

# **SURVEY OF REGULATORY PRACTICES IN THE GAMING INDUSTRY**

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# SURVEY OF REGULATORY PRACTICES

## Background on Surveys

The American University was asked to analyze the variance in types of regulations governing gaming enterprises, as well as the range of practices that gaming establishments follow.

### Survey Instrument

There are three survey instruments for our three sets of respondents—industry gaming, tribal gaming, and regulators for each. The instruments were developed by our methodologist, Dr. Robert Dudley, in consultation with our project’s legal advisor, Professor Caroline S. Cooper, and policy specialist, Dr. Amy Bunger Pool. Research staff went through thirteen formal iterations of the survey instruments. All three were then approved by ACIR and provided to research staff of NGISC in consultation with the research sub-committee of NGISC.

Broad categories of regulation sought to document the universe of common types of *gaming specific* regulation in existence, the extent or degree of regulation, an empirical measure of how actual regulation differs from perceptions of regulation, and the cost of *gaming specific* regulation.

Specific areas of inquiry include types of gaming, largest source of gaming revenue, background checks, fingerprinting, reporting of gaming receipts, audits, maintenance of records, licensing, fee payments, on-site inspections, social service expenditures, regulation, accuracy of equipment, training for employees, ratio of employees to receipts, alternative activities at gaming establishments and other attractions in the gaming complex.

### Sample Selection

At the request of the research sub-committee, the scope and population of the survey was changed from our originally proposed research. Our potential sample population includes 140 tribal gaming outlets, 25 industry gaming outlets, and corresponding regulators. For the latter, regulators vary in form from NIGC field offices, state regulators, local regulators, and tribal government regulators.

The twenty-five industry gaming outlets chosen for this survey represent an across the board selection of gaming activities in the twelve states which comprise the top quartile of industry gaming handle in 1997. Within the limitations of the sample size, we have attempted to represent a number of outlets for each gaming form. We have also attempted to cover the geographical span of the survey states, with particular emphasis on those which have casino gaming. This is not a statistically representative sample; rather it is a selection of gaming outlets in the various states. The selection was based on numerous criteria and it emphasizes casinos and riverboats because of their relative weight in the total gaming handle. In an effort to balance types and sizes of casinos relative to tribal outlets, state regulators were asked to provide ranges of outlets and

identify both the significant revenue generators, as well as more modest casino outlets.<sup>1</sup> The final sample represents twenty-one casinos and riverboats.

Based on aggregate revenue information provided by the National Indian Gaming Commission, tribal establishments were grouped into five categories of revenue, categories A-E:

	<u>Number of Operations</u>	<u>Percent of Total Revenues</u>
A:	20	50.5
B:	25	21.1
C:	60	20.1
D:	102	8.0
E:	54	0.3

The revenue ranged from less than 1.5 million dollars earned by an outlet to an aggregate number of 3.2 billion dollars, gross revenue, for the total of the top twenty outlets. We drew the sample according to the direction of the NGISC Research Subcommittee. Thus,

Category A (20 establishments) represents:	3.2 billion
Category B (25 establishments) represents:	1.350 billion
Category C (60 establishments) represents:	1.300 billion
Category D (102 establishments) represents:	600 million
Category E (54 establishments) represents:	all under 1.5 million per outlet

Outlets included in the sample in the above categories included a census of establishments in categories A, B, and C, meaning that the respondent population had the potential to be a census, *instead* of a sample. Categories A, B, and C, the census population, represent 91.7% of revenue generated by tribal gaming. Alternatively, the potential respondent population for 91.7% of the revenue was exhaustive and all-inclusive. Of the remaining 156 outlets (based on 1997 figures, the last comprehensive data from which extant data could be drawn) in categories D and E, we randomly selected 36 outlets.

## FINDINGS

The findings are based on survey data and not an independent legal examination of the laws or regulations, which lies outside the scope of this contract. This is a self-reporting survey and the information generated is based on the answers provided by the survey respondents.

The top revenue generators (91.7%) are included in the survey data, with a current response rate of .628<sup>2</sup>, which is considered a high response rate for attaining

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<sup>1</sup>This technique is known as a snowball sample, a commonly used non-probability sampling method employed in field research whereby each respondent suggests additional persons for interviewing. This technique was balanced against information obtained from extant data.

representativeness of sample respondents, for a survey of this type.<sup>3</sup> *Narrative discussion of the data is presented in context of the 91.7% for it reflects a more accurate meaning, but data, narrative responses and codebooks are provided for the lower revenue outlets as well.*

While cooperation and participation in the survey was generally high, as evidenced by the response rate, there were establishments or governmental entities that declined to be interviewed.<sup>4</sup> All “declines” were faxed a basic information sheet, outlining the parameters of this study, in an attempt to allay concerns about the purpose of the research. Most were also contacted by the principal investigator in an effort to obtain participation, unless the survey team was in receipt of a written refusal based on decision of a tribal government. Pending litigation was a common reason for refusal to participate, as was the fact that funding originally emanated from the National Gambling Impact Study Commission. Another common reason for declining to participate was a confusion between NGISC and NIGC. NIGC and their Director of Enforcement, Alan Fedman, made himself available for tribes to call and verify the independent role of the survey team.

In general, standard statistical tests, which often accompany survey data, are not as useful in this type of sample, where the sample weighting is disproportionate, and with this number of respondents. It was asked that the survey be designed to provide more detail than cursory statistical data often afford. Rather, this discussion is intended instead to reflect the “heart” or “essence” of regulation in gaming, in which the voices of the respondents are used as evidence. A narrative account is provided which details the specific weight given to the range of answers for questions. Copies of the actual data are provided in the appendices. Certain questions required narrative documentation, because the essence of the response couldn’t be automatically subsumed into a dichotomous answer and narrative responses are also provided in appendices.

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<sup>3</sup>Earl Babbie, The Practice of Social Research, fifth ed. (Belmont, CA: Wadsworth Publishing Company, 1989), p. 242. Generally, phone surveys have high refusal rates, making this level of participation quite high. See Frank Hagan, Research Methods in Criminal Justice and Criminology (New York: MacMillan Publishing)

<sup>4</sup>From the perspective of methodological integrity, it must be noted that it is inappropriate to engage in wholesale replacement of respondents who refuse to be interview. When this is done, it biases the findings in favor of those willing to talk, and thus increases the degree to which it is then unrepresentative.

# Tribal Gaming

## OVERVIEW

Although specific suggestions for improving regulation exist, such as with vendor licensing, neither respondents nor regulators had sweeping suggestions for improvement. Generally, tribal regulations governing gaming exceeded the federal requirements, as did state regulation when it was present. The data are definitively supportive that regulation of gaming is essential. The tools used by regulators, regardless of whether they are tribal governments, state governments or NIGC, be they auditing practices or the new technological sophistication of machine testing, are generally also supported. The universe of techniques or tools that regulators use to monitor gaming is not broad, meaning that there are generally agreed upon types of monitoring, testing or inspecting. Variance occurs in the frequency and degree of use of these activities. The fundamental issue lies with which levels of government have these responsibilities and to what degree tasks are duplicative.

## THE GAMING ESTABLISHMENTS

### Types of Games Featured

The top five categories of gaming, with respect to the *number of establishments* having them, were slots, blackjack, bingo, poker and video poker, respectively. The frequencies for the next cluster of types of games were cardrooms, roulette, craps, keno, pari-mutuel and pull-tabs. Ten or fewer responses were recorded for Let-it-Ride, Caribbean Stud Poker, Pai Gow, Video Roulette, Video Blackjack, and Video Lottery Terminals.

### Types of Facilities

Almost the entire respondent population serves food at their facilities. Live entertainment is offered by approximately half of the outlets, while slightly under half serve liquor. Just over one-third of respondents have hotel facilities as part of the gaming operation.

### Types of Attractions

There were a wide variety of alternative attractions at gaming facilities reported by respondents. Golfing facilities and RV parks were identified by nine and seven outlets, respectively. A small number of outlets have shopping facilities or marinas as part of the gaming complex. Live boxing and spas exist in a few outlets, and a few respondents reported a child-care facility for patrons of the gaming complex.

### Largest Source of Gaming Revenue

The largest source of gaming revenue came from slot machines, with two-thirds of the establishments ranking this highest revenue generator. Video gaming devices were also a significant source of revenue, with eight outlets declaring them the primary source of revenue.

## COMMON REGULATORY PRACTICES IN GAMING ESTABLISHMENTS

### Background Checks

Generally speaking, background checks for tribal gaming are not uncommonly conducted by three levels of government--state, federal and tribal. While the repetitive element is a source of contention for tribal gaming respondents, the necessity of having background checks themselves is not in dispute. All respondents recognize the requirement to perform background checks on employees.

All tribes are subject to background checks for key employees at the time of hire. More than three-quarters of tribes also perform their own background checks. A very small number of respondents indicated only the federal government required background checks, while three states indicated only state authority requirement for background checks. Most responses indicated multiple levels of government requirements for fingerprinting by some combination of federal, state, or tribal governments. Well over half of the respondents were subject to Federal, State and Tribal government requirements for background checks, fourteen tribes indicated both federal and tribal requirements, and three reported state and tribal requirements.

With very few exceptions, checks are reported at least annually, and many tribal gaming commissions require quarterly checks. Many tribal commissions are now requiring background checks for all employees, not just "key" or "money handling" employees. The frequency with which checks are occurring is also increasing, and tribal commissions have started to require checks at hire, at each change of status and upon termination. The most common answer, however, for all three levels of government, federal, state or tribal, was a requirement for background check at hire, which is then reported annually. This demonstrates a strong consensus that background checks at hire which are reported annually, is the most recognized method of checking employees.

Approximately half of those surveyed indicated that the requirements for background checks had increased, while the other half reported little change in the status quo. Of those who indicated an increase in requirements, or a change in requirements, respondents provided responses that varied from, "When we first started, we only backgrounded key and management employees. Now we background everyone" to, "We have to check more locations and cities due to increased mobility in today's society. We are seeing that applicants have held many more positions in the past, therefore we are requiring more checks."

Because there is an improvement in their turnaround time, checks are being used more extensively, and many respondents felt they were more thorough now, with an ability to look at credit history.

### Fingerprinting

All tribes were required to conduct fingerprinting. Slightly less than half of the respondents indicated that they were required to do fingerprinting by federal, state and tribal governments, and almost three-quarters of respondents had more than one level of government requiring fingerprinting. Like background checks, the most common response was a requirement for fingerprinting at hire or certification, which is then reported annually.

More stringent changes have occurred in the area of which employees are printed,

and many establishments are now printing all money handling and non-money-handling employees.

Like background checks, many tribes illustrated the increased efficiency in processing fingerprints. Some establishments are extending requirements to non-money handling employees, or requiring the check again upon a change of employment status or a promotion to a money-handling task.

#### Accuracy of Gaming Equipment

Respondents indicated marked change in the checking and testing of gaming equipment. Most of the reasons for these changes have occurred because “equipment is new and better, more modern,” indicating basic improvements in technologies.

Those surveyed indicated that changes in frequency of the tests were not as important as the improved quality of the testing equipment itself. On a related note, many respondents answered that machines could be better tested and regulated because of a learning curve and the basic professionalization of the inspectors testing. One respondent illustrates that the evolution of more standardized equipment and skilled manpower actually lead to a decrease in oversight. “Increased internal controls led to state’s confidence of internal controls and they decreased their oversight. For example, their first audit was seven officers for one week while the most recent audit was three officers for two days.”

Some respondents also noted that a compliance officer performed the testing, instead of an in-house person, and this represented significant change.

#### Employee Training

Approximately half of those in the survey believed they were required to conduct or partake in training. Slightly more than half responded that while training was not required, it was tribal policy to do so. The range of responses was very wide, as illustrated by one respondent, “Customer orientation, IGRA training, compact training, machine layout, operations and communications training”. The most common answers were clustered, and involved issues of machine testing; operation and repair; gaming training and dealing; and security and surveillance training. Other issues of significance included Title 31 training, and basic management education courses. Just over one fifth of the survey responded that training was not required (although the answer is further refined by, “No, but it is our tribal policy to do so”).

Many respondents spoke about training necessary to understanding the legal relationships between tribal government and federal or state government relations, or the “orientation for Indian regulation”. Several respondents cited the necessity for “IGRA training” while others referred to “compact and leasing agreements”.

As a matter of practice, tribes rely quite heavily on external training schools, typically gaming specific programs such as Gaming Laboratories International, the Atlantic Coast College in Atlantic City or “Las Vegas casino training”. Additionally, tribes may support training at a university or college, as noted by one respondent, “Slot technicians train at a local community college or at places recommended by the gaming technicians”.

In a discussion of how employee training had changed over the past five years, approximately one third reported required changes. The changes reported were increases in the array of training choices, and in some instances the tribal government is requiring a

set number of hours per employee. The impetus for training in some cases was compliance with Title 31, and simply the ability to keep up with changing laws. Similarly, training for “compacting and leasing” was oft cited. The most common answer when queried about how training requirements had changed, was that changes didn’t occur because there were no requirements for training, and that training is based on tribal policy .

The timing of training tends to be either at hire, ongoing or training occurs on an “as needed” basis. Responses ranged from a “three week course” to a “minimum of thirty hours”, to “Forty hours of training is required annually for each inspector”. One fifth of respondents noted that training is required on a systematic basis, be it annually, quarterly or monthly. However, almost half of the respondents indicated that the timing of training was not an applicable topic because it wasn’t required.

#### Staffing levels

The ratio of employees to customers or receipts was perhaps the most consistent response in the survey. Over eighty percent of respondents indicated that there are no staffing requirements. Of those persons who indicated attention to the ratio, this was only because it “was tribal policy to do so”, and several respondents, just less than one-fifth indicated that tribal government imposed staffing level requirements.

#### Reporting of Gaming Receipts

Annual reports of gaming revenue are required by NIGC, and reporting is also required by tribal government. Some states require reporting of gaming receipts in their compact, particularly when the compact has a provision that allocates a percentage fee to be paid to the state based on revenue.

Over eighty percent of tribal regulators require reporting of gaming receipts, which they tend to require on a quarterly basis, if not daily or weekly.

The actual frequency of reporting is highly variable. The number of authorities to whom tribes must report and the frequency with which they must report, varies widely. All tribes must report to NIGC annually. Tribes may report to their tribal commissions as frequently as monthly, while some are reporting annually. One third of respondents have to submit different forms (as opposed to a commonly accepted form).

The majority of responses indicated that there was no change in reporting requirements. Of those who reported a change in requirements (approximately one-third), changes in policies promulgated by NIGC was the most common response, followed by multiple formats for reporting or a more detailed level of reporting. There remains here a consistent theme of this report, which is the increased level of gaming education and professionalization of the industry itself. With respect to receipts, this is reflected in, “We have become more efficient by cutting down on paperwork and still maintaining the same level of monitoring and integrity”; “We are now more conservative and stringent in keeping better records”; and, “Requirements are more stringent so there is accountability. This makes for better business”.

#### Record Keeping

States require various forms of record keeping in approximately half of the cases. Regarding an actual change in policy of record keeping, most respondents indicated there wasn’t one. Those that reported a change are in agreement that records are kept in a much more sophisticated manner, either due to an increase in requirements or because they have

increased compliance through better technological skills or staffing and training.

### Licensing

Licensing is a function residing primarily with tribal governments, with approximately two thirds of those surveyed indicating the tribal function. Multiple levels of licensing, in the case of state and tribal governments, occur in about one-tenth of cases. There were a significant number of persons who indicated that they were regulated by three governmental entities, because tribal governments would not issue a license until an establishment demonstrated compliance with federal regulation, and thus thought the federal government could be deemed a licensor.

The fees for licensing range from no fee to \$10,000. The majority of licenses are issued by tribal governments (although gaming may be operated by a management company), and are issued once. Licenses, in two-thirds of respondents, need to be renewed annually, but can be revoked for cause.

### Payment of Fees

Fees are paid to NIGC on a sliding scale basis, as a percentage of the outlets total revenue. When a compact is present between tribal and state governments, states are typically paid a fee, but the calculation of the fee and the terms of delivery are different for virtually every state that requires a fee. Almost half of respondents pay a fee to their respective states. Of those who pay their state, respondents are split as to whether a sliding scale or set fee is required.

### Inspections

All outlets are subject to random on-site inspections. They are more likely to occur from State gaming regulators, although two-thirds of respondents reported that Tribal Gaming Commissions and NIGC also conduct these inspections. The frequency of inspections and by whom the inspections are conducted, varies widely. Outlets with significant revenues (those which fall in categories A, B, or C) typically have tribal investigators on staff. Investigations conducted by tribal investigators are most likely to occur in response to the filing of an incident report. The on-site presence of state inspectors varies from virtually none, although the operation may always be subject to a random inspection, to very frequent. For example the compact in the state of Louisiana requires on site presence. Here, it is important to differentiate between *presence* and *inspection*, and this may vary by outlet, regulator or particular officer.

Over fifty percent of respondents said that the frequency of on-site inspections had changed, while slightly less indicated that inspections had increased in frequency.

### Social Service Expenditures

The vast majority of those surveyed indicated that they were not *required* to perform social service activities. However, the most common response, given by over half those surveyed, was, “No, but it is our tribal policy to do so”. Of those who indicated that social services were compulsory, a contribution to Gambler’s Anonymous or other like group was the most common response followed by the posting of their materials and providing a hotline.

Social Services is an area where responses were most variable for tribal gaming. Clearly, there are groups of respondents that are very extensively involved in social service endeavors. Examples included “health service program”, “family social service program”, “scholarships, college funding and job corps”, “clothing for the community”

and “provision of services for those with mental health problems”.

However, what is also seen are multiple interpretations of what training responsibilities are required, versus what are perhaps “pro forma”. This is illustrated by the difference in responses to questions about funding for compulsive gambling. There is disparity between those who believe they absolve their regulatory responsibility by “posting 1-800 numbers and brochures”, and tribes who send employees for “outside training in detecting problem gambling”.

While tribes are required under IGRA to provide for the welfare of the tribe, many of the tribal governments also mandate specific requirements for social service expenditures. This may come in the form of a set percentage fee that must be allocated to members of the tribe, or it may go to fund a range of services. The most common beneficiary of funding is the health care community, including access to insurance, alcoholism treatment, and mental health treatment. Examples of other activities or programs funded by gaming revenue include reading programs, seed money to start businesses, college scholarships, and medical insurance. Other types of social service programs were mentioned by respondents. Health care issues, both from insurance to access, elder care and day care were all subsidized. Many tribes provide college scholarships, and a few mentioned housing subsidies, hardship payments and seed money to start businesses.

#### Necessary Regulations

Those surveyed were asked, “In your opinion, are there regulations which are necessary to the gaming industry?” With virtual unanimity, respondents indicated that some form of regulation is imperative for doing good business. Effective handling of money was the most common answer and occurred in various forms such as “access to money and money flows”, “money handling regulations”, and “daily auditing and reporting of funds”. Internal daily accounting and tracking issues were discussed, and MICS (Minimum Internal Control Standards) were specifically cited by many respondents. Regular audits by NIGC, as well as tribal gaming commissions were deemed essentials, with the latter occurring on a more frequent basis. The requirement for financial reporting was mentioned by some respondents, both for federal regulatory purposes, but was also seen as important for tribal governments as a mechanism allowing them to “protect actual tribal members”.

When asked what areas of regulation were not addressed by the survey, security was one category that was much more frequently alluded to than others. In particular, respondents discussed jurisdictional problems, and tribes believed that the safety and security of their outlets was lessened because of their lack of jurisdiction in some issues of criminal responsibility. This was present in issues involving patron disputes, the powers of tribal police in the establishment and surrounding reservations, and other non-specific crimes at the operation.

### Cost of Regulation

Estimating regulatory costs was difficult for respondents to quantify with precision, and the median answer to the question, “Thinking about these regulations you judge to be necessary for the industry, can you estimate the costs your establishment incurs in complying?” was \$1,000,000, with an average reported response of \$1,299,310. Staff, inspectors, office space, auditing, background checks, security and surveillance were discussed but are not often broken out into specific categories in budgeting. For example, tribal respondents often gave the budget for their tribal regulating body, responding “We have a \$1.4 million dollar budget for our Tribal Gaming Commission”.

The easiest uniform method of comparison looks to be with staffing levels, but most respondents didn’t have actual salaries for various types of employees. A common type of answer then was “We have six employees who do background checks and thirteen inspectors”. Several respondents also factored in financial, accounting or compliance personnel. The ratio of security or investigatory personnel to accounting appears to be approximately 4 to 1.

Many respondents were able to discuss specific micro-level costs. For example, one respondent explained that “background checks are either \$225/275 per applicant and we have 200 employees”. Another respondent indicated that they spend “\$12,000 a year on drug tests.”

Table 1 **Costs of Regulations – Tribal Establishments**

<b>Expenditure</b>	<b>Cost (per year)</b>
Taxes and fees	\$8 million
Total compliance expenditures	\$8 million
MICS compliance	\$3 million
Regulatory compliance	\$3 million
Financial auditing (staff, inspectors, office space, audits, surveillance)	\$2.4 million
Gaming Commission and Surveillance	\$2 million
Commission Budget	\$1.8 million
Gaming Commission	\$1.3 million
Gaming Commission budget	\$1.4 million
Gaming Commission	\$1.3 million
Accounting and auditing costs	\$1 million +
Compliance division	\$1 million +
Licensing and background checks	\$1 million +
Total compliance expenditures	\$1 million +
Compliance Division	\$1 million
Compliance division	\$1 million
Gaming Commission	\$1 million
Gaming Commission budget	\$ 1 million
Gaming Commission budget	\$1 million
Surveillance	\$1 million
Total compliance expenditures	\$800,000 to \$1 million
Regulatory compliance	\$800,000
Machine Compliance	\$600,000 and staff of 6-10 full-time
Gaming Commission	\$500,000

Internal control compliance	\$500,000
Gaming commission payroll	\$500,000
Surveillance	\$400,000-\$600,000
Commission budget	\$400,000
Background checks	\$400,000
Maintenance of State Troopers on premises	\$400,000 +
Total Commission	\$300,000-\$400,000
Gaming commission and surveillance department	\$300,000
State background check regulatory compliance	\$250,000 + costs of background checks
Background checks	\$200,000
Licensing (screening costs)	\$180,000
Title 31 compliance	\$150,000
Background checks	\$113,400
Licensing	\$100,000
Title 31 compliance	\$70,000
Drug checks	\$56,700
Federal background check regulatory compliance	\$50,000 + costs of background checks
Salaries for pit supervisors	\$50,000 - \$60,000
Background checks	\$45,000 - \$55,000
Criminal background checks	\$40,000-\$50,000
Accounting system	\$30,000
Annual audits by outside firms	\$30,000
Drug tests	\$12,000
External auditors	\$12,000
Video surveillance equipment	\$10,000-\$15,000
Background checks	\$4,800

### Unnecessary Regulations

Respondents were close to being split on this issue, with just over half indicating “yes, there are regulations of the gaming industry which are unnecessary” and just under half responding that there are “no unnecessary regulations”. Of the latter category, those who felt that there really aren’t unnecessary regulations, still responded that they felt efforts expended on regulation were redundant. Stated alternatively, the types of regulation in place were seen as necessary to responsible business practices. The problem seen was with the manner in which the regulation occurred, generally requiring duplicative efforts mandated by different regulating entities, in many of the regulated functions, for example, “The maintenance of state troopers who are performing the same function as tribal investigators”.

Many of the persons surveyed explained that they didn’t feel that governmental regulation was by definition “a bad thing” but that it should either be undertaken solely at the federal level, or left for the states to regulate. There wasn’t a sole issue or regulation dominating this theme, meaning an unfavorable opinion of any on particular state or federal requirement. It was the multiple levels of requirements, with often redundant tasks involved, but each of which had to be carried out in a slightly different manner. Many tribal respondents believed that multiple layers of regulation were actually causing more harm than the generally positive purpose of the requirement because the varying

requirements increased the likelihood of confusion, or lack of clarity in understanding what is precisely expected.

Generally, respondents felt that those regulations in place were not excessive. So, too, due to the general progress of technology, accounting systems, background and fingerprint checking, respondents viewed the quality of regulation as quite good.

Of those who responded that regulations were unnecessary, the most common assertion was simply the duplication of effort to adhere to a regulation, not an objection to the content of the regulation. This was specifically the case for background investigations and fingerprinting. Again, of those who felt regulations were excessive, approximately about one-tenth complained that a more precise interpretation of classes needed to be developed.

Several respondents discussed problems with the regulation of vendors, or gaming related contractors' issues. For example a state and NIGC may require that vendors to a casino be licensed by a given state. Small firms cannot afford the licensing process, and some respondents suggest that it be limited by money, to contractors who do over \$10,000 worth of business.

Respondents were queried about whether there were regulations not required, although they may be standard operating policy, that might serve the industry well. Just over two-thirds felt that the regulations in place were not just sufficient, but actually effective and well done.

Of those whose responded that some additional regulation might be useful, responses fell into four categories--classification of gaming types, MICS, NIGC and background checks. Several of those surveyed felt that more regulations were needed for Bingo, Keno and cardrooms, and that Class II gaming needed regulation. Again, respondents expressed frustration with levels of specificity in gaming regulation. This was seen in the classification schemata for determining what is Class II and Class III. This theme of too much ambiguity was echoed in the discussion of MICS, where several respondents again indicated that they are necessary, but that they need to be refined because they are too vague. Multiple respondents commented on NIGC, from both the perspective of scope and size. Some respondents wanted the actual authority of NIGC to be expanded, while others advocated that they need to increase their staff, and implicitly, their funding.

Particularly true of the largest establishments and higher revenue outlets, was a recommendation that tribal governments require background checks for all employees, not just key or money handling employees. Problems of ambiguity in language were again seen here, where respondents did not feel that the differentiation between classes of employees was clear enough for the effective implementation of policy.

Respondents were also asked whether the actual *enforcement* of regulation was excessive, and three quarters of respondents felt that it was not. Of those who felt that there were problematic areas of enforcement, compact issues were the most common problem, for example when they then require certification of employees, at the expense of the employee. A few persons felt that issues peripheral to actual gaming often incorrectly fell under regulatory authority. A recurrent theme discussed was the vendor issue and their licensing. As in different types of questions, the ambiguity of regulation was a complaint associated with enforcement, citing again, the vagueness of MICS and the

vagueness in classification of games.

Generally, those surveyed did not feel that there were areas of regulation that were too lax, with over two-thirds expressing satisfaction and support for the types of regulation in place. Of those who felt that there were ways in which regulation could be improved, the most common answer was the “under regulation” of Nevada and New Jersey. A consistent theme occurred in two areas. Respondents again expressed dissatisfaction with the ambiguity of MICS and the classification of Class II versus Class III gaming. Law enforcement powers were also discussed, with the suggestion that tribal peace officers need to have concurrent police authority on reservations because local or state authority is not sufficient to ensure public safety.

#### Changes in the Regulation of Gaming and the Gaming Business

Asked to look back over the past five years, respondents were asked whether they had noticed changes in the regulatory processes surrounding gaming. A substantial majority indicated that they had. The most obvious and common response was a change in the national presence in regulating gaming, and the implementation of MICS.

Generally speaking, changes in regulation were seen as caused by the change in the enterprise of gaming. Multiple respondents cited the explosive growth of the industry, and many see this as “forcing” the professionalization of the industry. Thus, respondents continually cited much improved accounting practices, more sophisticated equipment for machine checking, and a better understanding of laws.

#### Compacts

Of tribes who have Tribal-State compacts, the overwhelming majority felt that the regulatory activities implicit therein did not exceed the authority given in the document. A recurrent issue plaguing the discussion of compacts was the ambiguity of them, particularly as it related to different classes of gaming, but also the technical standards for maintaining gaming devices. Again, the role in regulating vendors was seen as necessary, but unfair in the application.

Similar to the question of regulatory activities exceeding authority in compact, the enforcement practices of regulation were also seen as within the authority of the compact, with almost all of the respondents stating that enforcement practices closely followed that which was agreed to in the compact.

# Tribal Regulation

## OVERVIEW

Respondents broadly indicated that the types and quality of the regulation itself was not at issue. Nor was the enforcement of regulations that are in place deemed a problem. The major issue revolves around the degree to which multiple jurisdictions are going to the expense of duplicating tasks completed by another governmental authority.

Ascertaining the appropriate respondent was difficult, and often took a dozen or more calls, with an average of seven calls to determine the correct entity with whom surveyors could speak. The categories of those interviewed were almost equally split among the thirty one respondents, between the Director or Head of the Tribal Gaming Commission, a Gaming Commissioner and an agent, representative or director of a State Department of Gaming.

### Staffing of Regulatory Bodies

Most regulatory entities had less than twenty persons, with one-third of respondents having ten or less staff, and one-third of respondents having 11-20 employees. For the categories of 21-30 staff members and 31-40, each had less than a handful of respondents.

### Regulators Budgets

Of respondents who knew their operations budget with a reliable degree of accuracy (many did not), one quarter of respondents had budgets under one million dollars, with a few respondents in *each* \$200,000 increment category up to \$600,000 and one respondent between \$800,000-\$1,000,000. A handful of respondents reported one million dollar budgets, and a similar number reported between one and two million. There were regulatory offices which exceeded two million dollars, and a few regulators who reported budgets exceeding four million dollars.

Just less than half of monies for these offices were reported to be general appropriations from tribal or state governments. Thirty-five percent of regulators indicated that revenues for their offices came from revenues from gaming fees. Over two-thirds of respondents report budget increases in the past five years, while approximately one-fifth of the budgets were status quo. No budgets had been decreased, or if decreased, were returned to original funding.

Budgetary increases were predominantly due to an increase in size of staff, while somewhat less than this was due to an increase in the salaries of staff. Generally speaking however, the staffing level confounds the real reason for the increase. In most instances, staffing is due simply to the expansion of gaming and the professionalization of the monitoring therein, a reason cited by many respondents. "Gaming has expanded in the entire state as well as the growth in the number of machines", "We've experienced the growth of our operation from pull-tabs to a two casino establishment" and "As the industry grows, so does enforcement" were responses provided.

When asked to describe the regulatory activities which are the primary responsibility of the regulator, the responses all fell within approximately seven categories, but the weight given to categories varied fairly widely. For example, several regulators indicate that the majority of their charge involves background investigations, or "determining the suitability of employees" but not all regulators have the same types of

jurisdiction and mandates.

Upward of one-third of respondents indicated that certification and licensing were the primary activity of their agency. Machine testing, upholding MICS and auditing were common responses, each designated approximately one-fifth of the regulatory activity. Attention to requirements in compacts was the major responsibility for approximately one-fifth of respondents.

A handful of respondents felt that one of their primary tasks was to facilitate communication between state gaming departments and tribes. One regulator indicated that to do the job well, meaning accurately and with integrity, at least half of the energy expended need to be to “keep the lines of communication open between state departments of gaming, federal regulators and tribes”. When queried about the *most* important task that a tribal regulator undertakes, one respondent answered, “To keep lines of communication open with the tribal regulators” while another responded, “To try to work with tribal commissions of each tribe to help us figure out the smoothest relations and most productive methods.”.

Discussing changes that have occurred in the past five years in the responsibility of regulating, regulators echoed the answers of tribes. Many noted the increase in staff, and its relationship to the expansion of the gaming industry. Regulators also noted the exponential growth in the professionalization of monitoring and accounting procedures, as well as machine testing. Responses included: “Before, they were understaffed, and they have made new adjustments and increased activities,”; “As they have been there longer, they have been able to understand their role better and been able to take on more responsibilities”; and, that regulators have been able to increase what they look at and “be more detailed because regulators are getting used to their activities.”

#### Background Checks and Fingerprinting

All regulatory bodies reported a requirement for background checks. Over three quarters of respondents had continuity in how this was required, which was at hire and to be reported annually. The results for fingerprinting were almost identical, with a requirement for printing at hire, to be reported annually. Minor variations (n=1) occurred with a requirement to increase the frequency of reporting to monthly, quarterly or semi-annually, and there was also one response for printing and background checks for a change in job status.

#### Auditing

All regulators conducted auditing, although the frequency of audits varied widely. Just under one third of respondents required annual auditing, and a like number of respondents required semi-annual audits. About one-tenth of respondents required quarterly auditing, and this same number also required monthly and daily auditing. This frequency of auditing was more likely in places where there is a requirement for a set percentage of revenue to be paid to the state, for example “the state gets 25% of slot revenue”.

Some regulators did believe that the quality of their audits (or lack thereof) was dependent upon the degree of access that was had to records. More than one respondent indicated that unfettered access to certain types of records, such as daily cash transactions, would greatly improve the quality of the oversight. As one interviewee stated, “By the time I see the incident report (referring to a customer complaint about a payout or

machine malfunction), it has been cleaned-up”.

#### Gaming Equipment Inspection

All but one regulator reported responsibility for inspecting machines. Less than a dozen regulators reported requiring inspections when a new machine is introduced. One quarter of those surveyed require daily testing of machines, and the same holds true for a monthly reporting requirement. A small number of regulators report a requirement for weekly or quarterly inspections, and approximately the same number of regulators require semi-annual or annual reporting.

#### Training

Over one third of respondents indicate that training is required of the outlets that they monitor, although only half of regulators have responsibility for the oversight of said training. Over half of the respondents indicated that they had no jurisdiction over training requirements, or that such was not required.

#### On-site inspections

Only one regulator indicated no responsibility for on-site inspections. All regulators agree that the ability to do on-site inspections well, because of improvements in accounting practices and machine technologies, has increased significantly.

In part because they are easier to do, over half of tribal regulators are trying to perform inspections on a daily basis. Twenty percent of regulators do on-site inspections on a weekly, quarterly, semi-annual or annual basis. One fifth of the respondents indicated a variation on the above methods.

So too, though, have inspections increased simply in response to the growth of the industry and the need for more uniform quality control. One regulator explained that the frequency of on-site inspections was not because of any uncovering of illicit activity, but simply the “explosiveness of the gaming industry”.

#### Primary Activities

Differing slightly from what regulators *actually* do, respondents reported different opinions about what they deem most important. Significant numbers of respondents felt that ensuring productive and independent working relationships between states, tribes and regulators was their most important task. Approximately one quarter of respondents saw insuring compliance as their primary responsibility, irrespective of the specific tasks that this might require.

#### Satisfaction with State Regulatory Performance

Respondents were queried as to whether they thought their state did a good job in regulating gaming, and were given a Likert scale response, “very good, good, adequate, poor, very poor”. Since tribal regulators are included in the respondents, many indicated they had less ability to rate the state. However, 29% of regulators thought that they did a very good job, about 25% thought they did a good job and 16% felt that their performance was adequate.

A common complaint with respect to the quality of the job they do is not with the tools, authority or techniques by which regulation occurs, but the actual training of the staff that does the job. Many respondents indicated a significant learning curve, and several persons indicated that casino-specific training (as opposed to general accounting) should be required.

A common theme in the responses is a distinction between whether the regulators

are charged with *monitoring* of activities instead of *regulating* the practices.

Once again, regulators who felt that they did a very good job reported significantly positive working relationships with the tribal community or the casino.

#### Appropriate Degree of Regulation

Respondents were asked whether they believed that regulations placed an excessive burden on the gaming industry, and/or whether there are regulations not presently in place that would improve the quality of regulation. Over 70% of regulators indicated that they felt the regulatory burden was not excessive, although there were some specific improvements that about one-third of respondents felt would be helpful. Suggestions for improvement included the ability to issue sanctions, and more auditing and regulatory authority. Most regulators credited NIGC for setting an appropriate tone for the balance of regulation between tribes and other governmental entities.

Over two thirds of regulators indicated that greater enforcement of regulations on the books would be appropriate. Responses included a better dispute process, such as mediation or arbitration. When asked to prioritize where money would be spent should regulators receive a budgetary increase, responses varied significantly. The two most common responses, at one-quarter of responses respectively, were an increase in employees and funding for training of employees. Ten percent of those surveyed supported an increase in monies for inspections, audits, equipment, and enforcement.

# Industry Gaming

## OVERVIEW

### Types of Games Featured

The types of gaming most commonly represented in this sample are fairly evenly split between “traditional” casino types of games--craps, blackjack, poker and slots--and other categories of gaming such as video poker and pari-mutuel.

The change in the types of games is one of the more significant findings of those surveyed. Most industry casinos have either decreased the number of table games offered, or maintained the initial numbers of table games. Tables games are considered to have a loyal customer base, but are not “where the growth is”. Emphasis was resoundingly on slot machines, which either have become a larger percentage of the games offered (as tables games decrease), or, in the case of an increase in what is offered, all of the increase takes place with slots or video poker.

Profitability has led this change, meaning that tables games have not brought in the same level of dollars that slots do. But the more important question is what has brought about this change. Many respondents spoke directly to this point. As gambling becomes a more common recreational activity, it draws upon numbers of persons who have no base knowledge on the activity. Table games are thought to be “intimidating” to the casual user. Alternative explanations for the increase in slot machines is that they offer a “quicker pace, quicker payout” and are more “user friendly”.

The theme of customer service manifests itself in this area. Many of those surveyed have a sophisticated knowledge of who their customers are. For example, one respondent can identify the customer base with great accuracy:

### **Proximity to Casino:**

0-10 miles:	35%
10-15 miles:	45%
50-250 miles:	3%

### **Gender:**

Female:	48%
Male:	52%

### **Age**

21-30%:	8%
31-50%:	29%
51-64%:	20%
65 and up:	43%

### **Racial Composition**

White:	58%
Black:	39%
Asian:	3%
Hispanic	.3%

Accordingly, this increases their knowledge of what types of games these demographics are more likely to play, and at what times during the week. One outlet specifically mentioned the creation of “The Tub”, which is a structural change in how customers can play craps. Presumably, standing for long periods of times is more difficult for this constituency and the Tub offers senior citizens the opportunity to play craps sitting down.

### Types of Facilities and Attractions

All of the establishments surveyed served food. Over three-quarters of the outlets served liquor. Seventy-five percent offered live entertainment as part of the gaming

complex. Half of those surveyed had hotel facilities. Like tribal outlets, alternative attractions, such as golfing, movie theaters and shopping facilities, are available. RV parks are also available.

The gaming complexes are changing as the industry changes. Undoubtedly, and as revealed by the respondents, some outlets (or their management companies) are actively trying to diversify. But a surprisingly significant number stated that the array of activities present was an attempt to “keep up with the competition”, and, in the words of one respondent, “Get those tour buses to decide it is worth it to get off on our exit.”

As discussed above, with the witnessing of a changing demographic in who is visiting casinos, namely a large percentage of the client base being senior citizens, the gaming complex is being planned with this in mind. The growth of RV parks, with RV’s being a common for of travel with senior citizens, was mentioned by many respondents. Some facilities are offering beauty salon services, something much more standard to the senior citizen market.

#### Largest Source of Gaming Revenue

For casino gaming, slots were clearly the largest source of revenue. Additionally, they are comprising a larger share of the activity taking place in gaming establishments. Many of the respondents discussed a shift from table games, such as poker, to slots. They cited two reasons for this change, as discussed above. First, slots are simply more profitable. Related to the first, though, is a reported change in demographics of the customer, which is moving toward a majority senior citizen population.

#### Background Checks

Casino outlets reported that their respective states required background checks. Typically, the background checks occur at hire, or the time of the employee’s certification, and half of the respondents indicated that checks were repeated annually.

There were a few outlets that conducted their own background checks in addition to the checks performed by the state. Very few outlets indicated that *all* employees were investigated.

About one-third of the casino respondents stated that the background requirements had become more extensive, in part due to an increase in frequency of the renewals for licenses. Most respondents reported no change in background checks over the past five years.

Some non-casino outlets indicated that they performed no background checks, nor were any required, while a small number of respondents explained that background checks were not required, but it was management policy to conduct them. When reviewing these numbers, as well as other findings for the industry sample, one must take into account the wide mix of gaming outlets in the sample universe. These numbers would vary slightly if we were to consider only casinos, riverboats and pari-mutuels.

#### Fingerprinting

The responses are similar to background checks. Most respondents have a requirement, mandated by their state, to undergo fingerprinting. There were a couple of respondents who indicated a local requirement for fingerprinting, and one which was repeated on an annual basis. This is atypical, and it was hypothesized that the annual fingerprinting requirement may be seen as desirable because it boosts the public coffers. Similarly, it was thought that were annual re-checks to be mandated, it made more sense

for them to be background checks, since there is a greater likelihood that repeating a background check will yield more new information than a repeat fingerprinting.

Generally, however, the background checks were to be required with the application or at certification, or, at completion of the background check.

Respondents indicated that requirements had either not changed in the past five years, or were not applicable.

#### Accuracy of Gaming Equipment

Checks on equipment have changed, and are continuing to change, for the gaming industry. The majority of casino outlets surveyed report an increased use of surveillance, and a significant rise in the sophistication of the tools used to monitor equipment, such as with a computer chip or the fill reasonableness test. So, too, though, did respondents feel that much of the change was due to a higher level of expertise of those checking equipment. Being such a fledgling industry, but one with such rapidity of growth, initially outlets had fewer trained technicians, which was not a commonly reported problem in 1999.

Of casinos surveyed, all indicated a requirement for testing gaming equipment, and similar to other requirements, this is imposed by the outlets' respective states. In most instances, this is also in-house company policy. "We would be robbed blind if we did these checks only twice a year. For keno, we check once a week. For slots we check once a week. These are minimums. I personally conduct them in between these weekly checks."

Machine testing is most likely to be *required* at installation with follow-up checks on a quarterly basis. All outlets reported a requirement to test a machine in response to an "incident report" by a patron. Many of those surveyed discussed the continuous (24 hour) or daily presence of state inspectors or law enforcement personnel in their respective facilities, in part to insure the integrity of the machines. Initially, many responded that they had inspections on a daily basis. When further questioned, surveyors were able to determine a specific and important difference between *presence* and *inspection*. Several respondents discussed that customers "had access" to state officials when at the facility should they have problems with a machine, and that these officials insured the integrity of the operations. But so, too, were there respondents who indicated a real difference between being physical present and being engaged in actual monitoring. Commented one casino manager, "Unfortunately these inspectors are not uniformly vigilant in monitoring and checking things at the facility. I am sure they would rather be proactive and out investigating a case, than been in this reactive setting". Herein lies an important distinction between regulations which are in place, and how regulations are actually carried out in practice. The regulatory requirement may be stringent, but, according to several casino managers, it remains unclear as to how stringent enforcement is in this area.

How checks are reported varies. Some outlets are permitted to simply keep a log of testing, often which is affixed to the machine. Other respondents indicated that they were required to fill out specific forms documenting machine testing.

As a matter of course, or in-house policy, many outlets report daily testing by house staff. This is most likely to be conducted if equipment is moved.

Virtually all casinos queried had in-house staff or technicians who were trained to

conduct inspections of equipment. Similarly, these were the main persons responsible for the testing. While many outlets reported that testing was done by state gaming inspectors, testing by actual inspectors was something that was always theoretically possible, but not necessarily a frequent, predictable or regular occurrence. Depending on the state, some states inspect the EPROMS initially.

Again, the question is not applicable for a portion of the sample, for whom requirements do not exist, or are not applicable.

### Training

There is not much *required* training cited by industry casino respondents, and the focus of the training that occurs as a matter of practice or in-house policy, is changing. Respondents generally linked changes in training to changes in the types of games, or necessitated by changes in laws. An important theme transcends all types of training, and that is, as mentioned in the Belletier Report, “the clarity of purpose” in laws or regulations. Comments one manager, “The first element to training is to translate generic regulation specifically for casino application. Then I can get to reviewing and teaching the task that will most closely meet that requirement.

About one third of casinos surveyed are required by state law to conduct training. However, over two-thirds of the industry sample has a management policy to do so. The policy may be as formal as set training sessions scheduled at predictable intervals, such as twice a month. Most employees have no set schedule for training to which they must adhere, and training tends to be conducted “on the job” when an employee is hired. The frequency of training is more likely an annual “average” rather than a set requirement for a mandated number of hours per year.

Large currency transactions were cited as the most common form of training, and this was an area where respondents indicated that expectations and professionalization was increasing. Again while formal training is not required, industry casinos have developed common practices. Reports one small casino operator, “When I do our in-house audits every month, I have a separate pad of paper where I take notes about who made mistakes where. I then personally handle the retraining of that employee.” Security and surveillance training was also common.

Most employees are trained to identify problem drinkers and gamblers. Here too, there may be some important distinctions, however, between required procedures and the actual delivery or practice of them. Very few respondents mentioned actual staff intervention policies when confronting someone who appears to have had too much to drink and is still engaged in gaming activities, but those who have clear policies in place do appear to be enforcing them vigorously. These few respondents report the keeping of logs or reports that average several cases of intervention daily. Intervention policies regarding problem drinker and/or gaming may become a more significant issue as video poker is becoming increasingly available in the casino bars. When queried about problem gaming, which most respondents discussed in the context of drinking, the responses were centered around the availability of literature or the posting of signs similar to, “If you play with real dollars, play with real sense”.

Consistent with the theme of emerging competition for casinos, customer oriented training is clearly becoming more common. This was the only type of training that any respondent cited as being required of all employees. For example, some outlets are

designating themselves “CFOs”, which stands for Customer Focused Organization. This is an external professional certification, and trainers are brought in from other industries to educate all employees as to the customer service perspective. Another type of training cited by respondents, for gaming specific casino employees, that is peripheral to the actual games themselves, is leadership training. Again, this type of training is more likely to involve an outside consultant coming in to perform the training.

Generally, however, training tends to occur internally. The trainer is most likely to be a pit, slot or cage manager in the larger outlets, and here training is defined as “departmental” training. In the smaller casinos, the head internal auditor or director of finance had more involvement with employee training.

Because training is a practice and not a requirement, most respondents indicated that they have not noticed major changes in the types of training required.

#### Reporting of Gaming Receipts/Revenue

All industry outlets that provided a response to this question<sup>5</sup>, were required to report gross revenue. Consistently, the state government is the recipient of this information, and typically this is both a state gaming entity and a state revenue department. Additionally, in cases where licensing fees apply, local governments may also require this information.

There are states in which gaming has a stated public policy purpose, (as opposed to the open competition models), such as economic redevelopment. These states may have another entity, such as a non-profit agency or a local government, to whom some percentage of receipts, either in set fee or sliding scale, must be paid.

Requirements for frequency of reporting range from daily to annually, although the most common reporting requirement was monthly. Again, local reporting requirements occurred for only a few outlets.

Just over one third of respondents were permitted to submit a common form to different outlets, while a small number of outlets were required to use different forms.

There were very few changes with respect to reporting requirements. Of those who did report a change, the most commonly cited difference was an ability to submit reports electronically. Some respondents noted that slots require more extensive reporting. There were a few respondents who indicated that their reporting requirements had lessened or been eliminated in a particular area.

#### Licensing

Licensing for industry gaming occurs almost exclusively at the state level, with well over three-quarters of respondents reporting such. A majority of casinos surveyed renew licenses on an annual basis. Many respondents fall into a predictable, but not identical pattern of license renewal. For example, a casino may be required to renew a license annually for a set number of years, after which it is every other year, or a different outlet may have to get a license every year for two years, then every third year.

Licensing fees by the state are fairly split between being a set fee or a sliding scale fee. There are many combinations for how licensing is charged. Some states have an initial licensing fee, for example, of \$50,000,<sup>6</sup> which is then followed by an annual

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<sup>5</sup>Two outlets declined to answer.

<sup>6</sup>This figure would be higher if the actual work done to obtain the license cost more than the original fee, and this cost would be borne by the applicant.

renewal fee of \$5,000. Particularly for riverboat casinos, licensing fees may be paid on a per head basis because ships have a strict capacity limit. For example, an establishment may have a \$2.00 overhead fee for customers, \$.50 of which is the licensing fee to the city, and \$1.50 which goes to a non-profit enterprise as part of a state mandated economic redevelopment program. A state licensing fee is equally likely to charge based on the numbers of machines on the floor.

#### Fees

Half of those surveyed have to pay fees in addition to licensing. Additional fees are most likely to go to the state, but there are instances of local fees being incurred. The method by which these fees are measured varies widely. The most common answer is for fees to be levied on a state sliding scale basis. Responses range from both a federal set fee and a federal sliding fee, or a local government set or sliding scale fee.

For example, a state may require an application fee for each employee, and employees may be ranked at different levels based on their position with the company. A top level employee fee could be \$1,000, a middle level, \$200 and the bottom tier a \$75, with a subsequent annual \$50 fee renewal for all employees. Some establishments pay these initial costs up front and deduct these costs from payroll, but these fees levied on employees are uniformly considered impediments to finding workers. This is particularly true in areas where gaming is authorized with an economic redevelopment stated public policy purpose.

Some states, while not calling them licensing fees, require fees based on the number of machines. For example, one respondent pays \$75 *per machine*, of which there are over one thousand, to the state, and then pays a *per device* fee of \$1,265 to the city (with again, the same number of machines), for a total of nearly 1.4 million dollars. In addition, this same outlet would pay a sliding scale fee to the state:

2% of the first \$2 million dollars (in gross revenue)

4% of the next \$2 million dollars

8% of the next \$1 million dollars

18% of the next \$5 million dollars

20% of \$20 million or above

#### On-site inspections

All casino facilities may be the recipient of on-site inspections. However, this only measures the *possibility* of the inspections, not the *incidents* of inspection. In fact, most respondents indicate that the pace of inspections has remained very consistent in the past five years. Respondents could not quantify any set schedule for inspections, and again, some of those surveyed replied that they have on site inspections, “24 hours a day, seven days a week,” because they may have the round the clock presence of a state law enforcement officer. Again, what is important for states to distinguish is the difference between *presence* and some form of *proactive engagement*. However, important changes in the quality of inspections may have occurred, in the words of one respondent, “As regulators have gained more knowledge”. This improvement in the learning curve and professionalization of those working in the industry is again reiterated in this area.

These are almost exclusively conducted by the State level officials, be they from Departments of Gaming, State Criminal Justice or Law Enforcement Divisions. Riverboat

casinos may be subject to inspections by the Coast Guard.

### Social Service Activities

Somewhat less than one-third of casino respondents reported a requirement to maintain or staff social service activities. As with the reporting of receipts, casinos who operate in state that follow a more heavily regulated model, due to a clear public policy purpose<sup>7</sup>, were more likely to be required to participate in social service activities. Some outlets were required to fund a non-profit organization, which in turn allocates funding for local hospitals and nursing facilities, and has paid for fire trucks and for cameras to be installed in police vehicles. Another example of social service activities included 2.5 million dollar donation to a charitable foundation.

Of those casinos who are required to provide for social services, there is also a higher rate of optional or non-required (e.g. casino policy, not part of state policy) social service activity. Specific employee involvement activities include giving back to a main client base, the elderly, and outlets may sponsor events such as senior citizen luncheons, holiday food subsidies or provision of groceries, and a Paint-a-Thon. The Paint-a-Thon is when an elderly, generally non-mobile couple needs their house painted but either can't afford it or are unable to do so themselves, and the casino donates labor and supplies for this endeavor. Other examples include mentoring activities such as "shadowing" programs whereby high school students may trail casino employees for set time periods to learn what kind of work is being done and what sorts of skills are required. Several outlets also reported a children's holiday toy drive,

Slightly over half of the outlets *not* required to fund social service activities reported that they did so anyway, as a matter of company policy. The majority of casino outlet respondents defined their support for social services by the degree to which their enterprise engage in problem gaming initiatives. Some respondents indicated that they must pay flat fees, for example \$500, if they join their professional gambling organization which in turn may fund a hotline for problem gaming. Many respondents report an increase in requirements to clearly provide literature on problem gambling, or to post visible signs.

### Necessary Regulations

A number of casino respondents felt that no regulation of the gaming industry was necessary<sup>8</sup>, but predominantly, the response was that regulation is needed. Respondents could not identify which regulations, with any degree of unanimity, should be required.

An overarching theme suggested by many respondents was simply the presence of regulation for the sake of public consumption. More important than any mandated standards, skills and monitoring, casino managers<sup>9</sup> reiterated that the maintenance of public confidence and business integrity were singularly paramount to tasks inherent to specific regulations. Alternatively, regulations need to be in place even if the only purpose they might serve is symbolic. In response to what regulations are necessary, respondents replied, "Regulations which will insure the public confidence," and "all of them are necessary to keep public confidence up in gaming industry."

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<sup>7</sup> Again, such as economic redevelopment.

<sup>8</sup> Unfortunately, their responses were limited to "no" with no willingness to elaborate about specifics.

<sup>9</sup> There were instances where casino managers and/or lead audit or counsel would not speak with the survey team directly and calls were handled by Public Information Officers.

Casino respondents did, however, have specific tasks that were also believed to be necessary. Approximately one-third of respondents supported auditing and minimum internal control standards. Examples included “continual review of gaming receipts” and “ensure proper accounting for revenue and expenses”. Receiving about one-quarter of the answers was machine testing or “those activities which ensure the fairness of the games” and specific examples such as “sealing tape on machines.

Only a few respondents named background checks and fingerprinting. This is in direct contrast to what industry regulators believe, whereby investigations, background checks and licensing are thought to be imperative to the integrity of gaming. As the Belletier Report states, integrity is best insured when “administrative decision making is in the hands of an appointed independent body” and that regulators, “must be authorized to conduct in-depth and, by most any standard, remarkably intrusive background investigations.”

### Costs of Regulation

The cost of regulation ranged from a low of \$100,000 to an excess of 10 million dollars. Keeping the cost in perspective, however, there were outlets who replied, “the cost is really negligible” or “The cost is not significant.” Unlike tribal regulation costs, industry casino respondents said compliance costs were attributable to surveillance and equipment more so than staffing.

Table 2                    **Costs of Regulation – Industry Establishments**

<b>Expenditure</b>	<b>Cost (per year)</b>
Compliance	\$3-4 million
Surveillance	\$1 million +
Compliance	\$500,000-\$1 million
Surveillance	\$500,000-\$1 million
Compliance staff	\$350,000
Equipment testing	\$200,000
Surveillance monitor salary	\$200,000
Internal audit costs, surveillance, outside investigator	\$150,000
Auditing staff	\$120,000
Financial regulatory compliance	\$100,000
Outside consulting fee	\$100,000
Regulatory compliance	\$100,000
Licensing and fingerprinting	\$50,000-60,000
Permitting for non-gaming services	\$50,000
Relicensure fee	\$5,000

### Unnecessary Regulation

Even when given the opportunity to identify unnecessary regulation, most casino respondents either said that there wasn't anything unnecessary, or that, while certain areas were in need of refinement, they were nonetheless necessary.

Of those respondents who indicated regulation was unnecessary, examples of such regulation included, "Strict permitting, the process of deciding for whom to provide non-gaming services,"; "gaming licenses for employees"; "Annual licensing should be extended,"; "extent of surveillance equipment"; "state equivalent to Title 31"; "requirements to keep track of transactions over \$10,000 in cash, but also to keep track of over \$10,000 in chips"; "pull tab regulations"; "hopper reasonableness test,"; "title 31"; and, "Annual fingerprints are not necessary and could be replaced by annual background checks".

When asked about approximating the cost of "unnecessary" regulation, responses were tightly clustered, with all respondents indicating between \$50,000-\$80,000, except for one outlet whose estimate was \$200,000.

There were very few exceptions to the overwhelming majority of casino outlets, almost all of whom replied that no additional regulations were necessary. Of those who thought more regulation should be introduced, three examples were provided: "Ban concealed weapons from facilities,"; "Get people with corrupt backgrounds out of gambling,"; and, "Regulate Player and Slot Clubs where you can redeem points for merchandise, food, or actual cash".

When queried about the actual *enforcement* of regulation, casino respondents were fairly split as to whether enforcement of regulations was excessive. Of those who believed that regulation was excessive, responses were either very specific suggestions (as opposed to sweeping generalizations), or the response arose because of general ambiguities in the law or regulations, and the subsequent misunderstanding that such may cause. One respondent with a specific complaints about the degree of enforcement said that, "slot meter comparisons require a lot of time. There are multiple reports to do and they produce repetitive information." The second respondent had complaints about the statistical reports for the State Department of Gaming.

Some respondents echoed a broader theme found throughout responses, that of ambiguity, and a lack of understanding of requirements. Perhaps more insightful critiques of regulatory enforcement included, "If you exceed the MICS because your own standards require it, you should not be fined for missing your own standard if it still exceeds the MICS. Here lawmakers should look at intent, not letter of the law." A second respondent explained, "Look, sometimes regulators aren't properly trained, so sometimes they don't appropriately cover the law, nor do they understand it correctly". In sum, it is clear that clarity of laws and regulations can only serve both the industry and the regulator. As noted by one respondent who didn't feel enforcement was excessive, "While we don't necessarily like the regulation and enforcement, we have a very ethical Gambling Control Board and we *understand what is expected of us.*"

When queried about the converse, "Are there any areas of regulation where you think enforcement is too lax?" respondents overwhelmingly replied no. Only two casino outlets said yes, one of whom wouldn't specify the nature of the response, and the second, who replied that "dockside agents need access to books".

### Changes in Regulation and the Gaming Industry

Those surveyed were asked to generally reflect on the types of changes that are occurring in regulation and the industry. With respect to regulation, respondents were fairly unanimous in their observations. Far outweighing the discussions of “too much versus not enough” regulations, respondents feel that regulation is continually being developed and modified as appropriate, and that the regulators are, “always refining and adding, but in small increments”. Casino respondents commented that as regulators “start to understand more, they are getting rid of some controls that are unnecessary” and that “Rules have become more precise to reflect the range or variance in casino outlets”. Indicative of a field in which norms are being established, one manager stated, “We have been able to reduce the number of compliance report filings to semi-annual because both the casinos and the regulators have become better at monitoring compliance and all are better skilled.”

Larger changes were felt to have occurred in the industry itself, as opposed to the regulation thereof. Many of those queried cited the increase in efficiency and the knowledge base, such that more sophisticated business practices can be relied upon and have become standardized. It is clear the degree to which competition is driving the behavior of these enterprises. The types of games are changing, with newer games and more sophisticated equipment becoming more common. There are changes in the ratios of the layout of the casino floor, from table to slots. Marketing efforts are more heavily emphasizing slot players.

In sum industry respondents are keenly aware of the competition posed by other outlets. Understanding the customer base and the greatest sources of revenue correlated to this demographic is receiving full attention. It appears to be moving to a “client-based” customer service industry.

# INDUSTRY REGULATORS

## OVERVIEW

Virtually all regulation of industry gaming occurs at the state level, with local involvement generally limited to taxes and fees. The respondents for industry regulators range from political appointees to state law enforcement officers, with the most likely respondent being an investigator or representative of a State Department of Gaming, and in a few instances, the Director of the State Department of Gaming.

## Staffing of Regulatory Bodies

Industry regulatory bodies are substantially larger than tribal gaming regulatory offices. Only one regulator had less than 10 persons staffing the office, a category in which one third of respondents fell for tribal regulating. There were two clusters of the most common answers. A small number of offices had 31-50 persons and 51-70 persons respectively. Again, a small number of respondents had staffing levels of 101-150, and 151-200. One regulator reported a staff of between 301-400 persons, and one a staff of over 400 persons.

## Regulators Budgets

The lowest budget reported by industry regulators was in excess of 2 million dollars. Respondents also recorded budgets in excess of eight to ten million dollars.

One third of respondents receive general appropriations from their state, and only one respondent indicated that revenue came from gaming fees. Other possible sources of revenue tend to come from a mixed formula of revenue from gaming and appropriations from the state, or dedicated funds from the state.

Over the past five years, almost all of the regulators indicated an increase in budget. Percentage increases in budgets were between 5% and a high of 30%, but most respondents were unaware of the increments of their budget increases. The most common reason for budget increases was simply a growth in gaming activity, and with more business to regulate, more staff is needed to fulfill these tasks. Inflation, or an increase in salaries, and money for new equipment were also cited as reasons for the increase.

## Major Activity of the Agency

Regulators were queried as to their *major* activity and their *most important* activity. Regulators play a wide range of roles. Some describe their function as “to be there 24 hours a day, 7 days a week” so that they can “arbitrate disputes”. Other regulators say their function is “purely oversight, as the tribes are the primary regulators” while another regulatory colleague indicates their function is “prosecutory”. The public element of their job was clearly significant to some regulators, who described their responsibility as “protecting the public”, while one respondent said, “I may not agree with the terms my state negotiated with the casino industry. Nonetheless, this is now a matter of state law and my job is to see that the people of the state get what is now legally their share”.

In response to the question, “In your opinion, what are the most important aspects of your agency’s activities?”, instead of responding with specific tasks like auditing or background checks, responses grouped around the notion of accountability. The overarching idea was expressed by a respondents who explained, “We are the civilian conscious of the community that determines what is right for the community in terms or

regulations and licensing.” Almost uniformly somewhat “intangible” items and respondents cited themes like: “Protecting the citizens of the state”; “ensuring fair gaming and people’s confidence”; and, “regulating to ensure public confidence”.

There remained a more practical element to the answers as well. Responses also reflected the notion of being an officer of a given state, illustrated in responses such as, “Protecting the assets of the state, “; “ensure the state is being paid the right fees”; “ensure the state is receiving a fair share of tax money”; making sure “that they get the correct revenue share from the operations.”

In terms of how the regulatory function has changed, again, it is apparent that gaming is a “growth industry” to which state agencies are adapting. Many respondents discussed structural or hierarchical changes in their agency as responsibilities and relationships are reevaluated.

Several industry respondents also cited the growth and sophistication of technology, explaining that, “devices are more sophisticated, most are computer driven with new types of computers,” or that their agency has, “had to adopt new sophisticated regulations to mirror new technology.” So, too, was the sophistication of the industry itself cited as a cause for change in tasks and allocation of time and resources. Explaining an approach toward investigations, on respondent comments that there are, “Corporate financial arrangements that are very sophisticated and require more sophisticated investigations.

#### Background Checks

Half of the industry regulators had responsibility for conducting background checks (versus the checks being done by a local or state police department), which were typically done at hire or point of issue of certification.

There is significant variation as to how often checks are repeated, if at all. For example, a license, which may require a background check, may be reissued every fourth year, at which time background checks are redone. In another locale, background checks are repeated with a change in status or change in employment. Another state may require “annual updates as a matter of course, and change-of status updates in between, if necessary”.

As in tribal gaming, there are distinctions made between key and non-money handling employees. In industry there were often more “tiers” or classifications of types of employees, some of whom were investigated, some of whom were not.

#### Fingerprinting

Three-quarters of respondents require fingerprinting for industry gaming employees. Generally it is at hire or certification, but one fifth of respondents “refingerprinted” at change of the employee’s status or on an ongoing basis. A few states with limited outlets require annual reprinting.

#### Auditing

The majority of those surveyed had responsibility for conducting audits. One third of them conduct audits on an annual or less basis, specifically, annual or quarterly. Over half conduct audits on some predictive cycle that exceeds every two years, typically every third or fourth year. With respect to fulfilling this audit function, common themes expressed were, “only to the extent that such is necessary to comply with state tax code” to “we have the jurisdictional authority to do so and will do as on an as needed basis.”

Some respondents described what is known as an “audit presence”, which operates on a “risk based model”. This requires annual audit compliance and a “full blown audit every three years with spot audits if necessary.

#### Gaming Equipment Inspection

Industry regulators conducted machine testing or inspection in almost all cases. A small number of regulators conduct tests on a daily basis, but inspections are conducted once a year or less for only a quarter of respondents, who also conduct daily or weekly spot checks. Over half of those surveyed conduct audits on an “as needed” basis, or in increments greater than every two years.

#### Training

Over one-third of industry regulators queried indicated that training was required for employees, with regulators responsible for oversight of training in half of those cases. One-third of respondents indicated that there was no required training. Of those who required training, detection of problem gambling was common, as was training for games, detection of underage gamblers, and security on the casino floor. The frequency of training had changed in some instances, to where regulators require certain number of hours of training per quarter for cage and audit employees. Training is typically in-house, but some regulators are sent to external gambling schools.

This was an area, commonly cited by regulators, on which people would spend additional funds if such were allocated. Specific areas to increase training were cited for identification of underage gaming and *casino* auditing skills.

#### On-site Inspections

Most regulators surveyed had the authority to perform on-site inspections, but there was a high degree of variability as to the frequency of visits, and the pattern of inspections has generally not increased in frequency over the years.

As previously mentioned, there were respondents who indicated that 24 hour coverage constituted daily on-site inspection, and as before, there is an important distinction to be drawn between *presence* and *inspection*.

Some respondents indicated a non-regular pattern for inspections and tried to do them every three or four years, on an “as needed” basis, or that they “strive for as many as they can”.

#### Efficacy of Regulation

When a Likert scale question was introduced about how well the state regulates the gaming industry, over 60% of respondents thought they did a “very good” job, and 30% thought they did a “good job”. Similarly, the actual performance of regulation, enforcement was ranked higher. All but two respondents ranked their enforcement efforts as “very good”, while the outliers ranked their enforcement as “good”. Reasons for this ranking included regular presence in the casinos, the quality of an incident reporting system and improved technology that allowed more accurate and current monitoring.

None of the regulators queried felt that the regulations imposed too large a burden on the gaming industry, but two-thirds felt that additional regulations were needed. Topics of concern to regulators were wide ranging, from the lack of regulation on electronic gaming, less ambiguity in rules governing industry, and increasing penalties for violations. There were also suggestions about regulations which would allow access to

some of the surrounding facilities, while not exposing children to the gaming areas of establishments.

Most of the regulators indicated that greater enforcement activity needs to occur, and several cited dealing with issues of underage gaming or presence in facilities. When queried as to how additional resource would be expended were they to be given, approximately one-third would support adding employees, but the tasks which received the highest responses, which would presumably benefit from more employees, were equally split between enforcement, auditing and training.

#### Pari-Mutuel Betting

There was a small representation of pari-mutuel betting in the sample. Of those, background checks were required, as was fingerprinting. Audits were conducted in all cases, but there was no pattern to the frequency. On-site inspections of these facilities were conducted, typically on a quarterly basis.