




**OFFICE OF  
INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

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Memorandum

To: Eric Eisenstein  
Division Chief, Internal Control and Audit Follow-up,  
Office of Financial Management

Paula Hart  
Director, Office of Indian Gaming,  
Bureau of Indian Affairs

From: Hannibal M. Ware   
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Subject: Verification Review of Recommendations from our Final Report, "Evaluation of BIA's Process to Approve Tribal Gaming Revenue Allocation Plans" (Report No. E-EV-BIA-0071-2002), June 2003  
Report No. ER-VS-BIA-0001-2012

The U.S. Department of the Interior (DOI) Office of Inspector General (OIG) has completed a verification review of the three recommendations presented in the subject evaluation report. The objective of the verification was to determine whether the recommendations were implemented by the Bureau of Indian Affairs (BIA) as reported to the Office of Financial Management (PFM), Office of Policy, Management and Budget. PFM reported to OIG when each of the three recommendations in the subject report had been addressed and provided supporting documentation. As a result, two of the recommendations were reported as closed on September 24, 2010, but not implemented, and, the third recommendation was implemented and closed on April 19, 2011.

Based on our review, we agree that BIA's Office of Indian Gaming attempted to implement the first two recommendations but did not succeed due to resistance from tribal authorities and lack of enforcement capability. BIA concluded that it did not have the authority to force tribes to submit the additional financial information that would have been required to implement OIG's first two recommendations. OIG agrees that there is no express authority in either applicable regulation or statute to require submittal of financial information from tribes to obtain approval for gaming Revenue Allocation Plans (RAPs). DOI and BIA could have, however, used their authority to deny RAPs to effectively compel requested financial information from tribes.

OIG acknowledges that BIA and PFM closed the first two recommendations and verified that the third recommendation was satisfactorily implemented and closed.

## **Background**

The Indian Gaming Regulatory Act (IGRA) of 1988 requires the Secretary of the Interior to approve adequate plans for allocating tribes' net gaming revenues—especially with respect to funding tribal government operations or programs and promoting tribal economic development—in cases where tribes want to make per capita payments. In addition, 25 CFR § 290 12(b)(2) provides the following—

[Information submitted for RAP approval] must contain detailed information to allow the ABO [Appropriate Bureau Official] to determine that [the tribe] complies with this section and IGRA particularly regarding funding for tribal governmental operations or programs and for promoting tribal economic development.

The Indian Affairs Manual (IAM) § 47, “Indian Gaming,” chapter 3, “Tribal Revenue Allocation Plan” (updated March 2011) explains the basic BIA standard for plan review and approval:

- There must be a percentage breakdown of how all (100 percent) net gaming revenues will be allocated.
- If per capita distribution to tribal members is over 50 percent of the net gaming revenue, then the tribe must submit additional information.

If the proposed per capita distribution to tribal members is more than 50 percent, BIA's Office of Indian Gaming asks for additional information such as the number of enrolled members of the tribe, number of businesses owned and /or operated by the tribe, and the amount of revenues generated by each business that is available to the tribe for economic development.

Our June 2003 evaluation report, “Evaluation of BIA's Process to Approve Tribal Gaming Revenue Allocation Plans” contained three recommendations related to BIA's process and mandate to review and approve plans submitted by Indian tribes participating in gaming operations. In appendix 5 of the report, OIG listed all three recommendations as “resolved; not implemented.” OIG referred the recommendations to PFM for tracking of implementation.

PFM and BIA closed the first two recommendations without implementation in a September 24, 2010 memorandum to OIG. BIA reported that they consulted with various tribes across the country and that these tribes were against implementing both recommendations OIG suggested. PFM and BIA agreed that DOI did not have the authority to mandate tribes to accept the changes. In an April 19, 2011 memorandum to OIG, PFM reported that BIA had implemented and closed the third recommendation. PFM subsequently closed the evaluation report .

## **Scope and Methodology**

We limited the scope of this review to obtaining and analyzing sufficient documentation to evaluate BIA's implementation of our recommendations. We reviewed the supporting documentation that BIA officials provided to PFM and OIG to close the recommendations. We

interviewed BIA officials about actions taken relating to each of the three recommendations and independently verified implementation.

We did not perform site visits or conduct fieldwork to determine whether the underlying deficiencies that OIG initially identified have actually been corrected. As a result, we did not conduct this review in accordance with the Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States or the Quality Standards for Inspections of the Council of the Inspectors General on Integrity and Efficiency.

## **Results of Review**

As of last year, PFM closed all three recommendations in OIG's report, but BIA only implemented one recommendation. BIA concurred with all three recommendations in the final report issued in June 2003, but two recommendations depended on the outcome of consultations with Indian tribes.

The Office of Indian Gaming conducted 10 consultation sessions with American Indian tribes between March 2006 and December 2008. BIA reported that the tribes disagreed with OIG findings and opposed the recommended changes. PFM and BIA agreed that DOI did not have the authority to force the tribes to accept the recommended changes or to enforce the recommendations if enacted. OIG agrees that in 25 CFR § 290 and the Indian Gaming Regulatory Act, no express authority exists to compel the tribes to produce the requested information. We also recognize that DOI and BIA could interpret 25 CFR 290.12(b)(2) in a manner implicitly requiring further financial information. Approval of an RAP is not a right; BIA can require any additional information relevant to its approval process. The tribes can refuse to submit the information, but BIA could also deny approval.

In addressing OIG's verification questions, BIA clarified its procedures with regards to requesting information to evaluate RAP submittals in situations in which tribes want to make per capita payments. PFM closed Recommendations 1 and 2. BIA satisfactorily implemented Recommendation 3 as confirmed.

**Recommendation 1:** Amend the applicable regulations to require tribes to submit sufficient financial information, modeled after the Michigan tribe, including: historical and projected tribal enrollment; gaming revenues; tribal budgets; historical and projected tribal services provided; other potential sources of tribal revenue; balances, earnings, and projected earnings from capital investment reserve accounts; and capacity of gaming operations and other related facilities.

After reviewing the available documentation and speaking with the Director of Indian Gaming and Deputy Director of Indian Gaming, we conclude that although BIA took appropriate action to address OIG's recommendation, the Office of Indian Gaming could not enlist the necessary tribal support. In its September 23, 2010 memorandum to PFM addressing Recommendations 1 and 2, BIA stated that the tribes—

- disagree with OIG findings and oppose the amendment of Federal regulations;

- agree that there is not a Federal law that gives the Secretary of the Interior the authority to request such information; and
- believe that requiring the submittal of this information is contrary to the Federal policy of tribal self-governance and self-determination.

As a result, PFM closed the recommendation without implementation. PFM stated that, since the Secretary does not have the authority to force the tribes to submit the suggested financial information, it closed this recommendation. According to the current Deputy Director, the tribes also claimed that DOI did not have the authority to demand or protect tribal financial information under the Freedom of Information Act (FOIA) process; BIA concurred. Based on BIA's decision, we consider this recommendation closed.

**Recommendation 2:** Develop and publish a standard to determine what is “adequate” funding for each tribe’s government and economic development programs.

PFM closed this recommendation using the same rationale for closing Recommendation 1. The tribes did not support the development or publishing of a standard as described by OIG, and BIA has no authority to mandate that tribes adhere to the standards. BIA proposed articulating a standard in an amendment to the existing Federal regulations and publishing it at the same time as the proposed amendment under Recommendation 1, which would require the tribes to submit sufficient financial information. This recommendation does not specify, however, that a change in Federal regulations is required or intended. The Secretary has the authority and legal responsibility to determine if the Indian tribes’ gaming RAPs reserve adequate amounts of money to fund tribal government programs and economic development. If the plans do not reserve adequate amounts of money, then DOI has the authority to deny them. DOI also has the right to develop and publish its own standard that clarifies what financial measures it will use to determine that tribes have adequate funding in their plans to cover the tribes’ government and economic development programs.

The Deputy Director evaluates the gaming requests and either approves or denies them after reviewing all RAP submittals. According to the current Deputy Director, it is not possible to develop a blanket standard describing adequate funding for each tribe’s government and economic development program. Each tribe’s situation is unique and depends on many variables, such as the number of tribal members and existing government and business infrastructure.

After reviewing the available documentation and speaking with the Director and the Deputy Director, we conclude that, although BIA took appropriate action in an effort to address OIG’s recommendation, it was not able to enlist tribal support. As a result, PFM and BIA agreed that DOI did not have the authority to force the tribes to accept or enforce a financial standard imposed by DOI. We were told by the Deputy Director that she makes this decision on a case-by-case basis, using information supplied by tribes. Based on PFM’s and BIA’s decision, we consider this recommendation closed.

**Recommendation 3:** Develop and produce written operating procedures for reviewing plans – including forms, surnames, documentation of tribal contacts, modifications to plans, and final disposition of plans.

OIG's report noted that BIA did not always document its deliberative process for reviewing and approving tribal gaming plans. Furthermore, BIA did not have a tracking system to document when a plan was received, reviewed, and approved, or when a tribe was contacted.

We selected a small sample of recently submitted tribal gaming plans from the Office of Indian Gaming's logs. These logs represent BIA's tracking system and include pertinent dates such as plan submittal, review, approval, denial, and modification. We verified that the log data matched the information submitted by tribes provided to the Office of Indian Gaming. IAM § 47, "Indian Gaming," chapter 3, "Tribal Revenue Allocation Plan" (updated March 2011) contains written operating procedures for reviewing plans.

After reviewing the available documentation, requesting additional information to confirm and verify that BIA took appropriate actions, and speaking with the Director and Deputy Director, we conclude that BIA satisfactorily implemented this recommendation prior to closure.

## **Conclusion**

We informed the Director and Deputy Director of the Office of Indian Gaming of the results of this review at an exit conference on June 1, 2012. They agreed with the results of our review.

cc: Alexandra Lampros, Audit Liaison Officer, Office of the Secretary  
Michael Oliva, Audit Liaison Officer, Assistant Secretary – Indian Affairs