The Proposed UIGEA Regulation Requires a Clearer Definition of "Unlawful Internet Gambling"

1. The definition of unlawful Internet gambling is unclear.

A. While the Department of Justice contends that any telecommunicated wager is illegal under the Wire Act (18 U.S.C 1084), the Fifth Circuit Court of Appeals (the highest court that has ruled on it) has ruled that the Wire Act only applies to sports betting.[1]

B. In the 2000 amendments to The Interstate Horseracing Act (IHA) (15 U.S.C. 3001 et seq.), Congress defined what constitutes a legal Internet wager under that statute. However, in his signing statement[2] President Clinton voiced the DOJ's opinion that, notwithstanding the clear intent of the amendment, all Internet horse wagers violate the Wire Act. UIGEA exempts from its enforcement mechanism wagers conducted pursuant to the IHA[3]. However, when Reps. Cannon and Conyers wrote to DOJ[4] to ask for a list of states from which banks could legally process payment for horse wagers, DOJ seemed to respond[5] that they should block all Internet horse bets. This clearly contradicts the intent of Congress.

C. There are many games played on the Internet which in some way resemble gambling, in that they have an entry fee and a cash prize, but are clearly skill games. According to comments filed by the Interactive Skill Game Alliance[6], these include trivia games, games such as Bejeweled and Luxor, and similar games. In their comments the ISGA said that in the absence of additional clarity in the UIGEA rules, they would expect banks to block payments to them.

D. In testimony before the House Financial Services Committee, a witness representing the Federal Reserve, who has been working on this regulation for almost two years, testified, "The activities that are permissible under the various federal and state gambling laws are not well-settled and can be subject to varying interpretation."[7]

2. The Proposed UIGEA deputizes banks to block Unlawful Internet Gambling, but gives no guidance as to what that means.

A. In the preamble to the proposed rule, the regulators make clear that they do not intend to clarify what constitutes a "restricted transaction" under the proposed rule, writing, "The proposed rule does not attempt to further define gambling-related terms because the Act itself

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[3] Sec. 5362 (10) (D) of UIGEA
[4] Reps. Conyers and Cannon letter to AG Gonzalez, June 5, 2007
[5] Bruce Benczkowski letter to Chairman Conyers, July 23rd 2007
[6] Comments to Board of Governors, Federal Reserve System, from Harlan Goodson, President, ISGA
[7] Testimony of Louise L. Roseman, Board of Governors of the Federal Reserve, before the Subcommittee on Domestic and International Monetary Policy, April 2nd 2008 Hearing: Proposed UIGEA Regulations: Burden Without Benefit."

does not specify which gambling activities are legal and illegal, and the Act does not require the agencies to do so."[8]

B. Later in the preamble, the regulators note the difficulty in determining what businesses were engaged in unlawful Internet gambling, saying that to do so, the agencies "...would have to formally interpret the various Federal and State gambling laws in order to determine whether the activities of each business that appears to conduct some type of gambling-related function are unlawful under those statutes."[9] It bears mentioning that, in failing to do so, the regulators put precisely that onerous and expensive burden on the general counsel of every bank and payment system in the country.

C. The Chairman and Ranking Member of the Subcommittee on Commercial and Administrative Law, which oversees the rulemaking process wrote a letter to the agencies which argued that the proposed rule violated the APA. They pointed out that the objective of regulatory law is to let the regulated community know what it must do to comply with statutory law, and that, by not clarifying what is a "restricted transaction" the proposed rule failed this test.[10]

3. The proposed rule would deputize banks and to block "restricted transactions" without telling them what constitutes a restricted transaction. Some will debate whether it is an appropriate role for the Federal Government to prevent adults from playing poker on-line. Beyond that, there is a debate to be had about whether, in an effort to do so, it is appropriate for the government to deputize banks and payment systems and turn them into the Internet gambling police. But if one agrees with both of those propositions, the third question is, if the government is going to deputize the financial services industry, what level of clarity is owed to them as to what should be blocked?

4. A formal rulemaking with an Administrative Law Judge is the appropriate solution to this.

A. In order to come up with an appropriate definition of unlawful Internet gambling, one would have to examine 50 state laws plus federal (and in some cases, local) law. In addition, there would be significant findings of fact -- what games actually are games of chance, and what are games of skill? If the National Contract Bridge League wanted to argue that on-line bridge tournaments are not gambling, they would have a forum to do so.

B. Some will argue that it would be more expedient to have DOJ define unlawful Internet gambling. However, at a minimum, DOJ's interpretation of the laws is in conflict with highest court that has ruled on the subject (in the Mastercard decision) and the clear intent of Congress (in the 2000 IHA amendments), and would thus, almost certainly be litigated. The reality is, one way or another, this will have to be sorted out by a judge. It is better to have a judge address these issues before the regulation is finalized, than to impose an uncertain and shifting standard on the regulated community.

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[8] Federal Reserve System 12 CFR Part 233, Regulation CG Docket No. R-1298; Department of the Treasury 31 CFR Part 132 RIN 1505-AB78 Prohibition On Funding of Internet Gambling, Supplementary Information, p. 6.
[9] ibid. p. 25
[10] Reps. Sanchez and Cannon letter to Secretary Paulson and Chairman Bernanke, December 12, 2007.

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For release on delivery
10:00 a.m. EDT
April 2, 2008

Statement of

Louise L. Roseman

Director, Division of Reserve Bank Operations and Payment Systems

Board of Governors of the Federal Reserve System

before the

Subcommittee on Domestic and International Monetary Policy, Trade, and Technology

of the

Committee on Financial Services

U.S. House of Representatives

April 2, 2008

Chairman Gutierrez, Ranking Member Paul, and members of the Subcommittee, I am pleased to appear before you to discuss the implementation of the Unlawful Internet Gambling Enforcement Act of 2006. I will provide an overview of the Act and of the proposed rule to implement the Act that the Federal Reserve Board and the Secretary of the Treasury (the Agencies) published for comment. I will also highlight the major issues raised in the comments we received.

Unlawful Internet Gambling Enforcement Act of 2006

The Act prohibits gambling businesses from accepting payments in connection with unlawful Internet gambling. Such payments are termed "restricted transactions." The Act also requires the Board and the Secretary of Treasury, in consultation with the Attorney General, to prescribe regulations requiring designated payment systems and their participants to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions.

The Act does not spell out which gambling activities are lawful and which are unlawful, but rather relies on the underlying substantive Federal and State laws. The Act does, however, exclude certain intrastate and intratribal wagers from the definition of "unlawful Internet gambling," and also excludes any activity that is allowed under the Interstate Horseracing Act of 1978. The activities that are permissible under the various Federal and State gambling laws are not well-settled and can be subject to varying interpretations. Congress recognized this fact when it included in the Act a "sense of Congress" provision that states that the Interstate Horseracing Act exclusion "is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes."

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
http://www.house.gov/judiciary

December 12, 2007

The Honorable Henry M. Paulson
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington DC, 20220

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave NW
Washington, DC 20551

Dear Secretary Paulson and Chairman Bernanke:

As Chair and Ranking Republican Member of the Subcommittee on Commercial and Administrative Law, we are deeply concerned that both the Department of the Treasury and the Board of Governors of the Federal Reserve System appear to have ignored the Administrative Procedure Act and a recent congressional admonition to implement the Unlawful Internet Gambling Enforcement Act of 2006, Title VII of P.L. 109-347. UIGEA requires the Secretary and the Board of Governors ("Agencies") to issue regulations that would, among other things, require financial institutions "to identify and block" "restricted transactions" (31 U.S.C. 5364). The proposed regulation expressly abdicates this responsibility by leaving it up to the financial institutions to determine whether a transaction is "restricted" under state or federal law. This is troubling for a variety of reasons.

As the Secretary and Board have recognized, the UIGEA "does not spell out which activities are legal and which are illegal, but relies on the underlying substantive Federal and State laws." 72 Fed. Reg. 56680. 56682 (Oct. 4, 2007). Given this legal vacuum, it is difficult to understand how or why the Agencies believe that they can issue rules without defining the scope of those rules, but that is precisely what they have done. The Agencies' statement that the UIGEA "does not require the Agencies to do so," defies common sense and our common understanding of administrative law. Id.

First, on a practical level, it is difficult to understand how financial institutions are to develop policies and procedures for blocking restricted transactions if the Agencies themselves are unwilling to identify those particular transactions. We recognize that gambling laws vary from state to state and there is only limited federal legislation. However, the lack of legal clarity is not an excuse for the Agencies to simply impose on the regulated community the difficult task of deciding what is and is not "unlawful Internet gambling" for the purpose of UIGEA.

Second, the quintessential purpose of rulemaking under APA is to disclose to the regulated community precisely what it is they have to comply with under statutory law. This form of APA guidance is particularly important in the financial sector, which depends on certainty. We believe that the agencies notice of proposed rulemaking is inconsistent with this principle, and, when compared to other rules, it is aberrant. Most regulations in the Code of Federal Regulation contain an initial section specifying the scope of the rule. In this case, the scope of the rule necessarily depends on the transactions that are prohibited. That section is missing from the Agencies proposed rule.

We are therefore writing to urge that, prior to issuing any final rule, your Agencies undertake a separate proceeding to clarify what constitutes "unlawful Internet gambling" for the purpose of that statute and the rule. Such a proceeding would examine, on a state-by-state basis, what sorts of transactions should be blocked by financial institutions. For example, it would presumably find that most forms of gaming are legal within the state of Nevada, while none are legal within the state of Utah; most other states would fall somewhere in between. Without providing such clarity, we believe the Agencies and their proposed rule violate the letter and spirit of the APA.

Thank you for your consideration. We look forward to your prompt response.

Sincerely,

Linda T. Sánchez
Chair, Subcommittee on
Commercial and Administrative Law

Christopher B. Cannon
Ranking Member, Subcommittee on
Commercial and Administrative Law

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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June 5, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

We are aware that your agency, in consultation with the Department of the Treasury and the governing Board of the Federal Reserve, is drafting a proposed rule pursuant to the Unlawful Internet Gambling Enforcement Act of 2006, PL 109-347 (UIGEA). As this process proceeds, there are certain issues we would like addressed prior to the issuance of the proposed rule. While we and others may inquire as to other aspects of the regulation under separate cover, it is the purpose of this letter to inquire specifically about the regulations as they will apply to internet horse wagering.

As you are aware, Section 802 of UIGEA exempts from that law enforcement mechanism wagers which are legal under the Interstate Horse Racing Act ("Act"). However, there remains substantial ambiguity as to what wagers are actually legal under the Act. Indeed, it is our understanding that one processor of such wagers believes there are only a dozen or fewer states from which such wagers may legally be accepted, while another accepts them from nearly forty.

As you are also aware, UIGEA tasks banks, credit card companies, and other payment systems with blocking unlawful internet wagers. Accordingly, these financial services providers would be required also to block wagers from states where those wagers are not legal under the Act. Given the differing interpretations of the Act, it seems likely that there will be considerable confusion on the part of the payment systems as to which wagers should be blocked.

Accordingly, we are writing to ask you to clarify from what states payment systems should block internet horse wagers under the UIGEA.

We look forward to your prompt response and again urge you to please provide it prior to the issuance of the proposed rule.

Sincerely,

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary

The Honorable Christopher B. Cannon
Ranking Member
Subcommittee on Commercial and
Administrative Law

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

July 23, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter, dated June 5, 2007, to the Attorney General concerning the regulations that will be issued pursuant to the Internet Gambling Enforcement Act of 2006, Public Law 109-247 (UIGEA). In your letter, you inquired about the regulations as they will apply to internet wagering on horse races and requested that the Department of Justice "clarify from what states payment systems should block internet horse wagers under the UIGEA."

Your letter states that "Section 802 of the UIGEA exempts from that law enforcement mechanism wagers which are legal under the Interstate Horse Racing Act." As you know, the UIGEA itself does not make any type of gambling legal or illegal; rather, the statute is focused on regulating the methods of payment for already-illegal gambling. In fact, § 802 of the UIGEA created § 5361(b) of Title 31, United States Code, which states "RULE OF CONSTRUCTION.–No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."

As to the issue of the interplay between the UIGEA and wagering on horse races over the internet, the UIGEA contained a Sense of the Congress provision, codified at 31 U.S.C. § 5362(10)(D)(iii), which expressly indicated that the UIGEA was not intended to address this issue. The language in the UIGEA states as follows:

> It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of enactment of this subchapter.

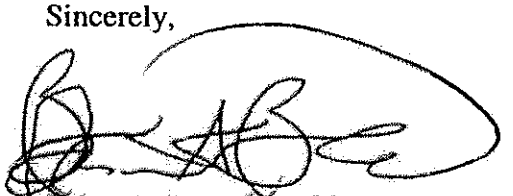
This subchapter is not intended to change that relationship. This subchapter is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.

With respect to the question of whether interstate wagering on horse racing is currently permitted under federal law, the Department of Justice has publicly stated that the Interstate Horseracing Act of 1978, 15 U.S.C. §§ 3001-3007, did not amend existing criminal statutes. At the April 5, 2006, hearing before the House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section in the Criminal Division, testified that the Department of Justice was concerned about H.R. 4777, the proposed Internet Gambling Prohibition Act, because the bill could be construed to permit interstate wagering by the horse racing industry. Mr. Ohr testified that "it is the Department's view that the Interstate Horseracing Act did not change Section 1084 [of Title 18, United States Code]." The position stated by Mr. Ohr at the April 5, 2006, hearing has been the view of the Department of Justice for several years. The Department has previously stated that it does not believe that the amendment made in 2000 to the Interstate Horseracing Act modified those federal criminal statutes that prohibit interstate wagering and that were in effect at the time of the enactment of that amendment.

Finally, while the UIGEA requires that the regulations be issued "in consultation with the Attorney General," the Department of the Treasury and the Federal Reserve have the primary responsibility for drafting the regulations, and therefore we would defer questions concerning the timing or the scope of the regulations to those parties.

We are also sending this response to Representative Christopher B. Cannon. Please do not hesitate to contact me if I can be of further assistance in this or any other matter.

Sincerely,



Brian A. Benczkowski
Principal Deputy Assistant Attorney General

From: Saved by Windows Internet Explorer 7
Sent: Saturday, January 19, 2008 1:16 PM
Subject: Small Business Administration: Office of Advocacy - Letter dated 12/12/07 - Federal Reserve System and Department of Treasury - Prohibition on Funding of Unlawful Internet Gambling Act of 2006

Office of Advocacy

December 12, 2007

The Honorable Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Valerie Abend
Deputy Assistant Secretary for Critical Infrastructure Protection and Compliance Policy
Department of Treasury
Office of Critical Infrastructure Protection and Compliance Policy
Room 1327
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Prohibition on Funding of Unlawful Internet Gambling Act of 2006
Federal Reserve: Docket Number R-1298
Treas-DO: Docket Number Treas-DO-2007-0015

Dear Ms. Johnson:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits this comment to the proposed rulemaking on the Prohibition on Funding of Unlawful Internet Gambling. The Office of Advocacy believes that Department of Treasury and the Federal Reserve System (hereinafter "the agencies") have not analyzed properly the full economic impact of the proposal on small entities as required by the Regulatory Flexibility Act (RFA). Advocacy recommends that the agencies prepare a revised initial regulatory flexibility analysis (IRFA) to address the concerns presented below.

Advocacy Background

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily

reflect the views of the SBA or of the Administration. Section 612 of the RFA requires Advocacy to monitor agency compliance with the Act, as amended by the Small Business Regulatory Enforcement Fairness Act.(1)

On August 13, 2002, President George W. Bush enhanced Advocacy's RFA mandate when he signed Executive Order 13272, which directs Federal agencies to implement policies protecting small entities when writing new rules and regulations. Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

The Proposed Rule

On October 4, 2007, the agencies published a proposed rule entitled *Prohibition on Funding of Unlawful Internet Gambling* to implement applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the ''Act'').(2) In accordance with the requirements of the Act, the proposed rule designates certain payment systems that could be used in connection with unlawful Internet gambling transactions restricted by the Act. The proposed rule requires participants in designated payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling. As required by the Act, the proposed rule also exempts certain participants in designated payment systems from the requirements to establish such policies and procedures because the Agencies believe it is not reasonably practical for those participants to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act. Finally, the proposed rule describes the types of policies and procedures that nonexempt participants in each type of designated payment system may adopt in order to comply with the Act and includes non-exclusive examples of policies and procedures which would be deemed to be reasonably designed to prevent or prohibit unlawful Internet gambling transactions restricted by the Act. The proposed rule does not specify which gambling activities or transactions are legal or illegal because the Act itself defers to underlying State and Federal gambling laws in that regard and determinations under those laws may depend on the facts of specific activities or transactions (such as the location of the parties).

Requirements of the RFA

The RFA requires agencies to consider the economic impact that a proposed rulemaking will have on small entities. Pursuant to the RFA, the agency is required to prepare an initial regulatory flexibility analysis (IRFA) to assess the economic impact of a proposed action on small entities. Under Section 601(3) of the RFA "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. The IRFA must include: (1) a description of the impact of the proposed rule on small entities; (2) the reasons the action is being considered; (3) a succinct statement of the objectives of, and legal basis for the proposal; (4) the estimated number and types of small entities to which the proposed rule will apply; (5) the projected reporting, recordkeeping, and other compliance requirements, including an estimate of the small entities subject to the requirements and the professional skills necessary to comply; (6) all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and (7) all significant alternatives that accomplish the stated objectives of the applicable statutes and minimize any significant economic impact of the proposed rule on small entities.(3) In preparing its IRFA, an agency may provide either a quantifiable or numerical description of the effects of a

proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.(4) The RFA requires the agency to publish the IRFA or a summary of the IRFA in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule.(5)

Pursuant to section 605(a), an agency may prepare a certification in lieu of an IRFA if the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. A certification must be supported by a factual basis.

The Agencies' Compliance with the RFA

The agencies prepared an IRFA for the proposed rule and solicited comments from the public regarding the information in the IRFA. Advocacy, however, is concerned that the IRFA may not comply with the RFA.

The Agencies Fail to Provide Sufficient Information About the Economic Impact of the Proposed Rule

The purpose of an IRFA is to describe the impact of the proposal on small entities. Although the IRFA submitted by the agencies identifies types of small businesses that are affected by the proposal, it fails to provide information about the nature of the impact as required by the RFA. Instead, the agencies state that they do not have sufficient information and request that the information be provided by the public.

Advocacy appreciates the fact that the agencies may need to obtain information and commends the agencies for soliciting additional information from the public. However, Advocacy is concerned that the agencies are not providing all available information in the proposal. In the Supporting Statement for Recordkeeping Requirements associated with Regulation GG submitted to the Office of Management and Budget, the Federal Reserve stated that the total cost to the public is $19, 899,325. This estimate was based on an assumption that 30 percent of the work would be provided by clerical staff at $25 per hour; 45 percent would be performed by managerial or technical staff at $55 per hour, 15 percent would be performed by senior management at $100 an hour, and 10 per cent would be performed by legal counsel at $144.(6) This information was found under the reporting forms section on the Federal Reserve's website but it is not in the preamble of the proposed rule. If the agencies provided this information to the public in the IRFA, the public would be able to provide the agencies with meaningful comments about whether the assumptions about the costs are correct for small entities.

Moreover, Advocacy questions whether the projected paperwork costs are the only costs involved. In the statement, the Federal Reserve states that the estimate does not include large money-transmitting businesses because they already have systems in place. It states that smaller firms acting as agents in these large systems may be able to rely on the large system's policies and not need to establish their own policies and procedures. Will smaller firms incur legal fees in determining whether the proposed rule applies to them? If the rules do apply, will those firms incur costs to develop policies and to train their employees on the policies? These are a few of the questions that the agencies may want to consider in determining the economic impact of this regulation on small entities.

Alternatives

In addition, as noted above, the RFA requires agencies to consider less burdensome alternatives that still meet the statutory objectives. Instead of considering alternatives and providing a discussion about the economic impact of the potential alternatives, the agencies state that:

> "Other than noted above, the agencies are unaware of any significant alternatives to the proposed rule that accomplish the stated objectives of the Act and that minimize any significant economic impact of the proposed rule on small entities. The Agencies request comment on additional ways to reduce regulatory burden associated with this proposed rule."

It is unfortunate that the agencies do not put forward a meaningful discussion of alternatives in their proposal. Simply soliciting information about alternatives from small entities does not relieve the agencies of their obligation to consider less burdensome alternatives as part of the IRFA (in the proposed rule).

One alternative that the agencies may want to consider is exempting small money transmitters from the proposed rulemaking. The National Money Transmitters Association (NMTA) has informed Advocacy that the existing customer agreements and contracts with counterparties already include clauses prohibiting network use for unlawful transactions. As such, transmitting funds for an unlawful gambling activity would breach the contract. Moreover, a money transmitting business is similar to a wire transfer system in that both types of businesses operate as send agents, not financial institutions. Since a wire transfer system is exempt, the money transmitting businesses should also be exempt.

Identification of Duplicative, Overlapping, or Conflicting Federal Rules

As noted above, the RFA also requires an agency to identify duplicative, overlapping, or conflicting federal rules. In this proposal, the agencies sought comment on whether there are statutes or regulations that would duplicate, overlap, or conflict with the proposed law. The RFA places the duty to identify existing regulations on agencies, not small entities. Shifting that obligation to small entities usurps the purpose of the RFA.

Conclusion

The RFA requires agencies to consider the economic impact on small entities prior to proposing a rule, to provide the information on those impacts to the public for comment, and to consider less burdensome alternatives. Advocacy encourages the agencies to prepare and publish for public comment a revised IRFA to determine the full economic impact on small entities; identify duplicative, overlapping or conflicting regulations; and consider significant alternatives to meet its objective while minimizing the impact on small entities before going forward with the final rule.

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. Advocacy is available to assist the agencies in their RFA compliance. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Thomas M. Sullivan
Chief Counsel for Advocacy

/s/

Jennifer A. Smith
Assistant Chief Counsel for
Economic Regulation and Banking

cc: The Honorable Susan E. Dudley, Administrator
Office of Information and Regulatory Affairs, OMB

ENDNOTES

1. Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

2. 72 Federal Register 56680.

3. 5 USC § 603.

4. 5 USC § 607.

5. 5 USC § 603.

6. The Supporting Statement for Recordkeeping Requirements associated with regulation GG can be found at http://www.federalreserve.gov/reportforms/review.cfm. The information regarding the paperwork burden is on pages 5-6 of that statement.

United States Senate

WASHINGTON, DC 20510

February 11, 2008

The Honorable Henry M. Paulson
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Ben S. Bernanke
Chairman
Board of Governors
Federal Reserve System
20th Street and Constitution Ave, N.W.
Washington, D.C. 20551

Dear Secretary Paulson and Chairman Bernanke,

The effectiveness of any law is reliant on sound implementation. Federal regulations are intended to provide clarity and guidance for those subjected to their reach. The value of such regulations is to prevent non-compliance while minimizing wasted effort, time, and cost by those being regulated. Clear rules also promote interstate commerce by facilitating uniform enforcement.

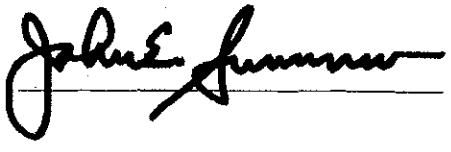
In this spirit, your agencies have an opportunity to provide additional guidance in the implementation of the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA). While the October Notice of Proposed Rulemaking contains certain guidance for the regulated community, it leaves sufficient ambiguity as to what sort of transactions are to be blocked. In failing to provide more detail, the proposed rules would inordinately burden every bank, credit union, credit card company, money transmitting business and payment system in the country, leading to non-uniform compliance and confusion. This issue is particularly important, as most federal and state gambling laws predate the Internet, and are less than specific as to their application to particular practices or circumstances.

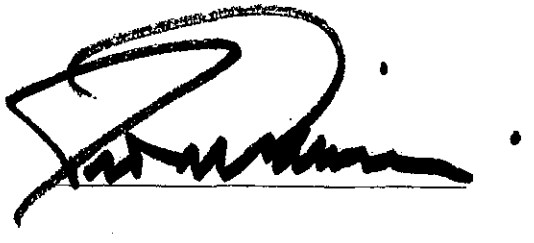
The extensive public comments received on this issue highlight the likelihood that risk-averse financial institutions will simply choose to block every transaction that may be interpreted or could resemble gambling, whether legal or not. Knowing that this is not your intention, we write to urge that any final rules contain a list of restricted transactions and instances that are covered by the law and the corresponding rules.

As an alternative, we suggest you consider separating the rules into those forms of activities for which there is settled federal law (i.e., defined by the Professional and Amateur Sports Protection Act (PASPA)) and those that are not. This would allow immediate implementation for known activities, while providing greater time to determine what other transactions are to be captured.

We thank you in advance for your consideration.

Sincerely,





Congress of the United States
Washington, DC 20515

The Honorable Henry M. Paulson
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington DC, 20220

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave NW
Washington, DC 20551

December 12, 2007

Dear Secretary Paulson and Chairman Bernanke:

As Members of Congress who are interested in the accurate and faithful application of our nation's laws, we understand the important role that clear and consistent federal regulations play in fostering economic growth and marketplace competition. At their best, federal regulations provide explicit guidance to a regulated community while also providing important consumer protections.

However, when regulatory guidance is vague, an unintended consequence is often the suppression of legitimate commerce through an abundance of caution exercised by an unsure regulated community. **We are writing to ensure that this does not become the case regarding the Notice of Proposed Rulemaking pursuant to the Unlawful Internet Gambling Enforcement Act, issued by your two agencies on October 1, 2007.**

Notwithstanding the policy disagreements surrounding the underlying issue of internet gaming, we agree that it is always the federal government's responsibility to encourage clear regulatory guidance. It appears to us that in this case, the proposed rule governing this area of law is overly broad and does not provide the regulated industry with sufficiently clear and consistent guidance.

Specifically, we are concerned that in the proposed rulemaking, your agencies could do more to clarify what constitutes an "unlawful Internet gambling" transaction and how regulated communities are expected to comply with the "blocking, preventing, and prohibiting restricted transactions" mandates referenced throughout the rule.

As you know, the statute and the proposed rule require financial institutions and payment systems to take steps to block certain unlawful Internet wagers, and exempt from the statute's effect certain classes of wagers, such as wagers accepted in compliance with the Interstate Horseracing Act, and intrastate wagers accepted by state-licensed entities.

However, the proposed rule does not seem to designate precisely what sorts of transactions must be blocked by financial institutions and payment systems. The preamble to the regulation cites

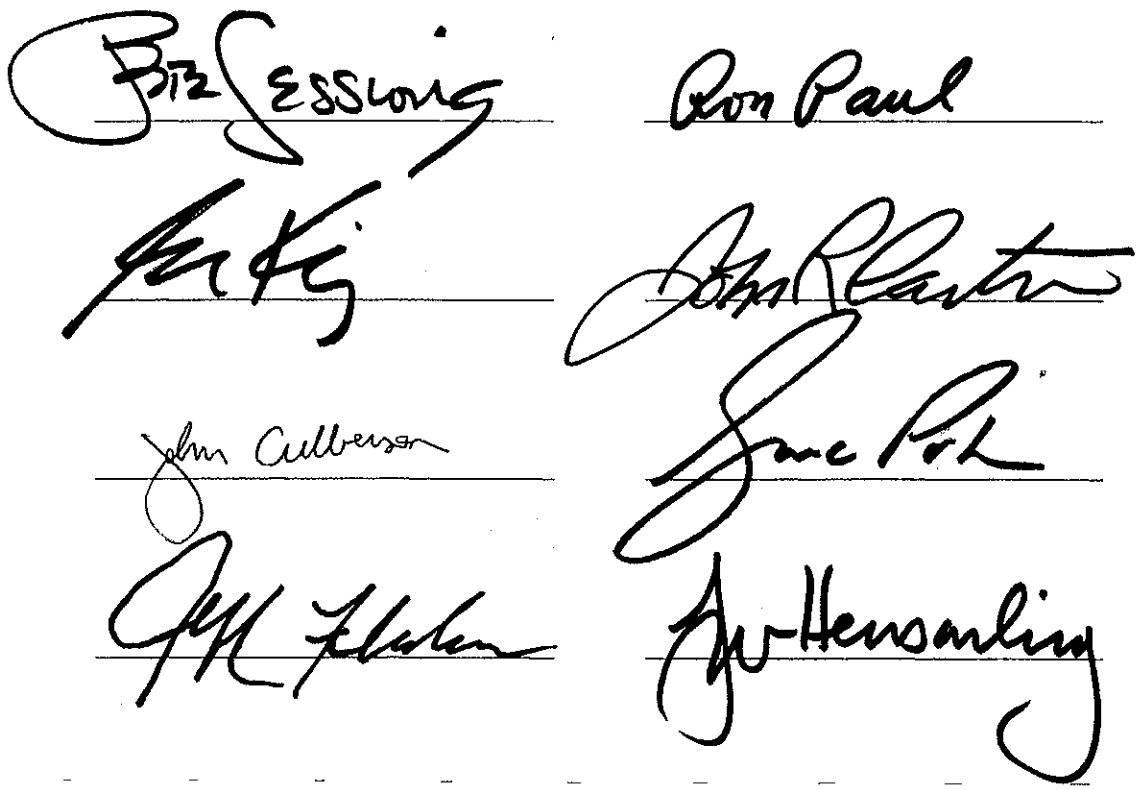
the difficulty of evaluating every federal and state law with respect to every possible form of gambling as the reason not to do this; nevertheless, the proposed rule would instead lay that exact burden on the general counsel of every bank, credit union, credit card network and money-transmitting business in the country.

We believe that the unintended consequence of this lack of clarity will be for many financial institutions to block broadly anything which may in any way resemble gambling, be it legal or illegal. Indeed, it has come to our attention that the providers of online skill games are already having difficulty with payment processing, as banks have already begun to exercise an abundance of caution to avoid potentially violating either the law or the unclear regulation.

Mr. Secretary and Mr. Chairman, we believe that, under both the Administrative Procedures Act and the Paperwork Reduction Act, your agencies could still do more to provide clarity to the regulated community in this instance. **We therefore urge that, prior to issuing a final rule, your agencies undertake additional efforts to determine, on a state-by-state basis, precisely what transactions payment systems are required to block.**

We thank you for all of your efforts in this matter and for your service to our country. If you have any further questions regarding this issue, please feel free to contact Josh Saltzman, Deputy Chief of Staff for Congressman Pete Sessions, at Josh.Saltzman@mail.house.gov or 202.225.2231.

Sincerely,



Connie Mack

Joe Boxton

Lynda [illegible]

[illegible]

Dean Heller

Fred Upton

Marsha Blackburn

Michael T. McCaul

Internet Gambling Regs
Signature Map

Page One

Left Column	**Right Column**
Pete Sessions	Ron Paul
Peter King	John Carter
John Culberson	Jon Porter
Jeff Flake	Jeb Hensarling

Page Two

Connie Mack	Dean Heller
Joe Barton	Fred Upton
Lynn Westmoreland	Marsha Blackburn
Darrell Issa	Mike McCaul