



## NIGC Regulatory Review

by Tracie Stevens

On November 18, 2010, the National Indian Gaming Commission (NIGC) released a Notice of Inquiry (NOI) asking tribes to comment on NIGC regulations. As I outlined in the first article of this series, regulatory review is a priority for this Commission. However, we recognize that relevant and effective regulatory review will only come after we consult with tribes in a meaningful way. As I have stated repeatedly since my confirmation, the new Commission is committed to President Obama's directive to federal agencies to consult with tribes before taking actions with tribal implications. My fellow Commissioners and I endeavor to implement this directive in new and innovative ways.

### Why is Regulatory Review a Priority for the New Commission?

In the Indian Gaming Regulatory Act (IGRA), Congress authorized the NIGC to promulgate regulations and guidelines appropriate to implement the provisions of IGRA. While tribes are primary regulators of Indian gaming and enact their own gaming regulations, the regulatory role of the NIGC is key to ensuring that tribal gaming operates under a comprehensive regulatory framework. Regulations ensure that the Commission functions in a transparent manner and they serve to provide clear standards to the regulated community.

Since my confirmation, the Commission is fully staffed for the first time in several years. As we began to work together and meet with tribes over the past six months, it became clear to Vice-Chairwoman Steffani Cochran, Commissioner Dan Little and myself, that regulatory review must be a priority during our tenure at the NIGC. We heard from tribal leadership, tribal gaming regulators and operators, as well as from game manufacturers and gaming labs that many of our current regulations could be improved. During our time on the job, we also realized that there may be a need for additional regulations to provide clarity for tribes and the regulated community. It is simply good government to take a hard look at our regulations and update them where necessary to better protect the industry. Given that time is limited, these changes must be completed as thoroughly and effectively as possible in a timely fashion.



### What is the Notice of Inquiry?

A NOI is a tool utilized by many federal agencies to solicit input from the public before the agency takes an action, regulatory or otherwise, that affects the industry. The primary intent of the Commission's NOI is to solicit input on the regulations before any revisions are proposed by the NIGC. Typically, the NIGC has issued a proposed regulation and then asked tribes for their comments.

During our consultations over the summer of 2010, tribes repeatedly stated that this method of rulemaking was inappropriate. The Commissioners acknowledge this critique and are dedicated to finding a new method of promulgating regulations that is appropriate. We believe the NOI is a step in that direction.

Recently, the Commission held consultations at eight different locations around the country to hear tribal input on the NOI. The questions in the NOI were derived in part from questions tribes have raised during our tenure, including during the summer 2010 consultations. It is important to state that we have deliberately taken no position in the NOI on which regulations, if any, will be revised. Instead, we will review the input received on the NOI and set our regulatory review agenda after considering that input. We hope this fresh approach to the rulemaking process will not only demonstrate this Commission's commitment to meaningful consultation with tribes, but also results in an agenda that has a significant positive impact on the industry.

There are three primary questions asked by the NOI. First, which regulations need to be revised, removed, or promulgated? Second, how should the Commission prioritize the regulations to be addressed? This question is important because our goal is to focus the Commission's resources on regulations that are necessary to more effectively implement IGRA's policies of protecting Indian gaming as a means of generating tribal revenue, assuring that gaming is conducted fairly and honestly by both the operator and players and ensuring that tribes are the primary beneficiaries of gaming operations. The final question is also very important: by what method should the Commission revise and promulgate particular regulations? The Commission has utilized Tribal Advisory Committees (TAC) in the past with varied success. The most recent attempt to use a TAC resulted in a product that was never finalized. We want to do the right thing, in the right way, with the right timing. In order

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to accomplish this goal, we will strive to work collaboratively with tribal governments.

We are dedicated to ensuring that the process for consultation is transparent. To that end, we will post all comments received on the Tribal Consultation page of our website at [www.nigc.gov](http://www.nigc.gov). We will also transcribe each consultation session and post the transcripts on the Tribal Consultation page of the website. Following these consultations, written comments will be accepted until February 12, 2011. After the comment period closes, the Commission will examine every comment received and create a regulatory review agenda. We commit to thoroughly reviewing and considering every comment received. We understand that there will be disagreements about our decisions and that disagreement is inevitable. However, we commit to explaining our reasoning in reaching a particular decision in a transparent manner. The regulatory review agenda will be accompanied with an explanation for how the agenda was set. All of this material will be public and posted to our website.

We have begun walking down a challenging path. We need tribal governments to engage us and assist us as we undertake this monumental task. The end product will reflect how well NIGC and tribal governments communicate with each other throughout this process. Teamwork and collaboration will be the foundation that will propel us forward in promoting tribal economic development, self-sufficiency and strong tribal governments. ♣

*Tracie Stevens is Chairwoman of the National Indian Gaming Commission (NIGC) and a member of the Tulalip Tribes of Washington. She can be reached by calling (202) 632-7003. For more information about the NIGC, visit [www.nigc.gov](http://www.nigc.gov).*

#### Legal Notice

## Important information about the \$3.4 billion Indian Trust Settlement

### For current or former IIM account holders, Owners of land held in trust or restricted status, or their heirs

There is a proposed Settlement in *Cobell v. Salazar*, a class action lawsuit about individual Indian land held in trust by the federal government. This notice is just a summary. For details, call the toll-free number or visit the website listed below.

The lawsuit claims that the federal government violated its duties by (a) mismanaging trust funds/assets, (b) improperly accounting for those funds, and (c) mismanaging trust land/assets. The trust funds include money collected from farming and grazing leases, timber sales, mining, and oil and gas production from land owned by American Indians/Alaska Natives.

If you are included in the Settlement, your rights will be affected. To object to the Settlement, to comment on it, or to exclude yourself, you should get a detailed notice at [www.IndianTrust.com](http://www.IndianTrust.com) or by calling 1-800-961-6109.

#### Can I get money?

There are two groups or "Classes" in the Settlement eligible for payment. Each Class includes individual IIM account holders or owners of land held in trust or restricted status who were alive on September 30, 2009.

#### Historical Accounting Class Members

- Had an open individual Indian Money account ("IIM") anytime between October 25, 1994 and September 30, 2009, **and**
- The account had at least one cash transaction.
- Includes estates of account holders who died as of September 30, 2009, if the IIM account was still open on that date.

#### Trust Administration Class Members

- Had an IIM account recorded in currently available data in federal government systems any time from approximately 1985 to September 30, 2009, **or**
- Owned trust land or land in restricted status as of September 30, 2009.
- Includes estates of landowners who died as of September 30, 2009 where the trust interests were in probate as of that date. This means you have asked a court to transfer ownership of the deceased landowner's property.

An individual may be included in one or both Classes.

#### What does the Settlement provide?

- A \$1.5 billion fund to pay those included in the Classes.
- A \$1.9 billion fund to buy small interests in trust or restricted land owned by many people.
- Up to \$60 million to fund scholarships to improve access to higher education for Indian youth.
- A government commitment to reform the Indian trust management and accounting system.

#### How much can I get?

- Historical Accounting Class Members will each get \$1,000.
- Trust Administration Class Members will get at least \$500.
- If you own a small parcel of land with many other people, the federal government may ask you to sell it. You will be offered fair market value. If you sell your land it will be returned to tribal control.

If you believe you are a member of either Class and are not receiving IIM account statements, you will need to call the toll-free number or visit the website to register.

#### What are my other rights?

- If you wish to keep your right to sue the federal government about the claims in this Settlement, you must exclude yourself by **April 20, 2011**.
- If you stay in the Settlement you can object to our comment on it by **April 20, 2011**. The detailed notice explains how to exclude yourself or object/comment.

The U.S. District Court for the District of Columbia will hold a hearing on June 20, 2011, to consider whether to approve the Settlement. It will also consider a request for attorneys' fees, costs, and expenses in the amount of \$99.9 million. However, Class Counsel has fee agreements that would pay them 14.75% of the funds created for the Classes, which could result in an award of \$223 million. The Court may award more or less than these amounts based on controlling law. If approved, these payments and related costs will come out of the Settlement funds available for payment to Class Members.

If you wish, you or your own lawyer may ask to appear and speak at the hearing at your own cost. For more information, call or go to the website shown below or write to Indian Trust Settlement, P.O. Box 9577, Dublin, OH 43017-4877.

**For more Information: 1-800-961-6109 [www.IndianTrust.com](http://www.IndianTrust.com)**