

Convenience Fees

This publication includes Card Acceptance Guide language on “Best Practices for Merchant Use of Convenience Fees” in addition to addressing specific differences by card brand and special circumstances under which specific merchants (based on the Merchant Category Code – MCC) may handle fees differently on a pilot basis. In most cases, merchants accept Visa cards and must therefore meet the Visa requirements for convenience fees to ensure parity across all card and acceptance channels (i.e. ACH and echeck) for merchant location.

BEST PRACTICES FOR MERCHANT USE OF CONVENIENCE FEES:

Merchants are prohibited by card association rules from billing consumers a fee for using a credit card. This is considered surcharging. The prohibition on surcharging ensures that credit cardholders are not discriminated against at the point-of-sale. However, discounts on cash purchases are permitted. Also, surcharging is different from a situation in which particular business cases (i.e. government or schools) may warrant imposition of a convenience fee for utilization of specific alternative payment modes, such as Internet and telephone.

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. NOTE: The requirement for an alternate payment channel means that MOTO and electronic commerce merchants whose payment channels are exclusively non face-to-face may NOT impose a Convenience Fee.
- Added only to a non face-to-face transaction
- 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

Imposing a convenience fee has been found by the card associations to impede consumer credit card payments, so be aware of the potential for changes to current policy and procedures.

A percentage-based fee is ONLY permitted for consumer tax payments. This is a pilot program at this time for registered merchants available only if merchant or their third party servicer has demonstrated their compliance with Payment Card Industry Data Security Standards (PCI DSS).

The card associations as a normal course of business do not monitor other merchant fees that are uniformly applied to all payment types such as shipping and handling fees or student registration fees, since they do not discriminate or limit card acceptance. Some merchants, such as ticket sellers and travel agents may charge consumers for costs associated with the value-added services they provide and the merchant name and other transaction data must indicate the merchant of record. Businesses that facilitate credit card payments for other merchants are subject to additional requirements.

Effective April 2005, a special Visa interchange program is launched for registered Utility MCC 4900 merchants who affirm they will abstain from charging convenience fees on utility transactions and affirm that they will correctly identify bill payments with the required Visa fields. Utility merchants who elect to assess a convenience fee can not register for the Visa Utility Interchange program.

Effective October 2006, a special MasterCard program is launched for registered Utility MCC 4900 merchants. A convenience fee is allowed provided the fee is imposed on all like transactions regardless of the form of payment used. A merchant may register for the MC program without registering for the Visa Utility a

Effective July 1, 2006 through March 31, 2008, MasterCard is undertaking a convenience fee pilot for a select number of pre-certified government and education entities or their third party agents. Participants in the pilot program will be permitted to charge a differentiated convenience fee on MasterCard transactions than is charged for EFT and echecks. Participants are entities classified in MCCs 8211, 8220, 9211, 9222, 9311, and 9399. The convenience fee charged may be a fixed dollar amount, a fixed percentage or a tiered rate. There are both registration and reporting requirements (posted on compliance site). Effective September 1, 2006, MC will allow registered merchants to charge a convenience fee on face-to-face transactions as long as there is a separate line for credit card payments. Also, kiosks were previously excluded from the program, they are permitted to participate. NOTE: Merchants that accept Visa may not register for this program if they accept ACH and echecks as Visa requires that all convenience fees be the same for acceptance channels and prohibit merchants from charging a lesser fee amount on ACH and echecks. Also, Visa prohibits convenience fees on face-to-face transactions (with the exception of the Visa Tax Payment Service Fee Pilot for registered tax payment merchants only). Tax Payment merchants may register for both programs if they meet all requirements.

The Visa USA Board of Directors approved a limited-scope pilot program (funning from March 2002 through December 2004) to allow government-taxing authorities or parties acting on their behalf to accept Visa cards for the payment of personal income and real estate taxes, while imposing a percentage-based "service fee". In February 2005, the Board of Directors extended the Tax Payment Pilot program through the 2007 tax year. The pilot program allows a selected number of pre-certified taxing entities or their third-party agents to accept Visa for personal income taxes, real estate taxes, other property taxes, unemployment taxes, employer-paid payroll taxes, business income taxes, and sales and uses taxes. Merchant or processing agent may assess a "service fee". The service fee may be calculated as a percent of the tax amount. If a "service fee" is assessed, it must be processed as a separate and unique transaction and not embedded with the tax liability payment. MCC required to be 9311 (Tax Payments). Service Fee must be applied on payments received through all payment channels. Merchant registration is required. The processing agent or merchant must be PCI DSS – compliant. The acquirer may be subject to a \$5,000 participation fee. (NOTE: MCC 9311 (Tax Payments) is not eligible for Visa CPS/Retail 2 (Select Developing Market) interchange; CPS/Card Not Present and CPS/Electronic Commerce interchange rates apply. Effective January 1, 2007, monthly reporting must be provided by acquiring member to Visa USA identifying Merchant DBA Name, Merchant Customer Service Phone Number, and DBA State Code.

	American Express	MasterCard	Visa	ACH E-Check
Convenience Fee				
Flat or Fixed Fee Amount	OK	OK	Required	OK
Variable Amount (tiered or percentage)	OK	OK	Prohibited	OK
Added only to non-face-to-face transactions			Required	
Applicable to all forms of payment accepted in the alternative payment channel			Required	
Disclosed prior to the completion of the transaction and			Required	
The cardholder is given the opportunity to cancel			Required	
Included as a part of the total amount of the transaction			Required	
MCC Restrictions				
MC Convenience Fee Pilot				
NOTE: The primary purpose of this pilot is to differentiate the convenience fee amount for ACH and echecks which must currently be subject to SAME convenience fee under Visa and MC rules. Tax payment merchants that wish to charge a fee on face-to-face Tax Payments may register for this pilot if they do not accept ACH and echecks for this secondary purpose. Visa rules have NOT changed and therefore merchant may NOT take Visa and charge a different fee on Visa than ACH and echecks.				
Flat or Fixed Fee Amount	OK	OK	Required	OK
Variable Amount (tiered or percentage)	OK	OK	Prohibited	OK
Added only to non-face-to-face transactions			Required	
Added to kiosk payments	OK	Yes, effective September 1, 2006	Yes, must apply to all payments	
Added to face-to-face transactions where an inoffice line accepts only card payments	OK	Yes	Prohibited, except for MCC 9311-Taxes for registered Tax Pilot merchants	
Applicable to all forms of payment accepted in the alternative payment channel		Yes, however, may differentiate fee for ACH and echeck	Required	
Disclosed prior to the completion of the transaction and			Required	
The cardholder is given the opportunity to cancel			Required	
Included as a part of the total amount of the transaction			Required	
Convenience fee is a separate transaction	OK	Recommended	Prohibited	
MCC Restrictions		<ul style="list-style-type: none"> ○ 8211 elementary edu ○ 8220 colleges ○ 9211 courts ○ 9222 fines ○ 9311 taxes ○ 9399 government 		

	American Express	MasterCard	Visa	ACH E-Check
Tax Payment Service Fee Pilot				
Flat or Fixed Fee Amount	OK	OK	OK	OK
Variable Amount (tiered or percentage)	OK	OK	Registration Required	OK
Added only to non-face-to-face transactions			Required	
Applicable to all forms of payment accepted in the alternative payment channel			Required	
Disclosed prior to the completion of the transaction and			Required	
The cardholder is given the opportunity to cancel			Required	
Included as a part of the total amount of the transaction			Prohibited	
Service fee is a separate transaction	OK	Recommended	Required	
MCC Restrictions			9311	
Recurring Payments				
			Prohibited	

A merchant of record may charge a convenience fee under Visa rules as long as it is disclosed on the cardholder transaction prior to final payment, included in the transaction amount, and charged only on a non-face-to-face transaction. Visa requires that this be a flat amount (not tiered, not %). Visa prohibits merchants from charging a convenience fee on a recurring transaction. Visa has a second program that allows a "service fee" to be charged on tax payments (only Taxes) as a percentage of the transaction. The Visa Tax Payment requires registration and the Service Fee must be a separate transaction. The separate transaction support payment of the service fee to a third party (i.e. OPAY, etc.). Information on registration is on the Compliance Intranet Site under merchant registration at:

http://at1cds-001/Volumes/Compliance/Compliance/Membership/Merchant_Registration_Homepage.htm

Product recently pose question regarding steps that a third party must take with American Express. American Express' policy for merchant of record charging a convenience fee is essentially parity in pricing. If third party is behind the merchant and not receiving funds from American Express (i.e. receiving the "convenience fee" from the merchant), then our understanding is that the merchant of record is the merchant and no special agreement is needed. However, if the third party wants to process and charge a "service fees" as a separate transaction on tax payments, then they must setup an Amex Merchant account for the specific purpose of being paid for the service fees (Amex Service Establishment) and the third party must enter into a third party agreement with American Express.

Please keep in mind that if a merchant accepts Visa for Government services other than tax payments, then only the merchant of record can collect a convenience fee under Visa rules, the convenience fee must be a flat amount, and there must be parity. However, if same merchant takes American Express, Discover, and MasterCard for Government Services other than tax payments, then MC rules for convenience fees would allow a separate fee as would American Express if third party has entered into agreement with American Express. Finally, American Express indicated that the policy is the same across all industries and is allowed as long as there is parity with other card types.

Card Association Regulations:

Discover

5.8 Surcharges You may permit Merchants to assess a surcharge on a Card Sale conducted using a credit Card, subject to the restrictions in **Section 2.4** of these *Operating Regulations*. You agree not to permit Merchants to levy a fee or other penalty of any kind on a Cardholder using a Card other than a credit Card, for a Card Sale. Furthermore, you agree not to permit Merchants to levy a fee or other penalty of any kind on a Cardholder using a credit Card where such fee is not assessed on all other credit cards accepted by the Merchant for the purchase of goods or services. [Interpretation: Acquires may allow merchants to impose a convenience fee or service fee where there is parity for all card brands.]

2.4 Equal Treatment of Discover Network Cards with Other Payment Cards; Equal Treatment of Discover Network Card Issuers You may not institute or adopt any practice that unfavorably discriminates against or provides unequal and unfavorable treatment of any Person who elects to pay using a Card versus any other credit, charge, debit, stored value or other payment card accepted by your Merchants, except with respect to such Merchants' proprietary cards (e.g., private label and loyalty cards) and gift cards. You shall include in your Merchant Agreements (or regulations issued in connection with Merchant Agreements) an obligation of the Merchants not to adopt any practice that unfavorably discriminates against or provides for unequal and unfavorable treatment of any Person who elects to pay using a Card versus any other credit, charge, debit, stored value or other payment card accepted by your Merchants, except with respect to such Merchants' proprietary cards (e.g., private label and loyalty cards) and gift cards, and you shall use commercially reasonable efforts to enforce these Merchant obligations. [Interpretation: Acquirers may not adopt any practice that unfavorably discriminates against Discover Network Issuers.]

13.6.1 Fees to Cardholders Notwithstanding the provisions of **Section 5.8**, you are prohibited from assessing or otherwise imposing a fee or surcharge on a Cash Advance and must prohibit any Cash Advance Merchant from assessing or otherwise imposing a fee or surcharge on any Cardholder for any Cash Advance transaction. The amount of the Cash Advance transaction reflected in Cash Advance Sales Data submitted by you to us for Settlement must be the amount of cash disbursed to the Cardholder. If any fees were assessed to the Cardholder by you or the Cash Advance Merchant in connection with a Cash Advance, including, a fee paid in cash after the transaction was completed, the entire amount of the Cash Advance transaction is subject to Dispute.

MasterCard:

(14) Charges to Cardholders. The merchant shall not directly or indirectly require any MasterCard cardholder to pay a surcharge, to pay any part of any merchant discount, whether through any increase in price or otherwise, or to pay any contemporaneous finance charge in connection with the transaction in which a MasterCard card is used. A surcharge is any fee, charged directly or indirectly, deemed by this Corporation to be associated with the use of a MasterCard card that is not charged if another payment method is used. "Merchant discount," as used in this subsection, means any charge for the acquisition of sales slips negotiated by the merchant and the member or affiliate with which the merchant has a merchant agreement. The prohibitions of this subsection (14) do not prohibit discounts for payments in cash, or for charges (such as bona fide commissions, fees for special handling or expedited service, postage and handling, and the like) that are charged to the cardholder regardless of the form of payment.

- MasterCard rules stipulate that accepting agencies
 - Cannot add a surcharge that cardholder must pay
 - Cannot offer card acceptance to a select customer group that is behind in payments
 - Cannot put a minimum or maximum limit on a credit card payment
- MasterCard rules allow for convenience fees provided:

- Same fee must be applied to each transaction type within a specific payment mode
- No discrimination exists for a MasterCard card based on payment method
- Merchant decides how to apply fee - can be priced as a flat rate, tiered, or percentage based
- Not permitted to advertise the fee as offset to merchant discount rate

Visa USA 5.2.E Convenience Fees

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.

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