



FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 76-72
May 20, 1976

American Revolution Bicentennial

FEDERAL TRADE COMMISSION (FTC) HOLDER IN DUE COURSE RULE

**TO ALL BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:**

We have received numerous inquiries regarding the Federal Trade Commission rule, "Preservation of Consumers' Claims and Defenses" (also known as the holder in due course rule), 40 FEDERAL REGISTER 53506 (November 18, 1975), which became effective May 14, 1976.

This rule was issued by the Federal Trade Commission, not the Federal Reserve, and it does not apply directly to banks but rather to "sellers" of consumer goods or services. For that reason, we do not believe that we are in a position to comment on or furnish interpretations of the FTC rule. We would suggest that you contact your bank's attorney, the Dallas office of the Federal Trade Commission (214-749-3056), or the FTC's Bureau of Consumer Affairs in Washington (202-523-3921) if you have questions concerning the effect of this rule on one of your bank's transactions. A pamphlet of FTC staff guidelines under the rule can be obtained from the Federal Trade Commission, Bureau of Consumer Protection, Washington, D.C. 20580.

Under the FTC rule, in situations where a sale or lease of consumer goods or services is involved, a seller is prevented from accepting the proceeds of a "purchase money loan" extended by a bank that has a "business arrangement" with the seller unless the loan documents issued by the bank contain a waiver of the bank's rights as holder in due course.

We have also received numerous inquiries regarding the relationship between the May 14 FTC rule and the Texas Deceptive Trade Practices-Consumer Protection Act (TEX. BUS. & COMM. CODE ANN., section 17.41 et seq. (Supp. 1975)). Whether a bank might be liable under the Texas statute for a transaction in violation of the FTC rule is a matter to be decided by the courts, and again, the Federal Reserve Bank of Dallas is not in a position to advise you on that point.

Confusion may have been created because of a regulation proposed by the Federal Reserve on January 30, 1976, which is similar to the FTC rule of

May 14. The Federal Reserve proposal was forwarded to you with our Circular No. 76-24, February 13, 1976. This proposal, which is not yet in final form, will, if finalized, apply to banks.

The Board of Governors' proposal was made after the FTC proposed to amend its May 14 rule so as to extend the holder in due course waiver to nonbank lenders as well as sellers. If the FTC finalizes its nonbank lender proposal, the 1974 Amendments to the Federal Trade Commission Act require the Board of Governors within 60 days either to issue a similar regulation applicable to banks or to publish a statement "that such acts or practices of banks are not unfair or deceptive or that implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board."

Sincerely yours,

T. W. Plant

First Vice President