



GUNSTER

ATTORNEYS AT LAW

December 2009

Deadline to Comply with the Requirements of the Unlawful Internet Gambling Enforcement Act is Extended

In November 2008, the United States Department of the Treasury and the Board of Governors of the Federal Reserve System ("Agencies") issued a joint final regulation ("Final Rule") implementing the Unlawful Internet Gambling Enforcement Act of 2006 ("Act").

The Act prohibits gambling businesses from knowingly accepting payments in connection with unlawful Internet gambling, including payments made through credit cards, electronic funds transfers and checks.

Among others, the Final Rule: (i) designates payment systems that could be used in connection with or to facilitate unlawful Internet gambling transactions restricted by the Act; (ii) exempts certain participants in designated payment systems; and (iii) requires non-exempt participants in designated systems to establish and implement policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit, unlawful Internet gambling transactions.

The Final Rule established an effective date of January 19, 2009 and a compliance date of December 1, 2009.

Following comments expressing concern that the Act and the Final Rule do not provide a clear definition

of "unlawful Internet gambling" and a request to extend the compliance date of the Final Rule, the Agencies, on November 27, 2009, announced a six (6) month extension of the compliance date. Accordingly, **the compliance date for the Final Rule is now June 1, 2010.** The Final Rule's effective date remains unchanged.

A copy of the Final Rule can be found at: www.treas.gov/press/releases/reports/unlawfuintern/etgambing11.12.08.pdf

* * *

Should you wish to receive further information concerning matters discussed in this publication, please contact:

Clemente L. Vazquez-Bello
305.376.6082 • cvazquez-bello@gunster.com

Andres A. Fernandez
305.376.6097 • afernandez@gunster.com

Marina Olman
305.376.6069 • molman@gunster.com

MIAMI 473571.1

This publication is for general information only. It is not legal advice, and legal counsel should be contacted before any action is taken which might be influenced by this publication.

FEDERAL RESERVE SYSTEM

12 CFR Part 233

Regulation GG; Docket No. R-1298

DEPARTMENT OF THE TREASURY

31 CFR Part 132

RIN 1505-AB78

PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

AGENCIES: Board of Governors of the Federal Reserve System and Departmental Offices, Department of the Treasury.

ACTION: Final rule; extension of compliance date.

SUMMARY: This document is published jointly by the Board of Governors of the Federal Reserve System ("Board") and Departmental Offices, Department of the Treasury ("Treasury") (collectively, the "Agencies") to extend the compliance date for the final regulation implementing applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the "Act").¹ ~~The final regulation requires non-exempt participants in designated payment systems to establish and implement written policies and procedures that are reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act.~~ In extending the compliance date, the Agencies have consulted with the Department of Justice, as required by the Act.

¹ The final regulation adopted by the Board is Regulation GG (12 CFR Part 233) and the final regulation adopted by the Treasury is codified in 31 CFR Part 132. Regulation GG and 31 CFR Part 132 duplicate one another.

DATES: The effective date of the final regulation published November 18, 2008 (73 FR 69382) remains January 19, 2009. The compliance date of the final regulation is extended from December 1, 2009 to June 1, 2010.

FOR FURTHER INFORMATION CONTACT:

BOARD: Christopher W. Clubb, Senior Counsel (202/452-3904), Legal Division; Jeffrey S. Yeganeh, Manager, or Joseph Baressi, Financial Services Project Leader (202/452-3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263-4869.

TREASURY: Charles Klingman, Director, Office of Critical Infrastructure Protection and Compliance Policy; or Steven D. Laughton, Senior Counsel, Office of the Assistant General Counsel (Banking & Finance), 202/622-9209.

SUPPLEMENTARY INFORMATION:

I. Summary

On November 18, 2008, the Agencies issued a joint final regulation implementing the Act.² Among other things, the final regulation designates payment systems that could be utilized in connection with or to facilitate unlawful Internet gambling transactions restricted by the Act; exempts certain participants in designated payment systems; requires non-exempt participants in designated payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act; and identifies types of policies and procedures (including non-exclusive examples) that would be deemed to be reasonably designed to identify and block or otherwise prevent or prohibit unlawful

² 73 FR 69382 (Nov. 18, 2008).

Internet gambling transactions restricted by the Act. The final regulation established an effective date of January 19, 2009 and a compliance date of December 1, 2009.

By letter dated September 18, 2009, the Agencies received a petition requesting an extension of the compliance date of the final regulation for an additional twelve months to December 1, 2010.³ The petitioners assert that an extension of the compliance date is necessary because a significant number of regulated entities will not have in place the necessary policies and procedures by the current December 1, 2009 compliance date. Petitioners assert that many small regulated entities do not have the resources necessary to develop and implement appropriate policies and procedures by the December 1, 2009 compliance date and cite the possibility of confusion regarding the term “unlawful Internet gambling.”

The Agencies have received letters in support of the petition from regulated financial institutions, associations representing regulated financial institutions, and members of Congress.⁴ Some of these commenters assert that the compliance date of December 1, 2009 will not be achievable for many regulated entities despite their good-faith efforts to achieve full compliance. Commenters expressed concern that the Act and the final regulation do not provide a clear definition of “unlawful Internet gambling,” which is central to compliance.⁵ In addition, certain members of Congress acknowledged that the Act does not contain a clear definition of “unlawful Internet gambling” and

³ The petition was submitted on behalf of three gambling industry associations; specifically, the Poker Players Alliance, the National Thoroughbred Racing Association, and the American Greyhound Track Owners Association.

⁴ See, e.g., letters from Wells Fargo (Oct. 21, 2009); the American Bankers Association (Nov. 4, 2009); the Credit Union National Association (Oct. 5, 2009); the National Association of Federal Credit Unions (Nov. 9, 2009); and members of Congress (Rep. Frank et al) (Oct. 1, 2009).

⁵ See, e.g., letter from the Independent Community Bankers of America (Nov. 5, 2009), p. 1.

expressed an intent to consider legislation that would allow problematic aspects of the Act to be addressed.⁶ Several of these members of Congress stated that there is considerable interest in Congress in clarifying the laws underlying Internet gambling, and that it would be prudent to defer the compliance date until Congress has had time to act. The Agencies have also received letters opposing the petition citing, among other things, the speculative nature of the problems raised by petitioners, the associations and other interest groups.⁷ All of the opposition letters are from members of Congress.⁸

While the final regulation affords regulated entities maximum flexibility in establishing and implementing policies and procedures that are reasonably designed to prevent or prohibit unlawful Internet gambling transactions restricted by the Act, the Agencies acknowledge some of the challenges regulated entities are experiencing with the Act's definition of "unlawful Internet gambling."⁹ Moreover, as noted above, several members of Congress have indicated interest in revising the Act.

The Agencies are thus persuaded that a limited extension of the compliance date for regulated entities is appropriate. While representations made by the associations whose members are required to comply with the final regulation and thus are in a position to assess the level of difficulty and burden in achieving compliance by the December 1,

⁶ See, e.g., letter from Senator Reid (Nov. 9, 2009); letter from Chairman Frank, House Committee on Financial Services (Oct. 1, 2009); and letter from Reps. Cohen, Berkley et al (Sept. 25, 2009).

⁷ See, e.g., letter from Senator Kyl and Representative Bachus (Nov. 3, 2009).

⁸ The petition and comment letters are available for public inspection and copying in the Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. You can make an appointment to inspect the petition and the comments by calling (202) 622-0990. The petition and comment letters are available from the Board's Web site at http://www.federalreserve.gov/generalinfo/foia/index.cfm?doc_id=R%2D1298&doc_ver=1.

⁹ In the final regulation, the Agencies address the desire for more certainty that would result from a precise regulatory definition of "unlawful Internet gambling" through the due diligence guidance contained in section __.6(b) of the final regulation. See 73 FR 69382, 69384 (Nov. 18, 2008).

2009, compliance date indicate that compliance is not achievable by some institutions by December 1, 2009, neither petitioners nor commenters supporting the petition have provided the Agencies with sufficient data or documentation to justify a twelve month extension of the compliance date. The Agencies believe that a six month extension is sufficient for regulated entities to address issues related to the definition of “unlawful Internet gambling.” For example, section ____6(b) of the final regulation makes it clear that non-exempt participants may rely on documentation provided by a commercial customer regarding the legality of Internet gambling activities. This shifting of the burden will enhance the ability of regulated entities to comply with the challenging definition of “unlawful Internet gambling” contained in the Act and the final regulation. In particular, the six month extension of the compliance period will facilitate the establishment of policies and procedures that require gambling businesses to document the legality of their activities to regulated entities. Accordingly, the compliance date for the final regulation is extended to June 1, 2010.¹⁰ The final regulation’s effective date of January 19, 2009 remains unchanged.

II. Administrative Law Matters

A. Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

¹⁰ Regulated entities may establish and implement the written policies and procedures required by the Act and the final regulation before the June 1, 2010 compliance date.

C. Administrative Procedure Act

The Agencies find that, for good cause and the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date for the final regulation are impracticable, unnecessary, or contrary to the public interest.¹¹ In this regard, the Agencies also believe that regulated entities need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation process accordingly. The change to the compliance date is effective upon publication in the Federal Register.¹²

D. Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4; 2 U.S.C. 1532)

Treasury has concluded the extension of the compliance date 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 \$100 million or more (adjusted for inflation) in any one year.

E. Plain Language

¹¹ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (hereinafter “APA”) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impracticable, unnecessary, or contrary to the public interest.”).

¹² This date is less than 30 days after publication in the Federal Register, in accordance with the APA, which allows effectiveness in less than 30 days after publication for “good cause.” See 5 U.S.C. 553(d)(3). The legislative history of Section 553(d)(3) indicates that its primary purpose was to afford persons affected a reasonable time to prepare for the effective date of a rule. The Agencies believe that there is good cause for dispensing with the 30 day delayed effective date because the immediate extension of the compliance date will have the beneficial effect of affording regulated entities additional preparation time.

Each Federal banking agency, such as the Board, is required to use plain language in all proposed and final rulemakings published after January 1, 2000. 12 U.S.C. 4809. In addition, in 1998, the President issued a memorandum directing each agency in the Executive branch, such as Treasury, to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The Agencies have sought to present this final rule, to the extent possible, in a simple and straightforward manner.

[THIS SIGNATURE PAGE PERTAINS TO THE NOTICE TITLED, "PROHIBITION
ON FUNDING OF UNLAWFUL INTERNET GAMBLING"]

By order of the Board of Governors of the Federal Reserve System, November
25, 2009.

Jennifer J. Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE NOTICE TITLED, "PROHIBITION
ON FUNDING OF UNLAWFUL INTERNET GAMBLING"]

Dated: November 25, 2009

By the Department of the Treasury.

Michael S. Barr (signed)
Michael S. Barr
Assistant Secretary for Financial Institutions