Supporting Statement for the
Recordkeeping Requirements Associated with
Regulation GG (FR 4026; OMB No. 7100-NEW)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to implement the Recordkeeping Requirements Associated with Regulation GG. The Paperwork Reduction Act (PRA) classifies reporting, recordkeeping, or disclosure requirements of a regulation as an "information collection."[1] On October 4, 2007, the Federal Reserve published a notice in the *Federal Register* (72 FR 56680) requesting public comment on the recordkeeping requirements associated with applicable provisions under section 802 of the Unlawful Internet Gambling Enforcement Act of 2006. The comment period for this notice expires on December 12, 2007

The Secretary of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Federal Reserve) (together, the agencies) in consultation with the U.S. Attorney General, jointly are issuing a notice of proposed rulemaking (NPR) to implement applicable provisions under section 802 of the Unlawful Internet Gambling Enforcement Act of 2006 (Act). The proposed rule requires participants in designated payment systems to establish written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling.[2] The collection of information in the proposed rule is in sections 5 and 6.[3]

Section 5 of the regulations requires all non-exempt participants in the designated payment systems to establish and implement policies and procedures in order to identify and block, or otherwise prevent or prohibit, restricted transactions. In addition, section 5 states that a participant in a designated payment system can rely on policies and procedures established by the payment system if the system's policies and procedures otherwise comply with the requirements of the regulation.

Section 6 of the regulations sets out for each designated payment system non-exclusive examples of policies and procedures the Agencies believe are reasonably designed to prevent or prohibit restricted transactions for non-exempt participants in the system. The Federal Reserve estimates 134,451 financial institutions will establish and maintain the policies and procedures required by Section 5 and 6 of the Act. The annual

[1] 44 U.S.C. § 3501 et seq.

[2] 31 C.F.R.§132.5(a).

[3] This information is required by section 802 of the Act, which requires the Agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions.

recordkeeping burden for establishing and maintaining these policies and procedures is estimated to be 322,779 hours.

Background and Justification

On October 13, 2006, President Bush signed into law the Unlawful Internet Gambling Enforcement Act of 2006. In general, the Act prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Such transactions are termed "restricted transactions." The Act generally defines "unlawful Internet gambling" as placing, receiving, or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.[4] The Act states that its provisions should not be construed to alter, limit, or extend any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.[5] The Act does not spell out which activities are legal and which are illegal, but rather relies on the underlying substantive Federal and State laws.[6]

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[4] From the general definition, the Act exempts three categories of transactions: (i) intrastate transactions (a bet or wager made exclusively within a single State, whose State law or regulation contains certain safeguards regarding such transactions and expressly authorizes the bet or wager and the method by which the bet or wager is made, and which does not violate any provision of applicable Federal gaming statutes); (ii) intratribal transactions (a bet or wager made exclusively within the Indian lands of a single Indian tribe or between the Indian lands of two or more Indian tribes as authorized by Federal law, if the bet or wager and the method by which the bet or wager is made is expressly authorized by and complies with applicable Tribal ordinance or resolution (and Tribal-State Compact, if applicable) and includes certain safeguards regarding such transaction, and if the bet or wager does not violate applicable Federal gaming statutes); and (iii) interstate horseracing transactions (any activity that is allowed under the Interstate Horseracing Act of 1978, 15 U.S.C. 3001 *et seq.*).

The Department of Justice has consistently taken the position that the interstate transmission of bets and wagers, including bets and wagers on horse races, violates federal law and that the Interstate Horseracing Act did not alter or amend the federal criminal statutes prohibiting such transmission of bets and wagers. The horse racing industry disagrees with this position. While the Act provides that the definition of "unlawful Internet gambling" does not include "activity that is allowed under the Interstate Horseracing Act of 1978," 31 U.S.C. § 5362(10)(D)(i), Congress expressly recognized the disagreement over the interplay between the IHA and the federal criminal laws relating to gambling and determined that the Act would not take a position on this issue. Rather, the Sense of Congress provision, codified at 31 U.S.C. § 5362(10)(D)(iii), states as follows:

> It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of enactment of this subchapter. This subchapter is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.

[5] 31 U.S.C. 5361(b).

[6] See H. Rep. No. 109-412 (pt. 1) p.10.

Description of Information Collection

The Act requires the Agencies (in consultation with the U.S. Attorney General) to designate payment systems that could be used in connection with or to facilitate restricted transactions. Such a designation makes the payment system, and financial transaction providers participating in the system, subject to the requirements of the regulations.[7] The Act further requires the Agencies (in consultation with the U.S. Attorney General) to prescribe regulations requiring designated payment systems and financial transaction providers participating in each designated payment system to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The regulations must identify types of policies and procedures that would be deemed to be reasonably designed to achieve this objective, including non-exclusive examples. The Act also requires the Agencies to exempt certain restricted transactions or designated payment systems from any requirement imposed by the regulations if the Agencies jointly determine that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions.

Under the Act, a participant in a designated payment system is considered to be in compliance with the regulations if it relies on and complies with the policies and procedures of the designated payment system and such policies and procedures comply with the requirements of the Agencies' regulations. The Act also directs the Agencies to ensure that transactions in connection with any activity excluded from the Act's definition of unlawful Internet gambling, such as qualifying intrastate transactions, intratribal transactions, or interstate horseracing transactions, are not blocked or otherwise prevented or prohibited by the prescribed regulations.

Section 5 and 6 contain new information collection requirements. Details of the requirements for each section are provided below.

Section 5. Section 5 of the proposed regulations requires all non-exempt participants in the designated payment systems to establish and implement written policies and procedures in order to identify and block, or otherwise prevent or prohibit, restricted transactions. In accordance with the Act, section 5 states that a participant in a designated payment system shall be considered in compliance with this requirement if the designated payment system of which it is a participant has established written policies and procedures to prevent or prohibit restricted transactions and the participant relies on, and complies with, the policies and procedures of the designated payment system. In other words, the Act and the proposed rule permit non-exempt participants in a designated payment system to either (i) establish their own policies and procedures to prevent or prohibit restricted transactions; or (ii) rely on and comply with the policies and

[7] The Act defines "financial transaction provider" as a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network or other participant in a designated payment system.

procedures established by the designated payment system, so long as such policies and procedures comply with the regulation.

Section 6. Section 6 of the proposed regulations sets out examples of policies and procedures the Agencies believe are reasonably designed to prevent or prohibit restricted transactions for non-exempt participants in the system for each designated payment system. Under the proposed rule, non-exempt participants in each designated payment system should maintain policies and procedures that (i) address methods for conducting due diligence in establishing and maintaining a commercial customer relationship designed to ensure that the commercial customer does not originate or receive restricted transactions through the customer relationship; and (ii) include procedures reasonably designed to prevent or prohibit restricted transactions, including procedures to be followed with respect to a customer if the participant discovers the customer has been engaging in restricted transactions through its customer relationship.

Time Schedule for Information Collection

The proposed rule does not include a specific time period for record retention, however, non-exempt participants would be required to maintain the policies and procedures for a particular designated payment system as long as they participate in that system.

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Consultation Outside the Agency

All of the Board's rulemaking activities are subject to the notice and comment requirements of the Administrative Procedure Act. On October 4, 2007, the Agencies published a notice of proposed rulemaking in the *Federal Register* to seek public comment on the recordkeeping requirements associated with Regulation GG. The comment period for this notice expires on December 12, 2007.

Legal Status

The Board's Legal Division has determined that 31 U.S.C. § 5364 (a) authorizes the Board to require the information collection under the terms of Section 802 of the Unlawful Internet Gambling Enforcement Act of 2006. The rule requires covered payment system participants to adopt policies and procedures, but does not require them to be submitted to the Board, so normally no confidentiality issues would be implicated. To the extent the policies and procedures were obtained by the Board through the examination process, they could be afforded confidential treatment, 5 U.S.C. §552(b)(8).

Estimate of Respondent Burden

The total annual burden for the FR 4026 is 322,779 hours, as shown in the table below. The total burden represents less than 1 percent of the total Federal Reserve System paperwork burden.

The Federal Reserve estimates that approximately 7,847 depository institutions and card servicers will be required to establish policies and procedures under Section 5 and 6. The Federal Reserve estimates that the initial burden of creating new policies and procedures will average twenty-four hours for each depository institution and card system operators. Money transmitting businesses are not included in this estimate, because certain large money transmitting business operators have their own centralized policies and procedures to prevent unlawful gambling transactions. Small money transmitters, acting as agents in these large systems, may be able to rely on the system's policies and policies, and therefore would not need to establish their own policies and procedures.

The Federal Reserve also estimates that approximately 126,604 depository institutions, card system operators, and money transmitting businesses will be required to maintain policies and procedures under Section 5 and 6. The Federal Reserve estimates that the burden of maintaining the policies and procedures once they are established will be one hour per year.

	Number of respondents	*Estimated annual frequency*	*Estimated response time*	*Estimated annual burden hours*
Section 5				
Recordkeeping - depository institutions and card operators	7,847	1	25 hours	196, 175
Section 6				
Recordkeeping – depository institutions, card system operators and money transmitting businesses	126,604	1	1 hour	126,604
Total				322,779

The total cost to the public is estimated to be $19,899,325.[8]

[8] Total cost to Federal Reserve respondents was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% - Clerical @ $25, 45% - Managerial or Technical @ $55, 15% - Senior Management @ $100, and 10% - Legal Counsel @ $144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and

Estimate of Cost to the Federal Reserve System

The annual cost to the Federal Reserve System for collecting this information is negligible.

Statistics, *Occupational Employment and Wages*, news release.