Ms. Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

VIA ELECTRONIC MAIL

October 23, 2008

Dear Ms. Dudley:

We are deeply concerned about the regulations you have received from Treasury concerning the implementation of the Unlawful Internet Gambling Enforcement Act (Docket Number Treas-DO-2007-0015). We do not believe that you should finalize any rules relating to UIGEA at this time and, instead, should order further study and review of their likely impact. We have three major concerns. First, the regulations need a complete re-analysis light of recent changes in America's banking system. Second, we believe the regulations will impose significant costs that could further destabilize an already shaky banking system. Third, the regulations very likely violate the Regulatory Flexibility Act.

Since the time Treasury and the Federal Reserve began work on these regulations, the end of investment banks as a major category of financial institutions has vastly expanded UIGEA's potential scope. Just a year ago, commercial and investment banks with differing consumer bases, regulatory requirements, and business models controlled distinct parts of the American financial landscape. Investment banks, which processed fewer payments, had relatively little to say about UIGEA while most commercial banks believed they would experience significant adverse consequences as a result of the law. In the last year, however, nearly all of America's major investment banks have either converted themselves into commercial banks or found themselves subsumed into commercial banks. The percentage of America's banking system that UIGEA might impact has thus expanded a great deal. Differences in business models and regulatory rules pertaining to different types of assets may well mute these impacts. At this time, nonetheless, it appears wise to avoid implementing any banking regulations based upon analysis and comments generated at a time when the American banking system had a far different form.

The lack of clarity in the regulations, furthermore, appears quite likely to destabilize an already shaky banking system. Neither the UIGEA statute nor the regulations currently under consideration offer a clear definition of what activities are and are not "unlawful." Thus, they offer no list of what activities depository institutions are supposed to block. The law, as written will almost certainly result in the blocking of many perfectly legal transactions. UIGEA will also impose significant costs on consumers: Largely because the statute and regulations remain so vague, depository institutions will likely have to expend significant resources in order to implement UIGEA. Because depository institutions—by definition—have direct billing and/or payment relationships with all of their customers, it is very easy for banks, thrifts, and credit unions to pass on these charges in the forms of higher interest rates on loans and lower interest rates on deposits and investments. In ordinary times, perhaps, the banking sector and America's consumers could pay these costs without a significant bottom-line impact. Right now, that is not the case. UIGEA, if implemented, could send some institutions—and some consumers—over the edge. In short, it would destabilize the banking system at a time when it needs stability. Delaying implementation for further review could assist current efforts to stabilize the banking system.

Finally, the regulations as proposed violate the Regulatory Flexibility Act's mandate that regulatory agencies consider the impact of regulations on smaller business entities. In a letter dated December 12, 2007 the Small Business Administration's Office of Advocacy makes it clear that the proposed rule "fails to provide information about the nature of the [economic] impact [on small entities] as required by the RFA." The letter continues: "Instead, the agencies state that they do not have sufficient information and request that the information be provided by the public." Quite simply, Treasury and the Fed both fell asleep at the wheel when it came to evaluating the potential impacts of the rule on smaller entities. They have known about the potential problems for almost a year but have failed to act. Unless they provide the information that Advocacy has requested and perform a complete IRFA, this violation of Regulatory Flexibility Act alone should provide sufficient reason to reject the regulations as proposed.

In the midst of a major financial crisis, it is simply not wise to burden America's banking sector with significant new regulations. We believe that OMB and OIRA should not act to finalize the regulations relating to UIGEA that Treasury has submitted.

Yours truly,

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Americans for Tax Reform

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