



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

GC: bhs  
4675

February 25, 1988

Office of General Counsel

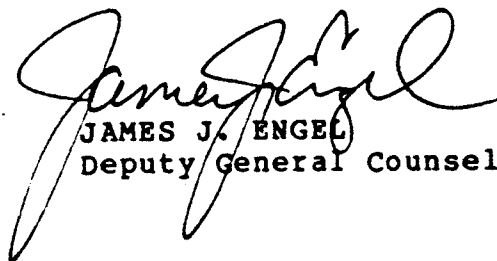
Thomas A. Welmers  
Lang Insurance Agency  
1663 Stephenson Hwy.  
Suite 200  
Troy, Michigan 48063

Re: Credit Union Lease Financing (Your Letter of  
February 17, 1988)

Dear Mr. Welmers:

You have requested our opinion concerning aspects of Federal credit unions' ("FCU") participation in leasing automobiles to FCU members. Your plan is to create an independent leasing company and have an FCU fund leases and collect monthly lease payments via an assignment to the FCU of the member\lease company leasing agreement. We have recently addressed this issue in another opinion letter, a copy of which is enclosed. An FCU relying on the enclosed opinion letter must conform their auto leasing program to meet the requirements found therein.

Sincerely,



JAMES J. ENGEL  
Deputy General Counsel

RD:bhs

Enclosure

FOIA

Vol. I Part C (19) AUTO Lease Plan

February 10, 1988

GC/STG  
4650

Earl D. Tanner, Esq.  
Tanner, Bowen & Tanner  
1020 State Street  
Salt Lake City, UT 84111

Re: Credit Union Lease Financing (Your Oct. 23, 1987,  
Letter)

Dear Mr. Tanner:

The issue you present is as follows: Can a motor vehicle leasing program meet the requirements of Interpretive Ruling and Policy Statement ("IRPS") 83-3 ["Federal Credit Union ("FCU") Leasing of Personal Property to Members"] [48 Fed. Reg. 52568 November 21, 1983] if: (a) the leasing company assigns the lease to the FCU; (b) the leasing company holds title to the vehicle; (c) the FCU is named as the sole lienholder on the vehicle's certificate of title; and (d) the FCU is given an unconditional and irrevocable power of attorney to assign at will title to itself or to any other person as it may choose? In our view, such a leasing program meets the requirements of IRPS 83-3, even though the FCU may not hold legal title to the leased property during the lease term.

IRPS 83-3 sets forth the requirements that enable FCU's to engage in leasing of personal property to their members. In general, an FCU "may not assume burdens or subject itself to risks greater than those ordinarily incident to a secured loan." [48 Fed. Reg. 52568 (November 21, 1983)] More specifically, IRPS 83-3 provides that an FCU may:

engage in leasing of personal property to their members ... [when the leases are] 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

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

In adopting IRPS 83-3, the NCUA Board further described the "indirect or direct lease" requirement:

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.

You have pointed out several problems which may practically disable an FCU from engaging in leasing programs if the "direct or indirect lease" provision requires the FCU to become legal titleholder to the property to be leased: In many states, entities engaging regularly in the acquisition and sale or lease of motor vehicles must be licensed as motor vehicle dealers; and in many states, motor vehicle dealers must post bonds and comply with various other state regulatory requirements. These requirements certainly would constitute a significant barrier to FCU's participating in leasing programs in those states.

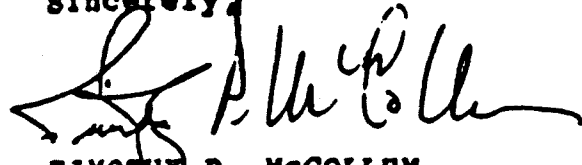
You suggest that a solution to this problem is to have the leasing company: (a) retain legal ownership of the leased vehicles; (b) assign all of its rights in the lease to the FCU (the FCU will receive the lease payments and determine if the lease is in default); (c) name the FCU as the sole lienholder on the vehicles; and (d) give the FCU an unconditional and irrevocable power of attorney to at will assign title to itself or to any other person it may choose. Except for the fact that the FCU will not be the legal titleholder to the leased vehicles, all other requirements of IRPS 83-3 will be met.

We are persuaded that IRPS 83-3 does not require an FCU to acquire legal title to the leased property. In our view, the program you described will not subject the FCU to risks greater

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than those involved in a secured loan, and gives the FCU a sufficient equitable interest in the leased vehicles to satisfy the "ownership" requirement of IRPS 83-3.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy P. McCollum', written over a horizontal line.

TIMOTHY P. MCCOLLUM  
Assistant General Counsel

HMU:bms

cc: Fred Haden, Esq.