



Merchant Fee Programs

Surcharging & Cash Discount Program

United States

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PIVOTAL
PAYMENTS

POWERING YOUR SUCCESS



TYPES OF MERCHANT FEE PROGRAMS

- Convenience Fees
- Surcharge Fees
- Cash Discount

Convenience fees and surcharge fees are not the same!

DIFFERENTIATION

Convenience Fees

Convenience fee regulations are quite strict, particularly under the Visa acceptance program. Convenience fees:

- Must be a flat or fixed amount
- Applicable to all forms & types of payment
- Allowed on credit and debit transactions
- Allowed ONLY on card not present (CNP) transactions
- Are excluded from state legislation
- Require enrollment in convenience fee program through acquirer and card brands

Convenience fees are allowed only on an alternative payment channel, for example if the merchant accepts most of their payments face-to-face, they may charge a convenience fee for an online payment which would be considered the “convenient channel of payment.”

A payment card surcharge, also known as a checkout fee, is an additional fee that a merchant adds to a consumer's bill when he or she uses a card for payment

As a result of a legal settlement to resolve claims* brought by a group of U.S. merchants, merchants in the U.S. and U.S. territories may add a surcharge to certain credit card transactions, starting January 27, 2013. Merchants who choose to surcharge must follow consumer disclosure and other requirements agreed to as part of the settlement.

DIFFERENTIATION

Surcharge Fees

- Are a percent (%) of the sale amount
- Applicable to some, or all credit card sales
- Allowed on credit transactions ONLY
- Allowed on card present & card not present transactions
- Must follow state legislation
- Require prior notification to acquirer and card brands before implementation of program

Merchants may not pass through both a convenience fee and a surcharge on the same transaction. Merchants must choose which program works best for their needs.

DIFFERENTIATION

Cash Discount

- Are a flat dollar amount (\$) added to the sale amount
- Advertised as a 'customer service charge,' 'service fee' or the like
- Advertised as a fee applied to all transactions (a "published" price), but 'credited' to non-cash transactions at the point of sale, eliminating the fee on cash sales
- Can not apply to card not present transactions
- Not a part of legislation surrounding surcharging
- Require a specific point of sale setup & acquirer notification

Merchants must post signage at the point of entry, at all point of sale devices advising customer of the added charge. The fee must also be clearly shown on the receipt. The charge must be applied to all store sales. For customers paying with cash, a discount equal to the amount of the charge must be applied to the sale, creating a cash discount.

Cash discount and surcharge fees are not the same!

“A cash discount is when the merchant provides a discount from the published price when the consumer pays with cash. “This has always been allowed and is not restricted by state,” David Leppek, president of Transaction Services, an Omaha, Neb.-based payments provider. “But it must clearly be a discount from the published price.”

- *'Surcharging Ahead' – May 2017 – Digital Transactions – Kevin Woodward*

Free Speech?

Yes, in a ruling in January 2017 the Supreme Court said the law can be challenged in lower courts based on whether it restricts the way merchants advertise prices. The case began as a challenge to New York's surcharging laws.

Different Costs – BOTH costs advertised

A merchant can advertise a \$10 cash pizza and a \$10.30 credit card pizza, or it can advertise the \$10.30 price and a cash "discount." But it cannot post only the \$10 price and a 3% or 30-cent credit card surcharge.

"Sticker Price" - ONE cost advertised

In other words, a cash discount must be a true cash discount, a reduction in the price from the "sticker price." If the "sticker price" is \$10, then a discount for cash might be \$9.70. If the customer pays with a credit card then the cost might be \$10.30. Any time a fee is being added, that is a surcharge.

MERCHANT SURCHARGING PROGRAM



SURCHARGE REQUIREMENTS

- Notify
- Limit
 - Surcharge Cap
 - Credit Only
 - Brand Level Surcharging
 - Product Level Surcharging
- Disclose

NOTIFY

30 Days Notice

Merchants must first notify Visa and their acquirer of their intent to surcharge at least 30 days prior to implementing surcharging.

Merchants can submit a notification form to Visa at:

www.visa.com/merchantsurcharging

Merchants can submit a notification to MasterCard at:

<https://www.mastercard.us/en-us/merchants.html>

Merchants can submit a notification to Discover at:

<https://www.discoversurcharge.com/>

Merchants do not need to notify American Express.

Surcharge Disclosure Form – Acquirer Registration

Merchant Surcharge – Acquirer Notification Form

Merchant Information

Business Legal Name: _____

DBA Name: _____

Merchant ID#: _____

Principal Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____

Contact Email: _____

Sales Channels: Retail eCommerce Mail Order Telephone Order

Surcharging: All Credit Cards or Specific Credit Products

Payment Card Brands Accepted: Visa MasterCard Discover American Express

Other Merchant Location(s) Information

List the number of merchant locations you wish to register: _____

Notification to Payment Card Brands

Date that merchant notified the Payment Card Brands of intent to surcharge: _____

Processor Information

Processor Name: _____

Processor Phone: _____

Processor Email: _____

Processor Fax: _____

Date form submitted: _____

I have read and understand the surcharging rules from the Payment Card Brands found on page 2.

Merchant Principal Signature: _____

Please contact Partner Services to obtain the surcharge registration form.

1.866.974.8682

PartnerServices@pivotalpayments.com

LIMIT

Surcharge Cap

The limit for credit card transaction surcharges may not exceed the merchant's discount effective rate. The surcharge value may not exceed 4%.*

Calculation of the effective discount rate must be based on the previous month, or previous 12 month period.

LIMIT

Credit Cards Only

Merchants may not assess a surcharge on any prepaid or debit card. Surcharges may only be passed on to credit card transactions.

Debit cards ran as “credit” may NOT be surcharged.

LIMIT

Brand Level Surcharging

All brands must be treated the same. A merchant may not surcharge one brand over another, nor can one brand have a different surcharge than another.

LIMIT

Product Level Surcharging

A product level surcharge is one where the merchant imposes a surcharge on a particular credit product rather than on the brand overall. Examples of product level surcharging might be rewards cards, or business cards.

Merchants may choose between brand level and product level surcharging.

In both circumstances, the level of the surcharge is subject to the 4% cap.

Merchants that accept credit or charge cards of other payment network brands, surcharging practices are subject to a competitive “**level playing field**” limitation that depends on whether those payment network brands impose surcharge restrictions on credit cards and the merchants’ costs of accepting those credit cards.

If the merchant accepts a competing payment network brand that is as or more expensive to the merchant than Visa, and that competing payment network limits the merchant’s ability to surcharge credit cards, the merchant may surcharge Visa Credit cards only in the same way as the merchant would be allowed to surcharge the competing payment network’s credit card (or on the terms on which the merchant actually surcharges the competing payment network’s credit cards).

If the merchant accepts a competing payment network brand of credit card that prohibits or effectively prohibits the merchant from surcharging in a particular channel of commerce (i.e. either face-to-face or non-face-to-face), the merchant may not surcharge Visa Credit cards unless it also surcharges the competing payment network’s credit cards regardless of the cost of that card to the merchant. The amount of the surcharge on the competing payment network brand must equal at least the lesser of: the cost to accept the competing brand’s credit cards or the surcharge imposed on Visa Credit cards.

LIMIT

Surcharging

Merchants may NOT vary their surcharge based on the transaction size / ticket amount or based on the customer / cardholder.

MasterCard allows merchants with distinct lines of business to impose a surcharge on a particular line of business and not on another.

DISCLOSE

Consumer Alert

Both in-store (retail) and online (e-commerce) merchants must clearly alert consumers in three ways:

- At the point of entry
- At the point of sale and
- On every credit card sales receipt

The fee must be disclosed as a merchant fee prior to the transaction being completed.

We impose a surcharge of _____% on the transaction amount on Visa credit card products, which is not greater than our cost of acceptance. We do not surcharge Visa debit cards.

We impose a surcharge of \$_____ on the transaction amount on Visa credit card products, which is not greater than our cost of acceptance. We do not surcharge Visa debit cards.



SURCHARGE CONSIDERATIONS

- Prohibited States
- Implementation
- Enforcement

PROHIBITED STATES

Ten states currently prohibit surcharging based on state legislation.

Merchants based in these states may not currently surcharge:

- California
- Colorado
- Connecticut
- Florida
- Kansas
- Maine
- Massachusetts
- New York
- Oklahoma
- Texas

IMPLEMENTATION

Merchant Considerations

Implementing a surcharge program will impact the merchant and may be cost prohibitive to some merchants. Considerations include:

- Equipment cost
- Staff training
- Customer perception
- Loss of revenue
- Competitor surcharge programs

Equipment / Terminals

Merchant point of sale (countertop/wireless terminals, POS, software/gateway etc.) must be compatible with surcharging.

The following terminals are available through Pivotal Payments:

- Ingenico
- Dejavoo
- FlexPoint

At this time merchant processing on Pivotal Mobile (P-Mobile) may not surcharge.

ENFORCEMENT

Surcharge Fee Enforcement

The card brands do impose fines for non compliance with surcharge program fees. Cardholders may report misuse or abuse of the convenience fee and surcharge programs to the card brands. Cardholders and issuers are also protected with chargeback rights for merchants who are out of compliance with surcharge and convenience fee regulations.

CASH DISCOUNT PROGRAM



CASH DISCOUNT PROGRAM

- Pivotal Payments' Stance
- Consumer Disclosure
- Prohibited States
- Registration
- Terminal & POS

PIVOTAL PAYMENTS' STANCE

Cash Discount Program

Pivotal Payments has thoroughly reviewed the cash discount program with our sponsor bank and we believe that the way many merchants are using the cash discount program today is not acceptable under the program guidelines.

A cash discount is truly a discount for using cash as a method of payment, it is NOT a waiver of the surcharge/customer service fee.

Any time an additional fee is being added at the point of sale for use of a credit card, that is a surcharge. Therefore, we will register all cash discount program merchants as surcharge program merchants.

DISCLOSE

Consumer Alert

Retail in-store merchants must clearly alert consumers in three ways:

- At the point of entry
- At the point of sale and
- On every credit card sales receipt

The fee must be disclosed as a merchant fee prior to the transaction being completed.

A true cash discount program offers a discount for cash, not just a waiver of the service fee.

CUSTOMER PRICING NOTICE

A customer service fee of \$___ is applied on all store sales.

CUSTOMER PRICING NOTICE

All prices listed are cash prices.

CUSTOMER CASH DISCOUNT

Customers who pay with cash will now receive an immediate discount of \$___ an amount equal to the customer service fee.

DISCLOSE

Verbiage

In addition to proper signage, merchant location staff must be “in the know” about verbiage requirements with a cash discount program.

Here are some examples of ways to phrase cash discounting to a cardholder/customer:

“Would you like to save \$.60 and pay with cash?”

“All prices listed on our stickers are cash prices.”

This statement is **NOT** acceptable, this is a surcharge!

“We are going to charge you \$.60 to pay with a credit card.”

NOTIFY

Registration

Pivotal Payments will register merchants wishing to participate in the cash discount program in the credit card surcharging program.

Merchants do not need to register with the card brands (Visa, MasterCard and Discover.) Merchants interested in enrolling in the cash discount must only notify Pivotal Payments to begin the registration process.

PROHIBITED STATES

Because merchants participating in the Pivotal Payments cash discount program are registered as surcharge merchants, they must abide by state laws which prohibit surcharging.

Ten states currently prohibit surcharging based on state legislation.

Merchants based in these states may not currently surcharge:

- California
- Colorado
- Connecticut
- Florida
- Kansas
- Maine
- Massachusetts
- New York
- Oklahoma
- Texas

POINT OF SALE SOLUTIONS

Currently there are few terminals capable of adding a surcharge to a transaction. The Dejavoo terminal line (not resold by Pivotal Payments) and the Ingenico terminal lines both have the ability to add a surcharge/customer service fee to the transaction at the point of sale and to print that fee amount on the customer receipt.

Some Point of Sale solutions may also have the ability to add a service fee.

MERCHANT FEE PROGRAM CONSIDERATIONS



SURCHARGE CONSIDERATIONS

- Durbin Amendment
- Terminal Compatibility
- Additional Fee Program Considerations
- Average Cost of Acceptance
 - Visa
 - MasterCard

DURBIN AMENDMENT

Minimum Transaction Amount

The Durbin Amendment allows merchants to set minimums for credit card purchases (debit card's may NOT be imposed a minimum.) Merchants may also discount cash or debit card sales.

The Federal Reserve has the authority to change the value of the minimum, however it has been set at \$10 since the bill's inception. A merchant who sets a minimum must apply that minimum to all credit card transactions.

Discount

Merchants must also follow any state laws which may prohibit or restrict merchants from setting a credit card purchase minimum. Merchants may not differentiate between card issuers or payment card networks.

TERMINAL COMPATIBILITY

Dejavoo

There are currently limitations on terminal and Point of Sale devices that can handle surcharging and cash discount programs. Pivotal Payments is utilizing the Dejavoo terminal line for surcharging and cash discount terminal setups.

REQUIREMENTS

Registration

Merchants will be registered by Pivotal Payments and can begin with their fee program very quickly. As soon as Pivotal has registered the merchant, the merchant fee program can be implemented assuming signage is posted and all surcharging rules are followed.

ADDITIONAL CONSIDERATIONS

Convenience Fee? Surcharge? Cash Discount?

Aside from the surcharge, convenience fee and cash discount programs an additional option to help merchants recover and minimize credit card processing fees is available through 2011's Durbin Amendment, part of the Wall Street Reform Act.

Minimum?

The Durbin Amendment introduced the ability to set credit card minimums and alternative payment discounts.

ADDITIONAL CONSIDERATIONS

Obviously charging a fee to use an electronic payment card could evoke negative emotions from the customer/cardholder which could impact future sales for the merchant.

Consumer Disadvantage - Short Lived Program?

Some industry professionals suggest that cash discounting may be short lived as the margins are unstable. Inflating a merchants fees to 3.50%-4% simply because they can pass on the fee to the cardholder may prompt lawmakers and the card brands to investigate the program and potentially reverse or ratify it. This type of inflation affects the entire payments ecosystem. Sales offices charging excessive discount fees because they're allowed to under the cash discount program increases cardholder cost & becomes a consumer disadvantage. Passing through reasonable discount fees is encouraged to avoid abuse of the current program allowances.

Visa Average Cost of Acceptance

MERCHANT CATEGORY	ALL CREDIT	TRADITIONAL	REWARDS	SIGNATURE	SIGNATURE PREFERRED	COMMERCIAL
Emerging	1.99%	1.73%	1.75%	1.76%	2.38%	2.53%
Oil	1.93%	1.85%	1.83%	1.80%	1.76%	2.45%
Restaurants	2.55%	2.02%	2.34%	2.63%	2.87%	3.03%
Retail	2.07%	1.81%	1.93%	1.96%	2.40%	2.51%
Supermarket	1.83%	1.36%	1.66%	1.95%	2.34%	2.30%
Travel & Entertainment	2.47%	1.83%	2.13%	2.51%	2.59%	2.74%
Utility	1.85%	1.59%	1.64%	1.67%	1.84%	2.12%
Card Not Present	2.27%	1.96%	2.07%	2.08%	2.52%	2.48%

MasterCard Average Cost of Acceptance

MERCHANT CATEGORY	ALL CREDIT	CORE & ENHANCED	WORLD	WORLD ELITE	COMMERCIAL
Gas Station (including AFD)	2.14%	1.97%	2.01%	1.99%	2.47%
Grocery	1.65%	1.46%	1.58%	1.77%	2.39%
Retail	2.26%	1.97%	2.10%	2.52%	2.57%
Travel and Entertainment	2.51%	2.09%	2.45%	2.68%	2.74%
Utilities	1.88%	1.60%	1.50%	1.50%	2.47%
Other	2.24%	1.91%	2.06%	2.51%	2.42%