

June 10, 2024

Executive Office  
Tribal Council  
The Eastern Band of Cherokee Indians  
Cherokee, NC

We conducted an audit of tribal-wide Ethics in accordance with the FY24 annual audit plan. REDW was engaged to conduct the audit.

The review is designed to assess the effectiveness of the Tribe's ethics programs and processes. The review is intended to be used as a tool to determine if improvement is needed.

REDW identified 4 observations. The details of these observations along with recommendations can be found in the attached report. Management's response is included as an attachment.

The assistance of the Ethics and Employee Relations staff is appreciated. Please do not hesitate to contact our office with questions.

Sincerely,



Sharon Blankenship, CIA, CGAP, CFE, LPEC  
Chief Audit and Ethics Executive

cc: Lori Lambert, Audit and Ethics Committee Chair  
Tasheena Parker, Ethics Officer  
Sarah Teesateskie, Secretary of Human Resources  
Reva Ballew, Employee Relations Manager



# Eastern Band of Cherokee Indians

Tribe-Wide Ethics  
Internal Audit  
May 30, 2024

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**Eastern Band of Cherokee Indians  
Tribe-Wide Ethics  
Internal Audit**

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## **Eastern Band of Cherokee Indians Tribe-Wide Ethics Internal Audit**

### **Report**

#### **Introduction**

We performed the internal audit services described below solely to assist the Eastern Band of Cherokee Indians (EBCI) in assessing the effectiveness of ethics programs for both tribal officials and employees including ethics training, complaint tracking, and financial/gift/conflict of interest disclosure procedures.

Our services were conducted in accordance with the Consulting Standards issued by the American Institute of Certified Public Accountants and the terms of our Professional Services Contract agreement for internal audit services.

#### **Purpose and Objectives**

The EBCI Office of Internal Audit and Ethics is responsible for reviewing and investigating potential violations of the EBCI Tribal Official Code of Ethics and determining appropriate methods of resolution based on the nature of the complaint. The Office of Internal Audit and Ethics works with all EBCI divisions as well as public citizens to ensure complaints and violations can be addressed in accordance with the EBCI Ethics Rules of Procedure.

The EBCI Human Resources Division and Employee Rights Department are responsible for reviewing and investigating potential violations of the EBCI employee Code of Ethics. The Human Resources Division and Employee Rights Department work with all EBCI divisions as well as public citizens to ensure complaints and violations can be addressed in accordance with the EBCI Personnel Policy and EBCI Employee Rights Standard Operating Procedures.

Our internal audit focused on evaluating the processes and internal controls over the complaints process to ensure complaints were resolved timely, officials and employees received required Code of Conduct Training, and elected/appointed officials filed financial interest and gift disclosure forms as required. As testing was performed, we considered best practices over training processes and content, complaint tracking and handling, and disclosure reporting for Tribal Officials to determine if opportunities existed to enhance the process.

## Observations and Recommendations

As a result of our test work, we identified the following observations:

### 1. **Corrective Action and Complaint Approvals/Tracking**

In accordance with Section 9.01 of the EBCI Personnel Policy – Corrective Action Procedures, all proposed and final corrective actions must be reviewed by Employee Rights office personnel and by an attorney in the Office of the Attorney General before the corrective action is given to the employee. The EBCI Employee Rights Standard Operating Procedures mirror a similar process when reviewing complaints submitted by employees. In addition, the decision to place an employee on Designated Leave With Pay (DLWP), both for corrective actions and complaints, must be approved by the Human Resources Division and the Executive Committee. Our testing of 7 corrective actions and 3 complaints determined:

- 6 corrective actions and 1 complaint did not have documentation maintained to support review by the Employee Rights and the Office of the Attorney General before the final decision was given to the employee; and
- 1 corrective action and all 3 complaints did not have documentation maintained to support approval of DLWP by the Human Resources Division and Executive Committee.

Further inquiry determined that because these reviews were conducted in a variety of different formats (i.e., e-mail, phone calls, or in person/virtual meetings), compiling documentation that the review occurred was difficult to ensure. In addition, our testing over the employee complaint tracking mechanism determined that the spreadsheet did not contain fields to ensure approval dates, such as the ones above, could be tracked. We also determined the spreadsheet was missing other key information such as dates interviews occurred, interviewer names, etc. however, we were able to obtain additional evidence through other documentation to support compliance with procedural requirements in these areas.

**Potential Risk – Moderate:** If corrective actions do not follow approval procedures according to policy, the risk is increased that they may be inappropriately or inconsistently applied, exposing EBCI to potential legal challenges, grievances, or disputes. Since it appears the reviews did occur, they just were not documented in the employee file, we have assessed the risk at moderate.

**Recommendation:** The EBCI Employee Rights Department should implement a more comprehensive tracking mechanism over complaints, corrective actions and other employee grievance processes to improve tracking of the various required tasks according to the EBCI Personnel Policy and EBCI Employee Rights Standard Operating Procedures. Specific elements that should be added to the tracking mechanism include the date each review was conducted, the method of review utilized (such as email correspondence, phone call, or in-person meeting), and the full names and job titles of the reviewers involved. Additionally, a detailed record of the recommendations and decisions made should be included. HR and Employee Rights personnel should be trained on the updates to the tracking mechanism to ensure awareness of the revised documentation requirements and the functionality of the new tracking mechanism. Lastly, the EBCI Employee Rights Department should perform periodic reviews at regular intervals to confirm that procedures are being followed and to identify any areas that may require further attention or improvement.

## **2. *New Tribal Official Training Deadline***

In accordance with Section E8 of the EBCI Office of Internal Audit and Ethics – Policies and Procedures – Education Program, Tribal Officials are required to complete Code of Conduct training within 10 business days of their election or appointment. Failure to complete the training timely results in a Code of Ethics violation. To track training deadlines, the EBCI Office of Internal Audit and Ethics utilizes a tracking spreadsheet with Tribal Official appointment dates and training deadlines. Our testing of 10 new Tribal Officials determined 2 did not complete the training within 10 business days (with variances ranging from 6 to 8 days after the deadline) nor was a Code of Ethics violations issued. Further inquiry determined 1 Tribal Official requested an extension due to scheduling conflicts however, no documentation of the extension approval was maintained in the Tribal Official's file. In the other instance, no extension was granted.

**Potential Risk – Low:** If training is not attended timely, new Tribal Officials may not be aware of Code of Conduct requirements. Since both Tribal Officials attended the within two weeks of their appointment, we have assessed the risk at low.

**Recommendation:** The EBCI Office of Internal Audit and Ethics should remind Tribal Officials of the importance of attending Code of Conduct training timely. In the event scheduling conflicts arise, Tribal Officials should continue to work with the EBCI Office of Internal Audit and Ethics to determine if extensions can be granted. These decisions should be maintained in the Tribal Official's file to support why a Code of Conduct violation did not occur. If a Tribal Official does not attend training timely, the violation policy should be enforced or extenuating circumstances for why the violation was not issued should be documented.

## **3. *Gift Reporting Penalties***

In accordance with Section E7.4 of the EBCI Office of Internal Audit and Ethics – Policies and Procedures – Gifts, Donations and Contributions, Tribal Officials are required to file gifts reports by the 15<sup>th</sup> of January, April, July, and October. Grace periods between 5-10 business days are typically given to allow Tribal Officials additional time to submit the report. Our testing of 10 gift reports that were submitted late determined that 1 Tribal Official filed their gift report 3 days after the grace period and was not issued a written reprimand in accordance with the progressive penalty policy.

**Potential Risk – Low:** If penalties are not properly enforced, Tribal Officials may continue to submit required reports late. Since most of the gift reports sampled were in compliance with the progressive penalty policy and were submitted after the first written reprimand, we have assessed the risk as low.

**Recommendation:** EBCI should reiterate the importance of reporting deadlines and grace periods for gift report submissions to ensure Tribal Officials are aware of their responsibilities. The EBCI Office of Ethics and Internal Audit should enforce the defined penalties for late submissions to maintain accountability and compliance with policy. Documentation should be maintained in each Tribal Official's file for any extenuating circumstances that contribute to departures from the policy.

#### **4. Attestation and Disclosures Statements**

In accordance with Section E7.1 of the EBCI Office of Internal Audit and Ethics – Policies and Procedures – Attestation and Disclosure, Tribal Officials are required to file a completed Attestation and Disclosure (A&D) statement on or before October 15<sup>th</sup> of every year so any potential conflicts of interests can be disclosed. Grace periods between 5-10 business days are typically given to allow Tribal Officials additional time to submit the statement. Our testing of 10 A&D submissions determined:

- 1 Tribal Official submitted the A&D statement 53 days after the end of the grace period. Further inquiry determined there was a miscommunication about whether this Tribal Official would remain in office during an administration change in October 2023. Upon discovery that the Tribal Official was still in the position, the A&D statement was requested and submitted; and
- 1 Tribal Official submitted the A&D statement timely, but the statement was not complete as the Tribal Official did not initial next to 2 of 3 A&D acknowledgements.

**Potential Risk – Low:** If A&D Statements are not submitted completely or timely, conflicts of interests may not be properly disclosed. Since the majority of the sample was in compliance with policies, we have assessed the risk at low.

**Recommendation:** The EBCI Office of Internal Audit and Ethics should remind Tribal Officials of the importance of submitting completed A&D statements. In the event a statement is submitted incomplete, it should be returned to the Tribal Official for completion.

## Best Practice Recommendations

REDW performed the analysis below to compare EBCI's current ethics program practices against best practices to determine if additional recommendations could be made to enhance the program for both Tribal Officials and employees. REDW utilized a variety of sources with a focus on those related to Government/Tribal Government when considering applicable/relevant best practices.

<b>Ethics Program Component</b>	<b>Current Practice</b>	<b>Best Practice Recommendation</b>
Code of Conduct Training – Tribal Officials	<p>Code of Conduct training did not include examples of current events or global circumstances relevant to Tribal Officials conduct.</p> <p>The deadlines for refresher trainings were set 2 years after completion of the last training, meaning the deadline was everchanging and was affected by whether the Tribal Official completed their training early or late.</p>	<ul style="list-style-type: none"> <li>• The EBCI Office of Internal Audit and Ethics should consider including examples of current events happening with other Tribal Organizations/governments to ensure trends can be discussed and enhance awareness.</li> <li>• The EBCI Office of Internal Audit and Ethics has various training videos on relevant current topics related to tribal official conduct. EBCI should consider making one or more of those videos mandatory viewing for Tribal Officials in addition to the initial and refresher Code of Conduct trainings already offered. This can assist in further enhancing awareness of various topics within Code of Conduct.</li> <li>• EBCI should set implement a fixed due date for all Tribal officials and then set the next refresher deadline 2 years from the previous due date, not from date of last training. This will help with tracking and monitoring of training deadlines and help standardize training requirements for all Tribal Officials moving forward.</li> </ul>



<b>Ethics Program Component</b>	<b>Current Practice</b>	<b>Best Practice Recommendation</b>
Tribal Officials Financial Disclosures	<p>Section E7.1 of the EBCI Office of Internal Audit and Ethics – Policies and Procedures was silent to the filing deadline for newly elected or appointed tribal officials. Internal policy is that new officials are required to file an A&amp;D statement within 5 business days of their election or appointment.</p> <p>The EBCI Office of Internal Audit and Ethics – Policies and Procedures were silent to cooling off periods for Tribal Officials.</p>	<ul style="list-style-type: none"> <li>EBCI should ensure deadlines are standardized to ensure there is no perception of unfair practices.</li> <li>EBCI should update their attestation and disclosure policies to formalize the filing deadline for newly elected or appointed tribal officials to ensure timelines can be monitored and adhered to.</li> <li>EBCI should formalize in their policy, mandatory “cooling-off” periods for former officials. This policy should require ex-officials to abstain from making decisions or exerting influence in the specific sector or domain where they previously held authority for at least one year.</li> </ul>
Complaint Tracking - Employees	The EBCI Personnel Policy requires a written statement to be submitted when a potential complaint is filed. Various documentation types are submitted including handwritten, e-mails, phone calls, etc.	<ul style="list-style-type: none"> <li>EBCI should create and use a standard form for complaints. A standardized form would help tracking and documentation purposes and ensure all required information is obtained when the complaint is submitted.</li> </ul>

### **Scope and Procedures Performed**

**In order to gain an understanding of the process, we interviewed the following personnel:**

- Sharon Blankenship, Chief Audit and Ethics Executive
- Tasheena Parker, Ethics Officer
- Sarah Teesateskie, Secretary of Human Resources Division
- Reva Ballew, Employee Rights Manager

**In order to gain an understanding of the processes and controls in place we read relevant portions of:**

- Cherokee Code Section 117-45
- Cherokee Code Section 96-2
- EBCI Employee Rights Standard Operating Procedures updated May 2023
- EBCI Personnel Policies and Procedures updated August 2023
- EBCI Ethics Rules of Procedure updated October 2023

**We performed the following test work:**

**Ethics Training for Tribal Officials** – We obtained a listing of tribal officials as of February 2024. We reviewed the training record for all 122 officials to verify that they were listed as having completed initial training and 2-year refresher training. We then selected a sample of 10 new officials and 5 existing officials and tested to determine:

- New officials completed initial training within 10 days of election/appointment;
- Existing officials attended refresher training on or before 2 years after the date of initial training; and
- If the official did not attend initial training within 10 days or did not complete refresher training within 2 years, they were cited with a code of conduct violation.

In addition, we obtained the training documentation for initial trainings and refresher trainings to determine if the content contained relevant information including current events regarding ethics violations or global circumstances.

**Tribal Official Complaints** – We obtained a listing of Tribal Official complaints from January 2023 to January 2024. From a total population of 10 complaints received, we selected 4 (1 withdrawn, 1 dismissed, and 2 substantiated) and tested to determine if:

- An initial review was performed within 5 business days of receipt of the complaint to determine if it was a violation or not; and
- The complaint form, or other written documentation detailing the nature of the complaint, was submitted and all required elements were completed.

For the 2 complaints that were withdrawn or dismissed, we tested to determine:

- There was documented rationale for why the complaint was not investigated;
- Documentation of this rationale was sent to the complainant within 2 business days of the decision not to investigate; and
- There was evidence that the complaint was not a violation of the code of conduct or was one of the items that the committee will not consider according to the Cherokee Code.

For the 2 complaints that were substantiated, we tested to determine:

- The Case Manager submitted the determination to the Chief Audit and Ethics Executive for approval;
- The determination was approved by the Chief Audit and Ethics Executive;
- Once the determination was approved, the complaint was sent to the respondent within 2 business days;
- The respondent responded within 15 business days;
- Once the response was received, the Case Manager and Chief Audit and Ethics Executive performed a review within 5 business days to determine if an investigation was warranted;
- The Case Manager sent the recommendation to the Audit and Ethics Committee;
- If an investigation was not warranted and the complaint was dismissed, a letter was sent to the complainant and respondent informing them of the decision;

- All actions taken during the investigation was documented and placed in the complaint file; and
- Fines were assessed for positive findings and agreed to the progressive scale.

**Employee Corrective Actions and Complaints** – We obtained a listing of employee corrective actions from October 1, 2023 to March 31, 2024. From a total population of 155 entries on the corrective action spreadsheet (25 complaints, 130 corrective actions), we selected a sample of 10 (3 complaints and 7 corrective actions) and tested to determine:

For Corrective Actions:

- The corrective action was reviewed by Employee Rights office personnel and by an attorney in the Office of the Attorney General before the corrective action was given to the employee;
- Designated Leave with Pay was approved by Human Resources and the Executive Committee.

For Complaints:

- The complainant was interviewed by 2 Employee Rights Staff;
- The complaint form, or other written documentation with complaint elements, was submitted and on file;
- A written verification of receipt was provided to the Complainant within 2 business days of receipt of the complaint;
- The complaint was reviewed by Employee Rights Staff and Human Resources Secretary within 2 business days;
- An Investigative Report was completed and shared with the appropriate parties;
- The corrective action was reviewed by Employee Rights office personnel and by an attorney in the Office of the Attorney General before the corrective action is given to the employee;
- The Final Determination Letter was sent to the complainant; and
- Designated Leave with Pay was approved by Human Resources and the Executive Committee.

As testing was performed, we considered best practices over complaint tracking and handling to determine if opportunities to enhance the complaints process.

**Attestation and Disclosure (A&D Statements)** – We obtained a population of Tribal Officials as of February 2024. From a population of 122, we determined that each was listed on the tracker as having submitted required disclosures. We performed an analysis of the submissions to determine the rate of compliance with the October 15<sup>th</sup> submission requirement. We then selected a sample of 10 Tribal Officials and tested to determine if:

- The A&D statement was signed by the Tribal Official indicated that they received, read, understood, and will abide by the Code of Ethics by the deadline;
- The A&D statement included a list of the Tribal official’s immediate family; and
- The A&D statement included a list of businesses or entities in which the Tribal official or immediate family has a personal interest as defined in Cherokee Code 117-45.3(a)(3).

**Gift Disclosures** – We obtained the tracking spreadsheet for all quarters that occurred in FY 2023 and the first quarter of FY 2024 and performed an analysis on each quarter to determine the rate of compliance with the submission deadline with a focus of identifying repeat late submissions. From a population of 29 officials identified with repeat late submissions, we selected a sample of 10 and tested to determine if penalties were enforced in accordance with the progressive scale according to the Ethics Rules of Procedures.

**Ethics Program Best Practices** – We performed an analysis over the EBCI Ethics Program for Tribal Officials and employees to determine where opportunities for enhancements may be present in accordance with best practices for government organizations.

\* \* \* \* \*

We discussed and resolved minor observations with management and received cooperation and assistance from the EBCI Office of Internal Audit and Ethics, Human Resources Division, and Employee Rights Department during the course of our interviews and testing. We sincerely appreciate the courtesy extended to our personnel.

*REDW* LLC

Albuquerque, New Mexico  
May 30, 2024

## MEMORANDUM

**TO:** Executive  
Tribal Council

**FROM:** Sharon Blankenship, Chief Audit and Ethics Executive

**CC:** Lori Lambert, Audit and Ethics Committee Vice Chair  
Sarah Teesateskie, Secretary of Human Resources  
Reva Ballew, Employee Relations Manager  
Tasheena Parker, Ethics Officer

**DATE:** June 10, 2024

**RE:** Responses to Report 24-004 – Ethics Audit Report

The 4 observations and recommendations identified in the Tribal-wide Ethics audit report 24-004 were distributed to the program and responses prepared. The responses as provided are stated below. The original response forms are on file with this office.

### 1. Corrective Action and Compliant Approvals/Tracking

**Response: Agree, Target implementation 9/7/24**

Respondent narrative: “Develop centralized tracking system.” “Develop a tracking form that includes the date of review, signatures, and correspondence regarding corrective actions. Long term we are working to develop an electronic tracking mechanism to track this process.”

### 2. New Tribal Official Training Deadline

**Response: Agree, Target implementation 8/31/24**

Respondent narrative: “To address this observation, we will implement the following:

Communication Log: We will implement a communication log to document all interactions with Tribal officials. This log will track the date, time, subject matter, and key points of each communication.

Extension Requests: All extension requests will be documented in the communication log, outlining the reason for the request, the date of approval or denial, and the revised deadline.



File Management: All communication logs related to the specific Tribal official will be maintained within their designated file.

Tribal Council Resolution Language: We have developed and submitted language for inclusion in Tribal Council's resolution for the confirmation process. This language will require all newly confirmed Tribal officials to contact our office within three business days of their confirmation hearing."

### **3. Gift Reporting Penalties**

#### **Response: Agree, Target implementation 8/31/24**

Respondent narrative: "To address this observation, we will implement the following:

Communication Log: We will implement a communication log to document all interactions with Tribal officials. This log will track the date, time, subject matter, and key points of each communication.

Extension Requests: All extension requests will be documented in the communication log, outlining the reason for the request, the date of approval or denial, and the revised deadline.

File Management: All communication logs related to the Tribal official will be maintained within their designated file.

Enforcement of Penalties: We will consistently enforce the policy for Tribal officials who fail to report within the allotted timeframe unless a documented extension has been granted."

### **4. Attestation and Disclosures Statements**

#### **Response: Agree, Target Implementation 8/31/24**

Respondent narrative: "To address this observation, we will implement the following:

Enforcement of Completeness: We will implement a process to ensure that all A&D statements are complete and accurate upon submission. Incomplete statements will be returned to the Tribal Official for completion before being accepted. Additionally, we will require Tribal Officials to complete the A&D statement within 10 business days of their appointment/election.

Documentation of Extensions: All extension requests will be documented in the communication log, including the reason for the request, the date of approval or denial, and the revised deadline.

File Management: All communication logs related to the Tribal official will be maintained within their designated file."