

February 7, 2005

Bruce O. Jolly, Esq.
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601

Re: Card Processing Services for Members.

Dear Mr. Jolly:

You have asked if a federal credit union (FCU) may solicit members that are retail merchants to accept merchant card processing services offered through a third party in exchange for compensation from the third party. We believe this activity is within an FCU's incidental powers and is permissible.

You have described an arrangement in which a credit union service organization (CUSO), acting on behalf of its affiliated credit unions, negotiates a rate for services from a third party related to point of sale terminal deployment, transaction processing, and risk management. The third party may also offer ancillary services related to debit card acceptance, check guarantee, electronic check conversion, and gift cards.

Our understanding of the arrangement is that the CUSO and FCUs will have distinct roles. The CUSO will conduct market surveys and negotiate with card processing servicers regarding rates and services for credit unions and their members. The CUSO will enter into a master contract with the service provider establishing the services and the rates to be provided. Each FCU will also have an ancillary contract with the third party processor and, in turn, will present the opportunity to sign up with the processor to its merchant members, at rates reflecting discounts negotiated by the CUSO. The FCU will fulfill the role of finder on behalf of the member, and the FCU will receive compensation from the servicer based on the transaction volume of its members. The CUSO's role is to negotiate the contract and administer the relationship with the service provider for its affiliated credit unions. The CUSO is likewise compensated based on transaction volume.

An FCU may only engage in activities that the FCU Act expressly authorizes or that fall within an FCU's incidental powers. In a previous opinion, we concluded that the FCU Act does not authorize an FCU to solicit non-member businesses to accept debit or credit cards in exchange for compensation from the card processor. OGC 04-0404, dated June 10, 2004. The distinction in this case is

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that the businesses to be solicited are members of the credit union. Under the incidental powers rule, an FCU may act as a finder by bringing together a third-party vendor with the FCU's members so that the parties may negotiate and consummate a transaction between them. 12 C.F.R. §721.3(f).

Our CUSO regulation governs the permissible activities for CUSOs, but the specific activities listed within the preapproved categories are not intended as an exclusive or exhaustive listing of approved activities, but rather as an illustration of the types of activities that are permissible within each category. 12 C.F.R. §712.5. In this case, the CUSO is not providing the merchant card processing services itself, but is, instead, negotiating for these services on behalf of its affiliated credit unions. We think this role, although indirect, is permissible for a CUSO under our rules that permits a CUSO to provide electronic transaction services, including credit card and debit card services. 12 C.F.R. §712.5(e).

We understand that beneficial rates for the types of services offered by the third party are dependent on volume, and we appreciate that smaller credit unions are not able individually to secure the best rates for their members for this reason. We also note that, since only the credit union will be approaching its members and offering the chance to subscribe to the card processing services, the CUSO is not engaging in finder activity, which is not a permissible CUSO activity supported by the rule. Finally, we note the importance of an FCU's ability to provide access to and related support for necessary services at a competitive rate for its members that are engaged in retail business ventures.

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel

GC/RPK/SAA:bhs
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