

Statement: National Retail Federation

The concept that merchants will start surcharging for credit card use is propaganda being spread by the card industry. The lawsuit was brought by merchants in an attempt to bring down swipe fees and, in turn, the prices paid by consumers, not to increase the amount paid by consumers. Surcharging therefore would run 180 degrees to the intent of the suit. While there can always be exceptions, merchants in general have no intention of surcharging. We have discussed the settlement with many, many merchants, and not a single merchant we have spoken to plans to surcharge.

The settlement does include Visa/MasterCard rule changes that would theoretically allow merchants to surcharge, but anyone seeking to do so would have to meet a complex set of requirements. Furthermore, surcharging is banned by law in 10 states. And existing Visa/MasterCard rules require retailers to handle credit cards the same in all of their stores, so national chains that have stores in any of those 10 states would not be able to surcharge in any state. The same would apply to regional chains that have stores in any of the 10 states. In addition, the settlement says that if a merchant is going to surcharge Visa and MasterCard, they also have to surcharge any other card with an equal or higher swipe fee, meaning American Express. But American Express contracts bar merchants from surcharging their cards. That means a merchant who accepts Amex in addition to Visa/MasterCard could not surcharge any of the three.

After eliminating 1) merchants in the 10 states, 2) national chains, 3) regional chains with stores in any of the 10 states and 4) stores that also accept Amex, that leaves mostly small retailers. Those retailers would then have to comply with the settlement's requirements of notifying Visa/MasterCard of their intent to surcharge within a specified time frame, informing customers of the surcharge, posting their surcharge policy, and complying with other Visa/MasterCard rules on surcharging. Small retailers are too busy running their stores to do all of that.

The bottom line is that very few retailers would be able to surcharge under the settlement, and that the vast majority don't want to surcharge even if they could.

Please keep in mind that despite the preliminary approval, this settlement is not at all settled. Ten of the 19 original plaintiffs, including all six trade associations that were part of the case, fired their lawyer and dropped out of the case. The 10 are on record as opposing the settlement and have filed an appeal of the preliminary approval. NRF (which was not a party to the case but represents more than 9,000 members who would be affected because it is a class action settlement) went to court to oppose the preliminary approval and is exploring its legal options now that preliminary approval has been granted. Home Depot filed an appeal, and both Walmart and Target are on record opposing the settlement.

Surcharging aside, our primary opposition to the settlement is that it does nothing to change the way swipe fees are set, does nothing to keep fees from going up going forward, offers merchants only pennies on the dollar in compensation for past price-fixing, and bars future lawsuits, all while giving retailers no real option to opt out.

Again, I cannot overemphasize - merchants have no desire to surcharge and no plans to surcharge. The concept of widespread surcharging is purely card industry propaganda.