COMMENTS OF THE AMERICAN GAMING ASSOCIATION
To Proposed Amendments to Bank Secrecy Act Regulations
71 Fed. Reg. 14129 (March 21, 2006)
Regulatory Information Number 1506-AA84

The American Gaming Association (AGA), which represents the commercial gaming industry,[1] generally endorses and supports the regulatory amendments proposed by the Financial Crimes Enforcement Network (FinCEN) for "Casino Recordkeeping and Reporting Requirements" under the Bank Secrecy Act. The proposed amendments include several improvements of current regulations. In two important respects the amendments would reduce the compliance burden for casinos without impairing the government's access to reports that are useful for enforcement against tax and money laundering offenses:

- by exempting from currency transaction reporting any jackpots won from slot machines and video lottery terminals (an exemption that the AGA has supported since 1995); and
- by exempting from currency transaction reporting any business transactions between casinos and (i) currency dealers and exchangers, and (ii) check cashers.

Certain elements of the proposed amendments, however, should be clarified by FinCEN in its final regulations. In particular, FinCEN should explain that its proposed amendment relating to the insertion of currency into gaming machines does not alter the impact of the "knowledge" requirement that applies to the reporting of such currency transactions, as was explained in guidance provided by FinCEN in February 2005. In addition, the proposed extension of the currency reporting obligation to "money plays" should be reconsidered, as it is

[1] The AGA's members include approximately two dozen casino and gaming equipment supply companies, more than two dozen businesses that provide services and other supplies to the industry, and nine state and regional gaming associations.

based on a misunderstanding of money plays and would not serve the enforcement purposes of the Bank Secrecy Act.

These comments will address each proposed amendment as it appears in the "Section-by-Section Analysis" in the Federal Register notice of proposed rulemaking (NPR).

A. *Jackpots from Slot Machines and Video Lottery Terminals, 103.22(b)(2)(ii) and 103.22(b)(2)(iii)*

As proposed, the amendments would add a specific exclusion from currency reporting requirements for "jackpots from slot machines and video lottery terminals [VLTs]." The preamble to the NPR aptly summarizes the reasoning that supports this amendment. Including slot jackpots in Currency Transaction Reports for Casinos (CTRCs) does little to combat money laundering, since a customer who plays long enough to earn such jackpots is highly unlikely to be attempting to launder money. Neither will including slot jackpots in CTRCs improve tax enforcement, since casinos already report jackpots over $1,200 to the IRS on Form W-2G. Accordingly, CTRCs reporting jackpots from slot machines and VLTs do not have a "high degree of usefulness in criminal, tax, or regulatory matters," which is the standard set for currency reporting by the Bank Secrecy Act. 31 U.S.C. § 5312(a)(2)(Y).

The AGA strongly endorses this proposed amendment, which will reduce regulatory burdens without any material impact on law enforcement effectiveness.

B. *Currency Dealer or Exchanger, or Check Casher Transactions – 103.22(b)(2)(iii)(A)*

This amendment would exempt from CTRC reporting those transactions between a casino and those businesses that provide currency exchange and check cashing services. Because those transactions are between highly regulated businesses, they would fall within most guidelines FinCEN has promulgated for transactions that likely should be exempted from CTR reporting.

Moreover, as the NPR's preamble points out, all such transactions now are subject to duplicate filings by the check cashing services and currency exchange firms. AGA supports this amendment, as well.

C1. *Gaming Instruments – 103.22(b)(2)(i)(A)*

AGA agrees that FinCEN should substitute the phrase "other gaming instruments" for "plaques." In view of evolving technologies, it makes sense to apply a more generic description for those items that denote the value that is wagered at the casino.

C2. *Money plays as bets of currency – 103.22(b)(2)(i)(E)*

Under current state gaming regulations, this proposed amendment would apply only in Mississippi and Nevada, and in certain tribal properties. Even in those jurisdictions, the proposed amendment would apply to a relatively small number of bets: those occasions on which a patron places a wager in currency (a so-called "money play"). Although the amendment thus would apply to a small category of bets in only a few jurisdictions, it embodies an undesirable inconsistency that should be avoided.

At the moment that a patron makes a money play by placing a wager in currency, that currency does *not* belong to the casino and – contrary to the assertion in the NPR – there has been no "physical transfer of currency" to the casino. *See* 71 Fed. Reg. 14131. Rather, the currency that has been wagered is in play. Indeed, no casino accounting system records the placement of the money as a bet. If the patron wins the wager, the casino will never take physical possession of the currency. If the patron loses the wager, *then* the currency is received by the casino, which properly accounts for it as cash received. Those amounts are then considered as part of the casino's assets. This point can be illustrated by contrasting a money play with the purchase of chips by a customer. When a patron purchases chips, the casino

definitely acquires possession of the currency that a patron exchanges for chips, and that currency is immediately recorded and tracked in the casino's accounting systems.

The conceptual inconsistency presented by the amendment emerges in its application (based on our understanding of the current proposal). If a patron were to place a bet in currency at a blackjack table and win that wager, the proposed amendment would require the casino to count the currency as *both* a cash-in to the casino (the money placed on the blackjack table) and a cash-out to the patron (the currency he retains after the bet). This outcome is misleading, and reflects the misapprehension that the casino has ownership of the currency when it is in play. Indeed, the additional CTRCs generated by the proposed amendment will not have a "high degree of usefulness in criminal, tax or regulatory matters." The patron who wins a money play retains the identical currency he placed as a wager (plus any chips he wins from the casino), so no criminal act of money laundering could be present. The currency has not been converted in any respect. Moreover, any amounts won by rated players are estimated by casino personnel, and any eventual chip cashouts of winnings are reported on CTRCs, which satisfies tax enforcement concerns.

Consequently, the proposed amendment should be revised so that currency wagered as a "money play" is deemed a cash-in to the casino only when the patron loses the wager at issue, as has been the rule under Nevada's Regulation 6A for over twenty years.

C3. *Bills inserted into electronic gaming devices – 103.22(b)(2)(i)(I)*

This amendment would specify that "cash in" to a casino includes "bills inserted into electronic gaming devices," whether or not the customer actually wagers the currency as part of a game. The rationale behind this amendment is that the insertion of the currency "involves the

physical transfer of currency to a casino," a statement that is literally true (in contrast to the cash wagered in the "money play" scenario).

The amendment, however, does not alter the advice provided by FinCEN on this subject in a letter dated February 7, 2005, and released publicly. That letter addressed a situation in which a casino's slot machines accept currency directly through bill validators, but (a) the integrated operating system for the slot machines records the identity and gambling activity of only those players who "swipe" an identification card, and (b) even for those identified players, the integrated operating system does not distinguish between currency and other forms of value that are inserted into the machine, and cannot be readily made to do so. In those circumstances, the letter concluded, the casino has no duty to file a CTRC because it does not have "knowledge" that the player has inserted the currency in the gaming machine, as required by 31 C.F.R. § 103.22(b)(2).[2] We note that the prevailing data systems in casinos still do not generate a record of a player's identity and the amount of currency that player inserted into any gaming machine; such integrated records could not be generated without extensive and expensive reprogramming of casino data systems, or without incurring major expense to have employees perform much of that effort. Because there is no business reason for a casino to undertake either effort, casinos ordinarily will not have the required "knowledge" of such currency insertions under the BSA.

Nothing in the amendment proposed in the NPR would change this application of the "knowledge" standard to currency accepted into gaming machines through bill validators. If applied to the same facts addressed in FinCEN's letter of February 7, 2005, the amended rule would yield the same conclusion: The casino would not ordinarily have to file a CTRC for

[2] The letter made clear that the casino could have such knowledge if it were to conduct the "complex series of queries and data manipulations" that would be required to determine what currency was inserted in a gaming machine an individual patron.

currency inserted directly into gaming machines, because the casino had no knowledge of the amounts inserted by individual patrons. To avoid confusion and prevent misdirected enforcement activity, the preamble to the final regulation should reaffirm the vitality of FinCEN's letter of February 7, 2005.

C4. *Tickets and other gaming instruments -103.22(b)(2)(ii)(A)*

This change follows the reasoning of the first amendment listed above, and AGA supports it for the same reason.

C5. *Payments based on receipt of funds through wire transfers – 103.22(b)(2)(ii)(F)*

AGA agrees that the revised version of this provision – which would omit a reference to credits to a customer – would be more clear.

C6. *Travel and complimentary expenses and gaming incentives – 103.22(b)(2)(ii)(I)*

To the extent these items represent transfers of currency to patrons, we concur that they are properly viewed as "cash outs" for purposes of currency reporting. The amended language is acceptable.

C7. *Tournaments, contests or promotions – 103.22(b)(2)(ii)(J)* – To the extent that payments of this kind are made in currency, they are properly included as cash-outs for currency reporting purposes.

Respectfully submitted,

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<<NPR comments from AGA.DOC>>

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