



the
**Chickasaw
Nation**

OFFICE OF THE GAMING COMMISSIONER

1500 N. COUNTRY CLUB ROAD | PMB 228, 902 ARLINGTON CENTER | ADA, OK 74820

Bill Anoatubby
Governor

Chris Anoatubby
Lt. Governor

August 12, 2021

Mr. Sequoyah Simermeyer, Chairperson
National Indian Gaming Commission
1849 C. Street NW
Mail Stop #1621
Washington, D.C. 20240

Re: Tribal Comments on July 2021 Topics of Consultation

Dear Chairperson Simermeyer & Commission members:

Included in with this letter are the Chickasaw Nation's comments regarding the topics presented for consultation at virtual sessions held on July 27-28, 2021, particularly regarding the NIGC's proposed changes to its Consultation Policy, Strategic Plan, and regulations related to key employees and primary management officials, fees, facility licenses notifications, and management contracts.

Thank you for your consideration of our comments.

Sincerely,

A large, bold, black ink signature of Scott Colberg, written in a cursive style. The signature is positioned above the printed name of the signatory.

Scott Colberg, Commissioner
The Chickasaw Nation

Comments of the Chickasaw Nation

Consultation Series A

July 26-27, 2021

I. Introduction

The Chickasaw Nation is pleased to submit these comments in response to the NIGC's proposed changes to its Consultation Policy, Strategic Plan, and regulations related to key employees and primary management officials, fees, facility licenses notifications, and management contracts. We appreciate the NIGC's efforts to consciously engage with tribal governments on these and other issues, which are of central importance to the ability of tribal governments to succeed in achieving their development goals.

Accordingly, the Chickasaw Nation ("Nation") submits the following comments, which are included under the topic area below, for the NIGC's consideration.

II. Comments

A. General Comments

The Nation deems it important to indicate to the NIGC that, although the current regulations carry an enforcement date of 2013, the NIGC has herein not suggested an amendment that would reflect the new enforcement date in the regulations. We would recommend including such a revision as soon as the enforcement date is known.

B. Key Employee and Primary Management Official Definition

The Nation is opposed to the changes proposed to the definition of Key Employee and Primary Management Official. Specifically, we are concerned that the proposed language is inconsistent with the Indian Gaming Regulatory Act ("IGRA,") which intended the licensing provisions thereof to pertain to employees of tribal gaming operations, not employees of the tribe itself or its regulatory bodies. Accordingly, we would recommend adding language to both § 502.14 and § 502.19 limiting the assignment of Key Employee and Primary Management Official labels to employees of a tribal gaming operation/facility.

Moreover, the Nation is of the opinion that the supplemental language regarding licensing and compliance officials specifically in the definition of Key Employee will not achieve the aims of allowing tribal governments to background and license such individuals. During the drafting process of the Memorandum of Understanding between the FBI and the NIGC and, in turn, the

NIGC and tribal TGRAs, the FBI made clear that it was not willing to process fingerprints for individuals who had merely been designated Key Employees or Primary Management Officials under 25 CFR §§ 502.14 (d) and 502.19 (d) due to the flexibility of who such definition could encompass. It is our opinion that the NIGC will meet the same resistance with subsections 502.14 (a)(11),(12). As a result, we would recommend removing these provisions from the final draft of § 502.14.

Should the NIGC adopt these changes to the definition of Key Employee and Primary Management Official, though, the Nation is concerned that it, and other tribal governments, will encounter compliance difficulties resulting from existing employees who will be newly classified as Key Employees or Primary Management Officials. Specifically, the licensing files for individuals who would constitute Key Employees or Primary Management Officials after the effective date of the regulation would be void of the required notifications to the NIGC, including Notices of Results and Notices of Issuance. Accordingly, we would recommend that the NIGC include additional language in the regulations regarding Key Employees and Primary Management Officials so as to apply the standards for submissions solely to those employees hired and/or licensed after the effective date of the regulations.

The Nation is further concerned that the NIGC has not proposed a definition for the term “secured area,” despite the fact that it has suggested that a Key Employee includes “any person with unescorted access to secured areas.” The Nation has adopted a definition for the term “sensitive area,” which it believes overlaps with the term “secured areas” in meaning and scope. The Nation defines “sensitive area” as follows: “Areas of a licensed gaming facility that have been determined by the Gaming Commissioner to be confidential and classified. Such areas include but are not limited to: Cage(s), Vault Room(s), Count Room(s), Surveillance Operation Room(s), Surveillance Viewing Room(s), Server Room(s), Data Room(s), Main Distribution Frame Room(s), Independent Distribution Frame Room(s).” However, the Nation understands that across the need for different forms of secured areas will likely vary across the tribal gaming industry, and thus would recommend that the NIGC adopt a less specific definition that is used by the Nation for its purposes.

Since many of the revisions to this effect are based around the revisions to requirements concerning Criminal History Record Information, it is our opinion that it would be appropriate to base the definition for “secured areas” on the FBI’s definition for “physically secure locations. Accordingly, we would recommend defining “secured area” as follows: “Secured Area means an area, room, group of rooms, space, or other segment of or within a gaming facility with both physical and personnel security controls sufficient to protect confidential or protected information or tribal assets.”

C. Fee Regulations

While the Nation appreciates the NIGC’s efforts to clarify the language of the current regulation, we are concerned with certain elements of the revised language. Particularly, the Nation is concerned that 25 C.F.R. § 514.4 (c,) which includes the formula for assessing assessable gross revenues, does not specifically exclude the amounts wagered that the gaming operation can demonstrate were issued by the gaming operation as promotional credits from the total amount of

money wagered. While promotional credits are excluded in subsection (f) below, we are concerned that excluding this language from the formula itself will produce unintended, and unfair, results.

The Nation is further concerned with the language of subsection (f) itself, which states that promotional credits “may be excluded.” It is our opinion that the word “may” creates an uncertain and overly flexible standard that could be avoided by use of the term “shall,” “will,” or “must.” Moreover, because subsection (f) provides that only the “amounts wagered that the gaming operation *can demonstrate* were issued by the gaming operation as promotional credits” are subject to exclusion from the formula, we are concerned that gaming operations across regions will be held to a different standard of proof and thus subject to unequal application of the regulations, which will affect the gaming income of tribal gaming.

In remedy, we would recommend that the NIGC revise § 514.4 (c) as follows: “For purposes of computing fees, assessable gross revenues for each gaming operation are the total amount of money wagered on class II and III games, plus entry fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, *less any promotional credits*, and less an allowance for capital expenditures for structures as reflected in the gaming operation's audited financial statements.”

D. Facility License Notifications and Submissions

The Nation is firmly in favor of the proposed change to § 559.2 (b). It is our opinion that removing the requirement to include a gaming facility address in an application will not only reduce the burden on tribal governments, who may otherwise be forced to delay their application for a facility license, but also increase efficiency of processing, which will assist governmental efforts toward economic development. However, we would recommend including within the regulation a procedure for updating the NIGC's file with regard to a facility license once an address is known, if needed, to ensure that tribal governments do not encounter consequences of unintended noncompliance.

III. Conclusion

The Nation appreciates the opportunity to participate in consultation with the NIGC by providing the comments herein and looks forward to continuing to engage in meaningful consultation with the NIGC on these matters throughout the revision process. Again, we appreciate the NIGC's consideration of our comments and those of other tribal governments. We are confident that such collaboration will result in regulations and policies that will benefit the tribal gaming industry and economic development in Indian country, overall.