



## Frequently Asked Questions – 25 C.F.R §§ 502, 556 and 558

### Key Employee/Primary Management Official

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This list of Frequently Asked Questions (FAQ) is maintained, and updated as needed, by the NIGC Compliance Division in consultation with the Commission and Office of General Counsel. Tribal Gaming Regulatory Authorities (TGRAs) may submit questions for this list to a NIGC Region Office, Region Director and/or Compliance Officer. The Compliance Division encourages all TGRAs to communicate questions associated with 25 C.F.R. §§ 502, 556 and 558 to their NIGC Region Office.

#### Gaming Enterprise – § 502.25

**1. Question:** What is the difference between the definitions for Gaming Enterprise and Gaming Operation? Does Gaming Enterprise encompass Gaming Operation?

**Answer:** The definitions are distinguishable. Gaming Operation, defined at § 502.10, means “each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses.” Under § 502.25, Gaming Enterprise means “the entities through which Tribe conducts, regulates, and secures gaming on Indian lands . . . pursuant to the Indian Gaming Regulatory Act.” So, Gaming Enterprise includes Gaming Operation because the operation is the entity that is “conducting” the gaming; however, it does not work the other way around. Gaming Operation is more limited in its definition and cannot include the broader term of Gaming Enterprise. Also, Gaming Enterprise comprises more than just gaming operations, including Tribal Gaming Regulatory Authorities (TGRAs), Security, and IT entities.

**2. Question:** The definition of Gaming Enterprise includes tribal entities that “regulate” gaming. Does this mean the gaming operation has regulatory authority and can disregard the TGRA’s authority?

**Answer:** No. The Commission clarified in its final rule comments and responses that it intends for the definition of Gaming Enterprise to mean more than just the entity that operates gaming. The definition also includes TGRAs as well as tribal entities that secure the gaming. Tribal entities that secure the gaming ensure the gaming’s risk from loss or protect it from exposure to threats. This definition, however, does not interfere with a TGRA’s independence and its distinct role in regulating a tribe’s gaming.

**3. Question:** Does the definition Gaming Enterprise include contractors or vendors?

**Answer:** No. Contractors and vendors are not tribal entities.

### **Gaming Ordinance – §§ 556.8 and 558.6**

**1. Question:** Under the new rule, are tribes required to amend their existing gaming ordinances?

**Answer:** No. The new regulations revise §§ 556.8 and 558.6 to read: “All tribal gaming ordinances and ordinance amendments approved by the Chair prior to September 14, 2023, do not need to be amended to comply with this part. All future ordinance submissions, however, must comply.” Should a tribe wish to amend its ordinance under 25 C.F.R. § 522.3, the amendment must comply with the new NIGC regulations in parts 502, 556 and 558.

**2. Question:** Our NIGC-approved tribal gaming ordinance defines Key Employees (KE) to include persons whose total cash compensation is in excess of \$50,000 per year. Is the tribe required to fingerprint, background and license them?

**Answer:** Yes. All KE definitions in an NIGC-approved gaming ordinance that do not conflict with the new regulation, § 502.14, (e.g., \$50,000 plus wage earners) must be followed. The persons coming within these definitions should be backgrounded and licensed as a KE in accordance with the ordinance, and are eligible to be fingerprinted through the NIGC. If a tribe no longer wants to background and license such employees based on the \$50,000 wage threshold, it must amend its ordinance to remove such positions as a KE, submitting the amendment to the NIGC Chairman for review and approval.

**3. Question:** With respect to §§ 556.8 and 558.6, which parts of the regulations do they intend to cover? Are Tribes with ordinances that were approved by the NIGC prior to September 14, 2023, required to comply with old NIGC regulations quoted in their ordinance?

**Answer:** Sections 556.8 and 558.6 apply to parts 556 and 558, respectively. In general, where a tribal gaming ordinance and a new regulation do not conflict, abide by both. Where there is a conflict, a tribe must follow NIGC regulations in parts 556 and 558 but do not have to update its gaming ordinance until next amendment submission. Please note that §§ 556.8 and 558.6 apply to parts 556 and 558; there is not a similar disclaimer for part 502.

**4. Question:** Our tribal gaming ordinance states that we will wait to receive NIGC’s response to our notice of results before we issue a gaming license. Should we continue to follow the tribal gaming ordinance, even though part 558 does not require the tribe to wait?

**Answer:** Yes, because your tribe has directed the TGRA through its ordinance to wait. Waiting does not conflict with part 558. Part 558 creates an option for the tribes to wait or to license without first receiving a response from NIGC.

### **Custodian of Gaming Systems – § 502.14(a)(9)**

**1. Question:** Can you clarify the specific sections of § 547.2 that are applicable to the KE definition at § 502.14(a)(9), which pertains to the custodianship of gaming systems?

**Answer:** The definition of Class II gaming system in 25 CFR § 547.2 pertains to the term “gaming systems” in § 502.14(a)(9). “Gaming systems” is defined as “All components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games, including accounting functions mandated by these regulations.” Therefore, this definition applies to Class II gaming systems and similar Class III gaming systems in § 502.14(a)(9).

### **Surveillance Employees – § 502.14(a)(10)**

**1. Question:** Please explain how to license surveillance employees if the surveillance department is employed by the gaming operation? Also, what if these employees are employed by the TGRA or Tribe?

**Answer:** If a surveillance employee works for the gaming operation and is a “[c]ustodian of surveillance systems or surveillance records,” as defined in § 502.14(a)(10), they must be licensed as a KE. If the surveillance employee works for an entity within the Gaming Enterprise, such as the TGRA, the tribe may choose to license them as a KE under § 502.14(d). If the tribe chooses to do so, it must document such employees as a KE prior to fingerprinting them.

### **Primary Management Official – § 502.19(b)(1)**

**1. Question:** Must a PMO have authority to both hire AND fire to meet the PMO definition in § 502.19(b)(1)?

**Answer:** Yes. Under § 502.19(b)(1) a PMO includes any person having the authority “[t]o hire and fire employees of the gaming operation.” The new rule requires a PMO to have both “hire” and “fire” authority. If an employed management official has authority to hire but not fire, a tribe may choose to document them as PMO under § 502.19(e).

### **Documentation – §§ 502.14(d) and 502.19(e)**

**1. Question:** For purposes of designating KEs or PMOs as employees of the Gaming Enterprise under §§ 502.14(d) and 502.19(e), what constitutes documentation?

**Answer:** For these specific provisions, documentation by the tribe may include, but is not limited to: the tribal gaming ordinance, gaming regulations, TGRA orders, licensing procedures and policies, written job descriptions, the employee handbook, and other written memoranda or lists. It is the tribe’s choice to determine how best to document KEs or PMOs under §§ 502.14(d) and 502.19(e) and it may be done via a single document or multiple documents.

**2. Question:** Is the documentation of KEs or PMOs under §§ 502.14(d) and 502.19(e) subject to review by the NIGC?

**Answer:** Yes. If a tribe chooses to document additional employees of the Gaming Enterprise as KEs or PMOs, the documents used to do so may be requested by NIGC for the purposes of performing a compliance review of the tribe’s background and licensing program; specifically, to ascertain if the tribe complied with parts 502, 556, and 558. Such documents may also be requested to perform a CJIS audit by NIGC or the FBI. The documents are used by the tribe, NIGC, and FBI to confirm that the persons

being fingerprinted through NIGC to obtain FBI CHRI are “documented” as KE and PMO by the tribe. If the tribe chooses not to document additional employees as KE or PMO beyond what is listed in 502.14 (a-c) and 502.19(a-d), the tribe will not be scrutinized by NIGC, because it did not expand its KEs and PMOs beyond Part 502.14 (a-c) or 502.19 (a-d). Of course, the tribe is not submitting fingerprints for CHRI beyond 502.14(a-c) and 502.19(a-d) either.

### **KEs/PMOs of the Gaming Enterprise – §§ 502.14(d) and 502.19(e)**

**1. Question:** What are the background and licensing implications for KE and PMO of the Gaming Enterprise as set forth in §§ 502.14(d) and 502.19(e)?

**Answer:** Because Gaming Enterprise includes the entities through which a tribe conducts, regulates, and secures its gaming, tribes may choose to background TGRA, Security, and IT personnel (and potentially other employees) as KEs of the Gaming Enterprise by documenting them as such. Likewise, tribes can choose to background and license TGRA directors or other management officials as PMOs, if they document them as such. Documenting employees as KEs or PMOs requires designating them as such in writing via job position descriptions, the employee handbook, the gaming ordinance, gaming policies or procedures, TGRA orders or resolutions, or memoranda/lists. Once the tribe has documented an employee of the Gaming Enterprise as a KE or PMO, they can be fingerprinted, backgrounded, and licensed in accordance with the tribal gaming ordinance and 25 CFR parts 556 and 558.

**2. Question:** Under § 502.14(d), is it possible to document and license all gaming operation employees as KEs?

**Answer:** Yes, if all the employees are employed by the entity that “conducts” the gaming on the tribe’s Indian lands and the tribe documents them all as KEs.

**3. Question:** In transitioning non-KEs/PMOs to KEs/PMOs under §§ 502.14(d) and 502.19(e), what should a tribe consider when processing these employees when it has limited resources or licensing staff?

**Answer:** The NIGC recommends each tribe assess and analyze the number of employees it is considering licensing as well as the burden it may place on its licensing staff. If there are many employees to transition, we recommend taking a phased approach. There is no requirement that these employees transition all at once. For large groups of employees, the tribe may consider breaking them down into subgroups, documenting each job position as KE or PMO incrementally or staggering designations of KE or PMO using “effective by” dates or upcoming licensing renewal dates in its designation documentation. When the tribe has settled on its plan, we recommend it inform NIGC Compliance Officers and Administrative Specialists to assess compliance with parts 502, 556, and 558.

Also, please consider § 556.6(b)(2) which requires a tribe to submit a notice of results (NOR) to the Commission no later than sixty (60) days after the applicant begins work. NIGC regulation § 556.6(2)(ii), requires the notice to include “the date on which the applicant began or will begin work as key employee or primary management official.” To comply with these regulations, the tribe may include on the notice, the date an employee transferred from a position not previously designated as a KE or PMO to a position the tribe now designates as a KE or PMO.

**4. Question:** With the new definitions for the KEs and PMOs, our tribe is going back to licensing our gaming commissioners and staff. Since we only took these licenses away because of the CJIS changes can the tribe

Page 4 of 5

just reinstate the licenses or does it need to start all over again with new background checks based on renewed/reinstated KE status with an effective date after September 15, 2023?

**Answer:** Look first at the TGRA's process for expired or reinstated gaming licenses and follow the time frames the process establishes. If the time set by your policies has been exceeded, the NIGC recommends you follow your policy which may require the TGRA personnel to reapply and complete the background and licensing process. If their licenses have not expired, there is no requirement to relicense them. If they were licensed without ever having obtained their FBI CHRI, each individual should have their fingerprints taken and submitted to the NIGC for purposes of obtaining CHRI in accordance with 25 CFR §§ 522.2(g) and 556.4(a)(14). Use the CHRI results to determine if the applicant is eligible for a gaming license under the NIGC and tribe's licensing criteria. See 25 CFR §556.6(a)(2) & (b).

### **License Revocation Decisions – § 558.3(e)(1) and (2)**

**1. Question:** Why does the NIGC need gaming license revocation decisions when the information it collects is sufficient for notifying tribes of the NIGC's licensing objections?

**Answer:** IGRA requires continued oversight on an ongoing basis of KE/PMOs. Revocation decisions are an essential component of such oversight. Tribal license revocations are not contained in other background checks, including FBI CHRI. Revocation decisions further safeguard Indian gaming by making sure that the NIGC possesses the most up to date information on KEs and PMOs. NIGC uses this information not only for license objections but also to assist tribes with their background investigations.

**2. Question:** Does a tribe or TGRA that revokes a license need to provide or list details when informing the NIGC of its decision to revoke?

**Answer:** No. In accordance with § 558.3(e)(2) a tribe must "forward copies of its license revocation decision for inclusion in the Indian Gaming Individuals Record System." NIGC regulations only require submission of the revocation decision, not any evidentiary or supporting documents, materials, or correspondence related to the decision.

**3. Question:** Will the revocation decisions be made available through Tribal Access Portal System (TAPS)?

**Answer:** Revocation information will not be available through TAPS; however, it may be obtained by contacting the tribes or TGRAs where the person was previously licensed. If you have questions related to a person's status, please do not hesitate to contact your NIGC Compliance Officer.