White Paper:
Surcharges— Making E-Commerce Pay for Itself

TEXAS A&M UNIVERSITY

Summary

Texas A&M University offers its departments the ability to accept credit and debit cards as a form of payment online. The university's e-commerce platform can accommodate payments by Visa, MasterCard, American Express, and Discover. The procedures and costs for online stores can be found at http://fmo.tamu.edu/e-commerce/.

As a land grant university, Texas A&M University's core missions are Teaching, Research, and Service. Given that "commerce" is not in that list, frequently campus departments that accept online payments for the first time find themselves caught off guard by the cost. Invariably the first question is "Can we pass this to customers as a surcharge?"

In short, no[1].

E-commerce fees are a cost of doing business just like catering for a conference or screen printing for t-shirts. In most cases, your cost of doing business should be factored into a single price you charge[2], regardless of payment channel (such as online or mail order) or payment method (such as checks, credit, or debit). Adding a surcharge for online or credit card payments encourages your customers to save money by mailing in a check—essentially driving your customers toward the most time-consuming, error-prone, and labor intensive payment method for your department.

From a more practical position, the rules for surcharges are a tangle of overlapping and sometimes conflicting requirements that make it nearly impossible to assess a surcharge and stay in compliance with the requirements of all four card brands. These rules can differ depending on the market and can change at any time based on pending legislation, court action, or whim.

In the sections that follow, the relevant rules of each stakeholder—the state and the four card brands—are quoted verbatim for your independent analysis. In this paper's conclusion we apply a matrix to summarize the stakeholders' similarities and differences. Although nothing prevents you from skipping to the end, you will find the matrix more easily understood if you read the rules upon which it is built.

Texas Law

Education Code, Title 3, Subtitle A, Chapter 54.

http://www.statutes.legis.state.tx.us/DocViewer.aspx?K2DocKey=odbc%3a%2f%2fTCAS%2fASUPUBLIC.dbo.vwTCAS%2fED%2fS%2fED.54%40TCAS2&QueryText=%22credit+card%22&HighlightType=1

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[1] In some cases the rules are different for student bills (tuition and fees), which is outside the scope of this white paper. This paper focuses on "everything else" university e-commerce.

[2] We realize this isn't possible when accepting credit cards for deposit payments. Unfortunately, there is no positive solution. You must decide whether your budget can absorb the cost of card acceptance or if you should forgo card acceptance for deposits.

> Sec. 54.5011. CHARGES AND FEES FOR CERTAIN PAYMENTS. (a) This section applies to a payment of tuition, a fee, or another charge to an institution of higher education that is made or authorized person, by mail, by telephone call, or through the Internet by means of:
>
> (1) an electronic funds transfer; or
>
> (2) a credit card.
>
> (b) An institution of higher education may charge a fee or other amount in connection with a payment to which this section applies, in addition to the amount of the tuition, fee, or other charge being paid, including:
>
> (1) a discount, convenience, or service charge for the transaction; or
>
> (2) a service charge in connection with a payment transaction that is dishonored or refused for lack of funds or insufficient funds.
>
> (c) A fee or other charge under this section must be in an amount reasonable and necessary to reimburse the institution for the expense incurred by the institution in processing and handling the payment or payment transaction.
>
> (d) Before accepting a payment by credit card, the institution shall notify the student of any fee to be charged under this section.

Visa

Up until 2013 Visa only allowed a flat fee (*not* a percentage of amount paid) as a surcharge, and only in narrow situations. Due to ongoing litigation, both Visa and MasterCard agreed to permit surcharges where the law allows. However, as you'll read, the new policy is not as permissible as it first seems. Visa's changes are described in a PDF on their Visa International Operating Regulations webpage. The link is called **Operating Regulations to Support the U.S. Merchant Litigation Settlement**.

> … a Merchant that assesses a U.S. Credit Card Surcharge must not charge a Convenience Fee in addition to the U.S. Credit Card Surcharge.
>
> The Merchant may assess a U.S. Credit Card Surcharge by either:
>
> - Applying the same fixed or variable U.S. Credit Card Surcharge to all Visa Credit Card Transactions (brand level); or
> - Applying the same fixed or variable U.S. Credit Card Surcharge to all Visa Transactions of the same credit product type (product level)
> - The U.S. Credit Card Surcharge at the brand level must be the same for all Visa Credit Card Transactions, regardless of the Card's Issuer or the product type, and after accounting for any discounts or rebates offered by the Merchant on Visa Credit Card Transactions at the Point-of-Transaction.
> - The U.S. Credit Card Surcharge at the product level must be the same for Transactions on a particular Visa Credit Card product type, regardless of the Card's Issuer, and after accounting for

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any discounts or rebates offered by the Merchant on Visa Credit Card Transactions on the product type at the Point-of-Transaction.

- A Merchant must not assess a U.S. Credit Card Surcharge on Visa Credit Card Transactions at both the brand and product level.
- The U.S. Credit Card Surcharge must be included in the Transaction amount

Effective 27 January 2013, in the U.S. Region or in a U.S. Territory, a Merchant must not assess a U.S. Credit Card Surcharge:

- On a Visa debit[3] Card (Including a Visa Prepaid Card)
- On a Credit[4] Transaction

Effective 27 January 2013, in the U.S. Region or in a U.S. Territory, an Acquirer must ensure that its Merchant notifies Visa and its Acquirer in writing at least 30 calendar days before assessing a U.S. Credit Card Surcharge. Notice to Visa can be provided as specified on the "Merchant Surcharge Notification" link at www.visa.com.

MasterCard

Like Visa, to avoid certain ongoing litigation MasterCard agreed to permit surcharges where the law allows. MasterCard summarized those changes on a webpage called Merchant Surcharge Rules: What It Means To You.

Pursuant to a settlement of the U.S. merchant class litigation, MasterCard will modify certain rules and business practices to permit U.S. merchants to apply an extra checkout fee, also known as a surcharge, to customers who pay with MasterCard-branded credit cards. The rule change permitting such surcharging will go into effect on January 27, 2013. These fees are not allowed on Debit MasterCard[5] or MasterCard prepaid cards.

A summary of the rules changes required by the settlement that MasterCard acquirers will provide to their merchant can be accessed via clicking here. The details regarding the terms under which merchants may impose a surcharge on MasterCard credit transactions can be found

[3] …and BAM! In one little bullet point they completely eliminate the university's ability to charge a surcharge. With regard to online transactions, Texas A&M University does not have the means of identifying a Visa debit card (aka "check card") from a Visa credit card and charging different rates for each.

[4] Refund

[5] See footnote 3, replacing "MasterCard" for Visa. You can read the rest of MasterCard's policies if you want, but this is the poison pill.

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in the specific No Surcharge Rule modification that can be accessed via clicking here.

Below is a summary of key provisions of the no surcharge rule change. Merchants should review the actual rule change and complete the required notification process before implementing a surcharge on MasterCard credit cards.

Merchant Registration with MasterCard and Acquirer

A merchant's ability to apply a surcharge is conditioned on the merchant's satisfaction of certain disclosure requirements. These disclosure requirements include advance notice to both MasterCard and the merchant's acquirer of the merchant's intention to impose a surcharge no less than thirty days before the merchant implements a surcharge. A merchant can satisfy its disclosure obligation to MasterCard by clicking here and providing the following information:

- Merchant Name
- Merchant Contact Information (address, phone and email)
- Number of Locations Surcharging
- Type of Channel (face-to-face, eCommerce, mail order or phone order)
- Type of Surcharge (brand or product)

Merchants should contact their acquirers with regard to the acquirer notification requirements.

Type of Permissible Surcharges

Merchants are permitted to apply either a brand-level surcharge or a product-level surcharge to MasterCard credit cards. A brand level surcharge is one where the merchant charges the same percentage on all MasterCard credit cards. A product level surcharge is one where the merchant imposes a surcharge on a particular MasterCard credit product. In both circumstances, the level of the surcharge is subject to a cap.

Cap on the Level of the Surcharge

The level of the fee that a merchant may charge a cardholder is capped in relation to the merchant's cost for MasterCard credit acceptance. For merchants who choose to impose a brand level surcharge, a merchant may only surcharge a MasterCard cardholder at the lesser of the merchant's average effective merchant discount rate that the merchant pays its acquirer for MasterCard credit acceptance or the Maximum Surcharge Cap, which can be found below. For merchants that impose a product level surcharge, the surcharge must not be more than the merchant's cost to accept the particular MasterCard credit product, minus the Durbin Amendment's cap on debit interchange fees.

Merchant Disclosure to Consumer

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A merchant must provide clear disclosure to the merchant's customers of the merchant's surcharging practices at the point of interaction which shall include the amount of the surcharge and the dollar amount of the surcharge on the transaction receipt provided by the merchant to its customers. Merchants should refer to the specific rule for additional consumer disclosure obligations.

Nothing in the MasterCard rules affects any obligation of a merchant to comply with applicable state or federal laws, including but not limited to state laws that may prohibit or restrict surcharging of credit transactions, and federal and state laws regarding deceptive or misleading disclosures.

Other Requirements Should The Merchant Accept Competing Credit Networks

For merchants that accept other brands of credit payment networks, such as American Express, Discover or PayPal, there are other requirements around the circumstances in which such a merchant could surcharge MasterCard cards that depend on the costs of those brands to the merchant and those brands' surcharging restrictions. A merchant should refer to the specific rules and/or contact their acquirer for greater detail concerning those requirements.

Relevant Data for Merchants Who Surcharge

The Maximum Surcharge Cap – 4%

MasterCard Cost Of Acceptance by Merchant Category

MasterCard Cost Of Acceptance by Product Type

Discover

Discover's merchant regulations are not publicly available on their website. The following information came from the **Discover Merchant Operating Regulations R13.2**, effective 10/18/2013.

2.4 Equal Treatment of Cards Issued or Operating on the Discover Network with Other Payment Cards; Equal Treatment of Card Issuers[6]

Other than with respect to discounts as permitted in Section 2.5, you may not institute or adopt any practice, including any discount or in-kind incentive, that unfavorably discriminates against or provides unequal and unfavorable treatment of any Issuer, Cards operating on the Discover network versus cards operating on other payment networks, or any Person who elects to pay using a type of Card (e.g., credit, debit, prepaid) versus any payment card of the same type that you accept (except for any proprietary payment card issued by you or any payment card issued under a formal co-branding relationship between you and a

[6] We were going to trim section 2.4 for you, but IT'S ONE SENTENCE!

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card issuer), except to the extent such restrictions are prohibited by Requirements of Law or permitted as set forth in Sections 2.5 and 5.11.

2.5 Surcharges and Discounts

Subject to Requirements of Law, you may assess a surcharge on a Card Sale provided that (a) the amount of the surcharge may not exceed the Cost of Acceptance payable by you to us for the Card Sale; and (b) you assess surcharges on card sales conducted using the same type of cards (e.g., credit, debit, prepaid) or payment methods operating on other payment networks accepted by you, in each case subject to the restrictions in Section 2.4; and (c) you otherwise comply with Section 2.4. You may not assess a surcharge or other penalty fee of any kind other than as set forth above. You may offer discounts or in-kind incentives for payment by different tender types (e.g., a discount for payment by cash versus payment by credit card) subject to the restrictions in Section 2.4.

2.5.1 Notification of Intent to Assess Surcharges

If you choose to impose a surcharge, you must provide us with no less than thirty (30) calendar days advance written notice that you intend to impose a surcharge on Card Sales. For information about how to notify Discover, see www.DiscoverNetwork.com.

2.5.2 Surcharge Disclosure Requirements

If you choose to impose a surcharge, you must, at both the point-of-entry into your outlets and/or locations (and including, without limitations, for internet Card Sales and mail-order Card Sales, on the same page that the Merchant references the card brands it accepts) and the point-of-sale, clearly and prominently display a disclosure that must contain:

At point-of-entry:

- Statement that a surcharge imposed by you is not greater than the Cost of Acceptance

· At point-of-sale:

- The amount or percentage of surcharge
- A statement that a surcharge is being imposed by you; and
- A statement that a surcharge is not greater than the Cost of Acceptance

· Transaction Receipt:

- The dollar amount of the surcharge as a separate line item after the subtotal and before the final transaction amount

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American Express

Like Discover, American Express does not make their merchant regulations publicly available. The sections quoted below come from their most recent version.

> **12.13 government/utilities/education (U.S.)**
>
> This section applies to Merchants that we classify in the government, utilities, or certain education industries (i.e. higher education, private school – kindergarten to grade 12).
>
> Customers should feel free to use all forms of payment that Merchants accept without being penalized for choosing a particular form of payment. To promote consumer choice, Merchants are generally prohibited from imposing any restrictions, conditions, or disadvantages when the Card is accepted that are not imposed equally on all Other Payment Products. See section 3.2, "treatment of the American Express Brand (U.S.)".
>
> The Merchant must not impose a higher convenience fee on Charges than it imposes on Other Payment Products, except for automated clearing house funds transfers, cash, and checks. American Express views discrimination against Cardmembers as a breach of the Agreement.
>
> Merchants in the government, utilities and applicable education sectors may assess convenience fees on Charges, provided that they comply with the other requirements of this section, as follows:
>
> - Merchants classified as government Entities, including government utilities, and privately owned utilities may assess convenience fees on all Charges.
> - Merchants classified as educational institutions may assess convenience fees only on Charges for tuition, room and board, school lunch payments or other mandatory fees.
>
> The Merchant must clearly disclose the amount of convenience fees to the customer and give the customer the opportunity to cancel the Charge if the customer does not want to pay the convenience fee.
>
> Any explanation, verbal or written, describing why the convenience fee is being assessed, or how it is calculated, must characterize the convenience fee as an assessment to cover the Merchant's administrative costs and not as an assessment to cover the Merchant's cost of accepting the Card[7].
>
> Your third-party service provider can only assess a convenience fee when it accepts the Card for the foregoing Charges in compliance with the requirements of this section.

[7] In other words, lie.

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Conclusion

The summary matrix below illustrates the differences and similarities among the stakeholders in university e-commerce.

Surcharge Requirements

	Visa	MC	Disc	AMEX	Texas
Credit cards allowed	*	*	*	*	*
Debit cards allowed			*	*	*
Notification to card brand required	*	*	*		
Disclose surcharge at time of purchase	*	*	*	*	*
Disclose surcharge on receipt as line item		*	*		
Same fees for all card brands			*	*	
Price must not exceed cost of acceptance		*	*		*
Discount for cash/check permitted			*		
Limited to tuition, mandatory fees, housing, meals				*	

This matrix cannot underscore the significance of Visa and MasterCard's refusal to allow surcharges on debit transactions, which prevents the university from accepting ANY Visa or MasterCard payments for online transactions with a surcharge. Our online system cannot distinguish a debit card (aka "check" card) from a credit card and reject only the debit cards, nor would it be good business to do so. The exclusion of Visa and MasterCard, paired with American Express's limitations on which types of transactions are eligible for surcharges, in turn paired with Discover's requirement for listing the surcharge as a separate line item on the receipt (a feature not currently available with the university's e-commerce platform) means that surcharges are not feasible.

This whitepaper has been provided for informational purposes for use by Texas A&M University employees. Due to the ever-changing landscape of payment rules, Financial Management Operations recommends your independent verification of the rules cited in this document. This document was most recently published December 2013.

If you have questions about the content of this document or credit card acceptance in general, contact FMO at 845-8118 or visit http://fmo.tamu.edu/e-commerce.

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