



REGULATORS RESPONSE TO COVID-19: VOLUME 2

Friends and Colleagues:

It has been nearly a month since tribes across the country began responding to the coronavirus (COVID-19) pandemic by closing facilities in an attempt to slow the spread of the disease and to protect our patrons and employees. Although many weeks have passed, there are still many weeks ahead that will require our continued vigilance as we deal with the ongoing effects of facility closures and plan for the time when we will welcome back the public to our gaming facilities. There are a few matters that will require attention if we are to keep pace, if not get ahead of dealing with results of prolonged facility closures.

Many tribes expect to re-open their gaming facilities within the next two weeks; however, some tribes have recently extended their closures through the end of April, perhaps due to extended “stay at home” order from state Governors. While many tribes have kept employees on the payroll after closure, should closures extend beyond current projections, a time may come when it is not possible to continue this practice. Casino employees, and possibly tribal gaming regulatory agency (TGRA) staff, may be subject to furloughs, lay-offs, or even terminations.

Each of these scenarios will require its own unique response, particularly in the area of licensing. In the case of furloughs, where workers are placed on an unpaid leave of absence and essentially retain employment once operations resume, it will be necessary for the TGRA to continue to track the license renewal dates for existing employees as well as to decide on an appropriate response for those applicants that were in process at the time of shutdown. Your tribal gaming ordinance and, if applicable, your tribal-state compact may provide guidance on how to handle these situations. TGRA regulations may also fill in any gaps in the ordinance and/or compact.

TGRAs must decide whether or not they are able to continue to process license renewals for employees, including making all timely submissions to the NIGC and state agencies as applicable. The NIGC has indicated recently it cannot expand submission periods or extend submission deadlines. The NIGC Chairman did, however, recently issue a memo to the NIGC Compliance Director indicating the NIGC understands there may be some late filings and the focus of the Compliance Division should not be to target items that are briefly delayed beyond a deadline. Obviously, it is best to simply adhere to the required submission timelines and avoid any non-compliance issues if at all possible.

In the case of lay-offs and terminations, licensees are not longer considered employees and must re-apply for any positions that come open when operations resume. The TGRA must decide how it will treat the licenses at the time of separation as well as how to handle licenses for any employees that may return. Some of these decisions and actions may need to be communicated to, possibly coordinated with, state gaming agencies to ensure compliance with any tribal-state compact.

As with employees, a similar course may be followed for vendor license renewals. New vendors, particularly those needed to provide products and services related to virus mitigation efforts, may require expedited processing to afford facilities quick access to these vital resources.

Likewise, facility licensure and the related inspections for renewals remains an important regulatory responsibility. TGRA's should continue to provide all applicable notices regarding facility license issuance, renewal and, if applicable, notice to state gaming agencies of license related inspections pursuant to the various compacts.

The process of re-opening a facility is one that will take preparation and time. In order to determine what actions will be necessary, it is important to know what actions were taken at the time of and during closure. Assessments must be made of the gaming machines, of financial resources, and of facility readiness – e.g. cleaning efforts on the gaming floor, in public areas, and in food and beverage areas. There are more items that will need to be checked prior to re-opening; these may be found on the recommended checklist recently distributed by the NTGCR.

All of these efforts will require continued communications with gaming facility management, state gaming agencies, and with tribal leadership. Timely and clear communication will help ensure the swift re-openings we all hope to see.

The federal government enacted a financial stimulus/relief package that may be of benefit to tribes. Based on tribal entity eligibility language, all TGRA's should coordinate such relief directly through their respective Tribes and with proper individual legal and accounting guidance. The Cares Act relief through the SBA created a Paycheck Protection Program whereby short-term SBA disaster loans used to maintain employee payroll with convert to a non-repayable grant if all necessary criteria are met.

Although we have come a long way and the virus may be reaching its peak in the hardest hit areas of the country, we still have a long way to go. As tribes, we are not strangers to adversity. We endured tragedies in the past and emerged a stronger people. Together we will endure the

hardships brought about by this virus and again show the world the fortitude and resiliency inherent to our people.