

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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April 1, 2008

The Honorable Luis V. Gutierrez
Chairman
Subcommittee on Domestic and International
Monetary Policy, Trade
and Technology
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Ron Paul
Ranking Member
Subcommittee on Domestic and International
Monetary Policy, Trade
and Technology
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Gutierrez and Ranking Member Paul:

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses of every size, sector, and region, applauds the Subcommittee on Domestic and International Monetary Policy, Trade, and Technology's decision to hold an oversight hearing on the proposed regulations issued pursuant to the Unlawful Internet Gambling Enforcement Act (UIGEA).

During congressional consideration of the UIGEA, the Chamber voiced its concerns that the statute could become confusing or burdensome to businesses affected by the regulations. Having now seen the proposed regulations issued by the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve (the Fed), the Chamber remains concerned and hopes your hearing will help address this.

1. The proposed rule does not define "restricted transaction."

One problem with the proposed rule is its failure to clarify what constitutes a restricted transaction for the purpose of the rule. In several places in the preamble to the proposed rule, Treasury and the Fed cite the difficulty of making that determination. Instead, the proposed rule imposes the burden on banks and payment processors. Differences in interpretation of the Wire Act (18 U.S.C. Section 1084) between the Department of Justice and the courts account for part of this. Finally, there is considerable confusion about the meaning of the exemption provisions, particularly the exemption for wagers conducted pursuant to the Interstate Horseracing Act (IHA). For instance, it is not clear from which states it is legal to take bets under the IHA.

In its previously filed comments, the Chamber proposed that Treasury and the Fed resolve these questions in a formal rulemaking proceeding with an Administrative Law

Judge (ALJ) before having the proposed rule take effect, and the Chamber continues to believe that this is the best way to provide clarity to the regulated community.

2. The proposed rule does not comply with the Regulatory Flexibility Act.

The U.S. Small Business Administration (SBA) has filed comments to the effect that the proposed rule fails to comply with the Regulatory Flexibility Act in that the proposed rule's Initial Regulatory Flexibility Analysis (IRFA) failed to adequately assess the regulatory burden on small businesses. In their letter, SBA asserts that, in order to comply with the law, Treasury and the Fed should perform a more complete IRFA and solicit public comments on it before seeking to finalize the rule. As strong supporters of small business and the Regulatory Flexibility Act, the Chamber supports SBA's position.

3. The proposed rule could strain the international banking system.

The Chamber is concerned about the burden posed on the international relationships of U.S. banks. Although the extent of the burden is not clear under the proposed rule, it appears that U.S. banks would have to perform due diligence, not only with respect to each of their relationships with non-U.S. financial institutions, but with respect to every relationship of those institutions, possibly resulting in multiple degrees of know-your-customer responsibility. The rule would also compel U.S. banks to require all of their foreign partners and all of those banks' partners to refrain from providing merchant services to companies that might be accepting "illegal Internet wagers"—which neither the proposed rule nor UIGEA define—even though those companies are operating legally in the jurisdictions where they are situated.

This effort to use access to the U.S. banking system as a mechanism to leverage enforcement of U.S. laws by foreign banks could prove to be a strain on the international banking system. Foreign banks comply with these sorts of requirements in the course of fighting terrorism, but it is unclear whether they would be as accommodating with respect to Internet wagering. For example, the U.S. stance on Internet gambling has already caused the U.S. to lose one WTO case, and to undertake the unprecedented step of trying to withdraw a WTO obligation in response to an adverse decision. As strong supporters of the U.S. banking system and of international trade, the Chamber is concerned that the proposed UIGEA rule could exacerbate this situation.

4. The proposed rule needs to be considered in the context of the broader regulatory burden on U.S. financial institutions.

There are many areas where banks are pressed into the service of the federal government. From helping to track the finances of terrorists and organized crime syndicates, to community lending, banks are already carrying the substantial burden of many other laws, which are much more directly linked to the banks' underlying business than is the UIGEA. The Chamber suggests that the regulatory burden imposed by this rule should reflect that reality.

To be clear, the Chamber understands that Treasury and the Fed face a challenge in trying to prevent millions of Americans from gambling online. In the UIGEA, Congress chose to impose this burden on banks and payment processors. If the federal government is going to take this step, it must provide as much clarity as possible and should promulgate rules that reflect the broader regulatory burden already placed on U.S. financial institutions by other laws and regulations. The proposed rule succeeds at neither.

Again, thank you for holding this hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Josten", written in a cursive style.

Bruce Josten

Cc: Members of the Subcommittee on Domestic and International Monetary Policy, Trade, and Technology