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July 28, 2006

Chairman Richard C. Shelby
U.S. Senate committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Chairman Arlen Specter
U.S. Senate committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Shelby and Chairman Specter:

On behalf of the nearly 5,000 members of the Independent Community Bankers of America, I am requesting your careful review of the Internet gambling legislation now pending in the Senate (H.R. 4411). That bill calls on community banks to monitor and block Internet gambling transactions. The Senate should address the operational difficulties this bill presents before it takes action.

We understand that Senator Kyl is seeking Senate action on H.R. 4411. At this time, three critical issues remain unresolved:

1. The bill would create an impossible compliance burden for “uncoded” transactions. Unlike credit card transactions, which include a code that identifies the type of business – including gambling – that is receiving payment, uncoded transactions do not provide a bank with this information. So, while it is possible to monitor and block credit card transactions, a bank cannot do this with uncoded transactions.

Uncoded transactions include Automated Clearing House (ACH) transactions as well as paper and electronic checks. Financial institutions rely on ACH transfers as an efficient and cost effective means of moving funds. Our financial system processed some 12 billion transactions by ACH in 2004. Checks remain the most commonly used type of noncash payment by value with more than 45% of all transactions completed by check with 36 billion checks written in 2004. Due to the overwhelming number of ACH and check transactions, the application of this bill to uncoded transactions would require a massive overhaul of the payments system. Even after such an overhaul, our testimony before the House Judiciary Committee showed that it would still be possible to easily evade any restrictions.

The House bill gives Treasury and the Federal Reserve final power to determine which transactions would be covered and to avoid creating an impossible compliance burden each time an internet gambling company is prosecuted. Congress could provide this certainty by giving the federal regulators guiding factors to assist in determining which transactions would be subject to the law.

The legislation should also prevent the courts from placing additional compliance requirements on the nation's banking system. Our concern is highlighted by recent decision of the U.S. District Court of Missouri. On July 17, 2006 the District Court approved a Temporary Restraining Order (TRO) barring "entities having possession or control of the instrumentalities used by the [internet gambling company], ...from causing the transmission of funds solicited from persons in the United States for the purpose of placing wagers on sports and sporting events to the defendant and its agents outside the United States." The TRO was accompanied by a list of 708 affiliated entities – each of which is a potential payee.

To comply with this TRO, any bank that may have a customer who may gamble with the defendant website or any of the 708 listed affiliates would have to monitor and block all their customers' payments (check, debit and ACH) to prevent payments to the defendant and all other 708 possible payees.

The need for unified federal oversight of (a) what payments are subject to the law and (b) who has the authority to create a national payments monitoring obligation is obvious and immediate.

2. The bill threatens to subject banks and electronic processors to potential criminal liability for pursuing their core business operations of merely processing financial transactions.

In earlier House versions of the bill, banks were excluded from liability because they were specifically excluded from the definition of a "gambling business." In the most recent version of the bill, that exclusion has been removed without explanation.

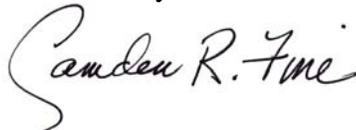
We are particularly concerned by this revision as the courts have found criminal liability attaches whenever an act is "necessary or helpful" in operating the [gambling] enterprise." Under this construction, the courts have found waitresses, bookkeepers and custodians liable for performing job related tasks. As a result, a bank with neither a relationship with a casino nor knowledge of its illegal activities could be criminally liable for transactions that flow through the bank (e.g., check clearing or a withdrawal of funds) during the regular course of business. This is an unacceptable level of risk to impose on our industry.

3. The bill could subject banks to inconsistent state and national standards.

H.R. 4411 envisions a regime where the obligations of financial institutions to prevent Internet gambling transactions are established by expert federal regulatory agencies: the Department of Treasury and the Federal Reserve Board. This is appropriate because these agencies are uniquely qualified to understand the underlying law enforcement objectives and the practical realities of using payment systems to deter or to prevent Internet gambling activities. H.R. 4411 should include a provision ensuring that financial institutions have a national standard under which to operate with respect to preventing Internet gambling transactions.

ICBA recognizes the concerns that some of your colleagues have raised about Internet gambling. We urge Congress to recognize that the nation's banks have already taken on major responsibilities to help detect and prevent terrorist financing and illegal money laundering. Attempting to monitor and block gambling transactions, particularly given the limits of the current payment technology, could detract from those efforts. Therefore, I strongly urge you to modify this legislation to reduce its negative impact on community banks. I thank you in advance for your consideration of this request.

Sincerely,



Camden R. Fine
President & CEO

cc: Committee on Banking, Housing and Urban Affairs
Committee on the Judiciary