(EXTERNAL CALL-IN PHONE LINE AND ADOBE CONNECT LINK ESTABLISHED)

>> JONODEV CHAUDHURI: Welcome everybody.

Before my fellow Commissioners and I get started with formal consultation, in keeping with our traditions at NIGC, and the fact that we are here in conjunction with the National Congress of American Indians, we will start with the blessing today. And Secretary Greg Abramson from the Spokane Tribe has offered to provide us with a blessing before we begin.

(OPENING BLESSING.)

>> JONODEV CHAUDHURI: Thank you so much, Secretary.

So, my name is Jonodev Chaudhuri. I serve as Chairman of the National Indian Gaming Commission. I am joined by my fellow Commissioners, as well as many senior staff at the Agency. And I want to welcome everybody here today. I know a lot is going on during NCAI, there are other consultations going on and a lot of travel considerations that everybody --
everybody has. Traffic was horrible. So, I am just very thankful for those of us who are here for today's consultation, and I want to thank you all for making the time to come join us today. We are going to hear from subject matter experts, who will lay out the background for each of our topics, but beyond the specifics of what we are here to discuss today, I think it's important that the form and process that we are undertaking is important.

As an Agency, we have been committed for many, many, many years, from our inception, to be actively engaged in meaningful consultation, and today's discussion is an extension of that. For us, what that means is working hand in hand, not just to get buy-in on the final product, but to get buy-in before we put pen to paper. So, we are actively trying to work on positive deliverables to -- to issue from the Commission. And the topics we are hearing today, the reason we are here discussing these topics, we heard from Indian country through continuing consultations three topics that provides areas of opportunity to improve the gaming landscape.

I want to welcome everybody here today as Muskogee Creek, member of the Bear Clan, it's an
honor to have a consultation here in conjunction with NCAI.

I will turn it over to my Commissioners, who will share opening comments.

>> KATHRYN ISOM-CLAUSE: Thank you. Good morning. I am Kathryn Isom-Clause, Vice Chair of the Commission.

I would like to thank you for being here today. As the Chairman mentioned, it's a busy day, busy week. We know you have competing interests for your time, we thank you for being here. This is kind of a special consultation for us because while we usually like to be in person face-to-face, that's preferable, we know that's not always possible for folks. So we have Adobe Connect going today. We have people joining us online through the phone lines. So we are really excited we can offer that as well today.

Tribal consultation is primarily a means for us to listen to tribes, not only to honor the government-to-government relationship, but in recognition of the role of tribes.

As primary regulator, it's very important to acknowledge when you start out. It's also a time for us to present ideas, how we can strengthen our regulatory
partnerships to make our work more efficient. With
tour topics today we are hoping to do exactly all of
those things, make the processes more efficient, and
work a little bit better together in partnership.

I would like to note that while our time with this
current Commission may be somewhat limited, we are
continuing stability on policy initiatives that we have
been working towards. Those will be reflected in our
strategic plan, which is coming out very shortly now
this month, you will be able to see that online pretty
soon.

And just to sum up, we are really looking forward
to hearing from you all and sharing your ideas as well.
Thank you.

>> SEQUOYAH SIMERMeyer: Good morning. I am
Sequoyah Simermeyer. I am Coharie, my Tribe's
community is in eastern North Carolina. I am the third
member of the National Gaming Commission and I
have served a little over two years, of my three–year
term.

I am going to join my colleague in saying thank
you for being here. There is a lot going on, we
appreciate everyone engaging in this.

I want to briefly, just as part of the introduction,
share a bit about my approach to the Commission, and
then my colleagues will share.

In the work that I do with the Commission I try to keep
three considerations in mind: First, that the
Commission has an obligation to follow the Indian
Gaming Regulatory Act, it sets up the framework for
how tribal gaming operates today, and importantly,
articulates policy objectives that helps to ensure tribes
are the primary beneficiary of the over $31billion
industry.

I also keep in mind the importance of seeking the
institutional knowledge and expertise that exists
among the regulatory community, including the dozens
of compliance officers, auditors, financial analysts and
attorneys that work within the Gaming Commission, as
well as the approximately 6,000 members of the tribal
regulatory bodies and the institutional knowledge
exists across the many state regulatory bodies as well.

As a matter of good governance and improved
partnerships, it’s important that we look to these
resources in how we develop the decisions.

And finally, it’s important to make the
Commission diplomatic in decision processes. The
tribes best execute what is best for the people. And a
part of that is being respectful to intergovernmental relationships and tribes engaging, whether between tribes of the federal government or state governments, so it's important, I think, that the Commission is diplomatic in how we make a decision. I think that improves our ability to do your mission. Engaging in consultation sessions, like this today, is an important way for the federal agencies not only to make sure that the appropriate decision-makers are at the table engaging in discussions, and not only provide more transparency and more informed decision making, I think, importantly, the gaming consultation helps to define and give meaning to the government–to–government relationship that exists between tribes.

I want to say thank you for being here, and drawing my colleagues in our appreciation today.

>>> JONODEV CHAUDHURI: Thank you fellow Commissioners.

So, we always try to recognize members of the NIGC family when we can. I want to recognize Liz Homer, former Vice Chair, as well as Paxton Myers, a former Chief of Staff from NIGC.

We are going to do introductions a little bit
differently today, given the fact that we have so many competing concerns. We have a lot of staff here today. We also ask the audience to introduce themselves when they make comments, that will help today's conversation flow a little bit more smoothly and move things along.

So with that, if we could introduce ourselves, whoever is providing subject matter background, please begin. Traci.

>> TRACI SANTILLANES: Good morning, Traci Santillanes from the audit manager and I'm Shoshone Band.

>> TANA FITZPATRICK: Good morning, Tana Fitzpatrick, staff attorney with the Commission and I'm Crow Montana.

>> YVONNE LEE: Good morning, Yvonne Lee, manager of finance of the NIGC.

>> TOM CUNNINGHAM: Tom Cunningham, Assistant Director of Compliance. I am Seminole Nation of Oklahoma.

>> JONODEV CHAUDHURI: We have an open door, open phone line policy at the Agency. And beyond today's back and forth open dialogue I want to encourage anybody to reach out to NIGC at any time
with any questions, comments or concerns. Before we get into the housekeeping section, of the consultation, again, recognizing people have other things to do, planes to catch, if anybody needs to get a statement on the record now, we will afford time and opportunity to do that before we actually jump into the specific subjects.

Anybody need to get on the record before we start? Okay.

With that, again, we very excited to have this consultation, not only be a live consultation, or in–person consultation but, also, to be accessible by Adobe Connect. This is part of our technology and outreach initiatives. We are committed to staying ahead of the technology curve wherever and whenever possible, not only in the training and technical assistance that we do but also internally in our Agency operations. So, we are excited to be able to livestream this and have it accessible through Adobe Connect. Additionally, we recognize the expense involved in traveling to consultations, and so we are excited to have the opportunity for people to attend from -- from home or from their office, wherever that may be.

I am going to turn it over to Mr. Cunningham at this
time to go over some housekeeping matters before we get into the topic discussions.

   >>> TOM CUNNINGHAM: Thank you, Chairman.

   As the Chairman said, the meeting is scheduled to go from 9 to 12 p.m. -- yes, 12 p.m. However, if all topics have been covered, and all comments from the tribes have been received, we may end early.

   The meeting will be transcribed, so if you stand to make a comment, please state your name clearly so the transcriptionist can hear it. Also, tell them what party you represent, what tribal government you are here representing.

   We have an additional consultation on February 21 at the Potawatomi Hotel and Casino in Milwaukee, Wisconsin.

   Questions and comments will be taken after each topic, so please hold your questions until the subject matter expert has completed their speaking.

   Our topics for today are: Management Contract, Audit Submissions, and Management and Sole Proprietary Definitions. The time period for written comments and topics will end February 28, 2018.

   >>> JONODEV CHAUDHURI: Okay. So the structure of today's consultation, again, is going to be a little bit
different than our purely live consultations. We will hear from each subject matter expert, who will provide background, and then we will open up the floor for questions, comments and concerns from both the in-person audience, as well as those attending via Adobe Connect. I would ask folks who are -- who have any questions or comments, to work with our moderator, and -- and what was the process? You hit –

>> (Inaudible)

(Discussion off record.)

>> JONODEV CHAUDHURI: Okay. The moderator will prompt those attending online to ask questions.

So, with that, we will begin with our first topic of consultation. Our presenter for that will be Yvonne Lee, our Director of Finance.

>> YVONNE LEE: Thank you, Chairman. Under the regulations tribes wanting to engage a third party to manage their operations are required to enter into a management agreement with a third party that must be approved by the Chairman of the National Indian Gaming Commission. Following the NIGC's 2017 consultation sessions, the Commission carefully
reviewed its regulations, and the Agency's internal procedures for reviewing and approving management contracts. As a result of that review, and based on comments received during the consultations, the Commission believes that changes to our management contract regulations will improve the efficiency of the contract review process and ensure consistency with IGRA's requirements regarding term limits. I will provide some background on this topic, including current regulations, Agency concerns, and the Commission's proposed amendments to the regulations.

The Chair of the NIGC may only approve a management contract if it does not exceed a term of five years, or in rare circumstances, seven years. NIGC regulations reflect that stipulation and management contracts are not approved unless they comply with all requirements of IGRA, including term limits. After management contracts have been approved, tribes and their management contractors may amend their contracts by following the streamlined procedures for review and approval of contract amendments found in NIGC regulations, 25 CFR Part 535. Part 535 provides an expedited process within which federal sessions are only required if the third
party individual and entities responsible for the contract have changed, and no new business plan or updated financial information is required. The expedited process is designed to allow the parties to sustain their relationship in a dynamic business environment while maintaining the integrity of the Chair's initial management contract review and approval.

The safeguards found in NIGC's management contract review process serve to assure IGRA's primary policy goals are met, including protecting Indian gaming and ensuring the tribe is the primary beneficiary of the gaming operation.

A thorough review of past practice reveals parties using Part 535's expedited process have submitted amendments to the initially approved contracts that have extended the term of the approved contract by an additional one to five years resulting in a contract that extends beyond the explicit term limits of IGRA.

Thus, the Commission believes it is important to update regulations to maintain IGRA's mandate.

The proposed amendments clarify the regulations by explicitly noting that amendments that extend the approved management agreement beyond the term limits permitted by IGRA, which is five or seven
years, will be reviewed under the full requirements of a new management contract under Part 531.

So, for example, if an approved contract with a five-year term is nearing the end of its term, and the parties are happy with the relationship and simply wish to extend it for an additional five years, they may do so, but it may not be reviewed as an amendment. Because IGRA limits contract terms to five or seven years, the Chairman will review the agreement under Part 531, and the entire requisite information that 531 requires must be submitted.

For another example, though, if a management contract had a one-year term and the parties wanted to amend the agreement to extend it for an additional year, for a total term of two years, the Chair would review the amendment under Part 535 because the term limit would still be within the statutory limit of five or seven years.

The Commission understands this change may affect the timing and expense of updating background investigations for making suitability determination of management contractors. And independent of the changes discussed above, the Commission received comments during the last round of consultation that the
background investigation process was time-consuming
and expensive. As a result, the Commission has done a
thorough review of its background investigation process
and is proposing changes to our internal procedures to
make the process more efficient, thereby reducing the
cost of investigations.

Under the new process, NIGC staff will review
the background investigation applications and divide
them into different investigative groups based on the
level of risk. This process will allow the Agency staff to
focus their investigative resources on the most vital
individuals and entities. This replaces a
one-size-fits-all model that scrutinizes all applicants
the same.

For example, under the current process, the top
direct financial interest goes through the same
background investigation as the smallest indirect
financial interest. But under the new process entities
and individuals with a direct financial interest, holding
the highest level of risk to the tribe, will have a more
in-depth background investigation completed versus
those entities or individuals who have an indirect
financial interest.

In addition, the Commission has proposed
changing the individuals and entities that are required to submit background applications under the regulations to those that have 10% or greater financial interest. This proposed change should significantly reduce the costs to the management contractors in submitting full applications on smaller investors.

Further, this proposed change will also better align the Agency's requirements with other regulatory agencies.

This change should not increase the risk to tribal gaming as the Commission will retain discretionary authority to conduct background investigations on the owners with even the smallest interests, who may pose a threat to the industry.

In addition, the Commission is proposing a regulatory change to clarify "the reduced scope of the investigation" provision to reduce the burden of background investigations for those who qualify. To further reduce the time and cost of background investigations, the Agency will no longer use the Office of Personnel Management, or OPM, to conduct part of the background investigations. Instead, we will process fingerprint checks through FBI and perform credit checks through other more efficient alternatives.
Lastly, to reduce the up-front financial burden and timing concerns, the proposed amendments to the regulation removes the requirement of a deposit before the background investigations begin. Instead, the Agency will bill the management contractors regularly as the investigation proceeds.

I would now like to turn it back over to the Commission to lead the discussion. Thank you.

>> JONODEV CHAUDHURI: Thank you, Miss Lee. I am going to turn it over to my fellow Commissioners for a little bit more background.

>> SEQUOYAH SIMERMEYER: Thank you. This is Sequoyah Simermeyer. The management contract review process is conducted by the Chair, not the full Commission, unless there is an appeal. And it's generally, it's rare that a Chairman's management denial comes up on appeal to the Commission.

However, as a full Commission, we are hoping some of the proposed changes will provide more efficiency to help avoid backlogs and improve stewardship of the tribal fees that support the Agency. Efficiencies in the process will ensure it does not create unnecessary burdens on the tribes when they are trying to seek partnerships they deem are necessary for their success.
So specifically, not using OPM, removing the $25,000 deposit, and creating tiers of background investigation to help assure the work for suitability determinations should create a more efficient, less costly, and less burdensome review process.

Finally, it's important to me that these changes do not exceed what IGRA requires for management contract terms and any Agency changes can be reconciled with the Agency's past interpretations of IGRA.

It's helpful to see what works for tribes with management and non-management services like financing services to make sure the changes don't unintentionally hinder the processes that tribes use while at the same time helping NIGC to be more efficient and remain in-line with IGRA.

>> KATHRYN ISOM-CLAUSE: Thank you. I would certainly echo Commissioner Simermeyer's comments on that. The changes proposed to the background investigation process is really moving from a blanket approach to a more targeted approach where we use our resources and our Agency time and we really hope that will result in a lot of efficiencies for the industry.
I want to thank the staff, to think through the processes and how we go about it and looking at our regs, the management contracts is one we have been talking about quite a while going around with a lot of different creative ideas. So I just, again, want to thank our staff for doing that. Thank you.

>>> JONODEV CHAUDHURI: Thank you fellow Commissioners.

So these proposals, I think, have the potential of advancing the ball an important way at the Commission. Let me just give a little background about why we are consulting on the management agreements. For several years now, we have been operating under some core initiatives at the Agency. One of those initiatives is protecting against gamesmanship on the backs of tribes, which is a fancy way of restating our mandate under IGRA to protect the primary beneficiary status of tribal nations, and to ensure that the sole proprietary interest requirements of IGRA are met. Management agreements are an important part of that.

The backrounding that the Agency does that's part of the management agreement review, helps -- helps ensure that we work hand in hand with tribes to protect the industry but protect generally against any third party
threats to assets or operations.

So, the fact that we are considering, in my view, aligning our management agreement process to be more in keeping with the intent of IGRA’s timeframes involved, namely, the five and seven-year timeframes, goes a long way towards furthering one of our key initiatives, but also fulfilling our mandates under IGRA. In addition to those initiatives, we have an ongoing commitment to good governance and promoting sound economic development as well as sound regulation. I believe these recommendations that come from staff come from Indian country; they go a long way to streamline the process without sacrificing regulatory -- regulatory duties.

So, with that, we are going to turn -- turn the floor over to the audience as well as those attending online.

Please -- moderator, please open up the lines for any questions. If we don't have any questions that's -- there is never any crime in finishing early, as I always say, but we will open the floor up now for question, comments, concerns.

>> MODERATOR: Thank you. If you would like to ask a question, please press star 1, please unmute
your phone and record your name, tribal affiliation or
organization fully and clearly when prompted. Your
information is required to introduce our question.
Again, that is star 1. One moment, wait.

>> JONODEV CHAUDHURI: Going once? Going
twice?

>> MODERATOR: At this time we have no
questions.

>> JONODEV CHAUDHURI: All right. Okay. Any
questions or comments from attendees in the room?

Bingo. Okay.

(LAUGHTER)

>> JONODEV CHAUDHURI: Well, I'm sorry, the
time closed.

>> ELIZABETH HOMER: No, no, I am right here,
Elizabeth Homer. I don't really have a comment, I think
that my clients will be sending their written comments in
to you, but I do have a question.

You know, I think that, you know, reviewing
the -- the management contract process is really
important, you know. My question is -- is a logistical
one. You know, I am a former member of the
Commission, as you know, and you know, even back in
our day, we -- the Commission was criticized by the
amount of time that it took to do management contract review.

And I understand a large part of that is due to the time it took to do investigations, the background investigations.

So, my question is: As you all know, a lot of Tribal Governments are creating entities that are, you know, actually providing management services to other tribes. And some years ago in the regulations, there was a provision dropped in that said that, you know, for tribal management contractors could have an expedited process.

And that has really never kind of been fleshed out to my knowledge. I don't know, maybe you guys have you know talked about that. So, long question, but it really boils down to this, is: Have you all thought about adding some kind of more meat on the skeleton of this tribal management contractor? And what are you thinking in terms of, you know, the scope of a background of a tribal entity? So that's my question.

>> JONODEV CHAUDHURI: Thank you Miss Homer. Excellent question.

So, I should add, in addition to our subject
matter expert, we are joined by the Chief of Staff and
general counsel here today Christinia Thomas and Mike
Hoenig, respectively, who may weigh in at various times.
Excellent point. Excellent question. Yes, we absolutely
see the benefit of sister tribe investment in Indian
country; we want to encourage that at every step.
However, some of those streamlinings are cooked in our
process as it exists, but also will be cooked into the
process moving forward.

So, as Miss Lee discussed, there is kind of two
parts to this. There is -- there is a change in how we
are -- how often we are going to be doing these
reviews. And basically, you know, moving away from
the amendment approach to trying to stay closer to
IGRA's five to seven–year spirit is part of that.
But there is also internal operational tweaks that we are
making. And Miss Lee mentioned the three tiers of
backgrounding that we are going to be working off of.

Well, those three tiers of backgrounding are
aligned with risk. When you are figuring out how to
streamline within those tiers the presumption is tribal
nations who have a longstanding track record of
regulation will -- their risk levels will be assessed in that
process. So, that on the backgrounding side, you know,
the assumption is that there will be some overlap in some of the key officials who will be -- will be backgrounded in the sister arrangements. But, also, on the management agreement review side, you know, there may be streamlining there as well, so some of that is cooked into the process already.

And that's kind of the point of having the different tiers of risk deciding -- controlling how much backgrounding will take place.

It's very difficult to -- to anticipate all situations that would come up under management agreements because every agreement, every transaction is different. And so, in terms of creating blanket processes, the best that we can do is streamline the categories that we are operating under and recognize that every agreement is different and every backgrounding involves different individuals.

So, I don't know if any members of our team want to add to that, but that's an excellent, excellent point. We want to encourage sister -- sister tribe investment at every stage.

>>> MICHAEL HOENIG: Hi, this is Michael Hoenig, general counsel at NIGC. One of the things the regs allows and IGRA allows is certain entities to -- that
includes tribal government and institutional investors, in the draft regulatory change will be put out, we tried to clarify a little bit who can make the request. I know internally and our Chief of Staff, Yvonne, might talk better to this, internally we are trying to figure out what that would look like and what that means for actually how we would process the background investigation. This is certainly something we are thinking about as we go forward.

>> ELIZABETH HOMER: Thank you. One other question has jumped into my mind. If anyone else has something, come and grab the mic from me.

The other question is logistical because these backgrounds do take a long time. And -- and you know, if you are coming up on a hard date this contract ends like today, and your process, because you are treating this like a brand new submission, is not finished, that poses a logistical and a major problem for tribal gaming operations that is under, you know, a particular management contract.

So, is there a way to build in some timeframes or some kind of process where maybe you are at the end of, you know, something, and maybe a few days are going to, you know, go over where the contract is
expired so that, you know, tribes are not facing a shutdown or the loss of their management team or, you know, that kind of thing? I guess any time you do regulations, the devil is in the details. I really worry about the deadlines here.

>> JONODEV CHAUDHURI: And thank you, Miss Homer, that's an excellent point. And in practice, we do quite a bit of coordination with tribes to work together to manage upcoming deadlines. In my opinion, you know, I am only one of three commissioners that would vote on any regulatory change, but in my opinion this will help bring clarity to the industry because the way that the Agency has typically functioned in the past is through the amendment process and through the extension process. It's a little bit ad hoc. And bringing some clarity to the -- the time periods management agreements and the deadlines they are absolutely maybe some growing pains in the short-term, but I think in the long-term clarity does help people predict what -- you know, predict upcoming deadlines -- I mean, the impact of upcoming deadlines passing. And I -- it is my hope that that additional clarity will help the industry work to -- to not be in a situation where workarounds have to be developed to get around IGRA's five to seven-year
period through amendments or one–off ad hoc extensions.

And, so, over time the hope is there will be clarity in the industry, that folks will work together. But certainly in the short–term as the -- any new changes are implemented we are always aware of growing pains and our team will work with -- work with folks who have upcoming deadlines to process the best that we can.

Additional comments, questions, concerns?

Mr. Abramson?

>> GREGORY ABRAMSON: I will come to the table here so -- is it on? Yes. Spokane Tribe of Indians.

We have just gone through this process, and we are very appreciative of NIGC. As you know, a lot of times when I catch some of you, as kind of like a fly bothering you completely all the time there, so it's as there does seem to be tedious and a long time. I do appreciate the regulations that we have to go through. And one thing that with our tribe is we buck that we are the primary regulators there. And that's one thing that I don't like to see is that we have to duplicate our -- we are on the same page when we go through a FBI background or FBI prints and stuff there, if the tribes, if
our tribe is on the same -- I don't know if there are
different FBI sites that you go to, to be able to find it out
if one is more in-depth than the other, and I know that
our tribe, we go through that there, getting the
fingerprints and going through that there. But one thing
when -- I first wanted to thank the Commission there as
we went through this, and the staff. The staff is the one
that had to deal a lot with our attorneys and had to deal
a lot with that there. And Michael and others, we know
that because we did have deadlines.

And Liz stated too when you have these
deadlines and stuff we want to try to hit them and you
guys did assist and help us, and even though we are
right down to the very last day and stuff there of getting
them accomplished.

But I guess my main portion is duplicative
things, but we do believe that our regulatory body is the
main regulatory people and we do know that you guys
have oversight on it there. And we do appreciate it
there, so --

>> JONODEV CHAUDHURI: Thank you very much
Secretary Abramson. Thanks to you and the Spokane
Tribe for collaboration and coordination in terms of
working with us, getting whatever we needed, and
meeting the deadline at hand with Spokane.

To answer the question, I am going to -- in terms of the backgrounding, we try to avoid duplication wherever possible, but I don't know if Christinia or Yvonne want to add anything more to how we kind of use readily available information, and we do try to do that but Yvonne, did you --

>> YVONNE LEE: For background investigation there are actually, you know, two main categories. One are the entities and the other ones are the individuals. So, for individuals, yes, you know if you already have gone through the FBI and all of those fingerprint check, of course we do more than that. But if you have already gone through that you can send us the results and we definitely will review those documents and we won't duplicate those efforts that's already been done. But for entities we have to kind of, you know, if it's a brand new entities, we do have to look at their corporate organization, their, you know, their holding status and their financial statements and all of that, that's a little bit different, yeah.

>> GREGORY ABRAMSON: Okay.

>> JONODEV CHAUDHURI: But Secretary Abramson, your point is absolutely well taken, and I
think echoed from -- in terms of our philosophy. Tribes are the primary regulators at their gaming -- we have an important role to play hand-in-hand with the tribes to strengthen the regulatory structure of Indian gaming, but we always recognize and respect tribal regulators and tribal leadership because that's where it starts and ends.

Thank you very much for --

>>> GREGORY ABRAMSON: Now, yield my time from my gaming chair, he was supposed to be here, but will see you next week in Milwaukee there.

>>> JONODEV CHAUDHURI: Wonderful.

>>> GREGORY ABRAMSON: He will probably be up here making more comments next week.

>>> JONODEV CHAUDHURI: Wonderful, wonderful.

That's an excellent point. Our comment period goes through February 28? February 28.

I want to encourage everybody if -- this isn't the only opportunity to get comments, and we welcome and encourage comments in any form, whether they are written or statements on the record that will be transcribed later. But we look forward to seeing your Chairman, your gaming commissioner. So, thank you
very much, Secretary.

>> GREGORY ABRAMSON: Thank you. Thank you.

>> JONODEV CHAUDHURI: So any additional comments, questions, concerns on this topic?

>> SEQUOYAH SIMERMEYER: Before we go on, this is Sequoyah Simermeyer, I want to say I appreciate a lot of the comments that are being made because for me there is two -- on this particular issue, kind of two things that will be helpful to consider in the coming weeks during our conversation series. One is what is being proposed, or is there anything else that we are not thinking of that will make this process more efficient.

And, secondly, is what is being proposed able to reconcile with the intent of IGRA or the practices we have had that Indian country has come to expect from our Agency and provide better clarification in that area. So thank you for the comments and ideas that spoke to those today, and any more that will come in will be very much appreciated.

>> JONODEV CHAUDHURI: You want to?

>> KATHRYN ISOM–CLAUSE: (Shakes head side to side.)
Jonodev Chaudhuri: So, Amanda, if we can ask the virtual audience one last time if there are any additional questions before we move on to the next topic?

Moderator: Thank you. As a reminder if you would like to ask a question, please press star 1. One moment. At this time we have no questions.

Jonodev Chaudhuri: Okay. Thank you. So with that, we will move on to our next topic, which is audit submissions, I will turn it over to our audit manager.

Traci Santillanes: Thank you, Chairman. I am Traci Santillanes.

Under IGRA and current NIGC regulations, gaming operations, regardless of income, are required to submit an annual audited financial statement, completed by certified public accountants, to the Commission within 120 days of their fiscal year end. These audits may be encompassed within existing independent tribal audit systems.

Submission of the annual audit report is critical to the NIGC’s mission to protect the integrity of Indian gaming and provides a certain level of assurance as to
the safekeeping of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

The Commission, however, recognizes that small or charitable gaming operations often struggle with the cost of these requirements. With this in mind, the Commission is seeking feedback and recommendations on whether changes are needed to the audit submission regulations. Specifically, we want input on what level or levels of audit should be required for smaller gaming operations or charitable gaming operations.

A gaming operation earning less than $2 million in gross gaming revenue annually can request from the Commission to submit a CPA reviewed financial statement, if it has submitted an audited financial statement for three consecutive years. A reviewed financial statement must be completed by an independent CPA and conform to statements on
standards for accounting and review services of the gaming operation.

In fiscal year 2016, only 80 operations earned less than $2 million in gross gaming revenue. Of those 80, only six submitted the lesser financial statement review. Small or charitable gaming operations often produce less than $100,000 in gross gaming revenue annually, some less than $10,000. Contracting a CPA firm perform an annual audit can prove cost prohibitive, and as a result, may deter tribes from pursuing these gaming opportunities.

NIGC reviewed statutes and regulations from a number of jurisdictions and agencies concerned with financial entities, including the State of Nevada, the Federal Deposit Insurance Corporation and the Department of Interior. We found no consistency in the audit requirements. For example, Nevada gaming regulations require audits of financial statements for operations grossing more than $5 million, but maintain the right to require audits, compiled statements or reviews of financial statements of those operations whose gross revenue is less than $5 million. Interior exempts nonfederal entities from their audit requirement if the entity spends less than $750,000 per
year. As NIGC considers altering its own regulations, it recognizes that there are currently 95 tribal operations that produce less than $3 million in gross gaming revenue. Further, the Commission is aware that tribal operations comply with the most regulations from their own governments as well as state and federal entities. Our hope through this consultation session is to discuss opportunities or receive feedback and recommendations on how to amend this regulation while still ensuring we are supporting financial stability and maintaining a high level of protection of tribal gaming operations. Thank you for listening, and with that, I will hand the floor back over to the Commission to lead the discussion.

>> JONODEV CHAUDHURI: Turn it over to my fellow Commissioners for comments

>> SEQUOYAH SIMERMEEYER: Thanks, Chairman.

This is Sequoyah Simermeyer, thank you for the presentation.

Like with the management contract review process that we just discussed, what the Commission is looking at with regard to audit is making sure that any changes in process comply with the IGRA requirements that tribes submit an annual independent audit.

In whatever changes to auditing the Commission
considers, we need to make sure that the Agency supports IGRA'S expectations and that these requirements are going to promote financial stability and enhance tribes' regulatory capacity. Many tribes' regulatory bodies already have a very sophisticated level of capacity to conduct audits and to ensure independence and integrity.

It's also the case that the high cost of independent audits can make a small gaming operation not profitable for a community, or worse, can create a disincentive to comply with any audit submissions, or it can create a disincentive to small gaming operations opening up unfortunately. It would be helpful to hear about tribe's experience with the NIGC's auditing requirements compared with a tribe's own auditing practices. It will also help to hear and to know more about why tribes may or may not want to participate in lesser financial statement reviews. As was mentioned, in fiscal year 2016, only six of potentially eligible 80 operations submitted lesser financial statement reviews. And finally, it would help to hear about how increasing the $2 million threshold, or providing more customized technical assistance, or drafting new guidance might help to incentivize or dis-incentivize
tribes from participating in those reduced reviews or
more efficient processes.

>> KATHRYN ISOM–CLAUSE: So this topic aligns
with our rural outreach initiative because we know that
the burden can be especially heavy on smaller
operations, but we also, of course, have to recognize the
need for audit. So, as Commissioner Simermeyer
mentioned, we are interested in your feedback on
different ways that we can kind of meet both of those
goals, you know, still having the audits that are
required, and to the extent that they were required and
how we can make it more efficient for smaller
operations. You know, we have a couple of more
questions. I think Commissioner Simermeyer went over
most of them, but we are very happy to have an
open–ended discussion too, related to these questions.

>> JONODEV CHAUDHURI: Thank you Vice
Chair.

And I just want to echo my fellow
Commissioners' comments. This is really an extension
of our commitment to doing whatever we can to support
smaller operations in recognition of the fact that
everybody involved in Indian gaming, we are in it
together, we want to make sure that small operations
are able to meet that balancing point that is so important for all of us. Which is, not inhibiting the entrepreneurial spirit of tribal nations while ensuring sound regulation at the same time. The proposals that are being discussed today are an attempt to hit that balancing point, but we are absolutely open to comments or concerns about whether or not it's -- this is the right approach.

So, at this time, we are going to turn it over to the floor for questions and comments. But as I always say, there's no shame in finishing early either. We will ask Amanda at this time -- Amanda, do you mind polling the audience to see if there are any questions on the phone or online?

>> MODERATOR: Yes, of course. As a reminder, if you would like to ask a question, please press star 1. One moment, please.

>> JONODEV CHAUDHURI: And while we are waiting, we always try to put our consultation tables up as close to the circle as possible with the idea of being, you know, this is a group discussion. I mean, anybody that wants to sit right at the table and chairs are free to. Of course, you are welcome to sit wherever you would like.
MODERATOR: At this time we have no phone questions.

JONODEV CHAUDHURI: Okay.

So, turn it over to the in-person audience. Questions, comments or concerns?

ELIZABETH HOMER: Just a question. Have you all considered the possibility of making this a permissive rule and allowing the tribe, through its regulatory Agency, to determine, you know, what level of review and then you just kind of set the upper threshold and let them decide if they are going to, you know, want, you know, a full audit or what kind of standard that the tribe wants to set?

JONODEV CHAUDHURI: Well, thank you, Miss Homer. That's the type of feedback we absolutely welcome, and we want to hear.

So, I think one of the slides discuss whether or not our current threshold really reflects the full universe of smaller operations out there. We also, as I said, this is an attempt to set the right balancing point between those two issues. If there are specific recommendations, please feel free to weigh in in writing or here in further detail. But that's certainly one approach that we would love to hear more about. Additional
questions, comments, concerns?

Okay. Well, thank you.

We will move on to our third and final topic, which is Management and Sole Proprietary Definition, and for that, we have Tana Fitzpatrick.

>> TANA FITZPATRICK: Good morning, everyone. My name is Tana Fitzpatrick, and I am staff attorney with the Commission.

As previously discussed, IGRA provides that a tribal gaming operation owned by the tribe may either be managed by the tribe or by a management contractor subject to a management contract approved by the NIGC Chair. This applies to any arrangement in which a contractor manages all or part of an Indian gaming operation. To provide better clarity, the Commission is considering developing regulations clearly setting out its standard for what constitutes management, as well as its criteria for evaluating when a sole proprietary interest violation has occurred.

With this in mind, I will provide some brief background information of these terms and then pass it back to the Commission to open the floor for questions and discussion.

To assist tribes in determining whether an
activity constitutes management, NIGC Bulletin No. 94–5 explains that the term encompasses activities such as planning, operating -- excuse me -- organizing, directing, coordinating, and controlling all or part of a gaming operation. In addition, the NIGC Office of General Counsel issued an opinion letter expanding on these terms by providing examples of management activities.

However, to date, the Commission has not issued a regulation formally defining management. The Commission believes that, in consultation with tribes, developing a regulatory definition consistent with past interpretations would help provide greater certainty to the tribal gaming industry regarding what constitutes management. The Commission recognizes that the 7th Circuit has also recommended that the Commission provide more guidance.

A stated purpose of IGRA is "to ensure that the Indian tribe is the primary beneficiary of the gaming operation." Seeking to serve this purpose, IGRA requires that the gaming ordinances provide that tribes have the sole proprietary interest and responsibility for the conduct of any gaming activity, unless the gaming activity is individually owned.
To determine whether a third party has received a proprietary interest in a tribal gaming operation in violation of the sole proprietary interest mandate, the NIGC considers the term of the relationship; the amount of revenue paid to the third party; and the right of control over the gaming activity provided to the third Party.

The Commission has previously consulted on developing guidance or regulations concerning sole proprietary interest in 2008 and 2010. Courts have had the opportunity to consider and discuss this issue in intervening years, noting and upholding NIGC's formulation of the criteria to evaluate for such violations. The Commission believes that a regulation consistent with past NIGC enforcement actions and litigation would provide greater certainty to the tribal gaming industry regarding what constitutes a violation of the sole proprietary interest mandate.

The draft regulations we provided you today as a handout incorporate these interpretations for consideration, as an addition to the Commission's compliance regulations. I would now like to turn it back over to the Commission to lead the discussion.
>> SEQUOYAH SIMERMeyer: Thanks.

This is Patrick -- this Sequoyah Simermeyer.

As the presentation mentioned, the Agency’s guidance and legal opinions as well as Federal case law informed the management definitions in the past. As a member of the full Commission I would not make the determination that an unauthorized management occurred or that there was a violation of sole proprietary interest, that is a determination made by the Chair. However, as a member of the Commission, we could hear an appeal to review the Chair's decision. It is hoped that promulgating a standard would support the transparency and good governance practices at both the initial decision stage and at the appeal stage. I also hope that promulgating a definition where one does not already exist could help to provide more certainty to the partners working with Indian country and reduce the costs associated with making these types of arrangements.

For example, in 2017 NIGC's Office of General Counsel provided 60 declination letters for tribe's financial agreements in order to bring certainty to the question of whether financial agreement might constitute management of a tribal gaming operation.
It's important to provide assistance with declination letters, and there's no reason that should stop, but it adds time and associated transaction costs for gaming operations and their partners.

Finally, promoting a definition can improve general awareness about the sole proprietary interest and management contract provisions within IGRA, and the Chair's ability to make enforcements. There have only been a small number of actions by the Agency or Chair over the NIGC's history. And nobody hoped for enforcement action, but that there is additional ways for the full Commission to articulate the definition of these issues.

So thanks for everyone's feedback today and in the coming weeks on this topic.

>> KATHRYN ISOM–CLAUSE: So, this topic, we have had, you know, several years to think this through within our own Agency as well as the courts have interpreted this for us. So we believe that the proposed definitions that we are putting forth captures all of those ideas, as much as we can, but just in one place, so you are not kind of hunting all over for these different ideas of the definition.

So, as Commissioner Simermeyer mentioned, we
hope that it will provide more clarity to the industry and overall make relationships more efficient because you don't have to have any uncertainty. One question that came up in a previous session was whether by doing this we intend to kind of back away from doing declination letters, and that is certainly not the case. We really appreciate that service that the Office of General Counsel provides and we would continue to do that, but this would also just provide some parameters on the definition.

>> JONODEV CHAUDHURI: Thank you, Vice Chair.

I just want to expand on my fellow Commissioners' statements. I agree with everything they said. But you know, also tie this proposed -- or this proposal to our gamesmanship initiative. As I mentioned before, one of our tent pole initiatives is protecting against gamesmanship on the backs of tribes, essentially that's doing what we can to work hand in hand with the primary regulators of gaming to protect tribal assets and operations. It flows from our responsibilities in IGRA, that flows from our work in every aspect of operations. And that's -- it's an important initiative to us.
How this proposal is tied into that, obviously bringing clarity to the industry regarding sole proprietary interest regarding management will assist tribal nations in the conduct of their own reviews to protect their own operations.

So, while there is nothing earth shattering in terms of these definitions, I mean, we are basically codifying various pieces of law that have been pronounced in different arenas and putting them in one place, we do think this will go a long way to protecting the integrity of Indian gaming so that tribal regulators, tribal nations, can clearly point to regulation when raising any concerns about any outside threats to their assets or operations.

So, this is an extension of what we are about as an Agency. I am very excited by this proposal, in the sense that, in addition to good governance and transparency, it also furthers one of our tent pole initiatives.

So I really want to thank our team, as well as our partners in Indian country who worked hard to come up with some workable definitions in these areas. So, with that, we are going to turn it over to the floor for questions, comments, and concerns. And Amanda, if
you could poll the folks online, we would appreciate it.

   >> MODERATOR: Thank you.

As a reminder, if you would like to ask a question please press star 1. One moment, please.

   >> JONODEV CHAUDHURI: Thanks.

   >> MODERATOR: At this time we have no questions.

   >> JONODEV CHAUDHURI: Okay. Thank you. In person questions, comments or concerns?

Yes.

   >> WILDA WAHPEPAH: Thank you. I am Wilda Wahpepah, W-i-l-d-a, W-a-h-p-e-a-h, attorney at Sheppard, Mullin, Richter and Hampton, from Norman, Oklahoma.

I have a question about the language for Part 573, which is the sole proprietary interest draft regulation. There is a list of seven factors here, and my question is about number 7.

So the lead-in says that "in determining whether sole proprietary interest mandate has been violated, the Chair can take any of the following factors, including a single factor into consideration."

And number 7 says, "The provision or assignment of tribal rights to the third party, including
but not limited to, the third party's right to access to
records or financial information regarding the gaming
operation or part thereof; the right to place gambling
devices that are controlled by a third party in the
gaming operation or part thereof; and the grant of
security interest in the gaming operation."

So, if you look at this from a tribal gaming
finance perspective involving, let's just say, a
commercial lender, a federally recognized national bank,
it would be not uncommon to see in the covenants the
borrower, a tribal borrower agreeing to provide its
audits. For example, year-end audit to the lender or a
quarterly audit to the lender. That's a customary
provision that you see, a market provision.

And with respect to C, the grant of the security
interest in the gaming operation, also in this commercial
tribal finance perspective, it's customary to see that a
security interest in the revenue and personal property of
the gaming authority, for example, that's entering into
the lending contract, is a security interest that's being
granted because that's the collateral for the loan.

So, I was wondering if you could provide a little color on
what the intent was in this particular factor into what is
the concern driving that.
>> JONODEV CHAUDHURI: Thank you. Excellent question.

Just to give Mike a heads up, probably going to ask for his way in, but let me address those in turn.

First of all, all of these portions of the definition come from, you know, either our Agency decisions or case law that's out there. We -- there is a distinction between audit records that are somewhat sanitized and summarized, versus original source material, original source records I mean. And there is certainly -- certainly an amount of degree involved -- or analysis of degree involved when you are looking at access to records and in terms of proprietary interest. You are thinking about control, influence, things of that nature. But I wanted to draw that distinction, but also, distinction of a financial interest.

You know, when we talk about sole proprietary interest, we are talking about concepts involving ownership and control. And it's really a case by case analysis that speaks to the ownership and control that is exerted by a third party. So it's always going to be somewhat fact specific.

But I don't know if -- Mike, do you want to weigh in on any of the background of those provisions
So, I think, first, it's important to remember that when we talk about the kind of documents that we are reviewing, when we talk about sole proprietary interest, it's not just financing documents. Certainly, as far as the declination letter process has gone, financing has certainly taken up a big chunk of what we now review. But before -- before, in the early days, it was mostly consulting agreements and development agreements, as well as -- in fact, I don't think we ever saw financing agreements, or rarely did, until after the Wells Fargo litigation.

But at any rate, as far as the security interest, and the third party's access to records, I would say that's one of the factors that we have looked at in the past to look for that element of control that goes along with sole proprietary interest. But at the same time, I would say we have also issued hundreds now of declination letters that have reviewed security interests. And we understand that it's part of financing that security interest is almost always part of that. And oftentimes, it includes a right to, in the event of default, to call in the gross gaming revenues from the operation.
And what we have seen though, is at the same time there has been other safeguards that have been put into security agreements and loan documents and financing agreements that say, even if that happens, that there is all of these other things that protect the tribe's sole proprietary interest in its gaming operation. I think they are, in the industry, they are referred to as the IGRA's savings provisions. You know, we see that it's almost a standard -- just as now getting a declination letter is a standard condition, that language is almost a standard provision in all of the documents.

So, I think that we would be looking at this more in the sense of if, for example, someone just gets all of the gaming revenue plus they have all of the control over the facility, they are the ones that get to come in and demand, we are going to review every document, those are the kind of things that we would look at in maybe a different context than the standard lending framework that we have seen.

So it certainly is a factor that we would want to keep in there, it's something we always would look at, but I don't think it's a primary one. I don't think it's -- I can't -- I mean, it's possible, but I don't know that it would ever be the sole factor that we would look at if we
were making a determination on sole proprietary
interest. I don't know if that helps or presents any
certainty but --

>>> JONODEV CHAUDHURI: Thank you for the
question. As I mentioned, it's a matter of degree too
and it's a very fact intensive analysis.

I see another question.

>>> ELIZABETH HOMER: Yes. Thank you,
Chairman.

I have gotten a lot of feedback from my
colleagues that do gaming law and, you know, also from
my clients in their gaming enterprises about this
particular issue. There is a great concern that the
definition of management is going to sweep in all kinds
of standard agreements, and end up, you know, having
to get declination letters for every kind of agreement
that the enterprise might enter into, including training
and things that are mundane, happen all the time, are
necessary. You know, help the tribe to make sure that it
has properly adequately trained staff.

You know, also, with respect to marketing
contracts. You know, and most of these contracts they
are just a fee-for-service contract. You know, they are
not where somebody is actually gaining a security
interest in the gaming operation or, you know, in the revenue stream or anything like that.

And so, I guess that that is -- the question is: Will you all consider the breadth of that definition and the potential unintended consequences that could end up costing, you know, a lot of money, a lot of time, a lot of slowing down on business activity, you know, if there are these more mundane and routine types of agreements that are now going to be subject to management contract review. That's what people are afraid of.

>> JONODEV CHAUDHURI: And thank you Miss Homer. If there are any specific tribal concerns from any of the specific tribes we would absolutely welcome that more targeted commentary as well. You know, we very much welcome input. You mentioned clients generally, if there are any specific tribal comments you want to follow up with, we would be welcome to review that.

But let me just share a few kind of thoughts that come to mind.

I am not sure if bringing clarity to the industry would result in an uptick in declination letters of collateral agreements. If we are clear what the
definitions are, which we are attempting to be, it will be clear that fee-for-service contracts don't fall into this management definition. That, I think, that's one of the purposes of having a definition that everybody can look to.

In fact, the result may very well be as lenders, as tribes are more aware of the black-and-white definition, there very well may be a reduction in the declination letter requests that come in. Bring clarity to the industry is what -- what one of our objectives is.

But if there are specific types of agreements that there is concern over following into this definition, we would be happy to examine that and talk about it. And certainly the issue would be whether or not such agreements would give rise to an enforcement action or void them in some way. I don't think -- you know, hiring somebody to do a training is necessarily going to fall under the definition of management.

>> ELIZABETH HOMER: That's very reassuring, Chairman. And we will take you at your word on that. That is reassuring.

However, you know, the sad truth is you may not always be the Commissioners that are interpreting this language. And you know, I think that there is possible
mischief with respect to -- you know, potential mischief
with respect to the scope of the definition. It does
include things like training and marketing. The long list
of things, you know. So, I think that that's the concern.
You know, and if you think about specific examples,
another example are machine leases. You know, I mean,
they do -- they are usually, you know, a 30/70 or an
80/20 kind of split or those kinds of things.
So the question is: Would these machine lease
agreements, and sometimes machine purchase
agreements also, you know, they are being paid for with
the gaming revenue. So, there is kind of a participation
here. Would that bring those kinds of agreements into
the management contract review process?

>> JONODEV CHAUDHURI: I think that's an
excellent question.
And absolutely it's the intent, if through under
the guise of an ancillary agreement, management is
taking place, it's helpful to have a definition that assists
in the process to -- to address that. And so, if there is
a machine lease agreement that bleeds into
management authorities, that's a concern. That's a real
concern, and we want to address that.
And I don't want to -- and a lot of that, the
proof is in the -- I mean, the devil is in the details in the
language of those agreements. And so, by providing a
definition, the hope is that there is clarity as folks are
negotiating things like machine lease agreements, so
that issues of management are avoided and not included
into these agreements before they ever become a
problem. And you can't do that without a clear
definition.

And so -- or you can do it, it's just more
difficult. And so, that's a very good -- excellent point.
We will kind of think through it as -- if this is, indeed,
approved by the Commission, certainly the
implementation will have to be reasonable as well. But
the more clarity there is in terms of the playing field that
we are working under, the less freedom there is for
myself or any future Chairs to interpret management
arbitrarily. Thanks.

>> MARK VAN NORMAN: Thank you.

Mark Van Norman.

You know, Mr. Chairman, we have kind of an
interesting situation in South Dakota where most of the
tribes are operating, you know, small gaming facilities
that we, you know, view them still as casino hotels,
casino resorts. But we also have a situation where the
state has probably a video lottery with probably 8 to 10,000 machines. And there are 10 machines per building. And then they define building to say, if you add a wall here or there, you could get up to 30, wherever there is on sale or off sale liquor license. So, on the reservations, we really haven't had the state lottery because the state video lottery is set up to be a revenue share of the proprietor where the machines are located, gets 50% of the net revenue, and the state gets 50% of the net revenue. And the state owns the video lottery gaming devices and they own the central server. So, they really have a model there where there is revenue sharing, it wouldn't comport with the IGRA because we have to have at least 60% of the revenue going to the tribes, and we understand that. But, you know, at some level it may be more effective for the tribes, rather than purchasing the games outright, which may then become outmoded to lease, you know, the electronic player stations -- which are not gaming devices -- so that, you know, you can change them out. And what -- what we are hearing from folks is, and from other tribes, is it's more effective to be flexible and be able to change out your games and see which ones are going to be successful, and that kind of thing.
So I don't think you should rely too heavily on this percentage of profits because it may be more effective to work with the suppliers on the basis of doing some kind of a percent share of net profits, rather than buying the games outright because they -- the technology changes so quickly. So, I think that's an important thing to consider.

And then if you are working with folks that maybe are the proprietors of establishment that has on or off sale, and we were to do something equivalent, you know, they have to receive some -- some compensation also.

Obviously we don't want to go up to the level of the state video lottery, but there is some, oh, some appetite, you know, for having small numbers of electronic player stations in remote locations because, you know, these proprietors feel it would be an adjunct to their business, and the tribes feel, well, that my might be okay, and that might, you know, provide us an additional source of revenue without interfering with our main facility.

So, I think those are things to consider when you think about sole proprietary interest because you know, we still feel that the tribe is going to own the full
system, but we may have to do some leasing of the
machines and some leasing of locations because, you
know, we may have a network. So, that is something to
think about.

>> JONODEV CHAUDHURI: Excellent food for
thought Mr. Van Norman. And I may -- if Mike Hoenig
is comfortable speaking to the guidance we issued in
Washington State, well, and potential overlaps, but let
me just say, your comments may -- are very well taken
for this provision, but they may involve some food for
thought that's even beyond the scope of today's
consultation. And that's namely the role of the federal
government and ensuring primary beneficiary status of
tribes that came from IGRA. And frankly, I think it's
worked out decently; although, I think there would be
some -- some concerns that could be raised that it was
somewhat paternalistic in terms of some of the
requirements that would put into IGRA to kind of put
limits on the types of business agreements that tribes
could enter into. And so, whenever you talk about,
whether it's the revenue requirements of IGRA or other
requirements, such as primary beneficiary status, sole
proprietary interest. You have this -- you have these
competing concerns to -- to not inhibit tribal
investment, tribal innovation, but at the same time
uphold your responsibility to work with tribes to protect
against third party threats. Now, as applied -- as
applied to management, it's an interest -- a good point
that you raised that we don't want to hamstring various
economic ventures that tribes may not -- may want to
consider but still at the end of the day we are still left
with a responsibility of the Agency to enforce the -- the
statute we operate under. So, that's -- that's frankly
something that we try to do in a nonpaternallistic way as
possible. But it's -- it exists in Indian gaming in a way
that doesn't exist in other industries.

And -- and some ways, you know, folks could
comment on how valuable that -- that federal
requirement of oversight has been, how respectful
sovereignty it is, but one practical effect of it is since it's
there, it gives us a hook to bring enforcement action
when something goes awry. So, while it may very well
make sense for tribes to consider very creative --
creative investment platforms, we still have
responsibilities under IGRA. And that's what we are
trying to work through. And if there is a specific portion
of the definition that you think could be tweaked to
allow for sensible investment, we would be happy to
continue chatting. But it's an excellent point you raise.

Sorry for the rambling discussion about various
investment platforms that are out there because it's --
IGRA is unique in that sense in terms of creating a
federal agency that's mandated to ensure primary
beneficiary status and there may be a lot of reasons for
that there certainly were when it was passed in 88, but
we are left with-- implementing what IGRA says. So
sorry for the--

>> MARK VAN NORMAN: I will consult with him
when we get back home.

>> JONODEV CHAUDHURI: No, sorry for the long
speech there.

>> ELIZABETH HOMER: I hear where you guys
are coming from. I understand well the concerns that
you are trying to address here. And at the same time,
you know, how does this provision square with the
provisions of IGRA that allows tribes to license nontribal
entities and yet retain 60% of the revenue. And what is
this distinction there, does that give any kind of hint or
clue as to what congress intended -- intended as the
sole proprietary interest? I am not saying that it does. I
am just saying that when you kind of open this can of
worms, like a lot of other things come, you know, come
spilling out about IGRA. And you know, I guess our goal always is to have a fair and reasonable interpretation of the law.

You know, but there are different kinds of ways that are permissible under IGRA for, you know, tribes to be involved in gaming without having the sole proprietary interest in the activity when it comes to licensing, you know, other entities within their jurisdiction.

So, I guess that's a question. You know, I don't know the answer to it, I don't pretend to, but I think it's something that we have to think about.

>> JONODEV CHAUDHURI: And I thank you Miss Homer. I mean, it goes back to ownership and control. And that's what we are trying to codify in our definition.

But we have seen, again, not to go way too off track, why -- not in this setting. I don't want to waste everybody's time with that. But those are good concerns this is our best attempt at articulating IGRA's requirement but it -- it's not just our attempt to -- kind of gleaned from a lot of court cases, a lot of decisions that we have made, and you know, many of our own opinions or Agency actions. And so those are great
points, but again some of it goes beyond the scope of IGRA I think or beyond the scope of the consultation, speaks to the history of why certainly provisions were put into IGRA in the first place, so -- I mean, I don't think anybody was expecting historical discussion when they came in here today. But this is good.

(LAUGHTER)

>> JONODEV CHAUDHURI: Any additional comments, concerns? Amanda?

We will give one last crack to the folks attending online?

>>> MODERATOR: Thank you. As a reminder, please press star 1 if you would like to ask a question. At this time we have no questions on the phone line.

>>> JONODEV CHAUDHURI: Okay. Well, that concludes our third topic for discussion. You know, since we have a little time, I want to again open it up for any -- any final comments from the audience. Okay. With that, I will turn it over to my fellow Commissioners for some concluding remarks.

>>> SEQUOYAH SIMERMeyer: Thanks, Chairman. This is Sequoyah Simermeyer. I want to thank you for participating today or for comments you might send in in the future, and I appreciate all of the
conversations that -- I think there is open-ended
discussion that was really helpful, as well talking about
the importance of complying with IGRA’s meaning. But
in a lot of these for me -- a lot of what has been -- as a
separate point for me, a lot of what has been discussed
in this past few weeks is looking at ways to make the
Agency more efficient and make sure we are removing
any burdens that exist while still complying with IGRA.
Thank you for your comments today.

>> KATHRYN ISOM–CLAUSE: Thank you. I
think we have seen today that a lot of our work is trying
to figure out the balance, you know, of being too broad,
too narrow, how to reconcile the different interests. We
appreciate your thoughtful feedback on this and helping
us to work through this. And we hope we will see more
written comments as well through February 28th, just as
a reminder again.

Thank you all again for being here.

>> JONODEV CHAUDHURI: Thank you. And just
want to echo that, thank you everyone for being here.
When, you know, when I first started to get my glimpse
of how we do things at the Commission, you know, it's
clear to me that we all believed in consultation.
Consultation was the bedrock of our operations. We
made commitment pretty early on that we would never consult for consultation sake. We would never be, you know, after -- we would never engage in after-the-fact consultation. I think we have been pretty true to that. Whenever we consulted we worked diligently to produce actual, tangible results, tangible deliverables on the topics that we discussed.

So, I want to thank everybody for their past involvement and consultations. I think we, you know, have been able to produce some specific deliverables for each one of our priorities over the last few years. Today we are hearing on some -- we discussed some areas of opportunity to help us run through the tape. You know, as -- as my fellow Commissioner mentioned, we fully anticipate continued smooth operations at the Agency, even after the expiration of any of our terms. But we want to take the opportunity that we have now, given the fact that we have a full Commission, to do what we can to really take advantage of any areas of opportunity while we have it to do -- do good work. And that's what today's discussion is helping us do.

Thank you everyone for taking the time to be here today. Thank you to NCAI for allowing us to piggyback with this consultation. And really, I want to wish
everybody safe travels as they travel home.

Meduk (phonetic).

And I want to thank our team as well, our team has been incredible in terms of putting together all of the recommendations that working with all of you and putting together these recommendations and putting on today's consultations. So, thank you, safe travels.

Meduk (phonetic).

(MEETING CONCLUDES AT 11:36 A.M.)