

Title 31 – Can your Casino afford a \$2.5M penalty assessment?

Standardizing Title 31 Compliance in Indian Gaming.

Earlier this year, the Financial Crimes Enforcement Network (FinCEN) assessed a casino in Oklahoma with a \$2.5M penalty for not having a Title 31 program in place. Did that get your attention? As a result of that hefty action, I felt it was time to write a standardization article concerning Title 31, to ensure that you and your casino do not find yourself on the wrong side of FinCEN.

As I was trying to find inspiration to write an informative, yet interesting Title 31 article, I was enjoying my grande, two-pump, no-whip mocha from Starbucks, and the inspiration, or caffeine, kicked in. I thought to myself, “Wouldn’t it be great if Starbucks managed Title 31 regulation?” You see, the thing so many people enjoy about Starbucks, aside from the never-ending flow of caffeine, is that they are so consistent. It matters not whether you are in Seattle or New York, you can be assured that your Venti, half-caff, no whip, caramel macchiato, coffee concoction will always taste exactly the same, and not only that, it will also cost the same. The concept comes across almost as a revelation.

In contrast, are the confusing guidelines set forth by the Internal Revenue Service and FinCEN regarding their mandatory anti-money laundering program known as Title 31. Although the regulations are not specifically confusing, they are somewhat vague and ambiguous. For example, the basic guidelines for each casino are: *“To produce an anti-money laundering program, based on an analysis of risks presented by the casino’s products and services. An assessment of risk should be made for each product or service offered by the casino.”* It is this vague guidance that leads to varied forms of interpretation throughout Indian Gaming and as a result, a tremendous amount of disparity from casino to casino. Specifically, some casinos have small cafe style Title 31 programs and act according to the interpretation of the day, while others have highly organized franchise operations, with clear guidelines, procedures, and the personnel and training required. The lack of clear, concise, and uniform Title 31 regulations coupled with the absence of minimum internal control standards has resulted in casino Title 31 compliance being one of the most diverse and inconsistent areas throughout Indian Gaming.

In order to standardize operations, and brew the perfect Title 31 program, lets all begin a course in barista training, starting from the beginning.

Program Requirements – The Basic Brew.

Although vague, there are actually some very specific requirements that must be included in every Title 31 program. Specifically, the IRS categorizes casinos as financial institutions subject to the requirements of the Bank Secrecy Act and requires every casino to have a designated Title 31 compliance officer and a written anti-money laundering program, created using risk analysis based upon the casino’s size, location, dollar volume, types of games, nature of customers, and internal controls related to money laundering. In addition, the IRS has mandated that the following items must be included in your anti-money laundering program:

- Internal controls designed to assure compliance with the Bank Secrecy Act.
- Casino employee training.

- Independent compliance testing.
- A compliance officer, responsible for day-to-day compliance with the Bank Secrecy Act and the casino's anti-money laundering program.
- Procedures for using all available information to determine the name, address and SSN, and to verify the identity of a patron.
- Procedures for using all available information to determine any transactions or patterns of transactions required to be reported as suspicious.
- Procedures for using computers to aid in compliance.

Aside from some reporting and filing requirements, these are the ONLY guidelines for casinos, and they leave the specific details such as Multiple Transaction Logs (MTL) and other tracking programs up to the individual casino, and it is precisely these homemade tracking forms where Title 31 Compliance Officers spend the majority of their time.

In an effort to simplify the Title 31 compliance requirements let's review the above stated guidelines, and pair them with the solution your casino should have in place:

Internal Controls.

Title 31 Regulation. A detailed Title 31 regulation must be prepared by the casino Title 31 department, outlining the parameters used by the casino, such as gaming day, sample forms, employee procedures, etc... Many casino's fall short in this area and fail to create a stand alone document that all operational departments can reference when a question arises.

Multiple Transaction Logs (MTL) – Everyone should be familiar with these, however these logs must be easy to use or electronic if possible, so that casino employees can easily track patron activity and forward the information to accounting. User friendliness is the key to casino forms.

Employee Training.

Employee training is critical to a successful Title 31 program, however casino management must first decide which personnel require training and the frequency of the training. Some casinos train every employee in the casino, and some choose to only train supervisors who will be involved in cash transactions on the casino floor. I recommend that you provide training at least semiannually, using relevant information complete with numerous real world scenarios that arise on the casino floor.

Independent Testing.

This is easy, and is probably already being completed by your Tribal Gaming Regulatory Agency or Internal Audit staff, if not, schedule this with one of these departments or an outside accounting or consulting firm.

Compliance Officer.

This is your Barista, or day to day Title 31 specialist, who is the go to person that all casino personnel can rely on for questions regarding Title 31. If this person is

not readily available to casino operational personnel and there is not direct two-way communication, then you are leaving the casino open to multiple interpretations of Title 31 regulation. Make sure that your Title 31 Compliance Officer regularly meets with casino operational personnel and is available throughout the gaming day to answer questions.

Identification Gathering.

Continually asking patrons for their identification is a never ending task that is often where casino's can easily improve in both customer service and efficiency. Ensure that you are using technology fully with products such as drivers license scanning or other fields in your slot accounting management software to store patron identification. If you are still making thousands of photo copies of patron identification documents, it is definitely time to spend a little time and effort on technology, which will pay numerous dividends in the form of improved customer service coupled with the accuracy and efficiency improvements that technology can provide.

Suspicious Transactions.

This area is more ambiguous than the basics of Title 31 and requires determining amongst casino management and your regulatory body, what you consider suspicious, then document sample transactions in your Title 31 Regulation, teach it in your training sessions, and allow plenty of opportunity for casino employees to give you everything they think is suspicious and let the Title 31 Compliance Officer figure out whether it is suspicious or not. With the IRS specifically looking closely at this area, it is better to be safe than sorry.

Computer Aids.

With slot accounting management software installed in every casino tracking every bit of play on the casino floor, you would be surprised at the number of casino's that do not have custom reports or even basic access to the slot accounting software reports. Because most Title 31 personnel are not operational casino employees, they often do not know what they do not know. Most of the required information needed to properly track and cross reference Title 31 transactions is already contained in your slot accounting system. If you are not fully using technology now, it is time to set up an appointment with your IT department to see if there are reports available that the Title 31 department has not been granted access to.

Incorporate these basic requirements and your Title 31 Compliance program will be fully functional and meet all IRS and FinCEN guidelines. In order to be like Starbucks, your casino must start with three basic elements: written procedures, employee training, and technology use. Specifically, a clear and concise Title 31 Regulation, relevant and standardized training, plus a dash of technology will make your Title 31 program as good as a steaming cup of java.

Sit back with a great tasting cup of coffee and get busy working on updating your Title 31 regulation today. When completed, invite your friendly regulators along with some casino

operations personnel to join you for a cup and to read over your newly revised Title 31 Regulation with you. Having their input and questions answered before you distribute it will ensure a smooth implementation of any changes. Once completed, ensure that your regulation is distributed to all casino operational departments for standardized implementation and that training is scheduled shortly thereafter. You can be assured that your casino will be free of any FinCEN assessments and that you have set the standards for your casino for years to come.

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