

Memorandum of Understanding

between

Tax Exempt & Government Entities (TEGE) Office of Indian Tribal Governments

and

Small Business/Self-Employed (SB/SE) BSA Program

Purpose of Agreement

This agreement between the TEGE Office of Indian Tribal Governments (ITG) and the SB/SE Office of Fraud/BSA Policy and Operations 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. The purpose of the agreement is to clarify the responsibilities of the Office of Indian Tribal Governments and the Office of Fraud/BSA Policy and Operations with respect to the administration of Bank Secrecy Act (BSA) and IRC Section 6050I activities involving tribal governments.

Operating Procedures for Both Operating Functions

- 1) ITG has responsibility for the identification of entities subject to the Bank Secrecy Act (BSA) and Section 6050I that are owned by Indian Tribal Governments. ITG is responsible for notifying the BSA Program staff of any identified entities. The BSA Program staff will provide ITG with the format for reporting this information to them.
- 2) ITG and BSA Program staff will utilize their web site pages to share the names, telephone numbers, and geographic areas of the field personnel to be used as contact points. ITG staff information will be accessible at www.irs.gov/tribes under the "About ITG" link. BSA staff information will be accessible at <http://sbse.web.irs.gov/FR/>.
- 3) ITG will coordinate the delivery of Bank Secrecy Act (BSA) and Section 6050I training for all ITG field personnel. BSA Policy staff will assist in that process, by reviewing training materials created by ITG to ensure currency, relevancy, and adequacy. ITG staff will be invited to attend BSA CPE's and monthly casino teleconferences. 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.
- 4) ITG will notify BSA Policy staff of scheduled Consultation Listening Meetings held four times per year with Indian tribes on a rotating basis in the 12 Bureau of Indian Affairs regions, so that appropriate BSA Program staff may attend to answer any questions or concerns raised by the tribes regarding Bank Secrecy Act and Section 6050I issues.

- 5) ITG will notify BSA Policy staff of any training meetings held by other agencies for Indian Tribes with casinos, such as the FBI or the National Indian Gaming Commission (NIGC).
- 6) 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. As soon as an Indian Tribal Government entity subject to the BSA is identified, ITG will issue a Letter 1052 to the entity and will notify BSA Workload Identification, Selection, Delivery and Monitoring staff (WISDM) and BSA Policy staff 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. As soon as an Indian Tribal Government entity subject to Section 6050I is identified, ITG will notify WISDM and BSA Policy staff via an e-mail message.
- 7) On a semi-annual basis, ITG will provide WISDM and BSA Policy staffs with any updates to the information on Tribal entities subject to BSA. WISDM staff will provide ITG with the format for reporting this information to them. WISDM staff will be responsible for updating their Title 31 database. This information will be provided on April 1, and October 1 each year.
- 8) After identification, and ITG's issuance of Letter 1052 for BSA entities, ITG will arrange for education of the tribal entity. All materials and handouts must be approved by BSA Policy staff. ITG personnel conducting the educational outreach will prepare a standard report after each educational outreach. A copy of the report will be forwarded to WISDM staff for inclusion in the historical file. All subsequent educational outreach will follow the same procedures.
- 9) ITG will ensure that processes and procedures exist so that there is a separation of Title 26 and Bank Secrecy Act (BSA) activities in interactions between ITG and tribal entities. All BSA contacts will be separate and distinct from contacts on any other matter, and there will be no co-mingling of information.
- 10) BSA Program staff will have full jurisdiction over the planning and conduct of all Bank Secrecy Act (BSA) and Section 6050I examinations involving entities owned by Indian Tribal Governments. On April 1 of each fiscal year, ITG will provide WISDM and BSA Policy staff with a data-driven risk analysis of tribal entities, using selection and ranking criteria approved by designated BSA Program staff. WISDM staff will share the relevant portion of their annual Work Plan with ITG, 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. This will be achieved by forwarding a report to ITG on October 1 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 outcome from the previous fiscal year.

- 11) ITG may perform compliance checks (not to be confused with a BSA examination) of tribal casinos based on their risk analysis and any other factors they deem appropriate which have not been selected for examination by BSA Program staff. When ITG conducts a compliance check they will forward to WISDM staff the template developed by ITG for these compliance checks and a copy will be maintained in the historical file.
- 12) ITG staff will forward information through e-mail to WISDM and BSA Policy staff when they become aware of situations that may impact an ongoing BSA examination or the decision to select an entity for a BSA examination.
- 13) BSA Field Managers will utilize the Specialist Referral System prior to initiating any Bank Secrecy Act (BSA) or Section 6050I examination activity with regard to entities owned by Indian Tribal Governments. The applicable ITG Field Manager will assist BSA Program staff in addressing proper protocol for contacting and interacting with tribal government officials and representatives. Where both ITG field personnel and the BSA Program staff 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 Program staff, 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 BSA examiner conducting the examination.
- 14) WISDM staff will forward to ITG BSA Liaison 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, BSA Policy staff 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, BSA Policy staff will notify ITG of the results.
- 15) Any Internal Revenue Manual provisions drafted for ITG use, which have relevancy to the Bank Secrecy Act (BSA) or Section 6050I, will be approved 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.
- 16) ITG field personnel will refer to the appropriate BSA Policy staff any BSA questions which are complex or which deal with policy matters or which are asked by an entity under BSA examination or review. Routine BSA questions may be answered by ITG staff.

17) ITG will ensure that all time applied by ITG staff in support of the Bank Secrecy Act (BSA) and Section 6050I activities is properly documented and is reported to the BSA Program staff under written procedures to be provided by that office.

18) It is expressly understood that the Office of Indian Tribal Governments has jurisdiction over tribally owned entities only. All potential BSA matters relating to individuals on or near Indian lands, or businesses not wholly owned by Tribal governments, remain within the sole jurisdiction of the Director, Fraud/BSA Program. However, BSA Field 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 BSA staff.

This agreement supersedes the prior agreement dated August 2005, and is effective thirty days after signature.

This agreement may be amended at any time to accommodate unanticipated issues with both parties' concurrence.

Dispute Resolution

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

Signature
Director, Office of Indian Tribal Governments

Signature
Director, Fraud/BSA