

Indian Gaming and Tribal Revenue Allocation Plans: A Case of “Play to Pay”

William A. Taggart and Thaddieus W. Conner

SINCE ENACTMENT of the Indian Gaming Regulatory Act (IGRA) in 1988,¹ American Indian gaming has proliferated at an incredible rate in the United States.² By 2009, over 200 tribes were operating in excess of 400 gaming facilities in 28 states,³ representing approximately two-thirds of the nations in the lower 48 states.⁴ What started out as a modest industry with estimated revenues around \$200 million in 1988⁵ has evolved into a major component of the casino market, generating over \$25 billion in net revenue during the last few years of the 2000s.⁶ Admittedly, 2009 was a down year for Indian gaming—its first year of no growth—but nothing compared to the losses found in the commercial (non-Indian) sector, which continues to be ravaged by the lingering economic recession.⁷ It is also important to emphasize that not all nations are equally successful in their gaming pursuits, with a comparatively small proportion of gaming tribes accounting for a significant proportion of the annual revenue.⁸

The first of three primary goals identified in the IGRA is “... promoting tribal economic development, self-sufficiency and strong tribal governments.”⁹ The vision for gaming, as noted by many early commentators,¹⁰ was that it would serve as a means for transforming Indian country, plagued for generations by a host of economic and social ills, into vibrant communities providing the infrastructure and institutions needed by Native Ameri-

cans to exercise meaningful self-determination. To encourage this transformation, the IGRA limits the use of the gaming revenues to the following purposes: 1.) to fund tribal government operations or

¹25 U.S.C. §§ 2701–21.

²J. Schapp, *The Growth of the Native American Gaming Industry: What has the Past Provided, and What Does the Future Hold*, 34 AMERICAN INDIAN QUARTERLY 365 (2010).

³*Id.*, National Indian Gaming Association [NIGA], *The Economic Impact of Indian Gaming in 2009*, available at <http://www.indiangaming.org/info/NIGA_2009_Economic_Impact_Report.pdf> (last visited Jan. 18, 2011). Earlier reports also are available at their Web site.

⁴W. G. Smith and W. A. Taggart, *Tribal-State Gaming Compacts 20 Years after Passage of the Indian Gaming Regulatory Act*, 14 GAMING LAW REVIEW AND ECONOMICS 85 (2010).

⁵NATIONAL GAMBLING IMPACT STUDY COMMISSION, FINAL REPORT (1999), available at <<http://govinfo.library.unt.edu/ngisc/>> (last visited Jan. 18, 2011).

⁶NIGA, *supra* note 3. A. Meister, *Indian Gaming Industry Report* (Casino City Press), provides an annual report on the state of the industry as well. In the IGRA, net revenue is defined as the “gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.” 25 U.S.C. § 2703(9).

⁷NIGA, *Gaming Revenue Reports*, available at <http://www.niga.gov/Gaming_Revenue_Reports.aspx> (last visited Jan. 18, 2011). For the woes of the commercial sector, see American Gaming Association, *2010 State of the States: The AGA Survey of Casino Entertainment* (2010), available at <<http://www.americangaming.org/survey/index.cfm>> (last visited May 29, 2010). Earlier reports are available at their Web site as well.

⁸S. A. LIGHT AND K. R. L. RAND, *INDIAN GAMING AND TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE* (2005) and A. Meister, *supra* note 6.

⁹25 U.S.C. § 2702.

¹⁰See, for example, G. C. Anders, *Indian Gaming: Financial and Regulatory Issues*, 556 ANNALS OF THE ACADEMY OF POLITICAL AND SOCIAL SCIENCE 98 (1998), *INDIAN GAMING AND THE LAW* (W. R. Eadington ed., Institute for the Study of Gambling and Commercial Gaming, 1998); LIGHT AND RAND, *supra* note 8; and A. M. McCulloch, *The Politics of Indian Gaming: Tribal/State Relations and American Federalism*, 24 PUBLIUS 99 (1994).

William A. Taggart, Ph.D., is a professor in the Department of Government at New Mexico State University in Las Cruces. Thaddieus W. Conner is a Ph.D. candidate and research assistant in the Department of Political Science at the University of Oklahoma in Norman. The authors would like to acknowledge the Harvard Project for American Indian Economic Development for making the data used in part of this article public.

programs; 2.) to provide for the general welfare of the Indian tribe and its members; 3.) to promote tribal economic development; 4.) to donate to charitable organizations; or 5.) to help fund operations of local government agencies.¹¹ Consequently, annual reports from the National Indian Gaming Association (NIGA), a professional organization representing a little less than 200 of the gaming nations, provide breakdowns on the use of gaming funds that mirror many of the purposes delineated in the IGRA.¹²

Most of the available evidence suggests that gaming has generated impacts consistent with the realization of this basic goal, although a consensus regarding the scope, magnitude, and durability of the effects is difficult to identify.¹³ In the process, researchers have considered and explored the impact of gaming from a broad range of useful perspectives, informed by an assortment of methodologies.¹⁴ However, one dimension of gaming's potential impact that has received scant attention is the use of gaming revenues to make "per capita payments" to tribal members as authorized in the IGRA.¹⁵ This lack of interest is perhaps somewhat surprising, given the very direct and immediate nature of the impact, coupled with the fact that over one hundred nations have received approval from the Department of the Interior to distribute gaming revenues.¹⁶ To be sure, it has been fodder for media portrayals of Indian country,¹⁷ and sometimes the subject of hotly contested litigation,¹⁸ but rarely does it receive more than passing mention in less-impassioned treatments of gaming. In the pages that follow, we offer a brief introduction to this poorly understood aspect of Indian gaming, by reviewing how nations engage in making per capita payments to their members, while discussing current practices and the characteristics of nations pursuing this distributional strategy. We conclude with a brief discussion of possible future research directions in this area.

TRIBAL REVENUE ALLOCATION PLANS

The IGRA stipulates four requirements that a Class II or Class III gaming nation must meet before it can make per capita payments to its members.¹⁹ A tribe must 1.) submit a plan for making payments 2.) that has received approval from the Interior Secretary, 3.) which protects the interests of minors and other legally incompetent persons, and 4.) provides recipients with notification that payments are subject to federal

taxation while indicating the amount of tax liability.²⁰ The plan, known as a Tribal Revenue Allocation Plan or RAP,²¹ must address five elements²² and include two supporting documents.²³ First among these is that a nation must report how it will allocate, on a percentage basis, its net revenues to one or more of the five expenditure categories identified in the IGRA, and that this represents an "adequate portion" in support of these activities,²⁴ especially as it pertains to supporting government operations and economic development, an IGRA requirement.²⁵ Moreover, it mandates sufficient "detailed information" to permit an assessment of compliance with this requirement before approval will be forthcoming.²⁶ The Interior Secretary will permit a nation to distribute no more than 40 percent of its net revenues in the form of per capita payments.²⁷ Obviously, this means that at least 60 percent of a tribe's funds will be in support

¹¹25 U.S.C. § 2710(b)(2)(B).

¹²NIGA, *supra* note 3.

¹³LIGHT AND RAND, *supra* note 8, chapter 4, provide an excellent review of the literature on the impacts of gaming. See T. W. Conner and W. A. Taggart, *The Impact of Gaming on the Indian Nations in New Mexico*, 90 SOCIAL SCIENCE QUARTERLY 50 (2009), and also Schapp, *supra* note 2, for recent analyses concerning the benefits of gaming. The NIGA annual reports, *supra* note 3, offer a variety of case studies illustrating the broad range of ways tribal communities throughout the country are investing gaming revenues. For a less sanguine conclusion, see E. A. MORSE AND E. P. GOSS, *GOVERNING FORTUNE: CASINO GAMBLING IN AMERICA* (2007).

¹⁴LIGHT AND RAND, *supra* note 8.

¹⁵25 U.S.C. § 2710(b)(3).

¹⁶The Bureau of Indian Affairs (BIA) provided a list of nations with plans and the dates of approval via e-mail correspondence on Oct. 15, 2009.

¹⁷For example, D. L. Barlett and J. B. Steele, *Special Report Indian Casinos: Wheel of Misfortune*, TIME MAGAZINE 44 (Dec. 16, 2002).

¹⁸LIGHT AND RAND, *supra* note 8; K. L. L. Rand and S. A. Light, *Virtue or Vice? How the IGRA Shapes the Politics of Native American Gaming, Sovereignty, and Identity*, 4 VIRGINIA JOURNAL OF SOCIAL POLICY AND THE LAW 381 (1997).

¹⁹25 U.S.C. § 2710(b)(3).

²⁰*Id.* Also see, NIGC, Bulletin No. 05-1, Using of Net Gaming Revenues Bulletin (Jan. 18, 2005), available at <http://www.nigc.gov/Reading_Room/Bulletins/Bulletin_No._2005-1.aspx> (last visited Jan. 12, 2011).

²¹25 C.F.R. §§ 290.1–290.26 (as of April 2010).

²²25 C.F.R. § 290.12.

²³25 C.F.R. § 290.17.

²⁴25 C.F.R. § 290.12(b)(1).

²⁵25 U.S.C. § 2710(b)(3)(B).

²⁶25 C.F.R. § 290.12(b)(2).

²⁷W. N. THOMPSON, *GAMBLING IN AMERICA: AN ENCYCLOPEDIA OF HISTORY, ISSUES, AND SOCIETY* (2001) at 255.

of other activities; for some nations, this percentage was higher.²⁸

Another important element is that the RAP must address eligibility requirements for receiving payments, and establish a legally recognized forum for resolving disputes regarding the allocation of gaming revenues, including—but not limited to—making per capita payments.²⁹ This requires that nations have some mechanism in place for tribal members to challenge the overall use of gaming funds.³⁰ A 2008 article in *News from Indian Country* reports that over 1,500 Oneida tribal members participated in a marathon business session, resulting in overwhelming support for raising the annual per capita payment amount.³¹ The definition of “eligibility” is reserved to the tribe and need not include all tribal members, though exclusion cannot be unreasonable or otherwise in violation of the law.³² The remaining requirements under this section include that the RAP provides protections for minors and other legally incompetent persons³³ and that it address the notification of federal taxation when a payment is made, including the withholding of taxes.³⁴

Two other documents are required when submitting a RAP for Interior approval, including a formal written request for approval.³⁵ The second document is a certification that the RAP was approved in a manner consistent with tribal law before its submission to the Interior Department.³⁶ Because nations have adopted various governmental structures and processes to address their internal political affairs,³⁷ this might include anything from tribal council approval to a popular vote of tribal members. Regardless of the mechanism, the document accompanying the RAP must include the place, date, and the results of any vote taken.³⁸

Because of the nature of the information contained in a RAP, a plan’s details are not available for inspection, since public records requirements are not applicable to Indian gaming activities.³⁹ Further, most tribes do not report individual per capita payment information to protect personal privacy. Clearly, a key factor in determining how much a nation distributes is the relative success of their gaming operation: the more people “play,” the more they can potentially “pay” to members. As a result, available materials would suggest that there have been varied experiences among nations with approved plans, with some nations paying out relatively small amounts while others make substantial distributions. Recently, for example, the Oneida in Wisconsin

voted to make an annual payment of \$1,200 to its approximately 16,000 members,⁴⁰ in contrast to the one-time only payments of \$5,000 and \$10,000 they received at the end of the previous year.⁴¹ Likewise, the Yakama Nation in Washington reports making monthly payments of \$100 to each of its 10,000 members, while it was considering cutting the amount in half in light of financial difficulties.⁴² The membership size of both of these nations probably helps to explain why their per capita payments appear relatively modest.

Alternatively, the members of some nations appear to be doing significantly better. During the 1990s, a small tribe in Minnesota made individual payments exceeding \$800,000 in one year, while others nations were making annual payments of over \$100,000 per member.⁴³ Another study claims that some reservations were paying individual members over \$500,000 a year, but provides no concrete examples.⁴⁴ Light and Rand identify a California

²⁸*Id.*

²⁹25 C.F.R. § 290.12(b)(5).

³⁰NIGC, *supra* note 20.

³¹*News from Indian Country*, “Per Capita Payments of \$1,200 Approved for Oneida Members” (May 2008), available at <http://indiancountrynews.net/index.php?option=com_content&task=view&id=3440&Itemid=33> (last visited Jan. 20, 2011).

³²25 C.F.R. § 290.14. The NIGC, *supra* note 20, provide several examples revolving around eligibility issues.

³³25 C.F.R. § 290.12(b)(3).

³⁴25 C.F.R. § 290.12(b)(4).

³⁵25 C.F.R. § 290.17.

³⁶*Id.*

³⁷D. WILKINS, *AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM* (2002).

³⁸25 C.F.R. § 290.17.

³⁹25 U.S.C. § 2720.

⁴⁰*News from Indian Country*, *supra* note 31.

⁴¹*News from Indian Country*, “Oneida Nation Pays Out \$88 Million to Members in Per Capita” (Dec. 2007), available at <http://indiancountrynews.net/index.php?option=com_content&task=view&id=2119&Itemid=75> (last visited Jan. 20, 2011). In the earlier year, they paid members over the age of 62 twice as much as other eligible members.

⁴²*News from Indian Country*, “Murky Finances Rankle Many Yakama Nation Members” (Nov. 2007), available at <http://indiancountrynews.net/index.php?option=com_content&task=view&id=1955&Itemid=33> (last visited Jan. 20, 2011).

⁴³THOMPSON, *supra* note 27. A couple years earlier, Thompson reports a small tribe in Minnesota had paid “as much as \$700,000” annually. See Thompson, *History, Development, and Legislation of Native American Casino Gaming*, in *LEGALIZED CASINO GAMING IN THE UNITED STATES: THE ECONOMIC AND SOCIAL IMPACT* 41 (C. H. C. Hsu, ed. 1999).

⁴⁴C. A. Boger, Jr., D. Spears, K. Wolfe, and L. Lin, *Economic Impact of Native American Casino Gaming*, in Hsu, *id.* at 135.

tribe that was making monthly per capita payments of \$10,000, while noting that the Pequots, operators of the famous Foxwoods Casino, were making annual payments of at least \$50,000 per person, while also providing free homes and other services to certain members.⁴⁵ Perhaps predictably, tribes engaged in making payments have found themselves embroiled in controversy in light of internal efforts to “trim” membership rolls and regulate new applications for membership.⁴⁶ This, of course, fosters divisions within the tribe,⁴⁷ which may actually work against enhancing a sense of community, identity, and political stability.⁴⁸

In recent years, the Interior Department has pursued action to amend the regulations pertaining to RAPs, seeking to add clarity in some instances and new requirements in others.⁴⁹ Among the proposals are efforts to obtain greater information about the nation submitting the application, including goals and objectives for economic development, tribal demographic data, five-year forecasts of revenues (all sources), and budgetary projections for tribal operations.⁵⁰ The inclusion of historical data is to accompany these materials as well.⁵¹ There is also a call for new record keeping,⁵² greater specificity regarding eligibility distinctions,⁵³ and an expansion of tribal obligations if seeking to amend or revise an existing plan.⁵⁴ As mentioned, issues related to eligibility have arisen on multiple occasions, and probably explains the Interior Department’s efforts to examine this matter more closely. Revisions or amendments to a RAP would require review under these new regulations⁵⁵—but a nation would now be required to address any decreases in financial programming activities and dramatic changes in revenues.⁵⁶ A final rule has not been issued in the *Federal Register*, and at least one source reports a delay in activities concerning the proposed changes.⁵⁷

THE ADOPTION OF ALLOCATION PLANS

The list of nations with approved RAPs provided by the Bureau of Indian Affairs⁵⁸ contains the names of 120 federally recognized tribes and reports the approval date of each nation’s plan, with the most recent additions being two tribes in California in September 2008.⁵⁹ We cross-referenced this information with a listing of gaming tribes as reported by the National Indian Gaming Commission (NIGC)⁶⁰ and merged it,

where possible, with tribal U.S. Census data assembled by the Harvard Project for American Indian Economic Development.⁶¹ As we examined this information, we supplemented the discussion with other materials to offer a broader context in which to understand and situate these pay nations. It is important to reiterate that it is not possible to determine systematically from these or, to the best of our knowledge, other sources the extent to which nations are actually making payments to tribal members and, if they are, how much they pay. In addition, if the NIGC reported a lack of gaming facilities, we attempted to establish through other means if a nation was in the gaming business, and in the end concluded that most were not operating a casino or other type of gaming facility at the time these various materials were assembled.⁶²

Table 1 summarizes the number of nations with allocation plans by state, juxtaposed with recent infor-

⁴⁵LIGHT AND RAND, *supra* note 8. Keep in mind that all of the preceding examples are payments per person, so the amount flowing into a household might be considerably higher.

⁴⁶LIGHT AND RAND, *supra* note 8.

⁴⁷Thompson, *supra* note 43.

⁴⁸Rand and Light, *supra* note 18.

⁴⁹The Interior Secretary disseminated notification letters and proposed changes to 25 C.F.R. 290 for public comment in both 2007 and 2008. The 2007 letter and changes available at <<http://www.bia.gov/idc/groups/public/documents/text/idc-002001.pdf>>, 2008 letter available at <<http://www.bia.gov/idc/groups/public/documents/text/idc-001998.pdf>> and 2008 changes available at <<http://www.bia.gov/idc/groups/public/documents/text/idc-001995.pdf>>, (last visited Jan. 20, 2011). The authors examined a hard copy of proposed changes in 2006 that we could not find online.

⁵⁰*Id.* 2008, 290.15.

⁵¹*Id.*

⁵²*Id.*, 290.19.

⁵³*Id.*, 290.15(6).

⁵⁴*Id.*, 290.22.

⁵⁵25 C.F.R. 290.26.

⁵⁶2008, *supra* note 49, 290.22.

⁵⁷NIGA, *NIGA Legislative Update*, 1 *Indian Gaming Update* 3 (Jan. 2009), available at <http://www.indiangaming.org/info/newsletter/NIGA_NEWSLETTER_02-09.pdf> (last visited Jan. 21, 2011).

⁵⁸BIA, *supra* note 16.

⁵⁹It is not possible to determine if a nation has replaced an older plan with a newer version, but as discussed almost half of the approvals pre-date the current (2000) regulations suggesting that many nations probably have not adopted new plans.

⁶⁰NIGC, *Gaming Tribe Report Sorted Alphabetically* (Aug. 11, 2010), available at <<http://www.nigc.gov/LinkClick.aspx?fileticket=sr3yyNHT4dw%3d&tabid=68>> (last visited Aug. 26, 2010).

⁶¹J. B. TAYLOR AND J. KALT, *AMERICAN INDIANS ON RESERVATIONS: A DATABOOK OF SOCIOECONOMIC CHANGES BETWEEN THE 1990 AND 2000 CENSUSES* (2005), available at <<http://www.ksg.harvard.edu/hpaied/>> (last visited Jan. 20, 2010).

⁶²See note 71, *infra*.

TABLE 1. NUMBER OF NATIONS WITH APPROVED TRIBAL REVENUE ALLOCATION PLANS AS OF 2009 AND NUMBER OF TRIBAL-STATE GAMING COMPACTS AS OF 2009 BY STATE

State	Number of Plans ¹	Percent	Number of Compacts ²	Percent	Plans as Percent of Compacts
1. California	49	40.8	62	25.6	79.0
2. Washington	11	9.2	27	11.2	40.7
3. Arizona	9	7.5	17	7.0	52.9
4. Oklahoma	8	6.7	31	12.8	25.8
5. Wisconsin	8	6.7	11	4.5	72.7
6. Michigan	6	5.0	11	4.5	54.5
7. Minnesota	6	5.0	11	4.5	54.5
8. Oregon	5	4.2	9	3.7	55.6
9. Idaho	3	2.5	4	1.7	75.0
10. Louisiana	3	2.5	3	1.2	100.0
11. Connecticut	2	1.7	2	0.8	100.0
12. Kansas	2	1.7	4	1.7	50.0
13. Alabama	1	0.8	0	0.0	
14. Florida	1	0.8	0	0.0	
15. Iowa	1	0.8	1	0.4	100.0
16. Mississippi	1	0.8	1	0.4	100.0
17. North Carolina	1	0.8	1	0.4	100.0
18. Nebraska	1	0.8	2	0.8	50.0
19. South Dakota	1	0.8	7	2.9	14.3
20. Texas	1	0.8	0	0.0	
Eight Other States with Class III Indian Gaming ³	0	0.0	38	15.7	0.0
	120	99.9*	242	99.8*	

¹BIA, *supra* note 16.

²Smith and Taggart, *supra* note 4. Zero indicates that a tribal-state compact was not in place as of 2009, which under the IGRA would limit a nation to offering Class II games.

³The states without payment gaming nations are (number of compacts in parentheses): Colorado (2), Missouri (1), Montana (5), Nevada (5), New Mexico (16), New York (3), North Dakota (4), and Wyoming (2).

*Does not sum to 100% due to rounding error.

mation reported by Smith and Taggart on the number of tribal-state compacts in these same states.⁶³ The 120 tribes with RAPs are located in 20 of the 28 contiguous states that are home to either Class II and/or Class III Indian gaming activities.⁶⁴ Most of the nations with allocation plans are concentrated in a handful of states, with two-fifths found in California alone, which—not surprisingly—also accounts for the largest percentage of gaming compacts. The tribes situated in the next six states listed in Table 1 account for a similar proportion of plans (40.1 %) and, together with California, represent 97 of the 120 approved plans. The remaining 23 plans are for nations found in the other 13 states, with seven of these states each associated with a single nation having a RAP. The mean number of nations with plans per state is six, skewed, of course, by the few extreme values; the median is 2.5.

In looking at the adoption of plans relative to the distribution of Class III gaming compacts, there are a couple of patterns deserving mention. First, there are 38 Class III gaming nations spanning eight

states that do *not* engage in the distribution of per capita payments, including 16 compacted pueblos and tribes in New Mexico.⁶⁵ At the same time,

⁶³Smith and Taggart, *supra* note 4. Two of the tribes with plans have lands spanning two states, which required that we “place” them in a state for presentational purposes. To this end, we defined tribal location based upon the official point-of-contact for gaming as reported by the NIGC, *supra* note 60.

⁶⁴Meister, *supra* note 6, notes that gaming is not permitted in Hawaii, while only a few of the over 200 nations in Alaska offer Class II games. There are no tribes in Alaska with approved payment plans.

⁶⁵Smith and Taggart, *supra* note 4, point out that just because a nation has a valid compact in place does not necessarily mean it is operating a casino or something similar at the present time—although in most instances that is indeed the case. We mention this because not all of the New Mexico pueblos and tribes with compacts are operating casinos, though the number continues to grow with the Navajo Nation being the most recent addition. See T. W. Conner and W. A. Taggart, *A Research Note on the Impact of the Economic Recession on Indian Gaming in New Mexico*, 20 *INDIGENOUS POLICY JOURNAL* (Spring 2009), available at <<http://ipjspring09.wordpress.com/table-of-contents/research-notes/>> (last visited Feb. 8, 2010).

three tribes in three different states have adopted allocation plans, though they are limited to offering bingo and other Class II games.⁶⁶ Third, there is noticeable variation across the states regarding the percentage of compacted nations adopting payment plans, although in all but three states, it represents at least one-half of the gaming tribes. On average, allocation plans have been adopted by two-thirds (66.2 %) of the nations situated in the 17 states where compacts *and* plans are found. Even if one overlooks the three states home to a single compacted nation, the average is still almost three-fifths (58.9 %) of the nations. Overall, there is a greater concentration of tribes with allocation plans relative to gaming activities across the American states.

Table 2 summarizes the approval year of the 120 RAPs. The Interior Department approved the first plans during the summer of 1993, while the most recent approvals, as noted earlier, date to fall 2008. Over the course of the 16 years, there are noticeable fluctuations in approval dates, including a couple of brief periods reflecting somewhat greater activity. The most distinctive of these is at the beginning of 2000, with the approval of almost one-third of the plans in a three-year period. Many of these RAPs are for tribes in California, which corresponds with a tremendous surge in compacts as well,⁶⁷ which permitted for the first time slot machines and other Class III games in the Indian casinos.⁶⁸ The second most active period, perhaps not surprisingly, is the first three years of the series, representing almost one-fifth of the approvals. It is also the case that a little more one-half (54.2 %) of the allocation plans were approved during the last half—eight years—of the series. Overall, however, there is a somewhat steady flow to the approval of payment plans, following no major discernable pattern.⁶⁹

According to the NIGC,⁷⁰ 115 (95.8%) of these nations were operating at least one gaming establishment as of 2010.⁷¹ Not surprisingly, two-thirds (66.7 %) have but a single facility, typically invoking the word “casino” or “resort” in the name of the operation (results not presented in tabular form). Almost another one-quarter (23.3 %) of the tribes with allocation plans are operating either two or three gaming facilities. At the other extreme, two nations in Wisconsin (the Oneida and Ho-Chunk) are running 17 facilities (eight and nine, respectively), while the Florida Seminoles weigh-in with the next highest number of operations, at seven. Lastly,

there are four tribes with four establishments apiece, three of whom are located in Oklahoma. Overall, a majority of nations with plans are relying on the net revenues of a single casino to support their efforts to

⁶⁶Meister, *supra* note 6, summarizes in recent reports that the nations in question have had strained relations with their respective states in the pursuit of Class III gaming though the years. For a detailed discussion concerning the dynamics of gaming in Texas, see T. A. Skopek and K. Hansen, *Reservation Gaming, Tribal Sovereignty, and the State of Texas: Gaining Ground in the Political Arena?*, 34 *POLITICS AND POLICY* 110 (March 2006). The NIGC, *supra* note 60, reports that two of these nations currently operate at least one casino, while other methods established the existence of a casino for the third (the Ysleta in Texas). In July 2010, the Interior Department approved a Class III gaming compact between the Seminole Tribe of Florida and the State of Florida. See news release available at <<http://www.bia.gov/idc/groups/public/documents/text/idc009934.pdf>> (last visited Jan. 23, 2011).

⁶⁷Smith and Taggart, *supra* note 4.

⁶⁸T. W. Conner and W. A. Taggart, *A Research note on Indian Gaming in California: Shifting Strategies in a Bad Economy*, 21 *INDIGENOUS POLICY JOURNAL* (Winter 2010), available at <<http://www.indigenouspolicy.org/ipjblog/post/A-Research-Note-on-Indian-Gaming-In-California-Shifting-Strategies-in-a-Bad-Economy.aspx>> (last visited Feb. 1, 2011).

⁶⁹Given the experiences of California at the beginning of the 2000s, it is reasonable to speculate new compacting activities may trigger revised RAP plans in subsequent years, and that this dynamic is reflected to some degree in Table 2. Unfortunately, data limitations preclude the ability to explore this issue at present.

⁷⁰NIGC, *supra* note 60.

⁷¹In terms of the other five nations, we were able to establish that the Ysleta in Texas having been operating a Class II casino on a more or less continuous basis for many years, which is open at present, and that the Hoh Reservation in Washington is no longer in the gaming business. The Kaibab-Paiute Tribe in Arizona does not have gaming according to their Web site, available at <<http://www.kaibabpaiute-nsn.gov/>> (last visited Jan. 24, 2011), though a Class III gaming compact was approved in 1994, available at <<http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/compacts/Kaibab%20Band%20of%20Paiute%20Indians/kaibabpaiutecomp4.8.94.pdf>> (last visited Jan. 24, 2011). The remaining two tribes, both in California, have compacts dating back to 2000, available at <<http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/compacts/Buena%20Vista%20Rancheria%20Indian%20Tribe/buenavistacomp5.5.00.pdf>> and <<http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/compacts/Ewiiapaayp%20Band%20of%20Kumeyaay%20Indians/ewiiapaaypcomp5.5.00.pdf>> (last visited Jan. 24, 2011), but do not appear to be operating facilities at present. See *Tribal News*, available at <http://www.buenavistatribe.com/tribal_news.htm>, *Tribal Gaming News*, available at <http://www.buenavistatribe.com/tribal_gaming.html>, “Fed Rejects Viejas-Ewiiapaayp Joint Casino Venture,” available at <<http://500nations.com/news/California/20080325.asp>> and “Ewiiapaayp Band Won’t Deny Interest in Casino,” available at <<http://64.38.12.138/IndianGaming/2009/015272.asp>> (last visited Jan. 24, 2011) for a discussion of these two cases.

TABLE 2. APPROVAL YEARS OF TRIBAL REVENUE ALLOCATION PLANS¹

<i>Approval Year</i>	<i>Number of Plans</i>	<i>Percent</i>	<i>Cumulative Percentage</i>
1993	6	5.0	—
1994	11	9.2	14.2
1995	10	8.3	22.5
1996	6	5.0	27.5
1997	7	5.8	33.3
1998	4	3.3	36.6
1999	3	2.5	39.1
2000	8	6.7	45.8
2001	12	10.0	55.8
2002	18	15.0	70.8
2003	5	4.2	75.0
2004	10	8.3	83.3
2005	5	4.2	87.5
2006	5	4.2	91.7
2007	4	3.3	95.0
2008	6	5.0	100.0
	120	100.0	

¹BIA, *supra* note 16.

make tribal payments, while 90 percent are depending on three or fewer facilities.

CHARACTERISTICS OF PLAN ADOPTERS

To develop a better understanding of the nations adopting per capita payment plans, we examined a variety of socio-economic characteristics reported by Taylor and Kalt⁷² for tribes situated in the lower 48 states. This information is tribal level data collected by the U.S. Bureau of the Census as part of the decennial census in both 1990 and 2000. Although subject to various limitations, including issues associated with underreporting, missing data, and the use of self-reported information, it offers the most comprehensive look at Indian country available by providing data on over 300 federally recognized tribes.⁷³ To assess if tribes adopting RAPs were somehow different from other tribes, we conducted two sets of comparisons that consider the decade of a plan’s approval, while taking advantage of the two time points (1990 and 2000) reflected in the data set. The first comparison uses the data from 1990 and examines nations adopting allocation plans during the decade of the 1990s relative to all other nations. Similarly, the second comparison employs the 2000 data and considers the adopters during the second decade compared to the remaining nations. An additional benefit of

this approach is the ability to compare the two groups of adopters across the time points, though we encourage caution due to changes in the census between the two decades.

We have summarized the results of these efforts in Table 3, which presents the means for 11 indicators spanning the two sets of comparison groups. The first nine variables are for Indians only, as opposed to all residents of tribal lands, since we assume the former are more likely of greater relevance to tribes as they evaluate the decision to make payments to their members. In looking at the results for the 1990s, it would appear that those nations adopting plans were marginally better off than the other nations at the beginning of the decade with respect to per capita income, levels of poverty, participation in the labor force, and quality of housing. Alternatively, non-adopters had a slightly lower level of unemployment and had a greater percentage of college graduates compared to those nations with plans approved during the 1990s. The most striking difference among the Indian-only measures, however, is in terms of population: non-adopters had an average Indian population more than twice as large as plan adopters. Among the first wave of tribes obtaining approvals to make payments to members were numerous smaller gaming nations. Indeed, a little more than one-half (57.8%) of these tribes had populations below 100, while another fifth were between 100 and 370 (results not shown in tabular form).

The two remaining measures in Table 3 reveal a couple of other interesting differences at the beginning of the 1990s between the first wave of plan adopters and the other nations. First, nations with approved plans had a comparatively larger percentage of non-Indians living on their defined reservation lands; these early adopters were less homogenous in composition. Second, the tribes with approved plans had a larger percentage of

⁷²TAYLOR AND KALT, *supra* note 61.

⁷³Wilkins, *supra* note 37, discusses some of the problems concerning the use of census data as it pertains to Native America. In the following analysis, we only consider federally recognized tribes for which data are available (n=330), though we also excluded the Navajo Nation due to its comparatively much larger population and extreme levels of economic distress (see TAYLOR AND KALT, *supra* note 61). Because of missing data on individual variables, we report the number of cases as necessary. We do not employ tests of significance given the nonrandom nature of the data.

TABLE 3. SOCIO-ECONOMIC CHARACTERISTICS OF NATIONS ADOPTING REVENUE ALLOCATION PLANS COMPARED TO NATIONS NOT ADOPTING PLANS BY DECADE

<i>Characteristic—Based on Indian- Only Population Except for Last Two Measures¹</i>	<i>Mean in 1990 for Nations Adopting Plans During the 1990s (n)</i>	<i>Mean in 1990 for All Other Nations (n)</i>	<i>Mean in 2000 for Nations Adopting Plans During the 2000s (n)</i>	<i>Mean in 2000 for All Remaining Nations (n)</i>
Per Capita Income	\$8,740 (45)	\$8,267 (264)	\$12,032 (59)	\$9,624 (220)
Percent Families Below Poverty	28.1 (37)	31.0 (236)	25.6 (57)	27.6 (217)
Percent Children Below Poverty	37.6 (38)	42.6 (246)	34.4 (56)	33.3 (213)
Percent Unemployed	18.7 (41)	18.0 (254)	14.8 (58)	15.8 (216)
Percent in Labor Force	58.7 (42)	54.0 (261)	54.8 (59)	54.6 (221)
Percent Homes Lacking Complete Plumbing	2.7 (42)	3.9 (258)	1.6 (58)	2.4 (221)
Percent College Graduates	6.1 (42)	9.0 (258)	10.0 (59)	11.6 (221)
Percent High School Graduates	34.2 (42)	31.2 (258)	32.4 (59)	32.3 (221)
Indian Population	677 (45)	1,692 (264)	643 (59)	2,229 (221)
Percent Non-Indian Population	76.8 (45)	65.0 (264)	43.0 (59)	38.9 (223)
Percent Urban	22.9 (45)	17.4 (283)	21.4 (59)	22.1 (220)

¹TAYLOR AND KALT, *supra* note 61.

reservation residents living in a census-defined urban area, which are places with at least 2,500 people. Although not a direct measure, it is tempting to speculate that these more “urbanized” tribes are either part of or closer to larger markets offering more potential customers, which undoubtedly has a major impact on the relative success of a gaming establishment.⁷⁴

The second set of comparisons considers the same characteristics as of 2000, but this time for nations with plans approved during the 2000s relative to all the remaining nations. It purposively excludes those tribes adopting plans during the first decade. Again, it would appear that the adopters were doing slightly better overall than their counterparts at the beginning of this decade, though in the case of per capita income the difference is now in the \$1,000s as opposed to the \$100s seen previously. Otherwise, the differences on most of the Indian-only measures are generally small and comparable to the results for the first decade. A notable exception is with respect to the Indian-only population, where the difference between the adopters and non-adopters has become even more noticeable. Indeed, this second group of adopters has a slightly smaller average population than the first group of adopters, while the remaining tribes have an average population more than triple in size. Clearly, smaller nations are more likely to have allocation plans. Lastly, the results for percent non-Indian, while diminished, are consistent with the previous decade, and the findings concerning percent urban suggest little difference between the two groups in 2000.

RAPS IN THE FUTURE

Although the future of Indian gaming is not entirely clear amid repeated calls for reform and even repeal of the IGRA,⁷⁵ it is hard to envision that Congress will pursue any significant changes in the short-run given that its agenda already appears heavy with other pressing policy concerns. Despite the Interior Department’s efforts to modify the regulations, which they scale back with each proposal, the existing law ensures that tribes will be able to continue adopting RAPs or making payments to their members under an existing plan. As the examples cited in this article suggest, there appears to be a broad range of payment practices and there is no reason to suspect that this variability will diminish, all other things being equal. It seems that the members of some nations are reportedly receiving substantial payments, while others are being paid sums not likely to be making a significant difference in overall living conditions or quality of life. Unfortunately, it is examples of the former that help contribute to the negative stereotypes fueled by the media and held by some members of the public about gaming creating a class of “rich Indians.”

⁷⁴LIGHT AND RAND, *supra* note 8.

⁷⁵K. R. L. Rand and S. A. Light, *How Congress Can and Should “Fix” the Indian Gaming Regulatory Act: Recommendations for Law and Policy Reform*, 13 VIRGINIA JOURNAL OF SOCIAL POLICY AND THE LAW 396 (2006), discuss a number of these arguments.

In spite of the obstacles, there is a need for additional research concerning RAPs. The number of nations adopting plans more than doubled between the first and second decade following passage of the IGRA, which represents approximately one-half of the nations with Class II and/or Class III gaming facilities.⁷⁶ Overlooking new entrants to the market, this leaves a significant proportion of tribes perhaps contemplating if they should move in the direction of adopting a plan. Knowing something about the various experiences of those nations currently making payments could be beneficial to these nations as they evaluate their options. Given the IGRA requirement of prior tribal approval of a plan, an examination of selected tribal ordinances, which sometimes are available for public consumption, could be a source of more detailed information about RAPs and the practices of tribal communities.

Another direction for future research revolves around the decision to adopt a plan. Our findings suggest that earlier adopters tended to be comparatively better off than other nations, which is consistent with existing research that suggests a positive relationship between socio-economic conditions and policy adoption.⁷⁷ More evident in our analysis,

however, was the impact of *population*, as a large percentage of the adopters across both decades were comparatively much smaller tribes. How these two conditions, along with perhaps other factors not considered in this article, affect a nation's decision to make payments to members needs further examination. A related line of inquiry would be to ask what has occurred following the adoption decision and the making of payments. Taken together, are the members of tribes with payment plans doing better? Have these nations been more effective in reducing poverty and raising incomes in comparison to gaming nations utilizing slightly less direct strategies? Regardless, have there been social costs, more difficult to quantify, to the collective sense of community and membership? It would seem that these are just a couple of directions researchers might pursue to further understand the nature of RAPs and their consequences for Native Americans.

⁷⁶Smith and Taggart, *supra* note 4.

⁷⁷See, for example, F. J. Boehmke and R. Witmer, *Disentangling Diffusion: The Effects of Social Learning and Economic Competition on State Policy Innovation*, 57 *POLITICAL RESEARCH QUARTERLY* 39 (2004).