



Quapaw Nation Gaming Agency

P.O. Box 405 • 69300 E. Nee Rd.

Quapaw, OK 74363

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



June 3, 2022

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

Re: Tribal Comments to the NIGC's Proposed Changes to 25 C.F.R. Part 518 Self-Regulation of Class II Gaming

Dear Chairman Simermeyer & Members of the Commission:

Included along with this letter are the Quapaw Nation Gaming Agency's comments on the National Indian Gaming Commission's proposed amendments to its regulations, specifically the Self-Regulation of Class II Gaming, found at 25 C.F.R. Part 518. These comments expand upon the comments submitted following the NIGC consultations held on September 21-22, 2021, and October 21, 2021, as well as the amendments made by the NIGC following Consultation Series B. We sincerely appreciate the NIGC's efforts to solicit and consider tribal input on these matters, which will have a tangible impact on Tribal Gaming Regulatory Agencies' ability to adequately protect the integrity of gaming.

Erin Fekhart, Director
Quapaw Nation Gaming Agency

Enclosure.

COMMENTS OF THE QUAPAW NATION GAMING AGENCY ON THE NATIONAL INDIAN GAMING COMMISSION'S PROPOSED AMENDMENTS TO 25 C.F.R. PART 518.

I. INTRODUCTION

These comments are submitted in response to the notice of proposed amendments to 25 C.F.R. Part 518, published by the National Indian Gaming Commission (“NIGC”) in the Federal Register on April 7, 2022. This proposed rule was drafted and published after the NIGC conducted its Tribal Consultation Series B, in which the NIGC communicated its intent to revise various regulations, including those governing the self-regulation of Class II Gaming.

In response to this proposed rule, the Quapaw Nation Gaming Agency (“QNGA”) respectfully submits the following comments for consideration.

II. COMMENTS

A. Certification and Review Process (25 C.F.R. § 518.7)

As a regulatory agency, the QNGA understands and welcomes that compliance is necessary to maintain certification and functionality. However, the QNGA has some lingering concerns about the clarity of standards to which a tribal government seeking to maintain self-regulated status is held. During the NIGC’s Consultation Series B, the QNGA recommended that the standards of review be more detailed, especially the standards of assessment against the terms of 25 C.F.R. § 518.3 (a)-(e). The QNGA renews that request for a more thorough description of the procedure for conducting assessments. Such increased transparency will help ensure self-regulation status is achievable and maintainable, which comports with the tenants of self-governance and self-reliance propagated by IGRA.

The QNGA would also like to express its appreciation of the clarification provided by the NIGC that a final determination on issuing a certificate of self-regulation will be made within thirty (30) days of the Commission’s preliminary findings. Such clarification provides a clear time frame for when a tribal government can expect a determination and allows the process to move forward rather than languish.

B. Duty to Advise the Commission (25 C.F.R. § 518.11)

During the last round of pertinent consultations, we did express a concern that some of the terms, particularly those related to the duty to advise the NIGC of certain material changes in circumstance, were overly broad and vague. We made specific reference to the term “financial instability” and the clause “any other factors that are material to the decision to grant a certificate of self-regulation.” We note that the sentence that contained these points of concern has been removed from the most this proposed rule. However, such deletion raises a new concern—namely that now there are no examples of what might constitute a material change to the approval criteria in § 518.5. We recommend that the NIGC consider having clear, defined examples of material

changes so tribal governments have an informed idea on what constitutes a material change that would require notification to the Commission within ten (10) business days.

As with the prior subsection, the QNGA again wants to relay our approval of incorporated changes between the 2021 consultation and this proposed rule. The NIGC's deletion of the requirement that a tribal government provide "information that may lead to information that is relevant to any material change in circumstances," is much appreciated. It is our belief that this prior requirement was vague and erroneously overbroad.

C. Determinations of Non-Compliance (25 C.F.R. § 518.13) and Appealing a Revocation (25 C.F.R. § 518.14)

Our concerns for both Parts §§ 518.13 and 518.14 are interrelated. As expressed during the Series B Consultation, the QNGA is not opposed to the amendments that would designate the Office of Self-Regulation as "the proponent of any case to revoke a certificate before the Commission," nor are we opposed to the Office of Self-Regulation bearing the burden of proof on evincing why a certificate of self-regulation should be revoked. We do, however, have some lingering concerns with potential due process issues arising from the appointment of the Director of the Office of Self-Regulation and his/her role in the appeals process.

As opposed to the language suggested during the Series B Consultation, this proposed rule appears to allow the NIGC Chair to appoint a non-NIGC member to serve as the Director of the Office of Self-Regulation. If such appointment is made, our concerns are abrogated. Yet, if the NIGC Chair does choose to appoint a sitting NIGC member to that position, it is our opinion that there would be an impermissible conflict of interest. The Director would serve as the decision maker involved in the revocation of a self-regulation certificate and would also serve as a member of the body who is responsible for determining if the initial decision maker has met his/her burden of proof for such a determination. Resulting, we recommend that, in addition to the changes already promulgated in Part § 518.2, that the NIGC consider adding a provision that requires the Director of the Office of Self-Regulation to recuse himself/herself from participating as a Commissioner of the NIGC in any revocation hearing.

III. CONCLUSION

The QNGA appreciates the opportunity to provide comments to the NIGC, and we are confident that, through cooperative discourse, the NIGC will achieve regulations that foster the integrity of gaming without imposing an undue burden on TGRAs, tribal governments, and tribal gaming operations. We look forward to continuing to engage in meaningful collaboration with the NIGC on these matters.