



U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS

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DEPUTY ASSISTANT SECRETARY VALERIE ABEND BEFORE THE U.S. HOUSE OF REPRESENTATIVE JUDICIARY COMMITTEE

WASHINGTON- Mr. Chairman, Ranking Member Smith, and Members of the Committee, it is my privilege to represent the Treasury Department today to discuss the Unlawful Internet Gambling Enforcement Act of 2006 (the "Act").

Proposed Rulemaking Process

The Act is designed to require the various payment systems to stop the flow of funds from gamblers to businesses providing unlawful Internet gambling services. To accomplish this, the Act requires the Treasury Department and the Federal Reserve Board, in consultation with the Justice Department, to jointly prescribe regulations requiring participants in designated payment systems to establish policies and procedures that are reasonably designed to prevent or prohibit such funding flows.

On October 4, 2007 the Treasury Department and the Federal Reserve Board published a Notice of Proposed Rulemaking seeking public comment on the proposed rule. Our goal when writing this proposed rule was to faithfully adhere to the mandates set forth by Congress in the Act.

I would like to take a moment to discuss the process the Treasury Department followed to develop this proposed rule. As you are aware, joint rule making requires extensive coordination. The Treasury and the Federal Reserve Board began this proposed rulemaking first by identifying individuals within our offices that have experience with rulemaking and payment systems' operations. At the Federal Reserve, this included individuals responsible for FedWire, one of the largest payment systems in the country.

We have learned a lot since the passage of the statute by working with both the Federal Reserve Board and the Justice Department. Payment systems are complex and vary greatly. They are built to meet the needs of the particular participants and while some are modernized, others are paper-based systems. The complexity and differences necessitate different approaches to meet the requirements of the statute effectively. We expect to learn more from the comments that we will receive during the comment period, which runs through December 12, 2007.

Fulfilling the Act's Mandates

As I mentioned earlier, our overarching principle has been that the proposed rule should faithfully adhere to the Congressional mandates in the Act. First, the Act requires us to designate payment

systems that could be used in connection with unlawful Internet gambling. The proposed rule designates the following 5 payment systems:

- Automated Clearing House Systems
- Card Systems (e.g., credit cards, as well as stored value cards)
- Check Collection Systems
- Money Transmitting Businesses
- Wire Transfer Systems (i.e., CHIPS)

Second, the Act requires us to provide exemptions if the Treasury Department and the Federal Reserve jointly determine that it is not reasonably practical for participants in designated payment systems to prevent or prohibit unlawful Internet gambling transactions. No payment system is exempted completely from this proposed regulation. However, the proposed rule does partially exempt certain participants within some of the designated payment systems from having to establish policies and procedures. The Treasury and the Federal Reserve Board determined that this was the most appropriate way to implement the Act consistent with Congressional intent.

Under the proposed rule, the gambling *business's* bank, or, if abroad, the first U.S. bank dealing with that bank, is not exempted because it could, through reasonable due diligence, ascertain the nature of its customer's business and ensure that the customer relationship is not used to receive unlawful Internet gambling transactions. Let me emphasize that there are requirements under the proposed rule for the bank in the United States that has a corresponding relationship with a gambling business's bank. The proposed exemptions generally extend to the gambler's bank. For example, in the case of checks, the check collection system is highly automated and it is not reasonably practical for the gambler's bank to know whether a check presented to it for payment involves unlawful Internet gambling. However, the gambling business's bank, or, if abroad, the first U.S. bank to receive the check under the proposed rule would need to have policies and procedures to block the processing of the check.

Third, the Act requires us to provide nonexclusive examples of policies and procedures, which would be deemed "reasonably designed" to prevent or prohibit unlawful Internet gambling transactions. As a result, this proposed rule contains a "safe harbor" provision, as mandated by the Act that includes for each designated payment system nonexclusive examples of reasonably designed policies and procedures.

Fourth, the Act requires us to ensure that certain transactions excluded from the definition of the term "unlawful Internet gambling" are not prevented or prohibited by the proposed rule. For example, the UIGEA states that "the term 'unlawful internet gambling' shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (IHA). This provision was immediately followed by the Sense of Congress provision that states that the UIGEA was not intended to change the relationship between the IHA and other federal statutes. The IHA did not amend or repeal existing criminal statutes. Since the proposed rule only covers "unlawful internet gambling", it in no way requires participants to prevent or prohibit transactions that are lawful under the Interstate Horseracing Act and all other applicable federal statutes.

Conclusion

Through our efforts to date, we are making progress in reaching our objective of promulgating a final rule that strictly adheres to the statute. We expect to receive a large number of comments as we approach the close of the comment period. We have an open mind on all aspects of the proposed rule. We will be providing analysis of the comments received, and reasons for any decisions that will be made, as we publish the final rule. Let me assure you that we are committed to giving fair consideration to all relevant comments as we work toward promulgating a final rule. We have much work to do, but

we understand the task ahead and what we will need to do to reach our objective. Thank you, I would be happy to answer your questions.