Repayment Agreements

February 2021

pulse survey

Pulse Survey – Repayment Agreements

Repayment agreements (also referred to as clawbacks) have had a long-standing presence in mobility programs. The general premise of a repayment agreement is if an employee should leave their employer within a specific period of time following an employer-paid relocation, the employee would be obligated to repay some or all of the relocation expenses incurred by the company.

The results of Aires' most recent pulse survey are explained in this report in full detail to provide the most up-to-date look at how employers are using repayment agreements.

Survey Highlights

Domestic repayment agreement utilization remains very high, while international utilization continues to grow steadily.

Two-year agreements are more common than one- and three-year agreements, and most agreements are prorated.

Agreements used in U.S. domestic relocations are most likely the same as ones used for intra-country domestic and international relocations.

Enforcement of repayment agreements has been steadily increasing over the years.

Domestic Repayment Agreements

Ninety-five percent of survey respondents confirm utilizing repayment agreements in their U.S. domestic mobility programs, and another 1% are considering adding such agreements. These percentages have remained consistent over the years. In fact, these percentages are identical to the findings reported in Aires' 2012 repayment pulse survey, confirming the widespread use of repayment agreements in domestic relocations.

95%

of respondents require repayment agreements.

98%

of respondents with repayments agreements require all relocating employees to sign a repayment agreement.

96%

of respondents with repayment agreements confirm requiring repayment of all relocation-related expenses paid to the employee or paid on their behalf

Almost all of those utilizing repayment agreements do so with every relocating employee. Only 2% of respondents with repayment agreements in their mobility programs confirm excluding some domestically relocated employees from a repayment requirement.

Repayment agreements most often require an employee to repay all expenses that were incurred by the employer as a result of the relocation. That may include any monies that were reimbursed to the employee or paid directly to service providers by the employer or relocation management company (RMC).

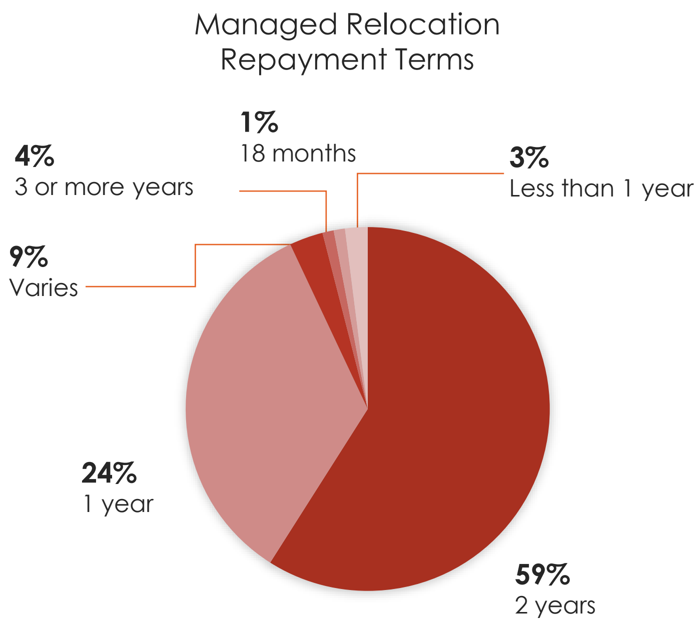
While exact wording in the agreement may vary, 96% of respondents confirm requiring repayment of all relocation-related expenses paid to the employee or on their behalf. Of the 4% who reported only specific expenses would need to be paid, the miscellaneous allowance (i.e., cash payment made to the employee), reimbursed expenses (e.g., travel), and gross-up are the benefits most often requiring repayment.

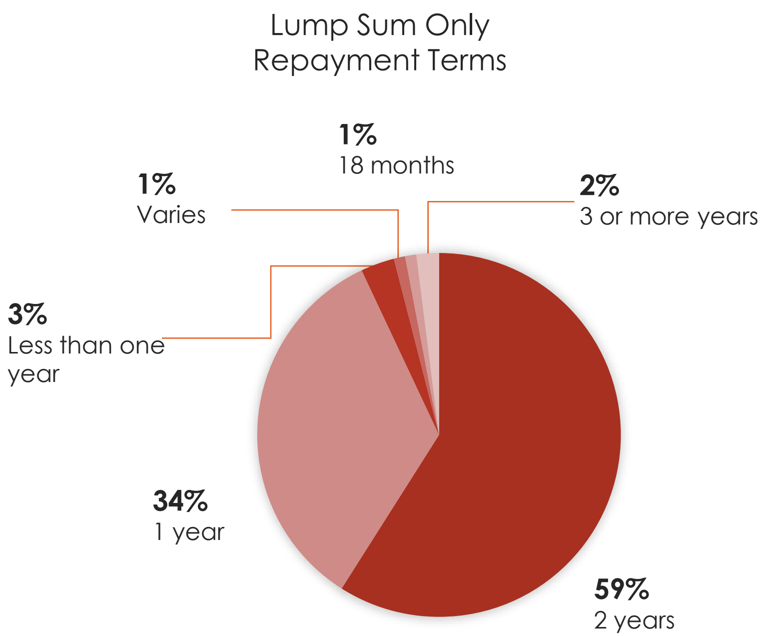
Repayment Terms

The terms of a repayment agreement include the amount of time an employee must stay employed following the relocation and the condition under which their employment ends. Based on survey responses, the most common term length is two years, and the most common condition is voluntary termination (i.e., the employee quits); however, there are variants.

Some employers only require a one-year repayment agreement, some require three, and others have more than one term length depending on employee/benefit type. Ten percent of respondents confirm utilizing more than one repayment agreement term, most often two-year and one-year, noting differences between (respectively) homeowners and renters, executives and non-executives, new hires and existing employees, and managed relocations and lump sums. Two respondents in particular confirmed their term lengths vary based on their businesses' discretion, with one ranging from two- and three- year terms and the other from two- up to five-year terms.

The following data compares managed relocations (with services, direct payments, and reimbursed expenses) to lumps sums (the only benefit provided is a cash payment). While the same percentages reported using two-year repayment agreements, there is a noticeable increase in the use of one-year terms with lump sums compared to managed relocation.





Voluntary termination is the most common reason for a repayment obligation (recognized by almost all respondents), but there are other circumstances under which an employee may depart that can prompt the same repayment obligation. Termination for cause or gross misconduct are also commonly reported. One respondent noted their agreement states misconduct instead of gross misconduct. Regardless of the language, any agreement should clearly define the circumstances under which repayment is applicable and there should be baseline definitions of any terms such as misconduct, gross misconduct, and cause.

Language Within the Agreement That Defines When Repayment is Required	Percentage
Voluntary termination	99%
Termination for cause	56%
Termination for gross misconduct	55%
Retirement	17%
Employee declined relocation	8%
Not specified	3%
Any reason	2%

A repayment agreement is considered a legal document. The wording should be carefully reviewed and approved by legal counsel to ensure an agreement's intent, clarity, and defensibility.

Another important aspect of the term of a repayment agreement is at what point the term begins; in other words, when does the clock start ticking? The point at which the employee leaves is very clear, but the survey responses reveal there are some differences with when the term of the agreement actually starts.

The most common beginning of the term, or effective date of the repayment agreement, is an employee's start, hire, or transfer date, noted by 86% of respondents. This has long been the most common approach, basing the term of the agreement on the date of employment recognized by the employer; however, recent years have shown a slow-growing trend to account for the fact that many employees do not report to work on their start, hire, or transfer date, and it may take up to a year or more to complete their relocation.

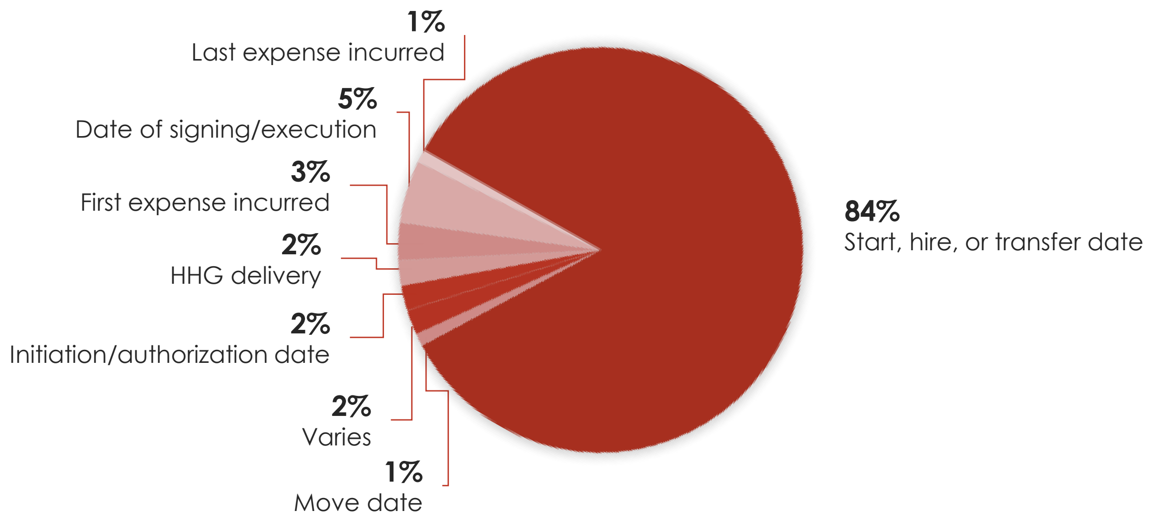
Industry standards are to provide up to one year for employees to incur relocation expenses. Previous research published in Aires' COVID-19 series of surveys confirms that some employers are extending that time frame. The timing of when expenses are incurred is causing some employers to rethink and redesign their repayment agreement strategies.

Five percent confirm their repayment clock starts ticking the day the employee executes the agreement. (It is best practice to have the agreement signed before any expenses are paid to the employee or on their behalf.) Three percent specifically noted that the occurrence of the first expense is the effective date of the agreement. Two percent noted using one of two dates:

- The later of the start date in the new location or the delivery date of the household goods
- The latter of the start date or move date

Another 2% each noted either the initiation/authorization date or the delivery date of the household goods, and 1% starts the term of their repayment agreement after the last expense for the relocation has been paid.

Date Which Signifies the Beginning of the Repayment Term



Be careful of using ambiguous terms in a repayment agreement. Any terms that are used in the agreement (such as transfer date, start date, authorization date, move date, etc.) should have baseline definitions that are understood by all parties involved.

Prorated Repayment

There is a high percentage of survey respondents with prorated repayment agreements. Prorating the agreement means that as time passes and the term of the agreement nears expiration, the repayment obligation decreases. For example, if an employee were to leave their employer after eight months into their repayment agreement, they may be obligated to repay all of the relocation-related expenses, but if that same employee were to stay employed for 18 months, they would only be obligated to repay a portion of the expenses.

There are numerous ways proration can be applied. According to the survey results, the highest number of proration options appear in two-year agreements.

Monthly prorations are most common with one-year agreements (the total amount of the repayment obligation declines by 1/12 after each month passes) but are also found in two-year agreements (either declining by 1/24 after each month or 1/12 each month of the second year).

Annual prorations are most common with two- and three-year agreements. The most common structure is 100% within year one and 50% within year two. The survey noted 10 other different approaches incorporating monthly proration, as well as three, six, and 12 months as the points after which the percentage decreases.

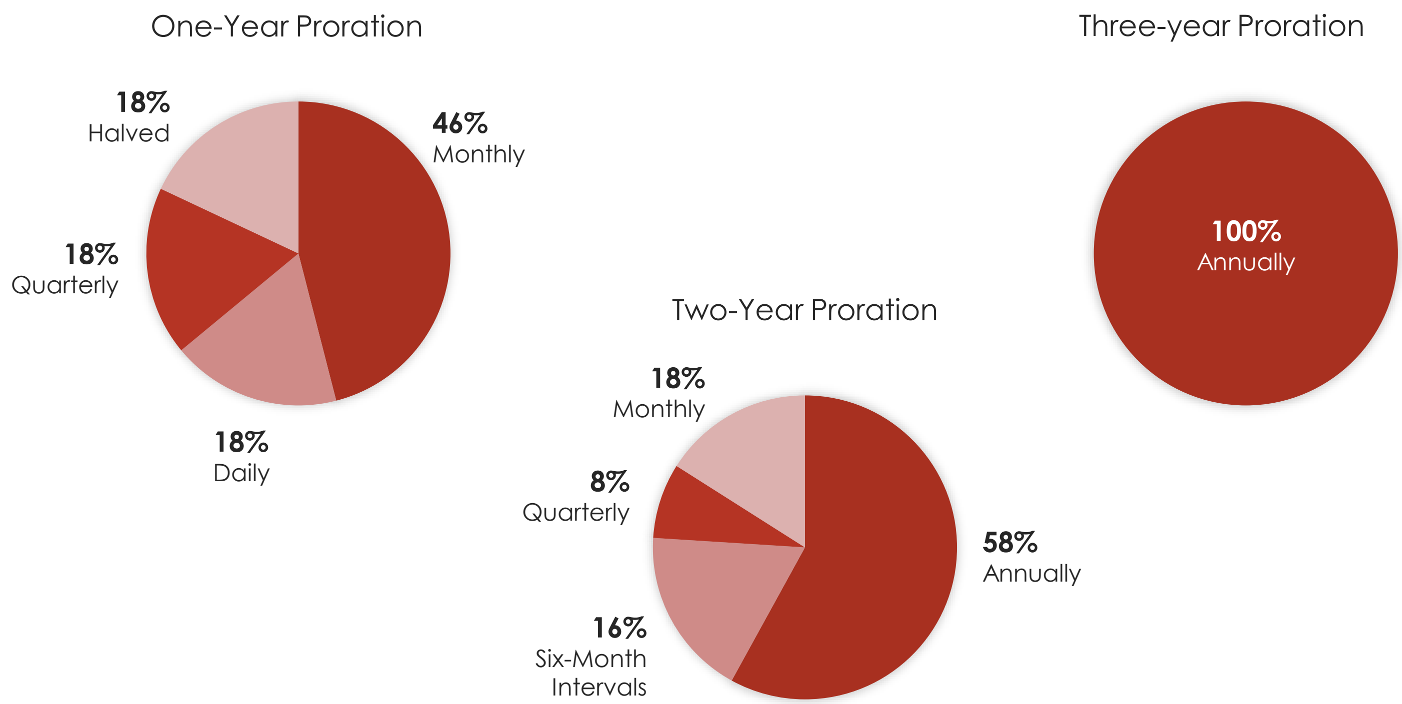
80%

of companies with managed relocations prorate the repayment requirement over the course of the term

67%

of respondents with lump sum relocations prorate the repayment requirement over the course of the term

Methods of Prorating



60% of respondents with multi-year repayment terms require 100% repayment in the first year, prorating only the time after one full year.

Impact of the Pandemic

As reported in several of Aires' COVID-19 Series surveys, relocation policies have yet to see much change as a result of the pandemic. Employers are mostly dealing with exceptions, delayed start dates, and extensions of allowance expenses.

Similarly, 90% of respondents confirm that the pandemic has not impacted their repayment agreements. Those that confirm their agreements have been impacted mostly state that the effective date of the agreement has been delayed or modified of the process has been altered in some way. Some noted considering changing the start of their term to the move date rather than the hire date to account for that. And a couple of respondents acknowledged complications with having virtual employees that haven't actually relocated.

10% of survey respondents note the pandemic has impacted their repayment agreements. A few examples include:

"Repayment period was extended so relocation benefits were extended."

"Took a nine-month break from our collection agency."

"As relocations are delayed, the start date is also delayed."

"We extended the allowable relocation period and repayment provisions from 12 months to 18 months; this is intended to be temporary."

"We modified the form to allow use of e-signatures."

Repayments and Permanent Residency

Are employers who support permanent residency of foreign nationals (e.g., U.S. green cards) also requiring repayment agreements?

The responses confirm 38% of employers supporting permanent residency do require the employee to sign a repayment agreement, while 62% either do not or don't know. Several respondents were not sure of any repayment obligation or the details of any existing agreement, as that process is out of their area of expertise or responsibility.

Most respondents with permanent residency repayments noted a two-year requirement. And most also stated that they are aware that costs associated with the PERM application and labor certification process are not recoverable; however, costs associated with the I-140, the I-485, and Adjustment of Status and related fees are. Often a special repayment agreement for permanent residency will stipulate which expenses are recoverable.

> *According to Bobby Bartle, Aires' General Counsel, employers need to be very careful with understanding which costs they can recoup in the permanent residence process, especially because it can be a long process and one that needs to consider multiple steps in the overall journey. An employer-sponsored green card may involve all three of the following steps: (i) PERM certification, (ii) I-140 petition made by company, and (iii) I-485 petition made by employee. Depending on the green card preference category, some employees may qualify for obtaining a green card with only steps (ii) and (iii). Notwithstanding the above, it is critical to point out that employers understand that per 20 C.F.R. § 656.12, the employer must cover all costs associated with step (i), the PERM certification. Costs typically associated with the PERM certification include attorney costs and position advertising costs. So, any repayment agreement for permanent residence that requires a payback clause should clearly state that those specific payments related to the PERM certification are not applicable.*

38% of respondents who support permanent residency require a corresponding repayment agreement.

PERM certification fees are not recoverable

Non-U.S. Intra-Country Domestic Repayment Agreements

The survey finds that non-U.S. relocations do not have the same utilization rate for repayment agreements as U.S. relocations. Of the survey respondents, only 43% confirm using repayment agreements in other countries' domestic relocations.

Half of respondents using repayment agreements outside of the U.S. noted using agreements in Canada, and another quarter noted using agreements in all other countries where they have activity. Two respondents confirmed they do not use agreements in Brazil, Columbia, and Mexico. Two additional respondents confirmed the use of agreements in Mexico, but commented they are not enforceable.

43% confirm using repayment agreement in other countries' domestic relocations

Other countries where respondents use repayment agreements

All countries	26%
Canada	49%
Mexico	17%
UK	11%
China	9%
Germany	9%
India	9%

5% or fewer noted Australia, Brazil, France, Ireland, Japan, Malaysia, New Zealand, Philippines, South Africa, South Korea, Turkey, U.A.E, or the entire EMEA region.

92% of respondents using repayment agreements in other countries confirm the terms of the agreements are the same or similar to U.S. repayment agreements.

International Repayment Agreements

Sixty-four percent of respondents confirm using repayment agreements with one or more types of their international assignments and/or relocations. Another 9% are considering using such agreements.

There are different types of international assignments and relocations, and the usage of repayment agreements varies with each. More respondents noted utilizing more than one term for each type of assignment or relocation compared to domestic repayment agreements.

Short-term assignments (typically less than one year in length) had more one-year repayment agreements noted, as well as the highest number of respondents not using repayment agreements.

Long-term assignments (typically more than one year, less than five years) had more two-year agreements noted.

Permanent transfers and local hires had the most two-year agreements noted, as well as the highest utilization of agreements.

Short Term Assignment	Percentage
1-year	46%
2-year	24%
3 year	3%
N/A	38%

Permanent Transfer/Local Hire	Percentage
1-year	41%
2-year	63%
3 year	9%
N/A	10%

Long-term Assignment	Percentage
1-year	42%
2 year	58%
3 year	16%
N/A	18%

There was more consistency in the date that signifies the beginning of the repayment term with international agreements compared to domestic agreements. More than 90% of respondents with international repayment agreements noted the start date or hire date as the beginning of the repayment term.

Long-term assignments present a challenge because the term of the repayment agreement often may be shorter than the assignment itself. The survey found that only 15% of respondents with long-term assignees have repayment agreements that are associated with the repatriation date or end-of-assignment date. As noted with domestic repayment, one- and two-year agreements were most common, and that remains true for repatriation repayment agreements. The results were split between those with one- and two-year agreements and also split with those that prorated the repayment from the time of the return to the home country.

Just as reported with domestic repayment agreements, there are times when repayment is not enforced.

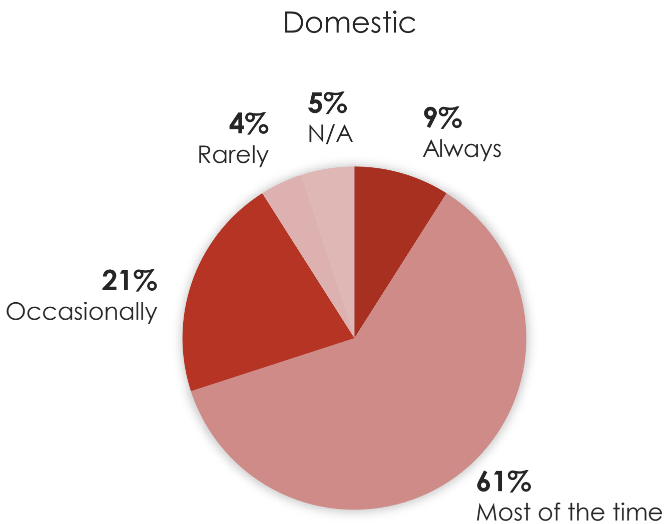
15% of respondents with long-term assignments tie a repayment obligation to the repatriation date.

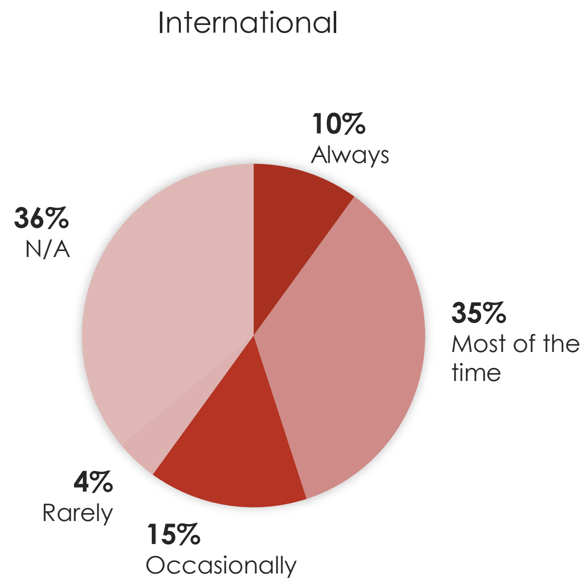
The Art of Collection

Two-thirds of respondents confirm they are either always or mostly successful in the collection of departed employee repayment obligations. This has remained fairly consistent over the past 10 years. More respondents noted not having to enforce international agreements compared to domestic agreements, as they have not had employees leave within the term of their agreements (noted as N/A in the data below).

The reasons for non-collection have also remained fairly consistent over the years, with management deciding not to enforce the agreement and costs associated with pursuing repayment leading the charge. International agreements were reported to be unenforceable more often than domestic agreements. Also, losing contact with the employee was more likely with international repayments than domestic.

Repayment Collection Rate of Success





Reasons for Not Pursuing Domestic Repayment	Domestic	International
Management decision	75%	82%
Costs involved	37%	29%
Legal counsel advanced against it	34%	31%
Lost contact with employee	30%	40%
Not enforceable	8%	32%

Some of the comments from respondents sum up how challenging it can be to enforce agreements and pursue the repayment:

"The cost of legal fees may outweigh the amount we are looking to recoup."

"Unfortunately, another team within HR oversees the repayment program, so it is not always consistently enforced/pursued."

"We may forgive the repayment if the employee's departure was mutual."

"Too risky as a financial institution; however, we do code those who don't pay as not eligible for rehire."

"We don't pursue beyond communicating a couple of times."

"We lack global reporting and monitoring to capture post assignment terminations/quits. Multiple manual processes involved in current repayment process."

Conclusion

As repayment agreements have become mainstream in employee mobility, employers have honed their internal processes to implement them and enforce them. There is still work to be done toward enforcing the agreements for many companies, and that starts by having effective agreements in place with clear and defensible language and a defined process for collection.

Are you interested in reviewing your repayment agreement document and procedures? If so, here are some key questions to answer that will guide your documentation and processes.

- What is a reasonable amount of time for a relocated employee to stay employed in order to avoid repayment obligations?
- What are reasons for a relocated employee's departure that would necessitate a repayment obligation?
- What expenses will be subject to repayment?
- What point in time does the repayment term start?
- Is the term of the agreement clearly defined in the company's policies and understood by all parties?
- Who is responsible for monitoring the signing and storage of the agreement?
- Who is responsible for tracking the employee?
- Who is responsible for obtaining the data needed (e.g., total amount to be repaid)?
- Who is responsible for communicating the repayment obligation to the employee?
- Under what conditions could the repayment obligation be waived?
- Who has the authority to waive the repayment obligation?

To discuss any changes to your repayment agreement, please contact your Aires representative.

Survey Participant Profile

A total of 127 companies participated in this survey spanning a variety of industries.

Industries	Percentage
Manufacturing	20%
Technology	18%
Finance/Insurance/Investment	12%
Energy	9%
Retail/Restaurants	7%
Pharma/Medical	6%
Chemicals	5%
Automotive	4%
Consumer Products	3%
Hospitality/Leisure	3%
Legal/Professional/Consulting	3%
Aerospace/Defense	2%
Food/Beverage	2%
Telecommunications	2%
Transportation/Distribution	2%
Media/Entertainment	1%
Non-Profit/Education	1%

Size of Organizations

Volume	Percentage
100,001 or more	16%
50,001 – 100,000	15%
20,001 – 50,000	14%
5,001 – 20,000	35%
1,001 – 5,000	18%
Under 1000	2%

Annual Volume	Domestic	International
Over 1,000	9%	3%
500-999	12%	4%
250-499	8%	4%
150-249	10%	6%
75-149	15%	11%
50-74	9%	10%
25-49	15%	15%
Under 25	22%	48%

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