

PART 290 - REVENUE ALLOCATION PLANS

Sec.

- 290.1 Purpose **and scope.**
- 290.2 Definitions.
- 290.3 Information collection.
- 290.4 What is a revenue allocation plan?
- 290.5 Who **must submit a** revenue allocation plan?
- 290.6 What are the consequences for a tribe that is making per capita payments without an approved revenue allocation plan?
- 290.7 How may an Indian tribe use net gaming revenues if it does not have an approved revenue allocation plan?
- 290.8 What information must the revenue allocation plan contain?
- 290.9 Who can share in per capita payments **under a revenue allocation plan?**
- 290.10 **How must the revenue allocation plan protect and preserve the interest of minor and legally incompetent persons?**
- 290.11 Must the Indian tribe establish trust accounts with financial institutions for minors and legally incompetent persons?
- 290.12 Can the per capita payments of minors and legally incompetent persons be deposited into accounts held by the BIA or the Office of Special Trustee (OST)?
- 209.13 **Can the revenue allocation plan allow for flexibility in tribal budgeting of its net gaming revenues?**
- 290.14 Where should the Indian tribe submit the revenue allocation plan?
- 290.15 **What information must be submitted to the Superintendent before a revenue allocation plan may be reviewed?**
- 290.16 How long will it take the **ADO** to review the revenue allocation plan?
- 290.17 **What criteria will the ADO use when deciding whether to approve a revenue allocation plan?**
- 290.18 How does a tribe appeal the **ADO's** decision?
- 290.19 **Once a plan is approved and the tribe is distributing per capita payments, must it keep records of the distributions?**
- 290.20 **How may members of an Indian tribe resolve disputes arising from distributions of per capita payments made pursuant to an approved revenue allocation plan or otherwise ensure compliance with the plan?**
- 209.21 **Can the Federal government enforce tribal compliance with an approved revenue allocation plan?**
- 290.22 **Does the ADO need to approve amendments to a revenue allocation plan?**
- 290.23 Are revenue allocation plans, revisions, or amendments approved before [the effective date of this regulation], subject to review in accordance with this part?
- 290.24 What is the liability of the United States under this part?

AUTHORITY:

5 U.S.C. § 301, 25 U.S.C. §§ 2, 9, and 2710

§ 290.1 Purpose.

This part contains procedures for submitting, reviewing, and approving revenue allocation plans **that allow for distribution of per capita payments to tribal members from class II and class III net gaming revenues in accordance with 25 U.S.C. § 2710(b) and (d).**

§ 290.2 Definitions.

Appropriate Departmental Official (ADO) means the **Department of the Interior** official with delegated authority to approve revenue allocation plans.

BIA means **Bureau of Indian Affairs, Department of the Interior.**

IGRA means the Indian Gaming Regulatory Act of 1988, as amended and codified at 25 U.S.C. §§ 2701-2721.

Indian Tribe or tribe means any Indian tribe, band, nation, or other organized group or community of Indians that **is recognized by the Secretary as having a government-to-government relationship with the United States and is eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as may be evidenced by inclusion of the tribe on the list of recognized tribes published by the Secretary under 25 U.S.C. 479a-1.**

IRS means the **Internal Revenue Service.**

Legally incompetent person means an individual who is eligible to participate in a per capita payment and who has been declared to be by a court of competent jurisdiction as being unable to manage his/her personal affairs because of a mental or physical disease or injury by that jurisdiction, or as defined by the jurisdiction.

Member of an Indian tribe means an individual who meets the requirements established by applicable tribal law for enrollment in the tribe and (1) has been listed on the tribal rolls of that tribe if such rolls are kept or (2) has been recognized as a member by the tribal governing body if tribal rolls are not kept.

Minor means an individual who is eligible to participate in a per capita payment and who has not reached the age of 18 years.

Net gaming revenues means net revenue derived from a tribe's **IGRA** class II and/or III gaming operations, as defined in IGRA and **NIGC regulations.**

NIGC means the **National Indian Gaming Commission, Department of the Interior.**

OST means the **Office of the Special Trustee for American Indians, Department of the Interior.**

Per capita payment means the distribution of money or other thing of value, **paid from net gaming revenues** to all members of the tribe or to identified groups of members, **that does not qualify as a non-taxable payment made to provide for the general welfare of the tribe and its members.** This definition does not apply to net gaming revenues paid to tribal members for bona fide programs addressing specifically identified needs, such as social welfare, medical assistance, education, or housing, with written eligibility criteria that must be met by program participants.

Per capita payment account means an account established by an Indian tribe at a financial institution to receive and invest per capita payments for minors or legally

incompetents pending distribution of the account assets to those members after they attain the age of majority or cease to be legally incompetent as determined by a court of competent jurisdiction or tribal justice system.

Regional Director means the official of the BIA in charge of the regional office which has administrative responsibility for the affairs of the tribe.

Resolution means the formal document in which the tribal governing body expresses its legislative will in accordance with applicable tribal law.

Revenue allocation plan or RAP means the document submitted by an Indian tribe that provides for distribution of per capita payments to tribal members from net gaming revenues in accordance with 25 U.S.C. § 2710(b) and (d).

Secretary means the Secretary of the Interior or his/her authorized representative.

Superintendent means the official or other designated representative of the BIA in charge of the field office which has immediate administrative responsibility for the affairs of the tribe.

To provide for the general welfare of the tribe and its members means the use of net gaming revenues for programs such as social welfare, education, medical care, and housing pursuant to 25 U.S.C. § 2710(b)(2)(B)(ii). Use of net gaming revenues to make a payment of money or other thing of value to an individual tribal member is considered to be for the general welfare of the tribe and its members rather than a per capita payment if the recipient established an individual need for the payment by meeting written qualifying criteria for the program established by the tribe.

Tribal governing body means the governing body of an Indian tribe as established by applicable tribal law.

You or your means the Indian tribe.

§ 290.3 Information Collection.

The information collection requirements contained in §§ 290.12, 290.17, 290.24 and 290.26 have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507(d), and assigned clearance number 1076-0152.

§ 290.4 What is a revenue allocation plan?

It is a document describing how a tribe will allocate net gaming revenues that provides for the possibility of distribution of per capita payments to tribal members from net gaming revenues in accordance with 25 U.S.C. § 2710(b) and (d).

§ 290.5 Who must submit a revenue allocation plans?

Any Indian tribe that intends to make a per capita payment from net gaming revenues must submit a RAP. If you do not intend to make per capita payments, you do not need to have a revenue allocation plan.

§ 290.6 What are the consequences for a tribe that is making per capita payments without an approved revenue allocation plan?

IGRA requires that you have an approved RAP before distributing per capita payments. If you make per capita payments to tribal members without an approved RAP, you are in violation of § 2710(3) of IGRA and the NIGC may bring an enforcement action that could result in a fine or, in the case of a substantial violation, temporary and/or permanent closure of your gaming facility or facilities. Federal income tax penalties may also apply.

§ 290.7 How may an Indian tribe use net gaming revenues if it does not have an approved revenue allocation plan?

Without an approved RAP, you may use net gaming revenues for any of the five categories listed in IGRA at 25 U.S.C. § 2710(b)(2)(B). They are as follows:

- (a) To fund tribal government operations or programs;
- (b) To provide for the general welfare of your tribe and its members;
- (c) To promote tribal economic development;
- (d) To donate to charitable organizations; or
- (e) To help fund operations of local government agencies.

§ 290.8 What information must the revenue allocation plan contain?

The RAP must:

- (a) include a percentage breakdown, that totals 100 percent, of the following uses for which you will allocate net gaming revenues:
 - (1) To fund tribal government operations or programs;
 - (2) To provide for the general welfare of the tribe or its members;
 - (3) To promote tribal economic development;
 - (4) To donate to charitable organizations;
 - (5) To help fund operations of local government; or
 - (6) To distribute per capita payments to eligible tribal members.
- (b) protect and preserve the interests of minors and legally incompetent persons;
- (c) describe how you will notify members of the tax liability for per capita payments and how you will withhold taxes for all recipients in accordance with IRS regulations in 26 CFR Part 31;
- (d) authorize the distribution of per capita payments to the group of members eligible to receive per capita payments according to specific eligibility requirements; and
- (e) utilize or establish a tribal court system, forum or administrative process for the resolution of disputes concerning the allocation and distribution of net gaming revenues, including the distribution of per capita payments to tribal members and to parents or legal guardians on behalf of minors and legally incompetent persons.

§ 290.9 Who can share in a per capita payments under a revenue allocation plan?

- (a) You must establish your own criteria for determining whether all members or identified groups of members are eligible for per capita payments.

(b) If the **RAP** calls for distributing per capita payments to an identified group of members rather than to all members, you must justify limiting this payment to the identified group of members. You must **ensure** that:

(1) The distinction between members eligible to receive payments and members ineligible to receive payments is reasonable and not arbitrary, and does not discriminate or otherwise violate the Indian Civil Rights Act; **and**

(2) The justification complies with applicable tribal law;

§ 290.10 How must the revenue allocation plan protect and preserve the interest of minors and legally incompetent persons?

The RAP must protect and preserve the interests of minors and legally incompetent persons who are entitled to receive per capita payments by:

(a) Ensuring that tribes make per capita payments for eligible minors and legally incompetent persons available for disbursement to the parents or legal guardians of these minors and legally incompetent persons at times, and in amounts, necessary for the health, education, or welfare of the minor and legally incompetent person;

(b) Establishing criteria for allowing the withdrawal of any per capita payments by a parent or legal guardian;

(c) Requiring acceptable proof and/or receipts for accountability of the expenditure of any per capita payments withdrawn by a parent or legal guardian; and

(d) Establishing criteria for denying the withdrawal of the minors' and legally incompetent persons' per capita payments by a parent or legal guardian.

§ 290.11 Must the tribe establish trust accounts with financial institutions for minors and legally incompetent persons?

No. The tribe may, but is not required to, establish per capita payment accounts with financial institutions for minors and legally incompetent persons, and should explore investment options to structure the accounts to their benefit. If **the tribe has opted to establish such accounts, the tribe must submit documentation** demonstrating that such accounts have been established to ensure compliance with IGRA and this Part.

§ 290.12 Can the per capita payments of minors and legally incompetent persons be deposited into accounts held by BIA or OST?

No. The Secretary will not accept any deposits of payments or funds derived from net gaming revenues to any account held by BIA or OST.

§ 290.13 Can the revenue allocation plan allow for flexibility in tribal budgeting of its net gaming revenues?

Yes. A tribal RAP can allocate revenue in percentage spreads rather than strict allocations to allow tribal governing bodies flexibility in responding to budget needs and distributing per capita payments. This is strongly encouraged as any amendments to a RAP require approval pursuant to this part before becoming effective.

§ 290.14 Where should the Indian tribe submit the revenue allocation plan?

You must submit the RAP to your respective Superintendent, who will forward it to the ADO.

§ 290.15 What information must be submitted to the Superintendent before a revenue allocation plan may be reviewed?

You must submit:

- (a) The revenue allocation plan;
- (b) A tribal resolution or other document generated by the tribal governing body:
 - (1) indicating the date and method of adoption, including the result of any vote taken,
 - (2) certifying the RAP was adopted and is being submitted in accordance with applicable tribal law; and
- (c) requesting that the Federal government approve the plan; and
- (c) The following supplemental information to allow the ABO to determine that the plan complies with this part and IGRA:
 - (1) Current tribal enrollment and projected enrollment for the next 5 years;
 - (2) Historical and projected net gaming revenues for the next 5 years;
 - (3) Other potential sources of tribal revenue within the next 5 years, including, but not limited to, revenue received pursuant to the Indian Self-Determination and Assistance Act, 25 U.S.C. § 450 et seq., and budgeted by the tribe to provide governmental services on its reservation;
 - (4) Historical and current tribal budgets and anticipated budgets for the next 5 years;
 - (5) The tribe's written goals and standards for maintaining and achieving economic health, particularly in respect to tribal government operations or programs and providing for the general welfare of the tribe and its members.
 - (6) If an identified group, other than all enrolled members, is to receive per capita payments, the justification for distinguishing between this group and the rest of the members of the tribe must be provided.
 - (7) If the tribe has opted to establish per capita payment accounts with a financial institution on behalf of minors and persons found to be legally incompetent for deposit of their per capita payments, documentation demonstrating that such accounts have been established.

§ 290.16 How long will it take the ADO to review the revenue allocation plan?

(a) Once you have submitted the RAP to the Superintendent, he/she will review the revenue allocation plan to make sure it has been properly adopted in accordance with applicable tribal law and the application package is complete. The Superintendent will then transmit the RAP within 30 days to the appropriate BIA regional director who will submit the revenue allocation plan to the ADO with a recommendation on whether the plan should or should not be approved.

(b) The ADO must review and either approve or disapprove your RAP within 60 days of receiving it from the Superintendent. If the ADO does not act within 60 days of receipt, you can appeal the inaction to the Interior Board of Indian Appeals pursuant to 25 CFR Part 2. A RAP is not effective without the ADO's written approval.

§ 290.17 What criteria will the ADO use when deciding whether to approve a revenue allocation plan?

- (a) A RAP is adequate and will be approved if the ADO determines that:
- (1) the plan is consistent with the tribe's written goals and standards for maintaining and achieving economic health, submitted under § 290.15(c)(5) of this part;
 - (2) the plan authorizes the distribution of per capita payments to tribal members according to specific eligibility requirements and, if the plan does not call for per capita payments to all members, that the requirements of § 290.9 of this part have been satisfied;
 - (3) that the interests of minors and legally incompetent persons have been met in a method that satisfies § 290.10 of this part;
 - (4) The plan provides for notification of tribal members of the tax liability for per capita payments and the withholding of taxes for all recipients in accordance with IRS regulations in 26 CFR Part 31;
 - (5) A tribal court system, forum or administrative process is in place or has been established for the resolution of disputes concerning the allocation and distribution of net gaming revenues, including the distribution of per capita payments to tribal members and to parents or legal guardians of minors and legally incompetent persons;
 - (6) The RAP was adopted in accordance with applicable tribal law;
 - (7) The RAP does not violate the Indian Civil Rights Act of 1968, tribal law, Federal law, or the United States' trust obligations.
- (b) If the RAP is not found to be adequate, the ADO will send you a written disapproval notice that explains why the plan does not conform to this part and IGRA.

§ 290.18 How does a tribe appeal the ADO's decision?

You may appeal the ADO's decision to the Interior Board of Indian Appeals pursuant to 25 CFR Part 2.

§ 290.19 Once a plan is approved and the tribe is distributing per capita payments, must it keep records of the distributions?

Yes. You must maintain information on the amount of per capita payment given to each individual in each distribution and make it available for review by the tribal court system, forum or administrative process in place for the resolution of disputes concerning the allocation and distribution of net gaming revenues as well as to the NIGC and IRS upon the request of either agency.

§ 290.20 How may members of an Indian tribe resolve disputes arising from distributions of per capita payments to individual members or identified groups of members made pursuant to an approved revenue allocation plan and otherwise ensure compliance with the plan?

You must utilize or establish a tribal court system, forum or administrative process for reviewing challenges to expenditures and allocation of net gaming revenues, and, if any deficiencies are found, then issuing decisions with explanations of how you will correct these deficiencies. The tribe must periodically review the revenue allocation plan to ensure its compliance with this Part and IGRA.

§ 209.21 Can the Federal government enforce tribal compliance with an approved revenue allocation plan?

Yes. The NIGC may take enforcement action to ensure tribal compliance with the terms of a RAP if it has reason to believe a violation has occurred.

§ 290.22 Does the ADO need to approve amendments to a revenue allocation plan?

Yes. Amendments to a RAP must be approved under this part before they become effective.

(a) If you are amending or replacing a previously approved RAP, you must submit the amended or new plan to your Superintendent for review and approval under this part, along with updated submission information, if changed.

(b) You must provide with the submission information whether:

(1) any government operations, programs or services have been curtailed or cut back and the reasons for this; or

(2) the tribe's net gaming revenues have either increased or decreased by 25 percent in the last fiscal year.

§ 290.23 Are revenue allocation plans, revisions, or amendments, approved before [the effective date of this regulation], subject to review in accordance with this part?

No. These regulations are prospective only and do not apply to a revenue allocation plan that has already been approved.

§ 290.24 What is the liability of the United States under this part?

The United States is not liable for the content or implementation of the RAP.