



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

September 3, 1987

GC 573
3600

Office of General Counsel

Stanley M. Hammerman, Esq.
300 W. Clarendon, Suite 375
Phoenix, Arizona 85013

Dear Mr. Hammerman:

This is in response to your letter asking whether it is permissible for Federal credit unions (FCU's) to participate in an automobile leasing program offered by Car Find Network Inc. (Car Find).

You stated in your letter that, under the proposed program, Car Find will use their own funds to purchase automobiles. These automobiles will then be leased to FCU members, and the leases will be sold to the FCU. Legal title to the automobile will remain in Car Find's name. You concluded that the program is in compliance with NCUA's Interpretive Ruling and Policy Statement 83-3.

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 authorizes 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 a secured loan 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

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lease financing. Federal credit unions engaging in leasing must maintain a contingent liability insurance policy with an endorsement for leasing.

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.

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. You requested in your letter that you be informed of any hearing process or appeal rights that would be available to you in the event of an adverse decision by this Office. In this regard, we refer you to Section 790.10(b) of the NCUA Rules and Regulations.

I hope that we have been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

JT:sg