

Protecting Native American casinos from money-laundering risks

For the vast majority of patrons, Native American casinos are ideal destinations for entertainment and leisure. Casinos are cash-intensive operations that extend credit and provide financial services such as check cashing, which makes them vulnerable to customers who wish to exploit the establishment to move and conceal illicit funds.

The Financial Crimes Enforcement Network (FinCEN)¹ requires the gaming industry to establish an anti-money-laundering program that is reasonably designed to prevent, detect and report suspected money laundering by its patrons, as underscored by several highly publicized enforcement actions against casino operations that had inadequate controls in place to meet this requirement. Similarly, banks are required by the Bank Secrecy Act to know their customers and understand their activities. This includes having an understanding of how their casino customers meet their regulatory obligations with respect to establishing an effective anti-money-laundering program. As a result of this regulatory requirement, banks are asking commercial and Native American casino clients for access to their Title 31 anti-money-laundering (AML) programs, analyzing the design of each program in relation to the risks posed by the particular casino customer, and conducting onsite reviews to understand the effectiveness of the controls established by the program. The goal: to ensure that the bank's products and services are only offered to casino customers with anti-money-laundering programs that are reasonably designed to prevent, detect and report money laundering through the casino.

Key takeaways



Casinos extend credit and conduct millions of dollars of cash transactions every day, exposing them to criminal schemes.



Regulators have heightened their scrutiny of casinos and taken enforcement actions against casinos that failed to adequately manage compliance with federal anti-money-laundering statutes.



All casinos should have a culture of compliance to ensure that AML programs are comprehensive and effective.

¹ The Financial Crimes Enforcement Network (FinCEN) is a bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions in order to combat domestic and international money laundering, terrorist financing and other financial crimes.

Background: Bank Secrecy Act and anti-money laundering

“Criminals and terrorists are constantly looking for new ways to move and disguise illegal proceeds through money laundering, putting our country at risk,” said Mike Lettig, National Executive of KeyBank’s Native American Financial Services. “By implementing effective programs to safeguard against illicit undertakings, the gaming industry can play a critical role in keeping the financial system safe from unlawful activity.”

The Currency and Foreign Transactions Reporting Act of 1970—commonly referred to as the “Bank Secrecy Act” (BSA)—is the nation’s most comprehensive federal AML and counter-terrorism-financing statute. The BSA authorizes the Secretary of the Treasury to issue regulations requiring banks and other financial institutions to take a number of precautions against financial crime.

The BSA requires U.S. financial institutions to report and retain records of cash transactions and negotiable instruments of more than \$10,000 (daily aggregate amount) and to report any suspicious activity that may suggest money laundering, tax evasion or other criminal activities. Casinos and card clubs that have gross annual gaming revenues in excess of \$1 million are considered financial institutions subject to the requirements of the BSA. As such, they are required to comply with the BSA and to implement an effective AML program.

An agency of the U.S. Department of the Treasury, FinCEN has regulatory responsibility for administering the BSA and its regulations. Specifically, FinCEN is charged with safeguarding the financial system from illicit use, combating money laundering and promoting national security through the collection, analysis and dissemination of financial intelligence. FinCEN carries out its mission by:

- Receiving and maintaining financial transactions data.
- Analyzing and disseminating that data for law enforcement purposes.
- Building global cooperation with counterpart organizations in other countries and with international bodies.



As the only federal regulator with AML enforcement authorities for casinos, FinCEN may impose civil penalties on domestic casinos as well as their partners, directors, officers and employees of such entities who participate in misconduct or exercise willful blindness. Banks that willfully or negligently process illicit transactions for their casino customers may also be penalized. The Internal Revenue Service (IRS) serves as FinCEN’s delegated examiner for casinos and card clubs and makes referrals to FinCEN of significant violations for enforcement consideration. In addition, casinos may also have enforcement actions levied against them by a state regulatory agency.

Heightened regulatory scrutiny and enforcement

In the past, FinCen has taken enforcement actions against a wide range of financial institutions and individuals covered by the Bank Secrecy Act, including casinos and a casino employee. The monetary penalties levied on casinos have been substantial.

Casino	Civil monetary penalty
Tinian Dynasty Hotel & Casino	\$75,000,000 June 3, 2015
CG Technology, L.P. (d/b/a Cantor Gaming)	\$12,000,000 October 3, 2016
Trump Taj Mahal	\$10,000,000 March 6, 2015
Desert Palace, Inc. (d/b/a Caesars Palace)	\$8,000,000 September 8, 2015
Hawaiian Gardens Casino, Inc.	\$2,800,000 July 15, 2016
Sparks Nugget Inc.	\$1,000,000 April 5, 2016
Oaks Card Club	\$650,000 December 17, 2015
The Lower Sioux Indian Community	\$250,000 April 21, 2011

Source: www.FinCen.gov

Enforcement actions also included, in addition to a fine, permanently barring an employee from working in financial institutions as a result of his willful violations of the Bank Secrecy Act².

Common problems that surfaced during the reviews leading to enforcement actions included:



- Systemic deficiencies in implementing and maintaining an effective AML program, including failure to maintain required records and to report large cash transactions and suspicious activity.
- Weak or nonexistent delegation of responsibility for day-to-day compliance with the BSA.
- Lack of training for casino personnel in BSA recordkeeping requirements or in identifying, monitoring and reporting suspicious activity.
- Ignoring IRS findings in earlier reviews and failing to take remedial actions, which often allowed violations to go on for years.

“As painful as the monetary penalties are, the price paid for noncompliance doesn’t end with the fine,” said Allard Teeple, Portfolio Manager, KeyBank Native American Financial Services. “A casino that is subject to enforcement action is required to implement major program improvements to correct deficiencies. It can also expect to receive heightened scrutiny in subsequent examinations to ensure shortcomings have been adequately addressed.”



From an enforcement perspective, most roads lead back to one single point of failure—a failed compliance culture. This suggests to me that each institution should engage in some honest self-examination and ask itself whether its culture of compliance is merely lip service or is it real.

Stephanie Brooker, Associate Director for Enforcement, Financial Crimes Enforcement Network (FinCEN), 2015 Bank Secrecy Act Conference

Building an effective AML compliance culture

“Each casino that is subject to the Bank Secrecy Act must have an effective AML program,” said Ryan Bumrungkittikul, Relationship Manager, KeyBank Native American Financial Services. “It’s not a matter of doing just enough to try to get through the examination, however. There has to be a strong culture of compliance for all employees at the casino, one that demonstrates that the organization’s leadership takes risk management and AML controls seriously.”

AML compliance programs must have a number of elements in place, including:

- Internal controls (policies and procedures designed to assure compliance with the BSA).
- Initial and ongoing training of casino employees.
- Independent testing for compliance.
- A compliance officer responsible for day-to-day compliance with the BSA and the casino’s AML program.
- Procedures for using all available information to determine, when required, a person’s name, address and Social Security number, and to verify his/her identity.
- Procedures for using computers to aid in assuring compliance if the casino has computerized systems.
- Procedures for using all available information to determine any transactions or patterns of transactions required to be reported as suspicious.



Federal law requires casinos to submit a Currency Transaction Report (CTR) for currency transactions over \$10,000 conducted by, or on behalf of, one person, as well as multiple currency transactions that in aggregate exceed \$10,000 in a single day. While there is no general prohibition against handling large amounts of currency, the filing of a CTR is required if the thresholds are met regardless of the reasons for the currency transaction.

² 8/20/2014 In the Matter of George Que, FinCEN also assessed a civil money penalty of \$5,000 against the former VIP Services Manager at the Tinian Dynasty Hotel & Casino.

Suspicious Activity Reports (SARs) are used to report possibly illegal activity involving \$5,000 or more in funds or other assets (single transaction or aggregated). A casino is required to file a SAR if it knows, suspects or has reason to suspect that:



- The activity involves funds derived from illegal activity.
- The activity is designed to hide assets derived from illegal activities, to evade federal law or avoid reporting requirements.
- The activity is being undertaken to evade BSA requirements.
- There is no business or apparent lawful purpose.
- The activity involves the use of the casino to facilitate criminal activity.

Casinos must be on the lookout for structuring, where an individual breaks up currency transactions into multiple, smaller amounts for the purpose of evading the CTR reporting requirement. Structuring is a federal crime, and it must be reported on a SAR.

Casinos also should report suspicious transactions that are under \$5,000, such as the submission by a patron of an identification document the casino suspects is false or altered.



When dealing with businesses as complex as modern casinos, and with judgments as subjective as those required by the BSA, no compliance effort can be perfect or immune from retrospective re-evaluation. Casinos should reconsider their AML/BSA compliance efforts on a regular basis to ensure they account for new risks and emerging patterns of illegal activity.

American Gaming Association, “Best Practices for Anti-Money Laundering Compliance,” December 2015

AML compliance program best practices

American Gaming Association’s “Best Practices for Anti-Money Laundering Compliance, December 2015” includes guidance on:

- Conducting risk assessments
- BSA/AML compliance officer scope and responsibilities
- Employee training
- Preventive steps
- Customer due diligence
- Transaction monitoring
- Identifying potentially suspicious activity
- SAR review procedures
- Audit procedures
- Recordkeeping and retention

FinCEN also provides valuable resources to help casinos with their AML programs, including “The SAR Activity Review—Trends, Tips & Issues.” A product of ongoing dialogue and collaboration among the nation’s financial institutions, law enforcement officials and regulatory agencies, the report provides actionable information about the preparation, use and value of SARs and other FinCEN reports filed by financial institutions.

FAQs

Question:

What things should be considered when analyzing a casino's risk for money laundering?



Answer:

The casino's size, location, dollar volume, types of games, type/nature of customers and internal controls are some of the factors to consider when analyzing the possible risk of money laundering occurring at the casino.

Question:

Why are banks asking for a casino's compliance program materials and independent review?

Answer:

Providing compliance program materials to the casino's bank helps it understand the casino's AML program and its culture of compliance. The independent review provides the bank with an assessment of the effectiveness of the casino's AML program and compliance with regulatory requirements.

Question:

Why is there increased scrutiny of casinos?

Answer:

FinCEN has reported disturbing instances in which IRS examiners were obstructed during the examination process and denied access to critical information. In addition, some casinos have failed to address repeated violations. FinCEN has noted that if IRS examiners fail to see enough improvement over multiple exams or recidivist behavior, it will be more likely to dig deeper into the overall program.

Question:

If a Tribe has several casinos, is each casino required to have a separate AML program?

Answer:

Each casino should have its own risk-based compliance program and compliance officer *if* it has different potential risks, such as different types of games and patrons. The distance between casinos, the use of separate record keeping systems and other factors may increase the need to have a separate compliance officer for each location.

Question:

Is there a standard or "pro forma" written program that a casino can use?

Answer:

There is no standard written program for a casino to utilize, as no two casinos are perfectly alike, however FinCEN has outlined minimum elements that are required for a casino's AML program. In addition, each casino should perform a risk assessment which "should be tailored to each specific casino and the nature and characteristics of its enterprise and customers".³

³ Source: American Gaming Association Best Practices for Anti-Money Laundering Compliance, 2015

Taking the next steps

While KeyBank is not acting in an advisory capacity, our experienced team of financial professionals are here to help.

For more information, speak with your KeyBank Relationship Manager or visit key.com/nativeamerican

To assist Native American casinos with creating a culture of compliance and protecting casinos from being a vehicle for money laundering, please refer to the following websites for specific guidance:

Financial Crimes Enforcement Network (FinCEN) – fincen.gov

American Gaming Association (AGA) Best Practices – americangaming.org



Commonly used terms

Anti-money laundering (AML)

Anti-money laundering (AML) refers to a set of procedures, initiatives, laws or regulations designed to prevent the practice of making illegally gained proceeds appear legal. Casinos and card clubs that have gross annual gaming revenues in excess of \$1 million are considered financial institutions subject to the requirements of the BSA. As such, they are required to comply with the BSA and to develop and implement an effective AML program.

Bank Secrecy Act (BSA)

The Currency and Foreign Transactions Reporting Act of 1970—commonly referred to as the “Bank Secrecy Act” or “BSA”—requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion or other criminal activities. Several AML acts, including provisions in the USA PATRIOT Act of 2001, have been enacted to amend the BSA. Casinos and card clubs licensed to do business as casinos or card clubs and which have gross annual gaming revenues in excess of \$1 million are considered financial institutions subject to the requirements of the BSA and are required to develop and implement an effective AML program.

Currency Transaction Report (CTR)

CTRs are used to disclose currency transactions over \$10,000 conducted by, or on behalf of, one person, as well as multiple currency transactions that aggregate to be over \$10,000 in a single day.

Financial Crimes Enforcement Network (FinCEN)

FinCEN is the agency in the U.S. Treasury with the responsibility to implement, administer and enforce compliance with the BSA. The Internal Revenue Service (IRS) serves as FinCEN's delegated examiner for casinos and card clubs and notifies FinCEN of significant violations found in its exams for enforcement consideration.

Structuring

Structuring is the breaking up of transactions for the purpose of evading the Bank Secrecy Act reporting and recordkeeping requirements.

Suspicious Activity Report (SAR)

A casino must file a SAR for any transaction conducted or attempted by, at or through a casino, and involving or aggregating at least \$5,000 in funds or other assets, that the casino knows, suspects, or has reason to suspect:

- Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (money laundering);
- Is designed to evade the reporting or recordkeeping requirements of the BSA (structuring);
- Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts; or
- Involves use of the casino to facilitate criminal activity.



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