

INTERNET GAMBLING REGULATION, CONSUMER  
PROTECTION, AND ENFORCEMENT ACT

SEPTEMBER 29, 2010.—Ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial  
Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2267]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2267) to amend title 31, United States Code, to provide for the licensing of Internet gambling activities by the Secretary of the Treasury, to provide for consumer protections on the Internet, to enforce the tax code, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Internet Gambling Regulation, Consumer Protection, and Enforcement Act”.

### SEC. 2. FEDERAL LICENSING REQUIREMENT FOR INTERNET GAMBLING OPERATORS.

(a) IN GENERAL.—Chapter 53 of title 31, United States Code, is amended by adding at the end the following new subchapter:

#### “SUBCHAPTER V—REGULATION OF LAWFUL INTERNET GAMBLING

##### “§ 5381. Congressional findings

“The Congress finds the following:

“(1) Since the development of the Internet, millions of people have chosen to gamble online, and today Internet gambling is offered by operators located in many different countries under a variety of licensing and regulatory regimes.

“(2) Despite the increasing use of the Internet for gambling by persons in the United States, there is no Federal or State regulatory regime in place to protect United States citizens who choose to engage in this interstate activity, or to oversee operators to establish and enforce standards of integrity and fairness.

“(3) In the United States, gambling activities, equipment, and operations have been subject to various forms of Federal and State control, regulation, and enforcement, with some form of gambling being permitted in nearly every State and by many Indian tribes.

“(4) Internet gambling in the United States should be controlled by a strict Federal, State, and tribal licensing and regulatory framework to protect underage and otherwise vulnerable individuals, to ensure the games are fair, to address the concerns of law enforcement, and to enforce any limitations on the activity established by the States and Indian tribes.

“(5) An effective Federal, State, and tribal licensing system would ensure that licenses are issued only to Internet gambling operators which meet strict criteria to protect consumers, and which—

“(A) are in good financial and legal standing, and of good character, honesty, and integrity;

“(B) utilize appropriate technology to determine the age and location of users;

“(C) adopt and implement systems to protect minors and problem gamblers;

“(D) adopt and implement systems to enforce any applicable Federal, State, and Indian tribe limitations on Internet gambling; and

“(E) have in place risk-based methods to identify and combat money laundering and fraud relating to Internet gambling, and to protect the privacy and security of users.

“(6) There is a need to extend the regulatory provisions of this Act to all persons, locations, equipment, practices, and associations related to Internet gambling, with each State and Indian tribe having the ability to limit Internet gambling operators from offering Internet gambling to persons located within its territory by opting out of the provisions of this Act.

##### “§ 5382. Definitions

“For purposes of this subchapter, the following definitions shall apply:

“(1) APPLICANT.—The term ‘applicant’ means any person who has applied for a license pursuant to this subchapter.

“(2) BET OR WAGER.—The term ‘bet or wager’ has the same meaning as in section 5362(1).

“(3) ENFORCEMENT AGENT.—The term ‘enforcement agent’ means any individual authorized by the Secretary to enforce the provisions of this subchapter and regulations prescribed under this subchapter.

“(4) INDIAN LANDS AND INDIAN TRIBE.—The terms ‘Indian lands’ and ‘Indian tribe’ have the same meanings as in section 4 of the Indian Gaming Regulatory Act.

“(5) INTERNET.—The term ‘Internet’ has the same meaning as in section 5362(5).

“(6) LICENSEE.—The term ‘licensee’ means an entity authorized to operate an Internet gambling facility in accordance with this subchapter.

“(7) OPERATE AN INTERNET GAMBLING FACILITY.—The term ‘operate an Internet gambling facility’ or ‘operation of an Internet gambling facility’ means the direction, management, supervision, or control of an Internet site through which bets or wagers are initiated, received, or otherwise made, whether by telephone, Internet, satellite, or other wire or wireless communication.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury, or any person designated by the Secretary.

“(9) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

“(10) SPORTING EVENT.—The term ‘sporting event’ means any athletic competition, whether professional, scholastic, or amateur.

**“§ 5383. Establishment and administration of licensing program**

“(a) TREASURY RESPONSIBILITIES.—The Secretary shall have responsibility for the following activities:

“(1) Exercising full regulatory jurisdiction over—

“(A) the operation of Internet gambling facilities by licensees; and

“(B) the licensure and regulation of all applicants, except to the extent that powers have been delegated to qualified State and tribal regulatory bodies pursuant to this subchapter.

“(2) Prescribing such regulations as may be necessary to administer and enforce the requirements of this subchapter.

“(3) Employing enforcement agents with sufficient training and experience to administer the requirements of this subchapter and the regulations prescribed under this subchapter.

“(4) Enforcing the requirements of this subchapter through all appropriate means provided under this subchapter and other provisions of law.

“(b) INTERNET GAMBLING LICENSING PROGRAM.—

“(1) LICENSING REQUIRED FOR CERTAIN INTERNET GAMBLING.—No person may operate an Internet gambling facility that knowingly accepts bets or wagers from persons located in the United States without a license issued by the Secretary in accordance with this subchapter.

“(2) AUTHORITY UNDER VALID LICENSE.—A licensee may accept bets or wagers from persons located in the United States, subject to the limitations set forth in this subchapter, so long as its license remains in good standing.

“(c) APPLICATION FOR LICENSE.—

“(1) IN GENERAL.—Any person seeking authority to operate an Internet gambling facility offering services to persons in the United States may apply for a license issued by the Secretary.

“(2) INFORMATION REQUIRED.—Any application for a license under this subchapter shall contain such information as may be required by the Secretary, including the following:

“(A) The criminal and credit history of the applicant, any senior executive and director of the applicant, and any person deemed to be in control of the applicant.

“(B) The financial statements of the applicant.

“(C) Documentation showing the corporate structure of the applicant and all related businesses and affiliates.

“(D) Documentation containing detailed evidence of the applicant’s plan for complying with all applicable regulations should a license be issued, with particular emphasis on the applicant’s ability to—

“(i) protect underage and problem gamblers;

“(ii) ensure games are being operated fairly; and

“(iii) comply with and address the concerns of law enforcement.

“(E) Certification that the applicant agrees to submit to United States jurisdiction and all applicable United States laws relating to acceptance by the applicant of bets or wagers over the Internet from persons located in the United States and all associated activities.

“(F) Certification that the applicant has established a corporate entity or other separate business entity in the United States, a majority of whose officers are United States persons and, if there is a board of directors, that the board is majority-controlled by directors who are United States persons.

“(d) STANDARDS FOR LICENSE ISSUANCE; SUITABILITY QUALIFICATIONS AND DISQUALIFICATION STANDARDS.—

“(1) SUITABILITY FOR LICENSING STANDARDS.—

“(A) IN GENERAL.—No person shall be eligible to obtain a license unless the Secretary or an appropriate State officer or agency has determined, upon completion of a background check and investigation, that the applicant, and any person deemed to be in control of the applicant, is suitable for licensing.

“(B) ASSOCIATES OF APPLICANTS.—If the applicant is a corporation, partnership, or other business entity, a background check and investigation shall occur with respect to the president or other chief executive of the corporation, partnership, or other business entity and other partners or senior executives and directors of the corporation, partnership, or entity, as determined appropriate by the Secretary or any appropriate State or tribal officer or agency.

“(C) BACKGROUND CHECK AND INVESTIGATION.—The Secretary shall establish standards and procedures for conducting background checks and investigations for purposes of this subsection.

“(2) SUITABILITY FOR LICENSING STANDARDS DESCRIBED.—For purposes of this subchapter, an applicant and any other person associated with the applicant, as applicable, is suitable for licensing if the applicant demonstrates to the Secretary or appropriate State or tribal officer or agency by clear and convincing evidence that the applicant (or individual associated with the applicant, as applicable)—

“(A) is a person of good character, honesty, and integrity;

“(B) is a person whose prior activities, reputation, habits, and associations do not—

“(i) pose a threat to the public interest or to the effective regulation and control of the licensed activities; or

“(ii) create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of the licensed activities or the carrying on of the business and financial arrangements incidental to such activities;

“(C) is capable of and likely to conduct the activities for which the applicant is licensed in accordance with the provisions of this subchapter and any regulations prescribed under this subchapter;

“(D) has or guarantees acquisition of adequate business competence and experience in the operation of Internet gambling facilities; and

“(E) has or will obtain sufficient financing for the nature of the proposed operation and from a suitable source.

“(3) UNSUITABLE FOR LICENSING.—An applicant or any other person may not be determined to be suitable for licensing within the meaning of this subchapter if the applicant or such person—

“(A) has failed to provide information and documentation material to a determination of suitability for licensing under paragraph (1);

“(B) has supplied information which is untrue or misleading as to a material fact pertaining to any such determination;

“(C) has been convicted of an offense punishable by imprisonment of more than 1 year;

“(D) is delinquent in filing any applicable Federal or State tax returns or in the payment of any taxes, penalties, additions to tax, or interest owed to a State or the United States;

“(E) has, on or after the date of the enactment of the Unlawful Internet Gambling Enforcement Act of 2006—

“(i) knowingly participated in, or should have known they were participating in, any illegal Internet gambling activity, including the taking of an illegal Internet wager, the payment of winnings on an illegal Internet wager, the promotion through advertising of any illegal Internet gambling website or service, or the collection of any payments to an entity operating an illegal Internet gambling website; or

“(ii) knowingly been owned, operated, managed, or employed by, or should have known they were owned, operated, managed, or employed by, any person who was knowingly participating in, or should have known they were participating in, any illegal Internet gambling activity, including the taking of an illegal Internet wager, the payment of

winnings on an illegal Internet wager, the promotion through advertising of any illegal Internet gambling website or service, or the collection of any payments to an entity operating an illegal Internet gambling website;

“(F) has—

“(i) received any assistance, financial or otherwise, from any person who has, before the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, knowingly accepted bets or wagers from a person located in the United States in violation of Federal or State law; or

“(ii) provided any assistance, financial or otherwise, to any person who has, before the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, knowingly accepted bets or wagers from a person located in the United States in violation of Federal or State law;

“(G) with respect to another entity that has accepted a bet or wager from any individual in violation of United States law, has purchased or otherwise obtained—

“(i) such entity;

“(ii) a list of the customers of such entity; or

“(iii) any other part of the equipment or operations of such entity;

“(H) is listed on a State gambling excluded persons list; or

“(I) fails to certify in writing, under penalty of perjury, that the applicant or other such person, and all affiliated business entities (including all entities under common control), has through its entire history—

“(i) not committed an intentional felony violation of Federal or State gambling laws; and

“(ii) used diligence to prevent any United States person from placing a bet on an Internet site in violation of Federal or State gambling laws.

“(4) APPEAL OF DETERMINATION.—With respect to any applicant or other person that the Secretary determines is not suitable for licensing within the meaning of this subchapter by reason of subparagraph (E) or (F) of paragraph (3), and where the Secretary has not determined that such applicant or person was acting in their capacity as a managerial employee of an Internet gambling website, the Secretary shall establish an appeals process by which such applicant or person may appeal the Secretary’s determination.

“(5) ONGOING REQUIREMENT.—A licensee (and any other person who is required to be determined to be suitable for licensing in connection with such license) shall meet the standards necessary to be suitable for licensing throughout the term of the license.

“(6) PROTECTION OF THE PUBLIC TRUST.—The Secretary may take such action as is necessary to protect the public trust, including the implementation of such safeguards as may be necessary to ensure the operation of an Internet gambling facility licensed under this subchapter is controlled only by persons who are suitable for licensing.

“(7) ENFORCEMENT ACTIONS.—

“(A) DETERMINATION OF UNSUITABILITY FOR CONTINUED LICENSURE.—If the Secretary finds that an individual owner or holder of a security of a licensee, or of a holding or intermediary company of a licensee or any person with an economic interest in a licensee or a director, partner, or officer of a licensee is not suitable for licensing, the Secretary may determine that the licensee is not qualified to continue as a licensee.

“(B) ACTION TO PROTECT THE PUBLIC INTEREST, INCLUDING SUSPENSION.—If the Secretary may determine that the licensee is not qualified to continue as a licensee, the Secretary shall propose action necessary to protect the public interest, including, if deemed necessary, the suspension of the authority of the licensee to engage in licensed activities.

“(C) IMPOSITION OF CONDITIONS INCLUDING REMOVAL OF PARTIES.—Notwithstanding a determination under subparagraph (A), the Secretary may allow a licensee to continue engaging in licensed activities by imposing conditions on the licensee under penalty of revocation or suspension of the authority of the licensee to engage in licensed activities, including—

“(i) the identification of any person determined to be unsuitable for licensing; and

“(ii) the establishment of appropriate safeguards to ensure such person is excluded from any interest in the licensed activities.

“(e) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

“(1) USER FEES.—

“(A) IN GENERAL.—The cost of administering this subchapter with respect to each licensee, including the cost of any review or examination of a licensee to ensure compliance with the terms of the license and this subchapter, shall be assessed by the Secretary against the licensee institution by written notice in an amount appropriate to meet the Secretary’s expenses in carrying out such administration, review, or examination.

“(B) DISPOSITION.—Amounts assessed by the Secretary as user fees under subparagraph (A) shall—

“(i) be maintained by the Secretary solely for use in accordance with clause (ii);

“(ii) be available to the Secretary to cover all expenses incurred by the Secretary in carrying out this subchapter; and

“(iii) not be construed to be Government funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 or any other authority.

“(C) HEARING.—Any licensee against whom an assessment is assessed under this paragraph shall be afforded an agency hearing if such person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

“(D) COLLECTION.—

“(i) REFERRAL.—If any licensee fails to pay an assessment under this paragraph after the assessment has become final, the Secretary shall recover the amount assessed by action in the appropriate United States district court.

“(ii) APPROPRIATENESS OF ASSESSMENT NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the assessment shall not be subject to review.

“(2) DIRECT AND EXCLUSIVE OBLIGATION OF LICENSEE.—The user fee shall be the direct and exclusive obligation of the licensee and may not be deducted from amounts available as deposits to any person placing a bet.

“(f) APPROVAL OF LICENSE.—The Secretary shall grant licenses under this subchapter if the applicant meets the criteria set by the Secretary set forth in this subchapter and in any regulations promulgated thereunder.

“(g) SAFEGUARDS REQUIRED OF LICENSEE.—No person may operate an Internet gambling facility in accordance with this subchapter unless the person maintains or requires mechanisms so that the following requirements, and the standards established under section 5384, are met with respect to any Internet bet or wager:

“(1) LEGAL AGE.—Appropriate safeguards to ensure that the individual placing a bet or wager is of legal age as defined by the law of the State or tribal area in which the individual is located at the time the bet or wager is placed.

“(2) PERMISSIBLE LOCATION.—Appropriate safeguards to ensure that the individual placing a bet or wager is physically located in a jurisdiction that permits Internet gambling at the time the bet or wager is placed.

“(3) COLLECTION OF CUSTOMER TAXES.—Appropriate mechanisms to ensure that all taxes relating to Internet gambling from persons engaged in Internet gambling are collected at the time of any payment of any proceeds of Internet gambling.

“(4) COLLECTION OF TAXES OF LICENSEE.—Appropriate mechanisms to ensure that all taxes relating to Internet gambling from any licensee are collected and disbursed as required by law, and that adequate records to enable later audit or verification are maintained.

“(5) SAFEGUARDS AGAINST FINANCIAL CRIME.—Appropriate safeguards to combat fraud, money laundering, and terrorist finance.

“(6) SAFEGUARDS AGAINST COMPULSIVE GAMBLING.—Appropriate safeguards to combat compulsive Internet gambling.

“(7) PRIVACY SAFEGUARDS.—Appropriate safeguards to protect the privacy and security of any person engaged in Internet gambling.

“(8) PAYMENT OF ASSESSMENTS.—Appropriate mechanisms to ensure that any assessment under subsection (e) is paid to the Secretary.

“(9) OTHER REQUIREMENTS.—Such other requirements as the Secretary may establish by regulation or order.

“(h) TERM AND RENEWAL OF LICENSE.—

“(1) TERM.—Any license issued under this section shall be issued for a 5-year term beginning on the date of issuance.

“(2) RENEWAL.—Licenses may be renewed in accordance with the requirements prescribed by the Secretary pursuant to this subchapter.

“(i) REVOCATION OF LICENSE.—

“(1) IN GENERAL.—Any license granted under this subchapter may be revoked by the Secretary if—

- “(A) the licensee fails to comply with any provision of this subchapter;
  - “(B) the licensee is determined to be unsuitable for licensing, within the meaning of this subchapter; or
  - “(C) the licensee is determined to be targeting marketing or advertising materials at individuals who are not of legal age to place a bet or wager, as defined by the law of the State or tribal area in which the individuals are located.
- “(2) FINAL ACTION.—Any revocation of a license under paragraph (1) shall be treated as a final action by the Secretary.
- “(j) REGULATIONS.—The regulations prescribed by the Secretary under this subchapter shall include regulations to fully implement—
- “(1) safeguards required for licensees under subsection (g); and
  - “(2) the requirements for programs relating to the Problem Gambling, Responsible Gambling, and Self-Exclusion Program under section 5384.
- “(k) ADMINISTRATIVE PROVISIONS.—
- “(1) GENERAL POWERS OF SECRETARY.—
- “(A) IN GENERAL.—The Secretary shall have the authority to engage in the following:
- “(i) Investigate the suitability of each licensee to ensure compliance with this subchapter and regulations prescribed under this subchapter.
  - “(ii) Require licensees to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter.
  - “(iii) Require licensees to maintain substantial facilities involved with the processing of bets or wagers from the United States within the United States.
  - “(iv) Require that a majority of all of the employees of the applicant or licensee, and of its affiliated business entities, be residents or citizens of the United States. All entities under common control shall be considered affiliated business entities for the purposes of this subparagraph.
  - “(v) Require licensees to maintain in the United States all facilities that are essential to the regulation of bets or wagers placed from the United States at a location that is accessible to the appropriate regulatory personnel at all times.
  - “(vi) Examine any licensee and any books, papers, records, or other data of licensees relevant to any recordkeeping or reporting requirements imposed by the Secretary under this subchapter.
  - “(vii) Require licensees to maintain all facilities within the United States for processing of bets or wagers made or placed from the United States.
  - “(viii) When determined by the Secretary to be necessary, summon a licensee or an applicant for a license, an officer or employee of a licensee or any such applicant (including a former officer or employee), or any person having possession, custody, or care of the reports and records required by the Secretary under this subchapter, to appear before the Secretary or a designee of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to any investigation in connection with the enforcement of this subchapter or any application for a license under this subchapter.
  - “(ix) Investigate any violation of this subchapter and any regulation under this subchapter and any other violation of law relating to the operation of an Internet gambling facility.
  - “(x) Conduct continuing reviews of applicants and licensees and the operation of Internet gambling facilities by use of technological means, onsite observation of facilities, including servers, or other reasonable means to assure compliance with this subchapter and any regulations promulgated hereunder.
  - “(xi) Prohibit inappropriate advertising practices by licensees, including unsolicited emails targeting members of vulnerable populations, including problem gamblers and minors, or Internet advertising linked to search terms associated with children, problem gamblers, or other topics deemed inappropriate.
- “(B) EFFECT OF WTO RULING.—Clauses (iii) and (iv) of subparagraph (A) shall cease to have effect if a tribunal of the World Trade Organization of final arbitration rules that the implementation of such clauses would violate the trade commitments of the United States under the World Trade Organization.

“(2) CONSULTATION WITH INDIAN TRIBES.—In implementing this subchapter, the Secretary shall conduct meaningful consultation with Indian tribes regarding all aspects of this subchapter which affect Indian tribes, both as potential licensing entities or operating entities.

“(3) ADMINISTRATIVE ASPECTS OF SUMMONS.—

“(A) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this subsection may require that books, papers, records, or other data stored or maintained at any place be produced at any business location of a licensee or applicant for a license or any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the licensee or applicant for a license operates or conducts business in the United States.

“(B) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense incurred in connection with the production of books, papers, records, or other data under this subsection.

“(C) SERVICE OF SUMMONS.—Service of a summons issued under this subsection may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

“(4) CONTUMACY OR REFUSAL.—

“(A) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under this subsection or a refusal by such person to obey such summons or to allow the Secretary to conduct an examination, the Secretary shall refer the matter to the Secretary of the Treasury for referral to the Attorney General.

“(B) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States to compel compliance with the summons within the jurisdiction of which—

“(i) the investigation which gave rise to the summons or the examination is being or has been carried on;

“(ii) the person summoned is an inhabitant; or

“(iii) the person summoned carries on business or may be found.

“(C) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or a delegate of the Secretary to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, to allow the Secretary to examine the business of a licensee, and to pay the costs of the proceeding.

“(D) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(E) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.

“(5) COMPILATION OF DATASETS ON PLAYER BEHAVIOR.—

“(A) IN GENERAL.—The Secretary shall compile and make available to the public, on the website of the Secretary, datasets on player behavior.

“(B) REGULATIONS REQUIRING SUBMISSION OF INFORMATION.—The Secretary shall prescribe regulations to require licensees under this subchapter to provide information on player behavior that the Secretary determines is appropriate for the datasets under subparagraph (A).

“(C) INFORMATION REQUIRED TO BE INCLUDED.—Datasets prepared under this paragraph shall include information on any individual player, if requested by the Secretary, including but not limited to information concerning gambling frequency, gaming duration, the amount wagered, the number of bets placed, and net losses, provided that such request complies with the provisions of subparagraph (D).

“(D) PROTECTION OF PRIVACY.—All information provided pursuant to this paragraph shall be aggregated and anonymized, and shall not contain information that either alone or in combination with other data elements would permit identification of any individual player.

“(1) CIVIL MONEY PENALTIES.—

“(1) IN GENERAL.—The Secretary may assess upon any licensee or other person subject to the requirements of this subchapter for any willful violation of this subchapter or any regulation prescribed or order issued under this subchapter, a civil penalty of not more than the greater of—

“(A) the amount (not to exceed \$100,000) involved in the violation, if any;

or

“(B) \$25,000.

“(2) ASSESSMENT.—



“(A) WRITTEN NOTICE.—Any penalty imposed under paragraph (1) may be assessed and collected by the Secretary by written notice.

“(B) FINALITY OF ASSESSMENT.—If, with respect to any assessment under paragraph (1), a hearing is not requested pursuant to subparagraph (E) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

“(C) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Secretary may compromise, modify, or remit any penalty which the Secretary may assess or has already assessed under paragraph (1).

“(D) MITIGATING FACTORS.—In determining the amount of any penalty imposed under paragraph (1), the Secretary shall take into account the appropriateness of the penalty with respect to—

“(i) the size of the financial resources and the good faith of the person against whom the penalty is assessed;

“(ii) the gravity of the violation;

“(iii) the history of previous violations; and

“(iv) such other matters as justice may require.

“(E) HEARING.—The person against whom any penalty is assessed under paragraph (1) shall be afforded an agency hearing if such person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

“(F) COLLECTION.—

“(i) REFERRAL.—If any person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Secretary shall recover the amount assessed by action in the appropriate United States district court.

“(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

“(G) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

“(3) CONDITION FOR LICENSURE.—Payment by a licensee of any civil penalty assessed under this subsection that has become final shall be a requirement for the retention of its license.

“(m) TREATMENT OF RECORDS.—In light of business competition, confidentiality, and privacy concerns, the Secretary shall protect from disclosure information submitted in support of a license application under this subchapter and information collected in the course of regulating licensees to the full extent permitted by sections 552 and 552a of title 5.

“(n) SUITABILITY FOR LICENSING REQUIREMENTS FOR CERTAIN SERVICE PROVIDERS.—

“(1) IN GENERAL.—Any person that knowingly—

“(A) manages, administers, or controls bets or wagers that are initiated, received, or otherwise made within the United States,

“(B) otherwise manages or administers the games with which such bets or wagers are associated, or

“(C) develops, maintains or operates, or distributes or makes available for downloading software, other system programs or hardware that create, operate, or otherwise affect the outcome of a game,

shall meet all of the suitability for licensing criteria established under this section in the same manner and to the same extent as if that person were itself a licensee.

“(2) SUITABILITY FOR LICENSING REQUIREMENTS FOR CERTAIN SERVICE PROVIDERS.—Any failure on the part of person described in any subparagraph of paragraph (1) to remain suitable for licensing shall be grounds for revocation of the authority of the licensee for whom such service is provided to operate an Internet gambling facility, in the same manner and in accordance with subsection (i).

“(o) RELIANCE ON STATE AND TRIBAL REGULATORY BODY CERTIFICATIONS OF SUITABILITY FOR APPLICANTS.—

“(1) QUALIFICATION OF STATE AND TRIBAL REGULATORY BODIES.—

“(A) APPLICATION FOR DETERMINATION.—Any State or tribal regulatory body with expertise in regulating gambling may—

“(i) notify the Secretary of its willingness to review prospective applicants to certify whether any such applicant meets the qualifications established under this subchapter; and

“(ii) provide the Secretary with such documentation as the Secretary determines necessary for the Secretary to determine whether such

- State or tribal regulatory body is qualified to conduct such review and may be relied upon by the Secretary to make any such certification.
- “(B) DETERMINATION AND NOTICE.—Within 60 days after receiving any notice under subparagraph(A)(i), the Secretary shall—
- “(i) make the determination as to whether a State or tribal regulatory body is qualified to conduct a review of prospective applicants and may be relied upon to certify whether any such applicant meets the qualifications established under this subchapter; and
- “(ii) notify the State or tribal regulatory body of such determination.
- “(2) ACTIONS BY QUALIFIED AUTHORITIES.—During the period that any determination of qualification under paragraph (1)(B) is in effect with respect to any such State or tribal regulatory body, the State or tribal regulatory body—
- “(A) may undertake reviews of any applicant to determine whether the applicant or any person associated with the applicant meets the criteria for suitability for licensing established under this subchapter;
- “(B) may impose on each such applicant an administrative fee or assessment for conducting such review in an amount the regulatory body determines to be necessary to meet its expenses in the conduct of such review; and
- “(C) shall process and assess each applicant fairly and equally based on objective criteria, regardless of any prior licensing of an applicant by the State or tribal regulatory body.
- “(3) RELIANCE ON STATE OR TRIBAL CERTIFICATION.—Any applicant may provide a certification of suitability for licensing made by any State or tribal regulatory body under paragraph (2), together with all documentation the applicant has submitted to any such State or tribal regulatory body, to the Secretary, and any such certification and documentation shall be relied on by the Secretary as evidence that an applicant has met the suitability for licensing requirements under this section.
- “(4) AUTHORITY OF SECRETARY TO REVIEW.—Notwithstanding any certification of suitability for licensing made by any State or tribal regulatory body, the Secretary retains the authority to review, withhold, or revoke any license if the Secretary has reason to believe that any applicant or licensee does not meet the suitability requirements for licensing established under this section, or any other requirement of a licensee.
- “(5) RELIANCE ON QUALIFIED REGULATORY BODY FOR OTHER PURPOSES, INCLUDING EXAMINATION AND ENFORCEMENT.—The Secretary shall rely on any State and tribal regulatory body found qualified under this subsection for such other regulatory and enforcement activities as the Secretary finds to be useful and appropriate to carry out the purposes of this subchapter, including authority under paragraph (6).
- “(6) ADDITIONAL AUTHORITY OF QUALIFIED STATE OR TRIBAL AUTHORITIES.—The qualified state or tribal authorities may—
- “(A) examine licensees who are licensed under a State or tribal program referred to in paragraph (1);
- “(B) employ enforcement agents with sufficient training and experience to administer the requirements of this subchapter; and
- “(C) enforce any requirement of this subchapter that is within the jurisdiction of the qualified state or tribal authority through all appropriate means provided under this subchapter and other provisions of law.
- “(7) REVOCATION OF QUALIFICATION.—The Secretary may revoke, at any time and for any reason, the qualification of any State or tribal regulatory body to certify or to conduct any other regulatory or enforcement activity to carry out the purposes of this subchapter.
- “(p) PREVENTION OF MINORS FROM PLACING BETS OR WAGERS.—The Secretary shall—
- “(1) frequently monitor, evaluate, and measure compliance effectiveness of each licensee’s software, mechanisms, and other systems for preventing minors from placing bets or wagers through the Internet site of the licensee; and
- “(2) impose a sanction of either a fine, a revocation of license, or both, on a licensee whose minor protection software, mechanisms, and other systems are found to be insufficiently effective.
- “(q) REQUIREMENTS WITH RESPECT TO CHILD SUPPORT DELINQUENTS.—
- “(1) IN GENERAL.—When it is made known to the Secretary by a Federal or State court or a competent State agency involved with the administration or enforcement of a court-ordered child support payment that a particular individual is delinquent with respect to court-ordered child support payments, the Secretary shall include that individual on the list established under section 5384(c)(1)(A).

“(2) REMOVAL FROM LIST.—Individuals placed on the list pursuant to paragraph (1) shall be removed from such list if the court or agency that made such individual’s delinquency known to the Secretary notifies the Secretary that such individual is no longer delinquent.

**“§ 5384. Problem Gambling, Responsible Gambling, Consumer Safeguards, and Self-Exclusion Program**

“(a) REGULATIONS REQUIRED.—The Secretary and any State or tribal regulatory body that has been qualified under subsection 5383(o) shall prescribe regulations for the development of a Problem Gambling, Responsible Gambling, Consumer Safeguards, and Self-Exclusion Program on the basis of standards that each licensee shall implement as a condition of licensure.

“(b) MINIMUM REQUIREMENTS.—

“(1) IN GENERAL.—Any application for a license shall include a submission to the Secretary or qualified State or tribal regulatory body setting forth a comprehensive program that is intended—

“(A) to verify the identity and age of each customer through the use of commercially available data sources or any approved government database that is available for access in real-time through an automated process;

“(B) to ensure that no customers under the legal age 21 may initiate or otherwise make any bets or wagers for real money;

“(C) to verify the State or tribal land in which the customer is located at the time the customer attempts to initiate a bet or wager;

“(D) to ensure that no customer who is located in a State or tribal land that opts out pursuant to section 5387 can initiate or otherwise make a bet or wager prohibited by such opt-out;

“(E) to ensure that responsible gambling materials including materials on problem gambling, services and resources to address problem gambling, descriptions of games offered by the licensee, and when appropriate, odds of winning or payout rates of games, and any other materials that the Secretary or qualified State or tribal regulatory body may deem appropriate are made available to customers;

“(F) to make available player-selectable responsible gambling options that may include, as appropriate to specific gambling games, a stake limit, loss limit, time-based loss limits, deposit limit, session time limit, time-based exclusion from all gambling and other similar options that the Secretary or qualified State or tribal regulatory body may deem appropriate and require to be made available;

“(G) to require each customer, before making or placing any bet or wager, to establish personal limits as a condition of play that apply across all betting sites, which may be in hourly, daily, weekly or monthly increments, at the discretion of the customer;

“(H) to protect the privacy and security of any customer in connection with any lawful Internet gambling activity;

“(I) to protect against fraud and to provide for dispute resolution relating to internet gambling activity through programs to insure the integrity and fairness of the games; and

“(J) to protect against money laundering relating to Internet gambling activities.

“(2) REQUIREMENTS FOR PROGRAMS ENSURING INTEGRITY AND FAIRNESS.—The programs referred to in paragraph (1)(I) to insure the integrity and fairness of the games shall include requirements for—

“(A) real-time, multiparty cryptographic protocols for random number generation where 1 of the parties is the player;

“(B) secure audit trails;

“(C) detailed player betting logs that record and store each wager placed by the player;

“(D) real time confirmation of high value bets or wagers, where appropriate; or

“(E) equally effective options that the Secretary or qualified State or tribal regulatory officer or agency may determine to be appropriate.

“(c) PERIODIC REVIEW.—

“(1) IN GENERAL.—The Secretary shall, on a regular basis, review the minimum requirements under this section and may, based on the best available technology, update the standards that each licensee shall implement as a condition of licensure.

“(2) CONSULTATION.—In conducting the review required under paragraph (1), the Secretary shall consult with—

“(A) State and tribal gaming regulatory officials;

- “(B) law enforcement officials;
  - “(C) experts in underage and problem gaming;
  - “(D) experts on individual privacy;
  - “(E) consumers;
  - “(F) on-line retailers of other age restricted materials such as tobacco and alcohol products;
  - “(G) licensees and other representatives of the gaming industry;
  - “(H) software developers with expertise in gaming, privacy, the payments systems available, and other relevant areas; and
  - “(I) such other relevant individuals as the Secretary may determine to be appropriate.
- “(d) LIST OF PERSONS SELF-EXCLUDED FROM GAMBLING ACTIVITIES.—
- “(1) ESTABLISHMENT.—
- “(A) IN GENERAL.—The Secretary shall provide by regulation for the establishment of a list of persons self-excluded from gambling activities at all licensee sites.
  - “(B) PLACEMENT REQUEST.—Any person may request placement on the list of self-excluded persons by—
    - “(i) acknowledging in a manner to be established by the Secretary that the person wishes to be denied gambling privileges; and
    - “(ii) agreeing that, during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gambling activity at any licensee sites.
- “(2) PLACEMENT AND REMOVAL PROCEDURES.—The regulations prescribed by the Secretary under paragraph (1)(A) shall establish procedures for placements on, and removals from, the list of self-excluded persons.
- “(3) LIMITATION ON LIABILITY.—
- “(A) IN GENERAL.—The United States, the Secretary, an enforcement agent, or a licensee, or any employee or agent of the United States, the Secretary, an enforcement agent, or a licensee, shall not be liable to any self-excluded person or to any other party in any judicial or administrative proceeding for any harm, monetary or otherwise, which may arise as a result of—
    - “(i) any failure to withhold gambling privileges from, or to restore gambling privileges to, a self-excluded person; or
    - “(ii) otherwise permitting a self-excluded person to engage in gambling activity while on the list of self-excluded persons.
  - “(B) RULE OF CONSTRUCTION.—No provision of subparagraph (A) shall be construed as preventing the Director from assessing any regulatory sanction against a licensee for failing to comply with the minimum standards prescribed pursuant to this subsection.
- “(4) DISCLOSURE PROVISIONS.—
- “(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the list of self-excluded persons shall not be open to public inspection.
  - “(B) AFFILIATE DISCLOSURE.—Any licensees may disclose the identities of persons on the self-excluded list to any affiliated company or, where required to comply with this subsection, any service provider, to the extent that the licensee ensures that any affiliated company or service provider maintains such information under confidentiality provisions comparable to those in this subsection.
- “(5) LIMITATION ON LIABILITY FOR DISCLOSURE.—A licensee or an employee, agent, or affiliate of a licensee shall not be liable to any self-excluded person or to any other party in any judicial proceeding for any harm, monetary or otherwise, which may arise as a result of disclosure or publication in any manner.
- “(e) GAMBLING BY PROHIBITED PERSONS.—
- “(1) PROHIBITION BENEFITTING FROM PROHIBITED GAMBLING ACTIVITY.—A person who is prohibited from gambling with a licensee by law, or by order of the Secretary or any court of competent jurisdiction, including any person on the self-exclusion list as established in accordance with subsection (d), shall not collect, in any manner or proceeding, any winnings or recover any losses arising as a result of any prohibited gambling activity.
  - “(2) FORFEITURE.—In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, any prohibited person by a licensee as a result of bets or wagers made by a prohibited person shall be subject to forfeiture by order of the Secretary, following notice to the prohibited person and opportunity to be heard.
  - “(3) DEPOSIT OF FORFEITED FUNDS.—Any funds forfeited pursuant to this subsection shall be deposited into the general fund of the Treasury.

“(4) PERSONS SELF-EXCLUDED.—Licensees may not accept bets or wagers from persons on the list established pursuant to subsection (d)(1)(A).

“(f) PROBLEM OR COMPULSIVE GAMBLERS NOT ON THE LIST OF SELF-EXCLUDED PERSONS.—

“(1) PUBLIC AWARENESS PROGRAM.—

“(A) IN GENERAL.—The Secretary and any State or tribal regulatory body that has been qualified under subsection 5383(o) shall provide by regulation for the establishment of a program to alert the public to the existence, consequences, and availability of the self-exclusion list, and shall prepare and promulgate written materials to be used in such a program.

“(B) LICENSEE-PROVIDED PUBLICITY.—Regulations prescribed under subparagraph (A) may require a licensee to make available literature or screen displays relating to the existence of the program.

“(2) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as creating a legal duty in the Secretary, a qualified State or tribal regulatory body, a licensee, or any representative of a licensee to identify or to exclude problem or compulsive gamblers not on the list of self-excluded persons.

“(3) IMMUNITY.—The United States, the Secretary, a qualified State or tribal regulatory body, a licensee, and any employee or agent of a licensee, shall not be liable to any person in any proceeding for losses or other damages of any kind arising out of that person’s gambling activities based on a claim that the person was a compulsive, problem, or pathological gambler.

**“§ 5385. Financial transaction providers**

“(a) IN GENERAL.—No financial transaction provider shall be held liable for engaging in financial activities and transactions for or on behalf of a licensee or involving a licensee, including payments processing activities, unless such provider has knowledge that the specific financial activities or transactions are conducted in violation of this subchapter and with applicable Federal and State laws.

“(b) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) FINANCIAL TRANSACTION PROVIDER.—The term ‘financial transaction provider’ means 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 payment system.

“(2) OTHER TERMS.—

“(A) CREDIT, CREDITOR, CREDIT CARD, AND CARD ISSUER.—The terms ‘credit’, ‘creditor’, ‘credit card’, and ‘card issuer’ have the meanings given the terms in section 103 of the Truth in Lending Act.

“(B) ELECTRONIC FUND TRANSFER.—The term ‘electronic fund transfer’—  
“(i) has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that the term includes transfers that would otherwise be excluded under section 903(6)(E) of such Act; and

“(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

“(C) FINANCIAL INSTITUTION.—The term ‘financial institution’ has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

“(D) INSURED DEPOSITORY INSTITUTION.—The term ‘insured depository institution’—

“(i) has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act; and

“(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

“(E) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms ‘money transmitting business’ and ‘money transmitting service’ have the meanings given the terms in section 5330(d) (determined without regard to any regulations prescribed by the Secretary under such section).

**“§ 5386. List of unlawful Internet gambling enterprises**

“(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) UNLAWFUL INTERNET GAMBLING ENTERPRISE.—The term ‘unlawful Internet gambling enterprise’ means any person who, more than 10 days after the date of the enactment of this section—

- “(A) violates a provision of section 5363;
- “(B) knowingly receives or transmits funds intended primarily for a person described in subparagraph (A); or
- “(C) knowingly assists in the conduct of a person described in subparagraph (A) or (B).
- “(2) DIRECTOR.—The term ‘Director’ means the Director of the Financial Crimes Enforcement Network.
- “(b) LIST OF UNLAWFUL INTERNET GAMBLING ENTERPRISES.—
- “(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this section, the Director shall submit to the Secretary a list of unlawful Internet gambling enterprises and shall regularly update such list in accordance with the procedures described in paragraph (3).
- “(2) CONTENTS OF LIST.—The list prepared under paragraph (1) shall include the following information for each such unlawful Internet gambling enterprise:
- “(A) All known Internet website addresses of the enterprise.
- “(B) The names of all known owners and operators of the enterprise.
- “(C) To the extent known, information identifying the financial agents and account numbers of the enterprise and the persons listed under subparagraph (B).
- “(3) DISTRIBUTION OF LIST BY SECRETARY.—The Secretary shall make available—
- “(A) a copy of the information provided under subparagraphs (A) and (B) of paragraph (2) on the Internet website of the Secretary of the Treasury;
- “(B) to all persons who are required to comply with the regulations prescribed under the authority provided in section 5364 a copy of all the information provided under paragraph (1) in an electronic format compatible with the Specially Designated Nationals list maintained by the Office of Foreign Assets Control; and
- “(C) any information required under this paragraph not later than 10 days after receiving any new or updated list from the Director.
- “(4) PROCEDURES.—The procedures described in this paragraph are the following:
- “(A) INVESTIGATION.—The Director shall investigate entities that appear to be unlawful Internet gambling enterprises. An initial investigation shall be completed before the end of the 60-day period beginning on the date of enactment of this section. After the initial investigation, the Director shall regularly investigate entities that appear to be unlawful Internet gambling enterprises. If the Director discovers evidence sufficient to prove a prima facie case that any person is an unlawful Internet gambling enterprise, the Director shall provide the notice required under subparagraph (C).
- “(B) REQUESTS.—Any Federal, State, tribal, or local law enforcement official, any affected sports organization, any person directly harmed by unlawful Internet gambling, any financial transaction provider, and any interactive computer service (as such terms are defined in section 5362) shall have the right, but not the obligation, to make a written request to the Director for the addition of any person to the list of unlawful Internet gambling enterprises. If the Director determines that the evidence submitted is sufficient to prove a prima facie case that such person is an unlawful Internet gambling enterprise, the Director shall provide the notice required under subparagraph (C) to each person identified as an alleged unlawful Internet gambling enterprise. The Director also shall provide written notice of its decision under this subparagraph, including a decision not to add a person to the list required under paragraph (1), to the requesting party no later than 30 days after the request is received.
- “(C) NOTICE.—Not fewer than 30 days before adding an unlawful Internet gambling enterprise, or an owner or operator thereof, to the list required under paragraph (1), the Director shall provide written notice to such enterprise, owner, or operator. Any enterprise, owner, or operator receiving such notice may contest the Director’s determination by written appeal to the Director not more than 30 days after receiving notice.
- “(D) OPPORTUNITY FOR HEARING.—If a person properly submits a written appeal under subparagraph (C), the Director shall not include such person in the list required under paragraph (1) unless and until the Director provides such person with an opportunity for a hearing not more than 30 days after receiving written notice of appeal. Not more than 10 days after an opportunity for hearing is afforded, whether or not the person requesting the hearing appears at such hearing, the Director shall proceed to add such person to the list of unlawful Internet gambling enterprises unless the Di-

rector determines, based on a preponderance of the evidence, that such person is not an unlawful Internet gambling enterprise.

“(E) INJUNCTIVE RELIEF.—Any person that the Director determines shall be included in the list required under paragraph (1) after such person appears at a hearing described in subparagraph (D) and any person included in such list who did not receive the notice required under subparagraph (C), may petition for injunctive relief in the United States District Court for the District of Columbia, which shall have exclusive jurisdiction to hear challenges pursuant to this section. The petitioner shall have the burden of establishing by a preponderance of the evidence that such person is not an unlawful Internet gambling enterprise. Only persons designated by the Director for inclusion on the list of unlawful Internet gambling enterprises, and other owners or operators of an enterprise to be so listed, shall have standing to contest the Director’s determination. The court may enjoin the Director and the Secretary not to add or remove the petitioner from the list of unlawful Internet gambling enterprises, and no other judicial recourse shall be permitted.

“(c) EFFECT OF LIST.—A financial transaction provider shall be deemed to have actual knowledge that a person is an unlawful Internet gambling enterprise to the extent that such person is identified on the list available to the public, or on a non-public list made available to such financial transaction provider, by the Secretary as described in subsection (b)(2), provided that the list shall not be deemed to be the sole source of actual knowledge.

**“§ 5387. Limitation of licenses in States and Indian lands**

“(a) STATE OPT-OUT EXERCISE.—

“(1) LIMITATIONS IMPOSED BY STATES.—

“(A) IN GENERAL.—No licensee may engage, under any license issued under this subchapter, in the operation of an Internet gambling facility that knowingly accepts bets or wagers initiated by persons who reside in any State which provides notice that it will limit such bets or wagers, if the Governor or other chief executive officer of such State informs the Director of such limitation, in a manner which clearly identifies the nature and extent of such limitation, before the end of the period beginning on the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act and ending on the date on which such State’s legislature has conducted one full general legislative session, where such session began after the date of the enactment of such Act, or in accordance with paragraph (2), until such time as any notice of any amendment or repeal of such specific limitation becomes effective under paragraph (2).

“(B) COORDINATION BETWEEN STATE AND TRIBAL OPT-OUT EXERCISES.—Any State limitation under subparagraph (A) shall not apply to the acceptance by a licensee of bets or wagers from persons located within the tribal lands of an Indian tribe that—

“(i) has itself opted out pursuant to subsection (b) (in which case the tribal opt-out exercise under such subsection shall apply); or

“(ii) would be entitled pursuant to other applicable law to permit such bets or wagers to be initiated and received within its territory without use of the Internet.

“(C) COORDINATION WITH INDIAN GAMING REGULATORY ACT.—No decision by a State under this subsection shall be considered in making any determination with regard to the ability of an Indian tribe to offer any class of gambling activity pursuant to section 11 of the Indian Gaming Regulatory Act.

“(D) TRIBAL STATUS OR CATEGORY NOT IMPACTED.—Tribal operations of Internet gambling facilities under this subchapter shall not impact an Indian tribe’s status or category or class under its land-based activities.

“(E) NEW NEGOTIATIONS NOT REQUIRED.—Operating under a license issued pursuant to this subchapter shall not require, or impose any requirement on, an Indian tribe to negotiate a new agreement, or renegotiate any existing agreement, limitation or other provision of a tribal-State compact, agreement, or other understanding with respect to gaming or revenue-sharing, with regard to any Internet bet or wager occurring pursuant to a license issued by the Secretary under this subchapter.

“(2) CHANGES TO STATE LIMITATIONS.—The establishment, repeal, or amendment by any State of any limitation referred to in paragraph (1) after the end of the period referred to in paragraph (1) shall apply, for purposes of this subchapter, beginning on the first January 1 that occurs after the end of the 60-day period beginning on the later of—

“(A) the date a notice of such establishment, repeal, or amendment is provided by the Governor or other chief executive officer of such State in writing to the Secretary; or

“(B) the effective date of such establishment, repeal, or amendment.

“(b) INDIAN TRIBE OPT-OUT EXERCISE.—

“(1) LIMITATIONS IMPOSED BY INDIAN TRIBES.—No Internet gambling licensee knowingly may accept a bet or wager from a person located in the tribal lands of any Indian tribe which limits such gambling activities or other contests if the principal chief or other chief executive officer of such Indian tribe informs the Secretary of such limitation, in a manner which clearly identifies the nature and extent of such limitation, before the end of the 90-day period beginning on the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, or in accordance with paragraph (2), until such time as any notice of any amendment or repeal of such specific limitation becomes effective under paragraph (2).

“(2) CHANGES TO INDIAN TRIBE LIMITATIONS.—The establishment, repeal, or amendment by any Indian tribe of any limitation referred to in paragraph (1) after the end of the 90-day period beginning on the date of the enactment of this subchapter shall apply, for purposes of this subchapter, beginning on the first January 1 that occurs after the end of the 60-day period beginning on the later of—

“(A) the date a notice of such establishment, repeal, or amendment is provided by the principal chief or other chief executive officer of such Indian tribe in writing to the Secretary; or

“(B) the effective date of such establishment, repeal, or amendment.

“(c) NOTIFICATION AND ENFORCEMENT OF STATE AND INDIAN TRIBE LIMITATIONS.—

“(1) IN GENERAL.—The Secretary shall notify all licensees and applicants of all States and Indian tribes that have provided notice pursuant to paragraph (1) or (2) of subsection (a) or (b), as the case may be, promptly upon receipt of such notice and in no event fewer than 30 days before the effective date of such notice.

“(2) COMPLIANCE.—The Secretary shall take effective measures to ensure that any licensee under this subchapter, as a condition of the license, complies with any limitation or prohibition imposed by any State or Indian tribe to which the licensee is subject under subsection (a) or (b), as the case may be.

“(3) VIOLATIONS.—It shall be a violation of this subchapter for any licensee knowingly to accept bets or wagers initiated or otherwise made by persons located within any State or in the tribal lands of any Indian tribe for which a notice is in effect under subsection (a) or (b), as the case may be.

“(4) STATE ATTORNEY GENERAL ENFORCEMENT.—In any case in which the attorney general of a State, or any State or local law enforcement agency authorized by the State attorney general or by State statute to prosecute violations of consumer protection law, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by a violation by a licensee pursuant to paragraph (2), the State, or the State or local law enforcement agency on behalf of the residents of the agency’s jurisdiction, may bring a civil action on behalf of the residents of that State or jurisdiction in a district court of the United States located therein, to—

“(A) enjoin that practice; or

“(B) enforce compliance with this subchapter.

**“§ 5388. Sports betting prohibited on Internet**

“No licensee under this subchapter shall accept Internet bets or wagers on sporting events, with the exception of pari-mutuel racing as permitted by law.

**“§ 5389. Prohibition on the use of credit cards for Internet gambling**

“(a) IN GENERAL.—No licensee, no person operating on behalf of a licensee, and no person accepting payment for or settlement of a bet or wager who intends to transmit such payment to a person licensee, may accept a bet or wager or payment for or settlement of a bet or wager that is transmitted or otherwise facilitated with a credit card (as defined in section 5362(11)).

“(b) EXCEPTION.—

“(1) CLARIFICATION OF SCOPE.—For any person licensed to take bets or wagers in accordance with the Interstate Horseracing Act of 1978, the prohibition in subsection (a) shall only apply to those activities conducted pursuant to a license under this subchapter.

“(2) INTRASTATE ACTIVITIES.—For any person involved in legal, land-based or State- or tribal-regulated intrastate gambling, the prohibition in subsection (a) shall only apply to those activities conducted pursuant to a license under this subchapter.



**“§ 5390. State and tribal lotteries**

“(a) IN GENERAL.—Notwithstanding any other provision of this subchapter, this subchapter shall not apply to Internet gambling conducted by any State or tribal lottery authority when conducted in accordance with subparagraph (B) or (C) of section 5362(10), as clarified by section 5362(10)(E).

“(b) RULE OF CONSTRUCTION.—For purposes of the clarification made by subparagraph (E) of section 5362(10) to the meaning and intent of subparagraphs (B) and (C) of such section, Internet gambling described in subsection (a) is hereby expressly permitted, and operators of any State or tribal lottery authority conducting Internet gambling facilities operating in accordance with such subparagraph (B) or (C), as clarified by such subparagraph (E), and vendors, suppliers and service providers to such State or tribal lottery authority, shall not be required to be licensed under this subchapter.

“(c) APPLICABILITY OF OTHER PROVISIONS TO LOTTERY ACTIVITY.— To clarify existing law, section 1084 of title 18 shall not apply to any of the following that occurs in connection with any Internet gambling conducted by any State or tribal lottery authority when conducted in accordance with subparagraph (B) or (C) of section 5362(10), as clarified by section 5362(10)(E):

“(1) Any Internet bet or wager, including any transmission thereof.

“(2) Any transmission of information assisting in the placing of bets or wagers.

“(3) any transmission entitling the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.

“(d) AUTHORIZATION OF SPONSOR.—No licensee may offer services relating to any lottery sponsored by a State, tribal, or other governmental body without the authorization of the official sponsor.

**“§ 5391. Safe harbors**

“It shall be a complete defense against any prosecution or enforcement action under any Federal or State law against any person possessing a valid license under this subchapter that the activity is authorized under and has been carried out lawfully under the terms of this subchapter.

**“§ 5392. Relation to section 1084 of title 18 and the Unlawful Internet Gambling Enforcement Act**

“Section 1084 of title 18 and subchapter IV of this chapter shall not apply to any Internet bet or wager occurring pursuant to a license issued in accordance with this subchapter.

**“§ 5393. Cheating and other fraud**

“(a) ELECTRONIC CHEATING DEVICES PROHIBITED.—No person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee, knowingly shall use, or assist another in the use of, an electronic, electrical, or mechanical device which is designed, constructed, or programmed specifically for use in obtaining an advantage in any game authorized under this subchapter, where such advantage is prohibited or otherwise violates the rules of play established by the licensee.

“(b) ADDITIONAL OFFENSE.—No person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee, knowingly shall use or possess any cheating device with intent to cheat or defraud any licensee or other persons placing bets or wagers with such licensee.

“(c) PERMANENT INJUNCTION.—Upon conviction of a person for violation of this section, the court may enter a permanent injunction enjoining such person from initiating, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

“(d) CRIMINAL PENALTY.—Whoever violates subsection (a) or (b) of this section shall be fined under title 18 or imprisoned for not more than 5 years, or both.”

(b) RULES OF CONSTRUCTION.—

(1) TECHNICAL AND CONFORMING AMENDMENT.—Section 310(b)(2) of title 31, United States Code is amended—

(A) by redesignating subparagraph (J) as subparagraph (K); and

(B) by inserting after subparagraph (I) the following new subparagraph:

“(J) Administer the requirements of subchapter V of chapter 53.”

(c) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“SUBCHAPTER V—REGULATION OF LAWFUL INTERNET GAMBLING

- “5381. Congressional findings.
- “5382. Definitions.
- “5383. Establishment and administration of licensing program.
- “5384. Problem Gambling, Responsible Gambling, Consumer Safeguards, and Self-Exclusion Program.
- “5385. Financial transaction providers.
- “5386. List of unlawful Internet gambling enterprises.
- “5387. Limitation of licenses in States and Indian lands.
- “5388. Sports betting prohibited on Internet.
- “5389. Prohibition on the use of credit cards for Internet gambling.
- “5390. State and tribal lotteries.
- “5391. Safe harbors.
- “5392. Relation to section 1084 of title 18 and the Unlawful Internet Gambling Enforcement Act.
- “5393. Cheating and other fraud.”

**SEC. 3. REPORT REQUIRED.**

(a) **IN GENERAL.**—Before the end of the 1-year period beginning on the effective date of the regulations prescribed under section 5(a), and annually thereafter, the Secretary shall submit a report to the Congress on the licensing and regulation of Internet gambling operators.

(b) **INFORMATION REQUIRED.**—Each report submitted under subsection (a) shall include the following information:

- (1) A comprehensive statement regarding the prohibitions notified by the States and Indian tribes pursuant to section 5387 of title 31, United States Code.
- (2) Relevant statistical information on applicants and licenses.
- (3) The amount of licensing and user fees collected during the period covered by the report.
- (4) Information on regulatory or enforcement actions undertaken during the period.
- (5) Any other information that may be useful to the Congress in evaluating the effectiveness of the Act in meeting its purpose, including the provision of protections against underage gambling, compulsive gambling, money laundering, and fraud, and in combating tax avoidance relating to Internet gambling.

**SEC. 4. FEASIBILITY STUDY.**

The Secretary of the Treasury, in consultation with appropriate State or tribal officers or agencies, shall conduct a feasibility study on safeguards to address gambling while impaired through programs such as periodic notices, periodic testing of individuals to establish cognitive competence, and any other similar option that the Secretary or appropriate State or tribal officers or agencies may determine to be appropriate.

**SEC. 5. EFFECTIVE DATE.**

(a) **REGULATIONS.**—The Secretary of the Treasury shall prescribe such regulations as the Secretary may determine to be appropriate to implement subchapter V of chapter 53 of title 31, United States Code (as added by section 2(a) of this Act) and shall publish such regulations in final form in the Federal Register before the end of the 180-day period beginning on the date of the enactment of this Act.

(b) **SCOPE OF APPLICATION.**—The amendment made by section 2(a) shall apply after the end of the 90-day period beginning on the date of the publication of the regulations in final form in accordance with subsection (a).

**PURPOSE AND SUMMARY**

H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, would establish a federal regulatory and enforcement framework under which Internet gambling operators could obtain licenses authorizing them to accept bets and wagers from individuals in the U.S., on the condition that they maintain effective protections against underage gambling, compulsive gambling, money laundering and fraud, and enforce prohibitions or restrictions on types of gambling prohibited by States, and Indian Tribes.

**BACKGROUND AND NEED FOR LEGISLATION**

The U.S. government has faced profound difficulties in preventing people from engaging in online gambling, which the Justice

Department has deemed to be illegal from the earliest days of the Internet. The Department of Justice has generally interpreted the 1961 Wire Act to prohibit all online interstate betting, regardless of type, notwithstanding that the only federal appellate court to consider the issue has ruled that the Wire Act prohibits sports gambling online but does not prohibit non sports online gambling.<sup>1</sup> The Justice Department chose not to appeal that case.

In 2006, Congress enacted the Unlawful Internet Gambling Enforcement Act (UIGEA), which restricts the use of the payments system for U.S. citizens who seek to gamble online. During consideration of the UIGEA, supporters of the legislation frequently cited the following concerns about Internet gambling: fraud, money laundering, compulsive gambling, underage gambling and criminal infiltration, all of which are better policed in a licensed, regulated system, rather than an unregulated environment.

In October 2006, the Financial Action Task Force (FATF), the intergovernmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing, issued a report on new Internet payment systems and their vulnerabilities to money laundering and terrorism financing. The editor of the FATF report was quoted in *Business Week* regarding how moving payments from online gambling away from the regulated credit card industry and into less regulated realms provides room for exploitation by money launderers and financiers of terrorism:

According to the report, it would be difficult for individual countries to compel Internet services based outside their borders to stop processing transactions that are legal in the nation from which they operate. Thus, it would be problematic for U.S. law enforcement officials to stop Internet payment services from processing illegal gambling transactions made from U.S. computers. With this thorny question of Internet gambling, where the United States has made a decision on policy that is not unanimous in the world community there will be ways that these systems will be exploited, kind of like the old days in prohibition, says Vincent Schmoll, principal administrator with the FATF secretariat and editor of the report. Quite honestly, in the criminal financial world exploiting differences in jurisdictions has been the key thing all along.

The UIGEA required the Fed and Treasury to issue regulations to cover financial institutions. These regulations have been the source of much controversy and Committee consideration. On Wednesday, April 2, 2008, the Committee on Financial Services Subcommittee on Domestic and International and Monetary Policy held a hearing entitled, "Proposed UIGEA Regulations: Burden Without Benefit?" to examine the proposed regulations, which garnered more than 200 comment letters. At that hearing, the testimony of the regulators and the industry made it clear that the regulations were unworkable. Subsequently, Chairman Frank introduced legislation, H.R. 6870, which would transition the rule-

<sup>1</sup> In re *Mastercard*, 313 F. 3d 257, 262, 263 & n. 20 (5th cir. 2002) ([A] plain reading of the statutory language [of the Wire Act] clearly requires that the object of the gambling be a sporting event or contest).

making process to a formal rulemaking process and clarify the definition of unlawful Internet gambling. H.R. 6870 was favorably reported out of the Financial Services Committee on September 16, and a report was filed October 3, 2008, but the House adjourned before further action could be taken. The final rules were issued on November 18, 2008, with an effective date of January 19, 2009, and an implementation date of December 1, 2009. H.R. 2266, The Reasonable Prudence in Regulation Act, introduced by Chairman Frank on May 6, 2009, would have extended the compliance deadline for the regulations to December 1, 2010. On November 27, 2009, in response to a petition filed by the National Thoroughbred Racing Association, the Poker Players Association and the American Greyhound Track Operators Association, the Federal Reserve and Treasury delayed the implementation of these regulations to June 1, 2010. Many letters were written in support of this petition for delayed implementation, including: a letter dated October 1 by 19 bipartisan members of the Financial Services Committee; a letter headed by Congressman Cohen and 24 other members on September 26; a letter headed by Congressmen Sessions and 15 other members on October 26, a Kentucky delegation letter sent on November 19, and letters from Senators Reid, McConnell and Menendez. In addition, letters in support of the petition were sent by the American Bankers Association, Independent Community Bankers Association, National Association of Federal Credit Unions, Credit Union National Association, NACHA-The Electronic Payments Association, and other financial institutions.

The regulations, like the underlying legislation, fail to define the term unlawful Internet gambling, leaving it to each financial institution to reconcile conflicting state and federal laws, court decisions and inconsistent Department of Justice interpretations, when determining whether to process a transaction. Furthermore, some of the information needed to make this determination would generally be unavailable to banks because customers or financial institutions in foreign jurisdictions will likely be unwilling or unable to provide it.

On May 6, 2009, Chairman Frank introduced H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act. The legislation would establish a federal regulatory and enforcement framework under which Internet gambling operators could obtain licenses authorizing them to accept bets and wagers from individuals in the U.S., on the condition that they maintain effective protections against underage gambling, compulsive gambling, money laundering and fraud, and enforce prohibitions or restrictions on types of gambling prohibited by states, and Indian Tribes. H.R. 2267, as amended in committee, explicitly prohibits Internet wagers on professional and amateur sports. This language reaffirms decades of federal statutory policy against sports betting.

This bill currently has 70 cosponsors.

#### HEARINGS

The Committee on Financial Services held a hearing on “H.R. 2266, the Reasonable Prudence in Regulation Act, and H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act” on Thursday, December 3, 2009. The following witnesses testified:

- The Honorable Robert Martin, Tribal Chairman, Morongo Band of Mission Indians
- Ms. Parry Aftab, Executive Director, WiredSafety
- Professor Malcolm K. Sparrow, John F. Kennedy School of Government, Harvard University
- Mr. Keith S. Whyte, Executive Director, National Council on Problem Gambling
- Mr. Jim Dowling, Dowling Advisory Group
- Mr. Samuel A. Vallandingham, Chief Information Officer and Vice President, The First State Bank on behalf of the Independent Community Bankers of America
- Mr. Mike Brodsky, Executive Chairman, Youbet.com

The Committee held an additional hearing on “H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act” on Wednesday, July 21, 2010. The following witnesses testified:

- Mr. Edwin Williams, President and Chief Executive Officer, Discovery Federal Credit Union
- Mr. Tom Malkasian, Vice Chairman and Director of Strategic Planning, Commerce Casino
- The Honorable Lynn Malerba, Tribal Chairwoman, Mohegan Tribe of Connecticut
- Mr. Michael K. Fagan, Law Enforcement and Anti-Terrorism Consultant
- Ms. Annie Duke, professional poker player, on behalf of the Poker Players Alliance

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 28, 2010, and ordered H.R. 2267, Internet Gambling, Consumer Protection, and Enforcement Act, as amended, favorably reported to the House by a record vote of 41 yeas, 22 nays, and 1 present.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 41 yeas, 22 nays, and 1 present (Record vote no. FC–135). The names of Members voting for, against, and present follow:

#### RECORD VOTE NO. FC–135

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....	X	.....	.....	Mr. Bachus .....	.....	X	.....
Mr. Kanjorski .....	X	.....	.....	Mr. Castle .....	.....	X	.....
Ms. Waters .....	X	.....	.....	Mr. King (NY) .....	X	.....	.....
Mrs. Maloney .....	X	.....	.....	Mr. Royce .....	.....	X	.....
Mr. Gutierrez .....	X	.....	.....	Mr. Lucas .....	.....	.....	.....
Ms. Velázquez .....	X	.....	.....	Mr. Paul .....	.....	.....	X
Mr. Watt .....	X	.....	.....	Mr. Manzullo .....	.....	X	.....
Mr. Ackerman .....	X	.....	.....	Mr. Jones .....	.....	X	.....
Mr. Sherman .....	.....	.....	.....	Mrs. Biggert .....	X	.....	.....
Mr. Meeks .....	X	.....	.....	Mr. Miller (CA) .....	.....	.....	.....
Mr. Moore (KS) .....	X	.....	.....	Mrs. Capito .....	.....	.....	.....

RECORD VOTE NO. FC-135—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa	X			Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)		X	
Mrs. McCarthy	X			Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer		X	
Mr. Lynch				Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott		X		Mr. Campbell	X		
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant	X		
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee	X		
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster	X						
Mr. Carson	X						
Ms. Speier		X					
Mr. Childers							
Mr. Minnick							
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

During the consideration of the bill, the following amendments were disposed of by record votes. The names of Members voting for, against, and present follow:

An amendment by Mr. Baca, no. 7, regarding State and Indian tribe opt-in, was not agreed to by a record vote of 22 yeas and 37 nays (Record vote no. FC-133):

RECORD VOTE NO. FC-133

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)			
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas			
Ms. Velázquez		X		Mr. Paul			
Mr. Watt				Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)		X		Mrs. Capito			
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca	X			Mr. Neugebauer	X		
Mr. Lynch				Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry			
Mr. Scott		X		Mr. Campbell		X	
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		

RECORD VOTE NO. FC-133—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Bean				Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee		X	
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers							
Mr. Minnick							
Mr. Adler							
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment in the nature of a substitute offered by Mr. Bachus, no. 18, was not agreed to by a record vote of 22 yeas and 43 nays (Record vote no. FC-134):

RECORD VOTE NO. FC-134

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)		X	
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas			
Ms. Velázquez		X		Mr. Paul		X	
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert		X	
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)		X		Mrs. Capito			
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer	X		
Mr. Lynch				Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell		X	
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee		X	
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier	X						
Mr. Childers							
Mr. Minnick							

## RECORD VOTE NO. FC-134—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Adler .....	.....	X	.....				
Ms. Kilroy .....	.....	X	.....				
Mr. Driehaus .....	.....	X	.....				
Ms. Kosmas .....	.....	X	.....				
Mr. Grayson .....	.....	X	.....				
Mr. Himes .....	.....	X	.....				
Mr. Peters .....	.....	X	.....				
Mr. Maffei .....	.....	X	.....				

The following other amendments were also considered:

An amendment by Mr. Frank, no. 1, a manager's amendment, was offered and withdrawn. The amendment was subsequently re-offered as amendment no. 12, and was agreed to by a voice vote.

An amendment by Mr. Sherman, no. 2, regarding "bad actors", was agreed to by a voice vote.

An amendment by Mr. King (and Mr. Meeks), no. 3, prohibiting sports betting on the Internet, was agreed to by a voice vote.

An amendment by Ms. Kilroy, no. 4, prohibiting inappropriate advertising, was agreed to by a voice vote.

An amendment by Mr. Bachus (and Mrs. Bachmann), no. 5, regarding licensing requirements, was offered and withdrawn.

An amendment by Mr. Baca, no. 6, regarding relation to the Act of January 2, 1951, was ruled out of order as not germane.

An amendment by Mr. Campbell, no. 8, dealing with miscellaneous subjects, was agreed to, as modified, by a voice vote.

An amendment by Mr. Sherman, no. 9, regarding opt-out timing, was agreed to by a voice vote.

An amendment by Mrs. Bachmann, no. 10, regarding legal age requirement for marketing and advertising material, was agreed to by a voice vote.

An amendment by Ms. Bean (and Ms. Kilroy), no. 11, regarding prevention of minors from placing bets or wagers, was agreed to by a voice vote.

An amendment by Mrs. Bachmann, no. 13, regarding screening for child support delinquents, as amended by the amendment by Mr. Frank, no. 13a (as modified), to the amendment, was agreed to by a voice vote.

An amendment by Mr. Peters (and Mr. Hodes), no. 14, regarding State and tribal lotteries, was agreed to by a voice vote.

An amendment by Mr. Bachus (and Mrs. Bachmann), no. 15, regarding licensing requirements, was agreed to by voice vote.

An amendment by Mr. Sherman, no. 16, regarding U.S. presence, was agreed to by a voice vote.

An amendment by Ms. Kilroy, no. 17, regarding compilation of datasets on player behavior, was agreed to by a voice vote.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.



## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 2267 would establish a federal regulatory and enforcement framework under which Internet gambling operators could obtain licenses authorizing them to accept bets and wagers from individuals in the U.S., on the condition that they maintain effective protections against underage gambling, compulsive gambling, money laundering and fraud, and enforce prohibitions or restrictions on types of gambling prohibited by states, and Indian Tribes.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 22, 2010.

Hon. BARNEY FRANK,  
*Chairman, Committee on Financial Services,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

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

Summary: H.R. 2267 would amend existing law that regulates Internet gambling. The legislation would establish a framework for federal regulations and enforcement and would require Internet gambling operators to obtain licenses to accept wagers from individuals in the United States.

CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 2267 would increase revenues by \$971

million and direct spending by \$688 million over the 2011–2020 period. Those changes in revenues and direct spending would reduce future budget deficits by \$283 million over the same period. Because the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

H.R. 2267 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

By requiring all Internet gambling facilities to be licensed by the federal government, H.R. 2267 would impose a private-sector mandate, as defined in UMRA, on businesses that are currently authorized to offer online gambling services. Based on information from industry sources and the Department of the Treasury, CBO estimates that the aggregate cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2267 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority ..	20	40	60	80	82	83	85	87	88	90	282	715
Estimated Outlays .....	14	34	54	74	81	83	84	86	88	90	257	688
CHANGES IN REVENUES												
Treasury User Fees .....	15	30	45	60	61	62	64	65	66	68	211	536
Taxes on Increased Gambling Income .....	1	17	25	34	41	47	54	62	72	82	118	435
Total Changes in Revenues .....	16	47	70	94	102	109	118	127	138	150	329	971
NET INCREASE OR DECREASE (–) IN THE BUDGET DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Net Deficit Impact .....	–2	–13	–16	–20	–21	–27	–33	–41	–50	–60	–72	–283

Note: Amounts may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in 2010. Enacting the bill would increase both direct spending and revenues, but have no significant impact on spending subject to appropriation.

### *Direct spending*

CBO expects that enacting H.R. 2267 would increase the workload of the U.S. Treasury because the department would be required to establish regulations and to issue licenses to operators of Internet gambling sites. The department would be required to review an applicant’s financial condition and corporate structure, business experience, suitability, and stability and conduct a background check before issuing those license. The legislation also would allow the Treasury to revoke or terminate the license of any operator.

Under the legislation, the department would be authorized to collect a fee to offset the costs of regulating the Internet gambling industry. Amounts collected would be available for the Treasury’s use without further appropriation. Based on information from the de-

partment and the cost of similar programs, such as the Financial Crimes Enforcement Network, CBO, estimates that when fully implemented, H.R. 2267 would cost about \$85 million annually, mostly for salaries, benefits, expenses, and training of additional lawyers, accountants, and computer specialists. We expect that it would take about four years to reach that level of effort; over the 2011–2020 period, CBO estimates that costs would total about \$670 million.

*Revenues*

Because the fees that would be collected under this bill would be compulsory payments arising from an exercise of the government’s sovereign authority, CBO believes that those amounts should appear in the budget as revenues. Furthermore, because fees paid to the Treasury would reduce the based income and payroll taxes, those new fees would lead to reductions in revenues from income and payroll taxes. As a result, the fees collected by the Treasury from gambling operators would be partially offset by a loss of receipts from income and payroll taxes estimated to total 25 percent of the fees. CBO estimates that net receipts would total \$536 million over the next 10 years.

Staff of the JCT expects that enacting this bill would increase taxable income and federal revenues. Those increases would occur because gambling winnings and losses would both increase under this legislation and are treated differently in the tax system. For nonprofessional gamblers, winnings are taxable under the individual income tax, and such winnings can be offset by gambling losses only for taxpayers who itemize their deductions. In addition, gambling losses that exceed gambling winnings are not deductible from income for such taxpayers. Staff of the JCT estimates that additional revenues would total \$435 million over the 2011–2020 period.

H.R. 2267 also would establish new federal crimes related to Internet gambling, enacting the bill thus could increase civil and criminal penalties. CBO estimates that any additional collections would not be significant because of the small number of cases likely to result. Civil crimes are recorded in the budget as revenues. Criminal fines also are recorded as revenues, deposited in the Crime Victims Fund, and subsequently spend without further appropriation.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2267 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON JULY 27, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact .....	0	–2	–13	–16	–20	–21	–27	–33	–41	–50	–60	–72	–283

Estimated impact on State, local, and tribal governments: H.R. 2267 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: By requiring all Internet gambling facilities to be licensed by the federal government, H.R. 2267 contains a private-sector mandate, as defined in UMRA, on businesses that are currently authorized to offer online gambling services. Online services, for example, facilities that offer gambling where permitted by state or tribal law and facilities that offer gambling on horse races, would have to comply with new federal standards for Internet gambling. According to information from industry sources, approximately 20 facilities offer online gambling on horse races, earning about \$100 million in annual revenues, and no Web sites currently offer other types of gambling either within a state or on tribal land.

The cost of the mandate would include redesigning Web sites, changing business operations to meet the new federal standards, and paying user fees to the Department of the Treasury. Based on the current number of online gambling sites and information from industry sources on the costs of adhering to licensing requirements, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

Estimate prepared by: Federal Spending: Matthew Pickford; Federal Revenues: Pamela Greene; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## EARMARK IDENTIFICATION

H.R. 2267 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## EXCHANGE OF COMMITTEE CORRESPONDENCE

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section establishes the short title of the bill, the “Internet Gambling Regulation, Consumer Protection, and Enforcement Act.”

*Section 2. Federal licensing requirement for Internet gambling operations*

This section includes Congressional findings; definitions; provides for the administration of a licensing program; establishes suitability qualification and disqualification standards for the issuance of a license, and for service providers; permits reliance on qualified state and tribal regulatory body certifications of suitability for applicants; provides for a problem gambling, responsible gambling, and self-exclusion program; prohibits sports betting; prohibits the use of credit cards for Internet gambling; requires Treasury to create and maintain of a list of unlawful Internet gambling enterprises; provides procedures for states and tribes to opt out; provides an exemption for state and tribal lotteries; provides a safe harbor from prosecution for activities carried out lawfully, under a valid license authorized under this subchapter; prohibits the use of electronic cheating devices, and authorizes criminal penalties including permanent injunction for anyone convicted of such use.

*Section 3. Report required*

Provides for an annual Report to Congress regarding the licensing and regulation of Internet gambling operators.

*Section 4. Feasibility study*

Requires Treasury to conduct a study regarding safeguards to address gambling while impaired.

*Section 5. Effective date*

Authorizes the Secretary to issue implementing regulations which shall be published within 180 days after enactment, which shall be applicable 90 days after publication.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 31, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE I—GENERAL**

\* \* \* \* \*

**CHAPTER 3—DEPARTMENT OF THE TREASURY**

\* \* \* \* \*

**SUBCHAPTER I—ORGANIZATION**

\* \* \* \* \*

**§ 310. Financial Crimes Enforcement Network**

(a) \* \* \*

(b) DIRECTOR.—

(1) \* \* \*

(2) DUTIES AND POWERS.—The duties and powers of the Director are as follows:

(A) \* \* \*

\* \* \* \* \*

*(J) Administer the requirements of subchapter V of chapter 53.*

**[(J)]** *(K) Such other duties and powers as the Secretary of the Treasury may delegate or prescribe.*

\* \* \* \* \*

**SUBTITLE IV—MONEY**

\* \* \* \* \*

**CHAPTER 53—MONETARY TRANSACTIONS**

**SUBCHAPTER I—CREDIT AND MONETARY EXPANSION**

Sec.

5301. Buying obligations of the United States Government.

\* \* \* \* \*

*SUBCHAPTER V—REGULATION OF LAWFUL INTERNET GAMBLING*

5381. *Congressional findings.*

5382. *Definitions.*

5383. *Establishment and administration of licensing program.*

5384. *Problem Gambling, Responsible Gambling, Consumer Safeguards, and Self-Exclusion Program.*

5385. *Financial transaction providers.*

5386. *List of unlawful Internet gambling enterprises.*

5387. *Limitation of licenses in States and Indian lands.*

5388. *Sports betting prohibited on Internet.*

5389. *Prohibition on the use of credit cards for Internet gambling.*

5390. *State and tribal lotteries.*

5391. *Safe harbors.*

5392. *Relation to section 1084 of title 18 and the Unlawful Internet Gambling Enforcement Act.*

5393. *Cheating and other fraud.*

\* \* \* \* \*

SUBCHAPTER V—REGULATION OF LAWFUL INTERNET  
GAMBLING

**§ 5381. Congressional findings**

*The Congress finds the following:*

(1) *Since the development of the Internet, millions of people have chosen to gamble online, and today Internet gambling is offered by operators located in many different countries under a variety of licensing and regulatory regimes.*

(2) *Despite the increasing use of the Internet for gambling by persons in the United States, there is no Federal or State regulatory regime in place to protect United States citizens who choose to engage in this interstate activity, or to oversee operators to establish and enforce standards of integrity and fairness.*

(3) *In the United States, gambling activities, equipment, and operations have been subject to various forms of Federal and State control, regulation, and enforcement, with some form of gambling being permitted in nearly every State and by many Indian tribes.*

(4) *Internet gambling in the United States should be controlled by a strict Federal, State, and tribal licensing and regulatory framework to protect underage and otherwise vulnerable individuals, to ensure the games are fair, to address the concerns of law enforcement, and to enforce any limitations on the activity established by the States and Indian tribes.*

(5) *An effective Federal, State, and tribal licensing system would ensure that licenses are issued only to Internet gambling operators which meet strict criteria to protect consumers, and which—*

*(A) are in good financial and legal standing, and of good character, honesty, and integrity;*

*(B) utilize appropriate technology to determine the age and location of users;*

*(C) adopt and implement systems to protect minors and problem gamblers;*

*(D) adopt and implement systems to enforce any applicable Federal, State, and Indian tribe limitations on Internet gambling; and*

*(E) have in place risk-based methods to identify and combat money laundering and fraud relating to Internet gambling, and to protect the privacy and security of users.*

(6) *There is a need to extend the regulatory provisions of this Act to all persons, locations, equipment, practices, and associations related to Internet gambling, with each State and Indian tribe having the ability to limit Internet gambling operators from offering Internet gambling to persons located within its territory by opting out of the provisions of this Act.*

**§ 5382. Definitions**

*For purposes of this subchapter, the following definitions shall apply:*

(1) *APPLICANT.—The term “applicant” means any person who has applied for a license pursuant to this subchapter.*

(2) *BET OR WAGER.—The term “bet or wager” has the same meaning as in section 5362(1).*

(3) *ENFORCEMENT AGENT.*—The term “enforcement agent” means any individual authorized by the Secretary to enforce the provisions of this subchapter and regulations prescribed under this subchapter.

(4) *INDIAN LANDS AND INDIAN TRIBE.*—The terms “Indian lands” and “Indian tribe” have the same meanings as in section 4 of the Indian Gaming Regulatory Act.

(5) *INTERNET.*—The term “Internet” has the same meaning as in section 5362(5).

(6) *LICENSEE.*—The term “licensee” means an entity authorized to operate an Internet gambling facility in accordance with this subchapter.

(7) *OPERATE AN INTERNET GAMBLING FACILITY.*—The term “operate an Internet gambling facility” or “operation of an Internet gambling facility” means the direction, management, supervision, or control of an Internet site through which bets or wagers are initiated, received, or otherwise made, whether by telephone, Internet, satellite, or other wire or wireless communication.

(8) *SECRETARY.*—The term “Secretary” means the Secretary of the Treasury, or any person designated by the Secretary.

(9) *STATE.*—The term “State” means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

(10) *SPORTING EVENT.*—The term “sporting event” means any athletic competition, whether professional, scholastic, or amateur.

**§5383. Establishment and administration of licensing program**

(a) *TREASURY RESPONSIBILITIES.*—The Secretary shall have responsibility for the following activities:

(1) *Exercising full regulatory jurisdiction over—*

(A) *the operation of Internet gambling facilities by licensees; and*

(B) *the licensure and regulation of all applicants, except to the extent that powers have been delegated to qualified State and tribal regulatory bodies pursuant to this subchapter.*

(2) *Prescribing such regulations as may be necessary to administer and enforce the requirements of this subchapter.*

(3) *Employing enforcement agents with sufficient training and experience to administer the requirements of this subchapter and the regulations prescribed under this subchapter.*

(4) *Enforcing the requirements of this subchapter through all appropriate means provided under this subchapter and other provisions of law.*

(b) *INTERNET GAMBLING LICENSING PROGRAM.*—

(1) *LICENSING REQUIRED FOR CERTAIN INTERNET GAMBLING.*—No person may operate an Internet gambling facility that knowingly accepts bets or wagers from persons located in the United States without a license issued by the Secretary in accordance with this subchapter.

(2) *AUTHORITY UNDER VALID LICENSE.*—A licensee may accept bets or wagers from persons located in the United States, sub-



ject to the limitations set forth in this subchapter, so long as its license remains in good standing.

(c) APPLICATION FOR LICENSE.—

(1) *IN GENERAL.*—Any person seeking authority to operate an Internet gambling facility offering services to persons in the United States may apply for a license issued by the Secretary.

(2) *INFORMATION REQUIRED.*—Any application for a license under this subchapter shall contain such information as may be required by the Secretary, including the following:

(A) The criminal and credit history of the applicant, any senior executive and director of the applicant, and any person deemed to be in control of the applicant.

(B) The financial statements of the applicant.

(C) Documentation showing the corporate structure of the applicant and all related businesses and affiliates.

(D) Documentation containing detailed evidence of the applicant's plan for complying with all applicable regulations should a license be issued, with particular emphasis on the applicant's ability to—

(i) protect underage and problem gamblers;

(ii) ensure games are being operated fairly; and

(iii) comply with and address the concerns of law enforcement.

(E) Certification that the applicant agrees to submit to United States jurisdiction and all applicable United States laws relating to acceptance by the applicant of bets or wagers over the Internet from persons located in the United States and all associated activities.

(F) Certification that the applicant has established a corporate entity or other separate business entity in the United States, a majority of whose officers are United States persons and, if there is a board of directors, that the board is majority-controlled by directors who are United States persons.

(d) STANDARDS FOR LICENSE ISSUANCE; SUITABILITY QUALIFICATIONS AND DISQUALIFICATION STANDARDS.—

(1) SUITABILITY FOR LICENSING STANDARDS.—

(A) *IN GENERAL.*—No person shall be eligible to obtain a license unless the Secretary or an appropriate State officer or agency has determined, upon completion of a background check and investigation, that the applicant, and any person deemed to be in control of the applicant, is suitable for licensing.

(B) *ASSOCIATES OF APPLICANTS.*—If the applicant is a corporation, partnership, or other business entity, a background check and investigation shall occur with respect to the president or other chief executive of the corporation, partnership, or other business entity and other partners or senior executives and directors of the corporation, partnership, or entity, as determined appropriate by the Secretary or any appropriate State or tribal officer or agency.

(C) *BACKGROUND CHECK AND INVESTIGATION.*—The Secretary shall establish standards and procedures for conducting background checks and investigations for purposes of this subsection.

(2) *SUITABILITY FOR LICENSING STANDARDS DESCRIBED.*—For purposes of this subchapter, an applicant and any other person associated with the applicant, as applicable, is suitable for licensing if the applicant demonstrates to the Secretary or appropriate State or tribal officer or agency by clear and convincing evidence that the applicant (or individual associated with the applicant, as applicable)—

(A) is a person of good character, honesty, and integrity;

(B) is a person whose prior activities, reputation, habits, and associations do not—

(i) pose a threat to the public interest or to the effective regulation and control of the licensed activities; or

(ii) create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of the licensed activities or the carrying on of the business and financial arrangements incidental to such activities;

(C) is capable of and likely to conduct the activities for which the applicant is licensed in accordance with the provisions of this subchapter and any regulations prescribed under this subchapter;

(D) has or guarantees acquisition of adequate business competence and experience in the operation of Internet gambling facilities; and

(E) has or will obtain sufficient financing for the nature of the proposed operation and from a suitable source.

(3) *UNSUITABLE FOR LICENSING.*—An applicant or any other person may not be determined to be suitable for licensing within the meaning of this subchapter if the applicant or such person—

(A) has failed to provide information and documentation material to a determination of suitability for licensing under paragraph (1);

(B) has supplied information which is untrue or misleading as to a material fact pertaining to any such determination;

(C) has been convicted of an offense punishable by imprisonment of more than 1 year;

(D) is delinquent in filing any applicable Federal or State tax returns or in the payment of any taxes, penalties, additions to tax, or interest owed to a State or the United States;

(E) has, on or after the date of the enactment of the Unlawful Internet Gambling Enforcement Act of 2006—

(i) knowingly participated in, or should have known they were participating in, any illegal Internet gambling activity, including the taking of an illegal Internet wager, the payment of winnings on an illegal Internet wager, the promotion through advertising of any illegal Internet gambling website or service, or the collection of any payments to an entity operating an illegal Internet gambling website; or

(ii) knowingly been owned, operated, managed, or employed by, or should have known they were owned, operated, managed, or employed by, any person who

was knowingly participating in, or should have known they were participating in, any illegal Internet gambling activity, including the taking of an illegal Internet wager, the payment of winnings on an illegal Internet wager, the promotion through advertising of any illegal Internet gambling website or service, or the collection of any payments to an entity operating an illegal Internet gambling website;

(F) has—

(i) received any assistance, financial or otherwise, from any person who has, before the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, knowingly accepted bets or wagers from a person located in the United States in violation of Federal or State law; or

(ii) provided any assistance, financial or otherwise, to any person who has, before the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, knowingly accepted bets or wagers from a person located in the United States in violation of Federal or State law;

(G) with respect to another entity that has accepted a bet or wager from any individual in violation of United States law, has purchased or otherwise obtained—

(i) such entity;

(ii) a list of the customers of such entity; or

(iii) any other part of the equipment or operations of such entity;

(H) is listed on a State gambling excluded persons list;

or

(I) fails to certify in writing, under penalty of perjury, that the applicant or other such person, and all affiliated business entities (including all entities under common control), has through its entire history—

(i) not committed an intentional felony violation of Federal or State gambling laws; and

(ii) used diligence to prevent any United States person from placing a bet on an Internet site in violation of Federal or State gambling laws.

(4) **APPEAL OF DETERMINATION.**—With respect to any applicant or other person that the Secretary determines is not suitable for licensing within the meaning of this subchapter by reason of subparagraph (E) or (F) of paragraph (3), and where the Secretary has not determined that such applicant or person was acting in their capacity as a managerial employee of an Internet gambling website, the Secretary shall establish an appeals process by which such applicant or person may appeal the Secretary's determination.

(5) **ONGOING REQUIREMENT.**—A licensee (and any other person who is required to be determined to be suitable for licensing in connection with such licensee) shall meet the standards necessary to be suitable for licensing throughout the term of the license.

(6) **PROTECTION OF THE PUBLIC TRUST.**—The Secretary may take such action as is necessary to protect the public trust, in-

cluding the implementation of such safeguards as may be necessary to ensure the operation of an Internet gambling facility licensed under this subchapter is controlled only by persons who are suitable for licensing.

(7) ENFORCEMENT ACTIONS.—

(A) DETERMINATION OF UNSUITABILITY FOR CONTINUED LICENSURE.—If the Secretary finds that an individual owner or holder of a security of a licensee, or of a holding or intermediary company of a licensee or any person with an economic interest in a licensee or a director, partner, or officer of a licensee is not suitable for licensing, the Secretary may determine that the licensee is not qualified to continue as a licensee.

(B) ACTION TO PROTECT THE PUBLIC INTEREST, INCLUDING SUSPENSION.—If the Secretary may determine that the licensee is not qualified to continue as a licensee, the Secretary shall propose action necessary to protect the public interest, including, if deemed necessary, the suspension of the authority of the licensee to engage in licensed activities.

(C) IMPOSITION OF CONDITIONS INCLUDING REMOVAL OF PARTIES.—Notwithstanding a determination under subparagraph (A), the Secretary may allow a licensee to continue engaging in licensed activities by imposing conditions on the licensee under penalty of revocation or suspension of the authority of the licensee to engage in licensed activities, including—

(i) the identification of any person determined to be unsuitable for licensing; and

(ii) the establishment of appropriate safeguards to ensure such person is excluded from any interest in the licensed activities.

(e) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

(1) USER FEES.—

(A) IN GENERAL.—The cost of administering this subchapter with respect to each licensee, including the cost of any review or examination of a licensee to ensure compliance with the terms of the license and this subchapter, shall be assessed by the Secretary against the licensee institution by written notice in an amount appropriate to meet the Secretary's expenses in carrying out such administration, review, or examination.

(B) DISPOSITION.—Amounts assessed by the Secretary as user fees under subparagraph (A) shall—

(i) be maintained by the Secretary solely for use in accordance with clause (ii);

(ii) be available to the Secretary to cover all expenses incurred by the Secretary in carrying out this subchapter; and

(iii) not be construed to be Government funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 or any other authority.

(C) HEARING.—Any licensee against whom an assessment is assessed under this paragraph shall be afforded an agency hearing if such person submits a request for such hear-

ing within 20 days after the issuance of the notice of assessment.

(D) COLLECTION.—

(i) REFERRAL.—If any licensee fails to pay an assessment under this paragraph after the assessment has become final, the Secretary shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF ASSESSMENT NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the assessment shall not be subject to review.

(2) DIRECT AND EXCLUSIVE OBLIGATION OF LICENSEE.—The user fee shall be the direct and exclusive obligation of the licensee and may not be deducted from amounts available as deposits to any person placing a bet.

(f) APPROVAL OF LICENSE.—The Secretary shall grant licenses under this subchapter if the applicant meets the criteria set by the Secretary set forth in this subchapter and in any regulations promulgated thereunder.

(g) SAFEGUARDS REQUIRED OF LICENSEE.—No person may operate an Internet gambling facility in accordance with this subchapter unless the person maintains or requires mechanisms so that the following requirements, and the standards established under section 5384, are met with respect to any Internet bet or wager:

(1) LEGAL AGE.—Appropriate safeguards to ensure that the individual placing a bet or wager is of legal age as defined by the law of the State or tribal area in which the individual is located at the time the bet or wager is placed.

(2) PERMISSIBLE LOCATION.—Appropriate safeguards to ensure that the individual placing a bet or wager is physically located in a jurisdiction that permits Internet gambling at the time the bet or wager is placed.

(3) COLLECTION OF CUSTOMER TAXES.—Appropriate mechanisms to ensure that all taxes relating to Internet gambling from persons engaged in Internet gambling are collected at the time of any payment of any proceeds of Internet gambling.

(4) COLLECTION OF TAXES OF LICENSEE.—Appropriate mechanisms to ensure that all taxes relating to Internet gambling from any licensee are collected and disbursed as required by law, and that adequate records to enable later audit or verification are maintained.

(5) SAFEGUARDS AGAINST FINANCIAL CRIME.—Appropriate safeguards to combat fraud, money laundering, and terrorist finance.

(6) SAFEGUARDS AGAINST COMPULSIVE GAMBLING.—Appropriate safeguards to combat compulsive Internet gambling.

(7) PRIVACY SAFEGUARDS.—Appropriate safeguards to protect the privacy and security of any person engaged in Internet gambling.

(8) PAYMENT OF ASSESSMENTS.—Appropriate mechanisms to ensure that any assessment under subsection (e) is paid to the Secretary.

(9) OTHER REQUIREMENTS.—Such other requirements as the Secretary may establish by regulation or order.

*(h) TERM AND RENEWAL OF LICENSE.—*

*(1) TERM.—Any license issued under this section shall be issued for a 5-year term beginning on the date of issuance.*

*(2) RENEWAL.—Licenses may be renewed in accordance with the requirements prescribed by the Secretary pursuant to this subchapter.*

*(i) REVOCATION OF LICENSE.—*

*(1) IN GENERAL.—Any license granted under this subchapter may be revoked by the Secretary if—*

*(A) the licensee fails to comply with any provision of this subchapter;*

*(B) the licensee is determined to be unsuitable for licensing, within the meaning of this subchapter; or*

*(C) the licensee is determined to be targeting marketing or advertising materials at individuals who are not of legal age to place a bet or wager, as defined by the law of the State or tribal area in which the individuals are located.*

*(2) FINAL ACTION.—Any revocation of a license under paragraph (1) shall be treated as a final action by the Secretary.*

*(j) REGULATIONS.—The regulations prescribed by the Secretary under this subchapter shall include regulations to fully implement—*

*(1) safeguards required for licensees under subsection (g); and*

*(2) the requirements for programs relating to the Problem Gambling, Responsible Gambling, and Self-Exclusion Program under section 5384.*

*(k) ADMINISTRATIVE PROVISIONS.—*

*(1) GENERAL POWERS OF SECRETARY.—*

*(A) IN GENERAL.—The Secretary shall have the authority to engage in the following:*

*(i) Investigate the suitability of each licensee to ensure compliance with this subchapter and regulations prescribed under this subchapter.*

*(ii) Require licensees to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter.*

*(iii) Require licensees to maintain substantial facilities involved with the processing of bets or wagers from the United States within the United States.*

*(iv) Require that a majority of all of the employees of the applicant or licensee, and of its affiliated business entities, be residents or citizens of the United States. All entities under common control shall be considered affiliated business entities for the purposes of this subparagraph.*

*(v) Require licensees to maintain in the United States all facilities that are essential to the regulation of bets or wagers placed from the United States at a location that is accessible to the appropriate regulatory personnel at all times.*

*(vi) Examine any licensee and any books, papers, records, or other data of licensees relevant to any recordkeeping or reporting requirements imposed by the Secretary under this subchapter.*

(vii) Require licensees to maintain all facilities within the United States for processing of bets or wagers made or placed from the United States.

(viii) When determined by the Secretary to be necessary, summon a licensee or an applicant for a license, an officer or employee of a licensee or any such applicant (including a former officer or employee), or any person having possession, custody, or care of the reports and records required by the Secretary under this subchapter, to appear before the Secretary or a designee of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to any investigation in connection with the enforcement of this subchapter or any application for a license under this subchapter.

(ix) Investigate any violation of this subchapter and any regulation under this subchapter and any other violation of law relating to the operation of an Internet gambling facility.

(x) Conduct continuing reviews of applicants and licensees and the operation of Internet gambling facilities by use of technological means, onsite observation of facilities, including servers, or other reasonable means to assure compliance with this subchapter and any regulations promulgated hereunder.

(xi) Prohibit inappropriate advertising practices by licensees, including unsolicited emails targeting members of vulnerable populations, including problem gamblers and minors, or Internet advertising linked to search terms associated with children, problem gamblers, or other topics deemed inappropriate.

(B) EFFECT OF WTO RULING.—Clauses (iii) and (iv) of subparagraph (A) shall cease to have effect if a tribunal of the World Trade Organization of final arbitration rules that the implementation of such clauses would violate the trade commitments of the United States under the World Trade Organization.

(2) CONSULTATION WITH INDIAN TRIBES.—In implementing this subchapter, the Secretary shall conduct meaningful consultation with Indian tribes regarding all aspects of this subchapter which affect Indian tribes, both as potential licensing entities or operating entities.

(3) ADMINISTRATIVE ASPECTS OF SUMMONS.—

(A) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this subsection may require that books, papers, records, or other data stored or maintained at any place be produced at any business location of a licensee or applicant for a license or any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the licensee or applicant for a license operates or conducts business in the United States.

(B) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense incurred in connection

with the production of books, papers, records, or other data under this subsection.

(C) *SERVICE OF SUMMONS.*—Service of a summons issued under this subsection may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

(4) *CONTUMACY OR REFUSAL.*—

(A) *REFERRAL TO ATTORNEY GENERAL.*—In case of contumacy by a person issued a summons under this subsection or a refusal by such person to obey such summons or to allow the Secretary to conduct an examination, the Secretary shall refer the matter to the Secretary of the Treasury for referral to the Attorney General.

(B) *JURISDICTION OF COURT.*—The Attorney General may invoke the aid of any court of the United States to compel compliance with the summons within the jurisdiction of which—

- (i) the investigation which gave rise to the summons or the examination is being or has been carried on;
- (ii) the person summoned is an inhabitant; or
- (iii) the person summoned carries on business or may be found.

(C) *COURT ORDER.*—The court may issue an order requiring the person summoned to appear before the Secretary or a delegate of the Secretary to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, to allow the Secretary to examine the business of a licensee, and to pay the costs of the proceeding.

(D) *FAILURE TO COMPLY WITH ORDER.*—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(E) *SERVICE OF PROCESS.*—All process in any case under this subsection may be served in any judicial district in which such person may be found.

(5) *COMPILATION OF DATASETS ON PLAYER BEHAVIOR.*—

(A) *IN GENERAL.*—The Secretary shall compile and make available to the public, on the website of the Secretary, datasets on player behavior.

(B) *REGULATIONS REQUIRING SUBMISSION OF INFORMATION.*—The Secretary shall prescribe regulations to require licensees under this subchapter to provide information on player behavior that the Secretary determines is appropriate for the datasets under subparagraph (A).

(C) *INFORMATION REQUIRED TO BE INCLUDED.*—Datasets prepared under this paragraph shall include information on any individual player, if requested by the Secretary, including but not limited to information concerning gambling frequency, gaming duration, the amount wagered, the number of bets placed, and net losses, provided that such request complies with the provisions of subparagraph (D).

(D) *PROTECTION OF PRIVACY.*—All information provided pursuant to this paragraph shall be aggregated and anonymized, and shall not contain information that either



alone or in combination with other data elements would permit identification of any individual player.

(l) CIVIL MONEY PENALTIES.—

(1) IN GENERAL.—The Secretary may assess upon any licensee or other person subject to the requirements of this subchapter for any willful violation of this subchapter or any regulation prescribed or order issued under this subchapter, a civil penalty of not more than the greater of—

- (A) the amount (not to exceed \$100,000) involved in the violation, if any; or
- (B) \$25,000.

(2) ASSESSMENT.—

(A) WRITTEN NOTICE.—Any penalty imposed under paragraph (1) may be assessed and collected by the Secretary by written notice.

(B) FINALITY OF ASSESSMENT.—If, with respect to any assessment under paragraph (1), a hearing is not requested pursuant to subparagraph (E) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(C) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Secretary may compromise, modify, or remit any penalty which the Secretary may assess or has already assessed under paragraph (1).

(D) MITIGATING FACTORS.—In determining the amount of any penalty imposed under paragraph (1), the Secretary shall take into account the appropriateness of the penalty with respect to—

- (i) the size of the financial resources and the good faith of the person against whom the penalty is assessed;
- (ii) the gravity of the violation;
- (iii) the history of previous violations; and
- (iv) such other matters as justice may require.

(E) HEARING.—The person against whom any penalty is assessed under paragraph (1) shall be afforded an agency hearing if such person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(F) COLLECTION.—

(i) REFERRAL.—If any person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Secretary shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(G) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

(3) CONDITION FOR LICENSURE.—Payment by a licensee of any civil penalty assessed under this subsection that has become final shall be a requirement for the retention of its license.

(m) *TREATMENT OF RECORDS.*—*In light of business competition, confidentiality, and privacy concerns, the Secretary shall protect from disclosure information submitted in support of a license application under this subchapter and information collected in the course of regulating licensees to the full extent permitted by sections 552 and 552a of title 5.*

(n) *SUITABILITY FOR LICENSING REQUIREMENTS FOR CERTAIN SERVICE PROVIDERS.*—

(1) *IN GENERAL.*—*Any person that knowingly—*

(A) *manages, administers, or controls bets or wagers that are initiated, received, or otherwise made within the United States,*

(B) *otherwise manages or administers the games with which such bets or wagers are associated, or*

(C) *develops, maintains or operates, or distributes or makes available for downloading software, other system programs or hardware that create, operate, or otherwise affect the outcome of a game,*

*shall meet all of the suitability for licensing criteria established under this section in the same manner and to the same extent as if that person were itself a licensee.*

(2) *SUITABILITY FOR LICENSING REQUIREMENTS FOR CERTAIN SERVICE PROVIDERS.*—*Any failure on the part of person described in any subparagraph of paragraph (1) to remain suitable for licensing shall be grounds for revocation of the authority of the licensee for whom such service is provided to operate an Internet gambling facility, in the same manner and in accordance with subsection (i).*

(o) *RELIANCE ON STATE AND TRIBAL REGULATORY BODY CERTIFICATIONS OF SUITABILITY FOR APPLICANTS.*—

(1) *QUALIFICATION OF STATE AND TRIBAL REGULATORY BODIES.*—

(A) *APPLICATION FOR DETERMINATION.*—*Any State or tribal regulatory body with expertise in regulating gambling may—*

(i) *notify the Secretary of its willingness to review prospective applicants to certify whether any such applicant meets the qualifications established under this subchapter; and*

(ii) *provide the Secretary with such documentation as the Secretary determines necessary for the Secretary to determine whether such State or tribal regulatory body is qualified to conduct such review and may be relied upon by the Secretary to make any such certification.*

(B) *DETERMINATION AND NOTICE.*—*Within 60 days after receiving any notice under subparagraph(A)(i), the Secretary shall—*

(i) *make the determination as to whether a State or tribal regulatory body is qualified to conduct a review of prospective applicants and may be relied upon to certify whether any such applicant meets the qualifications established under this subchapter; and*

(ii) *notify the State or tribal regulatory body of such determination.*

(2) *ACTIONS BY QUALIFIED AUTHORITIES.*—During the period that any determination of qualification under paragraph (1)(B) is in effect with respect to any such State or tribal regulatory body, the State or tribal regulatory body—

(A) may undertake reviews of any applicant to determine whether the applicant or any person associated with the applicant meets the criteria for suitability for licensing established under this subchapter;

(B) may impose on each such applicant an administrative fee or assessment for conducting such review in an amount the regulatory body determines to be necessary to meet its expenses in the conduct of such review; and

(C) shall process and assess each applicant fairly and equally based on objective criteria, regardless of any prior licensing of an applicant by the State or tribal regulatory body.

(3) *RELIANCE ON STATE OR TRIBAL CERTIFICATION.*—Any applicant may provide a certification of suitability for licensing made by any State or tribal regulatory body under paragraph (2), together with all documentation the applicant has submitted to any such State or tribal regulatory body, to the Secretary, and any such certification and documentation shall be relied on by the Secretary as evidence that an applicant has met the suitability requirements under this section.

(4) *AUTHORITY OF SECRETARY TO REVIEW.*—Notwithstanding any certification of suitability for licensing made by any State or tribal regulatory body, the Secretary retains the authority to review, withhold, or revoke any license if the Secretary has reason to believe that any applicant or licensee does not meet the suitability requirements for licensing established under this section, or any other requirement of a licensee.

(5) *RELIANCE ON QUALIFIED REGULATORY BODY FOR OTHER PURPOSES, INCLUDING EXAMINATION AND ENFORCEMENT.*—The Secretary shall rely on any State and tribal regulatory body found qualified under this subsection for such other regulatory and enforcement activities as the Secretary finds to be useful and appropriate to carry out the purposes of this subchapter, including authority under paragraph (6).

(6) *ADDITIONAL AUTHORITY OF QUALIFIED STATE OR TRIBAL AUTHORITIES.*—The qualified state or tribal authorities may—

(A) examine licensees who are licensed under a State or tribal program referred to in paragraph (1);

(B) employ enforcement agents with sufficient training and experience to administer the requirements of this subchapter; and

(C) enforce any requirement of this subchapter that is within the jurisdiction of the qualified state or tribal authority through all appropriate means provided under this subchapter and other provisions of law.

(7) *REVOCATION OF QUALIFICATION.*—The Secretary may revoke, at any time and for any reason, the qualification of any State or tribal regulatory body to certify or to conduct any other regulatory or enforcement activity to carry out the purposes of this subchapter.

(p) *PREVENTION OF MINORS FROM PLACING BETS OR WAGERS.*—  
The Secretary shall—

(1) frequently monitor, evaluate, and measure compliance effectiveness of each licensee's software, mechanisms, and other systems for preventing minors from placing bets or wagers through the Internet site of the licensee; and

(2) impose a sanction of either a fine, a revocation of license, or both, on a licensee whose minor protection software, mechanisms, and other systems are found to be insufficiently effective.

(q) *REQUIREMENTS WITH RESPECT TO CHILD SUPPORT DELINQUENTS.*—

(1) *IN GENERAL.*—When it is made known to the Secretary by a Federal or State court or a competent State agency involved with the administration or enforcement of a court-ordered child support payment that a particular individual is delinquent with respect to court-ordered child support payments, the Secretary shall include that individual on the list established under section 5384(c)(1)(A).

(2) *REMOVAL FROM LIST.*—Individuals placed on the list pursuant to paragraph (1) shall be removed from such list if the court or agency that made such individual's delinquency known to the Secretary notifies the Secretary that such individual is no longer delinquent.

**§5384. Problem Gambling, Responsible Gambling, Consumer Safeguards, and Self-Exclusion Program**

(a) *REGULATIONS REQUIRED.*—The Secretary and any State or tribal regulatory body that has been qualified under subsection 5383(o) shall prescribe regulations for the development of a Problem Gambling, Responsible Gambling, Consumer Safeguards, and Self-Exclusion Program on the basis of standards that each licensee shall implement as a condition of licensure.

(b) *MINIMUM REQUIREMENTS.*—

(1) *IN GENERAL.*—Any application for a license shall include a submission to the Secretary or qualified State or tribal regulatory body setting forth a comprehensive program that is intended—

(A) to verify the identity and age of each customer through the use of commercially available data sources or any approved government database that is available for access in real-time through an automated process;

(B) to ensure that no customers under the legal age 21 may initiate or otherwise make any bets or wagers for real money;

(C) to verify the State or tribal land in which the customer is located at the time the customer attempts to initiate a bet or wager;

(D) to ensure that no customer who is located in a State or tribal land that opts out pursuant to section 5387 can initiate or otherwise make a bet or wager prohibited by such opt-out;

(E) to ensure that responsible gambling materials including materials on problem gambling, services and resources to address problem gambling, descriptions of games offered by the licensee, and when appropriate, odds of winning or

*payout rates of games, and any other materials that the Secretary or qualified State or tribal regulatory body may deem appropriate are made available to customers;*

*(F) to make available player-selectable responsible gambling options that may include, as appropriate to specific gambling games, a stake limit, loss limit, time-based loss limits, deposit limit, session time limit, time-based exclusion from all gambling and other similar options that the Secretary or qualified State or tribal regulatory body may deem appropriate and require to be made available;*

*(G) to require each customer, before making or placing any bet or wager, to establish personal limits as a condition of play that apply across all betting sites, which may be in hourly, daily, weekly or monthly increments, at the discretion of the customer;*

*(H) to protect the privacy and security of any customer in connection with any lawful Internet gambling activity;*

*(I) to protect against fraud and to provide for dispute resolution relating to internet gambling activity through programs to insure the integrity and fairness of the games; and*

*(J) to protect against money laundering relating to Internet gambling activities.*

**(2) REQUIREMENTS FOR PROGRAMS ENSURING INTEGRITY AND FAIRNESS.**—*The programs referred to in paragraph (1)(I) to insure the integrity and fairness of the games shall include requirements for—*

*(A) real-time, multiparty cryptographic protocols for random number generation where 1 of the parties is the player;*

*(B) secure audit trails;*

*(C) detailed player betting logs that record and store each wager placed by the player;*

*(D) real time confirmation of high value bets or wagers, where appropriate; or*

*(E) equally effective options that the Secretary or qualified State or tribal regulatory officer or agency may determine to be appropriate.*

**(c) PERIODIC REVIEW.**—

**(1) IN GENERAL.**—*The Secretary shall, on a regular basis, review the minimum requirements under this section and may, based on the best available technology, update the standards that each licensee shall implement as a condition of licensure.*

**(2) CONSULTATION.**—*In conducting the review required under paragraph (1), the Secretary shall consult with—*

*(A) State and tribal gaming regulatory officials;*

*(B) law enforcement officials;*

*(C) experts in underage and problem gaming;*

*(D) experts on individual privacy;*

*(E) consumers;*

*(F) on-line retailers of other age restricted materials such as tobacco and alcohol products;*

*(G) licensees and other representatives of the gaming industry;*

(H) software developers with expertise in gaming, privacy, the payments systems available, and other relevant areas; and

(I) such other relevant individuals as the Secretary may determine to be appropriate.

(d) LIST OF PERSONS SELF-EXCLUDED FROM GAMBLING ACTIVITIES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall provide by regulation for the establishment of a list of persons self-excluded from gambling activities at all licensee sites.

(B) PLACEMENT REQUEST.—Any person may request placement on the list of self-excluded persons by—

(i) acknowledging in a manner to be established by the Secretary that the person wishes to be denied gambling privileges; and

(ii) agreeing that, during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gambling activity at any licensee sites.

(2) PLACEMENT AND REMOVAL PROCEDURES.—The regulations prescribed by the Secretary under paragraph (1)(A) shall establish procedures for placements on, and removals from, the list of self-excluded persons.

(3) LIMITATION ON LIABILITY.—

(A) IN GENERAL.—The United States, the Secretary, an enforcement agent, or a licensee, or any employee or agent of the United States, the Secretary, an enforcement agent, or a licensee, shall not be liable to any self-excluded person or to any other party in any judicial or administrative proceeding for any harm, monetary or otherwise, which may arise as a result of—

(i) any failure to withhold gambling privileges from, or to restore gambling privileges to, a self-excluded person; or

(ii) otherwise permitting a self-excluded person to engage in gambling activity while on the list of self-excluded persons.

(B) RULE OF CONSTRUCTION.—No provision of subparagraph (A) shall be construed as preventing the Director from assessing any regulatory sanction against a licensee for failing to comply with the minimum standards prescribed pursuant to this subsection.

(4) DISCLOSURE PROVISIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the list of self-excluded persons shall not be open to public inspection.

(B) AFFILIATE DISCLOSURE.—Any licensees may disclose the identities of persons on the self-excluded list to any affiliated company or, where required to comply with this subsection, any service provider, to the extent that the licensee ensures that any affiliated company or service provider maintains such information under confidentiality provisions comparable to those in this subsection.

(5) *LIMITATION ON LIABILITY FOR DISCLOSURE.*—A licensee or an employee, agent, or affiliate of a licensee shall not be liable to any self-excluded person or to any other party in any judicial proceeding for any harm, monetary or otherwise, which may arise as a result of disclosure or publication in any manner.

(e) *GAMBLING BY PROHIBITED PERSONS.*—

(1) *PROHIBITION BENEFITTING FROM PROHIBITED GAMBLING ACTIVITY.*—A person who is prohibited from gambling with a licensee by law, or by order of the Secretary or any court of competent jurisdiction, including any person on the self-exclusion list as established in accordance with subsection (d), shall not collect, in any manner or proceeding, any winnings or recover any losses arising as a result of any prohibited gambling activity.

(2) *FORFEITURE.*—In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, any prohibited person by a licensee as a result of bets or wagers made by a prohibited person shall be subject to forfeiture by order of the Secretary, following notice to the prohibited person and opportunity to be heard.

(3) *DEPOSIT OF FORFEITED FUNDS.*—Any funds forfeited pursuant to this subsection shall be deposited into the general fund of the Treasury.

(4) *PERSONS SELF-EXCLUDED.*—Licensees may not accept bets or wagers from persons on the list established pursuant to subsection (d)(1)(A).

(f) *PROBLEM OR COMPULSIVE GAMBLERS NOT ON THE LIST OF SELF-EXCLUDED PERSONS.*—

(1) *PUBLIC AWARENESS PROGRAM.*—

(A) *IN GENERAL.*—The Secretary and any State or tribal regulatory body that has been qualified under subsection 5383(o) shall provide by regulation for the establishment of a program to alert the public to the existence, consequences, and availability of the self-exclusion list, and shall prepare and promulgate written materials to be used in such a program.

(B) *LICENSEE-PROVIDED PUBLICITY.*—Regulations prescribed under subparagraph (A) may require a licensee to make available literature or screen displays relating to the existence of the program.

(2) *RULE OF CONSTRUCTION.*—No provision of this subsection shall be construed as creating a legal duty in the Secretary, a qualified State or tribal regulatory body, a licensee, or any representative of a licensee to identify or to exclude problem or compulsive gamblers not on the list of self-excluded persons.

(3) *IMMUNITY.*—The United States, the Secretary, a qualified State or tribal regulatory body, a licensee, and any employee or agent of a licensee, shall not be liable to any person in any proceeding for losses or other damages of any kind arising out of that person's gambling activities based on a claim that the person was a compulsive, problem, or pathological gambler.

**§ 5385. Financial transaction providers**

(a) *IN GENERAL.*—No financial transaction provider shall be held liable for engaging in financial activities and transactions for or on

behalf of a licensee or involving a licensee, including payments processing activities, unless such provider has knowledge that the specific financial activities or transactions are conducted in violation of this subchapter and with applicable Federal and State laws.

(b) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **FINANCIAL TRANSACTION PROVIDER.**—The term “financial transaction provider” means 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 payment system.

(2) **OTHER TERMS.**—

(A) **CREDIT, CREDITOR, CREDIT CARD, AND CARD ISSUER.**—The terms “credit”, “creditor”, “credit card”, and “card issuer” have the meanings given the terms in section 103 of the Truth in Lending Act.

(B) **ELECTRONIC FUND TRANSFER.**—The term “electronic fund transfer”—

(i) has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that the term includes transfers that would otherwise be excluded under section 903(6)(E) of such Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) **FINANCIAL INSTITUTION.**—The term “financial institution” has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(D) **INSURED DEPOSITORY INSTITUTION.**—The term “insured depository institution”—

(i) has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act; and

(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

(E) **MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.**—The terms “money transmitting business” and “money transmitting service” have the meanings given the terms in section 5330(d) (determined without regard to any regulations prescribed by the Secretary under such section).

### **§ 5386. List of unlawful Internet gambling enterprises**

(a) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **UNLAWFUL INTERNET GAMBLING ENTERPRISE.**—The term “unlawful Internet gambling enterprise” means any person who, more than 10 days after the date of the enactment of this section—

(A) violates a provision of section 5363;



(B) knowingly receives or transmits funds intended primarily for a person described in subparagraph (A); or

(C) knowingly assists in the conduct of a person described in subparagraph (A) or (B).

(2) **DIRECTOR.**—The term “Director” means the Director of the Financial Crimes Enforcement Network.

(b) **LIST OF UNLAWFUL INTERNET GAMBLING ENTERPRISES.**—

(1) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this section, the Director shall submit to the Secretary a list of unlawful Internet gambling enterprises and shall regularly update such list in accordance with the procedures described in paragraph (3).

(2) **CONTENTS OF LIST.**—The list prepared under paragraph (1) shall include the following information for each such unlawful Internet gambling enterprise:

(A) All known Internet website addresses of the enterprise.

(B) The names of all known owners and operators of the enterprise.

(C) To the extent known, information identifying the financial agents and account numbers of the enterprise and the persons listed under subparagraph (B).

(3) **DISTRIBUTION OF LIST BY SECRETARY.**—The Secretary shall make available—

(A) a copy of the information provided under subparagraphs (A) and (B) of paragraph (2) on the Internet website of the Secretary of the Treasury;

(B) to all persons who are required to comply with the regulations prescribed under the authority provided in section 5364 a copy of all the information provided under paragraph (1) in an electronic format compatible with the Specially Designated Nationals list maintained by the Office of Foreign Assets Control; and

(C) any information required under this paragraph not later than 10 days after receiving any new or updated list from the Director.

(4) **PROCEDURES.**—The procedures described in this paragraph are the following:

(A) **INVESTIGATION.**—The Director shall investigate entities that appear to be unlawful Internet gambling enterprises. An initial investigation shall be completed before the end of the 60-day period beginning on the date of enactment of this section. After the initial investigation, the Director shall regularly investigate entities that appear to be unlawful Internet gambling enterprises. If the Director discovers evidence sufficient to prove a prima facie case that any person is an unlawful Internet gambling enterprise, the Director shall provide the notice required under subparagraph (C).

(B) **REQUESTS.**—Any Federal, State, tribal, or local law enforcement official, any affected sports organization, any person directly harmed by unlawful Internet gambling, any financial transaction provider, and any interactive computer service (as such terms are defined in section 5362) shall have the right, but not the obligation, to make a writ-

ten request to the Director for the addition of any person to the list of unlawful Internet gambling enterprises. If the Director determines that the evidence submitted is sufficient to prove a prima facie case that such person is an unlawful Internet gambling enterprise, the Director shall provide the notice required under subparagraph (C) to each person identified as an alleged unlawful Internet gambling enterprise. The Director also shall provide written notice of its decision under this subparagraph, including a decision not to add a person to the list required under paragraph (1), to the requesting party no later than 30 days after the request is received.

(C) NOTICE.—Not fewer than 30 days before adding an unlawful Internet gambling enterprise, or an owner or operator thereof, to the list required under paragraph (1), the Director shall provide written notice to such enterprise, owner, or operator. Any enterprise, owner, or operator receiving such notice may contest the Director's determination by written appeal to the Director not more than 30 days after receiving notice.

(D) OPPORTUNITY FOR HEARING.—If a person properly submits a written appeal under subparagraph (C), the Director shall not include such person in the list required under paragraph (1) unless and until the Director provides such person with an opportunity for a hearing not more than 30 days after receiving written notice of appeal. Not more than 10 days after an opportunity for hearing is afforded, whether or not the person requesting the hearing appears at such hearing, the Director shall proceed to add such person to the list of unlawful Internet gambling enterprises unless the Director determines, based on a preponderance of the evidence, that such person is not an unlawful Internet gambling enterprise.

(E) INJUNCTIVE RELIEF.—Any person that the Director determines shall be included in the list required under paragraph (1) after such person appears at a hearing described in subparagraph (D) and any person included in such list who did not receive the notice required under subparagraph (C), may petition for injunctive relief in the United States District Court for the District of Columbia, which shall have exclusive jurisdiction to hear challenges pursuant to this section. The petitioner shall have the burden of establishing by a preponderance of the evidence that such person is not an unlawful Internet gambling enterprise. Only persons designated by the Director for inclusion on the list of unlawful Internet gambling enterprises, and other owners or operators of an enterprise to be so listed, shall have standing to contest the Director's determination. The court may enjoin the Director and the Secretary not to add or remove the petitioner from the list of unlawful Internet gambling enterprises, and no other judicial recourse shall be permitted.

(c) EFFECT OF LIST.—A financial transaction provider shall be deemed to have actual knowledge that a person is an unlawful Internet gambling enterprise to the extent that such person is identi-

fied on the list available to the public, or on a non-public list made available to such financial transaction provider, by the Secretary as described in subsection (b)(2), provided that the list shall not be deemed to be the sole source of actual knowledge.

**§ 5387. Limitation of licenses in States and Indian lands**

(a) STATE OPT-OUT EXERCISE.—

(1) LIMITATIONS IMPOSED BY STATES.—

(A) IN GENERAL.—No licensee may engage, under any license issued under this subchapter, in the operation of an Internet gambling facility that knowingly accepts bets or wagers initiated by persons who reside in any State which provides notice that it will limit such bets or wagers, if the Governor or other chief executive officer of such State informs the Director of such limitation, in a manner which clearly identifies the nature and extent of such limitation, before the end of the period beginning on the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act and ending on the date on which such State's legislature has conducted one full general legislative session, where such session began after the date of the enactment of such Act, or in accordance with paragraph (2), until such time as any notice of any amendment or repeal of such specific limitation becomes effective under paragraph (2).

(B) COORDINATION BETWEEN STATE AND TRIBAL OPT-OUT EXERCISES.—Any State limitation under subparagraph (A) shall not apply to the acceptance by a licensee of bets or wagers from persons located within the tribal lands of an Indian tribe that—

(i) has itself opted out pursuant to subsection (b) (in which case the tribal opt-out exercise under such subsection shall apply); or

(ii) would be entitled pursuant to other applicable law to permit such bets or wagers to be initiated and received within its territory without use of the Internet.

(C) COORDINATION WITH INDIAN GAMING REGULATORY ACT.—No decision by a State under this subsection shall be considered in making any determination with regard to the ability of an Indian tribe to offer any class of gambling activity pursuant to section 11 of the Indian Gaming Regulatory Act.

(D) TRIBAL STATUS OR CATEGORY NOT IMPACTED.—Tribal operations of Internet gambling facilities under this subchapter shall not impact an Indian tribe's status or category or class under its land-based activities.

(E) NEW NEGOTIATIONS NOT REQUIRED.—Operating under a license issued pursuant to this subchapter shall not require, or impose any requirement on, an Indian tribe to negotiate a new agreement, or renegotiate any existing agreement, limitation or other provision of a tribal-State compact, agreement, or other understanding with respect to gaming or revenue-sharing, with regard to any Internet bet or wager occurring pursuant to a license issued by the Secretary under this subchapter.

(2) *CHANGES TO STATE LIMITATIONS.*—*The establishment, repeal, or amendment by any State of any limitation referred to in paragraph (1) after the end of the period referred to in paragraph (1) shall apply, for purposes of this subchapter, beginning on the first January 1 that occurs after the end of the 60-day period beginning on the later of—*

(A) *the date a notice of such establishment, repeal, or amendment is provided by the Governor or other chief executive officer of such State in writing to the Secretary; or*

(B) *the effective date of such establishment, repeal, or amendment.*

(b) *INDIAN TRIBE OPT-OUT EXERCISE.*—

(1) *LIMITATIONS IMPOSED BY INDIAN TRIBES.*—*No Internet gambling licensee knowingly may accept a bet or wager from a person located in the tribal lands of any Indian tribe which limits such gambling activities or other contests if the principal chief or other chief executive officer of such Indian tribe informs the Secretary of such limitation, in a manner which clearly identifies the nature and extent of such limitation, before the end of the 90-day period beginning on the date of the enactment of the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, or in accordance with paragraph (2), until such time as any notice of any amendment or repeal of such specific limitation becomes effective under paragraph (2).*

(2) *CHANGES TO INDIAN TRIBE LIMITATIONS.*—*The establishment, repeal, or amendment by any Indian tribe of any limitation referred to in paragraph (1) after the end of the 90-day period beginning on the date of the enactment of this subchapter shall apply, for purposes of this subchapter, beginning on the first January 1 that occurs after the end of the 60-day period beginning on the later of—*

(A) *the date a notice of such establishment, repeal, or amendment is provided by the principal chief or other chief executive officer of such Indian tribe in writing to the Secretary; or*

(B) *the effective date of such establishment, repeal, or amendment.*

(c) *NOTIFICATION AND ENFORCEMENT OF STATE AND INDIAN TRIBE LIMITATIONS.*—

(1) *IN GENERAL.*—*The Secretary shall notify all licensees and applicants of all States and Indian tribes that have provided notice pursuant to paragraph (1) or (2) of subsection (a) or (b), as the case may be, promptly upon receipt of such notice and in no event fewer than 30 days before the effective date of such notice.*

(2) *COMPLIANCE.*—*The Secretary shall take effective measures to ensure that any licensee under this subchapter, as a condition of the license, complies with any limitation or prohibition imposed by any State or Indian tribe to which the licensee is subject under subsection (a) or (b), as the case may be.*

(3) *VIOLATIONS.*—*It shall be a violation of this subchapter for any licensee knowingly to accept bets or wagers initiated or otherwise made by persons located within any State or in the tribal lands of any Indian tribe for which a notice is in effect under subsection (a) or (b), as the case may be.*

(4) *STATE ATTORNEY GENERAL ENFORCEMENT.*—In any case in which the attorney general of a State, or any State or local law enforcement agency authorized by the State attorney general or by State statute to prosecute violations of consumer protection law, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by a violation by a licensee pursuant to paragraph (2), the State, or the State or local law enforcement agency on behalf of the residents of the agency's jurisdiction, may bring a civil action on behalf of the residents of that State or jurisdiction in a district court of the United States located therein, to—

(A) enjoin that practice; or

(B) enforce compliance with this subchapter.

**§ 5388. Sports betting prohibited on Internet**

No licensee under this subchapter shall accept Internet bets or wagers on sporting events, with the exception of pari-mutuel racing as permitted by law.

**§ 5389. Prohibition on the use of credit cards for Internet gambling**

(a) *IN GENERAL.*—No licensee, no person operating on behalf of a licensee, and no person accepting payment for or settlement of a bet or wager who intends to transmit such payment to a person licensee, may accept a bet or wager or payment for or settlement of a bet or wager that is transmitted or otherwise facilitated with a credit card (as defined in section 5362(11)).

(b) *EXCEPTION.*—

(1) *CLARIFICATION OF SCOPE.*—For any person licensed to take bets or wagers in accordance with the Interstate Horseracing Act of 1978, the prohibition in subsection (a) shall only apply to those activities conducted pursuant to a license under this subchapter.

(2) *INTRASTATE ACTIVITIES.*—For any person involved in legal, land-based or State- or tribal-regulated intrastate gambling, the prohibition in subsection (a) shall only apply to those activities conducted pursuant to a license under this subchapter.

**§ 5390. State and tribal lotteries**

(a) *IN GENERAL.*—Notwithstanding any other provision of this subchapter, this subchapter shall not apply to Internet gambling conducted by any State or tribal lottery authority when conducted in accordance with subparagraph (B) or (C) of section 5362(10), as clarified by section 5362(10)(E).

(b) *RULE OF CONSTRUCTION.*—For purposes of the clarification made by subparagraph (E) of section 5362(10) to the meaning and intent of subparagraphs (B) and (C) of such section, Internet gambling described in subsection (a) is hereby expressly permitted, and operators of any State or tribal lottery authority conducting Internet gambling facilities operating in accordance with such subparagraph (B) or (C), as clarified by such subparagraph (E), and vendors, suppliers and service providers to such State or tribal lottery authority, shall not be required to be licensed under this subchapter.

(c) *APPLICABILITY OF OTHER PROVISIONS TO LOTTERY ACTIVITY.*—To clarify existing law, section 1084 of title 18 shall not apply to any of the following that occurs in connection with any Internet gambling conducted by any State or tribal lottery authority when conducted in accordance with subparagraph (B) or (C) of section 5362(10), as clarified by section 5362(10)(E):

(1) Any Internet bet or wager, including any transmission thereof.

(2) Any transmission of information assisting in the placing of bets or wagers.

(3) any transmission entitling the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.

(d) *AUTHORIZATION OF SPONSOR.*—No licensee may offer services relating to any lottery sponsored by a State, tribal, or other governmental body without the authorization of the official sponsor.

**§ 5391. Safe harbors**

*It shall be a complete defense against any prosecution or enforcement action under any Federal or State law against any person possessing a valid license under this subchapter that the activity is authorized under and has been carried out lawfully under the terms of this subchapter.*

**§ 5392. Relation to section 1084 of title 18 and the Unlawful Internet Gambling Enforcement Act**

*Section 1084 of title 18 and subchapter IV of this chapter shall not apply to any Internet bet or wager occurring pursuant to a license issued in accordance with this subchapter.*

**§ 5393. Cheating and other fraud**

(a) *ELECTRONIC CHEATING DEVICES PROHIBITED.*—No person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee, knowingly shall use, or assist another in the use of, an electronic, electrical, or mechanical device which is designed, constructed, or programmed specifically for use in obtaining an advantage in any game authorized under this subchapter, where such advantage is prohibited or otherwise violates the rules of play established by the licensee.

(b) *ADDITIONAL OFFENSE.*—No person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee, knowingly shall use or possess any cheating device with intent to cheat or defraud any licensee or other persons placing bets or wagers with such licensee.

(c) *PERMANENT INJUNCTION.*—Upon conviction of a person for violation of this section, the court may enter a permanent injunction enjoining such person from initiating, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

*(d) CRIMINAL PENALTY.—Whoever violates subsection (a) or (b) of this section shall be fined under title 18 or imprisoned for not more than 5 years, or both.*

\* \* \* \* \*

## DISSENTING VIEWS

In spite of significant bipartisan opposition, the Committee majority passed H.R. 2267, "The Internet Gambling Regulation, Consumer Protection, and Enforcement Act," to establish a federal licensing program under which Internet gambling companies may lawfully operate and accept bets or wagers from individuals located in the United States. In doing so, H.R. 2267 reverses the long-standing national policy against gambling by establishing a presumption in favor of legalized online betting.

Internet gambling's characteristics are unique: online players can gamble 24 hours a day from home; children may play without sufficient age verification; and betting with a credit card can undercut a player's perception of the value of cash, leading to addiction, bankruptcy and crime. Young people are particularly at risk. John Kindt, Professor of Business Administration at the University of Illinois says: "It's 'click the mouse, lose your house.' It puts gambling at every work desk and every school desk and in every living room. It would increase problem gambling rates exponentially."

By approving this bill, the largest expansion of gambling in history, the Committee has taken steps to open casinos in every home, dorm room, library, iPod, Blackberry, iPad and computer in America. Since this Congress took action in 2006 to address the spread of Internet gambling by passing the Unlawful Internet Gambling Enforcement Act (UIGEA), offshore gaming interests have campaigned to repeal the law, or at least, to undermine it. These are large corporate interests that are protecting their bottom line at the expense of addiction and destruction to our homes and communities. Supporters of H.R. 2267 argue that by licensing and taxing online wagering and implicitly repealing the Wire Act, the Federal government could better prevent fraud, limit compulsive gambling and protect minors. At the same time, they argue it would create a new multi-billion dollar revenue source for the Federal government.

It is true that to obtain a license to conduct Internet gambling operations under this bill, applicants must demonstrate a variety of online safeguards to ensure safe and proper use of a licensee's Web site. But recent developments have cast doubt on whether the intended protections are viable. For example, the bill requires protective mechanisms that combat fraud. But the Federal Bureau of Investigation (FBI) has identified several ways to cheat at online poker, none of which are illegal or banned by the bill. The FBI has also said that not only does technology exist to manipulate online poker games, but that advanced technology to cheat is not even necessary because "it would only take two or three players working



in unison to defeat the other players who are not part of the team.”<sup>1</sup>

Perhaps even more significant than the potential undetectable theft of money from one participant in an online peer-to-peer game like poker, the FBI fears that cheaters will use online poker rooms to “virtually wash money.”<sup>2</sup> It has described a simple money laundering scheme involving private games with “mules” or ciphers. In this scenario, an individual could create a private game or tournament (available on almost every online poker site) with a number of phony players guaranteed to win. In any given hand, the individual could raise the pot to the maximum amount allowed and subsequently fold before the hand is finished, allowing the individual to transfer the money from his account to the mule account (potentially several times). In other words, under the guise of innocent participation in a friendly poker game with friends, an individual could launder limitless sums of money.

Just as there is considerable doubt whether H.R. 2267 will prevent cheating or money laundering, there are questions whether H.R. 2267’s age and location verification mandates will prevent minors from gambling online or ensure that bettors only bet in jurisdictions that permit gambling. First, the FBI has dismissed assertions by online vendors who say they have technology solutions to validate the age or location of potential players.<sup>3</sup> Second, a federal district court judge has found age and identity verification procedures either unavailable or ineffective.<sup>4</sup> Third, experts in the field of online protection and identity verification mechanisms.<sup>5</sup> And fourth, evidence indicates that such safeguards, even when implemented, do a poor job of preventing web site access to restricted parties such as children.

Even though the bill would inadequately guard against cheating, money laundering and underage betting, some have said that this bill could raise significant revenues to fund other policy priorities. But that claim is specious too. Although it is our view that the Federal government should not take advantage of the young, the weak and the vulnerable in the name of growing government, we learned during the legislative hearing on this bill that the estimates of the revenues that legalizing Internet gambling would supposedly generate are significantly overstated. To raise the revenues that its supporters tout (\$42 billion over ten years), H.R. 2267 would need to require complete federal preemption. The Joint Committee on Taxation’s most expansive of four different estimates—\$42 billion—is based on an assumption that “no State or tribal government will be permitted to limit federally licensed Internet gambling operators from providing online gambling services in their jurisdictions” In other words, legalizing Internet gambling will generate \$42 billion *only if* H.R. 2267’s opt-out procedure—its principal State-protective provision—is eviscerated. The Joint Committee on Taxation estimate that is most closely based on the texts of H.R. 2267 and its

<sup>1</sup> Letter from Shawn Henry, Assistant Director, Cyber Division, Federal Bureau of Investigation, to Spencer Bachus, November 13, 2009.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007).

<sup>5</sup> Fagan, Michael. Statement to the House Committee on Financial Services. *H.R. 2267, Internet Gambling Regulation, Consumer Protection, and Enforcement Act*, Hearing, July 21, 2010.

companion tax measure, H.R. 4976, indicates that the bills will generate just \$10 billion in Federal revenue. This estimate appears to assume that many States will choose to opt-out in order to prevent the expansion of gambling on the Internet. Ultimately though, given that this bill fails to enforce laws against illegal sites, there will be little incentive for gaming interests to set up a legal and taxed site. In that case, the promised “revenues” are likely to be illusory.

Considering that the social and economic harm done to America’s families and to young people from unlawful Internet gambling is well-documented, we ask: is passing new legislation to create a Federal right to gamble that has never existed in our country’s history—and addicting the Federal government to Internet gambling taxes for more spending in the process—really worth it? We urge our colleagues to see H.R. 2267 for what it really represents—the largest expansion of gambling ever proposed in Congress. We oppose its passage.

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