

National Indian Gaming Commission Moves Beyond Recommendations of General Accounting Office Report

The General Accounting Office (GAO) recently published a report on the regulation of Indian gaming titled *Indian Gaming: Regulation and oversight by the Federal Government, States, and Tribes*. The report describes the numerous tribal and governmental resources devoted to effective regulation and recognizes the importance of gaming to tribal economic development and self-determination. The GAO report did not uncover any major concerns or controversies regarding the National Indian Gaming Commission's (NIGC) statutory and regulatory obligations pursuant to the Indian Gaming Regulatory Act (IGRA) toward tribes or other stakeholders.

The GAO limited its recommendations for the NIGC to two primary areas: First, the report states that NIGC should institute standards to analyze the effectiveness of its training and technical assistance. Secondly, the report stated that the NIGC should communicate more with states concerning Class III gaming.

Jonodev O. Chaudhuri, who was recently confirmed as NIGC's Chairman, welcomed the GAO report. "The report is yet another tool for the Commission to assess its performance in the regulation of Indian gaming, while also illustrating areas where the Commission can continue to advance the goals of the Indian Gaming Regulatory Act," said Chaudhuri. "In fact, I am pleased to report that the Commission has already put in place many of the recommendations made by the GAO, and we are working to further strengthen technical assistance, compliance and enforcement in the Indian gaming industry through application of key priorities and guiding principles that I have laid out for the agency. In many cases, our efforts in these areas exceed the report's recommendations."

During his confirmation proceedings, Chairman Chaudhuri outlined specific agency priorities that are well-targeted to advancing the sound regulation of Indian gaming. These priorities include:

- 1) Active performance of regulatory duties.
- 2) Engaging in ongoing meaningful tribal consultation.
- 3) Staying ahead of the technology curve.
- 4) Supporting a strong workforce both in-house and among regulatory partners.
- 5) Strengthening dialogue and relationships with all relevant stakeholders.



In the implementation of these priorities, NIGC's Chairman has provided specific guiding principles for the agency, including the need to:

- Act within appropriate agency authority to address and mitigate activity that jeopardizes the integrity of Indian gaming and, by extension, the valuable self-determination tool that it represents.
- Swiftly act on anything that jeopardizes the health and safety of the public at gaming establishments, including employees and patrons.
- Engage in sound regulation without unnecessarily stymieing lawful economic development activities.
- Protect against anything that amounts to gamesmanship on the backs of tribes.

Shannon O'Loughlin, NIGC's Chief of Staff appointed by the Chairman in May added that "application of these priorities and principles has already seen positive results and is taking the agency well beyond GAO's recommendations. For example, prior to the GAO's recommendation that the NIGC should communicate more with states about Class III gaming, NIGC established a new position of Legislative and Intergovernmental Affairs Coordinator in its D.C. headquarters. This position was created specifically to grow its commitment to communicate with state and local governments, as well as Congress and other federal agencies."

Eric Shepard, General Counsel for the NIGC, also named by the Chairman in May, said "in addition to the agency's communications to states and other stakeholders, the NIGC is fully committed to the President's November 5, 2009 Executive Memorandum on Tribal Consultation with Indian tribes and Executive Order 13175 on consultation and coordination with Indian Tribal Governments. Since 2011 the NIGC has held over 50 tribal consultations on every regulatory initiative considered by the Commission in an effort to ensure timely, meaningful and substantive conversations with tribes." The GAO report did not provide any

comment or insight on the NIGC's activities regarding tribal consultation.

O'Loughlin further explained that the NIGC recently created a Division of Technology, which will play a critical role in ensuring that the NIGC stays abreast of the ever-changing technological landscape of gaming in the performance of its regulatory functions, including uncovering and mitigating compliance issues, training regulatory partners, and performing internal operations consistent with principles of good government.

"Having a director at the senior level who can lend their voice to the policy discussion helps to ensure that the agency takes a comprehensive approach to the ever-changing landscape of gaming technology and informs all agency functions, including training, technical assistance, internal operations, compliance functions and data collection and retention," said Chaudhuri.

The development of the Division of Technology will enhance the agency's ability to capture and analyze relevant data to help track the effectiveness of NIGC training and technical assistance and shape agency operations. This is specifically on-point with the GAO's recommendation regarding performance standards. The agency is already instituting measurement standards, including knowledge reviews, to analyze the effectiveness of its training and technical assistance to support compliance. In addition, over the last two years the NIGC has trained more people at more events and the agency projects a continual increase in training and attendance in 2015. In fact, tribal attendance at NIGC training was up 18% in 2012, and 2014 attendance was up 32%. Additionally, NIGC's analysis of Agreed Upon Procedures reports show a 34% decline in high-risk findings and a 36% decline in overall noncompliance findings from the reports received between 2009 and 2013. The NIGC recognizes that a singular measurement cannot provide a holistic view of its effectiveness, especially given recent regulatory changes, including the 2012 amendments to Class II Minimum Internal Control (MICS) standards.

A fuller understanding of NIGC's overall effectiveness as a regulator may be assessed through tribal gaming operations' compliance with tribal laws and the IGRA. Some have coined the phrase "voluntary compliance" to explain tribal compliance efforts, but have misconstrued the meaning. Chairman Chaudhuri explains that "the concept of voluntary compliance pursuant to the IGRA does not mean that tribal gaming operations are left alone to comply with the IGRA. It is the goal of the IGRA that tribes will assert their self-determination, develop regulatory capabilities and hire strong regulators, so that their gaming operations will comply with tribal laws, and federal law and regulations." Chaudhuri points out that "the NIGC provides the technical training

and assistance to support this goal of voluntary compliance. But if tribal gaming operations do not comply, the NIGC has the necessary enforcement tools available to compel compliance with the IGRA."

However, the NIGC acknowledges, despite its best efforts to provide training and technical assistance to tribes, situations will arise that leave the agency with no choice but to use the enforcement powers provided in the IGRA. Chairman Chaudhuri notes that NIGC will not hesitate to fulfill its obligations and protect the integrity of Indian gaming, adding that, "meaningful and effective work on the front end in the vast majority of instances have negated the need for action on the back end. NIGC recognizes that sound and consistent regulation preserves public confidence, supports tribal self-sufficiency and self-determination, protects tribal assets, and promotes a safe and fair environment for all people who interact with the industry." ♣

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