



Quapaw Nation Gaming Agency

P.O. Box 405 • 69300 E. Nee Rd.

Quapaw, OK 74363

Phone: (918) 919-6020 Fax: (918) 919-6029



September 7, 2022

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

Re: Tribal Comments on Proposed Rules Published on August 10, 2022

Dear Chair Simermeyer & Commission members:

Included in with this letter are the Quapaw Nation Gaming Agency's comments regarding the topics presented for comment on the National Indian Gaming Commission's proposed amendments to its regulations at 25 C.F.R. §§ 502, 556, and 558, each of which were published in the federal register on August 10, 2022.

Thank you for your consideration of our comments. If you have any questions, please do not hesitate to contact me by email at eeckhart@quapawnga.com or by phone at 918-919-6031.

Sincerely,

Erin Eckhart, Director
Quapaw Nation Gaming Agency

Enclosure.

I. Introduction

The Quapaw Nation Gaming Agency (“QNGA”) appreciates the opportunity to submit comments in response to proposed changes to regulations concerning definitions, backgrounding, and licensing for consideration by the NIGC. Given the significant changes between the proposed rules discussed here and those considered during previous consultations with the NIGC, however, we also respectfully request that the NIGC conduct additional, formal consultation on these subjects.

II. Comments

A. Proposed Amendments to Definitions in 25 C.F.R. § 502

The QNGA reluctantly supports the proposed elimination of a compensation threshold for Key Employees. We see that in practice, § 502.14 (b), which provided that any person “whose total cash compensation is in excess of \$50,000 per year” constituted a Key Employee, requires TGRAs to background and license gaming operation employees holding positions that are in no way connected to gaming, simply because the gaming operation wishes to compensate them at a higher amount. Given today’s employment market, we are concerned that retaining the threshold, or even increasing it, would make hiring even more difficult as the average salary for its non-gaming employees necessarily ticks up.

Employees brought in as key employees solely because of their earnings typically do not carry out traditional “key” tasks related to gaming, and accordingly, the possibility that a nefarious actor in such a position could interfere with the fairness of gaming, while perhaps not impossible, is low. More importantly, however, a tribal gaming regulatory agency’s tools for ensuring that gaming operation employees are suitable are not limited to its licensing power. At the QNGA, as in many TGRAs, we have carefully developed a healthy working relationship with gaming operation hiring teams, which in turn take our input and suggestions concerning potential employees into account when making hiring and firing decisions. Hiring and maintaining employees of character is mutually beneficial to both TGRAs and the gaming operations they regulate, and we believe that the strength of those shared interests can be trusted. Accordingly, we recommend accepting the proposed change to § 502.14 (b), which would eliminate classification of key employees on the sole basis of compensation, though we would be comfortable with the alternative of increasing the threshold from \$50,000 to \$75,000 – 100,000.

However, the QNGA respectfully renews its opposition to the other changes proposed for the definitions of Key Employee and Primary Management Official. Specifically, we are concerned that the proposed language in §§ 502.14 (d) and 502.19 (e) 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 agencies. The QNGA is in favor of the addition of the definitions of “Gaming Enterprise” and “Tribal Gaming

Regulatory Agency” at §§ 502.25 and 502.26, respectively. However, we are concerned that the choice to use “Gaming Enterprise” rather than “Gaming Operation” at the sections described, and indeed throughout the regulations, may lead to unintended results, specifically presenting conflicts between complying with licensing regulations and the MOU with the NIGC and the FBI concerning criminal history record information and criminal justice information.

While we greatly appreciate the efforts that the NIGC has taken toward remedying several similar issues following its consultation sessions, we are concerned that certain other ambiguities still exist so as to cause concern. Particularly, we recommend 1) revising § 502.14 (b) to specify that it is limited to employees *of the gaming operation* who are entitled to unescorted access; 2) modifying § 502.19 (b) to read as “any person, *other than an employee of a TGRA*, who has authority...”; and 3) revising § 502.14 (c) to read as follows: “If not otherwise licensed as a key employee or primary management official, the four persons most highly compensated by the gaming operation.”

B. Proposed Amendments to Backgrounding and Licensing in 25 C.F.R. §§ 556 and 558

We strongly oppose the proposed amendments to § 558.3 (e), which would require TGRAs to provide the NIGC with “its license revocation decision and a summary of the evidence it relied upon” for enforcement actions revoking a Key Employee or Primary Management Official’s gaming license. First, we are concerned that the NIGC does not have a specific, demonstrated purpose for these materials in line with its statutory mandate, given that it is able to prevent bad actors from re-licensure with the more limited scope of information to which it is currently entitled. As a result, we are concerned that enforcement of this proposed requirement may risk classification as arbitrary and capricious.

We are more concerned, however, that such a requirement would prove onerous for TGRAs. While the QNGA appreciates the benefits of compiling information in the Indian Gaming Individuals Record System, given the stringent requirements for backgrounding Key Employees and Primary Management Officials, including provisions of a detailed report on the status of licenses that an applicant holds, formerly held, or has applied for, requiring TGRAs to submit the proposed information for reference by other TGRAs strikes us as overly intrusive and duplicative. Moreover, providing copies of a revocation decision and supporting evidence would undoubtedly increase the temporal and monetary burden of TGRAs and tribal governments at large.

While it may usually be the case that TGRAs have compiled evidence in support of a revocation, it is highly likely that such evidence is not ordinarily summarized in a document separate from a TGRA’s final order. Accordingly, were the NIGC to enact this proposed rule, it would also assign a new and arduous task that can only be reasonably completed after an enforcement action has concluded, given that the TGRA cannot know what evidence will be relied upon until final preparation and issuance of the revocation itself. License revocations are the weightiest of those

licensing actions that TGRAs undertake, and in turn, the breadth of information considered is usually extensive. Accordingly, the preparation of an extraneous summary would deprive TGRAs of time that would otherwise be spent dedicated to its responsibilities under federal and tribal law. While we can envision a middle ground wherein only already-prepared information is submitted with notice of the revocation, we caution that such a requirement would also present issues with compliance. Specifically, many tribal governments, including the Quapaw Nation, have enacted laws and regulations requiring that any such materials as are internally prepared with relation to enforcement actions are confidential and not subject to discovery. We are concerned that to regulate in conflict with such usual industry practices would risk offending principles of tribal sovereignty. Accordingly, we respectfully request that the NIGC omit this proposal from its final rule.

III. Conclusion

The QNGA appreciates the NIGC's consideration of our comments and those of other tribal governments and TGRAs. 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.