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## **STATEMENT REGARDING FTC OPINION AFFIRMING CONSUMER RIGHTS UNDER THE HOLDER RULE**

**BOSTON**—On May 10, 2012 the Federal Trade Commission (FTC) issued an [advisory opinion](#) affirming that consumers retain certain important rights under the FTC Rule on the Preservation of Consumers' Claims and Defenses (16 CFR § 433). The opinion was requested by the National Consumer Law Center (NCLC), and joined by Public Citizen, U.S. PIRG, the Center for Responsible Lending, and the National Association of Consumer Advocates.

The Rule allows consumers to raise their seller-related claims against the holder of their loan agreements. Such claims can offset the remaining indebtedness, but some courts had found, despite the Rule's clear language, that consumers could not utilize such claims to recover amounts already paid to the lender. The FTC staff in 1999 had provided an informal opinion to NCLC rejecting such a limiting interpretation of the Rule, but some courts continued to misapply the Rule.

Now that the full Commission has issued a formal advisory opinion interpreting its own rule, it is hoped that this issue will be laid to rest, so that consumers who have already made substantial payments on a loan are not treated worse than those who have not. By insuring that the Rule is properly applied, the FTC has strengthened one of the most important pieces of consumer protection in the United States.

The FTC Rule on the Preservation of Consumers' Claims and Defenses is a cornerstone of consumer protection. It makes it far more practical for consumers to raise claims against sellers, even when the seller is insolvent or skipped town, and it encourages lenders to scrutinize the sellers with whom they form business relations.

For example, it is far more practical when a car dealer sells a defective vehicle to raise that claim as a reason not to repay a car loan than for the consumer to have to bring a separate affirmative action against the dealer, while at the same time having to continue making car payments. The lender is in a far better position to recover any loss from the dealer. Moreover, the Rule encourages the lender to police its related sellers to insure that they treat consumers fairly so that consumers are not raising seller-related claims on the loan.

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Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.