

Regulatory Reform in the COVID-19 Era

September 23, 2020



The American Gaming Association (AGA) has consistently promoted regulatory modernization and reform in the past to ensure our industry is on the cutting edge of technology and business.¹ Now, with the uncertainty and challenges our industry faces due to the pandemic and related economic upheaval, there are several reforms that regulators should consider to support the industry and our communities as they rebuild.

As with all industries, COVID-19 has forced gaming regulators and the licensees they oversee to revisit their regulatory and compliance functions. In just a matter of weeks – and in some cases days – regulators completely redesigned their work, including shifting to virtual agency meetings, testing gaming products from home, and revamping license application and renewal processes. While many of these changes were originally temporary, now licensees and the regulatory community can see the long-term benefit of incorporating these new procedures permanently.

At a time when budgets for both state and tribal regulators and gaming companies are stretched thin, these initially temporary fixes offer permanent, budget-conscious solutions. The industry and regulatory community have become more comfortable with a variety of technological tools and new procedures that streamline industry oversight – without compromising gaming integrity or customer safety. Now is the time to adopt these modern tools permanently to help the industry navigate our new operating environment and build a robust recovery that will generate more tax revenue and jobs for our communities.

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1. See Next Generation Gaming Policy, Amer. Gaming Ass'n, <https://www.americangaming.org/policies/next-generation-gaming/>.

I. STREAMLINING LICENSING TO REDUCE COST AND ADMINISTRATIVE BURDENS FOR AGENCIES AND LICENSEES

Prior to commencing any operations, gaming companies and their corporate officers and key employees undergo a rigorous background investigation. Once licensed, the business and their officers then submit to regular investigation updates for license renewal. Throughout the pandemic and the resulting restrictions on in-person meetings, air travel, and more, regulators have found new tools and methods for continuing these essential investigations. Regulators have employed a variety of modern technologies and strategies that allow background investigations, interviews, due diligence, and licensing to continue uninterrupted. Now that regulators and licensees have experienced the capabilities of modern tools in action, regulators should consider making these adaptations permanent.

A. VIDEO INTERVIEWS

The AGA has previously recommended the use of videoconference technology for background investigations and final regulator reviews. Gaming companies, including executives and key employees, are located all over the world, yet hold licenses in each jurisdiction in which they operate. Before, these officers would travel to each jurisdiction or the companies paid for regulators to travel to them for interviews, resulting in high costs and lengthy delays. Now with the pandemic greatly restricting travel, this sort of travel is no longer feasible and there is no certain timeline when such travel may resume.

The industry has turned to virtual meetings to fill the gap, using digital platforms to interview and coordinate with their licensees. This is consistent with a variety of other industries that have adapted to a virtual format, even for sensitive topics and proceedings.²

While not the exact same as in-person interactions, video interviews can be a powerful tool. Video interviews are more budget friendly than the costs of flights, hotels, and other travel incidentals absorbed when in-person meetings are required. Moreover, virtual interviews are easier to schedule, requiring a lesser time commitment than travel, resulting in more efficient investigations and fewer wasted resources.

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2. For example, workplaces of all kind have shifted to virtual format for internal investigations. See Allen Smith, *Rise to the Challenge of Remote Investigations*, SHRM, June 15, 2020, <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-challenge-of-remote-investigations.aspx>; Jennifer L. Achilles, et al., *Taking Your Investigations Online*, Reed Smith, July 8, 2020, <https://www.reedsmith.com/en/perspectives/2020/07/taking-your-investigations-online-prepare-for-conduct-a-virtual-interview>; Marci Harris et al., *Congressional Modernization Jump-Started by COVID-19*, Brookings, June 18, 2020, <https://www.brookings.edu/blog/techtank/2020/06/18/congressional-modernization-jump-started-by-covid-19/>.

Regulators should make video interviews and teleconferencing a permanent part of their toolkit. Utilizing this technology that is now in every workplace will help regulators drive down costs for their agencies and their licensees and conduct investigations and licensee approvals more efficiently without sacrificing integrity or oversight.

B. FINGERPRINTING & NOTARY REQUIREMENTS

Almost every jurisdiction requires corporate officers to submit a fingerprint card that facilitates the necessary background check. Fingerprints are submitted to that state’s law enforcement officers, who then use official law enforcement tools to investigate the key officers. However, many state and tribal jurisdictions require fingerprints to be taken either in-state or by law enforcement officers in the applicant’s home jurisdiction. This requirement overlooks the availability of licensed vendors that are capable of taking fingerprints to the applicable specifications.³

Beyond restricting the ability to travel as noted above, the pandemic has also made traveling to local police precincts impossible and unsafe. However, licensed vendors – many of whom are mobile and can travel to the applicant – can fill this gap. The mobile vendors are more convenient and still available when local law enforcement offices are not open for such business. The vendors are approved by the relevant state agencies, ensuring the necessary precautions are in place.⁴ The fingerprints still undergo the same background check process, so gaming regulators have the same information as if the law enforcement officer took the fingerprints themselves. Alternately, regulators could accept certified electronic images of an applicant’s fingerprints that were previously taken by a legitimate law enforcement agency without requiring that new fingerprints be taken.

Similarly, some gaming regulators have waived notary requirements during the pandemic, as notary services are frequently unavailable due to health and safety precautions. Instead, regulators have turned to tools like sworn declarations to ensure that the applicants appreciate the seriousness of the licensing process

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3. Moreover, in jurisdictions outside the United States, fingerprinting services are even more difficult to navigate as many international law enforcement agencies do not offer these services.

4. For example, the Illinois Department of Financial and Professional Regulation approves vendors that provide fingerprinting services. See Fingerprint Vendor List, IDFP, <https://www.idfpr.com/LicenseLookup/fingerprintlist.asp>. New Jersey has contracted with a vendor to offer electronic fingerprinting for background checks in the banking industry. See *Live Scan: Electronic Fingerprinting Process*, State of New Jersey, Dept. of Banking & Ins., <https://www.state.nj.us/dobi/insliced/livescan.html>.

and the privileges it conveys. Here too, regulators should consider adopting sworn declarations for applicants permanently. Especially for renewals, a sworn declaration imparts the same seriousness of the licensee’s commitment to candidness and veracity in their application as a notary stamp.⁵

C. DIGITAL FILING OF APPLICATIONS

Another aspect of regular business that has changed is the method of filing applications. Applications for business entities, officers, and key employees can run into the hundreds of pages, and many regulators require the original and several copies to be filed, incurring costs for printing and shipping. Once these documents are submitted, regulators then must pay for storage, maintaining these records for years to be compliant with record retention laws. Then, regulators acquire more costs when they are able to finally destroy the records but must do so through secure methods.

As many other industries that have security concerns have moved to digital filing and record retention, so too should gaming.

As going to the office for printing and shipping became impractical and unsafe, many regulators have begun accepting applications digitally during the pandemic. There are a variety of technologies that allow the safe, secure transfer of large files and also facilitate digital signatures. With many offices moving to “paperless,” the options for robust digital file storage have proliferated. As many other industries that have security concerns have moved to digital filing and record retention,⁶ so too should gaming. In fact, digital management of records is more secure than entrusting hard copies to be shipped by unknown couriers all over the world. Digital filing of licensing paperwork will make compilation and storage of these voluminous records efficient and cost-effective for licensees and regulators alike.

II. EMBRACING TECHNOLOGICAL OPPORTUNITIES FOR PUBLIC ACCESS TO AGENCY ACTIONS

Somewhat counterintuitively, the pandemic has made gaming agency meetings more accessible than ever. Regulators in various jurisdictions, including Nevada and Michigan, have begun livestreaming their executive-level meetings via applications like Zoom or Microsoft Teams meetings. This has been a benefit for everyone. Now, gaming industry participants at all levels can virtually attend

5. Similar to fingerprinting services, many international jurisdictions do not have readily available notary services either, and the limited services on offer can cost nearly \$1,000 per signature.

6. Another aspect of gaming industry compliance already relies heavily on electronic methods: filing of suspicious activity reports and currency transaction reports with FinCEN. See BSA E-Filing System, <https://bsaeifiling.fincen.treas.gov/main.html> (last visited Sept. 2, 2020). Even before the pandemic, many businesses that handle sensitive information began relying on secure, digital file transfers and storage including: Federal Courts, see *Electronic Filing*, U.S. Courts, <https://www.uscourts.gov/court-records/electronic-filing-cmecf> (last visited Sept. 2, 2020); Medicine, see *Electronic Medical Records/Electronic Health Records (EMRs/EHRs)*, Centers for Disease Control, <https://www.cdc.gov/nchs/fastats/electronic-medical-records.htm> (last visited Sept. 2, 2020); Banking, see *The Electronic Signatures in Global and National Commerce Act (E-Sign Act)*, Fed. Deposit Ins. Corp., <https://www.fdic.gov/regulations/compliance/manual/10/x-3.1.pdf> (last visited Sept. 2, 2020); Federal Contracting, see e.g., FAR 4.703(c) (allowing digital storage of records) and FAR 504.802 (requiring electronic maintenance of contract files); Employment records for federal contractors, see *Preserving Employment and Personnel Records in Electronic Format*, OFCCP, <https://www.dol.gov/agencies/ofccp/faqs/electronic-records> (last visited Sept. 2, 2020).

meetings and learn about key issues facing the regulatory community. Before, attending meetings required travel, which was typically reserved for only those employees with active business before the regulators.

Improving access to meetings is an essential public policy priority. While the entire industry looks forward to the time we can meet in-person again, gaming regulators should incorporate virtual meetings along with resuming regular operations to improve transparency and access industrywide.

III. SUPPORTING INNOVATION AND INVESTMENT IN THE GAMING INDUSTRY WILL BE ESSENTIAL TO REBUILDING AND GROWTH

As the gaming industry rebuilds, innovation will be essential to demonstrating that it is safe and enjoyable for our customers to return. Attracting new sources of investment and acquiring capital to finance innovation will be critical to developing these new products and technologies. To facilitate and encourage new products and new investment, especially from those new to the gaming industry and unfamiliar with its regulatory structure, there are several ways that licensing and oversight could be streamlined without compromising the industry’s integrity.

A. STREAMLINED TESTING FOR NEW PRODUCTS

The gaming industry is always innovating by developing new products that will bring exciting entertainment to customers. Such innovation will remain a priority as the industry works to recover. New games and features will be key to ensuring our customers have an enjoyable – and safe – experience when they return. Gaming is already a highly regulated industry, including rigorous testing of new products for the casino floor. However, modern innovations require flexibility in oversight and opportunity to bring products to the gaming floor efficiently to meet consumer demand.

Some states already have programs in place to help streamline testing of new products. For example, Nevada launched the New Innovation Beta (NIB) program in 2016 that created a new method for testing gaming products, including allowing limited field launch pending complete development, testing, or final regulatory approval.⁷ In fact, Nevada regulators have expanded NIB to

7. See Notice to Licensees, Changes to Regulation 14 Implementing New Innovation Beta, Nev. Gaming Control Board, Nov. 7, 2016, <https://gaming.nv.gov/modules/showdocument.aspx?documentid=11629>.

allow for testing of new payments options in June 2020, which will better allow operators and suppliers to meet requirements around contactless payments and public health.⁸ Similarly, New Jersey offers the “New Jersey First” program that allows field testing of certain gaming products to streamline bringing the newest games to customers.⁹

Programs like New Innovation Beta and New Jersey First will be essential to the gaming industry’s recovery. Especially as public health officials advocate for and in some cases require “contactless” technologies in reopened businesses, the ability to quickly adapt and meet these requirements will be essential for gaming. Allowing field testing of games and equipment while final approval is pending (but under controlled circumstances) will allow gaming operators and suppliers to adapt and respond to customer demands in this uncertain new environment. Further, opportunities to work with other jurisdictions or testing labs¹⁰ may help facilitate approvals and launches of new gaming products quickly without sacrificing game integrity.

Regulators should consider whether their current testing standards meet the realities of modern gaming technology and business. The ability for gaming to be a modern entertainment option is imperative as gaming strives to encourage visitors back to our properties, which will in turn support revenue generation for our communities. Regulators that can provide innovative and efficient solutions in game testing will be leading the industry’s recovery.

B. “SHELF APPROVALS” FOR PUBLIC OFFERINGS AND NARROWING LICENSING REQUIREMENTS FOR INSTITUTIONAL INVESTORS

The gaming industry’s ability to navigate the ongoing economic uncertainty created by the pandemic will be contingent on access to capital to keep properties running, workers employed, and new products in development. The necessary funding may come from outside investments or through debt transactions. However, these sorts of investment or funding are complicated and require regulatory oversight and approvals. Regulators have opportunities to ensure proper oversight while allowing gaming companies flexibility in addressing their needs.

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8. See Richard Velotta, *Nevada Commission Considers Regulations for More Cashless Gaming*, Las Vegas Rev.-J., June 25, 2020, <https://www.reviewjournal.com/business/casinos-gaming/nevada-commission-considers-regulations-for-more-cashless-gaming-2060594/>.

9. See New Jersey First Submissions & Approvals, N.J. Div. of Gaming Enforcement, https://www.nj.gov/oag/ge/tsb_njfirst.html (last visited Sept. 2, 2020).

10. Such as Gaming Laboratories International, <https://gaminglabs.com/>, or BMM Testlabs, <https://bmm.com/>.

For example, shelf approvals allow gaming licensees to conduct public offerings when markets are most favorable, resulting in better credit opportunities. Nevada, Mississippi, and Louisiana already permit these shelf approvals, granting gaming companies up to three years to complete the transaction after regulatory approval.¹¹ With the current and ongoing uncertainty in the markets, businesses will need to be extremely diligent in securing the best terms for their transactions. They will only be able to do this if they can “strike while the iron is hot,” and regulatory approvals should not cause a gaming company to miss out on a much-needed financial opportunity.

Shelf approvals (that can have certain limitations to ensure a licensee’s solvency) should extend up to five years to help gaming companies navigate their recovery. Providing five years, which would be an increase from the three-year term in several states, will give companies a sufficient window for strategic financial planning. Further, the use of shelf approvals could be extended to debt transactions, giving businesses the ability to secure necessary bank loans efficiently.

Similarly, waiving licensing for institutional investors below a 25% threshold will make it possible for publicly traded gaming companies to more easily secure necessary investments. Previously, the AGA recommended that regulators should waive licensing or registration requirements for institutional investors holding less than 25% ownership of a licensee. Since then, Pennsylvania and Mississippi increased the ownership threshold that triggers the need to apply for a gaming license to greater than 20% and 25% respectively.¹² This threshold improves gaming companies’ access to capital without raising the regulatory burden. Regulators in these jurisdictions have found that the revised threshold resulted in no negative effects on game integrity while providing benefits to their licensees seeking outside investment.¹³

As we have seen recently, there is growing interest in the gaming business from other industries around the expansion of legalized sports betting. Those types of investments and support will be critical as the gaming industry strives to innovate and recover from the economic impacts of the pandemic-related shutdowns. Regulators should join the jurisdictions that have already streamlined the process for institutional investors so that their gaming licensees can seek investments that will be essential to their long-term success.

11. See David O. Stewart, Advancing Regulatory Modernization, Amer. Gaming Ass'n, <https://www.americangaming.org/wp-content/uploads/2018/12/AGA-WhitePaper-10RecommendationsforStreamliningProcesses.pdf>.

12. Other states that already had such thresholds in place include Nevada and New Jersey.

13. See David O. Stewart, Advancing Regulatory Modernization, Amer. Gaming Ass'n, [americangaming.org/wp-content/uploads/2019/02/Advancing-Regulatory-Modernization_FINAL.pdf](https://www.americangaming.org/wp-content/uploads/2019/02/Advancing-Regulatory-Modernization_FINAL.pdf).

IV. CONCLUSION

Gaming regulation is an essential, critical part of our industry – it ensures integrity in the business and consumer confidence in our products. But regulation must meet the demands and challenges of our time, balancing regulatory oversight with support for industrywide recovery. Even before the pandemic, the industry was developing new innovative products and seeking to be on the cutting edge of technology. However, with the pandemic and resulting economic challenges, many of the innovations have gone from “nice to have” to essential. Permanently adopting these modernizations will not only drive innovation and growth, but allow gaming companies to further invest in essential responsible gaming and consumer protection tools as well.

To ensure the gaming industry can realize a robust recovery, gaming regulators should look to ways they can modernize their operations. While the pandemic has brought about unprecedented challenges, it is a silver lining that the industry has had to turn to technological innovation to continue business. Rather than letting these new tools be just temporary fixes, we should strive to implement such technologies and tools for the long-term health and success of gaming.

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