



CUNA & Affiliates

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Testimony of

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On behalf of

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Before the Committee on Financial Services

Hearing on

H.R. 2267, the Internet Gambling Regulation, Consumer Protection and Enforcement Act

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Mr. Chairman, Ranking Member Bachus, and Members of the Financial Services Committee: Thank you very much for the opportunity to testify at today's hearing on behalf of the Credit Union National Association (CUNA). My name is Ed Williams and I am President and Chief Executive Officer of Discovery Federal Credit Union in Reading, Pennsylvania. I am also a member of CUNA's Board of Directors.

CUNA is the largest credit union advocacy organization in the United States, representing nearly 90% of America's 7,700 state and federally chartered credit unions and their 92 million members. With total assets of approximately \$130 million, Discovery Federal Credit Union serves 10,500 members in the community of Berks County, Pennsylvania.

CUNA, of course, does not condone any illegal activity. However, the Unlawful Internet Gambling Enforcement Act (UIGEA) and its implementing regulations represent an inappropriate and unreasonable compliance burden which causes us great concern. In short, the law makes credit unions and other financial institutions liable if transactions with illegal Internet gambling providers are approved, but does not provide us with a definition of "unlawful internet gambling," much less a list of illegal Internet gambling providers.

Even if credit unions were not struggling to comply with an ever-increasing regulatory burden—which they are—it is unreasonable to assign the liability for policing Internet gambling activity to depository institutions, many of which are small, without giving them the means necessary to determine which transactions are illegal. The Treasury Department and the Federal Reserve Board have concluded that they cannot track who these entities are and leave this burden to the private sector.

We are thankful that the regulatory regime promulgated by the Federal Reserve Board and Treasury did take steps toward reducing the burden that my credit union faces in complying

with UIGEA, but it has not removed the liability that we—or our service providers—face if we are wrong.

The UIGEA rules put the onus on depository institutions serving non-consumer accountholders to ensure that those entities are not operating in violation of UIGEA. This generally involves asking the new non-consumer credit union members (which include not only businesses, but non-profit organizations, trusts, etc.) about Internet gambling during the account-opening process, and when necessary obtaining a certification from the member that they are not engaging in illegal Internet gambling activity. To ensure compliance with respect to blocking transactions, we rely on policies and procedures developed by the various payment card system operators -- transactions that receive a certain code are blocked from payment. At my credit union, the number of transactions that are blocked is no more than a handful per month. This process, unfortunately, catches some false-positives -- transactions which should not have been blocked because they were not illegal Internet gambling transactions, notwithstanding the code assigned by the payment card network.

As we said in our comment letter to the Department of the Treasury and the Federal Reserve Board in December 2007¹, we believe that part of the solution to the compliance problem credit unions face could be the enactment of legislation like H.R. 2267, the Internet Gambling Regulation, Consumer Protection and Enforcement Act, which would require Internet gaming businesses to be licensed and pay user fees. By registering these businesses, the legislation provides safe harbor for financial institutions to make payments to these federally registered sites without any risk of violating UIGEA. H.R. 2267 promotes regulatory simplicity while assisting financial institutions compliance with UIGEA.

¹ http://www.cuna.org/reg_advocacy/comment_letters/cl_121207.html

Under this measure, we expect that a list of licensed gambling enterprises would be developed for use in identifying and blocking transactions for Internet gambling businesses that are not on the approved list. Our hope is that this information would be augmented by information from the Justice Department regarding such businesses or individuals involved in illegal gaming activities. Such an approach would promote compliance for institutions by providing them a much greater level of certainty as to whether a transaction for a particular entity should be prevented. In conjunction with the development of such a list, the exemptions and safe harbor provisions in the proposal would help provide a regulatory framework that assists in policing illegal Internet gambling activities without inflicting unreasonable compliance burdens on financial institutions.

Although H.R. 2267 is a step in the right direction, we would like to work with you, Mr. Chairman, to strengthen the safe harbor rules currently in the bill. Specifically, we ask Congress to direct the Departments of Treasury and Justice to develop and maintain a list of illegal Internet gambling providers and provide safe harbors to financial institutions which use both the lists of legal Internet gambling providers and illegal Internet gambling providers when determining whether a transaction should be blocked.

Credit unions are already burdened with heavy policing mandates and limited resources. Our compliance responsibilities under the Bank Secrecy Act and Office of Foreign Assets Control (OFAC) rules are extraordinary. We do not think that UIGEA can be fairly implemented without creating a list similar to what OFAC publishes to tell financial institutions who are the “bad guys.”

We know that the Department of Treasury and the Federal Reserve Board gave significant consideration to the development and maintenance of a list of unlawful Internet gambling providers during the UIGEA rulemaking. They concluded that such a list would not be

effective or efficient because the agencies enforcing UIGEA lacked competency to interpret laws enforced by other governments and agencies, particularly state legislatures and law enforcement agencies; the payment transactions would not necessarily be made payable to the business's listed name; some payment systems do not process the transaction based on the payee name; and such a list would be outdated quickly.² If the Federal government is unable to know which entities are illegal Internet gambling businesses, how in the world are depository institutions like mine expected to know?

Mr. Chairman, credit unions are already heavily burdened by the policing duties imposed on them. Your legislation takes a step in the right direction and would add a degree of certainty to credit union compliance with UIGEA. We appreciate your tireless effort on this issue. Nevertheless, we continue to maintain that if the government decides certain gaming is illegal and mandates financial institutions police the illegal activity, the government should have the responsibility to produce a list of bad actors and provide safe harbors to depository institutions that use the list.

Thank you very much for the opportunity to testify at today's hearing. I am pleased to answer any questions the Members of the Committee may have.

² Federal Register. Vol. 72, Number 223. November 18, 2008. 69384.