

September 20, 2021

Summary of Proposed Topics related to 25 C.F.R. Part 514 – Fees
National Indian Gaming Commission

The National Indian Gaming Commission seeks tribal input, feedback, and suggestions concerning amending 25 C.F.R. Part 514 – Fees – to respond to lessons learned from the pandemic’s impact. The Commission anticipates that consultation on this topic will lead to additional dialogue with tribes and industry stakeholders which will inform potential drafts of specific proposed regulatory changes.

1) The Commission proposes exploring options for including a mechanism within the NIGC fee regulations to adjust the *assessed fiscal year* in response to extreme and unexpected variations in *assessable gross revenues*. The *assessed fiscal year* is defined by NIGC fee regulations as the gaming operation’s fiscal year ending prior to January 1 of the year the Commission adopted fee rates. This definition is intended to result in all gaming operations applying the same fiscal year’s audited revenues to the same fee rate, but it also results in at least a calendar year transpiring between the end of the assessed fiscal year and a fee payment calculated using that fiscal year. Thus, during the pandemic, fee payments were calculated using pre-pandemic *assessed fiscal years* and post-pandemic, fee payments will be calculated using pandemic impacted *assessed fiscal years*. The Commission seeks tribal input, feedback, and suggestions on a mechanism to adjust the *assessed fiscal year* to address these concerns in response to extreme and unexpected variations in *assessable gross revenues*.

2) The Commission proposes mandating a process for reporting on the amounts the NIGC has available to carry over at fiscal year-end. The Indian Gaming Regulatory Act provides that fees “shall be available to carry out the duties of the Commission, to remain available until expended.” 25 U.S.C. § 2717a. In addition, the Commission proposes requiring that NIGC budget commitments maintain a two-quarter transition fund. This reporting and budget requirement is intended to better inform tribes of the NIGC budget and to better prepare the NIGC for unexpected budgetary impacts.

3) The Commission proposes revising the fee regulations to incentivize electronic submission of fee payments, provide for flexibility in quarterly payments under certain circumstances, and provide guidelines for the fee rate calculation for self-regulated tribes. The Commission believes that increased adoption of electronic submission of fee payments will result in administrative cost savings for both the NIGC and tribal gaming operations and seeks tribal input on a means to incentivize electronic payment adoption. The Commission further proposes exploring options for providing gaming operations with increased flexibility in the timing of the quarterly payments in response to extreme industry-wide impacts such as the global pandemic. Finally, the Commission seeks tribal input on fee rate calculations for self-regulated tribe and whether additional guidance or regulatory changes are warranted to incentivize self-regulation.