



RGA Submission to the Norwegian Government

In response to the consultation on the draft amendments to Norwegian gaming laws to prevent financial transactions between Norwegian citizens and remote gambling operators

Executive Summary

1 The Ministry of Culture and Church Affairs is conducting a consultation on draft amendments to the Norwegian gaming laws which would prohibit financial transactions between Norwegian citizens and remote gambling operators. The RGA believes that such a policy is misguided from both a legal and a technical standpoint.

2 The RGA is of the view that making the processing of financial transactions to and from remote gambling operators not holding a Norwegian licence infringes the principle of free movement of services and capital provided for in the EEA Agreement.

3 Within the EU, where the principles of free movement of services and capital also apply, this view has been put forward by the European Commission in its detailed opinions to the German Lander regarding the financial transaction blocking sections of the Inter-State Treaty. It subsequently stated in its recent Letter of Formal Notice to the German government that “to prohibit credit and financial services institutions from any involvement in payments for unauthorized games of chance and payouts from unauthorized games of chance... violate[s] its obligations under Article 56¹ of the EC Treaty”.

4 Adoption of a financial transaction blocking policy is an unattractive step when the success of previous attempts elsewhere in the world is considered. The United States introduced a financial transaction blocking law in October 2006 that has, quite frankly, never worked and only added layers of burdensome compliance for financial institutions. Congressman Jim McDermott recently stated that “the current approach, prohibiting Internet gambling through the Unlawful Internet Gambling Enforcement Act (UIGEA), has proved to be a failure. Notwithstanding the UIGEA prohibition, millions of Americans are still able to gamble online. In addition, proposed rules by the Treasury Department to

¹ The equivalent to Article 40 of the EEA Agreement

implement the current prohibitions have been severely criticized by many parties, including the American Bankers Association, Credit Union National Association, Financial Services Roundtable, and other leading financial services companies and groups. (see appendix 1 for more expert testimony on the US law)

5 The ill-conceived legislation in the United States has done little to prevent US citizens from gambling with remote gambling operators. A large segment of the top ten poker sites are sites which continue to take gambling transactions from US citizens. The 28 million US remote gamblers who existed prior to the UIGEA legislation have not simply given up their leisure pursuit. Instead they are gambling with sites which may not provide any sort of regulation which was clearly not the intended consequence of the US effort. For more information please visit www.pokersourceonline.com from which you can access the information on the top ten poker sites and their customer base.

6 Despite being a seemingly simple method of enforcing the Norwegian ban on its citizens from using remote gambling operators licensed in other jurisdictions, financial transaction blocking is unlikely to be successful. The technical reality of payment processing means some operators may revise their coding schemes with payment card companies to avoid being caught, e-wallets schemes would fall outside the scope of the ban and other methods of transferring funds such as bank transfers, cheques and other direct payment methods will not necessarily provide financial institutions with the information they require to comply with the legislation.

7 Consequently, experience to date dictates that measures as those proposed are bound to fail where there exists a demand for a range of remote gambling services, unlicensed operators willing to cater to that demand and no equivalent offer from licensed operators.

8 The RGA understands a Member State's desire to "control" the offering of remote gambling services. Unfortunately the unintended effect is to force their own citizens to pursue such opportunities with services in an unregulated market. This is why the RGA continues to pursue a policy of proper regulation which is more likely to reduce problem gambling, prevent under-age gambling and fraud. The RGA policies in all these areas can be found on www.rga.eu.com and are attached here in full.

9 RGA members operate with the utmost integrity and high standards of probity, social responsibility and consumer protection. We believe that the best method of achieving social objectives and protecting citizens is a regulated market where all operators are required to meet the same standards in the fields of consumer protection and social responsibility. The RGA would be happy to assist the Norwegian government find effective solutions to your objectives which are also compatible with the principles of EEA law.

Introduction

1. The RGA asks that the Norwegian Ministry of Culture and Church Affairs expand its consultation from being solely about financial transaction blocking enforcement mechanisms to a broader review of the effective regulation of remote gambling services. No enforcement mechanism or mechanisms have proved very effective in other Member States or elsewhere and the RGA strongly encourages the Norwegian government to take this opportunity to address the more fundamental question of how to regulate online gambling in a non-discriminatory way.
2. The RGA understands that the Norwegian gambling market is governed by the General Civil Penal Code, the Lottery Act, the Gaming Act and the Totalizator Act. Such laws make it illegal for unlicensed entities to provide gambling services to Norwegian citizens. The Ministry of Culture and Church Affairs has proposed to draft regulations to enforce this law through the mechanism of blocking financial transactions between Norwegian citizens and remote gambling operators who are licensed in other jurisdictions.
3. The method being proposed is to target financial institutions which provide methods of payment for Norwegian citizens using remote gambling operators by seeking to define their complicity in the provision of an illegal act – in other words, creating civil liability for financial service institutions who allow such transactions to take place.
4. As such the draft regulations would have to amend the Gaming, Lottery and Totalizator Act to define complicity as the act of processing such transactions between Norwegian citizens and remote gambling operators who are licensed outside of Norway.
5. Powers could be accorded to the Norwegian Gaming and Foundation Authority, working in conjunction with the Financial Supervisory Authority, with the possibility to levy fines against financial institutions who do not uphold the prohibition against financial transactions between Norwegian citizens and remote gambling operators.

6. The RGA understands that the Ministry is not proposing to criminalise Norwegian citizens who continue to seek gambling services with remote gambling operators, but shall only be targeting those transactions which it believes can be identified and stopped. While the current consultation only concerns the enforcement mechanisms, it is set against a backdrop of what is the most appropriate method of regulation. References to the commercial value of remote gambling, statistics concerning problem gambling and measures to prevent crime and fraud broaden the issue from one of enforcement to one of appropriate regulation.
7. The only current legal gambling is provided by the state operators, Norsk Tipping and Norske Rikstoto. There is no indication that gambling services offered by Norsk Tipping and Norsk Rikstoto will be curtailed or eliminated.
8. There is a market for gambling within Norway. The same consultation indicates a player market for remote gambling of 230,000 people in 2006 with an indicative turnover of NOK 6 billion. This of course pales into insignificance when compared with the NOK 44 billion in turnover produced by the entire gambling market (offline and online) in Norway for 2006. The figure for the overall number of players in the Norwegian market across all gambling segments is not made available.
9. It is unclear as to what legal interactive offerings are made available in Norway since section 1.2 clearly states that Norsk Tipping and Norsk Rikstoto are not permitted to offer remote gambling but the market for local remote gambling website must be NOK 0.7 billion (following the calculations in section 1.4).
10. Our purpose in writing at this stage is to set out the remote gambling industry's position in the hope that this will help the Ministry of Culture and Church Affairs in its deliberations about draft regulations.
11. We readily acknowledge the difficult task that the Ministry will have in identifying proposals that it considers necessary for the purpose of adapting Norwegian regulations to market developments and developments in technology, and to developments in EEA law.
12. These are challenges that all European countries will have to address sooner or later, but they do raise a number of complex and perhaps less than welcome issues.

Remote Gambling Association

13. The Remote Gambling Association represents most of the major EU remote gambling companies (a list of our current membership is attached). It was formed in August 2005 following the merger of two earlier associations, the Association of Remote Gambling Operators (ARGO) and the interactive Gaming, Gambling & Betting Association (iGGBA).
14. RGA membership is restricted to operators and software suppliers. The operators must be licensed for gambling purposes somewhere in the European Economic Area, the Isle of Man or the Channel Islands and must adhere to our codes of practice on social responsibility and age verification.
15. We also have an affiliate programme that is primarily composed of legal firms, consultants and conference organisers who have a close interest in our industry.

Compatibility with EEA law

16. One of our predecessor associations, ARGO, published a report setting out the legal background and the case for regulated cross border remote gambling within the European Union. Given that the key principles of free movement of services and capital are the same in the EEA, the document is relevant to Norway and the current proposals. Its arguments are as relevant now as they were then and we would urge you to read and consider it fully.
17. With regard to Norway, we believe that the current restrictions in place, and those being contemplated at the moment, are unjustifiable restrictions on the principles of free movement of services and capital contained in Articles 36 and 40 respectively of the EEA Agreement.
18. It should be noted here that the EFTA Court's decision² that upheld the Norwegian grant of an exclusive licence to operate gaming machines dealt with a completely different market – land based, offline machines. The justification for such action will not necessarily apply to the Internet and gambling services offered on it. We believe that all governments should recognise the omnipresent nature of the Internet and seek to regulate at a level which facilitates services but seeks to mitigate potential harm.

² Case E-1/06 - EFTA Surveillance Authority v The Kingdom of Norway

19. It should not be viewed that a prohibition against remote gambling, because it is shared by the current state operators, is an appropriate response. As the European Commission pointed out in its detailed opinion to Germany on the prohibition of remote gambling in the recently adopted State Treaty, such a prohibition is not consistent with the offer of other gambling services. This was reinforced by the recent Letter of Formal notice to the German government concerning the State Treaty and its conformity with EU law.
20. As you know the European Commission proceedings against several Member States relate to whether restrictions on the supply of betting services from other EU Member States constitute a breach of Article 49³ of the EC Treaty which relates to the free movement of services. The fact that the Commission has taken this action further highlights the difficulties that Norway will have if it continues to allow the promotion and expansion of gambling services through its monopoly suppliers while at the same time restricting access to their markets by competitors from other EEA jurisdictions.
21. The incompatibility of EEA law and Member States' measures to protect their markets has led to many of them being compelled to reform their gambling regulations, replacing protected markets with well regulated markets for all operators. Obvious and recent examples of this are Italy, France and Ireland.

Future regulation

22. It should be noted by the Norwegian authorities that the Swedish government conducted a similar consultation exercise via a high level committee in 2006. The results of this committee were striking, given that the Swedish and Norwegian markets are very similar— same structure, offerings, etc. At the time, the Swedish Committee highlighted that the present regulations in Sweden are inadequate for dealing with international competition, '*particularly via the internet*'. This is not surprising because international competition is inevitable and unavoidable. Any attempt to minimise the extent of this competition through regulations is likely to fail and result in action by the EFTA Surveillance Authority. We expect that the Ministry may reach similar conclusions during its deliberations. Instead we would propose that a system of licensing or authorisation be introduced that allows any company that meets the Norwegian regulatory standards to compete in the Norwegian gambling markets on a non-discriminatory basis.

³ The equivalent to Article 36 of the EEA Agreement

23. The Swedish Committee concluded that '*....there are no effective means of preventing cross-border gaming at the present time, the only feasible way of maintaining Swedish supervision of gaming would be to channel gaming opportunities to this country.*'
24. This level of competition would bring benefits for Norwegian consumers and would encourage Norwegian gambling operators to become increasingly efficient in order to be able to compete effectively. While not all Norwegian gamblers may choose to gamble with Norwegian-authorised operators they would at least be given the opportunity to use companies that are approved by Norwegian regulators.
25. In parallel with this we would recommend that Norwegian and other EEA Member States seriously consider the possibility of agreeing minimum regulatory standards for online gambling operators in their jurisdictions. For example the RGA's codes of practice on social responsibility and age verification (two issues that we would expect all regulators to place a large emphasis on) are applied by our members irrespective of where they are based and so some common standards are already being adopted voluntarily. This would provide a good foundation for developing similar provisions in other areas.
26. The Swedish Committee expressed some concern that '*a higher level of competitiveness may, of course, lead to an increase in gaming and a growth in gambling addiction*'. We would observe that gambling in Norway is already very widespread with the Norwegian state operators. If we add in the availability of online products from outside of Norway it is hard to see how gambling could become much more accessible than it is already and so the increase in gaming has already taken place. The allegation contained in the consultation document that remote gambling is a main contributor to problem gambling is exactly because the state chooses not to regulate in this area. It should come as no surprise that gambling may be more prevalent in this area where the Norwegian government chooses not to regulate this sector. The UK prevalence study, which looks at problem gambling including the online gambling market in the UK, the actual level is moderate compared to some areas and has not risen since the last study despite an increase in the size of the online market. It seems clear that in a well regulated market an increase in the amount of gambling will not necessarily result in an increase in the rate of problem gambling.

27. Any potential growth in gambling addiction must be addressed and the remote gambling industry shares that aim with governments and regulators. The way forward is to work with gambling operators to ensure that they have reasonable measures in place to combat these problems even though they affect a tiny minority of gamblers.

Financial Transaction Blocking

28. The Swedish Committee also declined to propose any sanctions for '*players in Sweden or suppliers of intermediary services, such as Internet Service Providers or banks*'. We strongly support that approach. Such measures have been tried elsewhere and have either failed in practice or are already being challenged through the courts.
29. The last point requires further elaboration due to the misperception in some quarters that financial transaction blocking is an effective measure to prevent Norwegian citizens from gambling with non-authorised gambling sites. However, recent testimony in the US Congress and the US financial community indicates that similar regulations are technically difficult to implement, particularly coupled with exemptions for state operators. Attached please find an appendix with testimony from US financial providers concerning the US law which prohibits financial transaction blocking.
30. In the first instance, many financial transactions do not involve credit cards. Wire transfers, and special payment systems do not code gambling transactions and thus make it impossible to guarantee blocking. As the consultation document states only 68% of all remote gambling transactions by Norwegian citizens involved an instrument (credit card and debit card) by which the transaction ban be identified and thus stopped. This means that 32% of the market is dominated by payment methods which can not distinguish a gambling transaction from any other.
31. There are serious flaws in such a system which would make Norwegian financial institutions liable for civil penalties and fines, but which are legally unenforceable. For instance, a Norwegian citizen may attempt to use his credit card in a country where remote gambling is legal, thus creating all sorts of problems with the extraterritorial application of Norwegian law. A refusal to allow a Norwegian citizen to conduct a gambling transaction in a country where it is legal may bring a legal case where such a citizen's rights are curtailed without basis.

32. It should also be noted that the European Commission has constantly held that financial transaction blocking contravenes the provisions of the EEA Agreement regarding freedom to provide services and free movement of capital under Article 36 and 40 respectively.

Market forces

33. In reviews, such as that to be undertaken by the Ministry, it is sometimes difficult to account for the importance of market forces, but they are a crucial element in assessing regulatory priorities. New technology and communications, especially the Internet, have empowered consumers to a greater degree than ever before and this is a truth that legislators and regulators must accept even if it may not be welcomed by them. Online gambling has grown in popularity so quickly because it is an activity that consumers enjoy and it is one which they will actively seek out even where there are restrictions on advertising.
34. This was amply illustrated in a draft report produced for the European Commission by the Swiss Institute of Comparative Law. In the area of remote gambling it indicated that between 2003 and 2012 there would be an 87% increase in gross gaming revenues in Europe so that the sector would account for around 5% of Europe's gambling markets. Before 2003 there was no remote gaming industry as such and yet in Europe alone it has grown hugely. That would be remarkable in itself, but it must be remembered that it has achieved this growth despite the actions of most Member States, to restrict it. The consultation document supports this desire by customers to consume remote gambling services, noting that turnover for remote gambling has increased each year in Norway from 2004 – 2006.
35. Given this level of consumer demand it is unrealistic to believe that it can be outlawed or held at bay indefinitely. With respect, we would suggest that responsible governments ought to recognise this and work with the industry in the EU to ensure that properly licensed operators thrive in order to keep crime out, to ensure fairness to consumers and to put in place practical measures to assist problem gamblers and to prevent children gambling.

36. It is also interesting to note the experience of the United States. Two years after putting in place a total ban on online gambling, except for interstate horse racing and lottery, a large segment of the historic player market remains, gambling with sites which take US players. The experience shows that despite the best attempts by governments to ban or severely restrict access to online gambling, the actual effect is to simply push players into circumventing controls to continue to access sites which will allow them access.

Conclusion

37. These are subjects where our members between them have more experience and knowledge than anyone else in the world. EEA law is clear on the rights of licensed operators in one Member State to provide their services to customers in another and those are rights that we will actively pursue.
38. Our members, and the regulators in the jurisdictions that they operate from, share the Norwegian objectives of combating crime, ensuring fairness, and protecting the young and vulnerable. We would argue that the protections that they have in place are already at least comparable to those in Norway and that, consequently, there is no justifiable basis for the Norwegian authorities to deny access to the gambling markets in Norway.
39. Regulation rather than prohibition is the only solution that will address the valid concerns of European governments.
40. It is common for there to be well-regulated cross-border provision of services in non-gambling sectors of the EEA market. It is our firm belief that properly licensed EEA based providers of gambling services should be entitled to the same benefits.
41. Norway has nothing to fear from these services and we would recommend that, as well as abiding by its obligations under EEA law, it introduces its own licensing or authorisation regime to enable Norwegian-based companies to compete in this increasingly large international market.

42. All of the evidence points towards a continuing appetite for these products amongst the Norwegian population and the only way for the Norwegian Government to ensure that they receive the necessary protections is to provide them with a regulated alternative that is compliant with EEA Law. That inevitably means providing licences that anyone can apply for on an equal basis and recognising the regulatory controls already in place elsewhere within the EEA.
43. We appreciate that this would call for a significant shift in Norway's current position, but it would provide the necessary safeguards for Norwegian consumers and enable it to comply with EEA law.
44. It is worthwhile to note that the RGA takes no exception to the continued monopoly of the Norwegian lottery which we accept holds a unique position in the gambling market. It is estimated that the majority of taxation and charitable contribution comes from the Norwegian monopoly lottery operator so this should be taken into account when considering options for the future.
45. If the RGA can help in any way with the evolution of this process then we would be only too glad to provide further information or to meet with your regulators or officials from the Ministry of Culture and Church Affairs.

Appendix 1

The stance of US Financial Services firms on the ban on internet gambling transactions

The Unlawful Internet Gambling and Enforcement Act (UIGEA) requires private firms in the financial services sector to identify and block unlawful Internet gambling transactions.

The US Treasury and the US Federal Reserve System are publishing a notice of proposed rulemaking NPRM that requires designated payment systems and all participants to establish and implement written policies and procedures.

In total 127 public submissions were made, including comments from members of the public, religious and social groups, gambling & gaming companies, state agencies, and firms in the financial services sector. This document summarises the opinions expressed by the latter. The full list of submissions can be found at <http://tinyurl.com/2xt8by> or from the Brussels office of Policy Action.

Credit Card & Transaction Services

MoneyGram International

“Requiring an entity like MoneyGram to interpret gambling laws and then identify offending gambling businesses or individuals is simply not a realistic method to implement the Act. Imposing these same requirements on a multitude of participants in U.S. payment systems increases the total cost of the proposed Rules exponentially and unreasonably.”

The Money Services Roundtable (TMSRT)

“As in the case of ACH originators or wire transfer system originating banks, the send agents are not in a position to determine the purpose of the funds transmission. In addition, as noted in the ACH and wire transfer context, the customer/originator may misstate the purpose or fail to comprehend the prohibited nature of the purpose of the transaction and, of course, the send agent will be unable to determine whether the originator’s characterization of the transaction is accurate.”

VISA

“a US cardholder who is temporarily located outside the US may attempt to conduct a gambling transaction over the Internet that would be lawful in the local jurisdiction...the card issuer which maintains the cardholder’s US-based billing address, must be able to rely on the policies and procedures of the card system...and accordingly, identifies and blocks the transaction as a restricted transaction. Similarly, in many other circumstances, it is simply not practical to

distinguish between restricted transactions and transactions that are not restricted on a real-time basis.”

MasterCard Worldwide

“It is not clear to MasterCard whether appropriate codes - or other mechanisms - could be developed to block (or allow issuers to block) only those transactions that are actually restricted transactions. Among the difficulties with developing such an approach is evaluating and understanding the legality of any given Internet gambling transaction.”

Checkfree Corporation

[on the requirement that card systems and money transmitters include ongoing monitoring of websites to detect the unauthorised use of the payment systems' trademarks]

“We are extremely concerned about this proposed requirement, as we find it to be overly vague, potentially costly, and burdensome. The Proposed Regulation does not provide any guidance as to what level of monitoring would be required for the payment system to be deemed in compliance and thus within the safe harbor.”

Western Payments Alliance

“...it places a significant burden on the financial community to sift through the complexities of state and other laws to determine what might be legal or illegal practice by a business.”

PayPal

[On the prospect of developing a list of unlawful Internet gambling businesses]
“Developing such a list would [require] significant investigation and legal analysis. Such analysis could be complicated by the fact that the legality of a particular Internet gambling transaction might change depending on the location of the gambler at the time the transaction was initiated and the location where the bet or wager was received.”

Radix Consulting

“Our extensive experience in payment systems and our work with law enforcement agencies investigating Internet tobacco sales has convinced us that the majority of originating financial institutions that are working with third party senders have no idea of the business nature of the transactions that are being submitted by those third party senders.”

National Money Transmitters Association (NMTA)

“The Act seeks to use the financial system as a 'choke point' to combat Unlawful Internet Gambling (UIG.) In general, this approach has proved problematic for all concerned: it is usually difficult to write such rules, difficult to follow them, difficult to let good transactions through, and difficult to tell if the measures are working or are worth the trouble.”

First Data Corporation

“Businesses that are engaged in illegal activity would not be inclined to code the transactions in a manner that would make them easy to identify and block. In reality, if an illegal Internet gambling code were to be established, it is highly unlikely that merchants would use it so that we, as a processor, could in turn block their transactions.”

The Clearing House

“To expect payment-system participants to police the transactions as they are being processed and to hold the banks responsible for any restricted transactions on an after-the-fact basis is to put them in an untenable situation.”

Commercial Banking

Bank of America

“The proposed rule creates additional oversight responsibilities for financial services companies to undertake at a time when regulatory burdens have been shown to inhibit the competitiveness of U.S. financial institutions.”

Bank of Oklahoma

“While different levels of technology and functionality exist within each of the payment systems, none of the payment systems appear capable of completely differentiating between restricted and unrestricted transactions... It is our understanding that the major card brands assume that only unrestricted (legal) transactions are processed by their participants and that unique Merchant Category Codes and Transaction Codes that distinguish specific forms of gambling are not necessary. However, the Agencies' notice as well as our experiences are similar in that card issuers perceive restricted (illegal) transactions are processed and thus all gambling (restricted and unrestricted) transactions are often blocked.”

Citibank

"In articulating the difficulties involved in compiling a list of unlawful internet gambling businesses, the Agencies have put their finger on the reasons why Systems Participants cannot, given the current vague definition, determine how to comply with their obligations under the regulation."

Wells Fargo

"This transaction identification difficulty is further increased by the challenge the financial institutions confront in identifying the businesses themselves engaged in apparently unlawful Internet gambling. Certainly, the Agencies openly acknowledge this difficulty by electing not to provide a list of such unlawful Internet gambling businesses due to "significant investigation and legal analysis."¹³ Presumably, the financial institutions are saddled with the burden of undertaking such significant investigation and legal analysis."

Compass Bank

"We believe the Proposed Regulation fails because it requires a specific kind of functionality within the payments systems that simply does not exist."

M&T Bank

"M&T Bank does not believe the costs of creating a forfeiture process related to internet gambling have been accurately estimated or incorporated into the analysis of the financial burdens of the regulation... This is such an enormous burden that M&T Bank believes that banks will adopt internal policies refusing to do business with persons engaged in any internet gambling transactions, lawful or otherwise...[and] financial institutions will refuse to do business with entities directly involved in sponsoring internet gambling activities."

Financial Services Roundtable

"Financial institutions cannot do OFAC-type screening unless the government provides an OFAC-style list of names, which the Agencies have made clear they are reluctant to do. Payment systems and financial institutions also are unlikely to compile lists of unlawful Internet gambling businesses for the same reasons that the Agencies have given, together with the added considerations that they do not have the resources that the government has to do the investigations that would be necessary for compiling a list and because of concerns about possible legal liability to any entity that is mistakenly placed on a list."

The proposed rule places the onus on financial institutions to know the purpose and legality of payments. Since gambling laws are geographically based, financial institutions would need to determine where the customer is located when conducting in gambling activities and where computers and other equipment to process the transaction are located."

SunTrust Banks

"If implemented, this regulation would have significant implications for many aspects of the banking system, and more time is needed to consider the details of the proposal and how it could be put into practice...We believe the proposal is seriously flawed and would result in significant new regulatory burdens for banks while still not achieving the objectives of the underlying statute."

Consumer Bankers Association

"CBA and its members believe that the use of the US payment system to enforce various legal requirements imposed by legislation often not directly related to banking places unnecessary stress on this system and has grown to a point that it is a serious burden on banks and other payment system participants."

Kansas Bankers Association

"It occurs to us that there will be many customers who will not qualify as gambling entities. A question we would pose is whether the proposal will speak to the process a financial institution must have in place to demonstrate that it conducted an analysis of their customers to determine whether there was a gambling relationship."

Huntington National Bank

"While Huntington is willing to do its part to implement government policies, the requirements of the proposed rule in deputizing banking institutions and other payment system participants to enforce a social policy against certain forms of gambling create a significant burden on participants and the payment systems affected. This burden is exacerbated when the proposed rule shifts the burden of determining which transactions are legal or illegal to the payment system participants and payment systems, apparently because the federal regulators do not want be making such determinations, and in fact, apparently cannot even agree in certain cases on what is legal or not."

Glacier Bancorp

"To have staff checking the millions of ACH transactions daily scanning for internet gambling is inefficient and costly."

American Bankers Association

"ABA believes that the proposal, in large part due to the nature of the statute itself, will fail to create a practical process for intercepting prohibited conduct that maintains an efficiently functioning payments system."

Securities Industry and Financial Markets Association (SIFMA)

“While it may be possible for an originating bank to obtain information from its customer as to the purpose of the payment, the bank is not in a position to verify the accuracy of the statement. Accordingly, it is not reasonably practical for an originator's bank and an intermediary bank in a wire transfer system to implement policies and procedures that would likely be effective in identifying and blocking or otherwise prevent or prohibit restricted transactions.”

Branch Banking and Trust Company (BB&T)

“BB&T strongly believes that in its current form, the proposed regulation has a number of requirements and areas of inadequate clarity that would make compliance unnecessarily confusing and extremely difficult. Our concerns include, but are not limited to, vague definitions of certain terms and requirements of participants and the potential burden put on financial institutions if certain provisions of the rule are adopted as written.”

Albany Bank & Trust

“The cost and difficulty to comply with this proposed rule would greatly increase the cost of operations for this bank.”

Alston & Bird

“The Proposed Regulation is fatally deficient.”

Farmers Bank & Capital Trust

“Our ACH system is one of the most effective payments systems and this regulation will muddle that effectiveness will making banks the primary “rule” maker, regulator and decisions maker.”

Sovereign Bank

“Placing the burden of identifying unlawful Internet gambling businesses on the employees of every financial institution in the country would not be effective and would place yet another significant financial burden and liability on this country's financial institutions.”

Western Security Bank

“This intrusive monitoring places financial institutions between their customers and their money without cause... Additionally, the cost to monitor this activity will be burdensome to financial institutions and ultimately the cost would have to be passed on to the consumers, through higher service charges and/or lower rates paid for their deposits. ACH or electronic transactions comprise a huge amount of the transaction base being processed by financial institutions on a daily basis. To monitor for a specific type of purchase would be near impossible to perform with the current ACH structure in place.”

Community Banks & Credit Unions

National Association of Federal Credit Unions (NAFCU)

“[We] 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.”

Credit Union National Association (CUNA)

“the proposal raises a number of serious and practical concerns that we believe will make compliance for institutions extremely difficult, if not virtually impossible.”

Independent Community Bankers of America (ICBA)

“ICBA is deeply concerned when our nation’s payment systems are used to track, analyze, and block individual payment transactions given the potential for such activity to undermine payment systems efficiency. Payment systems were not designed for this function..”

Association of Corporate Credit Unions (ACCU)

“The basic rule should be the “know your member” rule, and corporate credit unions do not and cannot know the natural person member of a credit union whose transaction is flowing through the corporate credit union..”

Boeing Employee Credit Union (BECU)

“In today’s automated world, it is impractical (to impossible) to analyze, and execute on, each transaction that is in question. The burden far outweighs any benefit. Requirements to analyze all ACH transactions would make our automated systems ineffective as this would require a manual review.”

Corporate Central Credit Union

“Corporate Central has concern regarding the proposed rule expectations for a financial institution to monitor for unlawful Internet gambling.”

California and Nevada Credit Union Leagues

“the current proposal falls substantially short in recognizing the complexity and operational burdens that implementation of the proposal would involve. We believe these shortcomings are significant enough to make the proposed rules unworkable — or, at the least, highly ineffective ... We are also troubled that the proposal does not contain a complete assessment of the potential costs to credit unions, financial institutions, small businesses, and other payment system participants.”

Corporate One Federal Credit Union

“Given the proposed impact on operations, Corporate One believes the Proposed Rules should broadly exempt third party processors and intermediary financial institutions. Corporate One maintains this position, because third party processors and intermediary financial institutions do not actually own the

accounts involved, nor do they have direct interaction with those engaged in unlawful Internet gambling. Consequently, third party processors and intermediary financial institutions are not in a position to identify restricted transactions.”

Navy Federal Credit Union

“it seems irresponsible to require 18,000 depository institutions to individually research numerous complex state and federal laws as a prerequisite to developing individual institution policies and procedures.”

State Department Federal Credit Union

“we are concerned that the implementation of the Act will create an undue burden on financial intuitions and slow the pace of innovation in the financial services industry by effectively making the financial services industry the Internet gambling police.”

U.S. Central Federal Credit Union

“...the inability to easily distinguish between Internet gambling transactions that are lawful and those that are unlawful places financial transaction providers with a difficult choice. Because of the difficulty of determining what Internet gambling transactions are lawful, it is likely that depository institutions will simply choose to refuse to do business with persons who engage in Internet gambling transactions.”

Think Tanks & Other

Center for Regulatory Effectiveness

“The Departments has not provided the required objectively supported estimate of burden on depository institutions, card systems, money transmitting businesses and other financial organizations.”

Chamber of Commerce of the United States of America

“the Chamber strongly encourages you not to approve the proposed collection of information associated with the UIGEA unless and until it fully complies with all statutory requirements..”

Comptroller of the Currency

“It is unclear whether these generally applicable requirements are realistic or are likely to be effective in all cases. The foreign institutions are not subject to the Act and the contractual provisions suggested by the Proposed Rule may be difficult for U.S. banks to negotiate or enforce as a business matter..”

Depository Trust & Clearing Corporation

“Because the DTCC clearing agency subsidiaries are not in a position to assess the risk that the entities with whom the subsidiaries deal directly are submitting Restricted Transactions, imposition of the requirements of the Proposed Regulations on the securities clearing agencies would cause delays in processing and hinder their mission to clear and settle transactions promptly and accurately.”

Electronic Check Clearing House Organization

[on the obligation for inclusion of UIGEA adherence into the terms of Commercial Account Agreements]

“We are concerned that this example of a policy will, as a practical matter, be difficult for banks to implement for existing commercial customers. It is our experience that many commercial customer agreements cannot be amended without the written agreement of the commercial customer.”