

Department of the Treasury, Departmental Offices
Supporting Statement and Request for Clearance
Final Rule – 31 C.F.R. Part 132 –
Prohibition on Funding of Unlawful Internet Gambling

A. Justification

1. Circumstances necessitating the collection of information

The Unlawful Internet Gambling Enforcement Act of 2006 (Act) (enacted as Title VIII of the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884, and codified at 31 U.S.C. §§ 5361 – 5367) requires the Secretary of the Treasury and the Board of Governors of the Federal Reserve System (Board), in consultation with the Attorney General, to prescribe regulations requiring designated payment systems and all participants therein to prevent or prohibit unlawful Internet gambling transactions (referred to in the Act as “restricted transactions”) through the establishment of reasonably designed policies and procedures. 31 U.S.C. § 5364(a).

To carry out the Act, the Treasury’s Departmental Offices and the Board, after consulting with the Justice Department, are publishing in the Federal Register a final rule. The final rule will require designated payment systems and all participants therein (referred to collectively in the final rule as “participants in designated payment systems”) to establish and implement written policies and procedures reasonably designed to prevent or prohibit restricted transactions. 31 C.F.R. § 132.5(a).

2. Method of Collection and Use of the Data

The final rule imposes a recordkeeping requirement on regulated entities (i.e., depository institutions, money transmitting business operators such as Western Union, MoneyGram, and PayPal, and card system operators such as Visa and MasterCard) by requiring them to establish and maintain written policies and procedures reasonably designed to prevent or prohibit restricted transactions.

3. Use of Information Technology

The recordkeeping requirement affords regulated entities maximum flexibility in the use of information technology to maintain the written policies and procedures. Specifically, the final rule neither prescribes nor prohibits the use of any type of information technology.

4. Efforts to Identify Duplication

The recordkeeping requirement does not duplicate any other Treasury recordkeeping requirements.

5. Impact on Small Entities

The recordkeeping requirement in the final rule does not appear to have a significant economic impact on a substantial number of regulated small entities. The Act mandates that the Treasury and the Board jointly prescribe regulations requiring participants in designated payment systems to prevent or prohibit restricted transactions through the establishment of reasonably designed policies and procedures. As a result, the economic impact of the recordkeeping requirement on regulated entities, including small entities, flows directly from the Act, and not the final rule. Moreover, steps have been taken to minimize recordkeeping burdens on regulated small entities in that the final rule does not prescribe how such regulated entities are to establish and maintain their written policies and procedures. Additionally, the proposed rule estimated that approximately 253,368 small entities would be subject to the rule. The final rule estimates that approximately 12,267 small entities or less than five percent of the total number of small entities estimated in the proposed rule will be subject to the final rule. This estimated reduction stems from the narrowing of the designation of money transmitting businesses as a designated payment system and the exemption of all money transmitting business participants other than the operator. Treasury thus believes that the final rule will not affect a substantial number of small entities.

Moreover, in response to the public comments received on the proposed rule, the final rule contains changes that will reduce the economic impact on regulated small entities. For example, the proposed rule contained a six month delayed effective date. Many commenters stated that this was insufficient time to implement the rule. Based on these comments, the final rule requires regulated entities, including regulated small entities, to be in compliance with the final rule twelve months after its publication. This longer period will give regulated small entities more time to establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent restricted transactions, and may reduce small entities' costs of complying with the final rule.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

The recordkeeping requirement in the final rule is required by the Act.

7. Circumstances Requiring Special Information Collection

The recordkeeping requirement in the Act and in the final rule has no sunset date, and as a result recordkeepers will be required to maintain their written policies and procedures for a particular designated payment system as long as they participate in that system.

8. Solicitation of Comments on Information Collection

The Treasury and the Board published a notice of proposed rulemaking (NPRM) in the Federal Register. See 72 FR 56680 (October 4, 2007). The NPRM solicited public comment on the recordkeeping requirement contained in the proposed rule. See 72 FR

56680, 56694. The Treasury and the Board collectively received seven comment letters (from a law firm, a depository institution, a member of Congress, an individual, a government agency, and two business/trade associations) that addressed the recordkeeping issues. Broadly, all commenters stated that the recordkeeping burden estimates contained in the NPRM were too low. Based on these comments, the burden hour estimates have, for the most part, been substantially increased. In the NPRM, the initial burden of establishing the policies and procedures required by the Act was estimated at 24 hours per recordkeeper for depository institutions and card servicers. In the final rule, for example, the initial burden of establishing the policies and procedures is estimated to be 100 hours for depository institutions consisting of commercial banks, savings associations, and card system operators. With regard to credit unions, the final rule estimates the initial burden to be only 20 hours per credit union recordkeeper because credit unions generally have very few, if any, commercial customers. Without commercial customers, credit unions would not need policies and procedures as extensive as those depository institutions which have commercial customers that might be Internet gambling businesses. Similarly, in the NPRM the annual burden of maintaining the policies and procedures once they are established was estimated to be 1 hour per recordkeeper. The final rule estimates that the annual burden of maintaining the policies and procedures is 8 hours per recordkeeper.

9. Provision of Payments to Recordkeepers

Not applicable. The final rule does not provide for making payments or gifts to recordkeepers.

10. Assurance of Confidentiality

Not applicable. The final rule contains no assurances of confidentiality.

11. Justification of Sensitive Questions

Not applicable. The final rule neither contains questions of a sensitive nature nor does it require regulated entities in establishing and implementing written policies and procedures to ask questions of a sensitive nature.

12. Estimate of the Hour Burden of Information Collection

- The total estimated number of recordkeepers is 9,148 consisting of 4,240 commercial banks, 829 savings associations, 4,068 credit unions, 8 money transmitting business operators, and 3 card system operators.
- The frequency of recordkeeping is once.
- The estimated annual hour burden to establish the written policies and procedures required by the Act is 100 hours for each commercial bank, savings association, and card system operator; 20 hours for each credit union; and 120 hours for each

money transmitting business operator. This estimate is based on the Board's consumer regulations which require the establishment of policies and procedures and estimate a one-time burden of 80 hours.

- The estimated annual hour burden to maintain the written policies and procedures once they are established is 8 hours per recordkeeper for all 9,148 recordkeepers. This estimate of hour burden is based on the Board's consumer regulations which require the establishment of policies and procedures with an ongoing burden of maintaining such policies and procedures.
- Total estimated annual recordkeeping burden: One-time burden, 589,520 hours and ongoing burden, 73,184 hours.
- Total estimated cost to establish the policies and procedures is \$51,258,764 based on the following formula - percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 20% clerical @ \$25; 25% Managerial or Technical @ \$55; 25% Senior Management @ \$100; and 30% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the U.S. Department of Labor, Bureau of Labor Statistics' occupational employment statistics for compliance officers, dated May 2007.
- Total estimated annual cost per recordkeeper to maintain the policies and procedures is \$200 based on averages using data from the U.S. Department of Labor, Bureau of Labor Statistics' occupational employment statistics for office and administrative support occupations, dated May 2007.

13. Estimate of Total Annual Cost to Recordkeepers

Not applicable. See paragraph 12 above.

14. Estimate of Annualized Cost to Treasury

It is estimated that the recordkeeping requirement will result in no costs to the Treasury's Departmental Offices. The final rule does not require recordkeepers to make the written policies and procedures available to the Treasury's Departmental Offices.

15. Any Program Changes or Adjustments

Not applicable. There are no program changes or adjustments.

16. Plans for Information Publication

Not applicable. The Treasury's Departmental Offices does not plan to publish the written policies and procedures.

17. Reasons for Not Displaying Expiration Date of OMB Approval

The Treasury's Departmental Offices requests approval not to display in the final rule the expiration date of the OMB control number, because the recordkeeping requirement under the Act will extend beyond the standard 3-year expiration date. As a result, the display of an expiration date would likely confuse regulated entities. If OMB approves this recordkeeping requirement, the Treasury's Departmental Offices will timely request extensions of the OMB control number for this recordkeeping requirement, thereby rendering the display of an expiration date unnecessary.

18. Explanation of Exceptions to Certification Statement

Not applicable. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable. This recordkeeping requirement does not involve statistical methods.