

December 6, 2007

Department of the Treasury  
Office of Critical Infrastructure Protection and Compliance Policy  
Room 1327, Main Treasury Building  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Ref: Treas-DO, Docket No. Treas-DO-2007-0015

*And*

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

Ref: Docket No. R-1298

***Re: Comments pertaining to Notice of Joint Proposed Rulemaking - Prohibition on Funding of Unlawful Internet Gambling [31 CFR 132]***

Honorable Members of the Treasury Department and Federal Reserve System:

As a concerned citizen, I must express concern about the following proposed regulations. I have the following concerns regarding the currently proposed rules

## **SIX CONCERNS WITH THE PROPOSED REGULATIONS:**

### **(1) Require Foreign Institutional Contracts to Follow Existing “Know Your Customer” Regulations**

Proposed regulations maintain that contracts with foreign senders should require “the foreign sender to have reasonably designed policies and procedures in place to ensure that the relationship will not be used to process restricted transactions.” Regulations need to be more explicit about what “reasonably designed policies and procedures” should be. Current “Know Your Customer” regulations are a sound model to follow for adding more specifics to the UIGEA regulations.

### **(2) Avoid “Overblocking” Through Creation of Separate Accounts**

Foreign Internet gambling sites may have legitimate financial transactions with U.S. financial institutions, such as sales of merchandise (i.e. T-shirts, watches and other merchandise). Regulations that might cause U.S. institutions to block *all* financial transactions with these operators may also block non-restricted transactions (termed “overblocking”). Regulations should provide for separate accounts and codes that will avoid overblocking. Separate accounts and merchant codes are established with relative ease, by creating separate merchant codes (compliant with U.S. law) that do not fall under the Internet gambling code: 7995. This would allow even the offshore

gambling sites to receive funds from U.S. institutions for non-prohibited, non-gambling purposes.

Financial institutions that maintain such merchant accounts are required, through a contractual relationship with the payment card provider (e.g., VISA, MasterCard, etc.) to conduct investigations about the nature of their customer's business. Based upon this investigation, the customers are assigned merchant codes specifying the nature of their business. For instance, in the area of Internet gambling, this code is "7995." Separate accounts and codes would provide an efficient mechanism to facilitate appropriate blocking of restricted online gambling transactions.

### **(3) Uncovered Forms of Payment**

Several online casinos use 900 telephone numbers in Canada to fund accounts for U.S. customers. Gamblers call 900 numbers in Canada, which appear as charges on gamblers' telephone bills. The Canadian companies that set up the 900 number receive payment through the phone company, and then sends the funds to the bank of the gambling business to fund the gambler's account. In this case, no participant in a "designated payment system" (as defined in the current regulations) in the U.S., so the regulations would not cover this scenario. The only U.S. participant in this case is the telephone company, which would need to be covered in some capacity by the UIGEA regulations to prevent this form of illegal gambling payment.

### **(4) Law Enforcement: Sharing Information**

A mechanism must exist to discover, expose and penalize foreign Internet gambling operators that violate or transfer a restricted or illegal transaction. Terrorist activity, money laundering, or other illegal activities differ from Internet gambling sites – and their related transactions – as online gambling relies on gambler participation, market presence and advertising, especially in countries where Internet gambling is legal. While the cost of posting a Web site is minimal, thus attracting many "rogue" gambling operations, it's assumed that most online gamblers would give confidential account information to larger, better-established online casinos. Identification is, therefore, less difficult.

Banks and other financial entities lack the will and expertise, however, to decide exactly which transactions are related to illegal Internet gambling. Restricted transactions will likely be identified by law enforcement or by others working in an effort to identify illegal gambling transactions. Federal and state law enforcement entities, state gambling regulators, and even concerned citizens can identify and report Internet gambling operations that advertise and/or offer illegal gambling services to U.S. customers.

Efficient mechanisms for information sharing between law enforcement and financial entities will strengthen this legislation's ability to detect and stop illegal, restricted transactions. Portals – phone, mail and Internet - should also be established for the private sector to report illegal, online gambling operations to a specific law enforcement agency.

The Notice of Proposed Rulemaking (NPRM) states that a government-maintained list was considered and judged to be an *inefficient* way of enforcing the regulations. However, a list that facilitates the existing structure of the regulations (versus an OFAC type list that serves as the *only* method for identifying restricted transactions) would not suffer from the same weaknesses noted in the NPRM.

The proposed regulations need revision to clarify that U.S. financial institutions are *not* exempt, regardless of their role in an illegal transaction, if they have actual knowledge that a transaction is restricted. It may be practical to exempt institutions from *detecting* such restricted transactions, but institutions should be responsible for blocking transactions when they possess credible information regarding the prohibited nature of the transaction. This clarification is critically important for any information-sharing mechanism and within the context of the UIGEA.

**(5) Governmental List of Unlawful Gambling Operations**

The United States Government should task an individual – or several federal employees - with the duty of finding, investigating and reporting unlawful Internet gambling operations to financial institutions. Likewise, financial institutions should report suspicious activities to the government personnel assigned the task of reporting unlawful gambling activities. Financial institutions could effectively block unlawful Internet gambling transactions through a system similar to that used by OFAC. A well-trained government investigator – or several investigators – could effectively perform this task, thus eliminating a potential burden on financial institutions.

**(6) Parameters for Applying Penalties**

The proposed regulation instructs financial entities to have policies and procedures addressing when services should be denied or relationships terminated as a penalty against other parties who transmit restricted transactions. But there is no guidance on whether it would be appropriate to impose penalties after one violation or 10 violations. Clarification should create set boundaries, guidelines and penalties. Imposing penalties after an initial violation would likely reduce subsequent violations.

I hope that you find these comments helpful.

Thank you for your time, consideration and service.

Sincerely,



Manuel Fernandez  
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