

Motor Vehicle Bulletin 1999-1

Disclosure of Negative Equity on an Installment Sale Contract



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Financial Institutions Bureau
Department of Consumer and Industry Services
State of Michigan

An April 23, 1999 declaratory ruling¹ issued by Commissioner Patrick M. McQueen concluded that a licensee under the Motor Vehicle Sales Finance Act (MVSFA) may finance on an installment sale contract for the purchase of a motor vehicle the amount of negative equity associated with a vehicle traded in. This bulletin establishes that a licensee which itemizes negative equity as a component of the cash price in a manner consistent with the declaratory ruling will not violate the MVSFA.

Section 13(2) of the MVSFA, which enumerates items required to be disclosed in an installment contract,² does not require itemized disclosure of the amount of negative equity in an installment sale contract. Importantly, Section 13(2) does not appear to preclude disclosure items other than those listed in the subsection.

In order to reconcile the disclosure requirements of the Federal Reserve Board's revised commentary on Regulation Z with those of the Motor Vehicle Sales Finance Act (MVSFA), the Financial Institutions Bureau has prepared an example showing one method of disclosing the negative equity in connection with an installment sale of a motor vehicle. Other ways of disclosing negative equity, which are consistent with the declaratory ruling issued on April 23, 1999 and which satisfy the requirements of the MVSFA and the revised commentary to Regulation Z, may be permissible.

The Official Staff Commentary on Regulation Z, amended in 1998 and again in 1999 to clarify disclosure of negative equity in credit sales, notes that a downpayment in a credit sale may be applied only to *reduce* the cash price. The commentary requires that a negative equity trade-in in a credit sale be disclosed as zero, not as a negative downpayment amount. The commentary notably emphasizes that the regulation allows considerable flexibility in disclosing the itemization of the amount financed. In particular, the commentary notes regarding section 226.18(c) of the regulation that it "establishes only a minimum standard for the material to be included in the itemization of the amount financed" and that creditors may add categories:

" . . . For example, in a credit sale, the creditor may include the cash price and the downpayment. If the credit sale involves a trade-in of the consumer's car and an existing lien on that car exceeds the value of the trade-in amount, the creditor may disclose the consumer's trade-in value, the creditor's payoff of the existing lien, and the resulting additional amount financed. "³ [emphasis added]

¹ Request by Kenneth J. Rojc of Nisen & Elliott for a declaratory ruling on whether an installment seller licensed under the Motor Vehicle Sales Finance Act may finance negative equity under an installment sale contract.

² MCL 492.113(2); MSA 23.628(13).

³ 12 CFR Part 226 (1999), Supplement I-Official Staff Interpretations, Section 226.18-Contents of Disclosures, 2. Format, 18(c) Itemization of Amount Financed, 2. Additional Information, iii. Add Categories.

Section 12(b) of the MVSFA⁴ authorizes the Commissioner to prescribe the minimum information to be set forth in an installment sale contract. Licensees under the MVSFA are hereby directed that in an installment sale involving negative equity the following shall be disclosed in the installment sale contract:

- the value of the vehicle or vehicles traded in by the installment buyer;
- the amount of existing lien(s) on the trade-in vehicle or vehicles being paid off by the licensee; and
- the amount of negative equity financed in the installment sale contract.

The attached example shows one format of disclosing these details of an installment sale involving negative equity. Licensed installment sellers and sales finance companies that disclose negative equity in a manner consistent with the example attached will be deemed to have satisfied the itemization requirements set forth in section 13(2) of the MVSFA and this bulletin. Other formats of itemizing negative equity, which meet the requirements of the MVSFA and the revised commentary to Regulation Z and which are consistent with the Bureau's declaratory ruling, may be permissible.

Licensees are expected to implement procedures to bring their disclosures of financed negative equity into conformance with this bulletin as soon as possible.

Questions regarding this bulletin should be directed to the Examination Division of the Financial Institutions Bureau at (517) 373-3470.

/s/

/s/

Gary K. Mielock
Acting Commissioner

A. Ann Gaultney
Director of the Examination Division

07-06-99

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Date

Date

⁴ "Every installment sale contract shall be completed as to all essential provisions prior to the signing of such contract by the buyer, and shall contain such minimum information as the administrator shall direct." MCL 492.112(b); MSA 23.628(12).

1. Cash Price of the Installment Sale Transaction

a. Taxable Costs, Fees, and Charges	
i. Motor Vehicle Cash Price	20,000.00
ii. Accessories and Installation Charges	100.00
iii. Document Preparation Fee (Cannot exceed \$40.00)	40.00
iv. _____	0.00
Total Taxable Costs, Fees, and Charges	<u>20,140.00</u>
b. Michigan Sales Tax	1,208.40
c. Non-Taxable Amounts of Cash Price	
i. Negative Equity Value of Trade-In (As calculated in Item 2-Down Payment)	4,000.00
ii. _____	0.00
Total Non-Taxable Amounts of Cash Price	<u>4,000.00</u>
TOTAL CASH PRICE OF THE INSTALLMENT SALE TRANSACTION	25,348.40

2. Down Payment Made by the Buyer

a. Cash Paid by Buyer	1,000.00
b. Trade-In of Motor Vehicle (As calculated below) (If net equity value is negative, show trade-in as zero and itemize negative equity on line 1(c)(i) under Item 1-Cash Price)	0.00
i. Gross Value of Trade-In	6,000.00
ii. Amount Owed on Trade-In and Paid to _____ on Buyer's Behalf	10,000.00
iii. Net Equity Value of Trade-In	<u>- 4,000.00</u>
c. Other Trade-In	0.00
TOTAL DOWNPAYMENT MADE BY THE BUYER	1,000.00

3. Unpaid Cash Price Balance (This is the difference between Item 1-Cash Price and Item 2-Down Payment) 24,348.40

4. Insurance Premiums, etc. Paid By Seller to Others on Buyers Behalf	
a. Optional Credit Insurance (As calculated below)	75.00
i. Credit Life:	50.00
ii. Credit Casualty:	25.00
b. Liability Insurance:	0.00
c. Extended Warranty and Service Contracts:	0.00
d. _____	0.00
TOTAL INSURANCE PREMIUMS, ETC. PAID	75.00

5. Other Costs Paid by Seller to Others on Buyers Behalf	
a. Titling Fee (Public Official)	
b. Registration Fee (Public Official)	20.00
c. License Fee (Public Official)	20.00
d. Judgement Lien Release Fee (Public Official)	20.00
e. _____	0.00
TOTAL OTHER COSTS PAID	80.00

6. Principal Amount Financed (This amount is the sum of Item 3-Unpaid Cash Price, Item 4-Insurance, etc., and Item 5-Other Costs) 24,503.40

7. Finance Charge 2,430.19

8. Time Balance (This amount is the sum of Item 6-Principal Amount Financed and Item 7-Finance Charge) 26,933.59