NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/HMU:sg
4650

June 19, 1987

Office of General Counsel

Mr. Tom E. Walker
Vice President for Administration
Suncoast Schools Federal Credit Union
Tampa, Florida 33680

Dear Mr. Walker:

This is in response to your letter concerning Federal credit union ("FCU") involvement in repurchase balloon loan programs.

We recently addressed the involvement of FCU's in repurchase balloon loan programs in a letter to Mr. Timothy Woodrum. A copy of that letter is enclosed. FCU's may continue or begin to offer repurchase balloon loan programs until we have completed our current review of such programs. If our review leads us to the conclusion that repurchase balloon loans are permissible only if certain criteria are met, all FCU programs will be required to conform to those criteria.

Thank you for your input on this issue.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

HMU:sg

Enclosure

FCI-1 Vol I, C, 5, — Balloon Rpts

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

May 4, 1987

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Office of General Counsel

Mr. Timothy Woodrum
Treasurer
Cartel Enterprises, Inc.
Suite 210
Fort Lauderdale, FL 33308

Dear Mr. Woodrum:

This is in response to your letters of February 26, April 10, and April 23, 1987, and our telephone conversation of April 23, 1987, concerning repurchase and conventional balloon loans involving Federal credit unions ("FCU's").

According to the program described in the letters, your company is involved in providing residual value insurance to FCU's that engage in repurchase balloon loans with their members. As stated in our December 11, 1986, letter to Mr. Randall McCathren (enclosed), a repurchase balloon loan program is not consistent with the generally accepted definition of a loan since it gives the borrower an option to return property rather than money. In addition, a repurchase balloon loan does not meet the requirements of a permissible lease for FCU's pursuant to Interpretive Ruling and Policy Statement 83-3. We are presently reexamining repurchase balloon loans and their legality for FCU's. We have been informing FCU's and other entities involved in FCU repurchase balloon loan programs that they may continue to participate in such programs pending the completion of our current review. If our review leads us to the conclusion that repurchase balloon loans are permissible if certain criteria are met, all FCU programs will be required to conform to those criteria.

As discussed in our telephone conversation and as noted in our letter to Mr. McCathren, FCU's may make conventional balloon loans to their members. You noted that your program could be modified so that the FCU would provide conventional balloon loans rather than repurchase balloon loans to its members. As you know, the loan documents for conventional balloon loans do not contain a provision giving the member an option of returning the vehicle instead of paying the lump sum amount at the maturity of the loan. Your April 23 letter contains the statement that ". . . Cartel's program is structured in such a manner that the loans offered are considered conventional balloon loans . . . ." (Emphasis added.) So that there is no further misunderstanding, our opinion on the permissiblity is based upon your

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representation that the loans are (as opposed to "considered") conventional balloons as we have described such loans in this letter.

Under your plan, the participating FCU would facilitate its members' purchase of residual value insurance through your company. An FCU may make insurance plans of third party vendors available to its membership pursuant to Part 721 of the NCUA Rules and Regulations (12 C.F.R. Part 721), copy enclosed. Your attention is specifically directed to the reimbursement provisions of that regulation (see Section 721.2).

In conclusion, an FCU may make conventional balloon loans (i.e. loans that do not involve a repurchase option) and offer a third party vendor's residual value insurance plan to its members. Of course, such loans must be in compliance with Section 1757(5) of the FCU Act (12 U.S.C. §1757(5)) and Section 701.21 of the NCUA Rules and Regulations (12 C.F.R. §701.21) (NCUA statutory and regulatory provisions governing loans) and any other applicable Federal or state law. Lastly, FCU involvement in a third party vendor insurance plan must comply with Part 721 of the NCUA Rules and Regulations.

I hope that we have been of assistance.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

HMU:sg

cc: Jeffrey Burris, Esq.
Randall McCathren

Enclosures

Part 721

Federal Credit Union Insurance and Group Purchasing Activities

§721.1 Authority

A federal credit union may make insurance and group purchasing plans involving outside vendors available to the membership (including endorsement), and may perform administrative functions on behalf of the vendors.

§721.2 Reimbursement.

(a) For purposes of paragraph (b) of this section, the following definitions shall apply:

(1) "Dollar amount" shall mean $4 per single payment policy, $6 per combination policy, or $4 per annum for any other type of policy; and

(2) "Cost amount" shall mean the total of the direct and indirect costs to the Federal credit union of any administrative functions performed on behalf of the vendor. The Federal credit union must be able to justify this amount using standard accounting procedures.

(b) A Federal credit union may be reimbursed or compensated by a vendor for activities performed under § 721.1 as follows:

(1) Except as otherwise provided by applicable state insurance law, reimbursement or compensation is not limited with respect to insurance sales by the credit union or its employees which are directly related to an extension of credit by the credit union or directly related to the opening or maintenance of a share, share draft or share certificate account at the credit union;

(2) For insurance sales other than those described in paragraph (b)(1), a Federal credit union may receive an amount not exceeding the greater of the dollar amount or the cost amount;

(3) For group purchasing plans other than insurance, a Federal credit union may receive an amount not exceeding the cost amount.

(c) No official or employee of a Federal credit union or any immediate family member of an official or employee may receive any compensation or benefit, directly or indirectly, in conjunction with any activity under this regulation. For purposes of this section, "immediate family member" means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or spouse of any such individual.

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

December 11, 1986

Office of General Counsel

Mr. Randall McCathren
Executive Vice President
Bank Lease Consultants Inc.
3401 West End Avenue
Nashville, TN 37203

Dear Mr. McCathren:

This is in response to your letter concerning conventional balloon loans and repurchase balloon loans and whether these programs are permissible for Federal credit unions (FCU's). We apologize for the delay in our response.

Conventional balloon loans differ from traditional loans in that there is a lump sum (balloon) payment due at the end of the financing period. FCU's can make balloon loans pursuant to Section 107(5) of the FCU Act (12 U.S.C §1757(5)) and Section 701.21 of the NCUA Regulations (12 C.F.R. §701.21). Conventional balloon loans are subject to the same requirements as other FCU loans. You analogize the conventional balloon program to an open-end lease program permissible for FCU's pursuant to Interpretive Ruling and Policy Statement 83-3 - FCU Leasing of Personal Property (IRPS 83-3). IRPS 83-3 has no bearing on an FCU's authority to offer conventional balloon loans. They are loans rather than leases and no analogy to permissible leases need be made.

The repurchase balloon loan differs from the conventional balloon loan in that, in addition to a lump sum (balloon) payment being due at the end of the financing period, the borrower has the option of returning the property (vehicle) to the FCU at the end of the financing period for a predetermined residual value in lieu of the balloon payment. We do not view the repurchase balloon loan program as a loan of money. A loan of money is a delivery of a sum of money to another under a contract to return at some future time an equivalent amount with or without interest. (See, e.g, Boerner v. Colwell Co., 577 P.2d 200.) The repurchase balloon loan program is not consistent with the generally accepted definition of a loan because it gives the borrower an option to return property rather than money. As you know, the NCUA has authorized FCU's to lease personal property to their members if the leases are the functional equivalent of loans. (See IRPS 83-3.) The repurchase balloon loan program

does not meet the requirements of IRPS 83-3 since the borrower/member has title to the property rather than the FCU.

Under the repurchase balloon program, the FCU is not the lessor as is required by IRPS 83-3. The fact that the repurchase balloon loans are similar in other respects to permissible leasing does not bring them within authorized activities for FCU's. The repurchase balloon program is neither a permissible loan nor lease for FCU's. Rather, it is a hybrid program that is not authorized for FCU's.

In summary, conventional balloon loans are permissible for FCU's while the repurchase balloon loan program is not.

I hope that we have been of assistance.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

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