

July 12, 2021
Summary of proposed change to 25 C.F.R. Part 537
National Indian Gaming Commission

The National Indian Gaming Commission seeks tribal input, feedback, and suggestions concerning proposed amendments to 25 C.F.R. Part 537.

Pursuant to the Indian Gaming Regulatory Act, contracts between tribes and third parties for the management of a tribal gaming operation must be submitted to the NIGC Chair for review and approval before the third party may manage. As part of the Chair's review, the Chair:"

[S]hall require and obtain... the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock.

The Chair must determine whether anyone included in that list is person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto

Currently, the NIGC regulations implementing this provision of IGRA require the chair to perform a background investigation of "the ten persons who have the greatest financial interest in the management contract" and "any entity with a financial interest in the management contract." The Commission has received feedback over the years, though, that this language is overly broad and may capture persons or entities whose financial interest in the contract is negligible. In response, the Commission is proposing to amend the regulations to require information only from persons or entities with 10% or more financial interest in the management contract.

In addition, NIGC regulations allows for reduce the scope of required information and the background investigation for certain entities and individuals. The Commission proposes to amend the regulation to move the provision to its own sub-section of Part 537, and to clarify that such reduced scope investigation may be initiated either by request or unilaterally by the Chair.

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

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

- (1) Each person with management responsibility for a management contract;
- (2) Each person who is a director of a corporation that is a party to a management contract;
- (3) ~~The ten (10) persons who have the greatest~~ All persons who have 10 percent or more direct or indirect financial interest in a management contract;
- (4) ~~Any entity with a financial interest in a management contract~~ All entities with 10 percent or more financial interest in a management contract ~~(in the case of any tribe, a wholly owned tribal entity, national bank, or institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact, the Chair may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted);~~ and
- (5) Any other person or entity with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

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537.1(d) For any of the following entities, or individuals associated with the following entities, the Chair may, upon request or unilaterally, exercise discretion to reduce the scope of the information to be furnished and background investigation to be conducted:

- (a) Tribe as defined at 25 CFR 502.13;
- (b) Wholly owned tribal entity;
- (c) National bank; or
- (d) Institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact.