

Swipe Fees and Credit Cards: An Antitrust Case That Could Spell Relief for Organizations

For decades, organizations have been wrestling with the high cost of credit card company interchange fees, or so-called swipe fees. Traditionally, these fees are between 2% and 4% of a total credit card transaction cost. They represent a service charge paid to the card company, or its bank, covering the costs associated with allowing individuals to use their Visa, Mastercard or other credit card for purchases. Regrettably, these charges can be hefty for organizations on an annual basis.

In response to these high fees, a federal class action lawsuit was filed in 2005. The case, entitled *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 05-MD-1720 (U.S. Dist. Ct., Eastern Dist. of NY), has produced two separate settlements that could provide some relief for organizations.

The first settlement deals with the damages to be paid to any business that accepted Visa or Mastercard between January 1, 2004 and January 25, 2019. Under the agreement approved by the court, organizations (and other businesses) are entitled to file a claim for a portion of nearly \$5.6 billion in reparations.

If your organization accepted Visa or Mastercard during that time, you may have the right to receive some of this money. To do so, you will need to act before May 31, 2024. Those who wish to file a claim should go to:

Payment Card Settlement Official Website - <https://www.paymentcardsettlement.com/en>

While there is at least \$5.6B to be distributed, an organization's actual pro rata share of this total will be based on a number of factors, including the total number of claimants and the total amount of swipe fees paid. Unfortunately, this distribution may not be nearly as high as the swipe fees your organization paid over those years. However, this is a chance for organizations to get something back from Visa and Mastercard. As such, a claim may be worth pursuing.

The second settlement resolves the main claim in the lawsuit: that Visa and Mastercard (and their banks) broke antitrust law when imposing these interchange fees. This settlement requires Visa and Mastercard to:

1. Ensure their swipe fees do not go above the 2023 level for five years;
2. Reduce their swipe fees by at least 0.04 percentage points for three years;
3. Ensure their average swipe fee is 0.07 percentage points below the current average for all swipe fees over the next five years; and
4. help steer members to use cards with lower swipe fees over more expensive swipe fee cards.

In the end, this settlement produced some tangible, albeit limited, benefits for organizations that allow the use of credit cards for the monthly payment of dues and fees. The bad news is high swipe fees will never go away until Congress steps in to provide permanent relief.

Thankfully, Congress has started to look at this issue more critically with the introduction of the Credit Card Competition Act (CCCA). This bill would enable greater competition among banks that process credit card transactions and help lower these swipe fees for good. Of course, it may be some time before the CCCA is signed into law.

With that in mind, organization leaders should determine whether their organizations are entitled to receive some of the damages settlement and they should keep their fingers crossed that the court approves the antitrust settlement – it may be the only break from swipe fees for some time....

Get in touch with your Engagement Team/Partner/Manager

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