



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, DC 20240

April 14, 2021

The Honorable Larry Romanelli  
Ogema, Little River Band of Ottawa Indians  
2608 Government Center  
Manistee, Michigan 49660

Dear Ogema Romanelli:

On March 9, 2021, the Superintendent of the Michigan Agency, forwarded to the Office of Indian Gaming for review and approval the Little River Band of Ottawa Indians (Tribe) Revenue Allocation Plan (Amendment).

We have completed our review of the Amendment authorized by Tribal Resolution No. 20-1216-362, dated December 16, 2020. The Amendment states that its purpose is to reallocate the percentages to increase the per capita payments as a more efficient means to provide for all enrolled Tribal members.

We conclude that the Amendment complies with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (IGRA), and our implementing regulations at 25 C.F.R. Part 290. We note that the Amendment provides adequate funding for one or more of the following purposes: tribal government operations or programs, general welfare of the tribe and its members, to promote economic development, to donate to charitable organizations, or to help fund operations of local governments.<sup>1</sup> Accordingly, pursuant to my delegated authority and Section 11 of IGRA, the Amendment is approved.

If you have any questions regarding this matter, please contact Ms. Morgan Oakes, Management Assistant, Office of Indian Gaming at (202) 219-4066.

Sincerely,

Darryl LaCounte  
Director, Bureau of Indian Affairs  
Exercising the Delegated Authority  
of the Assistant Secretary – Indian Affairs

cc: Superintendent, Michigan Agency

**LITTLE RIVER BAND OF OTTAWA INDIANS  
REVENUE ALLOCATION PLAN**

**Section 1. Findings**

- 1.01. The Little River Band of Ottawa Indians ("Tribe") is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994.
- 1.02. The Tribe, as an exercise of its sovereign authority, operates gaming enterprises. These gaming enterprises are subject to federal regulation by the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 et. seq.
- 1.03. The Tribal Council has determined that implementation of a revenue allocation plan ("RAP") which governs the allocation of net gaming revenues the Tribe receives from the operation of its gaming enterprises is in the best interest of the Tribe.

**Section 2. Purpose**

- 2.01. This RAP implements § 2710(b)(3),(d)(1)(A)(ii) of IGRA which requires that a tribal government implement a revenue allocation plan prior to making direct distributions of net gaming revenue to its tribal citizens.
- 2.02. The RAP shall allocate revenues generated by the Tribe's gaming enterprises towards the following purposes; the funding of tribal government operations and programs, providing for the general welfare of the Tribe and its members, the promotion of the Tribe's economic development, donations to charitable organizations and per-capita distributions to tribal members.
  - (a) The RAP shall not allocate revenues towards assisting the funding of the operations of local government agencies. The Tribe has entered into a Class III Gaming Compact with the State of Michigan which requires that the Tribe provide funding assistance to the operations of local government as specified in the Compact.

**Section 3. Definitions**

- 3.01. *Budget* means the plan which appropriates all of the Tribe's revenues and other income for the coming fiscal year that is prepared and submitted by the Ogema to the Tribal Council in accordance with the Constitution and other applicable laws.
- 3.02. *Business* means a corporation, partnership, limited liability company, joint venture or other activity that takes place outside of the Tribal government operations and is expected to generate revenues, a part of which are to be returned to the Tribe. Business includes those

entities created by the Tribe for conventional business purposes, as well as those entities for which the primary purpose is to generate revenue for or to carry out essential governmental functions.

- 3.03. *Constitution* means the constitution of the Little River Band of Ottawa Indians adopted on May 27, 1998 and approved by the Secretary of Interior on July 10, 1998 and all subsequent amendments thereto.
- 3.04. *Fiscal Year* means a 12 month time period designated by the Tribal Council which is used for the purpose of setting a budget as established by resolution or tribal law.
- 3.05. *Gaming Enterprise* means an entity chartered, incorporated, or organized by the Tribe which conducts gaming the purpose of generating revenue or creating employment opportunities for members of the Tribe.
- 3.06. *Indian Gaming Regulatory Act ("IGRA")* means the law codified at 25 U.S.C. § 2701 *et seq* which regulates gaming activities engaged in by tribal governments.
- 3.07. *Legally Incompetent Person* means an individual who has been declared, by a court of competent jurisdiction, to be operating under a legal disability which prevents that individual from caring for themselves or making legally binding decisions concerning their care.
- 3.08. *Minor* means an individual who is less than 18 years of age.
- 3.09. *Net Gaming Revenues* means revenues derived from the Tribe's class II and/or III gaming operation and associated amenities distributed to the Tribe on a monthly basis through the prescribed formula of Earnings Before Interest Taxes Depreciation and Amortization (EBITDA) less Interest Expense, Gaming Tax, Capital Replacement Reserve, Debt Principal Repayment, and Gaming Compact Related Payments with the addition back of Interest Income and Depreciation Expense. This formula approximates the amount of cash available from the Gaming Enterprise and related amenities that is available for distribution to the Tribal Government for operations.
- 3.10. *Ogema* means the chief executive of the Little River Band of Ottawa Indians as described in Article V, § 1 *et seq* of the Constitution.
- 3.11. *Per Capita Distribution* means the distribution of money or other thing of value to all members of the Tribe, or to identified groups of members, which is paid directly from the net gaming revenues of any tribal gaming activity. This definition does not apply to tribal revenues which have been set aside by the tribe for bona fide programs, for which participants have met the program's written eligibility criteria, such as programs for social welfare, medical assistance, education, housing or other similar, specifically identified needs.

- 3.12. *Program* means a subdivision of the Tribal government operations located within the Executive branch that offers services or benefits at or below cost.
- 3.13. *Qualified Tribal Member* for the purposes of this RAP, shall mean those individuals who:
- (a) are at least eighteen years old;
  - (b) alive; and
  - (c) duly enrolled in the Little River Band of Ottawa Indians pursuant to Article II of the Tribe's Constitution.
- 3.14. *Resolution* means a formal document in which the Tribal Council expresses its legislative will in accordance with applicable Tribal law.
- 3.15. *Revenue Allocation Plan* means a document submitted by the Tribe that satisfies the requirements of § 2710(b)(3),(d)(1)(A)(ii) of IGRA.
- 3.16. *Subdivision* means a program, enterprise, board, commission, committee, or support offices of the Judiciary, or of the Tribal government operations.
- 3.17. *Tribal Council* means the legislative body of the Little River Band of Ottawa Indians as described in Article IV, § 1 *et seq* of the Constitution.
- 3.18. *Tribal Government or Tribal Government Operations* means all branches or subdivisions of the Little River Band of Ottawa Indians.

#### **Section 4. Use of Net Gaming Revenues: Tribal Government Operations and Programs**

- 4.01. **Allocation.** The Tribal Council hereby allocated 33% percent of net gaming revenues to the funding of tribal governmental operations and programs.
- (a) If it deems it necessary, the Tribal Council shall have the authority to revise and increase the percentage of net gaming revenues allocated to funding the tribal government operations and programs. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior for approval.
  - (b) Any net gaming revenues allocated for the purpose of funding tribal governmental operations and programs that have not been expended as of the last date of the fiscal year shall be reallocated as follows:

- (i) Investment: 100%
- (ii) Tribal Government Operations & Programs: 0%

4.02. **Supported programs.** The uses of net gaming revenue allocated under this Section shall include, but shall not be limited to, the following: the operation of all branches of Tribal government; capital improvement projects; tribal public works program, tribal planning program; tribal enrollment program; tribal housing programs; tribal social services; including child welfare; tribal health services; Indian Health Services clinic; tribal education programs; tribal parenting program; summer youth workers' program; tribal elders programs; tribal prosecutor; members legal assistance services; tribal police department; and tribal cultural programs .

#### **Section 5. Use of Net Gaming Revenues: Tribal Economic Development & Investment**

5.01. **Allocation.** The Tribal Council hereby allocates 6.9% percent of net gaming revenues to the funding of tribal economic development and investments made in accordance with an investment policy adopted by the Tribal Council.

- (a) If it deems it necessary, the Tribal Council shall have the authority to increase the percentage of net gaming revenues allocated to funding economic development programs and investments. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior for approval.
- (b) Any net gaming revenues allocated for the purpose of funding economic development and investment that have not been expended as of the last date of the fiscal year shall be reallocated as follows:
  - (i) Investment: 100%
  - (ii) Tribal Economic Development: 0%.

5.02. **Supported Economic Development & Investment Activities.** The uses of net gaming revenue allocated under this Section shall include, but shall not be limited to, the following: investment of net gaming revenues made pursuant to an investment policy adopted by resolution of the Tribal Council; the funding of existing or proposed tribal enterprises or business entities; the acquisition of land; and encouraging small business growth and small business ownership by tribal members.

#### **Section 6. Use of Net Gaming Revenues: General Welfare of the Little River Band of Ottawa**

## **Indians and its Tribal Members**

- 6.01. **Allocation.** The Tribal Council hereby allocates 10% percent of net gaming revenues to the funding of the general welfare of the Little River Band of Ottawa Indians and its tribal members. Such funding is to include new initiatives and to replace and/or supplement existing programs.
- (a) If it deems it necessary, the Tribal Council shall have the authority to revise and increase the percentage of net gaming revenues allocated to funding the general welfare of the Little River Band of Ottawa Indians and its tribal members. This percentage may be decreased, at the Tribal Council's discretion, after budget review, to fund any per capita distribution authorized under § 8 of this RAP. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior for approval.
  - (b) Any net gaming revenues allocated for the purpose of funding general welfare that have not been expended as of the last date of the fiscal year shall be reallocated as follows:
    - (i) Investment: 100%
    - (ii) General Welfare: 0%.
- 6.02. **Supported General Welfare Programs.** The uses of net gaming revenue allocated under this section shall include, but shall not be limited to, the following: utility assistance programs, funeral assistance programs, tribal housing assistance programs, higher education programs, elder services, social services programs, health services, and food distribution programs.

## **Section 7. Use of Net Gaming Revenues: Charitable Contributions**

- 7.01. The Tribal Council hereby allocates 0.10% percent of net gaming revenues to fund the charitable contributions of the Little River Band of Ottawa Indians.
- (a) Any net gaming revenues allocated for the purpose of funding charitable contributions that have not been expended as of the last date of the fiscal year shall be reallocated as follows.
    - (i) Investment: 100%
    - (ii) Charitable Contributions: 0%.
  - (b) The Tribal Council may show a preference to charitable requests that benefit tribal

members or Native American/Indian people generally.

## **Section 8. Use of Net Gaming Revenues: Individual Per Capita Distributions**

8.01. **Allocation.** The Tribal Council hereby allocated 50% percent of net gaming revenues to individual per capita distributions.

- (a) If it deems it necessary, the Tribal Council shall have the authority to revise and increase the percentage of net gaming revenues allocated to individual per capita distributions. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior for approval.
- (b) Any net gaming revenues allocated for the purpose of funding per capita distributions that have not been expended as of the last date of the fiscal year shall be reallocated as follows:
  - (i) Investment: 100%
  - (ii) Tribal Government Operations & Programs: 0%.

8.02. **Disbursement Schedule.** Per capita distributions to qualified tribal members shall be made on the first day of each fiscal quarter. This payment schedule may be amended by a subsequent Resolution adopted by the Tribal Council at any time.

8.03. **Per Capita Distribution Eligibility.**

- (a) **Eligibility Criteria.** In order to be eligible to receive a per capita distribution an individual must:
  - (i) Be a “qualified tribal member” as that term is defined in § 3.13 of this RAP;
  - (ii) Be enrolled in the Tribe no later than the last day of two fiscal quarters previous. For example, to be eligible to receive a per capita distribution in fiscal quarter four of the fiscal year, a qualified tribal member would need to have enrolled with the Tribe by no later than the last day of fiscal quarter two of that fiscal year.
  - (iii) **Determination of Age of Tribal Member for Per Capita Distribution Purposes.** A tribal member’s age, for purposes of per capita distributions made pursuant to this RAP, shall be determined by the tribal member’s age on the last day of two fiscal quarters previous. For example, to be considered 18 in fiscal quarter four of the fiscal year, a tribal member would need to have turned 18 by no later than the last day of fiscal quarter two of that fiscal

year. Another example, to be considered 55 in fiscal quarter four of the fiscal year, a tribal member would need to have turned 55 by no later than the last day of fiscal quarter two of that fiscal year.

- (b) **Minor Tribal Members Ineligible.** Tribal members under the age of 18 shall not be eligible to receive per capita distributions.
- (c) **Determining Amount of Individual Per Capita Distributions.** The amount of per capita a qualified tribal member is eligible to receive shall be determined by a point system, as set forth below, which assigns distribution points to a qualified tribal member based on the age of the qualified tribal member.
  - (i) **Distribution Point Schedule:**
    - (A) Qualified Tribal Members Age 18-54 ("QTMP1"): One point
    - (B) Qualified Tribal Members Age 55 ("QTMP2"): Two points
  - (ii) **Calculation System:**
    - (A) **Total Number of Tribal Members.** The total number of tribal members in each age category, 18-54 ("QTA1") and 55 and older ("QTA2"), shall be totaled.
    - (B) **Distribution Point Calculation:**
      - (1) The total number of QTMP 1 and QTMP2 will be multiplied by their respective distribution point value set out in the Distribution Point Schedule; the distribution point total for QTA1 shall be DPT1 and the distribution point total for QTA2 shall be DPT2.
      - (2) The resulting total of distribution points from DPT1 and DPT2 shall be added together and the resulting sum shall be the Total Number of Distribution Points ("TNDP").
    - (C) **Calculation of Percentage Allocation to Each Age Group.** The percentage of the total amount of net gaming revenue to be distributed to each age group shall be calculated as follows:
      - (1) QTA1: DPT1 divided by TNDP; this percentage resulting from this calculation ("PCP1") represents the Percentage of Per Capita Distribution ("PPCD") that will be distributed to tribal members in QTA1.



(2) QTA2: DPT2 divided by TNDP; this percentage resulting from this calculation ("PCP2") represents the PPCD that will be distributed to tribal members in QTA2.

(D) **Calculation of Amount to be Distributed to Individual Tribal Members.** The amount of per capita to be distributed to an individual tribal member shall be based on the following calculations:

(1) Qualified Tribal Members Age 18-54: PCP1 multiplied by Actual Dollar Amount Allocated for Per Capita Distribution ("ADAA") in a fiscal quarter, the resulting product of this calculation ("PCD 1") represents the dollar amount of per capita to be distributed to tribal members ages 18-54; the quotient of PCD1 divided by QDA1 represents the actual dollar amount that each tribal member age 18-54 will receive for that fiscal quarter.

(2) Qualified Tribal Members Age 55 & Older: PCP2 multiplied by Actual Dollar Amount Allocated for Per Capita Distribution ("ADAA") in a fiscal quarter, the resulting product of this calculation ("PCD2") represents the dollar amount of per capita to be distributed to tribal members ages 55 and older; the quotient of PCD2 divided by QDA2 represents the actual dollar amount that each tribal member age 55 and older will receive for that fiscal quarter.

8.04. **Deposit of Designated Per Capita Funds.** All net gaming revenues designated for disbursement as per capita distributions shall be deposited, when received by the Tribe from the Gaming Enterprise, into a low-risk interest bearing account with a federally insured financial institution prior to distribution.

8.05. **Legally Incompetent Persons.**

(a) The Tribal Council shall place into trust a low-risk interest bearing account in a federally insured financial institution it finds satisfactory, the per capita distributions, or any portion or percentage thereof, of any individual who is declared legally incompetent by a court of competent jurisdiction.

(b) The Ogema, or an agent appointed by the Ogema, shall make disbursements

from a legally incompetent person's trust to that individual's legal guardian for the purposes of providing for the individual's health, education or welfare if the following criteria are satisfied:

- (i) The person requesting the withdrawal of monies on behalf of a legally incompetent person is the legal guardian of the legally incompetent person in question, and,
  - (ii) The money will be used to meet the health, safety, welfare, or educational needs of the legally incompetent person.
- (c) The Ogema shall not release a legally incompetent person's per capita distributions if that individual's legal guardian fails to demonstrate to the satisfaction of the Ogema that the above criteria have been met.
- (d) The Ogema, or an agent appointed by the Ogema, shall require that the petitioning guardian to submit receipts documenting the expenditures made with funds released in accordance with § 8.05(a),(b). Failure of the legal guardian to provide the required documentation may result in future requests by the legal guardian for release of funds to be denied. The establishment of a regular monthly allowance for any individual declared legally incompetent from the proceeds of any per capita distribution placed into trust under this section shall remain at the discretion of the Ogema.

8.06. **Retroactive Per Capita Distributions.** No person shall be entitled to any retroactive payment of per capita distribution.

8.07. **Federal Tax.** The Ogema, or an agent appointed by the Ogema, shall ensure that notification is sent to recipients of per capita distributions that such distributions are subject to federal taxation. The Ogema, or an agent appointed by the Ogema, shall also implement a procedure by which applicable taxes are automatically deducted from per capita distributions, in accordance with 25 C.F.R. §290.12(5), 26 C.F.R. part 31, and 26 U.S.C. §3402(r).

8.08. **Attachment or Garnishment of Per Capita Distributions.** Per capita distributions may be withheld to satisfy any court ordered judgment obtained by the Tribe against the qualified tribal member or to satisfy court ordered child support obligations. Any amount remaining after satisfaction of the court ordered judgment or child support obligation shall be distributed to the qualified tribal member in accordance with the provisions of this RAP.

8.09. **Method of Distribution.** The method of distribution shall be by check or direct deposit to the qualified tribal member's bank account. The qualified tribal member must designate, in

writing, how they would like to receive their per capita distribution. If no designation is made, the per capita distribution shall be distributed by check and mailed to the address of record on file for the qualified tribal member.

### **Section 9. Dispute Resolution**

All disputes arising out of the implementation of this RAP shall be heard in the Little River Band of Ottawa Indians Tribal Court.

- (a) Any monetary relief awarded by the Tribal Court under this provision shall be limited to the actual dollar amount of the per capita distribution that the qualified tribal member would have been entitled to under this RAP.

### **Section 10. Amendment or Repeal of Revenue Allocation Plan**

This RAP, and any section, part, or word thereof, may be amended or repealed only by a Resolution adopted by the Tribal Council of the Little River Band of Ottawa Indians. A copy of the resolution shall be provided to the Secretary of the Interior. Any amendment or repeal under this section is subject to Secretarial approval as required by the Indian Gaming Regulatory Act.

### **Section 11. Severability**

If any section, or any part thereof, of this Plan or the application thereof to any party, person, or entity or, in any circumstances, shall be held invalid for any reason whatsoever by a court of competent jurisdiction, or by the Department of the Interior, the remainder of the section, or part of this Plan shall not be affected thereby and shall remain in full force and effect as though no section, or part thereof, has been declared to be invalid.

### **Section 12. No Waiver of Sovereign Immunity**

Nothing in this RAP shall provide or be interpreted to provide a waiver of the Little River Band of Ottawa Indians or any of its governmental officers' and/or agents' sovereign immunity from suit.

### **Section 13. Automatic Re-adoption**

If no RAP is prepared for the subsequent fiscal year, the terms of this Revenue Allocation Plan shall automatically be carried forward, without any further Tribal Council action, to govern the allocation of net gaming revenues for the subsequent fiscal year.

### **Section 14. Effective Date**

This RAP governs the distribution of any and all net gaming revenues occurring in fiscal year 2021

which begins on January 1, 2021 and ends of December 31, 2021. This RAP becomes effective upon adoption by the Little River Band of Ottawa Indians Resolution #20-1216-362 and approval by the Area Director of the Bureau of Indian Affairs in accordance with the United States Department of the Interior's Rules and Regulations and all other applicable federal law.