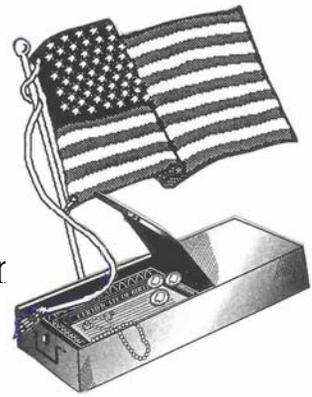


USA PATRIOT Act Creates Safe Deposit Confusion



On October 1, 2003 the final rule for customer identification was officially implemented, as required by the USA PATRIOT Act of 2001. The compliance provisions of the Act are mandatory. Unfortunately, the safe deposit departments of many financial institutions nationwide are still *not in compliance*.

How do I know this? After 35 years of providing safe deposit training and consultation, I answer many compliance questions each month. The “Most Frequently Asked” questions over the past year were generated by the PATRIOT Act and how it impacts the safe deposit industry. These questions indicate that there is still much confusion regarding safe deposit compliance. To avoid penalties, financial institutions must address these questions now.

In this article I will respond to a few of the PATRIOT Act questions that I consider to be most critical. These answers should help many financial institutions avoid future problems, litigation, and penalties.

Frequently Asked Questions

Q. Why does the USA PATRIOT Act affect safe deposit?

A. *The PATRIOT Act defines an account between a consumer or business and a financial institution as a “relationship”. Originally this relationship did not extend to the safe deposit area, but was confined to other financial activities. Later, the scope of the definition was revised and in the final rules, safe deposit box rental activity fell under the “relationship” definition and is now included in this regulation.*

Q. Why should we be worried about terrorism in the safe deposit area?

A. *Consider the devastation that would result if terrorists came into major US cities and infiltrated the safe deposit systems of many financial institutions. They could rent hundreds of boxes and place bombs in each one timed to explode simultaneously. We can only imagine the extent of the losses that would ensue. It would be impossible to calculate the monetary loss and the destruction of valuables, many irreplaceable, which would result. Also consider the massive confusion and the extensive damage such an event would generate in our financial industry. (This frightening scenario leads us to the answer of our next safe deposit compliance question.)*

Q. Should a Suspicious Activity Report (SAR) be filed in the safe deposit area?

A. *Historically, because of privacy issues surrounding safe deposit box confidentiality, filing a SAR in the safe deposit department was seen as a delicate and difficult procedure to pursue. Often it was deemed more prudent to avoid filing a SAR in a department typically viewed as a “gray area”. Now, because of the PATRIOT Act as well as other changes, the safe deposit department is no longer exempt from these reporting practices. There are a number of safe deposit situations that will now require a SAR filing. Before a safe deposit employee files a report however, the BSA compliance officer or legal counsel should review and approve it.*

Q. Should we offer jointly rented boxes or add signatures to existing contracts?

A. After a renter's death, most states allow easy box access to a surviving joint renter. If only individual boxes are rented, this will create very expensive and time-consuming problems for the renter's heirs and your institution. Also, if you don't allow additional signers on contracts, your renters will probably become angry and close all of their accounts. Adding renter signatures outside your facility should only be done using the required written compliance and disclosure procedures.

Q. Should we rent safe deposit boxes to non-depositors?

A. Renting boxes to non-depositors is an internal policy decision with which many institutions have been struggling for years. Because of the strict PATRIOT Act identification requirements, many institutions have decided to only rent boxes to existing depositors. This simplifies the PATRIOT Act requirements and gives your safe deposit employees an added incentive to solicit new accounts from these prospective depositors.

Q. What disclosure notice must be provided when a box is rented or signers are added?

A. Your "Identity Verification Disclosure Notice" must be provided to all new box renters. If all renters are not present, this notice may be given to any one renter for delivery to the other signers. To simplify your box rental and disclosure procedures, this required disclosure notice should be included in your Box Rental Application form. This application form should also be used to add additional signers to existing contracts.

Q. Should we have written "CIP" procedures covering our safe deposit area?

A. A written "CIP" program and policy and procedures are both required by the PATRIOT Act. These documents must be approved by your Board of Directors, used in your safe deposit employee training, and audited and tested periodically.

Significant Penalties and Fines

Since the USA PATRIOT Act is now part of the Bank Secrecy Act and the Money Laundering Control Act, the penalties and fines for non-compliance in the safe deposit area can be significant and far reaching. Failure to comply with these regulatory requirements can subject a financial institution to very large monetary penalties. In 2004, four financial institutions received large fines for money laundering law violations. The largest penalty, \$50 million dollars, was due to incorrect security, compliance, and reporting procedures. This type of regulatory punishment signals a new era of enforcement efforts, designed to combat money laundering and terrorist activity.

In Conclusion

Your safe deposit area must get into compliance NOW! Taking precautions, training your employees, and auditing and testing your internal safe deposit procedures can minimize the potential for large fines, penalties and the time-consuming embarrassment of your institution becoming involved in a regulatory legal action. If you need assistance in developing your written safe deposit procedures, Identification Disclosure Forms, or would like additional PATRIOT Act information, call (713) 937-9929 or email your request to sdspec@aol.com.

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. He has created numerous safe deposit manuals, training videos, and compliance products, including a "USA PATRIOT Act and Your Safe Deposit Operation" manual and Identification Disclosure Forms. During the past 35 years, McGuinn's safe deposit products have been recognized as the national standard for the financial industry.*