

June 10, 2004

Mr. Sean Crabson
VISA Debit Processing Service
8910 Ridgeline Boulevard
Highlands Ranch, CO 80129-2326

Re: Marketing of VISA Cards to Merchants.

Dear Mr. Crabson:

You have asked if a federal credit union (FCU) may solicit merchants to accept VISA cards in exchange for compensation from your company. No, such an activity exceeds the limits of an FCU's exercise of its incidental powers and is not permissible.

Your company provides card processing services for financial institution clients and is willing to pay an initial bonus and a per transaction percentage amount to any client that enlists a local merchant to accept VISA cards. One of your FCU clients has expressed an interest in participating in this compensation arrangement. We understand that its interest derives initially from the prospect of enlisting the FCU's sponsor to accept VISA cards as a method of payment for employees who will be attending a conference to be held by the employer later this year. The FCU is also interested in finding merchants and other additional businesses willing to accept the card.

An FCU may only engage in activities that the FCU Act expressly authorizes or that fall within an FCU's incidental powers. The FCU Act does not authorize an FCU to solicit businesses to accept debit or credit cards in exchange for compensation from the card processor. 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). Although the FCU's proposed action in this case may result in a convenience to some of its members by enabling them to do business with a debit or credit card, the predominant aspect of the proposal is on behalf of VISA, as evidenced by its agreement to pay the compensation. Third-party, nonmember merchants and businesses that agree to accept the card would also benefit, since customers are more willing to transact business with cards rather than cash.

An FCU's finder authority does not extend to the marketing and promotion of a third-party's products or services to nonmembers. The FCU would not be acting as a finder for its members and cannot receive compensation from VISA for its participation in the proposed arrangement.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/RPK:bhs
04-0404