

**MEMORANDUM OF UNDERSTANDING BETWEEN
TAX EXEMPT & GOVERNMENT ENTITIES (TEGE) OFFICE OF INDIAN TRIBAL
GOVERNMENTS (ITG)
AND
SMALL BUSINESS/SELF-EMPLOYED (SB/SE) DIVISION**

1. INTRODUCTION:

This Memorandum of Understanding (MOU) between the TEGE Office of Indian Tribal Governments (ITG) and the SB/SE Division provides guidance for personnel in those functions with regard to identification, notification, education, and examination activities relating to the Bank Secrecy Act (BSA) and IRC Section 6050I responsibilities of tribal governments.

2. AUTHORITY:

The Office of Indian Tribal Governments is responsible for maintaining a functional and interactive government-to-government relationship between the IRS and Indian tribal governments as directed by the Presidential Executive Order. ITG provides a single point of contact for tribes and all IRS employees are required to contact ITG before making initial contact on Indian tribal government cases. BSA regulatory and enforcement matters relating to individuals on or near Indian lands, or businesses not wholly owned by Tribal governments, remain within the sole jurisdiction of the Chief, BSA Field Examination.

3. PURPOSE:

The purpose of the agreement is to clarify the responsibilities of the Office of Indian Tribal Governments and the SB/SE programs of BSA Case Selection/Workload Selection and Delivery. BSA Policy and BSA Field Exam are active participants in administering the BSA and IRC Section 6050I activities involving tribal governments.

4. DUTIES AND RESPONSIBILITIES OF ITG:

- A. ITG has responsibility for the identification of entities subject to the BSA and Section 6050I that are owned by Indian Tribal Governments. ITG is responsible for notifying the BSA Workload Selection and Delivery (WSD) Group Manager and WSD Casino Coordinator of any identified entities. The notification information provided by ITG should be in a spreadsheet sent by secure email to the BSA-WSD Group Manager, with a copy to the WSD Casino Coordinator. ITG will not disclose Title 26 information to BSA for Title 31 purposes.
- B. When ITG identifies tribal Consultation or listening meetings relating to BSA or 6050I matters, the ITG BSA Liaison will notify the BSA Policy Program Manager and Casino Technical Advisor by secure email of scheduled Consultation or listening meetings, so appropriate BSA Program staff may attend to answer any questions or concerns raised by the tribes regarding Bank Secrecy Act and Section 6050I issues.

- C. The ITG BSA Liaison will notify the BSA Policy Program Manager and staff by secure email of any training meetings or conferences held by other agencies for Indian Tribes with casinos, such as the FBI or the National Indian Gaming Commission (NIGC).
- D. Once a year, by April 1, ITG will provide information updates on Tribal entities subject to BSA to the BSA-WSD Casino Coordinator, BSA Group Manager, Exam Case Selection and the BSA Policy Casino Technical Advisor. The updated information will be provided by ITG in a spreadsheet sent by secure email. The BSA-WSD Casino Coordinator will ensure that the BSA-Case Selection Title 31 Non-Bank Financial Institution Database is updated with the information received from ITG.
- E. As soon as an ITG entity subject to the BSA is identified, ITG will issue a Letter 1052 to the entity and will notify the BSA-WSD Group Manager, WSD Casino Coordinator and the BSA Policy Casino Technical Advisor via an e-mail message that includes a copy of the Letter 1052. The ITG BSA Liaison will maintain a copy of the Letter 1052 in ITG files. When an ITG entity subject to Section 6050I is identified, ITG will notify the BSA-WSD Group Manager, WSD Casino Coordinator and the BSA Policy Casino Technical Advisor via secure email.
- F. After identification, and ITG's issuance of Letter 1052 for BSA entities, ITG will arrange for education of the tribal entity. All new and/or changes to BSA materials and handouts, including but not limited to any ITG-created publicly available websites and publications such as Publication 3908, must be approved by the BSA Policy Casino Technical Advisor and Program Manager. ITG personnel conducting the educational outreach will prepare a standard report after each educational outreach. Each quarter, copies of the reports will be compiled and sent via secure email to the BSA-WSD Group Manager and WSD Casino Coordinator for inclusion in the examination file if the respective tribal casino is selected for examination. The reports concerning tribal casinos not selected for examination are archived by the BSA-WSD Casino Coordinator in a shared drive accessible by the BSA-WSD Casino Coordinator and Management. All subsequent educational outreach will follow the same procedures.
- G. ITG may perform compliance checks of tribal casinos. These compliance checks are not BSA examinations. When ITG conducts a compliance check, the ITG BSA Liaison will forward to the BSA-WSD Group Manager and Casino Coordinator the template developed by ITG for compliance checks via secure email. The BSA-WSD Casino Coordinator will place a copy of the template in examination file of any respective casino selected for examination. The BSA-WSD Casino Coordinator will archive the template of any casino not selected for examination in a shared drive accessible by the BSA-WSD Casino Coordinator and Management.
- H. ITG staff will provide information to the BSA-WSD Group Manager, Casino Coordinator and BSA Policy Casino Technical Advisor if they become aware of situations that may impact an ongoing BSA examination or the decision to select an entity for a BSA examination.

5. DUTIES AND RESPONSIBILITIES OF SB/SE (BSA) :

- A. The BSA Policy Casino Technical Advisor and BSA-WSD Casino Coordinator will notify the ITG BSA Liaison by secure email of any training meetings or conferences held by other agencies for Indian Tribes with casinos, such as the FBI or the NIGC.
- B. BSA Program staff maintains jurisdiction over the planning and conduct of all BSA and Section 6050I examinations involving entities owned by ITG. The BSA-WSD Group Manager will share semi-annually and via secure email the relevant portion of their annual Work Plan with the ITG BSA Liaison, so that ITG can estimate the impact on tribal casinos and can separately determine targeted outreach they may wish to perform on entities that are not likely to be examined. The BSA-WSD Group Manager and WSD Casino Coordinator will provide a report to the ITG BSA Liaison annually, by October 1st of each fiscal year. The report will include data on BSA cases currently being worked, identified for examination in the current fiscal year and a history of closed cases and their outcomes from the previous fiscal year.
- C. BSA-WSD will identify tribal casinos that are not current leads for BSA examinations but based on a risk analysis are appropriate for an ITG compliance check. The BSA-WSD Group Manager will share semi-annually, by October 1st and April 1st of each fiscal year, and via secure email a list of tribal casino leads suitable for ITG consideration for compliance checks based on their level of BSA non-compliance risk.
- D. BSA Field Managers will utilize the Specialist Referral System prior to initiating any BSA or Section 6050I examination activity on entities owned by ITG. The applicable ITG Field Manager and Specialist will assist the BSA Field Group Manager and Examiners in addressing proper protocol for contacting (appointment letter addressee), interacting and executing agreements (Letter 1112 addressee) with tribal government officials and representatives. Where both ITG Field Group Manager and the BSA Field Group Managers agree, an ITG Specialist may assist BSA examiners. The type of assistance may include contacting the appropriate Tribal Representative regarding any pending actions by the BSA Field Examination and accompanying the BSA examiner on visits to the tribe. The ITG field personnel will not participate in the actual examination unless requested to do so by the Manager of the BSA examiner conducting the examination.
- E. The BSA-WSD Group Manager will forward to ITG BSA Liaison via secure email a copy of letters provided to ITG entities indicating findings of BSA and Section 6050I examinations when the case is closed from the BSA field group. If a referral is forwarded to the Financial Crimes Enforcement Network (FinCEN) for consideration of civil penalties, the BSA Field FinCEN Liaison will forward a copy of the Form 5104 referral and attachments to ITG BSA Liaison, along with a copy of the Letter 1112 and attachments issued to the entity. ITG will ensure that the Form 5104 and attachments are not disclosed to the entity. Upon closure of the referral by FinCEN, the BSA Field FinCEN Liaison will notify ITG of the results.

- F. BSA Field Group Managers will notify the applicable ITG Manager in advance of any contact regarding a BSA matter involving a non-tribal entity known to be located on an Indian reservation or on tribal lands. ITG will provide input regarding any potential political or security issues. ITG may assist in facilitating any resolution of issues upon request of the Chief, BSA Field Examination.

6. SHARED DUTIES AND RESPONSIBILITIES OF ITG AND SB/SE (BSA):

- A. The ITG BSA Liaison will coordinate the delivery of BSA and Section 6050I training for all ITG field personnel. The BSA Policy Casino Technical Advisor will assist in that process, by reviewing training materials created by ITG to ensure currency, relevance, and adequacy. ITG staff will be invited to attend BSA Continuing Professional Education presentations and quarterly BSA Exam examiner casino teleconferences hosted by BSA Policy. BSA Program staff and ITG staff may be invited to make presentations during each other's relevant training, with each function funding its own costs.
- B. ITG and BSA Program staffs share responsibility for Bank Secrecy Act and Section 6050I notification and education activities relating to entities that are owned by Indian Tribal Governments.
- C. Any Internal Revenue Manual provisions drafted for ITG use, which have relevancy to the BSA or Section 6050I, will be reviewed during the IRM clearance process by BSA Policy staff prior to implementation, to ensure accuracy and consistency with national program requirements. Any BSA materials that reference Indian tribes or tribal entities will be shared with ITG for their input prior to implementation. In case of a conflict in IRM material, the BSA IRM will govern.
- D. ITG personnel may contact BSA Policy technical advisors to assist in addressing questions and issues related to entities under BSA examination or review. BSA questions may also be answered by ITG staff or routed to the FinCEN Regulatory Help Line at (800) 767-2825 or the FinCEN Resource Center at FRC@fincen.gov.

7. DISCLOSURE, SAFEGUARDS, AND RECORD KEEPING REQUIREMENTS:

- A. ITG will not disclose Title 26 information to BSA for Title 31 purposes.
- B. ITG will ensure that processes, procedures and controls exist so that there is a separation of Title 26 and Title 31 information and activities in interactions between ITG and tribal entities. All BSA compliance contacts will be separate and distinct from contacts on any other matter, and there will be no co-mingling of information, pursuant to the requirements of the Internal Revenue Code Section 6103. No Title 26 information will be disclosed for any Title 31 purpose within the scope of this MOU.
- C. All information obtained under this MOU must be safeguarded in accordance with this agreement as well as the safeguard requirements of IRC section 6103(p)(4),

as described in IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies and Entities.

- D. ITG and SBSE BSA will ensure that all requirements for recordkeeping and accounting for disclosures are met in accordance with IRC section 6103(p)(3) and its implementing regulations.

8. TRANSMITTAL PROCEDURES:

- A. ITG and BSA Program Offices will utilize secure email to share the names, telephone numbers, and geographic areas of the field personnel to be used as contact points.
- B. ITG and BSA Program Offices will utilize secure email when sharing information including providing notifications, reports, spreadsheets or other documents as set forth in this agreement.

9. DISPUTE RESOLUTION:

If the ITG and BSA staffs are unable to reach a mutually agreeable solution to any issues concerning BSA or Section 6050I activities, the disputed issue will be submitted to the next higher level of management in each function for resolution.

10. EFFECTIVE DATE:

This agreement supersedes the prior agreement dated 7/29/2019 and is effective thirty days after signature.

11. AMENDMENT OF MOU:

This MOU may be amended by deletion or modification of any provisions, at any time to accommodate unanticipated issues provided that such amendment is in writing and is signed by all parties to the MOU.

12. TERMINATION OF MOU:

This MOU may be cancelled upon 30 days written notice by either party.

13. LIMITATIONS:

The terms of this MOU are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this MOU which conflicts with federal law will be null and void.

14. EVALUATION OF AGREEMENT:

ITG and SB/SE BSA will review this MOU annually to evaluate the existing data exchange and to determine whether the provisions of this Agreement require amendment or revision and whether the Business Units are complying with the provisions of the Agreement. The method of review (conference call, meeting, email) will be jointly determined by ITG and SB/SE BSA.

APPROVALS:

Stephen A. Martin

3/2/2021

Signature

Stephen A. Martin

Acting Director, Exempt Organizations and Government Entities, TE/GE

Donald J.
Sniezek

Digitally signed by Donald
J. Sniezek
Date: 2021.02.09 15:02:11
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Signature

Donald J. Sniezek

Director, Examination Headquarters, SB/SE