

Quapaw Tribal Gaming Agency
P. O. Box 405
Quapaw, Oklahoma 74363
918-919-6020
Fax 918-919-6040



Via Electronic Mail: reg.review@nigc.gov

February 24, 2012

Ms. Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: 25 C.F.R. Part 537 – Management Contracts – Background Investigations;
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.

Dear Chairwoman Stevens:

The Quapaw Tribal Gaming Agency (“QTGA”) appreciates the opportunity to provide comments on the three above-captioned proposed rules regarding background investigations and licensing. As the gaming regulatory agency of the Quapaw Tribe of Oklahoma, the QTGA continues to recognize and applaud the NIGC’s efforts to work together with tribal governments through tribal consultation and the solicitation of comments such as those which follow below.

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 QTGA strongly supports the NIGC’s proposed addition in 25 C.F.R. § 537.1(a)(4) of tribes and wholly owned tribal entities to the list of entities with which “the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted.” The QTGA would, however, like to suggest that the term “institutional investor” be defined to clarify the types of institutions that may qualify for this expedited review process. Such a definition could, for instance, limit the expedited review process to only those institutional investors that lend money through publically traded bonds and instruments and meet a clear capitalization threshold.

The QTGA believes this regulation could be further improved by including a rebuttable presumption that those entities, or at the very least, tribes and wholly owned tribal entities, are eligible for the expedited review process. The Chair would, of course, still maintain his or her discretion to rebut the presumption for good cause to require a more extensive background investigation.

25 C.F.R. 556 – Background Investigations For Primary Management Officials And Key Employees

The QTGA supports the formalization of the pilot program in this proposed rule. The formal adoption of the pilot program, which has proven successful for so many tribes, would both streamline the process under which gaming licensing are issued and better comport with the Indian Gaming Regulatory Act (“IGRA”), which vests tribal governments with primary licensure authority.

In response to the NIGC’s specific request seeking comments on whether the proposed rule should require applicants to provide a list of all associations to which they pay membership dues, it is the QTGA’s view that the determination of the type of information needed to make suitability determinations falls within the purview of tribal governments. Thus, the QTGA does not believe the NIGC should include any regulatory language which may restrict the ability of tribal governments to exercise their own discretion in determining background investigation and licensing requirements. Rather, we believe a general statement clarifying a tribal government’s authority to determine for itself specific background information requirements would be more appropriate.

Also, the QTGA asks the NIGC to revisit the issue regarding the terms “eligibility” and “suitability,” as they are used in proposed § 556.5. As a tribal regulatory agency, the QTGA makes a finding as to the applicant’s suitability and issues a gaming license based on that finding. Section 556.5(a) mistakenly suggests that licenses are issued based on an eligibility determination. For most tribes, including the Quapaw Tribe, the tribal regulatory body is not responsible for hiring decisions or for making findings regarding the applicant’s eligibility for hire. Eligibility determinations are more appropriately addressed by the tribe’s gaming enterprise. Thus, replacing the term “eligibility” with “suitability” in § 556.5(a) would better reflect the NIGC’s appreciation and understanding of actual regulatory practice.

25 C.F.R. Part 558 – Gaming Licenses For Key Employees And Primary Management Officials

The QTGA agrees with the NIGC that § 558.1 should expressly exclude from this Part any licenses with terms shorter than ninety days. Such change, if implemented, would provide tribal governments with greater flexibility and discretion in issuing, limiting, and canceling such licenses without being subject to other regulatory requirements that are more appropriate to regular gaming licenses.

The QTGA asks the NIGC to carefully consider the language and intent of proposed § 558.3(c). As drafted, proposed § 558.3(c) provides that notice is to be given for when a tribe *does not license* an applicant. In practice, however, there are a myriad of benign reasons for not issuing a license, including the applicant’s decision to withdraw from the application process. The notice requirement in this provision should thus only apply to those licenses that are denied on suitability grounds.

Finally, the QTGA asks that the NIGC consider removing the three-year records retention requirement in proposed § 558.3(e), especially since the NIGC will have already received information relating to an applicant’s background investigation and results through the pilot program. The QTGA believes that a tribe’s records retention policy should be a matter of tribal discretion and not a regulatory requirement.

In closing, we would like to thank you for this opportunity to provide comments on 25 C.F.R. Parts 537, 556, and 558. We hope that you give meaningful consideration to our comments as you proceed with your deliberations.

Sincerely,

A handwritten signature in blue ink that reads "Barbara Kyser-Collier". The signature is written in a cursive style with a horizontal line underneath the name.

Barbara Kyser-Collier
Director, QTGA