



### **Title 31 or the Bank Secrecy Act: What You Need to Know**

by Joe Oprosko

There has been a great deal of attention over the last year or so placed on Title 31 or the Bank Secrecy Act (BSA) as it is also known. This is especially true as it relates to Indian gaming. Over the past few years Indian gaming has been becoming a larger and larger blip on the federal government's radar screen due to the exceptional double digit growth Indian gaming has experienced. In 2004 tribally owned casinos took in \$18.5 billion dollars which was double what the State of Nevada had in gaming revenue. That much cash passing hands will catch anyone's attention, particularly FinCEN. FinCEN is short for the Financial Crimes Enforcement Network, which is the administrator of the BSA. Enforcement of the BSA is performed through the Department of Treasury or the Internal Revenue Service ("IRS") to be more specific.

Indian casinos with revenues greater than \$1 million dollars are by definition non-bank financial institutions and have been required to comply with all aspects of the BSA and the special rules for casinos since 1996. What the BSA is designed to do and attempting to accomplish is to detect or prevent money laundering. Money laundering is defined in section 5312 of Title 31 of the US code as "...the movement of illicit cash or cash equivalent proceeds into, out of, or through US financial institutions...", or in more down to earth terms, to catch people trying to use funds from illegal sources and make the funds look legitimate.

Now, in order for the BSA to meet its objectives there are of course requirements. First and foremost an Anti-Money Laundering Program (AML) must be present in the operation. The AML needs to be designed to record all cash in and cash out transactions of \$10,000.01 and greater in a day and then be reported on Form 103, which is a currency transaction report (CTR) for casinos. The CTR needs to be filed within 15 days of the transaction with FinCEN. A day is defined as the operation's gaming day and is a 24 hour period. There needs to be a multiple transaction log maintained in the operation for all transactions greater than \$3,000 or more so that any transactions with the same customer within the 24 hour gaming day can be combined and reported if it exceeds the \$10,000.01. There also needs to be a log maintained for all cash to cash money exchanges in excess of \$1,000 to the same customer for transactions such as foreign currency exchanges, larger bills to smaller bills, and vice versa. The AML must also be designed to capture and provide the recording and reporting of potential suspicious activities relating to cash transactions. If the operation knows

about or reasonably thinks a transaction is suspicious, and the transaction is greater than \$5,000 (that amount is for casinos only), then a suspicious activity report (SAR) needs to be filed within 30 days of the transaction (or 60 days if no suspect can be identified).

The backbone of strong BSA compliance at a casino lies with the development of a solid AML designed to record and report all reportable transactions. There are four minimum requirements of an AML. The first is a solid set of internal controls in place and operating throughout the organization. This will help to identify reportable transactions, ensure that the reports are completed and filed accurately, verify that there is adequate supervision of cash handling employees, and provide dual controls and segregation of duties on the recording and filing of reports. The second requirement is the independent testing for compliance with the AML throughout the operation. This should be performed at least annually preferably by the internal audit department, consultants, or the external auditors. The third minimum requirement for an AML is the designation of a BSA or Title 31 compliance officer. This person needs to be a senior official that has the authority to make and/or enforce policies. The last minimum requirement we'll talk about is that there needs to be adequate training for the appropriate personnel in the operation. This would include cashiers and tellers, slot attendants, surveillance employees, the bingo staff, and any other employees that could possibly handle currency transactions. There should be an overview given to all new employees and annual refresher classes for all the appropriate personnel. Current employees may be changing jobs into a cash handling position and should be trained on the AML as well. The training materials utilized must be available in the operation and for review by auditors.

Those are the basic requirements of the BSA and an AML, and as with all requirements there are risks associated with not meeting them. Some of the largest fines to casinos in the past few years have been the result of non-compliance with the BSA. These fines have been levied for failure to file a CTR, failure to file SARs, and failure to have an AML in place at the operation. Without a good AML in place there could be the non-reporting of a transaction and the lack of maintaining documentation supporting the process (must be kept for 5 years). In addition there may be no process for reporting, employees may not be properly trained, smaller transactions may not be

getting captured and combined, and suspicious activities may not be properly reported if being reported at all. Another risk worth mentioning is that the NIGC MICS require the operations to be in compliance with Title 31, so if you are not in compliance with Title 31 then you are not in compliance with the MICS. One last risk is unfortunately a constant threat at casinos, and that relates to an employee that will take advantage of their position to steal or assist others in laundering money for a price. Solid internal controls and a strong AMLP with training is the best defense against this last risk as well as all the other risks mentioned.

Following are three real-life examples of money laundering that took place in casinos that have been reported by the IRS-Criminal Investigation unit:

- Customers laundered money through video poker machines by feeding various funds (\$5, \$10, and \$20 bills) from drug sales and then after very little or no play, hit the cash out button, retrieved their ticket and took a casino check in payment.
- A major drug dealer played \$100 dollar slot machines

wagering hundreds of thousands of dollars in order to receive a casino check and W-2G to legitimize his income.

- A number of customers all bought chips below the reporting threshold and then passed them on to a single individual who cashed them in and received a casino check triggering the filing of a CTR making the transaction seem legitimate. Over a twelve month period that one individual was named on CTRs totaling \$1.1 million dollars paid out but not one CTR for money paid in.

It is important that you have a solid AMLP in place. Always keep your eyes open to the unexpected. Money laundering can happen anywhere. ♣

*Joe Oprosko is a CPA and an Engagement Manager with the Minneapolis Office of Jefferson Wells International. He can be reached by calling (612) 968-5028 or email [joe.oprosko@jeffersonwells.com](mailto:joe.oprosko@jeffersonwells.com)*



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