

NACS: INTERCHANGE FEES

QUESTIONS AND ANSWERS

Can I offer discounts?

Yes. As soon as the legislation is signed into law, networks will no longer be able to penalize you for offering discounts and in-kind incentives to customers who use your preferred form of payment. You can offer discounts to customers who use debit cards, checks, cash, or even credit cards based on which of those forms of payment you would like to incentivize. However, networks can require that your discounts be neutral, which means that you must treat all banks that issue cards equally and treat all card networks (Visa, MasterCard, Discover, etc.) equally. Therefore, for example, you could offer a certain percentage or dollar discount for using any debit card, but will not likely be able to limit that discount only to Discover Cards or to debit cards issued by a particular bank. The discount should either apply equally to all debit cards or not apply at all.

Retailers should also be aware that discounts will have to comply with state and local pricing laws, many of which require such discounts to be clearly and conspicuously disclosed to all customers.

What is an “in-kind incentive”?

An “in-kind incentive” is any offer by the merchant other than a pricing difference aimed at inducing the customer to use the merchant’s preferred form of payment. The legislation does not specifically define “in-kind incentive” but, for example, an incentive may include benefits such as free merchandise, services such as preferred check-out lines, or other perks that might provide value to customers prompting them to use the form of payment the merchant prefers.

While merchants may start offering in-kind incentives immediately, it is important to remember that, as explained above, any incentive offered to customers will likely need to be neutral with regard to the card network and card issuer (that is, it will have to be open to everyone using the preferred form of payment such as a debit card). Retailers should also be aware that incentives will have to comply with state and local laws, many of which require such incentives to be clearly and conspicuously disclosed to all customers.

Can I surcharge?

No. The major credit card companies threaten fines if merchants create a surcharge for the use of one of their cards, and the legislation does not change those rules.

Can I discount for cards from my local bank?

No. Unless the card network rules change, any discount must apply equally to a given form of payment (such as a debit card), and cannot distinguish between the cards issued by your local bank and cards issued by other banks. Therefore, if you offer any discounts to customers who use a debit card, you must offer the same discount to all customers who use a debit card regardless of which bank issues that card.

Can I discount for cards that are part of my co-branded program?

Yes. The network rules for co-branded card programs were not changed by the legislation. Typically, those rules require that any such discount be applied after the transaction (such as a discount/credit that comes when the customer receives a card statement). We urge you to review the card network rules to ensure compliance with their limitations on this practice.

Can I give cash discounts?

Yes. The legislation reaffirms merchants' ability to offer discounts to customers who pay in cash.

How much will interchange be?

That question will depend on the rulemaking by the Federal Reserve Board ("the Fed"). The Fed will have nine months after the President signs the legislation into law to write rules ensuring that all interchange fees on debit card purchases are "reasonable and proportional" to the cost of processing the transaction. Those regulations will become effective one year after the date the law is signed.

Will the Fed reduce interchange fees?

For debit cards: It depends upon the Fed's findings with respect to card issuers' costs for processing transactions, and the Fed's view of what is "reasonable and proportional" to those costs. As noted above, the Fed will write rules ensuring that all interchange fees on debit card purchases are "reasonable and proportional" to the cost of processing the transaction. NACS and most observers believe those rules will result in much lower interchange fees on debit card transactions, but no one will know for certain until the Fed publishes its rules in nine months.

For credit cards: The Fed will not have a similar ability to change credit card interchange fees. Those fees may, however, finally be subject to some downward market pressures if merchants take advantage of the ability to discount for cheaper forms of payment.

Can I set minimums for taking cards?

Yes. You may set a minimum dollar value for accepting a credit card, so long as the minimum does not exceed \$10 (though the Fed might increase that amount in the future). Note that no minimum amount can be set for accepting debit cards or prepaid cards – only credit cards. This provision takes effect immediately.

Can I set a minimum payment for all types of cards, or just credit cards?

The legislation only allows merchants to set a minimum dollar amount for **credit card** transactions. It does **not** allow minimums to be set for debit card or prepaid card transactions.

Can I set maximum amounts for taking cards?

Not unless you are a federal agency or university. Under the legislation, those are the only entities that can set a maximum dollar amount for accepting a credit card without risking a penalty from one of the card networks.

Does the legislation affect network fees?

Yes. The Fed will be able to regulate network fees charged on debit card transactions – that is, the fees charged by Visa, MasterCard and Discover as opposed to those charged by card issuing banks. However, the Fed's authority to regulate network fees is limited to ensuring that network fees are not, in any way, used to compensate issuers or otherwise circumvent its regulations relating to interchange fees.

Can I decide which network to use to route transactions?

For debit transactions the answer will be yes. The Fed will write rules to take effect in one year that will prohibit card networks and banks from creating exclusive deals to route transactions. The networks and bank issuers will be prohibited from limiting the networks over which a debit transaction can be routed to only one network (or only affiliated networks). The rules will also require that merchants be given the right to select the network (of the applicable choices) over which their transactions will run.

When does the legislation take effect?

Two provisions in the legislation take effect as soon as the bill is signed into law: 1) Merchants can start offering discounts or incentives to customers based on the form of payment they use; and 2) merchants can set a minimum dollar amount (\$10 or less) for accepting credit cards without a penalty from issuers or networks. The rest of the provisions in the legislation, including the Fed's regulation of interchange rates, will take effect twelve months from the date of enactment.

If I have more questions, who should I contact?

Lyle Beckwith, Senior Vice President of Government Relations, NACS
lbeckwith@nacsonline.com
703.518.4220