

TESTIMONY OF
JONODEV OSCEOLA CHAUDHURI
CHAIRMAN OF THE NATIONAL INDIAN GAMING COMMISSION
BEFORE THE
SENATE INDIAN AFFAIRS COMMITTEE
UNITED STATES SENATE
OVERSIGHT HEARING ON
“SAFEGUARDING THE INTEGRITY OF INDIAN GAMING”

JULY 22, 2015

Chairman Barraso, Vice Chairman Tester, and members of the committee, good afternoon, and thank you for the opportunity to appear before you today to share my perspective on safeguarding the integrity of Indian gaming.

The National Indian Gaming Commission (NIGC) is firmly committed to fulfilling its responsibilities under the Indian Gaming Regulatory Act (IGRA) to ensure not only the integrity of Indian gaming is protected, but that tribes remain the primary beneficiaries of their gaming operations.

Over the course of eighteen months, the NIGC worked closely with the General Accounting Office (GAO) in its efforts to provide an overview of the Indian gaming industry. We are grateful for the GAO’s report titled *Indian Gaming: Regulation and oversight by the Federal Government, States, and Tribes* and generally agree with its findings. I view the report as a tool the agency will use to refine its procedures to more fully address regulatory priorities while adhering to certain principles.

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

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

To implement these priorities, NIGC is focusing on the following specific guiding principles to administer our statutory responsibilities:

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

Application of these priorities and principles has already seen positive results and is taking the agency beyond the GAO's recommendations.

Consistent in these priorities and principles is the recognition of the value and efficiency of leveraging our relationships with our regulatory partners to meet our shared goal of compliance with IGRA. We recognize that in addition to being a matter of good policy and consistency with executive orders, it is also a matter of agency economy and good fiscal management to maintain positive relationships with our regulatory partners. We do this through open and frank dialogue, meaningful and active consultation, and by the delivery of quality training and technical assistance.

We were pleased that the report recognized the important and strong relationships between the NIGC, tribes, and states. As the report details, tribes dedicated \$422 million to the regulation of the Indian gaming industry in 2013. This includes the costs tribes bear for federal and state regulation of their gaming activity. The resources devoted to effective regulation, especially the thousands of tribal regulators, are a testament to the importance of gaming to tribal economic development and self-determination.

Sound regulation preserves public confidence, supports tribal self-sufficiency and self-determination, protects tribal assets, and promotes a safe and fair environment for all people who interact with the industry. We recognize there are still opportunities for improvement as we continue to advance the goals of IGRA, but it is appropriate to highlight the work we have done to address the GAO's recommendations.

The GAO recommended that in order to make an informed decision, the NIGC should seek input from states on its proposal to draft updated guidance on class III minimum internal control standards and withdraw its 2005 regulations. It has always been our intent to seek guidance from all of the parties involved in the regulation of Indian gaming. To assist in this goal, the NIGC added a new position: Legislative and Intergovernmental Affairs Coordinator. This addition to our staff will strengthen our communications and outreach efforts to all stakeholders.

Earlier this year, the NIGC invited tribal leaders to participate in consultations on the issuance of guidance on class III minimum internal control standards that regulators may use in developing their own class III internal controls. The purpose of these consultations was to receive tribal views on the process to be used by the NIGC in providing guidance on class III minimum internal control standards. These discussions did not involve any substantive discussions of individual controls. For example, during the consultations, tribes expressed concern over the withdrawal of the 2005 regulations and the possible void that may be left for tribes whose compacts reference or incorporate those standards. These types of issues must be addressed before we undertake drafting substantive guidance.

The NIGC recognizes and respects the sovereignty of Indian tribes and the government-to-government relationship that exists between the United States and tribal governments. The Commission is committed to implementing the President's November 5, 2009 Executive Memorandum on Tribal Consultation with Indian tribes and Executive Order 13175. This is why it is so important for the NIGC to reach out to tribes before it takes any substantive action. Once

the process to be used is determined by the NIGC, it will then begin work on substantive internal control guidance.

Once drafted, the guidance will be published for comments from industry stakeholders including states. I am mindful of the fact that class III gaming is framed by the terms of compacts negotiated between tribes and states. The NIGC does not want to interfere or hinder compact negotiations or the relationships between tribes and states.

The GAO also recommended that to improve its ability to assess the effectiveness of its training and technical assistance efforts, the NIGC should review and revise, as needed, its performance measures to include additional outcome-oriented measures. The NIGC began efforts to assess the effectiveness of its training and technical assistance efforts during GAO's review. To assist in these assessments, and to contribute to the overall performance of the agency, the NIGC has established a Division of Technology. Among its responsibilities will be to capture, track, and analyze data from all of our compliance efforts.

Congress, through IGRA, mandated that the NIGC provide tribes with training and technical assistance. Our focus has been to incorporate this Congressional mandate into overall compliance efforts rather than something that is done simply as a service. The NIGC is committed to measuring the efficacy of its training and technical assistance and making adjustments, where necessary. The NIGC is actively working to develop outcome-focused assessments of its effectiveness. In recognition of the value of accurate performance measurements to continued improvement of operational management, the NIGC has actively explored a variety of tools to measure the effectiveness of the initiative.

One of the tools it has been using is an analysis of data contained in Agreed Upon Procedures (AUP) reports that tribes are required to submit to the Agency. A comparison of AUP findings from before the NIGC began emphasizing training and technical assistance with findings after implementation of this approach show a 34% decline in high risk findings and a 36% decline in overall findings. The Agency is mindful, however, of narrow reliance on any one data source in assessing its ongoing training and technical assistance. In addition to a review of data collected by existing means, the NIGC has recently developed additional tools to track its operations. These include voluntary internal control assessments and IT threat assessments.

Further, the NIGC is considering developing knowledge reviews that will be conducted during training sessions. The report recommends that the NIGC apply the recommendations found in the GAO report titled *Human Capital: A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, GAO -04-546G (Washington, D.C.: March 2004). The NIGC is currently reviewing this report to ascertain whether it is practical to track and apply individual training results to improvements in IGRA compliance. The NIGC anticipates coordinating the development of performance measures with the regulated industry.

Finally, the GAO recommended, to help ensure letters of concern are more consistently prepared and responses tracked, that the NIGC develop documented procedures and guidance 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 NIGC on potential compliance issues. Since the NIGC began utilizing letters of concern it has been examining and refining their use.

The NIGC's regulations related to letters of concern were first promulgated on August 9, 2012, and established a system of graduated enforcement. The NIGC recognized that there was a lack of clarity in these letters and that action timetables were needed. A standardized format for these letters has been developed that include deadlines for tribes. Further, the NIGC is refining its procedures for tracking responses to these letters.

The NIGC was pleased that the GAO report highlighted many of the success stories in Indian gaming; including the manifold ways tribes have used gaming revenue to safeguard their peoples' futures and pursue self-determination. We were also pleased that the report's technical recommendations were consistent with many of the positive efforts we have actively pursued in recent months to support tribal economic development by strengthening the regulatory structure of the Indian gaming industry. I believe that all of the NIGC's responses to the issues raised by the GAO will only enhance the regulation of the industry and I look forward to their continuing implementation.

Thank you for your time today. I am happy to answer any questions you may have.