

December 12, 2007

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

RE: Comment on Docket Number R-1298;
Prohibition on Funding of Unlawful Internet Gambling

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the Department of the Treasury's (Treasury) and the Board of Governors of the Federal Reserve System's (Fed) (collectively, the Agencies) request for public comment on their joint proposed rulemaking to implement the *Unlawful Internet Gambling Enforcement Act of 2006* (the Act). The Act prohibits gambling businesses from accepting payments in connection with unlawful Internet gambling, including payments made through credit cards, electronic funds transfers, and checks.

The proposed rule would apply to five designated payment systems, specifically: (1) automated clearinghouse (ACH); (2) card systems; (3) check collection systems; (4) money transmitting businesses; and (5) wire transfers. Generally, the proposal would require participants performing non-exempt functions in designated payment systems to establish and implement policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions.

Recognizing the challenging mandate presented by the Act, NAFCU commends the Agencies for their efforts to promulgate a regulation that is both practical and effective within the constraints of the legislation. It is apparent that the Agencies have taken care to craft a pragmatic rule that is in keeping with the spirit of the statute. As such, we generally support the proposed rule.

NAFCU, however, would like to take the opportunity to express our concern about the emergent trend towards effectively deputizing credit unions and other financial institutions to guard against a growing array of crimes. While the credit union industry remains firmly committed to helping to safeguard the American financial system from threats posed by illicit and unlawful activity, especially terrorist financing and money laundering, NAFCU is disheartened at the mounting degree of accountability being imposed on financial institutions for policing against unlawful or immoral activities. NAFCU strongly believes that the primary responsibility of



depository institutions is, and should continue to be, the safe and sound provision of financial products and services and not to surveil consumers for criminal behavior or immoral activity.

In addition, NAFCU would like to provide the following specific comments regarding the joint proposed rule.

Exempted Participants

The Act authorizes the Agencies to create exemptions for certain transactions or payment systems if the Agencies determine that it is not reasonably practical to identify and block, or otherwise prevent or prohibit restricted transactions. Accordingly, the proposed rule would generally exempt all participants in the ACH, check collection, and wire transfer systems, except for the participant with the customer or member relationship with the Internet gambling business (and certain participants involved in cross-border transactions). NAFCU strongly supports the proposed approach.

In the preamble to the proposal, the Agencies rationalize that the participant with the direct or preexisting relationship with the member or customer would be in the best position to ascertain, through reasonable due diligence, whether a particular transaction may be a restricted transaction as defined by the regulation; thus, that participant is not exempted. NAFCU generally agrees with this contention. Further, we support the Agencies' determination that it is not reasonably practical for most other participants in ACH, check collection, and wire transfer systems to effectively identify and block restricted transactions, particularly in light of current technological prohibitions. Indeed, these systems do not presently use coding that would enable participants to reasonably identify and block restricted gambling transactions.

Thus, NAFCU believes that the proposed exemptions are appropriate. Federal credit unions can be expected to know their members; however, they should not be responsible for validating transactions for which they have little or no information.

Processing of Restricted Transactions

Under the proposal, all non-exempt participants in the designated payment systems must establish and implement policies and procedures to prohibit the processing of unlawful gambling transactions. However, a participant may under certain conditions comply with this requirement by relying upon the policies of the designated payment system of which it is a participant. NAFCU strongly supports the option for individual participants to rely on and comply with policies and procedures established by designated payment systems. NAFCU believes that this is a prudent approach that will help to minimize redundancy costs and unnecessary regulatory burdens. We suggest, however, that the final rule go further to provide an express safe harbor for non-exempt participants that in good faith rely on the policies and procedures established by the designated payment system and where participants reasonably believe the payment system's policies are in compliance with the regulation.



Overblocking Provision

Section 5 of the proposal clarifies that the regulation does not require non-exempt participants to “overblock,” that is, to block or prevent lawful gambling transactions. Nevertheless, designated payment systems or participants in these systems are not prevented from making a business decision to avoid processing any and all gambling transactions.

NAFCU encourages the Agencies to refrain from imposing any regulatory requirements which might hamper federal credit unions from making reasonable business decisions to benefit their members. Thus, we agree that designated payment systems and non-exempt participants should be permitted to exercise their business judgment to decline to process all gambling transactions, even if lawful.

Effective Date

The Agencies have proposed that the final regulation take effect six months after the joint final rule is published. NAFCU believes that six months’ implementation time is insufficient to enable covered participants to institute the required policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions. In some cases, credit unions may be forced to rely on payment systems or other third-party providers to execute on the new policy requirements. In establishing a compliance deadline, ample time must be allowed for participants to work with payment systems and third-party providers to implement any necessary policies and procedures to effectively identify and prevent restricted gambling transactions.

Accordingly, NAFCU recommends that a minimum of 12 months from the date of publication in the *Federal Register* be provided to allow credit unions sufficient time to establish and fully implement required policies and procedures.

NAFCU would like to thank the Agencies for the opportunity to provide its comments on this proposed rulemaking. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU’s Associate Director of Regulatory Affairs at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,



B. Dan Berger
Senior Vice President of Government Affairs

BDB/py

