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December 3, 2008

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Federal Reserve System and Department of the Treasury: Prohibition on Funding of Unlawful Internet Gambling*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Reserve System and Department of the Treasury (agencies), entitled “Prohibition on Funding of Unlawful Internet Gambling” (RIN: 1505-AB78). We received the rule on November 17, 2008. It was published in the *Federal Register* as a final rule on November 18, 2008. 73 Fed. Reg. 69,382.

The final rule implements provisions of the Unlawful Internet Gambling Enforcement Act of 2006. Title VIII of Public Law 109-347, Oct. 13, 2006. The final rule designates payment systems that could be used by participants in connection with, or to facilitate, a restricted transaction and exempts certain participants in certain designated pay systems from the requirements of the regulation. The final rule also requires participants performing non-exempt functions to establish and implement policies and procedures reasonably designed to prevent or prohibit restricted transactions, and provides non-exclusive examples of such policies and procedures. The final rule sets out the regulatory enforcement framework and is effective January 19, 2009. However, compliance by non-exempt participants in the designated payment system is not required until December 1, 2009.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule.¹ Our review indicates that the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Robert Pribble
Special Assistant to the Board
Board of Governors of the
Federal Reserve System

Steven D. Laughton
Senior Counsel
Department of the Treasury

¹ In addition to the submission from the agencies on this rule, we received comments from the Center for Regulatory Effectiveness. Letter from Jim Tozzi, Member, Board of Advisors, to Michael R. Volpe, Assistant General Counsel, GAO, Nov. 21, 2008.

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL RESERVE SYSTEM AND
DEPARTMENT OF THE TREASURY
ENTITLED
"PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING"
(RIN: 1505-AB78)

(i) Cost-benefit analysis

The Departmental Offices of the Department of the Treasury (Treasury) prepared a cost-benefit analysis in conjunction with the final rule. The potential benefits associated with the rule include inhibiting the accumulation of consumer debt and restricting excesses related to unlawful Internet gambling by underage or compulsive gamblers. Additionally, since Congress determined that Internet gambling is a growing cause of debt collection problems for the insured depository institutions and the consumer credit industry, the final rule has a potential benefit of reducing debt collection problems for that group. Treasury describes steps it has taken to minimize the potential costs associated with the final rule. The final rule allows financial transaction providers to rely on the written policies and procedures of the designated payment system of which they are a part unless specifically notified by the appropriate federal agency that the system's policies and procedures do not comply with the final rule. The final rule also provides flexibility for regulated entities that choose to establish their own policies and procedures by requiring only that the procedures be "reasonably designed" to identify and block or otherwise prevent unlawful Internet gambling, and includes a "safe harbor" provision which provides more specific guidance.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The agencies prepared a final regulatory flexibility analysis, even though, according to the agencies, the rule does not appear to have a significant economic impact on a substantial number of small entities. The agencies estimate that the final rule will directly affect 12,257 small depository institutions and 10 small money transmitting business operators. Changes from the proposed rule resulted in approximately 241,101 fewer small entities having to comply with the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Treasury concluded that the final rule does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of \$130 million or more in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The agencies jointly published a notice of proposed rulemaking in the *Federal Register* on October 4, 2007. 72 Fed. Reg. 56,680. The agencies received comments from 225 members of the public, including consumers, depository institutions, gambling-related entities, public-policy advocacy groups, pay system operators, and others. The agencies responded to the comments in the final rule. 72 Fed. Reg. 69,382.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The information collection requirements in the final rule were reviewed by the Office of Management and Budget (OMB). The Board of Governors of the Federal Reserve System (Board) estimated that the final rule will result in a burden of 428,520 hours for an estimated 7,538 recordkeepers, which includes commercial banks, credit unions, card system operators, and money transmitting business operators. OMB approved the information collection requirements submitted by the Board (Control number 7100-0317). Treasury estimated that the final rule will result in a burden of 589,520 hours for an estimated 9,148 recordkeepers, which includes commercial banks, savings associations, credit unions, card system operators, and money transmitting business operators. Treasury submitted the information collection requirements to OMB and is currently awaiting approval (Control number 1505-0204). Under the Paperwork Reduction Act, the requirements are not enforceable until approved by OMB. The agencies determined that the total PRA burden for all regulated entities would be 1,018,040 hours, with associated costs of over \$88.5 million.

Statutory authorization for the rule

The final rule is authorized by the Unlawful Internet Gambling Enforcement Act of 2006, Title VIII of Pub. L. 109-347, 120 Stat. 1952 (2006).

Executive Order No. 12,866

The final rule is an economically significant regulatory action under the Order and has been reviewed by the Office of Management and Budget. Treasury prepared a Regulatory Assessment in conjunction with the Order.

Executive Order No. 13,132 (Federalism)

The final rule does not directly address the Executive Order. However, in the analysis under Executive Order 12,866, the agencies note that the Act does not alter state, local or tribal gaming law and avoids undue interference with state, local, and tribal governments in the exercise of governmental functions.