



PARTICIPANT GUIDE

The Commission is promoting four emphasis areas in the agency’s work commitment to assist in being more engaged and accountable to the Indian gaming industry and Indian Country.

Industry Integrity

Protecting the valuable tool of Indian gaming that in many communities creates jobs, is the lifeblood for tribal programs, and creates opportunities for tribes to explore and strengthen relationships with neighboring jurisdictions.

Agency Accountability

Meeting the public’s expectation for administrative processes that uphold good governance practices and support efficient and effective decision making to protect tribal assets.

Preparedness

Promoting tribes’ capacity to plan for risks to tribal gaming assets including natural disaster threats, the need to modernize and enhance regulatory and gaming operation workforces, or public health and safety emergencies.

Outreach

Cultivating opportunities for outreach to ensure well-informed Indian gaming policy development through diverse relationships, accessible resources, and government-to-government consultation.

This training reinforces these four emphasis areas and the agency's commitment to the Indian gaming industry and Indian Country.



Indian Gaming Regulatory Act (IGRA)

Enacted in 1988 as Public Law 100-497 and codified at 25 U.S.C. 2701

- Class I
- Class II
- Class III



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The Act established three classes of gaming with a different regulatory scheme for each.

- Class I gaming is defined as traditional Indian gaming and social gaming for minimum prizes. Regulatory authority over Class I gaming is vested in tribal governments.
- Class II gaming is defined as the game of chance commonly known as bingo (which may include the use of electronic, computer, or other technological aids) and if played in the same location as the bingo, pull tabs, punch boards, tip jars, instant bingo, and other games similar to bingo. Class II gaming also includes non-banked card games, that is, games that are played exclusively against other players rather than the house or a player acting as a bank.
- The definition of Class III gaming is extremely broad. It includes all forms of gaming that are neither Class I nor Class II. Games commonly played in casinos, such as slot machines, blackjack, craps, and roulette, would clearly fall in the Class III category, as well as electronic facsimiles of any game of chance. Before any tribe may lawfully conduct Class III gaming, the following conditions must be met. First, the particular form of Class III gaming the tribe wants to conduct must be permitted in the state in which the tribe is located. Second, the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and third, the

tribe must have adopted a tribal gaming ordinance that has been approved by the Chair of the NIGC.



Declaration of Policy - IGRA

Provide a statutory basis for the operation of gaming by tribes to promote:

- **tribal economic development**
- **self-sufficiency, and**
- **strong tribal governments.**

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§2702. Declaration of policy

The purpose of this chapter is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.



IGRA Violations

Suspect activity often ends in violations such as:

- Managing an Indian gaming operation without an approved management contract.
- Misuse of gaming revenue
- A violation of the sole proprietary interest requirement.



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1. Non-tribal government interest.
2. Manipulates Tribal business relationships.
3. Undue influence over the tribal decision making processes.
4. At the expense of the tribal gaming operation.
5. Violates IGRA, NIGC regulations, Tribal Gaming Ordinances and other federal, state or tribal laws.



Bulletin 94-5

- Any agreement can be management if it authorizes management activity.
- Provides distinctions between Consultant Agreements and Management Contracts.
- Optional Contract Review by Office of General Counsel.

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"Management contract" is defined as: any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of the gaming operation.



Management contract issues

- Contracts/Agreements that leads to a violation of management without an approved contract.
 - A “Consultant” contract that “doesn’t need approval” yet does give a third party control over management decisions.
 - A vendor services contract that includes most of the terms that must be in a contract.
 - Any agreement that seems to be following the limitations of a management contract.

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Management without an approved contract is a substantial violation. See 25 C.F.R. § 575.4. A management contract that has not been approved by the Chairman is void.

§575.4 When civil fine will be assessed.

The Chairman may assess a civil fine, not to exceed \$54,157 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued under §573.3 of this chapter after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming.

(c) *History of violations.* The Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five (5) years.

(1) A violation cited by the Chairman shall not be considered unless the associated notice of violation is the subject of a final order of the Commission and has not been vacated; and

(2) Each violation shall be considered whether or not it led to a civil fine.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may reduce the amount of a civil fine based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.



Misuse of Gaming Revenue



- Violation of IGRA and NIGC regulations.
- Five specific purposes.
- When used for some other purpose, can result in a

Notice of Violation

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§2710. Tribal gaming ordinances - (b)(2)(B) - net revenues from any tribal gaming are not to be used for purposes other than—

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Indian tribe and its members;
- (iii) to promote tribal economic development;
- (iv) to donate to charitable organizations; or
- (v) to help fund operations of local government agencies;



Evaluating Sole Proprietary Interest



- The term of the relationship between the tribe and the third party;
- The amount of revenue paid to the third-party; and
- The third party's right of control over the gaming activity.

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Transfers of a percentage of gaming revenue without any limitations is a red flag.



Guard Against IGRA Violations

Know Your Authority

- Tribal Gaming Ordinance
- IGRA
- Gaming Regulations
- Policy



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A strong ordinance allows a TGRA to review all contracts and agreements associated with a gaming operation and do not exclude contracts or agreements only related to gaming vendors.

- Does your process include a submission of the contract with the submission of the vendor, 3rd party or consulting agreement licensing process?
- Does your gaming system approval process include a copy of the contract?
- Does your gaming ordinance state the TGRA is responsible for enforcing IGRA?



Guard Against IGRA Violations

Know where to look

- Review Contracts
- Observe Daily Activity
- Audit/Test Payments

Know what to look for

- Red Flags (handout)



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Observe Daily Activity

- Who is present, what is their access to areas such as the cage, finance, marketing?
- Are they directing any gaming department by setting operational policy.
- Do they work for the tribe, contracted by the casino.
- Who is their client and to whom do they report.

Audit/Test Payments

- Who is the payment of the agreement/contract going to? The person in the contract or someone outside of the contract?
- How much is the payment, how is the payment calculated, how long are the payments to occur?
- Are the payments based on gaming revenue, net win, weekly or hourly rate.
- Is the person or company required to be licensed and are they licensed?



Guard Against IGRA Violations



Know how it happens

- Lack of Awareness
- Good Intentions/Few Options
- Pressure
- Collusion

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Guard Against IGRA Violations

Who knows

- Negotiator
- Contractor
- Author(s) of the contract
- CFO
- Check signatory
- Accounting Department
- Department receiving the service

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Determine the relationships between the negotiator and contractor, the execution of the contract, authorizations, when payments occur, what the payments are going to be, what are the payments based upon and how were the payment amounts determined.



Guard Against IGRA Violations

Be proactive not reactive

Take action

Work with NIGC

REACTIVE



PROACTIVE



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Be aware that these violations can and do occur, know your authorities, how the casino functions, the licensing process for employees, gaming vendors and non-gaming vendors, and the access restrictions.



What is the Desired Outcome?

- **Stop the violation**
- **Return management control to the tribe and/or ensure the tribe is the sole beneficiary**
- **Promulgate controls to prevent reoccurrence**



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- Stop the violation
- Return management control to the tribe and/or ensure the tribe is the sole beneficiary
- Promulgate controls to prevent reoccurrence



Questions

Please reach out to the Division of Compliance or the Office of General Counsel if you have any questions.

(202) 632-7003
ContactUs@nigc.gov



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Participants can and should reach out to Compliance and or OGC to discuss actions that lead to IGRA violations. Call (202) 632-7003. Email contactus@nigc.gov