

TITLE 26 - FINANCE

CHAPTER 1 - FINANCE CODE

ARTICLE 5 - FRAUD POLICY

Legislative History: 26 T.O.C. Chapter 1, Article 5, "Enacting Nation's Fraud Policy," was enacted and codified by Resolution No. 09-582, effective November 25, 2009.

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TITLE 26 - FINANCE

CHAPTER 1 - FINANCE CODE

ARTICLE 5 - FRAUD POLICY

Section 1501 Purpose and Scope

(A) Purpose:

To establish policies and procedures for: (1) identifying acts that are considered to be fraudulent, (2) describing the steps to be taken when fraud or other dishonest activities are suspected, and (3) accounting for missing funds and seeking restitution and recovery of missing funds.

(B) Scope:

This Fraud Policy applies to all Tohono O'odham Nation employees, all District employees, and all Tohono O'odham Nation and District Elected and Appointed Officials.

Section 1502 Definitions: The definitions in this Policy are only applicable to this Policy.

- (A) Appointed Official – means an official of the Nation or District who is appointed, rather than elected. Examples include but are not limited to: Nation's judges, the Legislative Secretary, District Secretary, and District Treasurer.
- (B) Branch Official – Branch Official means the Chairperson of the Nation for the Executive Branch, the Chief Judge for the Judicial Branch, and the Chairperson of the Legislative Council for the Legislative Branch.
- (C) District – District means all of the political subdivisions defined as Districts in Article IX of the Constitution of the Tohono O'odham Nation.
- (D) Elected Official – Elected Official means Legislative Council representatives and alternates, District Council representatives and alternates, the Chairperson and Vice-Chairperson of the Nation, and the Chairperson and Vice-Chairperson of the Districts.
- (E) Employee – Employee means any individual or group of individuals who receive compensation, either full- or part-time, from the Tohono O'odham Nation or any District. The term also includes any volunteer who provides services to the Nation through an official arrangement with the Nation or District.
- (F) External Auditor – External Auditor means an independent audit professional who performs or participates in an audit of the Nation's financial statements.

- (G) Fraud – Fraud means any deception deliberately practiced in order to secure unfair or unlawful gain, misappropriation, or other similar irregularity. Examples of fraud and other similar irregularities include, but are not limited to:
- (1) Claims for reimbursement of expenses that are not job-related or authorized.
 - (2) Forgery or unauthorized alteration or unauthorized use of documents (checks, promissory notes, time sheets, independent contractor agreements, purchase orders, budgets, etc.).
 - (3) Misappropriation of tribal assets (funds, securities, supplies, furniture, vehicles, equipment, etc.).
 - (4) Improprieties in the handling or reporting of money transactions.
 - (5) Authorizing or receiving payment for goods not received or services not performed.
 - (6) Computer-related activity involving unauthorized alteration, destruction, forgery, or manipulation of data or misappropriation of Nation-owned software.
 - (7) Misrepresentation of financial or economic information on documents.
 - (8) Any apparent violation of federal, state, or tribal laws related to dishonest activities or fraud.
 - (9) An Employee, Appointed Official, or Elected Official who seeks, accepts, or agrees to accept anything of material value for personal benefit from any person, including Nation’s vendors, consultants, contractors, lessees, applicants, or grantees, with the agreement or understanding that the Employee or Official’s vote, opinion, judgment, exercise of discretion or other action or inaction will be improperly influenced.
- (H) Internal Auditor –Internal Auditor means any qualified independent audit professional, who among other duties is assigned by the Nation’s Chairperson to investigate any suspected fraud or similar activity. The Internal Auditor may be an employee of the Nation or a contracted individual or company.
- (I) Management– Management means any administrator, manager, director, supervisor, or other individual who manages or supervises employees, but especially those managers who administer or supervise employees administering funds or other resources, including human resources.
- (J) Nation – means the Tohono O’odham Nation, a federally recognized Indian tribe, and includes the Legislative Branch, the Judicial Branch, and the Executive Branch.

Section 1503 Policy

- (A) The Tohono O'odham Nation and its Districts are committed to protecting all assets against the risk of loss or misuse. Accordingly, it is the policy of the Tohono O'odham Nation and its Districts to identify and promptly investigate any possibility of suspected fraud or related suspected dishonest activities against the Nation and/or Districts and, when appropriate, to pursue legal remedies available under the law.
- (B) The Nation will fully investigate any suspected acts of fraud. Any investigation will be conducted in an objective and impartial manner regardless of the position, title, and length of service or relationship with the Nation of any party who might be or become involved in or becomes the subject of such investigation.
- (C) Management of any District or of any Nation's program, department, or branch is responsible for instituting and maintaining a system of internal controls to provide reasonable assurance for the prevention and detection of fraud.
- (D) The Internal Auditor has the primary responsibility for administrative investigation of all suspected fraud. The Financial Crimes Division of the Tohono O'odham Police Department has the primary responsibility for the criminal investigation of all suspected fraud.
- (E) When initiating an administrative investigation, the Internal Auditor will inform the Financial Crimes Division of the Tohono O'odham Police Department that an administrative investigation has begun. Throughout any investigation, the Internal Auditor will inform the Financial Crimes Division of the Tohono O'odham Police Department of pertinent investigative findings.
- (F) Employees who report suspected improprieties will be granted protection when acting in good faith and in accordance with this Policy. When informed of a suspected impropriety, neither the Nation, the District, nor any person acting on behalf of the Nation or the District shall take any of the following actions in retaliation for an employee's report of suspicious activity:
 - (1) Dismiss or threaten to dismiss the reporting employee,
 - (2) Discipline, suspend, or threaten to discipline or suspend the reporting employee,
 - (3) Impose any penalty upon the reporting employee, or
 - (4) Intimidate or coerce the reporting employee. Violations of the above protection will result in discipline. These protections shall not be afforded to employees who intentionally file a false claim or who are subject to discipline for other reasons.

- (G) Upon conclusion of an investigation, the results will be reported to the respective Branch Official or Elected Official and to the Financial Crimes Division of the Tohono O'odham Police Department.
- (H) The Branch Official or Elected Official will review the investigation results and take appropriate action regarding employee misconduct, unless the Branch Official or the Elected Official is the person under suspicion, in which case the next person in the chain of authority shall review the investigation results.
- (I) The Nation will pursue every reasonable effort, including court ordered restitution, to obtain recovery of the Nation's losses from the offender, or other appropriate sources.
- (J) No person with knowledge of an investigation, other than an authorized person of the Chairperson's Office, shall discuss the alleged fraud investigation with the media.

Section 1504 Procedures

- (A) Responsibilities of Appointed and Elected Officials
 - (1) If any Appointed and Elected Official has reason to suspect that a fraud has occurred, he or she shall immediately contact the Internal Auditor.
 - (2) No Appointed or Elected Official shall attempt to investigate the suspected fraud or discuss the matter with anyone other than the Internal Auditor. If deemed appropriate by the Internal Auditor, as part of an administrative investigation, the Internal Auditor may request that the Chairperson, Council members, any District Elected Official or the Chief Judge discuss the matter with appropriate law enforcement officials.
 - (3) Appointed and Elected Officials shall make every effort to enforce this Policy, and will cooperate fully with the Internal Auditor, other involved departments, and law enforcement agencies in the detection, reporting, and investigation of suspected fraud, including the prosecution of offenders for any suspected fraud that amounts to a criminal act.
 - (4) During an investigation, to the extent legally permissible, Appointed and Elected Officials shall give the Internal Auditor and any law enforcement investigators full and unrestricted access to all necessary records and personnel. All of the Nation's furniture and contents, including desks, computers, and any personal owned property used in the workplace, are open to inspection at any time. There is no assumption of personal privacy.
- (B) Management Responsibilities
 - (1) Management is responsible for being alert to and reporting suspicious activities in their areas of supervision.

- (2) Each manager should be familiar with the types of improprieties that might occur in his or her area.
- (3) If a manager has reason to believe an activity may involve suspected fraud, that manager should promptly share these concerns with their immediate supervisor.
- (4) Department Directors shall inform the Internal Auditor in writing of all concerns of suspected fraud brought to their attention.
- (5) Management should not attempt to conduct individual investigations, interviews, or interrogations.
- (6) Management shall make every effort to enforce this Policy, and will cooperate fully with the Internal Auditor, other involved departments, and law enforcement agencies in the detection, reporting, and investigation of suspected fraud, including the prosecution of offenders for any fraud that amounts to a criminal act.
- (7) During an investigation, to the extent legally permissible, Management shall give the Internal Auditor and any law enforcement investigators full and unrestricted access to all necessary records and personnel. All of the Nation's furniture and contents, including desks and computers, are open to inspection at any time. There is no assumption of personal privacy.
- (8) In dealing with suspected dishonest or suspected fraudulent activities, great care must be taken. Therefore, Management should avoid the following:
 - (a) Alerting suspected individuals that an investigation is underway;
 - (b) Treating employees unfairly or disparately; and
 - (c) Making statements that could lead to claims of false accusations or other offenses.
- (9) In handling suspected dishonest or fraudulent activities, Management has the responsibility to:
 - (a) Make no contact (unless requested) with the suspected individual to determine facts or demand restitution. Under no circumstances should there be any reference to "what you did", "the crime", "the fraud", "the misappropriation", etc.
 - (b) Avoid discussing the case, facts, suspicions, or allegations with anyone other than employees or authorities who have a need to know such as the

Internal Auditor, Office of Attorney General or law enforcement personnel.

- (c) Direct all inquiries from the suspected individual, or his or her representative, to the Internal Auditor or Office of Attorney General. All inquiries by an attorney of the suspected individual should be directed to the Office of Attorney General or after a criminal investigation has begun, to the Office of the Prosecutor. All inquiries from the media should be directed to the Office of the Chairperson.
 - (d) Take appropriate corrective and disciplinary action in conformance with applicable personnel policies and procedures.
- (10) If fraud, or any procedural or managerial weakness that could lead to fraud, is discovered, Management is responsible for taking appropriate corrective actions to ensure adequate controls exist to prevent reoccurrence of improper actions.
 - (11) Management is responsible for following up on any Internal Auditor recommendations. Management shall issue a written report in 60 days to the Internal Auditor regarding actions taken.
- (C) Employee Responsibilities
- (1) A suspected fraudulent incident or practice observed by, or made known to, an employee must be reported to the Internal Auditor.
 - (2) The reporting employees shall refrain from further investigation of the incident, confrontation with the alleged violator, or further discussion of the incident with anyone, unless requested by the Internal Auditor, Office of Attorney General, Management or law enforcement personnel.
- (D) Internal Auditor Responsibilities
- (1) Upon a report of suspected dishonest or suspected fraudulent activity the Internal Auditor will promptly investigate the suspicious activity.
 - (2) In all circumstances where there appears to be reasonable grounds for suspecting that a fraud has taken place, the Internal Auditor will contact the Financial Crimes Division of the Tohono O'odham Police Department.
 - (3) The Internal Auditor shall be available and receptive to receiving relevant, confidential information to the extent allowed by law.
 - (4) If evidence is uncovered indicating fraudulent activities, the Internal Auditor will proceed as follows:

- (a) After conferring with the Financial Crimes Division of the Tohono O'odham Police Department, discuss the findings of the administrative investigation with Management and the Department Director, unless they are the person under suspicion, in which case the next person in the chain of authority shall review the administrative investigation findings.
 - (b) Coordinate with the Nation's Insurance Office at the onset of its administrative investigation in order to protect the Nation's rights under its insurance policy.
 - (c) Take immediate action with the assistance of the Financial Crimes Division of the Tohono O'odham Police Department to prevent the theft, alteration, or destruction of evidentiary records. Such action shall include, but is not limited to:
 - (i) Removing records and placing them in a secure location, or limiting access to the location where the records currently exist.
 - (ii) Preventing the individual suspected of committing the fraud from having access to the records.
 - (5) In consultation with the Financial Crimes Division of the Tohono O'odham Police Department, the Internal Auditor may disclose particulars of the investigation with potential witnesses if such disclosure would further the investigation.
 - (6) At the conclusion of the investigation, the Internal Auditor shall document the results in a confidential memorandum report to the applicable Branch Official or Elected Official, the Office of Attorney General, and to the Financial Crimes Division of the Tohono O'odham Police Department. A summary of the report may be released to the External Auditor.
 - (7) The Internal Auditor will make recommendations to the appropriate department, branch or District for assistance in the prevention of future similar occurrences.
 - (8) Upon completion of the investigation, including all legal and personnel actions, all records, documents, and other evidentiary material obtained from the department, branch or District under investigation will be returned by the Internal Auditor to that department, branch or District. The Internal Auditor may retain copies of records and other documents as part of the file on the investigation.
- (E) Tohono O'odham Police Department Responsibilities
- (1) In cases where the Internal Auditor has not been informed or involved, the Financial Crimes Division of the Tohono O'odham Police Department shall:

- (a) Inform the Tohono O'odham Insurance Office at the start of its investigation in order to protect the Nation's rights under its insurance policy.
 - (b) Prepare a written report for the Internal Auditor that may be included in any report in which the Internal Auditor may provide to the appropriate department, branch or District.
- (2) In cases where the Internal Auditor has a conflict of interest, the Internal Auditor shall report to the Prosecutor's Office or to the Financial Crimes Division of the Tohono O'odham Police Department.

Section 1505 Review

The Budget and Finance Committee shall review this Fraud Policy annually and recommend necessary changes to the Legislative Council.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Nation's Fraud Policy)

RESOLUTION NO. 09-582

1 **WHEREAS, the Constitution of the Tohono O'odham Nation vests the Tohono O'odham Legislative**
2 **Council with broad legislative and fiscal powers, including the power "to manage any**
3 **funds within the exclusive control of the Tohono O'odham Nation, including proceeds**
4 **derived from lands and resources of the Tohono O'odham Nation (Constitution, Article**
5 **VI, Section 1(d)(2)); and**

6 **WHEREAS, the Legislative Council Budget and Finance Committee, in coordination with the**
7 **Nation's Treasurer and Executive Branch, has drafted and obtained passage of a**
8 **number of laws for inclusion in the Nation's Finance Code that are designed to**
9 **properly allocate and account for the Nation's funds, and to strengthen internal**
10 **controls; and**

11 **WHEREAS, as part of this ongoing effort, the Budget and Finance Committee, Treasurer,**
12 **Accounting Department, Tohono O'odham Police Department Financial Crimes Unit,**
13 **and Chairman's Office have developed a Nation's Fraud Policy; and**

14 **WHEREAS, the Fraud Policy is designed to "establish policies and procedures for: (1) identifying**
15 **acts that are considered to be fraudulent, (2) describing the steps to be taken when**
16 **fraud or other dishonest activities are suspected, and (3) accounting for missing funds**
17 **and seeking restitution and recovery of missing funds (Fraud Policy, Section 1501(A));**
18 **and**

19 **WHEREAS, the Fraud Policy will help the Nation "to identify and promptly investigate any**
20 **possibility of suspected fraud or related suspected dishonest activities against the**
21 **Nation and/or Districts and, when appropriate, to pursue legal remedies available**
22 **under the law (Fraud Policy, Section 1503(A)); and**

23 **WHEREAS, the Fraud Policy, as dated for reference April 2009, is incorporated by this reference**
24 **and would be codified as Tohono O'odham Code Title 26, Chapter 1, Article 5; and**

25 **WHEREAS, because the Nation is required by tribal and federal law to ensure that the Nation's**
26 **gaming revenues, including revenues distributed to the Nation's 11 districts, are**
27 **expended for lawful purposes, the Fraud Policy is designed to apply to all Tohono**
28 **O'odham Nation and district employees, and to all elected and appointed officials of**
29 **the Nation and the Districts (Ordinance for the Regulation of Gaming Activities within**

1 the Tohono O'odham Nation, 16 T.O.C. Chapter 1; Indian Gaming Regulatory Act, 25
2 U.S.C. § 2701 *et seq.*); and

3 WHEREAS, it is in the Nation's best interest to enact the Fraud Policy and thereby strengthen the
4 procedures for effectively addressing misuse of the Nation's assets.

5 NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it enacts the
6 Fraud Policy as Tohono O'odham Code Title 26, Chapter 1, Article 5.

7 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 17TH. Day
8 of NOVEMBER, 2009 at a meeting at which a quorum was present with a vote of 2,216.15 FOR; 379.35
9 AGAINST; -01- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by
10 Article IV, Section 1 (d) of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono
11 O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -
12 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48
13 Stat. 984).

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15 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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18 _____
19 Verlon M. Jose, Legislative Chairman

20
21 25 day of November, 2009

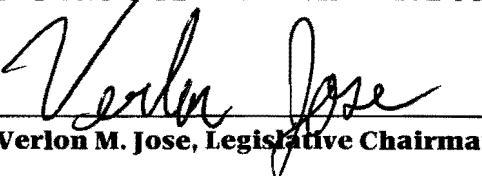
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23 ATTEST:

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25 _____
26 Evonne Wilson, Legislative Secretary

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28 17 day of November, 2009.

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30 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham
31 Nation on the 25 day of November, 2009 at 9:56 o'clock, a. .M.,
32 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
33 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
34 submittal.

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36 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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40 Verlon M. Jose, Legislative Chairman

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APPROVED
 DISAPPROVED

on the 25 day of November, 2009
at 3:10 o'clock, P.M.

Ned Norris, Jr.
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 25 day of
November, 2009, at 3:22 o'clock, P.M.

Evonne Wilson
Evonne Wilson, Legislative Secretary

ACTION: ENACTING NATION'S FRAUD POLICY

MOVED: COUNCILWOMAN EVELYN JUAN MANUEL

SECOND: COUNCILWOMAN CYNTHIA E. MANUEL

DATE: NOVEMBER 17, 2009

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF ODAK 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35	X			
	2. MARY LOPEZ ()	99.35	X			
SELLS 449.6	1. KIMBERLY LISTO ()	224.80	X			
	2. EVELYN B. JUAN MANUEL ()	224.80	X			
SCHUK TOAK 159.0	1. FRANCES B. CONDE (Fredrick Jose)	79.50	X			
	2. LINDA PARLEY (Agnes Joaquin)	79.50		X		
SAN XAVIER 204.7	1. FELICIA NUÑEZ ()	102.35	X			
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	102.35	X		X	
SAN LUCY 187.1	1. LORRAINE EILER (Charlotte Cadavas)	93.55	X			
	2. GLORIA RAMIREZ ()	93.55		X		
PISINEMO 184.5	1. CHESTER ANTONE (Tony Murrietta)	92.25	X			
	2. EDWARD MANUEL (Gerald Fayuant)	92.25	X			
HICKIWAN 174.5	1. MICHELLE ORTEGA ()	87.25	X			X
	2. SANDRA ORTEGA ()	87.25	X			
GU VO 206.3	1. GRACE MANUEL ()	103.15		X		
	2. PAMELA ANGHILL (Angela Ortiz)	103.15		X		
GU ACHI 230.1	1. TIMOTHY L. JOAQUIN ()	115.05	X			
	2. CYNTHIA E. MANUEL ()	115.05	X			
CHUKUT KUK 277.0	1. ETHEL GARCIA (Sara Mae Williams)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			X
BABOQUIVARI 324.0	1. FRANCES MIGUEL (Roberta Harvey)	162.0	X			
	2. FRANCES G. ANTONE (<i>Absent</i>) (Vernon Smith) (<i>Present</i>)	162.0	X			
TOTAL		2,595.50	2,216.15	379.35	-01-	[02]