

02-029

CHAPTER 133

Regulation #33

LEASING OF PERSONAL PROPERTY BY STATE-CHARTERED CREDIT UNIONS

SUMMARY:

The Superintendent has the statutory authority to promulgate regulations granting state-chartered credit unions the power to engage in activities authorized by federal law or regulation for credit unions chartered by, or otherwise subject to the jurisdiction of, the federal government. This authority is granted with the intent of maintaining parity between federally-chartered and state-chartered credit unions. This regulation is being promulgated to provide the framework for credit unions to engage in the leasing of personal property to their members, provided the leases are the functional equivalent of secured loans for personal property. It closely follows National Credit Union Administration ("NCUA") Interpretive Ruling and Policy Statement Number 83-3, effective November 17, 1983.

I. AUTHORITY

Title 9-B MRSA Section 111 declares that it is the policy of the state to supervise financial institutions in a manner to assure their strength, stability, and efficiency and encourage development and expansion of financial services advantageous to the public welfare.

Title 9-B MRSA Section 215 gives the Superintendent the power to implement, by rule or regulation, any provision of law relating to the supervision of financial institutions.

Title 9-B MRSA Section 828 gives the Superintendent the authority to allow, by regulation, a credit union to engage in any activity which has been authorized under federal law or regulation for credit unions chartered or otherwise subject to the jurisdiction of the federal government.

II. PURPOSE

The purpose of this regulation is to provide the regulatory framework to permit state-chartered credit unions to lease personal property to their members. This regulation will provide parity between state- and federally-chartered credit unions and will enable credit union members to enter into lease transactions through their credit union.

III. DEFINITIONS

For purposes of this regulation, the following terms have the following meanings:

- A. "Closed-end lease" means a lease in which the lessor is responsible for any decrease between the residual value and the actual value of the leased property at the end of the lease.
- B. "Credit Union" means a credit union as defined in 9-B M.R.S.A. §131.12.
- C. "Direct leasing" means a transaction where the credit union purchases the personal property to be leased from a third-party vendor at the request of the lessee.
- D. "Full payout lease" means a lease wherein the lessor must recoup, over the term of the lease, its entire investment in the leased property plus the cost of the financing. This return comes from the monthly payments made by the lessee and the estimated residual value of the property.
- E. "Indirect leasing" means a transaction where the credit union purchases a lease after the lease has been executed between a vendor and the credit union member; the credit union may or may not purchase the leased property.
- F. "Net lease" means a lease where all of the burdens of ownership (e.g., maintenance and repairs, purchase of parts and accessories, renewal of licenses and registration, insurance on the leased property) are placed on the lessee.
- G. "Open-end lease" means a lease in which the lessee is responsible for any difference between the residual value and the actual value of the leased property at the end of the lease.
- H. "Residual value" is the value, determined at the outset of the lease, of the leased property at the end of the lease that will be relied upon by the credit union to meet the full payout requirement.

IV. GENERAL PROVISIONS OF THE REGULATION

A credit union may lease personal property to its members as long as the leases are the functional equivalent of secured loans for personal property. Accordingly, such leases will be subject, to the extent applicable, to the provisions of Chapter 85 of the Maine Banking Code. The credit union, however, may not assume burdens or subject itself to risks greater than those ordinarily incident to a secured loan. Although leasing and lending are recognized under federal law as functional equivalents when certain requirements are met, they are not legal equivalents and therefore lease transactions are not subject to Maine usury laws. The following criteria must be present for the leases to be permissible:

- A. The leases must be net, full payout leases.
- B. The leases may be either open-end or closed-end.

- C. The leases may be either direct or indirect. In the case of indirect leasing where the credit union does not have legal title to the leased property, the credit union will be deemed to have effective ownership of the leased property if the credit union requires the leasing company that retains legal ownership of the leased property to:
1. Assign all of its rights in the lease to the credit union (the credit union will receive the lease payments and determine if the lease is in default);
 2. Name the credit union as sole lienholder on the title to the leased property; and
 3. Give the credit union an unconditional and irrevocable power of attorney to at will assign title to itself or to any other person it may choose.
- D. The residual value relied upon to meet the full payout requirement can not exceed 25% of the original cost of the leased property, unless the residual value is reasonable and guaranteed by a non-affiliated financially capable party.
- E. The credit union must maintain a contingent liability insurance policy with an endorsement for leasing.
- F. The credit union must retain salvage powers over the leased property so that it may take reasonable and appropriate action to salvage or protect the value of the leased property or its interests arising under the lease.
- G. The credit union is subject to the requirements of the Maine Consumer Credit Code, which incorporates the Consumer Leasing Act and Federal Reserve Board Regulation M (12 CFR 213).
- H. The leases must comply with applicable state and federal lending laws and regulations.

V. FEDERAL/STATE REGULATIONS

It is recognized that the National Credit Union Administration and the Maine Bureau of Banking have promulgated, or may, in the future, promulgate regulations governing the manner in which credit unions may engage in the leasing of personal property. It is further recognized that there may exist differences in scope and coverage between this regulation and those promulgated by federal regulatory agencies. It is not the intent of this regulation to permit any practice which is not permitted by the National Credit Union Administration. To the contrary, besides any other restriction or limitation stated herein, each credit union must fully comply with the regulations of the National Credit Union Administration.

VI. EFFECTIVE DATE January 28, 1996

BASIS STATEMENT

The Maine Credit Union League requested the Bureau, on behalf of its members, to promulgate a regulation authorizing state-chartered credit unions to engage in the leasing of personal property to their members. Federally chartered credit unions are authorized to engage in personal property leasing, pursuant to National Credit Union Administration Interpretive Ruling and Policy Statement 83-3 ("IRPS 83-3"). This regulation, which closely parallels IRPS 83-3 and subsequent NCUA advisory letters, is being promulgated to establish parity between state-chartered and federal credit unions in the area of personal property leasing.

Notice of this proposed regulation was published on or about October 4, 1995 and comments were solicited through November 3, 1995. Comments were received from the Maine Association of Community Banks ("MACB") and the Maine Credit Union League ("MECUL"). Their comments are addressed below.

SUMMARY

MACB identified three areas where the proposed regulation was not fully consistent with IRPS 83-3. The proposed regulation was changed to (1) clarify the definition of indirect leasing (Section III.E); (2) specify that the residual value shall be determined at the outset of the lease (Section III.H); and (3) specify that leasing and lending are functional equivalents only when certain requirements are met (Section IV). The Bureau also added, in response to a MACB comment, a general statement in Section IV that leases shall be subject to the general credit union lending provisions of Chapter 85 of the Maine Banking Code.

MACB also identified several areas where the proposed regulation was not consistent with leasing regulations issued by the Office of the Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System ("FRB"). MACB opined that this regulation should include the provisions of the OCC and FRB leasing regulations "in order to maintain parity throughout the financial industry." No changes to the regulation were made in this area, as explained in the following paragraph.

The Bureau recognizes that there are differences between this regulation and the regulations issued by the OCC and FRB; however, those regulations do not apply to most state-chartered financial institutions. Historically, parity between state and federally-chartered financial institutions has generally been limited to institutions of the same charter type, i.e., state-chartered commercial banks with national banks or state-chartered credit unions with federally-chartered credit unions. In fact, the statutory which serves as a basis for this rule (Section 828 of the Maine Banking Code) is limited to parity with federal credit unions; it does not provide for parity with other types of financial institutions. The Bureau is confident that it can address any unsafe or unsound leasing practices

engaged in by credit unions through the supervisory powers provided in the Maine Banking Code.

MECUL's comments, in response to the issues raised in MACB's submission, supported the regulation as proposed.