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Description of document: Responses to Questions for the Record (QFR) provided to Congress by the National Indian Gaming Commission (NIGC), 2011-2012

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National Indian Gaming Commission
90 K Street NE Suite 200 Mailstop #1621
Washington, DC 20240
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September 30, 2014

Re: NIGC-FOIA-2014-038

This responds to your Freedom of Information Act ("FOIA") 5 U.S.C. § 552, request to the National Indian Gaming Commission ("NIGC") received in the NIGC FOIA Office on June 18, 2014 for "a copy of each response to a Question for the Record ("QFR") provided to Congress by the NIGC."

The NIGC FOIA Office has conducted a search of its files and has located one document (totaling 4 pages) responsive to your request that is being released to you in full.

As this completes the processing of your request, the NIGC now considers your request closed. Pursuant to 25 C.F.R. § 517.8, you may challenge the FOIA Office's determination by submitting a written appeal to the National Indian Gaming Commission, C/O Department of the Interior, 1849 C Street N.W., Mail Stop #1621, Washington, D.C., 20240, within thirty (30) working days of the date of receipt of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." The written submission should include copies of the original request, the denial, and a brief statement of the reasons you believe the denial to have been in error. 25 C.F.R. § 517.8(c).

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew G. Mendoza".

Andrew G. Mendoza
Staff Attorney

Enclosures



August 1, 2012

The Honorable John Barrasso
United States Senate
Committee on Indian Affairs
838 Hart Office Building
Washington, D.C. 20510

Dear Vice-Chairman Barrasso:

Thank you again for the invitation to come before your Committee on July 26, 2012 and provide testimony with regard to Regulation of Tribal Gaming: From Brick & Mortar to the Internet.

Enclosed with this letter are the written responses to the questions sent by the Committee on August 26, 2011. I know that the responses were finalized last year, but that they may not have been received by the Committee. I hope that, despite the lapse in time, the information is useful to the Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tracie Stevens".

Tracie Stevens
Chairwoman

SENATE COMMITTEE ON INDIAN AFFAIRS
FOLLOW-UP QUESTIONS FOR MS. STEVENS
OVERSIGHT HEARING – ENFORCING THE INDIAN GAMING REGULATORY
ACT – THE ROLE OF THE NATIONAL INDIAN GAMING COMMISSION AND
TRIBES AS REGULATORS
JULY 28, 2011

QUESTIONS FROM SENATOR BARRASSO

(Original statement and questions are included in italics)

Your written testimony states that successful regulation depends upon a properly trained and informed workforce. To assess the effectiveness of workforce training would seem to require some tangible measurements.

Q1. How would you measure the effectiveness of gaming workforce training to ensure the adequacy of regulation?

A1. Evaluating the effectiveness of gaming workforce training will be an on-going process that will rely upon a multitude of factors, including: feedback that we receive from tribal employees and regulators; feedback from NIGC regional staff on tribal implementation of skills enhanced through training; and evaluation of compliance and enforcement issues. As I testified at the Committee's Oversight Hearing in 2010, training and technical assistance can preempt the need for enforcement actions, reduce compliance issues and enhance operational performance and integrity. Thus, the effectiveness of training may be reflected in part by the issuance of fewer Notices of Violation and a reduction in the number of compliance issues.

The decision in the Colorado River Indian Tribes found that the National Indian Gaming Commission lacked statutory authority to regulate Class III gaming under the IGRA. While you testified that all Indian gaming facilities have some internal control standards, you also testified that you have not completed your assessment of the effects of the Colorado River Indian Tribes decision.

Q2. Does every Indian gaming facility have the same level and quality of internal control standards and regulations?

A2. The decision in the Colorado River Indian Tribes did not conclude that the Commission lacked authority to regulate class III gaming under the IGRA. The case held that the Commission lacked authority to promulgate or enforce regulations establishing class III minimum internal control standards (MICS).

Every tribe has MICS. The level and quality varies from tribe to tribe. Some MICS are set forth in tribal-state compacts, some tribes have adopted NIGC's class III MICS, some tribes have adopted tribal ordinances that incorporate NIGC MICS and some tribes have established their own MICS.

Q3. Even if in preliminary form, what are your findings to date on the effect of the Colorado River Indian Tribes decision on Indian gaming regulation in general and in particular on the National Indian gaming commission's ability to effectively regulate Indian gaming?

A3. We are still in the process of evaluating the facts regarding class III MICS after the CRIT decision. Five years have passed since that decision. We know that many tribes have adopted NIGC MICS and many tribal-state compacts already address this issue.

Q4. Has the Commission made any changes or adjustments in its processes or procedures in light of, or in reaction to, the Colorado River Indian Tribes decision? If yes, please describe the changes and/or adjustments.

A4. Based on information from staff, the Commission discontinued general class III MICS audits approximately five years ago, shortly after the Colorado River Indian Tribes (CRIT) decision. Prior to the CRIT decision, the Commission conducted approximately thirty-six class III MICS audits. It appears that NIGC's first audit of class III gaming operations was conducted in 2000. The Commission continues to perform class III MICS audits when requested by Tribes, when tribal gaming ordinances provide for NIGC regulation of class III MICS or when a tribe is regulating gaming pursuant to Secretarial Procedures. Since the CRIT decision, the Commission has conducted approximately twenty-three class III MICS audits.

The NIGC 2009 compliance report tracks tribal compliance with key requirements under the Indian Gaming Regulatory Act. However, it does not appear to track incidents of theft and crime occurring at Indian gaming facilities.

Q5. What mechanisms are available to track and report on such occurrences?

A5. IGRA does not provide NIGC with criminal authority. IGRA provides for NIGC to provide such information to appropriate federal, state or tribal law enforcement officials. Such law enforcement agencies would have the best information on the mechanisms available to track and report on such occurrences.

Q6. Would keeping track of and reporting on incidents of theft and crime at Indian gaming facilities shed light on the quality or effectiveness of gaming regulation at particular facilities?

A6. NIGC's maintains civil regulatory authority over Indian gaming. The occurrence of theft or crime at a gaming facility may not equate to poor regulation.

Q7. Please provide a date certain when the 2010 compliance report will be completed.

A7. The 2010 Compliance Report is in the final stages of being completed. I anticipate it being finalized by the end of the month.

The Indian Gaming Regulatory Act requires an independent audit of certain vendor contracts in excess of \$25,000 annually.

Q8. What types of due diligence is involved in these audits and in selecting these vendors?

A8. IGRA requires that tribal gaming ordinances provide for independent audits of certain contracts in excess of \$25,000 annually. Many tribes utilize one of two methods to perform independent audits of such vendor contracts. A tribe may contract with a CPA firm to conduct an audit of contracts over \$25,000 or it may include this audit with the performance of the fiscal year-end audit of the gaming operation's financial statements. Review of contracts and procedures performed during the disbursements/accounts payable testing should be part of a typical audit engagement.

Q9. Should the vendors be subject to background checks? If not, please explain why.

A9. Many vendors to tribal gaming operations are already subject to background checks. Many background checks are performed pursuant to tribal law or tribal-state gaming compacts. Further, some vendors may be regulated by other federal or state agencies. Background screening is good for the industry and can be a useful tool to maintain the integrity of Indian gaming.