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Part 1

UNLAWFUL INTERNET GAMBLING FUNDING PROHIBITION ACT

DECEMBER 13, 2001.—Ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 556]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 556) to prevent the use of certain bank instruments for unlawful Internet gambling, 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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99–006

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 "Unlawful Internet Gambling Funding Prohibition Act".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Internet gambling is primarily funded through personal use of bank instruments, including credit cards and wire transfers.

(2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent them.

(3) Internet gambling is a major cause of debt collection problems for insured depository institutions and the consumer credit industry.

(4) Internet gambling conducted through offshore jurisdictions has been identified by United States law enforcement officials as a significant money laundering vulnerability.

SEC. 3. PROHIBITION ON ACCEPTANCE OF ANY BANK INSTRUMENT FOR UNLAWFUL INTERNET GAMBLING.

(a) IN GENERAL.—No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of the other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction as the Secretary may prescribe by regulation which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person.

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

(1) BETS OR WAGERS.—The term "bets or wagers"—

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28, United States Code;

(D) includes any instructions or information pertaining to the establishment or movement of funds in an account by the bettor or customer with the business of betting or wagering; and

(E) does not include—

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of such Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade pursuant to the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any other transaction that is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;

(vii) any deposit or other transaction with a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act);

(viii) any participation in a simulation sports game or an educational game or contest that—

(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event;

(II) has an outcome that reflects the relative knowledge and skill of the participants with such outcome determined predominantly by accumulated statistical results of sporting events; and

(III) offers a prize or award to a participant that is established in advance of the game or contest and is not determined by the number of participants or the amount of any fees paid by those participants; and

(ix) any transaction authorized under State law with a business licensed or authorized by a State.

(2) BUSINESS OF BETTING OR WAGERING.—The term "business of betting or wagering" does not include, other than for purposes of subsection (e), any creditor, credit card issuer, insured depository institution, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service.

(3) INTERNET.—The term "Internet" means the international computer network of interoperable packet switched data networks.

(4) UNLAWFUL INTERNET GAMBLING.—The term "unlawful Internet gambling" means to place, receive, or otherwise transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made.

(5) OTHER TERMS.—

(A) CREDIT; CREDITOR; AND CREDIT CARD.—The terms "credit", "creditor", and "credit card" have the meanings given such terms in section 103 of the Truth in Lending Act.

(B) ELECTRONIC FUND TRANSFER.—The term "electronic fund transfer"—

(i) has the meaning given such term in section 903 of the Electronic Fund Transfer 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 such term in section 903 of the Electronic Fund Transfer Act.

(D) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms "money transmitting business" and "money transmitting service" have the meanings given such terms in section 5330(d) of title 31, United States Code.

(E) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(c) CIVIL REMEDIES.—

(1) JURISDICTION.—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this section by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this section.

(2) PROCEEDINGS.—

(A) INSTITUTION BY FEDERAL GOVERNMENT.—

(i) IN GENERAL.—The United States, acting through the Attorney General, may institute proceedings under this subsection to prevent or restrain a violation of this section.

(ii) RELIEF.—Upon application of the United States under this subparagraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(B) INSTITUTION BY STATE ATTORNEY GENERAL.—

(i) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this section allegedly has occurred or will occur may institute proceedings under this subsection to prevent or restrain the violation.

(ii) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this subparagraph, the district court may enter a preliminary injunction or an injunction

against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(C) INDIAN LANDS.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a violation that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—

(I) the United States shall have the enforcement authority provided under subparagraph (A); and

(II) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act shall be carried out in accordance with that compact.

(ii) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

(D) BANKING REGULATORS.—Before initiating any proceeding under this paragraph with respect to a violation or potential violation of subsection (e) by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), the Attorney General of the United States or an attorney general of a State (or other appropriate State official) shall—

(i) notify the appropriate Federal banking agency (as defined in such section) of such violation or potential violation; and

(ii) allow such agency a reasonable time to issue an order to such insured depository institution under section 8(x) of the Federal Deposit Insurance Act.

(3) EXPEDITED PROCEEDINGS.—In addition to any proceeding under paragraph (2), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States under paragraph (2)(A), or the attorney general (or other appropriate State official) of an affected State under paragraph (2)(B), in accordance with Rule 65(b) of the Federal Rules of Civil Procedure.

(4) LIMITATION.—No provision of this section shall be construed as authorizing an injunction against an interactive computer service (as defined in section 230(f) of the Communications Act of 1934) unless such interactive computer service is acting in concert or participation with a person who violates this section and such service receives actual notice of the order.

(d) CRIMINAL PENALTY.—

(1) IN GENERAL.—Whoever violates this section shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(2) PERMANENT INJUNCTION.—Upon conviction of a person under this subsection, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making illegal bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

(e) CIRCUMVENTIONS PROHIBITED.—Notwithstanding subsection (b)(2), 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 network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service, may be liable under this section if such creditor, issuer, institution, operator, business, network, or participant has actual knowledge and control of bets and wagers and—

(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(f) ENFORCEMENT ACTIONS.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end the following new subsection:

"(x) DEPOSITORY INSTITUTION INVOLVEMENT IN INTERNET GAMBLING.—If any appropriate Federal banking agency determines that any insured depository institution is engaged in any of the following activities, the agency may issue an order to such institution prohibiting such institution from continuing to engage in any of the following activities:

"(1) Extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service with the actual knowledge that any per-

son is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such extension of credit, electronic fund transfer, or money transmitting service.

"(2) Paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution with the actual knowledge that any person is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such check, draft, or other instrument.".

SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN JURISDICTIONS.

(a) IN GENERAL.—In deliberations between the United States Government and any other country on money laundering, corruption, and crime issues, the United States Government should—

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information sharing or other measures, in the enforcement of this Act; and

(3) encourage the Financial Action Task Force on Money Laundering, in its annual report on money laundering typologies, to study the extent to which Internet gambling operations are being used for money laundering.

(b) REPORT REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

PURPOSE AND SUMMARY

H.R. 556 prohibits the acceptance of any bank instrument for unlawful Internet gambling. It defines certain terms for purposes of the Act; establishes civil remedies, criminal penalties, and regulatory enforcement authorities; encourages cooperation by foreign governments in the enforcement of the Act; and requires the Secretary of the Treasury to report annually to Congress on deliberations between the United States and other countries on issues relating to Internet gambling. Its primary purpose is to give U.S. law enforcement a new, more effective tool for combating offshore Internet gambling sites that illegally extend their services to U.S. residents via the Internet.

BACKGROUND AND NEED FOR LEGISLATION

The Committee has established a comprehensive hearing and markup record on Internet gambling. In addition to the extensive debate at the Committee's October 11, 2001 markup of H.R. 3004, the Financial Anti-Terrorism Act of 2001, Internet gambling was addressed at the Committee's October 3, 2001 hearing on terrorism and money laundering. At that hearing, the FBI, the Criminal Division of the Department of Justice, and a money laundering expert testified that Internet gambling serves as a vehicle for money laundering and can be exploited by terrorists for that purpose. The FBI also testified about pending litigation linking organized crime to money laundering and Internet gambling.

At two hearings held in July by the Subcommittee on Oversight and Investigations and the Subcommittee on Financial Institutions and Consumer Credit, witnesses discussed the legal status of Internet gambling, the social and financial challenges it poses, and legislative options for addressing those challenges.

Many legal experts, including officials from the Department of Justice, State attorneys general, and others involved in law enforcement, hold the view that Internet gambling is generally prohibited under various Federal statutes. Among them, the Federal

Wire Act (title18, United States Code, section 1084) criminalizes the knowing use of a wire communication facility by a gambling establishment for the transmission of bets or wagers in interstate or foreign commerce.

Conventional forms of gambling activities, such as casino wagering, State lotteries, slot machines, and horseracing, legal in many jurisdictions, are regulated by the individual States. However, these activities are subject to intense scrutiny and a myriad of licensing and other operational requirements. Virtually all States prohibit the operation of gambling businesses not expressly permitted by their respective constitutions or special legislation. Internet gambling fell into the category of illegal gambling activity in all fifty States until June of 2001 when the Nevada legislature authorized the Nevada gaming commission to legalize on-line, Internet gambling operations if and when such operations can be conducted in compliance with Federal law.

Because Internet gambling is generally held to be illegal under Federal and State law, most of the estimated 1,500 Internet gambling sites today operate from offshore locations in the Caribbean and elsewhere. As such, they operate effectively beyond the reach of U.S. regulators and law enforcement, as well as the statutory anti-money laundering regimes that apply to U.S.-based casinos. These "virtual casinos" advertise the ease of opening betting accounts mainly through the use of credit cards. Internet gambling sites are not only vulnerable to criminal exploitation by money launderers, they can also easily abuse a customer's credit card information or manipulate the odds of a particular wager to the casino's advantage.

At the Oversight Subcommittee's hearing on July 12, the American Gaming Association—representing commercial casinos and their suppliers in the United States—addressed some of the practical problems associated with Internet gambling, including the difficulty of subjecting Internet operations to the kinds of regulation currently applied to U.S.-based casinos. According to the AGA, its major concern is that offshore Internet gambling sites "frustrate important state policies, including restrictions on the availability of gaming within each state." The AGA went on to say: "* * * unregulated Internet gambling that exists today allows an unlicensed, untaxed, unsupervised operator to engage in wagering that is otherwise subject to stringent federal and state regulatory controls. These controls are vital to preserving the honesty, integrity and fairness that those in the gaming industry today have worked so hard for so long to bring about." The AGA further reported that it does not believe the technology for exercising such controls with respect to Internet gambling is yet available.

Testifying from a State perspective, the New Jersey Director of Gaming Enforcement also noted that offshore Internet gambling operations provide no tax revenue or jobs to States, unlike State-regulated casinos.

In addition to the legal and economic challenges cited above, problem gambling—including problem Internet gambling—can lead to personal and family hardships, such as lost savings, excessive debt, bankruptcy, foreclosed mortgages, and divorce. In particular, Internet gambling is proving to be a serious problem for many college students. Testimony from the National Collegiate Athletic As-

sociation (NCAA) at the July hearings underscored the vulnerability of young people to losing large sums through Internet gambling. According to a Nellie Mae survey cited by the NCAA, 78 percent of college students have credit cards, nearly a third have four or more credit cards, and one in ten will graduate with balances over $7,000. One student reportedly lost $10,000 on Internet sports gambling over a three-month period. And, in another case, a student reportedly lost $5,000 on a single Internet wager on the Super Bowl and was forced to drop out of school. The New Jersey Director of Gaming Enforcement also testified that the State of New Jersey has filed a suit against certain offshore casinos found to be taking online bets from minors in that State. Witnesses from the National Council on Problem Gambling and the Compulsive Gambling Center testified about the problems associated with compulsive or pathological gambling, and the Christian Coalition, in a letter to a Member of the Committee, echoed concerns about the impact of gambling on families and society and, in particular, the impact of Internet gambling on the poor, youth, and those who are already compulsive gamblers.

Because of the pervasive legal, economic, and social challenges posed by the rapid growth of Internet gambling, the National Gambling Impact Study Commission unanimously recommended in its 1999 final report that the Federal government prohibit, with no new exemptions, all Internet gambling not already authorized by law. The Commission also recommended that legislation be adopted to prohibit wire transfers to Internet gambling sites or to the banks which represent them, and called on the government to develop enforcement strategies that include credit card providers and money transfer agencies that facilitate Internet gambling.

H.R. 556, the Unlawful Internet Gambling Funding Prohibition Act, builds on the recommendations of the National Gambling Impact Study Commission by prohibiting gambling businesses from accepting credit cards or other bank instruments in connection with unlawful Internet gambling. Because of the anticipated difficulty in enforcing this prohibition offshore, the legislation also authorizes the Attorney General (or appropriate State officials) to seek an injunction against any person to prevent or restrain a violation of this bill, including to prohibit banks and other financial service providers from processing any credit card transaction or other financial instrument with a specified illegal Internet gambling site. The bill is similar to provisions incorporated in the Committee-reported version of H.R. 3004, the Financial Anti-Terrorism Act of 2001, as well as to legislation adopted by the House Banking Committee in the last Congress (H.R. 4419).

H.R. 556, as amended, is not intended to impose new burdens on financial institutions to identify which offshore gambling sites may be engaged in unlawful activities. Rather, the legislation contemplates a mechanism whereby banks and other financial service providers will be provided, pursuant to an injunction, with the names of specific Internet gambling operations to which payments are to be prohibited. The obligation of financial institutions pursuant to such an injunction would be similar, in effect, to their obligations under certain other U.S. laws, such as those administered by the Office of Foreign Assets Control (OFAC) barring financial transactions with terrorists and drug kingpins.

HEARINGS

The Subcommittee on Oversight and Investigations held a hearing on July 12, 2001 entitled, "Financial Aspects of Internet Gaming: Good Gamble or Bad Bet?" Witnesses at the hearing included Mr. John Peter Suarez, Director, Division of Gaming Enforcement, New Jersey Department of Law and Public Safety; Mr. Sebastian Sinclair, Vice President, Christiansen Capital Advisors; Mr. Keith S. Whyte, Executive Director, National Council on Problem Gambling; Dr. Valerie Lorenz, Executive Director, Compulsive Gambling Center; Mr. Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association; Mr. Bill Saum, Director, Agent Gambling and Amateurism Activities, National Collegiate Athletic Association; Mr. Mark MacCarthy, Senior Vice President Public Policy, Visa USA, Inc.; Ms. Sue Schneider, Chairman, Interactive Gaming Council; Ms. Penelope W. Kyle, Executive Director, Virginia Lottery, and President, National Association of State and Provincial Lotteries; and Mr. Greg Avioli, Deputy Commissioner, National Thoroughbred Racing Association.

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on July 24, 2001 on H.R. 556, the Unlawful Internet Gambling Funding Prohibition Act and other Internet gambling proposals. Witnesses at the hearing included The Honorable James A. Leach (IA); The Honorable Bob Goodlatte (VA); The Honorable Jon Kyl (AZ); Mr. Michael L. Farmer, Senior Vice President, Wachovia Bank Card Services; Dr. Bob Frederick, Chairman, National Collegiate Athletic Association Committee (NCAA) on Sportsmanship and Ethical Conduct, NCAA, former Director of Athletics, University of Kansas; Mr. Mark VanNorman, Executive Director, National Indian Gaming Association; Mr. Edwin J. McGuinn, CEO, E-Lottery; and Dr. Timothy A. Kelly, former Executive Director, National Gambling Impact Study Commission.

COMMITTEE CONSIDERATION

On October 31, 2001, the Committee met in open session and ordered H.R. 556 reported to the House with a favorable recommendation, with an amendment, by a record vote of 34 yeas and 18 nays.

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. Oxley to order the bill reported to the House with a favorable recommendation, with an amendment, was agreed to by a record vote of 34 yeas and 18 nays (Record vote no. 10). The names of Members voting for and against follow:

YEAS	NAYS
Mr. Oxley	Mr. Baker
Mr. Leach	Mr. Castle
Mrs. Roukema	Mr. Ney
Mr. Bereuter	Mr. Paul
Mr. Bachus	Mr. LaTourette
Mr. Royce	Mr. Ose

Mr. Lucas of Oklahoma
Mr. Gillmor
Mr. Ryun of Kansas
Mr. Riley
Mr. Manzullo
Mr. Green of Wisconsin
Mr. Shays
Mr. Gary G. Miller of California
Mr. Grucci
Ms. Hart
Mrs. Capito
Mr. Ferguson
Mr. Rogers of Michigan
Mr. LaFalce
Mr. Sanders
Mrs. Maloney of New York
Mr. Bentsen
Mr. Maloney of Connecticut
Ms. Hooley of Oregon
Mr. Sherman
Mr. Sandlin
Mr. Meeks
Ms. Lee
Ms. Schakowsky
Mr. Moore
Mr. Gonzalez
Mr. Lucas of Kentucky
Mr. Israel
Mr. Toomey
Mr. Fossella
Mr. Tiberi
Mr. Frank
Mr. Kanjorski
Ms. Waters
Mr. Watt of North Carolina
Mr. Capuano
Mr. Ford
Mr. Hinojosa
Mr. Crowley
Mr. Clay

The Committee also considered the following amendments:

An amendment in the nature of a substitute by Mr. Oxley, no. 1, substituting the Internet gambling provisions of H.R. 3004, as reported, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Ney, no. 1a, clarifying language exempting lawful transactions with State authorized or licensed entities and exempting Internet service providers and telecommunications companies from the bill's general coverage, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1b, clarifying that injunctive authority applies to illegal gambling, 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: Using au-

thority granted by this legislation, the Attorney General will reduce the availability of offshore Internet gambling in the United States.

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 finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 13, 2001.

Hon. MICHAEL G. OXLEY,
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. 556, the Unlawful Internet Gambling Funding Prohibition Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contract is Lanette J. Walker.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 556—Unlawful Internet Gambling Funding Prohibition Act

Summary: H.R. 556 would prohibit gambling businesses from accepting credit cards, checks or other bank instruments from gamblers who illegally bet over the Internet. The bill also would authorize the agencies that regulate insured depository institutions to issue cease-and-desist orders against institutions that knowingly facilitate Internet gambling. The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Trift Supervision (OTS), and the National Credit Union Administration (NUCA) would enforce the provisions of H.R. 556 as they apply to financial institutions.

CBO estimates that implementing this legislation would result in no significant cost to the federal government. Because enactment of H.R. 556 could affect direct spending and receipts, pay-as-you-

go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

Although H.R. 556 would prohibit gambling businesses from accepting credit card payments and other bank instruments from gamblers who bet illegally over the Internet, the bill would not create a new intergovernmental or private-sector mandate. Under current federal and state law, gambling businesses are generally prohibited from accepting bets or wagers over the Internet. Thus, H.R. 556 does not contain a new mandate relative to current law, and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that the government would incur no significant costs under H.R. 556. CBO estimates that implementing H.R. 556 would increase administrative costs of the Department of Justice, but any such costs would be negligible. The bill also would have a small effect on the operating costs of the FDIC and the Federal Reserve System. Finally, the bill would have a negligible effect on the collection and spending of criminal penalties.

Basis of estimate: The bill would have only minor budgetary effects, as described below.

Spending subject to appropriation

Because H.R. 556 would establish a new federal crime relating to Internet gambling, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects, however, that most cases would be pursued under existing state laws. Therefore, we estimate that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriated funds.

H.R. 556 would require the Department of Justice to submit an annual report on deliberations with other countries on issues related to Internet gambling. CBO estimates that preparing and completing the report would cost less than $100,000 a year, subject to the availability of appropriated funds.

Direct spending and revenues

The NCUA, the OTS, and the OCC charge fees to cover all their administrative costs; therefore, any additional spending by these agencies to implement the bill would have no net budgetary effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks.

The bill would cause a small increase in FDIC spending, but would not affect its premium income. In total, CBO estimates that H.R. 556 would increase direct spending and offsetting receipts of the NCUA, OTS, OCC, and FCC by less than $500,000 a year over the 2002–2006 period.

Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Based on information from the Federal Reserve, CBO estimates that enacting H.R. 556 would reduce such revenues by less than $500,000 a year over the 2002–2006 period.

Because those prosecuted and convicted under the bill could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (i.e., revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Any additional collections are likely to be negligible because of the small number of cases involved. Because any increase in direct spending would equal the amount of fines collected (with a lag of one year or more), the additional direct spending also would be negligible.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 556 could affect both direct spending and receipts, but CBO estimates that any such effects would be negligible.

Intergovernmental and private-sector impact: Although H.R. 556 would prohibit gambling businesses from accepting credit card payments and other bank instruments from gamblers who bet illegally over the Internet, the bill would not create a new intergovernmental mandate. Under current federal and state law, gambling businesses are generally prohibited from accepting bets or wages over the Internet. Thus, H.R. 556 does not contain a new mandate relative to current law.

Estimate prepared by: Federal Spending: Mark Hadley and Lanette J. Walker. Federal Revenues: Carolyn Lynch. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, 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.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of the bill, the "Unlawful Internet Gambling Funding Prohibition Act."

Section 2. Findings

This section provides findings which note that: (1) Internet gambling is primarily funded through the personal use of banking instruments and plays a large role in the creation of ultimately uncollectible personal debt; and (2) Internet gambling is susceptible to abuse by money launderers.

Section 3. Prohibition on acceptance of any bank instrument for unlawful Internet gambling

Subsection (a) prohibits a gambling business from accepting bank instruments in connection with unlawful Internet gambling. Covered instruments include credit cards, electronic fund transfers, and checks.

Subsection (b) defines the term "bets or wagers" as the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance with the agreement that the winner will receive something of greater value than the amount staked or risked. Excluded from that definition is a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument; any other transaction exempt from State gaming or bucket shop laws pursuant to the Commodity Exchange Act or Securities Exchange Act; a contract of indemnity or guarantee; a contract for insurance; a deposit with a depository institution; certain participation in a simulation sports game or education game; or a transaction authorized under State law with a business licensed or authorized by a State.

This subsection also defines the term "business of betting or wagering" and excludes from that definition a credit card issuer, an insured depository institution, various other financial service providers, an interactive computer service and a telecommunications service, except as provided by subsection (e).

Another term defined in subsection (b) is "unlawful Internet gambling" which means to place, receive, or otherwise transmit a bet or wager by any means which involves the use of the Internet where the bet or wager is illegal under Federal or State law in the State where the bet or wager is initiated, received, or otherwise made. This subsection does not seek to redefine what is lawful or unlawful Internet gambling and is not intended to supersede existing State or Federal law, or to effect any change in current law related to tribal compacts pursuant to the Indian Gaming Regulatory Act, in terms of its definitions and coverage.

Subsection (c) authorizes civil remedies, including the issuance of a preliminary injunction or injunction by a U.S. District Court—at the request of the Attorney General or certain State officials—against any person to prevent or restrain a violation of this legislation. Injunctions issued in connection with alleged violations of this bill on Indian lands are to be enforced in accordance with the In-

dian Gaming Regulatory Act and any applicable Tribal-State compact. The subsection also requires the Attorney General or State official to notify the appropriate Federal bank agency before seeking an injunction against an insured depository institution in order to allow the bank agency time to issue its own order under the Federal Deposit Insurance Act. Subsection (c) also limits the availability of the broad injunctive relief otherwise available under this subsection with respect to interactive computer services, as defined in section 230(f) of title 47.

Subsection (d) authorizes criminal penalties for a violation of subsection 3(a), including fines under title 18 or imprisonment for not more than five years or both. It also authorizes the issuance of a permanent injunction against any person convicted of a violation under subsection (a).

Subsection (e) provides that certain financial service entities, interactive computer services, or telecommunications services may—despite their general exclusion from the definition of a business of betting or wagering—be liable for a violation of subsection (a) if they have actual knowledge and control of bets and wagers and they operate, own, or supervise (or are operated, owned, or supervised by) an Internet site engaged in illegal gambling. The purpose of this subsection, when read in conjunction with the exception to the definition of "business of betting or wagering" in subsection (b), is to ensure that a financial intermediary, interactive computer service or telecommunications service is not held liable for a violation of this bill based solely on its unknowing and unintentional involvement in an unlawful Internet gambling transaction.

Subsection (f) provides that a Federal banking agency may take appropriate enforcement action against any financial institution that knowingly permits its payment or credit facilities to be used in connection with Internet gambling activity that violates this bill.

Section 4. Internet gambling in or through foreign jurisdictions

Section 4 provides that, in deliberations between the U.S. Government and any other country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments and international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote cooperation by foreign governments in enforcing this bill, and encourage the Financial Action Task Force on Money Laundering (FATF) to study the extent to which Internet gambling operations are being used for money laundering. It also requires the Secretary of the Treasury to submit an annual report to Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 8 OF THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 8. (a) * * *

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(x) DEPOSITORY INSTITUTION INVOLVEMENT IN INTERNET GAMBLING.—If any appropriate Federal banking agency determines that any insured depository institution is engaged in any of the following activities, the agency may issue an order to such institution prohibiting such institution from continuing to engage in any of the following activities:

(1) Extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service with the actual knowledge that any person is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such extension of credit, electronic fund transfer, or money transmitting service.

(2) Paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution with the actual knowledge that any person is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such check, draft, or other instrument.

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DISSENTING VIEWS

H.R. 556, which limits the ability of individual citizens to use bank instruments, including credit cards or checks, to finance Internet gambling should be rejected by Congress since the Federal Government has no constitutional authority to ban or even discourage any form of gambling.

In addition to being unconstitutional, H.R. 556 is likely to prove ineffective at ending Internet gambling. Instead, this bill will ensure that gambling is controlled by organized crime. History, from the failed experiment of prohibition to today's futile "war on drugs," shows that the government cannot eliminate demand for something like Internet gambling simply by passing a law. Instead, H.R. 556 will force those who wish to gamble over the Internet to patronize suppliers willing to flaunt the ban. In many cases, providers of services banned by the government will be members of criminal organizations. Even if organized crime does not operate Internet gambling enterprises their competitors are likely to be controlled by organized crime. After all, since the owners and patrons of Internet gambling cannot rely on the police and courts to enforce contracts and resolve other disputes they will be forced to rely on members of organized crime to perform those functions. Thus, the profits of Internet gambling will flow into organized crime.

Furthermore, outlawing an activity will raise the price vendors are able to charge consumers, thus increasing the profits flowing to organized crime from Internet gambling. It is bitterly ironic that a bill masquerading as an attack on crime will actually increase organized crime's ability to control and profit from Internet gambling!

In conclusion, H.R. 556 violates the constitutional limits on Federal power. Furthermore, laws such as H.R. 556 are ineffective in eliminating the demand for vices such as Internet gambling; instead, they ensure that these enterprises will be controlled by organized crime. Therefore I urge my colleagues to reject H.R. 556, the Internet Gambling Prohibition Act.

RON PAUL.

