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Description of document: National Indian Gaming Commission (NIGC) Return to Office Plan 2025

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Source of document: Agency FOIA Officer
National Indian Gaming Commission
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March 27, 2025

Re: NIGC-FOIA-0371

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 FOIA office on March 24, 2025. In your request, you stated that you were seeking:

A copy of the NIGC Return to Office Implementation Plan required by the OMB and OPM Memo dated January 27, 2025

Pursuant to this request, the NIGC FOIA Office has searched relevant agency recordkeeping systems and found 1 document (7 pages) that is responsive to your request. This document is being released to you in full and is attached to the email transmitting this letter.

Fees

For fee assessment purposes you were designated as an “all others” requester and, therefore, required to pay the full reasonable direct costs incurred for searching for and reproducing records if that total costs exceeds \$15.00, except that the first 100 pages and the first two hours of manual search time shall not be charged.

Because the processing costs did not exceed \$15.00, there are no fees being assessed for this request.

Closure of Request

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 NIGC FOIA Office's determination by submitting a written appeal to the National Indian Gaming Commission, 1849 C Street N.W., Mail Stop #1621, Washington, D.C., 20240 no later than ninety (90) days after the date of this letter. *See* 5 U.S.C. § 552 (a)(6)(A)(i)(III)(aa). 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.

Please be advised that you have the right to seek dispute resolution services from the NIGC's FOIA Public Liaison or the Office of Government Information Services (OGIS). If you wish to contact the NIGC's FOIA Public Liaison, please contact Jo-Ann Shyloski at (202) 632-7003 or by way of e-mail at Jo-Ann_Shyloski@nigc.gov. If you would prefer to contact OGIS, you may do so in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1 (877) 684-6448

If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (202) 264-0676.

Sincerely,



Tim Osumi
Chief FOIA Officer

NIGC RETURN TO OFFICE IMPLEMENTATION PLAN

Agency: National Indian Gaming Commission

Points of Contact: Dustin Thomas, Chief of Staff
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Subject: Implementation Plan to Comply with Presidential Memorandum
Return to In-Person Work and Accompanying OPM and OMB Guidance

This memorandum details the National Indian Gaming Commission's plan to implement Presidential Memorandum, *Return to In-Person Work* as well as related OPM and OMB guidance.

Background Information

The National Indian Gaming Commission (NIGC or Commission) is an independent regulatory agency established by the Indian Gaming Regulatory Act of 1988 (IGRA). The IGRA provides a statutory basis for the regulation of Indian gaming to adequately shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and playing public. To accomplish its statutory mandate, the NIGC must ensure that its mission-critical operations continue with minimal disruption to essential functions.

The NIGC is a small agency funded by fees that Indian gaming tribes pay annually. The IGRA provides that the total amount of fees imposed during any fiscal year cannot exceed 0.08% of the gross gaming revenues of all Indian gaming operations.

The Commission provides Federal oversight to approximately 529 tribally licensed gaming establishments located on Indian lands in 29 states. The Commission carries out its statutory role of monitoring Indian gaming by conducting on-site visits of Indian gaming operations, performing audits, performing investigations as necessary, and providing training and technical assistance on an on-going basis. To carry out these statutory mandates, NIGC staff regularly travel to Indian gaming facilities to perform these regulatory functions on-site. To ensure the statutory compliance of tribal gaming facilities located throughout the United States, the NIGC created regional offices near such regulated Indian gaming communities. The Commission maintains its headquarters in Washington, D.C. and maintains seven regional offices. These regional offices are located in Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; Rapid City, South Dakota; Tulsa, Oklahoma; and Oklahoma City, Oklahoma. This regionalized approach allows certain NIGC employees to be geographically closer to the

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regulated community, which results in overall cost savings to the NIGC in the form of reduced travel expenses and reduced locality pay.

NIGC Return to Office Implementation Plan

1. Describe the steps the agency will take to revise telework agreements for all eligible employees, including major milestones for implementation.

The NIGC is actively working to rescind all telework or remote work agreements for all eligible employees.¹

Since the issuance of the *Return to In-Person Work* Presidential Memorandum and related guidance, the NIGC has identified all employees that currently have telework or remote work agreements. The NIGC has also identified employees that are currently located within 50 miles of an existing NIGC office to enable the NIGC to prioritize return to in-person work for such employees. The NIGC has also identified all employees that are located more than 50 miles from an existing NIGC office to allow the NIGC to phase such employees back into the office as soon as practicable. The NIGC plans to rescind telework or remote work agreements for all eligible employees pursuant to respective telework and remote work agreement notice periods.

2. Provide timelines for the return of all eligible employees to in-person work as expeditiously as possible, including the date that the agency will be in full compliance with the PM.

The NIGC is actively working to return all eligible employees to in-person work as expeditiously as possible. In its January 22, 2025, memorandum, *Guidance on Presidential Memorandum Return to In-Person Work*, OPM recommends that agencies set a target date of approximately 30 days for full compliance with the PM, subject to any exclusions granted by the agency.

The NIGC Telework Policy requires supervisors to provide employees with notice of cancellation of a telework agreement. That said, eligible employees with signed telework agreements will receive notice that their agreement will be cancelled on February 10, 2025, and will be required to return full-time to an office. That date is February 24, 2025.

The NIGC remote work policies and employees' signed remote work agreements state that, for a management-initiated termination of a remote work agreement, the employee must receive advanced written notification of the decision to terminate the remote work agreement before the effective date of the termination.

¹ "Eligible Employees" means any agency employee, unless excused due to disability, qualifying medical condition, or other compelling reason certified by the agency head and the employee's supervisor. The NIGC also excludes military spouses working remotely based on the Military Spouse Employment Act, 5 U.S.C. § 3330(d).

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In addition, assuming sufficient office space exists, eligible employees with signed remote work agreements will receive their notice of cancellation on February 10, 2025, and will be required to return full-time to an office after the notice is issued. That date is May 19, 2025.

As set forth in detail below in the constraints and barriers section, and in the categorical exemptions section of this implementation plan, some NIGC employees will be phased-in to return to an NIGC office as expeditiously as possible.

3. Describe the steps the agency will take to bring any relevant Collective Bargaining Agreements (CBAs) into compliance with the new PM, consistent with applicable law, to include an examination of the process by which agencies put new CBAs into place in the last four years.

Not applicable, as the NIGC does not have any CBAs.

4. Describe the steps the agency will take to determine permanent worksites for all eligible employees currently teleworking on a full-time basis (i.e., remote workers), the number of those employees, and the steps the agency will take to move these employees' duty stations to the most appropriate Federal office based on the employees' duties and job functions. This information must include estimated costs and resource implications when the new duty station is greater than 50 miles from current alternative worksites, a description of what policy, regulation, or statute requires or permits payment of relocation benefits, and where those employees will be located—whether in a home agency's office or in another agency's federal office space.

The NIGC has identified all employees that currently have telework or remote work agreements. Currently there are 82 employees with a telework or remote work agreement who are located within 50 miles of an existing NIGC office. The NIGC is prioritizing return to in-person work for such employees.

There are currently 45 employees with a remote work agreement who are located more than 50 miles from an existing NIGC office. The NIGC is actively developing a plan to phase such employees back into the office as soon as practicable, including assessing the location of certain NIGC eligible employees to determine if they may be relocated to a nearby NIGC Regional Office.

To promote fiscal responsibility and good stewardship of the fees that it collects, the NIGC proactively developed and has been implementing a plan to reduce its overall office space for over a decade. The NIGC reduced the square footage of each regional office on a rolling basis as each region office lease approached expiration. To date, the NIGC has collectively

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reduced its regional office space by approximately 11,000 square feet. The effort to relocate and consolidate the NIGC headquarters office has been underway over the past few years and the estimated move completion date is February 17, 2025, the date that the new office is expected to be move-in ready. The new NIGC headquarters office, reduces the NIGC headquarters office space by 10,000 square feet, resulting in a total of approximately 21,000 square foot reduction across all NIGC offices, which promotes the consolidation of federal government offices by making full use of the General Services Administration's (GSA) existing leases for office space nationwide. This reduction in office space has not only resulted in cost savings to the NIGC but ensures that the NIGC is operating in a manner that promotes the effective and efficient use of resources in carrying out its statutory mission.

5. Identify any risks, barriers, or resource constraints that would prevent the expeditious return of all eligible employees to in-person work (e.g., availability of suitable office space, budgetary impacts, resource capacity, etc.) and a plan to overcome those barriers.

The IGRA requires the NIGC to provide regulatory oversight of Indian gaming conducted on Indian lands. Fulfilling this important statutory mandate requires certain NIGC staff to directly observe and monitor the approximately 529 Indian gaming operations located in over 29 states. In carrying out its statutory role, NIGC compliance officers regularly conduct on-site visits of Indian gaming operations. Additionally, auditors conduct on-site audits and reviews covering NIGC fee reviews, internal audit reviews, internal control assessments, self-regulation reviews, investigation audits, and site visit assistance. The IGRA further requires the NIGC to provide training and technical assistance to regulated entities on an ongoing basis. The nature of certain forms of technical assistance requires NIGC staff to observe and test certain standards of a gaming operation on-site, such as information technology vulnerability assessments, gaming licensing controls, and surveillance controls. As such, NIGC staff regularly travel to Indian gaming facilities to perform these regulatory functions. Returning such employees to an office on a full-time basis could hinder the NIGC from fulfilling the statutory mandates of IGRA that require NIGC staff to perform aspects of their work in the field.

The NIGC's recent effort to consolidate its offices by making full use of GSA's existing leases for office space nationwide has resulted in a reduction of immediate and available office space. To address this concern, the NIGC is waiting for additional information related to the number of employees that have accepted the Deferred Resignation Program offer to evaluate how many employees the NIGC may accommodate in its existing offices.

As mentioned above, the NIGC is a small agency funded by fees that Indian gaming tribes pay annually. Moreover, the NIGC is statutorily prohibited from exceeding a 0.08% fee rate of the gross gaming revenues of all Indian gaming operations. The NIGC's current fee rate is already set at the statutory maximum of 0.08% of gross gaming revenues and therefore cannot be raised any further.

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The estimated budget impact to acquire additional office space to accommodate in-person work for all NIGC eligible employees will be approximately \$705k for the initial one-time construction and furniture costs, plus an annual rent increase of approximately \$252k/year (plus rent inflation adjustments after the first year). This estimate is based on a conservative assumption that all existing NIGC regional offices will have additional space available to lease, as well as the addition of a satellite office in southern California.

In addition to increased costs associated with acquiring additional space and furnishings, the NIGC anticipates increased costs associated with core IT infrastructure services to cover redundancy and fault tolerance to include): additional internet circuits (MTIPS); express route (dedicated circuit for Azure connectivity; additional firewall; and additional switches. The estimated budget impact for these additional core IT infrastructure services will be approximately \$205k for initial one-time upfront costs, plus an annual increase of approximately \$13k/year.

In addition, federal statutes at 5 U.S.C. 5724 and 5724a, as well as Federal Travel Regulations at 41 C.F.R. Chapter 302, require the mandatory payment of relocation expenses when the relocation is in the interest of the government. In other words, these federal laws and regulations require that employees who are subjected to a directed reassignment (i.e., an involuntary transfer in the interest of the government) from one geographic area to a different geographic location (over 50 miles) are eligible to receive relocation expense allowances. Currently, there are 45 employees whose remote work location is over 50 miles from the nearest NIGC office. Determining exact relocation expenses is difficult because the NIGC is responsible for paying for a myriad of relocation expenses, including, but not limited to, the transportation expenses of an employee and his or her spouse to travel for house-hunting purposes at the new official duty station, the expenses of transporting, packing, crating, temporarily storing, and unpacking his or her household goods and personal effects, and certain expenses dealing with the sale of the old residence and the purchase of the new residence.

In addition, the return of employees to the office will result in other costs to the agency, including those from a transit benefit program. Pursuant to the Federal Employees Clean Air Incentives Act (5 U.S.C. § 7905), the NIGC implemented a “transit pass” transportation benefit program for qualified employees, and a financial incentive to those employees who commute to and from work by bicycle. The transit benefit program may approximately equal the employee’s actual commuting costs but cannot exceed the maximum level allowed by law. With the return of NIGC employees to office, the NIGC estimates these costs to increase approximately by \$45k/year.

6. Describe agency’s process for determining exceptions based on disability, qualifying medical condition, and or other compelling reason.

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The Rehabilitation Act of 1973 and the Equal Employment Opportunity Commission regulation at 29 C.F.R. § 1614.203(d)(3) require all federal agencies to adopt, post on its public website, and make available to all job applicants and employees in written and accessible formats, reasonable accommodation procedures that are easy to understand. As such, the NIGC has adopted its own reasonable accommodation policy. Amongst other requirements, the NIGC's reasonable accommodation policy contains the process for determining whether to provide a reasonable accommodation, including the interactive process, requests for additional information where appropriate, and contact information for the individual from whom requester will receive a final decision.

Under the NIGC's reasonable accommodation policy, an NIGC official may request medical information from an individual to determine if the impairment is a "disability" under the Rehabilitation Act, and the effectiveness of the requested accommodation. Such medical information may not be necessary if the disability is obvious (e.g., the individual is blind or has paraplegia), if the disability is already known to the NIGC (e.g., the individual previously requested an accommodation and the medical information submitted at the time showed a disability existed and that there would be no change in the medical condition), or if an effective accommodation is obvious.

If an individual's disability and/or need for accommodation are not obvious or already known, the NIGC is entitled to ask for and receive medical information showing that the individual has a covered disability that requires an accommodation. In determining whether medical documentation is necessary to support a request for reasonable accommodation and whether an individual has a disability within the meaning of the Rehabilitation Act, NIGC officials are guided by the principles set forth in the ADA Amendments Act of 2008 (ADAAA). Specifically, the ADAAA directs that the definition of "disability" should be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis.

As described in more detail below, the NIGC's process for determining other compelling reasons will be based on a few limited and discrete categories, as well as the ability for the NIGC to effectively accomplish its statutory duties.

7. Describe the agency's criteria for determining "other compelling reasons" for exemptions from return-to-office, including any limited, discrete categories (such as military spouses working remotely) where categorical or indefinite exemptions may be granted.

The following limited and discrete categories will be exempted from return-to-office:

- a. Employees who are working remotely due to a spouse's military orders.

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- b. Employees who are allowed to telework or remote work pursuant to a previously executed settlement agreement resulting from an employee grievance or complaint.
- c. Employees who are allowed to telework or remote due to a reasonable accommodation.

The agency will use the following criteria when determining “other compelling reasons” for exemptions from return-to-office:

- d. Position duties and responsibilities – What are the duties and responsibilities of the position? Can the roles and responsibilities of the position be performed at an existing NIGC office? Does the position require on-site/field work for the employee to fulfill the statutory mandates of IGRA? If yes, to what extent?
- e. Privacy considerations – Does the position require the employee to handle sensitive information and/or data? Does the position require the employee to protect verbal confidential communications? If so, when can the NIGC provide such employee(s) with a dedicated office to ensure that all privacy and confidentiality requirements are met?
- f. Budgetary impacts – Whether the NIGC will incur or save costs and how such circumstance(s) effect the ability of the NIGC to fulfill its statutory mandates?
- g. Office availability – The NIGC is currently in the process of downsizing of its offices. The NIGC will consider whether certain offices are suitable for immediate use for the return of employees (e.g. waiting on office furnishings, inspections, et cetera).
- h. Other hardship – May be considered on a case-by-case basis. The employee requesting the exemption must have received a rating of fully successful or higher on their last performance review and may not be subject to any misconduct or disciplinary actions. Exemptions will be temporary and time limited and must fit the business needs of the NIGC.