



FinCEN Sets the Tone That It's Time to Take Title 31 Seriously

by Grant Eve

The United States Department of Treasury established the Financial Crimes Enforcement Network (FinCEN) in 1990 to provide a multisource financial intelligence and analysis network. In 1994, the organization was broadened to include regulatory responsibilities for administering the Bank Secrecy Act (BSA), one of the strongest weapons to prevent corruption in the United States financial system. The USA Patriot Act of 2001, enacted shortly after the 9/11 attacks in America, broadened the scope of the Bank Secrecy Act to focus on terrorist financing as well as money laundering. The Act also gave FinCEN additional responsibilities and authorities, and established the organization as a bureau within the Treasury Department. FinCEN has delegated BSA compliance examination authority to the Internal Revenue Service (IRS) for casinos. The IRS examination of tribal casinos to address BSA compliance concerns will include reviewing and analyzing the fulfillment of compliance obligations as well as identifying any failures to file BSA reports such as the currency transaction reports (CTR) and suspicious activity reports (SAR).

Title 31 of the United States Code, also known as the Bank Secrecy Act (BSA) or anti-money laundering act, is applicable to tribal casinos with gross gaming revenues in excess of \$1 million. Money is "laundered" to conceal illegal activity, including the crimes that generate the money itself, such as drug trafficking, so that the money can be used without detection of its criminal source. Criminals may attempt to use casinos to hide or disguise the origin of funds derived from illegal activity because casinos provide similar types of services those offered by banks as a normal part of casino operations, such as providing customer deposit and credit accounts, check cashing, currency exchanging, and transmitting and receiving funds transfers directly from other financial institutions. The basic objectives of Title 31 are to monitor cash activity to prevent or detect money laundering, gather intelligence information for the IRS, and to detect terrorist financing and other illegal information.

Tribal casinos are required to have a comprehensive written anti-money laundering (AML) program in place that is "reasonably designed" to assure and monitor compliance with the Bank Secrecy Act. This program should have controls to detect and prevent money laundering and must provide multiple procedures to assure ongoing compliance with the BSA.

What Type of Penalties Can FinCEN Assess?

FinCEN is authorized to assess civil penalties against a tribal casino and employees thereof for willful violations of the anti-money laundering program, reporting, and recordkeeping requirements, as follows:

- A penalty of \$25,000 per day for failure to establish and implement an adequate written BSA compliance or anti-money laundering program, including program failures that led to instances of undetected structuring. A separate violation occurs for each day the violation continues.
- A penalty not to exceed the greater of the amount involved in the transaction (but capped at \$100,000) or \$25,000 may be assessed for each currency transaction or suspicious activity reporting violation.
- A penalty up to the amount of the coins and currency involved in the transaction for structuring, attempting to structure, or assisting in structuring.

FinCEN does not always assess high fines, but it is important to understand the authority they have and the non-compliance risks associated with not taking Title 31 seriously.

Most Recent Case Against a Tribal Casino

On April 21, 2011 the Financial Crimes Enforcement Network (FinCEN) announced the assessment of a \$250,000 civil money penalty against a midwestern tribal casino for violating Bank Secrecy Act (BSA) requirements for casinos. The casino, without admitting the allegations, consented to the payment of civil money penalties which were assessed for violations of the anti-money laundering program, reporting and recordkeeping requirements of the BSA (also known as Title 31). This also serves as a wake-up to smaller casinos that do not think they have much exposure to Title 31. The casino which consented to the fine was a lower-tiered facility with approximately 1,200 gaming machines and 20 table games. The facility was more than 350 miles from the Canadian border and not in a HIFCA (High Intensity Financial Crime Area) location. A list of HIFCA locations can be found on FinCEN's website and the program is intended to concentrate law enforcement efforts at the federal, state, and local level to combat money laundering in designated high-intensity money laundering zones.

The violations cited in FinCEN's assessment of the civil money penalty included the following:

- Failure to implement effective internal controls to ensure compliance with the BSA.
- Failure to develop and implement effective procedures for the preparation, review and filing of reports or the retention of records associated with suspicious activity.
- The casino's written BSA compliance program and procedures were ineffective and did not consistently reflect BSA requirements for filing currency transaction reports.

- The casino failed to conduct sufficient independent testing to comply with BSA requirements. The internal audits were conducted with the participation of the BSA compliance officer, which compromised the independence of the audit function.
- The casino failed to conduct sufficient training related to BSA recordkeeping and reporting requirements.
- The casino did not have a BSA compliance office in place for several months.
- The casino failed to implement procedures to fully utilize some automated systems that could be used to aggregate player transactions and identify and monitor suspicious activity.
- The casino lacked effective systems and controls to record monetary instrument transactions over \$3,000.
- The casino violated the requirement to report transactions in currency by late filing incorrect and incomplete Currency Transactions Reports by Casinos (CTRC).
- The casino violated the requirement to report suspicious activity by late filing incorrect and incomplete Suspicious Activity Reports for Casinos (SARC).

The above list of violations cited by FinCEN should serve as a warning to tribal casinos that the Internal Revenue Service and FinCEN take Title 31 non-compliance very seriously and failure to comply with the BSA requirements can subject both casinos and casino employees with significant monetary penalties. In 2006, federal authorities announced not only a \$1,000,000 fine against a small Oklahoma casino, it also assessed \$1,500,000 fine against the former general manager.

Best Practices

No matter the size or location of casinos, it is important to continually analyze your casino's system of internal controls to assure ongoing compliance with the BSA. The BSA Compliance Officer is the individual (or individuals) that need to take charge and responsibility of the day-to-day compliance.

It is also "best practices" to perform internal or external independent testing for compliance. Once the testing is reported, casino management should take corrective action to implement recommendations resulting from Title 31 risk assessments and compliance audits to minimize the likelihood of monetary penalties being assessed by FinCEN. ♣

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