Department of the Treasury
Financial Crimes Enforcement Network

GUIDANCE

FIN-2009-G002
Issued: June 16, 2009
Subject: Guidance on the Scope of Permissible Information Sharing Covered by Section 314(b) Safe Harbor of the USA PATRIOT Act

The Financial Crimes Enforcement Network ("FinCEN") is issuing this interpretive guidance to clarify the application of the rule implementing section 314(b) (the "314(b) rule")[1] of the USA PATRIOT Act (the "Act").[2] Specifically, this guidance clarifies that a financial institution participating in the section 314(b) program may share information relating to transactions that the institution suspects may involve the proceeds of one or more specified unlawful activities ("SUAs") and such an institution will still remain within the protection of the section 314(b) safe harbor from liability.

Section 314(b) permits two or more financial institutions and any association of financial institutions to "share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities."[3] Section 314(b) establishes a safe harbor from liability for a financial institution or an association of financial institutions that voluntarily chooses to share information with other financial institutions for the purpose of identifying and, where appropriate, reporting possible money laundering or terrorist activity.[4] To avail itself of the section 314(b) safe harbor, a financial institution must comply with the requirements of the implementing regulation, including provision of notice to FinCEN, taking reasonable steps to verify that the other financial institution has submitted the requisite notice, and restrictions on the use and security of information shared.[5]

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[1] 31 CFR § 103.110.

[2] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 ("USA PATRIOT Act") Pub. L. No. 107-56, 115 Stat. 272 (2001).

[3] Pub. L. No. 107-56, § 314(b). Consistent with the broad intent underlying section 314(b) of the Act, the 314(b) rule defines "money laundering" by reference to sections 1956 and 1957, Title 18, United States Code, which in turn include the conducting of a transaction involving the proceeds of a specified unlawful activity.

[4] 31 CFR § 103.110(b)(5).

[5] 31 CFR § 103.110(b)(2)-(b)(4).

The SUAs listed in 18 U.S.C. § § 1956 and 1957 include an array of fraudulent and other criminal activities.[6] Information related to the SUAs may be shared appropriately within the 314(b) safe harbor to the extent that the financial institution suspects that the transaction may involve the proceeds of one or more SUAs and the purpose of the permitted information sharing under the 314(b) rule is to identify and report activities that the financial institution "suspects may *involve possible* terrorist activity or money laundering."[7] Therefore, to the extent that financial institutions share information related to possible money laundering activities, including those associated with the underlying SUAs, or related to possible terrorist activity, such information sharing remains within the protection of the rule's safe harbor, provided the aforementioned conditions are met.[8]

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Questions or comments regarding the contents of this Guidance should be addressed to the FinCEN Regulatory Helpline at 800-949-2732.

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[6] FinCEN has been asked, for example, about the applicability of information sharing under the 314(b) rule in the mortgage fraud context. 18 U.S.C. § 1956 includes SUAs relating to fraudulent Federal credit institution entries, Federal Deposit Insurance transactions, bank entries, and loan or credit applications. *See e.g.*, 18 U.S.C. § 1956(c)(7)(D).

[7] 31 CFR § 103.110(b)(1) (emphasis added).

[8] Although the section 314(b) safe harbor covers a broad range of information sharing, it must be read as being consistent with the confidentiality provision set forth at 31 U.S.C. § 5318(g), which prohibits financial institutions from disclosing a suspicious activity report to the subject of the report. FinCEN has construed this language broadly to prohibit a financial institution from disclosing a SAR to any person other than FinCEN, the Securities Exchange Commission, or another appropriate law enforcement or regulatory agency, or for purposes consistent with Title II of the BSA as determined in regulation or guidance. Accordingly, a financial institution, when sharing information relating to possible money laundering or terrorist activity, may not disclose a suspicious activity report or reveal its existence but may share the information underlying a suspicious activity report.