

Card Organization Rules

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Surcharges, Convenience Fees, & Cash Discounts

It's hard to be a cash-only business, especially when businesses are expected as a matter of course to accept credit and debit cards. But processing fees can make merchants hesitant to sign up for transaction processing services, and many payment processors want to offer merchants the ability to pass processing costs through to the customer. There are several ways these programs can be structured, each subject to a different regulatory framework.

Three common options are surcharges, convenience fees, and cash discounts. They sound similar and many people mistakenly use these terms interchangeably, but each one works in a slightly different fashion and they all have different legal requirements. Businesses can incur significant penalties for running afoul of the rules, so knowing how each method works—and what each one's limitations are—can be critical.

Surcharges

Payment card networks such as Visa and Mastercard define a surcharge as any extra fee or price increase imposed on a cardholder for paying by credit card as opposed to cash or another payment method. Surcharges are governed by both card brands rules and state law. A number of states have outlawed credit card surcharges entirely, and although such bans have been subject to recent legal challenges (including at the Supreme Court), the status and enforceability of these laws remain in flux. Additionally, the enforceability of state laws does not affect the surcharge rules promulgated by the card brands, which continue to place restrictions on how surcharges can be imposed.

Convenience Fees

Convenience fees are charged for the convenience of paying online rather than in person. Convenience fees can be a good option for certain situations; however, not all merchants are eligible. Because the fees must be for the convenience of the online transaction and not for the use of a credit card, a merchant may not discriminate based on the type of payment used. Similarly, convenience fees can only be charged if the merchant's e-commerce system qualifies as an "alternative payment channel," which will only be the case if the merchant also offers a card-present option so the customer can avoid the fee by paying in person, and if other conditions are satisfied.

Cash Discounts

Merchants are allowed to offer discounts for cash payments, and these discounts are not considered "surcharges" under state surcharge bans or card brand rules. Because cash discount programs are virtually unrestricted, there are advantages in implementing such a program over a surcharge program. The difficulty is in distinguishing between surcharges and cash discounts since they often can be functionally equivalent. Many processors purport to offer compliant programs, but there is a reason to be skeptical as to whether any of these programs actually satisfy regulatory requirements. Legal advice should be sought before trying to avoid surcharge rules and laws by describing a program as a cash discount program rather than a surcharge program.

- Daniel Ungar, Attorney, Jaffe, Raitt, Heuer & Weiss, P.C. The above is intended as general information only and should not be construed as legal advice or as creating or soliciting an attorney-client relationship. You should consult your own attorney for guidance with respect to any particular issue or problem.

