

**OVERVIEW OF RAP LEGAL REQUIREMENTS**

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**Indian Gaming Regulatory Act**

Net gaming revenues can only be used for the following purposes:

1. To fund tribal government operations or programs;
2. To provide for the general welfare of the Indian tribe and its members;
3. To promote economic development;
4. To donate to charitable organizations; or
5. To help fund operations of local government agencies.

25 U.S.C. § 2710(b)(2)(B)

**AND . . .**

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**Indian Gaming Regulatory Act**

As per capita payments to tribal members if:

- > The tribe has prepared a plan to allocate revenues (RAP) to the § 2710(b)(2)(B) uses;
- > The RAP is approved by the Secretary of the Interior as adequate, particularly regarding the § 2710(b)(2)(B) uses;
- > The interests of minors and other legally incompetent persons are protected and preserved;
- > Per capita payments are disbursed to the parents or legal guardian in such amounts as may be necessary for the health, education or welfare of the minor or legally incompetent person; and
- > The per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

25 U.S.C. § 2710(b)(3)

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### Office of Indian Gaming Regulations

A RAP must:

- Allocate net gaming revenues
- Authorize per capita payments
- Define eligibility for per capita payments
- Protect minors and legal incompetents
- Notify recipients of federal tax liability
- Provide a method of dispute resolution

25 C.F.R. 290.12

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### Office of Indian Gaming Regulations

#### Allocation of Net Gaming Revenues.

Net gaming revenues allocations, broken out and totaling 100%, must:

- Reserve an adequate portion of revenues to fund tribal government operations or programs, general welfare of the tribe and its members, promote tribal economic development, donate to charitable organizations, and fund local government operations.
- Contain detailed information that allows the Office of Indian Gaming (OIG) to determine that the RAP is adequate in this area, especially for funding of tribal government programs or operations and economic development initiatives.

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### Office of Indian Gaming Regulations

#### Protection of Minors and Legal Incompetents.

The interests of minors and legal guardians must be preserved by:

- Ensuring that per capita payments are made to their parents or guardians at times and in the amounts necessary for their health, education, and welfare;
- Establishing criteria for withdrawal of the funds by parents/guardians, including what is acceptable proof or receipts to justify the decision-maker's disbursement or denial of the funds, and ensuring accountability exists;
- Establishing a process, system, or forum for dispute resolution;

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### Office of Indian Gaming Regulations

#### Eligibility.

If the RAP allows distribution of per capita payments to an identified group of tribal members rather than to all members, the RAP must justify this decision as:

- Reasonable and not arbitrary.
- Nondiscriminatory and not in violation of the Indian Civil Rights Act (i.e., religion, equal protection of the law, taking of private property for a public use without justification).
- Allowable under Tribal law.

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### Office of Indian Gaming Regulations

#### Tax Liability Notification and Withholding.

The RAP must require that:

- Members be notified of the tax liability for the per capita payments at the time of distribution
- The Tribe shall withhold taxes for recipients in accordance with 26 C.F.R. Part 31.



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### Office of Indian Gaming Regulations

#### Dispute Resolution.

The Tribe must specify a method for members to protest allocations or distributions of per capita payments or the lack of a distribution by:

- Designating the tribal court system as the forum for dispute resolution, or
- Creating an alternate forum or process for the resolution of disputes.

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To summarize, IGRA allows a tribe to make per capita payments to tribal members if:

- A. The Tribe's governing body has approved a RAP:
  - 1) allocating funds to § 2710 uses;
  - 2) The interests of minors and legal incompetents are preserved;
  - 3) Strict eligibility requirements are established;
  - 4) Disbursements may be made to parents/guardians for the health, welfare, or education of the minors or legal incompetents; and
  - 5) Members of notified of Federal tax liability when payments are distributed.
- B. And the Secretary has approved the RAP as adequate.

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### RAP Submission

The RAP must be sent to the local BIA Superintendent with:

- A written request for approval.
- A tribal resolution or other document certifying the adoption of the RAP in accordance with tribal law. The document must include the date and place of adoption as well as the result of any vote taken.

25 C.F.R. § 290.17

- !! **OIG generally requests supporting documentation on the RAP only if over 50% of the net gaming revenues are allocated to per capita payments.**

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### RAP Approval

- Interior has 60 days to review and act on the RAP.
- If Interior does not act within 60 days, the Tribe can appeal the inaction pursuant to 25 C.F.R. Part 2.
- The RAP is not effective without the written approval of the Secretary or his designee. The Tribe cannot distribute per capita payments without an approved RAP.

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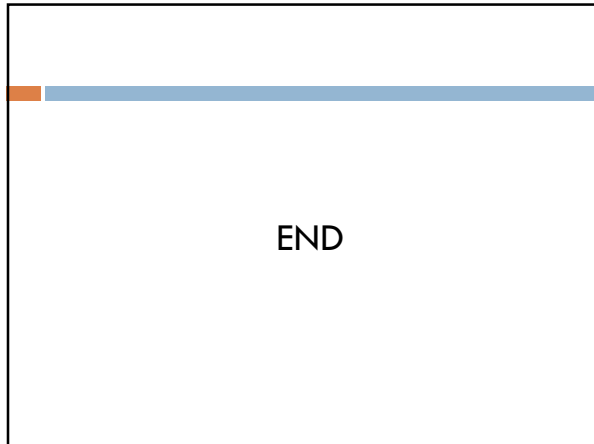
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