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INDIAN GAMING

Preliminary Observations on the Regulation and Oversight of Indian Gaming

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GAO Highlights

Highlights of [GAO-14-743T](#), a testimony before the Committee on Indian Affairs, U.S. Senate

Why GAO Did This Study

Over the past 25 years, Indian gaming has become a significant source of revenue for many tribes, reaching \$27.9 billion in 2012. At that time, about 240 of the 566 federally recognized tribes operated more than 420 gaming establishments ranging from bingo halls to multimillion dollar casinos across 28 states. IGRA, the primary federal statute governing Indian gaming, provides, among other things, a statutory basis for the regulation of Indian gaming to assure that it is conducted fairly and honestly. Tribes, states, Interior, and the National Indian Gaming Commission have roles in regulating or overseeing Indian gaming.

This testimony is based on GAO's preliminary observations from ongoing work that examines (1) the process Interior uses to ensure compliance with IGRA through its review of tribal-state compacts and the types of provisions contained in these compacts; (2) how states and selected tribes regulate Indian gaming; and (3) how the Commission regulates and oversees Indian gaming and how, if at all, recent organizational changes have affected its regulatory or oversight approach.

In its ongoing work, GAO analyzed compacts; visited three states and seven tribes (selected for geographic representations and revenue generation) to discuss the oversight of Indian gaming; reviewed Commission data on technical assistance and enforcement actions; and interviewed Interior and Commission officials. GAO will continue to collect information on these topics and produce a final report.

GAO is not making any recommendations in this testimony.

View [GAO-14-743T](#). For more information, contact Anne-Marie Fennell, (202) 512-3841, fennella@gao.gov.

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INDIAN GAMING

Preliminary Observations on the Regulation and Oversight of Indian Gaming

What GAO Found

The Department of the Interior (Interior) has a multistep review process designed to help ensure that compacts comply with the Indian Gaming Regulatory Act (IGRA). Such compacts are agreements between a tribe and state that governs the conduct of the tribe's Class III (or casino) gaming activities. Based on GAO's preliminary review, Interior has approved 78 percent (382) of the tribal-state compacts submitted since 1998. While the provisions in compacts approved by Interior are largely similar, they do vary in some respects, such as the terms of "revenue sharing" arrangements established between states and tribes. For example, some compacts do not provide for revenue sharing with states, while some require tribes to share significant portions of revenue with states. The remaining 22 percent (106) of compacts reviewed were either (1) considered approved without action by the Secretary of the Interior, (2) withdrawn, or (3) disapproved by Interior for various reasons, such as when they were not consistent with IGRA.

The roles of states and tribes in regulating Indian gaming vary and are established in two key documents: (1) compacts for Class III gaming and (2) tribal gaming ordinances, which provide the general framework for day-to-day tribal regulation of Class II (including bingo) and Class III gaming facilities. Based on GAO's preliminary observations of ongoing work, GAO found that the three states visited—Arizona, California, and Oklahoma—varied in their approaches to regulating Indian gaming, as seen through differences in their regulatory agencies' organization, staffing levels, and funding. For the seven tribes GAO visited, each has established tribal gaming commissions that perform various regulatory functions to help ensure that their gaming facilities are operated in accordance with tribal laws and regulations and, for Class III operations, the compact.

The National Indian Gaming Commission (Commission), an independent commission created by IGRA within Interior, plays an important role in regulating and overseeing Indian gaming by ensuring that Class II and Class III gaming facilities comply with IGRA and applicable federal regulations and tribal ordinances or resolutions. Among other things, the Commission monitors tribal gaming activities, inspects gaming premises, and takes enforcement actions when necessary. In 2011, the Commission implemented its Assistance, Compliance, and Enforcement initiative, which emphasizes providing assistance to tribes to achieve compliance with IGRA. Through this initiative, the Commission has sought to provide technical assistance and training to tribes so that compliance issues may be resolved early and voluntarily without the need for enforcement actions. According to Commission officials, in part, as a result of this initiative, the number of enforcement actions has decreased significantly. Also in 2011, as part of a broader organizational realignment, the Commission merged its Enforcement and Audits divisions into one Compliance Division. According to Commission officials, this merger was deemed necessary, in part, to better support the Commission's emphasis on compliance assistance under its initiative.

Chairman Tester, Vice Chairman Barrasso, and Members of the Committee:

I am pleased to be here today to provide some preliminary observations from our ongoing review of Indian gaming oversight for this committee. Over the past 25 years, Indian gaming has become a significant source of revenue for many tribes. In fiscal year 2012, the Indian gaming industry generated revenues totaling \$27.9 billion and included 420 gaming establishments in 28 states.

The Indian Gaming Regulatory Act (IGRA) was enacted in 1988 to provide a statutory basis for the regulation of gaming on Indian lands. IGRA created three classes of gaming and sets out regulatory responsibilities for tribes, states and the federal government. Class I gaming consists of social games played solely for prizes of minimal value or traditional gaming played in connection with tribal ceremonies or celebrations. This type of gaming is within the exclusive jurisdiction of the tribes. Class II gaming includes bingo, games similar to bingo, and certain card games. Class III gaming includes all other types of games, including slot machines, craps, and roulette. Class II and Class III are subject to federal regulation or oversight; however, Class III is also subject to state regulation to the extent specified in compacts between the tribe and state that allow such gaming to occur. Compacts are agreements between the tribe and state that establish the terms for how a tribe's Class III gaming activities will be operated and regulated, among other things. The Secretary of the Interior (Secretary) approves compacts and must publish a notice in the *Federal Register* before they go into effect.

IGRA also created the National Indian Gaming Commission (Commission), a commission within the Department of the Interior (Interior), and charged it with regulating and overseeing various aspects of Indian gaming. The Commission is composed of a Chair, appointed by the President and confirmed by the Senate, and two associate commissioners, appointed by the Secretary. The Commission maintains its headquarters in Washington, D.C. and has seven regional offices and three satellite offices and it has approximately 100 full-time employees. To help ensure compliance with IGRA and its implementing regulations, the Commission engages in various activities to monitor the work of tribal gaming regulators—such as examining records of gaming operations, inspecting gaming facilities, and assessing tribe's compliance with

minimum internal control standards for Class II gaming.¹ In addition, the Chair reviews and approves various documents related to gaming operations, including tribal ordinances or resolutions adopted by a tribe's governing body.² In 2011, the Commission reorganized its oversight program by consolidating its Enforcement and Audit divisions into a single Compliance Division.

This testimony reflects our preliminary observations from our ongoing review that examines (1) the process Interior uses to help ensure compliance with IGRA through its review of compacts and the types of provisions contained in these compacts; (2) how states and selected tribes regulate Indian gaming; and (3) how the Commission regulates and oversees Indian gaming and how, if at all, recent organizational changes have affected its regulatory or oversight approach.

To determine the process Interior uses to help ensure compliance with IGRA through its review of compacts and the provisions contained in these compacts, we obtained a list from Interior of all Indian gaming compacts in effect as of July 2014 and analyzed the compacts to identify key provisions, including those provisions related to tribal and state regulation. We also obtained from Interior a list of all compact decisions (e.g., approved, disapproved) from 1998 to the present. We are in the process of verifying the accuracy of this list. We also examined written guidance and other relevant documentation describing Interior's process for reviewing gaming compacts and we interviewed agency officials about how this review process helps ensure compliance with IGRA.

To determine how states and selected tribes regulate Indian gaming, for our ongoing review of Indian gaming oversight, we are in the process of contacting all 28 states that have Indian gaming operations. We are collecting information about how each of the 28 states oversees Indian gaming including information on the states' regulatory organizations, staffing, funding and expenditures, and the types of monitoring and

¹Although the Commission's regulations establishing minimum internal control standards applied to both Class II and Class III, in 2006, a federal circuit court ruled that IGRA did not authorize the Commission to issue regulations establishing minimum internal control standards for Class III gaming. *Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134 (D.C. Cir. 2006).

²While IGRA refers to both tribal ordinances and resolutions, this testimony will use the term tribal ordinances.

enforcement activities conducted by state agencies. For our ongoing review, we are visiting 6 states—Arizona, California, Michigan, New York, Oklahoma, and Washington. We chose these states to provide geographic representation and because they are among the states with the greatest revenue generated from Indian gaming. We have completed visits to Arizona, California, and Oklahoma, which have about 45 percent of all Indian gaming operations.³ We are limiting the discussion of our site visits to these three states for our preliminary observations in this testimony. We are in the process of contacting the remaining 22 states by telephone. Given that there are over 200 tribes that conduct gaming, we will not be able to obtain information that is representative of all gaming tribes. Rather, for each of the 6 states that we visit, we are interviewing officials from at least one or two federally recognized tribes with gaming operations regarding their approaches to regulating Indian gaming.⁴ Our discussion today will focus on 7 tribes that we have already visited.⁵

To determine how the Commission regulates and oversees Indian gaming and how, if at all, recent organizational changes have affected its regulatory and oversight approach, for our ongoing review we are in the process of collecting information on the Commission's policies and procedures related to its regulation and oversight of Indian gaming. Also, for fiscal years 2004 through 2013, we plan to obtain and analyze data from the Commission about (1) technical assistance and training provided to tribes, (2) monitoring activities and enforcement actions taken, and (3) tribal compliance rates. We are also obtaining information about the Commission's recent consolidation of its Enforcement and Audit divisions into a Compliance Division, including impacts of this consolidation, if any, on the Commission's regulatory and oversight approach.

³While the number of gaming establishments was 420 in 2012, as of July 7, 2014, the Commission reported 477 gaming establishments. About 45 percent of the gaming establishments (216 out of 477) were located in Arizona, California, and Oklahoma.

⁴IGRA only authorizes federally recognized tribes—those recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians—to conduct gaming activities.

⁵As of this testimony, we have visited the Salt River Pima-Maricopa Indian Community and the San Carlos Apache Tribe in Arizona; Shingle Springs Band of Miwok Indians, United Auburn Indian Community of the Auburn Rancheria, Yocha Dehe Wintun Nation in California; and Chickasaw Nation and the Muscogee (Creek) Nation in Oklahoma.

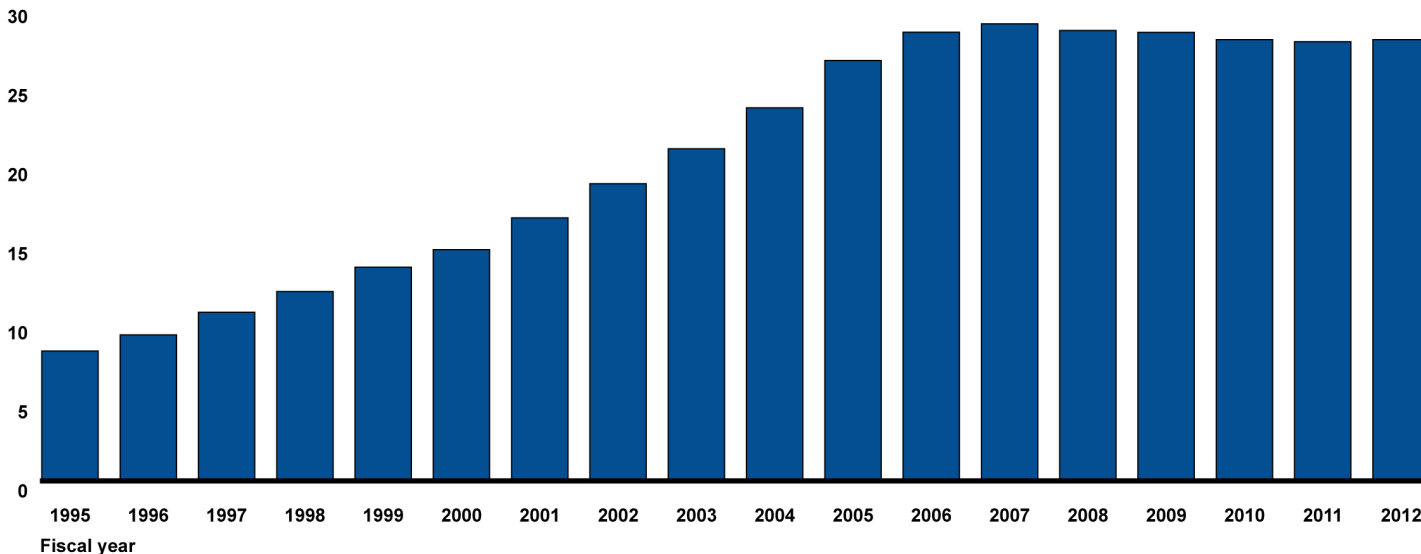
We are conducting our ongoing work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we plan to obtain will provide a reasonable basis for our findings and conclusions based on our audit objectives. We provided a draft of this statement to Interior and the Commission for their review. The Commission provided technical comments which we incorporated as appropriate.

Background

Since fiscal year 1995, revenue from Indian gaming has grown from \$8.2 billion to \$27.9 billion in fiscal year 2012 (see fig. 1). In fiscal year 2012, about 240 of the 566 federally recognized tribes operated more than 420 Indian gaming establishments across 28 states. These establishments included a broad range of operations, from tribal bingo to multimillion dollar casino gaming facilities. Of these establishments, a few large operations account for a major portion of the revenue.

Figure 1: Growth of Indian Gaming Revenues, Fiscal Years from 1995 to 2012

Dollars (in billions, adjusted to 2012 constant dollars)



Source: GAO analysis of National Indian Gaming Commission data. | GAO-14-743T

IGRA is the primary federal statute governing Indian gaming.⁶ IGRA provides, among other things, a statutory basis for the regulation of Indian gaming to shield it from corrupting influences, assure that gaming is conducted fairly and honestly by both the operators and the players, and ensure that tribes are the primary beneficiaries of gaming operations. The act establishes the following three classes of gaming.

- Class I gaming consists of social gaming solely for nominal prizes or traditional gaming played in connection with tribal ceremonies or celebrations and is regulated solely by tribes and not subject to IGRA.
- Class II gaming includes bingo, pull-tabs,⁷ punch boards,⁸ and certain card games⁹ and is regulated by the tribes and the Commission.
- Class III gaming includes all other forms of gaming, including casino games and slot machines, and although both Interior and the Commission play a role in overseeing certain aspects of Class III gaming, it is regulated by the tribes and the states pursuant to compacts.

A tribe may only conduct Class III gaming activities if such activities are conducted in conformance with a compact, among other things. According to the relevant Senate committee report, IGRA was intended to provide a means by which tribal and state governments can realize their unique and individual governmental objectives.¹⁰ The Senate committee report also noted that the terms of each compact may vary extensively and may allocate most or all of the jurisdictional responsibility to the tribe,

⁶Pub. L. No. 100-497, 102 Stat. 2467 (1988).

⁷A pull-tab is a gambling ticket that is sold as a means to play a pull-tab game. The object of the ticket is to open the perforated windows on the back of the ticket and match the symbols inside the ticket to the winning combinations on the front of the ticket. The winning pull-tab ticket is turned in for a monetary prize.

⁸A punch board is a small board full of holes in which each hole contains a slip of paper with symbols printed on it; a gambler pays a small sum of money and pushes out a slip in the hope of obtaining one that entitles the gambler to a prize.

⁹Class II card games are nonbanking card games that the state explicitly authorizes, or does not explicitly prohibit, and are played legally elsewhere in the state, and are played in conformity with state laws and regulations, if any, regarding hours, periods of operation, and limitations on wagers and pot sizes.

¹⁰S. Rep. No. 100-446 at 6 (1988).

to the state, or to any variation in between.¹¹ These compacts are negotiated agreements that establish the states' and tribes' regulatory roles and specify the games that are allowed, among other things. IGRA specifies that compacts may include provisions related to

- the application of criminal and civil laws and regulations of the tribe and the state that are directly related to and necessary for the licensing and regulation of gaming,
- the allocation of civil and criminal jurisdiction between the tribe and the state necessary to enforce those laws and regulations,
- state assessments of gaming activities as necessary to defray costs of regulating gaming,
- tribal taxation of gaming activities,
- remedies for breach of contract,
- standards for gaming activity operations and gaming facility maintenance, and
- any other subjects directly related to the operation of gaming activities.

IGRA authorizes the Secretary to approve compacts and only allows the Secretary to disapprove a compact if it violates IGRA, any other federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians. Compacts only go into effect when a Notice of Approval from the Secretary has been published in the *Federal Register*.

Class II and Class III gaming may only be conducted on Indian lands in states that permit such gaming. Indian lands, as defined in IGRA, are (1) all lands within the limits of an Indian reservation; (2) lands held in trust by the United States for the benefit of an Indian tribe or individual over which the tribe exercises governmental power; and (3) lands held by

¹¹S. Rep. No. 100-446 at 14 (1988).

an Indian tribe or individual that are subject to restriction against alienation and over which the tribe exercises governmental power.¹²

Interior Uses a Multistep Review Process to Help Ensure That Compacts Comply with IGRA

Interior has a multistep review process that helps to ensure that compacts comply with relevant IGRA provisions and other applicable laws. While compacts approved by Interior share similar provisions, they do vary in some respects, such as the terms of “revenue sharing” arrangements between states and tribes and the extent to which the compact addresses tribal interactions with local governments. Interior cited a variety of reasons for allowing compacts to take effect without Secretarial action (deemed approved) and for disapproving compacts.

Interior’s Process for Reviewing Compacts

Interior’s Office of Indian Gaming, under the supervision of the Deputy Assistant Secretary of Indian Affairs Policy and Economic Development, is responsible for reviewing compacts. According to Office of Indian Gaming officials, on the day that a compact is received, the Office of Indian Gaming date-stamps the compact and files the original version. The Office of Indian Gaming has 10 days to conduct an initial review of the compact. During this time, they will contact the applicant tribe or state if any additional information is needed. After this initial review, the Office of Indian Gaming sends a copy of the compact to Interior’s Office of the Solicitor to conduct a legal review of the compact. The Office of the Solicitor has 10 days to review the compact. After the Office of the Solicitor’s review is complete, the Office of Indian Gaming provides a copy of the compact and a summary of relevant information to the Assistant Secretary of Indian Affairs, who has 45 days to approve or disapprove the compact. Under IGRA, if a compact is not approved or disapproved within 45 days of its submission, then the compact is considered to have been approved (referred to as “deemed approved”), but only to the extent that it is consistent with IGRA.

On June 18, 2014, the Office of Indian Gaming provided us with a list of compacts that were approved, deemed approved, disapproved, or withdrawn each year from 1998 to the present. We are in the process of

¹²25 U.S.C. § 2703(4). In addition, IGRA generally prohibits gaming on lands acquired by the Secretary of the Interior in trust for the benefit of an Indian tribe after October 17, 1988, although the act also contains several exceptions to the general prohibition. Alienation is the transfer of property.

verifying the accuracy of this list. Based on our preliminary analysis of this list of compacts, the Secretary received a total of 490 compacts during this time period to review. Of these, 78 percent (382) were approved; 12 percent (60) were deemed approved; 6 percent (28) were withdrawn; and 4 percent (18) were disapproved.¹³ The number of compacts submitted varied from year to year, from a high of 66 in 1999 to a low of 8 in 2006.

Variety of Provisions Contained in Compacts Approved by Interior

The compacts approved by Interior share similar provisions but vary in some respects. For example, while IGRA does not authorize states to impose a tax or fee on tribes, apart from the assessment to defray regulatory costs, the Secretary has approved compacts that contain provisions for revenue sharing with states, so long as the states provide the tribe with a comparable benefit in return—a benefit to which the tribe would not otherwise be entitled. The amount of revenue sharing varied widely in the compacts we reviewed. Some compacts do not provide for revenue sharing, such as the 1991 compact between the Fond du Lac Band of the Minnesota Chippewa Tribe and the state of Minnesota, or the 2011 compact between the Flandreau Santee Sioux Tribe and the state of South Dakota. In contrast, some compacts require the tribe to share significant portions of revenue with the state. For example, the 2010 compact between the Seminole Tribe of Florida and the state of Florida establishes percentages of net revenue that the tribe must give to the state—as much as 25 percent—based on how much revenue the tribe makes each year.

Approved compacts had provisions that varied in other ways, such as the extent to which the compacts require the tribe to enter into agreements with local governments. For example, the 2003 compact between the La Posta Band of Diegueno Mission Indians and the state of California requires the tribe to consult with the county and other relevant local governments to develop agreements to prevent and mitigate effects from any proposed gaming facility. Some compacts make no mention of agreements with local governments.

¹³For two of the compacts on the list provided by Interior, the decision was not indicated. We are following up with Interior to clarify the decision for these compacts.

Reasons Compacts Are Deemed Approved or Disapproved

Compacts that are not approved or disapproved within 45 days are deemed approved,¹⁴ but only to the extent that they comply with IGRA. According to *Federal Register* notices or decision letters that accompany the compacts, Interior might not take action on a compact within the statutory deadline for a variety of reasons. *Federal Register* notices indicate that some compacts take effect without Secretarial action because they only change the expiration date of a previously approved compact and do not require additional review. According to decision letters accompanying other compacts, the compacts were deemed approved because they contained provisions that the Secretary found to be questionable but not outright objectionable. For example, the 2014 compact between the Mashpee Wampanoag Tribe and the state of Massachusetts contained terms that could provide the possibility in the future for the state to regulate certain Class II games, which IGRA does not authorize, and Interior's letter cautioned the state and tribe against implementing the compact in a way that violated IGRA.

Of the disapproved compacts we reviewed, the reasons for disapproval varied. For example, compacts were disapproved because lands proposed to be used for gaming were not Indian lands as defined by IGRA or the compact established a management contract that did not meet the requirements of IGRA.¹⁵

State and Tribal Regulation of Indian Gaming

Compacts establish the responsibilities of both tribes and states for regulating Class III gaming and identify the standards for the gaming operation and maintenance of gaming facilities, as well as the state and tribal laws and regulations that will be used to regulate the gaming, among other things. In addition, tribal gaming ordinances, which apply to Class II and Class III gaming, provide the general framework for tribal regulation of gaming facilities. The ordinances include specific procedures that must be followed by tribes and standards that they must meet, among other things. Based on our preliminary observations of ongoing

¹⁴Interior uses the term "deemed" approved to refer to those compacts that take effect without Secretarial action, as opposed to those the Secretary approves outright.

¹⁵A tribe may enter into a management contract for the operation and management of its Class II or Class III gaming activity. A management contract is any contract or collateral agreement between a tribe and contractor, or a contractor and subcontractor, that provides for the management of all or part of the gaming operation. Management contracts must be approved by the Chair of the Commission.

work, we found that the approaches of the three states we have visited to regulating Indian gaming vary, as seen through differences in their regulatory agencies' organization, staffing levels, and funding. For the seven tribes we have visited, each has established tribal gaming regulatory agencies that govern the day-to-day operations of their gaming facilities. These agencies perform various regulatory functions to help ensure that their gaming facilities are operated in accordance with tribal laws and regulations and, for Class III operations, the compact.

Compacts and Tribal Gaming Ordinances Establish the Roles of States and Tribes

The roles of states and tribes in regulating Indian gaming vary and are established in two key documents: (1) compacts for Class III gaming and (2) tribal ordinances for both Class II and Class III gaming. Compacts that govern Class III gaming on Indian lands lay out the responsibilities of both tribes and states for regulating gaming. For example, compacts may include, but are not limited to, provisions allowing the state to conduct inspections, certify employee licenses, and review surveillance records. They may also include tribal responsibilities to notify the state when they hire a new employee or when they make changes to their gaming regulations or rules for gaming.

In addition, IGRA requires a tribe's governing body to adopt, and the Commission Chair to approve, a tribal gaming ordinance before a tribe can conduct Class II or Class III gaming. According to the Commission, the tribal gaming ordinances are a key part of IGRA's regulation for tribal gaming, providing the general framework for tribal regulation of gaming facilities, and including specific procedures and standards to be met. For the Chair to approve the ordinances, they must provide, among other things, that

- the tribe will have sole proprietary interest in the gaming activity;
- gaming revenues will only be used for authorized purposes;
- annual independent audits of gaming operations will be provided to the Commission;
- the construction, maintenance, and operation of the gaming facilities will be conducted in a manner that adequately protects the environment, public health and safety; and
- the tribe perform background investigations and the licensing of key employees and primary management officials in accordance with certain requirements.

Along with the ordinance, a tribe must also submit other documentation to the Commission, including copies of all tribal gaming regulations. The Chair has 90 days after submission of a tribal gaming ordinance to approve or disapprove it; if the Chair does not act within 90 days, the ordinance is considered to have been approved but only to the extent it is consistent with IGRA.

States Vary in Their Approaches to Regulating Class III Indian Gaming

Based on our preliminary observations, the three states that we have visited—Arizona, California, and Oklahoma—vary in their approaches to regulating Class III gaming. As illustrated in table 1, the three states differ in their organization, funding, and staffing levels.¹⁶ For example, California divides its regulatory responsibilities between two agencies, whereas Arizona and Oklahoma each have one agency. We also observed that state budgets for the regulation of Class III Indian gaming ranged from \$1.1 million to \$19.8 million and staffing levels ranged from 3 to 136 full-time equivalents.

Table 1: Preliminary Information on State Approaches to Regulating Class III Indian Gaming, Fiscal Year 2013

Dollars in millions

State	Number of Indian gaming facilities	State regulatory agency	State budget for regulating Indian gaming	Number of regulatory staff ^a
Arizona	23	Arizona Department of Gaming	\$11.5	100
California	60	California Gambling Control Commission and the Bureau of Gambling Control	\$19.8	136
Oklahoma	101	Office of Management Enterprise Services, Gaming Compliance Unit	\$1.1	3

Sources: GAO analysis of data provided by state regulatory agencies. | GAO-14-743T

^aStaff figures are in full-time equivalents.

We also observed that the three states engaged in a variety of regulatory activities, including conducting background checks on current and prospective employees, licensing gaming devices, inspecting gaming operations, and reviewing the gaming operator's surveillance.

¹⁶These differences are not, by themselves, an indication of effectiveness.

Tribes Are Responsible for the Day-to-Day Regulation of Indian Gaming

The Commission recognizes that tribal governments are responsible for the day-to-day regulation of gaming conducted on Indian lands. While tribal governments have the authority to engage in gaming, the Commission stresses the importance of tribes establishing a comprehensive regulatory framework for gaming. According to the Commission, comprehensive regulation by tribes is a necessary component to ensure the integrity of the games and to protect the interest of the tribe.

Each of the seven tribes we visited in Arizona, California, and Oklahoma for our preliminary observations have established tribal gaming regulatory agencies—also called tribal gaming commissions or tribal gaming agencies—that perform various regulatory functions to ensure that their gaming facilities are operated in accordance with tribal laws and regulations and, for Class III operations, the compact. For each of these tribes, the tribal gaming regulatory agency was established by the tribal government for the exclusive purpose of regulating and monitoring gaming on behalf of the tribe. In general, the regulatory functions that can be performed by tribal gaming regulatory agencies include

- developing licensing procedures for all employees of the gaming operations,
- conducting background investigations on primary management officials and key employees,
- obtaining annual independent outside audits and submitting these audits to the Commission,
- ensuring that net revenues from any gaming activities are used for the limited purposes set forth in the gaming ordinance,
- promulgating tribal gaming regulations pursuant to tribal law,
- monitoring gaming activities to ensure compliance with tribal laws and regulations, and
- establishing or approving minimum internal control standards or procedures for the gaming operation.

As part of our ongoing work, we plan to visit additional tribes to discuss their approaches to regulating Indian gaming, and we will summarize our findings in our final report.

The Commission's Regulation and Oversight of Indian Gaming and Impacts of Recent Reorganization

The Commission plays an important role in regulating Class II gaming and overseeing Class III gaming to ensure compliance with IGRA and applicable federal and tribal regulations. Among other things, the Commission monitors Class II gaming, inspects Class II gaming premises, and takes enforcement actions when necessary. In 2011, the Commission implemented its Assistance, Compliance, and Enforcement (ACE) initiative, which emphasizes providing assistance to tribes to achieve compliance with IGRA. Through this initiative, the Commission has sought to provide technical assistance and training to tribes so that compliance issues may be resolved early and voluntarily without the need for a Notice of Violation, which we refer to as an enforcement action. Also in 2011, as part of a broader organizational realignment, the Commission merged its Enforcement and Audits divisions into one Compliance Division. According to Commission officials, this merger was deemed necessary, in part, to better support the Commission's emphasis on compliance assistance under its ACE initiative.

The Commission Is Responsible for Ensuring That Gaming Facilities Comply with IGRA and Applicable Federal and Tribal Regulations

IGRA established the Commission within Interior to provide federal regulation of Class II and oversight of Class III Indian gaming. Among other things, the Commission

- monitors tribal Class II gaming activity;
- inspects Class II gaming premises;
- reviews licenses issued by tribes for key employees and primary management officials;
- audits and reviews financial records of Class II gaming operations (and Class III operations when tribal gaming ordinances provide for it);¹⁷
- provides technical assistance and training to tribal gaming commissions and operations, and;
- when appropriate, undertakes enforcement actions for violations of IGRA, the Commission's regulations and approved tribal gaming ordinances.

¹⁷Notwithstanding the decision in *Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, Commission officials told us that some tribal gaming ordinances authorize the Commission to conduct audits and reviews of Class III gaming activities.

The Commission also monitors tribal compliance with minimum internal control standards, which specify in detail the minimum practices tribes must establish and implement for gaming activities. The Commission adopted these standards for gaming operations on Indian lands in 1999; however, in 2006, a federal circuit court ruled that IGRA did not authorize the Commission to issue regulations establishing minimum internal control standards for Class III gaming.¹⁸ Commission officials explained that the impact of the court's decision is tempered by compacts requiring tribes to adopt tribal internal control standards for Class III gaming and that, in most cases, these standards are at least as stringent, if not more, than the Commission's Class III minimum internal control standards. Specifically, as of July 2014, Commission officials said 115 compacts in six states require tribes to adopt tribal internal control standards that are at least as stringent as the Commission's Class III standards. In addition to these compact provisions, Commission officials said that 15 tribes in California have gaming ordinances that provide for Commission enforcement of the Commission's Class III minimum internal control standards in lieu of the tribe ensuring compliance with tribal internal control standards and state verification of that compliance. However, Commission officials expressed concern that its minimum internal control standards are out of date since the Commission does not have the authority to amend these standards for Class III gaming. For example, gaming reporting functions have improved since the Class III minimum internal control standards were promulgated in 1999, and now this reporting is in digital format rather than in the analog format that the Class III minimum internal control standards suggest.

The Commission's Recent Initiative Seeks to Resolve Tribal Compliance Issues Voluntarily, When Possible

In 2011, the Commission implemented its ACE initiative, which emphasizes, among other things, providing assistance to tribes to achieve compliance with IGRA. Through this initiative, the Commission seeks to provide technical assistance and training to tribes so that compliance issues may be resolved voluntarily without the need for enforcement actions. However, Commission officials told us that enforcement actions will still be taken when necessary.

¹⁸*Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134 (D.C. Cir. 2006).

As part of its ACE initiative, the Commission provides guidance, technical assistance, and training to tribes to help build and sustain their capacity to prevent, respond to, and recover from internal control weaknesses and violations of IGRA and Commission regulations. To improve the technical assistance and training that the Commission offers to tribes, the Commission tracks the number of training and technical assistance events it offers, their length in hours, the number of people the training and technical assistance reaches, and satisfaction rates with the training the Commission offers. In fiscal year 2013, the Commission held 194 training and technical assistance events that provided 754 hours of training and technical assistance and reached 2,751 participants who were largely satisfied with the training and technical assistance provided, according to a Commission report (see table 2).

Table 2: National Indian Gaming Commission Assistance to Gaming Tribes, Fiscal Years 2011 through 2013

Training and technical assistance	2011	2012	2013	2011-2013 performance goal ^a	2014-2018 performance goal
Events held	83	84	194	70	82
Participants attending	2,309	2,013	2,751	2,000	2,000
Percent of tribes attending	84%	65%	81%	70%	70%
Percent of attendees satisfied	86%	93%	91%	85%	85%
Hours	659	748	754	^b	^b

Sources: GAO analysis of National Indian Gaming Commission performance reports and its strategic plan. | GAO-14-743T

^aThe National Indian Gaming Commission refers to its performance goals for fiscal year 2011 to 2013 as benchmarks in its Summary Performance Dashboard reports.

^bNo performance goal has been set.

As indicated in table 2, the Commission has met or exceeded its goals for training and technical assistance, with the exception of the percentage of tribes attending training in fiscal year 2012.

To monitor tribal compliance with IGRA and applicable federal and tribal regulations for both Class II and Class III operations—another component of the Commission’s ACE initiative—the Commission conducts site visits and audits and evaluations of tribal gaming facilities, among other things. The Commission has developed various performance measures related to these compliance activities to help measure progress toward achieving its goals. As shown in table 3, the Commission met its goals for

conducting site visits and audits in fiscal years 2011 and 2012, but it did not meet its goals for these activities in fiscal year 2013.¹⁹

Table 3: National Indian Gaming Commission Compliance Activities, Fiscal Years 2011 through 2013

Compliance activity	2011	2012	2013	2011-2013 performance goal ^a	2014-2018 performance goal
Site visits conducted	640	568	426	500	500
Audits conducted	13	21	7	12	20
Audit reports received within timelines	95%	96%	^b	99%	99%
Fee worksheets received within timelines ^c	87%	86%	^b	99%	99%

Sources: GAO analysis of National Indian Gaming Commission performance reports and its strategic plan. | GAO-14-743T

^aThe National Indian Gaming Commission refers to its performance goals for fiscal year 2011 to 2013 as benchmarks in its Summary Performance Dashboard reports.

^bTo be determined.

^cTribes use fee worksheets to establish the amount they owe in fees to the National Indian Gaming Commission.

The Commission also tracks tribal compliance with what it defines as eight primary obligations under IGRA, which are

- obtaining a compact approved by Interior prior to conducting Class III gaming;
- submitting investigative reports and suitability determinations on each key employee and primary management official, summarizing the results of the tribal background investigation;
- submitting fingerprint cards to the Commission for processing;
- submitting gaming employee applications to the Commission at the commencement of employment;
- adopting a gaming ordinance for Class II or Class III gaming that has been approved by the Commission;
- paying a fee assessment to the Commission based on gaming revenues;
- issuing a separate license for each facility where gaming is conducted; and

¹⁹The Commission scaled back site visits in 2013 due to the automatic, across-the-board cancellation of budgetary resources in fiscal year 2013, known as sequestration.

- submitting an annual independent audit of each Class II gaming operation to the Commission.

In its 2012 report to the Secretary regarding tribal compliance with these obligations, the Commission stated that tribes were in compliance with most of the obligations. However, the report stated that a number of tribes did not meet established deadlines for submission of fee payments and audit reports.²⁰

In recent years, the Commission has rarely initiated enforcement actions. Our analysis of the last 10 years of publicly available Notices of Violation—documents that describe the circumstances surrounding the violation of the law, Commission regulation or tribal ordinance and measures required to correct the violation—peaked in fiscal years 2008 and 2009 (see table 4) before the implementation of the ACE initiative. Prior to fiscal year 2010, the Commission issued Notices of Violation most frequently to address untimely submissions of annual audit statements or untimely fee statements.

Table 4: National Indian Gaming Commission Notices of Violation, Fiscal Years 2004 through 2013

Reason cited	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
Failing to submit an agreed upon procedures report ^a	0	0	0	1	1	0	0	0	0	0	2
Class III gaming without a compact	1	0	0	0	0	0	0	0	0	0	1
Gaming without an ordinance	0	0	0	0	1	0	0	0	0	0	1
Gaming on ineligible land	0	0	0	0	1	0	0	0	0	0	1
Unlawful proprietary interest ^b	0	0	0	0	0	0	0	2	0	0	2
Failing to forward background investigations	0	0	2	1	1	0	0	0	0	0	4
Untimely quarterly statement or fee submission	2	9	5	0	0	38	1	0	0	0	55
Untimely annual audit report submission	4	3	9	3	19	6	1	0	0	0	45
Operating under an unapproved management contract	0	1	3	1	0	0	0	1	1	0	7
Inappropriate use of gaming revenue	0	0	0	0	0	0	1	0	0	0	1
Improper per capita payment made ^c	0	0	1	0	0	1	0	0	0	0	2
Total	7	13	20	6	23	45	3	3	1	0	121

Source: GAO analysis of Notices of Violation published on the National Indian Gaming Commission website. | GAO-14-743T

²⁰National Indian Gaming Commission, Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act, Dec. 31, 2012.

^aAgreed upon procedures reports are assessments to verify whether a gaming operation is in compliance with the Commission's minimum internal control standards and/or a tribe's internal control standards, or a system of internal control standards that provide at least the same level of controls as the Commission's minimum internal control standards.

^bUnder the Indian Gaming Regulatory Act tribes must have the sole proprietary interest and responsibility for conducting gaming unless a tribal ordinance or resolution provides for Class II gaming entities other than the tribe on Indian lands.

^cA tribe may use net gaming revenues to make payments directly to tribal members, called per capita payments, if the tribe has a revenue allocation plan approved by the Secretary of the Interior. This plan describes how the tribe intends to allocate net gaming revenues among the allowable uses under the Indian Gaming Regulatory Act, which includes funding of tribal government operations or programs and promoting tribal economic development.

Commission officials attributed the decline in the Commission's enforcement actions since fiscal year 2009 to its more proactive, preventative approach taken to help ensure compliance as called for by the ACE initiative. Specifically, the ACE initiative seeks to prevent violations from occurring since Commission officials are working collaboratively with tribal regulators. Under the ACE initiative, Commission officials said that enforcement is generally viewed as a tool of last resort. Also, the Commission modified its regulations in 2012 so that fees or quarterly statements submitted late are now subject to a fine rather than a Notice of Violation.²¹ As these were the most common enforcement action initiated prior to fiscal year 2010, some decline in enforcement actions would be expected. We are continuing to collect and analyze data related to the Commission's regulations and oversight of Indian gaming, and we will present that information in our final report.

The Commission's Reorganization Appears to Align with Its Emphasis on Compliance Assistance

In 2011, as part of a broader organizational realignment, the Commission merged its Enforcement and Audits divisions into one Compliance Division. According to Commission officials, this merger was deemed necessary, in part, to better support the Commission's emphasis on compliance assistance through its ACE initiative. These officials explained that centralizing compliance, enforcement, and auditing staff into one division improves communication among these staff and allows the Commission to identify compliance issues early. Early identification of compliance issues, in turn, allows the Commission to provide assistance to tribes before an issue becomes more serious. In keeping with the ACE initiative, Commission officials said they would prefer not to let

²¹Late payments are those received between 1 and 90 days late. Payments received after 90 days are failures to pay, which subjects the tribe to a potential notice of violation and civil fine assessment.

compliance issues reach the enforcement stage. We will continue to collect information on the Commission's reorganization, and we will present this information in our final report.

Chairman Tester, Vice Chairman Barrasso, and members of the Committee, this completes my prepared statement. I would be happy to respond to any questions that you or other members of the Committee may have.

GAO Contact and Staff Acknowledgments

If you or your staff members have any questions about this testimony, please contact me at (202)-512-3841 or fennella@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Key contributors to this testimony were Jeff Malcolm (Assistant Director), Amy Bush, Jillian Cohen, John Delicath, Justin Fisher, Paul Kazemersky, Jeanette Soares, and Lisa Turner.

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