

# Getting to Know Surcharging Compliance

## What is Surcharge Compliance?

Much like any other form of compliance, surcharge compliance ensures that you are following all applicable rules and regulations during an activity – in this case, when surcharging. Critical components of surcharge compliance include:

- **Rate-Level compliance** – Ensuring you charge an allowed rate that still provides maximum recovery
- **Card-Level compliance** – Ensuring you follow all rules enforced by the card networks and banks
- **Government compliance** – Ensuring you follow all local, state/province, and federal surcharge laws
- **Compliance Conflicts** – Ensuring that correct rules are followed with indemnification just in case

## Why is Surcharge Compliance Important?

Non-compliance can lead to enforcement actions from both card vendors and governments. Card vendors will issue fines of up to \$25,000 or a breach of contract. Governments can issue fines or lawsuits. These enforcement actions can add considerable risk to your business. For example, Riverside Café, a small restaurant chain in Wichita, Kansas, paid a \$60,000 fine in February 2020 for illegal surcharges - more than 2 months of revenue for a typical regional restaurant.

Non-compliant surcharging solutions generate new risks every time a surcharge is issued, creating an ever-increasing risk that could result in enforcement action at any time.

## What Must be Done to Stay Compliant?

67 jurisdictions actively govern surcharges in the US. They range from each state and the federal government to the card brand networks and banks. Here are just some of the major rules to consider:

- **No customer surcharge surprises:** Customers must know you may impose a surcharge before they choose their payment method.
- **Surcharge disclosure:** The surcharge amount must appear as a separate line item on payment confirmation.
- **Alternative payment options:** Customers must have at least one payment option that does not carry a surcharge.
- **State restrictions:** Some states prohibit surcharges, while others have differentiated rules about surcharging.
- **Maximum 3% surcharge amount:** The surcharge amount may never exceed 3% of the transaction amount.
- **No profit rule:** You may not profit from a surcharge; i.e., the surcharge may never exceed the cost of accepting a card.
- **Card type restrictions:** Certain card networks prohibit surcharges on certain card types (credit, debit, prepaid, etc.).
- **Treat all card brands equally:** You must surcharge all card brands in the same manner.
- **30-day surcharge registration:** Certain card brands and acquirers require registering your surcharge program at least 30 days before your first surcharge.
- **60-day surcharge notice:** Certain card brands and acquirers require notifying subscription/recurring billing customers of an impending surcharge 60 days prior to the first surcharge.

## What Tools Must be Used to Stay Compliant?

Compliance requires dozens of considerations across 40 million card types. Some of the most critical are:

- **An automated solution:** Automate following the compliance rules on every transaction, ensuring consistent compliance.
- **Precision surcharging:** Surcharge the whole or part of the precise card fee – never more. Only surcharge cards, leaving other payment options available at lower cost.
- **State and provincial regulation handling:** Change the amount surcharged based on the local regulations of the card being used.
- **Refund and chargeback handling:** When funds need to be returned to a customer, make sure a pro-rated part of the surcharge amount is returned as well.
- **Sales tax handling:** Correctly handle the surcharge on the sales tax amount, maximizing the surcharge return.
- **Conflict considerations:** When American Express card rules conflict with the card rules of Visa and Mastercard, surcharge in a nuanced way that allows compliance with both.
- **Indemnification:** If compliance errors occur, ensure the surcharge solution is contractually obligated to indemnify you from the risk of enforcement action.

**Done correctly, surcharging can recoup the high cost of credit card acceptance while introducing little to no risk. To learn more, reach out to our team of surcharging experts.**

