



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/JT:sg
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April 11, 1989

Office of General Counsel

Mr. James L. Geary
President
Security Excel Corporation
1200 Weber Street, Third Floor
Orlando, Florida 32802

Re: Automobile Leasing Program (Your
February 22, 1989, Letter)

Dear Mr. Geary:

Your company offers an indirect automobile leasing program to Federal credit unions ("FCU's") that includes a loan from an FCU to the nonmember leasing company. You have asked whether this is permissible under NCUA's Interpretive Ruling and Policy Statement 83-3 ("Federal Credit Union Leasing of Personal Property to Members"). It is not. An FCU may only extend loans to members. You have also inquired about the proper accounting treatment for automobile leases. We have asked NCUA's Office of Examination and Insurance to respond to you on this issue.

BACKGROUND

Your indirect automobile leasing program operates as follows. Your company purchases an automobile and leases it to an FCU member. The FCU provides a nonrecourse loan to your company. The loan is secured by the assignment of the lease agreement, all lease payments, any insurance proceeds, and monies due on the residual value insurance policy. The FCU is listed on the title to the automobile as first lienholder. An unconditional and irrevocable power of attorney is granted to the FCU in the nonrecourse note and security agreement "for the purpose of carrying out the terms of the loan agreement and to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable under the loan agreement."

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ANALYSIS

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

We have interpreted the IRPS to permit indirect leasing without the FCU having title to the automobiles where: (1) the FCU is assigned the vendor's interest in the lease; (2) title to the automobile is held by the vendor; (3) the FCU is the sole lienholder of the leased automobile; and (4) the FCU receives an unconditional and irrevocable power of attorney authorizing the FCU to assign at will title to itself or anyone it chooses. It is unclear from your programs's description whether criteria (3) and (4) are met.

IRPS 83-3 authorized FCU leasing of personal property on the basis that when the conditions set forth in the IRPS are met, leasing of property is the functional equivalent of a secured loan to a member, and is, therefore, a permissible FCU activity. For indirect leasing to be permissible for an FCU, the

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obligation must be between an FCU and one of its members since an FCU does not have the authority to make loans to nonmembers. Your indirect leasing program is not permissible for an FCU since it involves an FCU making a loan to your company (a nonmember). Your letter does not contain sufficient information for us to determine whether the other requirements of the IRPS have been met.

Should your program be modified to comply with IRPS 83-3, this letter should not be construed as recommending the program for FCU's. Before participating in an automobile leasing program, an FCU should review all documents pertaining to the program to determine their responsibilities and obligations. An FCU should also satisfy itself that the leasing company it is dealing with is in a sound financial position.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

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