U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

December 18, 2013

Mr. Michael S. Botsaris, Esquire
Botsaris & Vance, LLC
1401 Madison Park Drive
Glen Burnie, Maryland 21061

Dear Mr. Botsaris:

I am writing in response to your letter dated July 24, 2013, to Marc Warren, Acting Chief Counsel of the FAA,in which you request a determination related to the lease of an aircraft to a non-profit flying club. The aircraft in question — a SeaRey airplane that has been issued a special airworthiness certificate in the light-sport category (SLSA) — would be purchased by a member of the flying club through an LLC. The member would then have the aircraft recertified as an experimental light-sport aircraft (ELSA) for the purpose of installing a Ballistic Recovery Systems (BRS) parachute. The LLC would then lease the aircraft to the flying club. The member involved in the purchase would share in the usual maintenance and upkeep expenses of the airplane, including the lease payment to the owner/lessor of the airplane.

You specifically ask whether the lease of the ELSA to the flying club would be a commercial operation and thus not allowed under the agency's regulations applicable to the operation of ELSAs, or whether the lease could be considered an alternative financing arrangement. You state that the club would not be using the airplane for commercial purposes.

An ELSA is issued an experimental certificate for the purpose of operating a light–sport aircraft under the provisions of Title 14, Code of Federal Regulations (14 CFR) § 21.191(i). Any person operating an aircraft issued an experimental certificate must comply with the operating limitations specified in 14 CFR § 91.319. Paragraph (f) of that section includes a limitation specific to persons intending to lease an ELSA which states that:

> No person may lease an aircraft that is issued an experimental certificate under §21.191(i) of this chapter, except in accordance with paragraph (e)(1) of this section.

Paragraph (e)(1) only permits an ELSA to be operated for compensation or hire to tow a glider that is a light-sport aircraft or unpowered ultralight vehicle in accordance with § 91.309.

Although the mere lease of an ELSA to a flying club would not be considered a commercial operation, § 91.319(f) imposes strict limitations on the lease of ELSAs which prohibit your proposed lease of a SeaRey aircraft certificated as an ELSA to a flying club unless it were used to conduct the towing operations permitted under § 91.319(e)(1).

In the Final Rule, Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, (69 FR 44772; July 27, 2004) the FAA specifically addressed this situation and noted that:

> [L]ight-sport aircraft issued an experimental certificate under § 21.191(i) should not generally be used for lease or rental. These experimental aircraft are for personal use, and do not meet a design standard, nor are they manufactured, or maintained at the same level as special light-sport aircraft, primary, or standard category aircraft. Therefore, they should not be made available to [the] general public for lease or rental, except when used to tow a glider that is a light-sport aircraft or unpowered ultralight vehicle. (69 FR 44853)

This interpretation was prepared by Paul Greer, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division (AFS-800) of the Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International
Law, Legislation, and Regulations