



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

August 17, 1987

GC/JSJ
4650

Office of General Counsel

Fred M. Haden, Esq.
450 Maple Avenue, East
Suites 202-203
Vienna, Virginia 22180

Dear Mr. Haden:

This is in response to your letter in which you asked whether Federal credit unions (FCU's) can purchase automobile leases of their members.

Under your proposal, an FCU member would lease an automobile from a third-party lessor. The lessor would then sell the lease to the FCU, but would remain the legal title owner of the automobile. The FCU would have a lien on the automobile.

Neither the FCU Act, 12 U.S.C. §1751 et seq., nor the NCUA Rules and Regulations, 12 C.F.R. Part 700 et seq., explicitly authorize FCU's to engage in leasing activities. However, in IRPS 83-3, the NCUA Board determined that when certain requirements are met, leasing of personal property is the functional equivalent of secured loans and therefore is a permissible activity for FCU's. The IRPS, which is based in part upon M & M Leasing Corporation v. Seattle First National Bank, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978), contains the requirements that a lease must have so that it is the functional equivalent of a secured loan. The IRPS provides that:

The leases may be either direct or indirect and either open end or closed end. The leases must be net, full payout leases, with a maximum limit of 25 percent residual value to be relied upon for the full payout requirement. Any reliance beyond the 25 percent is permissible if guaranteed. FCU's shall retain salvage powers over the leased property. Federal credit unions are not subject to the usury ceiling when engaging in lease financing. Federal credit unions engaging in leasing must maintain a contingent liability insurance policy with an endorsement for leasing.

FCIA
Vol I C 5 Special Loan Plans

Fred M. Haden, Esq.
Page Two

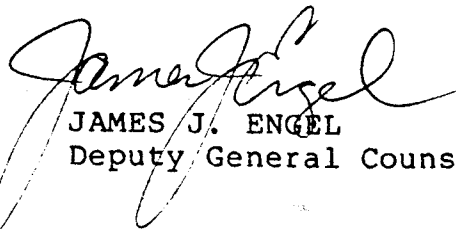
The IRPS limits FCU leasing activities to direct and indirect leasing. In indirect leasing, the FCU purchases the lease and the leased property after the lease has been executed between a vendor and an FCU member. In direct leasing, the FCU will become the owner of personal property at the request of the lessee member who wishes to lease it from the FCU. The FCU will purchase the property from a vendor and then lease it to the member. In both direct and indirect leasing, the FCU is the legal titleholder of the personal property. The IRPS does not authorize FCU's to engage in leasing activities in which the FCU will not be the owner of the leased property.

You stated in your letter that you believed your leasing proposal was permissible for FCU's because the FCU would be in the same position they would be in if they had purchased a member's automobile loan, i.e., a lienholder. Section 701.23 of the NCUA Rules and Regulations provides FCU's with the authority to purchase loans. Under §701.23(b)(1)(i) an FCU may purchase loans of its members if they are loans it is empowered to grant or if the loans are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant. We do not believe that this provision provides the authority to purchase leases pursuant to your leasing proposal. Arguably, it would permit FCU's to purchase leases of their members that were the functional equivalent of secured loans. However, to meet the functional equivalence test contained in the IRPS, the FCU must purchase both the lease and the property subject to the lease.

It is the opinion of this Office that the authority of FCU's to engage in leasing activities is limited to the situation in which the FCU is a lessor as detailed in IRPS 83-3.

I hope that we have been of assistance.

Sincerely,



JAMES J. ENGEL
Deputy General Counsel

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