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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456
September 26, 1988

Office of General Counsel

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

Re: Credit Union Leasing Agreement (Your
July 13, 1988, Letter)

Dear Mr. Hammerman:

You have asked whether a leasing agreement you prepared is in compliance with an opinion issued by this Office regarding Federal credit unions ("FCU's") engaging in auto leasing. We assume that you are referring to an opinion dated February 10, 1988, titled "Credit Union Lease Financing." You saw an excerpt of this opinion in the NCUA Watch, and state that your leasing agreement was drafted in accordance with the excerpt. We should point out that the NCUA Watch is not an NCUA publication; it is an independent newsletter. We are enclosing a copy of our opinion for your convenience. Our review of the leasing agreement indicates that it is not in conformance with the opinion issued by this Office, and also may not satisfy the requirements of Interpretive Ruling and Policy Statement ("IRPS") 83-3 ("Federal Credit Union Leasing of Personal Property to Members", 48 Fed. Reg. 52568, November 21, 1983).

Background

IRPS 83-3 sets forth the requirements that enable FCU's to engage in leasing of personal property to their members. It provides:

Federal credit unions may engage in leasing of personal property to their members when certain requirements are met. The leases may be either direct or indirect and either open end or closed end.

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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. Federal credit unions shall retain salvage powers over the leased property. Federal credit unions are not subject to the usury ceiling while engaging in lease financing. Federal credit unions engaging in leasing must maintain a contingent liability insurance policy with an endorsement for leasing.

In an opinion dated February 10, 1988, we stated our view that IRPS 83-3 does not require that an FCU acquire legal title to the leased property. We concluded that an FCU would obtain sufficient equitable interest in a leased vehicle to satisfy the "ownership" requirement of IRPS 83-3 if the leasing company: (a) retained legal ownership of the leased vehicles; (b) assigned all of its rights in the leases to the FCU; (c) named the FCU as the sole lienholder on the vehicles; and (d) gave the FCU an unconditional and irrevocable power of attorney to at will assign title to itself or to any other person it may choose.

Analysis

Your proposed agreement goes beyond the proposal reviewed in the February 10, 1988, letter. Your proposal provides that the lessor will retain title to the leased autos, but will "prepare and submit a Special Power of Attorney assigning to [FCU] all right, title and interest in the leased vehicle. [FCU] agrees not to exercise this Power of Attorney unless it has evidence in its possession that its collateral is in jeopardy. This Power of Attorney can only be exercised after [FCU] has given [lessor] a ten (10) day written notice of its intent to exercise." Also, it is unclear from the materials submitted whether the FCU will be the sole lienholder on the leased auto.

You have not given us any reason why further compromise of the "ownership" requirement is needed, and our independent review has uncovered none. Our February 10, 1988, letter therefore remains as the minimum ownership requirement we recognize.

We see several problems with the materials you submitted. We cannot determine whether the leases will be net, full payout, with a maximum limit of 25 percent value to be relied upon for the full payout requirement. (Higher estimates are allowed if

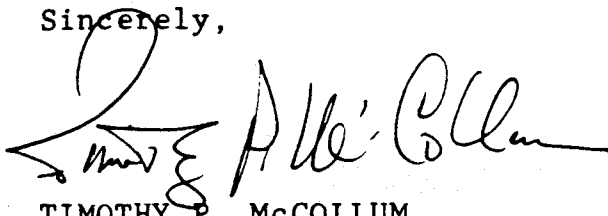
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the residual value is guaranteed by a financially capable party.)
Moreover, the contingent liability insurance requirement seems
not to be met. The agreement provides that the lessor will
provide contingent liability insurance. To satisfy IRPS 83-3,
the FCU must be either the policyholder or a coinsured with the
lessor.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy P. McCollum". The signature is written in a cursive style with a large initial "T" and "M".

TIMOTHY P. McCOLLUM
Assistant General Counsel

JT:sg

enclosure



NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20458

February 10, 1988

GC/ST:sg
4650

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

Re: [REDACTED]

Dear Mr. Tanner:

The issue you present is as follows: Can a motor vehicle leasing program meet the requirements of Interpretive Ruling 500 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.

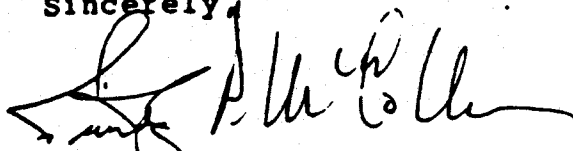
You suggest that a solution to this problem is to have the leasing company: (a) retain legal ownership of the leased vehicles; (b) assign all of its rights in the lease to the FCU (the FCU will receive the lease payments and determine if the lease is in default); (c) name the FCU as the sole lienholder 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,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

HMU:bms

cc: Fred Haden, Esq.