April 30, 2026

The Honorable Andrew N. Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: Request to Withdraw the Commission's 2022 Commission Statement on the Holder Rule and Attorneys' Fees and Costs

Dear Chairman Ferguson:

On behalf of America's Credit Unions, the American Association of Credit Union Leagues, and the state and regional credit union leagues and associations (the Leagues) listed below, we are writing to you to respectfully request that the Federal Trade Commission (FTC or Commission) withdraw its January 18, 2022, Commission Statement on the Holder Rule and Attorneys' Fees and Costs (the "2022 Commission Statement"). America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 146 million members nationwide. We also urge the Commission to reconsider the April 12, 2021, Staff Note Regarding the Holder Rule and Large Transactions (the "2021 Staff Note"), which reversed longstanding guidance on the Rule's application to loans exceeding $25,000. Both actions expanded the scope and impact of the Commission's Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 16 C.F.R. Part 433 (the "Holder Rule" or "Rule"), through administrative interpretation rather than formal rulemaking. As explained below, the 2022 Commission Statement is inconsistent with the Rule's plain text, has generated significant unintended consequences for credit unions and their members, and should be withdrawn.

Plain Text of the Rule

When the Commission adopted the Holder Rule in 1975, it sought to address a specific problem: sellers were using credit structures to separate a consumer's obligation to pay from the seller's obligation to perform. The Rule required that covered consumer credit contracts include a notice preserving the consumer's ability to raise claims and defenses against the holder of the contract.[1] That notice concludes with an express limitation on recovery:

> *RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.*

[1] 16 C.F.R. § 433.2.

This cap was a deliberate design choice. It balanced the consumer's right to raise claims against the holder with a ceiling on the holder's financial exposure. The Commission's own 1976 Staff Guidelines confirmed the scope of this limitation, explaining that it "limits the consumer to a refund of monies paid under the contract, in the event that an affirmative money recovery is sought."[2] The guidelines further stated that "the consumer will not be entitled to receive from the creditor an affirmative recovery which exceeds the amounts of money the consumer has paid in."[3]

In addition to this recovery cap, the 1976 Staff Guidelines identified other boundaries on the Rule's reach, including an exemption for transactions exceeding $25,000, which the guidelines understood as flowing from the Rule's references to definitions in the Truth in Lending Act (TILA) and Regulation Z. Together with the recovery cap, these limitations reflected a balanced approach: the Rule would protect consumers from seller misconduct, but it would also keep the holder's liability proportional and predictable.

The Rule itself also does not create new substantive claims. As the 1976 Staff Guidelines noted, the phrase "Claims and Defenses" in the required notice simply incorporates whatever rights the consumer has under existing law. The Rule preserves those rights against the holder; it does not expand them. This distinction matters because the 2022 Commission Statement effectively used the Rule as a vehicle to amplify state-law fee-shifting provisions into a new and uncapped remedy against holders, something the Rule was never designed to do.

2022 Commission Statement

The 2022 Commission Statement stated that the recovery cap in the Holder Rule Notice applies only to monetary recovery "based on the Holder Rule Notice" itself, and that attorneys' fees and costs authorized by separate state laws are not subject to the cap.[4] In doing so, the Commission drew a distinction between "recovery hereunder" (capped) and recovery under other legal authorities (uncapped), even when the underlying claim against the holder exists only because of the Holder Rule Notice.

This reading is difficult to reconcile with the Rule's text. The required notice states that recovery "hereunder" shall not exceed amounts paid by the debtor. The word "hereunder" most naturally refers to recovery under the consumer credit contract that contains the notice. When a consumer sues a holder, the holder's liability traces back to the notice in the credit contract. The idea that attorneys' fees incurred in litigating a Holder Rule claim are somehow not "recovery hereunder" requires an artificial separation of the fees from the claim they were incurred to pursue.

The Rule's cap language does not distinguish between categories of monetary recovery. It does not say "recovery of principal and interest hereunder shall not exceed amounts paid." It says

[2] FTC Staff Guidelines on Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, Bureau of Consumer Protection (May 4, 1976), at 6.
[3] Id.
[4] Commission Statement on the Holder Rule and Attorneys' Fees and Costs (Jan. 18, 2022).

"recovery." Reading an exception for fees and costs into that word requires adding language that the Commission did not include when it drafted the notice provision. For nearly three decades, the 1976 Staff Guidelines' interpretation of the cap as a comprehensive ceiling on affirmative recovery was the accepted understanding in the regulated community. The 2022 Commission Statement changed that understanding without changing the text of the Rule.

The Commission's own 2022 Commission Statement acknowledged that courts had split on whether the Holder Rule caps attorneys' fee awards. Some courts had read state fee-shifting statutes as operating independently of the cap.[5] Others reached the opposite conclusion, finding that the Holder Rule does not limit fee recovery and that a contrary agency interpretation would not warrant deference.[6]

The 2022 Commission Statement stepped into this split and sided with one line of cases. The result has been a self-reinforcing cycle: state courts rely on the 2022 Commission Statement as evidence of the Commission's intent, and plaintiffs' attorneys cite those state court decisions to argue that the law is settled. Meanwhile, the Commission points to those same state decisions as evidence that its interpretation reflects existing law. Each side of this loop reinforces the other, but neither addresses the threshold question of whether the Rule's text actually supports the reading.

Withdrawing the 2022 Commission Statement would break this cycle. It would restore the pre-2022 landscape in which the recovery cap's scope was understood as written, and courts would return to interpreting the text of the notice provision on its own terms.

Process

The 2022 Commission Statement was issued as just that, a "statement." The Commission did not amend the text of 16 C.F.R. Part 433. It did not publish a notice of proposed rulemaking. It did not solicit or consider public comment. It did not conduct a cost-benefit analysis or assess the impact on small entities, including credit unions.

The practical effect of the 2022 Commission Statement, however, was equivalent to a rule change. Before it was issued, holders could reasonably rely on the 1976 Staff Guidelines' reading of the recovery cap as a comprehensive limit on affirmative recovery. After it was issued, holders face potential liability that is multiples of the loan amount in states with fee-shifting statutes. That is a substantive change in the legal obligations of the regulated community, and it should have gone through the rulemaking process. The Commission had every opportunity to amend the Rule's text through notice-and-comment proceedings. It chose instead to reinterpret the

[5] See, e.g., Spikener v. Ally Fin., Inc., 50 Cal. App. 5th 151 (Cal. Ct. App. 2020); Reyes v. Beneficial State Bank, No. BCV-17-100082 (Cal. Sup. Ct., Kern Co., Dec. 5, 2019).
[6] See Pulliam v. HNL Auto. Inc., 60 Cal. App. 5th 396 (Cal. Ct. App. 2021) (concluding that Holder Rule does not limit attorney fee recovery from holder and that a contrary agency interpretation would not be entitled to deference).

existing text through a Commission Statement, avoiding the procedural requirements that would have applied to a formal amendment.

This approach also deprived the Commission of valuable information. Had the Commission proposed an amendment to the recovery cap, it would have received input from credit unions, banks, consumer groups, and state regulators on the practical consequences. The record would likely have shown that removing the cap on attorneys' fees would create perverse incentives in litigation, drive lenders out of certain consumer credit markets, and ultimately reduce the availability of affordable credit.

Harm of Commission Statement

Credit unions are member-owned, not-for-profit financial cooperatives. They do not have outside shareholders whose equity can absorb litigation losses. Every dollar a credit union pays in attorneys' fees to resolve a Holder Rule claim is a dollar that cannot be returned to members through lower rates, better products, or improved services. Credit unions are also not captive finance companies. They do not own or control the sellers whose products they finance. They do not set the terms of sale, make representations about product quality, or oversee installation or delivery. When a seller fails to perform, the credit union is as much a victim of the seller's misconduct as the consumer.

Yet under the 2022 Commission Statement, the credit union that financed the transaction bears open-ended liability for the seller's failures, including fees that can dwarf the original loan amount. This outcome turns the Holder Rule's original purpose on its head. The Rule was designed to prevent sellers from using credit structures to insulate themselves from accountability. It was not designed to make lenders the primary target of litigation when sellers go bankrupt or fail to deliver. The problem is most pronounced in residential solar lending, where the failure and bankruptcy of several major installation companies have left consumers with legitimate grievances. Credit unions have been actively working to remediate those situations, repairing systems and adjusting loan balances where appropriate. However, under the 2022 Commission Statement, borrowers' counsel now routinely seek attorneys' fees that equal or exceed multiples of the original loan amounts.

In one representative case, a credit union financed a residential solar installation with an $88,000 loan. The borrower's actual out-of-pocket payments on the loan were approximately $39,000, and of that amount, roughly $36,000 came from tax credits and seller rebates rather than the borrower's own funds. Despite the fact that the solar system was producing the energy output specified in the purchase contract, the arbitrator ordered the loan rescinded and a partial refund of amounts paid. The borrower's counsel then sought over $140,000 in attorneys' fees. The credit union's total exposure approached $225,000 on an $88,000 loan. This is not an outlier; it is the pattern that has emerged across solar lending claims in multiple states.

Before the 2022 Commission Statement, the recovery cap would have limited the borrower's total affirmative recovery to the approximately $39,000 paid on the loan. The Commission

Statement removed that ceiling, and the result is that the attorneys' fees tail now wags the dog. The incentive structure has shifted; it is now more profitable for plaintiffs' attorneys to pursue Holder Rule claims against solvent lenders than to pursue the sellers whose misconduct caused the harm in the first place. In many cases, those sellers have entered bankruptcy and are effectively judgment-proof, leaving the credit union as the only viable target.

This concern extends to any lending arrangement where a seller refers a consumer to a creditor or where a creditor has a business arrangement with a seller. That includes auto lending, home improvement financing, buy-now-pay-later products, and a growing range of merchant-arranged consumer credit. Publicly traded companies like Affirm have already disclosed potential Holder Rule liability in their Securities and Exchange Commission filings. State attorneys general have begun applying Holder Rule theories to additional product categories. As these theories expand, the scope of impact will continue to grow.

It is also worth noting the fundamental inequity in how the Rule allocates risk across consumers. A consumer who finances a solar installation through a seller-arranged loan has recourse against the lender under the Holder Rule. A consumer who pays for the identical system with cash, a home equity line of credit, or a personal loan obtained independently has no such recourse. The lender's liability turns entirely on the method of payment, not on the nature of the seller's misconduct or the consumer's injury. This arbitrary distinction becomes even more problematic when the 2022 Commission Statement removes any cap on the lender's exposure in the first category while leaving consumers in all other categories without equivalent protection.

When potential liability to a holder can be two or three times the amount of a loan, and that liability arises from the conduct of a third party the holder cannot control, the rational response for any lender is to withdraw from the market or price the risk into interest rates. Credit unions across the country have already begun to pull back from seller-arranged financing programs, particularly in solar and home improvement. Others are raising rates or tightening underwriting criteria to account for unpredictable Holder Rule exposure. Either outcome directly harms consumers by reducing the availability and increasing the cost of credit, precisely the opposite of the Holder Rule's stated purpose.

2021 Staff Note

The 2021 Staff Note reversed the 1976 Staff Guidelines' position that the Rule incorporated TILA's exemption for large transactions.[7] For 45 years, the regulated community understood that transactions exceeding the TILA threshold (originally $25,000, later adjusted to $50,000) fell outside the Rule's scope.[8] The 2021 Staff Note eliminated that understanding, expanding the

[7] Staff Note Regarding the Holder Rule and Large Transactions, Division of Financial Practices (Apr. 12, 2021).
[8] 1976 Staff Guidelines at 9 ("Additional limitations on [transactions to which the Holder Rule applies] are present because the definitions of 'Financing a Sale' and 'Purchase Money Loan' expressly refer to the Truth in Lending Act and Regulation Z, and thus incorporate the limitations contained in these laws.").

Rule's reach into higher-value loans including solar installations, boats, recreational vehicles, and other consumer products.

We recognize that the staff's textual argument has some force: the Rule's text does not expressly reference TILA's Section 104 exemptions, and the Commission stated in 1975 that it declined to adopt a transaction-size limitation.[9] However, the 1976 Staff Guidelines' reading was the operative understanding for nearly half a century. Regulated parties structured their lending programs around it. Reversing that understanding through a one-page staff note, without notice and comment and without a transition period, created immediate and retroactive exposure for credit unions holding existing portfolios of higher-value loans.

The practical interaction between the 2021 Staff Note and the 2022 Commission Statement is especially damaging. Removing the transaction-size limit brought higher-value loans under the Rule. Removing the recovery cap exposed holders of those loans to uncapped attorneys' fees. The combined effect is an open-ended liability framework that the original Rule's drafters did not contemplate and that the regulated community had no opportunity to address through the rulemaking process.

Deregulatory Mandate

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* reinforced that courts must exercise independent judgment in determining whether an agency has acted within its statutory authority.[10] The broader principle applies here as well: agencies should not expand the reach of their rules through interpretive guidance that contradicts the enacted text. Whatever the scope of the Commission's authority under the FTC Act, the 2022 Commission Statement does not purport to interpret the statute. It reinterprets the Commission's own Rule, and it does so in a way that contradicts the Rule's plain text.

The President's April 9, 2025, memorandum on deregulatory actions, and the subsequent October 21, 2025, Office of Management and Budget guidance directing agencies to revisit regulatory overreach, further support withdrawing the 2022 Commission Statement.[11] A straightforward reading of "recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder" does not permit uncapped attorneys' fees to be layered on top. The Commission has an opportunity to align its guidance with the text of its own Rule and to do so in a manner consistent with the Administration's broader commitment to regulatory accountability.

Conclusion

America's Credit Unions respectfully requests that the Commission:

[9] 40 Fed. Reg. 53,506, 53,527 (1975).
[10] Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024).
[11] Exec. Order, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (Apr. 9, 2025); OMB Memorandum, Streamlining the Review of Deregulatory Actions (Oct. 21, 2025).

1. Withdraw the January 18, 2022, Commission Statement on the Holder Rule and Attorneys' Fees and Costs;
2. Withdraw or revise the April 12, 2021, Staff Note Regarding the Holder Rule and Large Transactions;
3. Reaffirm that the recovery limitation in the Holder Rule Notice means what it says: that a debtor's total monetary recovery against a holder under the notice may not exceed the amounts the debtor has actually paid under the contract; and
4. Grant America's Credit Unions a meeting with appropriate Commission staff to discuss these issues and the broader impact of the Rule on the credit union industry.

We appreciate the Commission's willingness to reconsider regulatory actions that have exceeded their original scope. America's Credit Unions, AACUL, the Leagues, and our member credit unions stand ready to work with the Commission on an approach that protects consumers effectively while avoiding disproportionate liability for lenders who had no role in the underlying seller misconduct.

Sincerely,

America's Credit Unions
American Association of Credit Union Leagues

1. Alabama Credit Union Association – The League of Credit Unions & Affiliates
2. Alaska Credit Union League
3. Arizona's Credit Unions
4. Arkansas Credit Union Association
5. Association of Vermont Credit Unions
6. California Credit Union League
7. Carolinas Credit Union League (NC and SC)
8. Colorado's Credit Unions
9. Credit Union Association of New Mexico
10. Connecticut's Credit Unions
11. CrossState Credit Union Association (NJ and PA)
12. Dakota Credit Union Association (ND and SD)
13. Delaware Credit Unions – Cooperative Credit Union Association
14. Florida Credit Union Association – The League of Credit Unions & Affiliates
15. Georgia Credit Union Association – The League of Credit Unions & Affiliates
16. Hawaii Credit Union League
17. Idaho's Credit Unions
18. Illinois Credit Union League
19. Indiana Credit Union League
20. Iowa Credit Union League
21. Kansas Credit Union Association
22. Kentucky's Credit Unions
23. Louisiana Credit Union Association
24. Maine Credit Union League

25. MD|DC Credit Union Association
26. Massachusetts Credit Unions – Cooperative Credit Union Association
27. Michigan Credit Union League
28. Minnesota Credit Union Network
29. Mississippi Credit Union Association
30. Missouri Credit Union Association
31. Montana's Credit Unions
32. Nebraska Credit Union League
33. New Hampshire Credit Unions– Cooperative Credit Union Association
34. Nevada Credit Union League
35. New York Credit Union Association
36. Ohio Credit Union League
37. Oklahoma Credit Union Association
38. Oregon's Credit Unions
39. Rhode Island Credit Unions – Cooperative Credit Union Association
40. Tennessee Credit Union League
41. Texas Credit Union Association
42. Utah Credit Union Association
43. Virginia Credit Union Association – The League of Credit Unions & Affiliates
44. Washington's Credit Unions
45. West Virginia Credit Union League
46. The Wisconsin Credit Union League
47. Wyoming's Credit Unions