

Supermarket Industry Guidance: How to Implement Reforms on Restrictive Card Network Practices

There are two retail electronic payment acceptance reforms that take place immediately with the signing of the Dodd-Frank Wall Street Reform and Consumer Protection Act. One would provide retailers greater protections from card network fines in offering discounts or incentives for using cheaper forms of payments. The second would allow retailers to set minimums, not to exceed \$10, for the use of a credit card. Swipe fee reforms in the Dodd-Frank Wall Street Reform and Consumer Protection Act limit the ability of the card networks to impose fines on retailers who choose to implement either of these practices. The effective date of these reforms is July 22, 2010. We would encourage companies to take into account the guidance provided in this document in implementing these changes, but stress that implementation of these new reforms is up to each individual company to pursue on its own.

First, we would encourage you to contact your merchant acquirer to discuss potential programming changes that may need to be made in order to effectively carry out these reforms and determine if it makes financial sense for your company to implement these reforms. Your acquirer will likely play a large role in the programming necessary to offer discounts or in-kind incentives.

1. *Discounting/in-kind incentives* - The first reform is that a card network shall not inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards or credit cards, provided that discounts for debit cards and credit cards do not differentiate on the basis of the issuer or the card network, and provided that the discount is offered to all buyers and disclosed clearly to the extent required by federal and applicable state law.

- Discounts or in-kind incentives can be offered for cash, checks, debit cards or credit cards. While networks created extreme barriers to doing so, the ability to offer cash and check discounts was previously protected by the Cash Discount Law,¹ but the ability to discount on debit and credit cards is new.
- Discounts or in-kind incentives on credit and debit cards cannot vary based on the card network (i.e. Visa or MasterCard) or by the card issuer (i.e. Citibank or Bank of America). For example, you may offer a 1% discount for all debit purchases, but you may not offer a 1% discount for a Citibank debit purchase and then a 2% discount for a Bank of America debit purchase.
- Discounts may be applied to the full shopping basket. Discounts do not need to be labeled on each individual item.

¹ Section 167 of title I of the Act of May 29, 1968 (Pub. L. No. 90-321).

- We recommend that any discount or in-kind incentive should be clearly and conspicuously posted at the register.
- Discount signage may be placed at other locations throughout the store (such as the entryway or the aisle where an in-kind incentive may be offered) to help make shoppers aware of the discount before they are in the checkout line.
- In-kind incentives may include [pursuant to state laws] offering any product or service to incentivize a customer to use a less expensive form of payment. For example, you may wish to offer a customer a free loaf of bread to use cash or if it is less expensive for you to accept debit cards you may want to offer the same or a different incentive to any shopper who uses a debit card.
- We highly recommend talking to your processor for more information about programming your point-of-sale system to provide discounts or incentives.
- In order to document the benefit of the Durbin amendment on consumers, we would appreciate knowing about any discounts or incentives you intend to offer customers.

2. ***Minimums on credit cards*** – The second reform is that a card network shall not inhibit the ability of any person to set a minimum dollar value for acceptance of credit cards, provided that the minimum does not differentiate between issuers or card networks, and provided that the minimum does not exceed \$10.

- We recommend the minimum purchase dollar amount should be clearly and conspicuously posted at the register.
- The minimum purchase amount may not exceed \$10.
- Signage should indicate that the minimum purchase amount is only on credit cards and does not include debit card purchases.
- Signage may be placed at other locations throughout the store (such as the entryway) to help make shoppers aware of the credit card minimum purchase amount before they are in the checkout line.
- The minimum purchase amount must be the same for all credit cards. You may not set a minimum purchase amount of \$5 for a Citibank Visa credit card and then set a minimum purchase amount of \$10 for a Bank of America Visa credit card.



Once you have determined if your company plans to make any changes to your card acceptance procedures, we encourage you to begin educating your employees about these new reforms and how they are being implemented at the point-of-sale.

When instituting any of these reforms in your stores, we also strongly encourage you to review any relevant state laws, such as state consumer protection laws, surrounding consumer disclosures.