



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456
November 7, 1988

GC/TPM:jt
4650

Office of General Counsel

Fredric Benson, Esq.
Feldman and Wasser
P.O. Box 2418
Springfield, Illinois 62705

Re: Automobile Leasing Program (Your August 2, 1988,
Letter)

Dear Mr. Benson:

You have requested a review of an auto leasing program offered to Federal credit unions ("FCU's") by Midwest Auto Consultants, Inc. ("MAC") for compliance with NCUA requirements. You have not given us sufficient information to allow us to give an opinion on the program, but we will provide some guidance based on the information we have. We emphasize that nothing stated here should be construed as recommending the program for FCU's.

BACKGROUND

The program is structured as follows:

- a. An automobile is acquired by MAC.
- b. MAC completes a lease agreement between MAC and an FCU member.
- c. MAC assigns the lease to FCU.
- d. The leased auto is titled in the name of MAC and is registered in the member's name, with FCU as lienholder.
- e. Lessee/member furnishes insurance coverage in an amount set by FCU. FCU will be named as loss payee.
- f. FCU will maintain a contingent liability insurance policy with an endorsement for leasing.
- g. Residual values will be insured at least as much as required by NCUA. The cost of insuring residual value will be borne by the lessee as part of the lease payment. FCU will be the named loss payee.

FOIA ICS - Special Loan Plans

ANALYSIS

IRPS 83-3 sets forth the requirements for FCU's to engage in leasing 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).]

IRPS 83-3 (copy enclosed) provides that an FCU may engage in leasing personal property to its members, provided the lease is:

1. direct or indirect - in a direct lease, the FCU purchases the property and leases it to a member. In an indirect lease, the FCU purchases a lease and the leased property after the member has executed the lease with the vendor.
2. open-end or closed-end - in an open-end lease, the lessee member is responsible for any difference between the relied-upon residual value of the property and its actual value at lease-end; in a closed-end lease, this risk is placed on the FCU;
3. net lease - where all the burdens of ownership, maintenance, repair, licensing, and insurance rest with the lessee;
4. full pay-out - which requires the lessor FCU to recoup the entire investment in the leased property, plus the cost of the financing over the term of the lease. For full pay-out calculations, an FCU is permitted to assume the leased property will have a residual value of up to 25% of the original cost. FCU's may enter into full pay-out leases which assume a higher estimated residual value, provided the residual value over 25% is insured;
5. no usury ceiling applies; and
6. the FCU carries contingent liability insurance with an endorsement for leasing.

Though your program may qualify as an indirect, closed-end, net, full pay-out leasing program, these issues particularly need to be clarified:

1. In order to satisfy the full pay-out requirement, when residual values in excess of 25% of the original value are relied upon, the amount over 25% must be insured. Section I, paragraph (D)(2)(b) of the Marketing Agreement states:

Residual values will be insured by
an "A" Best Rated Insurance Company
or the National Union Fire
Insurance Company of Pittsburgh,

Fredric Benson, Esq.
November 7, 1988
Page 3

PA, rated "A + XV" in accordance with NCUA or state requirements. Provided, however, such insurance shall only apply to leases which are not terminated prior to the end of the term stated in the lease, and only to the portion of the lease term for which such insurance can be procured and for which MAC, Inc. chooses to insure.

Residual values in excess of 25% must be insured; insurance can not be at MAC's discretion.

2. Section I, paragraph (F) of the Marketing Agreement provides that the lease can include extended warranty agreements. The extended warranty cannot be provided by the FCU; that would be beyond its authority.

3. Section I, paragraph (B) of the Marketing Agreement provides that MAC will develop the lease documents. The documents must conform to the FCU's loan policies.

4. This Office has stated that IRPS 83-3 does not require an FCU to actually acquire legal title to leased property 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 it chooses.

Under your program, leased vehicles will be titled in MAC's name. The FCU will be the lienholder. Section II, paragraph (D) of the Marketing Agreement states:

Credit Union shall be the assignee of the lessor's interest in the lease and may at anytime file an application of title change using the blanket "Power of Attorney" or specific "Power of Attorney" supplied with each lease. Such title changes may be made without notification or compensation to MAC, Inc.

You did not provide us with a copy of the power of attorney. In order to satisfy IRPS 83-3 under our prior opinions, the power of

Fredric Benson, Esq.
November 7, 1988
Page 4

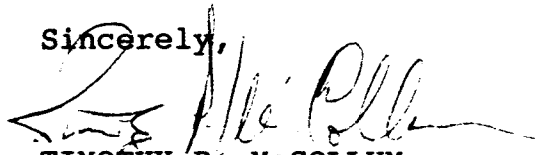
attorney may not place any limitations on the ability of the FCU to exercise it.

5. The Marketing Agreement refers to vehicle purchase as well as vehicle leasing. It is unclear whether the purchase aspect is limited to the lessee's exercising an option to purchase a leased vehicle or whether MAC will also be locating vehicles on behalf of FCU members for purchase. In the latter case, Part 721 of NCUA Rules and Regulations (12 C.F.R. Part 721) must be complied with.

6. Section IV of the Marketing Agreement provides that the agreement will be governed by the laws of Illinois. Where Federal law is applicable, it will prevail.

Again, we make no determination as to the advisability of an FCU participating in the program.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

JT:sg

Enclosures



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20458

February 10, 1988

GC/JT:sg
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

Earl D. Tanner, Esq.
February 10, 1988
Page 2

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.

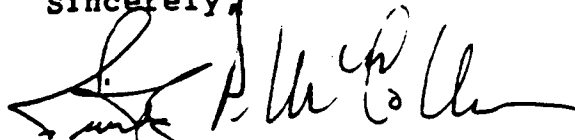
You suggest that a solution to this problem is to have the leasing company: (a) retain legal ownership of the leased vehicles; (b) assign all of its rights in the lease to the FCU (the FCU will receive the lease payments and determine if the lease is in default); (c) name the FCU as the sole lienholder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

Earl D. Tanner, Esq.
February 10, 1988
Page 3

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 faint, illegible typed name.

TIMOTHY P. MCCOLLUM
Assistant General Counsel

HMU:bms

cc: Fred Haden, Esq.