



June 2015

INDIAN GAMING

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

Accessible Version

GAO Highlights

Highlights of [GAO-15-355](#), a report to congressional requesters

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.

GAO was asked to review Indian gaming. This report examines (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. 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 selected for geographic distribution and gaming revenues generated.

What GAO Recommends

GAO recommends 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-15-355](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or fennella@gao.gov.

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What GAO Found

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of compacts; Interior did not act to approve or disapprove 12 percent; and the other 10 percent were disapproved, withdrawn, or returned.

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. GAO found that the 24 states with class III gaming operations vary in their approach for regulating Indian gaming. Specifically, based on the extent and frequency of state monitoring activities, GAO categorized 7 states as having an active regulatory role, 11 states with a moderate role, and 6 states with a limited role. In addition, all 12 of the selected tribes GAO visited had regulatory agencies responsible for the day-to-day regulation of their gaming operations.

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 (minimum internal control standards for gaming). The Commission does, however, play a role in class III gaming. For example, the Commission Chair must approve tribal gaming ordinances. In addition, Commission officials told us they do have authority to issue guidance on class III gaming standards. In its plans for developing such guidance, the Commission has laid out specific steps for gathering tribal input, but its plan for gathering input from affected states is unclear. 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, the Commission conducts monitoring activities, and the Commission Chair takes enforcement action to ensure compliance with IGRA and applicable Commission regulations. The Commission has more recently emphasized actions that encourage voluntary resolution of compliance issues, 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. The Commission has limited 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, the Commission does not have a documented process for its letters of concern to help ensure their effectiveness in encouraging tribal actions to address identified issues. Without written procedures the Commission cannot ensure consistency or effectiveness of the letters it sends.

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Abbreviations

ACE	Assistance, Compliance, and Enforcement
GPRA	Government Performance and Results Act of 1993

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June 3, 2015

The Honorable John Barrasso
Chairman
The Honorable Jon Tester
Vice Chairman
Committee on Indian Affairs
United States Senate

The Honorable Maria Cantwell
United States Senate

The Honorable John McCain
United States Senate

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.¹ The Indian Gaming Regulatory Act (IGRA) was enacted in 1988 to provide a statutory basis for the regulation of gaming on Indian lands.² 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)

¹This was the most recent year for which revenue data were available as of January 26, 2015.

²Pub. L. No. 100-497, 102 Stat. 2467 (1988).

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) and charged it with regulating class II and overseeing class III Indian gaming. To help ensure compliance with IGRA and Commission regulations, the Commission engages in various activities to monitor the work of tribal gaming regulators—such as examining records of gaming operations,³ inspecting gaming facilities,⁴ and assessing tribes' compliance with minimum internal control standards for class II gaming.⁵ In addition, 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.⁶ In 2011, the Commission implemented its Assistance, Compliance, and Enforcement (ACE) initiative, which emphasizes, among other things, providing assistance to tribes to help achieve voluntary compliance with IGRA.

You asked us to review the regulation and oversight of Indian gaming. Our objectives were to examine (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 Commission's efforts to ensure tribes' compliance with IGRA and Commission regulations.

³An Indian gaming operation refers to an economic entity that is licensed by a tribe, operates games, receives the revenue, issues prizes, and pays the expenses. 25 C.F.R. § 502.10.

⁴A gaming facility is a physical place or location on Indian lands where a tribe elects to allow class II or class III gaming.

⁵The 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.

⁶While IGRA refers to both tribal ordinances and resolutions, this report uses the term tribal ordinances for both terms.

In July 2014, we presented our preliminary observations in testimony before the Senate Committee on Indian Affairs.⁷

To examine the review process Interior uses to help ensure compliance with IGRA through its review of tribal-state compacts, we examined relevant Interior regulations and documentation describing the agency's process for reviewing compacts and interviewed agency officials about how this review process helps ensure compliance with IGRA. In addition, we obtained a list from Interior of all compacts in effect through fiscal year 2014 and verified the list against a search of *Federal Register* notices. We analyzed the compacts to identify key provisions, including those related to tribal and state regulation. We also obtained a list of all compact decisions and reviewed available decision letters from 1998 to 2014.

To determine how states and selected tribes regulate Indian gaming, we contacted all 24 states that have class III Indian gaming operations.⁸ We collected written responses, conducted interviews, and obtained additional information about how each state oversees Indian gaming, including information on the states' regulatory organizations, staffing, funding, and expenditures, as well as the types of monitoring and enforcement activities conducted by state agencies.⁹ We visited six states—Arizona, California, Michigan, New York, Oklahoma, and Washington. We selected these states because (1) of the geographic representation they provide and (2) they are among the states with the greatest revenue generated from Indian gaming.¹⁰ For each of the six states we visited, we interviewed officials from at least one federally recognized tribe with gaming operations regarding their approaches to

⁷GAO, *Indian Gaming: Preliminary Observations on the Regulation and Oversight of Indian Gaming*, [GAO-14-743T](#) (Washington, D.C.: July 23, 2014).

⁸Twenty-four states have Indian gaming operations with both class II and class III gaming, and four states have Indian gaming operations with class II gaming only.

⁹We 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.

¹⁰Collectively, 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.

regulating gaming.¹¹ We met with tribal officials willing to meet with us and interviewed officials from 12 tribes in all.¹² The views of the 12 tribes that we met with are not generalizable to the views of the more than 200 gaming tribes; however, these views provide examples of tribal officials' views concerning gaming operations. 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. The views of 5 out of the 10 associations that provided responses to discussion topics are not generalizable but provide additional examples of tribal perspectives on Indian gaming.

To examine the Commission's authority for regulating Indian gaming, we reviewed IGRA, relevant court cases, and Commission regulations and policies, including those related to minimum internal control standards for class II and class III gaming. We also interviewed Commission officials about the Commission's authority to regulate Indian gaming.

To examine the Commission's efforts to ensure tribes' compliance with IGRA and Commission regulations, we reviewed information on the Commission's regulations, policies, and guidance for regulating Indian gaming and analyzed Commission data. We obtained data to review the Commission's oversight activities before and after implementation of its ACE initiative in 2011. However, the availability and reliability of Commission data for fiscal years 2005 through 2014 varied by source. Thus, we obtained and analyzed data over varying periods of time. Specifically, for fiscal years 2009 through 2013, the most recent 5 years of data available, we collected and analyzed data on tribal compliance with internal control standards and audit risk level based on the Commission's review of annual audit reports required of tribal gaming operations. For fiscal years 2011 through 2014, we collected and analyzed available data on the Commission's monitoring activities,

¹¹Federally 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.

¹²See appendix I for the list of tribes that we interviewed regarding their approaches to regulating gaming. We also spoke with six additional tribes as part of an initial scoping visit in Arizona to learn more about Indian gaming and tribal perspectives generally but did not interview these tribes in our sample of 12.

including data on site visits conducted, and from a random, but not generalizable, sample of summary findings from 50 Commission visits to Indian gaming operations.¹³ 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. For fiscal years 2011 through 2013, we collected and analyzed performance measures data and information on the training and technical assistance the Commission provided to tribes on IGRA and Commission regulations.¹⁴ For fiscal years 2013 and 2014, we reviewed documentation on letters of concern that the Commission sent after the Commission's amendment of its compliance and enforcement regulation in fiscal year 2012.¹⁵ For fiscal years 2005 through 2014, we reviewed publicly available information on the Commission's enforcement actions and verified information with Commission officials. We also interviewed Commission officials in their headquarters office about the Commission's role in regulating Indian gaming and interviewed directors of each of the Commission's seven regional offices about their oversight and assistance activities.

We conducted this performance audit from November 2013 to June 2015 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 provides a reasonable basis for our findings and conclusions based on our audit objectives. A more detailed description of our audit scope and methodology is presented in appendix I.

Background

Since fiscal year 1995, adjusted gross annual revenues from Indian gaming, equal to the difference between gambling wins and losses, have grown from \$8.3 billion to \$28 billion in fiscal year 2013 (see fig. 1). About 240 of the 566 federally recognized tribes operated more than 400 Indian gaming operations across 28 states in fiscal year 2013. These operations included a broad range of facilities, from bingo halls to multimillion dollar

¹³Commission officials told us that collection of site visit data was integrated into one of its databases as of May 2010.

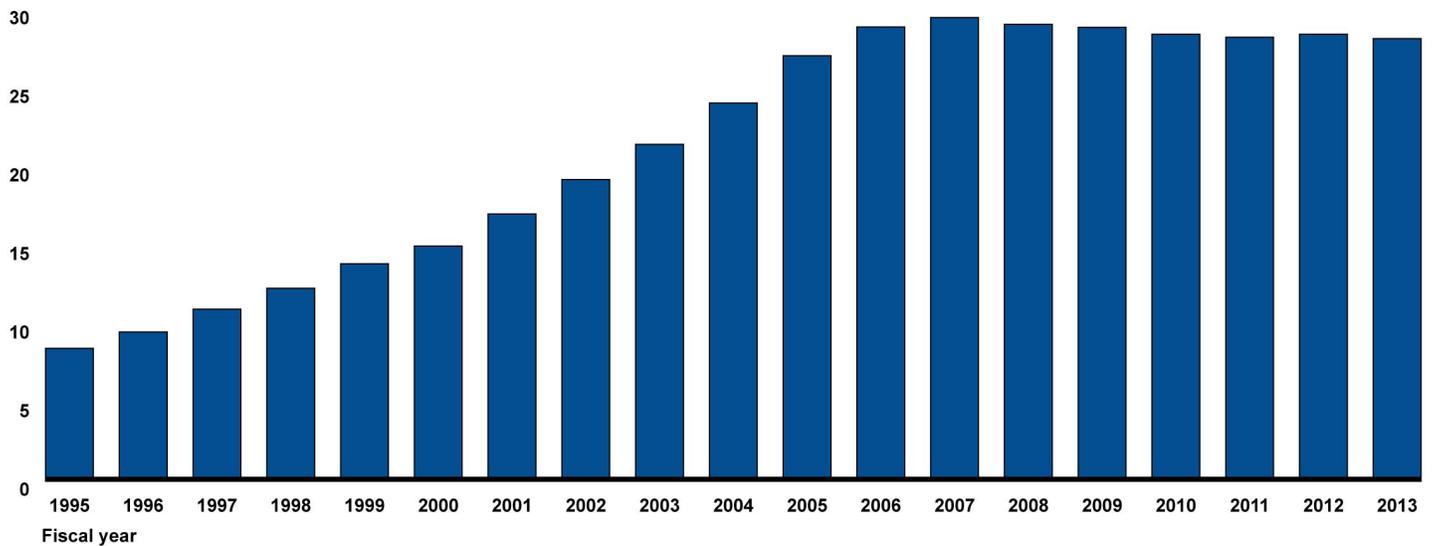
¹⁴Data for additional years was not available.

¹⁵25 C.F.R. § 573.2.

casinos. A relatively few large operations account for a major portion of the total revenue from Indian gaming. In fiscal year 2013, about 17 percent of Indian gaming operations generated more than 70 percent of the total gross gaming revenues that year.

Figure 1: Gross Annual Revenues from Indian Gaming, Fiscal Years 1995 to 2013

Dollars (in billions, adjusted to 2013 constant dollars)



Source: GAO analysis of National Indian Gaming Commission data. | GAO-15-355

IGRA is the primary federal statute governing Indian gaming and provides the basis for regulating gaming to shield it from organized crime and other corrupting influences, assure that it is conducted fairly and honestly by both operators and players, and ensure that tribes are the primary beneficiaries of gaming operations.¹⁶ In addition, IGRA prohibits using net revenues from Indian gaming for any purpose other than funding tribal government operations or programs; providing for general welfare of the tribe and its members;¹⁷ promoting tribal economic development; donating

¹⁶Pub. L. No. 100-497, 102 Stat. 2467 (1988).

¹⁷Tribes may distribute per capita payments to tribal members from net gaming revenues in accordance with tribal revenue allocations plans approved by the Secretary of the Interior if certain conditions are met. 25 U.S.C. § 2710(b)(3).

to charitable organizations; or helping fund local government agencies' operations. Total net tribal gaming revenues, which reflect net income and include all operational costs, were less than half of the gross gaming revenues for the past 5 years. For example, in fiscal year 2013, total net revenues from Indian gaming operations were \$11.3 billion, 40 percent of the gross revenues for that year. Tribal officials we interviewed told us they use gaming revenues to enhance or develop health and wellness programs for their members, offer educational programs for tribal children and youth, and provide tribal housing, among other uses. A few tribes also told us they make payments to members through approved revenue allocation plans.

IGRA establishes three classes of gaming and the roles of tribal, state, and federal agencies for each class (see table 1). The roles at the federal level are primarily carried out by the Commission and Interior's Office of Indian Gaming, which is within Interior's Office of the Assistant Secretary of Indian Affairs.

Table 1: Classes of Indian Gaming and Roles of Tribal, State, and Federal Agencies

Gaming class	Description of gaming class	Tribe	State	Department of the Interior	
				Office of the Assistant Secretary of Indian Affairs ^a	National Indian Gaming Commission
I	Consists of social gaming solely for prizes of minimal value, traditional gaming played in connection with tribal ceremonies, or celebrations. Not subject to the Indian Gaming Regulatory Act (IGRA).	Regulator	No role	No role	No role
II	Includes bingo, pull-tabs, ^b punch boards, ^c and certain card games ^d	Regulator	No role	Reviews and approves revenue allocation plans ^e	Regulatory responsibilities specified in IGRA ^f
III	Includes all other forms of gaming, including casino games and slot machines	Regulatory role pursuant to tribal-state compacts ^g	Regulatory role pursuant to tribal-state compacts ^g	Reviews and approves tribal-state compacts ^g and revenue allocation plans ^e	Responsibilities specified in IGRA ^h

Source: GAO analysis of the Indian Gaming Regulatory Act. | GAO-15-355

^aInterior's Office of Indian Gaming within Interior's Office of the Assistant Secretary of Indian Affairs manages the tribal-state compact review process and coordinates its review with the Interior's Office of the Solicitor. IGRA requires the Secretary of the Interior to approve or disapprove a tribal-state compact within 45 days of its submission, but the Secretary has delegated that responsibility to the Assistant Secretary of Indian Affairs.

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

^cA punch board is a small board full of holes, with each hole containing 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.

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

^eTribal revenue allocations plans establish per capita payments a tribe may make to its tribal members from net gaming revenues. Net gaming revenues may include revenues from class II or class III gaming operations, or both.

^fUnder IGRA, the Chair of the National Indian Gaming Commission (Commission) reviews and approves management contracts and tribal gaming ordinances, and the Commission reviews the background checks and tribal gaming licenses of primary management officials and key gaming employees. The Commission has also issued regulations establishing minimum internal control standards for class II gaming operations.

^gTribal-state compacts are negotiated agreements between tribes and states that establish the tribes' and states' regulatory roles for class III gaming and specify the games that are allowed, among other things.

^hUnder IGRA, the Chair of the Commission reviews and approves management contracts and tribal gaming ordinances, and the Commission reviews background checks and tribal gaming licenses of primary management officials and key gaming employees. A federal circuit court has ruled that IGRA does not authorize the Commission to issue regulations establishing minimum internal control standards for class III gaming operations. *Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134 (D.C. Cir. 2006).

Based on their varying roles in regulating and overseeing class II and class III gaming pursuant to IGRA, compacts, and tribal gaming regulations, the Commission, states, and tribes conduct a number of regulatory and oversight activities for Indian gaming operations.¹⁸ These activities include the following:

- Issuance or review of licensing for gaming facilities required by IGRA to ensure that Indian gaming is located on Indian lands eligible for gaming and conducted in a facility that is constructed and maintained to ensure that it protects the environment and the public's health and safety.

¹⁸GAO, *Casino Gaming Regulation: Roles of Five States and the National Indian Gaming Commission*, [GAO/RCED-98-97](#) (Washington, D.C.: May 15, 1998).

-
- Completion or review of background checks and investigations of key employees¹⁹ and primary management officials²⁰ to ensure suitability of individuals involved in management or daily operation of gaming facilities.
 - Issuance or review of licenses to employees and/or vendors of gaming machines and products.
 - Gaming machine testing or review of test results to ensure compliance of gaming hardware, software, and associated equipment with electronic gaming regulations or standards.
 - Development and regulation of the implementation of internal control standards for gaming that serve as the primary management procedures used to protect the integrity of gaming operations.

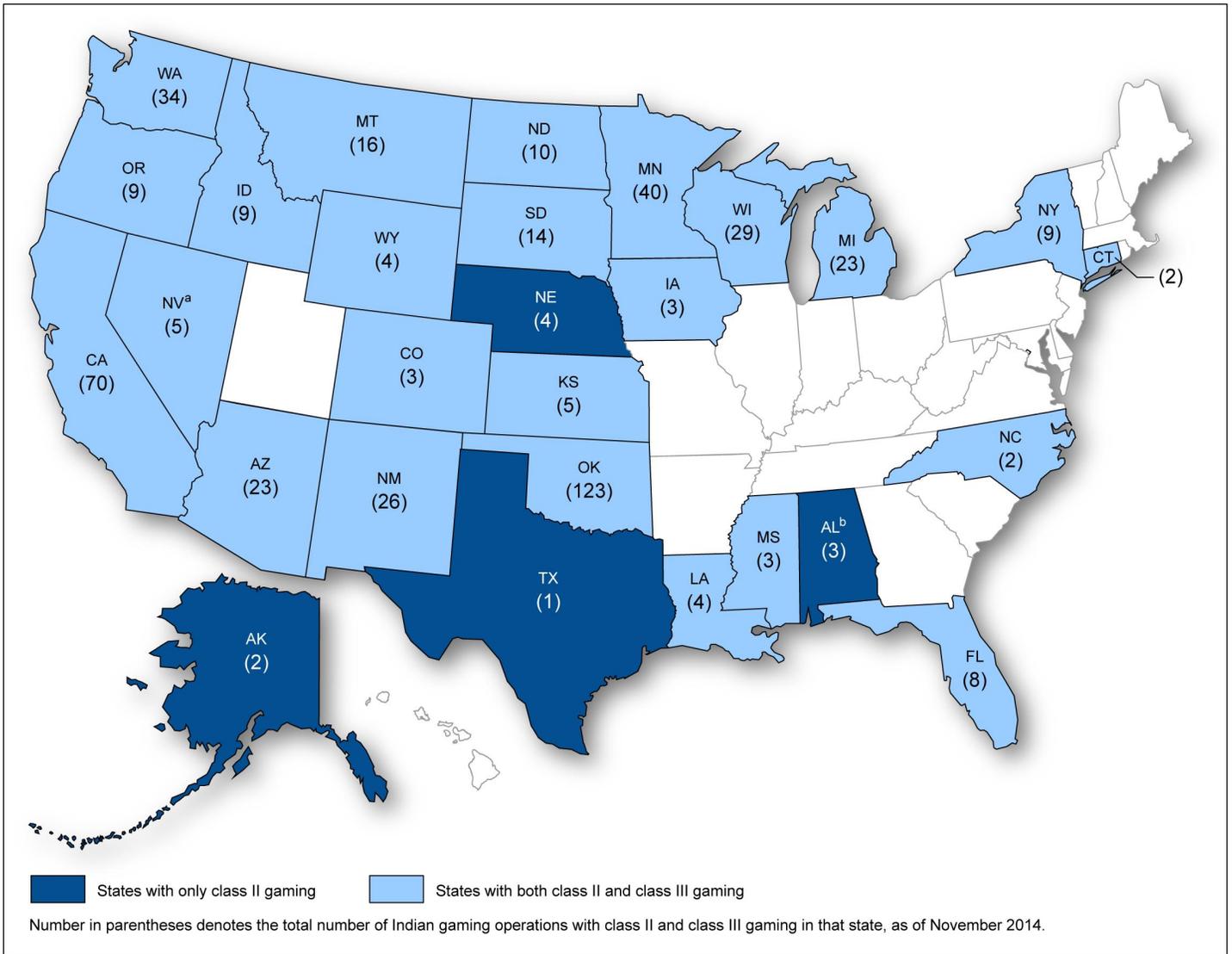
Twenty-four states have Indian gaming operations with both class II and class III gaming, and four states have Indian gaming operations with class II gaming only. Almost two-thirds (309 of 484) of Indian gaming operations include both class II and class III gaming, according to Commission data from November 2014. Of the remaining one-third of Indian gaming operations, about 97 operations have only class III gaming, and 78 operations have class II gaming only. The 484 Indian gaming operations shown in figure 2 by state were operated by 241 tribes.²¹

¹⁹Commission regulations define key employees as those (1) in specific positions; (2) any other person whose total cash compensation is in excess of \$50,000 per year; (3) the four most highly compensated persons in the gaming operation; and (4) any other person designated by the tribe as a key employee. The specific positions are bingo caller, counting room supervisor, chief of security, custodian of gaming supplies or cash, floor manager, pit boss, dealer, croupier, approver of credit, or custodian of gambling devices including persons with access to cash and accounting records within such devices. 25 C.F.R. § 502.14.

²⁰Commission regulations define primary management officials as (1) the person having management responsibility for a management contract; (2) any person who has authority to hire and fire employees or to set up working policy for the gaming operation; (3) the chief financial officer or other person who has financial management responsibility; and (4) any other person designated by the tribe. 25 C.F.R. § 502.19.

²¹Of the 241 tribes with gaming operations, 8 tribes had Indian gaming operations in more than one state.

Figure 2: States with Class II and Class III Indian Gaming as of November 2014



Sources: GAO analysis of National Indian Gaming Commission data; Map Resources (map). | GAO-15-355

Note: This figure includes gaming on Indian lands pursuant to the Indian Gaming Regulatory Act. Tribes may operate other gaming activities on non-Indian lands. For example, in Alaska—where tribes generally do not have Indian lands as result of the Alaska Native Claims Settlement Act—many tribes conduct charitable gaming pursuant to state law. See Alaska Stat. § 05.15.150.

^aThe number of Indian gaming operations and gaming tribes in Nevada includes a class III gaming operation owned and operated by non-Indians on Indian lands that is licensed by the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, as authorized by 25 U.S.C. § 2710(d)(2)(A). Under the tribal-state compact, this gaming operation is subject to concurrent tribal and state jurisdiction.

^bThe classification of the games in Alabama is in dispute. The Poarch Band of Creeks does not have a gaming compact with the state of Alabama, but the state alleged in a lawsuit that the tribe is offering a class III game. The federal district court dismissed the lawsuit without ruling on whether the game at issue is a class II or class III game. The state has appealed the decision, but the circuit court has yet to rule. *Alabama v. PCI Gaming Auth.*, 15 F. Supp. 3d 1161 (M.D. Ala. 2014), *appeal argued*, No. 14-12004 (11th Cir. Jan. 13, 2015).

Class II and class III gaming may only be conducted on Indian lands in states that permit such gaming.²² 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 an Indian tribe or individual that are subject to restriction against alienation and over which the tribe exercises governmental power.²³

A tribe may only conduct class III gaming activities if such activities are conducted in conformance with a tribal-state compact, among other requirements.²⁴ Compacts are negotiated agreements that establish the tribes' and states' regulatory roles for class III gaming and specify the games that are allowed, among other things. According to the Senate committee report accompanying the legislation, IGRA was intended to provide a means by which tribal and state governments can realize their

²²IGRA 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 contains several exceptions to the general prohibition. See GAO, *Indian Gaming Regulatory Act: Land Acquired for Gaming after the Act's Passage*, [GAO/RCED-00-11R](#) (Washington, D.C.: Oct. 1, 1999).

²³25 U.S.C. § 2703(4). The federal government holds legal title to lands held in trust by the United States, but the beneficial interest remains with the individual Indian or tribe. Alienation is the transfer of property.

²⁴In certain circumstances when a tribe and state cannot reach agreement on a compact, a tribe may conduct class III gaming under procedures issued by the Secretary of the Interior. 25 U.S.C. § 2710(d)(7)(B). According to Interior, three tribes conduct class III gaming under Secretarial procedures (Arapaho Tribe of the Wind River Reservation, Mashantucket Pequot Indian Tribe, and the Rincon Band of Luiseno Mission Indians of the Rincon Reservation).

unique and individual governmental objectives.²⁵ 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, to the state, or to any variation in between.²⁶ IGRA specifies that compacts may include provisions related to

- the application of criminal and civil laws and regulations of the tribe or 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 the costs of regulating Indian 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 allows the Secretary to disapprove a compact only 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.²⁷ Under IGRA, the Secretary has 45 days to approve or disapprove a compact once it receives a compact package from a state and tribe. Under IGRA, if a compact is not approved or disapproved within 45 days, then it is considered to have been approved (referred to as deemed approved) to the extent it is consistent with IGRA.²⁸ Compacts go into effect only when

²⁵S. Rep. No. 100-446, at 6 (1988).

²⁶S. Rep. No. 100-446, at 14 (1988).

²⁷The federal government has a fiduciary trust relationship to federally recognized Indian tribes and their members.

²⁸No court has issued a decision considering the extent to which a deemed approved compact is consistent with IGRA. 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.

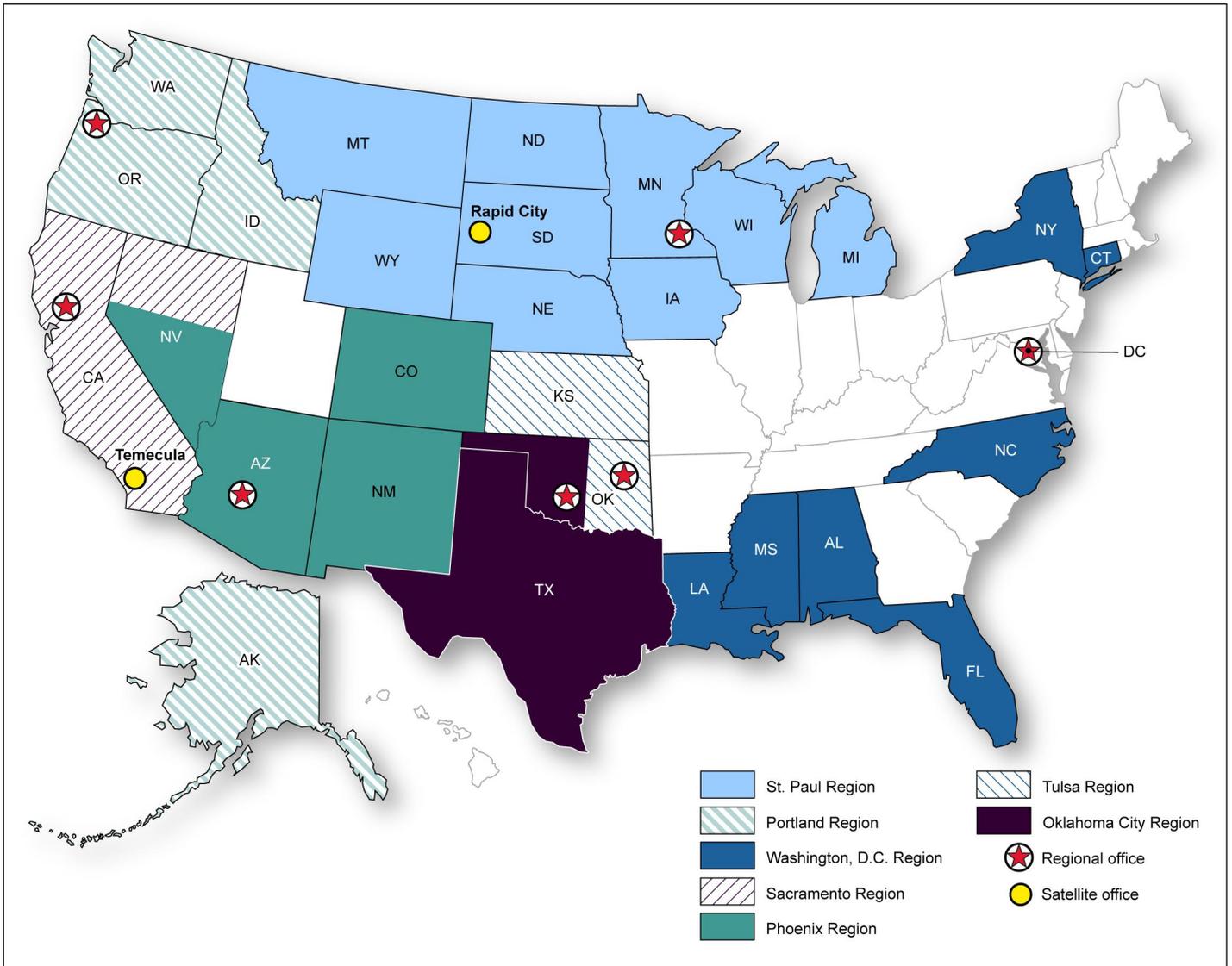
a notice from the Secretary has been published in the *Federal Register*. Interior's Office of Indian Gaming manages the compact review process and also reviews and approves revenue allocation plans. It had seven staff and a budget of nearly \$1.1 million in fiscal year 2014.²⁹

The Commission is an independent agency within Interior, established by IGRA as the primary federal agency with responsibilities for regulating class II and overseeing class III Indian gaming. The Commission is composed of a Chair appointed by the President and confirmed by the Senate, as well as two associate commissioners appointed by the Secretary. It has about 100 full-time staff. The Commission maintains its headquarters in Washington, D.C., and has seven regional offices and two satellite offices as shown in figure 3. The Commission's leadership, financial, and legal staff comprise about half of Commission staff and are assigned along with its Washington, D.C. region staff to its headquarters office in Washington, D.C. The other half of the Commission's staff consists of compliance officers and auditors who are located in regional and satellite offices and provide on-site monitoring of Indian gaming operations and technical assistance to tribes. Since fiscal year 1995, the Commission's staffing and overall expenditures have grown along with the growth of the Indian gaming industry, from more than 30 staff and \$3.3 million in expenditures in fiscal year 1995, to nearly 100 staff and \$19 million in expenditures in fiscal year 2014. The Commission is funded from fees collected on gross Indian gaming revenues from both class II and class III gaming conducted pursuant to IGRA.³⁰ For fiscal year 2013, the Commission assessed a fee rate of 0.072 percent on gross revenues in excess of \$1.5 million for each operation.

²⁹The Office of Indian Gaming has had an average of eight staff since 1993.

³⁰IGRA requires the Commission to establish the fee schedule but 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).

Figure 3: National Indian Gaming Commission Regions and Offices



Sources: National Indian Gaming Commission information; Map Resources (map). | GAO-15-355

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

Interior uses a multistep review process to help ensure that tribal-state compacts,³¹ and any compact amendments, comply with IGRA, other applicable laws, and the trust obligation of the United States to Indians. Interior officials said they closely review compact provisions that establish the terms for sharing gaming revenues between tribes and states that are included in many compacts. Overall, Interior approved most compacts submitted since 1998 and disapproved few compacts, most commonly because they contained provisions for revenue sharing between tribes and states that Interior found inconsistent with IGRA. In addition, Interior did not act to approve or disapprove some compacts within the 45-day review period citing concerns about various compact provisions. Consequently, under IGRA, those compacts are considered to have been approved (referred to as deemed approved) to the extent they are consistent with IGRA.

Interior Uses a Multistep Process to Review Tribal-State Compacts

Interior's Office of Indian Gaming is the lead agency responsible for managing a multistep process for reviewing all compacts submitted by tribes and states (see fig. 4).³² The Office of Indian Gaming conducts an initial review of compacts to ensure that all necessary information was included and develops a draft briefing memo identifying any potentially problematic areas for Interior's Office of the Solicitor's review. The Solicitor's Office conducts a legal review to ensure that compacts do not violate: (1) IGRA; (2) any federal laws that do not relate to jurisdiction over gaming on Indian lands; or (3) the trust obligation of the United States to Indians. After the Solicitor's Office's legal review is complete, the Office of Indian Gaming finalizes its analysis and submits a recommendation to the Assistant Secretary of Indian Affairs who makes a final decision on whether to approve the compact. Interior has 45 days to

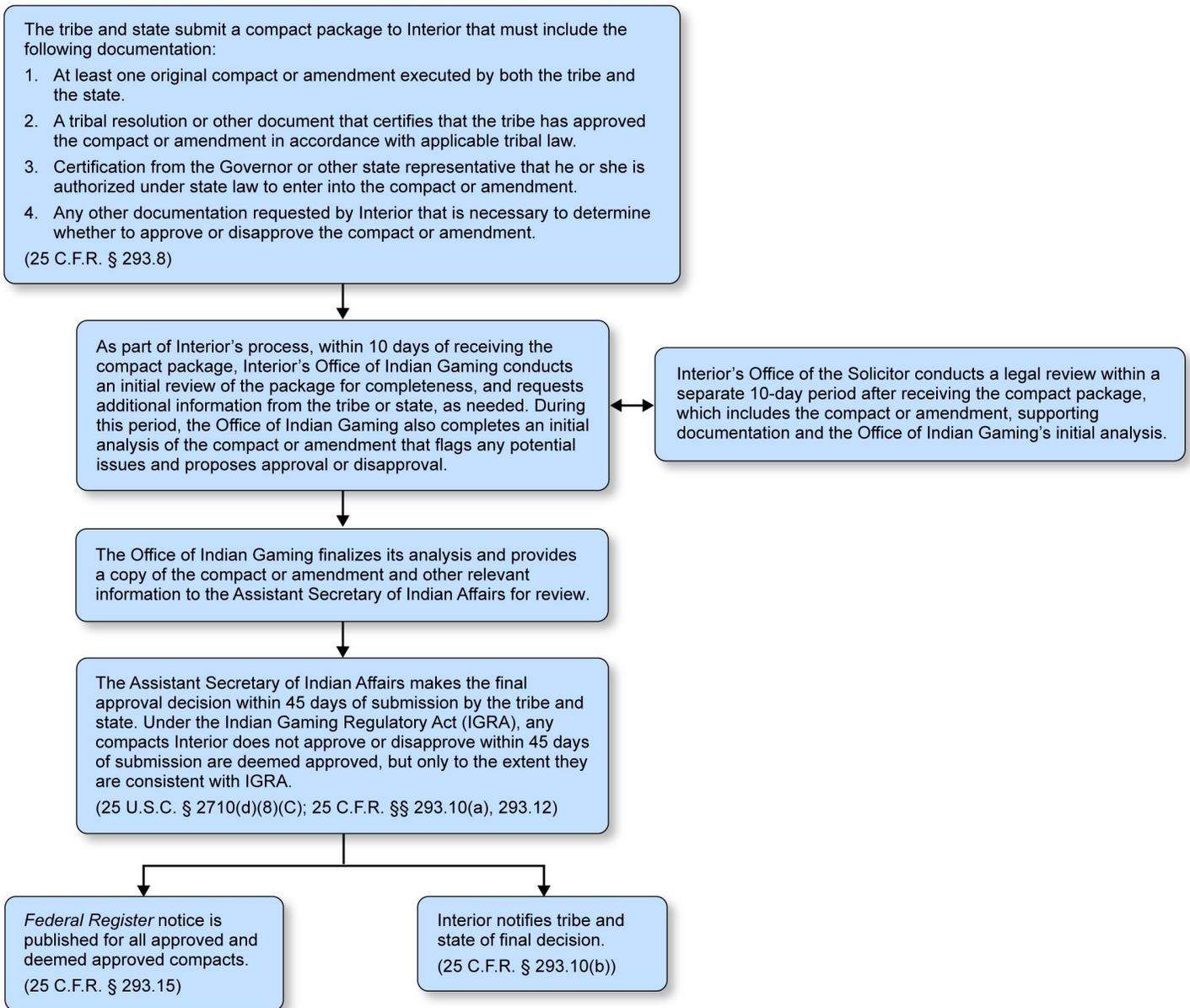
³¹We use the term compacts to refer to tribal-state compacts and compact amendments, unless otherwise noted.

³²Interior 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.

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 deemed approved, but only to the extent they are consistent with IGRA. According to Interior officials, decision letters accompany all approved and disapproved compacts.³³ Deemed approved compacts only have decision letters in cases where Interior has policy guidance to share related to issues in the compact.

³³We refer to Interior in our discussion of decision letters. Decision letters are signed by the Assistant Secretary of Indian Affairs, who makes final approval decisions. Under IGRA, the Secretary of the Interior is authorized to approve compacts, but the Secretary has delegated that authority to the Assistant Secretary of Indian Affairs.

Figure 4: Department of the Interior's (Interior) Compact Review Process



Source: GAO analysis of Department of the Interior (Interior) information. | GAO-15-355

Note: According to Interior officials upon receiving a compact for review, Interior's Office of Indian Gaming provides a copy of the compact to all relevant component agencies, including the Interior's Office of the Solicitor. The Office of Indian Gaming and the Solicitor's Office maintain ongoing discussions to address any potentially challenging issues throughout the review process.

For 1998 through fiscal year 2014, Interior reviewed and approved most of the 516 compacts and compact amendments that were submitted. Specifically, based on our analysis of Interior's list of compact decisions from 1998 to October 2014, 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. As of October 2014, a total of 276 compacts, not including amendments, were in effect.³⁴

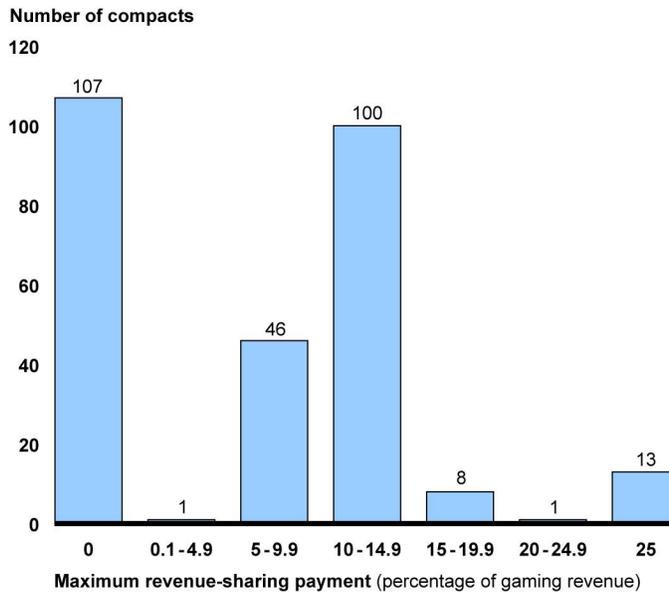
Interior Officials Said They Closely Review Compacts for Revenue Sharing Provisions

Interior officials told us that they pay close attention to provisions that dictate terms for revenue sharing between tribes and states to ensure that states are not imposing taxes or fees on Indian gaming revenues prohibited by IGRA.³⁵ Based on our analysis of compacts about 61 percent (169 of 276) of all compacts in effect as of October 2014 contained revenue sharing provisions between the tribes and states. 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. Of the 169 compacts that include revenue sharing provisions, most (164) involve payments tied to gaming revenues and include a maximum payment, ranging from 3.5 percent to 25 percent of all or a portion of gaming revenues (see fig. 5). A few compacts (5) require a fixed payment.

³⁴This includes five compacts which, as of October 31, 2014, no class III gaming was being conducted pursuant to these compacts: the Mashpee Wampanoag Tribe's compact with Massachusetts, the Omaha Tribe of Nebraska's compact with Nebraska, the Narragansett Indian Tribe of Rhode Island's compact with Rhode Island, and the North Fork Rancheria of Mono Indians and Wiyot Tribe's compacts with California. The Mashpee Wampanoag Tribe's class III gaming facility was under design and not in operation as of February 2015. The Omaha Tribe of Nebraska did not conduct class III in Nebraska as of February 2015. State and federal courts have declared the Narragansett Indian Tribe of Rhode Island's compact to be void and without legal effect. *Narragansett Indian Tribe of Rhode Island v. Rhode Island*, 94-cv-0618, 94-cv-0619, 95-cv-0034, 1996 WL 97856 (D.R.I. Feb. 13, 1996); *Narragansett Indian Tribe of Rhode Island v. State*, 667 A.2d 280 (R.I. 1995) (holding the Governor lacked constitutional and legislative authority to bind the state by executing the compact). The state law ratifying the North Fork Rancheria of Mono Indians and Wiyot Tribe's compacts was rejected in a November 2014 referendum, and consequently the compact has not been ratified in accordance with state law.

³⁵IGRA prohibits states from imposing any tax, fee, charge, or assessment on an Indian tribe for Indian gaming except for an assessment to defray the costs of regulating Indian gaming. 25 U.S.C. § 2710(d)(4).

Figure 5: Maximum Revenue Sharing Payment in 276 Tribal-State Compacts Approved or Deemed Approved as of October 2014



Source: GAO analysis of tribal-state compacts. | GAO-15-355

Note: Of the 276 compacts represented in the figure, 5 compacts required a fixed payment based on a percentage of gaming revenue.

Interior officials said that if they have a concern about a revenue sharing provision they will send a letter to the tribe and state requesting that they provide a written explanation as to why the provision does not constitute a tax or fee. Based on decision letters we reviewed, Interior conducts a two-pronged analysis to determine whether the revenue sharing provision violates IGRA. First, Interior evaluates whether the state has offered a “meaningful concession” in exchange for the tribe’s revenue sharing. For example, a state can offer a tribe exclusivity—the sole right to conduct gaming in the state, or a specific geographic area within the state.³⁶ Second, Interior determines whether the concessions offered by the state provide a substantial economic benefit for the tribe.

³⁶According to Interior decision letters, Interior does not consider compact terms routinely negotiated by tribes and states, such as increases in the number of gaming devices or hours of operation, as adequate state concessions for revenue sharing.

Interior Disapproved Few Compacts, Most Commonly for Revenue Sharing Provisions Inconsistent with IGRA

Of the 516 compacts and compact amendments submitted to Interior since 1998, Interior disapproved 19. In decision letters we reviewed, the most common reason for disapproving compacts was that they contained revenue sharing provisions Interior found to be inconsistent with IGRA.³⁷ For example, Interior found that the concessions offered by the state in some compacts were not proportional to the value of the revenues the state sought from the tribe. Interior disapproved these compacts because they did not eliminate or sufficiently reduce the tribe's payment to the state if the tribe's exclusivity ended or was diminished in the future. In addition, 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 example, 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 Act to Approve or Disapprove Some Compacts

Interior did not approve or disapprove 60 of the 516 compacts submitted by tribes and states since 1998 within the 45-day review period; as a result, these compacts are considered deemed approved to the extent that they are consistent with IGRA.³⁸ According to Interior officials, as a

³⁷Our 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.

³⁸No 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, which is explained and discussed in appendix II. *Friends of Amador County v. Salazar*, 554 F. App'x 562 (9th Cir. 2014); *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Babbitt*, 43 F.3d 1491 (D.D.C. 2014); *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.

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 concerns or may have potentially violated IGRA.³⁹ We reviewed the decision letters for 26 of the 60 deemed approved compacts.⁴⁰ 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.

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

States and selected tribes regulate Indian gaming in accordance with their roles and responsibilities established in compacts and tribal ordinances. Compacts establish the roles and responsibilities of both states and tribes for regulating class III gaming and identify applicable state and tribal laws and regulations for gaming operations, among other things. Tribal laws and regulations—which include tribal gaming ordinances—outline the general framework for tribes' regulation of class II and class III gaming operations. The regulatory approaches of the 24 states with class III gaming vary—with some states taking an active regulatory role in regulating Indian gaming, and others taking a limited role. In addition, all 12 of the selected tribes we visited had regulatory agencies responsible for the day-to-day regulation of gaming operations to help ensure compliance with tribal gaming ordinances and, for class III operations, compliance with compacts.

³⁹One federal circuit 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).

⁴⁰Interior officials told us no decision letters were issued for the remaining 34 deemed approved compacts.

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

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 are generally negotiated between tribes and state Governors or their staffs but, in some states, state law requires the state legislature to approve or ratify a compact negotiated by the Governor. State law requirements for entering into a compact are described in appendix III. 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. They may also include provisions requiring tribes to notify the state when they hire a new employee or when they make changes to their gaming regulations or rules. In addition, compacts may contain provisions governing how any disputes between the state and tribe over the compact and its terms will be resolved, including provisions waiving the sovereign immunity of the state, tribe, or both, to lawsuits seeking to resolve disputes. Sovereign immunity, including waivers in compacts and the IGRA provisions limiting state and tribal sovereign immunity, is described in appendix II.

In addition, IGRA requires a tribe's governing body to adopt a tribal gaming ordinance approved by the Commission Chair before a tribe can conduct class II or class III gaming.⁴¹ According to Commission documents, tribal gaming ordinances are a key part of the regulatory framework established by IGRA for tribal gaming, providing the general framework for tribal regulation of gaming operations, and including specific procedures and standards to be met. 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;⁴²
- net gaming revenues will only be used for authorized purposes;

⁴¹Along with the ordinance, a tribe must also submit other documentation to the Commission, including copies of all tribal gaming regulations.

⁴²However, 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).

- 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 and public health and safety; and
- the tribe performs background investigations and the licensing of key employees and primary management officials in accordance with certain requirements in Commission regulations.

In addition to the required provisions, ordinances may also contain provisions specifying, for example, how conflicts are to be resolved between tribal and compact internal control standards for gaming and the land on which gaming will be conducted.

States Varied in Their Approaches to Regulating Class III Indian Gaming

Since IGRA allows states and tribes to agree on how each party will regulate class III gaming, 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 (see table 2). 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. See figure 6 for information on state regulation of gaming operations.

Table 2: State Regulatory Roles for Class III Indian Gaming, Fiscal Year 2013 (Dollars in thousands)

	State regulatory role	Number of class III Indian gaming operations	State regulatory agency	State funding for regulating Indian gaming ^a	Number of regulatory staff ^b	Monitoring frequency				
						Daily	Weekly	Monthly	Annually	Every 1.5 to 3 years
Active	Arizona	23	Department of Gaming	\$9,725	100		✓	✓	✓	
	Connecticut	2	Department of Consumer Protection, Gaming Division	\$2,350	16	✓				
	Kansas	4	State Gaming Agency	\$1,839	23	✓	✓	✓		

	Louisiana	3	State Police, Gaming Enforcement Division	\$1,899	20	✓	✓	✓	
	New York	5	State Gaming Commission	\$4,507	49	✓		✓	
	Oregon	8	State Police, Gaming Enforcement Division	\$2,325	18	✓	✓	✓	✓
	Wisconsin	26	Department of Administration, Division of Gaming	\$1,825	18	✓	✓	✓	✓
Moderate	California	62	Bureau of Gambling Control; Gambling Control Commission	\$20,082	136				✓ ^c
	Florida	7	Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering	\$270	4			✓	
	Iowa	3	Department of Inspections and Appeals	\$130	1				✓
	Michigan	23	Gaming Control Board	\$719	6				✓
	Minnesota	19	Department of Public Safety, Alcohol and Gambling Enforcement	\$187	1				✓ ^c
	Nevada	5	Gaming Control Board	<\$300 ^d	1				✓
	New Mexico	25	Gaming Control Board	\$868 ^e	^e				✓ ^e
	North Dakota	6	Office of Attorney General, Gaming Division	\$143	4			✓	✓
	Oklahoma	116 ^f	Office of Management and Enterprise Services, Gaming Compliance Unit	\$1,085	3				✓
	South Dakota	9	Commission on Gaming	\$30	<1 ^g				✓
	Washington	28	State Gambling Commission	\$4,882	43				✓ ^c
Limited	Colorado	3	Department of Revenue, Division of Gaming	\$0	0				
	Idaho	9	Idaho Lottery	\$0	0 ^h				✓ ^h
	Mississippi	3	Gaming Commission	\$0	0				
	Montana	12	Department of Justice, Gambling Control Division	\$0	0				

North Carolina	1	Office of the Governor	\$0	0
Wyoming	4	Office of the Attorney General	\$0	0

Sources: GAO analysis of state and National Indian Gaming Commission data. | GAO-15-355

Note: States are listed as having an active, moderate, or limited role in regulating Indian gaming, largely based on the extent and frequency of their monitoring activities. Monitoring activities included inspection or observation of gaming operations, review of financial reports, and verification of gaming machine computer functions, among other activities. Other factors that were also considered in determining the extent of states roles included state funding and staffing levels, involvement in licensing and background investigations of gaming employees and vendors, among other factors. States categorized as having an active role monitor gaming operations at least weekly, and most have a daily on-site presence. States categorized as having a moderate role conduct monitoring activities at least annually, and all collect some amount of funding from tribes to support state regulatory activities. States categorized as having a limited role do not regulate class III Indian gaming in their state. Within each category—active, moderate, or limited role—states are listed in alphabetical order.

^aReported figures include assessments imposed on Indian gaming activity pursuant to tribal-state gaming compacts to defray the state's regulatory costs, as authorized by IGRA, 25 U.S.C. § 2710(d)(3)(C)(iii). Most states that reported funding amounts for state regulatory activities indicated that all or a majority of these state activities are funded through assessments on Indian gaming.

^bStaff data are in full-time equivalents and rounded to the nearest whole number.

^cStates performed monitoring activities at least annually and visited gaming operations as needed or, in the case of Washington, determined their monitoring frequency in consultation with tribes.

^dNevada's regulatory funding is a percentage of revenue from two tribes, so the state declined to provide an exact number to protect confidentiality. In lieu of an exact figure, Nevada told us their regulatory funding is less than \$300,000.

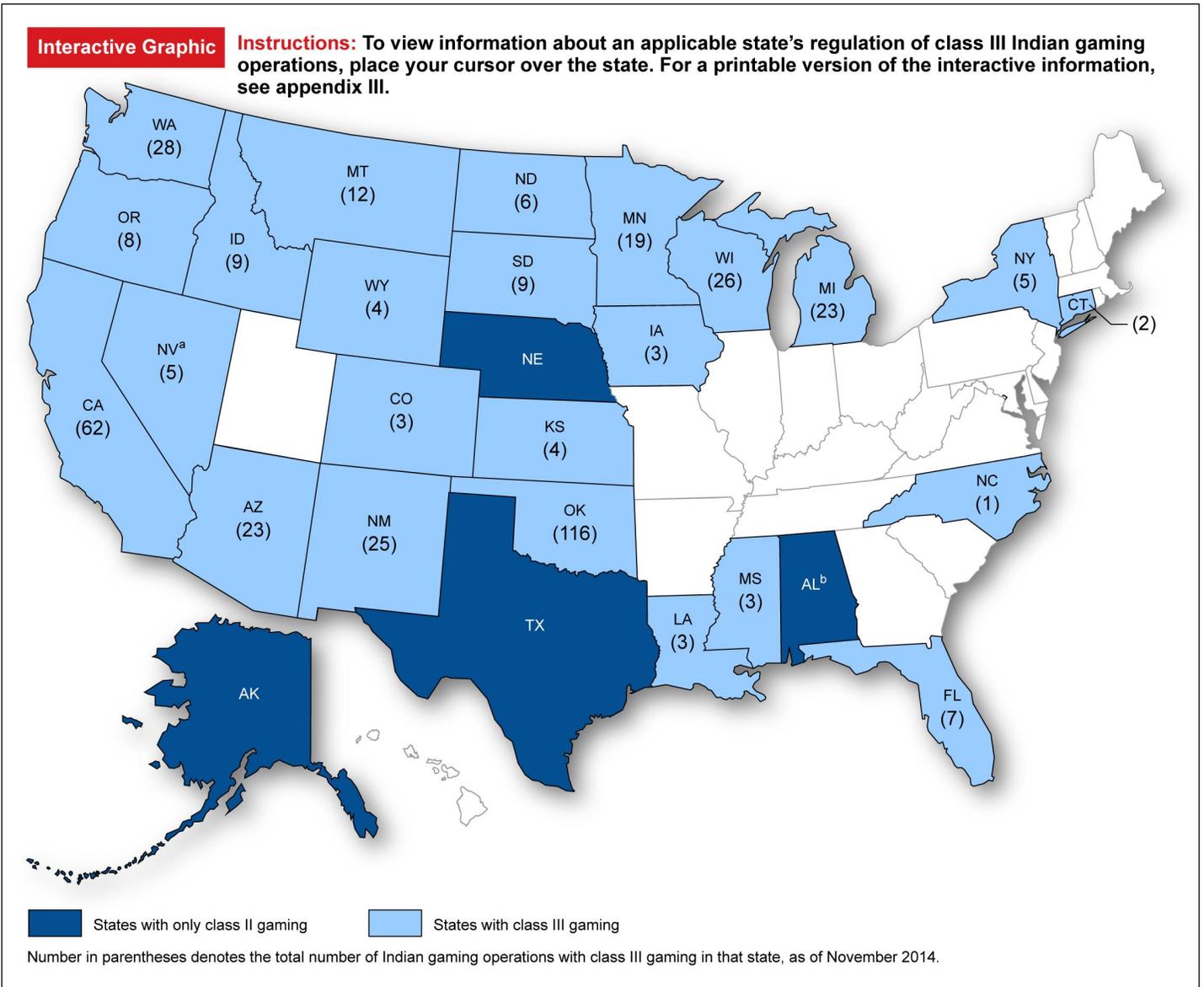
^eNew Mexico officials declined to be interviewed for this report. We obtained funding information from New Mexico's Fiscal Year 2013 Annual Report and information on annual monitoring of tribal gaming operations conducted by the state from a 2013 report to the New Mexico Legislative Finance Committee entitled Evaluation of Operational Effectiveness of Gambling Oversight in New Mexico. Other information on the number of regulatory staff for Indian gaming operations was not available.

^fOklahoma has over 100 gaming operations; however, most are small-scale operations consisting of a few slot machines installed at rest stops or travel centers.

^gSouth Dakota has two regulatory staff that spend partial time monitoring Indian gaming operations. South Dakota officials told us total staff time involved in overseeing Indian gaming is equal to less than one full-time-equivalent.

^hIdaho's visits included informal tours of gaming operations, but tours did not involve any state-initiated monitoring activity. Idaho officials estimated about 1 percent of their time is used to oversee Indian gaming.

Figure 6: State Regulation of Class III Indian Gaming Operations



Sources: GAO analysis of National Indian Gaming Commission and state information; Map Resources (map). | GAO-15-355

States with an Active Regulatory Role

^aThe number of Indian gaming operations and gaming tribes in Nevada includes a class III gaming operation owned and operated by non-Indians on Indian lands that is licensed by the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, as authorized by 25 U.S.C. § 2710(d)(2)(A). Under the tribal-state compact, this gaming operation is subject to concurrent tribal and state jurisdiction.

^bThe classification of the games in Alabama is in dispute. The Poarch Band of Creeks does not have a gaming compact with the state of Alabama, but the state alleged in a lawsuit that the tribe is offering a class III game. The federal district court dismissed the lawsuit without ruling on whether the game at issue is a class II or class III game. The state has appealed the decision, but the circuit court has yet to rule. *Alabama v. PCI Gaming Auth.*, 15 F. Supp. 3d 1161 (M.D. Ala. 2014), *appeal argued*, No. 14-12004 (11th Cir. Jan. 13, 2015).

Seven states have an active regulatory role and monitor gaming operations at least weekly, with most having a daily on-site presence.⁴³ Over 17 percent (71 of 406) class III Indian gaming operations are located in these seven states. Operations in these seven states accounted for about 25 percent of gross gaming revenue in fiscal year 2013.⁴⁴

Based on our analysis of states' written responses to questions and interviews, states with an active regulatory role 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.

Some states with an active regulatory role told us they also verify gaming operation funds to confirm payments to the state and inspect gaming operations to ensure public health and safety, such as reviewing building inspection records for gaming facilities. Of these states, five states assign staff at gaming operations to observe money counts, conduct background checks, and investigate compact violations, among other things. For example, New York regulators are present at all five class III gaming

⁴³States with an active regulatory role are Arizona, Connecticut, Kansas, Louisiana, New York, Oregon, and Wisconsin.

⁴⁴This gross gaming revenue percentage was calculated using both class II and class III gaming revenues.

operations 24 hours a day, with nine compliance officers at each gaming operation. Connecticut, Kansas, Louisiana, and Oregon also have staff at gaming operations to perform monitoring activities on a daily basis. In addition, Wisconsin regulators utilize electronic monitoring systems that report gaming operation information to the state on a daily basis. Arizona regulators visit operations weekly to perform various monitoring activities, and can conduct real-time electronic monitoring of gaming devices for some tribes with gaming operations in the state according to Arizona officials.

All of the states with an active regulatory role also told us that they require state-performed background checks for vendors. For example, Louisiana conducts extensive background investigations on any individual or company owning at least 5 percent stock in the gaming operation or receiving more than \$50,000 in payments over a 12-month period. In addition, all active role states except for Oregon and Wisconsin require state-performed background checks for key employees. Oregon provides background checks for key employees by request from tribes.

States with a Moderate Regulatory Role

Based on our analysis of states' written responses to questions and interviews with states, most of the 11 states that have a moderate regulatory role monitor operations at least annually, and all collect funds from tribes to support state regulatory activities.⁴⁵ About 75 percent (303 of 406) of class III Indian gaming operations are located in the 11 states with a moderate role. Operations in these 11 states generated 69 percent of all gross Indian gaming revenue in fiscal year 2013.⁴⁶

States with a moderate regulatory role have the broadest range of regulatory approaches, as demonstrated by varying monitoring frequencies and activities as described by state officials. 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. North Dakota officials told us they monitor more frequently than Nevada, with monthly inspections of

⁴⁵States with a moderate regulatory role are California, Florida, Iowa, Michigan, Minnesota, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, and Washington.

⁴⁶This gross gaming revenue percentage was calculated using both class II and class III gaming revenues.

gaming operations and an annual review of financial reports, among other activities. In addition, some moderate states perform a wide array of monitoring activities, and others perform a select few. For example, Washington performs monitoring activities commonly performed by states with an active role at least annually or, as needed, in addition to verifying gaming machines' functionality at a state-run laboratory prior to installation in gaming operations. According to California officials, all California compacts require state investigations of key employees, gaming vendor resource suppliers, and financial source suppliers to determine their suitability for licensing in California, and the state performed most monitoring activities with the exception of the gaming operations of 15 tribes.⁴⁷ In contrast, South Dakota compacts require state background investigations of employees, and the state verifies gaming machine computer functions annually and performs no other monitoring activity according to a South Dakota official.

Overall, based on our analysis of state responses to interview questions, most states with a moderate regulatory role (1) perform formal and informal inspection or observation of gaming operations, (2) review financial reports, and (3) verify gaming machine computer functions. In addition, about half of moderate states evaluate compliance with internal control standards, review surveillance systems in gaming operations, and audit gaming operation records in order to ensure compliance with compact provisions. Several of these states require state-issued background checks, while some states perform background checks upon request from tribes.

States with a Limited Regulatory Role

Based on our analysis of state information including written responses to questions and interviews with states, six states have a limited regulatory role and do not incur substantial regulatory costs or regularly perform monitoring activities of class III Indian gaming operations.⁴⁸ Eight percent (32 of 406) of class III Indian gaming operations are located in states with a limited regulatory role. Operations in these states represent about

⁴⁷ 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.

⁴⁸ States with a limited regulatory role are Colorado, Idaho, Mississippi, Montana, North Carolina, and Wyoming.

4 percent of gross Indian gaming revenue in fiscal year 2013.⁴⁹ The role of these states is largely limited to the negotiation of compacts with tribes. Montana officials told us that given the limitations on the size of the Indian gaming operations and lack of reported conflicts with localities, they saw no need for additional state regulation of Indian gaming. Montana compacts place limits on the number of gaming devices permitted in Indian gaming facilities. This controls the size and potential profits from a gaming operation. Some states visit or contact tribes annually or more frequently, but they do not perform monitoring activities. For example, Colorado officials told us they meet with tribes to discuss gaming trends, licensing, or technology issues, but the state does not perform monitoring activities during these meetings. Idaho officials told us they meet with tribes annually to tour their facilities, but the state relies on the tribes to ensure compliance with the compact. A few state officials with a limited role noted that their state has the right to investigate compact violations, should the state become aware of them. For example, according to North Carolina officials, while the Eastern Band of the Cherokee Indians compact does not give North Carolina authority to regulate class III gaming, it does give the state the right, after notifying the tribe, to informally inspect or observe operations and records related to class III gaming.

The 12 Selected Tribes Regulate Indian Gaming Day-to-Day

Tribes take on the primary day-to-day role of regulating Indian gaming, but they interact with the Commission and states given their roles in regulating or overseeing gaming operations. 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.⁵⁰ For each of these tribes, the tribal government established the tribal gaming regulatory agency for the exclusive purpose of regulating and monitoring gaming on

⁴⁹We calculated this gross gaming revenue percentage using both class II and class III gaming revenues. The total gross gaming revenue percentage for all the 24 states with class III gaming does not equal 100 percent because of the additional revenue generated by the other 4 states that have only class II gaming.

⁵⁰Each 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.

behalf of the tribe. 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 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.

In regulating their gaming operations, officials from many of the 12 tribal regulatory agencies generally reported good working relationships with both the Commission and state governments.⁵¹ For example, according to tribal regulatory agency officials, many of the tribes generally worked well with the Commission to ensure that the required background checks are performed on primary management officials and key gaming employees and that these employees were licensed. With regard to their relationships with state governments, the tribal officials generally told us they had positive experiences. For example, many tribal officials said that they work cooperatively with state regulators and often share information related to compliance with state and federal regulations. However, several tribal officials told us that their expertise in regulating gaming has matured to the point where they believe state oversight is too extensive.

⁵¹We provided the tribes with a list of topics for discussion. Not every tribe addressed every topic. The topics were open-ended, and the tribes volunteered responses. We did not ask officials from each tribe to agree or disagree with particular issues.

To obtain a broader view of tribes' roles in regulating Indian gaming, we also contacted 10 tribal associations.⁵² Among other things, representatives from tribal associations 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 \$319 million for tribal government gaming regulatory agencies; \$83 million for state gaming regulation; and \$20 million for Commission regulation and oversight of Indian gaming collected through fees required by IGRA. The association representatives also stated that the Commission has acknowledged that a vast majority of tribes have independent tribal gaming regulatory agencies and that, in 2013, tribal governments employed approximately 3,656 regulators, investigators, auditors, and other related regulatory officials who were dedicated to protecting Indian gaming from fraud, theft, and other crime.

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

Although the Commission has the authority to regulate class II gaming, it has limited authority for class III gaming. The Commission does have some authority for class III gaming such as the Chair's review and approval of tribal gaming ordinances and the Commission's review of tribal licensing decisions for key employees and primary management officials of Indian gaming operations. A key difference 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. 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 which equals or exceeds the Commission's minimum

⁵²We provided a list of topics for discussion to 10 tribal associations. Not every association addressed every topic. The topics were open-ended, and the associations volunteered responses. Of the 10 associations contacted: 5 provided responses to at least some of the topics, 4 did not respond, and 1 said it did not deal with Indian gaming issues. Tribal associations contacted include the Arizona Indian Gaming Association; California Nations Indian Gaming Association; Great Plains Indian Gaming Association; Midwest Alliance of Sovereign Tribes; National Indian Gaming Association; National Tribal Gaming Commissioners/Regulators; Oklahoma Indian Gaming Association; Oklahoma Tribal Gaming Regulators Association; United South and Eastern Tribes, Inc.; and Washington Indian Gaming Association.

internal control standards. According to the Commission, minimum internal control standards are a vitally important component to properly regulated gaming.⁵³

In 1999, prior to a court decision on the Commission's authority, the Commission issued regulations establishing minimum internal control standards for both class II and class III gaming. The Commission updated those standards in 2002, 2005, and 2006, which we refer to in this report as the 2006 regulations.⁵⁴ However, in 2006, a federal circuit court ruled that IGRA did not authorize the Commission to issue and enforce regulations establishing minimum internal control standards for class III gaming.⁵⁵ As a result of this decision, the Commission does not have the authority to enforce or update the 2006 regulations, which have not been withdrawn. In contrast, the Commission issued new minimum internal control standards for class II gaming in 2008.⁵⁶ 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 its 2006 regulations for 15 tribes in California with approved tribal gaming ordinances that call for the Commission to have such a role.⁵⁷

Commission officials told us they have authority to issue guidance with updated minimum internal control standards for class III gaming as best practices for tribes to voluntarily adopt. 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 in 2006. For example, they said gaming reporting functions have improved since 2006 and are now in a digital rather than an analog format referenced in the Commission's regulations. Based on our review of

⁵³73 Fed. Reg. 60492 (Oct. 10, 2008).

⁵⁴See 25 C.F.R. Part 542.

⁵⁵*Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134 (D.C. Cir. 2006).

⁵⁶25 C.F.R. Part 543. The Commission updated these regulations in 2012 and 2013.

⁵⁷State 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.

tribal-state gaming compacts, many tribes have compacts that allow them to establish their own internal control standards for class III gaming as long as they are at least as stringent as the Commission's 2006 regulations.⁵⁸ If the Commission issued guidance with class III minimum internal control standards that are at least as stringent as the 2006 regulations, these tribes would be able to adopt them by amending their tribal gaming ordinance. In other cases, however, tribes may not be able to amend their tribal gaming ordinances to adopt such guidance without changes to their compact.⁵⁹ In addition, California tribes cannot amend their ordinances to require compliance with such guidance while retaining the Commission's monitoring and enforcement role, without the state regulation being amended to allow them to do so. California regulations issued pursuant to the compacts allow tribes to adopt tribal gaming ordinances that provide for Commission monitoring and enforcement of its 2006 regulations. Fifteen tribes in California have adopted tribal gaming ordinances with such a provision, according to Commission officials.

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 accordance with Executive Order 13175.⁶⁰ In 2011, the Commission consulted with tribes on updating the 2006 regulations as part of a comprehensive review of its

⁵⁸Sixty tribes have compacts that allow them to establish their own internal control standards for class III gaming as long as they are at least as stringent as 25 C.F.R. Part 542.

⁵⁹Eleven tribes in three states—Iowa, Montana, and North Dakota—have compacts that require their compliance with 25 C.F.R. Part 542 and so would not be able to adopt any minimum internal control standards the Commission issues as guidance unless their compacts are amended to permit them to do so. In addition, some tribes, like those in Arizona, have compacts that require them to comply with minimum internal control standards contained in the compact. These tribes won't be able to adopt any minimum internal control standards the Commission issues as guidance unless they are consistent with the minimum internal control standards in the compact or the compact is amended to permit them to do so.

⁶⁰Executive Order 13175 directs federal agencies to have a process to ensure meaningful and timely input by tribal officials in the development of policies that have tribal implications. Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, November 6, 2000.

regulations.⁶¹ At that time, the Commission received written comments from tribes on revisions to the 2006 regulations and some comments at tribal consultation meetings. Written comments included recommendations from a few tribes that all references to class III minimum internal control standards in Commission regulations, notices, and bulletins be withdrawn. Other tribes supported issuing the standards as guidance. According to Commission officials, the Commission decided at that time not to amend its regulations where it does not have clear authority under IGRA and did not make a decision on whether to issue guidance on class III minimum internal control standards.

In February 2015, the Commission notified tribes of plans to seek comments on issuing guidance for class III minimum internal control standards during consultation meetings to be held in April and May 2015. In its letter to tribes about these consultation sessions, the Commission cited the importance of class III minimum internal control standards for a large section of the Indian gaming industry. Based on Commission data from November 2014, over 80 percent of Indian gaming operations have class III gaming. The Commission stated its plans to announce at consultation meetings a proposal to draft updated nonmandatory guidance on class III minimum internal control standards, publish draft guidance for comment by industry stakeholders, and withdraw the 2006 regulations once final guidance is issued.

In addition to tribes, states also regulate class III gaming and are users of the Commission's 2006 regulations. For example, three states have tribal-state compacts that require tribes to comply with the Commission's 2006 regulations.⁶² 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

⁶¹In 2011, the Commission conducted a comprehensive review of its regulations to determine the need for any amendments to more effectively implement IGRA's policies and sought input from tribes through written comments and a series of consultation meetings. 75 Fed. Reg. 70680 (Nov. 18, 2010). As a result of this review, the Commission amended its minimum internal control standards for class II gaming (25 C.F.R. Part 543), as well as other regulations.

⁶²These three states are Iowa, Montana, and North Dakota.

the Commission's 2006 regulations.⁶³ 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. Although the tribal gaming ordinances may establish internal control standards for the class III gaming operations, uncertainty over the compact's requirements for minimum internal control standards could affect a state's ability to enforce those requirements.⁶⁴

The Commission's plans for obtaining input from states on its proposal to issue guidance on minimum internal control standards for class III gaming and withdraw its 2006 regulations is unclear. *Standards for Internal Control in the Federal 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.⁶⁵ Commission officials told us that in the past some states provided written comments on updating minimum internal control standards for class III gaming, but the Commission did not specifically outreach to the states. In its letters to tribes, the Commission did not specify including states in its solicitation of comments on its proposal to issue guidance and withdraw its 2006 regulations. According to a Commission official, the Commission is considering 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

⁶³These nine states are California, Florida, Louisiana, Massachusetts, Minnesota, North Carolina, Oklahoma, Wisconsin, and Wyoming.

⁶⁴Tribal gaming ordinances might also require compliance with the Commission's 2006 regulations, but a tribe can often change its ordinance without negotiating amendments to the tribal-state compact.

⁶⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999). GAO's *Standards for Internal Controls in the Federal Government* are different from the minimum internal control standards for gaming. Federal internal control standards provide an 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 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.

its 2006 regulations would cause complications or uncertainty under existing tribal-state compacts.

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

The Commission helps ensure that tribes comply with IGRA and applicable federal and tribal regulations through various activities, including monitoring gaming operations, providing training and technical assistance, and alerting tribes of potential compliance issues using letters of concern. The Commission monitors gaming compliance by reviewing financial statements and audit reports submitted by tribes, visiting gaming facilities, and auditing gaming operations. Under the Commission's ACE initiative implemented in 2011, the Commission places emphasis on working collaboratively with tribes to encourage voluntary tribal 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. However, the effectiveness of these two approaches remains unclear. As part of the Commission's efforts to ensure tribal compliance with IGRA and regulations, the Commission Chair may take enforcement actions when violations occur, but a small number of actions have been taken in recent years.

The Commission Monitors Tribal Compliance with IGRA and Commission Regulations through Various Activities

The Commission conducts a broad array of monitoring activities to help ensure tribal compliance with IGRA and Commission regulations, including the following:

- reviewing and approving tribal gaming ordinances that dictate the framework, including specific procedures and standards for tribal regulation of Indian gaming;⁶⁶

⁶⁶IGRA 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. 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 the 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 and the Commission's implementing regulations.

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- reviewing and approving management contracts for the operation and management of the tribes' gaming activity;⁶⁷
 - reviewing background investigation results and tribal licensing decisions to ensure help ensure suitability of key employees and primary management officials licensed by tribal regulators;⁶⁸
 - reviewing independent audit reports submitted annually by tribes;
 - reviewing of audited financial statements and quarterly fee worksheets used to determine the amount to be collected to fund Commission operations;
 - conducting examinations during site visits to gaming operations to verify compliance with specific requirements, such as maintenance of employee background investigation and licensing records or surveillance at gaming facilities; and
 - auditing gaming operations as needed or by tribes' request, such as through reviews of gaming operations' compliance with internal controls standards.

Commission officials identified its review of independent audit reports, site visits to Indian gaming operations, and Commission audits as among its core monitoring activities. We discuss these activities in more detail.

⁶⁷A tribe may enter into a management contract for the operation and management of its class II or class III gaming activity if the contract is submitted to, and approved by, the Chair. A management contract is any contract, subcontract, 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. According to Commission officials, there were 11 approved management contracts in effect as of November 2014.

⁶⁸Tribes are required to submit the notice of results containing background investigation information and an eligibility determination for key employees and primary management officials to the Commission. If the Commission raises objections to the issuance of a license within 30 days of receiving a completed notice of results, the tribe must reconsider the application. The tribe is required to notify the Commission within 30 days of issuing a license to a key employee or primary management official. 25 C.F.R. § 558.3. In fiscal year 2014, the Commission received over 42,600 notices of results for applicants of key employee or primary management officials' positions. Ninety-four percent of the applicants were licensed by the tribe with no objection from the Commission, and 4 percent were denied a license by the tribe. The Commission objected to licensing about 0.1 percent of the applicants (nearly 40 applicants). Licensing status of the remaining 1 percent of applicants was not available as of December 2014.

Review of Audit Reports Submitted by Tribes

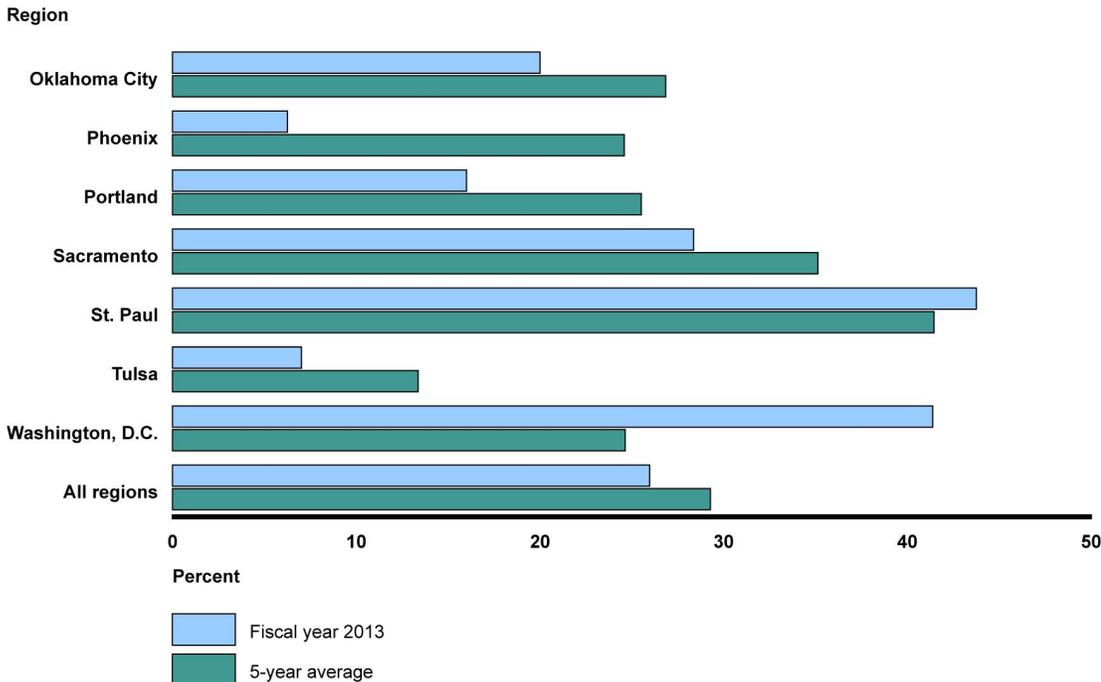
Commission regulations require tribes to have independent auditors—contracted certified public accountants that are external to their gaming operations—conduct two types of audit reports to be submitted annually by the tribes to the Commission. These reports are (1) annual audits of financial statements for class II and class III gaming and (2) agreed-upon procedures reports for class II gaming. Commission auditors review these reports to ensure that tribes are in compliance with various accounting and internal control requirements.⁶⁹ According to Commission officials, annual audits of financial statements indicate a gaming operation’s fiscal health, and agreed-upon procedure reports detail how well a gaming operation complies with minimum internal control standards. Commission auditors use financial statements and agreed-upon-procedures reports to assess gaming operations’ audit risks—an operations’ risks for noncompliance with minimum internal control standards. The Commission uses the audit risk assessments to help identify operations for follow-up and additional audits.

Overall, based on our review of Commission audit risk data from fiscal years 2009 through 2013, Commission auditors identified about 25 percent of all Indian gaming operations as having a high audit risk in fiscal years 2011 through 2013, down from 38 percent in fiscal year 2009. Commission officials attributed some of this decline to the collaborative approach between the Commission and tribes under the ACE initiative. Our analysis of Commission data showed some differences in high audit risk operations across regions. Specifically, two Commission regions—St. Paul and Sacramento—consistently had a larger proportion of gaming operations within their respective regions identified as having high audit risk in comparison with other regions (see fig. 7). In addition, compared to average audit risk in fiscal years 2009 through 2013, the number of operations identified with high audit risk in fiscal year 2013 increased in the St. Paul and Washington, D.C. regions. The Commission also

⁶⁹Agreed-upon procedure reports test a an operation’s compliance with selected minimum internal control standards for gaming. Because of the expense of producing agreed-upon procedures reports, most tribes with both class II and class III gaming operations do not have their independent auditors produce a separate report for each class of gaming, according to Commission officials. As a result, when tribes submit agreed-upon procedure reports, the Commission often receives information about the extent to which a tribe complies with their internal controls for both class II and class III gaming. In addition, according to Commission officials, some tribes that only have class III gaming operations submit their agreed-upon procedure reports to the Commission, even though they are not required to, with the exception of the 15 California tribes whose tribal gaming ordinances provide for Commission monitoring and enforcement of 25 C.F.R. Part 542.

consistently identified 12 percent of Indian gaming operations as having a high audit risk for 4 or more years of the 5 fiscal years (fiscal years 2009 through 2013) we reviewed. For fiscal year 2015, the Commission’s audit manager told us that the Commission plans to offer its auditing services on a first come, first serve basis to the 25 tribes it considers as having the highest audit risk. Auditing services will vary based on needs but could involve training on audit related tasks or completion of a minimum internal control audit or assessment.

Figure 7: Percentage of Indian Gaming Operations Considered at High Audit Risk by National Indian Gaming Commission Region, Fiscal Year 2009 to Fiscal Year 2013



Source: GAO analysis of National Indian Gaming Commission data. | GAO-15-355

Commission Site Visits

Compliance officers from the Commission’s regional offices conduct site visits of class II and class III tribal gaming operations. In addition to training and technical assistance that may be provided to tribes during site visits, compliance officers typically review, or examine, the gaming operation’s compliance with applicable Commission regulations, such as adherence to standards for surveillance of class II gaming. For operations with class III gaming, Commission officials told us they obtain a tribe’s permission to review tribal compliance with minimum internal control

standards in an advisory role, such as in a surveillance review or to observe table games. In addition, Commission officials told us that they ask tribes that operate facilities with class III gaming if they need assistance in any area and provide advisory information as needed. In fiscal years 2011 through 2014, Commission officials conducted over 400 site visits each year according to Commission data, examining various areas of an operations' compliance with Commission regulations during these site visits (see table 3).

Commission officials said that they scaled back the number of site visits they conducted in fiscal years 2013 and 2014 due to sequestration.⁷⁰ The number of site visits by Commission region varied because some regions visited gaming operations more often than others, and the number of gaming operations in each region vary. Among the regions, St. Paul conducted the most site visits (about one-third) for fiscal years 2011 to 2014 and had the largest number of operations in 2011 to 2013 (more than a quarter)—the most recent year for which data were available. A Commission official in the St. Paul region, told us that most gaming operations received at least two site visits per year, and some were visited three times. Commission officials from other regions told us they visit gaming operations annually.

⁷⁰Under the Budget Control Act, which amended the Balanced Budget and Emergency Deficit Control Act of 1985, when legislative action to reduce the deficit by \$1.2 trillion did not occur, the sequestration process in section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 as amended was triggered. Pub. L. No. 99-177, tit. II, 99 Stat. 1037 (1985). Section 251A required the Office of Management and Budget to calculate, and the President to order, a sequestration of discretionary appropriations and direct spending, also known as mandatory spending, to achieve a certain amount of deficit reduction for fiscal year 2013. See GAO, *2013 Sequestration: Agencies Reduced Some Services and Investments, While Taking Certain Action to Mitigate Effects*, [GAO-14-244](#) (Washington, D.C.: Mar. 6, 2014).

Table 3: Types of Examinations Conducted During National Indian Gaming Commission Site Visits to Tribal Gaming Operations, Fiscal Years 2011 through 2014

	2011	2012	2013	2014
Number of site visits completed	640	568	441	467
Areas examined^a	2011	2012	2013	2014
Key employee and primary management officials background investigation review	440	331	308	254
Other ^b	318	304	229	258
Tribal internal controls compliance	183	129	133	93
Surveillance review ^c	65	65	32	120
Facility license compliance	56	44	49	98
Training for tribal gaming operations	50	52	82	45
Internal audit review	65	43	53	36
Gaming ordinance review	23	13	11	11
Investigation ^d	8	8	4	6
Review of use of gaming revenue	4	2	1	5
Total number of examinations conducted	1,212	991	902	926

Source: GAO analysis of National Indian Gaming Commission data. | GAO-15-355

^aNational Indian Gaming Commission (Commission) staff perform one or more types of examinations or reviews during a single site visit.

^bAccording to Commission officials, when reporting on site visits in its tribal information management system, Commission staff frequently marked “other” for the area examined, where they are able to enter more detailed information. Examples of information noted when “other” areas examined was marked include new facility tours, reviews of specific components of the gaming operation such as the cage or specific types of games, technical assistance on specific procedures or regulations, and complaint follow-up. Some information listed by Commission staff in the data system when marking “other” areas examined overlap with existing categories including facility licensing, surveillance review, and internal audit review.

^cCommission staff conduct reviews of gaming operations’ surveillance systems for compliance with Commission minimum internal control standards, which include standards for security and access to surveillance equipment and extent of surveillance by the type of gaming conducted.

^dInvestigations refer to Commission follow-up on a range of issues, such as noncompliance with the requirement for the Chair to approve management contracts, or other potential violations of IGRA or Commission regulations. Investigative tasks that may be conducted during a site visit include conducting interviews, reviewing or collecting records or documents, and observing gaming activity.

In analyzing the results of data from a random, nongeneralizable sample of 50 Commission site visits, we found that Commission officials identified deficiencies at tribal gaming operations in over two-fifths (33 out of 74) of the various types of examinations they conducted (see table 4).⁷¹ Commission officials told us in November 2014 that they began requiring that compliance officers send follow-up letters to tribes summarizing site visit results, as a standard practice. In our sample, follow-up letters were sent in half the cases.

Table 4: Number of Deficiencies Identified in a Random Sample of 50 National Indian Gaming Commission Site Visits to Gaming Operations and Areas Examined, Fiscal Year 2011 through Fiscal Year 2014

Area examined	No deficiency identified	Deficiency identified	Unclear whether a deficiency was identified ^a	Total
Key employee and primary management officials background investigation review	21	13	0	34
Training and technical assistance	4	5	0	9
Internal audit review	3	5	0	8
Surveillance review	1	6	0	7
Routine site visit	6	0	0	6
Facility license compliance	2	1	1	4
Conducted a minimum internal controls audit	0	2	1	3
Investigation	0	1	1	2
Environment, public health, and safety compliance	1	0	0	1
Total	38	33	3	74

Source: GAO analysis of the National Indian Gaming Commission documents. | GAO-15-355

^aBased on documentation provided for the National Indian Gaming Commission site visits to tribal gaming operations, we were unable to determine whether Commission officials identified a deficiency.

⁷¹As shown in table 4, multiple areas are examined per site visit. For our random sample of 50 site visits, 74 compliance areas were examined.

Commission Audits

The Commission also conducts audits of class II gaming operations, and class III gaming operations for 15 tribes in California and when requested by other tribes,⁷² to evaluate internal controls and compliance with IGRA, applicable Commission regulations, and tribal ordinances. According to Commission officials, the focus of Commission audits may vary and are conducted as needed. For example, the Commission may conduct a comprehensive audit to test gaming operations' minimum internal controls against Commission regulations for minimum internal controls, which can take from 1 week to 4 weeks. If an operation is determined to be noncompliant, the Commission describes its findings in a letter to the operation and gives the operation 6 months to address these findings. The Commission may also conduct more limited audits to test operations' compliance with key accounting controls or a gaming operation's calculation of gross gaming revenues. In fiscal year 2013, the Commission conducted 12 audits, compared with 16 in fiscal year 2012, but consistent with the number conducted in fiscal year 2011.

The Commission Provides Tribes with Training and Technical Assistance to Encourage Voluntary Compliance but Does Not Have a Way to Assess Its Effectiveness

Under its ACE initiative, the Commission has publically 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 regular training events in each region and provides one-on-one training on specific topics as needed during site visits. In addition, the Commission's technical assistance involves guidance and advice provided to tribes on compliance with IGRA; Commission regulations; and day-to-day regulation of Indian gaming operations through written advisory opinions and bulletins, compliance reviews or examinations conducted during site visits, and responding to questions by phone and e-mail, among other activities.

⁷²The Commission will conduct audits of class III gaming operations at a tribe's request. In addition, the Commission monitors and enforces 25 C.F.R. Part 542 at 15 California tribes' class III gaming operations as specified in their tribal gaming ordinances. 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.

Although the Commission has always provided training and technical assistance as a means to support tribal compliance with IGRA and Commission regulations, Commission officials told us that since the implementation of the ACE initiative there is a greater emphasis on these activities. For instance, the Commission's training program is now more structured. Since 2011, the Commission has conducted annual regional trainings that have consisted of at least two planned 3-day trainings in each region rather than adding training to other events, such as gaming industry conferences, as it had done in the past. Commission officials also told us that they use results of Commission analyses of annual independent audits of financial statements and agreed-upon procedure reports, in part, to identify areas for training and technical assistance. For example, Commission officials said that annual regional trainings have included a focus on regulating gaming technology given that agreed-upon procedure reports for fiscal years 2009 to 2013 consistently showed tribes had the greatest challenge with complying with internal control standards related to gaming machines, among other things. In addition, the Commission may target facilities it identifies as at high risk for noncompliance with minimum internal control standards for further technical assistance, such as through follow-up site visits or audits.

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 goal for continuing its ACE initiative; and another goal for improving its technical assistance and training to tribes.⁷³ Yet, the Commission's performance measures for tracking progress toward achieving these 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 18 performance measures for these two goals are output-oriented, describing the types of products or services delivered by the Commission (see table 5). For example, the Commission's output

⁷³In 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.

measures include the number of audits and site visits conducted and the number of training events and participants attending these training events. In March 2004, we concluded that, while necessary, these kinds 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.⁷⁴ In that report, we stated 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 indicate progress toward achieving the intended result of a program—where feasible.⁷⁵

The Commission's remaining 6 measures include 1 customer service-oriented measure that indicates tribes' general satisfaction with training and 5 outcome-oriented measures. Four of the outcome-oriented measures are intermediate outcome measures. An intermediate outcome measure is a type of measure that indicates progress against an intermediate outcome that contributes to an ultimate outcome. These 4 measures track tribes' compliance with specific requirements, including 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 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. The final measure is an outcome measure and tracks whether actions were taken by the tribe to address audit findings, but this measure does not indicate the extent of actions taken or status of a gaming operation's overall compliance with IGRA and gaming regulations. Furthermore, the Commission has conducted few comprehensive audits since 2011 to indicate the extent of overall improvement in tribes' compliance and regulation of their gaming operations since the ACE initiative was

⁷⁴GAO, *Human Capital: A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, GAO-04-546G (Washington, D.C.: March 2004).

⁷⁵Office of Management and Budget, Circular A-11: *Preparation, Submission, and Execution of the Budget*, November 2014.

implemented. With additional outcome-oriented performance measures that better reflect and correlate the level of tribes' compliance or improvements to the regulation of gaming operations with the training and technical assistance it provides, the Commission would be better positioned to 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.

Table 5: Performance Measures Used by the National Indian Gaming Commission to Track Assistance to Gaming Tribes, Fiscal Years 2011 through 2013

Goal: Continue the Assistance, Compliance, and Enforcement Initiative

No.	Performance measure	2011	2012	2013	Performance goal ^a	Type of measure ^b
1	Site visits conducted	640	568	441 ^c	500	Output
2	Audits conducted	12 ^c	16 ^c	12 ^c	12	Output
3	Remedial action taken from findings reported in audits	^d	^d	^d	^e	Outcome
4	Response to e-mail inquiry from tribe	23	33	72	40	Output
5	Audit reports received within timeline ^f	95%	96%	^g	99%	Intermediate outcome
6	Fee worksheets received within timelines ^f	87%	86%	^g	99%	Intermediate outcome
7	Commission approved ordinance ^f	100%	100%	^g	99%	Intermediate outcome
8	Operation licensed by tribe ^f	98%	100%	^g	99%	Intermediate outcome
9	Fingerprint cards processed	67,724	67,421	69,305	67,000	Output
10	Notices of violation issued	2	1	1	^e	Output
11	Management contracts approved	2	1	0	^e	Output
12	Amendments to management contracts	3	6	3	^e	Output
13	Modifications to list of individual or entities for management contracts	6	3	2	^e	Output

Goal: Improve Training and Technical Assistance to Tribes

No.	Performance measure	2011	2012	2013	Performance goal ^a	Type of measure ^b
14	Events held	83	84	194	70 ^h	Output
15	Participants attending	2,309	2,013	2,751	2,000	Output
16	Percentage of tribes attending	84%	65%	81%	70%	Output
17	Percentage of attendees satisfied	86%	93%	91%	85%	Customer service
18	Hours	659	748	754	^e	Output

Sources: GAO analysis of National Indian Gaming Commission performance reports, strategic plan, and interviews with Commission officials. | GAO-15-355

^aThe National Indian Gaming Commission (Commission) refers to its performance goals as benchmarks in its Summary Performance Dashboard reports. All performance goals were the same as outlined in its strategic plan for fiscal years 2014 to 2018, unless otherwise indicated.

^bTypes of performance measures as defined by the Office of Management and Budget in Circular A-11: *Preparation, Submission, and Execution of the Budget* (2014) include the following:

- Customer service: A type of measure that indicates or informs the improvement of government's interaction with those it serves.
- Intermediate outcome: A type of measure that indicates progress against an intermediate outcome that contributes to an ultimate outcome, such as the percentage of schools adopting effective literacy programs, compliance levels, or the rate of adoption of safety practices.
- Outcome: Type of measure that indicates progress against achieving the intended result of a program. Indicates changes in conditions that the government is trying to influence.
- Output: Type of measure, specifically the tabulation, calculation, or recording of activity or effort, usually expressed quantitatively. Outputs describe the level of product or activity that will be provided over a period of time.

^cThese data are different from data reported in performance reports and were updated based on information provided by Commission officials.

^dUpdated data corresponding to revised audit numbers were not available as of March 2015.

^eNo performance goal has been set.

^fPerformance measure that tracks percent of tribes' compliance with specific requirements, such as percentage of gaming operations that submit timely audit reports as required by Commission regulations or have a tribal gaming ordinance approved by the Chair as required under the Indian Gaming Regulatory Act.

^gPerformance measures data were not reported in the Commission's Fiscal Year 2013 Performance Dashboard Report.

^hPerformance goals for this measure for fiscal years 2011 to 2013 differed from performance goals established for fiscal years 2014 to 2018. The performance goal for fiscal years 2014 to 2018 increased to 82.

The Commission may already collect data and information that could be compiled for use in outcome-oriented performance measures to help gauge progress in meeting Commission training and technical assistance related goals. The Commission collects extensive data and information on compliance of Indian gaming operations, as well as information on the training and technical assistance it provides to tribes.⁷⁶ For example, the Commission compiles compliance data from required annual agreed upon procedures reports that detail exceptions to minimum internal control standards and identify specific compliance issues by operation. In addition, the Commission tracks technical assistance and training provided during site visits. Data such as exceptions to minimum internal

⁷⁶Commission data and information on compliance, technical assistance, and training are collected in different data systems. Commission officials told us they are planning to integrate existing data systems as part of information technology upgrade in 2015 intended to facilitate sharing of information and data across the agency and tracking of workflow, among other benefits.

control standards could be analyzed along with training data to observe changes in compliance over time. For example, if data indicate that compliance generally increases after receiving training, this could indicate that the training has had a positive impact. Conversely, if compliance appears unrelated to training, this could signal the need to examine whether training is effectively targeting previously identified compliance issues.

The Commission Uses Letters of Concern to Help Resolve Compliance Issues, but Some Letters Did Not Include Key Information

Since the implementation of the Commission's ACE initiative, 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.⁷⁷ A letter of concern outlines Commission concerns about a potential compliance issue and is not a prerequisite to an enforcement action, according to Commission regulations.⁷⁸ Commission officials told us that regional directors generally send these letters to tribes after consulting with headquarters staff. Commission regulations require letters of concern to provide a time period by which a recipient must respond but do not specify 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 did not issue guidance or documented procedures to inform its staff about how to implement its regulation regarding letters of concern. Commission officials noted that they have not issued associated guidance in part because there are many variables to consider when determining whether to issue a letter of concern and emphasized that each tribe and situation is unique.

In fiscal years 2013 and 2014, the Commission sent 16 letters of concern to 14 tribes as follows:

- 7 letters addressed background investigations for key employees and primary management officials;

⁷⁷25 C.F.R. § 573.2.

⁷⁸The 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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- 5 letters addressed the submission of annual audits of financial statements of gaming operations to the Commission; and
 - 4 letters addressed a unique issue, such as the potential management of a gaming operation without a Commission Chair-approved contract or minimum internal control standards potentially not being met.

Of the 16 letters of concern provided to us by the Commission, 6 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. In addition to letters of concern, the Commission sends tribes various types of letters including follow-up letters from Commission site visits, letters regarding licensing of key employee and primary management officials, and notifications of investigation. By not including a time period for a response as required by Commission regulations and not consistently identifying letters as a letter of concern, it may be difficult for tribes to discern the significance of the letters as describing a potential compliance issue warranting their attention or for the Commission to ensure timely responses. Under federal internal control standards, agencies are to clearly document internal controls, and the documentation is to appear in management directives, administrative policies, or operating manuals.⁷⁹ Without guidance or documented procedures to inform its staff about how to complete letters of concern, the Commission cannot ensure consistency in the letters that are sent to tribes.

In addition, for 8 letters of concern, the Commission provided us with documentation to demonstrate whether the tribe took action to address the issues described in the letters, but did not provide requested documentation for the remaining 8 letters. Letters of concern and related documentation of tribal responses and actions taken in response to letters are not centralized in Commission data systems, but maintained by regional offices. A few regional offices did not provide follow-up documentation. Based on the documentation provided, we found 2 letters of concern resulted in tribal actions that addressed the issues. In another case the tribe sent letters to the Commission acknowledging its overdue audit report and financial statement but the reports were not submitted, and the Commission elected to take an enforcement action. In the remaining 5 cases, it was not clear from the documentation that tribes

⁷⁹[GAO/AIMD-00-21.3.1](#).

took action to address the issues identified or that the Commission considered the issues resolved. 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.⁸⁰ Without guidance or documented procedures to maintain such documentation, it may difficult for the Commission to track and measure the effectiveness of the letters in encouraging tribal actions to address potential compliance issues.

The Commission Chair Has Initiated a Small Number of Enforcement Actions in Recent Years

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.⁸¹ 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.⁸² The most common enforcement action taken by the Commission Chair in fiscal years 2005 through 2014 was a notice of violation (see table 6).⁸³ During this same period, the Commission Chair issued one closure order and six civil fine assessments, with most of these types of enforcement actions issued prior to fiscal year 2010. Similarly, the Chair issued most notices of violations prior to fiscal year 2010.

⁸⁰[GAO/AIMD-00-21.3.1](#).

⁸¹The 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.

⁸²In lieu of taking an enforcement action, the Chair may enter into a settlement agreement with an Indian tribe concerning the potential compliance issue.

⁸³According to Commission officials, from fiscal year 2005 to 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.

Table 6: Reasons for National Indian Gaming Commission Notices of Violations, Fiscal Years 2005 Through 2014

Reason cited	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Failing to submit or untimely submission of quarterly statement or fee ^a	8	4	0	0	38	1	0	0	0	0	51
Failing to submit or untimely submission of annual audit report	3	9	3	19	6	1	1 ^b	0	0	2	44
Operating under an unapproved management contract	1	2	1	0	0	0	1	1	0	0	6
Failing to conduct background investigations of and license certain employees ^c	0	2	1	1	0	0	0	0	0	0	4
Failing to submit or untimely submission of agreed upon procedures report ^d	0	0	1	1	0	0	0	0	0	2	4
Improper per capita payment made ^e	0	1	0	0	1	1	0	0	0	0	3
Gaming on ineligible land	0	0	0	1	1	0	0	0	0	0	2
Unauthorized use of gaming revenue	0	0	0	0	0	1	1	0	0	0	2
Unlawful proprietary interest ^f	0	0	0	0	0	0	2	0	0	0	2
Gaming without an approved ordinance	0	0	0	1	0	0	0	0	0	0	1
Total	12	18	6	23	46	4	5	1	0	4	119

Source: GAO analysis of National Indian Gaming Commission notices of violations. | GAO-15-355

Notes:

For the 10-year period for fiscal years 2005 through 2014, the Chair of the National Indian Gaming Commission (Commission) issued 107 unique notices of violations. Specifically, for fiscal years 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2014, the numbers of unique notices of violations issued were 12, 15, 6, 21, 46, 2, 2, 1, and 2, respectively. However, in some cases, the notices of violations cited multiple violations. Specifically, 9 notices of violations cited two violations each and 1 notice of violation in fiscal year 2011 cited four violations.

Three notices of violation included in the table above—one each in fiscal year 2008, 2009, and 2011—have been appealed to the Commission or are being challenged in court. A tribe appealed a notice of violation issued in fiscal year 2008, but the appeal was stayed until litigation regarding the eligibility of land for gaming was resolved. *Citizens Against Casino Gambling in Erie County v. Hogen*, Nos. 11-5171, 13-2339 (2nd Cir. argued Jan. 16, 2015). A tribe appealed a notice of violation issued in fiscal year 2009 and brought suit against the Commission in federal court for failing to rule on the appeal in 2014. *Fort Sill Apache Tribe v. Nat'l Indian Gaming Comm'n*, No. 14-cv-00958, (D.D.C. filed June 6, 2014). The Commission issued its final decision on the appeal in May 2015. A notice of violation the Commission Chair issued in fiscal year 2011 found that an agreement between a municipality and tribe violated IGRA's sole proprietary interest provision, but the municipality challenged the notice in federal court. In 2015, the federal district court dismissed the lawsuit after finding no grounds to set aside the notice. *City of Duluth v. Nat'l Indian Gaming Comm'n*, No. 13-cv-00246, slip op. at 6 (D.D.C. Mar. 31, 2015).

^aIn 2012, the Commission modified its regulations so that quarterly statements or fees submitted late are now subject to a fine rather than a notice of violation. Late payments are those received between 1 day 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.

^bThe tribe submitted the annual audit to the Commission but did not submit the management letter that accompanies the audit as required.

^cThese violations included: failure to conduct background investigations of primary management officials and key employees; failure to submit the investigation and related material to the Commission; failure to make eligibility determinations for licensing of primary management officials and key employees; and failure to issue tribal gaming licenses to primary management official and key employee.

^dAgreed 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 or states' internal control standards that provide at least the same level of controls as the Commission's minimum internal control standards. Tribes are required to submit agreed upon procedure reports to the Commission for class II gaming operations by Commission regulations, and 15 California tribes submit agreed upon procedures reports for class III pursuant to their tribal gaming ordinances that provide for Commission monitoring and enforcement of class III gaming.

^eA tribe may use net gaming revenues to make payments 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. Improper per capita payments can be payments made without an approved revenue allocation plan or payments that are not authorized by the approved plan.

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

Enforcement actions since fiscal year 2010 may have been taken less often because the Commission Chair has discretion in determining when to pursue an enforcement action, and recent Commission chairs have emphasized seeking voluntary compliance with IGRA. For example, in 2014, the Commission Chair issued a notice of violation to a tribe for failing to submit a required audit report. However, 16 months elapsed before the Chair issued the notice of violation, as Commission staff sought to achieve voluntary compliance. Before issuing the notice of violation in September 2014, the Commission sent two letters of concern about the late audit report in July 2013 and April 2014 because, according to Commission officials, such an approach was consistent with the ACE initiative and provided opportunity for tribal actions to voluntarily resolve the issue. Prior to the ACE Initiative, the last time the Commission issued a notice of violation to a tribe for failing to submit a required audit report was in fiscal year 2008. In this case, the Commission Chair issued the notice of violation 4 months after determining the tribe had not submitted an audit report. Commission officials told us that even with the focus on voluntary compliance, the Commission uses all tools at its disposal, including enforcement actions, when the Chair decides it is necessary. For example, Commission officials pointed to the immediate temporary closure order the Commission Chair issued in October 2014—to the same tribe that had received the notice of violation 1 month before for failure to submit the required audit report—when operation of the tribe's gaming facility threatened public health and safety.

Conclusions

The National Indian Gaming Commission was established by IGRA to help ensure the integrity of the Indian gaming industry that now includes more than 400 gaming operations in 28 states. We are encouraged by the Commission's plans to consult with tribes on and to make a decision regarding the Commission's proposal to issue guidance on class III minimum internal control standards. However, states are also important stakeholders in the regulation of class III Indian gaming. Both states and tribes will be affected by the Commission's proposal to issue guidance on class III minimum internal control standards, along with its proposal to withdraw its 2006 regulations. In addition to consulting with tribes, seeking state input would aid the Commission in making an informed decision on how to proceed.

In addition, since 2011, the Commission has emphasized providing tribes with training and technical assistance through its collaborative ACE initiative, and using tools such as letters of concern, as a means for achieving voluntary compliance with IGRA and Commission regulations without the need to use enforcement actions. However, the effectiveness of these two approaches is unclear. Most of the Commission's performance measures do not demonstrate the effectiveness of the agency's training and technical assistance efforts. Most of the measures are not outcome-oriented, inconsistent with Office of Management and Budget guidance, and those that are focused on tribes' compliance largely do not correlate with the Commission's training and technical assistance efforts. With additional outcome-based performance measures that better correlate the level of tribes' compliance or improvements to gaming operations with training and technical assistance provided, the Commission would be better positioned to assess the effectiveness of its training and technical assistance efforts and its ACE initiative.

Finally, the Commission has not consistently issued letters of concern that contain, as required by Commission regulations, a time period for the tribe to submit a response. In addition, some of these letters were not clearly marked as letters of concern to warrant tribes' attention, which may be helpful given the many types of letters sent to tribes. Both of these issues limit the Commission's ability to help ensure a timely response and actions by tribes to resolve potential compliance problems. The Commission has not issued guidance or documented procedures about how to complete letters of concern consistent with federal internal control standards. Without guidance or documented procedures to inform its staff about how to complete letters of concern and track tribal actions taken in response to letters, the Commission cannot ensure consistency or assess the effectiveness of the letters it sends.

Recommendations for Executive Action

We recommend that the National Indian Gaming Commission take the following four actions:

To help make an informed decision, the Commission should seek input from states on its proposal to draft updated guidance on class III minimum internal control standards and withdraw its 2006 regulations.

To improve its ability to assess the effectiveness of its training and technical assistance efforts, the Commission should review and revise, as needed, its performance measures to include additional outcome-oriented measures.

To help ensure letters of concern are more consistently prepared and responses tracked, the Commission should develop documented procedures and guidance to

- 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
- maintain and track tribes' responses to the Commission on potential compliance issues.

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of the Interior and the National Indian Gaming Commission for review and comment. In an e-mail, the Department of the Interior stated that the Office of Indian Gaming agreed with our recommendations. In written comments provided by the National Indian Gaming Commission (reproduced in appendix IV), the Commission generally agreed with our findings and recommendations. In its letter, the Commission described actions that it has already taken, has ongoing, or plans to take to address each of the recommendations. Both agencies also provided technical comments that we incorporated, as appropriate.

We are sending a copy of this report to the appropriate congressional committees, the Secretary of the Interior, the Chairman of the National Indian Gaming Commission, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, 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 report. GAO staff who made major contributions to this report are listed in appendix V.

A handwritten signature in black ink that reads "Anne-Marie Fennell". The signature is written in a cursive style with a large initial "A" and a long horizontal stroke at the end.

Anne-Marie Fennell
Director, Natural Resources and Environment

Appendix I: Objectives, Scope, and Methodology

Our objectives were to examine (1) the review process that the Department of the Interior (Interior) uses to help ensure that tribal-state compacts comply with the Indian Gaming Regulatory Act (IGRA); (2) how states and selected tribes regulate Indian gaming; (3) the National Indian Gaming Commission's (Commission) authority to regulate Indian gaming; and (4) the Commission's efforts to ensure tribes' compliance with IGRA and Commission regulations.

To examine the review process that Interior uses to help ensure that tribal-state compacts comply with IGRA, we examined relevant regulations including Interior's regulations on class III tribal-state gaming compact process (25 C.F.R. Part 293) and documentation describing Interior's process for reviewing compacts, such as process diagrams and checklists used during its review. In addition, we obtained a list from Interior of all Indian gaming compact decisions from 1998 to 2014. We verified this list of compacts in effect through fiscal year 2014 with *Federal Register* notices. We analyzed the compacts to identify key provisions. Specifically, we reviewed compacts for provisions related to revenue sharing with the state, waivers of sovereign immunity, minimum internal control requirements, among others. We obtained copies of decision letters sent by Interior for deemed approved and disapproved compacts, and we analyzed these letters for the explanation of each decision. We interviewed agency officials from Interior's Office of Indian Gaming and Office of the Solicitor about how this review process helps ensure compliance with IGRA.

To determine how states and selected tribes regulate Indian gaming, we contacted all 24 states that have class III Indian gaming operations.¹ Most states provided written responses to a structured interview guide, participated in interviews, and supplied additional documentation as appropriate.² We collected information about how each state oversees Indian gaming, including information on the states' regulatory

¹There are 27 states with class III gaming compacts; however, 3 states (Massachusetts, Nebraska, and Rhode Island) do not have Indian gaming operations with class III gaming and were not included in our review of state regulation of Indian gaming.

²We obtained information from all states with class III gaming operations except for New Mexico, which declined to provide written responses or participate in an interview. Information about New Mexico's involvement with class III gaming regulation was found in publicly available reports from the New Mexico Gaming Control Board and the New Mexico Legislative Finance Committee.

organizations, staffing, funding and expenditures, and the types of monitoring and enforcement activities conducted by state agencies. We analyzed this information and grouped states into one of three categories—active role, moderate role, or limited role—primarily based on information states provided on the extent and frequency of monitoring activities. States categorized as having an active role monitor gaming operations at least weekly, and most have a daily on-site presence. States categorized as having a moderate role conduct monitoring activities at least annually, and all collect some amount of funding from tribes to support state regulatory activities. States categorized as having a limited role do not regulate class III Indian gaming in their state. Other factors, such as funding per gaming operation and background check requirements, were also considered. We verified our categorization of state regulatory roles with state officials.

We visited six 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. Collectively, these six states accounted for more than 60 percent of all Indian gaming operations and Indian gaming revenue generated in fiscal year 2013. For each of the six states that we visited, we interviewed officials from at least one federally recognized tribe with gaming operations willing and available to meet with us regarding their approaches to regulating gaming.³ We spoke with officials from 12 tribes in all.⁴ The experiences of the 12 tribes that we met with are not generalizable to the more than 200 gaming tribes. Rather, the information from the 12 tribes provides illustrative information on the views of tribes regarding their approaches to

³IGRA 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.

⁴Tribes 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.

regulating gaming.⁵ In addition, to obtain regional and national tribal perspectives, we contacted representatives of 10 tribal gaming associations, including the Arizona Indian Gaming Association; California Nations Indian Gaming Association; Great Plains Indian Gaming Association; Midwest Alliance of Sovereign Tribes; National Indian Gaming Association; National Tribal Gaming Commissioners/Regulators; Oklahoma Indian Gaming Association; Oklahoma Tribal Gaming Regulators Association; United South and Eastern Tribes, Inc.; and Washington Indian Gaming Association. We provided a list of open-ended topics for discussions to the 10 tribal associations to obtain their views of tribes' roles in regulating Indian gaming. The views of associations we spoke with are not generalizable. Of the 10 associations contacted, 5 provided responses to at least some of the topics, 4 did not respond at all, and 1 said they did not deal with Indian gaming issues.

To examine the Commission's authority for regulating Indian gaming, we reviewed IGRA, relevant court cases, and Commission regulations and policies including those related to minimum internal control standards. We identified and reviewed public comments to proposed regulations collected in 2011 to discern varying viewpoints on updating minimum internal control standards last updated in 2006. We also interviewed attorneys from the Commission's Office of the General Counsel about the Commission's authority to regulate Indian gaming.

To examine the Commission's efforts to ensure tribes' compliance with IGRA and Commission regulations, we reviewed IGRA, Commission regulations and policies for regulating Indian gaming including its regulations on compliance and enforcement, and background investigations and licensing of key employees and primary management officials. We also reviewed Commission guidance and policies on agreed-upon-procedure reports and its directives on the agency's audit work.

We obtained and analyzed Commission data on its monitoring activities including the number and type of examinations conducted during site visits in fiscal years 2011 through 2014. We limited our review to data from these 4 fiscal years because Commission officials told us that

⁵We provided the tribes with a list of topics for discussion. Not every tribe addressed every topic. The topics were open-ended, and thus the issues raised by the tribes were "volunteered." We did not ask officials from each tribe to agree or disagree with particular issues.

collection of site visit data was integrated into one of its databases as of May 2010. We also reviewed a random, but not generalizable, sample of 50 site visit reports entered into the Commission's database to provide examples of the extent of any deficiencies or any potential compliance issues identified by the Commission during these visits. We limited our random sample to those that included attachments in the database. These attachments included documents such as follow-up letters sent to tribes after a site visit or other written assessments or information collected during the visit. For this random sample of site visits, we requested information such as the date and reason for the site visit, as well as any electronic documents associated with the site visit. To assess the reliability of the site visit data, we reviewed documentation on the tribal information management database, interviewed relevant Commission officials, and compared the data with published information on the number of site visits reported annually in recent Commission performance reports for 2012 and 2013. We found the data to be sufficiently reliable for our purposes.

We also obtained and analyzed available revenue and compliance data from the Commission's financial and agreed-upon procedures database for fiscal years 2009 through 2013. Specific data we obtained and analyzed included: gross gaming revenue data, net income data, data on noncompliance with internal control standards reported in agreed-upon procedure reports, and the audit risk level assigned by Commission auditors to each gaming operation based on review of submitted financial statements and agreed-upon-procedure reports. To assess the reliability of this data, we reviewed documentation on the database and asked follow-up questions of knowledgeable Commission officials to determine the extent to which the database included safeguards for data quality. In addition, for audit risk data and agreed-upon procedures data, as part of our analysis, we conducted testing for missing data. Due to confidentiality concerns, Commission officials ran our financial-related queries. Given the limited number of individuals that have access to this database, the Commission's internal review processes that include management review of samples of data, and how the data is linked to the fees the Commission collects for its operations, we found the financial and agreed-upon procedures reports database sufficiently reliable for our purposes.

We collected and analyzed Commission documentation on the training and technical assistance it provides to tribes. Specifically, we reviewed information related to training and technical assistance since implementation of the Commission's Assistance, Compliance and Enforcement initiative in 2011 contained in the Commission's budget

justification documents for fiscal years 2010 and 2013 and the Commission's strategic plans for fiscal years 2009 through 2014 and fiscal years 2014 through 2018. We reviewed and analyzed performance measures data reported by the Commission on its training and technical assistance to tribes for fiscal years 2011 to fiscal year 2013. We also reviewed the Commission's (1) Training and Technical Assistance 2011 Survey Summary; (2) presentation slides on the Training and Technical Assistance 2011 Survey; (3) Annual Report of Training and Technical Assistance Events Covering Fiscal Year 2013 and (4) most current Technical Assistance and Training Catalog, dated August 2011. We also interviewed current Commissioners, Commission headquarters staff, and Directors of each of the Commission's seven regional offices for further information and clarification on the Commission's role in Indian gaming and interviewed about their oversight and assistance activities.

We also reviewed publicly available information on all of the Commission's enforcement actions from fiscal year 2005 through fiscal year 2014 to determine the number and type of enforcement actions, reasons for the enforcement actions, and the amount of time that elapsed before an enforcement action was taken. We verified enforcement action information with Commission officials. In addition, we collected and analyzed documentation on 16 letters of concern the Commission sent in fiscal years 2013 and 2014 to notify tribal gaming operations about potential compliance issues. We focused our review of the letters of concern sent in these 2 fiscal years, to enable review of letters sent after the Commission's amendment of its compliance and enforcement regulations in fiscal year 2012. We reviewed the letters to determine whether the Commission clearly identified the letter as a letter of concern and whether the Commission included a time period for the gaming operation to respond to the letter. We also requested and reviewed available documentation on tribal actions taken to address potential compliance issues identified in these letters.

We conducted this performance audit from November 2013 to June 2015 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 provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Legal Appendix on IGRA and Sovereign Immunity

Like federal and state governments, Indian tribes are immune from lawsuits unless they have waived their sovereign immunity in a clear and unequivocal manner—such as including a statement waiving sovereign immunity in the tribal-state gaming compact—or a federal treaty or law has expressly abrogated or limited tribal sovereign immunity.¹ The Indian Gaming Regulatory Act (IGRA) includes provisions limiting both state and tribal sovereign immunity in certain circumstances. This allows states and tribes to sue each other. According to IGRA’s legislative history, given the unequal balance between tribal and state governmental interests, the Senate Committee on Indian Affairs decided “to grant tribes the right to sue a state if a compact is not negotiated” as the “least offensive option to encourage states to deal fairly with tribes.”² Allowing the states to sue tribes was a response to a 1987 Supreme Court decision that found states lacked any authority over gaming on Indian lands,³ thus allowing states to have some measure of authority over it.

Court decisions have limited the effect of these provisions, however. Specifically, a Supreme Court decision in 1996 holding that IGRA’s provision limiting state sovereign immunity is unconstitutional has prevented tribes from bringing the lawsuits envisioned by that provision. Furthermore, a Supreme Court decision in 2014 regarding IGRA’s limitation of tribal sovereign immunity has highlighted the limited circumstances under which states can sue tribes over class III gaming.

State Sovereign Immunity

IGRA requires states to negotiate in good faith with tribes that want to enter into the compacts necessary for tribes to conduct class III gaming. In addition, IGRA provides for tribes to sue states in federal court for failure to enter into negotiations for such a compact or to negotiate in good faith.⁴ If, after a successful tribal lawsuit, the state and tribe cannot

¹U.S. Const., amend. XI; *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (the Eleventh Amendment provides for state sovereign immunity); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (noting that Indian tribes have long been recognized as possessing the common law immunity from suit traditionally enjoyed by sovereign powers but tribal sovereign immunity is subject to the plenary control of Congress).

²S. Rep. No. 100-446, at 14 (1988).

³*California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

⁴25 U.S.C. § 2710(d)(7)(A)(i).

agree on a compact, IGRA's dispute resolution provision is triggered.⁵ If the dispute resolution procedure does not result in a compact, IGRA requires the Secretary of the Interior to issue Secretarial procedures to govern the tribe's class III gaming.⁶

However, a 1996 Supreme Court decision finding that the Eleventh Amendment prevents Congress from authorizing lawsuits by tribes against states to enforce laws like IGRA that were enacted under the Indian Commerce Clause invalidated IGRA's provision limiting state sovereign immunity.⁷ Without IGRA's provision limiting state sovereign immunity, tribes cannot sue states that refuse to negotiate or fail to negotiate in good faith unless states waive their sovereign immunity.⁸ As federal courts have noted, if states do not waive their sovereign

⁵Specifically, if the federal district court concludes that the state failed to negotiate in good faith to conclude a tribal-state compact, then the court must order the state and tribe to conclude such a compact within 60 days. 25 U.S.C. § 2710(d)(7)(B)(iii). If they do not conclude such a compact within the 60 days, then IGRA's dispute resolution provision is triggered, and the tribe and state must each submit to a court-appointed mediator a proposed compact that represents their last best offer for a compact. 25 U.S.C. § 2710(d)(7)(B)(iv). If the state consents within 60 days to the proposed compact the mediator has selected as best comporting with the terms of IGRA, any other applicable federal law and the findings of the court, it becomes the tribal-state compact. 25 U.S.C. § 2710(d)(7)(B)(vi).

⁶If the state does not consent within the 60 days, the mediator must notify the Secretary of the Interior, who is required to prescribe procedures, in consultation with the Indian tribe, under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction. The procedures must be consistent with the proposed compact selected by the mediator, IGRA, and relevant provisions of state law. 25 U.S.C. § 2710(d)(7)(B)(vii).

⁷*Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996). The Indian Commerce Clause authorizes Congress to regulate commerce with Indian tribes. See U.S. const., art. I, § 8, cl. 3. The clause is the most often cited basis for modern legislation regarding Indian tribes.

⁸Tribes cannot sue state officials in lieu of the state because the Supreme Court's 1996 decision also held that IGRA's dispute resolution process had significantly fewer remedies than those available in a lawsuit against state officials and, therefore, Congress intended to limit relief to those remedies. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 73-76 (1996).

immunity—and many have not⁹—tribes must accept the state's terms to be able to operate class III gaming legally.¹⁰ In addition to acknowledging the tribes' position and inability to sue states following the Supreme Court's 1996 decision, two federal circuit courts have noted that Congress could take action to remedy it, but IGRA has not been amended.¹¹ At least two federal courts have suggested that the federal government could sue states that refuse to negotiate or fail to negotiate in good faith

⁹Since the Supreme Court's 1996 decision, federal courts have dismissed several lawsuits tribes brought against states because the states did not waive their sovereign immunity. See e.g., *Santee Sioux Tribe of Neb. v. Nebraska*, 121 F.3d 427 (8th Cir. 1997); *Mescalero Apache Tribe v. New Mexico*, 131 F.3d 1379 (10th Cir. 1997), *Ponca Tribe of Okla. v. Oklahoma*, 89 F.3d 690 (10th Cir. 1996). However, California, by statute, has waived its sovereign immunity for lawsuits brought by tribes alleging that the state has refused to enter into negotiations over a compact or amendment to a compact; or negotiate in good faith, as well as for lawsuits alleging that the state has violated the terms of a compact. Cal. Govt. Code § 98005.

¹⁰*Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1026 n.8 (9th Cir. 2010) (noting that tribes in states that have not waived their Eleventh Amendment immunity for IGRA suits have no recourse to challenge the validity of revenue sharing, and some, therefore, choose to accept revenue sharing rather than go without a compact); *United States v. Spokane Tribe of Indians*, 139 F.3d 1297, 1301 (9th Cir. 1998) (noting that nothing now protects the tribe if the state refuses to bargain in good faith or at all; the state holds all the cards (so to speak)); *New Mexico v. Dep't of the Interior*, No. 1:14-cv-695, slip op. at 4 (D.N.M. Oct. 17, 2014), *appeal docketed*, No. 14-2222 (10th Cir. Dec. 12, 2014) (noting that the *Seminole* decision seriously weakened Indian tribes' bargaining power under IGRA because it made unobtainable tribes' sole remedy for state's bad faith).

¹¹*Pueblo of Sandia v. Babbitt*, 47 F. Supp. 2d 49, 57 (D.D.C. 1999) (noting, in the court's opinion, that Congress's time might be well spent examining whether the original goals and mechanisms of the IGRA have been emaciated by the judicial and executive branches and whether the statute should be reformed or revised to recalibrate a balance that has tipped drastically in favor of the states at the expense of tribal sovereignty); *United States v. Spokane Tribe of Indians*, 139 F.3d 1297, 1302 (9th Cir. 1998) ("we are left, then, with a tribe that believes it has followed IGRA faithfully and has no legal recourse against a state that allegedly hasn't bargained in good faith. Congress did not intentionally create this situation and would not have countenanced it had it known then what we know now...Congress could return to the statute and come up with a new scheme that is both equitable and constitutional").

on behalf of tribes but, as of March 2015, the Department of Justice has not brought any such lawsuits.¹²

In a *Federal Register* notice, the Department of the Interior (Interior) recognized that the Supreme Court's 1996 decision allows states to create an effective state veto over IGRA's dispute resolution system and stalemate the compacting process by not waiving their sovereign immunity.¹³ In 1999, Interior issued a regulation, 25 C.F.R. Part 291—simply known as Part 291—that provides for the Secretary to issue class III gaming procedures after a tribe sues a state for not negotiating in good faith, and the state refuses to waive its sovereign immunity from suit.¹⁴ As of March 2015, eight tribes have sought to obtain Secretarial procedures under Part 291 but Interior has not issued any procedures.¹⁵ However, in 2008, the U.S. Court of Appeals for the Fifth Circuit held that IGRA did not authorize the Secretary to promulgate Part 291 and that the

¹²See *United States v. Spokane Tribe of Indians*, 139 F.3d 1297, 1301 (9th Cir. 1998) (noting that the United States might sue on behalf of a tribe and force the state into a compact because the Supreme Court has held that sovereign immunity does not prevent the federal government from suing states); *New Mexico v. Dep't of the Interior*, No. 1:14-cv-695, slip op. at 27 (D.N.M. Dec. 15, 2014), *appeal docketed*, No. 14-2222 (10th Cir. Dec. 12, 2014) (noting that while the Pueblo of Pojoaque is effectively precluded from obtaining a ruling on its allegations of bad faith, it appears that nothing prevents the United States from doing so as the Pueblo's trustee).

¹³64 Fed. Reg. 17535, 17536 (Apr. 12, 1999).

¹⁴64 Fed. Reg. 17535, 17536 (Apr. 12, 1999), *codified at* 25 C.F.R. Part 291. One federal court has described Part 291 as preventing tribal gaming from becoming a compact-or-nothing prospect after the Supreme Court's 1996 decision by making IGRA's river card—regulations allowing gaming without a compact—available to a tribe on the flop, before a federal court has ruled on the tribe's allegations of bad faith. The court also noted that the state, of course, did not like this turn of events: if valid, the regulations prevent the state from using its Eleventh Amendment sovereign immunity as a trump card to force tribes to negotiate on the state's terms or not conduct gaming at all. *New Mexico v. Dep't of the Interior*, No. 1:14-cv-695, slip op. at 7 (D.N.M. Dec. 15, 2014), *appeal docketed*, No. 14-2222 (10th Cir. Dec. 12, 2014).

¹⁵Two of the applications became moot because the tribes (Seminole Tribe of Florida and Confederated Tribes of the Colville Reservation) subsequently entered into tribal-state gaming compacts, two more applications (Kickapoo Traditional Tribe of Texas and the Jena Band of Choctaw Indians) became moot after the 5th Circuit's decision in *Texas v. United States* (discussed below), one was denied (Santee Sioux Nation), and two were put on hold (Miccosukee Tribe of Indians and Poarch Band of Creeks). A decision by the federal district court in New Mexico prevented Interior from taking action on the eighth application (Pueblo of Pojoaque).

regulation was not a reasonable interpretation of IGRA.¹⁶ As a result, the regulation is invalid in the states located in the Fifth Circuit—Mississippi, Louisiana, and Texas. Other federal appeals courts have not ruled on the regulation’s validity, although a case is pending before the U.S. Court of Appeals for the Tenth Circuit Court.¹⁷ According to a federal district judge, if Part 291 is not available to tribes, they must negotiate with states, essentially on the states’ terms, or they would not have legal authority to conduct class III gaming.¹⁸

Tribal Sovereign Immunity

While the Supreme Court’s 1996 decision affected tribes’ ability to bring lawsuits against states, a 2014 Supreme Court decision and other recent cases, including cases currently pending before federal courts, have and will affect states’ ability to sue Indian tribes to enforce IGRA. IGRA limits tribal sovereign immunity for lawsuits by states to enjoin, or stop, class III gaming on Indian lands conducted in violation of a tribal-state gaming

¹⁶*Texas v. United States*, 497 F.3d 491 (5th Cir. 2007), *cert. denied sub nom, Kickapoo Traditional Tribe v. Texas*, 555 U.S. 881 (2008). The court said that Part 291 was not a reasonable interpretation of IGRA because the role the Secretary plays and the power he wields under Part 291 bear no resemblance to the Secretarial power expressly delegated by Congress under IGRA. *Id.* at 508-09.

¹⁷In October 2014, a federal district court in New Mexico ruled that Part 291 runs contrary to Congress’ clear intent—that the Secretary may only adopt class III gaming procedures after a federal court finds a state has failed to negotiate in good faith and ordered mediation between the parties—and thus is unenforceable. *New Mexico v. Dep’t of the Interior*, No. 1:14-cv-695, slip op. at 25-6 (D.N.M. Oct. 17, 2014), *appeal docketed*, No. 14-2222 (10th Cir. Dec. 12, 2014). The tribe and federal government appealed the district court’s decision to the Tenth Circuit, which has not ruled in the case as of May 2015.

¹⁸*New Mexico v. Dep’t of the Interior*, No. 1:14-cv-695, slip op. at 20 (D.N.M. Oct. 17, 2014), *appeal docketed*, No. 14-2222 (10th Cir. Dec. 12, 2014).

compact.¹⁹ If the class III gaming is not located on Indian lands or does not violate a compact, in 2014, the Supreme Court said that states must resort to other mechanisms, such as lawsuits against the responsible tribal officials or bargaining in the gaming compact for a waiver of the tribe's sovereign immunity for such a lawsuit to enforce IGRA.²⁰

Recent court decisions, however, have raised questions about states' ability to bring lawsuits under IGRA against tribal officials for class III gaming that is not located on Indian lands or does not violate a compact. First, the Supreme Court noted in a 2014 decision that IGRA may not authorize states to bring lawsuits against tribal officials for violating the act by conducting class III gaming outside of Indian lands.²¹ Second, a

¹⁹25 U.S.C. § 2710(d)(7)(A)(ii). Courts have dismissed several lawsuits brought by states that do not satisfy the requirements of section 2710(d)(7)(A)(ii). *Michigan v. Bay Mills Indian Cmty.*, __ U.S. __, 134 S.Ct. 2024, 2034 n.6 (2014) (noting that the statutory abrogation in 25 U.S.C. § 2710(d)(7)(A)(ii) does not cover all suits to enjoin gaming on Indian lands because it does not allow a state to sue a tribe for all class III gaming activity located on Indian lands, but only for such gaming as is conducted in violation of any tribal-state compact that is in effect); *Oklahoma v. Hobia*, 775 F.3d 1204, 1205-6 (10th Cir. 2014), *petition for cert. filed*, (U.S. Mar. 25, 2015) (No. 14-1177) (holding that any federal cause of action brought pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii) to enjoin class III gaming activity must allege and ultimately establish that the gaming is located on Indian lands); *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1242 (11th Cir. 1999) (dismissing state's lawsuit to enjoin the tribe's class III gaming operation due to the tribe's sovereign immunity because there was no tribal-state gaming compact in effect); *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1060 (9th Cir. 1997) (dismissing the state's lawsuit because the activity it sought to enjoin was not expressly prohibited by the tribal-state gaming compact). *Cf. Ho-Chunk Nation v. Wisconsin*, 512 F.3d 921, 933-34 (7th Cir. 2008) (holding that a proper interpretation of section 2710(d)(7)(A)(ii) is not that federal jurisdiction exists over a suit to enjoin class III gaming whenever *any* clause in a tribal-state compact is violated, but rather that jurisdiction exists only when the alleged violation relates to one of the seven items enumerated in 25 U.S.C. § 2710(d)(3)(C)(i-vii)); *Mescalero Apache Tribe v. New Mexico*, 131 F.3d 1379, 1385 (10th Cir. 1997) (noting that section 2710(d)(7)(A)(ii) waived tribal sovereign immunity in the narrow category of cases where compliance with IGRA's provisions is at issue and where only declaratory or injunctive relief is sought).

²⁰*Michigan v. Bay Mills Indian Cmty.*, __ U.S. __, 134 S.Ct. 2024, 2035 (2014). States are able to bring lawsuits against tribal officials for conduct that violates federal law because the Supreme Court has ruled that such suits are not barred by tribal sovereign immunity. Michigan has filed suit against members of the Sault Ste. Marie Tribe of Chippewa Indians' Board of Directors and Tribal Gaming Commission Tribal Gaming Authority for allegedly violating their compact by submitting applications to the Secretary of the Interior to take land into trust in Lansing and Huron, Michigan, for gaming. *Michigan v. Payment*, No. 12-cv-962 (D. Mich. filed Feb. 3, 2015). As of May 2015, the federal district court had not ruled on the case.

²¹*Michigan v. Bay Mills Indian Cmty.*, __ U.S. __, 134 S.Ct. 2024, 2029 n.2 (2014).

federal circuit court has ruled that a state's lawsuit against tribal officials for allegedly conducting class III gaming outside of Indian lands cannot be brought under IGRA.²² Moreover, a federal district court ruled in 2014 that IGRA does not authorize a state to bring suit against tribal gaming officials for allegedly conducting class III gaming on Indian lands without a compact.²³

In addition, a 2014 federal circuit court decision raised questions about whether the other mechanism the Supreme Court identified—broad waivers of tribal sovereign immunity in gaming compacts—would permit states to sue tribal officials for violating IGRA. Specifically, the court noted that such a waiver might not suffice to permit states to bring lawsuits against tribal officials because the dispute resolution provision in the compact at issue requires arbitration and thus effectively forbids the state from suing tribal officials for compact violations.²⁴

According to the Supreme Court, if states are not able sue tribes or tribal officials to stop class III gaming operations that violate IGRA but do not occur on Indian lands or violate a tribal-state compact, IGRA authorizes the federal government to enforce the law.²⁵ The federal government has sometimes filed a lawsuit to stop gaming activity that violates IGRA.²⁶ In addition, the National Indian Gaming Commission has issued closure

²²*Oklahoma v. Hobia*, 775 F.3d 1204, 1213 (10th Cir. 2014), *petition for cert. filed*, (U.S. Mar. 25, 2015) (No. 14-1177) (holding that the state's complaint alleging that the tribal officials' efforts to conduct class III gaming somewhere other than on Indian lands as defined in IGRA fails on its face to state a valid claim for relief under IGRA).

²³*Alabama v. PCI Gaming Auth.*, 15 F. Supp. 3d 1161, 1187 (M.D. Ala. 2014), *appeal argued*, No. 14-12004 (11th Cir. Jan. 13, 2015) (holding that IGRA did not authorize the state to bring a civil enforcement action to enjoin allegedly unlawful class III gaming on Indian lands). The case has been appealed and is pending before the U.S. Court of Appeals for the 11th Circuit.

²⁴*Oklahoma v. Hobia*, 775 F.3d 1204, 1213-14 (10th Cir. 2014), *petition for cert. filed*, (U.S. Mar. 25, 2015) (No. 14-1177) (noting that the tribal-state compact at issue effectively forbids the state from filing suit against tribal officials for violating the compact because it strictly limits the remedies available).

²⁵See *Michigan v. Bay Mills Indian Cmty.*, ___ U.S. ___, 134 S.Ct. 2024, 2034 n.6 (2014).

²⁶See e.g., *United States v. Spokane Indian Tribe*, 139 F.3d 1297 (9th Cir. 1998); *United States v. Santee Sioux Tribe of Nebraska*, 135 F.3d 558 (8th Cir. 1998); *United States v. Seminole Tribe of Fla.*, 45 F. Supp. 2d 1330 (M.D. Fla. 1999); *United States v. Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation*, 983 F. Supp. 1317 (C.D. Cal. 1997).

orders to tribes for operating class III gaming without a tribal-state compact.²⁷

²⁷ See e.g., the following National Indian Gaming Commission closure orders (CO), notices of violation (NOV) and settlement agreements (SA): CO-98-01; CO-99-07; CO-99-06; NOV/CO-99-01; NOV/CO-99-05; NOV/CO-99-04; SA/NOV/CO-99-10; NOV/CO-00-01; NOV/CO-00-06; CO-04-01.

Appendix III: Information on State Regulation of Class III Indian Gaming (Corresponds to Fig. 6)

In this appendix, table 7 provides additional details on the state regulation of class III Indian gaming that are part of the rollover information contained in interactive figure 6.

Table 7: Information on State Regulation of Class III Indian Gaming in Figure 6

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
Arizona	<p>Number of gaming tribes: 16</p> <p>Number of gaming operations by class:</p> <p>Class II: 0</p> <p>Class II/III: 19</p> <p>Class III: 4</p>	<p>State process to enter into compact:</p> <ul style="list-style-type: none"> • Governor negotiates and executes compact. Ariz. Rev. Stat. § 5-601(A). • A 1996 ballot initiative required the Governor to enter into a specific compact under certain circumstances, which resulted in one compact. <i>Salt River Pima-Maricopa Indian Cmty. v. Hull</i>, 190 Ariz. 97 (1997); 63 Fed. Reg. 49923 (Sept. 18, 1998) <p>Revenue sharing: Yes</p>	<p>Regulatory role: Active</p> <p>State regulatory agency:</p> <ul style="list-style-type: none"> • Department of Gaming <p>Number of regulatory staff: 100</p> <p>State fiscal year 2013 funding for regulating Indian gaming: \$9,725,000</p> <p>State performed background checks: Yes, required for employees and vendors</p> <p>State issued licenses and/or certifications: Yes, certifies suitability of employees and vendors</p> <p>Monitoring frequency: Weekly, monthly, annually</p>
California	<p>Number of gaming tribes: 61</p> <p>Number of gaming operations by class:</p> <p>Class II: 8</p> <p>Class II/III: 46</p> <p>Class III: 16</p>	<p>State process to enter into compact:</p> <ul style="list-style-type: none"> • Governor negotiates and executes compact, which is subject to ratification by statute approved by the state legislature and signed by the Governor. • As a state law, ratification of compact can be subject to voter referendum. • Cal. Gov't. Code § 12012.25. <p>Revenue sharing: Yes</p>	<p>Regulatory role: Moderate</p> <p>State regulatory agency:</p> <ul style="list-style-type: none"> • Bureau of Gambling Control • Gambling Control Commission <p>Number of regulatory staff: 136</p> <p>State fiscal year 2013 funding for regulating Indian gaming: \$20,082,000</p> <p>State performed background checks: Yes, required for key employees, vendors, and financial sources. Under some compacts, required for tribal gaming agency members.</p> <p>State issued licenses and/or certifications: Yes, certifies suitability of key employees, vendors, financial sources and tribal gaming agency members under some compacts.</p> <p>Monitoring frequency: Annually, as needed</p>

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
Colorado	Number of gaming tribes: 2 Number of gaming operations by class: Class II: 0 Class II/III: 2 Class III: 1	State process to enter into compact: <ul style="list-style-type: none"> Governor negotiates and executes compact, after consultation with the Colorado Limited Gaming Control Commission. Colo. Rev. Stat. §§ 12-47.2-101 to 12-47.2-102. Revenue sharing: No	Regulatory role: Limited State regulatory agency: <ul style="list-style-type: none"> Department of Revenue, Division of Gaming Number of regulatory staff: 0 State fiscal year 2013 funding for regulating Indian gaming: \$0 State performed background checks: Yes, required for management employees only State issued licenses and/or certifications: No Monitoring frequency: Does not monitor
Connecticut	Number of gaming tribes: 2 Number of gaming operations by class: Class II: 0 Class II/III: 2 Class III: 0	State process to enter into compact: <ul style="list-style-type: none"> Governor negotiates and executes compact, which did not require approval by the legislature until June 20, 1994. Since that date, compact and compact amendments have required approval by the legislature. Conn. Gen. Stat. § 3-6c. Revenue sharing: Yes	Regulatory role: Active State regulatory agency: <ul style="list-style-type: none"> Department of Consumer Protection, Gaming Division Number of regulatory staff: 16 State fiscal year 2013 funding for regulating Indian gaming: \$2,350,000 State performed background checks: Yes, required for employees and vendors State issued licenses and/or certifications: Yes, licenses employees and vendors Monitoring frequency: Daily
Florida	Number of gaming tribes: 2 Number of gaming operations by class: Class II: 1 Class II/III: 6 Class III: 1	State process to enter into compact: <ul style="list-style-type: none"> Governor negotiates and executes the compact. Compact must be ratified by the state legislature. Fla. Stat. ch. 285.712. Revenue sharing: Yes	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering Number of regulatory staff: 4 State fiscal year 2013 funding for regulating Indian gaming: \$270,000 State performed background checks: No State issued licenses and/or certifications: No Monitoring frequency: Monthly

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
Idaho	Number of gaming tribes: 4 Number of gaming operations by class: Class II: 0 Class II/III: 3 Class III: 6	State process to enter into compact: <ul style="list-style-type: none"> • Governor, or designee, negotiates and executes compact. • Compacts that do not meet state statutory requirements must be ratified by the state legislature. • Idaho Code § 67-429A. Revenue sharing: No	Regulatory role: Limited State regulatory agency: <ul style="list-style-type: none"> • Idaho Lottery Number of regulatory staff: 0 State fiscal year 2013 funding for regulating Indian gaming: \$0 State performed background checks: No State issued licenses and/or certifications: No Monitoring frequency: Annual tour of gaming operations
Iowa	Number of gaming tribes: 3 Number of gaming operations by class: Class II: 0 Class II/III: 2 Class III: 1	State process to enter into compact: <ul style="list-style-type: none"> • The Director of the Department of Inspections and Appeals negotiates and executes compact. Iowa Code § 10A.104(10). Revenue sharing: No	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> • Department of Inspections and Appeals Number of regulatory staff: 1 State fiscal year 2013 funding for regulating Indian gaming: \$130,000 State performed background checks: Yes, background checks on employees are performed as requested by tribes State issued licenses and/or certifications: No Monitoring frequency: Annually
Kansas	Number of gaming tribes: 5 Number of gaming operations by class: Class II: 1 Class II/III: 3 Class III: 1	State process to enter into compact: <ul style="list-style-type: none"> • Governor or designated representative negotiates compact, but the Joint Committee on State-Tribal Relations may recommend modifications. • State legislature must approve compact. • Kan. Stat. Ann. § 46-2302. Revenue sharing: No	Regulatory role: Active State regulatory agency: <ul style="list-style-type: none"> • State Gaming Agency Number of regulatory staff: 23 State fiscal year 2013 funding for regulating Indian gaming: \$1,839,000 State performed background checks: Yes, required for employees and vendors State issued licenses and/or certifications: No Monitoring frequency: Weekly, monthly

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
Louisiana	Number of gaming tribes: 4 Number of gaming operations by class: Class II: 1 Class II/III: 3 Class III: 0	State process to enter into compact: <ul style="list-style-type: none"> The Governor and, since 1993, the Governor's Office of Indian Affairs, negotiates compacts. The Governor enters into and signs the compacts. La. Rev. Stat. Ann. §§ 46:2302(6), (8), 46:2303. Revenue sharing: No	Regulatory role: Active State regulatory agency: <ul style="list-style-type: none"> State Police, Gaming Enforcement Division Number of regulatory staff: 20 State fiscal year 2013 funding for regulating Indian gaming: \$1,899,000 State performed background checks: Yes, required for employees and vendors State issued licenses and/or certifications: Yes, certifies suitability of employees and vendors Monitoring frequency: Daily, weekly, monthly
Michigan	Number of gaming tribes: 12 Number of gaming operations by class: Class II: 0 Class II/III: 17 Class III: 6	State process to enter into compact: <ul style="list-style-type: none"> Governor negotiates and executes compact, according to state officials. State legislature approves compact. <i>Taxpayers of Mich. Against Casinos v. State</i>, 685 N.W.2d 221 (Mich. 2004). Revenue sharing: Yes	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> Gaming Control Board Number of regulatory staff: 6 State fiscal year 2013 funding for regulating Indian gaming: \$719,000 State performed background checks: No State issued licenses and/or certifications: No Monitoring frequency: Annually, biannually
Minnesota	Number of gaming tribes: 11 Number of gaming operations by class: Class II: 21 Class II/III: 15 Class III: 4	State process to enter into compact: <ul style="list-style-type: none"> Governor or designated representatives, which must include two members from the state Senate and two from the state House, two of whom must be Chairs of committees with jurisdiction over gambling policy, negotiate and execute compact. Minn. Stat. § 3.9221(2). Revenue sharing: No	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> Department of Public Safety, Alcohol and Gambling Enforcement Number of regulatory staff: 1 State fiscal year 2013 funding for regulating Indian gaming: \$187,000 State performed background checks: Yes, required for employees and vendors State issued licenses and/or certifications: Yes, licenses vendors Monitoring frequency: Annually, as needed

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
Mississippi	Number of gaming tribes: 1 Number of gaming operations by class: Class II: 0 Class II/III: 1 Class III: 2	State process to enter into compact: <ul style="list-style-type: none"> • Governor negotiates and executes compact. <i>Willis v. Fordice</i>, 850 F. Supp. 523, 532-33 (S.D. Miss. 1994), <i>aff'd</i>, 55 F.3d 633 (5th Cir. 1995). Revenue sharing: No	Regulatory role: Limited State regulatory agency: <ul style="list-style-type: none"> • Gaming Commission Number of regulatory staff: 0 State fiscal year 2013 funding for regulating Indian gaming: \$0 State performed background checks: No State issued licenses and/or certifications: No Monitoring frequency: Does not monitor
Montana	Number of gaming tribes: 8 Number of gaming operations by class: Class II: 4 Class II/III: 6 Class III: 6	State process to enter into compact: <ul style="list-style-type: none"> • Governor or designee negotiates compact. • State Attorney General must approve compact. • Mont. Code Ann. §§ 18-11-103(2), 18-11-105(1). Revenue sharing: No	Regulatory role: Limited State regulatory agency: <ul style="list-style-type: none"> • Department of Justice, Gambling Control Division Number of regulatory staff: 0 State fiscal year 2013 funding for regulating Indian gaming: \$0 State performed background checks: Yes, but only as requested and paid for by tribes State issued licenses and/or certifications: Yes, but only as requested and paid for by tribes Monitoring frequency: Does not monitor
Nevada	Number of gaming tribes: 4 Number of gaming operations by class: Class II: 0 Class II/III: 1 Class III: 4	State process to enter into compact: <ul style="list-style-type: none"> • The compacts are signed by the Governor, a representative of the state Attorney General's office, Board of Examiners, and the Chair of the state Gaming Control Board. Revenue sharing: No	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> • Gaming Control Board • Office of the Attorney General Number of regulatory staff: 1 State fiscal year 2013 funding for regulating Indian gaming: <\$300,000 State performed background checks: Yes, varies by compact State issued licenses and/or certifications: Yes, varies by compact Monitoring frequency: Every 2 to 3 years

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
New Mexico	Number of gaming tribes: 14 Number of gaming operations by class: Class II: 1 Class II/III: 13 Class III: 12	State process to enter into compact: <ul style="list-style-type: none"> Compact terms are specified in state law; tribes join compact by enacting a tribal resolution. N.M. Stat. Ann. § 11-13-1. Governor and tribal official execute revenue sharing agreement, with terms that are specified in state law. N.M. Stat. Ann. § 11-13-2. Revenue sharing: Yes	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> Gaming Control Board Number of regulatory staff: Unknown State fiscal year 2013 funding for regulating Indian gaming: \$868,000 State performed background checks: Unknown State issued licenses and/or certifications: Unknown Monitoring frequency: Annually
New York	Number of gaming tribes: 4 Number of gaming operations by class: Class II: 4 Class II/III: 4 Class III: 1	State process to enter into compact: <ul style="list-style-type: none"> Governor negotiates and executes compact as authorized by state law. Compact deemed ratified by the state legislature upon the Governor's certification that the compact meets specified statutory requirements. N.Y. Exec. Law § 12. Revenue sharing: Yes	Regulatory role: Active State regulatory agency: <ul style="list-style-type: none"> State Gaming Commission Number of regulatory staff: 49 State fiscal year 2013 funding for regulating Indian gaming: \$4,507,000 State performed background checks: Yes, required for employees and vendors State issued licenses and/or certifications: Yes, certifies suitability of employees and vendors Monitoring frequency: Daily, weekly, monthly
North Carolina	Number of gaming tribes: 1 Number of gaming operations by class: Class II: 1 Class II/III: 0 Class III: 1	State process to enter into compact: <ul style="list-style-type: none"> Governor negotiates and executes the compact. N.C. Gen. Stat. § 147-12(a)(14). Revenue sharing: Yes, compact includes revenue sharing provision.	Regulatory role: Limited State regulatory agency: <ul style="list-style-type: none"> Office of the Governor Number of regulatory staff: 0 State fiscal year 2013 funding for regulating Indian gaming: \$0 State performed background checks: No State issued licenses and/or certifications: Yes, tests and approves games to be offered by the tribe Monitoring frequency: Does not monitor

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
North Dakota	Number of gaming tribes: 5 Number of gaming operations by class: Class II: 4 Class II/III: 4 Class III: 2	State process to enter into compact: <ul style="list-style-type: none"> • Governor or designee negotiates the compact and is authorized to execute the compact after holding a public hearing. N.D. Cent. Code § 54-58-03. Revenue sharing: No	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> • Office of Attorney General, Gaming Division Number of regulatory staff: 4 State fiscal year 2013 funding for regulating Indian gaming: \$143,000 State performed background checks: Yes, state or federal background check required for employees and management contractors State issued licenses and/or certifications: No Monitoring frequency: Monthly, annually
Oklahoma	Number of gaming tribes: 30 Number of gaming operations by class: Class II: 7 Class II/III: 112 Class III: 4	State process to enter into compact: <ul style="list-style-type: none"> • Compact terms specified in state law. • Tribes accept terms through signature of tribal Chief Executive Officer. • Okla. Stat. tit. 3A, §§ 280-281. Revenue sharing: Yes	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> • Office of Management and Enterprise Services, Gaming Compliance Unit Number of regulatory staff: 3 State fiscal year 2013 funding for regulating Indian gaming: \$1,085,000 State performed background checks: No State issued licenses and/or certifications: No Monitoring frequency: Annually
Oregon	Number of gaming tribes: 8 Number of gaming operations by class: Class II: 1 Class II/III: 6 Class III: 2	State process to enter into compact: <ul style="list-style-type: none"> • Governor negotiates and executes compact. Or. Rev. Stat. § 190.110(3). Revenue sharing: No	Regulatory role: Active State regulatory agency: <ul style="list-style-type: none"> • State Police, Gaming Enforcement Section Number of regulatory staff: 18 State fiscal year 2013 funding for regulating Indian gaming: \$2,325,000 State performed background checks: Yes, required for vendors; performed as requested by tribes for employees State issued licenses and/or certifications: No Monitoring frequency: Daily, weekly, monthly annually

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
South Dakota	Number of gaming tribes: 9 Number of gaming operations by class: Class II: 5 Class II/III: 9 Class III: 0	State process to enter into compact: <ul style="list-style-type: none"> Governor or designee may execute compact after public hearing(s). S.D. Codified Laws § 1-54-4. Revenue sharing: No	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> Commission on Gaming Number of regulatory staff: <1 State fiscal year 2013 funding for regulating Indian gaming: \$30,000 State performed background checks: Yes, required for employees State issued licenses and/or certifications: Yes, licenses vendors Monitoring frequency: Annually
Washington	Number of gaming tribes: 23 Number of gaming operations by class: Class II: 6 Class II/III: 15 Class III: 13	State process to enter into compact: <ul style="list-style-type: none"> The Washington State Gambling Commission Director, or Director's designee, is authorized to negotiate compacts. Proposed compacts must be submitted to State Gambling Commission members and state legislative committees on gaming compacts, which hold public hearings. The State Gambling Commission votes to forward it to Governor for execution. Wash. Rev. Code § 9.46.360. Revenue sharing: No	Regulatory role: Moderate State regulatory agency: <ul style="list-style-type: none"> State Gambling Commission Office of the Attorney General Number of regulatory staff: 43 State fiscal year 2013 funding for regulating Indian gaming: \$4,882,000 State performed background checks: Yes State issued licenses and/or certifications: Yes, certifies suitability of employees and vendors Monitoring frequency: Annually, or more frequently as determined in consultation with tribes
Wisconsin	Number of gaming tribes: 11 Number of gaming operations by class: Class II: 3 Class II/III: 18 Class III: 8	State process to enter compact: <ul style="list-style-type: none"> Governor negotiates and executes compacts. Wis. Stat. § 14.035. Revenue sharing: Yes	Regulatory role: Active State regulatory agency: <ul style="list-style-type: none"> Department of Administration, Division of Gaming Number of regulatory staff: 18 State fiscal year 2013 funding for regulating Indian gaming: \$1,825,000 State performed background checks: Yes, required for vendors State issued licenses and/or certifications: Yes, vendor certification Monitoring frequency: Daily, weekly, monthly, annually, every 1.5 years

**Appendix III: Information on State Regulation
of Class III Indian Gaming (Corresponds to Fig.
6)**

State	Gaming tribes and operations by state as of November 2014	Compacts	State regulation of class III Indian gaming
Wyoming	Number of gaming tribes: 2 Number of gaming operations by class: Class II: 0 Class II/III: 2 Class III: 2	State process to enter compact: <ul style="list-style-type: none"> The Governor's Office and Attorney General's Office are involved in the negotiation of compacts, according to a state official. Revenue sharing: No	Regulatory role: Limited State regulatory agency: <ul style="list-style-type: none"> Office of the Attorney General Number of regulatory staff: 0 State fiscal year 2013 funding for regulating Indian gaming: \$0 State performed background checks: No State issued licenses and/or certifications: No Monitoring frequency: Does not monitor

Sources: GAO analysis of National Indian Gaming Commission data, state laws and relevant court decisions on the compact process, and state information. | GAO-15-355

Appendix IV: Comments from the National Indian Gaming Commission



May 8, 2015

Ms. Anne-Marie Fennell
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Fennell:

Thank you for the opportunity to review and provide comments on the draft report entitled *Indian Gaming: Regulation and Oversight by the Federal Government, States, and Tribes* (GAO-15-355). The National Indian Gaming Commission reviewed the report and generally agrees with its findings and recommendations.

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. 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. The draft report is another tool for the Commission to assess its performance in the regulation of Indian gaming. We recognize there are still opportunities for improvement as we continue to advance the goals of the Indian Gaming Regulatory Act, but it is appropriate to highlight the work we have done. Many of the Commission's specific efforts in this area are outlined further below.

GAO Recommendation 1: To help make an informed decision, the Commission should seek input from states on its proposal to draft updated guidance on class III minimum internal control standards and withdraw its 2005 regulations.

NIGC Response: Earlier this year the Commission 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 Commission 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 prior to and during any rulemaking process. Once drafted, the guidance will be published for comments from the industry stakeholders including states.

NEW MAILING ADDRESS: NIGC/DEPARTMENT OF THE INTERIOR 1849 C Street NW, Mail Stop # 1621 Washington, DC 20240 Tel: 202.632.7003 Fax: 202.632.7066
REGIONAL OFFICES Portland, OR; Sacramento, CA; Phoenix, AZ; St. Paul, MN; Tulsa OK; Oklahoma City, OK
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During the consultations that we have conducted so far, tribes have 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. We will work closely with tribes and states to ensure that there is no void in the regulation of Indian gaming.

GAO Recommendation 2: To improve its ability to assess the effectiveness of its training and technical assistance efforts, the Commission should review and revise, as needed, its performance measures to include additional outcome-oriented measures.

NIGC Response: The Commission has committed itself to measuring the efficacy of its training and technical assistance and making adjustments, where necessary. The Commission is actively working to develop outcome-focused assessments of its effectiveness. Congress, through IGRA, mandated that the NIGC provide tribes with training and technical assistance. As we have discussed with GAO, the Commission's emphasis on training and technical assistance through the ACE initiative, is relatively new. The Commission's focus has been to incorporate this mandate into its overall compliance efforts rather than something that is done simply as a service. In recognition of the value of accurate performance measurements to continued improvement of operational management, the Commission 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 ACE initiative began with findings after 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 Commission has recently developed additional tools to track its operations. These include voluntary internal control assessments and IT threat assessments.

Further, the Commission is considering developing knowledge reviews that will be conducted during training sessions. The draft report recommends that the Commission 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 Commission is currently reviewing this report to ascertain whether it is practical to track and apply individual training results to improvements in IGRA compliance. The Commission anticipates coordinating the development of performance measures with the regulated industry.

GAO Recommendation 3: To help ensure letters of concern are more consistently prepared and responses tracked, the Commission should 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 Commission on potential compliance issues.

NIGC Response: The Commission's regulations related to letters of concern were first promulgated on August 9, 2012, and established a method to garner voluntary compliance through a graduated enforcement process. Additionally, a standardized format for these letters has

**Appendix IV: Comments from the National
Indian Gaming Commission**

already been developed that include action timelines. Finally, the Commission is refining its procedures for tracking responses to these letters.

Thank you for the opportunity to review the draft report and for providing recommendations on how we may better implement the goals of IGRA. If you have any questions, please contact the Commission at 202-632-7003.

Sincerely,



Jonodev O. Chaudhuri
Chairman

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Anne-Marie Fennell, (202)512-3841 or fennella@gao.gov

Staff Acknowledgments

In addition to the individual named above, Jeff Malcolm (Assistant Director), Amy Bush, Jillian Cohen, John Delicath, Justin Fisher, Paul Kazemsky, Dan Royer, Jeanette Soares, Kiki Theodoropoulos, Swati Sheladia Thomas, and Lisa Turner made key contributions to this report.

Appendix VI: Accessible Data

Data Table for Figure 1: Gross Annual Revenues from Indian Gaming, Fiscal Years 1995 to 2013

Fiscal year	Adjusted Indian Gaming Revenue (Dollars in billions, adjusted to 2013 constant dollars)
1995	8.32
1996	9.36
1997	10.81
1998	12.14
1999	13.70
2000	14.83
2001	16.87
2002	19.06
2003	21.30
2004	23.93
2005	26.94
2006	28.77
2007	29.37
2008	28.94
2009	28.75
2010	28.31
2011	28.12
2012	28.31
2013	28.03

Source: GAO analysis of National Gaming Commission data. | GAO-15-355

Data Table for Figure 2: States with Class II and Class III Indian Gaming as of November 2014

	State	Total number of Indian gaming operations with class II and class III gaming in that state, as of November 2014
States with both class II and class III gaming	Arizona	23
	California	70
	Colorado	3
	Connecticut	2
	Florida	8
	Idaho	9
	Iowa	3
	Kansas	5
	Louisiana	4

Appendix VI: Accessible Data

	Michigan	23
	Minnesota	40
	Mississippi	4
	Montana	16
	Nevada[Note A]	5
	New Mexico	26
	New York	9
	North Carolina	2
	North Dakota	10
	Oklahoma	123
	Oregon	9
	South Dakota	14
	Washington	34
	Wisconsin	29
	Wyoming	4
States with only class II gaming	Alabama[Note B]	3
	Alaska	2
	Nebraska	4
	Texas	1

Source: GAO analysis of National Indian Gaming commission data; Map Resources (map). | GAO-15-355

Note: This figure includes gaming on Indian lands pursuant to the Indian Gaming Regulatory Act. Tribes may operate other gaming activities on non-Indian lands. For example, in Alaska—where tribes generally do not have Indian lands as result of the Alaska Native Claims Settlement Act—many tribes conduct charitable gaming pursuant to state law. See Alaska Stat. § 05.15.150.

^aThe number of Indian gaming operations and gaming tribes in Nevada includes a class III gaming operation owned and operated by non-Indians on Indian lands that is licensed by the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, as authorized by 25 U.S.C. § 2710(d)(2)(A). Under the tribal-state compact, this gaming operation is subject to concurrent tribal and state jurisdiction.

^bThe classification of the games in Alabama is in dispute. The Poarch Band of Creeks does not have a gaming compact with the state of Alabama, but the state alleged in a lawsuit that the tribe is offering a class III game. The federal district court dismissed the lawsuit without ruling on whether the game at issue is a class II or class III game. The state has appealed the decision, but the circuit court has yet to rule. *Alabama v. PCI Gaming Auth.*, 15 F. Supp. 3d 1161 (M.D. Ala. 2014), *appeal argued*, No. 14-12004 (11th Cir. Jan. 13, 2015).

Data Table for Figure 3: National Indian Gaming Commission Regions and Offices

Region	Regional office	States	Satellite office
St. Paul Region	St. Paul, Minnesota	Iowa, Michigan, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wyoming	Rapid City, South Dakota
Portland Region	Portland, Oregon	Alaska, Idaho, Oregon, Washington	N/A
Washington, D.C. Region	Washington, D.C.	Alabama, Connecticut, Florida, Louisiana, Mississippi, New York, North Carolina, Washington, D.C.	N/A
Sacramento Region	Sacramento, California	California, Nevada (northern half)	Temecula, California
Phoenix Region	Phoenix, Arizona	Arizona, Colorado, Nevada (southern half), New Mexico	N/A

Region	Regional office	States	Satellite office
Tulsa Region	Tulsa, Oklahoma	Kansas, Oklahoma (eastern half)	N/A
Oklahoma City Region	Oklahoma City, Oklahoma	Oklahoma (western half), Texas	N/A

Sources: National Indian Gaming Commission information; Map Resources (map). | GAO-15-355

Text in Figure 4: Department of the Interior’s (Interior) Compact Review Process

- The tribe and state submit a compact package to Interior that must include the following documentation:
 1. At least one original compact or amendment executed by both the tribe and the state.
 2. A tribal resolution or other document that certifies that the tribe has approved the compact or amendment in accordance with applicable tribal law.
 3. Certification from the Governor or other state representative that he or she is authorized under state law to enter into the compact or amendment.
 4. Any other documentation requested by Interior that is necessary to determine whether to approve or disapprove the compact or amendment.

(25 .F.R. § 293.8)
- As part of Interior’s process, within 10 days of receiving the compact package, Interior’s Office of Indian Gaming conducts an initial review of the package for completeness, and requests additional information from the tribe or state, as needed. During this period, the Office of Indian Gaming also completes an initial analysis of the compact or amendment that flags any potential issues and proposes approval or disapproval.
 - Interior’s Office of the Solicitor conducts a legal review within a separate 10-day period after receiving the compact package, which includes the compact or amendment, supporting documentation and the Office of Indian Gaming’s initial analysis.
- The Office of Indian Gaming finalizes its analysis and provides a copy of the compact or amendment and other relevant information to the Assistant Secretary of Indian Affairs for review.
- The Assistant Secretary of Indian Affairs makes the final approval decision within 45 days of submission by the tribe and state. Under the Indian Gaming Regulatory Act (IGRA), any compacts Interior does not approve or disapprove within 45 days of submission are deemed approved, but only to the extent they are consistent with IGRA. (25 U.S.C. § 2710(d)(8)(C); 25 C.F.R. §§ 293.10(a), 293.12)
- Federal Register notice is published for all approved and deemed approved compacts. (25 C.F.R. § 293.15)
- Interior notifies tribe and state of final decision. (25 C.F.R. § 293.10(b))

Source: GAO analysis of Department of the Interior (Interior) information. | GAO-15-355

Note: According to Interior officials upon receiving a compact for review, Interior’s Office of Indian Gaming provides a copy of the compact to all relevant component agencies, including the Interior’s

Office of the Solicitor. The Office of Indian Gaming and the Solicitor's Office maintain ongoing discussions to address any potentially challenging issues throughout the review process.

Data Table for Figure 5: Maximum Revenue Sharing Payment in 276 Tribal-State Compacts Approved or Deemed Approved as of October 2014

Maximum revenue sharing payment (Percent of gaming revenue)	Number of compacts
0	107
0.1-4.9	1
5-9.9	46
10-14.9	100
15-19.9	8
20-24.9	1
25	13

Source: GAO analysis of tribal-state compacts. | GAO-15-355

Note: Of the 276 compacts represented in the figure, 5 compacts required a fixed payment based on a percentage of gaming revenue.

Data Table for Figure 7: Percentage of Indian Gaming Operations Considered at High Audit Risk by National Indian Gaming Commission Region, Fiscal Year 2009 to Fiscal Year 2013

Percent

Region	Fiscal year 2013	5-year average
Oklahoma City	20.00	26.84
Phoenix	6.25	24.59
Portland	16.00	25.51
Sacramento	28.36	35.13
St. Paul	43.75	41.45
Tulsa	7.02	13.37
Washington, DC	41.38	24.64
All regions	25.97	29.28

Source: GAO analysis of National Indian Gaming Commission data. | GAO-15-355

Text in Appendix IV: Comments from the National Indian Gaming Commission

Page 1

National Indian Gaming Association
 NEW MAILING ADDRESS:
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 1849 C Street NW, Mail Stop #1621
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U.S. Government Accountability Office
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Washington, DC 20548

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Sincerely,
Signed by
Jonodev O. Chaudhuri
Chairman

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