

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
FBI - NIGC MOU, 2021 CHRI MOU, CJISSECPOL 5.11.2_

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701, et seq., was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (NIGC) and outlined a comprehensive framework for the regulation of gaming on Indian lands. Among the IGRA’s requirements is that persons who apply for a “key employee” (KE) or “primary management official” (PMO) position at a tribal gaming operation must undergo a background investigation ((§ 2710(b)(2)(F)(i)). Similarly, the IGRA requires that persons who have direct or indirect financial interest in, or management responsibility for, a tribal gaming management contract, must undergo a background investigation and be evaluated for suitability as part of the NIGC’s management contract review process ((§ 2711(a), (e)(1)(D)). In keeping with these background investigative statutory requirements, NIGC regulations 25 CFR 522.2(g), 25 CFR 556.4(a)(14), and 25 CFR 537.1(b)(2) stipulate that prospective KEs/PMOs and management contractors must submit their fingerprints to the Federal Bureau of Investigations (FBI) and undergo a criminal history record information (CHRI) check.

Although CHRI checks are integral to the tribal KE/PMO applicant licensing process, tribes do not possess the necessary statutory authority to directly access FBI CHRI for this purpose. The NIGC, as a Federal agency empowered under the IGRA to access CHRI (§§ 2706(b)(3) & (7), 2708), accepts tribal fingerprint submissions and transmits them to the FBI for this purpose. In return, the FBI provides CHRI check results to the NIGC and the NIGC shares these results with the requesting tribe. In this process, the NIGC assumes the role of a CJIS (Criminal Justice Information Services) Systems Agency (CSA) - a duly authorized agency on the CJIS network that provides service to criminal justice users with respect to the criminal justice information held in various systems managed by the Federal Bureau of Investigations (FBI) CJIS Division.

The roles and responsibilities under which the NIGC, FBI, and tribes process CHRI checks are memorialized in Memoranda of Understanding between the FBI and the NIGC and between the NIGC and each requesting tribe. One such responsibility is to monitor the dissemination of CHRI to ensure FBI-compliant privacy and security standards are followed. This responsibility is detailed in FBI CJIS Security Policy, Policy Area 11 (CJISSECPOL 5.11.2) which specifies that the NIGC, as a CSA, is required to establish a process to periodically audit tribes that receive CHRI to ensure compliance with applicable statutes, regulations and policies. To fulfill this obligation, the NIGC has established a CJIS Audit Unit (CAU), which is tasked with coordinating with tribal authorities to ensure that NIGC-

disseminated CHRI is handled and managed in accordance with applicable statutes, regulations, and policies.

In performing its oversight duties, the CAU will deploy questionnaires to gather information. This information will be used to assess and document tribal compliance with privacy and security standards and will enable the CAU to identify information management risk factors that may require remediation. Responding to this information collection is voluntary, however, failure to collect this information may impair the NIGC's ability to fulfill its obligations under its MOUs with the FBI and its tribal partners. Indeed, this information collection is a vital tool for the NIGC CAU to perform its function and helps to ensure that the NIGC can continue to support the successful tribal operation of tribal gaming under the IGRA.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The purpose of this new collection is to enable the NIGC to fulfill its oversight responsibilities under its FBI-NIGC MOU, which requires the NIGC to "audit the handling and maintenance of [CHRI] in electronic and paper recordkeeping systems to ensure that appropriate security and privacy protections are in place." The information collected will be reviewed by a specialized NIGC audit unit and will be used to monitor and assess tribal compliance with security and privacy protection requirements.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The NIGC plans to deploy the questionnaires on a web-based platform that will allow access to anyone with a device connected to the web. The online form will be simple to use and will have one-step point/click response buttons, simple text space and easy document upload functionality.

The NIGC also recognizes that every tribe is unique and that some tribes may prefer using fillable e-forms or even physical (paper) forms. The NIGC is committed to tailoring its collection instruments towards tribal convenience and will be engaging with tribes via outreach, training and person-to-person assistance.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

This information collection is unique to the NIGC and its role in regulating Indian gaming.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

None of the respondents meet the Small Business Administration's definition of a small business. Nonetheless, the NIGC has designed its audit questionnaires after performing a line by line review of the original (standard) FBI CJIS Division audit questionnaires and extracting any content not specifically relevant or necessary within the tribal context. The resulting slimmed-down questionnaires are more limited in scope and seek only the minimum amount of information to fulfill agency obligations. In addition, the NIGC expects that the burden will be proportional to the size and complexity of the gaming operation, meaning, the smaller the tribal operation, the lesser the burden.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Currently, in the absence of this collection, the NIGC cannot provide any assurances that tribes are in compliance with information security and privacy protection requirements.

If the FBI were to terminate the FBI-NIGC MOU because of information security and privacy protection issues, this would jeopardize Indian gaming and the economic well-being of tribes that rely on Indian gaming revenue.

In FY2018, the FBI CJIS Division reviewed NIGC/tribal CJIS information management practices and issued a number of findings. This collection, and the activities that it supports, directly addresses those findings.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly:**

Not applicable

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:**

Not applicable

- **requiring respondents to submit more than an original and two copies of any document:**

Not applicable

- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years:**

Not applicable

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study:**

Not applicable

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB:**

Not applicable

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use, or:**

Not applicable

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Not applicable

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

On December 6, 2023, a 60-day notice was published in the Federal Register informing the public about the proposed information collection and soliciting comments. *See* 88 FR 84827 (December 6, 2023). The public comment period closed on February 4, 2024. No public comments were received.

The NIGC consulted with nine (9) tribes to obtain their views on the proposed information collection, in particular, the clarity of instructions, the availability of data, and the ease of use of the (Peak Performance) electronic reporting platform. Based on these consultations, the NIGC was able to formulate burden estimates (detailed below). In general, tribes reported that the instructions were clear, the electronic reporting platform was easy to use, and the data requested was readily available. The NIGC will continue to listen to feedback from respondents and seek way to reduce the collection burden.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable. The NIGC does not provide any payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Indian Gaming Regulatory Act requires the NIGC to keep confidential trade secrets, privileged or confidential, commercial or financial information, or information related to ongoing law enforcement investigations. Section 2716 of title 25, United States Code, removes from the NIGC any discretion it otherwise would have to disclose information that falls within FOIA exemptions 4 and 7, and requires the NIGC to disclose such information only to other law enforcement agencies for law enforcement purposes.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable. No sensitive questions are asked.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.**

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item**

The average annual number of respondents has been calculated so that all tribes will be audited on a triennial cycle in accordance with the CJIS Security Policy. Average hours per response and wage costs were determined after an internal analysis by NIGC CAU subject matter experts and in conjunction with tribal consultation. Total annual hours is the result of the number of responses multiplied by the average hours per response. Total annual wage costs is the result of the number of responses multiplied by the average wage cost per response.

ESTIMATED ANNUAL HOURLY BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE HOURS PER RESPONSE	AVERAGE (WAGE) COST PER RESPONSE	TOTAL ANNUAL HOURS	TOTAL (WAGE) COST
NGI	70	1	70	.5	\$36.25	35	\$1,353
NCJITS	70	1	70	.75	\$36.25	52.5	\$1,945
TOTAL	140		140			87.5	\$3,307

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public**

comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

This information collection is not expected to cause respondents to make any special purchases or incur any special costs.

ESTIMATED ANNUAL COST TOTALS

CFR CITE/ COLLECT ION	NUMBER OF ANNUAL RESPONDE NTS	FREQUE NCY OF RESPONS ES PER YEAR	TOTAL ANNUAL RESPON SES	AVERAG E ANNUAL COSTS	TOTAL COSTS
NGI	70	1	1	\$0	\$0
NCJITS	70	1	1	\$0	\$0
TOTAL	140			\$0	\$0

- 14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The NIGC CAU determined its cost and burden hour estimates, inclusive of operational expenses, based on the workflows of the program, and the functions specific to the receipt, recording, and analysis of the proposed information collections. The wage rates are based on hourly compensation at the level of a GS-13/5.

ESTIMATED ANNUAL AGENCY BURDEN TOTALS

CFR CITE/ COLLECT ION	NUMBER OF ANNUAL RESPONDEN TS	ANNUAL FREQUE NCY OF RESPONS ES	TOTAL ANNUAL RESPONSES	REVIEW HOURS PER RESPON SE	TOTAL HOURS	AVERAGE HOURLY RATE	TOTAL AGENCY COST
NGI	70	1	70	1	70	\$45.91	\$3,214
NCJITS	70	1	70	2	140	\$45.91	\$6,427

TOTAL	140		140		210		\$9,641
--------------	-----	--	-----	--	-----	--	---------

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

N/A

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Not applicable. The NIGC certifies compliance with 5 CFR § 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This section is not applicable. Statistical methods are not being employed.