

July 12, 2021

Summary of proposed change to 25 C.F.R. Parts 502, 556, & 558

National Indian Gaming Commission

The Commission seeks tribal input, feedback, and suggestions on whether and how the *primary management official* and *key employee* definitions in part 502 should be changed along with several background investigation and licensing regulatory provisions in parts 556 and 558.

IGRA requires that tribal gaming ordinances provide “an adequate system which ... ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and (ii) includes— (I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses; (II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and (III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.”<sup>1</sup>

This statutory provision has been interpreted by the Commission in its background investigation and licensing regulations as well as in its regulatory definitions of *primary management official* and *key employee*. Now, the Commission shares the attached proposed regulatory changes to:

- Address FBI’s concerns regarding who constitutes a *key employee* or a *primary management official*;
- Provide for custodians of licensing records and/or compliance inspectors or monitors to qualify as *key employees*, if designated as such in a gaming ordinance approved by the NIGC Chair;
- Ensure that volunteers and employees of other entities who undertake the duties, functions, or responsibilities of a key employee are included in the *key employee* definition;
- Include persons with unescorted access to secured areas as *key employees*;
- Raise the total cash compensation qualifier for *key employees*;
- Consolidate certain subsections of the *key employee* definition;
- Expand the *primary management official* definition to include any person who has authority to supervise a *key employee*;
- Add general managers or other persons who have management responsibility to the *primary management official* definition;
- Clarify that *key employees* and *primary management officials* are such because of their duties, functions, and/or responsibilities, even if they work for an entity other than the gaming operation;
- Focus on licensing of *primary management officials* and *key employees* instead of employment of them;
- Simplify the licensing application retention requirement to just the information within it.

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<sup>1</sup> 25 U.S.C. § 2710(b)(2)(F).

Primary management official and key employee definitions and licensing  
requirements

25 C.F.R. §§ 502.14 and 502.19

25 C.F.R. Parts 556 and 558

IGRA requires that tribal gaming ordinances provide “an adequate system which ... ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise ...”<sup>1</sup> Currently, the terms *key employee* and *primary management official* are defined in NIGC regulations, 25 C.F.R. §§ 502.14 and 502.19, respectively.

These definitions are the subject of the Commission’s consultation, seeking tribal input, feedback, and suggestions on whether and how these definitions should be changed. Below are explanations for potential modifications to the definitions.

**§502.14 Key employee**

*Key employee* means:

(a) ~~Any person, irrespective of employment status or compensation,~~ who performs one or more of the following functions:

- (1) Bingo caller;
- (2) Counting room supervisor;
- (3) Chief of security;
- (4) ~~Custodian of gaming supplies or cash;~~
- (5) Floor manager;
- (6) Pit boss;
- (7) Dealer;
- (8) Croupier;
- (9) Approver of credit; ~~or~~
- (9) Custodian of gambling devices, gaming supplies, gaming systems, or cash;
- (10) Custodian of gambling ~~devices including persons with access to cash and accounting device~~ records ~~within such devices;~~

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<sup>1</sup> 25 U.S.C. § 2710(b)(2)(F)(i).

(11) Custodian of licensing records, if designated as a key employee by a gaming ordinance or resolution approved by the Chair; or

(12) Compliance inspector or monitor, if designated as a key employee by a gaming ordinance or resolution approved by the Chair.

~~(b) Any person with unescorted access to secured areas; If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or,~~

~~(c) If not otherwise included, any other person whose total cash compensation is in excess of \$1050,000 per year; or, If not otherwise included, the four most highly compensated persons in the gaming operation.~~

~~(d) If not otherwise included, the four most highly compensated persons in the gaming operation. Any other person designated by the tribe as a key employee.~~

#### **§502.19 Primary management official**

*Primary management official means:*

(a) ~~The~~ Any person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(3) To supervise a Key Employee.

(c) The chief financial officer or other person who has financial management responsibility.

(d) The general manager or other person who has management responsibility.

~~(d) Any other person designated by the tribe as a primary management official.~~

#### **§556.4 Background investigations.**

A tribe shall perform a background investigation for each primary management official and for each key employee ~~of a gaming operation.~~

#### **§556.6 Report to the Commission.**

- (a) When a tribe ~~employs~~licenses a primary management official or a key employee, the tribe shall maintain ~~a complete application file containing~~ the information listed under §556.4(a)(1) through (14).

#### **§556.8 Compliance with this part.**

All tribal gaming ordinances and ordinance amendments approved by the Chair prior to February 25, 2013 and that reference this part, do not need to be amended to comply with this part. All future ordinance submissions, however, must comply.

#### **§558.3 Notification to NIGC of license decisions and retention obligations.**

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(c) ~~A gaming operation shall not employ a~~A key employee or primary management official who does not have a license after ninety (90) days ~~shall not be permitted to work~~perform the duties, functions, and/or responsibilities of a key employee.

(e) A tribe shall retain the following for inspection by the Chair or ~~his or her~~their designee for no less than three years from the date of termination ~~of employment~~of work:

- (1) ~~Applications for licensing~~ The information listed under §556.4(a)(1) through (14);
- (2) Investigative reports, as defined in §556.6(b); and
- (3) Eligibility determinations, as defined in §556.5.

#### **§558.4 Notice of information impacting eligibility and licensee's right to a hearing.**

(a) If, after the issuance of a gaming license ~~pursuant to 558.3 of this chapter~~, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for ~~employment a license~~ under §556.5 of this chapter, the Commission shall notify the issuing tribe of the information.

July 12, 2021

Proposed changes to 25 C.F.R. Parts 502, 556, and 558  
National Indian Gaming Commission

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

~~(d) A right to a hearing under this part shall vest only upon receipt of a license granted under an ordinance approved by the Chair.~~

(d) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision within 45 days of receiving notification from the Commission pursuant to paragraph (a) of this section.

#### **§558.6 Compliance with this part.**

All tribal gaming ordinances and ordinance amendments that have been approved by the Chair prior to February 25, 2013 and that reference this part do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.