



OFFICE OF THE GOVERNOR

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BILL ANOATUBBY
GOVERNOR

February 16, 2012

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street N.W., Suite 9100
Washington, DC 20005

Dear Chairwoman Stevens:

The efforts of the NIGC to engage tribal governments in the regulatory review process in the spirit of continued cooperation and coordination with tribal governments in accordance with the government-to-government relationship established by federal law and policy are appreciated. Included with this letter are comments from the Chickasaw Nation in response to the National Indian Gaming Commission's (NIGC) Notices of Proposed Rulemakings on 25 C.F.R. Parts 556, 558, and 537, dated December 22, 2011(76 Fed. Reg. 79,565-79,571).

Thank you for your consideration of the Chickasaw Nation's comments on this important matter. We look forward to continuing to work closely with the NIGC as amendments are considered to comport existing regulations with the purposes and goals of the Indian Gaming Regulatory Act.

Sincerely,

Bill Anoatubby
Bill Anoatubby, Governor
The Chickasaw Nation

Enclosure

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**COMMENTS OF THE CHICKASAW NATION ON THE
NATIONAL INDIAN GAMING COMMISSION'S
NOTICES OF PROPOSED RULEMAKINGS
25 C.F.R. PARTS 556, 558, 537:
TRIBAL BACKGROUND INVESTIGATIONS AND LICENSING;
MANAGEMENT CONTRACTS – BACKGROUND INVESTIGATIONS**

FEBRUARY 16, 2012

The Chickasaw Nation is pleased to submit the following comments to the National Indian Gaming Commission (NIGC) in response to the three Notices of Proposed Rulemakings, which were published in the Federal Register on December 22, 2011 (76 Fed. Reg. 79,565-79,571). The Notices invited public comment on the NIGC's proposed changes to the following regulations:

- 25 C.F.R. Part 556 – Background Investigations For Primary Management Officials and Key Employees
- 25 C.F.R. Part 558 – Gaming Licenses for Key Employees and Primary Management Officials
- 25 C.F.R. Part 537 – Management Contracts – Background Investigations.

The Chickasaw Nation appreciates the efforts of the NIGC to engage tribes in meaningful government-to-government consultation on its fee regulations and submits the following comments in the hopes that they prove helpful as the NIGC moves forward with the rulemaking process.

25 C.F.R. 556 - Background Investigations for Primary Management Officials and Key Employees

The Chickasaw Nation strongly supports the decision of the NIGC to formalize the pilot program which, if implemented, will eliminate unnecessary submission requirements and streamline the process under which gaming licenses are issued. In addition to being a cost-effective measure, this proposed change has the added benefit of bringing the regulation more in line with the Indian Gaming Regulatory Act ("IGRA"), which vests tribal governments with primary licensure authority. The Chickasaw Nation is also highly supportive of the different sections in the proposed rule which deal with information sharing and exchange. Information regarding an applicant's prior gaming licenses and disciplinary actions in relation to previously held licenses can be of great benefit to tribal governments in determining the suitability of an applicant. Among other things, such information can help verify the information provided in a license application.

In the preamble to the proposed rule, the NIGC seeks comments on whether applicants should be required to provide a list of all associations to which they pay membership dues. In the view of the Chickasaw Nation, tribal governments need to know the associations to which an individual pays membership dues, and a requirement to list and disclose all such associations provides valuable information concerning an applicant's suitability. Moreover, simply requiring

the disclosure does not invade or impede the ability of tribal governments to determine for itself the impact of such association. Rather, requiring disclosure of associations may help reveal issues relating to suitability determinations much in the same manner that criminal background checks disclose character issues.

Also in the preamble, the NIGC explains the decision against replacing the term “eligibility” with “suitability” in proposed § 556.5. Although this may appear to be a relatively minor technical change, the NIGC should reconsider its decision since the standard for *issuing gaming licenses* is based on the *suitability* of the applicant, and the standard for *hiring* is based on the *eligibility* of the applicant. To clarify, issuing licenses and hiring employees are two separate but inextricably related functions that cannot be referred to interchangeably. These two functions are performed by two separate tribal entities. Background investigations and suitability determinations are typically performed by a tribe’s regulatory agency. On the other hand, hiring decisions are typically made by a tribal gaming enterprise based on, among other things, the applicant’s suitability for licensure. Other eligibility requirements may include age, work experience, residence, etc.

Section 556.5(a) provides that “to make a finding concerning the *eligibility* of a key employee or primary management official for granting of a gaming license, an authorized tribal official shall review a person’s prior activities; criminal record, if any; and reputation, habits and associations.” The purpose of this provision is to ensure that the applicant is *suitable* for licensure after a review of the above factors, a determination which is made by the tribe’s regulatory agency. An applicant’s eligibility for hire is decided only after the applicant has been deemed suitable for licensure by the tribal regulatory agency. Because the factors listed in § 556.5(a) relate to *suitability* for licensure rather than eligibility for hire, the Chickasaw Nation encourages the NIGC to reconsider its decision against making the requested change. Among other benefits, it would be helpful to use terminology that is reflective of how the licensing process actually works in practice.

25 C.F.R. Part 558 – Gaming Licenses for Key Employees and Primary Management Officials

The Chickasaw Nation is generally supportive of the changes to 25 C.F.R. Part 558 concerning the issuance of gaming licenses by a tribal government. The Chickasaw Nation is especially pleased by the change proposed by the NIGC in § 558.1 to expressly exclude from this Part any licenses with terms shorter than ninety days, which will provide tribal governments with greater flexibility and discretion in issuing, limiting, and revoking such licenses. This proposed change not only affirms the licensure authority in tribal governments under IGRA, it also clarifies that the revocation of a temporary or provisional license will not be subject to the same notice and hearing requirements as regular gaming licenses.

In proposed § 558.3(c), notice and eligibility determinations must be submitted if a tribal government *does not license* an applicant in § 558.3(c). As the Chickasaw Nation noted in previous comments, in addition to being overly burdensome, this requirement fails to recognize that, in practice, there are many benign reasons why a license might not be issued. A license that is not issued for non-suitability reasons should not be subject to the same requirement as those licenses that are denied on suitability grounds. Thus, the Chickasaw Nation encourages the NIGC to revisit this issue and to reconsider our request to clarify that notice and eligibility

determinations will be required for only those licenses that are *denied* by the tribal government. Also, on a related note, the Chickasaw Nation requests that the NIGC consider revising § 558.3(c)(2) to clarify that *only* those applicants who have been denied a license based on a negative suitability determination will be included in the national database.

Finally, the Chickasaw Nation requests that the NIGC to reconsider tribal comments received concerning the three-year retention requirement in proposed § 558.3(e). We believe that determining the record retention period should be a matter of tribal discretion, especially since the NIGC will already have in its possession information relating to an employee's background investigation and results.

25 C.F.R. Part 537 – Background Investigations for Persons or Entities with a Financial Interest In, or Having Management Responsibility for, a Management Contract

The Chickasaw Nation supports the changes to 25 C.F.R. § 537.1(a)(4) to reduce the background investigation and the scope of information required for such investigations for tribal governments and wholly owned tribal entities proposed by the NIGC. While the background investigation process is certainly an important step in determining the suitability of management contractors, the Chickasaw Nation does not believe that tribal governments and wholly owned tribal entities should be subject to the same background and submission requirements as private management contractors.

While the efforts of the NIGC to eliminate unnecessary and/or duplicative investigations are appreciated, we believe the proposed rule could be further improved by including a rebuttable presumption that tribal governments, wholly owned tribal entities, national banks, and institutional investors will be eligible for the expedited review process in § 537.1(a)(4). This presumption could be rebutted by the Chair for good cause, which would allow the Chair to exercise his or her reasonable discretion in requiring additional background information. For purposes of this presumption, a regulatory definition of “institutional investor” that includes a capitalization threshold would be useful in paring down the list of eligible institutions. Only those large-scale institutional investors that lend money through publically or commercially traded bonds and instruments should be eligible for this rebuttable presumption.

In closing, the Chickasaw Nation greatly appreciates this opportunity to comment on 25 C.F.R. Parts 556, 558, and 537. It is our hope that the NIGC will give meaningful consideration to our comments as further revisions are contemplated.