NATIONAL CREDIT UNION ADMINISTRATION Lib
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January 25, 1990

Gary L. Antoniewicz, Esq.
Tomlinson, Gillman, Travers & Gregg, S.C.
P.O. Box 2075
Madison, Wisconsin 53701

Re: Omni Plus Leasing, Inc. (Your November 24, 1989, Letter)

Dear Mr. Antoniewicz:

You have asked us to review the lease program of Omni Plus Leasing, Inc. ("Omni") for compliance with the FCU Act and NCUA Rules and Regulations.

BACKGROUND

The FCU-Omni leasing arrangement would work as follows. After the FCU has approved a member's credit, Omni enters into a lease agreement with the member. Omni will then sell the lease to the FCU. The lessee-member will make its lease payments to the FCU. Omni will perfect title to the automobile in its own name. The FCU will be noted as first lienholder. Omni will deliver to the FCU the title and an irrevocable power of attorney for each vehicle, permitting the FCU to transfer title without notice to Omni. The lessee-member is responsible for insurance and Omni will verify that the insurance is in effect.

ANALYSIS

FCU's may engage in the leasing of personal property that is the functional equivalent of lending. The requirements of Interpre-

FOIA - Vol. I, Part C, 5 - Special Loan Plans
Vol. II, Part D - Group Purchasing, Plans

tive Ruling and Policy Statement 83-3 (IRPS 83-3) (48 FR 52568, 11/12/83) must be met.

1. Although the contract mentions residual value, we were unable to locate a specific statement to the effect that, where a residual value in excess of 25% of the original cost is relied on, the residual value over 25% is insured or guaranteed. The residual value guarantee requirement is found in IRPS 83-3. Such insurance must comply with IRPS 83-3. Section 3(f) of the contract your submitted does state that Omni will procure residual value insurance.

2. IRPS 83-3 also requires that an FCU maintain a contingent liability insurance policy with an endorsement for leasing. In the contract, Omni promises to verify that the required insurance is in effect and names Omni as the loss payee. No insurance documentation is provided and there is no mention in the contract concerning the FCU and the contingent liability policy.

3. Except for the comments above, the rest of the leasing program appears to be in compliance with IRPS 83-3. Although the program may be in compliance with IRPS 83-3 once the above problems are rectified, our analysis should not be construed as recommending the program for FCU's. Before participating in the program, an FCU should review all documents pertaining to the program to determine its responsibilities and obligations. An FCU should also satisfy itself that the leasing company they are dealing with is in a sound financial position.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Associate General Counsel