

# **EASTERN BAND OF CHEROKEE INDIANS FRAUD POLICY**

## **Article I. BACKGROUND**

According to *Management Antifraud Programs and Controls*, released in 2002 as an exhibit to Statement on Auditing Standards No. 99 *Consideration of Fraud in a Financial Statement Audit*, an organization must take three fundamental actions to mitigate fraud:

- Create a culture of honesty and high ethics,
- Evaluate antifraud processes and controls, and
- Develop an appropriate oversight process

The Eastern Band of Cherokee Indians' (EBCI) fraud policy is hereby established to facilitate the Tribe's fraud mitigation activities and fraud prevention program. It is the intent of EBCI to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations. It is Tribal management's responsibility, (i.e., Tribal Council, the Executive Committee, and Senior Management), to create a culture of honesty and high ethics and to communicate clearly and consistently acceptable behavior and expectations for each employee. Tribal management shall also be proactive, instead of reactive, in reducing fraud opportunities through:

- Identification and measurement of fraud risks, including financial reporting risk, operational risk, and compliance risk by internal as well as external sources,
- Taking action to mitigate identified risks, and
- Implementation and monitoring appropriate preventative and detective internal controls and other deterrent measures.

## **Article II. SCOPE OF POLICY**

This policy applies to any fraud, or suspected fraud, involving employees as well as appointees, elected officials, consultants, vendors, contractors, outside agencies doing business with employees of such agencies, and/or any other parties with a business relationship with EBCI and its associated tribal entities. Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position/title, or relationship to EBCI.

## **Article III. DEFINITION OF FRAUD**

- "an instance or act of trickery or deceit especially when involving misrepresentation; an intentional misrepresentation, concealment, or nondisclosure for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right." *Webster's Dictionary*
- "occupational fraud and abuse; the use of one's occupation for personal enrichment through deliberate misuse or misapplication of the employing organization's resources or assets." *Association of Certified Fraud Examiners*

## **Article IV. POLICY**

Management is responsible for the detection and prevention of fraud, misappropriations, and other inappropriate or unethical conduct. Each member of the management team will

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be familiar with the types of improprieties that might occur within his or her area of responsibility, and be alert for any indication of irregularity. The EBCI will institute a zero tolerance approach to fraudulent activity as evidenced by the implementation of this policy, the investigation of all reported suspected fraudulent activity, and the disciplinary measures taken. Any fraud that is detected or suspected must be reported immediately to the Chief Audit and Ethics Executive, who coordinates all investigations with the Attorney General's Office and other affected areas, both internal and external, as deemed appropriate.

**Article V. ACTIONS CONSTITUTING FRAUD**

The terms defalcation, misappropriation, and other fiscal wrongdoings refer to, but are not limited to:

- Any dishonest or fraudulent act
- Deceptive business practices
- Extortion
- Bribery
- Kickbacks
- Blackmail
- Embezzlement
- False pretenses
- Securing execution of documents by deception
- Tampering with records
- Forgery or alteration of any document or account belonging to EBCI
- Forgery or alteration of a check, bank draft, or any other financial document
- Misappropriation and/or misuse of tribal funds, securities, supplies, or other assets
- Impropriety in the handling or reporting of money or financial transactions
- Profiteering as a result of insider knowledge of EBCI activities
- Disclosing confidential and proprietary information to outside parties
- Disclosing to other persons securities activities engaged in or contemplated by EBCI
- Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to EBCI. Exception: Gifts less than \$50 in value.
- Destruction, removal or inappropriate use of records, furniture, fixtures, and/or equipment
- Any similar or related inappropriate and unethical conduct, including violations of the EBCI Code of Ethical Conduct

**Article VI. OTHER INAPPROPRIATE CONDUCT**

Suspected improprieties concerning an employee's moral, ethical, or behavioral conduct, as defined by of the EBCI Personnel Policies and Procedures generally and Article 8 Code of Ethical Conduct of said Policies and Procedures specifically, should be resolved by departmental management and/or the Human Resources.

If there is any question as to whether an action constitutes fraud, contact the Chief Audit and Ethics Executive for guidance.

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**Article VII. INVESTIGATIONS UNIT**

The Investigations Unit is responsible for coordinating potential and actual fraud examinations. It is composed of the Chief Audit and Ethics Executive and other staff as deemed appropriate. The Chief Audit and Ethics Executive as is deemed necessary shall contact the Attorney General's Office, the Prosecutor's Office, the Cherokee Police Department and/or external consultants to assist in an investigation.

**Article VIII. INVESTIGATION RESPONSIBILITIES**

The Office of Internal Audit and Ethics has the primary responsibility for the investigation of all suspected fraudulent acts as defined in this policy. If the investigation substantiates that fraudulent activities have occurred, the Chief Audit and Ethics Executive or designee will timely prepare a written report of the results of the investigation, indicating the findings and corresponding corrective action recommendations to appropriate designated personnel, including the Audit and Ethics Committee, per the Office of Internal Audit and Ethics's Report Issuance Policies and Procedures. Decisions to prosecute or refer the examination results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made in conjunction with the Attorney General's Office, as will final decisions on disposition of the case and recoveries of any tribal monies or property.

**Article IX. CONFIDENTIALITY**

The Office of Internal Audit and Ethics treats all information received confidentially. Any employee who suspects dishonest or fraudulent activity will notify the Chief Audit and Ethics Executive or a member of the Internal Audit staff, their immediate supervisor, or call the EBCI Hotline at 1-800-455-9014 or [ebci.alertline.com](http://ebci.alertline.com) immediately, and should not attempt to personally conduct investigations or interviews/interrogations related to any suspected fraudulent act (refer to *Article XII REPORTING PROCEDURE* in this policy). Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know. This is important in order to avoid damaging the reputations of persons suspected but subsequently found innocent of wrongful conduct and to protect EBCI from potential civil liability.

**Article X. AUTHORIZATION FOR INVESTIGATING SUSPECTED FRAUD**

Members of the Investigation Unit and designates will have (1) free and unrestricted access to all Tribal records and premises, whether owned or rented AND (2) the authority to examine, copy, and/or remove all or any portion of the contents of files, desks, cabinets, and other storage facilities on the premises without prior knowledge or consent of any individual who may use or have custody of any such items or facilities when it is within the scope of their investigation, and as further set forth in Cherokee Code Section 117-112.

**Article XI. REPORTING PROCEDURES**

Great care must be taken in the investigation of suspected improprieties or wrongdoings so as to avoid mistaken accusations or alerting suspected individuals that an investigation is under way.

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An employee who discovers or suspects fraudulent activity will contact the Chief Audit and Ethics Executive or a member of the Internal Audit staff, their immediate supervisor, or call the EBCI Hotline at 1-800-455-9014 or [ebci.alertline.com](http://ebci.alertline.com) immediately. The employee or other complainant may remain anonymous. All inquiries concerning the activity under investigation from the suspected individual, his or her attorney or representative, or any other inquirer should be directed to the Investigations Unit or the Attorney General's Office. No information concerning the status of an investigation will be given out. The proper response to any inquiries is: "I am not at liberty to discuss this matter." *Under no circumstances* should any reference be made to "the allegation," "the crime," "the fraud," "the forgery," "the misappropriation," or any other specific reference.

The reporting individual should be informed of the following:

- Do not contact the suspected individual in an effort to determine facts or demand restitution.
- Do not discuss the case, facts, suspicions, or allegations with *anyone* unless specifically asked to do so by the Attorney General's Office or the Chief Audit and Ethics Executive.

### **Article XII. DISCIPLINARY ACTION/TERMINATION**

Corrective action with regard to employee involvement in fraudulent activity and lack of supervisory oversight providing the necessary opportunity for such fraudulent activity will be the responsibility of senior management.

### **Article XIII. TRAINING**

A crucial component to the implementation of this policy is robust training and awareness of this policy and what constitutes fraudulent activity. As recommended by *Management Antifraud Programs and Controls*, released in 2002 as an exhibit to Statement on Auditing Standards No. 99 *Consideration of Fraud in a Financial Statement Audit*, new employees shall be informed during the New Employee Orientation about the EBCI's values, its Code of Ethical Conduct, and the EBCI Fraud Policy. This training shall explicitly cover expectations of all employees of the Fraud Policy, specifically including:

- Each employees' duty to communicate fraud issues,
- The types of issues, including actual or suspected fraud, to be communicated along with specific examples, and
- The appropriate procedure to communicate these issues.

Additionally, training on this policy shall be conducted for all current employees of EBCI and its associated entities, with annual refresher training thereafter to be documented by employee management within the employee personnel file.

### **Article XIV. ADMINISTRATION**

The Audit and Ethics Committee is responsible for the administration, revision, interpretation, and application of this policy. The policy will be reviewed annually and revised as needed.