

Motor Vehicle Advisory Bulletin: Trade-In Credit Agreements

This bulletin answers frequently asked questions about trade-in credit agreements for motor vehicle retail installment contracts under Chapter 348 of the Texas Finance Code.

1. What is a trade-in credit agreement?

A trade-in credit agreement is an agreement between a buyer and seller of a motor vehicle, entered at the time of purchase. If the car is damaged in a collision but not totaled, then the agreement provides a benefit when the buyer trades in the vehicle to purchase another.

Trade-in credit agreements for motor vehicle retail installment contracts are authorized under Sections 348.001(11) and 348.125 of the Texas Finance Code, added by HB 2339 (2017). Section 348.001(11) defines a trade-in credit agreement as: “a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller.”

A trade-in credit agreement is a separate agreement from the retail installment contract, and is not considered an insurance product.

2. What are the general requirements for a trade-in credit agreement?

The general requirements for trade-in credit agreements are located in Texas Finance Code, Sections 348.001(11) and 348.125 (added by HB 2339 (2017)), as well as the OCCC’s rules at Texas Administrative Code, Title 7, Sections 84.204, 84.707, 84.708, and 84.808 (recently amended effective September 7, 2017).

Trade-in credit agreements are subject to the following requirements:

- **Disclosure requirements:** The seller must provide the buyer with written notice of the following at the time the retail installment contract is executed:
 - a statement that the buyer is not required to purchase the agreement as a condition for approval of the retail installment contract,
 - a statement that the buyer is entitled to cancel the agreement before the 31st day after the retail installment contract and receive a full refund,

- a statement that the buyer may terminate the agreement at any time on or after the 31st day after the retail installment contract and receive a pro rata refund, minus any applicable cancellation fee which may not exceed \$50, and
- a statement that the buyer has been provided a clear and concise disclosure of the amount of the credit available during the term of the trade-in credit agreement.
- **Refunding requirements:** If the buyer terminates the trade-in credit agreement before the 31st day after the retail installment contract, then the seller must provide the buyer a full refund of the charge for the agreement. If the buyer terminates after the 31st day, the seller must provide a pro rata refund, minus any cancellation fee that may not exceed \$50.
- **Contractual liability reimbursement policy:** To ensure faithful performance of the seller's obligations under a trade-in credit agreement, the seller must be insured under a contractual liability reimbursement policy approved by the Texas Department of Insurance.
- **Limitation on amount charged:** The amount charged for a trade-in credit agreement may not exceed 5% of the cash price of the motor vehicle, including any attached accessories, and excluding the price of services related to the sale, the price of service contracts, taxes, and fees for license, title, and registration.
- **Required documentation:** The trade-in credit agreement must require the buyer to provide proof of insurance settlement documents in order to obtain the credit, and may not require the buyer to provide any other documentation.
- **Providing benefit under agreement:** If a retail seller enters a trade-in credit agreement with a retail buyer, the retail seller must comply with the terms of the trade-in credit agreement in connection with the purchase or lease of a subsequent motor vehicle. A retail seller must provide any credit required under a trade-in credit agreement at the time of the purchase or lease of a subsequent motor vehicle.
- **Reasonable benefit:** The benefit to be provided under a trade-in credit agreement must bear a reasonable relationship to the amount charged for the agreement and the amount, term, and conditions of the retail installment contract.
- **Recordkeeping:** Under the OCCC's recordkeeping rules, sellers must maintain a copy of the agreement, evidence of the contractual liability policy, documentation of any refund, evidence of the amount of any credit applied, any documentation used to process a claim, and a register that reflects agreements that were satisfied or denied.

3. How should a seller disclose the charge for the trade-in credit agreement on the retail installment contract?

There are two retail installment transactions relevant to the trade-in credit agreement: the first transaction in which the buyer purchases the agreement, and the second transaction in which the buyer trades in the vehicle and receives a benefit under the agreement.

In the first transaction, the initial charge for the trade-in credit agreement should be listed in the retail installment contract's itemization of amount financed, in the itemized charges not included in the cash price.

For example, if a seller is using the OCCC's model plain language retail installment contract located at Texas Administrative Code, Title 7, Section 84.809, then the seller may list the initial charge for the agreement on line 4.O., "Other charges," of the model itemization of amount financed, as a charge to "Seller" for "trade-in credit agreement."

4. In a transaction where the buyer receives a benefit under a trade-in credit agreement, how should a seller disclose the benefit on the retail installment contract?

In the second transaction, the seller should disclose the benefit under the agreement in the retail installment contract's itemization of amount financed, on the "other" line of the downpayment section, with a description such as "trade-in credit agreement benefit." The benefit should count toward the downpayment, effectively lowering the total amount financed owed by the buyer in the second transaction.

A seller should not include the benefit on the "Gross trade-in" line of the itemization of amount financed, or in the "Dealership Allowance for Trade-In" section of the disclosure of equity form. The benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself.