1Supporting Statement for the
Recordkeeping Requirements Associated with
Regulation GG (Prohibition on Funding of Unlawful Internet Gambling)
(FR 4026; OMB No. 7100-0317)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the recordkeeping requirements associated with Regulation GG. The Board is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies recordkeeping, reporting, and disclosure requirements contained in regulations, such as Regulation GG, as "required information collections."[1]

On November 18, 2008, the Board and the Secretary of the Treasury (the Agencies) published a joint notice of final rulemaking in the *Federal Register* (73 FR 69382) adopting joint regulations (the Board's requirements are contained in Regulation GG).[2] The compliance date for Regulation GG was June 1, 2010 (74 FR 62687). Regulation GG includes requirements implementing applicable provisions of section 802 of the Unlawful Internet Gambling Enforcement Act of 2006 (the Act).[3] Regulation GG, as required by the Act, 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.[4] The collection of information is set out in sections 5 and 6 of Regulation GG.

Section 5 requires all non-exempt participants in the designated payment systems to establish and implement policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit, transactions restricted by the Act. In addition, section 5 states that a participant in a designated payment system may rely on policies and procedures established by the designated payment system if the system's policies and procedures otherwise comply with the requirements of the regulation. Section 6 sets out non-exclusive examples of policies and procedures for each designated payment system that the Agencies believe are reasonably designed to prevent or prohibit restricted transactions for non-exempt participants in the system.

The Federal Reserve is estimating paperwork burden for approximately 7,015 depository institutions, card system operators, and money transmitting business operators

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[1] 44 U.S.C. § 3501 et seq.

[2] Section 802 of the Act 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. Treasury's requirements are contained in Title 31 Money and Finance Part 132-Prohibition on Funding of Unlawful Internet Gambling (31 CFR part 132).

[3] 31 U.S.C. § 5361 et seq.

[4] 12 CFR 233.5 and 233.6.

required to establish and maintain the policies and procedures under sections 5 and 6 of Regulation GG. The annual recordkeeping burden for establishing and maintaining these policies and procedures is estimated to be 56,396 hours.

Background and Justification

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.[5] 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.[6] 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.

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 non-exempt 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,

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[5] 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.*).

[6] 31 U.S.C. 5361(b).

[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.

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 (qualifying intrastate transactions, intratribal transactions, or interstate horseracing transactions) are not blocked or otherwise prevented or prohibited by the prescribed regulations.

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

Section 5. Section 5 of the regulations requires all non-exempt participants in the designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit, restricted transactions. In accordance with the Act, section 5 states that a non-exempt participant in a designated payment system shall be considered in compliance with this requirement if (1) it relies on, and complies with, the written policies and procedures of the designated payment system that are reasonably designed to identify and block restricted transactions or otherwise prevent or prohibit the acceptance of the products or services of the designated payment system in connection with restricted transactions and (2) such policies and procedures of the designated payment system comply with the requirements of this section. Regulation GG provides that, unless notified otherwise by its regulator, a participant may rely on a written statement or notice by the operator of the designated payment system to its participants that the operator has designed or structured the system's policies and procedures for identifying and blocking or otherwise preventing or prohibiting restricted transactions to comply with the requirements of Regulation GG.

Section 6. Section 6 of the regulations sets out non-exclusive examples of policies and procedures the Agencies believe are reasonably designed to prevent or prohibit restricted transactions for non-exempt participants in each designated payment system. Under Regulation GG, non-exempt participants in each designated payment system should maintain policies and procedures that (1) address methods for conducting due diligence in establishing a commercial customer relationship designed to ensure that the commercial customer does not originate or receive restricted transactions through the customer relationship and (2) 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. Also, the participant may notify all of its commercial customers, through provisions in the account or commercial customer

relationship agreement or otherwise, that restricted transactions are prohibited from being processed through the account or relationship.

Time Schedule for Information Collection

Regulation GG 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.

Consultation Outside the Agency

Regulation GG, including the collection of information and paperwork burden estimate, was promulgated jointly with the Department of the Treasury in accordance with the notice and comment procedures of the Administrative Procedure Act. 5 U.S.C. § 551 et seq. In addition, the Agencies consulted with the Department of Justice. On September 23, 2011, the Agencies published a joint notice in the *Federal Register* (76 FR 59188) requesting public comment for 60 days on the extension, without revision, of this information collection. The comment period for this notice expired on November 22, 2011. The Federal Reserve did not receive any comments. On February 10, 2012, the Agencies published a joint final notice in the *Federal Register* (77 FR 7162).

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 Act. 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 Regulation GG is 56,396 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 3,300 depository institutions, 3,701 credit unions, 3 card system operators, and 8 money transmitting business operators are required to maintain policies and procedures under sections 5 and 6. The Federal Reserve estimates that the burden of maintaining the policies and procedures once they are established is 8 hours per year for all recordkeepers. The Federal Reserve estimates that, on an annual basis, 3 new (de novo) institutions would take, on average, 100 hours to establish policies and procedures under sections 5 and 6. The Agencies have agreed to split equally the total number of recordkeepers not subject to examination

and supervision by either the Board or the Treasury's Office of the Comptroller of the Currency.

Recordkeeping	*Number of respondents*[8]	*Estimated annual frequency*	*Estimated average time per response*	*Estimated annual burden hours*
Depository institutions	3,300	1	8 hours	26,400
Card system operators	3	1	8 hours	24
Credit unions	3,701	1	8 hours	29,608
Money transmitting business operators	8	1	8 hours	64
De novo institutions	3	1	100 hours	300
Total	7,015			56,396

The total cost to the public is estimated to be $1,695,900.[9]

Estimate of Cost to the Federal Reserve System

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

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines (e.g., ethnicity, sexual relationships, etc.).

[8] Of the 7,015 respondents required to comply with this information collection, 5,187 are small entities as defined by the Small Business Administration (*i.e.*, entities with less than $175 million in total assets) www.sba.gov/contractingopportunities/officials/size/table/index.html.

[9] The cost for commercial banks, credit unions, card system operators, and money transmitting business operators, was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rate (100% Compliance Officer @ $30). The cost for de novo institutions was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rate (30% Office & Administrative Support @ $16, 45% Financial Managers @ $50, 15% Legal Counsel @ $54, and 10% Chief Executives @ $80). The hourly rate is the median hourly wages (rounded up) from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2010, www.bls.gov/news.release/ocwage.nr0.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.