



The Honorable Elizabeth Warren
The Honorable Richard Blumenthal
The Honorable Kristen Gillibrand
The Honorable Mazie Hirono
The Honorable Chris Van Hollen
The Honorable Edward J. Markey
The Honorable Christopher S. Murphy
The Honorable Jake Auchincloss
The Honorable Julia Brownley
The Honorable Troy Carter
The Honorable Sean Casten
The Honorable Sheila Cherfilus-McCormick
The Honorable Jason Crow
The Honorable Danny K. Davis
The Honorable Madeline Dean
The Honorable Debbie Dingell
The Honorable Adriano Espaillat
The Honorable Valerie P. Foushee
The Honorable Lois Frankel
The Honorable Maxwell Alejandro Frost
The Honorable Robert Garcia
The Honorable Sylvia R. Garcia
The Honorable Mary Gay Scanlon
The Honorable Dan Goldman
The Honorable Al Green

The Honorable Jahana Hayes
The Honorable Sheila Jackson Lee
The Honorable Henry C. "Hank" Johnson, Jr.
The Honorable Glenn Ivey
The Honorable Robin L. Kelly
The Honorable Barbara Lee
The Honorable Doris Matsui
The Honorable Betty McCollum
The Honorable Grace Meng
The Honorable Jared Moskowitz
The Honorable Eleanor Holmes Norton
The Honorable Bill Pascrell, Jr.
The Honorable Donald M. Payne, Jr.
The Honorable Chellie Pingree
The Honorable Delia C. Ramirez
The Honorable Andrea Salinas
The Honorable Jan Schakowsky
The Honorable Bradley Scott Schneider
The Honorable Shri Thanedar
The Honorable Mike Thompson
The Honorable Nydia M. Velázquez
The Honorable Bonnie Watson Coleman
The Honorable Nikema Williams
The Honorable Federica S. Wilson

January 11, 2024

Dear Senators and Representatives:

Thank you for your letter of December 6, 2023, regarding merchant category code ("MCC") 5723 developed by the International Organization of Standardization ("ISO") that seeks to designate merchants principally engaged in the selling of ammunition and firearms. We appreciate the opportunity to respond to your inquiry.

We deeply share your concern in seeking an end to tragic mass shootings and gun violence. We support the ability of lawmakers to act on this critical issue by working together on policy solutions that address gun crime in America.

With respect to consumers' credit card transactions, credit card payment networks and related technologies in the United States do not track or block consumers' legal purchases. The neutrality of the payment system benefits and protects all consumers and their privacy rights. While policies exist and actions are taken to prevent and address illegal activities, networks are not surveillance systems, nor are they equipped to proactively identify potential crimes when a consumer makes a legal purchase.

Credit card payment networks in the United States are designed to transmit the appropriate amount of data to authorize, clear, and settle a transaction. The system is not engineered to receive or make use of other additional data elements. Consequently, the system does not receive details about the specific goods or services that are purchased because payment card transaction data does not contain shopping cart level data (e.g., SKU level).

Although Discover is not a member of ISO and Discover was not involved in the development of the firearms and ammunition MCC, we are prepared to comply with laws regulating its use even though inconsistent legal standards for MCC usage and disclosure creates substantial discrepancies, such as conflicts with state laws. We note that there will be inconsistencies where sales occur that might be subject to the laws of more than one jurisdiction, such as where a resident of one state purchases a firearm in a different state.

If MCCs continue to be regulated in certain circumstances for specific products or services, Congress should consider the need for a preemptive, national standard that recognizes the limitations of MCCs and the various roles of payments ecosystem participants, and that contemplates the implications for consumer privacy.

Responses to specific questions are provided below.

While maintaining consumer privacy, Discover supports and facilitates legal commerce in compliance with applicable laws, including those governing the use of the new MCC.

MCCs are created by ISO as a global standard for the purpose of classifying merchant types and facilitating interoperability for businesses and other users of the payment system. As stated above, Discover is not affiliated with ISO, and was not involved in ISO's adoption of the new code. Regarding the general process for their implementation, MCCs are created by ISO, then made available by payment networks, and applied by users of the payments system, in accordance with applicable laws. MCCs have not been individually regulated on a state-by-state basis in the past.

Additionally, MCCs are four-digit business category designations. Their use to assess credit risk and develop fee structures is based on where cardholders transact, not what specific items they purchase. MCCs are not screening tools for identifying, nor are they able to identify, specific items purchased or individual cardholders. As such, MCCs are only made available by networks, and there could be occasions where not every MCC issued by ISO is utilized on the network.

Consistency, interoperability, and ubiquity are critical for payment systems to operate and route transactions safely, securely, and reliably. Uniform standards, technological specifications, and experiences are necessary for all users of the system, whether transacting at the point of sale or online. Discover complies with applicable laws and assesses the legal and regulatory landscape when contemplating updates and changes to the system and operations.

As stated in your letter, numerous states enacted novel legislation restricting or mandating the firearms MCC in 2023. This unprecedented regulation of a specific MCC is further complicated by the fact that each new law contains different requirements and effective dates, undermining the critical need for consistency and interoperability for national payments systems. It is anticipated this patchwork will continue to evolve rapidly as more states pass legislation, further complicating the legal and regulatory landscape. As noted above, the potential for conflict of laws creates further complexity and uncertainty for users of the payments ecosystem. Therefore, the rapidly evolving state legal landscape, as well as the corresponding need for consistency and interoperability, is expected to continue to further shape the roll out of the MCC.

Ensuring the technical readiness of this new MCC requires, among other considerations, the continued monitoring and evaluation of the legislative environment and subsequent emerging legal requirements for the payments ecosystem to inform future steps. Prior to the fluctuating legislative environment, and consistent with the traditional timing of updates and industry practices, it was projected the MCC would have been made available in the second quarter of 2023. Discover has been analyzing its legal obligations and technical solutions in light of the patchwork legal requirements. To ensure its technology can facilitate compliance with

conflicting state laws, and with evolving and emerging legislation, Discover will continue to monitor and evaluate MCC legislation.

As it relates to state laws requiring the use of the MCC, Discover complies with applicable laws and regulations, which will include making the MCC available in accordance with the new California statute under the timeline outlined in that law. As also reflected in the California statute, once the code is made available by the networks, it will ultimately be implemented and assigned by relevant users of the system as required.

As for next steps, the unprecedented emerging patchwork of legal requirements impacting the availability of MCCs on a state-by-state basis necessitates ongoing evaluation of the legislative environment. The evolution of legal requirements will inform future actions and the resulting updates necessary for network operating rules to abide by new laws.

We appreciate this opportunity to respond to your inquiry.

Sincerely,

A handwritten signature in cursive script, reading "Richard Santoro", followed by a horizontal line.

Richard Santoro
Vice President, Government Relations