



Testimony  
Before the Committee on Indian Affairs,  
U.S. Senate

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# INDIAN GAMING

## Regulation and Oversight by the Federal Government, States, and Tribes

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# GAO Highlights

Highlights of [GAO-15-743T](#), 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 \$28 billion in fiscal year 2013. IGRA, the primary federal statute governing Indian gaming, provides a statutory basis for the regulation of Indian gaming. Tribes, states, Interior, and the Commission have varying roles in Indian gaming.

This testimony highlights the key findings of GAO's June 2015 report ([GAO-15-355](#)). Accordingly, it addresses (1) Interior's review process to help ensure that tribal-state compacts comply with IGRA; (2) how states and selected tribes regulate Indian gaming; (3) the Commission's authority to regulate Indian gaming; and (4) the Commission's efforts to ensure tribes' compliance with IGRA and Commission regulations. For the June 2015 report, GAO analyzed compacts and Commission data on training, compliance, and enforcement; and interviewed officials from Interior, the Commission, states with Indian gaming, and 12 tribes in six states GAO visited based on geography and gaming revenues generated.

## What GAO Recommends

In its June 2015 report, GAO recommended that the Commission: (1) obtain input from states on its plans to issue guidance on class III minimum internal control standards; (2) review and revise, as needed, its performance measures to better assess its training and technical assistance efforts; and (3) develop documented procedures and guidance to improve the use of letters of concern. The Commission generally agreed with GAO's recommendations.

View [GAO-15-743T](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov).

July 22, 2015

## INDIAN GAMING

### Regulation and Oversight by the Federal Government, States, and Tribes

## What GAO Found

In its June 2015 report, GAO found that the Department of the Interior (Interior) has a multistep review process to help ensure that compacts—agreements between a tribe and state that govern the conduct of the tribe's class III (or casino) gaming—comply with the Indian Gaming Regulatory Act (IGRA). From 1998 through fiscal year 2014, Interior approved 78 percent of compacts; Interior did not act to approve or disapprove 12 percent; and the other 10 percent were disapproved, withdrawn, or returned.

GAO also found that states and selected tribes regulate Indian gaming in accordance with their roles and responsibilities established in tribal-state compacts for class III gaming, and tribal gaming ordinances, which provide the general framework for day-to-day regulation of class II (or bingo) and class III gaming. In addition, the 24 states with class III Indian gaming operations vary in their approaches for regulating Indian gaming, from active (e.g., daily or weekly on-site monitoring) to limited (e.g., no regular monitoring). Further, all 12 selected tribes GAO visited had regulatory agencies responsible for the day-to-day operation of their gaming operations.

In GAO's June 2015 report, GAO found that the National Indian Gaming Commission (Commission)—an independent agency within Interior created by IGRA—has authority to regulate class II gaming, but not class III gaming, by issuing and enforcing gaming standards. The Commission is considering issuing guidance with class III standards that may be used voluntarily by tribes and has held consultation meetings to obtain tribal input. However, in June 2015, GAO found the Commission does not have a clear plan for conducting outreach to affected states on its proposal. Federal internal control standards call for managers to obtain information from external stakeholders that may have a significant impact on the agency achieving its goals. Along with tribes, state input could aid the Commission in making an informed decision.

Even with differences in its authority for class II and class III gaming, GAO found that the Commission helps ensure that tribes comply with IGRA and applicable federal and tribal regulations through various activities, including monitoring gaming operations during site visits to Indian gaming operations and Commission-led audits. In addition, since 2011, the Commission has emphasized efforts that encourage voluntary compliance with regulations, including providing training and technical assistance and alerting tribes of potential compliance issues using letters of concern. However, the effectiveness of these two approaches is unclear. GAO found in June 2015 that the Commission had a limited number of performance measures that assess outcomes achieved. With such additional measures, the Commission would be better positioned to assess the effectiveness of its training and technical assistance. Further, GAO found the Commission does not have documented procedures, consistent with federal internal control standards, about how to complete or track letters of concern to help ensure their effectiveness in encouraging tribal actions to address identified potential compliance issues. Without documented procedures, the Commission cannot ensure consistency or effectiveness of the letters it sends.

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

I am pleased to be here today to discuss our June 2015 report on the regulation and oversight of Indian gaming.<sup>1</sup> Over the past 25 years, Indian gaming has become a significant source of revenue for many tribes. In fiscal year 2013, the Indian gaming industry included more than 400 gaming operations in 28 states and generated revenues totaling \$28 billion. The Indian Gaming Regulatory Act (IGRA) was enacted in 1988 to provide a statutory basis for the regulation of gaming on Indian lands.<sup>2</sup> IGRA established three classes of gaming and outlined regulatory responsibilities for tribes, states, and the federal government. Class I gaming consists of social games played solely for prizes of minimal value and traditional gaming played in connection with tribal ceremonies or celebrations. Class I 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. Both tribes and the federal government have a role in class II and class III gaming. Class III gaming is also subject to state regulation to the extent specified in compacts between tribes and states that allow such gaming to occur. Compacts are agreements between a 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) within the Department of the Interior (Interior) to regulate class II and oversee class III Indian gaming.

My testimony today highlights the key findings of our June 2015 report on Indian gaming.<sup>3</sup> Specifically, I will discuss (1) the review process that Interior uses to help ensure that tribal-state compacts comply with IGRA; (2) how states and selected tribes regulate Indian gaming; (3) the Commission's authority to regulate Indian gaming; and (4) the

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<sup>1</sup>GAO, *Indian Gaming: Regulation and Oversight by the Federal Government, States, and Tribes*, [GAO-15-355](#) (Washington, D.C.: June 3, 2015).

<sup>2</sup>Pub. L. No. 100-497, 102 Stat. 2467 (1988).

<sup>3</sup>[GAO-15-355](#).

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Commission's efforts to ensure tribes' compliance with IGRA and Commission regulations.

For our June 2015 report,<sup>4</sup> we examined IGRA and relevant federal regulations and policies, including Interior regulations and documentation on its compact review process, as well as Commission regulations, policies, and guidance on its regulation of Indian gaming. We also analyzed tribal-state compacts in effect through fiscal year 2014 and various Commission data corresponding to the Commission's oversight activities for fiscal years 2005 and 2014 to the extent these data were available and reliable based on their sources.<sup>5</sup> For example, for fiscal years 2011 to 2014, we analyzed Commission data on site visits and reviewed documentation related to a random, nongeneralizable sample of 50 site visits to Indian gaming operations; for fiscal years 2005 to 2014, we analyzed publicly available information on enforcement actions taken by the Commission Chair. We also interviewed Interior and Commission officials about their roles in regulating and overseeing Indian gaming. To determine how states and selected tribes regulate Indian gaming, we contacted all 24 states that have class III gaming operations.<sup>6</sup> We collected written responses, conducted interviews, and obtained additional information about how each state oversees Indian gaming, including information on each state's regulatory organizations, staffing, funding, and expenditures, as well as the types of monitoring and enforcement activities conducted by state agencies.<sup>7</sup> We visited six states—Arizona, California, Michigan, New York, Oklahoma, and Washington—selected for geographic representation and having the most

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<sup>4</sup>[GAO-15-355](#).

<sup>5</sup>To assess the reliability of these data, we interviewed Commission officials and reviewed documentation on the Commission's data system. We found the data to be sufficiently reliable for our purposes.

<sup>6</sup>Twenty-four states have Indian gaming operations with both class II and class III gaming, and 4 states have Indian gaming operations with class II gaming only.

<sup>7</sup>We obtained information from representatives of all state agencies with class III gaming except for the state of New Mexico; its representative declined participation in an interview with us. Information about New Mexico's involvement with class III gaming regulation was found in publically available reports from the New Mexico Gaming Control Board and the New Mexico Legislative Finance Committee.

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gaming revenues generated.<sup>8</sup> For each of the six states, we met with at least one federally recognized Indian tribe,<sup>9</sup> interviewing officials from 12 tribes willing and available to meet with us.<sup>10</sup> In addition, we contacted 10 tribal gaming associations including the National Indian Gaming Association and the National Tribal Gaming Commissioners/Regulators, to obtain additional information on tribal perspectives on Indian gaming. See our June 2015 report for additional details of the methods used to conduct our work.<sup>11</sup>

The work on which this testimony is based was performed 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 obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>8</sup>Collectively, the six states we visited (Arizona, California, Michigan, New York, Oklahoma, and Washington) accounted for about 60 percent of all Indian gaming operations and Indian gaming revenue generated in 2013.

<sup>9</sup>Federally recognized tribes are 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. IGRA authorizes only federally recognized tribes to conduct gaming activities.

<sup>10</sup>Tribes we interviewed regarding their approaches to regulating gaming were: Chickasaw Nation, Oklahoma; Confederated Tribes of the Chehalis Reservation; Muscogee (Creek) Nation; Oneida Indian Nation of New York; Pokagon Band of Potawatomi Indians of Michigan; Puyallup Tribe of the Puyallup Reservation; Salt River Pima Maricopa Indian Community; Shingle Springs Band of Miwok Indians; Squaxin Island Tribe; Tulalip Tribes of the Tulalip Reservation; United Auburn Indian Community of Auburn Rancheria; and Yocha DeHe Wintun Nation, California. We also spoke to representatives of six additional tribes—Colorado River Indian Tribes, Gila River Indian Community, San Carlos Apache Reservation, Tohono O’odham Nation, White Mountain Apache Tribe, and Yavapai-Apache Nation—as part of an initial scoping visit in Arizona to learn more about Indian gaming and tribal perspectives generally.

<sup>11</sup>[GAO-15-355](#).

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## Interior Uses a Multistep Review Process to Help Ensure that Tribal-State Compacts Comply with IGRA and Has Approved Most Compacts

In our June 2015 report,<sup>12</sup> we found that Interior uses a multistep review process to help ensure that tribal-state compacts, and any compact amendments, comply with IGRA, other federal laws not related to jurisdiction over gaming on Indian lands, and the trust obligation of the United States to Indians.<sup>13</sup> Interior's Office of Indian Gaming is the lead agency responsible for managing the multistep process for reviewing compacts submitted by tribes and states.<sup>14</sup> The Office of Indian Gaming coordinates its compact reviews with Interior's Office of the Solicitor. The Office of Indian Gaming submits a final analysis and recommendation regarding compact approval to the Assistant Secretary of Indian Affairs, who makes a final decision on whether to approve the compact. Interior has 45 days to approve or disapprove a compact once it receives a compact package from a state and tribe. Under IGRA, any compacts Interior does not approve or disapprove within 45 days of submission are considered to have been approved (referred to as deemed approved), but only to the extent they are consistent with IGRA.

From 1998 through fiscal year 2014, Interior reviewed and approved most of the 516 compacts and compact amendments that states and tribes submitted. Specifically, 78 percent (405) were approved; 12 percent (60) were deemed approved; 6 percent (32) were withdrawn or returned; and about 4 percent (19) were disapproved.

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<sup>12</sup>[GAO-15-355](#).

<sup>13</sup>The federal government has a fiduciary trust relationship to federally recognized Indian tribes and their members.

<sup>14</sup>Interior regulations require compacts and all compact amendments to be submitted for approval. The regulations specify that all compact amendments, regardless of whether they are substantive or technical, are to be submitted to Interior. 25 C.F.R. § 293.4(b). However, Interior does not review agreements concerning Indian gaming unless submitted by states and tribes. We identified several agreements and consent judgments between tribes and states regarding revenue sharing from Indian gaming operations that were not submitted to or reviewed by Interior. In these cases, the tribe and state did not consider the agreements to be compact amendments. Interior officials told us that, without examining the agreements, they could not determine whether they were compact amendments that needed to be submitted for review.

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In the decision letters we reviewed for the few disapproved compacts (19 out of 516),<sup>15</sup> the most common reason for disapproval was that compacts contained revenue sharing provisions Interior found to be inconsistent with IGRA.<sup>16</sup> For example, Interior found the revenue sharing payment to the state in some compacts to be a tax, fee, charge, or assessment on the tribe, which is prohibited by IGRA. For one compact, Interior found the state's offer of support for the tribe's application to take land into trust did not provide a quantifiable economic benefit that justified the proposed revenue sharing payments. Consequently, Interior viewed the payment to the state as a tax or other assessment in violation of IGRA. Interior also disapproved compacts for other reasons, including that compacts were signed by unauthorized state or tribal officials, included lands to be used for gaming that were not Indian lands as defined by IGRA, or included provisions that were not directly related to gaming.

Interior did not approve or disapprove 60 of the 516 compacts submitted by tribes and states within the 45-day review period. As a result, these compacts were deemed approved to the extent that they are consistent with IGRA.<sup>17</sup> According to Interior officials, as a general practice, the agency only sends a decision letter to the tribes and state for deemed approved compacts to provide guidance on any provisions that raised

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<sup>15</sup>According to Interior officials, decision letters accompany all approved and disapproved compacts. Our discussion of the compacts disapproved by Interior is based on a review of 18 out of 19 decision letters that Interior was able to locate as of February 2015. One letter for a compact between the Coyote Valley Band of Pomo Indians and the state of California, submitted to Interior on June 1, 2004, was unavailable.

<sup>16</sup>These revenue sharing provisions include various payment structures that may require, for example, tribes to pay states a fixed amount or a flat percentage of all gaming revenues or an increasing percentage as gaming revenues rise.

<sup>17</sup>No court has issued a decision considering the extent to which a deemed approved compact is consistent with IGRA. Federal courts have generally dismissed lawsuits challenging deemed approved compacts because a necessary and indispensable party to the litigation—the state, tribe, or both—could not be joined to the lawsuit due to sovereign immunity. *Friends of Amador County v. Salazar*, 554 F. App'x 562 (9th Cir. 2014); *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kan. v. Babbitt*, 43 F.3d 1491 (D.C. Cir. 1995); *Pueblo of Sandia v. Babbitt*, 47 F. Supp. 2d 49 (D.D.C. 1999); *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 327 F. Supp. 2d 995 (W.D. Wis. 2004), *aff'd on other grounds*, 422 F.3d 490 (7th Cir. 2005). Currently, a federal district court is hearing a challenge to a deemed approved compact that allegedly provides for class III gaming on non-Indian lands. *Amador County, Cal. v. Jewell*, 1:05-cv-658 (D.D.C.). Neither the relevant state nor the relevant tribe is a party to the suit.

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concerns or may have potentially violated IGRA.<sup>18</sup> We reviewed the decision letters for 26 of the 60 deemed approved compacts.<sup>19</sup> In 19 of the 26 letters we reviewed, Interior described concerns about the compact's revenue sharing provisions, and most of these letters also noted concerns about the inclusion of provisions not related to gaming. The remaining 7 letters we reviewed cited other concerns, such as ongoing litigation, that could affect the compact.

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## States and Selected Tribes Regulate Indian Gaming Based on Compacts and Tribal Ordinances, Depending on Gaming Class

As we found in our June 2015 report,<sup>20</sup> the roles of states and tribes in regulating Indian gaming are established in two key documents: (1) compacts for class III gaming and (2) tribal gaming ordinances for both class II and class III gaming. Compacts lay out the responsibilities of both tribes and states for regulating class III gaming. For example, compacts may include provisions allowing states to conduct inspections of gaming operations, certify employee licenses, review surveillance records, and impose assessments on tribes to defray the state's costs of regulating Indian gaming. Under IGRA, tribal gaming ordinances—which outline the general framework for tribes' regulation of class II and class III gaming—must be adopted by a tribe's governing body and approved by the Commission's Chair before a tribe can conduct class II or class III gaming, as required under IGRA.<sup>21</sup> Tribal ordinances must contain certain required provisions that provide, among other things, that the tribe will have sole proprietary interest and responsibility for the conduct of gaming activity;<sup>22</sup> that net gaming revenues will only be used for authorized

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<sup>18</sup>One federal court expressed the view that the Secretary of the Interior was attempting to evade responsibility by allowing compacts to be deemed approved because he was aware that such an action would be practically unenforceable and unreviewable, leaving the tribes with no means of vindicating their rights under IGRA even though he considered the revenue sharing and regulatory fee provisions to be illegal. *Pueblo of Sandia v. Babbitt*, 47 F. Supp. 2d 49, 56-57 (D.D.C. 1999).

<sup>19</sup>Interior officials told us no decision letters were issued for the remaining 34 deemed approved compacts.

<sup>20</sup>[GAO-15-355](#).

<sup>21</sup>Along with the ordinance, a tribe must also submit other documentation to the Commission Chair, including copies of all tribal gaming regulations.

<sup>22</sup>However, IGRA authorizes tribes to adopt gaming ordinances that provide for the licensing or regulation of class II or class III gaming activities on Indian lands owned by others in certain circumstances. 25 U.S.C. § 2710(b)(4), (d)(2)(A).



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purposes; and that annual independent audits of gaming operations will be provided to the Commission.

IGRA allows states and tribes to agree on how each party will regulate class III gaming, and we found that regulatory roles vary among the 24 states that have class III Indian gaming operations. We identified states as having either an active, moderate, or limited role to describe their approaches in regulating class III Indian gaming, primarily based on information states provided on the extent and frequency of their monitoring activities. Monitoring activities conducted by states ranged from basic, informal observation of gaming operations to testing of gaming machine computer functions and reviews of surveillance systems and financial records. We also considered state funding and staff resources allocated for regulation of Indian gaming, among other factors, in our identification of a state's role. Based on our analysis of states' written responses to questions and interviews with states we found the following:

- **Seven states have an active regulatory role:** Arizona, Connecticut, Kansas, Louisiana, New York, Oregon, and Wisconsin. These states monitor gaming operations at least weekly, with most having a daily on-site presence. Over 17 percent (71 of 406) of class III Indian gaming operations are located in these seven states, accounting for about 25 percent of gross gaming revenue in fiscal year 2013.<sup>23</sup> These states perform the majority of monitoring activities, including formal and informal inspection or observation of gaming operations; review of financial report(s); review of compliance with internal control systems; audit of gaming operation records; verification of gaming machines computer functions; review of gaming operator's surveillance; and observation of money counts.
- **Eleven states have a moderate regulatory role:** California, Florida, Iowa, Michigan, Minnesota, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, and Washington. Most of these states monitor operations at least annually, and all collect funds from tribes to support state regulatory activities. About 75 percent (303 of 406) of class III Indian gaming operations are located in these states and generated 69 percent of all gross Indian gaming revenue in fiscal year

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<sup>23</sup>The gross gaming revenue percentage was calculated using both class II and class III gaming revenues.

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2013. States with a moderate regulatory role have the broadest range of regulatory approaches. For example, according to Nevada officials, Nevada conducts comprehensive inspections of gaming operations once every 2 to 3 years and performs covert inspections, as needed, based on risk. In contrast, North Dakota officials told us they conduct monthly inspections of gaming operations and an annual review of financial reports.

- **Six states have a limited regulatory role:** Colorado, Idaho, Mississippi, Montana, North Carolina, and Wyoming. The role of these states is largely limited to negotiating compacts with tribes, and they do not incur substantial regulatory costs or regularly perform monitoring activities of class III Indian gaming operations. Eight percent (32 of 406) of class III Indian gaming operations are located in these states, and the operations accounted for about 4 percent of gross Indian gaming revenue in fiscal year 2013.

Tribes take on the primary day-to-day role of regulating Indian gaming. For example, each of the 12 tribes that we visited had established tribal gaming regulatory 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, compacts.<sup>24</sup> The tribes' regulatory agencies were similar in their approaches to regulating their gaming operations. For example, all of the tribes' regulatory agencies had established procedures for developing licensing procedures for employees, obtaining annual independent outside audits, and establishing and monitoring gaming activities to ensure compliance with tribal laws and regulations. Among other things, representatives from tribal associations we contacted emphasized that tribal governments have worked diligently to develop regulatory systems to protect the integrity of Indian gaming and have dedicated significant resources to meet their regulatory responsibilities. For example, according to representatives of the National Indian Gaming Association, in 2013, tribal governments dedicated \$422 million to regulate Indian gaming, including funding for tribal government gaming regulatory agencies, state gaming regulation,

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<sup>24</sup>Each of the 12 tribes we visited had gaming ordinances for class II and class III gaming that had been approved by the Commission Chair and had negotiated tribal-state compacts for class III gaming that had been approved by the Secretary of the Interior as required by IGRA.

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and Commission regulation and oversight of Indian gaming collected through fees required by IGRA.<sup>25</sup>

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## The Commission Has Limited Authority for Class III Gaming, but It Provides Some Services, as Requested, Using Standards Last Updated in 2006

In our June 2015 report,<sup>26</sup> a key difference we found between class II and class III gaming is that IGRA authorizes the Commission to issue and enforce minimum internal controls standards for class II gaming but not for class III gaming.<sup>27</sup> Commission regulations require tribes to establish and implement internal control standards for class II gaming activities—such as requirements for surveillance and handling money—that provide a level of control that equals or exceeds the Commission’s minimum internal control standards. But, in 2006, a federal court ruled that IGRA did not authorize the Commission to issue and enforce regulations establishing minimum internal control standards for class III gaming.<sup>28</sup> However, Commission regulations establishing minimum internal control standards, including standards for class III gaming, that were issued before the ruling were not struck down by the court or withdrawn by the Commission. The Commission issued these regulations in 1999 and last updated the standards in 2006, which we refer to as the 2006 regulations.<sup>29</sup> Since the court decision, for operations with class III gaming, the Commission continues to (1) conduct audits using the 2006 regulations at the request of tribes and (2) provide monitoring and enforcement of these regulations for 15 tribes in California with approved

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<sup>25</sup>Specifically, the Commission is funded by fees on gross gaming revenues from both class II and class III gaming. The Commission, as required by IGRA, establishes a fee schedule but the law caps the rate of fees based on the amount of gaming revenues, as well as the total amount of all fees imposed during a fiscal year (at 0.08 percent of gross gaming revenues of all gaming operations subject to IGRA).

<sup>26</sup>[GAO-15-355](#).

<sup>27</sup>The minimum internal control standards for gaming are specific to the gaming industry, and they are the primary management procedures used to protect the operational integrity of gambling games, account for and protect gaming assets and revenue, and assure the reliability of the financial statements for class II and class III gaming operations. These standards govern the gaming enterprise’s governing board, management, and other personnel and include procedures relevant to the play of, cash management, and surveillance for specific types of games.

<sup>28</sup>*Colorado River Indian Tribes v. Nat’l Indian Gaming Comm’n*, 466 F.3d 134 (D.C. Cir. 2006).

<sup>29</sup>25 C.F.R. Part 542. These regulations were issued in 1999 and updated in 2002, 2005, and 2006.

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tribal gaming ordinances that call for the Commission to have such a role.<sup>30</sup>

The Commission plans to issue guidance with updated minimum internal control standards for class III gaming and withdraw its 2006 regulations. Commission officials told us they have authority to issue such guidance, and tribes could voluntarily adopt them as best practices. According to Commission officials, issuing such guidance would be helpful because updated standards could be changed to reflect technology introduced since the standards were last updated. Commission officials told us that before the agency can make a decision on how to proceed with issuing guidance for class III minimum internal control standards, it first needs to consult with tribes. In February 2015, the Commission notified tribes of plans to seek comments on its proposal to draft guidance for updated class III minimum internal control standards during meetings in April and May 2015.

States involved in the regulation of Indian gaming are also impacted by the Commission's proposal to draft updated guidance and withdraw its 2006 regulations; however, the Commission's plans for obtaining state input on this proposal are unclear. We found that many tribal-state compacts incorporate by reference the Commission's 2006 regulations establishing minimum internal control standards. For example, three states have tribal-state compacts that require tribes to comply with the Commission's 2006 regulations.<sup>31</sup> If the Commission withdraws its 2006 regulations, it is not clear what minimum internal control standards the compacts would require tribes to meet. In addition, nine states have tribal-state compacts that require tribal internal control standards to be at least as stringent as the Commission's 2006 regulations.<sup>32</sup> If the Commission withdraws its 2006 regulations, these states and tribes would no longer have a benchmark against which to measure the stringency of tribal internal control standards. *Standards for Internal Control in the Federal*

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<sup>30</sup>State regulations issued pursuant to the tribal-state gaming compacts in California allow tribes to adopt tribal gaming ordinances that provide for Commission monitoring and enforcement of 25 C.F.R. Part 542 instead of tribal and state monitoring and enforcement of tribal minimum internal control standards.

<sup>31</sup>These three states are Iowa, Montana, and North Dakota.

<sup>32</sup>These nine states are California, Florida, Louisiana, Massachusetts, Minnesota, North Carolina, Oklahoma, Wisconsin, and Wyoming.

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*Government* call for management to ensure that there are adequate means of communicating with, and obtaining information from, external stakeholders that may have a significant impact on the agency achieving its goals.<sup>33</sup> According to a Commission official, the Commission is considering conducting outreach to the states on its proposal but did not have any specific plan for doing so. Consistent with federal internal control standards, seeking state input is important, as it could aid the Commission in making an informed decision on how to proceed with issuing such guidance and whether withdrawal of its 2006 regulations would cause complications or uncertainty under existing tribal-state compacts. As a result of this finding, we recommended that the Commission seek input from states regarding its proposal to draft updated guidance on class III minimum internal control standards and withdraw its 2006 regulations. In its comments on our draft report, the Commission concurred with this recommendation.

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<sup>33</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999). The *Standards for Internal Controls in the Federal Government* differ from the minimum internal control standards for gaming. Federal internal control standards provide a framework for identifying and addressing major performance and management challenges to help federal agencies achieve their mission and results and improve accountability. The minimum internal control standards for gaming are specific to the gaming industry and are the primary management procedures used to protect the operational integrity of gambling games, account for and protect gaming assets and revenue, and assure the reliability of the financial statements for class II and class III gaming operations.

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## The Commission Performs Various Activities to Help Ensure Tribes' Compliance with IGRA and Commission Regulations, but the Effectiveness of Some Activities Is Unclear

In our June 2015 report,<sup>34</sup> we found that the Commission helps ensure that tribes comply with IGRA and applicable federal and tribal regulations through various activities, including monitoring gaming operations during site visits to Indian gaming operations and Commission-led audits. Under the Commission's Assistance, Compliance, and Enforcement (ACE) Initiative implemented in 2011, the Commission places an emphasis on working collaboratively with tribes to encourage voluntary compliance with IGRA and Commission regulations. As part of the initiative, the Commission uses several approaches, including providing training and technical assistance and sending letters of concern to help tribes comply early and voluntarily with IGRA and applicable regulations. The Commission Chair may also take enforcement actions when violations occur and has taken a small number of actions in recent years.

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## Commission's Monitoring Activities

To help ensure compliance with IGRA and Commission regulations, the Commission conducts a broad array of monitoring activities—such as reviewing independent audit reports submitted annually by tribes, conducting site visits to tribal gaming operations to examine compliance with applicable Commission regulations, and assessing tribes' compliance with minimum internal control standards as part of Commission-led audits. In addition, as required by IGRA, the Commission's Chair reviews and approves various documents related to both class II and class III gaming operations, including tribal gaming ordinances or resolutions adopted by a tribe's governing body.

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## Training and Technical Assistance

Under its ACE initiative, the Commission has emphasized providing tribes with training and technical assistance as a means to build and sustain their ability to prevent, respond to, and recover from weaknesses in internal controls and violations of IGRA and Commission regulations. For instance, the Commission hosts two regular training events in each region. Commission staff also provide one-on-one training on specific topics, as needed, during site visits and offer technical assistance in the form of guidance and advice to tribes on compliance with IGRA;

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<sup>34</sup>[GAO-15-355](#).

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Commission regulations; and day-to-day regulation of Indian gaming operations through written advisory opinions and bulletins. Commission staff also respond to questions by phone and e-mail, among other activities.

However, the effectiveness of the Commission's training and technical assistance efforts remains unclear. The Commission's strategic plan for fiscal years 2014 through 2018 includes two goals corresponding to its focus on training and technical assistance to achieve compliance with IGRA and Commission regulations: one for continuing its ACE initiative; and another for improving its technical assistance and training to tribes.<sup>35</sup> Yet, the Commission's performance measures for tracking progress toward achieving these two goals are largely output-oriented rather than outcome-oriented, and overall do not demonstrate the effectiveness of the Commission's training and technical assistance efforts. Specifically, 12 of the 18 performance measures for these two goals include output-oriented measures describing the types of products or services delivered by the Commission. For example, they include the number of audits and site visits conducted and the number of training events and participants attending these training events. In prior work, we found that these types of measures do not fully provide agencies with the kind of information they need to determine how training and development efforts contribute to improved performance, reduced costs, or a greater capacity to meet new and emerging transformation challenges.<sup>36</sup> In that work, we concluded that it is important for agencies to develop and use outcome-oriented performance measures to ensure accountability and assess progress toward achieving results aligned with the agency's mission and goals. This is consistent with Office of Management and Budget guidance, which encourages agencies to use outcome performance measures—those that

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<sup>35</sup>In May 2006, the Native American Technical Corrections Act of 2006 made the Commission subject to the Government Performance and Results Act of 1993 (GPRA) and mandated the Commission to submit a plan to provide technical assistance to tribal gaming operations in accordance with GPRA. Subsequently, as required by GPRA, the Commission published a strategic plan for fiscal years 2009 through 2014 and replaced it with a strategic plan covering fiscal years 2014 through 2018.

<sup>36</sup>GAO, *Human Capital: A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, [GAO-04-546G](#) (Washington, D.C.: March 2004).

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indicate progress toward achieving the intended result of a program—where feasible.<sup>37</sup>

The Commission's remaining 6 measures include outcome-oriented measures that track tribes' compliance with specific requirements, including the percentage of gaming operations that submit audit reports on time and have a Chair-approved tribal gaming ordinance. They do not, however, indicate the extent to which minimum internal control standards are implemented or reflect improvements in the overall management of Indian gaming operations. In addition, they do not correlate such compliance with the Commission's training and technical assistance efforts. Additional outcome-oriented performance measures would enable the Commission to better assess the effectiveness of its training and technical assistance efforts and its ACE initiative. Commission officials told us that they recognize they have more work to do on performance measures and are interested in taking steps to ensure that their ACE initiative is meeting its intended goals. In our June 2015 report,<sup>38</sup> we recommended that the Commission review and revise, as needed, its performance measures to include additional outcome-oriented measures. In its comments on our draft report, the Commission concurred with our recommendation.

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## Letters of Concern

The Commission amended its regulations in August 2012 to formalize an existing practice of sending letters of concern to prompt tribes to voluntarily resolve potential compliance issues.<sup>39</sup> A letter of concern outlines Commission concerns about a potential compliance issue and, according to Commission regulations, is not a prerequisite to an enforcement action.<sup>40</sup> Commission regulations require that letters of concern specify a time period by which a recipient must respond but do

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<sup>37</sup>Office of Management and Budget, Circular A-11: *Preparation, Submission, and Execution of the Budget*, November 2014.

<sup>38</sup>[GAO-15-355](#).

<sup>39</sup>25 C.F.R. § 573.2.

<sup>40</sup>The Chair of the Commission is not obligated to wait for Commission staff to attempt to resolve potential compliance issues with letters of concern. If the Chair takes enforcement action before Commission staff send a letter of concern, Commission regulations require the Chair to state the reasons for moving directly to enforcement in the enforcement action.



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not address which compliance issues merit a letter of concern or indicate when a letter should be sent once a potential compliance issue is discovered. The Commission also has not issued guidance or documented procedures on how to implement its regulation regarding letters of concern. In our review of letters of concern sent by the Commission in fiscal years 2013 and 2014, we found that the Commission sent 16 letters of concern to 14 tribes. Six of the 16 letters of concern did not include a time period by which the recipient was to respond, as required by Commission regulations. In addition, 12 letters did not specify in the subject line, or elsewhere in the letter, that they were letters of concern. By not including a time period for a response as required by Commission regulations and not consistently identifying its correspondence as a letter of concern, the Commission may not be able to ensure timely responses, and tribes may find it difficult to discern the significance of these letters. In addition, the Commission provided us with documentation to demonstrate whether a tribe took action to address the issues described in 8 letters of concern, but it did not provide documentation for the remaining 8 letters. Under federal internal control standards, federal agencies are to clearly document transactions and other significant events, and that documentation should be readily available for examination.<sup>41</sup> Without guidance or documented procedures to inform its staff about how to complete letters of concern or maintain documentation tracking tribal actions, the Commission cannot ensure consistency in the letters that it sends to tribes, and it may be difficult to measure the effectiveness of the letters in encouraging tribal actions to address potential issues. As a result of these findings, we recommended in our June 2015 report,<sup>42</sup> and in its comment letter the Commission generally agreed, that the Commission should develop documented procedures and guidance for letters of concern to (1) clearly identify letters of concern as such and to specify the type of information to be contained in them, such as time periods for a response; and (2) maintain and track tribes' responses to the Commission on potential compliance issues.

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<sup>41</sup>[GAO/AIMD-00-21.3.1.](#)

<sup>42</sup>[GAO-15-355.](#)

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## Enforcement Actions

IGRA authorizes the Commission Chair to take enforcement actions for violations of IGRA and applicable Commission regulations for both class II and class III gaming.<sup>43</sup> Specifically, the Commission Chair may issue a notice of violation or a civil fine assessment for violations of IGRA, Commission regulations, or tribal ordinances and, for a substantial violation, a temporary closure order.<sup>44</sup> The most common enforcement action taken by the Commission Chair in fiscal years 2005 through 2014 was a notice of violation. The Chair issued 107 notices of violations that cited 119 violations during this period.<sup>45</sup> We found that the Chair issued 100 out of 107 notices of violation prior to fiscal year 2010. Since fiscal year 2010, fewer enforcement actions may have been taken because recent Commission chairs have emphasized seeking voluntary compliance with IGRA.<sup>46</sup>

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Chairman Barrasso, Vice Chairman Tester, and Members of the Committee, this completes my prepared statement. I would be pleased to answer any questions that you may have at this time.

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<sup>43</sup>The Commission refers matters that it does not have jurisdiction over to other federal agencies and states. For example, the Commission does not have the authority to enforce IGRA's criminal provisions. IGRA requires the Commission to provide information to the appropriate law enforcement officials when it has information that indicates a violation of federal, state, or tribal laws or ordinances. In 2013, the Commission referred eight matters to other federal agencies and states, including six matters to federal law enforcement agencies and two matters to the Internal Revenue Service. The Commission also notified a state about one of the eight matters.

<sup>44</sup>In lieu of taking an enforcement action, the Chair may enter into a settlement agreement with an Indian tribe concerning the potential compliance issue.

<sup>45</sup>According to Commission officials, from fiscal year 2005 to fiscal year 2014, the Commission was without a Chair or Acting Chair for approximately 4 months, so no enforcement actions could be taken. Specifically, the Commission was without a Chair or Acting Chair from September 27, 2013, to October 29, 2013, and April 26, 2014, to July 23, 2014.

<sup>46</sup>The Commission Chair has discretion in determining when to pursue an enforcement action. In addition, the Commission modified its regulations in 2012 so that quarterly statements or fees submitted up to 90 days late are now subject to a fine rather than a notice of violation. Almost half of the notices of violations issued between fiscal years 2005 and 2011 were for failure to submit or untimely submission of quarterly statements or fees.

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## 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](mailto:fennella@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Other individuals who made key contributions to this testimony include Jeff Malcolm (Assistant Director), Cheryl Arvidson, Amy Bush, Jillian Cohen, John Delicath, Justin Fisher, Paul Kazemersky, Dan Royer, Jeanette Soares, Kiki Theodoropoulos, Swati Sheladia Thomas, and Lisa Turner.

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