauge the risk associated with each loan. Part of this risk is the extent of potential legal liability for the loan.

As the Holder Rule stands, significant liability is presented. Were such liability expanded further, MBA is deeply concerned that it would disrupt investor confidence, shrink the availability of credit and drive up the price of the credit. Moreover, such an expansion of the Rule is unnecessary. Assignee liability is already well developed in the mortgage marketplace. In recent years, Congress has passed several laws, including the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA) and most recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), with specific and detailed assignee liability provisions.

It is important to note that the industry is still adapting and responding to these statutory changes in assignee liability as well as those flowing from Dodd-Frank rules including the Ability to Repay and TILA-RESPA<sup>2</sup> Integrated Disclosure (TRID) or Know Before You Owe (KBYO) rules. Further expansion of the Holder Rule at this time would interfere with this adjustment and create new uncertainty in the marketplace. Moreover, considering these changes, we urge that attention be given going forward to whether continuation of this rule is necessary or whether it confuses the current legal framework.

We appreciate the FTC's consideration of these comments and again applaud the Commission's effort to meaningfully review its rules and guides. If you have questions about this comment, please contact MBA's Vice President and Regulatory Counsel, Ken Markison, at [kmarkison@mba.org](mailto:kmarkison@mba.org) or (202) 557-2930 or MBA's Assistant Regulatory Counsel, Elizabeth Kemp, at [ekemp@mba.org](mailto:ekemp@mba.org) or (202) 557-2941.

Sincerely,

A handwritten signature in black ink that reads "Stephen A. O'Connor". The signature is written in a cursive style with a horizontal line at the end.

Stephen A. O'Connor  
Senior Vice President Public Policy & Industry Relations

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<sup>2</sup> Real Estate Settlement Procedures Act