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Sent via mail, courier, and fax

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Amended Petition for Correction under the Information Quality Act ("IQA", Section 515 of Public Law 106-554) and its Guidelines[1]

Background

On November 18, 2008, the Board of Governors of the Federal Reserve System and the Departmental Offices, Department of the Treasury, jointly issued final regulations[2] to implement the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA" or the "Act").[3]

The Act prohibits financial transaction providers (*e.g.*, banks, credit unions) from accepting transactions involving illegal internet gambling. Neither the Act nor the regulations spell out what activities are legal and which are illegal; rather, they rely on the underlying substantive Federal and State laws. The Act provides for civil and criminal penalties for participants in illegal internet gambling transactions.

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[1] The IQA "guidelines" referred to herein are both the OMB government-wide guidelines and the guidelines of the Department of the Treasury and the Federal Reserve System that conform to the OMB guidelines. The OMB guidelines are at 66 Fed. Reg. 49718 (Sept. 28, 2001) and 67 Fed. Reg. 8452 (Feb. 22, 2002). The Treasury IQA guidelines are in Chapter 14 of the Subdivision of Treasury Information Technology (IT) Manual; and the Federal Reserve System guidelines are on its information quality website. Since the Treasury and Federal Reserve guidelines conform to the OMB guidelines in all material respects for the purpose of this petition, they will be referred to collectively hereafter simply as the "guidelines." Under 44 U.S.C. § 3506(a)(1)(B), all Federal agencies are responsible for complying with the information dissemination policies established by OMB in its IQA guidelines and interpretations.

[2] 73 Fed. Reg. 69382.

[3] 31 U.S.C. §§ 5361-67, Pub. L. 109-347, title VIII, § 802(a), Oct. 13, 2006, 120 Stat. 1952.

The Act required the promulgation of regulations that identify types of policies and procedures deemed by the agencies to be "reasonably designed" to achieve the objective of blocking or prohibiting illegal transactions in which financial transaction providers might participate.

Because neither the Act nor the proposed regulations spelled out what activities are illegal, many who commented on the proposed regulations protested that the agencies must somehow specify what types of transactions would be regarded as illegal.[4]

In response to such comments, the agencies inserted provisions that had not previously been proposed for comment in the final regulations. They described those provisions as "reasonably designed" to block prohibited transactions and as creating a "safe harbor"[5] for financial institutions -- apparently meaning that if financial transaction providers comply with the provisions they would be immune from any civil or criminal enforcement for participating in unlawful Internet gambling transactions.

The so-called "safe harbor" provisions in the final rule state in relevant part that if a financial institution cannot determine whether a commercial customer presents a minimal risk of engaging in an internet gambling business, the financial institution will be regarded as having conducted "reasonably designed" due diligence -- and therefore will be immune from enforcement -- if it obtains "[a] copy of the commercial customer's license that expressly authorizes the customer to engage in the internet gambling business issued by the appropriate State or Tribal Authority" and a "third-party certification" that the customer has in place systems reasonably designed to ensure that its internet gambling business "will remain within the licensed . . . limits ...." Sec. __.6(b), 73 Fed. Reg. at 69409.

The agencies explained their rationale for these "safe harbor" provisions in the preamble of the notice of final rulemaking as follows:

> If a commercial customer [of a financial transaction provider] has a license that expressly authorizes the customer to engage in the Internet gambling business issued by the appropriate State or Tribal authority, the participant [*i.e.*, the financial transaction provider] should be able to rely on that State agency's ability to implement its own gambling laws in a manner that does not violate the law of another State or Federal law.

73 Fed. Reg. at 69392 3d col. (emphasis added).

In further explanation of the "safe harbor" provisions for financial institutions, the agencies stated in the preamble:

> After consulting with the Department of Justice and representative from the offices of several State attorneys general regarding this issue [of difficulty in

[4] See 73 Fed. Reg. at 69384 3d. col.

[5] 73 Fed. Reg. at 69396 1st & 3d cols.

> defining "unlawful Internet gambling"], the Agencies have determined that a single, regulatory definition of "unlawful internet gambling" would not be practical.[11] The Act's definition of "unlawful Internet gambling" relies on underlying Federal and State gambling laws. The States have taken different approaches to the regulation of gambling within their jurisdictions and the structure of State gambling law varies widely, as do the activities that are permitted in each State. Accordingly the underlying patchwork legal framework does not lend itself to a single regulatory definition of "unlawful Internet gambling." The Agencies have attempted to address the payments industry's desire for more certainty that would result from a precise regulatory definition of "unlawful Internet gambling" through the due diligence guidance provided in __.6(b). The suggested due diligence process relies on State regulation of Internet gambling ....

73 Fed. Reg. at 69384 3d col. (emphasis added).

Footnote 11 in the above quotation refers to a "summary of conference call with representatives of various State Attorneys General on July 9, 2008" (after the public comment period closed). That memorandum is of considerable importance, as will be discussed below, because it indicates that the participating State legal representatives were of the opinion that holding of a State gambling license by a financial institution's commercial customer does not, in fact, provide a "safe harbor" for financial institutions and is not "reasonably designed" to ensure that financial institutions block unlawful internet gambling transactions. A copy of the memorandum is attached to this petition as Attachment 1 as it is not otherwise readily accessible.

That memorandum states that the call participants "thought that creating a reference guide of all states' Internet gambling laws and rules would be difficult, because the rules in some states are substantially derived from case law, and the laws differ by state regarding what activities constitute gambling (*e.g.*, what activities are considered 'games of chance')." In other words, the State legal officials told the Treasury and the Federal Reserve participants that a gambling license in one State could not be relied on as any evidence of compliance with the laws of other States. Conversely, the memorandum certainly does not provide any reasonable basis for concluding that a State gambling license will provide evidence of compliance with the laws of other States and Federal law, and there is nothing else in the notice of rulemaking or the administrative record to provide a reasonable basis for concluding that holding of, and complying with, a State gambling license means that the license holder is in compliance with Federal laws such as the Wire Act, the Interstate Horseracing Act ("IHA"), and the Travel Act.[6]

It should be noted that one State official on the call "suggested that a reasonable approach for the Board and Treasury to take in their regulations would be to require a business engaged in Internet-gambling activities to provide documentation to its bank attesting to the legality of its activities." The memorandum, however, does not indicate support for the suggestion by any of

[6] For example, non-compliance with State law is also a violation of the Travel Act, which provides that the "any business enterprise involving gambling . . . in violation of the laws of the State in which they are committed" is an "unlawful activity" under that Federal law. 18 U.S.C. § 1952(b).

the other State legal officials on the conference call and thus it can only be concluded that none of the other State officials concurred with the suggestion. It should also be noted that no State official on the call asserted that their State took steps to ensure that their gambling laws were implemented in a manner that did not violate the laws of other states.

Recently, on December 1, 2009, the agencies issued a *Federal Register* notice extending the compliance date for the final rule to June 1, 2010.[7] In that extension notice, the agencies acknowledged that petitioners for the extension and commenters, including Members of Congress, had again raised the issue of the lack of a clear definition of "unlawful Internet gambling," and that there was "considerable interest in Congress in clarifying the laws underlying Internet gambling" to help resolve this "problematic" issue, which the agencies acknowledged was "challenging," referencing the "due diligence" provisions section __.6(b) of the final rule, which are the subject of this petition.

Description of the information for which correction is sought

1. The statement in the rulemaking preamble, at 73 Fed. Reg. 69392 3d col., that financial transaction participants "should be able to rely on that State agency's ability to implement its own gambling laws in a manner that does not violate the law of another State or Federal law."

2. The statements in the rulemaking preamble, at 73 Fed. Reg. 69396 1st & 3d cols., with regard to the State license provisions of __.6(b), that confirmation that a commercial customer holds and complies with such a license is "reasonably designed" to provide due diligence that will prevent restricted transactions and as therefore furnishing a reasonable "safe harbor" for financial transaction participants who confirm that their commercial customer holds and complies with a State gambling license.

3. The "safe harbor" provisions of the final rule involving State gambling licenses, and describing confirmation of the holding of such a license by a commercial customer as "reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions," in __.6(b) and __.6(b)(1), (2) and (3) at 73 Fed. Reg. 69409 2d and 3d cols. Also, the codification of __.6(b) in the CFR.

The above inter-related information disseminations for which correction is hereby sought are referred to collectively below as the "safe harbor statements," or "the statements."

Explanation of why the above information does not comply with the quality standards of the IQA and its guidelines and must be corrected

In brief, the safe harbor statements do not actually provide a safe harbor and are not "reasonably designed" to provide due diligence against illegal transactions. A State gambling license does not provide reasonable assurance of compliance with the "patchwork" of laws and caselaw interpretations of other States and other Federal laws.

[7] 74 Fed. Reg. 6287.

1. The safe harbor statements are not "accurate."

The IQA and its guidelines require that information disseminations be "objective," which is defined as including accuracy.[8] The safe harbor provisions are not accurate because they do not provide a safe harbor for financial transaction providers with respect to the laws of States for which a State license is not presented and for Federal Laws that incorporate State laws, such as the Travel Act,[9] or State laws that might be interpreted as at variance with Federal laws such as the Interstate Horseracing Act.

2. The safe harbor statements are not "reliable."

The IQA requirement for "objectivity" and the definition of that term by OMB requires that information be "reliable."[10]

The UIGEA requires the regulations to be "reasonably designed" to provide for due diligence by financial transaction providers in assuring compliance. The safe harbor provisions, which are stated to be "reasonably designed" for such due diligence, are not in fact reasonably designed to provide assurance of compliance with State laws and other Federal laws. Therefore, the statements that they are reasonably designed and provide a reasonable safe harbor because the institutions "should be able to rely" on a State gambling license as evidence that a commercial customer is in compliance with the laws of other States and Federal laws are not reliable. This is illustrated by the memorandum of the telephone conference with State laws enforcement officials cited above, which is the only supporting documentation cited in connection with that statement. Financial transaction providers that comply with the safe harbor provisions in __.6(b) of the final rule are still likely to be in jeopardy of non-compliance with the laws of other States and other Federal laws.

3. The safe harbor statements lack a transparent and reasonable basis.

The IQA guidelines require agencies to engage in "pre-dissemination" review of information disseminations to ensure their quality, and this pre-dissemination review process "shall enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information."[11] In addition, it is firmly established that in order for Federal regulations to be considered as having a reasonable basis (*i.e.*, reasonably designed), the agency must "examine the relevant data and articulate a

[8] 67 Fed. Reg. at 8459 3d col. (OMB government-wide guidelines of Feb. 22, 2002).

[9] See fn. 6, *supra*.

[10] *Id.*

[11] 67 Fed. Reg. at 8459 1st col. (OMB government-wide guidelines of Feb. 22, 2002).

satisfactory explanation for its action."[12] The agencies have not done this.[13] Given that this aspect of the final rule appears to be clearly arbitrary and capricious, it is not accurate for the agencies to state that the due diligence/safe harbor provisions are "reasonably designed." A provision that is arbitrary and capricious cannot be considered reasonable.

In addition, transparency is part of the definition of "utility," which is also addressed below. The definition of "utility" states that "when transparency of information is relevant for assessing the information's usefulness from the public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information."[14] There is no transparent basis for the safe harbor statements.

Neither the rulemaking notice nor the administrative record show that the agencies can substantiate that they took measures to ensure that the safe harbor provisions would be reliable. Apparently the only documentation relating to any attempt to ensure that the safe harbor statements would be reliable is the above-cited and quoted memorandum of the conference call with State law enforcement officials, which indicates just the opposite -- that such provisions would not be reliable.

For example, the memorandum of the conference call indicates that the participants were clearly skeptical that a "reference guide" or "compendium" of State gambling laws could be developed, due to the variances in State laws and case law. That being the case, it is not reasonable to assume that the issuance of a gambling license by one State can be reliably assumed to mean that the license indicates compliance with the gambling laws of all other States.

4. The safe harbor statements lack "utility."

The IQA "utility" standard "refers to the usefulness of the information to its intended users."[15]

The safe harbor statements lack utility in actually providing safety to financial transaction providers in ensuring immunity from violations of various State laws not covered by a commercial customer's State license and from violations of other Federal laws such as the Travel Act, the Wire Act, and the Interstate Horseracing Act. In addition, the general public, on whose behalf the Act and its regulations were promulgated, cannot be assured that the safe harbor

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[12] *FCC v. Fox Television Stations, Inc.* 129 S. Ct. 1800, 1810, __ U.S. __ (2009) (citing *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co*., 463 U.S. 29, 43 (1983)); *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009).

[13] The final rule is thus also vulnerable to a judicial review challenge under the Administrative Procedure Act, both on the basis that it has not provided a "satisfactory explanation" for its safe harbor due diligence provisions and also on grounds that those provisions were never proposed for public comment.

[14] 67 Fed. Reg. at 8459 3d col. (OMB government-wide guidelines of Feb. 22, 2002).

[15] 67 Fed. Reg. at 8459 2d col. (OMB government-wide guidelines of Feb. 22, 2002).

statements will lead financial transaction providers to reliably block all illegal gambling activities under all State and Federal laws.

5. The agencies failed to demonstrate that the safe harbor statements requiring information collection have "practical utility" in compliance with the IQA and PRA.

Under the IQA and its guidelines, a petitioner effectively carries the burden of demonstrating that particular information disseminated by an agency does not comply with the IQA quality standards. However, under the information collection provisions of the Paperwork Reduction Act ("PRA") and its regulations, the burden is on the agency to demonstrate that an information collection will have "practical utility."[16]

This requirement to demonstrate practical utility in turn requires the agency to demonstrate, and certify, that the information that will be collected will meet the quality standards of the IQA and its guidelines.[17]

There is no mention of compliance with the practical utility requirement in the notice of final rulemaking's discussion of compliance with the information collection provisions of the PRA with regard to the safe harbor statements.[18] The agencies did not raise the issue of the practical utility of the safe harbor information collections in their information collection requests that they certified would comply with the PRA, and therefore also the IQA. More specifically, the State-issued gambling licenses that are at the heart of the safe harbor were not even included in the information collection requests that were reviewed and approved by OMB and by the Federal Reserve under its delegated PRA authority, despite a clear duty to do so under the PRA. Thus, the agencies failed to demonstrate the practical utility of the safe harbor provisions under both the IQA and the PRA.

One of the documents commercial customers would be required to present to their bank, in addition to the State-issued license, is a "third-party certification that the commercial customer's systems for engaging in the Internet gambling business are reasonably designed to ensure that the commercial customer's Internet gambling business will remain within the

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[16] The PRA information collection requirements cover information not only information that the agencies will collect from the public, but also information which agencies will require or request third parties to disclose to others, as is the case here the safe harbor provisions providing for disclosure of State licensing information to financial transaction providers. 5 CFR § 1320.3(c) (definition of "collection of information").

[17] See the June 10, 2002, memorandum from OIRA to the agencies at 11-12, interpreting the IQA as applying to information collections. http://www.whitehouse.gov/omb/assets/omb/inforeg/iqg_comments.pdf. The Treasury IQA guidelines incorporate this requirement that information collections must be consistent with the IQA quality guidelines in sections 14.4, 14.5.1 and 14.5.2. http://www.fms.treas.gov/foia/515final_treasury.pdf. The IQA guidelines of the Federal Reserve System also cover information collections. See the first paragraph in the discussion of "Objectivity" in the guidelines. http://www.federalreserve.gov/iq_guidelines.htm.

[18] 73 Fed. Reg. at 69403-04.

licensed or otherwise lawful limits, including with respect to age and location verification." While it is plausible to imagine that a business could obtain a certification from a third-party with respect to the business verifying a gambling customer's age and location, it is difficult to understand how a third-party could certify that the business remained within "otherwise lawful limits," when many aspects of those lawful limits remain effectively undefined for the purposes of this regulation. Moreover, no standards or qualifications for the certifying party are specified nor are any requirements detailed which delineate the metrics or other items the commercial customer should ask their third-party certification entity/contractor to ensure they comply with, nor are there any standards financial institutions could use in evaluating whether the certification was adequate. The third-party certification requirement does not even contain a requirement that the certifying entity verify that the commercial customer has accurate and reliable systems for determining the location of individuals placing bets even though some states prohibit interstate wagering.

As is the case with State-issued gambling licenses, the third-party certification was not submitted for review under the PRA and, thus, the agencies failed to demonstrate its practical utility for safe harbor purposes under both the IQA and the PRA.

Example demonstrating that State gambling laws are implemented in a manner that permits violation of State and Federal law

State gambling laws are being implemented, in some instances, in a manner that allows licensees to violate the laws of other states and Federal law; this is not merely a theoretical concern, it is an ongoing reality.

As documented below, there are State-licensed internet gambling businesses that permit the placing of interstate bets from states which prohibit such transactions. These bets, therefore, violate the laws of the states in which they are placed as well as Federal law. Moreover, in at least some instances, advertising by State-licensed internet gambling business can be reasonably interpreted as encouraging the violation of State laws in states which prohibit interstate internet gambling.

For example, XpressBet, a State-licensed, Pennsylvania-headquartered internet betting service, uses as their motto the registered trademark phrase *Anytime…. from Anywhere*® (see Attachment 2, highlighted screenshot of XpressBet website on March 26, 2010).

The term "Anywhere," and the company's explanation that anywhere means anywhere with internet access (see Attachment 2), makes clear that the State-licensed gambling business accepts bets from their customers who travel to states such as Utah, which prohibit all wagering. Similarly, a Maryland resident who works in the District of Columbia, which does not allow interstate horseracing, can use XpressBet's service "to play the races from the comfort of [their]…office…."

By accepting bets placed by customer who are visiting jurisdictions which prohibit such wagers, the company is apparently violating the laws of those States as well Federal laws such as

the Travel Act and the IHA. The IHA definition of an "interstate off-track wager" requires that it be "lawful in each State involved.…"

In that the US betting company explicitly states that it accepts wagers placed from "around the world" (see Attachment 2), there may be additional legal issues associated with their use of gambling information in foreign commerce, particularly if the betting information is transmitted to and/or from countries that prohibit such bets.

An additional legal concern regards compliance with the tax laws of States and localities from which bets are unlawfully placed through State-licensed gambling businesses. If these States rely on the rule's assurance that the safe harbor ensures interstate gambling businesses' compliance with their State laws, they may not be aware that they may be owed tax revenues on winnings from bets placed from within their State.

XpressBet does place some restrictions on accepting customers and on their wagering based on their residency. The company, however, makes clear that such restrictions are based only on their State of residency, not their location when placing wagers (see Attachment 3).

Based on the above information, it is undisputable that State gambling laws are, in some instances, implemented in ways that allow for the violation of the laws of other States and of the Federal government. Thus, banks are not able to rely on a "State agency's ability to implement its own gambling laws in a manner that does not violate the law of another State or Federal law." Accordingly, the rule's safe harbor statements lack accuracy, reliability and utility, and require correction under the IQA.

In his testimony before the House Committee on Financial Services, Chairman Bernanke emphasized the importance of "the Federal Reserve's role as a supervisor of state member banks of all sizes…."[19] Congressional evaluation of continued Federal Reserve oversight of State banks becomes a more complicated issue if the agency maintains regulations which allow those banks to violate State laws. It is not in the interest of any stakeholder for financial regulatory agencies to maintain regulations which permit the violation of State laws even after such problems are presented to them for correction through the appropriate administrative process.

Recommended corrections

CRE is proposing that the Federal Reserve adopt either one of the following two options for correcting the final rule.

Correction Option 1

The safe harbor statements that are the object of this petition must be removed from the final rule and final rulemaking notice, and new, IQA-compliant, due diligence provisions that are "reasonably designed" must be developed and substituted. This will require promulgation of a

[19] "The Federal Reserve's Role in Bank Supervision," Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System before the Committee on Financial Services, U.S. House of Representatives, March 17, 2010, p. 3.

revised rulemaking. Because the safe harbor statements were not previously proposed, a new rulemaking proposal should be promulgated for public comment.

To correct the IQA infractions specified in this petition, we recommend that the agencies propose, for public comment, a definition of unlawful Internet gambling that states: "Unlawful Internet gambling means to use the Internet to place, receive, or transmit a sports bet or wager, other than those placed on fantasy sports or permitted under the Interstate Horseracing Act." Until this new rulemaking is completed, the compliance date should be further extended for an appropriate period.

While the suggested language is accurate as far as it goes, it is likely that it is not comprehensive with regard to all State laws. Therefore, it is suggested that the proposed definition be supplemented by a petition mechanism for individual States to propose specifying in an appendix additional activities that would be considered unlawful under their laws. Such a process would avoid the necessity for developing a comprehensive list or compendium of Internet gambling activities that are unlawful under the laws of all the States. Thus, the suggested corrective language would state: "Unlawful Internet gambling means to use the Internet to place, receive, or transmit a sports bet or wage, other than those placed on fantasy sports or permitted under the Interstate Horseracing Act. Unlawful Internet gambling also includes any gambling activity specified in the Appendix as illegal in a particular State."

Correction Option 2

The safe harbor statements that are the object of this petition must be the subject of a reopened rulemaking. The new notice-and-comment period would allow all stakeholders to fully ventilate the safe harbor contained in the final rule, an opportunity they have not yet enjoyed. The reopened rulemaking should also allow for additional comments on mechanisms for implementing the UIGEA, such as the one described in Correction Option 1, that are consistent with the requirements of the IQA. The new notice-and-comment period could take place while the current rule is in effect and, thus, without suspending or further delaying the rule's compliance date.

Why the Center for Regulatory Effectiveness is an affected person

As indicated by its name, the Center for Regulatory Effectiveness assists the regulated community and the Federal Government in developing effective regulations, and interpreting and complying with those regulations. Regulations that do not comply with the quality standards of the IQA and its guidelines interfere with this work by CRE and require the wasteful expenditure of its resources.

Contact information

The contact person for this petition is the undersigned. I can be reached at the address and phone number on the letterhead, or via email at tozzi@thecre.com.

Agency Response

CRE recognizes that filing this amended petition may result in the Federal Reserve resetting the clock on the date by which they need to respond to our petition.

Respectfully,

/s/

Jim J. Tozzi
Member, CRE Advisory Board

Attachments

Development of Internet Gambling Regulations
Conference Call with Representatives of Various State Attorneys General

Call Date: July 9, 2008 / 3:00pm EDT

AG Reps: Sara Drake, Office of the Attorney General, California
Neil Houston, Office of the Attorney General, California
Geoffrey Morgan, Office of the Attorney General, Mississippi
Martin Millette, Office of the Attorney General, Mississippi
Mary Francis Jowers, Office of the Attorney General, South Carolina
Jerry Ackerman, Office of the Attorney General, Washington
Nicholas Alexander, Criminal Law Counsel, National Association of Attorneys General (NAAG)

FRB: Rich Ashton, Joseph Baressi, Chris Clubb, Joshua Hart, Louise Roseman

Treasury: Charles Klingman

The Agencies arranged the call through NAAG staff to discuss issues related to State gambling laws in the United States. The state attorneys general offices on the call described a legal landscape in which gambling laws and regulations vary from state to state. States represented therefore did not believe it would be feasible to develop a single, nationwide definition of unlawful Internet gambling.

Call participants thought that creating a reference guide of all states' Internet gambling laws and rules would be difficult, because the rules in some states are substantially derived from case law, and the laws differ by state regarding what activities constitute gambling (e.g., what activities are considered "games of chance").[1] NAAG staff indicated that NAAG does not maintain a compilation of state Internet gambling rules. Formal approval of the NAAG Executive Committee and/or the membership might be required prior to a formal designation in the Code of Federal Regulations holding NAAG responsible for developing, maintaining and/or publishing such a compendium for consumption by the general public.[2]

Mr. Ackerman suggested that a reasonable approach for the Board and Treasury to take in their regulations would be to require a business engaged in Internet-gambling activities to provide documentation to its bank attesting to the legality of its activities.

In response to a question on whether any state attorneys general has used sections 5365(b) and (c) of the Unlawful Internet Gambling Enforcement Act to require an Internet service provider to

[1] South Carolina noted that it generally does not provide advisory opinions.

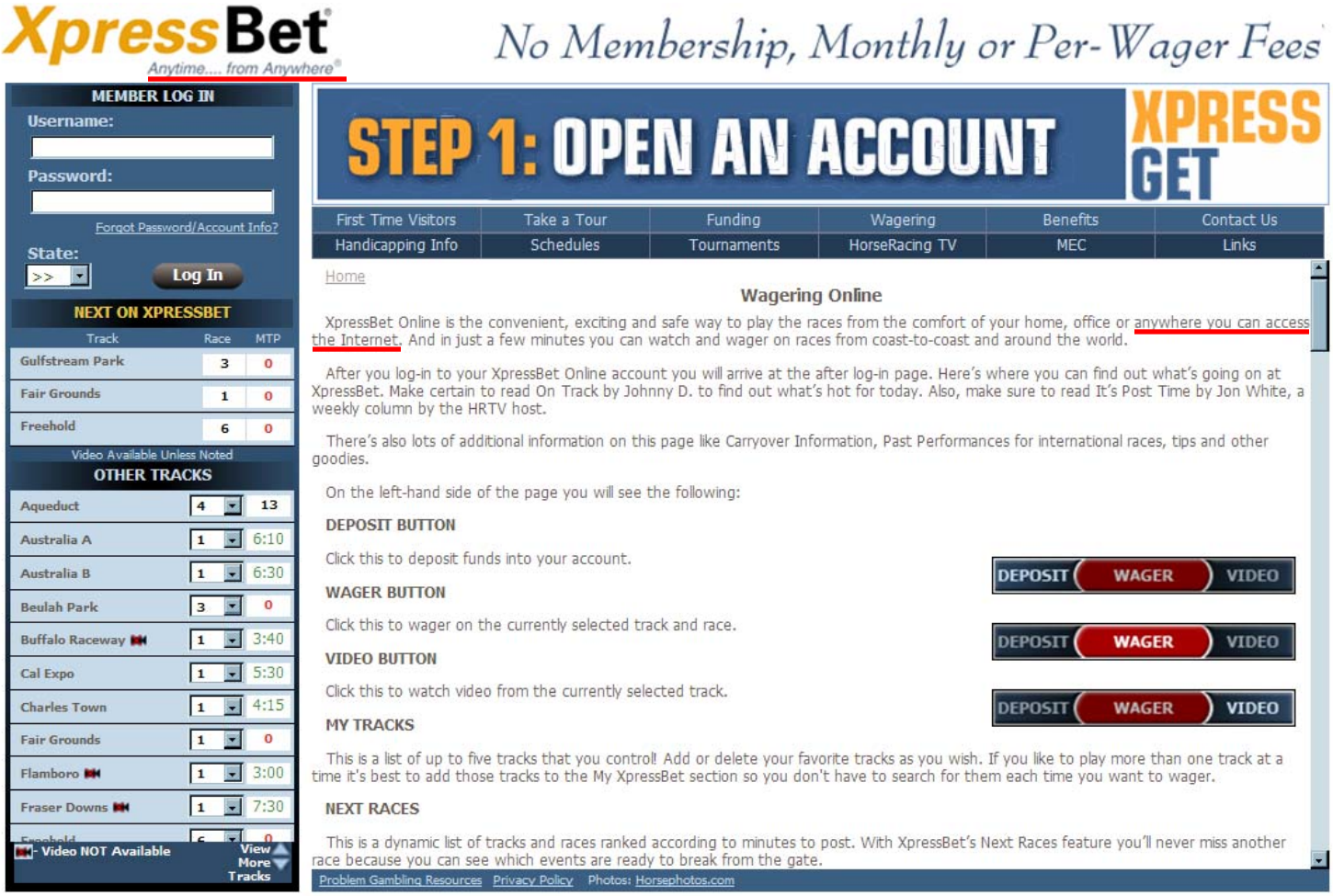
[2] In a follow-up written comment to the July 9 teleconference call, NAAG staff suggested that the Treasury Department and the Federal Reserve may be able to explore the maintenance of such a compendium with the National Conference of State Legislatures, the Council of Governments, or other similarly situated organizations.

remove an unlawful Internet gambling website, no one present on the call was aware of any such action. Mr. Ackerman indicated that such authority would be useful.[3]

Advance-deposit wagering on horse races is allowed in California and Washington. State residents establish accounts via the Internet from which they may fund bets if the bettor, the horse race, and the Internet website facilitating the bets are all located in states that permit such activity.

[3] Washington stated that it had not believed it could seek an injunction under § 5365 of the Act until the Board and Treasury publish their regulations. The Board and Treasury, however, believe that that section of the Act is self-implementing and is available to states' attorneys general at the current time.

Attachment 2



Attachment 3