

## Motor Vehicle & Registered Creditor Advisory Bulletin: Review of Debt Cancellation Agreements Requiring Insurance

This bulletin summarizes issues that the OCCC has encountered in reviewing debt cancellation agreements subject to Chapter 354 of the Texas Finance Code. A debt cancellation agreement is a term of a retail installment contract providing that if the vehicle is stolen or totaled, the holder will cancel part of the remaining amount owed.

If a debt cancellation agreement requires the buyer to maintain insurance, then it must be approved by the OCCC. The OCCC can deny a debt cancellation agreement that:

- does not include the provisions required by Section 354.004,
- contains inconsistent or misleading provisions, or
- does not fully disclose all exclusions in plain language.

Before you submit an agreement to the OCCC, you should read this bulletin and carefully review the agreement. You should make sure the agreement includes all required provisions and does not include any unacceptable provisions.

This bulletin provides general guidance about how to write a debt cancellation agreement that complies with Chapter 354 of the Finance Code. It does not list every type of inconsistent or misleading provision for which the OCCC could deny an agreement. Also, the bulletin's acceptable language is not the only language that can be used.

**If you use the acceptable language in this bulletin, make sure that the terminology is consistent with your agreement.** For example, if you use a sentence that mentions the "buyer," but your agreement generally refers to the buyer as the "consumer," you should replace "buyer" with "consumer." All your agreement's provisions should make sense in context.

In this bulletin:

- Items 1–6 relate to general requirements.
- Items 7–21 relate to required provisions.
- Items 22–49 relate to inconsistent or misleading provisions.

### GENERAL REQUIREMENTS

#### 1. Applicability limited to retail installment contracts

Chapter 354 debt cancellation agreements apply only to retail installment contracts, not loans or leases. Debt cancellation agreements for consumer loans are subject to a different provision: Section 342.4021 of the Finance Code. Debt cancellation agreements for leases are subject to Chapter 397 of the Finance Code, under the authority of the attorney general, starting September 1, 2017. The OCCC will deny an agreement suggesting that it covers loans or leases.

## **2. Applicability limited to covered vehicles**

Chapter 354 debt cancellation agreements are authorized only for a “covered vehicle” under Section 354.001(2), which states: “Covered vehicle’ includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.”

## **3. Benefit limited to canceling debt**

The benefit under a Chapter 354 debt cancellation agreement is limited to cancelling all or part of the debt, under Section 354.001(3). Other benefits are outside the scope of a debt cancellation agreement. In particular, the agreement may not include a credit toward the purchase of a new vehicle.

## **4. Requirement that buyer maintain insurance**

The OCCC’s debt cancellation agreement review process applies only to agreements that require the buyer to maintain property insurance on the vehicle, as provided by Section 354.002(a).

If the agreement applies to Chapter 348 motor vehicles and does not require the buyer to maintain insurance, then it is subject to a different set of requirements, located in Title 7, Sections 84.301 and 84.308 of the Texas Administrative Code. These include specific calculation requirements for the amount canceled and refunds, as well as limitations on exclusions and types of documents that will be required.

If you are submitting an agreement for the OCCC’s approval, it must include a statement that the buyer is required to maintain insurance. It is acceptable for the agreement to have an alternative method for calculating the amount canceled that applies when there is no insurance on the vehicle at the time of loss.

*Acceptable:*

- “The buyer is responsible for maintaining insurance on the vehicle.”
- “It is the buyer’s responsibility to maintain insurance on the vehicle while the retail installment contract is in effect.”

## **5. Complete and final version of the agreement**

The agreement that you submit must be a complete and final version of the agreement. You must submit a clean version with no highlighting, redline edits, or strikethroughs.

If you are submitting a new version of a previously approved agreement, you do not have to send a redlined or highlighted version of the new agreement. If you send a redlined or highlighted version, you must also send a version that is complete, final, and clean. The OCCC will review the latter version.

## **6. Form number**

Each agreement that you submit must have a form number that uniquely identifies the agreement. The form number must appear on the first page of the agreement. The OCCC uses the form number to track agreements and confirm that sellers are using approved agreements.

## **REQUIRED PROVISIONS**

A debt cancellation agreement must include these provisions under Section 354.004 of the Finance Code.

### **7. Contact information of parties**

Under 354.004(1)–(2), the agreement must state the name and address of the following parties: the buyer, the seller, the holder (i.e., the assignee), and any administrator. Typically, the spaces for the buyer, seller, and holder are blank spaces that can be filled in, with labels such as “Seller Name” and “Seller Address.”

### **8. Cost and term of agreement**

Under 354.004(3), the agreement must state the cost and term of the debt cancellation agreement. The agreement may include the term of the retail installment contract, but it must also include the debt cancellation agreement’s term.

### **9. Procedure for obtaining benefit**

Under 354.004(4), the agreement must state the procedure the buyer must follow to obtain benefits, including a phone number and address where the buyer may provide notice of a claim.

### **10. Required documentation—generally**

Under 354.004(6)–(7), the agreement must list all documentation that the buyer must provide in order to make a claim.

- If your agreement requires the buyer to submit a form to make a claim, then you must include a copy of the claim form with your submitted agreement. A copy of the claim form must be given to the buyer at the beginning of the transaction.
- If your agreement requires the buyer to provide a buyer’s order, purchase agreement, or bookout sheet, then the agreement must specify that this is required only if the document was provided to the buyer. These are optional documents that are not always signed in a retail installment transaction.
- If your agreement requires the buyer to provide a window sticker, then it must specify that this is required only if the vehicle was purchased new.

## 11. Required documentation—other documentation not listed

Under 354.004(7), the agreement must state that the buyer is not required to provide documentation not listed in the agreement.

### *Acceptable:*

- “You will not be required to provide any documents not listed above.”

### *Unacceptable:*

- “In addition to the documents listed above, you must provide any additional reasonable documents requested by the administrator.”

## 12. Inspection of the vehicle

Under 354.004(8), the agreement must state that on reasonable advance notice, the retail seller, the holder, or any administrator of the agreement may inspect the vehicle. The agreement may not require the buyer to pay the cost of the inspection, because the fee for a debt cancellation agreement must be in a single payment under 354.006(e). Also, if the agreement suggests that it terminates upon the buyer’s failure to allow inspection, it must have an exception for theft of the vehicle, because a stolen vehicle cannot be inspected.

### *Acceptable:*

- “If a total loss occurs, the administrator may inspect the vehicle on reasonable advance notice to the buyer.”
- “The holder will pay the cost of the inspection.”
- “The holder may terminate this agreement if the vehicle is not available for inspection, except in the case of theft.”

### *Unacceptable:*

- “If a total loss occurs, the administrator may inspect the vehicle.” (*This is insufficient because it does not mention advance notice.*)
- “The buyer must pay the cost of the inspection.”
- “The holder may terminate this agreement if the vehicle is not available for inspection.” (*This does not contain an exception for theft.*)

## 13. Statement that holder will cancel debt on total loss or theft

Under 354.004(9) and (16), the agreement must include a statement substantially similar to this: “You will cancel certain amounts I owe under this contract in the case of a total loss or theft of the vehicle as stated in the debt cancellation agreement.” You may need to change some of the terminology in this sentence, such as “You,” to be consistent with the rest of the agreement.

#### **14. Calculating the amount canceled—generally**

Under 354.004(11), the agreement must state the method of calculating the amount of debt to be canceled if a total loss or theft occurs. The agreement must be specific enough to explain the amount that will be canceled. It is not sufficient for the agreement to state that the amount canceled “shall not exceed” a certain amount.

#### **15. Calculating the amount canceled—use of an established guide**

As part of the method for calculating the amount canceled, some agreements use the vehicle’s retail value in an established retail guide. If the agreement uses a guide, it must identify the specific guide that will be used. The following examples assume that the “actual cash value” is used in calculating the amount canceled.

##### *Acceptable:*

- “Actual Cash Value means the retail value of the vehicle on the date of loss, as stated in the Kelley Blue Book. If the retail value is not available in the Kelley Blue Book, then the National Automobile Dealers Association (NADA) Official Used Car Guide or an equivalent guide will be used.”

##### *Unacceptable:*

- “Actual Cash Value means the retail value of the vehicle on the date of loss, as stated in the Kelley Blue Book or an equivalent guide.”

#### **16. Refunding—calculation method**

Under 354.004(10), the agreement must state the method for calculating refunds. The two most commonly used methods are: (1) the pro rata method, and (2) the pro rata method minus a fixed cancellation fee. The agreement may not state that the fee for the agreement is fully earned (i.e., nonrefundable) from the inception of the retail installment contract.

#### **17. Refunding—buyer’s request to cancel**

Under 354.004(13), the agreement must state that in order to cancel the agreement and receive a refund, the buyer must provide a written request to cancel to the seller, the holder, or the administrator.

If your agreement requires the buyer to provide a specific cancellation form in order to cancel, then you must include a copy of the cancellation form with your submitted agreement. A copy of the request form must be given to the buyer at the beginning of the transaction.

*Acceptable:*

- “The buyer may cancel this agreement at any time. To cancel the agreement and receive a refund, the buyer must send a written cancellation request to the administrator.”

*Unacceptable:*

- “The buyer may cancel this agreement at any time. To cancel the agreement and receive a refund, the buyer must request cancellation from the administrator.” *(This is insufficient because it does not specify that the request must be in writing.)*
- “The buyer may cancel this agreement at any time. To cancel the agreement and receive a refund, the buyer must send a written cancellation request.” *(This is insufficient because it does not specify to whom the request should be sent.)*

**18. Refunding—full refund in first 30 days**

Under 354.004(14), the agreement must state that if total loss has not occurred, the buyer can cancel and receive a full refund within the first 30 days (or a longer period stated in the agreement) after the date of the retail installment contract or the date of the debt cancellation agreement, whichever is later.

**19. Refunding—prepayment, acceleration, or total denial**

Under 354.007(a), a “refund or credit of the debt cancellation agreement fee must be based on the earliest date of: (1) the prepayment of the contract in full before the original maturity date; (2) a demand by the holder for payment in full of the unpaid balance or acceleration; (3) a request by the retail buyer for cancellation of the debt cancellation agreement; or (4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 354.003, except in the case of a partial loss of the covered vehicle.”

This means that in addition to providing a refund upon the buyer’s voluntary cancellation, the agreement must state that it will terminate upon—and the buyer will receive a refund based on the earliest of—any of the following: (1) prepayment of the retail installment contract in full, (2) a demand by the holder for payment in full or acceleration, or (3) total denial based on an exclusion.

**20. Credit approval**

Under 354.004(12), the agreement must state that purchase of the agreement is not required for the buyer to obtain an extension of credit and will not be a factor in the credit approval process.

*Acceptable:*

- “Purchase of this agreement is not required for the buyer to obtain an extension of credit and will not be a factor in the credit approval process.”
- “The buyer’s acceptance of this agreement is voluntary and is not required in order for the buyer to obtain credit, does not impact the buyer’s ability to obtain any particular or more favorable credit terms, and has no effect on the terms of the related sale of the vehicle.”

*Unacceptable:*

- “Purchase of this agreement is not required for the buyer to obtain an extension of credit.” *(By itself, this is insufficient because it does not specify that the purchase will not be a factor in the credit approval process.)*

## **21. OCCC complaint information**

Under 354.004(15), the agreement must state that the buyer may file a complaint with the OCCC, and must include the OCCC’s address, phone number, and website. The agreement must include the updated address of the OCCC’s website: [occc.texas.gov](http://occc.texas.gov)

*Acceptable:*

- “You may file a complaint about this agreement with the Office of Consumer Credit Commissioner (OCCC), a state agency. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Website: [occc.texas.gov](http://occc.texas.gov).”

## **INCONSISTENT OR MISLEADING PROVISIONS**

This section discusses some of the common inconsistent or misleading provisions that the OCCC has encountered in agreements. This section also discusses exclusions that are not fully disclosed in plain language.

### **22. Inconsistent terminology**

The agreement must use consistent terminology to refer to the parties and the transaction. If the agreement generally refers to the holder as the “Financial Institution,” it should not also use the term “Assignee.” If the agreement generally refers to the retail installment contract as the “Financing Agreement,” it should not also use “Financial Contract.”

### **23. Loan terminology**

The agreement may not include any terminology suggesting that it applies to loans. Chapter 354 debt cancellation agreements are used with retail installment transactions, not loans.

The following loan-related terms should not appear in the agreement: “loan,” “lender,” “lending,” or “borrower.” The word “interest” may not be included if it refers to the finance charge on a loan, but it is acceptable if it refers to something else (e.g., a property interest).

#### **24. Lease terminology**

The agreement may not include any terminology suggesting that it applies to leases. Chapter 354 debt cancellation agreements are used with retail installment transactions, not leases.

The following lease-related terms should not appear in the agreement: “lease,” “lessor,” “lessee,” “capitalized cost,” “disposition fee,” “penalty fee,” “termination fee.”

#### **25. Revolving credit terminology**

The agreement may not include any terminology suggesting that it applies to revolving or open-end credit. Chapter 354 debt cancellation agreements are used with retail installment contracts, which are a form of closed-end credit, not a revolving or open-end account.

The following revolving-credit-related terms should not appear in the agreement: “revolving credit line,” “revolving line of credit,” “open-end revolving loan,” “credit card.”

#### **26. Total exclusions vs. partial exclusions**

An exclusion is a provision that reduces the amount of debt canceled. There are two types of exclusions: total and partial. If a total exclusion applies, then no amount of debt will be canceled. If a partial exclusion applies, then a specific amount will be subtracted from (or not included in) the amount canceled.

For each exclusion in the agreement, it must be clear whether the exclusion is total or partial. The agreement may not contain both a total and partial exclusion for the same situation, because this is inconsistent.

*Unacceptable:*

- “Benefits shall not be provided for special carpeting, furniture, bars, audio, video, or data equipment, cooking and sleeping facilities, customized paint, or any equipment installed to overcome a physical handicap, trailers, special commercial usage optional equipment, accessories and body components.”

*(This exclusion is unclear. It could be read as a partial exclusion, stating that if the buyer installs special equipment, the value of the equipment will not be included in the amount canceled. Or it could be read as a total exclusion, stating that if the buyer installs any special equipment, the agreement will totally exclude loss and no amount will be canceled.)*



- Having both of the following provisions in the same agreement: “This agreement provides no benefit if the amount financed exceeds 150% of the value of the vehicle.” and “Any amount by which the amount financed exceeds 150% of the value of the vehicle will be subtracted from the amount canceled.”  
*(These provisions are inconsistent with each other, because they provide a total exclusion and a partial exclusion for the same situation.)*

## **27. Total exclusions for conditions known at time of sale**

Some agreements totally exclude loss for conditions that are known—or should be known—at the time the agreement is sold. These may include total exclusions for certain makes and models, vehicles over a certain weight, vehicles with branded titles, and loss that occurs before the date of the agreement. They may also include total exclusions for retail installment contracts that exceed a maximum term, amount financed, amount-financed-to-value ratio, or APR.

If the agreement totally excludes loss for a condition known at the time of sale, then the agreement must also specify that the buyer will receive a full refund of the debt cancellation agreement fee if loss is excluded for this reason. If loss is excluded due to a condition known at the time of sale, then the agreement provides no value to the buyer from its inception. Charging a consumer a fee for a product that provides no value is a misleading practice, and is prohibited by Texas law.

## **28. Exclusions for vague or undefined charges**

Some agreements contain partial exclusions for specific types of charges, specifying that these charges will not be included in the amount of debt canceled. The agreement should clearly define all excluded charges. The agreement should not contain exclusions for vague or undefined charges. For example, an exclusion of “financing contract charges” is unacceptable, because it could be read to apply to any amount charged in connection with a retail installment contract.

## **29. Exclusions resulting in amounts subtracted twice**

The agreement must be carefully written to ensure that amounts are not inadvertently subtracted twice. Also, the agreement may not exclude the same amount twice through different labels that refer to the same type of charge (e.g., excluding both “delinquent payments” and “missed or late payments”). The following examples assume that the unpaid net balance is used to calculate the amount of debt canceled.

*Acceptable:*

- “‘Unpaid net balance’ means the amount required to pay off the retail installment contract on the date of loss. However, the unpaid net balance does not include any unearned finance charge.”

*Unacceptable:*

- “‘Unpaid net balance’ means the amount required to pay off the retail installment contract on the date of loss, minus any unearned finance charge.”  
*(Because the unearned finance charge is generally not included in the payoff amount to begin with, this results in the unearned finance charge being subtracted twice.)*

### **30. Exclusion for delinquent payments**

Some agreements contain a partial exclusion for delinquent payments. If the agreement excludes delinquent payments, then it must contain a clear definition of “delinquent payments.” This is also true if the agreement excludes “missed or late payments,” “past due amounts,” or something similar. The definition should specify that it is limited to amounts that have not been paid on the date of loss, and should be consistent with Section 348.107, which allows the holder to collect a delinquency charge if an installment remains unpaid after the 15th day after its due date.

*Acceptable:*

- “‘Delinquent payment’ means a payment that: (1) remains unpaid for more than 15 days after the due date stated in the retail installment contract, and (2) remains unpaid on the date of loss.”

### **31. Exclusion for deferred payments**

Some agreements contain a partial exclusion for deferred payments. If the agreement excludes deferred payments, then it must contain a clear definition of “deferred payment.” This is also true if the agreement excludes “waived payments” or something similar. The definition should specify that it is limited to amounts that have not been paid on the date of loss.

*Acceptable:*

- “‘Deferred payment’ means a payment that: (1) has been postponed, skipped, or waived by the holder, and (2) remains unpaid on the date of loss.”

### **32. Exclusion for contracts without uniform monthly payments**

Some agreements totally exclude loss if the retail installment contract does not have uniform monthly payments. If the agreement contains this type of exclusion, then it must clearly define “uniform monthly payments” (or any similar term).

*Acceptable:*

- “‘Uniform monthly payments’ means payments that are consecutive, monthly, and substantially equal.”

### **33. Exclusion for exceeding maximum amount-financed-to-value ratio**

Some agreements contain a partial exclusion if the retail installment contract exceeds a maximum amount-financed-to-value ratio. If the agreement contains this type of exclusion, it must clearly explain how the excluded amount will be calculated. The following examples assume that “unpaid net balance” and “vehicle’s value” are defined terms used to calculate the amount canceled.

#### *Acceptable:*

- “Any amount by which the amount financed exceeds 150% of the vehicle’s value will be subtracted from the unpaid net balance.”

#### *Unacceptable:*

- “If the amount financed exceeds 150% of the vehicle’s value, the unpaid net balance will be reduced by the percentage the amount financed exceeds 150% of the vehicle’s value.”

### **34. Exclusion for buyer’s misrepresentation**

Some agreements contain a total exclusion if the buyer commits fraud or makes a material misrepresentation. If the agreement contains this type of exclusion, then it must be limited to *material* misrepresentations (as opposed to immaterial mistakes like an incorrect ZIP code), and limited to the misrepresentations of the buyer (as opposed to other parties such as the seller and holder).

#### *Acceptable:*

- “The holder may terminate this agreement if the buyer has committed fraud or made any material misrepresentations.”

#### *Unacceptable:*

- “The holder may terminate this agreement if the buyer has committed fraud or made any false statement.” (*This is not limited to material misrepresentations.*)
- “The holder may terminate this agreement in the event of fraud or material misrepresentation.” (*This is not limited to misrepresentations by the buyer.*)

### **35. Holder’s responsibilities**

The agreement may not suggest that someone other than the holder is responsible for canceling the debt or providing a refund. This suggestion would be misleading. A debt cancellation agreement is a term of the retail installment contract. This means that the holder of the retail installment contract is ultimately responsible for canceling the debt if there is a total loss, and for sending the refund if there is an early termination. Also, the holder is obligated to cancel the debt regardless of whether it has notified the administrator.

*Unacceptable:*

- “The seller is responsible for providing all refunds.”
- “No amount will be waived for any vehicle unless the holder has reported the agreement to the administrator.”

### **36. Termination upon total loss**

The agreement may not state that it terminates upon total loss. This would be misleading. If a total loss occurs, then the holder is obligated to cancel part of the debt as specified in the agreement. The agreement cannot terminate until the holder has met this obligation.

*Acceptable (if “gap amount” is a defined term referring to the amount of debt canceled):*

- “This agreement will terminate if the holder cancels the gap amount following a total loss.”

*Unacceptable:*

- “This agreement will terminate upon total loss.”

### **37. Refund upon total loss**

The agreement may not state that the fee for the debt cancellation agreement is fully earned (i.e., nonrefundable) upon total loss. This would be misleading. If a total loss occurs, the holder might be required to provide a refund under 354.007(a)(4). The fee is not fully earned until the holder has met its obligation to cancel part of the debt.

*Acceptable (if “gap amount” is a defined term referring to the amount of debt canceled):*

- “If the holder cancels the gap amount following a total loss, then the fee for this agreement will be fully earned and will not be refunded to the buyer.”

*Unacceptable:*

- “In the event of a total loss, the fee for this agreement will be fully earned and will not be refunded to the buyer.”

### **38. Statements that buyer “is eligible for” or “may be entitled to” a refund**

In the refunding provisions, the agreement should state that the buyer “will receive” a refund upon a terminating event (e.g., prepayment, acceleration, total denial, or the buyer’s written request). Statements that the buyer “is eligible for” or “may be entitled to” a refund are misleading, because they suggest that the buyer must perform additional actions not specified in the agreement in order to obtain a refund.

### **39. Required notice upon termination**

Under 354.007(a), the refund must be based on the earliest of: (1) prepayment of the retail installment contract in full, (2) a demand by the holder for payment in full or acceleration, (3) the buyer's written request to cancel the agreement, or (4) total denial based on an exclusion. This means that if prepayment, acceleration, or total denial occurs, then the agreement must terminate and the holder must provide a refund to the buyer. The agreement may not require the buyer to send a notice in order to receive a refund after prepayment, acceleration, or total denial.

### **40. Reason for cancellation & supporting documentation**

If the agreement includes a cancellation form, the cancellation form may not require the buyer to state the reason for cancellation. This requirement is misleading, because it suggests that the buyer is limited to a certain class of reasons for cancellation. Under 354.004(13) and 354.007(a)(3), the buyer may cancel the agreement at any time and is not required to provide a reason. Along the same lines, the agreement may not require the buyer to provide documentation supporting the reason for cancellation.

### **41. Reamortization**

The agreement may not reamortize the retail installment contract. A debt cancellation agreement may not contain a payment-allocation method or finance-charge-calculation method that is inconsistent with the method described in the retail installment contract. In general, provisions that reamortize the retail installment contract should either be deleted or replaced with total exclusions.

*Unacceptable:*

- "If the retail installment contract does not contain uniform monthly payments, the unpaid net balance will be calculated by reamortizing the retail installment contract as if it contained uniform monthly payments."

### **42. Waiver of buyer's rights**

The agreement may not waive any of the buyer's rights arising from the sale. This type of waiver is prohibited under 345.356 and 348.412.

*Unacceptable:*

- "Nothing herein shall be construed to exclude coverage on the basis of any specific law prohibiting such exclusion, which law shall govern as applicable in respect thereof, and You irrevocably and unconditionally agree to waive and not make any argument to the contrary in any dispute hereunder."
- "The buyer waives any right to claim that the exclusions listed above are unlawful."

#### **43. Restriction on buyer's transfer of equity**

Under 348.413, the buyer may transfer equity in a motor vehicle with the written consent of the holder. The holder may charge a fee up to \$25 for the transfer.

The debt cancellation agreement may not include a statement suggesting that the buyer cannot transfer the agreement, or that the buyer must pay a transfer fee other than the \$25 fee paid to the holder. These statements would be misleading and inconsistent with 348.413.

*Acceptable:*

- "The buyer may transfer this agreement to another person by transferring the buyer's equity in the vehicle with the written consent of the holder."

*Unacceptable:*

- "The buyer may not transfer this agreement to another person."
- "In order to transfer this agreement to another person, the buyer must pay a \$25 transfer fee to the administrator."

#### **44. Restriction on assignment to another holder**

The agreement may not provide that it terminates upon assignment to another holder. This provision would be inconsistent with the holder's right to assign the retail installment contract under Chapters 345 and 348, and would misleadingly suggest that part of the contract terminates on assignment. Under 345.301 and 348.301, a subsequent holder may acquire a retail installment contract from another person on the terms to which they agree.

*Unacceptable:*

- "This agreement terminates if the retail installment contract is assigned to another holder."
- "This agreement terminates if the retail installment contract is assigned to a holder other than HolderCo Acceptance Company."

#### **45. Statements about regulation of agreement**

Debt cancellation agreements are regulated by the OCCC, and the fee for an agreement is limited to 5% of the retail installment contract's amount financed under 354.002(b). The agreement may not include any statements that misleadingly suggest otherwise.

*Unacceptable:*

- "The cost of this agreement is not regulated by any governmental entity."
- "This GAP Waiver is subject to limited regulation by the Insurance Commissioner and a complaint regarding this GAP Waiver may be submitted to the Commissioner."  
*(Debt cancellation agreements are regulated by the OCCC, not the Texas Department of Insurance.)*

#### 46. Remote deletions and amendments

The agreement may not contain provisions stating that they remotely delete or amend other provisions. This practice makes it likely that the buyer will be misled into believing that the incorrect provisions apply. If a provision must be deleted, then you must actually remove the provision from the agreement, rather than adding another provision stating that it is deleted. The agreement may include a specific provision describing a situation where a general provision does not apply, but the provisions must be close enough together so that the buyer will not be misled.

*Acceptable:*

- “Refunds will be calculated by the pro rata method, minus a \$25 cancellation fee. The cancellation fee does not apply if the retail installment contract is assigned to HolderCo Acceptance Company.”

*Unacceptable:*

- “If this agreement is sold in Texas, item 3.B. is deleted.”
- “If this agreement is sold in Texas, item 3.B. is amended by adding the following phrase at the end of the second sentence: ‘except in the case of theft.’”

#### 47. Use of “void”

If the agreement uses the term “void” or “voided,” then it must use the term correctly. When an event *voids* an agreement, this means that the agreement has no legal effect at all, and the parties are returned to the position they were in before the agreement. This is different from *termination*, where the term of an agreement simply ends. If a debt cancellation agreement is void, then the buyer must receive a full refund of the fee for the agreement. If the buyer will not receive a full refund, then you should use a term other than “void” (e.g., “terminate”).

*Acceptable:*

- “If the buyer has committed fraud or made any material misrepresentations, then this agreement will be void, and the buyer will receive a full refund of the fee for the agreement.”
- “The holder may terminate this agreement if the buyer has committed fraud or made any material misrepresentations.”

*Unacceptable:*

- “If the buyer has committed fraud or made any material misrepresentations, then this agreement will be void.” (*This is insufficient because it does not specify that the buyer will receive a full refund.*)

#### 48. Undefined abbreviations

In order to be clear and not misleading, the agreement must define any abbreviations used in the agreement. For example, if the agreement uses the term “MSRP,” it should

explain at least once that this refers to “Manufacturer’s Suggested Retail Price.” This also applies to other abbreviations such as “NADA” (National Automobile Dealers Association) and “GVWR” (Gross Vehicle Weight Rating).

#### **49. Arbitration typographical error**

The OCCC has reviewed several agreements with arbitration sections that contain a specific typographical error. One sentence of the arbitration section states: “If the arbitrator holds that a party has raised a dispute without substantial justification, the arbitrator shall have the authority to order that the cost of the arbitration proceedings be borne by the other party.” In this sentence, the phrase “the other party” is a typographical error and should be replaced with “that party.” It is misleading to suggest that an arbitrator will order the party that *did not* raise an unjustified dispute to pay costs.