

Key Employee /Primary Management Official Classification Guide for CHRI MOU Compliance

Under the 2020 Memorandum of Understanding (MOU) with the FBI, the National Indian Gaming Commission (NIGC) agrees to use CHRI solely for the purpose of determining an applicant's eligibility for employment as a key employee or primary management official at the Tribe's gaming operation, as defined in NIGC regulations, **25 C.F.R. §§ 502.14(a) – (c) and 502.19(a) – (c)**, and not for any other purpose.¹

If a Tribe has an executed MOU with the NIGC, Tribes are permitted to submit fingerprints to the FBI through the NIGC to obtain and use Criminal History Record Information (CHRI) for the sole purpose of making an employment and/or licensing determination of KEs and PMOs as defined in the FBI/NIGC MOU. The NIGC offers the following technical assistance to tribal gaming regulatory authorities (TGRAs) for determining whether an applicant meets the definitions in the FBI/NIGC MOU.

Though there are some limitations, the position title can be an important indicator as to whether or not a gaming operation employee is a KE or a PMO. The proper classification of a gaming operation employee, however, depends upon the specific duties and responsibilities of the individual in their job/position. For example, a Food and Beverage Manager, as an employee of a gaming operation with an annual compensation of \$47,000, without the ability to hire or fire employees, who does not handle cash or gaming supplies, is not a KE. But if the same Food and Beverage Manager gets a raise and makes in excess of \$50,000 in a year, becomes a KE. Another example is Environmental Services (EVS) staff. In general, EVS staff are employees of a gaming operation with individual "total cash compensation" less than \$50,000 a year. Nevertheless, if when the TGRA examines the individual's specific duties and determines that the night-shift EVS employee performs additional duties normally completed by a KE, the EVS employee is a KE. These duties must include one or more listed in NIGC regulation, 25 C.F.R. § 502.14 (a)-(c), such as accessing or handling gaming equipment, gaming revenue, or gaming revenue accounting records (including revenue records in gaming equipment). Once an employee's position transforms into a KE position, the employee must go through the KE licensing process and their fingerprints may be submitted through NIGC for purposes of receiving their criminal history record.

To ensure CHRI MOU compliance, Tribes with an executed MOU are required to determine whether applicants meet the FBI/MOU definitions of a KE or a PMO prior to submitting fingerprints through the NIGC. The following questions should help guide the TGRA to properly classify such applicants. If additional analysis or further guidance is needed, please contact NIGC region staff.

Questions for KE Classification

1. Is the person an applicant or employee of the gaming operation?²
 - If yes, proceed to question two.
 - If no, the person cannot be fingerprinted because they do not satisfy the initial criterion of being an applicant or employee of a gaming operation.

2. An applicant or employee of a gaming operation whose "total cash compensation" will be or is in excess of \$50,000 per year?³
 - If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.

¹ 25 CFR §§502.14(d) and 502.19(d) are not categories of key employees and primary management officials whose prints can be submitted to the FBI through the NIGC MOU. However, the tribe can continue to license these categories through the NIGC if the tribe has an alternative, legal source of FBI CHRI other than the NIGC such as a statutory authorized tribal, state, local or 3rd party contractor.

² See NIGC regulation, § 502.10, defining *Gaming operation*.

³ This includes all employees on the gaming operation's payroll, full-time or part-time. Is the employee's compensation listed as an operating expense on the gaming operation's general ledger? Does the gaming operation issue a W-2 to the employee? Is the employee subject to the gaming operations employee handbook, rules and leave policy? In some circumstances, all tribal employees are paid through the tribe and follow the tribal employee handbook, including gaming operation employees. Examination of organization charts maintained by the gaming operation or tribal business entities will assist in making a determination. Does the employee and/or their supervisor report to the gaming operation's general manager or executive officer? Examining the process under which the employee was hired can be helpful. Were they processed through something other than the gaming operations HR department?

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3. Is the person one of the “four most highly compensated persons in the gaming operation?”
- If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.
4. A person in a position or performs duties that meet the definitions of a KE in accordance with NIGC regulation, 25 C.F.R. § 502.14 (a) through (c)?
- If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.
5. Does the person watch, protect, handle, use, or maintain gaming cash and/or gaming revenue⁴? Gaming cash means money used in the operation of Class II and III gaming. This includes cash deposited or withdrawn from the gaming operation’s cage or vault, in its kiosk and atms, gaming machine/system bill acceptors, drop boxes, change boxes, tip boxes, or other locations, containers, and devices used to store or retrieve cash used for the conduct of Class II and III games or accounted for as a cash asset of the gaming operation. The fact valet, housekeeping, wait staff, and other employees not involved in the conduct of gaming routinely receive tips and place them in a tip box would not require them to be licensed, but the person collecting and depositing the cash tips in the gaming operation’s cage/vault who takes on responsibility for an asset on behalf of the gaming operation qualifies as a KE.
- If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.
6. Is the person a custodian of gaming supplies? This may include but is not limited to a person with access to gaming systems, machine ticket paper, chips, tokens, playing cards, bingo paper, bingo balls, or hardware/software used in conjunction with the Class II/III gaming systems.
- If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.
7. Does the person have the ability to access and/or make changes to the gaming operation’s accounting system, player tracking system, or gaming system record? This may include but is not limited to a person “with access to cash and accounting records,” including accounting records within gaming equipment and devices.
- If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.
8. Does the person have duties or responsibilities that include oversight of any portion of a gaming operation?⁵ Oversight duties or responsibilities may include but are not limited to manager-on-duty obligations.
- If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.
9. Does the person perform the function of bingo caller, count room supervisor, chief of security, floor manager, pit boss, dealer, croupier⁶, or approver of credit?
- If yes, the person can be fingerprinted as a KE.
 - If no, proceed to the next question.

⁴ See NIGC regulation, § 502.16, defining *Net gaming revenue*

⁵ See NIGC regulation, § 502.10, defining *Gaming operation*.

⁶ Croupier is an employee of a gambling casino who collects and pays bets and assists at the gaming tables.

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10. Does the person have any job functions or responsibilities that require the person to watch, touch, guard, count, maintain, or otherwise be responsible for gaming cash, gaming revenue, or gambling supplies/devices that has not already been discussed? The responsibilities may include accessing or modifying a Class II/III gaming system, player tracking system, or any other ancillary system that is integral to the play of the games or generation, collection, or recording of gaming revenue.
- If yes, the person can be fingerprinted as a KE.
 - If no, the individual is not a KE.

Questions for PMO Classification

1. Is the person an applicant, employee, or official/executive of a gaming operation or a management contractor? Or does the person possess any of the authority, responsibilities, or duties outlined in questions 2-6?
- If yes, proceed to question two.
 - If no, the individual cannot be fingerprinted unless they can be classified as a KE in the previous section.
2. Does the person have management responsibility for a gaming operation, facility, or part of either due to a management contract?
- If yes, the person can be fingerprinted as a PMO.
 - If no, proceed to next question.
3. Does the person have the ability “to hire or fire employees?”
- If yes, the person can be fingerprinted as a PMO.
 - If no, proceed to next question.
4. Does the person “set up working policy for the gaming operation?”⁷ This can include, but is not limited to, actions that direct a person to perform operational, administrative, or financial functions for a gaming operation.
- If yes, the person can be fingerprinted as a PMO.
 - If no, proceed to next question.
5. Does the person plan, organize, or coordinate the activities of gaming operation/management contractor employees at the gaming operation?
- If yes, the person can be fingerprinted as a PMO.
 - If no, proceed to next question.
6. Is the person “the chief financial officer or other person who has financial management responsibility for the operation?”
- If yes, the person can be fingerprinted as a PMO.
 - If no, the person is not a PMO.

Please note: The regulatory definition of key employee and primary management official has not changed. The FBI and FBI/NIGC MOU have clarified which KE and PMO applicant fingerprints can be submitted through the NIGC under the MOU.

⁷ See NIGC Bulletin 1994-5, *Approved Management Contracts v. Consulting Agreements* (Oct. 14, 1994) (describing what are management functions and duties), <https://www.nigc.gov/images/uploads/bulletins/1994-5mgmtvconsult.pdf>