

Guidance Pertaining to Non-recourse Financial Transaction Exemption Contained in Act 636 of 2014

R.S. 9:3518.4 was enacted as a result of Act 636 and becomes effective January 1, 2015

R.S. 9:3518.4 (C) clearly states, the provisions of R.S. 9:3518.4 do not apply to any non-recourse consumer financial transactions. OFI finds R.S. 9:3518.4 (C) to clearly exempt non-recourse consumer financial transactions from the null and void provisions of R.S. 9:3518.4 (A) and the enforcement provisions of R.S. 9:3518.4 (B). Therefore, a non-recourse consumer financial transaction provided by a creditor for which a license was required and not obtained prior to engaging in such transaction shall not be automatically considered null and void by Act 636. For the purpose of determining if a transaction is non-recourse, the Commissioner or his designee will make a case by case determination of whether consumer financial transactions are non-recourse.

Act 636 did not provide a definition of non-recourse consumer financial transaction nor did it exempt such transactions from any other provisions of the Louisiana Consumer Credit Law (LCCL) other than R.S. 9:3518.4. Therefore, it is the purpose of this guidance to provide clarification that non-recourse consumer financial transactions which meet the definition of a consumer credit transaction contained in R.S. 9:3516(13) are considered to be subject to all limits and restrictions contained within the LCCL.

OFI recognizes that some non-recourse consumer financial transactions may not meet the definition of a consumer credit transaction. In these instances, the limits and restrictions contained in the LCCL would not apply. The determination of whether or not non-recourse consumer financial transactions are considered consumer credit transactions shall be made by the Commissioner or his designee on a case by case basis by evaluating their terms and characteristics.

The LCCL states in part, a consumer credit transaction means a consumer loan or a consumer credit sale but does not include a retail installment contract... Further, a consumer loan means a loan of money or its equivalent made by a lender in which the debtor is a consumer and the loan is entered into primarily for personal, family, or household purposes.

To determine if a specific non-recourse consumer financial transaction is subject to the restrictions contained within the LCCL, the Commissioner or his designee will consider the substance and form of the transaction to determine if it exhibits characteristics of a loan of money and a consumer credit transaction.

If the Commissioner or his designee determines that the non-recourse consumer financial transaction exhibits the characteristics of a loan of money and a consumer credit transaction, pursuant to his authority, the Commissioner will enforce all limits and restrictions contained in the LCCL.

Below is entire text of R.S. 9:3518.4 which becomes effective January 1, 2015.

§ 3518.4. Contract validity; consumer credit transactions; deferred presentment transactions

A. (1) A consumer credit transaction as defined by R.S. 9:3516(13) or deferred presentment transaction as defined by R. S. 9:3578.3(2) shall be null, void, unenforceable, and uncollectible as being contrary to the policy of this state if the creditor has not obtained a license, if required by this Chapter or R.S. 9:3578.1 et seq., at the time the transaction is made.

(2) The creditor shall forfeit all loans or transactions proceeds, fees, charges, and other amounts paid in association with the transaction or loan.

(3) Upon request of the borrower, the creditor shall return any property taken as collateral within thirty days of the request. If the collateral property has been disposed of at the time of the request, the creditor shall reimburse the borrower an amount equal to the current value of the collateral as determined by any recognized market for the type of collateral or, if there is no recognized market, the fair market value of any such property as determined by commercially reasonable standards.

(B). Any person who attempts to enforce or collect pursuant to the agreements nullified by this Section shall be subject to fines, penalties, assessments, and applicable administrative and legal actions at the discretion of the commissioner within the powers granted to him under this Chapter.

(C). The provisions of this Section shall not apply to creditors exempt from the consumer loan licensing requirements pursuant to R.S. 9:3560, any non-recourse consumer financial transaction, or any other creditor not required to obtain a license from the Office of Financial Institutions