



Financial Crimes Enforcement Network Department of the Treasury

September 9, 2008

FinCEN's 314(a) Fact Sheet

Section 314(a) of the USA PATRIOT Act of 2001 (P.L. 107-56)¹ required the Secretary of the Treasury to adopt regulations to encourage regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. FinCEN issued a proposed rule on March 5, 2002, and the final rule on September 26, 2002 (67 Fed. Reg. 60,579). Section 314(a) requirements are now published in 31 CFR Part 103.100.

Overview

FinCEN's regulations under Section 314(a) enable federal law enforcement agencies, through FinCEN, to reach out to more than 45,000 points of contact at more than 27,000 financial institutions to locate accounts and transactions of persons that may be involved in terrorism or money laundering.

FinCEN receives requests from federal law enforcement and upon review, sends requests to designated contacts within financial institutions across the country once every 2 weeks via either a secure Internet web site or via facsimile. The requests contain subject and business names, addresses, and as much identifying data as possible to assist the financial industry in searching their records. The financial institutions must query their records for data matches, including accounts maintained by the named subject during the preceding 12 months and transactions conducted within the last 6 months. Financial institutions have 2 weeks from the transmission date of the request to respond to 314(a) requests. If the search does not uncover any matching of accounts or transactions, the financial institution is instructed not to reply to the 314(a) request.

FinCEN began processing 314(a) requests in November 2002. This system was temporarily suspended, based on feedback from system users. Following extensive consultations, FinCEN issued FAQ's to implement and streamline the process and resumed operation of the system in February 2003. Since that time, as with any new system, the process continues to be fine-tuned. On March 1, 2005, FinCEN ceased notifying the financial industry with e-mail attachments and began posting 314(a) requests on a secure Internet site.

¹ Section 314 is reprinted in the Historical and Statutory Notes to 31 U.S.C. § 5311.

The Process

Through an expedited communication system, FinCEN's 314(a) process enables an investigator to canvas the nation's financial institutions for potential lead information that might otherwise never be uncovered. The focus quickly zeros in on relevant locations and activities. This cooperative partnership between the financial community and law enforcement allows disparate bits of information to be identified, centralized and rapidly evaluated.

It is important to note, however, that Section 314(a) provides lead information only and is not a substitute for a subpoena or other legal process. To obtain documents from a financial institution that has reported a match, a law enforcement agency must meet the legal standards that apply to the particular investigative tool that it chooses to use to obtain the documents.

To ensure that Section 314(a) inquiries are being used only for appropriate cases, FinCEN's Section 314(a) process requires federal law enforcement to provide assurances that the request has been subject to appropriate scrutiny at the agency level and that the matter under investigation satisfies FinCEN's standards for processing a formal Section 314(a) inquiry. FinCEN requires all requesters to submit a form certifying that the investigation is based on credible evidence of terrorist financing or money laundering.

Criteria for Money Laundering Requests

Because money laundering encompasses such a wide range of underlying criminal activity, agencies must determine that a money laundering case is significant before submitting a 314(a) request to FinCEN. To ensure that this standard is met, FinCEN requires documentation showing the size or impact of the case, the seriousness of the underlying criminal activity, the importance of the case to a major agency program, and any other facts demonstrating its significance.

In addition, law enforcement must certify in cases involving money laundering that all traditional means of investigation have been exhausted. The support for the assertion that other investigative alternatives have been exhausted or are unavailable must be provided in the form submitted to FinCEN for review prior to the request being submitted to financial institutions by FinCEN.

To date, the 314(a) process already has proved to be successful, as illustrated below. Results have yielded productive leads for both terrorist financing and money laundering investigations. The immediate matches have, for example, led to the identification of new accounts, transactions, indictments, etc. and enabled law enforcement to efficiently direct its use of legal processes to promptly obtain critical evidence in numerous cases. Examples of 314(a) requests, based on money laundering, include:

- Hawala operation involving a sanctioned country
- Arms trafficking
- Alien smuggling resulting in fatalities

- Cigarette smuggling
- Nationwide investment fraud with many victims
- International criminal network involved in identity theft and wire fraud
- Multi-agency investigation of drug trafficking rings

Results

To date, the 314(a) Program Office has processed 863 requests submitted by eighteen Federal agencies. Federal law enforcement organizations have submitted cases in the conduct of the following significant criminal investigations:

Terrorism/Terrorist Financing – 283 cases
Money Laundering – 580 cases

These requests included 7,784 subjects of interest. Of these, financial institutions have responded with 51,815 total subject matches: 50,777 positive and 1,038 inconclusive.

Feedback from Law Enforcement

Based upon the fifty-two percent of 314(a) feedback that has been received from the law enforcement requesters, the following information has been provided. The aggregate numbers yielded from all of the feedback responses factored by the number of related requests, reveal that, on the average, there were:

8.9 New Accounts Identified per request
10.6 New Transactions Identified per request
7.4 Follow up initiatives taken by Law Enforcement with Financial Institutions per request

In order to streamline the overall efficiency of the feedback reporting process, FinCEN has revised the feedback form that law enforcement utilizes to report feedback to our agency. To incorporate these latest enhancements which combine certain reporting elements, we are currently reporting the indictment and arrest statistics in two separate categories as follows:

Based on the total feedback we received using the previous feedback reporting form, 47% of 314(a) requests have contributed to arrests and 54% of 314(a) requests have contributed to indictments.

Based on the total feedback we have received using the current revised feedback reporting form, 51% of 314(a) requests have contributed to arrests or indictments.

To date, there have been 28 closed cases directly reported on all feedback forms. Of these indicated closed cases, there have been a total of 47 convictions.