



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAY 21, 2021

The Honorable Jonathan Nez  
President, Navajo Nation  
Arizona, New Mexico, & Utah  
P.O. Box 7440  
Window Rock, Arizona 86515

Dear President Nez:

On April 21, 2021, the Navajo Nation (Tribe) and the State of Arizona (State) submitted to the Department of the Interior (Department) the Navajo Nation - State of Arizona Amended and Restated Gaming Compact (2021 Compact), providing for the regulation of class III gaming activities on the Tribe's Indian lands.

I am pleased to approve the 2021 Compact for the reasons stated below.

I commend the Tribe, the State, and the other Arizona Tribes for engaging in good-faith negotiations to arrive at the 2021 Compact. In connection with the 2021 Compact, the State of Arizona enacted the 2021 Gaming Act.<sup>1</sup> The 2021 Compact and the 2021 Gaming Act complement each other by addressing the collective and individual interests of the Tribes and the State. The 2021 Gaming Act authorized the Arizona Lottery to operate on a limited and restricted basis electronic keno and a mobile draw game, fantasy sports contests, and authorized event wagering, with a significant opportunity for Tribes to participate in and benefit from off-reservation event wagering.

## *The 2021 Compact*

The 2021 Compact builds on the successes of the Tribe's existing compact that was approved by the Department in 2003 (2003 Compact) and addresses changes in gaming law and technology. The 2021 Compact extends the term of the 2003 Compact by including an additional 10-year initial term, a second 10-year first renewal term, and a 2-year final renewal term to allow for negotiation of a successor compact.<sup>2</sup> The 2021 Compact expands the scope of class III games the Tribe may offer on its Indian lands, including in-person and mobile sports betting and fantasy sports. The 2021 Compact maintains tribal exclusivity over the operation of gaming devices and poker, and expands tribal exclusivity to include blackjack, jackpot poker (including promotional award poker and house banked poker), baccarat, roulette, craps, sic bo, pai gow, and dealer

---

<sup>1</sup> 2021 Ariz. Sess. Laws 234, An Act amending section 5-554, Arizona Revised Statutes; amending title 5, chapter 6, article 1, Arizona Revised Statutes, by adding section 5-605; amending title 5, Arizona Revised Statutes, by adding chapters 10 and 11; amending sections 13-3301 and 13-3305, Arizona Revised Statutes; relating to amusements and sports.

<sup>2</sup> Compact at Section 23(b)(1)-(3).

controlled electronic table games.<sup>3</sup> The 2021 Compact additionally expands the scope of non-exclusive class III games the Tribe may offer to include on-reservation, in-person and mobile sports betting and fantasy sports wagering,<sup>4</sup> while carving out limited exceptions for state lottery, off-reservation fantasy sports, and state licensed sports betting. The 2021 Compact reflects the purposes of the Indian Gaming Regulatory Act (IGRA) by promoting tribal economic development, tribal self-sufficiency, and strong tribal governments.

### *Sports Betting and Mobile Gaming*

Another important aspect of exclusivity is the State's agreement to restrict off-reservation gaming. The 2021 Compact and the 2021 Gaming Act address changes in gaming law and technology, particularly sports betting and fantasy sports. The 2021 Compact and the 2021 Gaming Act work in tandem to authorize sports betting and fantasy sports in the State and on the Tribe's Indian lands, while providing the Tribe geographic and electronic exclusivity over their Indian lands. The Tribes extracted a significant concession from the State to permit the Tribes to participate in and benefit from off-reservation event wagering. The 2021 Gaming Act provides for up to 20 State sports betting licenses, 10 of which are reserved for the Tribes to operate off-reservation mobile sports betting under State law.<sup>5</sup>

### *The 2021 Compact Trust Fund*

I am encouraged to see that the 2021 Compact creates the 2021 Compact Trust Fund, into which the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation will contribute funds in order to benefit 2021 Compact signatory Tribes who are non-gaming or limited gaming Tribes (beneficiary Tribes) for a ten-year period.<sup>6</sup> The beneficiary Tribes will receive disbursements that will fund tribal government operations or programs. I note that funding tribal government operations or programs from gaming net revenues is a permissible use under 25 U.S.C. § 2710(b)(2)(B), and the Compact Trust Fund arrangement in the 2021 Compact complies with IGRA's "sole proprietary interest" requirement at 25 U.S.C. § 2710(b)(2)(A). The 2021 Compact Trust Fund complements the mutually beneficial arrangement initiated in the 2003 Compacts and continued under the 2021 Compact, under which Tribes may lease some or all of their allotment of gaming devices to other Tribes.<sup>7</sup>

<sup>3</sup> Compact at Section 3(a)(1).

<sup>4</sup> *Id.*

<sup>5</sup> 2021 Gaming Act § 5-1304; *see also* Letter from Martin Harvier, President, Salt River Pima-Maricopa Indian Community, to Paula L. Hart, Director, Office of Indian Gaming (May 6, 2021) (on file with the Office of Indian Gaming) (explaining the benefits of the limits contained in the 2021 Gaming Act's sports betting provisions including reserving mobile sports betting licenses for the Tribes).

<sup>6</sup> Compact at Section 12.1. *See, e.g.,* Letter from Val R. Panteah, Sr., Governor, Zuni Tribe of the Zuni Indian Reservation, to Paula L. Hart, Director, Office of Indian Gaming (May 10, 2021) (on file with the Office of Indian Gaming) (stating that the Trust Fund is not a tax or fee to the State of Arizona, but, like many of the 2021 amendments, is a set of obligations negotiated and agreed to between the participating tribes to strengthen and maintain the benefits of the compact for each tribe). *See also* Letter from Ned Norris, Jr., Chairman, Tohono O'odham Nation, to Paula L. Hart, Director, Office of Indian Gaming (May 13, 2021) (on file with the Office of Indian Gaming) (explaining the 2021 Compact Trust Fund was the result of inter-tribal negotiations as a way for all Arizona Tribes to benefit from the expansion of tribal gaming under the 2021 Compact).

<sup>7</sup> Compact at Section 3(d).

The 2021 Compact Trust Fund is an excellent example of Indian gaming benefitting all Tribes in a State.

### *Revenue Sharing*

The IGRA sharply limits the circumstances under which an Indian tribe can make direct payments to a state.<sup>8</sup> We review revenue sharing provisions in compacts or amendments with great scrutiny. We begin with the premise that a Tribe's payments to a state or local government for anything beyond the costs of regulating class III gaming activities are a prohibited "tax, fee, charge, or other assessment."<sup>9</sup> Our analysis first looks to whether the State has offered meaningful concessions to the Tribe that it was not otherwise required to negotiate, such as granting exclusive rights to operate class III gaming or other benefits with a gaming-related nexus. We then examine whether the value of the concessions provide substantial economic benefits to the Tribe in a manner justifying the revenue sharing required.

The 2021 Compact expands and clarifies the exclusive scope of tribal gaming in the 2003 Compact.<sup>10</sup> The 2021 Compact provides that five named Tribes will maintain the revenue sharing percentages contained in the 2003 Compact up to a maximum of 8% for net win over \$100 million. The remaining Tribes will pay a lower fixed rate of 0.75% of net win.<sup>11</sup> Representatives of the five named Tribes who will maintain the 2003 Compact's revenue sharing percentages stated that the improvements to the Tribes' expanded exclusivity provisions offset the limited expansions in state lottery and state-licensed sports betting, and justify maintaining the 2003 Compact's revenue sharing percentages.<sup>12</sup> Additionally, the representatives of the five named Tribes stated that the decrease in revenue sharing contributions for the remaining Tribes is evidence that the 2021 Compact is beneficial for Arizona Tribes. Further, the Tribes explain the 2021 Compact together with the narrowly tailored expansion of state-licensed, non-tribal gaming under the 2021 Gaming Act limits the potential impacts to the Tribes.

I also note that the State made a valuable concession to the Tribes by adopting the 2021 Gaming Act provisions that ensure an opportunity to participate in the commercial gaming market outside of Indian lands. This interconnected arrangement where the Tribes negotiated for the right to participate in off-reservation mobile sports betting with competition limited by the State is directly related to on-reservation gaming in the 2021 Compact, and, therefore, permissible under

<sup>8</sup> 25 U.S.C. § 2710(d).

<sup>9</sup> 25 U.S.C. § 2710(d)(4).

<sup>10</sup> See e.g. Letter from Peter Yucupicis, Chairman, Pascua Yaqui Tribe, to Paula L. Hart, Director, Office of Indian Gaming (May 11, 2021) (on file with the Office of Indian Gaming) (explaining the value of the changes to the Tribes' exclusivity under the 2021 Compact); Compact at Sections 3(a)(1) and 3(c)(1)(A).

<sup>11</sup> Compact at Section 12(b)(2)(A); Letter from Anni Foster, General Counsel to the Governor, to Paula L. Hart, Director, Office of Indian Gaming (May 13, 2021) (on file with the Office of Indian Gaming) (explaining that the revenue sharing tiered rate structure remains unchanged for five Tribes - Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Ak-Chin Indian Community, Tohono O'odham Nation, and Pascua Yaqui Tribe and the other 15 Tribes signing the 2021 Compact will see their revenue sharing rates decrease from the tiered rate structure to a flat 0.75% of Class III Net Win).

<sup>12</sup> See e.g. Letter from Martin Harvier, President, Salt River Pima-Maricopa Indian Community, to Paula L. Hart, Director, Office of Indian Gaming (May 6, 2021) (on file with the Office of Indian Gaming) (explaining the value of the changes to the Tribes' exclusivity under the 2021 Compact).

IGRA. Were the State's concession not directly related to the Tribes' conduct of gaming on Indian lands, our analysis would have been different.

We have thoroughly analyzed the 2021 Compact, together with the Tribe's responses to our questions. It is my determination that the State has made meaningful concessions to the Tribe. First, the State has agreed to preserve the Tribe's exclusive rights under the 2003 Compact to operate gaming devices and poker. Second, the State has agreed to expand the Tribe's exclusive scope of gaming to include the full breadth of Las Vegas-style casino gaming devices and table games identified above. Third, the State has secured an opportunity for the Tribe to participate in related commercial gaming.

It is my determination that the State's concessions will provide substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the 2021 Compact.

*Decision*

We completed our review of the 2021 Compact and conclude that it does not violate the Indian Gaming Regulatory Act, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. 25 U.S.C. § 2710(d)(8)(B). Therefore, pursuant to my delegated authority and Section 11 of IGRA, I approve the 2021 Compact. 25 U.S.C. § 2710(d)(8)(A). The 2021 Compact takes effect when the notice of this approval is published in the Federal Register. 25 U.S.C. § 2710(d)(3)(B).

A similar letter is being sent to the Honorable Doug Ducey, Governor of Arizona.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Newland", written in a cursive style.

Bryan Newland  
Principal Deputy Assistant Secretary  
Indian Affairs

Enclosure