

Congress of the United States

Washington, DC 20515

March 27, 2024

The Honorable Janet Yellen
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Andrea Gacki
Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

The Honorable Michael S. Barr
Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

Dear Secretary Yellen, Chairman Gruenberg, Director Gacki, Acting Comptroller Hsu, and Vice Chair Barr:

We write to urge the Treasury Department (Treasury) to issue clear guidance directing payment card networks and financial institutions to implement the new Merchant Category Code (MCC) for firearm and ammunition retailers (“gun stores”). Specifically, Treasury should prompt payment networks to make the MCC available for use, require merchant banks to assign the MCC, and develop guidance on recognizing activity that may be associated with gun crimes.¹ The need for uniform, clear federal guidance on this interstate commerce issue is becoming increasingly clear as states adopt differing and confusing rules about the gun store MCC.

Gun violence is at an all-time high in the United States. In 2023, there were 40 mass shootings in which four or more victims died² — the most in a single year since at least 2006.³ In recent years,

¹ Treasury has developed such guidance for other types of criminal activity, such as human smuggling. *See* Financial Crimes Enforcement Network, “Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking — Financial Red Flags,” September 11, 2014, <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2014-a008>.

² A “mass killing” or “mass murder” is defined as a mass shooting in which four or more people die (not including the shooter). Gun Violence Archive, “General Methodology,” <https://www.gunviolencearchive.org/methodology/>; Gun Violence Archive, “GVA- 10 Year Review,” <https://www.gunviolencearchive.org/>.

³ The Washington Post, “Double mass shootings over weekend set grim U.S. record,” Bonnie Berkowitz, December 4, 2023, <https://www.washingtonpost.com/nation/2023/12/04/mass-shootings-record-year/>; Gun Violence Archive,

several mass shooters have relied on credit cards to purchase thousands of dollars' worth of guns and ammunition just days or weeks before the killings.⁴ For example, in 2016, a mass shooter charged over \$20,000 to six credit cards to buy firearms, ammunition, and accessories less than two weeks before killing 49 people and wounding 53 others at the Pulse nightclub in Orlando, Florida.⁵ Similarly, in 2012, a perpetrator used his new Mastercard to spend over \$11,000 on weapons and military accessories in the weeks before killing 12 and injuring 70 others at a movie theater in Aurora, Colorado.⁶

Credit cards have also facilitated fraudulent gun purchases. A new report by Guns Down America identifies several cases in which individuals used credit cards to fraudulently purchase guns or gun parts in someone else's name.⁷ For example, in one case, an individual used stolen credit card information to buy \$15,000 worth of firearms in a two-week period. Soon thereafter, one of the guns was traced to a residential shooting.⁸

Suspicious firearm purchases like these have historically been difficult to detect. A key tool for identifying suspicious credit card purchases are MCCs, which are four-digit codes that classify merchants by their purpose of business. Once a payment card network adopts an MCC for a particular merchant and requires it to be used, the merchant banks that participate in that payment system can assign the MCC to the appropriate merchants. Financial institutions can then use the MCC, in combination with other datapoints, to evaluate patterns of transactions associated with criminal activity and report high-risk activity to bank regulators or law enforcement — including by filing Suspicious Activity Reports (SARs) with the Financial Crimes Enforcement Network (FinCEN) when necessary.⁹

But until 2022, gun stores lacked a unique MCC — despite the existence of unique MCCs for virtually every type of merchant, including codes for art dealers, automotive tire shops, and candy stores.¹⁰ Instead, gun stores were listed under the same MCC as sporting goods stores or miscellaneous general merchandise stores.¹¹ Then in September 2022, the International Organization for Standardization (ISO) approved the creation of a new MCC specifically for gun

“GVA- 10 Year Review,” <https://www.gunviolencearchive.org/>.

⁴ Guns Down America, “The Guns Store Exception: How payment processors could impact gun crimes,” February 12, 2024, https://www.gunsdownamerica.org/images/u/the_gun_store_exception_2024-2-12.pdf.

⁵ The New York Times, “How Banks Unwittingly Finance Mass Shootings,” Andrew Ross Sorkin, December 24, 2018, <https://www.nytimes.com/interactive/2018/12/24/business/dealbook/mass-shootings-credit-cards.html>.

⁶ *Id.*

⁷ Guns Down America, “The Guns Store Exception: How payment processors could impact gun crimes,” February 12, 2024, https://www.gunsdownamerica.org/images/u/the_gun_store_exception_2024-2-12.pdf.

⁸ United States Attorney's Office Southern District of Ohio, “Cincinnati man pleads guilty to leading firearms conspiracy involving 56 guns purchased online with stolen credit cards,” press release, January 31, 2024, <https://www.justice.gov/usao-sdoh/pr/cincinnati-man-pleads-guilty-leading-firearms-conspiracy-involving-56-guns-purchased>.

⁹ 31 C.F.R. § 1020.320.

¹⁰ Host Merchant Services, “A Complete Guide to Merchant Category Codes,” <https://www.hostmerchantservices.com/articles/a-complete-guide-to-merchant-category-codes/>.

¹¹ NPR, “A new credit card code is a first step toward preventing gun violence, advocates say,” Becky Sullivan, September 15, 2022, <https://www.npr.org/2022/09/15/1123059843/credit-card-code-gun-sales-visa-mastercard-american-express>.

stores.¹² This “watershed moment” meant that, for the first time, financial institutions could accurately detect suspicious and fraudulent purchases from the country’s 78,000 licensed gun dealers and report those purchases to regulators and law enforcement.¹³ Ultimately, the gun store MCC can help authorities and financial institutions combat gun violence by detecting and deterring suspicious firearm purchases.

However, the gun store MCC cannot be implemented until credit card companies opt to make the code available. Shortly after the creation of the gun store MCC in 2022, the largest credit card companies agreed to use it.¹⁴ Months later, they backtracked and said they were “pausing” implementation due to the prospect of then-pending state laws banning use of the MCC.¹⁵ Since then, conflicting state laws have been enacted: at least seven states have passed laws banning use of the gun store MCC, while California has passed a law requiring it.¹⁶ Similar legislation either requiring or restricting use of the MCC is pending in at least eleven other states.¹⁷ Meanwhile, contrary to laws banning use of the MCC, roughly two-thirds of American voters believe credit card companies should be either required or permitted to use the gun store MCC.¹⁸

¹² Reuters, “Global standards body approves new merchant code for gun sellers,” Ross Kerber, September 9, 2022, <https://www.reuters.com/world/exclusive-global-standards-body-approves-new-merchant-code-gun-sellers-2022-09-09/>.

¹³ Guns Down America, “The Guns Store Exception: How payment processors could impact gun crimes,” February 12, 2024, https://www.gunsdownamerica.org/images/u/the_gun_store_exception_2024-2-12.pdf; Everytown, “Everytown Releases First-of-its-Kind Report Outlining Gun Dealers Across The Country,” press release, July 6, 2023, <https://www.everytown.org/press/everytown-releases-first-of-its-kind-report-outlining-gun-dealers-across-the-country/>.

¹⁴ NPR, “A new credit card code is a first step toward preventing gun violence, advocates say,” Becky Sullivan, September 15, 2022, <https://www.npr.org/2022/09/15/1123059843/credit-card-code-gun-sales-visa-mastercard-american-express>; see also Reuters, “Exclusive: Discover to enable tracking of purchases at gun retailers from April,” Ross Kerber, February 18, 2023, <https://www.reuters.com/business/discover-enable-tracking-purchases-gun-retailers-april-2023-02-17/>.

¹⁵ Reuters, “Amex, Mastercard, Visa pause work on new firearms merchant code,” Ross Kerber, March 9, 2023, <https://www.reuters.com/business/finance/mastercard-pause-work-new-payments-code-firearms-sellers-2023-03-09/>; Payments Dive, “Amex follows rivals in ditching gun code,” Caitlin Mullen, March 9, 2023, <https://www.paymentsdive.com/news/card-companies-halt-gun-code-plans-payments-visa-mastercard-amex-discover/644598/>; see also Bloomberg News, “Visa, Mastercard Pause Work on Code Aimed at Tracking Gun Purchases,” Jennifer Surane, March 9, 2023, <https://www.bloomberg.com/news/articles/2023-03-09/visa-mastercard-pause-work-on-code-aimed-at-gun-purchases>.

¹⁶ CBS News, “California gun shops to require separate merchant codes to track suspicious purchases,” Kayla Moeller, February 12, 2024, <https://www.cbsnews.com/sacramento/news/gun-shops-require-separate-merchant-code-credit-card-companies-track-purchases/>; The Second Amendment Financial Privacy Act of 2023, House Bill 2004 (West Virginia); House Bill 295 of 2023 (Idaho), The Second Amendment Financial Privacy Act of 2023, House Bill 110 (Mississippi); Financial entities use of merchant codes to track firearm and ammunition-related purchase, to provide a penalty, to provide a continuing appropriation, and to provide for a legislative management study of 2023, House Bill 1487 (North Dakota); Sales of Firearms and Ammunition Act of 2023, Senate Bill 214 (Florida); A bill to prohibit tracking of firearms sale by financial institutions of 2023, Senate Bill 359 (Montana); A bill Relating to prohibiting a person or entity from surveilling, reporting, or tracking the purchase of firearms, ammunition, and accessories through the use of certain merchant category codes; imposing a civil penalty of 2023, House Bill 2837 (Texas).

¹⁷ Laws that would require use of the gun store MCC are pending in Colorado (SB24-066) and New York (S8479), while laws that would restrict use of the MCC are pending in Wisconsin (SB 466), Indiana (HB 1084), Kentucky (HB 357), Utah (HB 406), Georgia (HB 1018), New Jersey (SB 1866), Pennsylvania (SB 556), Ohio (SB 148), and Oklahoma (SB 814).

¹⁸ Data for Progress, “Voters Want President Biden to Use Executive Authority to Address Gun Violence,” Lew Blank, January 29, 2024, <https://www.dataforprogress.org/blog/2024/1/29/voters-want-president-biden-to-use>

In December 2023, almost 50 members of Congress urged the major payment networks — Visa, American Express, Discover, and Mastercard — to promptly implement the gun store MCC, at least in all states where it has not been banned.¹⁹ In response, all four companies expressed that the patchwork of conflicting state legislation has created “uncertainty” for their operations.²⁰

Treasury should eliminate that uncertainty by making clear that, under federal law, payment networks and banks are expected to use the most specific MCC available, particularly for high-risk merchants. Already, Treasury’s existing guidance directs banks to use MCCs as part of their risk management protocols: the Federal Deposit Insurance Corporation’s (FDIC) Credit Card Activities Manual states that appropriate risk controls generally include “assigning *proper* Merchant Category Codes (MCC),” particularly for high-risk merchants,²¹ while the Office of the Comptroller of the Currency’s (OCC) handbook on merchant processing states that banks should, at a minimum, have an “adequate understanding of the merchant’s business to ensure that it is classified under the merchant category code” before underwriting the merchant.²²

Treasury should build on those existing FDIC and OCC manuals with additional guidance to make clear that banks should use the most accurate MCCs available in order to comply with safety and soundness expectations, as well as their obligations under the Bank Secrecy Act (BSA).²³ In March 2023, several members of Congress wrote to Treasury requesting that it issue such guidance to: (1) clarify that, under existing “Know Your Customer” requirements, financial institutions are expected to assign accurate MCCs, and (2) explain the circumstances that should trigger a financial institution to file a SAR about possible criminal activity involving firearms.²⁴ In response, Treasury noted that financial institutions’ procedures for monitoring suspicious

[executive-authority-to-address-gun-violence.](#)

¹⁹ Letter from Senator Elizabeth Warren and Representative Madeline Dean, et al., to American Express, Visa, Mastercard, and Discover, December 7, 2023, <https://www.warren.senate.gov/oversight/letters/senator-warren-representative-dean-push-credit-card-companies-for-answers-on-implementation-of-mcc-code-for-gun-and-ammunition-retailers>.

²⁰ Response letter from Mastercard to Senator Elizabeth Warren, et al., January 12, 2024, p. 2, <https://www.warren.senate.gov/imo/media/doc/Mastercard%20Response%20-%20Warren%20Dean%2012-24.pdf> (the “inconsistent approach” of state laws has created a “legal uncertainty that led to an indefinite suspension of activities related to the [gun store MCC] earlier this year”); Response letter from Visa to Senator Elizabeth Warren, et al., January 12, 2024, p. 1, [https://www.warren.senate.gov/imo/media/doc/2024-01-12%20Visa%20Response%20\(final\).pdf](https://www.warren.senate.gov/imo/media/doc/2024-01-12%20Visa%20Response%20(final).pdf) (noting “a tremendous amount of regulatory and legislative uncertainty...[g]iven the conflicting state laws”); Response letter from Discover to Senator Elizabeth Warren, et al., January 11, 2024, p. 2, <https://www.warren.senate.gov/download/discover-mcc-response-1-11-24> (“[T]he potential for conflict of laws creates further complexity and uncertainty for users of the payments ecosystem.”); Response letter from American Express to Senator Elizabeth Warren, et al., January 12, 2024, p. 1, https://www.warren.senate.gov/imo/media/doc/Final%20AmEx%20Reply_Warren%20Dean%20letter.pdf (“Additional laws are expected in 2024 that will add to the complexity and uncertainty”).

²¹ Federal Deposit Insurance Corporation, “Merchant Processing,” March 2007, p. 172, https://www.fdic.gov/regulations/examinations/credit_card/pdf_version/ch19.pdf (emphasis added).

²² Office of the Comptroller of the Currency, “Merchant Processing,” August 2014, p. 23, <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/merchant-processing/index-merchant-processing.html>; Federal Financial Institutions Examination Council, “Bank Secrecy Act/Anti-Money Laundering Examination Manual,” 2014, p. 236, https://bsaaml.ffiec.gov/docs/manual/BSA_AML_Man_2014_v2_CDDBO.pdf (noting heightened risks when a “processor does not perform adequate due diligence on the merchants for which they are originating payments”).

²³ Bank Secrecy Act of 1970, Public Law 91-508.

activity must be “reasonably designed” to ensure compliance with the BSA, but that, while such procedures “may entail consideration of MCCs, FinCEN has not required or recommended the use of MCCs.”²⁵

Since then, the passage of conflicting state laws has made the need for uniform federal guidance on MCCs even more critical. Never before have states passed conflicting laws regarding the implementation of an MCC. This cascade of state legislation has eroded the uniformity that payment networks depend on to “operate and route transactions safely, securely, and reliably.”²⁶ As additional states pass MCC laws, the existing confusion will only intensify.

Treasury can provide the uniform guidance that payment networks and banks urgently need. First, we urge you to work with banking regulators to issue agency guidance making clear that the MCCs can promote banks’ safety and soundness when conducting merchant processing. Treasury can direct banks to use ISO’s set of MCCs (published in ISO 18245) at a minimum.²⁷ This would alert financial institutions that MCCs are an expected element of safety and soundness practices.

Second, Treasury should not only issue agency guidance but should promulgate a regulation to clearly preempt state laws that purport to forbid financial institutions from meeting their obligations under federal law. The regulation should make clear that compliance with safety and soundness expectations requires using the most accurate MCC available. For example, FinCEN could amend 31 C.F.R. Chapter X to make clear that banks’ reasonably designed legal compliance programs must include the use of the most accurate MCCs available, at least for high-risk categories of merchants. Payment networks should then make MCCs available so that their member banks can meet their obligations.

Finally, FinCEN should issue an advisory to payment networks and financial institutions about acts that may be predecessors to gun crime, and about the firearm-purchase scenarios that should trigger filing a SAR or otherwise alerting financial regulators or law enforcement. Red flags that warn of a potential gun crime can include firearm purchases using stolen credit cards or frequent or bulk purchases of firearms in a short period of time.²⁸ For example, FinCEN can inform banks to recognize suspicious activity when, within a 60-day period, a customer spends over \$2,500 at five (or more) gun stores and purchases more from gun stores than from all other types of merchants combined.²⁹

²⁴ Letter from Senator Robert Menendez, Senator Elizabeth Warren, et al., to Secretary Janet Yellen and Attorney General Merrick Garland, March 15, 2023, https://www.warren.senate.gov/imo/media/doc/letter_to_treasury_and_doj_on_mcc_code_for_gun_and_ammunition_stores.pdf.

²⁵ Response letter from the Treasury Department to Senator Elizabeth Warren, et al., April 26, 2023, <https://www.warren.senate.gov/download/4262023-response-to-senator-warren>.

²⁶ Response letters from Discover to Senator Elizabeth Warren, et al., January 11, 2024, p. 2, <https://www.warren.senate.gov/download/discover-mcc-response-1-11-24>.

²⁷ International Organization for Standardization, “ISO 18245:2023, Retail financial services, Merchant category codes,” 2023, <https://www.iso.org/standard/79450.html>.

²⁸ Brady: United Against Gun Violence, “The Suppliers of America’s Gun Violence Epidemic,” February 26, 2024, pp. 9-10, <https://s3.amazonaws.com/brady-static/Demand-Letter-2-Report-v4.pdf>.

²⁹ Guns Down America, “The Guns Store Exception: How payment processors could impact gun crimes,” February 12, 2024, p. 9, https://www.gunsdownamerica.org/images/u/the_gun_store_exception_2024-2-12.pdf.

This unprecedented situation demands action by Treasury to provide clear guidance to financial institutions. Such guidance could help authorities intervene to prevent the next mass shooting. To help the American public understand how Treasury plans to respond to these developments, we request answers to the following questions by April 11, 2024:

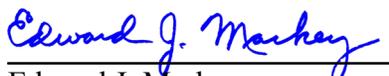
1. How does Treasury understand the role of MCCs in advancing the goals of the Bank Secrecy Act and banks' safety and soundness practices?
2. In light of the new conflicting state laws, what guidance do the OCC, FDIC, Federal Reserve, and FinCEN each plan to provide to banks regarding use of MCCs, particularly for high-risk merchants?
3. Please share all information that FinCEN has disseminated to banks regarding the methodology that banks could consider using as part of their anti-money laundering and combating the financing of terrorism (AML/CFT) programs, in order to identify indicia of potential active-shooter incidents and other suspicious firearm activity.

Thank you for your attention to this important matter.

Sincerely,


Elizabeth Warren
United States Senator


Madeleine Dean
Member of Congress


Edward J. Markey
United States Senator


Kevin Mullin
Member of Congress


Mazie K. Hirono
United States Senator


Nydia M. Velázquez
Member of Congress



Richard Blumenthal
United States Senator



Josh Gottheimer
Member of Congress



Kirsten Gillibrand
United States Senator



Barbara Lee
Member of Congress



Cory A. Booker
United States Senator



Delia C. Ramirez
Member of Congress



Chris Van Hollen
United States Senator



Maxwell Alejandro Frost
Member of Congress



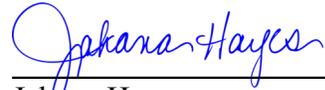
Eleanor Holmes Norton
Member of Congress



Julia Brownley
Member of Congress



Dan Goldman
Member of Congress



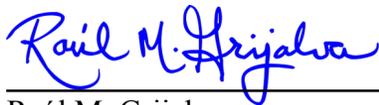
Jahana Hayes
Member of Congress



Ritchie Torres
Member of Congress



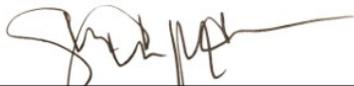
Gabe Amo
Member of Congress



Raúl M. Grijalva
Member of Congress



Shri Thanedar
Member of Congress



Sheila Cherfilus-McCormick
Member of Congress



André Carson
Member of Congress



Earl Blumenauer
Member of Congress



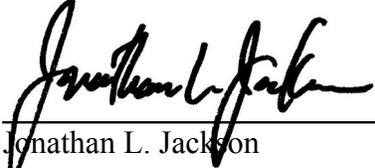
Sean Casten
Member of Congress



Jan Schakowsky
Member of Congress



Bill Foster
Member of Congress



Jonathan L. Jackson
Member of Congress



Robert C. "Bobby" Scott
Member of Congress



Jake Auchincloss
Member of Congress



Seth Moulton
Member of Congress



Adriano Espaillat
Member of Congress