

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
OMB No. 1505-0204

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) required the Secretary of the Treasury (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, published a final rule on November 18, 2008 in the Federal Register (73 FR 69382) requiring 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 imposed 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 the entities 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 prescribed nor prohibited 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 rule does not appear to have a significant economic impact on a substantial number of regulated small entities. The Act mandated that the Treasury and the Board jointly prescribe regulations require 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 rule. Moreover, steps have been taken to minimize recordkeeping burdens on regulated small entities in that the rule does not prescribe how such regulated entities are to establish and maintain their written policies and procedures. The rule also narrowed the designation of money transmitting businesses as a designated payment system and exempted all money transmitting business participants other than the operator such that the number of affected small entities and the impact on them would be minimized.

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

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

7. Circumstances Requiring Special Information Collection

The recordkeeping requirement in the Act and in the 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 on April 17, 2018 published a joint initial notice in the Federal Register (83 FR 16857) requesting public comment. No comments were received.

9. Provision of Payments to Recordkeepers

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

10. Assurance of Confidentiality

The rule contains no assurances of confidentiality.

11. Justification of Sensitive Questions

The 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 6,038 consisting of 3,149 banks and thrifts, 2,839 credit unions, 43 money transmitting business operators, and 7 card system operators.
- The frequency of recordkeeping is annually.
- The estimated one-time hour burden to establish the written policies and procedures required by the Act is 100 hours for each new or de novo institution of which there were 3. (300 hours total.)
- The estimated annual hour burden to maintain the written policies and procedures once they are established is 8 hours per recordkeeper for all 6,038 recordkeepers. (48,304 hours total.)
- Total estimated annual recordkeeping burden: 48,604 (One-time burden of 300 hours plus ongoing burden of 48,304 hours.)

13. Estimate of Total Annual Cost to Recordkeepers

- Total estimated cost to establish the policies and procedures is \$26,235 for the 3 new or de novo institutions 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 @ \$57; 25% Senior Management @ \$100; and 30% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are based on data from the U.S. Department of Labor, Bureau of Labor Statistics' National Industry – Specific Employment and Wage Statistics, dated May 2014.
- Total estimated annual cost to maintain the policies and procedures is \$1,207,600 for the 6,038 recordkeepers. This assumes a cost of \$200 per respondent based on data from the U.S. Department of Labor, Bureau of Labor Statistics' National Industry – Specific Employment and Wage Statistics for office and administrative support occupations, dated May 2014.

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 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

The decrease of 645,196 burden hours is due to adjustments in estimates of the number of recordkeepers as well as a reduction of recordkeeping hours per respondent as most recordkeepers now only need to maintain existing plans.

16. Plans for Information Publication

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

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

This recordkeeping requirement does not involve statistical methods.