

Convenience Fees and Surcharge Rules 2008

We get a lot of questions surrounding the ability for merchants to charge their customers a surcharge or convenience fee for accepting credit cards. This summary will attempt to provide a thorough overview of when convenience fees can be charged according to card regulations. We have also included excerpts from Visa, MasterCard, Discover, and American Express of the specific rules that govern the application of convenience fees. And if you are really interested and want nighttime reading, we have also included links to the complete operating regulations of these card brands.

Here are the important points you need to know. The words "convenience fee" and "surcharge" are used interchangeably.

1. A convenience fee cannot be assessed in a face-to-face environment
2. A convenience fee cannot be assessed for recurring payments. The convenience fee was designed for one-time payments and not for payments in which a cardholder allows his credit card to be periodically charged for recurring goods or services. Examples of recurring charges include, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership dues, and utility charges.
3. The merchant must provide a true "convenience" in the form of an alternative payment channel outside the merchant's customary face-to-face payment channels, and the fee must be disclosed by the merchant to the cardholder as a charge for the alternative payment channel convenience that is provided.
4. The convenience fee must be disclosed prior to the completion of the transaction, and the cardholder must be given the option to cancel the transaction if not wanting to pay the fee.
5. The convenience fee must be included in the total amount of the transaction; it cannot be "split" out from the transaction amount.
6. If a convenience fee is assessed it must be for all payments (V, MC, Discover, AMEX, ACH, Check) within a particular payment channel (mail, phone, internet).
7. Since all convenience fees are required to be assessed equally, a merchant who accepts Visa is restricted to a **flat convenience fee** for all cards.

Let us know if you have any questions or if your understanding is different.

VISA

Regulation 5.2.E – Convenience Fees and Surcharge Rules – Last Updated May 15, 2008

(complete regulations at www.optimizedpmts.com/regulations/visa-usa-operating-regulations.pdf)

A Merchant that charges a Convenience Fee must ensure that the fee is:

- Charged for a bona fide convenience in the form of an alternative payment channel outside the Merchant's customary payment channels
- Disclosed to the Cardholder as a charge for the alternative payment channel convenience
- Added only to a non face-to-face Transaction¹
- A flat or fixed amount, regardless of the value of the payment due
- Applicable to all forms of payment accepted in the alternative payment channel
- Disclosed prior to the completion of the Transaction and the Cardholder is given the opportunity to cancel
- Included as a part of the total amount of the Transaction

A Convenience Fee may only be charged by the Merchant that actually provides goods or services to the Cardholder. A Convenience Fee may not be charged by any third-party.

A Convenience Fee must not be added to a Recurring Transaction.

¹The requirement for an alternate payment channel means that Mail/Telephone Order and Electronic Commerce Merchants whose payment channels are exclusively non face-to-face may not impose a Convenience Fee.

MasterCard

Regulation 5.9.2 – Charges to Cardholders – Last Updated March 7, 2008

(complete regulations at www.optimizedpmts.com/regulations/mastercard-operating-regulations.pdf)

A Merchant must not directly or indirectly require any Cardholder to pay a surcharge or any part of any Merchant discount or any contemporaneous finance charge in connection with a Transaction. A Merchant may provide a discount to its customers for cash payments. A Merchant is permitted to charge a fee (such as a bona fide commission, postage, expedited service or convenience fees, and the like) if the fee is imposed on all like transactions regardless of the form of payment used, or as the Corporation has expressly permitted in writing. For purposes of this Rule:

1. A surcharge is any fee charged in connection with a Transaction that is not charged if another payment method is used.
2. The Merchant discount fee is any fee a Merchant pays to an Acquirer so that the Acquirer will acquire the Transactions of the Merchant.

Convenience fee can be tiered, percentage based, or flat.

Discover

Regulation 2.3 – Surcharges – Last Updated April 4, 2008

(complete regulations at www.optimizedpmts.com/regulations/discover-operating-regulations.pdf)

You may assess a surcharge on a Card Sale conducted using a Credit Card provided that (i) the amount of the surcharge may not exceed the Merchant Fee payable by you to us for the Card Sale, and (ii) you assess surcharges on card sales conducted using other credit cards accepted by you. You may not assess a surcharge or other penalty fee of any kind on any other type of Card Transaction or for any Card Sale conducted using a Card other than a Credit Card.

American Express

Exhibit 4 of Master Agreement – Convenience Fee Policy – Last Updated January 2006

(complete exhibit at www.optimizedpmts.com/regulations/amex-operating-regulations.pdf)

Merchants accepting the Card for transactions via telephone, Internet, kiosks or other methods where the Card or other credit, debit, charge, smart or other similar products (collectively, “Payment Products”) are not physically presented to the merchant’s representative for processing (“Card Not Present” transactions) and which transactions are related to (i) federal, state or municipal government revenue payments (such as taxes, court fees, licenses and fines), and/or (ii) tuition, room and board or other mandatory fees at public higher educational institutions may charge convenience fees, provided the merchant adheres to the following guidelines:

1. The method of payment must provide a true convenience for the customer. Convenience fees must apply only to “Card Not Present” transactions where the customer is able to make payment, and receive credit for payment, without physically presenting the Card to the merchant’s representative. Convenient methods of payment may include transactions via the Internet, an interactive voice response system or payment kiosk. A convenience fee is strictly prohibited for “Card Present” transactions where the customer physically presents the Card to the merchant’s representative; and
NOTE: A convenience fee may not be charged (i) if a merchant has no physical locations (e.g. mail/telephone/Internet order only) to accommodate a Card Present transaction, since the merchant would likely not be able to provide an additional “convenience” or (ii) for “mail-in” transaction forms, where a customer writes the Card account number on a transaction form and physically mails it to the merchant.
2. The amount of the convenience fee must be clearly disclosed to the customer and the customer must be given the opportunity to cancel the transaction if the customer does not want to pay the convenience fee, and
3. Any explanation, verbal or written, describing why the convenience fee is being imposed, or how it is calculated, must NOT characterize the convenience fee as a charge from American Express or as necessary to cover the merchant's costs of accepting the Card or other Payment Products,

but rather that the convenience fee is being charged by the merchant to cover its administrative costs associated with providing the convenient method of payment, and

4. Since the “convenience” provided to the customer is the same (i.e., the ability to pay without physically presenting the form of payment to the merchant’s representative) regardless of the form of payment the customer chooses to use, American Express’ view is that it would be discrimination against the Card if a higher convenience fee were imposed on Card transactions than a fee imposed on other Payment Products. American Express treats discrimination against Cardmembers as a serious breach of the Card Acceptance Agreement, which could result in the termination of a merchant account.