Safe Deposit Box Bulging with Cash - *SAR Report?*

For over 35 years, as a safe deposit consultant, I have traveled the United States and have received thousands of calls, letters and e-mails from financial institutions. They all have questions and want guidance on various safe deposit issues. Recently an institution requesting an answer, submitted the following scenario.

SCENARIO: One of our box renters, the owner of an oriental restaurant, has frequently been observed converting large amounts of cash into $100 bills and then immediately accessing his safe deposit box. This box is so full, that he has rubber-banded it together to enable him to return it to its opening. Non-cash transactions, however, are deposited into his business account. He openly acknowledges that he diverts the cash from his box to other financial institutions that in turn wires money to his suppliers. He justifies this business activity by explaining that this is a "normal practice for operating my type of business."

Question: Is this behavior suspicious, and should we file a Suspicious Activity Report (SAR)? His cash exchanges always fall short of the $10,000 CTR reporting limitation.

Answer: The answer is…yes and no! In 1996 the Bank Secrecy Act reporting requirements were changed and the proposed changes stated that safe deposit transactions were included in the reporting requirements for a Suspicious Activity Report. Fortunately, because of the opposition expressed by many sources, the final SAR reporting requirement excluded a safe deposit box entry as a transaction.

WHY WAS THE BSA AMENDED?

There was widespread concern that the BSA reporting requirement threatened the sanctity of a consumer's right to have private access to his safe deposit box. It has been a longstanding financial perception that all safe deposit box transactions are private and that the financial institution should refrain from any and all intrusions. Furthermore, it has always been incumbent upon the financial institution to zealously protect the consumer's right to privacy. There was also concern that inclusion of safe deposit box transactions under the BSA could potentially violate some existing state laws. Based on these arguments, FinCEN agreed to exclude the use of safe deposit boxes from the "transaction definition." They stated, "based on present experience, the risk of the use of a safe deposit box by itself as part of a money laundering or similar offense is sufficiently rare that a rule mandating blanket changes in long-established banking practices was uncalled for."

IT IS STILL A GRAY AREA

FinCEN did exclude the protection of safe deposit box transactions under certain conditions:

1. If a safe deposit transaction is used in conjunction with other large financial transactions, this transaction may be reportable.
2. If a financial institution deems it necessary to enter a box (such as drilling a box for past due rent or contract termination), this could possibly be viewed as a transaction that would fall under the BSA provisions and should be reported pursuant to BSA reporting requirements.
3. If a consumer is observed using his safe deposit box in ways that are considered suspicious, the financial institution might voluntarily submit a report. This exclusion could be construed as a subtle attempt to place accountability back in the lap of the financial institution.

Unfortunately, our government regulators have again left the SAR reporting decision in your hands with their suggestion that "voluntary reporting might be appropriate." Always be careful…before any safe deposit

employee decides to file a SAR; he or she should always consult with their institution's compliance officer for a decision and approval.

HOW TO AVOID THE PROBLEM

There are several ways to avoid the "should I or shouldn't I report this suspicious transaction" dilemma. First, instill in your staff that they must avoid any knowledge concerning the contents of a renter's box. If a renter attempts to discuss or show his box contents to an employee (which does occur quite often), the renter would be informed that no employee is allowed to possess any knowledge regarding a renter's box contents. This must be stressed as your "standard operating procedure." The "don't know, can't tell" rule will protect you and your employees from being placed in a comprising position. Second, always provide a private area where renters can conduct box transactions unobserved. Require that all box renters use a viewing room when examining their box contents. If the renter stays in the vault for a "quick transaction," employees should always move away from the box and not observe the renter's contents.

IN CONCLUSION

Implementing these important steps, being able to produce specific written policies outlining your institution's internal procedures, and providing in-depth training for your staff regarding privacy issues will help minimize your potential liability.

About the Author: David P. McGuinn, President of Safe Deposit Specialists, is a former banker and is often referred to nationwide as the safe deposit GURU. In all 50 states he has trained over 200,000 safe deposit personnel since 1969 and has served as President of the American Institute of Banking and the American, Texas and Houston Safe Deposit Associations. He has created numerous safe deposit manuals, training videos, products, compliance forms and other products. During the past 35 years, McGuinn's safe deposit manuals, videos, products and forms have been recognized as the national standard for the financial industry.