



MASTERCARD'S NEW RULES AFFECT MERCHANT'S NEGATIVE OPTION PROGRAMS

On January 16th, Mastercard announced new rules for merchants and acquirers of merchants that engage in negative option billing, including specific rules for credit card billing in connection with trial offers.

The new rules apply to card-not-present transactions where a consumer purchases a subscription to receive a physical good automatically using a Mastercard. The sale of services or digital content is not covered by the rules. Such a subscription presumably renews automatically until the consumer affirmatively cancels the subscription.

If a merchant offers a trial period for a product, the Mastercard rules require a merchant to reach out to the cardholder and provide the following information after the trial period ends, but before a card is charged:

- The amount the card will be charged;
- The date the card will be charged;
- The date the merchant will attempt to charge the card a second time if the account had insufficient funds when the first attempt was made;
- The merchant's name as it will appear on the cardholder's statement; and
- Subscription cancellation instructions.

The merchant must obtain a cardholder's explicit consent for the transaction amount before initiating the charge authorization request. The trial period must begin on the date the cardholder receives the product. The new rules contain other cardholder disclosure requirements for merchants, including, but not limited to, sending a transaction receipt to a cardholder via email or text each time a merchant submits an authorization request for a subsequent recurring transaction. The receipt must include instructions on how to cancel the subscription or negative option plan.

Under the new rules, merchants engaging in negative option billing to sell a physical good, regardless of whether a trial offer is present, will be classified as "high-risk merchants" subject to Mastercard registration. Merchants' third-party service providers that have access to cardholder data will also be subject to registration

with Mastercard. The new rules set forth acquirer compliance and monitoring obligations as well.

In a blog post, Mastercard touted that the "new rules increase transparency and ensure an outstanding cardholder experience." The rules become effective in April 2019.

The Mastercard rules join several federal and state laws that govern negative option programs. We advise clients regularly on marketing of financial products and services and can help reviewing marketing plans and collateral. □

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