

Comments received March 28, 2006 from DEA Liaison to FinCEN

I have some questions, concerns and possible suggestions. It seems the effort to remove a named individual as a point of contact in favor of a designated office where a subject must be familiar with the filing is a work-around aimed at protecting the privacy of the responsible filer. However, block 29 allows for the **optional** filing of an internal control number. From a law enforcement perspective, this may present a situation where the designated office who has an individual knowledgeable of the report to be nothing more than a party who knows where to go to retrieve the filing and not of the filing itself. This also does not ensure that different inquiries from more than one law enforcement agency will always reach the same knowledgeable individual, nor receive the same explanations or answers. This also expands the potential that law enforcement will have to contact several individuals within the institution to ensure that all the relevant data from the point of transaction has been accurately reflected.

As I understand it, the decision to make block #26 optional as opposed to mandatory is that some filing agencies did not have the ability to assign and/or track such an internal identifier. This seems to suggest that the volume of filings must be so low, that the volume wouldn't justify whatever costs necessary to establish such a system. In those instances, the manual application of a tracking number (i.e., SAR 06-1) seems to be a viable option as these must be retained (and filed) for a specific period of time anyway. If there are multiple SARs, it appears it may be difficult for law enforcement to contact the designated contact office and direct them to the specific SAR of interest absent a mandatory internal number.

It would also seem reasonable, that should law enforcement contact (unsolicited) the filing institution regarding a SAR, that a raised or enhanced level of due diligence might be reasonable, and if two or more unaffiliated law enforcement agencies make a query into the same SAR, EDD should be required and could be the subject of FinCEN guidance. In cases of EDD, the filing institution should then be responsible for informing the second and subsequent law enforcement agencies of the queries of the first (except for circumstances involving NSLs). Unless there is accurate internal tracking or the ability to consistently reach the same competent designated individual, this level of coordination and further level of risk assessment could be flawed.